

# TOPIC: DISCRIMINATION

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## 1. Discrimination in General

Equality is a goal that all civilised and democratic countries and all coalitions of civilised and democratic countries of the world are trying to achieve nowadays. For every society that respects and protects human rights and fundamental freedoms, the equal treatment of its citizens and the prohibition of their discrimination must be a non-separable part of the society's legal order. Constitutions and bills of rights of individual countries contain numerous provisions which declare that all people are equal in their dignity and rights, and which prohibit discrimination based on a variety of reasons, such as sex, race, age, gender, sexual orientation, property, social origin, disability, ethnicity, religion or other status. The requirement for the equality of people and prohibition of discrimination is also embedded in various international law documents - for example in the Universal Declaration of Human Rights (1948), in the International Convention on the Elimination of all Forms of Racial Discrimination (1965), in the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW, 1979) and in the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR, 1950). A great deal of attention to achieving equality and combating discrimination is also visible in the European Union (EU) – anti-discrimination provisions are contained not only in the Treaty Establishing the European Community (EC Treaty), but also in secondary legislation, as well as in some legally non-binding documents that EU institutions have adopted over time (such as the Charter of Fundamental Rights of the European Union adopted in 2000).

Although the principles of equality and prohibition of discrimination are firmly embedded in many legally binding documents of domestic, European and international importance, in reality, all people are not equal. We often see situations that prevent people from living their lives in the way they would choose to by themselves and that prevent them, usually when compared to other people, from making full use of their rights and of their human potential. They are deprived of their rights in various fields of life – for example in employment by not being allowed access to some jobs or working positions or by being paid less than their colleagues in identical positions; in education – by being treated with less attention and care than the rest of the class or by not being allowed to enter certain educational institutions; in services – by being refused service in and sometimes even entrance to stores or restaurants; in health care, political participation, and in many other fields. These situations are almost always determined by irrational reasons and have a common denominator: they usually concern facts or characteristics for which the individuals in question are not responsible - such as the colour of their skin, sex, religion, disability, age, race or ethnicity or sexual orientation. They often interfere in the most vulnerable spheres of people's personalities and harm their human dignity. These are manifestations of discrimination.

If we wanted to define discrimination, we could simply describe it as disadvantaging, limiting or depriving an individual or a group of individuals of their rights, usually when compared to other individuals or groups of persons, for reasons connected to their sex, race, skin colour, language, age, sexual orientation, religion or creed, political or other belief, national or social origin, nationality, ethnicity, property, gender or other status. Usually disadvantaging one person or group of persons for these reasons leads to unreasonable advantaging of other persons or groups of persons who would otherwise not be able to acquire these advantages. For example, if in the past women were not guaranteed suffrage, men would be advantaged in pursuing their

aims by not being limited by other interests and requirements than their own. Similarly, if a member of an ethnic group does not get a promotion because of his or her ethnic origin, although he or she is the best-qualified or most experienced person, someone with less merit but without the “wrong” ethnicity gets promoted. It often happens, too, that individuals are discriminated against on the grounds of several of the enumerated reasons at a time - for example a Roma woman may at the same time be discriminated against because of her sex as well as her ethnicity, and in some cases because of her age.

There can be several different types of discrimination. It can appear as a breach of a law guaranteeing equal rights for individuals in areas such as education, housing, employment, services, healthcare or social protection. However, discrimination can also stem from respect for the law that itself breaches the principle of equality. An example of this type of discrimination would be the absence of provisions in national legal orders that would guarantee the right for gays and lesbians to enter into official relationships that are, by their status and legal consequences, similar to those of married couples. One of the harshest examples of this type of discrimination was the policy of apartheid that was part of the law of the Republic of South Africa until the early nineties. The legislation of this country for example prohibited marriages between black and white citizens, limited the movement of citizens of colour to specific places and institutions (for example, citizens of colour did not have access to “white” universities during the apartheid era). The policy of apartheid, supported by the law, prevented the people of South Africa from equal enjoyment of personal, political, economic, social and cultural rights in their own country. Another example of discrimination approved by legislation was the deprivation of women of their voting rights in most of the countries of the world until the twentieth century. It was not until 1915 that women acquired voting rights in Denmark and not until 1918 and 1919 that women acquired voting rights in Poland and Czechoslovakia. In some countries women acquired their suffrage much later – in 1944 in France, in 1952 in Greece and as late as in 1971 in Switzerland.

Although legislative protection against discrimination has, with some exceptions, achieved quite a progressive stage, equality in practice is very remote from that construed by law. There are numerous reasons why this gap between *de facto* equality and *de iure* equality is still so wide. Discrimination is sometimes so deeply entrenched in a society that it is even difficult to find the particular perpetrators responsible for it, as it often penetrates into various layers of society and has a firm structural background. It even happens that the victims themselves are sometimes not fully aware of discrimination against them. What is more, victims of discrimination often represent the most vulnerable groups of society and initiating judicial or other legal proceedings represents a very difficult problem. Therefore many experts are of the opinion that it is not sufficient to rely solely on the fact that discrimination is prohibited by legislation and that the legislation contains numerous provisions enabling individuals affected by discrimination to seek remedies for their situations. More emphasis is currently put on alternative approaches to handling discrimination and disadvantage in a more complex and efficient manner and preferably at earlier stages. These approaches comprise measures that try to prevent discrimination in individual cases, for example by equalising the starting points of disadvantaged people with the starting points of representatives of the majority population (e. g. by inviting children from ethnic minorities to special courses preparing them for entrance exams to high schools or reserving quotas for some of these children who would under normal conditions not be admitted to these schools), by increasing participation of disadvantaged groups in decision-making and in public life in general (e. g. by reserving quotas for women in national or regional parliaments), by achieving diversity in educational institutions and in workplaces, by creating codes of conduct in individual institutions that have a strong preventive role and by making anti-discrimination and diversity education part of the curricula at all levels of education.

This text will give a brief overview of the most important instruments of international law as regards the requirement of equality and the prohibition of discrimination, with a more detailed glance at some cases decided by the European Court of Human Rights. It will then move on to describing how discrimination is tackled by the EU, mainly from the perspective of legally binding anti-discrimination directives. The last section of the text will be devoted to two alternative approaches to achieving equality – affirmative action and mainstreaming – again with a focus on their design in the EU.

## 2. International Protection Against Discrimination

Protection against discrimination has attracted the attention of the United Nations (UN) since the very beginnings of their existence. In 1945, the UN laid down as one of its purposes “*to achieve international co-operation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.*”<sup>1</sup> The Universal Declaration of Human Rights, adopted in 1948, stated that all human beings are born free and equal in dignity and rights. It also stated that everyone is entitled to all the rights and freedoms set forth in the 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. Other important UN or UN-related documents that condemn and prohibit discrimination are:

- UNESCO Convention Against Discrimination in Education (1960)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social and Cultural Rights (1966)
- International Convention on the Elimination of all Forms of Racial Discrimination (1965)
- International Convention on the Suppression and Punishment of the Crime of Apartheid (1973)
- Convention on the Elimination of all Forms of Discrimination against Women (1979).

In countries that are Member States to the Council of Europe, the most significant documents that entrench protection against discrimination are:

- European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and its additional protocols, mainly Additional Protocol No 12
- European Social Charter (1961)
- Framework Convention for the Protection of National Minorities (1995)

Other international organisations, such as the International Labour Organization, have also adopted documents that prohibit discrimination on various grounds and in various fields.

### **International Convention on the Elimination of all Forms of Racial Discrimination (1965)**

<sup>1</sup> Charter of the United Nations, Article 1 para 3.

Convinced that “any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination, in theory or in practice, anywhere”<sup>2</sup>, the nations of the UN adopted a special international convention that would deal specifically with racial discrimination. In the Convention, racial discrimination is defined as any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. Among other obligations contained in this convention, state parties to it are obliged to prohibit and bring to an end, by all appropriate means, racial discrimination by any persons, group or organisation.

Under this convention, state parties have also established the Committee on the Elimination of Racial Discrimination (CERD). The CERD is a body of [independent experts](#) that monitors the implementation of the Convention. All States are obliged to submit regular reports to the CERD on how the rights are being implemented. Apart from this, the CERD is also entitled to examine inter-state complaints – i.e. complaints that are addressed to it by one state complaining that another state has breached the Convention. In cases in which state parties have recognised the competence of the CERD to receive and consider communications from individuals or groups of individuals, individuals or groups of individuals who claim that their rights stemming from the Convention have been violated by a state party, they may file a complaint with the CERD. The findings of the CERD, expressed as suggestions and recommendations, have strong political influence and may create pressure on states that are breaching the Convention.

## **Convention on the Elimination of all Forms Discrimination of Women (1979)**

The CEDAW is often described as an international bill of rights for women. It defines discrimination against women as 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. By accepting the CEDAW, States committed themselves to undertake a series of measures to end discrimination of all forms against women, including incorporating the principle of equality of men and women in their legal systems, abolishing all discriminatory laws and adopting appropriate ones prohibiting discrimination against women, establishing tribunals and other public institutions to ensure the effective protection of women against discrimination, and ensuring the elimination of all acts of discrimination against women by persons, organizations and enterprises. Countries that are members to the CEDAW are also committed to submit national reports (at least once every four years) on measures they have taken to comply with their obligations. The national reports are then reviewed by the Committee on the Elimination of Discrimination against Women.

In 1999, an Optional Protocol to the CEDAW was adopted. The Protocol introduced the competence of the Committee on the Elimination of Discrimination against Women to receive and consider claims of violations of rights protected under the CEDAW from individuals or groups within the jurisdiction of states who ratified the Protocol. The Protocol also created an inquiry procedure enabling the Committee to initiate inquiries into situations of grave or

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<sup>2</sup> Preamble to the International Convention on the Elimination of all Forms of Racial Discrimination.

systematic violations of women's rights in states who are parties to the CEDAW and to the Protocol.

## **European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)**

The ECHR prohibits discrimination in its Article 14, which says that the enjoyment of the rights and freedoms set forth in the ECHR 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. This means that the right to equality and the prohibition of discrimination under the ECHR is never considered separately but is always dealt with in light of the enjoyment/violation of other rights that are guaranteed by the ECHR (such as the right to respect for family and private life, freedom of thought, conscience and religion, freedom of expression, right to a fair trial, right to liberty and security etc.). If an individual (or a non-governmental organisation or a group of individuals) claims that his or her rights stemming from the ECHR – i.e. also the right to non-discrimination, in connection with other rights contained in the Convention - have been violated by a state party to the Convention, he or she can refer to the European Court of Human Rights (ECtHR) in Strasbourg set up under the ECHR. One of the conditions for initiating these judicial proceedings is that all domestic remedies have been exhausted by the person affected. This means that before an individual addresses the ECtHR, he or she first has to make sure that there are no legal means available for a remedy on the domestic level (most frequently, this condition is fulfilled after the applicant has unsuccessfully referred her or his case to a constitutional court in her or his country or other equivalent judicial body).

The ECtHR has decided on a few cases that concerned discrimination. Here are short descriptions of some of them:

The judgement of *Nachova v Bulgaria* (application No 43577/98, 43579/98, 26 February 2004, 6 July 2005), decided in 2004 and then upheld by the Grand Chamber of the ECtHR in 2005, was the first time in the Court's history that it found a violation of Article 14 (prohibition of discrimination) of the ECHR on the grounds of racial discrimination. The case concerned the killing of two Roma conscripts who were shot dead by military police soldiers while trying to arrest the conscripts after they escaped from their workplace without leave. The victims were not armed and had no record of violent offences. The killing took place in daylight in a largely Roma neighbourhood where the grandmother of one of the victims lived. Immediately after the killing, a military police officer allegedly yelled at one of the town residents: "You damn Gypsies!" while pointing a gun at him. Relatives of the victims who filed the complaint with the ECtHR alleged that the victims were deprived of their lives in violation of Article 2 of the ECHR guaranteeing the right to life. They also alleged that a failure to conduct an effective investigation of the killings was in contravention of Article 2 and that the events were a result of hostile attitudes towards the Roma in breach of Article 14 of the ECHR.

The ECtHR held that Bulgaria had breached the victim's right to life under Article 2 of the ECHR and also the prohibition of discrimination under Article 14 of the ECHR. The Grand Chamber of the Court held that the prohibition of discrimination under Article 14 has a procedural component, which requires the state to investigate whether discrimination may have played a role in the killings. The failure to do so in this case, despite indications of racial motivation, amounted to discrimination. The judgement affirmed several important principles that should guide domestic authorities in future cases involving violence arguably motivated by racial hatred. One of these principles is that acts of racially induced violence and brutality are "particularly destructive of fundamental rights". Thus, where there is suspicion that violence is

racially motivated, “it is particularly important that the official investigation is pursued with vigour and impartiality.”

The case *Schuler-Zgraggen v Switzerland* (1995) 21 EHRR 404 concerned discrimination on the grounds of sex. Ms Schuler, the applicant, fell ill with a serious disease, which required her to stop working. As a result, she was granted an invalidity pension. Six years later, she gave birth to a baby and was required to undergo a medical examination in order to test her ability to work. The medical report stated that she was completely unfit for clerical work, but 60-70 per cent fit for housework. Her pension was terminated on the grounds that her family circumstances had radically changed due to the birth of her son, the improvement in her health and her ability to care for her son and for home. When she appealed, the domestic court dismissed her appeal and held that she was not entitled to a pension since, even if she had been well enough to work, as a woman she was expected to give up her job once she became a mother and devote herself to housework.

The ECtHR held that there had been a breach of Article 14 (prohibition of discrimination). The assumption of the domestic court that the applicant would have given up work when she became mother if she had not been unwell “*cannot be regarded ... as an incidental remark, clumsily drafted but of negligible effect. On the contrary, it constitutes the sole basis for the reasoning, but being decisive, and introduces a difference of treatment based on the ground of sex only.*” Since there was sex discrimination, this difference of treatment could be justified only by extremely compelling reasons, and no such reasons have been shown to exist in the present case.

The case of *Salgueiro da Silva Mouta v Portugal* (2001) 31 EHRR 47 concerned discrimination on grounds of sexual orientation. Mr Salgueiro had been living in a stable homosexual relationship after the dissolution of his marriage. In awarding Mr Salgueiro’s ex-wife custody of their child, the Portuguese court noted: “*It is not our task here to determine whether homosexuality is or is not an illness or whether it is a sexual orientation towards persons of the same sex. In both cases, it is an abnormality and children should not grow up in the shadow of abnormal situations; such are the dictates of human nature.*”

The ECtHR did not identify with the opinion of the Portuguese tribunal. It concluded that the Portuguese court created a distinction based on considerations regarding the applicant’s sexual orientation which is not acceptable under the ECHR, and thus breached the right of Salgueiro de Silva Mouta to non-discrimination with regard to his right to family life.

The judgement of *Thlimmenos v Greece* (2001) 31 EHRR 15 concerned discrimination on the grounds of religion. Mr. Thlimmenos, the applicant, was a Jehovah’s witness who was sentenced to prison for insubordination committed by his refusal to wear a military uniform. After having served his sentence, the applicant finished second among 60 candidates to be admitted to the profession of chartered accountancy. However, the relevant professional board refused to appoint him as a result of his criminal record.

The ECtHR concluded that there had been a breach of Article 14 in connection with Article 9 (freedom of religion) of the ECHR. Although the ECHR does not guarantee the right to freedom of profession, the state, according to the Court, discriminated against the applicant on the grounds of religion by not distinguishing between persons convicted of offences committed exclusively on religious grounds and offences committed for other reasons.

### **3. Principle of equal treatment and the prohibition of discrimination in the European Union**

### **3.1. Development of the prohibition of discrimination in the European Union**

European Communities and later the EU were not originally established with the aim to protect human rights, but rather to provide for the economic prosperity of the Member States and their inhabitants. This was reflected in the absence of any provisions that would protect human rights and the right to equality, with no exception as far as the prohibition of discrimination is concerned. The only exceptions in this area were the general provision of the current Article 12 of the EC Treaty on the prohibition of discrimination of inhabitants of the Member States on the grounds of nationality, and the provision of the current Article 141 on the obligation to pay men and women equally for equal work. In the establishment of these provisions, however, the European lawmakers cared more for their desire to remove any barriers preventing the development of the common market.

As time went by, the situation began to change. Several directives were adopted on the EU level that regulated in more detail the conditions of equal pay for men and women who perform equal work or work of equal value and that introduced the principle of equality into the relations of men and women in the field of employment and access to employment and in their social security schemes. The directives also established detailed mechanisms and procedures through which individuals belonging to the discriminated sex could claim remedies for violation of their rights. Achieving equality between sexes was later even enhanced to become one of the aims of the European Community (EC).

The European Court of Justice (ECJ) played an important role in this field. Through the decision-making of this institution, some important principles of equality and anti-discrimination were developed or defined, and they later became part of the abovementioned directives.

Although the actions of the ECJ combined with the activities of the lawmaking institutions of the EU established some basis for the fight against discrimination, the drawback of this concept was that it only focused on fighting discrimination on the grounds of sex.

A ray of hope for change came with the Treaty of Amsterdam (ToA) that entered into force in 1999. The ToA introduced a provision into Article 13 of the EC Treaty, according to which the Council, within the limits of the powers of the Community, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. On the basis of this article, three anti-discrimination directives were adopted on the EU level (see below).

The adoption of the European Charter of Fundamental Rights of the European Union by the EU institutions in 2000 can also be considered as a significant milestone in EU anti-discrimination protection. Compared to the anti-discrimination directives, the Charter perceives the concept of equality in a broader sense and forbids *any* discrimination, and not just discrimination in the areas enumerated in the anti-discrimination directives (such as employment, occupation, education and housing in some cases). Besides the grounds of discrimination prohibited by the directives (sex, racial or ethnic origin, religion, age, disability and sexual orientation), the Charter stipulates other reasons on the grounds of which there shall be no discrimination – e.g. colour, genetic features, property, birth or language. These reasons are stated only as examples and, theoretically, the list of examples can be extended.

Currently, the Charter is not a legally binding document, although it has become part of the proposed Constitutional Treaty of the EU, whose ratification by all Member States is still possible. The ratification would mean that the Charter could become a legally binding document. However, since the provisions of the Charter are nevertheless addressed only to the institutions and bodies of the Union and to the Member States when they are implementing the Union law, it is hard to estimate the particular impact in the field of equality that the possible legally binding character of the Charter would have.

## **3.2. Anti-discrimination legislation in the European Union and the scope of its protection**

Based on Article 13 of the EC Treaty, two directives were adopted in 2000. The first one, known as the “Race Directive”, regulates the principle of equal treatment regardless of race or ethnic origin<sup>3</sup>. The second one, sometimes called the “Framework Directive”, regulates the principle of equal treatment in employment and occupation regardless of religion and belief, disability, age or sexual orientation<sup>4</sup>. In 2002, Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women (“Equal Treatment Directive”) was also amended.<sup>5</sup> It regulates issues related to discrimination based on sex in a way similar to the abovementioned directives from 2000.

Although all three abovementioned directives have a lot in common and are based on the same principles, there are some minor differences and one major difference between them. They differ in the degree of protection they provide to the members of groups defined on the basis of the particular grounds of discrimination enumerated in the directives – i.e., for example, on the grounds of sex, race or ethnic origin, or age.

The EU provides the highest degree of protection against discrimination to people discriminated against on the basis of race or ethnic origin. Apart from the field of employment and vocational training, including working conditions and pay and membership in organisations of workers and employers, protection is also provided in the field of healthcare and social security, education and housing. A much narrower scope of protection against discrimination is guaranteed to individuals on the basis of their sex. Here protection is provided only in the field of employment and social security (excluding healthcare). The lowest level of protection is guaranteed by the Framework Directive where protection is restricted to the field of employment and occupation.

### **3.2.1. Direct discrimination, indirect discrimination, harassment**

All three abovementioned directives prohibit discrimination, distinguishing between direct and indirect discrimination. Harassment is also considered to be discrimination.

**Direct discrimination** occurs when one person is treated less favourably than another person is, has been or would be treated in a comparable situation. If a situation occurs in which an employer pays his or her female employee a lower wage than would be paid to his or her male colleagues with the same qualification and work experience, this would constitute direct

<sup>3</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

<sup>4</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

<sup>5</sup> Council Directive 2002/73/EC amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.



discrimination and the aggrieved employee could address a court in the Member State of her or his employment to achieve remedy. Similarly, it would constitute direct discrimination if an employer published a job offer in which the condition was that the applicant be younger than 30 years of age, without any justifiable reason for this age-limit. By the same token, the refusal to serve a Roma in a restaurant for the reason of her or his ethnicity would also be an example of direct discrimination.

**Indirect discrimination** is a situation in which an apparently neutral provision, criterion or practice would put a member of one of the groups defined in the directives at a particular disadvantage, compared to other persons, unless the provision, criterion or practice in question is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

An example for indirect discrimination would be a situation in which an employer pays his or her full-time employees higher hourly wages as compared to his or her part-time employees. At first sight, this measure is neutral and non-discriminatory for employees on the grounds of their sex. However, when we inspect the situation closer, we find out that of all the employees, part-time jobs are more often taken by women due to their family and household responsibilities. That is why the abovementioned measure of the employer would discriminate against them indirectly.

Another example of indirect discrimination would be a situation in which an employer provides social benefits connected to a job solely to employees who are married. This measure is at first sight also neutral – everybody has equal chances to get married. But if we go more deeply under the surface, we see that many of those who usually do not get married in practice are gays and lesbians, as most European legal orders do not have the institute of registered partnership of two persons of the same sex. Therefore this provision may be indirectly discriminatory on the basis of sexual orientation. It can, however, also be indirectly discriminative on the basis of age – because more younger people tend to be single. Therefore, applying the criterion of marriage may be indirectly discriminatory.

Another example of indirect discrimination would be an employer's requirement that employees in a particular workplace follow a particular dress code or appearance code – such as one prohibiting headgear or beards. At first glance these rules are also neutral and treat everyone on an equal footing. But a closer look again reveals the indirectly discriminatory nature in relation to representatives of some religions that are characterised by special symbols – such as headscarves in the case of Moslem women or beards in case of Sikhs.

Of course, each particular case has to be assessed according to its actual circumstances and it is up to a court or other decision-making body to judge whether indirect discrimination has occurred.

As has already been indicated in the definition of indirect discrimination above, there are some exceptions established by the directives where indirect discrimination does not necessarily need to be illegal. This would for example be the case when it would be possible to justify indirect discrimination with reasonable conditions required for a specific job – e.g. a condition of being of a certain age in the case of some working positions, or a condition of sound health in the recruitment for special jobs. Nevertheless, all exceptions from the prohibition of indirect discrimination must be justified, seek to fulfil a legitimate aim and meet the requirement of the principle of proportionality – i.e. the restrictions must be adequate as related to the fulfilment of the aim. In other words, the principle of proportionality requires exploring whether there is another, less severe or less discriminatory means for achieving the same objective.

**Harassment** is any unwanted conduct that relates to one or more of the abovementioned reasons for discrimination, the purpose or effect of which is the violation of the human dignity of a specific person and creating an intimidating, hostile, degrading, humiliating or offensive environment. As has been said above, harassment is considered to constitute discrimination, and therefore the persons affected have the same rights to be protected as in any other cases of discrimination.

A special form of harassment - **sexual harassment** – is defined by Directive 2002/73/EC amending the Equal Treatment Directive (76/207/EEC). Sexual harassment is defined as any form of unwanted verbal, non-verbal or physical conduct of a sexual nature, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.

### **3.2.2. Exceptions from the prohibition of discrimination**

The directives themselves contain several exceptions to the prohibition of discrimination. These exceptions enable the subjects who come into contact with persons protected by the directives – for example current or future employers – to behave in a way that could otherwise be considered discriminatory.

An exception that is entrenched in all anti-discrimination directives is the exception of so-called **genuine and determining occupational requirements**. Such requirements arise due to the nature of particular activities performed in some jobs or due to the context in which they are carried out. In practice, the requirement of a female actress to be cast in the role of a female character in a drama performance, as required by a drama script, can represent such a permitted exception. The same principle holds true for an **exception permitted to churches** and other associations established on religious grounds that can, within the scope of the Framework Directive, treat persons belonging to different religions/not having any religion in different ways. An example of applying this exception might be a situation in which the management of a Roman Catholic school decides to employ only teachers who are Roman Catholic believers.

The individual directives also state other cases that represent exceptions from the prohibition of discrimination of citizens of the Union. An example of such exception is the possibility for the Member States provided in the Framework Directive to permit **different treatment on the grounds of age** in their legal orders either for the purpose of securing increased protection of individuals, or for the purpose of trying to meet requirements related to certain kinds of jobs. Hence, if a Member State stipulates by a law that employers have the obligation to create special conditions for fresh high school or university graduates, or, on the contrary, if one of the conditions for being recruited for a specific job includes a minimum age, minimum qualification or minimum number of years of work experience, this law would not violate the anti-discrimination provisions contained in the Framework Directive. However, these measures can only be adopted if the aim that is supposed to be achieved is legitimate and the means for its achievement are adequate.

### **3.2.3. Remedies and enforcement of the anti-discrimination directives**

All anti-discrimination directives contain several provisions through which Member States are supposed to bring the requirements of the directives to life and which should enable individuals affected to demand redress and thus facilitate their assertion in the society.

According to the directives, Member States shall ensure that *judicial and/or administrative procedures*, including where they deem it appropriate, conciliation procedures, are available to persons who consider themselves wronged by the failure to apply the principle of equal treatment to them.

Probably the most common remedy in cases of violation of the principle of equal treatment guaranteed by the directives is the possibility for individuals to turn to the **courts** to demand redress. Usually, individuals are entitled to seek remedies in civil courts, but some countries also have specialised courts to which individuals can refer in cases of breaches of the equal treatment principle. Poland, for example, has labour courts which are also entitled to hear cases of discrimination. In some countries, such as in Greece and Poland, administrative courts also hear cases of discrimination if they concern actions of public administration.

In some Member States, there are also other institutions with competencies to hear cases of equal treatment principle violations. Examples of these are **inspectorates** which oversee, *inter alia*, the observance of the equal treatment rules in different areas – such as in the area of employment (labour inspectorates, operating in Slovakia and Greece) or in the area of access to goods and services (such as the Slovak Commercial Inspection Agency). Some countries also have **ombudspersons** with competencies related to breaches of the equal treatment principle, especially in the sphere of public administration. There are also **other institutions** in some of the EU Member States with stronger or weaker discrimination-related competencies – such as the Gender Equality Board in Denmark. In some countries, such as in Slovakia, it is also possible to file a **complaint** directly to the head of a body or institution whose action constituted discrimination (for example a particular employer, a director of a school, a head of a public institution etc.).

In the process of enforcement of the rights stemming from the anti-discrimination directives (especially in cases of civil judicial proceedings), the position of persons affected is facilitated by the application of the so-called **reversed burden of proof**. Reversed burden of proof (which is a legal instrument specifically applied in the field of anti-discrimination) means that if a person who considers herself or himself wronged because the principle of equal treatment has not been applied to him or her establishes before a court or other competent authority facts from which it may be presumed that there has been discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment. In other words, in the case of proceedings concerning violations of the principle of equal treatment, it is up to the person who is considered to be the perpetrator of the violation of the principle of equal treatment to prove the opposite – i.e. that discrimination has not taken place.

For cases of proven discrimination, Member States have to create **sanctions** that will be sufficiently effective, proportionate and dissuasive to violations of the principle of equal treatment. Examples of these sanctions might be: an obligation to employ a job applicant who, due to a breach of the equal treatment principle, has not been previously employed because of her or his sex or sexual orientation; an obligation to pay a fine; an obligation to compensate a successful plaintiff for the loss in wage or for the damages he or she has suffered due to discriminatory treatment; an obligation to provide a non-pecuniary satisfaction, such as apology. In more severe cases even criminal sanctions such as imprisonment could be considered,

The protection of victims of discrimination who have undertaken steps in order to claim their rights contained in the directives, or protection of other individuals who would contribute to

enforcing compliance with the principle of equal treatment via procedures guaranteed in the national legal orders, is strengthened by provisions contained in all anti-discrimination directives that prohibit the **victimisation** of these persons. In other words, Member States have to guarantee by their legal orders that once an individual tries to achieve a remedy for a breach of his or her or somebody else's rights connected to the principle of equal treatment, they cannot be subject to any adverse treatment or adverse consequences as a reaction to this complaint or proceedings. Examples of these adverse reactions would be: intimidating persons who initiate complaints or proceedings following discriminatory behaviour directed against them; releasing this person or a person who has given a testimony from his or her job, as a kind of "revenge"; denying these persons advantages that would otherwise result from their jobs, solely for the reasons connected to their participation in legal proceedings; harmful or detrimental behaviour targeted at these persons.

Besides, each Member State has to take care that the **provisions** adopted pursuant to the anti-discrimination directives, as well as the provisions that are already in force, are **brought to the attention** of all persons concerned by all appropriate means. This can be done through the media or by imposing a duty on employers to inform their employees about the content of the provisions adopted on the basis of the directives. Specialised bodies of the states with competencies related to the protection of human rights and protection against discrimination – such as special departments in governments or specialised state agencies - can also be a powerful tool in fulfilling this task. Non-governmental organisations with a legitimate interest in the fight against discrimination (with whom Member States are obliged to encourage a dialogue) can also play an important role in the implementation of this task.

## **4. Affirmative Action and Mainstreaming**

The lines above indicate that states are, both independently and in coalitions with other states, committed to the ideal of equality and for this purpose are developing various means of achieving non-discriminatory environments for their inhabitants. They adopt laws that describe what kind of behaviour constitutes discrimination and inform people of the steps to be taken when such behaviour occurs, establish and empower institutions which supervise the attainment of the principle of equality on both domestic and international levels and determine sanctions that follow its breaches. Despite these efforts, cases of discrimination are still numerous and the ideal of equality is still far from fulfilment.

One of the reasons for this situation is the deep structural background of discrimination that has already been mentioned in the introduction. Discrimination and disadvantage are deeply enrooted in all structures of society and what is seen in individual areas of life and fought against by legislation – for example discrimination in the field of employment or discrimination in access to goods and services – is often just the tip of the iceberg. What is unseen and needs to be changed lies below the surface – in the way people perceive each other and interact with each other in everyday lives, in their starting positions influenced, for example, by their social or educational backgrounds, or in the way institutions at various levels shape the design of the society.

Another reason for the high occurrence of discrimination is the fact that the initiative to combat it is often left to individuals who have been subject to unequal treatment. It is up to them to file a complaint with a competent body or turn to the courts once discrimination has occurred. Keeping in mind that these people often belong to the most vulnerable groups in society, they often lack the necessary resources such as money and legal assistance that would help them to achieve success in the proceedings. Other reasons also make it difficult for them to initiate the proceedings (for example, they are dependent on the income from the employer they would like

to sue, they are afraid of the social stigma that could be assigned to them – for example by other potential employers - once they oppose discrimination publicly). It is clear that combating discrimination by using a complicated case-by-case approach with uncertain results and with direct impact only on a very few persons or institutions is not the most efficient solution when trying to achieve equality.

For the abovementioned reasons, it is important that countries develop approaches that will act as alternatives to the initiation of legal proceedings by victims of discrimination. These approaches should be of a more preventive nature and should be more complex in the attitudes, tools and institutions involved. Examples of these approaches are affirmative action and mainstreaming which are, mainly in the EU context, briefly described in the following paragraphs.

#### **4.1. Affirmative action**

Affirmative action, or positive action, can be defined as a set of approaches and instruments conferring special advantages on members of groups suffering from past and/or present discrimination based on their membership in particular groups associated with race, gender, religion or ethnicity, sexual orientation, disability etc. Such discrimination is often a consequence of various prejudices and myths deeply-rooted in the society. These stereotypical and discriminative attitudes result in the under-representation of these groups in the social, economic and political life of their communities, and is often the cause of the further deepening of actual inequality as compared to the dominant majority or members of other groups. Goals of affirmative action usually range from compensating members of disadvantaged groups for their discrimination through a more general aim of increasing the participation of under-represented groups – for example in education, politics or employment – to achieving diversity in the society and its institutions.

In practice, affirmative action may take different forms, such as programmes for less developed regions or municipal districts with high unemployment rates inhabited predominantly by members of racial or ethnic groups, or educational programmes specially dedicated to women and aimed at improving their professional skills and thus increasing their chances to get a job. Affirmative action measures can also comprise imposing quotas – i.e. an exact number or percentage of members of an under-represented group that must be admitted to a particular educational establishment, job or a representative body (e. g. national or regional parliament). Quota setting, or the obligation to prefer candidates representing some groups who would otherwise not be chosen to occupy certain positions under standard competitive conditions, is the most distinctive, as well as the most controversial, type of affirmative action. Sometimes it is also called positive discrimination.

The philosophy and application of affirmative action have brought a number of diverging opinions. Opponents of this concept base their position in the philosophy of formal equality that guarantees the very same treatment to everybody without regard to his or her position in the society and the degree of disadvantage he or she has suffered. This approach is strongly merit-based, with its proponents strongly persuaded that the actual functioning of equality requires the decisions on conferring advantages and assigning posts to be taken exclusively according to the scope in which individuals have earned particular advantages and results. In other words, affirmative action opponents are convinced that we all have equal opportunities and taking advantage of them depends solely on us – our ability, knowledge, level of education, skills and other qualities. Although opponents of the affirmative action idea sometimes admit that members of some groups have been deprived of the possibility of reaching a particular level of education or obtaining other skills, they remain convinced that the representatives of the non-

disadvantaged groups bear no individual responsibility for this problem, and hence should not pay for it.

Proponents of affirmative action, on the other hand, point out that even though equality is guaranteed and discrimination prohibited by constitutions, laws and various international documents, not all people enjoy it in practice. These inequalities are probably most noticeable in cases of members of particular groups failing to achieve results comparable to those achieved by members of other groups in all spheres of life, due to their being subject to past or present discrimination or various prejudices and myths. The significant top-management- and political under-representation of women, compared to the number of men occupying these positions, the significantly differing wages of men and women performing the same work, or low representation of some minorities – such as Roma – in some spheres of life (e. g. education, politics) - can serve as examples of the actual inequalities. Therefore, the sole fact that we are all equal before the law does not automatically mean that we are also equal in practice. In order to eliminate the wide gap between formal equality and equality of results, extra measures need to be taken.

Although the EU encompasses many groups of inhabitants who, due to stereotypical perceptions and discriminative treatment from various spheres of life, are neglected, for many years it had provided a limited response to inequality between men and women in working life. When solving these inequalities, the EU endeavoured (and still does) to compromise between both abovementioned approaches to positive discrimination, on the one hand understanding the importance of individual freedom for each person and their opportunity to assert themselves using their own skills and merits and, on the other hand, considering actual inequalities between women and men in asserting themselves in their working lives. As a result, the EU has applied the concept of “equality of opportunities”.

Equality of opportunities, on the one hand, takes into account the actual inequalities between members of various groups that result from unfavourable conditions and that must be eliminated. On the other hand, this principle tries to avoid the risk of adopting measures automatically conferring advantages on the members of such groups. Measures taken to promote equality of opportunities are aimed at compensating the disadvantaged through helping them to reach the same starting positions as the others.

The possibility of adopting measures of affirmative action by promoting the equality of opportunities was initially included only in the Equal Treatment Directive<sup>6</sup>. In 1999 the EC Treaty was amended and a new provision, paragraph 4, was added to Article 141. This provision set the opportunity for Member States to adopt measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional carriers.

At first sight, Article 141(4) might seem to provide for a wider and more practical opportunity to implement affirmative action measures and as such to exceed the scope of the equality of opportunities principle as described above. However, the ECJ has interpreted this provision in line with the philosophy of equal opportunities.

Nowadays, provisions encouraging Member States to adopt affirmative action measures have been included in all existing anti-discrimination directives. However, thus far the ECJ has only had the opportunity to express its opinion on cases dealing with issues related to affirmative action ensuring the removal of inequalities in women's working lives. It has not dealt with any

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<sup>6</sup> Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, Article 2(4). The Directive was amended by Directive 2002/73.

affirmative action cases relating to the groups specified in the Race or Framework directives. However, considering the different social context of discrimination of these groups, it is hard to say for sure how such cases would be resolved. Therefore, only the affirmative action philosophy established by the ECJ in connection with the position of women and men in their working lives will be dealt with in the following paragraphs.

The philosophy establishing the basis for the decisions of the ECJ in cases relating to affirmative action was summarised in the *Marshall* case<sup>7</sup>:

*„(...) it appears that even where male and female candidates are equally qualified, male candidates tend to be promoted in preference to female candidates particularly because of prejudices and stereotypes concerning the role and capacities of women in working life and the fear, for example, that women will interrupt their careers more frequently, that owing to household and family duties they will be less flexible in their working hours, or that they will be absent from work more frequently because of pregnancy, childbirth and breastfeeding.*

*For these reasons, the mere fact that a male candidate and a female candidate are equally qualified does not mean that they have the same chances.*“<sup>8</sup>

The ECJ intimated the notion it assigns to the promotion of equal opportunities for men and women, and later to conferring special advantages intended to compensate for disadvantages of the under-represented sex, in a number of its judgments relating to affirmative action. In all of these judgements the ECJ dealt with the under-representation of women at work or in particular positions. In *Kalanke*, the first of them,<sup>9</sup> the Court declared that even in cases where a female and male applicant have the same qualification required for a certain position or promotion, the female candidate shall never be granted such position or promotion automatically, as such decision is considered by the Court as approaching equality of results instead of ensuring the equality of opportunity in terms of improving the ability to compete in the labour market. In its next judgement, *Marshall*,<sup>10</sup> the Court approved the preferred admittance of a female candidate for a job or promotion, but only provided there is a tie-break situation between the female candidate and her male counterpart in terms of qualification, and there are no specific reasons that would tilt the balance in favour of the male candidate. The ECJ partly explained the nature of these specific reasons for the preferential selection of a male candidate in the *Badeck* case<sup>11</sup>. For example, the Court considered the fact that the male candidate had been unemployed for a long time, had worked part-time because of his family and child-care responsibilities and wanted to work full-time again, or he had been a recipient of a disability pension or was disabled. Definitely, these reasons often result in disadvantages suffered by women, but their inclusion into the judgment of the ECJ also facilitates more fair and objective treatment of male candidates in particular individual cases.

On that account, we can see that the ECJ has dealt with the hiring or promotion of women to particular positions in preference to particular male candidates very cautiously, even in cases in which the qualifications of candidates of both sexes were fully equal. If the qualifications of women did not reach the qualification level of the male candidates, the ECJ refused any possibility of preferential promotion of female candidates.<sup>12</sup>

The Court took the same care, if not even more so, regarding the setting of quotas – i.e. a particular number of vacancies or positions, determined as a fixed number or calculated by

<sup>7</sup> C-409/95 *Marschall v Land Nordrhein-Westfalen*.

<sup>8</sup> Paras 29 and 30 of the judgement.

<sup>9</sup> C-450/93 *Kalanke v Freie und Hansestadt Bremen*.

<sup>10</sup> C-409/95 *Marschall v Land Nordrhein-Westfalen*.

<sup>11</sup> C-158/97 *Badeck v Hessischer Ministerpräsident and Landesanwalt beim Staatsgerichtshof des Landes Hessen*.

<sup>12</sup> See case C-407/98 *Abrahamsson and Anderson v Fogelqvist*.

using a key index set on the basis of posts or jobs to be filled by female candidates. The ECJ approved quotas to be applied only in cases where female candidates met the same qualification requirements as their male counterparts. At the same time, the Court refused to accept fixed ("hard") quotas; it only applied "soft" quotas determined on the basis of the number of female students studying at the university concerned at the time of the case resolution (the Court was to decide on choosing candidates for professorship at the university concerned)<sup>13</sup>.

The ECJ was a bit less strict in cases dealing with the participation of individuals in various training programs or inviting male and female candidates for recruitment interviews, as compared to the hiring of members of under-represented sexes to specific positions. The Court accepted the effectiveness of the provisions setting the rule that in cases of educational or vocational training courses aimed at preparing participants for specific jobs, the training places should be allocated so as to reserve at least fifty percent of them for female participants. Furthermore, the Court confirmed that the rules setting the obligation to invite all female candidates meeting qualification requirements relating to a vacancy for interviews are in compliance with the EU law<sup>14</sup>. This means that the Court is less strict with quotas relating to "preparatory stages" as compared to final acceptance for particular jobs.

## 4.2. Mainstreaming

The affirmative action approach described in the previous paragraphs represents only one possible solution to situations in which representatives of particular groups are put at a disadvantage and are not able to achieve their participation in various spheres of life by themselves. Affirmative action can be a good solution for many people who would otherwise not be able to fully participate in the life of society. However, this approach is not without its pitfalls. One of its drawbacks is that it does not deal with the reasons that representatives of disadvantaged groups have found themselves in their positions. For example, affirmative action fails to solve the question of why women are often considered to be the primary child- and household caretakers, which further predetermines them to interruptions in their careers and the lack of opportunity to take part in decision-making processes in society on an equal footing with men. Nor does this approach solve the causes for the persistent failure of members of particular groups, for example, ethnic groups, to find work despite the fact they meet all educational criteria required, or even for their failure to achieve a particular level of education. Affirmative action often functions as bandages that only cover wounds that need more serious treatment. It relieves the consequences of the unequal allocation of power in the society instead of removing its root causes.

Mainstreaming may become a step forward in this situation. It seeks to bring the aspect of equality - based on gender, race, religion, sexual orientation or disability, or on any other ground - into assessment and solution-seeking processes. For example, issues connected to the equality of women and men and equal opportunities for them should not only be solved in terms of labour legislation; they should also be considered when preparing educational concepts (as education can become an efficient tool for the systematic elimination of gender stereotypes and for emphasising equal abilities of women and man in all spheres of life), establishing advertising family, social, economic, health-care and other policies. Accordingly, equality issues should be omnipresent in the society rather than just "popping up" in cases where it is inevitable to solve problems resulting from the accumulated deficiencies rooted in the non-complex solutions of existing problems.

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<sup>13</sup> C-158/97 *Badeck v Hessischer Ministerpräsident and Landesanwalt beim Staatsgerichtshof des Landes Hessen*.

<sup>14</sup> *Ibid.*



The EU mainstreaming policy is composed of a set of recommendations, reports and other legally non-binding documents adopted by the EU institutions. These documents analyse the situation and submit recommendations to the EU Member States and institutions, proposing measures to be taken in order to achieve general improvement in the field of the right of their citizens to equal treatment. Almost all EU mainstreaming policies deal with the equality of men and women. However, some signs indicating the need to apply mainstreaming to all the excluded groups of citizens have already appeared in the EU.

In their mainstreaming policies aimed at ensuring equal treatment for women and men in all spheres of life, the EU institutions highlight, *inter alia*, the need to ensure that women participate in decision-making processes at all levels - in parliaments, Member States' national governments and municipal bodies, as well as in various managerial positions in public and private spheres - this means at all levels of political, economic, social and cultural life. The EU considers the increased representation of women in decision-making processes to be highly important, as it is "*likely to give rise to different ideas, values and behaviour which will result in more justice and equality in the world for both men and women*"<sup>15</sup>, which will surely be beneficial to the entire society. The authors of the EU mainstreaming concepts alert Member States to the importance of establishing a realistic and complete image of the roles and abilities of women and men in society, free of any prejudice and discriminatory stereotypes, and seeking a more balanced sharing of professional, domestic and social responsibilities between women and men via education<sup>16</sup>.

The EU mainstreaming policy is not binding for its Member States and their inhabitants. However, it definitely is an important source of inspiration for them. Finland and Sweden with their high representation of women in all spheres of life, as a result of, *inter alia*, mainstreaming, can serve as good models.

## 5. Glossary

**Affirmative Action (or positive action):** A set of approaches and instruments conferring special advantages on members of groups suffering from past and/or present discrimination based on their membership in particular groups related to race, gender, religion or ethnicity, sexual orientation, disability etc. The goals of affirmative action usually range from compensating members of disadvantaged groups for their discrimination through a more general aim of increasing participation of under-represented groups – for example in education, politics and employment – to achieving diversity in the society and its institutions.

**Direct Discrimination:** A situation where one person is treated less favourably than another person is, has been or would be treated in a comparable situation.

**Discrimination:** Disadvantaging, limiting or depriving an individual or a group of individuals of their rights, usually when compared to other individuals or groups of persons, for reasons connected to their sex, race, colour of skin, language, age, sexual orientation, religion or creed, political or other belief, national or social origin, nationality, ethnicity, property, gender or other status. Discrimination is prohibited by binding documents of international law as well as by domestic legal orders of individual countries.

**European Court of Human Rights:** A permanent judicial institution of the Council of Europe, established by the European Convention of Human Rights. It ensures the enforcement of the

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<sup>15</sup> Preamble to the Council Recommendation 96/694/EC of 2 December 1996 on the balanced participation of women and men in the decision-making process, Para 12.

<sup>16</sup> *Ibid*, Part I/2 (a) of the Recommendation.

obligations entered into by the contracting states of the European Convention that are entrenched in the Convention. The Court is located in Strasbourg.

**European Court of Justice:** A judicial institution of the European Union located in Luxembourg, composed of one judge per Member State. Its task is to ensure that in the interpretation and application of the EC Treaty the law is observed.

**Harassment:** Any unwanted conduct that relates to one or more grounds of discrimination (e.g. sex, age, disability, sexual orientation, religion, social origin), whose purpose or effect of is the violation of the human dignity of a specific person and creating an intimidating, hostile, degrading, humiliating or offensive environment.

**Indirect Discrimination:** A situation in which an apparently neutral provision, criterion or practice would put a member of one group (defined by sex, racial or ethnic origin, disability, age, sexual orientation, religion etc.) at a particular disadvantage, compared to other persons, unless the provision, criterion or practice in question is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

**Mainstreaming:** An approach seeking to bring the aspect of equality - based on gender, race, religion, sexual orientation or disability, or on any other ground - into any assessment and solution-seeking processes. For example, issues connected to the equality of women and men and equal opportunities for them should not only be solved in terms of labour legislation but they should also be considered when preparing educational concepts and establishing advertisement family, social, economic, health-care and other policies. Accordingly, equality issues should be omnipresent in the society rather than just "popping up" in cases where it is inevitable to solve problems resulting from the accumulated deficiencies rooted in the non-complex solutions of existing problems.

**Reversed Burden of Proof:** A legal principle specifically applied in the field of anti-discrimination (mainly in judicial proceedings). It means that if a person who considers herself or himself wronged because the principle of equal treatment has not been applied to him or her, establishes before a court or other competent authority facts from which it may be presumed that there has been discrimination, the respondent must prove that there has been no breach of the principle of equal treatment.

**Positive action:** See **Affirmative action**.

**Sexual Harassment:** Any form of unwanted verbal, non-verbal or physical conduct of a sexual nature, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.

## 6. Table of Treaties, Instruments and Legislation

Convention on the Elimination of all Forms of Discrimination against Women (1979). *The document is available at <http://www.un.org/womenwatch/daw/cedaw/>.*

Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. *The document is available at <http://europa.eu.int/infonet/library/m/200043ce/en.htm>.*

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation. *The document is available at <http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:32000L0078:EN:HTML>*

Council Directive 2002/73/EC amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions. *The document is available at <http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:32002L0073:EN:HTML>.*

Council Recommendation 96/694/EC of 2 December 1996 on the balanced participation of women and men in the decision-making process.

European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and its additional protocols. The documents are available at <http://www.echr.coe.int/ECHR/EN/Header/Basic+Texts/Basic+Texts/The+European+Convention+on+Human+Rights+and+its+Protocols/>.

European Social Charter (1961). The document is available at <http://conventions.coe.int/Treaty/EN/Treaties/Html/163.htm>.

Framework Convention for the Protection of National Minorities (1995). The document is available at <http://conventions.coe.int/Treaty/EN/Treaties/Html/157.htm>.

International Convention on the Elimination of all Forms of Racial Discrimination (1965). *The document is available at <http://www.hri.ca/uninfo/treaties/10.shtml>.*

International Convention on the Suppression and Punishment of the Crime of Apartheid (1973). *The document is available at <http://www.hri.ca/uninfo/treaties/11.shtml>.*

International Covenant on Civil and Political Rights (1966). The document is available at <http://www.hri.ca/uninfo/treaties/3.shtml>.

International Covenant on Economic, Social and Cultural Rights (1966). The document is available at <http://www.hri.ca/uninfo/treaties/2.shtml>.

UNESCO Convention Against Discrimination in Education (1960). The document is available at [http://www.unhchr.ch/html/menu3/b/d\\_c\\_educ.htm](http://www.unhchr.ch/html/menu3/b/d_c_educ.htm).

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Wyatt, D. (ed.), *Rudden & Wyatt's EU Treaties & Legislation* (United States: Oxford University Press, 2002).

## 8. Useful Websites

<http://www.coe.int>

Official website of the Council of Europe.

<http://www.curia.eu.int>

Website of the European Court of Justice.

<http://www.echr.coe.int/echr>

Website of the European Court of Human Rights.

<http://www.europa.eu.int>

Gateway to the European Union.

<http://www.ilo.org>

Website of the International Labour Organization.

<http://www.interights.org>

Website of an international centre for the legal protection of human rights.

<http://www.stop-discrimination.info>

The European Commission's website on anti-discrimination.

<http://www.un.org>

Website of the United Nations.