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Human Rights and the Anti-discrimination Practices in the EU Social Policy

EUROPE: FOR DIVERSITY AGAINST DISCRIMINATION



http://ec.europa.eu/employment_social/fdad/cms/stopdiscrimination?langid=en

READ EC: Stop Discrimination Newsletter



http://ec.europa.eu/employment_social/fdad/cms/stopdiscrimination/downloads/Newsletters/53_Newsletter_01_pdf/Newsletter-01-EN-090512.pdf?langid=en

Fighting Discrimination: Resources

http://ec.europa.eu/employment_social/fdad/cms/stopdiscrimination/resources/?langid=en

Information Films:

The jigsaw of identity: one person, many pieces (2009)

http://ec.europa.eu/employment_social/fdad/cms/stopdiscrimination/resources/campaign_materials/information_films.html?langid=en

A diverse society: Tackling Discrimination Across Europe (2008)

http://ec.europa.eu/employment_social/fdad/cms/stopdiscrimination/resources/campaign_materials/information_films.html?langid=en

Campaigns



CONTENT

Learning objectives

Part A: Understanding discrimination

I. What is discrimination?

1. "Being different as a sin": Understanding discrimination
2. Forms of Discrimination
 - a) Direct discrimination
 - b) Indirect discrimination
 - c) Racial harassment
 - d) Victimization
3. Criteria of discrimination
4. Discrimination in different areas and activities (labor market and employment, education, political sphere, provision of services etc).

II. How to tackle discrimination?

1. Management of diversity
2. Education for toleration and diversity
3. Judicial remedies for the victims of discrimination

Part B. Anti-discrimination as the core value of the Human Rights Law

I. Antidiscrimination in the international human rights instruments

II. Antidiscrimination in the European human rights instruments

Part C. The EU law and the respect for the fundamental rights

- I. The respect for Human Rights as a general principle of law of the EC
- II. The EC Treaty and the anti-discrimination law
- III. The human rights conditionality in EC's international trade
- IV. The Charter of Fundamental Rights of the European Union

V. Treaty of Lisbon and the protection of Human Rights

Part D. The European System of Human Rights and the European Social Policy

- I. The European Convention of Human Rights
- II. The European Social Charter (revised) and the Collective Complaints Protocol

Part E. The anti-discrimination practices in European Social Policy

Part F. Gender and anti-discrimination law and practice in EU

I. The equality between women and men : Gender equality pact

1. The Roadmap for equality between women and men 2006-2010

- a) The reconciliation of private and professional life
- b) Equal representation in decision-making
- c) The eradication of all forms of gender-based violence
- d) The elimination of gender stereotypes
- e) The promotion of gender equality in third countries

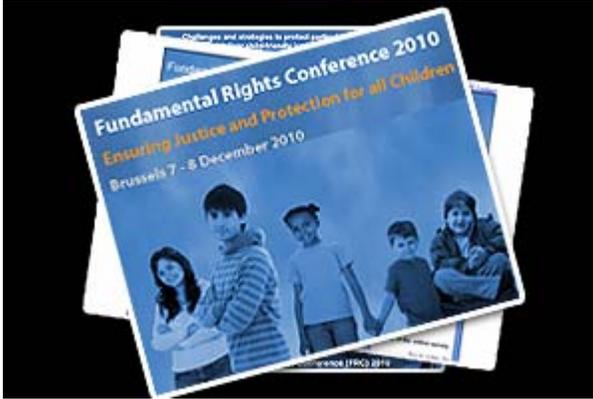
Suggested readings and web resources

Learning objectives

- **UNDERSTANDING** non-discrimination as a core value of Human Rights as well as of the European Union social law and policy.
- **ANALYZING** the dynamics of non-discrimination principle in European Law and Social Policy.
- **EVALUATING** the educational strategies as well as the judicial remedies aiming at tackling discrimination.
- **DEVELOPING** skills for advocacy in the field of human rights and non-discrimination.
- **UNDERSTANDING** the social and economic rights of the workers within the new legal frame of the Treaty of Lisbon

Part A: Understanding discrimination

News: Fundamental Rights Conference



More information: http://fra.europa.eu/fraWebsite/home/home_en.htm

I. What is discrimination?

1. Definitions of discrimination

Most of us have either experienced discrimination or know someone who has been a victim of discrimination. So as the recent EUROBAROMETER proves, discrimination on different grounds (especially of age, sexual orientation and ethnic origin) it is still wide spread in Europe.

What does the discrimination mean and where does it come from are questions that have been approached since long time ago by the interdisciplinary scientific research. People are not only different but are having their own identity (es). When the differences and identities are transformed in hierarchies and criteria of evaluation then the discrimination might occur. For instance, it is already a sort of 'popular story' the one told by many women who -in spite the fact that were having the needed professional expertise for a job or for a managerial position within the organization- lost the hiring or promotion competition in the favor of a men just because they are women! The later analysis made, many times, evidence that women candidate are asked many more questions related to the desire of having a family, children, and maternal leave. These kinds of situations are considered typical gender discrimination in the work place. It is worth to note that in the European Union there are important, strong remedies for the victims of discrimination as well as sanctions for the perpetrators of the discrimination.

Discrimination *is defined* as a less favorable treatment of a person or of a group, generally, on a ground that is prohibited by law: race, gender, language, religion, origin, age, sexual orientation, political opinion etc. It consists in different actions (and sometimes in non-actions) ranging from

distinction, restriction, exclusion from the enjoyment of fundamental rights till the radical ones like individual and mass victimization (the case of genocide, ethnic cleansing and other crimes against humanity).

In international human rights instruments discrimination is often defined, mainly, taking into consideration different grounds: race, gender, age and disability.

Definitions of Discrimination in International Human Rights Instruments

- **UN International Convention on the Elimination of All Forms of Racial Discrimination (art.1)**

For the purpose of this convention the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, color, 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.

- **International Convention on the Elimination of All Forms of Discrimination against Women (art.1)**

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

1.1 What's behind the discrimination? Stereotypes and prejudices

Discrimination is a social construct rooted in stereotypes and prejudices. *Stereotypes* are generally characterized as rigid and persistent false representations about persons or social groups. The stereotypes are among the main sources of prejudices as preconceived beliefs about persons and social groups. When the stereotypes and prejudices are involved in the mechanisms of thought and social interaction they generate discrimination.

Gender stereotypes and prejudices

Modernity with its focus on the rationality of the "adult white man" not only could not provide a non biased gender education and work relations but reinforced the historically grounded stereotype of qualitative differences among women and men's activities. The devaluation of women's work within modernity was rooted in what A. Jaggar called the "normative dualism". It introduced a difference and then a hierarchy among "intelligence" and "body", later reproduced in the hierarchy of work and professions. Based on these stereotypes and prejudices some professions dominated by women have been considered "of lower value", the work undertaken by women as "less scientific" and generally as being "tied to the body and need: teaching young children, social work, nursing" (Young, 2990:220). As an effect of the gender stereotypes and prejudices women have been excluded from a wide range of educational paths and careers.

2. Forms of Discrimination

f) Direct discrimination

The direct discrimination occurs as many times a person is treated less favorably than another is, has been or would be treated on different grounds like sex, race, color, 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

g) Indirect discrimination

The indirect discrimination occurs as many times when an apparently neutral provision, criterion or practice is liable to adversely affect a person or a group of persons of a particular sex, race, color, 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, unless that provision, criterion or practice is objectively justified by a legitimate aim which is unrelated to the above mentioned grounds, appropriate and necessary.

h) Racial harassment

Within doctrine racial harassment has a wide meaning and consists in creating an intimidating, hostile, offensive environment for a person or group of persons on the basis of sex, race, color, 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.

i) Victimization

Victimization is a less favorable treatment by an employer because the actions taken by an employee to ask a right, make an allegation or a 'whistleblow', concerning a matter of alleged discrimination (A. Price, 2000:229).

j) Scapegoating

Scapegoating is a special type of tough discrimination which, generally, occurs under difficult economic and political circumstances -in times of crisis for example – and consist in transferring to the "other different ones" (individuals or groups) the causes, the guiltiness of social turbulence and economic difficulties. In these times being different could become a sin (Balahur, 2004). Scapegoating has been, in different historical times, the ante-chamber of the extreme form of discrimination, like genocide and crimes against humanity.

k) Genocide and other crimes against humanity

Most of the extreme forms of discrimination are incriminated as genocide or crimes against humanity. The legal definitions are provided by the Rome Statute of the International Criminal Court (art.6 and art.7)

3. Grounds/criteria of (non) discrimination

3.1 Criteria of (non) discrimination.

The widest list of grounds of (non) discrimination is provided by the Charter of the Fundamental Rights of the European Union.

According to the Art.21 in the Charter:

Any discrimination based on any ground such as sex, race, color, 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.

4. Discrimination in different areas and activities: labor market and employment, education, political sphere, provision of services etc.

II. How to tackle discrimination

Part B. Anti-discrimination as the core value of the Human Rights Law

- I. Antidiscrimination in the international human rights instruments
- II. Antidiscrimination in the European human rights instruments

Part C. The EU law and the respect for the fundamental rights

- I. The respect for Human Rights as a general principle of law of the EC
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- V. Treaty of Lisbon and the protection of Human Rights

Part D. The European System of Human Rights and the European Social Policy

1. Non-discrimination and The European System of Human Rights
2. The Treaty of Lisbon: a new legal framework for the European Social Policy and anti-discrimination

2.1 Treaty of Lisbon¹ reaffirms *non-discrimination as one of the fundamental values* of the European Union. It also sets up the legal framework of combating discrimination on wider grounds and also in all the contexts (not limited to the work place). Art.19(1) states that :

Without prejudice to the other provisions of the Treaties and within the limits of the powers conferred by them upon the Union, the Council, acting unanimously in accordance with a special legislative procedure and 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.

2.1 The Treaty of Lisbon reinforces *the social and economic rights of the workers*.

- Art.45 (1) states that: Freedom of movement for workers shall be secured within the Union".

¹ <http://www.lisbon-treaty.org/wcm/the-lisbon-treaty/treaty-on-the-functioning-of-the-european-union-and-comments/part-3-union-policies-and-internal-actions/title-x-social-policy/420-article-153.htm>

- Art.45(2) Such freedom of movement shall entail the abolition of *any discrimination* based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.
- Art. 151: The Union and the Member States, having in *mind fundamental social rights* such as those set out in the *European Social Charter* signed at Turin on 21 October 1961 and in the 1989 *Community Charter of the Fundamental Social Rights of Workers*, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonization while the improvement is being maintained, *proper social protection*, dialogue between management and labor, the development of human resources with a view to lasting high employment and the combating of exclusion.(Art.151).
- With a view to achieving the objectives of Article 151, the Union shall support and complement the activities of the Member States in the following fields (art. 153(1):

(a) Improvement in particular of the working environment to protect workers' health and safety;

(b) Working conditions;

(c) Social security and social protection of workers;

(d) Protection of workers where their employment contract is terminated;

(e) The information and consultation of workers;

(f) Representation and collective defense of the interests of workers and employers, including co-determination, subject to paragraph 5;

(g) Conditions of employment for third-country nationals legally residing in Union territory;

(h) The integration of persons excluded from the labor market, without prejudice to Article 166;

(i) Equality between men and women with regard to labor market opportunities and treatment at work;

(j) The combating of social exclusion;

(k) The modernization of social protection systems without prejudice to point

- The principle of equal pay for male and female workers is also reinforced (art.157)

Art.157

1. Each Member State shall ensure that the principle of equal pay for male and female workers for *equal work or work of equal value is applied*.

2. 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

Part E. The Anti-discrimination practices in European Social Law and Policy

Combating discrimination in EU action, policy and law

Follow the link

http://europa.eu/legislation_summaries/justice_freedom_security/combating_discrimination/index_en.htm



The European Union (EU) combats discrimination based on sex, racial or ethnic origin, religion or belief, disability, age, and sexual orientation. In addition, all discrimination on the grounds of nationality is prohibited by the Treaties. The right to non-discrimination is further reinforced by the Charter of Fundamental Rights, which has the same legal value as the Treaties. The EU legal framework on anti-discrimination was initiated in 2000. It contains three directives, namely equal treatment irrespective of racial or ethnic origin, in employment and between men and women outside the labour market. Member States and the Union institutions and authorities are assisted by the European Union Agency for Fundamental Rights (FRA) when implementing EU law on anti-discrimination. Financial assistance is provided by the PROGRESS 2007-13 programme.

http://europa.eu/legislation_summaries/justice_freedom_security/combating_discrimination/index_en.htm

1. The legal frame of combating discrimination on different grounds in EU

Since 2000, the European Union adopted *several Directives* on combating discrimination on different grounds and in different areas and activities:

Racial equality directive (2000/43/EC) against discrimination on grounds of race and ethnic origin.

It forbids the discrimination on the grounds of: racial or ethnic origin both within the labor market and in other important aspects of social life such as housing, healthcare, education, social protection and access to goods and services.

Racial equality directive (2000/43/EC) against discrimination on grounds of race and ethnic origin

- Protection against discrimination on grounds of racial or ethnic origin in employment and training, education, social protection, membership of organizations and access to goods and services.
- Definitions of direct and indirect discrimination and harassment.
- Positive action to ensure full equality in practice.
- The right to complain through a judicial or administrative procedure, with appropriate penalties for those who discriminate.
- Limited exceptions to the principle of equal treatment (where a difference in treatment on the ground of race or ethnic origin is a genuine occupational requirement).
- Shared burden of proof in civil and administrative cases: victim must provide evidence of alleged discrimination, defendant must prove there has been no breach of the equal treatment principle.
- An organization in each EU country to promote equal treatment and assist victims of racial discrimination. <http://ec.europa.eu/social/main.jsp?catId=425&langId=en>

Directive 2000/782 Employment Framework Directive.

It forbids the discrimination on the grounds of: religion or belief, disability, age and sexual orientation in employment and vocational training.

Employment Framework Directive 2000/782

- Principle of equal treatment in employment and training irrespective of religion or belief, disability, age or sexual orientation.
- Same rules as the Racial Equality Directive on definitions of discrimination and harassment, positive action, rights of redress and sharing the burden of proof.
- Employers must make reasonable accommodation to enable disabled people who are qualified to participate in training or paid labour.
- Limited exceptions to the principle of equal treatment where the ethos of a religious organisation needs to be preserved, or where an employer legitimately needs an employee to be from a certain age group.

<http://ec.europa.eu/social/main.jsp?catId=425&langId=en>

Directive 2004/113 [2004] OJ L373/37 on access to goods and services

It aims at combating discrimination based on sex in access to and supply of goods and services, with a view to putting into effect in the Member States the principle of equal treatment between men and women.

Directive 2004/113 [2004] OJ L373/37 on access to goods and services

Art. 4

Principle of equal treatment

1. For the purposes of this Directive, the principle of equal treatment between men and women shall mean that

(a) there shall be no direct discrimination based on sex, including less favourable treatment of women for reasons of pregnancy and maternity;

(b) there shall be no indirect discrimination based on sex

Directive 2006/54 [2006] OJ L204/23 on equal treatment in employment

Directive 2006/54 [2006] OJ L204/23 on equal treatment in employment

Art.5 Prohibition of discrimination

There shall be no direct or indirect discrimination on grounds of sex in occupational social security schemes, in particular as regards:

- a) the scope of such schemes and the conditions of access to them
- b) the obligation to contribute and the calculation of contributions
- c) the calculation of benefits, including supplementary benefits due in respect of a spouse or dependants, and the conditions governing the duration and retention of entitlement to benefits.

Proposal for a directive COM(2008) 426 against discrimination based on age, disability, sexual orientation and religion or belief beyond the workplace

Directive against discrimination based on age, disability, sexual orientation and religion or belief beyond the workplace (COM(2008) 426)

- Equal treatment in the areas of social protection, including social security and health care, education and access to and supply of goods and services which are commercially available to the public, including housing. The Directive will prohibit direct and indirect discrimination as well as harassment and victimization.
- For people with disabilities, there would be an obligation to provide them general accessibility as well as "reasonable accommodation". Both are subject to the condition that they do not impose a disproportionate burden on service providers.

<http://ec.europa.eu/social/main.jsp?catId=425&langId=en>

The Treaty of Lisbon reinforced the right to non-discrimination and also strengthened the list of social and economic rights of the workers

Part F. Gender and anti-discrimination law and practice in EU

Follow the link

http://europa.eu/legislation_summaries/employment_and_social_policy/equality_between_men_and_women/index_en.htm



Equality between women and men is one of the fundamental principles of Community law. The European Union's (EU) objectives on gender equality are to ensure equal opportunities and equal treatment for men and women and to combat any form of discrimination on the grounds of gender. The EU has adopted a two-pronged approach to this issue, combining specific measures with gender mainstreaming. The issue also has a strong international dimension with regard to the fight against poverty, access to education and health services, taking part in the economy and in the decision-making process, women's rights and human rights.

http://europa.eu/legislation_summaries/employment_and_social_policy/equality_between_men_and_women/index_en.htm

III. The equality between women and men : Gender equality pact

http://europa.eu/legislation_summaries/employment_and_social_policy/equality_between_men_and_women/c10404_en.htm

2. The Roadmap for equality between women and men 2006-2010

- l) The reconciliation of private and professional life
- m) Equal representation in decision-making
- n) The eradication of all forms of gender-based violence
- o) The elimination of gender stereotypes
- p) The promotion of gender equality in third countries

Suggested readings and web resources

Suggested readings

Mark Bell, Combating Discrimination through Collective Complaints under the European Social Charter in *European Antidiscrimination Law Review*, 13-21, Issue 3, 2006,

Faye J. Crosby, M.S. Stockdale and S.A. Ropp (Eds), *Sex Discrimination in the Work Place*, Blackwell Publishing, 2007

Rebecca M. Blank, Marilyn Dabady, and Constance F. Citro, (Eds) *Measuring Racial Discrimination*, The National Academic Press, Washington, 2004.

Sandra Fredman, **Human Rights Transformed. Positive rights and positive duties**, , Oxford University Press, 2008.

Sandra Fredman, **Discrimination Law**, Oxford University Press, 2002.

D Schiek, L Waddington and M Bell (eds), **Cases, materials and text on national, supranational and international non-discrimination law**, Oxford: Hart Publishing, 2007.

Ramesh Mishra, **Social rights as human rights**, *International Social Work* 2005; 48; 948(1): 9–20

Alain Price, **Principles of Human Resources Management**, Blackwell, 2000

Marc De Vos, **Beyond Formal Equality** , European Communities, 2007

Web-resources

Discrimination in the European Union

http://ec.europa.eu/public_opinion/archives/ebs/ebs_263_en.pdf

Eurobarometer Special Surveys

http://ec.europa.eu/public_opinion/archives/eb_special_en.htm

**European Commission, *What you can do if you have suffered discrimination,*
Guidance for Victims**

http://ec.europa.eu/employment_social/fdad/cms/stopdiscrimination/config/tsearch.jsp?langid=ro&themaid=5&

**DIRECTIVE 2006/54/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 5 July 2006 on the implementation of the principle of equal opportunities and equal
treatment of men and women in matters of employment and occupation**

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:204:0023:0036:en:PDF>

**United Nations Guidelines on Justice in matters involving child victims and
witnesses of crime**

http://www.unodc.org/pdf/criminal_justice/Guidelines_E.pdf

The Charter of Fundamental Rights of the European Union

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:303:0001:0016:EN:PDF>

The Rome Statute of the International Criminal Court

<http://untreaty.un.org/cod/icc/statute/romefra.htm>

The Treaty of Lisbon

http://europa.eu/lisbon_treaty/full_text/index_en.htm