

THE EU LEGAL FRAMEWORK ON EQUALITY

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FROM THE PRINCIPLES OF NON DISCRIMINATION TO THE GENERAL PRINCIPLE OF EQUALITY

The economic foundation of the Antidiscrimination rules in the Treaty of Rome

The social foundation of these rules in the ECJ case law (*Defrenne I and II*)

Articles 20 and 21 of the EU Charter: equality before the law and formal (and substantial?) equality

The recognition of an EU general principle of equality (*Mangold*)



THE EFFICACY OF THE EU GENERAL PRINCIPLE OF EQUALITY

Direct effect of the principle (*Küçükdeveci*)

Irrelevance of the principles of legal certainty and the protection of legitimate expectations (*Dansk Industri*)

Problem: the horizontal direct effect of EU Directives (*Cresco Investigation*)



EU DIRECTIVES ON EQUAL TREATMENT - OVERVIEW

- [Directive 2000/43/EC](#) against discrimination on grounds of race and ethnic origin.
- [Directive 2000/78/EC](#) against discrimination at work on grounds of religion or belief, disability, age or sexual orientation.
- [Directive 2006/54/EC](#) equal treatment for men and women in matters of employment and occupation.
- [Directive 2004/113/EC](#) equal treatment for men and women in the access to and supply of goods and services.
- Directive 97/81 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC
- Directive 1999/70 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP
- Directive 2008/104 on temporary agency work



EU DIRECTIVES ON EQUAL TREATMENT - SCOPE

- Using the principles of non discrimination, a judge can **review the methods of exercising a public or private power** to "choose, distinguish, differentiate, to rule in the broad sense". Consequently, a judge can control the means chosen in the exercise of a power in relation to the effects that it is capable of producing.
- Inconsistency among EU Directives
- Subjective scope: beyond the employer
- Objective scope: beyond the employment relationship



INTERNATIONAL INSTRUMENTS

- Article 14 of the ECHR and Protocol no. 12
- Articles E, 20 and 27 of the Revised European Social Charter
- UN: Convention on the Rights of Persons with Disabilities

[International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families](#)

[Convention on the Elimination of All Forms of Discrimination against Women](#)

<https://ohchr.org/EN/Issues/Discrimination/Pages/discrimination.aspx>

- ILO: [Equal Remuneration Convention, 1951 \(No. 100\)](#)

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

Workers with Family Responsibilities Convention, 1981 (No. 156)

N.B. Their efficacy depends on the national legal order!

