

European Legal Framework on Equality

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This training session is funded under the 'Rights, Equality and Citizenship Programme 2014-2020' of the European Commission.

Summary

1. International instruments
 1. United Nations
 2. ILO
 3. Council of Europe
2. EU legislation
 1. Treaties and Charter of Fundamental Rights
 2. Secondary Law
 - Common issues
 - Divergences

International instruments

United Nations:

- **Race:** International Convention on the Elimination of All Forms of Racial Discrimination, 1965
 - **Religion:** Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 1981
 - **Disability:** Convention on the Rights of Persons with Disabilities, 2006
- + International Covenant on Economic, Social and Cultural Rights, 1965
- + International Covenant on Civil and Political Rights, 1966

International Labour Organization (ILO):

- **Discrimination (Employment and Occupation) Convention, 1958 (No. 111)**

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Council of Europe (I)

- **European Convention on Human Rights (1950):**

- ✓ **Art 14:**

- "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

- Residual right

- Protocol No. 12 (2000):**

- Art 1:** prohibition of discrimination on the grounds of ... in respect of any right set forth by law (para 1) and by public authorities (para 2)

- Broader right

- ✓ **Art 8(1):**

- "Everyone has the right to respect for his private and family life, his home and his correspondence."

- ↳ Autonomous right

- ↳ Possible causes of interference: Art 8(2)

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Council of Europe (II)

Revised European Social Charter (1996):

Discrimination:

Art E: No discrimination of workers on any grounds such as "race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status".

Art 24.3.d: Invalid grounds for dismissal:

"race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national origin or social origin"

Collective Complaints Procedure (Additional Protocol, 1995)

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EU - Treaties and Charter of Fundamental Rights

• Treaties:

- ✓ **Art 2 TEU** "equality" as a **founding value**
- ✓ **Art 3.3 TEU** shall combat discrimination
- ✓ **Art 10 of TFEU** 'mainstreaming'.
 - ↳ Combat discrimination across all policies/actions
- ✓ **Art 19 TFEU** empowers EU to **adopt measures** to combat discrimination
 - ↳ Adoption: Council (unanimity), with the consent of Parliament
 - ↳ **Absence of direct effect**
 - ↳ **Directives 2000/43/EC, 2000/78/EC**

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EU - Treaties and Charter of Fundamental Rights

- **Charter of Fundamental Rights:**

Art 21(1) Non-discrimination on the grounds of ethnicity or race, religion or belief, disability, age, sexual orientation (among others):

"Any discrimination based on any ground such as [...]"

Other relevant articles:

- Art 10 - freedom of religion; Art 22 - cultural and religious diversity
- Art 25 - elderly; Art 26 - integration of persons with disabilities

Attention

Art 51(1): The Charter is addressed to EU institutions/bodies, and to MS when implementing EU law.

Art 51(2): The Charter does not create or extend EU competences/powers

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EU - Treaties and Charter of Fundamental Rights

- **Example of application of the Charter of Fundamental Rights:**

Case C-236/09, Test-Achats:

- ✓ Dir 2004/113, Art 5(2)) → exception to the principle of equal treatment: differences of treatment on grounds of sex when calculating insurance premiums (based on actuarial factors)
- ✓ **Exception contrary to Articles 21 and 23 of the Charter of Fundamental Rights?**
- ✓ **CJUE:**
 - Exception contrary to the principle of equal treatment recognized in the Charter (arts. 21 and 23)
 - Null as of December 21, 2012

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EU - Secondary Law (I)

- **Employment:**

Race or ethnicity

Dir 2000/43/EC

**Religion or belief, age, disability,
sexual orientation**

Dir 2000/78/EC

- **Access to goods and services:**

Race or ethnicity

Dir 2000/43/EC

**Religion or belief, age, disability,
sexual orientation**

Proposal for a directive:
COM/2008/0426 final

+ **Criminal law:** Framework Decision 2008/913/JHA - racism and xenophobia

+ **Sexual identity?** - Dir 2006/54/EC, Recital 3 (gender reassignment)

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Dirs 2000/43/EC and 2000/78/EC

Personal scope of application:

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Art 3.1 Dir 2000/43/EC, Art 3.1 Dir 2000/78/EC:

"to all persons, as regards both the public and private sectors, including public bodies"

Art 3.2 Dir 2000/43/EC, Art 3.2 Dir 2000/78/EC:

"does not cover the difference of treatment on grounds of nationality and is without prejudice to the provisions and conditions relating the **entry into and residence of third-country nationals** and stateless persons in the territory of the Member States and to any treatment resulting from the legal status of third-country nationals and stateless persons.

→ Case C-54/07, *Firma Feryn*

→ Case C-83/14, *Chez*

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Dir 2000/43/EC and 2000/78/EC

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- They prohibit the same forms of discrimination:
 - ✓ **Direct discrimination** -Art 2.2.a Dir 43, 2.2.a Dir 78
 - ✓ **Indirect discrimination** -Art 2.2.b Dir 43, 2.2.b Dir 78
 - ✓ **Discrimination by association and/or perception**
 - Case C-303/06, *Coleman*
 - Case C-83/14, *Chez*
 - ✓ **Harassment and sexual harassment** -Art 2.3 Dir 43, 2.3 Dir 78
 - ✓ **Instruction to discriminate** -Art 2.4 Dir 43, 2.4 Dir 78
 - ✓ **Victimisation** -Art 9 Dir 43, 11 Dir 78
- Allow positive action -Art 5 Dir 43, 7 Dir 78
- Shift (?) of the burden of proof -Art 8 Dir 43, 10 Dir 78

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Dir 2000/43/EC and 2000/78/EC

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Material scope of application:

Art 3.2 Dir 2000/43, Art 3.1 Dir 2000/78, Dir 2004/38, Reg 492/2011:

Scope	Ethnic /Race	Religion/belief, age, disability, sexual orientation	Nationality/ Europeans	Nationality/ NON-Europeans
Employment (broad concept)	X	X	X	
Social protection (Soc. sec, health care, social advantages)	X	---	(X) economically active	---
Education	X	---	X	---
Access G&S	X	---	X	---

Dir 2000/43/EC and 2000/78/EC

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Equality Bodies:

Art Dir 2000/43/CE, Art 4 Dir 2014/54/EU:

Ethnic/ Race	Religion/belief, age, disability, sexual orientation	Nationality/ Europeans	Nationality/ NON- Europeans
Required	---	Required	---

Would be required if the Proposal for a Horizontal Directive is adopted

Dir 2000/78/EC

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Exceptions:

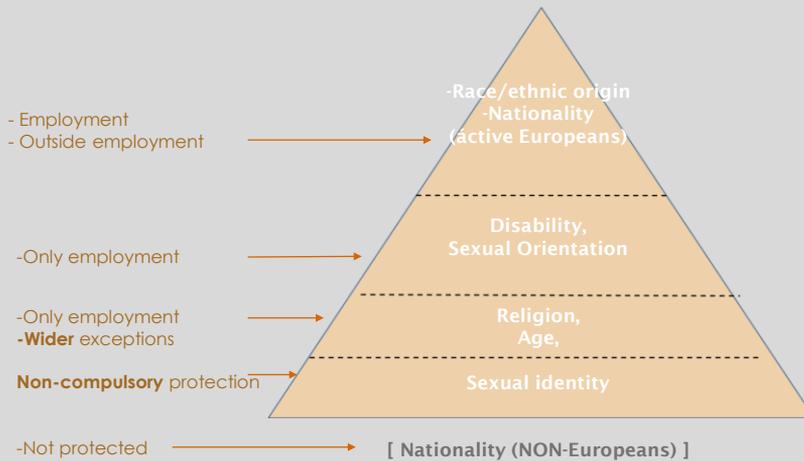
Ethnic/Race breed	Religion/belief, age, disability, sexual orientation	Nationality/ Europeans	Nationality/ NON- Europeans
Limited	Wide	Limited	---

Art. 4 Dir 43/2000/EC
(genuine and determining occupational requirements)

- Art. 2.2.ii Dir 78/2000/EC - exception disability
- Art 2.5 Dir 78/2000/EC - 'public policy' exception
- Art 3.4 Dir 78/2000/EC - exception "armed forces" (age, disability)
- Art. 4.1 Dir 78/2000/EC - genuine and determining occupational requirements
- Art 4.2 Dir 78/2000/EC - exception "churches and organisations with a religious ethos".
- Art. 6 Dir 78/2000/EC - age exception

Concluding Remarks (I)

- **Hierarchy of protection as per ground of discrimination?**



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Concluding remarks (II)

- **International treaties (United Nations, ILO):**

- Mechanisms for its practical application:
 - ✓ Periodic reporting system
 - ✓ Complaints procedure: CERD

- **Council of Europe:**

- Mechanisms for its practical application:
 - ✓ ECHR: European Court of Human Rights → **individual complaints**
 - ✓ Revised European Social Charter: [European Committee of Social Rights](#) → **collective complaints**

- **European Union:**

- Art 19 TFEU has no direct effect
- Implementation of Directives into national legislation
- Incorrect transposition → direct or indirect effect

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