

Discrimination on grounds of race and religion: main features and CJEU case law

Kristina Koldinská, PFUK

Equality principle in international law

- * ILO Conventions
 - * Convention no. 100 on Equal Remuneration for Men and Women Workers for Work of Equal Value of 1951
 - * Convention no. 111 on Discrimination (Employment and Occupation) Convention, 1958
 - * Convention no. 156 on equal opportunities and equal treatment of employees and workers with family responsibilities, 1981
- * UN Conventions
 - * 1979 UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
 - * 1965 International Convention on the Elimination of All Forms of Racial Discrimination
 - * Council of Europe Convention
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 - * The European Convention on Protection of Human Rights and Fundamental Freedoms, Art. 14
 - * discrimination test under ECHR:
 1. different treatment of individuals in any analogous or similar situation?
 2. Is this difference in treatment objective and reasonably justified?
 - (i) pursues a legitimate aim and at the same time,
 - (ii) is there reasonable relationship of proportionality between this objective and the means to achieve it?
 3. differential treatment beyond the discretion of the State?
 - * The European Social Charter

Equality in EU primary law

EU Treaty

- * **Article 2** 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.
- * **Art 3:** „ shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.“
- * **Art. 6.** „ The Union recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.“

EU Primary law

* TFEU

- * **Art. 19** Without prejudice to the other provisions of the Treaties and within the limits of the powers conferred by them upon the Union, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

Charter of fundamental rights EU

* *Art. 21*

- * 1. 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.
- * 2. Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.

* *Art. 23*

- * Equality between women and men must be ensured in all areas, including employment, work and pay.
- * The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex..
- * Title III includes also the rights of children, elderly people and persons with disabilities

Equality in secondary law of the EU

- * [Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin](#)
- * [Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation](#)

Types and forms of discrimination

The principle of equal treatment means that there is no direct or indirect discrimination

- * Direct discrimination shall be taken into account where one person is treated less favorably than another person is, has been or would be;
- * Indirect discrimination shall be taken into account, when an apparently neutral provision, criterion or practice caused a certain 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.
- * Harassment = unwanted conduct which has the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.
- * Sexual harassment is any form of unwanted conduct of a sexual nature, verbal, non-verbal or physical form, which has the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment
- * Discrimination also includes instruction to discriminate

Indirect discrimination

- * CJEU's case-law leaves the formulation of social policies, incl. employment policy, to the discretion of the Member States

However this discretion must pursue a legitimate aim in relation to equality, e.g. in recruiting staff – bankruptcies or budgetary problems do not justify discrimination (Steinicke, C-77/02)

Corporate policies are viewed somewhat milder, e.g. if there is a real need for some companies to reduce part-time staff, and this need can be objectively justified, then such policy can be tolerated, even though women are mostly employed part-time (ECJ Bilka Kaufhaus, 170/84)

Discriminatory grounds

- * sex
- * race and ethnic origin
- * religion and belief
- * age
- * disability
- * sexual orientation

Role of the CJEU in anti-discrimination issues

- * CJEU – key role in anti-discrimination issues
- * The CJEU has always actively complemented initially relatively modest equality legislation
- * From the case law arise basic concepts and principles of equal treatment and non-discrimination
- * The case law has been taken into account when amending old or adopting new Directives (e.g. 2006/54)

Race and ethnic origin

Directive 2000/43 – one of the directives with the widest material scope

- * conditions of access to employment, self-employment, including promotion; access to all types and levels of vocational guidance and training
- * employment and working conditions, membership and involvement in an organisation of workers or employers, including the benefits provided by these organisations
- * social protection, including social security and health care
- * social benefits
- * education
- * access to goods and services that are available to the public including housing and supplies

Case law – not vast, but courageous...

* C-54/07, Feryn

- * The fact that an employer declares publicly that they will not recruit employees of a certain ethnic or racial origin is clearly of such a nature that it can actually discourage some candidates to apply, and therefore constitutes an obstacle to their access to the labor market, which constitutes direct discrimination in recruitment within the meaning of Directive 2000/43. With such direct discrimination however, there is no identifiable complainant claiming to be the victim of discrimination.
- * EU law does not prevent "anti-discrimination association" to initiate judicial or administrative proceedings for the enforcement of obligations under that directive, without acting on behalf of a complainant, or if there is no specific complainant for the defendant to prove that the breach of the principle of equal treatment if the facts indicate that there has been direct or indirect discrimination.
- * The obligation to submit evidence to the contrary, so that burdens the originator of alleged discrimination is subject to a straightforward statement presumption of discrimination if it is based on proven facts. Such facts that may justify the assumption that it is a discriminatory recruitment policy, are statements by which an employer publicly announces that as part of its recruitment policy, they will not recruit employees of a certain ethnic or racial origin.

... not all

C-394/11 Belov

- * state distribution companies in some parts of the Bulgarian city, that are mainly inhabited by members of the Roma community, installed electricity meters on poles at a height of seven meters
- * In contracts the electricity distributor committed to install electricity meters so that they were accessible to customers to check their usage... if it is however necessary to protect the life and health of citizens, as well as commercial property... meters can be placed in inaccessible places, however the distribution firm has to provide the possibility of visual inspection within three days of receipt of the written request of the customer at its own expense
- * Mr. Belov: in his opinion - discrimination based on ethnic origin - filed an application for the removal to the Commission for Protection against Discrimination - she filed a preliminary ruling, the CJEU, but did not decide on the merits since the Commission is not a court

C-83/14 ČEZ Razpredelenie Bulgaria

* AG opinion

- * 1. In a district which is inhabited predominantly by people from a certain ethnic group, other persons residing there who do not themselves belong to that ethnic group may rely on the prohibition of discrimination based on ethnic origin where they suffer discrimination by association as a result of a measure on account of its wholesale and collective character.
- * 2. If consumers are normally provided with free electricity meters which are installed in or on buildings in such a way that they are accessible for visual checks, whilst in districts inhabited primarily by members of the Roma community such electricity meters are attached to electricity poles at an inaccessible height of approximately 6 m, there is a prima facie case of indirect discrimination based on ethnic origin within the meaning of Article 2(2)(b), in conjunction with Article 8(1), of Directive 2000/43.
- * 3. Such a measure may be justified if it prevents fraud and abuse and contributes to ensuring the quality of the electricity supply in the interest of all consumers, provided that:
 - * (a) no other, equally suitable measures can be taken to achieve those aims, at a financially reasonable cost, which would have less detrimental effects on the population in the district concerned, and
 - * (b) the measure taken does not produce undue adverse effects on the inhabitants of the district concerned, due account being taken of:
 - * – the fact that the threat of stigmatisation of an ethnic group appreciably outweighs purely economic considerations and
 - * – the interest of final customers supplied with electricity in monitoring their individual energy consumption by means of a regular visual check of their electricity meters.

Discrimination based on religion

- * The case law of the CJEU in relation to discrimination based on religion rather markedly works with asylum law
- * The CJEU has no case law on headscarves, turbans, etc. - Conversely, extensive case law of the ECtHR
- * Crosses in schools - also outside the EU law - are not judged by the CJEU