

Women's Rights Perspective on the EU Charter of Fundamental Rights



Article 21 of the EU Charter of Fundamental Rights: Right to 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 Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

The right to **non-discrimination**, essential to the principle of **equality**, is upheld in various human rights instruments and constitutions, though its scope varies. Key frameworks include the UN's Convention on the Elimination of Discrimination Against Women and the International Labour Organisation's Discrimination Convention. The EU emphasises non-discrimination through its Charter and the TFEU. The European Court of Human Rights interpret non-discrimination broadly, acknowledging a wide range of potential discrimination grounds.

Non-discrimination involves not only prohibiting discriminatory practices but also **creating conditions for true equality**. International and EU laws often support **affirmative action** to address disparities, as seen in Article 5 of the Convention on the Rights of Persons with Disabilities, or the EU's Race Discrimination Directive.

CEDAW General Recommendation No. 28 also emphasises that equal treatment may be discriminatory if it does not account for existing inequalities between women and men.

Discrimination can be experienced on several grounds at once, which is referred to as **intersectional discrimination**. In such cases, discrimination based on sex should not be overlooked by legal courts.

Violence against women is a form of sex-based discrimination, reflecting deep-seated structural inequality between women and men. ECtHR cases like *Tkheidze v. Georgia*, and *Volodina v. Russia* highlight the **positive obligations** for States to implement measures correct such discrimination.

Harassment at work is recognised as a potential form of sex-based discrimination under Directives 2004/113/EC, 2006/54/EC, and 2010/41/EU. The International Labour Organisation's global survey reveals that migrant women face significantly higher rates of harassment and violence compared to both migrant men and non-migrant women.

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Resources related to article 21 of the EU Charter of Fundamental Rights - Right to non-discrimination

Relevant EU and international legal instruments

UN Convention on the Elimination of All Forms of Discrimination against Women, 1979

Article 2

Article 11

General Recommendation No. 13 on Equal Remuneration for Work of Equal Value

General Recommendation No. 28 on the Core Obligations of States Parties under Article 2

International Labour Organisation Discrimination (Employment and Occupation) Convention, 1958

Treaty on the Functioning of the European Union, 1957

Article 2

Article 19

Article 157

International Convention on the Elimination of All Forms of Racial Discrimination, 1965

UN Committee on the Elimination of Racial Discrimination General Recommendation No. 35

Directive 2000/43/EC Implementing the Principle of Equal Treatment Between Persons Irrespective of Racial or Ethnic Origin, 2000

Article 5

Directive 2000/78/EC Establishing a General Framework for Equal Treatment in Employment and Occupation, 2000

Article 7

Convention on the Rights of Persons with Disabilities, 2006

Article 5

Directive 2004/113/EC Implementing the Principle of Equal Treatment Between Men and Women in the Access to and Supply of Goods and Services, 2004

Directive 2006/54/EC on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation, 2006

Directive 2010/41/EU on the Application of the Principle of Equal Treatment Between Men and Women Engaged in an Activity in a Self-Employed Capacity and Repealing Directive 86/613/EEC, 2010

Directive 2024/1385/EU on Combating Violence Against Women and Domestic Violence, 2024

Relevant case-law at EU and European levels

European Court of Justice

ECJ, *Kalanke v Freie Hansestadt Bremen* (Case C-450/93), 17th of October 1995

ECJ, *Marschall v Land Nordrhein-Westfalen* (Case C-409/95), 11th of November 1997

European Court of Human Rights

ECtHR, *Kjeldsen, Busk Madsen and Pedersen v. Denmark* (Application no. 5095/71; 5920/72; 5926/72), 7th of December 1976

ECtHR, *Tkheidze v. Georgia* (Application 33056/17), 8th of October 2021

ECtHR, *Gülbahar Özer and Others v. Turkey* (Application no. 64406/09), 8th of October 2018



Find more relevant EU, European and national cases in our database on migrant women's fundamental rights violations:

<https://www.womensrightsdatabase.eu/>

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