

Race, religion and sexual orientation

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Introduction

- Introduction
- Racial or ethnic origin
- Religion
- Sexual orientation
 - Transgender and gender identity

Racial or ethnic origin

- Governed by Racial Equality Directive 2000/43
- Definition
 - No definition of 'race or ethnic origin' in Treaty or Directive
 - Broad interpretation:
 - Article 21 Charter of Fundamental Rights: race, colour, ethnic or social origin, genetic features, language, membership of a national minority.
 - Self identification

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Racial or ethnic origin

Other sources:

- ICERD, European Social Charter, ECRI documents.
- Case law ECtHR:
 - *Timishev v Russia* (55762/00 and 55974/00)
 - *DH and others v Czech Republic* (57325/00)
 - *Horváth and Kiss v Hungary* (11146/11): State is *obliged* to apply positive measures for past discrimination
 - compare article 5 RED: MS are *authorized* to apply positive measures

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Racial or ethnic origin

- Scope: *employment* and *non-employment*
 - Article 3 RED:
 - Employment in the widest sense: recruitment and selection process, working conditions including dismissal and pay, relations on the work floor, vocational training
 - Membership trade union and employers' organisation

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Racial or ethnic origin

- Non-employment
 - Social protection, including health care
 - Social advantages
 - Education
 - Goods and services:
 - Pending case: C-83/14 CEZ Razpredelenie Bulgaria AD v Komisa za zashtita ot diskiminatsia

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Racial or ethnic origin

- Case law CJEU
 - C-54/07, Feryn NV
 - no identifiable victim, but still admissible;
 - statements in the press lead to presumption of discrimination.
 - C-571/10, Kamberaj v IPES
 - Nationality case, RED not applicable. Long term residents Directive contains non-discrimination clause.

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Religion or belief

- Governed by Framework Directive 2000/78
- Definition 'religion'
 - Three elements :
 - Belief (participation in rites),
 - Identity (affiliation with a community)
 - Way of life (behaviour, dress code).
- Includes 'forum internum' as well as external manifestatons

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Religion or belief

- Definition 'belief':
 - ECtHR: Must relate to a weighty aspect of human life and behaviour. Must possess a certain level of cogency, seriousness, cohesion and importance, compatible with respect for human dignity.
 - E.g. humanism, atheism, pacifism.

Religion or belief

- Scope:
 - Only employment: Article 3 Framework Directive
 - Exception to principle of non-discrimination: Article 4 (2) Framework Directive
 - Occupational requirements: special position for churches and organisations the ethos of which is based on religion or belief.

Religion or belief

- Issues:
 - Manifestation of religion in the workplace
 - Clothing rules at work / in schools: head scarf issues
 - Recent case law ECtHR:
 - *Ladele and Mc Farlane v UK* (51671/10, 36516/10)
 - *Chaplin and Eweida v UK* (59842/10, 48420/10)

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Sexual orientation

- Governed by Framework Directive 2000/78
- No definition in Treaty or Directive
- Protection against discrimination follows also from ECtHR:
 - *Karner v. Austria* (40016/98)
 - *Goodwin v. UK* (28957/95)
- No international conventions, but see *Yogyakarta Principles* (2006)

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Sexual orientation

- Case law CJEU
- *Pension and pay*
 - C-267/06, Tadao Maruko v Versorgungsanstalt
 - C-147/08, Jürgen Römer v Freie und Hansestadt Hamburg
 - C-124/11, Dittrich and others v Germany
 - C-267/12, Hay v Crédit Agricole Mutuel
- *Recruitment*
 - C-81/12, Asociația ACCEPT v CNCD

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Transgender and gender identity

- Governed by article 157 TFEU and gender directives
- Specific issues:
 - Legal recognition
 - Discrimination in relation to sex change
- CJEU case law:
 - C-13/94, P. v S. and Cornwall County Council
 - C-423/04, Richards v Secretary of State for Work and Pensions
 - C-117/01 K.B. v NHS Pension Agency

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Thank you!

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