

- ## The EU legal framework on equality
- The EU Charter and the EU Treaties
 - EU directives on equal treatment
 - International instruments (Council of Europe, UN, ILO)

Krzysztof Śmiszek
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EU legal framework on equality

European Union primary law

Art. 10 TFUE

combating discrimination with regard to sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation in all actions and policies of the EU (*equality mainstreaming*)

Art. 19 TFUE (former Art. 13 of Amsterdam Treaty)

Mandate for the European Council (in cooperation with the EP) to legislate on the ban of discrimination)

EU legal framework on equality

European Union primary law

Art. 2 of Treaty on European Union

The Union is founded on the values of respect for human dignity, freedom, democracy, **equality**, the rule of law and **respect for human rights**, including the **rights of persons belonging to minorities**. These values are common to the Member States in a society in which pluralism, **non-discrimination**, **tolerance**, justice, solidarity and **equality between women and men** prevail.

European debate on the situation of LGBT in Poland in the view of the art. 2 of the Treaty

EU legal framework on equality

European Union primary law

The EU Charter of Fundamental Rights

The Charter is legally binding. In accordance with Article 6 of the Treaty on European Union, it has the same legal value as the EU treaties. It applies only when EU institutions and EU countries are implementing EU law and does not extend the competences of the EU beyond those already granted in the treaties.

The Charter of Fundamental Rights consolidates all the fundamental rights applicable at the European Union

EU legal framework on equality

European Union primary law

Art. 21 Charter of Fundamental Rights

prohibition of 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.

Broader personal scope than Art. 10 and 19 of TFUE

No contradiction between Art. 10/19 TFUE and Art. 21 of Charter

Equality standard set in Art. 20-26

EU equality legal framework

Quite short history of European legislation in the area of non-discrimination on the grounds of race, ethnicity, age, sexual orientation, religion and belief

Biggest number of European Court's verdicts on gender discrimination comparing to other discrimination grounds

Legal concepts of gender discrimination served as a pattern for broadening the scope of protection on other grounds

EU equality legal framework

Directive 2000/43/EC „Racial Directive“

Personal scope - race and ethnicity.

No definitions of grounds.

Preamble „(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“.

Material scope: broad, most of the areas of life (access to goods and services, education, healthcare, employment)
Institutional protection (equality body or bodies)

EU equality legal framework

Directive 2000/78/EC „Equality Employment Directive“

Personal scope - sexual orientation (+ religion or belief, disability, age)

Material scope: **employment and occupation only** (access to employment, vocational training and promotion and working conditions, including dismissals, as well as pay

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)

Lack of institutional protection

EU equality legal framework

ground of ...

- „ground of ...“ is not always a concrete person's characteristic, stereotypes, biases, prejudices - Polish cases (labour court oficcer, dismissed father - paternity). Feryn case, Coman case.

Actual characteristic
Assumed characteristic
Associated characteristic

The ground needs to be a discriminaiton reason (not always a main reason, but it has to be involved)

Horizontal Equality Directive

European Union non-discrimination law operates through a series of EU Council Directives that give varying levels of protection against direct and indirect discrimination and against harassment on the grounds of racial or ethnic origin, gender, religion or belief, disability, age or sexual orientation.

However, these Directives give different protections to different equality grounds.

In 2008 EC proposed new proposal to ban discrimination on the grounds of religion or belief, disability, age or sexual orientation in all areas of social life. This directive aimed to propose a EU-wide minimum level of protection against discrimination through a horizontal approach, complementing the current EU Equality Directives which forbids discrimination in employment. **Unfortunately the proposed directive has been blocked by the Council of the European Union since 2008.**

Gender Equality Directives

Long history of European legislation in the area of gender equality

First decades of legislation devoted to equal pay and employment issues.

Biggest number of European Court's verdicts on gender discrimination comparing to other discrimination grounds

Legal concepts of gender discrimination served as a pattern for broadening the scope of protection on other grounds

International Instruments

Council of Europe

The Convention for the Protection of Human Rights and Fundamental Freedoms, better known as the European Convention on Human Rights

The principle of non-discrimination, which is based on the provisions of the Convention, is in many respects broader than that established by the EU's anti-discrimination acquis.

The wider scope of protection can be derived from:

- individual provisions of the Convention guaranteeing specific rights and freedoms which are supporting the principle of equality and non-discrimination,
- Art. 14 which prohibits discrimination (general prohibition of discrimination)

International Instruments

Art. 14 of the Convention

Axis around which the standard of equality is shaped.

Particular importance in increasing the level of protection against discrimination should be attributed to the formula in which the personal scope of this protection was defined, i.e. to an open catalog of characteristics that cannot constitute a motive for a difference in treatment.

Convention as a „living instrument“ - within 50 years enormous evolution in interpretation (LGBT rights, rights of persons with disabilities, rights of women, gender stereotypes).

International Instruments

Art. 14 of the Convention

The essential feature of the regulation in Art. 14 of the Convention is its limit and its application to the rights provided for in the Convention.

This means that, compared to the material scope of protection against discrimination established in EU law, the application of Art. 14 is significantly limited (it does not apply to such areas of life as employment, access to goods and services, or social security).

Art. 14 can not constitute a sole legal basis for the complaint. It always needs to go with the complaint regarding violation of the right/freedom laid down by the Convention.

International Instruments

Article 1 of Protocol No. 12 - General prohibition of discrimination

"1. The enjoyment of any right set forth by law shall be secured without discrimination on any grounds 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. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1."

It extends the scope of protection against discrimination to "any right set forth by law".

International Instruments

Council of Europe

The Council of Europe Convention on preventing and combating violence against women and domestic violence, better known as the Istanbul Convention

The European Social Charter and Revised Social Charter

ECRI

International Instruments

UN

International Covenant on Civil and Political Rights

International Covenant on Economic, Social and Cultural Rights

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Convention on the Rights of Persons with Disabilities (CRPD)

Convention on Elimination of All Forms of Racial Discrimination (CERD)

International Instruments

ILO Convention No. 111

Convention concerning Discrimination in Respect of Employment and Occupation, 1958

Convention provides the definition of discrimination. Discrimination is defined as any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.

International Instruments

ILO Violence and Harassment Convention, 2019 (No. 190)

Governments that ratify the treaty will be required to develop national laws prohibiting workplace violence and to take preventive measures, such as information campaigns and requiring companies to have workplace policies on violence.

The convention defines violence and harassment as "a range of unacceptable behaviors and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment."

The treaty covers workers, trainees, workers whose employment has been terminated, job seekers, and others, and applies to both formal and informal sectors. It also accounts for violence and harassment involving third parties, such as clients, customers, or service providers.

Thank you for your attention!

Krzysztof Śmiszek