



THE EVOLUTION OF EU GENDER EQUALITY LAW

Dr. Claudia Schmidt, Copenhagen, 15 April 2024

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Universal Declaration of Human Rights United Nations General Assembly, Paris, 10 December 1948

*Whereas the peoples of the United Nations have ... **reaffirmed their faith** in fundamental human rights, in the dignity and worth of the human person and **in the equal rights of men and women** ...*

ARTICLE 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, **without distinction of** any kind, *such as* race, colour, **sex**, language, religion, political or other opinion, national or social origin, property, birth or other status ...

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ARTICLE 14

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 a national minority, property, birth or other status.**

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ARTICLE 119 EEC



Each Member State shall during the first stage **ensure** and subsequently maintain **the application of the principle that men and women should receive equal pay for equal work.**

For the purpose of this Article, **'pay'** means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives, directly or indirectly, in respect of his employment from his employer.

Equal pay without discrimination based on sex means: (a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement; (b) that pay for work at time rates shall be the same for the same job.

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Article 119 EEC: the principle of equal pay

C-80/70 Defrenne v Belgian State (Conseil d'Etat)
25 May 1971

C-43/75 Defrenne/SABENA (Cour du Travail, Brussels)
8 April 1976

C-149/77 Defrenne/SABENA (Cour de Cassation)
15 June 1978

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Article 119 EEC (157 TFEU): the principle of equal pay

« Defrenne II »

Article 119 EEC pursues a double aim: economic and social.

Article 119 EEC has direct effect.

Since it is mandatory in nature, the prohibition on discrimination between men and women applies not only to the action of public authorities, but also extends to contracts between individuals.

Directives can provide further details regarding certain aspects but not prejudice the direct effect of Article 119.

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Article 119 EEC

« *Equal pay for equal work without discrimination based on sex* »

➔ **Article 141 EC (Maastricht Treaty)**

➔ **Article 157 TFEU (Lisbon Treaty)**

No change in substance!

C-624/19 Tesco Stores 3 June 2021 (GB)

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TREATY OF THE EUROPEAN UNION (TEU)

Preamble

*DRAWING INSPIRATION from the ... inheritance of Europe, from which have developed the **universal values of ... equality** ...*

Article 2 TEU

The Union is founded on the **values** of ... **equality**, These values are **common to the Member States** in a society in which ..., **non-discrimination**, ... and **equality between women and men** prevail.

Article 3 TEU

3. ... It (the Union) shall **combat** ... **discrimination**, and shall **promote** ..., **equality between women and men**, ...

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TREATY OF THE FUNCTIONING OF THE EUROPEAN UNION (TFEU)

PART ONE PRINCIPLES

TITLE II PROVISIONS HAVING GENERAL APPLICATION

Article 8 TFEU

In all its activities, **the Union shall** aim to eliminate inequalities, and to *promote equality, between men and women.*

Article 10 TFEU

In defining and implementing its policies and activities, the **Union shall aim to *combat discrimination based on sex***, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

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TREATY OF THE FUNCTIONING OF THE EUROPEAN UNION (TFEU)

PART TWO NON-DISCRIMINATION AND CITIZENSHIP OF THE UNION

Article 19 TFEU

1. Without prejudice to the other provisions of the Treaties ..., the **Council**, ... 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.

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THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EU

CHAPTER III EQUALITY

Article 21

Non-discrimination

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, any discrimination on grounds of nationality shall be prohibited.

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THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EU

CHAPTER III EQUALITY

Article 23

Equality between men and women

Equality between **men and women** 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.

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TREATY OF THE EUROPEAN UNION (TEU)



TREATY OF THE FUNCTIONING OF THE EUROPEAN UNION (TFEU)



CHARTER OF FUNDAMENTAL RIGHTS OF THE EU



secondary legislation



case law

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Secondary legislation: Shaping EU Gender Equality law



The notion of « Discrimination »*

'direct discrimination': where one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation

'indirect discrimination': where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary

*common to Directives 2006/54, 2000/43, 2000/78

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Secondary legislation: Shaping EU Gender Equality law

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Secondary legislation: Shaping EU Gender Equality law



The the burden of proof in cases of discrimination based on sex »*

Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, **when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish**, before a court or other competent authority, **facts from which it may be presumed** that there has been direct or indirect discrimination, **it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.**

*common to Directives 2006/54, 2000/43, 2000/78

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Case law of the ECJ: precisng EU Gender Equality law



Reinstating equality*

Where discrimination contrary to EU law has been established, *as long as measures reinstating equal treatment have not been adopted*, observance of the principle of equality can be ensured only by **granting to persons within the disadvantaged category the same advantages as those enjoyed by persons within the favoured category**. In such a situation, a national court must set aside any discriminatory provision of national law, *without having to request or await its prior removal by the legislature*.

*settled case-law, cf. **C-113/22 TGSS** 14 September 2023 (par. 41 and case-law cited)
- Directive 79/7/EEC - right to a pension supplement only for women -


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Case law of the ECJ: precisng EU Gender Equality law

Sex as a factor in the assessment of insurance risks?



Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services

C-236/09 Association Belge des Consommateurs Test-Achats 1 March 2011

Guidelines on the application of Council Directive 2004/113/EC to insurance, in the light of the judgment of the Court of Justice of the European Union in Case C-236/09 (Test-Achats)

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The main objectives of the Charter

- *Preservation and development of common values*
- *strengthening the protection of fundamental rights*
by
- *reaffirming the rights as they result, in particular, from the constitutional traditions ... common to the MS ... and the case-law of the CJEU and of the ECHR and*
- *Making those rights more visible in a Charter*

No extension of the competences of the Union




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Case law of the ECJ: precisising the role of the Charter with respect to Equality law

- C-144/04 Mangold** 22 November 2005
- C-555/07 Küçükdeveci** 19 January 2010
- C-447/09 Prigge and Others** 13 September 2011
- C-176/12 AMS** 15 January 2014
- C-441/14 DI (Dansk Industri)** 19 April 2016
- C-414/16 Egenberger** 17 April 2018
- C-68/17 IR** 11 September 2018
- C-193/17 Cresco Investigation** 22 January 2019

No horizontal direct effect of directives
but
Horizontal direct effect of Article 21 Charter



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The evolution of Gender Equality-supporting measures



1996:
COM 96 (67) final



2006:
Regulation EC
1922/2006, Vilnius

European Center for Gender Equality

- ❖ Reserch
- ❖ Statistic
- ❖ Reports



2020:
COM(2020) 152 final



Future evolution of EU Gender Equality law ...



❖ more then two gender?



❖ Gender based economic discrimination?

Future evolution of EU Gender Equality law ...



Our (non)decisions of today shape our lives of tomorrow

