



Discrimination on grounds of racial or ethnic origin: CJEU case law with focus on Case C-417/23

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Treaties and principles

I) Art. 10 TFEU


In defining and implementing its policies and activities, the Union shall aim to combat discrimination based *inter alia* on racial or ethnic origin (equality mainstreaming).

II) Art. 19 TFEU (former Art. 13 of Amsterdam Treaty) granting EU broader competences in the domain

=> Adoption of *inter alia* Directives 2000/43/EC (RED), 2000/78/EC (EED).....

III) Art. 21 Charter of Fundamental Rights of EU

“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”



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Directive 2000/43/EC (RED) (1)

I) Material scope (Art. 3.1(a)-(h))

Within limits of EU competences:

- Applies to all persons (public and private sectors)
- Applies in the employment domain intended broadly (i.e. also vocational training, workers' membership organisations etc.)
- Social protection (social security and health care) and social advantages
 - Education
- Supply of goods and services available to the public, including housing



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Directive 2000/43/EC (RED) (2)

II) Definitions

Direct discrimination: 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 (Art. 2.2(a))

Indirect discrimination: 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 (Art. 2.2(b))

Harassment shall be deemed to be discrimination [...], 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 (Art. 2.3)



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Directive 2000/43/EC (RED) (3)

III) Other elements

- Does not extend to difference of treatment based on nationality (Art. 3.2)
 - Allows for affirmative action (Art. 5)
- Asks that judicial/admin procedures and support associations are available for victims (Art. 7)
 - Requires shifting of burden of proof (Art.8)
- Requires creation of national equality bodies (Art. 13)
- Imposes the application of effective, proportionate and dissuasive sanctions (Art. 15)



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CJEU Case Law (1)

I) Key judgments

a) Case C-54/07, *Feryn*

i) Facts: Belgian employer declares publicly that he will not hire immigrants/Moroccans in his company – claim brought by Belgian (race) equality body

ii) Issues

- Direct race discrimination
- Not (permitted) nationality discrimination
 - Victimless discrimination
- Standing for equality body in Belgium



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CJEU Case Law (2)

b) Case C-83/14 (GC), *CHEZ* [+Case C-394/11, *Belov*]

i) Facts: Bulgarian electricity company hangs electrical meters at 7 meters height in predominantly Roma neighbourhoods – claim by non-Romani woman

ii) Issues

- Direct/or indirect racial discrimination by association
 - First EU case dealing with discrimination against Roma
 - Discrimination in the provision of services



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CJEU Case Law (3)

c) Case C-668/15, *Jyske Finans*

i) Facts: credit institution required a customer with country of birth other than EU/EFTA Member State to produce additional identification (e.g. passport or residence permit)

ii) Issues

- National equality body had found there was racial discrimination
- CJEU found no direct racial discrimination *inter alia* because nationality discrimination not covered by RED
- No indirect discrimination either because all third country nationals placed at a disadvantage and not just a specific group



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CJEU Case Law (4)

d) Case C-30/19, *Braathens Regional Aviation*

i) Facts: Chilean passenger whom airline thought was Arab/Muslim was asked to do an extra security check

Case had been unilaterally settled with payment of the demanded compensation but without admitting to claim of discrimination

ii) Issues

- Is Swedish legislation allowing for such 'forced' settlement of cases in line with rights of defence and for effective sanctions against race discrimination under EU law?
- CJEU finds a violation



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CJEU Case Law (5)

d) Case C-417/23 (GC), "*Danish Ghetto case*"

i) Facts: Danish Law on Public Housing identifies 3 areas based on 4 socio-economic criteria:

- Vulnerable housing areas that fulfill 2 criteria
- Parallel society areas (ex "ghetto" areas) that fulfill 2 criteria + where 50% of the residents are 'immigrants and their descendants from non-Western countries'
- Transformation areas (ex "hard ghetto" areas) that have been in the second category for more than five years
- In the last category development plans, including evictions of public housing tenants, are possible.

ii) Issues:

- Does such legislation fall within the scope of the RED?
 - Is the reference to descendants from non-Western countries an ethno-racial one?
 - Direct or indirect discrimination?



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CJEU Case Law (5)

"Danish Ghetto case" (continued)

i) **AG Ćapeta Opinion:**

- Characterises the case as falling under h) access to and supply of goods and services, including housing (Art. 3(h) RED); European Commission (EC) had argued it is a social advantage (Art. 3(f) RED);
 - Distinction between Western and Non-Western is ethnic;
- Suggests that Danish legislation constitutes direct discrimination

ii) **Judgment:**

- Service provision under Art. 3(f) RED, because economic activity run by Danish Public Housing Association, but Danish courts should check;
 - **Two-step analysis** in which the CJEU *first* looks at **direct discrimination** by explaining that it looks like an ethnic distinction;
- Ethnicity can be defined by nationality, religion, language, cultural and traditional origin, and background; neither nationality nor country of birth of an individual or their parents is sufficient, on its own, to establish that a person belongs to a particular ethnic group; grouping of various ethnic minorities can also be ethnicity;
- If the referring court rejects such finding – the statute might still be **indirect discrimination** (essentially because disproportionate to the aim of social cohesion and integration)

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CJEU Case Law (6)

II) Pending case – Case C-799/23, *Commission v. Slovakia*

- i) Facts: Roma children in separate classrooms, canteens or floors in primary schools, or by placing a higher number of Roma children into “special education” schools or classes
- ii) Issues: Did Slovakia infringe its EU obligations under the RED? Commission claims indirect discrimination
- iii) AG Ćapeta Opinion: Suggests that RED imposes on Member States an obligation of result and not merely of conduct; that the Commission has proven its case both as indirect discrimination and *de facto* discrimination; Slovakia failed to rebut presumption of discrimination

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CJEU Case Law (7)

III) Minor judgments/decisions

- a) Case C-391/09, *Runevič-Vardyn*
 - Refusal by Lithuanian authorities to transcribe Polish language names into the civil registers – not within scope of RED
- b) Case C-415/10, *Galina Meister*
- Russian engineer whose job application was denied by a German company – access to documents - no violation
- c) Case C-571/10 (GC), *Kamberaj*
- Long-term Albanian resident in Italy denied housing benefit in South Tyrol – not within scope of RED
- d) Case C-201/13 (GC), *Deckmyn*
- RED needs to be considered when interpreting the parody exception of the Copyright Directive in a case in which characters of a famous Belgian comic had been replaced by a far-right party with offensive images of Muslim women and people of colour
- e) Case C-457/17, *Maniero*
- Restriction of scholarships to support legal research projects or studies abroad to candidates having successfully completed a law examination in the fund-providing member state does not constitute indirect race/ethnic discrimination