ABSTRACTS TRACK 3

INTERNATIONAL CONFERENCE

THE GLOBAL CHALLENGE OF HUMAN RIGHTS INTEGRATION: TOWARDS A USERS' PERSPECTIVE

TRACK 3 - CONVERGENCE AND DIVERGENCE BETWEEN NATIONAL AND INTERNATIONAL HUMAN RIGHTS LAW

Track leader: Sébastien Van Drooghenbroeck, Saint-Louis University, Brussels

Panel session no. 1: The judge, the Constitution and the Treaty

Wednesday 9 December, 13.30 – 15.00

Chair: Sébastien Van Drooghenbroeck

National Constitutions And The Protection Of Human Rights In ASEAN

Irene I. Hadiprayitno, Leiden University

In Southeast Asia, the monetary crisis of 1997 overturned the traditional disinclination to engage with human rights. Aside from Brunei, Malaysia, Myanmar and Singapore, the other six members of Association of South East Asian Nations (ASEAN) are parties to both International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights. Moreover, international human rights norms have also been integrated in national constitutions of several countries in the region. The Constitution of the Kingdom of Thailand of 2007 guarantees the rights, freedoms and equality of the people. Human rights have also established a prominent status in the domestic legal order of the Philippines, as one of the first countries that ratified both Covenants. In 2004, the Indonesian Constitution was amended to include prominent changes pertaining to human rights protection.

Despite the integration of human rights norms in national constitutions, why do the state members of ASEAN remain reluctant to pursue stronger agenda in realising human rights protection at the regional level? In the last decade, ASEAN makes substantial steps towards adopting human rights. Human rights are now embedded in the aims of ASEAN as provided in the ASEAN Charter. Member states created the ASEAN Intergovernmental Commission on Human Rights (AICHR) in 2009 that was charged with promoting human rights, and in 2012 released the ASEAN Human Rights Declaration (AHRD) which for the first time details what ASEAN means when it uses the words "human rights". However, these developments have received mixed reviews. Scholarly discussions on this topic have offered numerous criticisms on the role of AICHR and the power of AHRD in promoting and protecting human rights of the citizens of Southeast Asian countries

The paper aims to investigate one aspect of ASEAN human rights protection – the (dis)connections between national and regional laws on human rights. It will analyse, firstly, how national human rights laws accepts, rejects and adapts the international human rights norms, and secondly, how the regional human rights law accepts, rejects and adapts national human rights laws. The paper will explore the confluences, constraints and contradictions regarding human rights that exist in the national constitutions of Thailand, the Philippines and Indonesia, in order to assess to what extent the legalisation of human rights in national constitutions contribute to the creation of a deadlock at the regional level.

Direct Effect of International Human Rights Treaties in Constitutional Law: Kazakhstan's Experience

Saule Emrich-Bakenova, KIMEP University

What happens after international treaties are incorporated into a domestic legal system? Exploring this question in the broader context of the relationship between national constitutional and international law systems, I look at the policy of direct effect of international human rights treaties in the Republic of Kazakhstan. For more than twenty years Kazakhstan has maintained the constitutionally entrenched supremacy of ratified treaties with respect to domestic laws; treaties are supposedly applied with direct effect unless they require implementing legislation. While the doctrine has always had strong political support there has yet been no cases on its actual application in Kazakhstan. The national system seems to deal with the rigidity of international commitment by neither strictly enforcing nor completely ignoring it. Several hypotheses could offer explanations for this paradox along with the corresponding directions for solutions that are supposed to mend the implementation process. However, what if the policy itself needs redefinition? If we treat human rights law merely as a matter of international politics as opposed to binding law, then this not only brings into question the objective of direct effect doctrine but also casts serious doubts on the notion of convergence of constitutional and international law.

Comparative Analysis Of The Application To The European Court Of Human Rights And The Constitutional Complaint To The Polish Constitutional Court

Liliya Maliarchuk, Jagiellonian University

In the legal orders of Poland, as well as the absolute majority of European states, we have to deal with two systems of human rights' protection. The internal (domestic) system – based on the constitutional complaint to the Polish Constitutional Court, and external (international) system – based on the application to the European Court of Human Rights. There are also other means for human rights' protection on the domestic level (lawsuit to the ordinary court etc.) and international level (application to United Nations Human Rights Council, Human Rights Committee etc.) both. But I have chosen two abovementioned remedies because of their importance in European legal order.

Constitutional complaint and application to the ECHR have a lot in common substantially and formally and affect on each other. Although such dual system of human rights' protection is intended to better protect them, there is also a risk of legal differences in the judgments of Constitutional Court and ECHR. Therefore we should assess: 1) constitutional complaint to the Constitutional Court through the requirements of the European Convention of Human Rights; 2) the importance of the Convention for the recognition of the constitutional complaint by the organ of constitutional control; 3) objective and subjective scope of both means and their admissibility criteria.

The constitutional complaint in broad objective scope (Germany, Spain) is recognized as an effective remedy. Concerning the constitutional complaint in narrow scope (among others in Poland), ECHR has formulated 3 conditions for its recognition as an effective remedy. Firstly, the domestic legal norm may be accused to be inconsistent with Constitution and with Convention at the same time. Secondly, the violation of human right protected by the Convention must arise from the use of the domestic legal norm which is the basis of the final domestic judgment. Thirdly, there must be a possibility of resuming proceedings if Constitutional Court decides that there is a violation of the Constitution.

According to the ECHR' judgments, conventional standards should apply to the proceedings before the Constitutional Court. ECHR' judgments cannot be a model for constitutional complaint proceeding, but invocation to its decisions can be used as an additional argument.

The "Added Value" Of The European Convention On Human Rights In The Ambit Of Religious Freedom And Religious Autonomy In Belgian Constitutional Case-Law

Stéphanie Wattier, Université catholique de Louvain

Since its very inception and similarly to numerous national and international human rights instruments, the Belgian Constitution forms the basis for freedom of religion in its Article 19. Since its beginning – and even if the text does not make it formally clear –, the Constitution also forms the basis for religious autonomy (Article 21).

Contrarily to the European Convention on Human Rights, Article 19 and Article 21 of the Belgian Constitution do not expressively permit any interference into freedom of religion or into religious autonomy. Even if the European Convention cannot be directly applied in its case-law, the Belgian Constitutional Court has considerably enriched its reasoning on religious freedom and religious autonomy by using the so-called "conciliatory method".2 Indeed, the Constitutional Court reads Article 19, 21 (and 20) of the Constitution together with Article 9, § 2, of the European Convention which specifies that "freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others".

The aim of the proposed paper is to draw up an overview of the "added value" of the European Convention on Human Rights and of the jurisprudence of Strasbourg in the ambit of religious freedom and religious autonomy in Belgian constitutional case-law.

For instance, this "added value" was especially strong in two very recent cases: on the one hand, concerning the burqa law ban3 and, on the other hand, relating to the right for the children to be exempt from religion course4 (which is in principle mandatory by virtue of Article 24 of the Belgian Constitution).

Panel session no. 2: Dialogues around human rights: some national experiences

Wednesday 9 December, 15.30 – 17.00

Chair: Sébastien Van Drooghenbroeck

From Localism To Globalism: One-Way Ticket? Reflections On A Complicated Relationship

Anna Silvia Bruno, University of Salento

In the wider scenario of the internationalization of legal concepts, marked by phenomena of legal transplants, migration of constitutional ideas, constitutional dialogues, …, the constitutional foundations and their related historical semantics are reinforced but manipulated by the international process. The 'legal flows' have emerged as useful tools to move concepts, cultures and histories through the formal channels of the legislative and judicial processes. These flows become a legal 'container' in which, completely opposite cultures, carry and cross; they also become the tool to 'transfer' new concepts and needs; they allow different and distant legal operators to circumscribe international spaces. This way, very different countries are united by using the same constitutional semantics which, moving from one place to another, lose their historic and cultural strength. This has in part led to the communitarisation of domestic law through shared values and spaces, and subsequently, to the increased flexibility of State powers; in part it has also led to the creation of a soft law , a law which is not binding in its legal strength but sufficiently strong in its programmatic

structure to represent a break from traditional laws. Geopolitical relationships of power and especially of economic interest are hidden behind the 'dialogues', covered by words that 'do not cost' and in the dialogue between courts, the rights are de-socialized, eradicated from the related social context. Dialogue is necessary, but not sufficient, especially in contexts, like Italy and, more specifically, the Mediterranean area, marked by international migration flows that require, first of all, to look carefully at local needs. The continuous migration flows have cultural elements suitable to require new forms of local interaction, a new governance for the future sustainability that takes into account changes on the territory, possible socio-environmental conflicts, a new balance between nature and human structures, a new relationship between the local environment, people's movements and human rights. Today, the 'local' is the synthesis of socio-legal-economic intergenerational processes, where the compared generations are no longer exclusively those originating in the place but a mixture of culturally different ethnic groups. There is the need for national policies to be not reduced to impersonal logic where the universality of human rights risks being merely a constitutional 'symbol'.

Implementing International Human Rights In Russia: A Pragmatic's Guide To Filling In The Blanks

Maria Smirnova, The University of Manchester School of Law

At first sight, Russia's human rights record is notoriously deplorable. From consistently justifying non-execution of recommendations issued by the UN human rights mechanisms to being an unbeatable champion in supplying human rights cases to the ECtHR – all these signs lead to a superficial conclusion that Russia ignores international human rights system and opposes the work of its mechanisms, despite being a signatory to all major human rights treaties.

However, a deeper research shows various signs that Russian legal system is becoming more and more open to international law: the number of court decisions of all levels citing international human rights instruments is growing exponentially; the language of litigation is changing towards implementation of international law concepts (proportionality, balancing of private and public interests, priority of human dignity, humanitarian considerations); the use of international law in decision-making is incentivised in a centralised manner by the highest courts; cooperation of all branches of power aimed at strengthening Russian positions in international legal processes is evident; even the Parliament voluntarily assumes an atypical function of placing new laws in a framework of existing international obligations, a function neither ascribed to it by the Constitution, nor specific to any other authority in Russian legal order.

Although Russian Constitution (1993) is a champion of all modern developments in human rights and reflects both internationally recognised catalogues of civil and political rights and socio-economic rights, their actual implementation is dependent largely on the active role of courts as the most politically neutral providers of legitimacy to international law.

This paper will indicate various practical examples of the use of international law at all levels of the Russian legal system to strengthen constitutional protection of human rights with a particular focus on the role of courts throughout the country in balancing constitutional standards of human rights protection and those provided by international law.

Integration of the Convention on the Rights of the Child into domestic law: the Nigerian example

Oluwafifehan Ogunde, University of Nottingham

One major method of determining whether a state has an effective child rights protection framework in place is the extent to which the standards of child rights protection as outlined in the Convention on the Rights of the Child (CRC) are guaranteed in its domestic legislation. To this end, the Committee

on the Rights of the Child has concluded that an obligation on the part of states exists to ensure that Convention provisions are given domestic effect and has particularly 'welcomed the incorporation of the Convention into domestic law'[1]. On its part, Nigeria signed the Convention on the Rights of the Child (CRC) on 26th June 1990 and ratified same on 19th April, 1991. This on its own suggests willingness to be bound by international standards of child rights protection.

In 2003, the civilian government led by Chief Olusegun Obasanjo went a step further in the child rights protection agenda by passing the Child Rights bill into law.[2] The Act essentially aimed at principally enacting into law in Nigeria the principles entrenched in the Convention on the Rights of the Child. As is the case with the CRC, it contains civil and political rights as well as economic and social rights.[3] The aim of this paper is to undertake a critical analysis of the provisions of the Child Rights Act (CRA) vis-à-vis the CRC. The focus of this paper will be limited to the provisions of the CRA which guarantee the substantive rights of children. In making this comparative analysis, reference would also be made to the Constitution of the Federal Republic of Nigeria (1999) which is the supreme legislative instrument in Nigeria. This would be relevant in determining the extent of the similarity or difference as the case may be between international and national child rights protection systems. One would also consider possible ways by which there can be an alignment between national and international child rights protection standards in the event of a disparity between the two systems.

Beefing up domestic human rights litigation with international human rights law? The case of the South African mining industry

Lieselot Verdonck, Ghent University

South Africa is the ideal case study for examining the convergence and divergence between national and international human rights law. Its Constitution was specifically drafted having international human rights conventions in mind. This is not only reflected in the rights enshrined in the Bill of Rights, which are clearly inspired by international human rights norms, but also in Sections 231, 232 and 233 of the Constitution, which regulate the effect and application of international law within South Africa.

This paper will analyze the interplay between constitutional rights and international human rights law in litigation related to a specific issue, that is significant environmental degradation caused by mineral extraction and the resulting health risks for mineworkers and neighboring communities. Aware of the fact that this constitutes a potential hotbed for violent conflict – as was recently demonstrated by the Marikana massacre – civil society actors (CSAs) in South Africa are actively seeking an appropriate response to the threat posed to economic, social, cultural and environmental rights by mining. Although the tool of litigation is only used as a last resort, the number of cases that have been filed at the courts' dockets in recent years accrues. On the basis of data collected in South Africa (November 2014 – March 2015), this paper will explore the strategic choice of litigants (not) to use the regional and international human rights law that is binding upon South Africa.

During the fieldwork in South Africa the researcher conducted 29 semi-structured interviews with CSAs, had informal conversations with 10 experts, undertook field visits of affected communities and

[1] See Committee on the Rights of the Child General Comment No.5:General Measures of Implementation of the Rights of the Child (2003) CRC/GC/2003/5 available at http://tb.ohchr.org/default.aspx?Symbol=CRC/GC/2003/5 . A copy of the CRC is available at http://www.ohchr.org/en/professionalinterest/pages/crc.aspx

[2] The date of commencement of the Act is 31st July,2003

[3] For example freedom of association, right to health, right to education. For more substantive rights, See: Child Rights Act (2003) available at http://www.placng.org/new/laws/C50.pdf Sections 4-20

polluted areas and attended meetings, workshops and conferences of CSAs. The researcher also had access to original documents related to specific cases, such as court papers and correspondence between legal representatives and clients. The respondents in the interviews were either lawyers (attorneys or advocates) or activists working for a community-based, faith-based or other nongovernmental organization. One of the issues that was examined throughout the fieldwork dealt with the question whether litigating parties rely on international human rights law and what are the underlying determinants of that decision.

Panel session no. 3: The permeability of the constitutional protection of human rights

Thursday 10 December, 11.30 – 13.00

Chair: Antoine Bailleux

European Convention On Human Rights: From The Lowest Common Denominator To The Greatest Common Divisor?

Begüm Bulak, Université de Genève

The different cultural and legal traditions of each contracting state foreshadowed the difficulty in the identification of uniform European standards on human rights while drafting ECHR. Indeed, no one argue that the universality of human rights equals uniformity, and it is commonly accepted that the ECHR guarantees a minimum level of protection. The term
"margin of appreciation" thus refers to the latitude that the national authorities enjoy in factual evaluation of situations and the provisions of the ECHR, approved as the minimum standard by the member states of the Council of Europe, which have more or less common traditions of democracy and human rights.
The doctrine of the margin of appreciation has been developed in order to find the right balance between the national approach to human rights and the uniform application of the values of the ECHR. The implementation of commitments vis-à-vis the Strasbourg institutions depends ultimately on the good faith and the continued cooperation of the contracting states.
According to the jurisprudence of the Court, the ECHR does not prescribe "the contracting states any given manner for ensuring within their internal law the effective implementation of all the provisions of this instrument."
This broad flexibility given to states is due in large part to the fact that the ECHR imposes an obligation of result, not of means. However, it seems appropriate to examine the weight given to the ECHR and the case law of the court in these national legal orders. Indeed, the importance of the ECHR in the hierarchy of legal standards varies significantly the national legal order in question. Moreover, recognized place in the regional mechanism for protection of fundamental rights allows to assess the alignment of national authorities to the standards established by the court and also to explain the reasons for any similarities or discrepancies.
In a hierarchical account of legal systems, such as that of Hans Kelsen, the Supreme Courts are tasked with upholding the primacy of the constitution as well as the International law.
If the interpretation and application of constitutions must respect the ECHR, its position in the hierarchy of different legal systems still remains unclear. In this regard, we must also analyse the contribution of the charter in the EU member states' legal orders for the guarantee of ECHR rights. Actually, EU law influences the ECHR status in these legal orders, since the European Union is about to ratify the ECHR. Thus, the contribution that the Charter provides for the protection of fundamental rights can be assessed only in the

light of national constitutions and of the ECHR. In a nutshell, discrepancy results from the fact that the ECHR provides for a minimum standard of protection of convention rights, leaving contracting states to guarantee the care at a higher level, if possible, in their respective legal systems. But this is not always consistent with regard to the aim stated
in the preamble of the ECHR, which consists of establishing a common understanding and a common respect for human rights, given the fact that on one hand, we might notice some conflicts not only between ECHR and national constitutions, but also within the constitutional provisions of a given country which recognizes mechanisms of direct democracy.

Intertwined But Different. Constitutional And International Approaches To Human Rights Protection: A "Bifocal" Analysis

A. Baraggia, University of Milan & M.E. Gennusa, University of Pavia

Looking at the multi-layered structure of human rights law, the interaction between international and constitutional orders is still a puzzling issue.
These two levels of protection are increasingly intertwined, however they seem to work following divergent assumptions, and constitutional and international courts seem to approach the protection of rights in quite a different way. What are the main dissimilarities between international and constitutional approaches and the reasons thereof?
In order to provide an answer to these questions, the first part of the paper offers an analysis of some relevant cases concerning in-vitro fertilization (IVF) and the protection of the right to life in the context of dangerous activities where the peculiar perspective of each level is particularly clear. In all the cases chosen, the same right is at stake both before the ECHR and before domestic constitutional courts (in particular we will focus on judgments ruled by the Constitutional Courts of Italy and Austria).
Courts belonging to different systems seem to make use of the same criteria (e.g. the margin of appreciation and the technique of balancing competing values), but sometimes in a different way. Therefore, in the second part of the paper we will address the different use of the same decision method by constitutional and international courts, considering in particular two of the core issues underlining the theory of margin of appreciation: the role of the evolution of scientific developments and the influence of historical, social and moral aspects in a given society on the judicial outcomes. This analysis allows light to be also shed on the different meaning that the so-called theory of "consensus" may take on when cast in different systems. While on the constitutional plane "consensus" is rooted in the democratic principle, on the international one the parameter to weigh "consensus" is the degree of spread among different states, which does not necessarily fulfil the democratic principle as embedded in a specific constitutional order.
After highlighting the main asymmetries in human rights adjudication between international and constitutional orders, the third part of the paper aims at evaluating further factors which may influence judicial reasoning. For instance, can the monistic v. dualistic attitude towards international law (identifiable within the two legal orders chosen in this analysis, Italy and Austria) influence domestic constitutional law in approaching human rights issues?

Norm Permeability And The National Human Rights System In The Common Law World: A Comparison Between Ireland And The United Kingdom

Donal Coffey, University of Surrey, UK

The normative basis of the European Convention of Human Rights has been declared to be that of dignity. This paper examines how the norm of dignity has been integrated into the national human rights systems in the common law countries of Ireland and the United Kingdom. It contrasts the utilitarian underpinnings of the United Kingdom's unwritten Constitution with the normatively laden

1937 Constitution of Ireland.
It describes how the exposition of the underlying theory of the Irish Constitution in subsequent case-law lead to a fully theorised conception of natural law in the 1970s in cases such as Byrne v Ireland. This is gradually being displaced by a conception of popular sovereignty as the basic norm of the Irish Constitution since the 1990s.
In contrast, the development of constitutional law in the United Kingdom in the 20th century was largely in the field of administrative law. The British Constitution was based on a concept of Parliamentary Sovereignty and rights were essentially residual; they were whatever was left over when the field of positive law was exhausted. The conception of the British constitution in the 20th century was based largely on the jurisprudence of the utilitarian John Austin, and conceived of the democratic State as the means by which the greatest utility could be formulated and achieved. Rights were only ever instrumentally useful to the British Constitution insofar as they advanced the cause of utilitarianism.
The difference in development between these fields accounts for the divergence between the integration of the European Convention of Human Rights into the respective national legal systems of Ireland and the United Kingdom. In the case of Ireland, the fully fledged constitutional jurisprudence meant that it was less permeable to the normative underpinnings of the European Convention on Human Rights. In contrast, the relatively under-theorised British structure has proven far more permeable to the influence of the dignitarian basis of the European Convention. In particular, the idea that human dignity imposes restrictions on the State has profoundly shaped the development of British constitutional law.
This paper explains how this operates in both the Irish and British legal system and demonstrates how the normative underpinning motivates the development of British constitutional law doctrine since the enactment of the Human Rights Act in 1998. This shift has been controversial in British constitutional law and a desire to return to the utilitarian tradition is the reason behind the recently elected Conservative Government's desire to repeal the Human Rights Act. In contrast, the Irish implementation of the European Convention on Human Rights Act 2003 has not generated a similar normative shift in Irish law.

Panel session no. 4: At the crossroad of national and international protection: selected topics

Friday 11 December, 11.00 – 12.30

Chair: Sébastien Van Drooghenbroeck

Constitutional Protection Of The Right To Food In Bolivia, Cambodia, Ghana And Kenya: Converging With Or Diverging From International Human Rights Norms?

Adriana Bessa, Joanna Bourke-Martignoni, Christophe Golay & Teresa Hatzl, Geneva Academy of International Humanitarian Law and Human Rights

International human rights mechanisms have emphasized the need for States to include the right to food and other economic, social and cultural rights within domestic legal systems, including their constitutions. This form of constitutional incorporation is particularly important given that most international treaty provisions on the right to food are considered to be non self-executing. Even in settings where economic, social and cultural rights guarantees contained in international treaty law are directly applicable within the national legal order, the complex nature of the right to food and its relationship with other human rights benefit from the clarity and additional interpretive guidance that

constitutional recognition provides.

Globally, many national constitutions take into account the right to food or some of its core attributes. Each of the four countries discussed in this paper has incorporated the right to food within its constitutional order in a slightly different manner. Kenya's 2010 Constitution explicitly recognizes that everyone has 'the right to be free from hunger and to have adequate food of acceptable quality.' In a similar vein, the Bolivian Constitution of 2009 also directly acknowledges the rights to food and to food security. In Cambodia, the right to food is indirectly protected in the 1993 Constitution that recognizes the obligation of the State to ensure citizens enjoy a 'decent standard of living.' The Ghanaian Constitution of 1992 provides that economic action to ensure 'an adequate means of livelihood' for everyone is a directive principle of State policy.

This paper will seek to discuss the manner in which these four countries have incorporated the right to food and related human rights guarantees into their constitutional orders and examines if and how this differential incorporation has affected the implementation of the right to food in practice. The extent to which these divergent approaches effectively transpose international human rights treaty obligations into national constitutional law is assessed and some preliminary conclusions concerning the relationship between international and national law on the right to food are put forward.

Convergence And Divergence Between National And International Human Rights Law: The Case Of Madagascar

Clémence Razanamahery-Rico, Institut d'Etudes Politiques, Aix-en-Provence

How do Malagasy constitutional rights protection and international human rights law interact? Do the first guarantees of human rights protection written in the Malagasy Constitution ensure a more efficient rights protection compared with the international human rights law? How does the Malagasy constitutional law co-ordinate and integrate Madagascar's multiple commitments under human rights treaties? How does the Malagasy constitutional practice add value to protection through international treaties that have direct effect in Malagasy internal law? The proposals dealing with the solution of these issues are discussed. Madagascar has its own history and its own vision of human rights protection and its approach is directly linked to the Malagasy philosophy of life. I argue that Malagasy constitutional protection and international human rights protection converge to a harmonious relationship, where they complement each other and provide the highest protection of human rights. But they often diverge from a strictly pragmatic viewpoint, especially in times of internal strife.

Prohibition of discrimination on the ground of social condition: an efficient tool to protect socio-economically underprivileged people?

Sarah Ganty, Université libre de Bruxelles

« Social origin » is one of the prohibited grounds expressly enshrined in many European and international anti-discrimination clauses. This ground essentially refers to the discriminations based on the socio-economic situation of a person. It is striking though, that it is barely used in practice. Only few case laws related to this exist at international and European levels. At national level, depending on the country at hand, discrimination is prohibited on the ground of social origin or on related grounds such as source of income, fortune, receipt of public assistance, … . However, national judges are often very reluctant to rule in favor of the applicant. Moreover, lawyers hardly invoke discrimination on such grounds before courts, either. Such a situation is surprising regarding the numerous direct and indirect discriminations people are facing because they are unemployed, low

educated, poor or homelessness. Does national and international Anti-discrimination Law fail to protect these people from discrimination? Are the ground of social origin and all the related ones in Antidiscrimination Law useless or could they be seen as an added value? Is there a misunderstanding of these grounds by practioners and judges at international and national levels? In this context, how can national and international levels influence and complement each other? What are the relationships between the discrimination on the ground of social origin and the other social, economic, civic and political rights? This paper proposes to answer those questions on the basis of examples of national – Belgian, Canadian, American, UK –, European and international case-laws by arguing that the ground of social origin in Anti-discrimination Law could be useful and seen as an empowering legal tool for 4 main reasons: the exclusivity of this ground in some cases, its important role in intersectional discrimination, the impact of lawsuits whatever the outcome and its role in the fight against an implicit racism.

European human rights law and constitutional separation of powers doctrines

Céline Romainville, Université catholique de Louvain

The research consists in a study on the integration of international and European human rights project in the constitutional reshaping of the separation of powers' doctrines. It tackles the delicate issue of the relationship between the judicial protection of human rights and the politics in a multilevel system. Based on a comparative study of four constitutional orders with contrasting views on separation of powers (Belgium, Germany, the UK and France), we will show that the separation of powers doctrine can be defined both as a source of deepening and as a strong obstacle for human rights protection and integration and that that human rights can be seen both as reinforcing but also as softening this doctrine.

After having briefly defined the contemporary doctrines of separation of power in a comparative perspective, we will, in a first step, focus on the relationships between **the judges** and the other powers on the question of human rights. This implies inter alia to analyze the impact on constitutional systems of the definition of the concept of "independent and impartial tribunals" by the international and European courts responsible for human rights protection and the application of the rights of defense in the cases of executive or legislative involvement in judicial decisions and sentencing (investigating committees, administrative authorities…). In a second step, we will observe the constraints developed by European and international human rights instruments on the **legislatures** and of **executives**. The inflation of rights and the elaboration of positive obligations notably question the autonomy of those powers and refines, to some extent, the core content of their mission. The case law of Strasbourg on the question of parliamentary immunities, verification mechanisms of powers of elected representatives, questions more specifically some of the most iconic prerogatives of the Legislature. In a third step, we will consider the key question that the human rights protection poses to separation of powers: the one of the content, configurations, scope and limits of the **judicial review of legislative and executive decisions.** We will describe, explain and assess, in the light of the separation of power doctrines, the convergence and divergence between constitutional and international orders on the question of deference standards and on concepts such as justiciability, proportionnality and margin of appreciation.