

# EQUALITY AND NON-DISCRIMINATION IN RELATION TO THE JURISPRUDENCE OF THE EUROPEAN COURT OF JUSTICE

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**ABSTRACT:** *The European Court of Justice is a crucial organization within the European Union, tasked with guaranteeing the harmonization and enforcement of Community law, which encompasses the interpretation and implementation of treaties and legislative acts of the European Union. The primary purpose of this entity is to perform a judicial role and scrutinize matters presented by Member States, European Union institutions, or people who may have uncertainties regarding the interpretation or implementation of the legislation. The European Court possesses the authority to adjudicate on a wide range of subjects, encompassing topics pertaining to human rights, competition, trade policy, environmental policy, and several other areas. The choices made by this entity have a substantial influence on how the law is understood and implemented inside the European Union. The European Court has been and remains a crucial actor in the establishment and operation of the legal framework of the European Union, as well as in guaranteeing the harmonization of individuals' rights. The text emphasizes the essential role that the European Court of Justice has played in shaping legal principles and precedents concerning equality and non-discrimination. The institution in question is a vital component of the European Union, responsible for guaranteeing adherence to and execution of Community law. This includes the interpretation and execution of treaties and legislative acts of the European Union. The contribution examines several concepts and regulations derived from the jurisprudence of the European Court, including: - The principle of equality - The definition of direct and indirect discrimination - Exceptions related to Protected Bases - The handling of individual petitions.*

**KEYWORDS:** *Definition, Human Rights, Protected, Impact*

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## 1. INTRODUCTION

The case law of the European Court of Human Rights is a crucial domain for comprehending and implementing human rights in European legal practice. The European Court of Human Rights is an international entity that reviews individual claims brought by citizens of member states of the Council of Europe who believe that their rights, as protected by the European Convention on Human Rights, have been infringed upon by state authorities. The case studies provide insights into how the European Court of Human Rights has applied and explained the articles of the Convention. Precedent-setting instances that shaped the evolution of legal principles by establishing benchmarks for like situations. It is crucial to have a thorough understanding of the methods and methodology employed by the European Court of Human Rights. This includes the protocols for initiating a legal proceeding, its evaluation by the Court, and the deliberation process about the infringement of human rights. The Commissioner for Human Rights, a body within the Council of Europe, plays a crucial role in overseeing and assessing the state of human rights in member nations. The evaluations and reports provided by the Commissioner serve as valuable resources for comprehending the wider framework of court circumstances. The European Court of Human Rights (ECtHR) is a global organization that has a crucial function in safeguarding and enforcing human rights in nations who are members of the Council of Europe. There are several justifications for the significance of this organization and its role in safeguarding human rights:

- The European Court of Human Rights is tasked with scrutinizing both individual and collective claims pertaining to infringements of the European Convention on Human Rights. This legal instrument seeks to ensure the basic rights and freedoms of individuals across many European nations. The Court's responsibility is to establish legal criteria for the understanding and execution of human rights. The ECtHR sets legal precedents and creates norms through its rulings, which can be applied to similar situations in the future.

- The Court enhances procedures for safeguarding human rights on the global scale. Individuals have the option to file complaints with the Court if they consider their rights have been infringed upon and they have not received enough protection at the national level.
- The European Court of Human Rights offers a framework to aid Member States in enhancing their legal systems and safeguarding human rights. The Court has the ability to facilitate modifications and enhancements in the legislation and practices of other countries through its rulings and recommendations.
- Through the analysis of various legal matters and the issuance of rulings, the Court actively fosters the development and dissemination of a culture that upholds and safeguards human rights. This impacts the consciousness of the government and the general public on the significance of safeguarding basic rights.

## 2. METHODOLOGY

The research approach employs a combination of qualitative and quantitative methodologies, selected based on the topic and structure of the work. The historical method, analytical method, and comparative technique are the primary methodologies used to achieve the purpose of the issue. The analytical approach is crucial in this article as it thoroughly examines several aspects, such as ideologies pertaining to women's rights, international, European, and national legislation concerning the safeguarding of women. An in-depth analysis is conducted on the European Court of Justice's legal decisions regarding discrimination and gender equality. The study also places significant emphasis on the comparative method, as it explores women's rights, gender equality, and non-discrimination from a comparative standpoint. The comparison is particularly focused on nations inside the European Union.

## 3. THE JUDICIAL PRACTICE OF THE EUROPEAN COURT OF JUSTICE

The Court of Justice of the European Union ensures adherence to Community law by interpreting and enforcing treaties and legislative actions arising from them, as stated in Article 19 TBE. The implementation of the two main Council directives against discrimination in 2000 had a significant impact on the understanding of the idea of equal and non-discriminatory treatment in relation to gender equality and non-discrimination. This was specifically inspired by the EU Directives described earlier (De Schutter 2005). The impact of the legal decisions made by the European Court of Justice on the understanding of directives established under Article 13 is evident in the decision of Member States to give more authority to the Council in implementing anti-discrimination measures. These measures are based on various criteria such as racial and ethnic background, religion or belief, disability, and age. Furthermore, the Council has chosen to offer wider safeguards against discrimination based on race or ethnic origin. (Semini, 2013: 9) Nevertheless, as stated in Article 2(5) of the Employment Framework Directive, this directive does not override measures implemented under national law that are deemed necessary in a democratic society to ensure public safety, maintain public order, prevent crime, protect health, and safeguard the rights and freedoms of others. Article 2(5) of the Employment Framework Directive is more restrictive in justifying measures that allow for differences in processing, compared to the model of Article 9, paragraph 2, of the European Convention on Human Rights. This is because the "protection of morals" is not considered a valid reason to limit the rights outlined in this Directive. In July 2004, the Commission brought five Member States (Austria, Finland, Germany, Greece, and Luxembourg) to the European Court of Justice for their failure to implement the Racial Equality Directive. The resolution of this matter is still pending. In December 2004, the Commission took the same Member States to court because they did not properly implement the framework directive on employment equality. Once again, the Commission's previous notification failed to resolve the issue, although it was effective in several comparable instances (Belgium, Denmark, Iran, the Netherlands, Portugal, and the United Kingdom). The anti-discrimination law was enacted in Greece at the end of 2004 after pressure from the Commission. However, in Finland and Austria, the directives have not yet been fully implemented in certain sectors. The Court issued a condemnation to Finland and Luxembourg in February 2005 for their failure to implement the Racial Equality Directive. By the conclusion of 2004, out of the 10 newly admitted Member States, only the Czech Republic had formally communicated to the Commission about the implementation of the Directives. The Commission is presently assessing the issue and may potentially submit many States, rather than just one, with the same petition to the Court. Initially, the community legislation only included one form of discrimination. The European Court of

Justice deserves recognition for its ability to differentiate between direct and indirect discrimination through its legal decisions. In the case *Finanzamt Köln-Alstadt v. Schumacker*, the Court asserted that discrimination arises when different rules are applied to similar situations or when the same rule is applied to different cases. This principle was reiterated in the *Ugliola* cases and *Sotgiu*. The Court established that, in matters concerning the free movement of workers, the principle of equal treatment... The decision not only prohibits explicit discrimination based on nationality, but also other forms of discrimination that result in the same outcome when using different criteria. However, it should not be assumed that criteria such as country of origin or employee residence can always lead to the same discrimination as nationality-based discrimination, as outlined in the Treaty. The Court's proposition is that not only overt forms of discrimination would be forbidden, but also covert ones that have the same outcome or consequence. The European Court of Justice made a significant advancement in its legal rulings with the *Defrenne II* case. It declared that Article 119 of the European Union Treaty has direct effect in all Member States. This means that women can use it as a legal basis to challenge unfair wages in front of national judges. In the *Defrenne III* decision, the Court affirmed that eradicating sex-based discrimination is a basic right and a fundamental value of the Community. The Court also examined the matter of direct and indirect discrimination in the case *M. L. Ruzius-Wilbrink v. Bestuur van de Bedrijfsvereniging voor Overheidsdiensten* does not provide explicit definitions for the terms involved. The Court in *Dekker* highlighted that determining whether a policy qualifies as direct discrimination hinges on whether the basis for denying employment is used without distinction to both male and female employees, or if it solely targets one gender. This definition served as the foundation for several subsequent rulings. In this instance, the Court determined that the employer's financial losses resulting from the maternity leave of a pregnant employee could not serve as a valid justification for engaging in direct discrimination. In relation to indirect discrimination, as previously said, the concept was first established by the Court in the *Defrenne II* judgment, and it has since evolved into the form now employed, as exemplified in the *Jenkins* case. In the *Bilka-Kaufhaus* decision, the Court revised its approach and developed a fresh interpretation of indirect discrimination. This new definition was thereafter employed in all instances involving indirect discrimination. According to this definition: If it were discovered that there is a significant disparity between the number of women working full-time compared to men, excluding part-time workers from pension schemes would go against Article 119 of the Treaty. This is because such a measure cannot be justified by factors that eliminate any form of gender discrimination. However, it should be noted that the fact that this measure affects women more than men does not alone prove a violation of Article 119. Hence, if the plaintiff can substantiate their claim with statistical evidence showing that a greater number of women are placed at a relative disadvantage as a result of a seemingly impartial rule, the presumption of explicit discrimination emerges. In this scenario, the responsibility to provide evidence rests on the opposing side, who must offer a rational argument in this matter. In the *O'Flynn* case, the Court articulated the concept of discriminatory consequence for the first time, explicitly noting that: "There is no need to prove that the specific provision in question actually impacts a larger number of migrant workers. It is enough to show that it has the potential to result in such an outcome." Regarding the proactive actions that Member States should implement to combat discrimination, the Court made a significant advancement in the *Kalanke* case by emphasizing that women should not be given preferential treatment over men. Additionally, the Court provided guidance on interpreting Article 2, paragraph 4 of the Directive in the most limited way possible. Prior to that point, it was believed that in order to address gender-based discrimination in the job market, if male and female candidates have identical qualifications, preference should be given to hiring women, hence allowing for discrimination. According to the *Badeck* case, the Court emphasized that the objective evaluation must include all the particular circumstances of the candidates. The ruling unambiguously demonstrates that the Court's intention was to eliminate barriers to the recruitment of male candidates facing circumstances comparable to those that may impede female applicants, namely males facing disadvantages resulting from their home responsibilities. In the *Lommers* case (Semini, 2013: 21), the Court identified sex-based discrimination and expressed concern regarding certain job offers that perpetuate traditional discriminatory stereotypes. Specifically, the court noted that offering childcare services exclusively to male workers in emergency situations could reinforce these stereotypes. In the *Sirdar* case, the Court determined that while Member States possess complete autonomy in determining the structure of their armed forces, these decisions remain subject to the regulations of Community law. Decisions about job access in these forces must adhere to the

principle of gender equality. Nevertheless, the Court determines that Member States have the authority to establish exceptions (provided they are suitable and essential to achieve the intended goal) to the application of the principle of gender equality, when gender is a decisive factor in the performance of the activity and Member States have the freedom to decide on the measures they consider necessary to guarantee public safety. In the Mangold case, the Court determined that the provision in German legislation, which allowed for the use of fixed-term employment contracts for individuals aged 52 and older, constituted age discrimination and violated the Employment Framework Directive. The Court clarified that while this provision aligned with the social policies of the Member State and EU legislation grants significant leeway to States in implementing such policies, the German legislation in question had exceeded the acceptable limits by implementing measures that were neither justifiable nor reasonable to justify the disparities in treatment outlined in this case. The recent anti-discrimination law in the EU explicitly mandates member states to establish mechanisms for redressing breached rights inside their own countries, while also emphasizing the need of adhering to community legal norms. The reference is taken from Picari's work, specifically page 16 (Picari, 2008:16). Aside from the legislative measures implemented, the rulings of the European Court have significantly impacted the modification of domestic procedural regulations that may conflict with the implementation of effective measures in instances of European law infringement. The idea of efficiency encompasses all aspects of the judicial process, encompassing the ability to enter the court, the procedural regulations for conducting the trial, and the regulations for presenting evidence (Kennett 2000). Nevertheless, the Court has undergone many changes in terms of the degree to which it mandated the incorporation of national laws into Community law. There were instances where it was clearly and strongly stated that Community law is superior to national law and that national courts should offer effective and sufficient solutions. On several occasions, the Court has displayed leniency towards national laws and examined whether the procedural regulations have excessively hindered the enforcement of European Union Law. The European Court of Justice has established the right to seek redress for breached rights. The court first took this action to comply with Article 6 of the Second Directive on Sexual Equality. The Directive only established the procedural entitlement to commence legal procedures in cases of suspected discrimination. However, the primary case relevant to this matter is Von Colson and Kamann. The Attorney General asserted that Article 6's wording implies that any transgression will face legal consequences under domestic state penalties. Thus, to recapitulate, it was necessary to associate a tangible assurance with a procedural assurance. The Court concurred with this viewpoint and asserted that the Directive would be rendered ineffective without a robust system of penalties, emphasizing that individuals who experience discrimination are entitled to reclaim their rights. In this instance, the Court cited Article 249 of the EU Treaty, which mandates Member States to implement the necessary steps to attain outcomes that are not anticipated by the directive. In the Johnston case, the Court declared that the requirement of effective judicial review aligns with the fundamental concept that underlies the constitutional practices of the Member States and is also mandated by Articles 6 and 13 of the European Convention on Human Rights (ECHR). Moreover, it is important to note that where a provision, such as Article 6 of the Second Gender Equality Directive, exists, it directly applies to the restoration of rights or the entitlement to compensation. In the Coote case, the Court clarified that the directive's protection also applies when the employment contract expires. This is because if it didn't, the idea of effective judicial oversight would be compromised. In the Dekker case, the Court stressed that the accountability of the individual convicted of discrimination is not only dependent on proving the violation or absence of justification for the discrimination. This is because even if such proof is shown, the practical impact of equal treatment would still be severely diminished. Put simply, the determination of discrimination is not contingent upon the proof provided by the individual claiming prejudice or the employer's culpability. This ruling had a profound impact on the liability legislation and domestic private law of the Netherlands. When it comes to taking action to address prejudice, the focus is on ensuring that the actions are effective, proportionate, and convincing. As to the Court's ruling, the Directive is not allowed to stipulate a particular penalty. The responsibility for imposing penalties lies with the Member States, however, it is crucial that these consequences are both impactful and commensurate with the offense, while also being persuasive in their execution. Member States in this scenario possess significant discretion, allowing national courts to have considerable authority in ensuring that their government adheres to minimal requirements. In the Marshall II decision, the Court clarified that in instances of unfair terminations, achieving equity requires either reinstating the victim into their job or providing



them with financial compensation to compensate for their losses. In this scenario, the selection of the Member State is restricted. Based on the aforementioned examples, it may be inferred that the Directives are not absolute and lack adequate specificity. While it is indeed accurate that they possess a direct theoretical impact, relying only on them as grounds for asserting anti-discrimination rights in front of national courts is not feasible. Hence, it is crucial to establish internal regulations to effectively execute these orders. In the Rewe case, the Court declined to provide the complaint with particular compensation and restoration of rights. The Court justified its decision by emphasizing the need of using the principles of proportionality and efficiency when considering appropriate means for restoring rights. The responsibility is with national courts to take action, albeit they should not go to the level of rendering EU rules unenforceable or challenging to enforce. The Court's jurisprudence lacks specificity and does not provide guidance on the principles to be used in the domestic legal system for determining compensation. However, it is necessary for such measures to be effective, proportional, and equivalent to those that would be applied in a domestic appeal before national courts. It is important to assess these measures only after considering all pertinent circumstances.

#### 4. CONCLUSION

In my opinion, the notion of the adoption and immediate impact of European Union Directives is impractical and does not align with the actual circumstances. Furthermore, several field studies deem anti-discrimination regulations to lack effectiveness. In the absence of the European Court of Justice's interpretation, it can be unequivocally said that the enforcement of European Community legislation would rest only on the member states' determination and readiness to execute their commitments. The balance is therefore tilting in favor of the private model for executing European Union regulations, wherein individuals file complaints with national courts, who subsequently refer matters (pertaining to the application of Community law) to the European Court of Justice for preliminary findings. The processes and punishments established by this Court effectively fulfill the framework of European basic rights.

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