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Racial or ethnic origin and the CJEU case law

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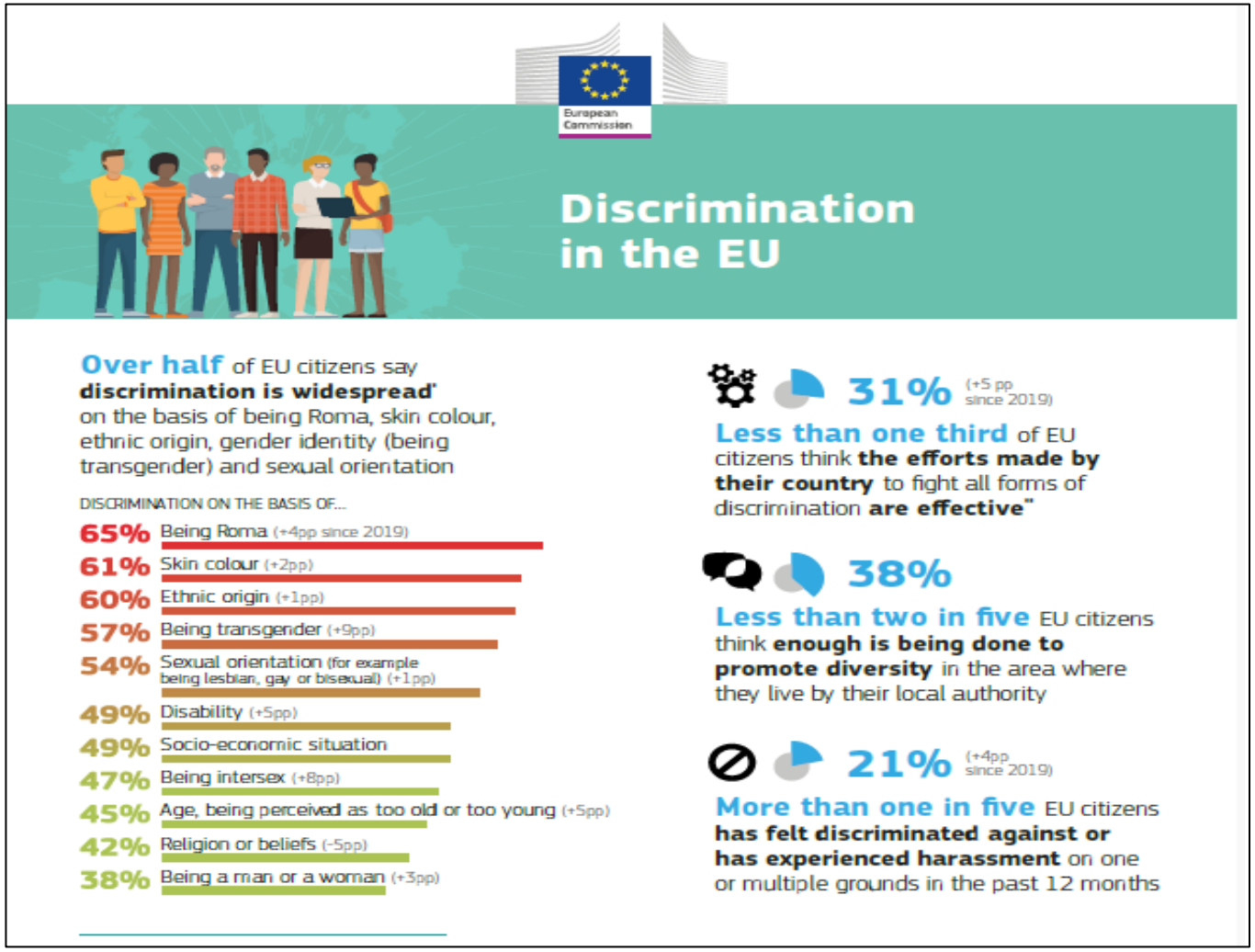
Applying EU Anti-Discrimination Law – Seminar for members of the judiciary

Lublin, 17-18 September 2026



European Commission, 2023 Eurobarometer on discrimination in the EU

Outline

1. **The EU legal framework**
2. **Discrimination on grounds of racial or ethnic origin under Directive 2000/43/EC**
   A. The protected ground: the meaning of “racial or ethnic origin”
   B. Direct or indirect discrimination?
3. **Enforcement: selected procedural aspects and effective remedies**
4. **Conclusions: key takeaways for national courts**

1. The EU legal framework



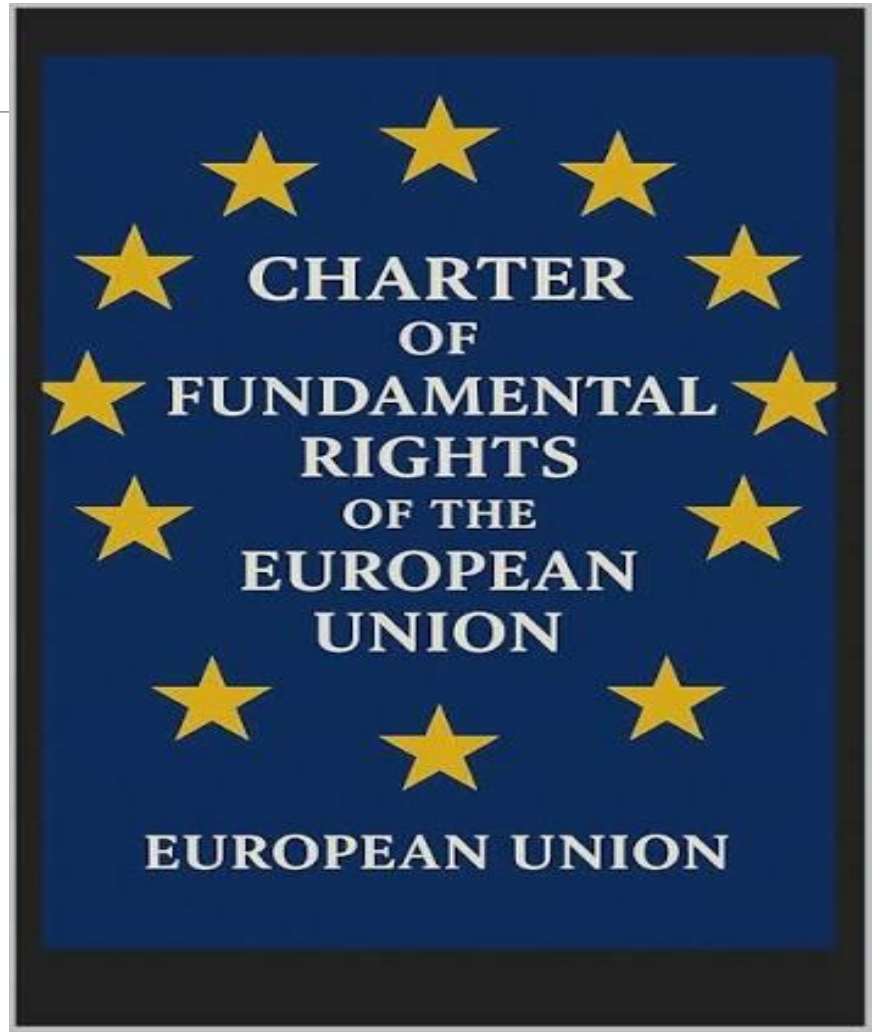
- **Art. 19 TFEU:** "1. Without prejudice to the other provisions of the Treaties and within the limits of the powers conferred by them upon the Union, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. […]"

  - **Art. 10 TFEU**: "In defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation."

The EU legal framework

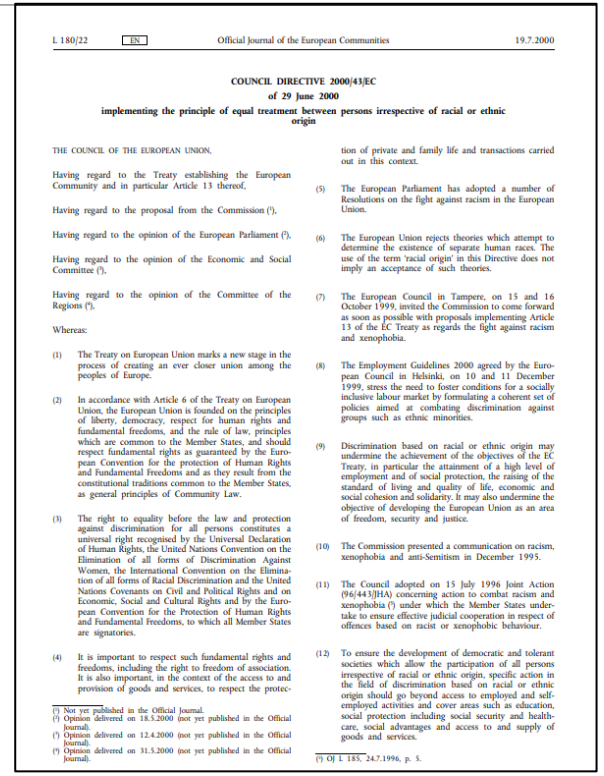
- **Art. 21 CFREU - Non-discrimination**: "1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited […]".
  - **Explanation on Art. 21 CFREU**: «Paragraph 1 draws on Article 13 of the EC Treaty, now replaced by Article 19 of the Treaty on the Functioning of the European Union, Article 14 of the ECHR and Article 11 of the Convention on Human Rights and Biomedicine as regards genetic heritage. In so far as this corresponds to Article 14 of the ECHR, it applies in compliance with it […]»

- **Art. 20 CFREU - Equality before the law**: "Everyone is equal before the law."



The EU legal framework

- **Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin**
  - as amended by Council Directive (EU) 2024/1499 of 7 May 2024 on standards for equality bodies



L 180/22 EN Official Journal of the European Communities 19.7.2000

COUNCIL DIRECTIVE 2000/43/EC
of 29 June 2000
implementing the principle of equal treatment between persons irrespective of racial or ethnic origin

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Article 13 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Having regard to the opinion of the Committee of the Regions (4),

Whereas:

(1) The Treaty on European Union marks a new stage in the process of creating an ever closer union among the peoples of Europe.

(2) In accordance with Article 6 of the Treaty on European Union, the European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States, and should respect fundamental rights as guaranteed by the European Convention for the protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, as general principles of Community Law.

(3) The right to equality before the law and protection against discrimination for all persons constitutes a universal right recognised by the Universal Declaration of Human Rights, the United Nations Convention on the Elimination of all forms of Discrimination Against Women, the International Convention on the Elimination of all forms of Racial Discrimination and the United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and by the European Convention for the Protection of Human Rights and Fundamental Freedoms, to which all Member States are signatories.

(4) It is important to respect such fundamental rights and freedoms, including the right to freedom of association. It is also important, in the context of the access to and provision of goods and services, to respect the protection of private and family life and transactions carried out in this context.

(5) The European Parliament has adopted a number of Resolutions on the fight against racism in the European Union.

(6) The European Union rejects theories which attempt to determine the existence of separate human races. The use of the term 'racial origin' in this Directive does not imply an acceptance of such theories.

(7) The European Council in Tampere, on 15 and 16 October 1999, invited the Commission to come forward as soon as possible with proposals implementing Article 13 of the EC Treaty as regards the fight against racism and xenophobia.

(8) The Employment Guidelines 2000 agreed by the European Council in Helsinki, on 10 and 11 December 1999, stress the need to foster conditions for a socially inclusive labour market by formulating a coherent set of policies aimed at combating discrimination against groups such as ethnic minorities.

(9) Discrimination based on racial or ethnic origin may undermine the achievement of the objectives of the EC Treaty, in particular the attainment of a high level of employment and of social protection, the raising of the standard of living and quality of life, economic and social cohesion and solidarity. It may also undermine the objective of developing the European Union as an area of freedom, security and justice.

(10) The Commission presented a communication on racism, xenophobia and anti-Semitism in December 1995.

(11) The Council adopted on 15 July 1996 Joint Action (96/443/JHA) concerning action to combat racism and xenophobia (5) under which the Member States undertake to ensure effective judicial cooperation in respect of offences based on racist or xenophobic behaviour.

(12) To ensure the development of democratic and tolerant societies which allow the participation of all persons irrespective of racial or ethnic origin, specific action in the field of discrimination based on racial or ethnic origin should go beyond access to employed and self-employed activities and cover areas such as education, social protection including social security and healthcare, social advantages and access to and supply of goods and services.

(1) Not yet published in the Official Journal.
(2) Opinion delivered on 18.5.2000 (not yet published in the Official Journal).
(3) Opinion delivered on 12.4.2000 (not yet published in the Official Journal).
(4) Opinion delivered on 31.5.2000 (not yet published in the Official Journal).

(5) OJ L 185, 24.7.1996, p. 5.

Relevant International Instruments:

- **International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted on 21 December 1965**
  - The EU is not a party to the Convention, but all its Member States are.
- **European Convention on Human Rights (ECHR)**
  - The EU is not (yet) a party to the Convention (see Art. 6(2) TEU)
  - **Art. 14 ECHR - Prohibition of discrimination**: "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."

2. Discrimination on grounds of racial or ethnic origin under Directive 2000/43

- **Purpose - Art. 1**: "The purpose of this Directive is to lay down a framework for combating discrimination on the grounds of racial or ethnic origin, with a view to putting into effect in the Member States the principle of equal treatment".

- **Scope - Art. 3(1):** "1. Within the limits of the powers conferred upon the Community, this Directive shall apply **to all persons**, as regards **both the public and private sectors**, including public bodies, in relation to:

  (a) conditions for access to employment, to self-employment and to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;

  (b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;

  (c) employment and working conditions, including dismissals and pay;

  (d) membership of and involvement in an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations;

  (e) social protection, including social security and healthcare;

  (f) social advantages;

  (g) education;

  (h) access to and supply of goods and services which are available to the public, including housing."

Since Directive 2000/43 gives specific expression to Article 21 CFREU in its field of application, its scope "cannot be defined restrictively" (*Slagelse*, C-417/23, para 52)

Discrimination on grounds of racial or ethnic origin under Directive 2000/43

- **Exclusions**: **Art. 3(2)** "This Directive **does not cover difference of treatment based on nationality** and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons on the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned."

- **Art. 6 → Minimum standard**

"1. Member States may introduce or maintain provisions which are more favourable to the protection of the principle of equal treatment than those laid down in this Directive.

2. The implementation of this Directive shall under no circumstances constitute grounds for a reduction in the level of protection against discrimination already afforded by Member States in the fields covered by this Directive."

A. The protected ground: the meaning of "racial or ethnic origin"

Article 2 - Concept of discrimination: "1. For the purposes of this Directive, the principle of equal treatment shall mean that there **shall be no direct or indirect discrimination based on racial or ethnic origin**."

The protected ground: the meaning of "racial or ethnic origin"

- **No definition** of "racial or ethnic origin" in Directive 2000/43 (≠ nationality).
- Recital 6: "The European Union rejects theories which attempt to determine the existence of separate human races. The use of the term "racial origin" in this Directive does not imply an acceptance of such theories."
- **Independent and uniform interpretation** of the notion of "ethnic origin" throughout the EU, having regard not only to the wording of the relevant provision but also to its context and the objectives pursued by the rules of which it is part (*Slagelse*, C-417/23, para 76)
- Relevance of Art. 21 CFREU and ECtHR case law, and ICERD to the interpretation of the notion:
  - According to the case law of the ECtHR relating to Article 14 ECHR, "discrimination based on a person's ethnic origin is a form of racial discrimination […]" (*Slagelse*, C-417/23, para 79).
  - According to Art. 1 ICERD, "the term 'racial discrimination' shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin, and as such discrimination based on a person's ethnic origin constitutes a form of racial discrimination within the meaning of that convention" (*Slagelse*, C-417/23, para 80)

Ethnic origin: a multi-factor assessment

- "The concept of 'ethnicity' has its origin in the idea of societal groups marked **in particular** by common nationality, religious faith, language, cultural and traditional origins and backgrounds" (*CHEZ*, C-83/14, para 46)
  - The list of criteria is **not exhaustive.** Ethnic origin cannot be determined on the basis of a single criterion, but **is based on a whole number of factors**, some objective and others subjective (*Jyske Finans*, C-668/15, paras 18-19).
  - Differences of treatment based on nationality as such are not covered by Directive 2000/43. Nevertheless, **nationality** may be taken into account together with other factors when determining ethnic origin.
  - Similarly, a **person's country of birth** may be connected to nationality, religious faith, language, cultural and traditional origins or living environment. It may form part of a body of evidence, but cannot, on its own, establish membership of an ethnic group (*Slagelse*, C-417/23, paras 81-84).

Applying "ethnic origin": three key cases

Case	Group or criterion at issue	The Court's assessment
***CHEZ*, C-83/14**	<u>The Roma community</u> [Electricity meters in a district inhabited mainly by persons of Roma origin were installed at a height of six to seven metres, compared with less than two metres in other districts]	The concept of ethnicity applies to the Roma community.
***Jyske Finans*, C-668/15**	<u>Country of birth outside the EU/EFTA</u> [A credit institution required applicants for a car loan to provide additional identification where their driving licence indicated such a country of birth]	"A person's country of birth cannot, **in itself**, justify a general presumption that that person is a member of a given ethnic group such as to establish the existence of a direct or inextricable link between those two concepts" (para 20).
***Slagelse*, C-417/23**	<u>Immigrants from non-Western countries and their descendants</u> [national legislation laying down an obligation to adopt development plans to reduce public family housing units in "transformation areas" that are characterised, inter alia, by the fact that, during the last five years, the proportion of "immigrants from non-Western countries and their descendants" residing in those areas has exceeded 50%]	"[…] even though neither the criterion of a person's nationality nor that of his or her country of birth is sufficient, in itself, to justify such a presumption of belonging to an ethnic group, **both may be taken into account, together with other factors**, for the purpose of assessing whether there is direct discrimination on the basis of 'ethnic origin' within the meaning of Directive 2000/43" (para 86).

B. Direct or indirect discrimination? Some definitions

Article 2

Concept of discrimination

1. For the purposes of this Directive, the principle of equal treatment shall mean that there shall be no direct or indirect discrimination based on racial or ethnic origin.
2. For the purposes of paragraph 1:

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin;

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

3. Harassment shall be deemed to be discrimination within the meaning of paragraph 1, when an unwanted conduct related to racial or ethnic origin takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.
4. An instruction to discriminate against persons on grounds of racial or ethnic origin shall be deemed to be discrimination within the meaning of paragraph 1.

Direct discrimination

1. Does the provision, criterion or practice establish a difference in treatment on grounds of racial or ethnic origin?

- A consideration relating to racial or ethnic origin must have **determined** the decision to introduce the difference in treatment (*CHEZ*, para 76; *Slagelse*, para 106).

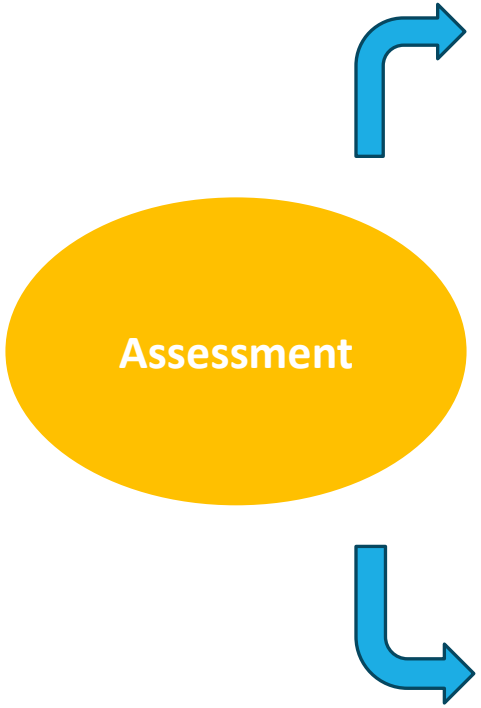
- The measure may also affect persons **who do not themselves possess the relevant racial or ethnic origin** (*CHEZ*, paras 56, 75).

- The criterion may encompass **several ethnic origins** (*Slagelse*, paras 101-102).

Assessment of all relevant circumstances, including the factual and legislative context

Direct discrimination

2. If so, does that difference result in less favourable treatment compared with persons in a comparable situation?



- Less favourable treatment must be assessed in the light of the **consequences of the measure, including its impact on fundamental rights** (*Slagelse*, paras 114 and 121-123).

- The requirement relating to the "comparability" of the situations must be assessed in the light of all the elements which characterise them (*CHEZ*, para 89 and *Slagelse*, para 112)

Assessing direct discrimination in practice: *Feryn*, *CHEZ*, *Slagelse*

Case	Provision/criterion/practice based on racial or ethnic origin	Less favourable treatment	Comparability of situations
Feryn, C-54/07	Public statements of the director of Feryn, an undertaking specialised in the sale and installation of doors, excluding "immigrants" from recruitment.	The statements were liable to **strongly dissuade** certain candidates from applying and thereby hinder their access to the labour market. No identifiable complainant was required (paras 23-25).	Not examined separately: the case concerned an exclusionary recruitment policy in the absence of an identifiable victim.
CHEZ, C-83/14	The presence of non-Roma residents did not rule out that the practice was based on the Roma origin of most inhabitants (para 75). Relevant indications included its **exclusive use in predominantly Roma districts, statements reflecting ethnic stereotypes**, the **lack of supporting evidence, and its compulsory, widespread and long-standing nature** (paras 80 -84).	The practice made it **extremely difficult or impossible** to monitor electricity consumption and was offensive and stigmatising (paras 86-87).	All consumers supplied by the same distributor in the same urban area were comparable, irrespective of the district in which they lived (paras 89-90).
Slagelse, C-417/23	The criterion could be based on ethnic origin even though it encompassed **several ethnic origins**. Relevant contextual evidence included the **preparatory documents**, which framed the lack of integration of "non-Western immigrants and their descendants" as the central challenge in "ghetto areas" (paras 100–105).	Residents of transformation areas appeared to face an **increased risk of early termination of their leases** and, ultimately, of losing their homes, whereas residents of vulnerable residential areas with at least similar socioeconomic conditions were not exposed to that risk (paras 120-123).	Residents of transformation areas and vulnerable residential areas appeared to be in comparable situations as regards their leases; in the latter, the 50% threshold was not exceeded (paras 112-113).

Exceptions

Article 4

Genuine and determining occupational requirements

Notwithstanding Article 2(1) and (2), Member States may provide that a difference of treatment which is based on a characteristic related to racial or ethnic origin shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.

Article 5

Positive action

With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin.

Indirect discrimination

Apparently neutral provision, criterion or practice

The provision, criterion or practice must be **worded or applied, ostensibly, in a neutral manner, that is to say, having regard to factors different from and not equivalent to the protected characteristic** (*Slagelse*, para 132)

the measure must be liable to put persons of a racial or ethnic origin **at a 'particular disadvantage' compared with other persons**

The measure must particularly disadvantage persons of a **given ethnic origin**, but it may place **several ethnic groups at a disadvantage** (*Slagelse*, paras 134–135).

The measure may also affect persons who, **without possessing a certain racial or ethnic origin**, suffer that particular disadvantage (*Chez*, para 60)

unless that provision, criterion or practice **is objectively justified by a legitimate aim**

and the means of achieving that aim are **appropriate and necessary** (proportionality test)

Proportionality requires:

Appropriateness: the measure must be genuinely capable of attaining the aim.

Necessity: the aim cannot be achieved just as effectively by less restrictive means.

Proportionality stricto sensu: the disadvantages must not be disproportionate to the aim or unduly prejudice the legitimate interests of the persons concerned; **affected fundamental rights must be properly balanced against that aim** (*Slagelse*, paras 158–168)

Indirect discrimination in practice

CHEZ, C-83/14

Apparently neutral criterion
Location of the dwelling in districts where meter tampering and unlawful connections had been recorded.

Particular disadvantage
The practice affected districts inhabited mainly by persons of Roma origin and made it **extremely difficult or impossible for residents to monitor their electricity consumption**. It was also offensive and stigmatising.

Objective justification
Preventing fraud and ensuring network security were legitimate aims. The practice could be justified only if no appropriate and less restrictive measure was available and if it did not disproportionately prejudice residents' interests in receiving electricity **under conditions that were neither offensive nor stigmatising and that enabled them to monitor their consumption regularly** (paras 113–18).

SLAGELSE, C-417/23

Apparently neutral criterion
Criteria relating to nationality and country of birth may, in themselves, be neutral with regard to ethnic origin. (para 99).

Particular disadvantage
A measure may particularly disadvantage persons belonging to **several ethnic groups**. Statistical evidence may be relevant.

Objective justification
The measure must be genuinely capable of achieving the legitimate aim and applied consistently; no equally effective, less restrictive measure must be available; and **a fair balance must be struck, taking account of the fundamental right to respect for the home under Article 7 CFREU** *(*paras *130-174).*

3. Enforcement: selected procedural aspects and effective remedies

- **Burden of proof (Art. 8)**
  - "1. Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, **facts from which it may be presumed that there has been direct or indirect discrimination**, i**t shall be for the respondent to prove that there has been no breach of the principle of equal treatment**".
  - Relevance of factual and legislative context
  - Member States may provide for the existence of indirect discrimination to be established by any means, including on the basis of **statistical evidence** (see Recital 15).
    - However, "it is for the national court to assess to what extent the statistical evidence adduced before it is valid and whether it can be taken into account, that is to say, whether, for example, it illustrates purely fortuitous or short-term phenomena, and whether it is sufficiently significant" (*Slagelse*, para 142)

Enforcement: selected procedural aspects and effective remedies

- **Remedies (Art. 7) and sanctions (Art. 15)**
  - Art. 7(1) reaffirms the right to an effective remedy, while Art. 7(2) gives specific expression to the right to effective judicial protection guaranteed by **Art. 47 CFREU** (*Braathens*, paras 33-34).
  - Sanctions must be **effective, proportionate and dissuasive** and, together with the remedies under Art. 7, ensure real and effective judicial protection (*Feryn*, paras 37-40; *Braathens*, para 38).
    - Directive 2000/43 does not prescribe a **specific sanction** (e.g. a finding of discrimination with appropriate publicity, an injunction to cease the discriminatory practice, or damages awarded to the body bringing the proceedings) (*Feryn*, para 37 and 39).
    - **Effective judicial protection** requires a court to be able to determine whether discrimination occurred even where the defendant agrees to pay compensation without admitting it. Where consistent interpretation is impossible, it must **disapply** any contrary national provision (*Braathens*, paras 55-59).

- **Associations, organisations or other legal entities acting on behalf or in support of the complainant (Art. 7)**
  - "2. Member States shall ensure that associations, organisations or other legal entities, which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, **either on behalf or in support of the complainant**, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive."
  - *Feryn*, C-54/07 → "Article 7 of Directive 2000/43 **does not preclude Member States from laying down**, in their national legislation, **the right for associations with a legitimate interest** in ensuring compliance with that directive, or for the body or bodies designated pursuant to Article 13 thereof, **to bring legal or administrative proceedings to enforce the obligations resulting therefrom without acting in the name of a specific complainant or in the absence of an identifiable complainant**" (para 27).

Enforcement: selected procedural aspects and effective remedies

- **Equality bodies** (**Directive 2024/1499** – transposition deadline 19 June 2026)
  - Extends the remit of the equality bodies to include discrimination on the grounds of age, religion or belief, disability or sexual orientation in the field of employment.
  - Expands the task of equality bodies to prevention activities, while strengthening their powers to assist victims, investigate discrimination and engage in litigation.
  - In *Belov*, the Bulgarian equality body was not regarded as a "court or tribunal" for the purposes of Art. 267 TFEU (C-394/11, paras 40-55).



4. Conclusions: key takeaways for national courts

- **A context-sensitive judicial assessment to distinguish direct from indirect discrimination**
- **The CFREU's role in strengthening protection within the Directive's scope**
- **The potential contribution of stronger equality bodies to effective judicial protection**
- **Beyond individual redress: towards systemic enforcement (pending Case C-799/23)**

Basic bibliography

- Bell M., and Waddington L., ‘More Equal than Others: Distinguishing European Union Equality Directives’, CML Rev 38, 2003.
- Tyson A., ‘The Negotiation of the European Community Directive on Racial Discrimination’, European Journal of Migration and Law 3, 2001, 199–229.
- Lahuerta S. B., ‘Ethnic Discrimination, Discrimination by Association and the Roma Community: CHEZ’, CML Rev. 53, 2016, 797-818.
- Ganty, S., ‘Racialized, but Equal?: Denmark’s Housing Law before the CJEU’, VerfBlog, 2026/1/21.
- Dawson M., Muir E., ‘Individual, Institutional and Collective Vigilance in Protecting Fundamental Rights in the EU: Lessons from the Roma’, CML Rev. 48, 2011, 751–775.
- de Búrca G., Passalacqua V., ‘The Curious Absence of Race Discrimination Litigation in EU Law’ , EUI WP 15, 2025.

Thank you for your attention!

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