



APPLYING INTERNATIONAL  
AND EUROPEAN  
ANTIDISCRIMINATION LAW  
TO THE HOUSING CONTEXT

Juan Carlos BENITO SANCHEZ

*Foreword*

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This work is co-published by  
Editions PEDONE in Paris, France  
and  
HART Publishing Ltd in Oxford, United Kingdom

EDITIONS PEDONE  
13 rue Soufflot – 75005 – Paris – France  
Telephone: +33 (0) 1 43 54 05 97 Fax: +33 (0)46 34 07 60  
E-mail: [editions-pedone@orange.fr](mailto:editions-pedone@orange.fr) Website: <http://www.pedone.info>

HART PUBLISHING  
Bloomsbury Publishing Plc  
Kemp House, Chawley Park, Cumnor Hill, Oxford, OX2 9PH, UK  
1385 Broadway, New York, NY 10018, USA  
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British Library Cataloguing in Publication  
Data – Data Available

© HART Publishing – OXFORD –2023 – I.S.B.N. 9781509971374.

© Editions A. PEDONE – PARIS –2023 – I.S.B.N. 978-2-233-01038-4

## PREFACE

This book is to my knowledge the first comprehensive study of antidiscrimination law applied to the field of housing from a European perspective. It fills an important gap in existing literature. Legislative and scholarly developments related to antidiscrimination have to a large extent been dominated by lessons drawn from discrimination in employment. Revealingly, several important concepts of antidiscrimination law are closely related to the employment context, such as the “genuine and determining occupational requirement” which may provide a justification for certain direct distinctions of treatment. As this book brilliantly demonstrates, focusing on the field of housing allows to enrich our understanding of antidiscrimination law’s implications, potential, and hurdles by bringing into light some neglected issues. This work also shows how an antidiscrimination perspective can reinforce the right to housing by allowing to address certain housing-related concerns that are not adequately or sufficiently tackled through this right alone.

The analysis draws on an impressive body of legal sources. In line with its European focus, it closely looks at European Union (EU) law as well as the European Convention on Human Rights, the European Social Charter and related case law of specialized monitoring bodies. But it also discusses United Nations (UN) human rights instruments and related practice of UN committees. Additionally, the study considers cases and examples taken from national law that are especially relevant to illustrate and concretize certain points. While not pretending to be a comparative law work, it pays special attention to four EU countries, namely Belgium, France, Spain and the United Kingdom. This approach perfectly reflects the “hybrid character” of contemporary human rights law which straddles the boundaries between international law, European law and domestic law.<sup>1</sup>

This work is also noteworthy for its use of interdisciplinarity. Delving into political and legal theory, it starts with an exploration of the philosophical foundations of antidiscrimination law (Chapter II). This enables the author to clarify his conception of antidiscrimination law. He defends a ‘pluralistic’ account of antidiscrimination norms, meaning that they are aimed at achieving a plurality of aims: eliminating hostility, prejudice and stigma;

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<sup>1</sup> O. De Schutter, *International Human Rights Law*, Cambridge, Cambridge University Press, 2010, at 1.

respecting cultural diversity and avoiding misrecognition; transforming existing structures; and ensuring a fair distribution of fundamental social goods. The study also elaborates on urban sociology research to cast light on certain complex social phenomena, such as urban segregation and housing commodification and financialization. Remarkably, whereas the analysis is primarily of a legal nature, the interdisciplinary dimension is not limited to a separate section; it infuses the whole analysis and is interwoven with the legal discussion. Insights from other disciplines are thus effectively used to advance our understanding of legal concepts.

Juan Carlos Benito Sanchez convincingly shows how key concepts of antidiscrimination law – like indirect discrimination, harassment, reasonable accommodation, or accessibility – help address certain human rights concerns in the field of housing and determine the responses required from public authorities (Chapter III). Compared with an approach exclusively based on the right to housing, antidiscrimination norms allow to better acknowledge the specific harm suffered by victims of rights violations stemming from group-based hostility, prejudice and stigma. They also contribute to emphasize the necessity to take into account the specific needs of certain groups in the context of housing policies, such as cultural minorities (as in the case of Travellers) and people with disabilities. They thereby complement and enrich a right to adequate housing perspective.

Especially interesting and timely is the discussion on the links between discrimination and socioeconomic disadvantage (Chapter IV). This issue has only recently started to attract scholarly attention.<sup>2</sup> It touches upon the wider debate on the relation between antidiscrimination and material inequality. Antidiscrimination law has been strongly criticized by a number of authors for being exclusively focused on status group inequalities and unable to address the problem of socioeconomic inequalities. According to this view, the growing attention paid to antidiscrimination has the effect of overshadowing the problem of material inequalities.<sup>3</sup> Other scholars, however, claim that antidiscrimination norms do have a role to play in combating material inequalities but should be understood as a complement of, rather than a substitute for, redistributive policies.<sup>4</sup> This is the position

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<sup>2</sup> See among others S. Ganty, 'Poverty as Misrecognition: What Role for Antidiscrimination Law in Europe?', *Human Rights Law Review* 21, no. 4 (2021): 962-1007; S. Atrey, 'The Intersectional Case of Poverty in Discrimination Law', *Human Rights Law Review* 18 (2018): 411-440 and S. Fredman, 'Redistribution and Recognition: Reconciling Inequalities', *South African Journal on Human Rights* 23 (2007): 214-234.

<sup>3</sup> See in particular S. Moyn, *Not Enough. Human Rights in an Unequal World*, Harvard, Harvard University Press, 2019 and Fr. Dubet, *Les places et les chances. Repenser la justice sociale*, Paris, Seuil, 2010.

<sup>4</sup> See in particular O. De Schutter, 'The persistence of poverty: how real equality can break the vicious cycles', A/76/177 (19 July 2021).

defended by Juan Carlos Benito Sanchez. Not only does he underline that discrimination being a factor of material inequality for certain status groups, robust antidiscrimination policies are a necessary component of strategies aimed at reducing such inequalities. He also pleads for the recognition of socioeconomic disadvantage as a prohibited discrimination ground, which would further enhance the potential contribution of antidiscrimination to anti-inequality policies.<sup>5</sup>

Also particularly thought-provoking is the examination from an antidiscrimination perspective of the phenomena of housing segregation and housing commodification and financialization (Chapters V and VI). The fact that blatant prohibitions to reside in certain areas based on race or ethnicity have disappeared in Europe does not mean that the problem of housing segregation is over. Yet, by contrast with United States legal scholarship,<sup>6</sup> the issue of residential segregation of certain racial or ethnic groups has so far received little attention from European antidiscrimination legal experts. However, as shown by Juan Carlos Benito Sanchez, various types of housing policies may have the effect of creating or reinforcing – either directly or indirectly – the concentration of racial or ethnic groups in specific neighbourhoods. Building on the emerging national and international case-law on this issue, he persuasively argues that such policies should, under certain conditions, be considered as discrimination. He further claims that antidiscrimination norms entail an obligation for states to act to counter *de facto* segregation in areas where residents suffer from territorial stigmatization. Acknowledging the complexity of this task, he emphasizes at the same time the need to ensure that desegregation policies themselves are in line with antidiscrimination requirements. His discussion of commodification and financialization of housing from the perspective of antidiscrimination also forcefully shows how an antidiscrimination approach helps refine a human rights analysis of these phenomena.

Importantly, this study does not limit itself to pinpointing violations of antidiscrimination law in the context of housing: it also explores a variety of avenues for developing diversity-conscious, all-inclusive housing policies, including innovative mechanisms like equality duties and the commons.

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<sup>5</sup> See also the report co-written by Juan Carlos Benito Sanchez with Sarah Ganty: *Expanding the list of protected grounds within antidiscrimination law in the European Union*, Equinet Report, 2021, available at [https://equineteurope.org/wp-content/uploads/2022/03/Expanding-the-List-of-Grounds-in-Non-discrimination-Law\\_Equinet-Report.pdf](https://equineteurope.org/wp-content/uploads/2022/03/Expanding-the-List-of-Grounds-in-Non-discrimination-Law_Equinet-Report.pdf).

<sup>6</sup> See among others J. Zasloff, 'The Price of Equality: Fair Housing, Land Use, and Disparate Impact', 49 *Columbia Human Rights Law Review* (2017); D. Troutt, 'Inclusion Imagined: Fair Housing as Metropolitan Equity', 65(1) *Buffalo Law Review* (2016); E. Boddie, 'Racial Territoriality', 58 *UCLA Law Review* (2010); R. Th. Ford, 'The Boundaries of Race: Political Geography in Legal Analysis', 107(8) *Harvard Law Review* (1994).

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Beautifully written, carefully argued, original and thought-provoking, this book provides a remarkable contribution to the literature on antidiscrimination, social and economic rights and, more generally, international, European and transnational human rights law.

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The central argument of this book is that the application of antidiscrimination law to the field of housing complements and enriches a right to adequate housing approach in two ways: firstly, it helps to elaborate and expand the rationale and implications of certain components of the right to housing; secondly, it allows us to address human rights concerns that cannot be adequately tackled through the right to housing alone. I reach this conclusion through an analysis of the conceptual and practical implications arising from the application of antidiscrimination norms to the housing context, with a focus on Europe.

An enquiry into the philosophical foundations of antidiscrimination law leads me to identify four aims that antidiscrimination norms ought to pursue: eliminating hostility, prejudice, and stigma; respecting cultural diversity and avoiding misrecognition; transforming existing structures; and ensuring a fair distribution of important goods in society. Applying this framework to the field of housing, I find that various antidiscrimination legal concepts can be mobilised to achieve those four aims, among which direct and indirect discrimination, discriminatory harassment, and reasonable accommodation. I also defend the usefulness of incorporating and mobilising socioeconomic disadvantage as a prohibited ground of discrimination to this end.

I then build on two case studies—housing segregation, on the one hand; housing commodification and financialisation, on the other hand—to further demonstrate the contribution of antidiscrimination law to specific housing issues. Finally, I propose several procedural and substantive avenues to achieve diversity-conscious, all-inclusive housing policies, looking in particular at equality duties and housing decommodification policies. The legal analysis developed throughout this book, based on a human rights law methodology, is enriched through references to political and legal philosophy and to urban sociology.

**Collection dirigée par Sébastien TOUZÉ**

HART PUBLISHING  
ISBN 9781509971374

EDITIONS PEDONE  
ISBN 978-2-233-01038-4