

Current equality law developments in
France – The French model of
expanding the discrimination grounds
as a way forward for the EU?

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Introduction

UN

Treaties

Universal, Race, Sex,
Disability

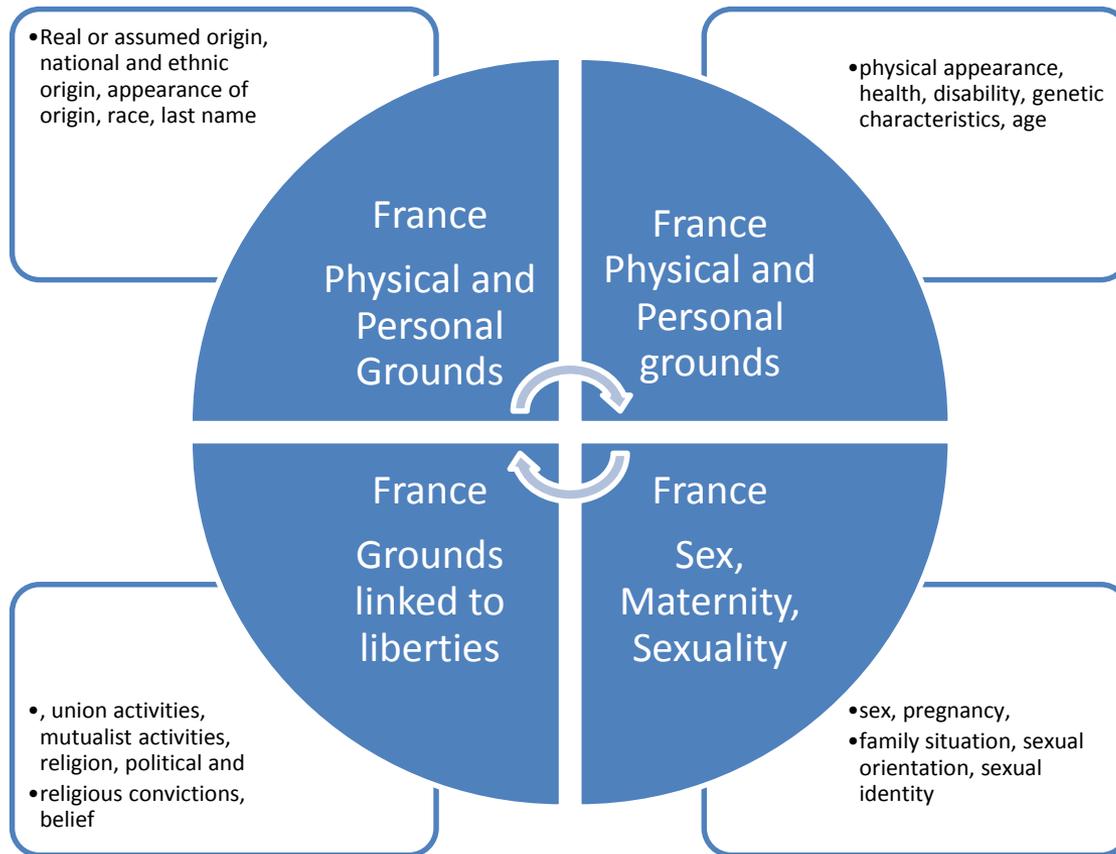
ECHR Grounds- Open list
article 14- Hierarchy between
the grounds

Article 19 TFEU grounds – closed list
☐ Sex / Ethnic origin / Race / Religion / Beliefs/
Disability / Age / Sexual orientation

Eu Charter of Fundamental Rights

Article 21 – Open list: Any ground such as sex, race, color, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion,

.... membership of a national minority,
property, birth, disability, age or sexual
orientation



Case Law

Loss of autonomy

Article
L 1132-1 Labor Code

Other laws (urban,
harassment)

Sexual identity

Place of residence

Social hardship

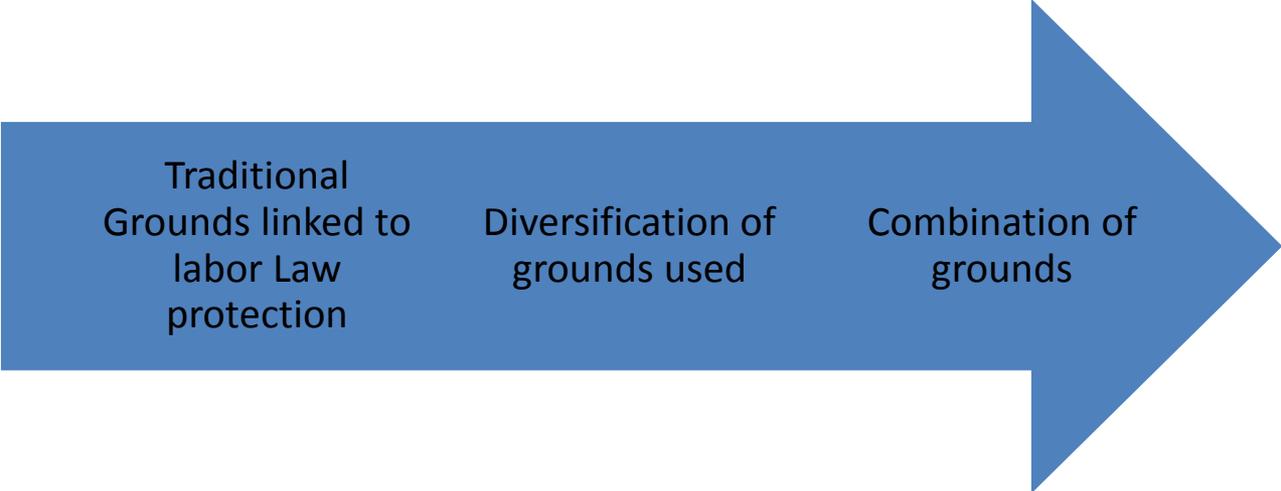


Judicial Interpretation extends beyond grounds linked to labor law

From union membership, pregnancy, and sex discrimination

To a diversification of grounds in case law

- From a more rigid and narrow view of grounds
- To a more flexible and contextual interpretation of grounds (combination of grounds)



Traditional
Grounds linked to
labor Law
protection

Diversification of
grounds used

Combination of
grounds

Evolution of legislative grounds

- From Intrinsic and personal characteristics:
- Race
- ☐ Religion
- ☐ Sex
- ☐ Sexual orientation

- To more social constructs based on stereotypes or grounds based on liberties:
- Sexual identity
- Place of Residence
- Personal Autonomy

French Grounds in legislation

- Why such an extensive list?
- To confront issues of enforcement, of evidence...
- “Real or assumed origin, appearance of origin,
- national and ethnic origin, race, sex, sexual identity, pregnancy, family situation, physical appearance, last name, health, disability, genetic characteristics, mores,
- sexual orientation, age, union activities,
- mutualist activities, religion, political and
- religious convictions, belief and place of residence »

Grounds follow the expansion of concepts in EU and national Law?

- EU case Law:
- Discrimination by association (Coleman, Chez)
- Discrimination by injunction (Feryn, Customer Preference)
- Multiple discrimination
- (Odar)

- French Law:
- Direct Discrimination
- Indirect Discrimination
- Systemic Discrimination
- (Class action bill pending, see May 24 2016 version)

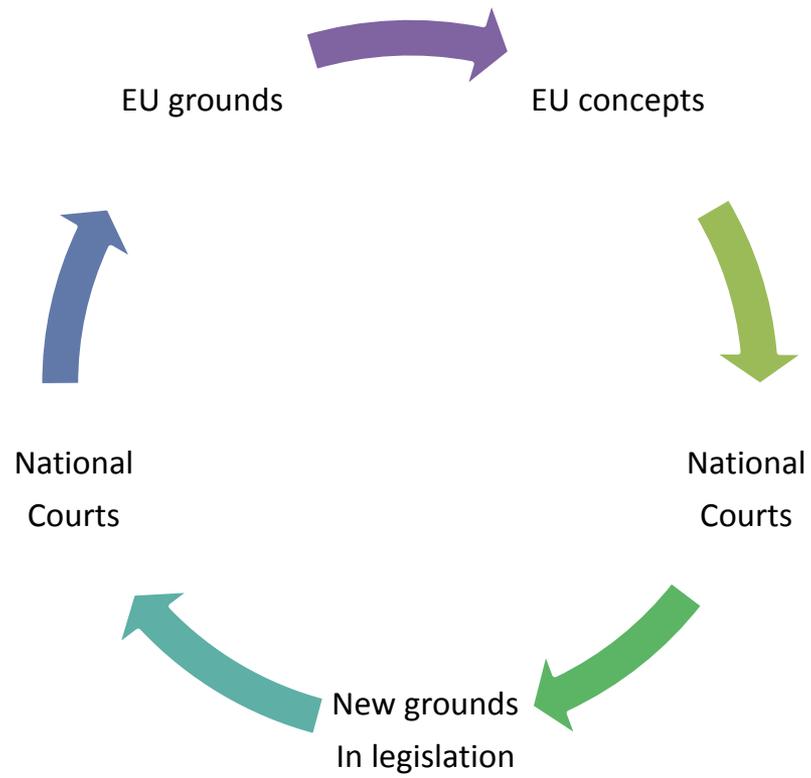
Diversification of EU case law linked to grounds

- Possible: No hierarchy between grounds
- More cases on sexual orientation, young age (EUCJ October 2015), religion (case pending. Opinion on Belgium case)
- Symetric dimension of some grounds (sex)(Leone)

Influence on French Law
(sexual orientation, Hay)

Influence on age
(essential and determining requirement, Perez)

Influence on maternity, parental rights and disability (Ring/Werge)



Conclusion

Cross-fertilization between courts (EU and national)

Dynamics of transnational and global Law

Importance of network of Equality or Human rights bodies and impetus of EU Commission

To pursue discussion free e-book to download:

- Mercat-Bruns, Marie. *Discrimination at Work: Comparing European, French, and American Law*. Oakland: University of California Press, 2016. doi: <http://dx.doi.org/10.1525/luminos.11>