



## THE 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 derives from the principle of equality and is a core value of the EU. The list of grounds for discrimination in the Charter is non-exhaustive similarly to the ECHR. Discrimination must be considered from an intersectional point of view, with some women cumulating several discrimination factors in intersectional discrimination cases before international courts, sex is often erased as a grounds for discrimination, and only other grounds are considered, which is an issue for women's rights protection.

### Positive action:

Non-discrimination is not just about the duty of States to not discriminate, or even to prevent others from discriminating, but it is also about developing the conditions for equality, including measures of affirmative action, or positive action. The CEDAW committee has clarified that neutral treatment may be discriminatory, as it fails to address inequality between women and men.

The project documents do not reflect the views of the European Commission.

## THE RIGHT TO NON-DISCRIMINATION

### Relevant norms from international legal documents

UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979):

Article 11, section d)

Article 2

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

General Recommendation No. 13 on Equal remuneration for work of equal value

ILO's 1958 Discrimination (Employment and Occupation) Convention

Treaty on the Functioning of the European Union (TFEU)

Article 2

Article 19

Article 157

Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (EU) - Article 5

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (EU) - Article 7

International Convention on the Elimination of All Forms of Racial Discrimination

UN Committee on the Elimination of Racial Discrimination General Recommendation No. 35 on Combating racist hate speech

Convention on the Rights of Persons with Disabilities  
- Article 5, number 4

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 2006/54/EC (EU)

Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC

Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence

### Jurisprudence

#### 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, Tkhelidze v. Georgia (Application no. 33056/17), 8th of October 2021

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

#### 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

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