



## The Non-Discrimination Directives and National Courts

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### Summary

- Terminology
- Which texts
- National Courts and European Law
- Reflections

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### I. The court

- civil courts
- penal courts
- labour courts
- administrative courts
- administrative/conciliation bodies
- bodies for the promotion of non-discrimination

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## II. The texts

- Directive 2000/43 and 2000/78
- Supranational sources (others than EU)
  - the Universal Declaration of Human Rights
  - the UN Convention on the Elimination of all Forms of Discrimination against Women
  - the International Convention on the Elimination of all Forms of Racial Discrimination
  - the UN Covenant on Civil and Political Rights
  - the UN Covenant on Economic, Social and Cultural Rights
  - the European Convention for the Protection of Human Rights
  - ILO Convention N° 111

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- National Laws
- Regional Laws (Länder, regions, etc.)
- Collective Bargaining Agreements
- Codes of Conduct
- Principe généraux du droit / Algemeine Rechtsgrundsätze

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## III. National Courts and European Law

1. National Courts must give priority to Community Legislation
  - Monism and Dualism
  - Article 249 EC Treaty [Marshall (C-152/84)]

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- the “State” [Foster (C-188/89)]
  - the body must be responsible for providing a public service;
  - it must be responsible pursuant to a measure adopted by the State
  - it must be under control of the State
  - it must have special powers beyond those which result from the normal rules applicable in relations between individuals.

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## 2. Interpretation conform to Directive

- Article 234 EC Treaty
- Judicial Body

## 3. Government liability in tort [Francovich (C-6 & 9/90)]

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## IV. Reflections

- The choice of the national court determines the legislation
- Confluence of laws (especially in the event of multiple discrimination)
- Directive 76/2007 = Directive 2000/43 and 2000/78?
- Prediction
  - Hardly any problem with ...
  - Many problems with ...

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