



PRESENTAZIONE DEL VOLUME

A) Informazioni generali

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B) Informazioni sul volume

The book plans to answer a fundamental question: can we consider equality and non-discrimination as fundamental elements of EU legal order? To answer the question, I analyse three dimensions of equality in the EU *acquis*: 'equality as a value', 'equality as a principle' and 'equality as a right'. Marking a clear difference with the majority of publications on equality and anti-discrimination law, the book aims, throughout the analysis of the three dimensions, to justify the fundamental importance of equality and non-discrimination within European law. The majority of scholarly works concentrates the attention on the negative or the positive elements of equality, without clarifying 1) the place and importance of the different dimensions of equality within EU law nor 2) the interaction between these dimensions, and in particular the interaction between 'equality as a principle' and 'equality as a right'. This work is addressed into filling this persistent gap within scholarship. The work will conclude that the importance of equality is linked to its condition of bridge between the 'economic' and the 'social' elements of European legal integration.

There are several challenges to be defied to pursue this aim. In the first place, the analysis of the dimension of value (Chapter 2) is undertaken with reference to the concept of equality in traditional legal theory. Then, the Chapter continues analysing equality as a value within EU

law, underlining the role played by the EU institutions. The dimension of principle (Chapter 3), on the other side, departs from the concept of general principles under international law, and continues with the description of the case-law of the CJEU on the principle of equality, in its various denominations (as equal treatment or non-discrimination), focusing in particular on the direct effect of the principle. One of the main characteristics of European Union law is to overcome the boundaries between sectors within legal scholarship. In this book, the reader will find many elements of interdisciplinary legal research. This emerges in particular in Chapter 4, where the analysis of the dimension of equality as a right via the study of secondary EU legislation and of the Charter borrows elements from constitutional law, procedural law and legal theory (with particular reference to the distinction between rights and principles in the Charter). The last Chapter of the Book (Chapter 5) presents the Conclusion, where is sketched the fundamental place of equality and non-discrimination as the synthesis between ‘economic’ and ‘social’ Europe. It was an ambitious task to keep together many different tenets of legal scholarship within the same project: the reader will judge if this attempt served faithfully the aim of the Book.

The book addresses the role played by equality and non-discrimination in the EU legal order. It is essential to depart by clarifying the use of words ‘equality’ and ‘non-discrimination’, a highly debated issue in scholarship. Here, I depart from the assumption that, in the EU legal order, the words equality and non-discrimination, albeit having different and definite meanings in scholarships, are mostly used interchangeably both by the EU Court of Justice as well as by the EU institutions. As known, the two words imply, in principle, positive (equality) and negative (non-discrimination) obligations; however, from negative as well as from positive obligations the various players of the EU legal order seem to draw similar conclusions in terms of rights granted and enforcement. Equality, in its various forms, imbibes the whole EU legal order, from economic law to citizenship, from economic governance to the relationship between the EU and national constitutional judges.

At the same time, the role played by equality and non-discrimination is analysed with reference to the EU legal order as a constitutional one. The fact that the EU is a constitutional legal order should not be given as granted. It is known that the ECJ has declared, since *Les Verts*, that the Treaties are the basic constitutional charter of the EU. In *Kadi*, the ECJ restated the concept with even more conviction. There are little doubts, though, that the ECJ considers the EU as a constitutional legal order. This concept, however, generated a considerable debate in scholarship, especially before and after the failure of the Constitutional Treaty, that perished also because of its ‘constitutional’ nature. In this Book, I adopt a functional approach. The EU is to be regarded as a constitutional legal order as it has ‘constituted’, of course, thanks to the delegation of powers and competences by the EU Member States, a complex system of institutions, that can adopt and enforce legislation within the areas of competences. There are of course limits, that are carefully designed by the Treaties. Yet, we can dispute the nature of the EU as a purely constitutional legal order, but we cannot reduce it to an international organisation fully dependent on its Member States.

The structure of the Book is thus presented as follows: after this introduction, in Chapter 2 I analyse equality as one of the values, inscribed in Art. 2 TEU, that guide the activity of the EU institutions and represents a benchmark of the membership of the EU Member States.

However, in a different fashion from political science and sociology, where reasoning on values allows the definition of the political and social orders, values are, for legal scholars, an important setback, but they are not legally binding. This means that they cannot – as such - be enforced and that are mainly guiding the activity of law-makers and policy-makers, as well as the interpretative work of national and European Courts (above all, the Court of Justice of the European Union).

The second dimension of equality – ‘equality as a principle’ – is analysed in Chapter 3. General principles of law are sources of international law and find their place in the EU legal order in Art. 6 TEU, where it is said that ‘fundamental rights [...] shall constitute general principles of the Union’s law’. General principles are, according to international and European legal scholarship, traditionally regarded as principles of interpretation. This is only partially true for the EU legal order. The case-law of the Court of Justice has, for instance, explained well before it becomes explicit in the letter of the Treaties that the fundamental rights protected by the European Convention of Human Rights and as they result from the constitutional traditions common to the Member State are general principles of EU law. However, the lack of clarity over the application of general principles has concretely led to several mismatches and different interpretations within the EU legal order and equality, as a general principle, did not represent an exception.

In Chapter 4 I account for the last dimension of equality, represented by ‘equality as a right’. If values have the role to guide the activity of law and policymakers, and principles can be sources of rights, albeit in particular circumstances, rights are, by nature, enforceable in front of courts. The right to equal treatment finds its sources, apart from the above-mentioned discourse on principles, in a variety of legal instruments which are scattered among the various legal instruments and policies of the EU, including the key role played by the Charter of Fundamental Rights of the EU. In Chapter 5 I outline the conclusions of the Book, explaining why equality and non-discrimination are fundamental elements of the EU legal order: equality as the synthesis between ‘economic’ and ‘social’ Europe.