



Utrecht University



This training session is funded under the Rights, Equality and Citizenship Programme 2014-2020 of the European Commission.

The EU legal framework on (gender) equality

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ERA, webinar for members of the judiciary, 3 September 2020



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OUTLINE

1. International (human rights) law and ECHR

2. History of EU equality law

3. Functions of equality in EU law

4. Protected grounds of EU non-discrimination law

5. Sources of EU gender equality law

➤ **Primary law**

➤ **Secondary law: a closer look at some of the Directives**

6. Conclusion

International legal framework on gender equality

United Nations

International Labor Organisation

Council of Europe

1948: Universal Declaration of Human Rights (**UDHR**)
1966: International Covenant on Economic, Social and Cultural Rights (**ICESCR**)
1966: International Covenant on Civil and Political Right (**ICCPR**)
1975: Convention on the Elimination of all Forms of Discrimination Against Women (**CEDAW**)

1957: Convention No. 100 (equal remuneration)
1958: Convention No. 111 (discrimination in employment and occupation)
1981: Convention No. 156 (workers with family responsibilities)
2000: Convention No. 183 (maternity protection)

1950: European Convention on Human Rights (**ECHR**)
1961: European Social Charter (**ESC**)
2011: Convention on Combating Violence against women and Domestic Violence (**Istanbul Convention**)

CEDAW

Article 1

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

European Court of Human Rights on gender equality

Article 14 ECHR

Prohibition of discrimination

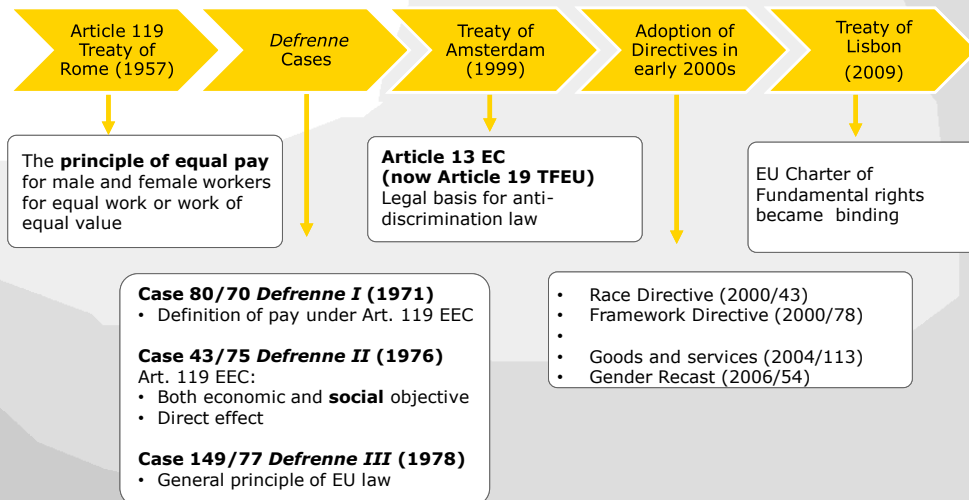
*'The enjoyment of the rights and freedoms set forth in this Convention shall be secured **without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with national minority, property, birth or other status.***

➤ Accessory right/not autonomous

Justifications

- Differences in treatment on ground of sex require 'very weighty reasons'
- Gender stereotypes cannot justify discrimination (GC *Konstantin Markin v. Russia* (2012))

Brief history of EU equality and non-discrimination law



Functions of equality in EU law

1. Founding value

Article 2 TEU

The EU is founded on the value of equality

2. Aim of the Union

Article 3(3) TEU

Combat discrimination and promote equality

3. Obligations on EU

Articles 9 and 21 TEU/ 8 and 10 TFEU

When the Union exercises its competences

4. General principle of EU law

Defrenne III

The Principle of equality is a general principle

5. Individual right

Rights can be enforced by individuals through the EU Charter

Protected grounds of non-discrimination in EU law

Nationality

Sex

Part-time and temporary work

Directive 97/81 (part-time work) & Directive 99/70 (fixed-term work)

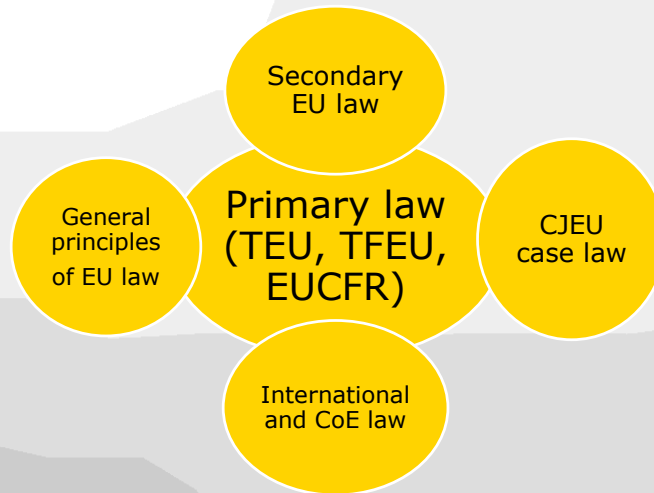
Race and ethnicity

Directive 2000/43/EC (Race Directive)

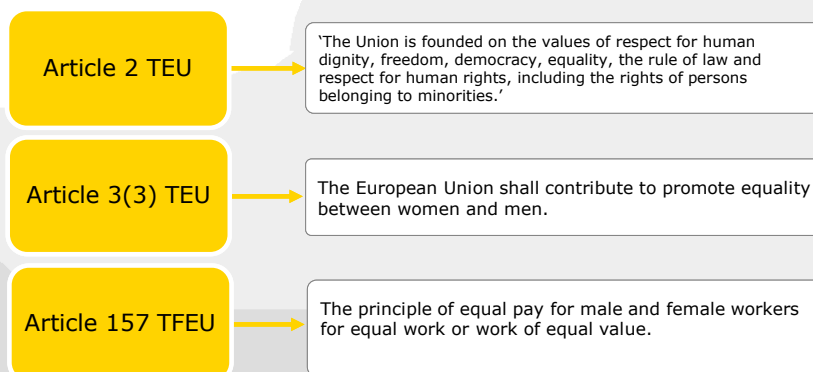
Age/disability/religion/sexual orientation

• Directive 2000/78/EC (Employment Equality Directive)

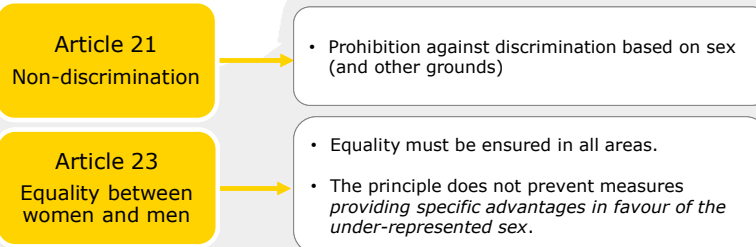
Sources of EU gender equality law



EU primary law on gender equality



EU Charter of Fundamental Rights on gender equality



Article 51: Binding on EU bodies + MS, but only when they implement EU law.

Role of CJEU

How do cases get to the CJEU?

→ Importance of preliminary references

Crucial role CJEU in developing gender equality law

EU directives on gender equality

Directive 79/7/EEC	matters of social security
Directive 92/85/EEC	pregnant workers and workers who have recently given birth or are breastfeeding
Directive 2004/113/EC	access to and supply of goods and services
Directive 2006/54/EC	employment and occupation (recast)
Directive 2010/18/EU	on parental leave. In effect until 2 August 2022
Directive 2010/41/EU	activity in a self-employed capacity
Directive 2019/1158/EU	work-life balance for parents and carers

Gender Recast Directive (2006/54/EC)

Purpose (Article 1)

- *'The purpose of this Directive is to ensure the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.*
- *To that end, it contains provisions to implement the principle of equal treatment in relation to:*
 - *(a) access to employment, including promotion, and to vocational training;*
 - *(b) working conditions, including pay;*
 - *(c) occupational social security schemes.*
- *It also contains provisions to ensure that such implementation is made more effective by the establishment of appropriate procedures.'*

Goods and Services Directive (2004/113/EC)

Purpose

Article 1: 'The purpose of this Directive is to lay down a framework for combating discrimination based on sex in access to and supply of goods and services, with a view to putting into effect in the Member States the principle of equal treatment between men and women.'

Scope + exclusions

Art 3: 1. ... this Directive shall apply to **all persons who provide goods and services, which are available to the public** irrespective of the person concerned as regards both the public and private sectors, including public bodies, and which are offered **outside the area of private and family life** and the trans- actions carried out in this context.
2. This Directive does not prejudice the **individual's freedom to choose a contractual partner** as long as an individual's choice of contractual partner is not based on that person's sex.
3. This Directive shall not apply to the **content of media and advertising nor to education.**





Common provisions in non-discrimination directives

Directives 2006/54/EC, 2004/113/EC and 2010/41/EU (self-employed) share common provisions with the other anti-discrimination Directives:

- *Definitions*
- *Burden of proof*
- *Legal protection and damages/compensation*
- *Bodies for the promotion of equal treatment*
- *Victimisation*
- *Social dialogue and dialogue with NGOs*
- *Positive and specific measures*

Work-life balance Directive (2019/1158/EU)

WHAT WILL THE NEW DIRECTIVE IMPROVE?

	CURRENT EU LAW	IMPACT OF THE NEW DIRECTIVE
 Paternity Leave	No minimum standards for paternity leave at EU level.	Working fathers will be able to take at least 10 working days of paternity leave around the time of birth of the child. Paternity leave will be compensated at least at the level of sick pay.
 Parental Leave	At least 4 months per parent, out of which 1 month is non-transferable between parents.	At least 4 months per parent, out of which 2 months are non-transferable between parents. Parents can request to take the leave in flexible forms (full-time, part-time or in a piecemeal way).
 Carers' Leave	No minimum rules on allowance/payment.	The 2 non-transferable months of parental leave will be compensated at a level set by Member States.
 Flexible Working Arrangements	No minimum standards for carers at EU level (except "force majeure" allowing to take short time off for imperative and unexpected family reasons).	All workers will have the right to 5 working days of carers' leave per year.
	Right to request reduced and flexible working hours upon return from parental leave. Right to request part-time work for all workers.	All working parents with children up to at least 8 years old and all carers will have the right to request the following flexible working arrangements: 1. reduced working hours 2. flexible working hours 3. flexibility on the place of work

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Conclusions?

Thank you!