

The EU Legal Framework on Equality

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Content

EU Charter and the EU Treaties

EU directives on equal treatment—overview
and scope

International instruments (Council of Europe,
United Nations, International Labour
Organisation)

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Waking the sleepy beauty

- Article 119 EEC (former Article 141 EC, now Article 157 TFEU)
- economic bases
- *Defrenne v Sabena Saga*
 - I. 80/70 distinction - public pension funds and pay
 - II. 43/75 direct effect; dual purpose
 - III. 149/77 distinction - equal treatment and equal pay; General Principle of EU law
- economic or social right
Sievers & Schrage Case 270/97



Elaine Vogel-Polsky

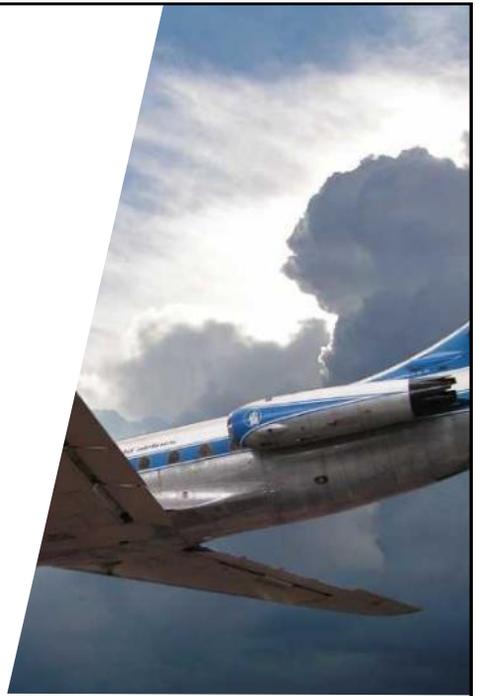
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EU Sex Equality Directives in employment

- 75/117/EEC equal pay directive
- 76/207/EEC equal treatment directive
- 76/207/EEC occupational social security
- 97/80/EC burden of proof
- 79/7/EEC Social security matters

Replaced by 2010/41/EU self-employed people

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Material scope: employment

Directive 2006/54/EC applies to

- Access to self-employment or to occupation including recruitment
- Promotion
- Vocational training including retraining and practical work experience
- Membership of and involvement in organizations of workers or employers and any organizations the members of which carry out a particular profession.
- Working conditions including dismissal and pay
- Occupational social security schemes.

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Broadening the scope of secondary legislation – post 1999

➤ Personal scope

- 2000/43/EC (incl. employment)
 - Race and ethnic origin
- 2000/78/EC (only employment)
 - Religion or belief
 - Disability
 - Age
 - Sexual orientation

➤ Material Scope beyond employment

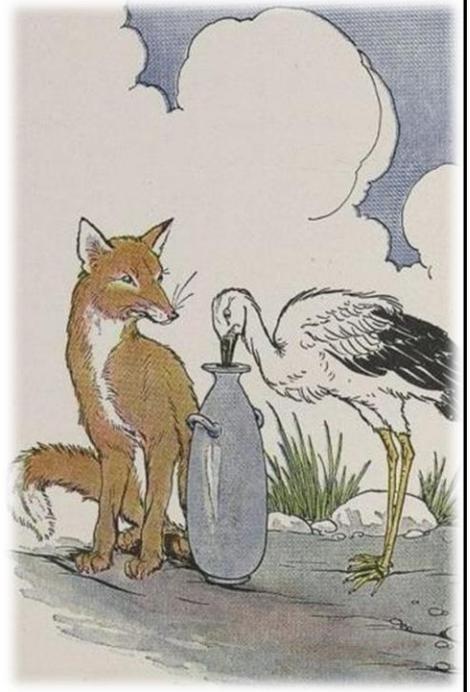
- 2000/43/EC (race and ethnic origin)
 - access and supply of goods and services
 - healthcare
 - education
- 2004/113/EC (sex)
 - access and supply of goods and services
 - Article 3(3) excludes content of media, advertising and education
- COM(2008)462 (age, disability, sexual orientation, religion and believe)

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The directives include...

- Key concepts
 - Direct and indirect discrimination, harassment
- But also...
 - Reasonable accommodation (disability)
 - Justification of direct age discrimination
 - Positive actions
 - special protection (pregnancy and maternity)
 - 92/85/EEC on maternity protection
 - 2019/1158/EU on work-life balance & parental leave
 - Exception for religious organisations
- CJEU's concept of equality
 - substantive equality
 - Normative notion
 - C-54/07 *Feryn*, C-83/14 *CHEZ*

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Broadening the scope of primary legislation

- General Principle of EU Law Article 6(3) TEU
 - as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms
 - result from the constitutional traditions common to the Member States
 - 149/77 *Defrenne v Sabena III*: non-discrimination
- EU Charter of Fundamental Rights
 - First proclaimed 7 December 2000
 - Now same status as the Treaties (Article 6(1) TEU)
 - Relationship with ECHR (Article 52(3) and 53 EU Charter)
 - Chapter III on Equality (Article 20-26)

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EU Charter of Fundamental Rights



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- Article 21: Non-Discrimination
 - Non-exhaustive list (incl. market based identities, nationality)
 - State-citizenship relationship
- Article 23: Equality between men and women
 - Beyond symmetry
 - Positive duty

Relationship

GP/EU Charter and Directives/Art. 157 TFEU

- Special expression/application of GP/Article 21
 - *Defrenne III* 149/77 (equal pay)
 - *Mangold* C-144/04 and *Kücükdeveci* C-555/07 (age)
 - C-414/16 *Egenberger* (religion and belief)
- Effect of GP/EU Charter on horizontal level
- Directives focus on horizontal relationship between private parties (incl. state as employer)

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International law obligations

- European Convention of Human Rights
 - Article 14 (parasitic right)
 - Protocol No. 12 (general prohibition of discrimination)
- UN Convention
 - for the Elimination of all forms of Discrimination against Women (CEDAW)
 - for the Elimination of all forms of Racial Discrimination (CERD)
 - on the Rights of Persons with Disabilities (CPWD)
- Discrimination (Employment and Occupation) Convention (1958) of the ILO

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Example: International law influence on the definition of disability -C-354/13 Kaltoft [53]

Following the ratification by the European Union of the United Nations Convention on the Rights of Persons with Disabilities [...] the Court held that the concept of 'disability' must be understood as referring to a limitation which results in particular from long-term physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers

HK Danmark C-335/11 [37 to 39], Z., C-363/12 [76], Glatzel, C-356/12 [45]

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