



Europeanization through Judicial Enforcement?

The Case of Race Equality Policy

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Abstract: Ten years after its enthusiastic adoption in 2000, the Race Equality Directive (RED) - a deeply innovative and indeed overall far-reaching piece of equal treatment legislation – seems to be still little enforced at the level of European courts. Why? Neither a sudden retrenchment of race discrimination in Europe, nor the inaptitude of the policy to generate European Union (EU)-law litigation, can easily explain the scarce signs of the extensive judicial enforcement that characterise other EU equal treatment policies, such as those on EU-nationality, gender and age. This study zooms in on the realm of domestic politics and judicial enforcement to inquire into cross-sectional and cross-national variations in the implementation of EU equal treatment policy. To do so, I rely upon analytical tools developed by three branches of EU studies scholarship — Europeanization, compliance and judicial politics literature — and I apply them to the yet unexplored domain of race equality policy. Tracing the process of transposition, in the first place, and analysing case law databases and expert interviews with legal practitioners, in the second place, I inquire into compliance and judicial enforcement in three EU countries: France, Germany and Italy.

The findings of this comparative study confirm a very limited judicial enforcement of the RED, especially as domestic patterns of adversarial litigation in the domain of race equality are concerned.

I explain this divergence looking at the ‘containment’ action that domestic policy-makers may exert on directives at the moment of transposition. In the case of the RED, this action crucially impinged on aspects likely to determine enforcement dynamics, such as those elements of the process regulating access to judicial redress. This work shows that in the case of a policy measure such as the RED, focused on individual judicial redress and mainly targeted towards disadvantaged end-users, the harmonization of some process elements is crucial to determining converging implementation dynamics. If Europeanization is contained at the moment of transposition, judicial enforcement can be seriously hindered at the national as well as the supranational levels even in presence of domestic legal mobilization. In addition to that, the thesis shows how limited race-consciousness is to be found in contemporary European jurisprudence as well as in the claims filed by antidiscrimination law applicants.



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Bio: As a researcher in the department of social and political science of the European University Institute, in Florence, **Costanza Hermanin** completed a PhD on the enforcement of EU racial anti-discrimination law in France, Germany and Italy. Her dissertation focuses on the national enforcement of EU race antidiscrimination policy, and tasks to explain cross-policy and cross-national variations in antidiscrimination litigation and in the work of equality bodies. Her academic and personal interests comprise antidiscrimination, immigration and citizenship policy at the national and EU level, EU decision-making, as well as clinical legal education and public interest litigation. Costanza currently works for the Open Society Justice Initiative/Open Society Institute Brussels. For the OSJI/OSI she is in charge of EU advocacy in the areas of Freedom, Security and Justice and coordinates strategic litigation on migration, non-discrimination and, more broadly, human rights in Italy.

In 2011, Hermanin was a Fulbright visiting scholar at the Law Schools of Columbia University and UC Berkeley. In 2008-2009 Hermanin was a visiting fellow at the *Centre d'Etudes et Recherches Internationales* (CERI - Paris) and at the *Wissenschaftszentrum Berlin für Sozialforschung* (WZB). She graduated on a double Masters-MPhil degree programme in Sciences-Po Paris and at the University of Florence. She worked as intern or consultant for the French Ministry of Foreign Affairs, the European Commission's Secretariat General, the *Centre d'Etudes européennes* of Sciences-Po Paris and the World Bank. She is the author of several articles in English and Italian and one of the editors of "Fighting discrimination in Europe: the case for a race-conscious approach", Routledge, 2012.