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European network of legal experts in gender equality and non-discrimination

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Unit D1: Non Discrimination: LGBTIQ, Age, Horizontal Matters
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European equality law review

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Directorate-General for Justice and Consumers

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Introduction on the state of play

The *European equality law review* is produced by the European network of legal experts in gender equality and non-discrimination (EELN/the network). The aim of the EELN is, and has been since 2015,[1] to provide the European Commission and the general public with independent information regarding gender equality and non-discrimination law and, more specifically, on the transposition and implementation of the EU equality and non-discrimination directives. The law review reflects legal and policy developments in European and national gender equality and non-discrimination law, covering the 27 EU Member States, the EEA countries, Albania, Montenegro, North Macedonia, Serbia, Türkiye and the United Kingdom. In addition, as of 2025, an overview of Bosnia-Herzegovina, Georgia, Moldova, Kosovo and Ukraine are included in relation to gender equality law. The current issue reflects, as far as possible, the state of affairs from 1 July 2024 to 30 June 2025.

In this issue

This issue opens with four in-depth articles. The first article, by Susanne Burri, gender equality expert and long-term member of the EELN, and Franka van Hoof, lead coordinator of the gender equality strand of the network at Utrecht University, celebrates the 40th anniversary of the gender strand of the network by looking back at its history as well as its current and possible future role and challenges. The second article, by Claudia Morini, from the University of Salento, examines the barriers to female participation in politics. The third article, by Lisa Waddington from the University of Maastricht, explores the link between (in)accessibility and disability discrimination in legislation and case law, with a particular focus on Austria, Bulgaria, Finland and Ireland. Finally, the fourth article, by Sophie Latraverse, independent expert in French non-discrimination law, provides an in-depth analysis of the evolution of access to evidence of racial or ethnic discrimination in France, in particular in relation to the GDPR and issues regarding personal data protection.

As in previous issues of this publication, the following section provides an overview of the relevant case law of the Court of Justice of the EU and of the European Court of Human Rights. The final section on national developments contains brief summaries of the most important developments in legislation, case law and policy at the national level in the countries covered by the network.

Recent developments at the European level

In March 2025, the European Commission published the Roadmap for Women's Rights,[2] its ambitious plan to advance gender equality across Europe. The roadmap presents the challenges and benefits of gender equality, highlighting its political and economic importance and it emphasis the need for both gender mainstreaming all policies and prevention and elimination of gender inequalities. On 19 May

[1] Until 2014, these aims were pursued by two separate networks: the European network of legal experts in the non-discrimination field and the European network of legal experts in the field of gender equality.

[2] Resolution of the European Economic and Social Committee, A roadmap for Women's Rights - Supporting the Declaration of Principles for a Gender-Equal Society (OJ C, C/2025/4201, 20.08.2025, ELI).

2025, the European Commission opened a public consultation to gather views from across society on the upcoming Gender Equality Strategy for 2026-2030.[3]

In parallel to the consultation on the new gender equality strategy, in April 2025 the Commission launched another public consultation to gather input from the public as well as targeted stakeholders on the anti-racism strategy, which is planned to be published in the fourth quarter of 2025.[4] The highly anticipated strategy will be the first comprehensive strategy at EU level to address racism and contribute to a society free from racial discrimination, building upon the anti-racism action plan 2020-2025. In this regard, the report published in September 2024 on the implementation of the EU anti-racism action plan and on the national anti-racism action plans will provide further input for the foundation of the new strategy.[5] The report provides an overview of the progress made so far in the implementation of the EU action plan but also offers useful guidance to the Member States on the development and implementation of effective action plans at national level.

On 28 December 2024, the Gender Balance on Corporate Boards Directive[6] entered into force. Aiming for more balanced gender representation on the boards of listed companies across EU Member States, the Directive sets a target for EU large listed companies to have 40 % of the underrepresented sex among their non-executive directors and 33 % among all directors.

November 2024 saw the creation of the Council of Europe network of specialised lawyers and NGOs assisting women victims of violence. The network brings together lawyers in private practice and those representing women victims through specialist support services. Its aim is to facilitate regular exchanges between lawyers from across all Council of Europe Member States and to serve as a knowledge-sharing platform for strategic litigation on violence against women.

During the reporting period, the European Commission has continued its work to enforce existing EU legislation, notably through infringement proceedings in the non-discrimination field. For instance, in October 2024, the Commission issued an additional letter of formal notice to Czechia in the context of the proceedings initiated 10 years prior, noting that recent measures at national level have not effectively put an end to the pressing issues of Roma segregation in education.[7] In July 2024, infringement proceedings were also pursued against countries such as Croatia, Germany, the Netherlands, Slovenia and Sweden due to their failure to completely incorporate the European Accessibility Act[8] into national law.[9] In March 2025, such proceedings were also pursued against Greece.[10] More precisely, these countries all received reasoned opinions. In parallel, the Commission also decided to refer Bulgaria to the CJEU due to its failure to make any formal notification of

3 The public consultation was concluded after the reporting period for this issue of the *European equality law review*.
4 European Commission, Anti-racism strategy dedicated consultation webpage.
5 European Commission (2024), Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Report on the implementation of the EU anti-racism action plan 2020-2025 and on national action plans against racism and discrimination, Brussels, 25.9.2024, COM(2024) 419 final.
6 Directive (EU) 2022/2381 of the European Parliament and of the Council of 23 November 2022 on improving the gender balance among directors of listed companies and related measures.
7 European Commission (2024), October infringement package, press release of 3 October 2024.
8 Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services, OJ L 151, 7 June 2019, pp. 70–115.
9 European Commission (2024), July infringement package, press release of 25 July 2024.
10 European Commission (2025), March infringement package, press release of 12 March 2025.

incorporation measures of the Accessibility Act.[11]

The year 2025 marks the 30th anniversary of the Beijing Declaration and Platform for Action,[12] which is considered a blueprint for advancing women's rights globally, from access to education to participation in decision making and living a life free from violence. The milestone was marked by the publishing of the report *Beijing Platform for Action +30 Impact driver - Marking milestones and opportunities for gender equality in the EU* by the European Institute for Gender Equality.[13]

Finally, in February 2025, the Commission presented its 2025 work programme, which aims to simplify and enhance the effectiveness of its work.[14] Notably, the programme announced the Commission's intention to withdraw the pending proposal for an equal treatment directive, which has been blocked in the legislative process since its conception in 2008.[15] The proposed withdrawal was met with criticism from stakeholders at EU level and was further discussed during the following months, in particular, in the European Parliament.[16]

Network publications and activities

During the reporting period, the network published five thematic reports. The first report, *Discrimination by Association and Discrimination by Assumption under Directives 2000/43 and 2000/78*,[17] by Judy Walsh from University College Dublin, examines the legal framework of and case law on the concepts of discrimination by association and assumption, both at CJEU and Member State level. The second report, by András Kádár, the Hungarian non-discrimination expert for the network, provides a comparative overview of the legal instruments available to combat anti-Muslim hatred in the EU, exploring their practical application by Member States and the extent to which they are able to provide protection against discrimination.[18] The third report, by Anja Eleveld and Erik Wesselius, from Vrije Universiteit Amsterdam, explores whether Directive 79/7, on statutory social security, is still fit for purpose and presents options for its future modernisation.[19] The fourth report, written by Sara de Vido from Ca' Foscari University of Venice, *EU law in light of the Istanbul Convention: legal implications after accession*,[20] provides a comprehensive analysis of the legal implications of the EU accession to the Council of Europe Istanbul Convention on preventing and combating violence against women and domestic violence. Finally, the fifth thematic report, by David Davies from the University of Sussex,

11 European Commission (2024), 'Commission decides to refer Bulgaria to the Court of Justice of the European Union for failing to incorporate the European Accessibility Act into national law', press release of 25 July 2024.
12 United Nations (1995), Beijing Declaration and Platform for Action, A/CONF.177/20/Rev.1, Fourth World Conference on Women, United Nations, Beijing.
13 EIGE (2025), *Impact driver - Marking milestones and opportunities for gender equality in the EU*, Publications office of the European Union, Luxembourg.
14 European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Commission work programme 2025 - Moving forward together: A Bolder, Simpler, Faster Union, Strasbourg, 11.2.2025, COM(2025) 45 final.
15 European Commission (2025), Annexes to the Commission work programme 2025, p. 25.
16 European Parliament LIBE Committee (2025), 'Commissioner Lahbib in LIBE on the withdrawal of the equal treatment directive', press statement of 13 May 2025.
17 Walsh, J. (2024), *Discrimination by Association and Discrimination by Assumption under Directives 2000/43 and 2000/78*, European Commission, Luxembourg.
18 Kádár, A. (2025), *The legal framework to combat anti-Muslim hatred in the European Union*, European Commission, Luxembourg.
19 Eleveld, A. & Wesselius, E. (2025), *Gender equality in statutory social security: the future of Directive 79/7*, European Commission, Luxembourg.
20 de Vito, S. (2025), *EU law in light of the Istanbul Convention: legal implications after accession*, European Commission, Luxembourg.

focuses on the efforts to combat harmful gendered content and gender stereotypes in advertising and the media across 27 EU Member States, Iceland, Norway, Lichtenstein and the UK.[21]

The network also published the *European equality law review 2024*[22] and the 2024 update of the country reports on gender equality for all 27 Member States and the EEA countries, and the country reports on non-discrimination for all 27 Member States. The annual legal seminar was held in Brussels on 29 November 2024, bringing together more than 200 representatives of the European Commission, EU Member State governments, equality bodies, EU umbrella organisations, academics from across Europe and members of the network itself.

In addition to these publications, the network publishes flash reports on the most important developments in legislation, case law and policy at the national level in the countries covered by the network on a continuous basis.

As always, please check the network's website – www.equalitylaw.eu – for the full text of all reports and the various contributions to the legal seminar.

Isabelle Chopin — Migration Policy Group
Linda Senden — Utrecht University
Yvonne van Leeuwen-Lohde — Human European Consultancy

[21] Davies, D. (2025), *Tackling harmful gendered content and gender stereotypes in advertising and the media in Europe: new challenges and opportunities*, European Commission, Luxembourg.

[22] European network of legal experts in gender equality and non-discrimination (2024), *European equality law review 2024*, European Commission, Luxembourg.

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[1] The network would like to express its sincere gratitude for the valuable contributions of Sébastien Van Drooghenbroeck, dedicated member of the network, who recently passed away. His commitment and insights have left a meaningful mark on our work, and he will be remembered with appreciation and respect.

'A wonderful example of comparative law in action'[1] Four decades of the European Gender Equality Law Network

Susanne Burri and Franka van Hoof*

Introduction

> '[T]he Commission is obviously unable to detect every potential difficulty deriving, notably, from provisions adopted in each member state: application decrees, collective agreements, works rules … and there is the need to … resort to a network of independent experts to provide such information to the Commission.'[2]

This quotation from 1986 by Odile Quintin, then the European Commission's Head of the Unit for Employment and Equal Treatment of Women and Men within the Directorate-General for Employment and Social Affairs, perfectly reflects the need for and main function of the European Gender Equality Law Network, whose work is the subject of this publication. In this article, written for a broad audience, two of the Network's experts reflect on the role Network's role and its many contributions, past and future, to the implementation and development of EU gender equality law.

The European Commission (EC), in its role as guardian of the treaties, is tasked with, among other things, monitoring the transposition and implementation of European Union Directives on gender equality at the national level and taking appropriate (legal) action where Member States fail, or fall short, in their transposition and implementation responsibilities. This has become an increasingly complex task for the EC, not only because of the considerable growth in scope of the EU acquis on gender equality over the years but also owing to the significant increase in the number of Member States to be monitored, following the enlargements of the EU. To perform its task effectively, the EC cannot rely solely on the information provided to it by the Member States. In 1983, the Commission set up the European Network of Legal Experts in the field of Gender Equality (Gender Network or, simply, Network) to complement its work and establish an alternative source of reliable, independent

[1] This is according to Professor McCrudden, C., who has been involved in this network since the beginning. This view was agreed with by most of the eight national experts, coordinators and representatives of the European Commission currently or previously involved in the network who answered a short questionnaire for the purposes of this publication and to whom the authors wish to extend their thanks.

* Dr Susanne Burri is guest researcher at the Utrecht School of Law and senior expert in gender equality within the European Network of Legal Experts in Gender Equality and Non-Discrimination (EELN). She was coordinator of the network from 2007 to 2015, following a stint as assistant coordinator in 2006–2007, alongside Professor Sacha Prechal, who coordinated it for many years (s.burri@uu.nl; www.uu.nl/rebo/medewerkers/sdburri). Franka van Hoof, LLM, MA, is coordinator of external relations at Utrecht University. She is currently lead coordinator of the EELN, having joined the coordination team of the network's gender equality strand in 2017 (f.c.j.vanhoof@uu.nl).

[2] Quintin, O. (1986), 'Treatment equality of men and women in the European Communities', in Verwilghen, M. (ed.), *Equality in law between men and women in the European Community,* Vol. 1 *General Reports*, Louvain-la-Neuve, Presses Universitaires de Louvain, p. 118.

and critical information. The Gender Network assisted the EC by providing independent (legal) expert information on gender equality at the national level, which is often not easily available, owing to the specificities of the different national legal systems and the language barriers that are commonly in place. The Network reported to the EC on the transposition of and compliance with gender equality directives and national court rulings, as well as the impact of judgments handed down by the Court of Justice of the European Union (CJEU) on national law, the role of equality bodies, and legislative and political developments at national level. In addition to providing valuable information from the ground in the Member States, over the years the Network became a key source of expertise for the EC regarding the development of new legislation at EU level and in the Commission's assessment of complaints against Member States. It also assisted the EC with its agenda-setting tasks by signalling new developments that required attention. The independence of the Gender Network's members and their high level of (legal) expertise made the Network the eyes and ears of the EC at the national level, providing it with essential information and expert opinions on a continuously expanding field of EU law.

In 2014, the Gender Network was merged with the European Network of Legal Experts in Non-Discrimination (established in 2004) to form a single network: the European Equality Law Network (EELN).[3] The EELN in its current form allows for better collaboration on overarching topics related to discrimination on the grounds of gender and other non-discrimination grounds.[4] The EELN still comprises two separate strands, however: on gender equality (the Gender Network or gender strand) and on non-discrimination (the Non-Discrimination Network or non-discrimination strand). When the gender strand of the EELN celebrated its 40th anniversary in 2023, many involved in this network considered it worthwhile to reflect, in the form of an article in this review, on the Network's history, the significance of its work and its possible future role.[5] It was considered especially relevant to mark this anniversary and the importance of having an independent and critical network given the current political climate and societal context that is increasingly unfavourable to gender equality. Even though the function and purpose of the Gender Network have remained largely the same since its establishment in 1983, the countries it covers and its scope – in terms of both subject matter and the tasks with which it assists the EC[6] – have changed considerably. This article provides an overview of how the Gender Network has evolved over the years, discussing the ways in which the EELN has contributed to the work of the EC in the field of gender equality and to the development and implementation of gender equality law and policies, as well as related topics. It also examines how the work of the Gender Network could possibly change in the future in the context of potential developments in EU gender equality law in a rapidly changing society. It aims to highlight the historic contribution of the many experts in gender equality law who have participated in the Gender Network

3 The Utrecht School of Law coordinated the European Network of Legal Experts in Gender Equality for many years, up to 2014. Since then, overall operation of the EELN is governed by Human European Consultancy, Utrecht School of Law coordinates the gender strand and the Migration Policy Group coordinates the non-discrimination strand.

4 Including the other grounds set out in Article 19 of the Treaty on the Functioning of the European Union (TFEU), i.e. racial or ethnic origin; religion or belief; disability; sexual orientation; and age.

5 See also Koukoulis-Spiliotopoulos, S. and Masse-Dessen, H. (2014), 'Thirty years of the gender equality network: Who we are, what we do, and why we do it', *European Gender Equality Law Review* 2014/1, pp. 4–10, available at: https://www.equalitylaw.eu/downloads/2802-european-gender-equality-law-review-1-2014.

6 Every four years, the EC publishes a new tender in which it lists the requirements and tasks of the network for a new contract period, in addition to the required specific qualifications of the proposed experts. The Utrecht University School of Law has been awarded contracts for the coordination of the gender strand of the EELN for many years.

since 1983, thereby enriching the collective memory of the work of the network and this expanding field of EU law.

Section 1 of the article looks back over the history of the Gender Network – starting with its inception and then examining its development and work. Section 2 analyses the main functions and roles of the Gender Network by assessing its contribution to revealing gaps in the implementation of EU gender equality law by the Member States, and thus the development of this field of law as well as its signalling function of new approaches and themes. Finally, Section 3 considers the possible future role of the Gender Network, including in the light of future prospects of EU equality law, while Section 4 provides some concluding remarks.

1. Looking back: a rich history with many achievements

1.1 The early years: actively promoting equality between men and women in collaboration with the European Commission

The principle of equal pay between men and women for equal work was included in the Treaty establishing the European Economic Community in 1957.[7] Although this principle had to be implemented into national law by the Member States by 1 January 1962, unfortunately, equal pay remains a key issue in gender equality.[8] The implementation of the principle of equal pay became one of the priorities of the social programme agreed on in 1974.[9] The EC subsequently initiated the Equal Pay Directive, adopted in 1975,[10] followed by the Equal Treatment Directive, adopted in 1976[11] and the Statutory Social Security Directive, adopted in 1979.[12,13] Éliane Vogel-Polsky, a Belgian lawyer and former member of the Gender Network, initiated the three famous *Defrenne* cases on the interpretation of Article 119 EEC, which had a considerable impact on advancing gender equality in the EU.[14] The women's liberation movement in Europe also led to fundamental cultural and societal changes that impacted the position of women in society and precipitated a steady move away from the dominant (male) breadwinner model to increased (economic) independence and labour-market participation of women, as well as greater rights for women. In this political context, EU directives

7 See Article 119 – EEC, subsequently Article 141 – EC and now Article 157 – TFEU.

8 See, for an overview, European Commission: Directorate-General for Justice and Consumers, European Network of Legal Experts in the Field of Gender Equality and Burri, S. (2018), *EU gender equality law – Update 2018*, Publications Office of the European Union, available at:https://data.europa.eu/doi/10.2838/673175.

9 Council Resolution of 21 January 1974 concerning a social action programme, OJ 1974, C 13/1.

10 Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women, OJ 1975, L 45/19.

11 Council Directive 76/207/EEC of 9 February 1976 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, OJ 1976, L 39/40.

12 Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security, OJ 1979, L 6/24.

13 Two more directives related to employment were adopted in 1986: Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes, OJ 1986, L 225/40 (repealed); and Council Directive 86/613/EEC of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood, OJ 1986, L 359/56 (repealed). In 1992, the Pregnancy Directive was adopted, which is still in force (Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, OJ 1992, L 348/1).

14 Case C-80/70 *Defrenne v. the Belgian State* (Defrenne I), 25 May 1971, ECLI:EU:C:1971:55; Case C-43/75 *Defrenne v. Sabena* (Defrenne II), 8 April 1976, ECLI:EU:C:1976:56; and Case C-149/77, *Defrenne v. Sabena* (Defrenne III), 15 June 1978, ECLI:EU:C:1978:130.

addressed the growing role of women in the labour market, putting equal treatment of men and women in employment at the heart of the legislation adopted.

It was in this context, in 1983, that Odile Quintin, as the European Commission's Head of the Unit for Employment and Equal Treatment of Women and Men within the Directorate-General for Employment and Social Affairs, initiated the Gender Network.[15] As a highly active Head of Unit, she chaired the Gender Network meetings and was very much involved in the Conference on Equality in Law between Men and Women in the European Community, held in May 1985 at Brussels and Louvain-la-Neuve. In the reports of the proceedings of this conference Quintin published Treatment equality of men and women in the European Communities,[16] in which she concluded that problems in implementing the Equal Treatment Directive[17] 'are to a large extent related to **attitudes** and **mentalities**' and that 'it is necessary to promote a much broader policy, bearing on **sensitivity**, **education** and **positive actions** to remedy *de facto* inequalities' [emphasis in the original]. Such a broad understanding of gender equality law has become even more relevant in our view, given the current (geo)political and societal context – in Europe and beyond – of polarisation and backlash against feminism and inclusion policies.

Sophia Koukoulis-Spiliotopoulos and Hélène Masse-Dessen, both committed members of the Gender Network since its establishment for, respectively, Greece and France, recalled the Louvain-la-Neuve conference in 1985 thus:

> 'The participants, judges, academics, lawyers, members of the European Parliament and Commission officials, joined forces with Network Members in an effort to find effective ways to disseminate EC gender equality legislation and CJEU case law, so as to promote their implementation at the national level; to assess national situations and ascertain whether new measures were necessary, and if so, what kind of measures. (…) Gradually an excellent *esprit de corps* developed along with proactive approaches, thanks also to the Commission officials collaborating with the Network – high-level jurists who share a strong sense of social justice with the Network's members and the will to promote concrete results of EC law in the everyday life of people residing in the EU.[18]'

1.2 The need for independent and critical experts

Since the early days of the Gender Network, the national experts participating in it have always been

[15] Odile Quintin subsequently became Director of DG Employment and Social Affairs and spent almost 40 years at the Commission – see Gray, E. (2008), 'A long tenure with rare insights', *Politico*, 28 May, available at https://www.politico.eu/article/a-long-tenure-with-rare-insights/.

[16] Quintin, O. (1986), 'Treatment equality of men and women in the European Communities', in Verwilghen, M. (ed.), *Equality in law between men and women in the European Community,* Vol. 1 *General Reports*, Louvain-la-Neuve, Presses Universitaires de Louvain, pp. 107–119. This publication contains the records of the proceedings of the European Conference, which was organised by the Commission of the European Communities, the Centre Interuniversitaire Belge de Droit Comparé and the Centre de Droit Patrimonial of the Université Catholique de Louvain.

[17] Council Directive 76/207/EEC of 9 February 1976 implementing the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, OJ 1976, L 39/40.

[18] Koukoulis-Spiliotopoulos, S. and Masse-Dessen, H. (2014), 'Thirty years of the gender equality network: Who we are, what we do, and why we do it', *European Gender Equality Law Review* 2014/1, pp. 4–10, available at: https://www.equalitylaw.eu/downloads/2802-european-gender-equality-law-review-1-2014.

high-level experts in law.[19] Most are academics, barristers, or NGO advocates, and a few are sociologists or independent experts, but all have a specific interest and expertise in gender equality issues. The work they do for the Network is in addition to their main function. Many experts have been involved in the Network for years, but members are replaced on a regular basis.

The active involvement of the Commission in the work of the Gender Network in the early years is reflected in two publications from 1986.[20] However, the nature of this involvement changed over the years from close collaboration, in which the EC and the Network worked jointly on reports and publications, to an arrangement whereby the members of the Network feed the Commission with independent expert information through various reports and outputs. This independence of the Network members is a very important element in the collaboration and the quality of the Network's outputs. One of the requirements to join the Network as a national expert is that the candidate must have no affiliation to any political, governmental, national or EU institution that could interfere with their assessment of whether the transposition and implementation requirements are met by their state. It also enables the experts, and the Network as a whole, to provide the EC (and the wider public, through its publications) with a critical lens through which to examine developments in the Member States as well as at EU level. Network publications now include a legal disclaimer stating that: 'This document has been prepared for the European Commission; however, it reflects the views only of the authors, and the Commission cannot be held responsible for any use which may be made of the information contained therein.'[21] While such a statement does not immediately suggest an *esprit de corps*, it does specifically enable the Network to express a different view from that of the EC and free of political influence. Both the Commission and the Network constantly aim to develop and consolidate EU gender equality acquis in diverse ways, which are further discussed in Section 3.

1.3 An increasing number of independent experts assisting the European Commission in a multilingual setting

In 1983, the European Economic Community comprised just 10 Member States: Belgium, Denmark, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, West Germany and the United Kingdom. The national reports written for the Gender Network and presented at the Louvain-la-Neuve conference in 1985 provided detailed information on the transposition of the principles of equal pay (Article 119 EEC and the Equal Pay Directive)[22] and of equal treatment in employment (the Equal Treatment Directive)[23] into national law. As well as the ten existing Member States the national reports

[19] Most experts have a doctorate in law. Each expert has to hold the required qualifications set by the European Commission in its tender specifications (see footnote 7). See, for more information, Jacquot, S. (2019), 'De missionnaires à consultant·e·s. Les transformations de l'expertise. Juridique européenne en matière d'égalité', *Droit et société,* Vol. 3, No. 103, pp. 693–708.

[20] Verwilghen, M. (ed.) (1986), *Equality in law between men and women in the European Community,* Vol. 1, *General Reports*, Louvain-la-Neuve, Presses Universitaires de Louvain; and Verwilghen, M. (ed.) (1986), *L'Égalité juridique entre femmes et hommes dans la Communauté Européenne*, Vol. 2, *Rapports nationaux*, Louvain-la-Neuve, Presses Universitaires de Louvain (some national reports in this publication are in English).

[21] See also Jacquot, S. (2019), 'De missionnaires à consultant·e·s. Les transformations de l'expertise. Juridique européenne en matière d'égalité', *Droit et société,* Vol. 3, No. 103, pp. 693–708.

[22] Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women, OJ 1975, L 45/19 (repealed).

[23] Council Directive 76/207/EEC of 9 February 1976 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, OJ 1976, L 39/40 (repealed).

covered the following (then) candidate member states Portugal and Spain.[24] Including candidate states in the Gender Network – and thus expanding its geographical scope beyond the European Union – has remained a recurring request of the EC and an enriching aspect in the development of the Network's activities around comparative law.

In the beginning, French, English and German were the languages used in the Gender Network. This was sometimes problematic, as certain concepts in English were not easily translated into French, for example.[25] English was not the mother tongue of most of the experts (and this remains the case today). A British lawyer even helped voluntarily in the early days of the Network to draft some reports for the Commission in 'proper' English! Interpreting services were available on the two or three occasions a year when the entire Network met with the Commission, and most publications were made available in French, English and German.[26] Currently, in most countries, just a single national gender expert is in charge of providing all the relevant information on national law, whereas in the past, two, sometimes even three or four, experts (for France, for example) per country were involved. The backgrounds of the experts were even more diverse then than they are now, with representatives of social partners (employers and workers organisations) also involved as national experts, alongside lawyers, academics and NGO advocates. Such varied expertise, qualifications and interests thus offered myriad perspectives on gender equality issues in one country.

The Gender Network's national experts have a very high level of expertise in their respective countries in what is an increasingly expanding field of EU law. Their involvement in the Network has not only provided the EC with very valuable information but also enabled the experts themselves to contribute to the correct implementation of EU gender equality law and in their country. The effect of this 'spillover' in the work and mission of the Network has been positive for both active and former members. Several former experts have obtained important positions at both EU and national level, including high judicial positions in the CJEU, the European Court of Human Rights (ECHR) and in the national Constitutional Courts. Others have risen to high-ranking positions in their national administrations, including ministerial roles, and as active test-case lawyers. In these positions, they can further enhance the implementation of EU gender equality law at different levels. The Gender Network is therefore important not only for the work of the EC in this regard but also for the further consolidation of EU law at the national and EU institutional levels.

During the COVID-19 pandemic, the Network proved to be a resilient and tightknit community, which grew stronger – and even increased its reach – during this period, providing information to the EC from the ground on developments that were not always publicly known. In addition to its vertical ascendent function – providing information to the EC and assisting it in its diverse tasks – the Network has a vertical descendent function – distributing information on EU gender equality law at the national level. The EELN also fulfils a horizontal role, in that national experts, in their roles as advocates or

[24] M. Verwilghen (ed.) (1986), *L'égalité juridique entre femmes et hommes dans la Communauté Européenne*, Vol. 2, *Rapports nationaux*, Louvain-la-Neuve, Presses Universitaires de Louvain.

[25] One of the respondents to the questionnaire for this article gave the example of 'contract compliance'.

[26] See, for example, Prechal, S. and Burri, S. (2008), *Geschlechtergleichstellungsrecht der EU*, 2008, Publications Office of the EU, available in German at: https://op.europa.eu/de/publication-detail/-/publication/4876afc8-bdd1-41f1-8859-42281db6f98b and in French at: https://op.europa.eu/fr/publication-detail/-/publication/4876afc8-bdd1-41f1-8859-42281db6f98b. The 2013 and 2018 updates of this publication are only available in English – 2013 at: https://op.europa.eu/en/publication-detail/-/publication/c7a08f35-e9e8-47f8-8c8b-b8375646d22c/language-en; and 2018 at: https://www.equalitylaw.eu/downloads/4767-eu-gender-equality-law-update-2018-pdf-444-kb.

representatives of NGOs, exchange information – for example, when preparing a case or during court proceedings.[27] The lines of communication are short, most of the experts have been active in the Gender Network for many years and know each other well, forming 'a family', as former long-serving Greek expert Sophia Koukoulis-Spiliotopoulos used to say.[28]

Until 2024, some publications were still translated from English into French and German, but currently all publications are in English only, which limits the potential impact of the work of the EELN.[29] The Network's experts thus need not only in-depth knowledge of EU gender equality law and EU law more generally, as well as of their national law system, but also a good command of written and spoken English. Consequently, even though English is obviously a very convenient language in which to communicate with so many different nationalities, nuance can sometimes be lost.

1.4 The European Equality Law Network since 2014

1.4.1 Scope and organisation of the European Equality Law Network (EELN)

The prohibitions of discrimination based on nationality and sex were the only discrimination grounds mentioned in the Treaty establishing the European Economic Community of 1957 (Articles 7 and 119, respectively). Since 1999, Article 19 TFEU (formerly Article 13 EC) provides an enabling clause to combat discrimination based not only on sex but also on racial or ethnic origin, religion or belief, disability, age or sexual orientation. Directive 2000/43 (the Race Directive) and Directive 2000/78 (the Framework Directive) require the transposition into national law of these discrimination grounds.[30]

Since 2014, the Gender Equality Law Network has been part of single body: the European Equality Law Network (EELN or Equality Law Network),[31] which was created that year and combines two previously separate networks: the European Gender Equality Law Network (the Gender Network) and the European Non-Discrimination Law Network (the Non-Discrimination Network). The European Non-Discrimination Law Network was established in 2004 with the main aim of providing the Commission with independent advice on all the grounds of discrimination (racial or ethnic origin; religion or belief; disability; sexual orientation; and age) covered by Directives 2000/43 and 2000/78. This network was a follow-up to three separate networks, one of which dealt with racial or ethnic origin and religion or belief, one with disability and one with sexual orientation.

Since 2014, the EELN has covered all the discrimination grounds mentioned in Article 19 TFEU: sex, racial or ethnic origin, religion or belief, disability, age and sexual orientation. The EELN currently

[27] See, for example, Case C-409/16 *Ypourgos Esoterikon and Ypourgos Ethnikis paideias kai Thriskevmaton v. Maria-Eleni Kalliri* (Kalliri), 18 October 2017, ECLI:EU:C:2017:76; and, on discrimination on the ground of sexual orientation, Case C-81/12 *Asociaţia Accept v. Consiliul Naţional pentru Combaterea Discriminării* (Accept), 25 April 2013.

[28] See, on the contributions of Sophia Koukoulis-Spiliotopoulos, Petroglou, P. and Burri, S. (2022), 'In memoriam: Sophia Koukoulis-Spiliotopoulos', *European Equality Law Review* 2022/2, p. ix, available at: https://www.equalitylaw.eu/downloads/5816-european-law-review-2-2022-pdf-1-189-kb.

[29] The thematic reports were translated into French and German until 2015 and the comparative analyses until 2019. The thematic reports published up to 2023 include a version of the executive summary in French and German. Since 2024, however, translations of reports produced by the EELN are no longer available.

[30] Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ 2000, L 180/22 and Council Directive 2000/78/EC of 27 November 2000 establishing a legal framework for equal treatment in employment and occupation, OJ 2000, L 303/16.

[31] Also called the European network of legal experts in gender equality and non-discrimination: see https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/gender-equality/who-we-work-gender-equality/network-legal-experts-gender-equality-and-non-discrimination_en.

includes senior experts who are specialists in the following grounds and areas of equality law: gender, trans and intersex, gender identity and gender expression in relation to trans and intersex people; violence against women; racial or ethnic origin; religion or belief; disability; age; sexual orientation; pregnancy, maternity and work-life balance rights; social security; equality bodies and enforcement; European human rights law; artificial intelligence and human rights; algorithmic discrimination, bias and data-driven inequality.[32] In addition to the senior experts, there are 36 national non-discrimination experts and 41 national gender experts (one for each country participating in the EELN). The coordination of the EELN is headed by Human European Consultancy, Utrecht University School of Law (the gender strand)[33] and Migration Policy Group (the non-discrimination strand). Altogether, the EELN currently comprises more than 100 experts. Although the Gender Equality Network has now become part of the EELN, it remains, as mentioned in the introduction, a separate strand within this larger network, with the same role and function it fulfilled previously as a separate network.

1.4.2 An expanding gender equality law landscape

The biggest changes for the gender network have been in relation to the issues and material scope covered, which increased as a result of societal developments (for example, algorithmic discrimination and new forms of employment, such as platform work), the growing body of EU gender equality law (now including, for example, work-life balance and violence against women) and other European/international developments (for example, the Istanbul Convention).

Until 1986, there were, in addition to Article 119 EEC on equal pay, only five gender equality directives that addressed the issue of equal treatment between men and women in terms of pay, employment, social security and self-employment.[34] Four of the five directives have since been repealed; currently, there are twelve directives in force in the area of gender equality law and related issues, such as work-life balance and part-time work.[35] The most recently adopted directives concern such issues as gender

[32] See, on the organisation of the Equality Law Network: https://www.equalitylaw.eu/about-us.

[33] The team coordinating the gender strand at Utrecht School of Law currently consists of Prof. Linda Senden; Franka van Hoof LLM, MA; Dr Alexandra Timmer; and Dr Birte Böök and Luana Almeida LLM. All four are specialists in gender equality, EU law and human rights law and they combine their academic work with the coordination of the gender strand, in which they are assisted by a student.

[34] Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women [1975] OJ L 45/19 (repealed); Council Directive 76/207/EEC of 9 February 1976 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 [1976] OJ L 39/40 (repealed); Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security [1978] OJ L 6/24; Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes [1986] OJ L 225/40 (repealed); and Council Directive 86/613/EEC of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood [1986] OJ L 359/56 (repealed).

[35] Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security [1978] OJ L 6/24; Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding [1992] OJ L 348/1; Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC [1997] OJ L 14/9; Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services [2004] OJ L 373/37; 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 (recast) [2006] OJ L 204/23; Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC [2010] OJ L 180/1; Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU [2019] OJ L 188/79; Directive (EU)

balance on company boards, pay transparency and enforcement mechanisms, violence against women and standards for equality bodies. In addition, the concept of gender itself has broadened, now explicitly encompassing gender reassignment in EU law.[36] Trans and intersex equality rights, gender identities and gender expression in relation to trans and intersex people now fall under the scope of the work of the EELN, too. While such broadening and reinforcing of EU gender equality law is certainly welcome, it is obvious that the scope and complexity of issues that have to be covered by the members of the EELN have increased dramatically. In the past, the issues covered by the Gender Network related mainly to employment issues, whereas the themes of reports produced by the Network recently have included violence against women,[37] algorithmic sex discrimination,[38] gender balance in political decision-making,[39] and harmful gender content and gender stereotypes in advertising and the media.[40] Similarly, in the past, the concept of a worker, which is central to the personal scope of most EU gender equality legislation, was rather clearly defined. Now, however, in a context of 'flexibilisation' and diversification of employment forms, such as solo entrepreneurs, it has become increasingly difficult to determine who exactly is entitled to protection and rights and who is not, where the concept of a *worker* is central to the personal scope of most EU gender equality legislation.[41] The difficulties in correctly applying EU gender equality law are reflected not only in the legislation in force but also in the case law of the CJEU. The list of relevant CJEU cases on gender equality is currently around 400 strong. The length of the preambles of the most recently adopted legislation is another indication of the rising complexity of EU gender equality law.[42] While the concepts used in the diverse fields of gender equality and non-discrimination law are the same or very similar (for example, the prohibitions of direct and indirect discrimination, positive action and (sexual) harassment), the relevant EU equality

2022/2381 of the European Parliament and of the Council of 23 November 2022 on improving the gender balance among directors of listed companies and related measures [2022] OJ L 315/44; Directive (EU) 2023/970 of the European Parliament and of the Council of 10 May 2023 to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms [2023] OJ L 132/21; Directive on combating violence against women and domestic violence (2024/1385/EU) [2024] OJ L 2024/1385; Directive Council Directive (EU) 2024/1499 of 7 May 2024 on standards for equality bodies in the field of equal treatment between persons irrespective of their racial or ethnic origin, equal treatment in matters of employment and occupation between persons irrespective of their religion or belief, disability, age or sexual orientation, equal treatment between women and men in matters of social security and in the access to and supply of goods and services, and amending Directives 2000/43/EC and 2004/113/EC [2024] OJ L 2024/1499; Directive (EU) 2024/1500 of the European Parliament and of the Council of 14 May 2024 on standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation, and amending Directives 2006/54/EC and 2010/41/EU [2024] OJ L 2024/1500.

36 Case C-13/94 *P v S and Cornwall County Council*, 30 April 1996, ECLI:EU:C:1996:170.

37 See, for example, de Vido, S. and Sosa, L (2021), *Criminalisation of gender-based violence against women in European States, including ICT-facilitated violence*, Publications Office of the European Union, available at: https://www.equalitylaw.eu/downloads/5535-criminalisation-of-gender-based-violence-against-women-in-european-states-including-ict-facilitated-violence-1-97-mb; and de Vido, S. (2025), *EU law in the light of the Istanbul Convention: Legal implications after accession*, Publications Office of the European Union, available at: https://www.equalitylaw.eu/downloads/6247-eu-law-in-light-of-the-istanbul-convention-legal-implications-after-accession.

38 Gerards, J. and Xenidis, R. (2020), *Algorithmic discrimination in Europe. Challenges and opportunities for gender equality and non-discrimination law*, Publications Office of the European Union, https://www.equalitylaw.eu/downloads/5361-algorithmic-discrimination-in-europe-pdf-1-975.

39 Kotevska, B. and Pavlou, V. (2023), *Promotion of gender balance in decision-making*, Publications Office of the European Union, available at: https://www.equalitylaw.eu/downloads/5824-promotion-of-gender-balance-in-political-decision-making.

40 Davies, D. (2025), *Tackling harmful gendered content and gender stereotypes in advertising and the media in Europe: New challenges and opportunities*, Publications Office of the European Union, available at: https://www.equalitylaw.eu/downloads/6260-tackling-harmful-gendered-content-and-gender-stereotypes-in-advertising-and-the-media-in-europe-new-challenges-and-opportunities.

41 Countouris, N. and Freedland, M. (2012), *The personal scope of the EU sex equality directives*, Publications Office of the European Union, available at https://www.equalitylaw.eu/downloads/2822-eu-sex-equality-directives.

42 The Pay Transparency Directive 2023/970 contains 66 recitals, for example, and the Work-Life Balance Directive 2019/1158, 52.

directives still differ in scope. The Framework Directive 2000/78 still only applies to employment,[43] while the Race Directive 2000/43 has a broader scope of application. The range of EU legislation on gender equality issues is even broader again, as it applies to – for example – statutory and occupational social security (Directives 79/7 and 2006/54), gender balance on company boards (Directive 2022/2381), pay transparency (2023/970), and violence against women and domestic violence (Directive 2024/1385). The lack of a coherent and consistent body of law applying to all the discrimination grounds stipulated in Article 19 TFEU has created a fragmented and complex field of law and hampers an intersectional approach, as illustrated by the 'headscarves' cases before the CJEU, which lack a gender perspective.[44]

The increasing complexity of EU gender equality law is reflected in the themes and length of the EELN's diverse publications. The Gender Network's tasks have grown in tandem with these developments: now, as well as assisting the EC in monitoring the timely and correct transposition, implementation and enforcement of EU gender equality law at national level, it also provides support for a more diverse range of activities as set out in the section below.

2. The enlargement of the Gender Equality Law Network, its expanding role and contributions to advancing gender equality

Over the years, the number of countries covered by the Gender Network gradually expanded – from 10 in 1983 to 33 in 2010, which encompassed the then 28 Member States, the 3 EEA countries (Iceland, Liechtenstein and Norway), as well as 2 candidate member states: North Macedonia[45] and Turkey. Gradually, more candidate member states were included,[46] such that, by April 2025, the Gender Network covered 41 countries in total. This enlargement mirrors EU developments and has resulted in an even greater flow of information in diverse forms and more publications aimed at different audiences, in addition to the EC.

The main functions of the Network have remained quite similar over the years. Whereas it used to focus mainly on monitoring the transposition and implementation of the existing EU acquis in the Member States, it has now gradually evolved to the point where it provides expert input to support different phases of EU lawmaking – from agenda-setting to preparing new legislation and monitoring transposition, implementation and compliance/enforcement.

2.1 How the Gender Network contributes to the advancement of gender equality in Europe

The Gender Network has, since its establishment, contributed to the advancement and development of gender equality law in the EU and in the countries involved in the Network by fulfilling diverse roles

[43] A so-called horizontal directive to extend the scope of the Framework Directive has still not been adopted: COM (2008) 426. See the European Parliament resolution on combating discrimination in the EU – the long-awaited horizontal anti-discrimination directive (2023/2582(RSP).

[44] See, for example, Case C-148/22 *OP v Commune d'Ans*, 28 November 2022, ECLI:EU:C:2023/924; and Vickers, L. (2023), 'Religious discrimination, headscarves and "exclusive neutrality": Backsliding by the CJEU', blog, 18 December, Oxford Human Rights Hub, https://ohrh.law.ox.ac.uk/religious-discrimination-headscarves-and-exclusive-neutrality-backsliding-by-the-cjeu/.

[45] Then called the Former Yugoslav Republic of Macedonia.

[46] Albania, Bosnia and Herzegovina, Georgia, Kosovo, Moldova, Montenegro, Serbia, Ukraine.

and functions for the European Commission, having access to the wealth of information provided by the Network and gaining insight into the different legal systems and drawing comparisons between them means that it can take appropriate steps concerning the implementation of legislation and identifying where (further) regulation would potentially be needed at EU level. This is especially true for topics that are less, or not yet, regulated at EU level and where the EC is looking at developing legal and policy initiatives. Different types of reports that the Network prepares have as an aim to identifying gaps in the legislation and whether there are any best practices at the national level that can be learned from. In fulfilling its various roles and functions, the Network produces many and quite diverse deliverables. The names and forms of these deliverables have changed over the years, owing to the tender specifications of the EC on the deliverables required, but their functions have remained very similar and have contributed to the advancement of gender equality in Europe in various ways and at various levels, as shown in the next section.

2.1.1 The Network's outputs and their role in consolidating the implementation and enforcement of the existing acquis

A major contribution of the Gender Network is its comprehensive, itemised, well-documented and detailed country reports on relevant national law and its overarching comparative analysis to the implementation and enforcement in practice of EU gender equality law. The country reports, which are authored by the national experts and cover all 41 Member States of the Network, provide an overview of the current state of affairs regarding the implementation of EU law at the national level. They discuss new concepts, such as multiple and intersectional discrimination, as well as new areas of EU law, including gender balance on company boards, work-life balance rights and violence against women. In addition, there is a focus on the concepts of direct and indirect discrimination, positive action, pregnancy and maternity protection, equal pay, equal treatment in employment, self-employment, occupational and statutory social security, goods and services, as well as on compliance and enforcement aspects. The comparative analysis is based on these country reports and currently covers gender equality law in the 27 EU Member States plus Iceland, Liechtenstein, Norway and the United Kingdom.[47] The range of issues addressed in the country reports and comparative analyses has broadened over the years, reflecting the current EU legal framework on gender equality.

These reports not only feed into the Commission's work but also have significant impact at the national level. Shortcomings listed in these reports can even concern central concepts of EU equality law, such as the legal definitions of direct and indirect sex discrimination – as discussed, for example, by the national expert for Greece in her country report[48] and in her flash report, published in 2019.[49] To our knowledge, the EC has not taken any measures to date to urge Greece to remedy these shortcomings. However, the Greek National Commission for Human Rights fully adopted the considerations of the gender equality expert for Greece in its own reporting, stating that the legal definitions of some central

[47] See Boök, B., De La Corte-Rodríguez, M. and Timmer, A. (2025), *A comparative analysis of gender equality law in Europe 2024*, Publications Office of the European Union, available at: https://www.equalitylaw.eu/downloads/6259-a-comparative-analysis-of-gender-equality-law-in-europe-2024.

[48] Petroglou, P. (2025), *Country Report Gender Equality. How are EU rules transposed into national law, Greece*, pp. 16–17 and 18–19, available at: https://www.equalitylaw.eu/downloads/6383-greece-country-report-gender-equality-2025.

[49] EELN (2019), *New Act 4604/2019 on substantive equality entered into force on 26 March 2019*, Flash Report, Greece, 1 July 2019, available at: https://www.equalitylaw.eu/downloads/4907-greece-new-act-4604-2019-on-substantive-equality-entered-into-force-on-26-march-2019-pdf-102-kb.

concepts fall short and referring to the relevant country report and flash report.[50] This example shows how the work of the Gender Network helps stakeholders advance the correct implementation of EU gender equality law into national law. It also highlights the role and potential impact of flash reports.[51]

The national experts can decide, on their own initiative, in addition to the country reports, to write flash reports on developments in their country concerning gender equality that they feel the EC needs to be informed about without delay. Besides keeping the EC informed on national legal, policy and case law developments that directly concern gender equality, this type of report also enables experts to warn the EC about certain developments that may not, initially, seem to concern gender equality but in fact do and which otherwise may have remained under the radar. Previous flash reports have covered, for example, the hiding of various (legal) initiatives aimed at restricting reproductive healthcare in other legislation in Poland,[52] and the absence of gender mainstreaming in new strategies and budgets in various countries. Serbia,[53] for example, recently reported that the country's newly adopted AI strategy, which failed to mention gender equality, women, or gender-sensitive approaches at any point in its strategic objectives, implementation measures, or evaluation indicators. This was identified as a significant gap, considering the risks for gender equality if AI development is not inclusive.

In addition to the country reports, the comparative analysis and the flash reports, the European Commission can quickly access specific information on national law by making an ad hoc request. The independence and expertise of the Network's national experts are of utmost importance here to ensure the information provided is factual and correct, and that the experts' assessments of issues – which are often delicate – are as objective as possible and free from political bias.

Since its establishment, the Gender Network has produced thematic reports, which address specific gender equality issues in depth and have diverse aims. Some provide information on the implementation of a specific directive, while others offer input for European gender equality strategies or new legislative proposals, sometimes covering issues not currently addressed in EU law. Some thematic reports highlight the relationship and alignment between EU gender equality law and other European law – for example, the Istanbul Convention.[54] Thematic reports cover a wide variety of themes, with the recurring ones including equal pay between women and men, positive action, indirect sex discrimination, (occupational and statutory) social security, sex-segregated services, equality bodies and enforcement aspects (such as access to justice and burden of proof). The publication *EU*

[50] NCHR (2024), 'Έκθεση Αναφοράς της ΕΕΔΑ για την κατάσταση των Γυναικών στην Ελλάδα' (*Report on the situation of women in Greece*), available at: https://nchr.gr/ta-nea-mas/1770-ekthesi-anaforas-tis-eeda-gia-tin-katastasi-ton-gynaikon-stin-ellada.html.

[51] The national experts regularly provide, on their own initiative, up-to-date information on national gender equality topics in flash reports, between 60 and 80 per year, on gender equality. These short documents cover relevant gender equality developments in the country concerned, such as legislative proposals, recent legislation, reports, policy developments and case law and are published on the EELN website.

[52] See https://www.equalitylaw.eu/downloads/5433-poland-new-law-provides-pharmacists-the-right-to-refuse-to-provide-pharmaceutical-services-if-its-performance-is-potentially-endangering-the-life-or-health-of-the-patient-or-others-104-kb.

[53] See, for example: https://www.equalitylaw.eu/downloads/6309-serbia-strategy-for-the-development-of-artificial-intelligence-in-the-republic-of-serbia-2025-2030.

[54] de Vido, S. (2025), *EU law in the light of the Istanbul Convention: Legal implications after accession*, Publications Office of the European Union, available at: https://www.equalitylaw.eu/downloads/6247-eu-law-in-light-of-the-istanbul-convention-legal-implications-after-accession.

Gender Equality Law discusses the EU gender equality acquis for a broad public.[55] Thematic reports allow a thorough review of the transposition and implementation of EU gender equality law into national law. In addition to legislation requiring implementation, experts signal inconsistencies with other rules that do not meet the EU requirements. The themes addressed reflect the expanding body of policies and legislation – for example, on equal treatment between women and men in (access to) goods and services[56] and violence against women.[57] The reports analyse the implementation of older, unamended directives (for example, on pregnancy protection[58] or part-time work[59]) but also of updated and/or new directives – for example, on equal pay,[60] self-employment,[61] or parental leave.[62] Thematic reports have also concerned EU legislation relating to work-life balance issues, such as the implementation of the Pregnancy Directive 92/85,[63] the Parental Leave Directive 2010/18,[64] and protection against dismissal and unfavourable treatment of workers taking family leave.[65]

Thematic reports have helped advance gender equality law at both EU and national level in relation to various issues. This was certainly the case with two specific and extensive thematic reports produced by the Network in 2022 and 2023 on the law of EU Member States aimed at implementing the Work-life Balance Directive 2019/1158.[66] The reports revealed that many Member States had not transposed this directive in time, correctly or completely. Burri and Van Eijken concluded in 2009 that

55 Burri, S. (2018), *EU gender equality law – Update 2018*, Publications Office of the European Union, available at: https://www.equalitylaw.eu/downloads/4767-eu-gender-equality-law-update-2018-pdf-444-kb.

56 Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services [2004], OJ L 373/37.

57 Directive (EU) 2024/1385 of the European Parliament and of the Council of 14 May 2924 on combating violence against women and domestic violence, OJ L 2024/1385.

58 Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, OJ L 1992, 348/1.

59 Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC, OJ 1997, L 14/9.

60 Now, Article 157 TFEU, formerly Article 141 EC and Article 119 EEC; Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women, OJ 1975, L 45/19 (repealed); 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 (recast), OJ 2006, L 204/23; and Directive (EU) 2023/970 of the European Parliament and of the Council of 10 May 2023 to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms, OJ 2023, L 132/21.

61 Council Directive 86/613/EEC of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood, OJ L 1986, 359/56 (repealed); and Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC, OJ 2010, L 180/1.

62 Council Directive 96/34/EC of 3 June 1996 on the Framework Agreement on parental leave concluded by UNICE, CEEP and the ETUC, OJ L 1996, 145/4 (repealed); Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC, OJ 2010, L 68/13 (repealed); and Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU, OJ 2010, L 188/79.

63 Prechal, S. and Senden, L. (1996), *Implementation of Directive 92/85 (Pregnant Workers). Special report 1995 of the Network of Experts on the implementation of the Equality Directives*, V/1717/96-EN.

64 Do Rosario Palma Ramalho, M., Foubert, P. and Burri S. (2015), *The implementation of Parental Leave Directive 2010/18*, available at: https://www.equalitylaw.eu/downloads/2723-parental-leave-en.

65 Masselot, A. (2018), *Family leave: enforcement of the protection against dismissal and unfavourable treatment*, available at: https://www.equalitylaw.eu/publications/thematic-reports?page=2.

66 de la Corte-Rodríguez, M. (2022), *The transposition of the Work-Life Balance Directive in the EU Member States: A long way ahead*, Publications Office of the European Union, available at: https://www.equalitylaw.eu/downloads/5779-the-transposition-of-the-work-life-balance-directive-in-eu-member-states-a-long-way-ahead; and de la Corte-Rodríguez, M. (2023), *The transposition of the Work-Life Balance Directive in EU Member States (II): Considerable work still to be done*, Publications Office of the European Union, available at: https://www.equalitylaw.eu/downloads/6048-the-transposition-of-the-work-life-balance-directive-in-eu-member-states-ii-considerable-work-still-to-be-done.

'EU rules and case law have provided a crucial impetus to gender discrimination law in the Member States and the EEA countries', but the authors also pointed to the need for effective enforcement. In their view, 'law in the books must also be law in everyday practice. Unfortunately, the law in the books and law in practice still differ today, sometimes dramatically.'[67] These conclusions of the Network coordinators at that time are, alas, still valid today. The Network's role in consolidating the implementation and enforcement of the existing gender equality acquis is therefore primary, not only now but also in the future as the body of equality law continues to grow in recent years.

2.1.2 Contributions of the Gender Network to the development of (new) EU gender equality law and policy measures

The various specific reports to ad hoc requests from the European Commission regarding particular themes of its work programme have also proven to be helpful tools for the EC when preparing a legislative proposal. For example, those produced on EU and national policies and laws on the reconciliation of work and family life have, together, provided detailed, up-to-date and useful information for the drafting and adoption of the Work-life Balance Directive 2019/1158.

Particularly extensive have been the Network's work concerning the advancement of legal protection against violence against women and domestic violence. Over the years, and since well before the Directive 2024/1385 was adopted, the Network has reported relentlessly on violence against women, pointing to the need for regulation at EU level and providing legal expertise for regulating this issue in diverse ways. When preparing this directive, the EC asked the Network to write a thematic report and provide it with an overview of the extent to which violence against women and domestic violence were regulated at the national level, and how central concepts were defined and qualified. Such national input also offered detailed information to the EC on innovative protections and higher levels of protection than those required by EU law and was useful information in drafting the directive.

As indicated in the section above, the reconciliation of work and family life is another area of gender equality law where the Network was involved. When most Member States provide stronger protection and more rights on certain issues than provided for in EU law, this is sometimes reflected in a proposal for a directive from the Commission. A good example of this is the issue of paternity leave, for which the level of protection was higher at the national level, as revealed in a variety of reports by the Network. The Work-Life Balance Directive (EU) 2019/1158 now provides for, among others, a right to 10 working days of paternity leave paid at a level that is at least equivalent to the level of national sick pay.[68] In addition to the thematic reports, the overall assessment sections of the country reports and flash reports provide information – and thus interesting suggestions for the development of EU gender equality law and related areas – on issues in national law that are further developed than in EU law.

[67] Burri, S. and van Ejjken, H. (2009), *Gender equality law in 33 European countries: How are EU rules transposed into national law?* Publications Office of the European Union, p. 39.

[68] Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU, OJ L 188 12.7.2019, pp. 79–93.

2.1.3 Signalling (new) areas that require regulation at EU level and the Network's role in agenda-setting

The European Commission also uses the expertise gathered in the Network for developing new areas of focus and strategies. For example, during its meeting with the Network in Brussels in November 2024 the EC asked the Network to offer input to the *Gender Equality Strategy 2026-2031*. A comparative document was compiled by the coordination team at this meeting from the input provided by national experts, which also highlighted relevant issues on the ground from the Member States, and then presented at the meeting. In addition, the EC asked the Network, together with other stakeholders, to offer input to the new strategy in all its recent thematic reports and European Equality Law Review articles. The articles on gender equality law in the *European Equality Law Review* often discuss recent approaches, concepts and new themes, such as intersectionality,[69] sexual harassment[70] or paid domestic work.[71] The EELR thus not only provides information on existing EU and national law and developments but also offers new perspectives on and contributions to current debates.

Thematic reports often address issues that are not yet firmly developed in existing directives and are currently lacking on the EU gender equality agenda. Examples include the still rather limited (personal) scope of directives in the field of employment with their central concept of a 'worker', which does not cover the employment situation or meet the protection needs of many (such as 'false' solo entrepreneurs or bogus self-employed persons,[72] on-call workers and platform workers).[73] The rights of carers and flexible working arrangements in the Work-life Balance Directive 2019/1158 are still rather restricted. Many carers, workers and solo entrepreneurs who depend on one main client need a stronger right to influence their working hours in relation to caring responsibilities. How to develop the potential of the rather outdated Directive on Statutory Social Security 79/7, and the Goods and Services Directive 2004/113, is discussed in the most recent thematic reports on these two directives.[74] By analysing the shortcomings, gaps and uncertainties in the applicable EU law in these areas and by offering new insights, the Network actively signals issues that could (or even should) be addressed from a gender equality perspective, both at EU and national level. By publishing thematic reports on innovative topics, the Network also contributes to agenda-setting, helping the EC draft

69 See, for example, Xenidis, R. (2022), 'Intersectionality from critique to practice: Towards an intersectional discrimination test in the context of "neutral dress codes"', *EELR* 2/2022, pp. 21–37; and Dube, N. (2024), 'Taking stock of the EU Pay Transparency Directive's intersectional approach', *EELR* 2024, pp. 43–57.

70 Petroglou, P. (2019), 'Sexual harassment and harassment related to sex at work: Time for a new directive building on the EU gender equality acquis', *EELR* 2/2019, pp. 16–34.

71 Pavlou, V. (2020), 'Whose equality?' *EELR* 1/2020, pp. 36–46.

72 According to Recital 8 of the Directive on transparent and predictable working conditions 2019/1152, 'bogus self-employment occurs when a person is declared to be self-employed while fulfilling the conditions characteristic of an employment relationship, in order to avoid certain legal or fiscal obligations'.

73 See, for example, Countouris, N. and Freedland, M. (2012), *The personal scope of the EU sex equality directives*, Publications Office of the European Union, available at https://www.equalitylaw.eu/downloads/2822-eu-sex-equality-directives; and Barnard, C. and Blackham, A. (2015) *Self-employed. The implementation of Directive 2010/41 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity*, available at: https://www.equalitylaw.eu/publications/thematic-reports?page=2.

74 Eleveld, A. and Wesselius, E. (2025) *Gender Equality in Statutory Social Security: the future of Directive 79/7*, available at: https://www.equalitylaw.eu/downloads/6246-gender-equality-in-statutory-social-security-the-future-of-directive-79-7 and Caracciolo di Torella, E. (2021) *Gender Equality in Goods and Services. In search of the potential of a forgotten directive*, https://www.equalitylaw.eu/downloads/5614-directive-2004-113-ec-on-gender-equality-in-goods-and-services-in-search-of-the-potential-of-a-forgotten-directive-1-38-mb.

policies and legislation in such areas as algorithmic discrimination,[75] gender balance in political decision-making,[76] trans and intersex equality rights,[77] and harmful gendered content and gender stereotypes in advertising and the media.[78] A report on that last theme looks at whether and to what extent the EU Member States and the EEA countries regulate harmful gendered content in the media and in advertising. As well as determining where the gaps are in the law it also identifies opportunities to address them at EU level and points to best practices from which to draw inspiration at the national level.

The Gender Network increasingly offers tools for addressing certain forms of (sex) discrimination in practice. The thematic report on algorithmic discrimination, for example, has a chapter on 'Enforcing algorithmic equality: solutions and opportunities for gender equality and non-discrimination', which includes a proposal for an integrated approach to algorithmic discrimination.[79] The Gender Network also produces a handbook for practitioners on how to interpret and apply the principle of intersectionality in the Pay Transparency Directive 2023/970. Such tools, which can be used in practice by diverse actors, constitute an important contribution by the Gender Network to putting the law in the books into practical action.

2.1.4 Creating impact through dissemination of the Network's outputs: the broad reach of its website and annual meetings of the entire network with representatives of the European Commission and diverse stakeholders

In the past, not all materials were publicly available, but with the development of the EELN's own website in 2014,[80] a wealth of materials has become accessible to a very broad public. Nearly all the information gathered by the experts is now available on the website and is used by students and academics, judges and lawyers, NGOs, public servants and many more interested parties. Moreover, various universities use the Network's reports as study material for their courses, providing students with a solid understanding of the EU gender equality acquis and its current and future challenges. An example of the broad remit of the work of the Gender Network and the value of the EELN's website far reach is a request received by the gender equality coordination team from the Research Directorate of the Immigration and Refugee Board of Canada, which urgently needed access to the country reports for their work. This illustrates that the Network has impact even beyond European borders. While it is difficult to determine the exact impact of the Gender Network, traffic to the EELN website and downloads of the various reports on it are monitored and it is clear that its materials are widely

[75] Gerards, J. and Xenidis, R. (2020), *Algorithmic discrimination in Europe. Challenges and opportunities for gender equality and non-discrimination law*, Publications Office of the European Union, https://www.equalitylaw.eu/downloads/5361-algorithmic-discrimination-in-europe-pdf-1-975.

[76] Kotevska, B. and Pavlou, V. (2023), *Promotion of gender-balance in political decision-making*, Publications Office of the European Union, https://www.equalitylaw.eu/downloads/5824-promotion-of-gender-balance-in-political-decision-making.

[77] van den Brink, M. and Dunne, P. (2018), *Trans and intersex equality rights in Europe – A comparative analysis*, Publications Office of the European Union, https://www.equalitylaw.eu/downloads/4739-trans-and-intersex-equality-rights-in-europe-a-comparative-analysis-pdf-732-kb.

[78] Davies, D. (2025), *Tackling harmful gendered content and gender stereotypes in advertising and the media in Europe: New challenges and opportunities*, Publications Office of the European Union, available at: https://www.equalitylaw.eu/downloads/6260-tackling-harmful-gendered-content-and-gender-stereotypes-in-advertising-and-the-media-in-europe-new-challenges-and-opportunities.

[79] Gerards, J. and Xenidis, R. (2020), *Algorithmic discrimination in Europe. Challenges and opportunities for gender equality and non-discrimination law*, Publications Office of the European Union, https://www.equalitylaw.eu/downloads/5361-algorithmic-discrimination-in-europe-pdf-1-975, pp. 121–150.

[80] See: https://www.equalitylaw.eu/.

consulted.[81] In addition to being disseminated on the website throughout the year, the EELN's reports are presented and discussed with the entire network at its annual legal seminar, which brings together some 200 representatives of the European Commission, Member State governments, equality bodies, EU umbrella organisations, academics from across Europe and members of the EELN itself. During the seminar, the participants discuss the work and findings of the EELN, exchange valuable firsthand information from their respective countries and develop ideas for new research in various workshops and plenary sessions. The legal seminar, which used to be just an in-person event in Brussels, is now held online too, allowing many more stakeholders to join in and furthering its reach. The keynote speeches, videos and materials presented during the workshops are made available to the public.[82] These very fruitful meetings promote mutual learning among participants from highly diverse backgrounds, enabling them to exchange expertise and views from different perspectives. The meetings allow members of the Network to bring issues to the attention of the EC that require action, which may include further regulation or action to be taken against Member States.

3. Future prospects of the gender strand of the EELN

The role of the gender strand of the EELN has remained essentially the same over the years. However, its importance and the type of support it provides have changed significantly, as it now provides input at all stages of law- and policy-making, as well as exploring new fields of (legal) action for the EC, in addition to its monitoring tasks. As described above, several factors have made the work of the coordination team and the national experts of the EELN's gender strand more challenging in recent years. These include the growing number of countries involved in the Network the merging of two previously separate operational networks into one large network and, most importantly, the expanding body of legislation in the field of gender equality, together with societal and political developments reflecting a backlash against gender equality issues.

EU gender equality law has evolved and increased considerably since 1957 and now includes – in addition to Treaty and Charter provisions relating to gender equality - Article 157 TFEU on equal pay and 12 directives currently in force, as well as substantial case law from the CJEU. Moreover, the EU operates in a European law context (influenced by the conventions of the Council of Europe, for example) and in accordance with international law (such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)[83]). The expansion of EU law, in relation to European and international law, requires huge efforts in terms of compliance with and enforcement of numerous gender equality issues at various levels of national law. Robust monitoring of complete and correct transposition and implementation of the gender equality *acquis communautaire* is of utmost importance, as is its enforcement in practice. This requires, in our view, collaboration among different stakeholders – not only the EC and the Member States but also active equality bodies, NGOs, lawyers, networks and monitoring bodies, etc. – who can rely on up-to-date specific expertise on EU gender equality law. The EELN certainly has – and will continue to have – an essential role to play in this

[81] The EELN's comparative analyses and thematic reports are also available on the website of the Publications Office of the European Union.

[82] See: https://www.equalitylaw.eu/seminars.

[83] See Case C-621/21 *WS v. Intervyuirasht organ na Darzhavna agentsia za bezhantsite pri Ministerskia savet*, ECLI:EU:C:2024:47, paras 37 and 44–47; Case C-646/21 *K and L v. Staatssecretaris van Justitie en Veiligheid*, ECLI:EU:C:2024:487, paras 36–37; and Joined Cases C-608/22 and C-609/22 *AH and FN v. Bundesamt für Fremdenwesen und Asyl*, ECLI:EU:C:2024:828, para. 33.

regard by providing this independent expertise. In addition, the Gender Network can fulfil a role in addressing issues that cut across different areas of EU law but should be considered from a gender perspective. Access to healthcare is one such issue. The possibilities the European Commission has to address such a theme might be greater than initially expected. The increasing scope and complexity of EU gender equality law is reflected in the volume and richness of the Gender Network's annual written output[84] – a valuable resource that is useful not only for the EC but for a wide range of stakeholders. Regarding Odile Quintin's assertion that implementation problems are 'to a large extent related to attitudes and mentalities' and that 'it is necessary to promote a much broader policy, bearing on sensitivity, education and positive actions to remedy *de facto* inequalities'[85] [emphasis in the original], careful reconsideration may be required regarding how best to achieve this goal. In this era, when social media has become the main source of information for many people who prefer quick and condensed information, there is a concern that lengthy publications may not reach a broad public and thus effect real change. And while the expanding body of EU gender equality law means the EC will, understandably, increasingly require specific, expert, up-to-date information, it has become quite challenging to manage such a large network, with such a wide and voluminous range of outputs, many of which have to be produced within very tight deadlines. The demands put on the national experts have increased dramatically over the years. Hence, we feel it is time to explore alternative ways of providing information to the EC, stakeholders and the wider public – for example, by providing brief and specific output on the issues at hand and embracing different media forms. Tailored and up-to-date information can be provided in many ways.

The advancement of gender equality, and therefore the work of the gender strand of the EELN, is subject to rapidly changing contexts. Digitalisation and AI, flexibilisation of various forms of work, diversification of working time, working hours and remote working, as well as platform work and solo entrepreneurship have all had a great impact on the labour market and work-life balance issues. The EELN – and the EC's Gender Equality Unit – operates in a (geo)political and societal context that is increasingly unfavourable to gender equality, particularly owing to the rise of right-wing movements, hate speech in social media and misogyny (for example, in politics). The participation and representation of women in politics are increasingly challenged. Resistance against so-called gender ideology has emerged in many countries involved in the EELN and sometimes hampers the work of the likes of NGOs and lawyers advocating on gender issues, and academics working in an environment where diversity, equality and inclusion (DEI) policies are being rolled back and/or budget cuts are being implemented. The EELN must therefore not only continue to focus on monitoring the implementation and transposition obligations of Member States vis-à-vis the existing body of EU gender equality law but also ensure it has the capacity and space to continue its role in signalling the problems and challenges these new developments may pose to the advancement of gender equality in the EU, and to provide insight on how these can be addressed at EC level. EU gender equality law is a rich and promising field of law, and a source of inspiration in many jurisdictions. Implementation and enforcement in the diverse areas now covered by EU legislation remain of utmost importance. The

[84] In total, it currently amounts to 31 country reports (on average, 100 pages per report); a comparative analysis based on the 31 country reports (authored by the Utrecht University coordination team; on average, 250 pages); two or three thematic reports per year (about 100 pages each); input for the annual *European Equality Law Review* (on average, 200 pages); 120 ad-hoc requests per year, on average; and 80 flash reports per year, on average.

[85] Quintin, O. (1986), 'Treatment equality of men and women in the European Communities', in Verwilghen, M. (ed.), *Equality in law between men and women in the European Community,* Vol. 1 *General Reports*, Louvain-la-Neuve, Presses Universitaires de Louvain, p. 119.

collective memory, independent and specialised expertise, and impetus present in the EELN are invaluable, and it is to be hoped that the Network will, in one form or another, be able to continue to promote gender equality law – one of the fundamental principles of EU law.[86]

4. Conclusion

The Gender Network (now the gender equality strand of the European Equality Law Network) is a unique and vast project that has grown enormously since its establishment, in terms of not just its geographical and material coverage but also its reach and importance to the European Commission and its many stakeholders. Its impact has grown significantly over the years, with the EC increasingly relying on the information it receives through the gender strand of the EELN in preparing legislative initiatives on gender equality issues and enforcement policies and legal actions.

The specialised, up-to-date, and reliable knowledge on gender equality law at both the EU and the national level provided by the independent experts of the Gender Network is invaluable, for the EC and for a broad public. The Gender Network fulfils a vertical ascendent function by giving independent information in diverse ways to the European Commission, but the Network also has a descendent vertical function towards the national level, sharing its expertise with a very broad public, not only in the EU, but even worldwide through its publications and its website.[87] A further benefit of the Network is its horizontal role: national experts, in their roles as advocates or representatives of NGOs, exchange information – for example, when preparing a case or during court proceedings. To continuously provide trustworthy independent information in different forms for very diverse groups has become even more important in a world with increasing risks of disinformation due to AI and social media.

The different functions and roles of the Gender Network become even more relevant in the light of the current and potential enlargement of the EU, which require outspreading monitoring activities from the relatively small staff of the EC's Gender Equality Unit. The - now 41- specialised national independent experts in gender equality provide the up-to-date information the EC is not able to gather and evaluate itself. The Network's assisting role in consolidating and advancing the EU gender equality *acquis* is therefore essential and has become even more significant given the current number of Member States and (potential) candidate member states. The independent expertise of the Gender Network is of utmost importance, not only when assessing the implementation and enforcement of existing EU and national law, but also when fulfilling a signalling and agenda setting role. Specific knowledge on national law is often a source of inspiration for EC's proposals enriching and strengthening EU gender equality law. Some thematic reports of the Gender Network feed directly into proposals of the EC. The collective memory held in the Gender Network since 1983 is often very

[86] Article 2 TEU states that 'the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.' According to Article 3(3) TEU, one of the aims of the EU is to 'combat social exclusion and discrimination, and (…) promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child'. In addition, Article 8 TFEU stipulates that 'in all its activities, the Union shall aim to eliminate inequalities, and to promote equality, between men and women'. The Charter of Fundamental Rights of the EU prohibits, *inter alia*, discrimination on any ground, including sex (Article 21), and recognises the right to gender equality in all areas, thus not only in employment, and the possibility of positive action for its promotion (Article 23).

[87] See: https://www.equalitylaw.eu.

welcome. The continuation of the EELN's work will ensure further contributions to the collective memory and archive, as the past four decades years of the gender strand of the network have shown.

The potential of EU gender equality law to inspire other areas can be further developed, by making the most of the wealth of information produced by the EELN.[88] In the current political and societal context, which is unfavourable to gender equality, a strong and sustainable EELN is a necessary asset for implementing, strengthening and advancing EU gender equality law, in particular – but certainly not only – for the European Commission and proves indeed to be a 'wonderful example of comparative law in action'.

[88] See, for example, Prechal, S. (2018), 'EU gender equality law: A source of inspiration for other EU law areas?' *EGELR* 1/2018, available at: https://www.equalitylaw.eu/downloads/2790-european-gender-equality-law-review-1-2008.

Female representation in politics: strengthening women's political participation in the European Union

Claudia Morini*

Introduction

According to the recently released UN publication, 'Women's rights in review 30 years after Beijing', the five fundamental priorities for achieving the goals of the Beijing Declaration and Platform for Action for all women and girls include the need to 'achieve equal participation and influence in decision-making at all levels, including for marginalised groups of women and girls, and open and protect spaces for women's groups to operate'.[1]

The enduring underrepresentation of women in politics constitutes a fundamental challenge to democratic governance, gender equality and inclusive decision-making processes.

The underrepresentation of women in policymaking and governance mechanisms is not merely a numerically measurable fact, it is also part of the broader debate about the promotion of women's rights in our societies and, more specifically, it is part of the movement aimed at empowering women – especially in relation to the exercise of their civil and political rights.

Despite global progress toward democratisation, women remain significantly underrepresented in government, particularly in ministerial and executive roles. Structural and cultural barriers – including traditional political practices, gender bias, caregiving responsibilities and the high financial cost of running for office – continue to hinder women's political participation. Thus, notwithstanding recent international and regional commitments to ensuring women's full and equal political participation, female political activists, leaders, politicians and candidates continue to face tough and significant hindrances, including gender-based harassment, hate speech and online violence. These forms of abuse not only deter women from entering politics, they also contribute to the early stepping back from political office of many female leaders (so-called 'chilling effect'), weakening democratic institutions and reinforcing systemic inequalities. Against this background, the 2023 report by the

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1 See UN Women, *Women's rights in review 30 years after Beijing* (2025), New York, UN Women: womens-rights-in-review-30-years-after-beijing-en.pdf. The five priorities are: 1. Close the accountability gap; 2. Elevate women's voices; 3. Close the financing gap; 4. Harness technology; 5. Shock-proof services and infrastructure. See, also, the original Beijing Declaration of the Fourth World Conference on Women, *Report of the 4th World Conference on Women*, A/CONF.177/20/Rev.1, 4-15 September 1995. In this document it is recalled that according to the 1948 Universal Declaration of Human Rights everyone has the right to participate in the governance of their country.

European Equality Law Network on gender balance in political decision-making 'categorised' structural obstacles to women's effective participation in politics, identifying the 'five Cs': care, cash, confidence, culture and candidate selection.[2]

The issue of women's political participation in the democratic life of the European Union's Member States is undoubtedly very topical. Indeed, the active role of women in politics is one of the most significant indicators of the vibrant and inclusive democracies that promote and facilitate participatory citizenship for women.

Empowering women and promoting their autonomy – especially by improving their social, economic and political status – is essential for achieving transparent, accountable governance and sustainable development across all areas of life.

Equality in political leadership is not only a matter of justice or gender equality; it is a prerequisite for democratic legitimacy and effective governance. When women are underrepresented in political decision-making, democratic institutions fail to reflect the diversity of the societies they serve. This undermines core EU values, including equality, pluralism, and participation.

Importantly, diverse leadership is not just beneficial for women – it leads to better policymaking overall: inclusive political bodies are more responsive, innovative, and capable of addressing a broader range of societal needs. They are less prone to 'group think' and more likely to produce balanced, sustainable policies. The presence of women in leadership roles expands the scope of political debate and improves outcomes in all areas. Therefore, gender balance in political leadership is both a democratic imperative and a practical necessity. Without the full and equal participation of women at all levels of decision-making, the EU cannot fully realise its legal commitments or the broader goals of equality, development, and peace.

Against this backdrop, this article explores the current state of women's political participation in the European Union, with a focus on the institutional, legal and political tools available to strengthen female representation across EU Member States. Despite significant progress at the supranational level – where key EU institutions are now led by women – structural barriers, gender stereotypes and unequal power dynamics continue to hinder full and effective gender parity in political life.

A dedicated section addresses the emergence of gendered political violence and online hate speech, which represent an increasingly serious threat to women's participation and safety in public life. These phenomena are assessed not only as social challenges but as issues with legal and institutional implications that demand EU-level action.

Building on the existing legal framework – particularly the Treaty provisions, the Charter of Fundamental Rights and anti-discrimination instruments – this article outlines concrete pathways for

[2] See Kotevska, B. and Pavlou, V. (2023), *Promotion of gender balance in political decision-making*, European Equality Law Network / Publications Office of the European Union, available at: https://data.europa.eu/doi/10.2838/749712, p. 121. Regarding 'care', the report specifies that gender inequality in public life often begins at home, where unequal divisions of labour and power restrict women's time and ability to engage in public decision-making. Against this scenario, a more balanced sharing of responsibilities between men and women would both improve quality of life and expand women's capacity to shape public policy and represent their interests effectively. Another interesting aspect touched on by the report is the lack of an intersectional perspective: there is, in fact, almost a complete absence of measures tailored for or aimed at the promotion of participation by women from minority groups. Consequently, intersectional discrimination could be considered as an additional cause of this underrepresentation.

further EU engagement and goes beyond existing assessments by offering a forward-looking perspective aimed at informing the formulation of the next EU Gender Equality Strategy 2026-2030, which the Commission is currently developing.

In conclusion, the article calls for a renewed, coordinated EU strategy aimed at ensuring equal political representation, recognising women's participation not only as a democratic imperative but as a legally protected right under EU law. Strengthening female political participation is presented as essential to the Union's legitimacy, inclusiveness and adherence to its founding values.

1. Women's political participation in the European Union: patterns, current challenges and EU responses

The patterns of women's political participation in the European Union reveal both progress and persistent challenges.

At the supranational level, the European Union has demonstrated a clear commitment to promoting women's leadership. Important positions are now held by women, including Roberta Metsola and Ursula von der Leyen, respectively President of the European Parliament and President of the European Commission; Kaja Kallas, the current EU High Representative for Foreign Affairs and Security Policy; Christine Lagarde at the helm of the European Central Bank; Kata Tüttő, President of the European Committee of Regions; Teresa Anjinho, the recently appointed European Ombudsman (following the mandate of Emily O'Reilly, who served as Ombudsman from 2013); Carlien Scheele, Director of the European Institute for Gender Equality (EIGE); and Sirpa Rautio, who is Director of the EU Agency for Fundamental Rights (FRA).[3]

However, this positive picture at the supranational level contrasts with broader global and European realities. According to the *Women in Politics: 2025 Map* by UN Women and the Inter-Parliamentary Union, women continue to be underrepresented at all levels of decision-making and achieving gender parity in political life remains a distant goal. Moreover, the distribution of ministerial portfolios remains highly gendered: women are more frequently entrusted with areas such as human rights, gender equality and social protection, whereas men continue to dominate strategic sectors such as foreign affairs, finance, home affairs and defence.[4] This global imbalance is also mirrored across EU Member

[3] By contrast, when it comes to decision-making authority in public bodies more widely, it is to be noted that the European Council remains male-dominated, with very few female heads of state or government. In addition, the gender balance in the EU Court of Justice is very poor. Furthermore, examining the composition of the European Parliament from the first direct elections in 1979 to the present day, we can observe a consistent increase in the number of female Members of the European Parliament (MEPs), except for in the most recent legislature. For the first time, a slight decline was recorded – down by 1 %, from 40 % in the 2019-2024 term to 39 % in the current one. From 1979 to the present, the percentage of elected women in the European Parliament has increased by 23 %. While encouraging, this result is not yet fully satisfactory, especially considering the June 2024 election outcomes. A comparative analysis of the proportion of women elected in each Member State, measured against the EU average, yields some noteworthy insights. Italy, with 32.89 %, falls below the EU average of 38.53 %. Cyprus, remarkably, elected no women to the European Parliament. At the top of the ranking are France (50.62 %), Spain (50 %), Finland (60 %) and Sweden, which leads with 61.90 % female representation. See https://results.elections.europa.eu/en/mep-gender-balance/2024-2029/. For an in-depth analysis of the 'gendered' dimension of EU politics, see Frech, E. (2024), 'Gendered European Careers? Representation and the challenges in women's political careers', *European Union Politics*, 26(1), pp. 3-22.

[4] Available at: https://www.unwomen.org/en/digital-library/publications/2025/03/women-in-politics-map-2025. See also: World Economic Forum (2025), *Global gender gap report 2025*, available at https://www.weforum.org/publications/global-gender-gap-report-2025/.

States. According to the latest update of the Gender Equality Strategy Monitoring Portal,[5] which brings together data from different sources and tracks progress on the European Commission's Gender Equality Strategy (GES) 2020-2025,[6] women's representation in national parliaments grew by an average of 9.4 percentage points between 2010 and 2024 across the region, reaching a share of 33.4 %. Seven EU Member States (Austria, Belgium, Denmark, Finland, the Netherlands, Spain and Sweden) have achieved gender balance above 40 % in their national parliaments. This result was partially driven by the introduction of legislative quotas.[7] Nonetheless, overall representation continues to stagnate, highlighting persistent structural barriers and power imbalances.[8]

Recognising these challenges, the European Commission has increasingly prioritised women's political participation. The *Roadmap for women's rights* points out that, among the long-term policy objectives for upholding and advancing women's rights and gender equality across the EU, a key role must be played by the promotion of political participation and equal representation of women.[9] Furthermore, the European Democracy Shield will complement these efforts by supporting women in politics, including through measures to safeguard political candidates and elected representatives.[10] Together, these initiatives reflect a growing EU commitment to addressing structural inequalities and fostering more inclusive political leadership across Europe.

Political participation is not merely a political ideal, it is also a legally protected right under both EU law and international human rights instruments, to which Member States and EU institutions are bound. Within the EU legal order, this right is affirmed through Treaty provisions, the Charter of

5 See https://composite-indicators.jrc.ec.europa.eu/ges-monitor.

6 The GES, among other issues, called on EU Member States to 'develop and implement strategies to increase the number of women in decision-making positions in politics and policy-making'. See Commission Communication COM/2020/152 final, 5 March 2020: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0152, para. 3.

7 See https://joint-research-centre.ec.europa.eu/jrc-news-and-updates/womens-political-representation-improves-road-parity-remains-long-2025-03-07_en. So far, 11 EU Member States have introduced legislative gender quotas for candidate lists in national elections: Belgium, Croatia, France, Greece, Ireland, Italy, Luxembourg, Malta, Poland, Slovenia and Spain. Of these, 10 have also applied such quotas to European Parliament elections. Most of these laws set a minimum threshold for each gender, typically ranging from 35 % to 59 % of the candidates. Some regulations include specific mechanisms such as 'zipper systems', which require candidates on lists to alternate by gender or ensure gender balance within a certain number of positions on the list. Malta, on the other hand, has implemented a gender corrective mechanism that automatically allocates up to 12 additional seats to the under-represented gender if fewer than 40 % of elected members belong to each gender. See European Commission (2025), *2025 report on gender equality in the EU*, available at: https://commission.europa.eu/document/download/055fdbab-5786-425e-a072-652bf53d8fe4_en?filename=Gender%20Equality%20Report.pdf. In the context of a meeting of the European Cooperation Network on Elections (ECNE), held on 19 April 2024, Member States engaged in discussions on various topics, including women's political participation. See https://commission.europa.eu/document/e7af20e7-c488-4c5b-b5d9-780477da507d_en.

8 According to Members of Parliament from across the OSCE region who gathered in Helsinki, Finland, on 3-4 June 2025 for the workshop 'Realising Gender Equality in and by Parliaments', despite intense efforts, 'progress has stalled across the OSCE region' and there are 'worrying signs of regression in gender equality, alongside growing resistance and mobilisation against it'. See 'Call to renew commitment: Helsinki Pledges on gender-sensitive parliaments in the OSCE region', available at: https://www.osce.org/files/f/documents/5/2/592562.pdf. See, also, the EIGE *Gender Statistics Database - Politics*, available at https://eige.europa.eu/gender-statistics/dgs/browse/wmidm/wmidm_pol and the EIGE's brief on *Gender Balance in Politics*, published in 2025, available at https://eige.europa.eu/sites/default/files/documents/gender-balance-in-politics.pdf.

9 See European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Roadmap for Women's Rights, Brussels, 7 March 2025, COM (2025) 97 final. This objective was already considered to be of pivotal importance in the context of the most important international commitment regarding the enhancement of the conditions of women worldwide, that is the Beijing Declaration and Platform for Action, adopted in the context of the Fourth World Conference on Women, held in Beijing from 4 to 15 September 1995.

10 The European Commission has stressed that because 'gender equality is also key to democratic participation and societal resilience… the European Democracy Shield will contribute to empowering and supporting women in politics, with dedicated measures on the safety of political candidates and elected representatives' (p. 5). See https://epd.eu/what-we-do/policy/european-democracy-shield/.

Fundamental Rights and general principles of law, which provide a constitutional and normative foundation for gender equality, including in the sphere of political participation. Key provisions include Article 2 of the Treaty on European Union (TEU), identifying equality between women and men as a founding value; Article 3(3) TEU, mandating the Union to promote gender equality; and Articles 8 and 10 of the Treaty on the Functioning of the European Union (TFEU), which establish mainstreaming obligations across all Union activities. Although these provisions do not confer direct, enforceable rights, they operate as binding principles of integration within the Union's legal order, guiding both legislative and policy-making processes and influencing the interpretation of secondary law. Within this normative framework, gender equality is not confined to specific sectors but acquires a transversal dimension that could extend to the sphere of political participation, thereby justifying EU initiatives to promote women's presence in decision-making processes.

While Articles 8 and 10 TFEU enshrine mainstreaming clauses that orient Union action and interpretation across all policy areas, Article 19 TFEU, instead, provides a distinct legal basis for the adoption of specific legislative measures to combat discrimination, including on the ground of sex. In this sense, it constitutes the normative complement to the mainstreaming principles, potentially allowing the EU to adopt concrete instruments to enhance gender equality in political participation. Nonetheless, its effectiveness is limited by the unanimity requirement in the Council, which often curtails the Union's capacity to enact ambitious and uniform measures.[11]

Finally, Articles 21, 23, 39 and 40 of the EU Charter of Fundamental Rights reinforce these principles, ensuring equality and the right to vote and stand for election, while allowing for measures favouring the underrepresented sex.

Yet, despite this normative framework, women's political participation across EU Member States remains constrained in practice. The structural, social and institutional factors that limit women's access to political office are multifaceted and interconnected, reflecting persistent gender inequalities across political systems.

It is against this backdrop that some persisting barriers can be identified. First, political institutions in many Member States remain gendered spaces, often structured around male-dominated networks and traditional leadership models.[12] Unconscious bias, sexism and power dynamics leading to gatekeeping by party elites and a lack of mentorship opportunities for women create cumulative disadvantages.[13]

Secondly, electoral systems and candidate selection procedures, particularly those based on single-member districts or closed party lists, often work to the detriment of female candidates unless paired

[11] According to a distinguished scholar, it would be vital to 'mov[e] Article 19 TFEU to majority voting' and this enhancement 'will not jeopardise the fine balance between the Union's role in protecting minorities and the imperative of respecting the commendable diversity of Member States' cultural values'. See Moussa M. (2023), 'The shackles of veto: On the American parallel of Article 19 TFEU and its tension with procedural justice', *Cambridge Yearbook of European Legal Studies*, 25:122-140.

[12] See the https://aceproject.org/ace-en/topics/ge/onePage.

[13] See Dingler, S. C. and Kroeber, C. (2022), 'Myths about women in the political executive – how gender stereotypes shape the way MPs assess the competences of ministers', *Political Research Quarterly*, 76(3), 1403-1417, available at: https://doi.org/10.1177/10659129221141871.

with parity mechanisms.[14] Although the European Union has limited competence over the design of national electoral systems, it has sought to shape the internal functioning of European political parties through regulatory instruments and conditionality.

Regulation (EU, Euratom) No 1141/2014 of the European Parliament and of the Council of 22 October 2014 on the Statute and Funding of European Political Parties and European Political Foundations does not currently impose binding obligations on gender balance. However, the revised version of the Regulation, now undergoing the process of adoption, introduces stronger incentives for gender equality.[15] According to the joint declaration of the co-legislators, the revised Regulation aims to strengthen adherence to European values by requiring parties to adopt anti-harassment policies, implement mechanisms to promote gender balance and produce yearly reports addressing representational gaps.[16]

Another ongoing initiative is the process of amending the *European Electoral Act* (with Council Decision (EU, Euratom) 2018/994 of 13 July 2018 amending the Act concerning the election of the members of the European Parliament by direct universal suffrage, annexed to Council Decision 76/787/ECSC, EEC, Euratom of 20 September 1976, still awaiting full approval by all Member States).[17] Recently, the President of the EP has announced that 'the European Parliament will soon table a targeted, narrow and surgical amendment to the EU Electoral Act - one that is limited to a single, but meaningful point. Our aim is to allow female Members of European Parliament who are pregnant or who have just given

[14] See Venice Commission, 'Report on the impact of electoral systems on women's representation in politics', 16 June 2009; EIGE, 'Gender-sensitive parliaments', 'Domain 1. Electoral system and gender quotas', available at: https://eige.europa.eu/gender-mainstreaming/toolkits/gender-sensitive-parliaments/self-assessment/area-1-women-men/domain-1-electoral-system?language_content_entity=en&utm. More recently see, Kotevska and Pavlou (2023), Chapter 3, 44 ff.

[15] See Regulation (EU, Euratom) No 1141/2014 was most recently modified by Regulation (EU, Euratom) 2019/493 of the European Parliament and of the Council of 25 March 2019 amending Regulation (EU, Euratom) No 1141/2014 as regards a verification procedure related to infringements of rules on the protection of personal data in the context of elections to the European Parliament. The consolidated text is available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02014R1141-20190327. Delivering on the commitments made in its European Democracy Action Plan (2020), the European Commission announced the revision of Regulation 1141/2014 as one of the key initiatives in 2021. The Commission's proposal is part of a broader initiative on democratic life and electoral processes in the EU. It seeks to facilitate interactions of the European political parties with their national counterparts, increase transparency (especially regarding political advertising and donations), cut excessive administrative burden and enhance the financial viability of European political parties and foundations. Among the European Parliament's negotiating mandate, notably, measures were included aimed at fostering gender equality, including the promotion of gender balance within the governing bodies of European political parties and the adoption of protocols to prevent and address sexual and gender-based harassment. On the Council's side, on 22 March 2022, the General Affairs Council reached a political agreement on the proposal. The Council text itself included provisions promoting gender equality, both within party structures and in candidate lists for elections to the European Parliament.

[16] On 17 June 2025, the negotiators representing the Council and the European Parliament reached a provisional agreement on the revision of the statute and funding rules applicable to European political parties and European political foundations. The provisional agreement now awaits formal endorsement by both the European Parliament and the Council. Subject to its adoption, most of its provisions are expected to become applicable from 1 January 2026. See https://www.europarl.europa.eu/legislative-train/package-european-democracy-action-plan/file-statute-and-funding-of-the-european-political-parties-and-foundations?sid=9301. The Committee on Constitutional Affairs voted on the Regulation on the statute and funding of European political parties and European political foundations (recast) on 16 of July 2025. See https://oeil.secure.europarl.europa.eu/oeil/en/procedure-file?reference=2021/0375(COD).

[17] See https://oeil.secure.europarl.europa.eu/oeil/en/procedure-file?reference=2025/2028(INI)#gateway. Although Council Decision 2018/994 has not yet entered into force, the European Parliament has put forward a new legislative initiative that seeks to repeal the current European Electoral Act and adopt a new regulation governing European elections. Within the proposed amendments the European Parliament has foreseen the obligation for all political parties and other entities participating in European elections to observe 'democratic procedures and transparency' when electing their candidates and to ensure gender equality in their candidatures, by using either a zipper system or quotas. The zipper system obliges political parties to structure their candidate lists so that genders alternate sequentially – typically, woman, man, woman, man – thereby ensuring that, as seats are allocated, the gender of the elected representatives alternates with each successive seat won by the party. This mechanism is designed to promote vertical gender parity within party lists.

birth to delegate their vote. "… no country, no institution, and no democracy should ever penalise elected representatives for choosing to start a family. Representation should never come at the cost of parenthood –and with this step, we choose to stand by both".'[18]

In the meantime, a Council Recommendation on gender parity in political representation could be promoted.

Although these instruments do not directly impose obligations on Member States, they are nonetheless indicative of the EU's political will to address the issue of women's underrepresentation in politics. They provide an important opportunity for the European Parliament to give concrete expression to the Union's foundational value of equality between women and men, as enshrined in Article 2 TEU, and reinforced by Articles 8 and 10 TFEU and Article 23 of the Charter of Fundamental Rights. By acting in this area, even within the limits of its formal competences, the Union enhances the credibility and consistency of its value system, showing that its declared principles are not merely symbolic but are backed by concrete policies and initiatives. In this way, the European Parliament not only reinforces the EU's internal coherence but also sets a powerful example that can support the European Commission in promoting common standards across Member States to strengthen women's political representation.

Another significant barrier to women's political participation remains the fact that political organisations, due to their working cultures, do not offer sufficient adaptations to ensure work-life balance, which makes it more difficult for women to take on political roles due to the persistent unequal distribution of care responsibilities. Across Europe, women continue to shoulder a disproportionate share of unpaid care work, which limits their availability for engagement in political life. Within the EU, the 2019 Work-Life Balance Directive, grounded in Article 153 TFEU, represents an important advance in addressing the gender care gap by establishing minimum standards for parental, paternity and carers' leave.[19]

While the Directive's indirect impact on political participation – through its promotion of dual-earner/dual-career models and its potential to shift entrenched gender norms – has yet to be fully evaluated or complemented by targeted measures for political inclusion, it constitutes a significant step towards facilitating women's access to political roles. By embedding an equality-oriented framework and supporting women's empowerment, the Directive creates conditions that may enable more active and direct engagement in public and political life.

The above-mentioned structural and institutional barriers are compounded by more overt forms of exclusion and intimidation, notably gender-based violence, harassment and online hate speech. While institutional biases and systemic obstacles limit women's access to political roles, hostile

[18] See *Remarks by the President of the European Parliament Roberta Metsola at the European Council*, Brussels, 26 June 2025, available at https://the-president.europarl.europa.eu/files/live/sites/president/files/newsroom/2025/06/26-euco/EN-20250626-EUCO.pdf.

[19] See Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU, available at: http://data.europa.eu/eli/dir/2019/1158/oj. Chapter 5 of the previously cited report, Kotevska and Pavlou (2023), highlights the crucial importance of adopting work-life balance measures as a key element in promoting women's political participation. See, also De la Corte-Rodríguez (2024), *The transposition of the Work-Life Balance Directive in EU Member States (II): Considerable work still to be done*, European Equality Law Network / Publications Office of the European Union, available at: https://www.equalitylaw.eu/downloads/6048-the-transposition-of-the-work-life-balance-directive-in-eu-member-states-ii-considerable-work-still-to-be-done.

environments – both offline and online – actively threaten their safety, agency and willingness to participate. The following section explores these forms of violence as a critical dimension of the challenges women face in political life, highlighting their legal and institutional implications.

2. Gendered political violence and online hate: a threat to women's political participation in the EU

Today, a major barrier to women's entry into and retention in political life is the prevalence of gender-based violence, harassment and hate speech, both offline and online. Such violence manifests itself in multiple forms, all intended to constrain or control women's involvement in decision-making processes.[20] Hostile environments, persistent stereotypes and systemic discrimination create a *chilling effect* that discourages political engagement, exacerbates underrepresentation and deters future generations of women from pursuing political careers.

CEDAW General Recommendation No. 40 highlights that 'gender-based violence against women in the public and the private sphere prevents women from taking initial steps toward representation in decision-making. Legislation to specifically address gender-based violence against women in political and public life, including against female human rights defenders, politicians, activists, journalists and voters, is frequently lacking' (para. 37). The CEDAW Committee also stresses the role played by media professionals and social media platforms in 'committing, perpetuating and normalising gender-based violence against women, and the role of political parties in trivializing such violence, including sexual harassment and other misogynistic behaviour, within their ranks' (para. 37).[21]

Beyond traditional forms of violence, online hate speech has emerged as a particularly pernicious obstacle to women's political participation. Female politicians and public figures are frequently targeted with threats, harassment and sexist abuse in digital spaces, leading many to self-censor or withdraw from political engagement. This form of digital violence disproportionately affects women of colour, LGBTIQ+ women and women with migrant backgrounds, representing a serious deterrent to political participation and an infringement of basic rights such as dignity, privacy and freedom of expression.[22] These attacks are systemic, aiming to exclude women from public life and undermining the foundational values enshrined in Article 2 TEU.

At the international level, existing soft and hard law instruments are trying to shape a legal ecosystem aimed at promoting women's participation in politics and in protecting them from abuse and harassment. UN General Assembly Resolution 73/148 (2018) on Women and Political Participation and Human Rights Council Resolution 38/11 (2018) on Violence Against Women in Politics underline the obligation of states to provide legal protections. The CEDAW Convention, together with General Recommendation No. 35 on gender-based violence, calls for proactive measures to prevent and

[20] See Krook, M. L. (2020), *Violence against women in politics*, Oxford University Press.

[21] CEDAW General Recommendation No. 40 on the Equal and Inclusive Representation of Women in Decision-Making Systems, adopted on 25 October 2024, is a vital contribution to providing guidance to States parties on reaching equal and inclusive representation of women in decision-making systems in all sectors. See https://docs.un.org/en/CEDAW/C/GC/40. In this document, the CEDAW Committee has also recognised that 'gender-based violence against women, including in decision-making, is often exacerbated for women who are subjected to intersectional discrimination' (para. 37).

[22] See CoE, 'Cyber violence against women', https://www.coe.int/en/web/cyberviolence/cyberviolence-against-women.

address violence against women in public and political life.

In Europe, the OSCE has played a central role in addressing this phenomenon.[23] Its Office for Democratic Institutions and Human Rights (ODIHR) recognises violence against women in politics as a serious threat to democratic integrity. The OSCE Ministerial Council Decision No. 7/09 on Women's Participation in Political and Public Life, adopted on 4 December 2009, and the 2021 Annual Report of the OSCE PA Special Representative on Gender Issues, devoted to 'Violence against Women Journalists and Politicians: a Growing Crisis' provide guidance for Member States on legal protections, data collection, and gender-sensitive security measures. Similarly, the OSCE/ODIHR toolkit 'Addressing violence against women in politics'[24] highlights a multifaceted array of obstacles, including physical and psychological violence, online harassment, entrenched stereotypes, discriminatory practices, institutional gaps and economic and cultural constraints, all of which collectively hinder sustained political participation.

At the Council of Europe level, the Istanbul Convention (2011) and its General Recommendation No. 1 on the digital dimension of violence against women offer a comprehensive framework to combat gender-based violence, including in the digital sphere. The Convention obliges parties to take measures to prevent violence against women in all spheres, including political participation. Article 17 calls on states to cooperate with private sector actors and the media to prevent gender-based discrimination and harassment, not excluding the online dimension of this violence.[25] Furthermore, the adoption of General Recommendation No. 1 has contributed to strengthening the impact of the Convention in this field.[26] The Recommendation has introduced the definition of the 'digital dimension of violence against women', which includes both acts of violence perpetrated online – such as those related to the dissemination of humiliating images and to insults, death and rape threats – and acts of violence carried out through the use of existing technologies (or those that have not yet been invented).

Within the EU legal order, existing instruments already provide a basis for protecting female politicians from such threats, laying the groundwork for further targeted measures to safeguard women's political engagement.[27] In terms of 'hard law' instruments, both the Victims' Rights Directive (Directive 2012/29/EU)[28] and the Directive on combating violence against women and domestic

[23] See https://www.osce.org/.

[24] See 'Addressing Violence against Women in Politics in the OSCE Region: Toolkit', adopted on 27 November 2022 and available at https://www.osce.org/odihr/530272. The toolkit offers best practices for states, political parties and civil society actors to prevent and mitigate digital threats targeting female politicians.

[25] 'Article 17 – Participation of the private sector and the media Parties shall encourage the private sector, the information and communication technology sector and the media, with due respect for freedom of expression and their independence, to participate in the elaboration and implementation of policies and to set guidelines and self-regulatory standards to prevent violence against women and to enhance respect for their dignity'. See CoE Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) (2011) CETS No 210 (entered into force on 1 August 2014).

[26] See GREVIO, General Recommendation no. 1 on the Digital Dimension of Violence against Women (20 October 2021), available at: https://rm.coe.int/grevio-rec-no-on-digitalviolence-against-women/1680a49147.

[27] See European Parliament (2024), *Violence against women active in politics in the EU. A serious obstacle to political participation*, EPRS briefing, available at: https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/759600/EPRS_BRI(2024)759600_EN.pdf.

[28] Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ L 315. It requires Member States to ensure that victims of crime are treated in a fair and non-discriminatory manner, paying particular attention to victims of crimes motivated by prejudice or discrimination. In its 2022 Work Programme, the European Commission announced a possible revision of the victims' rights acquis, in order to improve victims' access to justice, enhance their rights to information about the available compensation and strengthen their physical protection. On 12 July 2023, the Commission published its proposal for a revised Victims'

violence (Directive (EU) 2024/1385)[29] play a crucial role in promoting and protecting the rights of women active in political life by establishing binding legal standards that address gender-based violence, including forms of violence specifically targeted at women in politics.

Directive 2012/29/EU establishes minimum standards on the rights, support and protection of victims of crime. It is particularly relevant to women in politics in cases where they are subject to threats, harassment or violence due to their public role. Recital 17 explicitly acknowledges that gender-based violence and violence against women are forms of discrimination and violations of the fundamental freedom to dignity and equality. Article 1 sets the objective of ensuring that victims of crime receive appropriate information, support and protection and can participate in criminal proceedings. Articles 8 and 9 mandate access to confidential support services, including specialised services for victims of gender-based violence, which may be crucial for female politicians who face systemic harassment. Finally, Article 22 introduces the requirement of an individual assessment to identify specific protection needs of victims, including those based on gender or exposure to repeated violence.

While not specific to political actors, the broad definition of 'victim' set out in Article 2 ('a natural person who has suffered harm, including physical, mental or emotional harm or economic loss, which was directly caused by a criminal offence') allows the Directive to apply in cases where women experience violence due to their political involvement, thereby providing a legal basis for protection and support across Member States.

The *Directive on Combating Violence against Women*, adopted in May 2024, marks a substantial evolution in the EU's normative framework, introducing criminalisation of specific forms of gender-based violence, many of which affect women in public and political life. The provisions contained in Articles 5 to 8 of Directive (EU) 2024/1385, targeting non-consensual sharing of intimate or manipulated material, cyber stalking, cyber harassment, and online incitement to violence or hatred, are particularly relevant for the protection of women involved in political life, who remain especially vulnerable to gender-based online abuse aimed at undermining their participation through intimidation or silencing tactics. These provisions establish a solid legal foundation for the criminalisation and redress of online behaviours that undermine women's safety, dignity and ability to participate freely in democratic processes, providing Member States with the framework and opportunity to adopt effective measures to prevent and combat gender-based digital violence within their respective jurisdictions.

Article 5 (Non-consensual Sharing of Intimate or Manipulated Material) establishes that the dissemination, through information and communication technologies (ICT), of images, videos, or similar content depicting sexually explicit acts or the intimate body parts of an individual, without their consent, should be classified as a criminal offense when such actions are likely to result in serious

Rights Directive (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023PC0424). The revision of the Directive was mentioned as one of the priorities for the Danish Presidency at the Committee on Civil Liberties, Justice and Home Affairs (LIBE) meeting on 15 July 2025.

[29] Directive (EU) 2024/1385 of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence, OJ L 2024/1385. It recognises that 'cyber violence particularly targets and impacts women politicians, journalists and human rights defenders' (Recital 17) and that 'cyber harassment… often target[s] prominent women politicians…' (Recital 24).

harm to the individual.[30] Additionally, the same legal consequences should apply to those who produce, manipulate, or alter such material and subsequently make it accessible to the public via ICT, if the content falsely depicts an individual engaged in sexually explicit activities without their consent, where such conduct is likely to cause serious harm to that person. Member States are also required to ensure that threats to engage in the aforementioned conduct, with the intent of coercing an individual into performing, consenting to, or refraining from specific actions, are criminalised.

Article 5 is highly relevant to women's political participation because it addresses a specific form of gender-based violence that can significantly undermine women's ability to engage in public and political life. The ability to engage freely in politics without fear of personal harm or reputational damage is fundamental to democratic processes. When women face the threat of having intimate or manipulated material shared online, it becomes an active deterrent to their political engagement.

Article 6 (Cyber stalking), instead, criminalises the repeated or continuous surveillance of a person's movements or activities by means of ICT without consent, when such acts are likely to cause serious harm. For women in politics, this targets: persistent digital monitoring of their public or private appearance, social media posts or geolocation via tools like spyware or GPS tracking; and invasive surveillance intended to control, threaten or intimidate, which often serves as a precursor to further psychological or physical violence. The criminalisation of such conduct offers legal recourse against a form of coercion frequently used to dissuade women from maintaining a public or leadership role, thereby protecting their personal autonomy and participation in democratic life.

In addition, Article 7 (Cyber harassment) criminalises several types of gendered and technology-facilitated harassment, all of which are relevant to the political context: paragraph (a) addresses repeated threats by means of ICT, including threats of physical harm or criminal acts. For female politicians, this often manifests as *targeted threats of violence*, *rape* or *murder,* frequently delivered via social media, email or messaging platforms. Paragraph (b) focuses on coordinated online abuse (e.g. trolling and mobbing), often with gendered or sexualised insults, which can cause serious psychological harm and force women to withdraw from public debate. Furthermore, paragraph (c) criminalises cyber flashing, i.e. the unsolicited sending of sexually explicit content. Although this may appear less political, such acts are used as a method of *gendered humiliation* and dehumanisation of women in power. Finally, paragraph (d) addresses doxxing, the public dissemination of personal data (e.g. address, phone number or family information) with the intent to incite others to inflict harm. This is a well-documented tactic against women in politics, aiming to instil fear and suppress their political voice. Together, these provisions make clear that digital misogyny and intimidation are punishable crimes, offering national authorities a powerful tool to prosecute offences and deter further abuse. Lastly, Article 8 (Cyber Incitement to Violence or Hatred) directly addresses gender-based online hate speech, which has long been underregulated, despite its chilling effect on women's political

[30] In the context of ICT-facilitated violence against women in politics, the concept of 'likely to cause serious harm' can manifest as: psychological harm – the constant surveillance and harassment can cause emotional distress, anxiety, and fear, leading to long-term mental health issues such as depression – physical and security risks – cyberstalking can escalate to real-world threats, putting women politicians at risk of physical harm or direct intimidation, especially when personal data is exposed – reputational damage – the dissemination of manipulated or private content can harm a woman's public image, undermine her political credibility, and expose her to social ostracism – chilling effect on political participation – fear of online harassment or violence can deter women from engaging in politics, limiting their opportunities and representation in leadership roles. By criminalising these behaviours, 'likely to cause serious harm' ensures that preventive action is taken to protect women from the growing risks of online violence, supporting their ability to participate fully and safely in political life.

participation. It requires Member States to criminalise intentional public incitement to violence or hatred against individuals or groups based on gender, through the dissemination of such material by means of ICT. It explicitly extends to targeted online campaigns, hate memes, manipulated videos or coordinated calls for violence against female politicians, journalists or activists. This article is particularly important because it recognises gender as a protected ground, complementing the prohibition of discrimination on grounds of sex under Article 21 of the EU Charter of Fundamental Rights and reflecting the EU's foundational values of equality and respect for human dignity enshrined in Article 2 TEU. It also supports proactive content moderation and law enforcement intervention where online discourse incites hatred or legitimises political violence against women.

Articles 5 to 8 of Directive (EU) 2024/1385 establish a coherent and enforceable legal framework that explicitly targets the digital dimension of political violence against women. By criminalising behaviours such as cyber stalking, cyber harassment and gender-based incitement to hatred or violence, these provisions serve multiple functions: they deter attempts to silence, intimidate or discredit women engaged in political life; they empower law enforcement to intervene promptly and proportionately to prevent harm; and they affirm victims' rights to protection and redress, consistent with the EU's broader commitments to equality and non-discrimination.

This protective framework is further reinforced by Article 11(n) of the Directive, which designates as an aggravating circumstance the commission of offences against public representatives. Read together, these provisions acknowledge the specific vulnerability of women active in politics and translate the Union's founding principles of human dignity and equality, enshrined in Articles 2 TEU and 21 of the Charter of Fundamental Rights, into tangible obligations for Member States to prevent and sanction online and offline political violence motivated by gender bias.

Looking ahead, the key challenge for future legislative and policy initiatives – both the EU and national levels – will lie in adapting legal instruments to the dynamic nature of digital communication environments, while safeguarding fundamental rights, particularly freedom of expression.[31]

Regarding existing legal instruments, the 2022 Digital Services Act (Regulation (EU) 2022/2065) provides tools to require platforms to act against harmful content that may include violent or misogynistic campaigns targeting women in politics. The Regulation introduces new procedural mechanisms aimed at facilitating the rapid removal of illegal content while ensuring the global protection of the fundamental rights of online users. In this context, online hate speech, particularly when it contains a 'sexist connotation', may fall within the broader classification of 'illegal content'.

Pursuant to Article 34, paragraph 1, letter a), such content must be regarded as a 'systemic risk' associated with the use of digital services and therefore be systematically identified, analysed and assessed by providers of very large online platforms (VLOPs) and very large online search engines (VLOSEs). Moreover, when construed as a form of gender-based violence, sexist online hate speech may also fall under the scope of 'any actual or foreseeable negative effects in relation to gender-based violence… and serious negative consequences to the person's physical and mental well-being',

[31] See Phillips H., Bergia, A. and Grimà Algora, R. (2024), *Strengthening democracy by reducing threats to women in politics: A review of explanations and solutions to online violence against women in politics*, offering a comprehensive analysis of the causes, impacts and recommended responses to online violence targeting women in political life worldwide, available at: https://www.bsg.ox.ac.uk/sites/default/files/2024-03/Strengthening-democracy-reducing-threats-women-politics.pdf.

as outlined in Article 34, paragraph 1, letter d). The first systemic risk assessment reports have now been published. Some VLOPs/VLOEs have already identified violence against female politicians as a systemic risk. For instance, according to the *Facebook* and *Instagram*'s reports, 'public figures like female politicians, especially female politicians of colour, are targets of bullying and harassment at a disproportionate rate'.[32]

In addition to conducting this foundational risk assessment, service providers are required to implement targeted preventive measures to mitigate identified risks. Specifically, Article 35 mandates the adoption of reasonable, proportionate and effective mitigation strategies tailored to the nature of the systemic risks involved. These measures may include, among others, adjustments to content moderation practices – such as enhancing the speed and accuracy of responses to notifications concerning certain types of illegal content – and, where appropriate, ensuring the prompt removal of or restricted access to the content in question. This is especially relevant in relation to illegal hate speech or cyber violence and may also involve modifications to decision-making procedures and the allocation of dedicated resources for content moderation.

With regard to relevant soft-law instruments which could facilitate the mitigation of the effect of online harassment and hate speech against female politicians in the EU,[33] since 2016 the European Union and the major online platform providers have been working to curb this phenomenon through an important Code of Conduct to combat online hate speech.[34] In 2016, in fact, the European Commission, in collaboration with major online platforms such as Facebook, Twitter and YouTube, and later joined by companies including Instagram, Google+, Snapchat, Dailymotion, Jeuxvideo.com and TikTok, launched a Code of Conduct on countering illegal hate speech online.[35]

The updated Code of Conduct on Countering Illegal Hate Speech Online + aims to combat the dissemination of illegal hate speech on digital platforms by establishing commitments in key areas such as platform terms and conditions, prompt review of user notifications, transparency in content moderation, cooperation with stakeholders and awareness-raising initiatives. It builds upon the original 2016 Code, introducing more robust and enforceable standards. The revised Code enhances how signatory platforms handle content classified as illegal hate speech under EU and national legislation,

32 See https://digital-strategy.ec.europa.eu/en/policies/dsa-brings-transparency#ecl-inpage-lsets8qr.

33 See also the European Parliament Resolution of 11 November 2021 on the EU Strategy for Gender Equality (2021/2024(INI)), where the European Parliament: '28. Welcomes the proposed specific measures to tackle cyber violence which disproportionally affects women and girls (including online harassment, cyberbullying and sexist hate speech), in particular activists, women politicians and other public figures visible in public discourse; welcomes, in this context, the announcement that this phenomenon will be tackled in the Digital Services Act and that it envisages working with the tech platforms and the ICT sector in a new framework of cooperation, in order for the latter to address the issue through adequate technical measures such as prevention techniques and response mechanisms to harmful content; urges the Member States and the EU to adopt further measures, including binding legislative measures, to combat these forms of violence in the framework of a Directive on preventing and combating all forms of violence against women, and for Member States to be given support in the development of training tools for the services involved at all stages, from prevention and protection to prosecution, such as the police force and the justice system, together with the information and communication sector, while also safeguarding fundamental rights online' and '76. Recalls that the under-representation of women in public and political life undermines the proper functioning of democratic institutions and processes; calls, therefore, on the Member States to encourage and support measures to facilitate the balanced participation of men and women in decision-making at national, regional and local levels'. Available at https://www.europarl.europa.eu/doceo/document/TA-9-2021-0025_EN.html.

34 See European Commission, 'The EU Code of conduct on countering illegal hate speech online', https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/combatting-discrimination/racism-and-xenophobia/eu-code-conduct-countering-illegal-hate-speech-online_en.

35 This initiative goes beyond a mere declaration of intent by setting out concrete commitments. Participating companies are required to implement clear and effective mechanisms for reviewing and acting upon reports of illegal hate speech within their services, including the swift removal or disabling of such content.

contributing to compliance with and effective implementation of the Digital Services Act (DSA) in this domain.[36] Currently, the Code has 12 signatories, including seven designated VLOPs (Facebook, Instagram, LinkedIn, Snapchat, TikTok, X (formerly Twitter) and YouTube) and five additional participants: Dailymotion, Jeuxvideo.com, Microsoft, Rakuten Viber and Twitch.

On 20 January 2025, the European Commission and the European Board for Digital Services officially endorsed the integration of the revised *Code of Conduct on Countering Illegal Hate Speech Online +* into the regulatory framework of the *Digital Services Act*, according to Article 45 of the DSA.[37] The updated Code aims to strengthen the enforcement of EU and national laws concerning illegal hate speech on online platforms. It introduces new obligations for platforms, including the requirement to review at least 67 % of hate speech notices within 24 hours and to cooperate with designated 'monitoring reporters' (public entities or civil society organisations that report instances of illegal hate speech).[38] This integration strengthens the EU's capacity to address illegal hate speech on online platforms, a phenomenon that has emerged as a significant barrier to women's political participation. The revised Code imposes enforceable obligations on VLOPs and VLOSEs, including timely review of flagged content and cooperation with designated monitoring entities, such as civil society organisations reporting illegal hate speech. By moving from voluntary commitments to binding obligations and introducing mechanisms such as annual independent audits, the EU reinforces accountability, transparency and protection of individuals (particularly female politicians) against online harassment and gender-based digital violence. The Code of Conduct Hate Speech+ would also cover gender-based hate speech once the Member States have implemented Article 8 of the Directive on combating violence against women and domestic violence.

On 13 February 2025, the European Commission and the European Board for Digital Services also endorsed the official integration of the voluntary *Code of Practice on Disinformation* into the

[36] In late 2020 the European Commission proposed a horizontal reform of the European regulation regarding the liability of platforms for the dissemination of illicit content, the so-called 'Digital Services Act', consisting of a series of rules on the obligations and responsibilities of digital intermediaries within the single market. These are graduated according to the size of the operators and the consequent capacity for them to know the content that is uploaded by users. See Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act), [2022] OJ L 277. It has been fully enforceable since 17 February 2024. See also Citino, Y. (2023), 'The Digital Services Act at the test bench'; Church, P. and Necati Pehlivan, C. (2023), 'The Digital Services Act (DSA): A new era for online harms and intermediary liability', 4 *Global Privacy L Rev* 53; Duivenvoorde, B., 2022, 'The liability of online marketplaces under the Unfair Commercial Practices Directive, the E-commerce Directive and the Digital Services Act', 11 *Eur Common Market L Rev* 43; Frosio, G. and Geiger, C. (2023), 'Taking fundamental rights seriously in the Digital Services Act's platform liability regime', 29 *Eur Law J* 1; Heldt, A.P. (2022), 'EU Digital Services Act: The white hope of intermediary regulation', in *Digital Platform Regulation* 69; Peguera, M. (2022), 'The platform neutrality conundrum and the Digital Services Act', 53 *Intl Rev of Intellectual Property and Competition L* 681; Petkova, B. and Ojanen, T. (eds) (2020), *Fundamental rights protection online: The future regulation of intermediaries*, Edward Elgar; Turillazzi, A., Casolari, F., Taddeo, M. and Floridi, L. (2022), 'The Digital Services Act: An analysis of its ethical, legal, and social implications', available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4007389.

[37] According to the 'Conclusion of the Board on Code of Conduct on Countering Illegal Hate Speech Online +', 'the Code engages with some types of systemic risks outlined in Article 34 of the DSA and can be a suitable instrument to successfully contribute to the proper application of the DSA. Further, it clearly sets out its specific objectives, contains key performance indicators (KPIs) to measure the achievement of those objectives, and takes due account of the needs and interests of all parties concerned'. See https://digital-strategy.ec.europa.eu/en/library/code-conduct-countering-illegal-hate-speech-online. See also, 'Strengthening the EU's digital landscape – Integration of the Revised Code of Conduct on Hate Speech and the Code of Practice on Disinformation into the DSA', 31 March 2025, available at: https://www.medialaws.eu/strengthening-the-eus-digital-landscape-integration-of-the-revised-code-of-conduct-on-hate-speech-and-the-code-of-practice-on-disinformation-into-the-dsa/.

[38] See 'The Code of Conduct on Countering Illegal Hate Speech Online +', https://digital-strategy.ec.europa.eu/en/library/code-conduct-countering-illegal-hate-speech-online and 'Codes of conduct under the Digital Services Act', https://digital-strategy.ec.europa.eu/en/policies/dsa-codes-conduct.

framework of the DSA. The Code of Practice, originally established in 2018 and significantly strengthened in 2022, represents a pioneering framework agreed upon by a broad range of stakeholders, including online platforms, search engines, the advertising industry, fact-checkers, and civil society organisations. Its goal is to curb disinformation and associated harmful content online, including gender-based misinformation and harassment. In January 2025, the signatories of the Code – including VLOPs and VLOSEs – had submitted the necessary documentation to request its conversion into a Code of Conduct under the DSA. Following positive opinions from the European Board for Digital Services and the Commission, the Code was officially endorsed and took effect from 1 July 2025, making its commitments auditable and a relevant benchmark for determining DSA compliance regarding disinformation risks. This development complements the integration of the revised Code of Conduct on Countering Illegal Hate Speech Online, together forming an EU regulatory and self-regulatory framework aimed at enhancing the safety of women in politics online and addressing structural barriers to their participation. It should also be noted that the current Gender Equality Strategy includes a further commitment to setting up a framework for cooperation with online platforms to ensure women's safety online, which could further complement this framework

It should be noted, however, that the effectiveness of such regulatory instruments depends not only on formal obligations but also on the willingness of platforms to comply. Major platforms, including Meta (Facebook), have recently criticised or questioned certain diversity, equity and inclusion (DEI) policies, highlighting potential tensions between platform governance priorities and the EU's regulatory objectives. While the DSA integration makes compliance legally binding, its practical impact on protecting female politicians will rely on effective enforcement, continuous monitoring by competent authorities and active cooperation with civil society organisations designated as monitoring reporters.

Within the context of the EU's action to combat harmful content targeting women in politics, the European Commission pursues complementary approaches, including the potential expansion of the list of 'Eurocrimes' to address online hate speech more systematically, thereby enabling the adoption of a harmonised sanctioning framework across Member States. This initiative is grounded in Article 83(1) TFEU, which allows for the approximation of criminal laws in areas of particularly serious crime with a cross-border dimension. The current list includes terrorism, trafficking in human beings and the sexual exploitation of women and children, illicit drug and arms trafficking, money laundering, corruption, counterfeiting of payment instruments, cybercrime, and organised crime.

On 9 December 2021, the Commission issued a Communication on 'A more inclusive and protective Europe: extending the list of EU crimes to hate speech and hate crime', calling on the Council to adopt a decision identifying hate speech and hate crime as new areas of crime under Article 83(1) TFEU.[39] If adopted, the Commission would then be empowered to propose a directive laying down minimum rules concerning the definition of criminal offences and sanctions in this area. Such a directive would be adopted under ordinary legislative procedure by the European Parliament and the Council. This initiative has also gained increasing relevance in view of the growing phenomenon of online violence

[39] See Communication from the Commission to the European Parliament and the Council, A more inclusive and protective Europe: extending the list of EU crimes to hate speech and hate crime, COM (2021) 777 final (9 December 2021). This proposal was first announced by the President of the European Commission during her State of the Union Address on 16 September 2020 and then formally included in the Commission work programme for 2021: Commission Work Programme 2021: A Union of vitality in a world of fragility, COM(2020) 690 final (19 October 2020) 7. A draft Council decision was annexed to the Communication.

against women in politics, which often takes the form of gender-based hate speech disseminated via digital platforms. The legislative process is still ongoing.[40]

In sum, although existing EU directives, soft-law instruments and international frameworks provide a foundational legal and normative basis for protecting women from gender-based violence and online harassment in the political sphere, gaps and emerging challenges persist. The evolving digital landscape, the persistence of online hate speech and the uneven implementation of protective measures across Member States underscore the need for targeted, coordinated and adaptive strategies.

These considerations regarding online gender-based violence and hate speech targeting women in politics naturally lead to the question of how the EU could further develop its legal and policy instruments to strengthen women's political participation, creating a coherent approach that not only safeguards against violence and discrimination but also actively promotes equitable access to political office. The next section will explore potential avenues for EU action within the existing legal framework.

3. Pathways for further EU action: exploring options within the existing legal framework

The European Union's role in promoting women's political participation is situated within a broader international context in which women's empowerment is increasingly recognised. Of note is the 1953 Convention on the Political Rights of Women, adopted by the United Nations General Assembly on 31 March 1953. This is a concise instrument, composed of 11 articles. Of these, only the first three deal with political participation rights – that is, women's right to vote (Article I), their right to stand for election (Article II) and their right to access public employment (Article III); all based on 'equal conditions with men, without any discrimination'. Although the Convention addressed discrimination against women solely in the context of implementing political rights, it nevertheless represented the first universally binding instrument to impose legal obligations on the States Parties, subsequently paving the way for the United Nations to adopt a series of instruments aimed at eliminating discrimination against women in public life.

[40] In the European Parliament, the proposal was assigned to the Committee on Civil Liberties, Justice and Home Affairs (LIBE). On 4 March 2022, the Council examined the draft decision and expressed broad support for the initiative. However, the required unanimity among Member States to adopt the decision has not yet been achieved and the process has since stalled at the Council level. On 28 June 2023, a draft report on the proposal was presented to Parliament. The report strongly criticised the lack of progress in the Council and urged it to move forward, allowing the Commission to proceed to the second stage of the procedure. The LIBE Committee endorsed the draft report on 13 November 2023. Among its recommendations, the report emphasised the urgent need to address the misuse of the internet and social media, particularly in relation to ICT-facilitated hate speech targeting women in public and political life. Further developments have taken place since then. On 18 January 2024, the European Parliament adopted a resolution reiterating its support for the inclusion of hate speech and hate crime in the list of EU crimes. It also called on the Council to consider activating the *passerelle* clause to overcome the unanimity requirement under Article 83(1) TFEU. In May 2024, the Commission published a response to the January 2024 resolution of the Parliament, addressing the specific recommendations outlined in the resolution. Despite these important steps, the formal adoption of the Council decision remains blocked, highlighting persistent challenges in reaching consensus among Member States. Nonetheless, pressure from both the European Parliament and the Commission continues to mount, and the issue remains high on the EU's legislative agenda. For an in-depth analysis of this proposal, see Peršak, N. (2022), 'Criminalising hate crime and hate speech at EU level: Extending the list of Eurocrimes under Article 83(1) TFEU', 33 *Crim L Forum* 85; and Immenkamp, B. (2024), 'Hate speech and hate crime: Time to act?', EPRS briefing, available at: https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/762389/EPRS_BRI(2024)762389_EN.pdf.

Other fundamental documents on this topic include the International Covenant on Civil and Political Rights, adopted by the General Assembly on 16 December 1966 (Articles 2 and 25), and the notable Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) of 1979. This Convention, ratified by all Member States, promotes not only parity in active and passive suffrage but also the right of women to play a leading role in decision-making and to participate in non-governmental organisations and associations involved in the public and political life of the country (Article 7). Furthermore, it emphasises their right to represent their respective governments internationally and to participate, on behalf of their States, in the work of international organisations without any discrimination (Article 8).

As a noteworthy example, the outreach of the CEDAW Convention has been enriched by the adoption of relevant general recommendations with an impact on this topic. CEDAW General Recommendation No. 23 on women in political and public life (1997)[41] and, more recently, No. 25 on Article 4, paragraph 1, of the Convention (temporary special measures) (2004), No. 35 on gender-based violence against women, updating general recommendation No. 19 (2017) and No. 40 on equal and inclusive representation of women in decision-making systems (2024) have actually clarified the scope of CEDAW's Article 7 – enshrining the duty to eliminate discrimination against women in political and public life – by including, for instance, the duty to adopt temporary special measures (TSMs), such as quotas, to accelerate de facto equality.[42]

Furthermore, the 2023 OSCE/ODIHR Guidelines on Political Party Regulation and on gender equality also provide soft-law benchmarks for inclusive internal democratic practices and candidate selection procedures.[43] They also emphasise that '[m]any parties in OSCE participating States and Council of Europe member states have explicitly introduced the possibility or even the duty to introduce special measures to ensure equal opportunities for women and men to participate in party processes' and that '[t]hese special measures are not to be regarded as discriminatory' (para. 160). To achieve the goal of gender equality in politics, the Guidelines endorse the possibility for political parties to 'introduce provisions in their statutes to promote gender equality. These could include, for example, a minimum representation of each sex or women's sections in decision-making structures, electoral lists, nominations and appointments. Moreover, gender equality could be mentioned as a basic value in party statutes, policies and programmes' (para. 160).[44]

41 In particular, in its General Recommendation No. 23, the Committee clarifies that States parties' obligations under Article 7 of the CEDAW cover all areas of political and public life. Article 8 further guarantees women's rights to represent their governments at the international level and participate in the work of international organisations. Thus, a joint reading of Articles 7 and 8, alongside Articles 5 and 9-16 elucidate an expansive approach to women's representation in all decision-making systems.

42 In General Recommendation No. 25, the Committee interprets Article 4 of the CEDAW, affirming that 'temporary special measures may include the civil service, the *political sphere* and the private education and employment sectors. The Committee further draws the attention of States parties to the fact that such measures may also be negotiated between social partners of the public or private employment sector or be applied on a voluntary basis by public or private enterprises, organizations, institutions and *political parties*' (para. 23, italics added by the author).

43 See OSCE/ODIHR (2023), *Guidelines on political party regulation*, available at: https://www.osce.org/odihr/538473. This document also refers to several other international documents aimed at facilitating the participation of women in political processes. For instance, the OSCE Ministerial Council, Decision No. 7/09 on Women's Participation in Political and Public Life, calls upon participating States to implement concrete recommendations considering the 'continued under-representation of women in the OSCE area in decision-making structures within the legislative, executive, including police services, and judicial branches'.

44 See also OSCE/ODIHR (2014), *Handbook on promoting women's participation in political parties*, adopted on 7 July 2014, in which the Organisation seeks to encourage political party leadership – both male and female – to systematically

The international framework, therefore, outlines both binding obligations and soft-law benchmarks that have progressively shaped a global consensus on the need to guarantee women's full and equal participation in political and public life. Against this backdrop, the European Union cannot position itself in isolation: its legal and institutional framework is embedded within, and reactive to, these international commitments. The EU's legal and institutional architecture thus offers various entry points for further action to strengthen women's political participation. Building on the current *acquis*, the following legal measures could be envisaged.

With regard to the possible impact of EU action on national electoral systems, although their design remains primarily within the competence of the Member States, the European Union can intervene where electoral processes are shaped by cross-border dynamics. This is particularly relevant in the digital sphere, where disinformation campaigns, online hate speech and threats to electoral integrity transcend national boundaries. These phenomena have a disproportionate impact on women in politics, who are often targeted by gendered disinformation and harassment, discouraging their participation and undermining equal representation.

In this respect, existing EU regulatory instruments in the fields of digital governance and electoral transparency provide an important complement to national competences, by addressing structural risks that directly affect women's ability to engage in political life on an equal footing.

In addition, the scope of the *Digital Services Act* could be expanded through delegated to cover political participation as a specific protected domain. Under Article 34, paragraph 1, letter c) DSA, the notion of 'systemic risks' already encompasses any negative effects on civic discourse and electoral processes, as well as on public security. This provision could be interpreted or further specified to cover gendered forms of political disinformation, harassment and intimidation, insofar as they directly distort democratic participation and civic engagement. Moreover, Article 34, paragraph 1, letter d) explicitly refers to actual or foreseeable negative effects in relation to gender-based violence, alongside risks to public health, minors, and individuals' well-being. This inclusion provides a clear legal basis for interpreting gender-based online abuse and misogynistic campaigns targeting women in politics as a systemic risk under the DSA.

Building on this, Article 35 requires VLOPs and VLOSEs to implement reasonable, proportionate, and effective mitigation measures tailored to the systemic risks identified. In parallel, under paragraph 3, the Commission may issue guidelines outlining best practices and recommending specific mitigation strategies, thus providing a concrete procedural framework for addressing gender-based online political violence. This would operationalise gender-sensitive risk governance within the DSA framework without requiring a legislative amendment, ensuring coherence with the EU's commitments under the Gender Equality Strategy 2020-2025. A further legal tool could be the revision of the Audiovisual Media Services Directive to include provisions addressing the role of broadcasters and

integrate gender considerations into internal decision-making processes. Furthermore, it aims to enhance the capacity of female politicians to pursue and sustain successful political careers. A principal finding that emerged throughout the development of this handbook was the critical importance of internal party reform to the advancement of women in politics. Deficiencies such as inadequate internal party democracy and transparency, gender-insensitive mechanisms for candidate selection and outreach, and overly centralised decision-making structures constitute significant impediments to women's political leadership and their candidacy for elected office. See https://www.osce.org/files/f/documents/e/f/120877.pdf.

streaming platforms in amplifying or mitigating misogynistic political discourse.[45] The current text of the Directive already prohibits, under Article 6, any incitement to violence or hatred directed against groups or individuals on grounds such as race, religion or nationality, and under Article 9 it requires that audiovisual commercial communications respect human dignity and avoid discrimination based on sex. However, these provisions do not explicitly address gender-based hostility in the political sphere, nor do they impose specific obligations on media providers to prevent or counteract misogynistic narratives targeting women in politics. A future revision of the Directive could therefore extend the scope of these obligations by expressly including gender and political participation among the protected categories, thereby enhancing the accountability of broadcasters and streaming platforms. Such a reform could also introduce concrete duties to monitor, report and, where appropriate, remove harmful content, in cooperation with national regulatory authorities. In this way, the Directive would align more closely with the EU's broader commitments under Articles 8 and 10 TFEU and complement the horizontal safeguards introduced by the Digital Services Act, reinforcing the Union's legal architecture against gender-based violence and discrimination in the public sphere.

As to the possibility of expanding the protection against discrimination affecting women who want to enter or stay in politics, while waiting for a possible revision of the Treaties which could hopefully abolish unanimity in several fields, the Commission could rely on the second paragraph of Article 19 TFEU, permitting that '[b]y way of derogation from paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt the basic principles of Union incentive measures, excluding any harmonisation of the laws and regulations of the Member States, to support action taken by the Member States in order to contribute to the achievement of the objectives referred to in paragraph 1'.

Basic principles on the promotion of the participation of women in the public life of the Member States, including in politics, and on their protection from harassment, ICT-facilitated violence and online and offline sexist hate speech could be adopted and implemented at national level as a preliminary step and as a complement to legally binding instruments, such as Directive 2024/1385 or the Digital Services Act. In this respect, the adoption of such principles could materialise either through a binding decision under Article 19(2) TFEU, establishing incentive measures in support of national initiatives (e.g. targeted funding and training) or through non-binding instruments such as joint recommendations, guidelines or even a Union-wide code of conduct addressed to political parties and media platforms. While the former option would ensure greater legal certainty and a degree of enforceability, the latter would allow for a more flexible and immediately applicable response, capable of guiding Member States' action in a convergent manner pending the adoption of more ambitious reforms at primary law level. A complementary legal basis for promoting women's participation in political life can be found in Article 157(3) TFEU, which allows the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, to adopt measures to ensure the application of the principle of equal opportunities and treatment between men and women in employment and occupation. While Article 157(3) is formally intended to support incentive measures rather than harmonise national laws, its practical interpretation has been extended in EU practice, most notably in Directive (EU) 2022/2381 on Gender Balance on Corporate Boards (Women on Boards

[45] See Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services, available at: http://data.europa.eu/eli/dir/2010/13/oj.

Directive).[46] In that case, the EU treated membership of company boards as a form of *profession*, allowing binding targets for gender representation while leaving Member States flexibility in implementation. This illustrates that the concept of 'profession' can be interpreted beyond traditional employment contexts, provided there is a clear, structured activity with recognised responsibilities, remuneration and continuity.

By analogy, political office – particularly when exercised as a remunerated, full-time activity – shares key characteristics with a profession: it is continuous, requires specialised skills, occupies a substantial portion of an individual's time and entails accountability and responsibility. Drawing on Max Weber's analysis, political engagement can be exercised either occasionally or professionally; full-time politicians, dedicating themselves exclusively to politics, constitute a professionalised activity analogous to corporate board membership.[47] Thus, Weber's distinction between the *occasional* and the *professional* politician supports a sociological understanding of political office as a form of full-time, skilled professional engagement. In contemporary democracies, political mandates at national and EU level are remunerated, often require prior experience, and are subject to performance evaluation and oversight. This transforms politics into a 'labour-like domain', operating under market-like dynamics – with competition for office, reputational capital, and financial remuneration. Within this framework, women's underrepresentation in remunerated political positions – such as parliamentarians, ministers, or mayors – can thus be interpreted not merely as a democratic deficit but as a structural disadvantage in professional participation. Barriers to entry and retention in such positions (e.g., gender stereotypes, disproportionate care responsibilities, harassment, and financial disincentives) mirror the obstacles faced by women in other high-responsibility professional sectors, such as corporate leadership. Thus, women's underrepresentation makes legislative measures to enhance participation consistent with the rationale of Article 157(3) TFEU.

Article 157(4) TFEU complements this framework by authorising positive-action measures to remedy structural disadvantages in *professional* careers. While traditionally applied in labour markets, its underlying principle – correcting systemic barriers to ensure equal access to positions of responsibility – supports the extension of analogous measures to full-time political careers, such as targeted incentives, training programmes or temporary quotas.

Taken together, Articles 19(2) and 157(3)-(4) TFEU provide a complementary framework for EU action: Article 19(2) allows coordination and incentive measures at EU level; Article 157(3) enables legislative or non-legislative measures in areas where professional status can be recognised; and Article 157(4) underpins positive-action measures addressing structural barriers. In practice, this framework could be operationalised through EU-wide guidance, joint recommendations, codes of conduct or legislative initiatives, mirroring the approach taken in the private sector through the Women on Boards Directive while targeting political careers.

[46] See Directive (EU) 2022/2381 of the European Parliament and of the Council of 23 November 2022 on improving the gender balance among directors of listed companies and related measures, available at: http://data.europa.eu/eli/dir/2022/2381/oj. This Directive is grounded primarily in Article 157 TFEU and illustrates how the Union can use positive action to promote equality in decision-making bodies.

[47] See Weber, M. (1946), *Politics as a vocation*, reprinted from H. H. Gerth and C. Wright Mills (trans. and eds.), *Max Weber: Essays in sociology*, New York: Oxford University Press (original work published 1919), available at: https://ia800802.us.archive.org/28/items/weber_max_1864_1920_politics_as_a_vocation/weber_max_1864_1920_politics_as_a_vocation.pdf.

Turning to some 'financial tools', EU funding programmes, particularly the Citizens, Equality, Rights and Values Programme (CERV) and the European Social Fund Plus (ESF+), offer leverage to incentivise gender equality in political participation. The Common Provisions Regulation (2021/1060) empowers the Commission to make funding conditional on the achievement of gender equality objectives.[48] This legal basis is supported by Articles 8 and 10 TFEU, which enshrine, respectively, the principle of gender equality and the broader principle of equality and non-discrimination, obliging the Union to integrate gender considerations across all its policies and actions. By grounding funding conditions in these Treaty provisions, the EU could require political parties seeking support to demonstrate gender-balanced candidate lists or to support training programmes for women candidates.

Moreover, the ESF+ can be used to fund mentoring, capacity-building and gender audits within political parties, directly addressing structural barriers. Introducing performance-based budgeting with gender representation indicators would further reinforce political gender parity, in full alignment with the Union's Treaty obligations to promote gender equality in all areas of its action.

In addition, the EU could further use its budgetary instruments to provide targeted support to women's leadership training and mentorship schemes, civil society organisations supporting female candidates, and political party reforms aimed at equal representation.

Lastly, to enhance the formulation and coherence of EU initiatives in this field, the Commission could establish an *inter-service project group* specifically devoted to women's political participation. Bringing together key Directorates-General, including JUST, CNECT and HOME, such a group would provide an institutional platform for horizontal coordination and for the integration of gender equality objectives into the early stages of legislative and policy design.[49] These efforts could be further supported through soft-law instruments, notably by revising the Code of Practice on Disinformation to include concrete benchmarks addressing political misogyny and gender-based abuse in the digital sphere. In this way, the Commission would operationalise its obligations under Articles 8 and 10 TFEU, ensuring

[48] See Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy, available at: http://data.europa.eu/eli/reg/2021/1060/2024-06-30. According to Article 9, which lays down horizontal principles, '1. Member States and the Commission shall ensure respect for fundamental rights and compliance with the Charter of Fundamental Rights of the European Union in the implementation of the Funds. 2. Member States and the Commission shall ensure that equality between men and women, gender mainstreaming and the integration of a gender perspective are taken into account and promoted throughout the preparation, implementation, monitoring, reporting and evaluation of programmes. 3. Member States and the Commission shall take appropriate steps to prevent any discrimination based on gender, racial or ethnic origin, religion or belief, disability, age or sexual orientation during the preparation, implementation, monitoring, reporting and evaluation of programmes. In particular, accessibility for persons with disabilities shall be taken into account throughout the preparation and implementation of programmes…'.

[49] According to the *Working methods of the European Commission 2024-2029* '[t]he President will, upon proposal by the Secretariat-General, set up Project Groups... The purpose of the Project group is to ensure preparation and political steer in the delivery of an initiative from conception to implementation. The President decision to set up the Project Group will determine the mandate, the composition, the duration and the working methods of the group, and will appoint the Member(s) to lead the group. The President decision will be prepared by the Secretariat-General in consultation with the lead Member of the Commission. The lead Member of the Commission will chair the Project Group and will work with the Secretariat-General to coordinate the meetings, including invitations, agenda-setting, and ensure appropriate follow-up. The Project Groups will include Executive Vice Presidents, the High Representative/Vice-President, and other Members of the Commission, as well as relevant Commission services as appropriate. The Cabinets of the President and of the relevant Executive Vice-Presidents and/or the High Representative/Vice-President, as well as the Secretariat-General, Legal Service and Directorate-General for Communication will, as a rule, be invited to each meeting.' See https://commission.europa.eu/document/download/4b958a25-a16a-4ac2-bda8-c14a18bd117c_en?filename=Working%20Methods%20of%20the%20European%20Commission.PDF.

that the promotion of women's participation in political life is mainstreamed as a structural objective of EU policy-making.[50]

Taken together, the initiatives outlined above can be articulated along three complementary pathways, providing a coherent overview of the EU's approach to strengthening women's political participation.

1. Removing obstacles to participation:

   - Expanding the scope of the Digital Services Act to address online gender-based harassment and disinformation targeting women in politics.
   - Updating the Audiovisual Media Services Directive to explicitly include gender and political participation as protected categories.
   - Establishing benchmarks in the Code of Practice on Disinformation to guide platforms in countering political misogyny.

2. Actively promoting women's participation:

   - Creating an *inter-service project grou*p within the Commission (DGs JUST, CNECT, HOME) for horizontal coordination and early integration of gender objectives.
   - Adopting *incentive measures under Articles 19(2) and 157(3)-(4) TFEU* to support Member States' initiatives promoting women in politics. These measures could include conditional funding or grants for political parties implementing gender-balanced candidate lists; technical assistance for legislative reforms aimed at equal representation, including the design and monitoring of gender quotas; EU awards incentivising best practices in political gender parity.
   - Using *financial and capacity-building tools* (CERV, ESF+) to fund mentoring, training, leadership programmes and reforms for gender-balanced candidate representation.

3. Integrated approach:

   - Combining *protective and promotional measures* ensures gender equality is a structural objective of EU policy-making.
   - Supporting a *coherent, multidimensional framework* in which women's participation is safeguarded, promoted and systematically enhanced.

4. Concluding remarks

The analysis presented in this article demonstrates that, despite significant legal and policy advances at both EU and international levels, women remain underrepresented in political decision-making across the EU Member States. Structural and cultural barriers, including unequal caregiving responsibilities, gendered electoral practices and persistent stereotypes, continue to constrain women's access to political office. Moreover, gendered political violence and online hate speech have emerged as critical obstacles, with chilling effects that disproportionately deter women from entering

[50] See 'Code of Conduct on Disinformation', available at: https://digital-strategy.ec.europa.eu/en/library/code-conduct-disinformation.

or remaining in public life.

EU law provides a robust normative framework supporting gender equality and women's political participation. Articles 2 and 3(3) TEU and Articles 8, 10, 19 and 157 TFEU, together with the Charter of Fundamental Rights and recent secondary law acts, create both binding obligations and avenues for positive action. The analysis illustrates that instruments such as the Digital Services Act, the Women on Boards Directive, and EU funding programmes (CERV and ESF+) could be mobilised more systematically to address structural and increasing barriers to political participation. Furthermore, soft-law instruments and codes of conduct, while non-binding, play a complementary role in fostering accountability and guiding Member States and political actors toward substantive equality.

Looking forwards, the EU has multiple pathways to strengthen women's political representation. Legislative and non-legislative measures can be combined to create a coherent, multi-level strategy encompassing: (i) positive-action measures and temporary special quotas; (ii) enhanced protection against gender-based violence and online harassment; (iii) the use of financial and capacity-building instruments to support women candidates; and (iv) regulatory oversight over political parties, media, and digital platforms to ensure compliance with equality standards. The conceptualisation of political office as a 'profession' analogous to corporate boards, as supported by Articles 157(3)-(4) TFEU, provides a legal rationale for applying structured incentive and positive-action measures.

A renewed EU strategy should therefore recognise women's political participation not only as a democratic imperative but as a legally protected right under EU law, embedded in both primary and secondary legislation. By integrating legal, institutional and financial instruments into a comprehensive framework, the Union can promote a virtuous cycle in which enhanced representation, protection and empowerment reinforce each other. This approach will consolidate the EU's credibility as a champion of gender equality, strengthen democratic legitimacy and ensure that women's voices shape societies' political, economic and social priorities.

Advancing women's political participation in the EU requires coordinated, proactive and adaptive policies that address structural inequalities, safeguard against violence and discrimination, and create meaningful pathways for women to participate fully and equally in democratic life.

The forthcoming EU Gender Equality Strategy 2026-2030 offers a timely opportunity to operationalise these recommendations, ensuring that gender parity in political representation becomes a practical and enforceable reality across all Member States.

Exploring the link between (in)accessibility and disability discrimination in legislation and case law

Lisa Waddington*

Introduction

Persons with disabilities face many challenges to accessing their rights on an equal basis with others. Prominent amongst those challenges are disability discrimination, which can take a variety of forms, and lack of accessibility to the physical and digital environment, as well as goods and services, amongst others. While the obligation not to discriminate on the basis of disability and the obligation to provide accessibility are two distinct duties, they are nevertheless connected. Where a building is inaccessible, for example because the only entrance is up some steps which a person who uses a wheelchair cannot climb, this can be regarded as a form of disability discrimination. This is because it results in a disadvantage that impacts directly on a person with a disability (direct discrimination) or because it is a seemingly neutral situation that is more likely to adversely affect some persons with disabilities (indirect discrimination). A lack of accessibility can also result in the need to provide a person with a disability with an individualised reasonable accommodation, meaning an accommodation or adaption to meet their particular needs. The accommodation will then enable them to access a particular location, carry out a certain task or use specific goods or services. In the given example, this could involve installing a ramp so that the individual could enter the building, or providing the individual with the relevant services at another accessible location.

This article explores accessibility in the context of disability discrimination, and in particular the link between a lack of accessibility, including lack of compliance with legislation or standards establishing accessibility requirements, and disability discrimination. The article begins by defining some key concepts, and discussing non-discrimination and accessibility in the context of EU law, including in the context of the UN Convention on the Rights of Persons with Disabilities (CRPD). The article then discusses a number of dimensions to the link between disability discrimination and inaccessibility in Austria, Bulgaria, Finland and Ireland. These countries have been selected for analysis because this issue has been explicitly addressed, in one or more ways, in national legislation and/or case law, and their approaches reveal a variety of ways in which the two concepts are linked, and show how a lack of accessibility can result in disability discrimination.

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1. Understanding the key concepts and relevant EU legislation

This section briefly introduces and explains three key concepts which are relevant for this article: disability discrimination, accessibility and accessibility obligations.

1.1 Disability discrimination

EU law currently prohibits disability discrimination in the fields of employment and vocational training. The Employment Equality Directive (2000/78)[1] prohibits four kinds of discrimination: direct, indirect, harassment and an instruction to discriminate,[2] and establishes an obligation to provide a reasonable accommodation for a person with a disability, unless this would result in a disproportionate burden for the duty bearer.[3] In addition, following the conclusion of the CRPD, the EU is bound by the Convention to the extent of its competences, and the Convention has taken on the status of EU law. The CRPD establishes duties regarding equality and non-discrimination, including an explicit duty to ensure that reasonable accommodation is provided.[4] Aside from an unjustified failure to provide an accommodation, no other form of discrimination is explicitly mentioned in the Convention. However, General Comment No. 6 on equality and non-discrimination, which was adopted by the UN Committee on the Rights of Persons with Disabilities in 2018, makes it clear that direct and indirect discrimination, as well as harassment, are also prohibited forms of discrimination under the Convention.[5]

1.2 Accessibility

Accessibility relates to the characteristics of a good, service, infrastructure or other facility. A good, service, infrastructure or other facility is accessible for a person with a disability when barriers, including technical, design, functionality and other barriers, do not hamper its use by that person. Examples of relevant barriers include a lack of ramps and lifts in a multi-level building; failure to install disability accessible toilets; information that is not provided in large print, Braille and accessible digital formats; and products and services that are incompatible with standard personal assistive devices, such as digital information which cannot be read using screen reader technology. The existence of accessibility impacts on the ability of a person with a disability to access and use a good, service, infrastructure or other facility in practice. For example, a person who uses a wheelchair may be formally allowed to enter/access a building, such as a night club or court house; however, if the entrance to the building is inaccessible because the only way of entering is by climbing stairs, they will be unable to access that location in practice when using their wheelchair.

The CRPD refers to accessibility in the context of the physical environment, transportation, information and communications, including information and communications technologies and systems in Article 9, but does not contain a definition of accessibility. This article covers physical accessibility and information accessibility, including information and communication technologies such as websites (i.e.

1 Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303/16, 2.12.2000.
2 Article 2 of Directive 2000/78.
3 Article 5 of Directive 2000/78.
4 United Nations Convention on the Rights of Persons with Disabilities (2006), Article 5(3).
5 General Comment No. 6 (2018) on equality and non-discrimination, CRPD/C/GC/6, Para. 18.

information and communication provided in an accessible manner), to the extent that is addressed in the identified national legislation and case law.

1.3 Accessibility obligations

Accessibility obligations are legal or administrative rules that require compliance with some technical characteristics or, in general, the prevention and removal of barriers that persons with disabilities experience when they wish to access a good or service, infrastructure or facility. Legislation sometimes uses the word 'accessibility' as a general term, referring to the prevention and removal of barriers faced by persons with disabilities, but without defining the specific accessibility requirements or actions that need to be taken. In other cases, legislation refers to accessibility as a relative concept defined by specific requirements/characteristics that products, services and infrastructure must have. This may involve, for example, requirements to install ramps that are not steeper than a specific percentage or have lifts that meet minimum requirements in terms of the width of the entrance, and providing information in Braille and aurally or having signage that is printed in a specific large font size or above.

The European Accessibility Act (Directive 2019/882)[6] requires that certain goods, services and infrastructure are accessible before they are placed in the EU market. Annexes to the Directive set out general accessibility requirements, but do not set out technical standards.[7] However, the Directive establishes a presumption of conformity,[8] which provides that if covered goods and services, including websites or applications, comply with certain harmonised standards that have been adopted by European standardisation organisations following the issuing of a European Commission mandate, and published in the *Official Journal of the EU*, there will be a presumption that the goods and services meet the accessibility requirements set in the Directive. The CRPD, in Article 9, also addresses accessibility standards and obliges parties to 'develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open to the public'.[9] General Comment No. 2 on Article 9: Accessibility[10], which was adopted by the CRPD Committee in 2014, specifies that the 'right to access for persons with disabilities is ensured through strict implementation of accessibility standards'.

2. The relationship between disability discrimination, accessibility and accessibility obligations

General Comment No. 2 makes a link between lack of accessibility and discrimination.[11] It specifies that '[a]s a minimum' two specific situations in which a 'lack of accessibility has prevented a person

6 Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services, OJ L 151/70, 7 June 2019.
7 General accessibility requirements related to all services covered by Article 2(2) of the Directive are addressed in Annex I, Section III.
8 European Accessibility Act, Article 15.
9 European Accessibility Act, Article 9(2)(a).
10 General Comment No. 2 (2014) Article 9: Accessibility, CRPD/C/GC/2, Para. 14.
11 General Comment No. 2 (2014) Article 9: Accessibility, Para. 29 provides: 'accessibility should be encompassed in general and specific laws on equal opportunities, equality and participation in the context of the prohibition of disability-based discrimination'. Para. 34 provides: '[t]he duty of States parties to ensure access to the physical environment,

with disabilities from accessing a service or faculty open to the public' should be considered as 'prohibited acts of disability-based discrimination'. These situations are: '[w]here the service facility was established after relevant accessibility standards were introduced' and 'where access could have been granted to the facility or service (when it came into existence) through reasonable accommodation'.[12]

Disability discrimination, involving a lack of accessibility, can potentially be classified as direct or indirect discrimination or, as noted in General Comment No. 2, a failure to provide a reasonable accommodation.

A lack of accessibility that prevents a particular person with a disability from accessing or using a good, service, infrastructure or other facility that is open to the public could be classified as direct disability discrimination in legislation or court judgments. This is because a person is disadvantaged for a reason directly linked to their impairment.

A lack of accessibility could also be regarded as indirect discrimination. This involves 'an apparently neutral provision, criterion or practice [which] would put persons having … a particular disability … at a particular disadvantage'.[13] An inaccessible environment can be regarded as an 'apparently neutral' feature, which can disadvantage particular persons with disabilities, thereby potentially leading to indirect discrimination. According to the CRPD Committee's General Comment No. 6 on equality and non-discrimination of 2018,[14] indirect discrimination 'occurs when an opportunity that appears accessible in reality excludes certain persons owing to the fact that their status does not allow them to benefit from the opportunity itself'.[15]

An inaccessible environment can also result in the need for individualised reasonable accommodation. The accommodation would then enable the particular person with a disability to access the good, service, infrastructure or other facility. The CRPD Committee's General Comment No. 6 refers to 'making existing facilities and information accessible to the individual with a disability' as an example of a reasonable accommodation.[16] This could benefit not only the individual who requested the accommodation but also other persons with a disability who would similarly experience such a barrier in the given situation. This could be the case, for example, where the accommodation involved installing a ramp to allow access to a building. The provision of a reasonable accommodation for a particular individual could therefore potentially result in creating an accessible environment that would allow access for all persons with disabilities in a similar situation to the claimant. Nevertheless, the obligations to provide reasonable accommodation and accessibility are quite different. General Comment No. 2 on accessibility explains the relationship in the following way:

> 'Accessibility is related to groups, whereas reasonable accommodation is related to individuals. This means that the duty to provide accessibility is an *ex ante* duty. States parties therefore

transportation, information and communication, and services open to the public for persons with disabilities should be seen from the perspective of equality and non-discrimination'.

12 General Comment No. 2 (2014) Article 9: Accessibility, Para. 31.
13 Directive 2000/78, Article 2(2)(b).
14 General Comment No. 6 on equality and non-discrimination, CRPD/C/GC/6.
15 General Comment No. 6 on equality and non-discrimination, Para. 18(b).
16 General Comment No. 6 on equality and non-discrimination, Para. 23.

> have the duty to provide accessibility before receiving an individual request to enter or use a place or service. States parties need to set accessibility standards … . Accessibility standards must be broad and standardized. In the case of individuals who have rare impairments that were not taken into account when the accessibility standards were developed, or who do not use the modes, methods or means offered to achieve accessibility … even the application of accessibility standards may not be sufficient to ensure them access. In such cases, reasonable accommodation may apply.'[17]
>
> 'The duty to provide reasonable accommodation is an *ex nunc* duty, which means that it is enforceable from the moment an individual with an impairment needs it in a given situation, for example, workplace or school, in order to enjoy her or his rights on an equal basis in a particular context. Here, accessibility standards can be an indicator, but may not be taken as prescriptive. Reasonable accommodation can be used as a means of ensuring accessibility for an individual with a disability in a particular situation. … [A] person with a rare impairment might ask for accommodation that falls outside the scope of any accessibility standard.'[18]

Having explored the key concepts related to disability discrimination and accessibility, this article now proceeds to consider how the two concepts relate to each other in the legislation and case law of the selected EU Member States.

3. The link between (in)accessibility and disability discrimination in national legislation and case law

An examination of relevant legislation and case law from Austria, Bulgaria, Finland and Ireland reveals that a lack of accessibility can be taken into account in a number of ways when assessing whether disability discrimination has occurred. Section 3.1. below considers how non-discrimination legislation in the four Member States addresses a lack of accessibility for persons with disabilities, while Section 3.2 considers how a lack of accessibility is regarded in case law on disability discrimination.

3.1 Non-discrimination legislation

3.1.1 Non-discrimination legislation defines inaccessibility as direct disability discrimination

In Bulgaria, Article 5 of the Protection against Discrimination Act[19] (PADA) provides among other things that: 'the construction and maintenance of an architectural environment that makes it difficult for persons with disabilities to access public places, shall be considered discrimination'. This is the clearest statement that a lack of physical accessibility amounts to disability discrimination found in the non-discrimination legislation of any of the EU Member States. It explicitly equates a lack of accessibility – defined as 'an architectural environment that makes it difficult for persons with disabilities to access public places' – with direct discrimination.[20] Notably, the provision only applies to the architectural

[17] General Comment No. 2 (2014) Article 9: Accessibility, Para. 25.
[18] General Comment No. 2 (2014) Article 9: Accessibility, Para. 26.
[19] Bulgaria, Protection against Discrimination Act *(Закон за защита от дискриминация)*, adopted September 2003, last amended October 2023.
[20] This interpretation of the provision has been confirmed by case law which is discussed below.

environment of public places and not to the many other areas where inaccessibility can arise, such as information accessibility, including information and communication technologies, and goods and services.

3.1.2 Non-discrimination legislation defines inaccessibility as indirect disability discrimination/failure to comply with the reasonable accommodation duty

In Austria, disability discrimination legislation explicitly provides that a failure to comply with (accessibility) legislation or standards is relevant for a discrimination claim. Both the Act on the Employment of Persons with Disabilities[21] and the Federal Disability Equality Act,[22] (which covers areas beyond employment), establish obligations to make a reasonable accommodation and define a breach of that obligation as a form of indirect discrimination. The latter Act also refers to the built environment in its definition of indirect discrimination, specifying:

> 'Indirect discrimination shall be taken to occur where apparently neutral provisions, criterions or practices or characteristics of constructed areas[23] would put persons with disabilities at a particular disadvantage compared with other persons, unless the provisions, criterions or practices or characteristics of constructed areas are objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.'[24]

Both Acts also state:

> 'When assessing whether certain circumstances constitute indirect discrimination it has to be taken into account whether relevant legislation exists in regard to accessibility and to what extent it has been complied with. Premises or other facilities, means of transport, technical equipment, information systems or other dedicated spheres of life shall be deemed accessible[25] if they can be accessed and used by persons with disabilities in a customary way, unassisted and without extra difficulty.'[26]

This means that when assessing whether the provision of accessibility would amount to a disproportionate burden in the context of the reasonable accommodation duty/prohibition of indirect discrimination, the duty bearer's (lack of) compliance with legislation setting accessibility standards should be taken into account. It would seem to be impossible for a duty bearer to argue that a specific accommodation would amount to a disproportionate burden, and therefore not be required, if the relevant action is mandated under accessibility legislation. Given that the laws' reference to 'relevant legislation' regarding accessibility is generic, it can cover a range of instruments, including measures to transpose the European Accessibility Act into Austrian legislation. As noted above, a failure to provide a reasonable accommodation amounts to a particular form of indirect discrimination under the legislation.

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21 Austria, Act on the Employment of Persons with Disabilities (*Behinderteneinstellungsgesetz*), Sections 6 and 7.
22 Austria, Federal Disability Equality Act (*Bundes-Behindertengleichstellungsgesetz*), Section 7.
23 The relevant term in German is *Merkmale gestalteter Lebensbereiche.* This provision should be interpreted broadly, and includes the physical environment and technical equipment.
24 Austria, Federal Disability Equality Act, Section 5(2).
25 The relevant term in German is *barrierefrei.*
26 Austria, Act on the Employment of Persons with Disabilities, Section 7(c)(7); Federal Disability Equality Act, Section 6(4) and (5).

3.1.3 Other accessibility duties in non-discrimination legislation

In Finland, the Non-Discrimination Act[27] does not explicitly refer to accessibility. Moreover, the 2014 proposal for the Non-Discrimination Act[28] states that the requirement to provide reasonable accommodation is to be differentiated from accessibility, and accessibility requirements are established outside the Non-Discrimination Act, mostly through building and transport regulations. However, the proposal also states that the requirement to provide reasonable accommodation includes not only reacting to the specific needs of individuals with disabilities, but also meeting predictable needs in advance of a specific request.[29] The Government proposal that preceded the 2022 amendments to the Act elaborated on the amended reasonable accommodation duty. It refers to paragraph 24 of General Comment No. 6 of the CRPD Committee on equality and non-discrimination, and states that the requirement to provide a reasonable accommodation exists not only when it is requested, but also when the duty bearer should understand that there is a need for reasonable accommodation measures in advance of a specific request.[30] Such predictable or understandable accommodation measures can often relate to accessibility and could include, for example, installing a ramp so that a person using a wheelchair could enter the premises or installing a hearing loop, which would assist a person who uses a hearing aid.

In Ireland, the Disability Act 2005[31] places accessibility obligations on public bodies. Such bodies must ensure that public buildings are accessible 'as far as practicable' to persons with disabilities,[32] and that services are accessible for persons with disabilities. The latter obligation is to be met by providing integrated access to services where this is practicable and appropriate.[33] However, a failure to provide accessible public buildings under the Act is not construed as discrimination, and nor is a failure to provide accessible services.

3.2 Case law

Case law sometimes made a link between inaccessibility and disability discrimination. Some of this case law is discussed in the following subsections, which explore how inaccessibility can be regarded as direct discrimination, indirect discrimination or as involving a failure to provide a reasonable accommodation respectively.[34]

3.2.1 Case law finding inaccessibility amounts to direct disability discrimination

The Bulgarian Supreme Administrative Court (SAC) has regularly applied Article 5 of the PADA to find that 'an architectural environment that makes it difficult for persons with disabilities to access public places' amounts to direct discrimination. These cases have involved appeals against decisions of the Protection against Discrimination Commission (PADC).[35] One such recent case involved an appeal by

[27] Finland, Act 1325/2014, amended by Act 1192/2022.
[28] Finland, Government proposal 19/2014, p. 79.
[29] Finland, Government proposal 19/2014, p. 81.
[30] Finland, Government proposal 148/2022, p. 69.
[31] Ireland, Disability Act 2005.
[32] Ireland, Disability Act 2005, Section 25.
[33] Ireland, Disability Act 2005, Section 26.
[34] The case law from Austria and Bulgaria is not repeated in this sub-section, but is naturally also relevant.
[35] PADC is the national equality body.

a bank against a finding of the PADC, which had been upheld by a lower court, that it had discriminated under PADA by failing to provide an accessible environment at one of its offices in Sofia.[36] The SAC upheld the decisions of the PADC and the lower court, and found that the bank had breached Article 5 of the PADA by failing to ensure an accessible architectural environment. In reaching this finding, the SAC referred to Article 9 CRPD, and noted Bulgaria's obligations to remove barriers to accessibility in public spaces to ensure equal access for persons with disabilities. The SAC found that the bank had not taken any measures to facilitate access for persons with disabilities and had not demonstrated efforts to comply with the accessibility standards. The Court also emphasised that the responsibility to provide an accessible environment lies with the service provider, regardless of its status as a tenant of the building. Consequently, the Court found that the lack of accessibility amounted to direct discrimination. It upheld the decision of the PADC, which had imposed a fine and ordered the bank to make the office in question accessible within one month.

The PADC has initiated *ex officio* a number of such cases to enforce the accessibility provision in Article 5 PADA in the context of access to public places. Several of these have resulted in appeals to the SAC, which has upheld the PADC's finding of discrimination. These cases have concerned places operated by private entities, as well as places operated by the public sector. The SAC has therefore ruled in a case involving a credit institution (2022),[37] as well as cases involving the National Health Insurance Fund (2010),[38] a post office (2019),[39] and the Social Assistance Agency (2022).[40] However, while the CRPD refers to accessibility in a wide range of areas, Bulgarian case law and legislation only concerns accessibility of the physical environment.

In Finland, the National Equality and Non-Discrimination Tribunal has found that an inaccessible environment can result in direct discrimination against a person with a disability on occasions. The Tribunal interprets the Non-Discrimination Act, and issues binding decisions which can be appealed through the judicial system. Courts have generally approved the decisions of the Tribunal in cases involving accessibility on appeal.

In a case from 2015,[41] a person who used a wheelchair complained to the Tribunal about the lack of an accessible toilet at a restaurant. According to the relevant building regulations, the restaurant was obliged to have an accessible toilet. While such a toilet was present, it was used as a storage room, there was no sign indicating the presence of the toilet, and the door did not have the required pull-back handle. The Tribunal found that this amounted to direct discrimination against persons who need an accessible toilet, and prohibited the restaurant from continuing or renewing the discrimination. In reaching this finding, the Tribunal took account of the fact that the applicable building regulations had not been complied with. It also referred to an individual communication of the CRPD Committee, which concerned the failure to provide accessible information regarding public transport.[42] The Finnish expert for the network, Rainer Hiltunen, argues that this decision indicates that when inaccessibility results

[36] Bulgaria, SAC, Judgment No. 1312 of 7 February 2023 in Administrative Case No. 6434/2022.
[37] Bulgaria, SAC, Judgment No. 6293 in Administrative Case No. 2133/2022, concerning a credit institution.
[38] Bulgaria, SAC, Judgment No. 9544 in Administrative Case No. 6588/2010, concerning a local office of the National Health Insurance Fund.
[39] Bulgaria, SAC, Judgment No. 3355 in Administrative Case No. 10823/2019, concerning a post office.
[40] Bulgaria, SAC, Judgment No. 929 in Administrative Case No. 4190/2022, concerning a local office of the Social Assistance Agency.
[41] Finland, National Equality and Non-Discrimination Tribunal, 6x/2015, xx.xx.2016. This case is discussed further below.
[42] *F v Austria Communication* No. 21/2014, CRPD/C/14/DR/21/2014.

from a failure to comply with a clear legal requirement, such as that set out in building regulations, it will be viewed as direct disability discrimination.[43] More recently, in an as yet unpublished decision, the Tribunal also found direct discrimination in the provision of services in a situation in which the defendant knew about the accessibility needs of an individual with a disability but failed to provide accessible services.[44]

In contrast is a decision of the Irish Equality Tribunal,[45] which found that a hotel which had not complied with relevant building standards, resulting in the failure to provide a guest who used a wheelchair with a room with an accessible shower, had not directly discriminated against the complainant. The Tribunal found that direct discrimination was not at stake because the hotel had provided the complainant with a hotel room during her stay, albeit that the room was inaccessible in some respects. The Tribunal did however find that the hotel had failed to meet its duty to provide a reasonable accommodation to the complainant.

3.2.2 Case law finding inaccessibility amounts to indirect disability discrimination

In Austria, Section 5(2) of the Federal Disability Equality Act provides that indirect discrimination occurs where the characteristics of constructed areas would put persons with disabilities at a particular disadvantage. A district court applied this provision to find that the failure to ensure a newly refurbished bakery was accessible to a person who used a wheelchair, because of the presence of steps at the entrance, amounted to indirect discrimination.[46] The Court took building regulations into account in reaching this decision. In Finland, the Equality and Non-Discrimination Tribunal has viewed the lack of accessibility through the prism of indirect discrimination in a number of cases. These cases have occurred in a variety of areas, including housing and education infrastructure, as well as the accessibility of services.

In a decision of 2021,[47] the Tribunal found that the decision of a housing cooperative to refuse permission to install a ramp and a door opening mechanism at the entrance to an apartment building, which would have allowed a resident with a disability to have unhindered access to the building on an equal basis with other residents, amounted to indirect discrimination. The cost of the adaptions would have been covered by the local authority. The Tribunal found that this seemingly neutral decision, which involved refusing all requests to adapt the entrance to the building, in fact put persons with a disability in a less favourable position on the basis of disability. The Tribunal referred to a wide range of CRPD provisions in its decision, including Article 5 on equality and non-discrimination, Article 9 on accessibility and Article 19 on living independently and being included in the community.[48] This case was brought to the Tribunal by the Non-Discrimination Ombudsman, illustrating the importance of enforcing the rights of individuals with disabilities through litigation, and the value of allowing interested third parties to bring such cases. A 2023 decision of the Tribunal also concerned physical

[43] In email correspondence with the author.
[44] Information received from the National Equality and Non-Discrimination Tribunal by Rainer Hiltunen, the Finnish expert for the network.
[45] Ireland, Equality Tribunal, *Harrington v. Cavan Crystal Hotel*, DEC-S2008-117, 10 December 2008. This case is discussed further below.
[46] Austria, District Court Josefstadt, Dec. Nr. 4C 707/11z of 14 November 2011.
[47] Finland, Equality and Non-Discrimination Tribunal 8xx/2020, xx.xx.2021.
[48] The Tribunal also referred to Articles 1, 2, and 3 CRPD.

accessibility,[49] this time in the field of education. This case was also brought by the Non-Discrimination Ombudsman. The case concerned a child who had a mobility disability. The child's school was being renovated, during which time teaching took place in temporary classrooms. The location of the accessible entrance to the classroom resulted in the child having to travel a significantly longer and more difficult route to reach the classroom than other children did. The Tribunal found that the harm experienced by the child could not be considered minor, as the child could not enter the educational facilities on an equal basis with other children because of the extra effort required to reach the classroom. The Tribunal found that this amounted to indirect discrimination, as the child was placed at a disadvantage compared to other children without disabilities who attended the school. The Tribunal referred to a number of provisions in the CRPD, including Article 5(2) under which States Parties are to prohibit all discrimination on the basis of disability and Article 24 on the right to education, as well as General Comment No. 9 on the Rights of Children with Disabilities adopted by the Committee on the Rights of the Child in 2006.[50] The Tribunal referenced paragraph 65 of the latter General Comment, which states: '[a]ll schools should be without ... physical barriers impeding the access of children with reduced mobility'.

Lastly, the Tribunal has also found indirect discrimination to have occurred in a case involving an inaccessible service. This case concerned two individuals who used wheelchairs who enquired about booking an accessible hotel room. The hotel was able to offer such a room, but also informed the individuals that the accessible entrance to the hotel could only be used[51] when the reception was open. The reception was closed at night and for a large part of the day on Sunday. Other guests could use an entrance that was inaccessible to persons who used wheelchairs during this time. The hotel also offered the possibility for guests to request a guard to open the main entrance at this time, but charged a fee of EUR 50 for this. The Tribunal found that the accommodation service, like other services, must be accessible to persons with disabilities. It found that the hotel's practice put persons with certain disabilities in a disadvantageous position, as their ability to leave the hotel outside reception opening hours was limited. It also found that the practice of charging to open the accessible entrance outside opening hours would cause the applicants extra costs, which amounted to an additional financial burden for them compared to other guests. In reaching a finding of indirect discrimination, the Tribunal once again referred to provisions of the CRPD, including Articles 5 and 9.[52]

The Finnish expert for the network, Rainer Hiltunen, argues that the Tribunal has, in its more recent cases, placed greater emphasis on the need for duty bearers to meet predictable accessibility needs, prior to receiving a specific request for an individual accommodation.[53] If these predictable accessibility needs have not been met, the Tribunal may be more likely to regard the lack of accessibility as indirect discrimination, rather than a failure to provide a reasonable accommodation. The requirement to anticipate accommodation needs was given greater force in the 2022 amendments to the Non-Discrimination Act, but was addressed in the decisions of the Tribunal prior to that. In Ireland, while complaints regarding disability discrimination and inaccessibility are usually assessed against the reasonable accommodation obligation, there is also some case law which has

49 Finland, Equality and Non-Discrimination Tribunal, 10xx/20xx, xx.xx.2023.
50 CRC/C/GC/9, 27 February 2007.
51 Unless a fee was paid to open the main entrance, as noted below.
52 It also referred to Articles 2, 4 and 30 CRPD.
53 In email correspondence with the author.

found inaccessibility to amount to indirect discrimination. In *Sinnott v. Iarnrod Eireann*,[54] decided by the Workplace Relations Commission in 2018, a complainant with a visual impairment complained about various aspects of the public transport system. While the complainant alleged discrimination in the form of a failure to provide a reasonable accommodation, the Commission found indirect discrimination to have occurred in two instances. The Commission found that the respondent knew that its system was faulty and resulted in problems for the complainant, but did nothing to address the faults. It held that this amounted to indirect discrimination[55] and directed the respondent to review the on-board announcement system 'to ensure persons with visual impairments are not impacted negatively'.[56] The Commission also found that the temporary inaccessibility of a particular station amounted to indirect discrimination. Here, too, the transport company had not made any efforts to enable the complainant to access the services, which the Commission held amounted to indirect discrimination against people with visual impairments.[57] The Commission did not discuss the legal definition of indirect discrimination in its decision, and did not explicitly apply any definition to the facts of the case.

This case law reveals how inaccessibility can be regarded as a form of indirect disability discrimination. The aforementioned judgment of the Austrian district court and the decisions of the Finnish Equality and Non-Discrimination Tribunal reveal the potential of the prohibition of indirect discrimination to address situations of inaccessibility with regard to both physical accessibility, in a variety of fields, and access to services. Moreover, they show that the Finnish Tribunal is drawing on international human rights law, including both the CRPD and the CRC, as well as related general comments and individual communications, when addressing indirect discrimination in the form of inaccessibility. In contrast, the Workplace Relations Commission in Ireland is less clear as to why it regarded these particular forms of inaccessibility, relating to information and the physical infrastructure at a public transport station, as amounting to indirect discrimination in the cited case, and it did not refer to the CRPD in its decision. However, that decision also confirms the potential for various forms of inaccessibility to be regarded as indirectly discriminatory.

3.2.3 Non-discrimination legislation and/or case law finding inaccessibility amounts to a failure to provide a reasonable accommodation

As noted above, while the Employment Equality Directive does not explicitly define an unjustified

failure to provide a reasonable accommodation as a form of discrimination, the CRPD does adopt this approach. Moreover, national non-discrimination legislation often defines such a failure as a form of disability discrimination. This is the case in Austria, Ireland and Finland, where inaccessibility has been taken into account in cases concerning an (alleged) failure to provide reasonable accommodation.

In Austria, in a case concerning the inaccessibility of a good, the Viennese Commercial Court found that the failure to provide a DVD with subtitles amounted to discrimination against a consumer who was deaf.[58] The Court applied Section 5(2) of the Federal Disability Equality Act, which provides that

[54] Irish Workplace Relations Commission, *Sinnott v. Iarnrod Eireann*, DEC-S2018-007, 29 March 2018.
[55] Irish Workplace Relations Commission, *Sinnott v. Iarnrod Eireann*, Para. 4.4.
[56] Irish Workplace Relations Commission, *Sinnott v. Iarnrod Eireann*, Para. 5.3.
[57] Irish Workplace Relations Commission, *Sinnott v. Iarnrod Eireann*, Para. 4.4.
[58] Viennese Commercial Court, Dec. Nr. 60 R 93/10x of 8 September 2011.

indirect discrimination occurs when '*characteristics of constructed areas*' puts persons with a disability at a particular disadvantage. This concept embraces barriers and the provision extends beyond the built environment to cover technological barriers and procedures, as evidenced by the explanatory notes to the Disability Equality Act. The notes provide that 'a communication technological barrier is on hand when tactile, acoustic or optic aids for orientation or translations for sensory disabled persons are missing'.[59] The Court found that the absence of subtitles on the DVD amounted to a failure to provide a reasonable accommodation, which is a specific form of indirect discrimination under the Act.

In Ireland, both the Equality Tribunal and the body which replaced it, the Workplace Relations Commission, have considered lack of accessibility through the prism of the reasonable accommodation duty, although the relevant legislation does not make an explicit link between lack of accessibility and reasonable accommodation, or disability discrimination more generally. The decisions of both the Tribunal and Commission are binding and can be enforced in the event of default by taking district court proceedings. However, as quasi-judicial bodies, the Tribunal and Commission have a limited jurisdiction only to assess compliance with the laws that fall within their remit. Specifically, the Equal Status Acts 2000-2018, which cover discrimination in access to goods and services, including housing and education, establish an obligation to provide a reasonable accommodation. Section 4(1) provides that discrimination includes a refusal or failure by the provider of the service to do all that is reasonable to accommodate the needs of a person with a disability by providing special treatment facilities, if without such special treatment facilities it would be impossible or unduly difficult for the person to avail himself or herself of the service. Section 4(2) states that a refusal or failure to provide such 'special treatment facilities … shall not be deemed reasonable unless such provision would give rise to a cost, other than a nominal cost, to the provider of the service in question'.[60] A reasonable accommodation duty is also established in the field of employment under Section 16 of the Employment Equality Acts 1998-2021. The Equality Tribunal has arguably adopted a somewhat inconsistent approach when considering whether a lack of accessibility experienced by a person with a disability amounts to discrimination, and specifically a failure to provide a reasonable accommodation, or not. This inconsistency is reflected *inter alia* in three cases decided in 2008, all of which concerned physical accessibility of buildings open to the public, including toilets or bathrooms. The first case to be decided, *Hallinan v. Moy Valley*, [61] involved a complainant who used a wheelchair who attended a training session at the respondent's premises which did not have an accessible toilet. The complainant argued that the failure to provide an accessible toilet amounted to a breach of the reasonable accommodation obligation, and claimed that the building failed to comply with mandatory building regulations, which required the installation of such a toilet.

The Tribunal stated that it did not have a role in enforcing the relevant building regulations or other similar requirements, but did consider whether the respondent had complied with its duty to provide a reasonable accommodation. The Tribunal noted that while 'it may not be reasonable to presume that providers of goods and services have an expert understanding of all types of reasonable accommodation issues that may arise, the fact is that it is reasonable to assume that a facility serving

[59] Parliamentary Explanatory Notes to the Austrian Federal Disability Equality Act, XXII. GP (Legislative Period), Nr. 836, Annexes, Government bill, p. 7, available (GER).
[60] Ireland, Equal Status Acts 2000-2018, Section 4.
[61] Irish Equality Tribunal, *Hallinan v. Moy Valley Resources*, DEC-S2008-025, 1 April 2008.

the wider community would have considered such basic needs as an accessible toilet facility'.[62] It also found that the respondent had not offered evidence of whether the costs of providing such a toilet would be more than nominal, and therefore could not rely on the defence that installing such a toilet would be unreasonable. The Tribunal consequently held that the provision of an accessible toilet was a reasonable measure to expect of the respondent, given its role in serving the wider community, and that a breach of the reasonable accommodation duty had occurred.

The second case, *Hallinan v. Mayo Education Centre*,[63] concerned the lack of accessibility of a meeting venue. The complainant attended a meeting at the respondent's premises, having been previously informed that the venue was accessible. In fact, this was not the case. The lift could not accommodate his wheelchair, there were several steps leading to the meeting room, with no ramp available, and the toilet was inaccessible. As a result, the complainant and his colleagues had to hold their meeting in the reception area, which he found to be unprofessional and embarrassing. The meeting also had to be cut short because of the lack of privacy.

The Tribunal considered whether the respondent had breached the reasonable accommodation duty under the Equal Status Acts 2000-2018, and found that a lack of accessibility did not amount to a failure to provide a reasonable accommodation. Regarding the relevance of accessibility standards, the Tribunal noted it was not its task to examine compliance with building regulations. Rather, the Tribunal has to consider whether the service provider had done all that was reasonable to accommodate the needs of the complainant on the day. It held that the issues raised by the complainant related to structural changes, such as installing ramps or enlarging the lift, and could not have been 'rectified there and then'. It also found that the respondent had done 'all that was reasonable on the day', it was 'not reasonable to presume that a service provider has the relevant experience to assess accessibility for all', and found that making the requested accommodations would have resulted in excessive costs, and were therefore not required under Section 4(2) of the Equal Status Acts 2000-2018.[64]

The Tribunal, therefore, did not regard building regulations, which mandate accessibility requirements, as relevant in this case, and did not make a link between what could be expected of the respondent in terms of knowledge regarding accessibility and relevant building regulations. In contrast, in the third case of *Harrington v Cavan Crystal Hotel*,[65] the Equality Tribunal did explicitly take accessibility standards into account in determining what was 'reasonable' in terms of complying with the reasonable accommodation duty in Section 4. A woman who used a wheelchair complained that the shower in her hotel room was inaccessible, and that she did not have independent access to the hotel swimming pool because no hoist was available. She had informed the hotel of her access needs when booking the room. The Equality Tribunal took into account mandatory building regulations in establishing whether the respondent hotel should have provided a wheelchair-accessible shower. The hotel had been constructed after the relevant building regulations came into force and the respondent conceded that its architects had failed to take account of the relevant Technical Guidance Document[66] when designing the hotel, with the result that no wheelchair-accessible shower was available to the

62 Irish Equality Tribunal, *Hallinan v. Moy Valley Resources*, DEC-S2008-025, 1 April 2008, Para 5.8.
63 Irish Equality Tribunal, *Hallinan v. Mayo Education Centre*, DEC-S2008-063, 1 October 2008.
64 Irish Equality Tribunal, *Hallinan v. Mayo Education Centre*, DEC-S2008-063, 1 October 2008, Para 5.7.
65 Irish Equality Tribunal, *Harrington v. Cavan Crystal Hotel*, DEC-S2008-117, 10 December 2008.
66 See: Technical Guidance Document M - guidance and use.

complainant. The Equality Tribunal concluded that the hotel had failed to comply with the duty to provide a reasonable accommodation. The Tribunal found:

> 'it was reasonable to expect the respondent to have been aware of the need to provide level access showers for disabled customers and it was therefore reasonable for the complainant to expect that her needs in relation to the provision of bathroom facilities in the room in question should have been met.'[67]

While the Tribunal reiterated its finding in *Hallinan v Mayo Education Centre* that it had no jurisdiction to assess compliance with accessibility standards prescribed by building regulations, it did find that compliance with such standards could be taken into account in determining what was 'reasonable' to expect a duty bearer to do to meet the reasonable accommodation obligation. In this case, the Tribunal concluded that the reasonable accommodation duty had been breached. However, it did not find that the hotel had discriminated against the complainant by not providing a hoist that would have allowed her independent access to the swimming pool, as it was satisfied that she had access to the pool by being lifted in and out by staff.

In a 2014 case, the Equality Tribunal found, once again, that compliance with building regulations was a relevant factor to be taken into account when determining whether a respondent had complied with its reasonable accommodation obligation. The case of *Ms H v. A Multi-National Retailer*[68] was brought under the Employment Equality Acts, and concerned a shopworker who needed to use an accessible toilet. Her employer allowed her to use the accessible toilet in a nearby shopping centre, including allowing her to take extra time for toilet breaks. However, the worker argued that this was not suitable, as the toilets in the shopping centre were busy and, as a result of a medical condition, she could not always wait for a toilet to become available.

The Tribunal noted that the complainant had requested access to an accessible toilet at her workplace for some time, and that the use of the toilet in the shopping centre was not an appropriate long-term solution as these toilets were not kept clean and there were frequent queues. The Tribunal noted that the respondent acknowledged that, had its premises been built after 2001, it would have been required to provide access to a wheelchair-accessible toilet under Part M of the Building Regulations 2000. The Tribunal also requested an estimate of the cost of installing a toilet that was accessible to a person who had an ambulant disability, such as the complainant. That cost was approximately EUR 22 700, which the Tribunal did not regard as unreasonable for the respondent, which was an exceptionally large retailer. The Tribunal therefore found that a failure to provide a reasonable accommodation was at stake in this case, and noted that the accessible toilet could have been used by both staff and customers with a disability.

A further case in which the Equality Tribunal found that inaccessibility amounted to a breach of the reasonable accommodation duty concerned the failure of bus drivers on a particular route to allow a person who used a wheelchair to access the bus via a wheelchair lift.[69] The reason given for this was that the drivers had not had the relevant training. The respondent bus company argued that the physical assistance given by staff in boarding the bus met the requirement to provide a reasonable

[67] Irish Equality Tribunal, *Harrington v. Cavan Crystal Hotel,* DEC-S2008-117, 10 December 2008, Para 5.5.
[68] Irish Equality Tribunal, *Ms H v. A Multi-National Retailer,* DEC-E2014-030, 15 April 2014.
[69] Irish Equality Tribunal, *Doherty v. Bus Éireann*, DEC-S2011-052, 17 November 2011.

accommodation but the Tribunal found that it was 'unduly difficult' for the complainant to use the bus service and that a breach of the reasonable accommodation duty had occurred.[70]

The Equality Tribunal has also found that inaccessibility did not amount to a breach of the reasonable accommodation duty in a number of other cases. One such case concerned the unavailability of information in Braille about a store's loyalty card system.[71] The store in question had provided the complainant with information over the telephone and the Tribunal found that this meant access to the service was not 'unduly difficult', and that a *prima facie* case of discrimination, in the form of a failure to provide a reasonable accommodation, was not established. Similarly, the Tribunal found that requiring a man who was a wheelchair user to transfer to a manual wheelchair, with his motorised wheelchair being stored during transit, and travel in the dining car on the respondent's trains, did not amount to a failure to provide a reasonable accommodation.[72] The complainant argued that, had the Irish rail company complied with UK regulations on train carriage design,[73] he would have been able to travel in the train carriages with other passengers. However, the Tribunal did not engage with this argument,[74] and found that allowing the complainant to travel in the dining car met the reasonable obligation duty under the Equal Status Acts 2000-2018. It also noted that providing access for motorised wheelchairs would have been likely to have exceeded the nominal cost,[75] and would therefore have been unreasonable. Lastly, the Tribunal found that an offer by a bookstore to have staff bring books to the complainant, who used a wheelchair, was sufficient to meet the reasonable accommodation duty, in a situation where part of the shop was inaccessible to wheelchair users.[76]

In 2015, the Workplace Relations Commission replaced the Equality Tribunal in Ireland. Similar to the Tribunal, the Workplace Relations Commission has sometimes found that inaccessibility results in a breach of the reasonable accommodation duty. In *Elliott v. Flexiteam Ltd*,[77] the Commission found that a hotel had breached the duty when it accepted a room booking for the complainant and her child. The breach resulted from a failure to provide the necessary disability-related accommodations it had committed to when accepting the booking. The hotel was ordered to pay EUR 7 000 in compensation and to amend its website 'to clearly state what type of facilities are available for disabled staff and that it specifically states their current rooms are not wheelchair accessible'. The Commission also 'strongly' encouraged the hotel to review its policy of not providing an accessible room.

In a second decision, which also concerned access to services, the Workplace Relations Commission found that a bus company had breached the reasonable accommodation duty by failing to ensure that there were an adequate number of buses on a particular route, resulting in overcrowding and a lack of availability of a public transport service to persons using a 'disability hospital'. The complainant in this case was a woman who, along with her disabled son, were denied access to a bus that served a major hospital. The Workplace Relations Commission directed the respondent bus company to provide additional services to the hospital 'bearing in mind that a large number of Disabled passengers, with

70 Irish Equality Tribunal, *Doherty v. Bus Éireann*, DEC-S2011-052, 17 November 2011, Para. 5.4.
71 Irish Equality Tribunal, *Wellard v. Tesco Ireland*, DEC-S2009-047, 23 July 2009.
72 Irish Equality Tribunal, *Hennessy v. Network Catering/Iarnrod Eireann*, DEC-S2009-029, 7 May 2009.
73 The UK regulations are: S.I 1998 No. 2456, the Rail Vehicle Accessibility Regulations 1998.
74 Irish Equality Tribunal, *Hennessy v. Network Catering/Iarnrod Eireann*, DEC-S2009-029, 7 May 2009, Para. 4.19.
75 Irish Equality Tribunal, *Hennessy v. Network Catering/Iarnrod Eireann*, DEC-S2009-029, 7 May 2009, Para. 4.21.
76 Irish Equality Tribunal, *Connolly v. Hughes and Hughes*, DEC-S2009-064, 9 September 2009.
77 Irish Workplace Relations Commission, *Elliott v. Flexiteam Ltd.*, ADJ-00045346, 10 November 2023.

special needs, are likely to be dependent on the services'. The Commission also ordered that a wide-ranging review be undertaken with a view to improving access for persons with disabilities via public transport to the hospital. Both this decision, and that in *Elliott* mentioned above, involved a finding of discrimination on the basis that the reasonable accommodation duty had been breached.

However, in a number of other cases, the Workplace Relations Commission has not found that inaccessibility resulted in a breach of the reasonable accommodation duty. One such case is *Creevey v. Córas Iompair Éireann*,[78] in which the complainant, who used a wheelchair, claimed that the respondent light rail company had failed to provide her with a reasonable accommodation on two specific occasions, and that it failed to accommodate passengers with a disability generally. The complainant referred to two incidents when staff were unavailable to assist her to disembark at the planned time, as well as a failure to respond to calls to arrange assistance. She argued that full-time assistance should be available at all stations and referred, in that context, to the CRPD as well as the EU Charter of Fundamental Rights and EC Regulation No 1371/2007 on rail passengers' rights and obligations.[79]

In response, the Workplace Relations Commission found that the respondent light rail company had complied with its reasonable accommodation duties because it did 'all that is reasonable' to provide special facilities to the complainant upon becoming aware of her particular difficulties and, in essence, that the Commission did not have the competence to address accessibility in general as its remit was 'constrained' by Section 4(1) of the Equal Status Acts 2000-2018.

In a second case, *Kelliher v. Raidió Teilifís Éireann*, concerning a television broadcast, the Workplace Relations Commission similarly found that no breach of the reasonable accommodation duty had occurred. The complainant argued that the national broadcaster, RTÉ, had discriminated against him by failing to provide an Irish Sign Language (ISL) translation in its broadcast of an important national sporting event. The respondent broadcaster was obliged to meet specific targets for broadcasting programmes with ISL translations set by the Broadcasting Authority of Ireland under Section 43(1)(c) of the Broadcasting Act. It argued that it had exceeded these targets, and that providing ISL translations for live sporting events was particularly difficult, given the fast pace of such events. The Workplace Relations Commission took note of the targets the respondent had been set regarding broadcasting programmes with ISL translations, which had in fact been exceeded, as well as stating that the respondent was not required to provide ISL translations for all its broadcasts, and found that the respondent had 'done all that was reasonable to accommodate the Complainant's particular needs as a disabled person'.

Lastly, while most of the case law on inaccessibility and discrimination from Finland's Equality and Non-Discrimination Tribunal focused on indirect discrimination, the 2023 case involving the accessibility of a temporary classroom for a child with a mobility disability[80] discussed above was also found to involve a breach of the reasonable accommodation duty. This overview of case law from Ireland reveals that, on occasion, both the Equality Tribunal and the Workplace Relations Commission

[78] Irish Workplace Relations Commission, *Creevey v. Córas Iompair Éireann*, DEC-S2017-028, 12 September 2017.
[79] Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations. [2007] *OJ* L 315/14; Workplace Relations Commission, *Creevey v. Córas Iompair Éireann*, DEC-S2017-028, 12 September 2017, Paras 2.6-2.7.
[80] Finland, Equality and Non-Discrimination Tribunal, 10xx/20xx, xx.xx.2023.

have regarded a lack of accessibility as resulting in a breach of the reasonable accommodation duty, and therefore as amounting to disability discrimination. However, the case law of these two bodies seems somewhat inconsistent in this respect. The cases in which a breach of the duty has been found include accessibility of the physical environment (availability of an accessible toilet and an accessible shower) and services (a hotel room and public transport). However, other cases in these same areas have resulted in a finding that no discrimination has occurred and that the reasonable accommodation duty was either met, or that it was otherwise not established that the duty had been breached. The Finnish Equality and Non-Discrimination Tribunal has also recognised, on one occasion, that inaccessibility of the built environment could amount to discrimination in the form of a failure to provide a reasonable accommodation.

4. Use of building/accessibility standards to support a finding of discrimination as a result of inaccessibility in case law

This section briefly discusses the extent to which the case law identified above has made use of accessibility requirements set out in legislation in finding that a particular situation amounts to inaccessibility, and therefore results in some form of disability discrimination.

In Austria, in the decision concerning an inaccessible bakery discussed above,[81] the district court found that a refurbished bakery had breached Section 115(1) of the Viennese Building Order, which requires that all commercial enterprises used by consumers on a daily basis must be planned and constructed in a way that they are accessible for, among others, persons with disabilities 'without danger and without additional help from others'. This breach of the general accessibility norm was also the basis for reaching a finding of indirect discrimination under Section 5(2) of the Disability Equality Act. Austrian case law does not refer to the CRPD in this context

In Bulgaria, the Supreme Administrative Court has referred to the legal definition of 'accessible environment' set out in the national ordinances[82] which require public entities to ensure accessibility. Where these ordinances are breached, the Court can find that direct discrimination has occurred through the construction and maintenance of architectural environments that make it difficult for persons with disabilities to access public spaces under Article 5 of the Protection against Discrimination Act. The Court has also cited Article 9 CRPD on accessibility in its judgments that have found direct discrimination through inaccessibility of the built environment.[83]

In Finland, the Equality and Non-Discrimination Tribunal referred to building regulations, which required that an accessible toilet be available at a restaurant, in the case from 2015. The fact that such a toilet was not actually available for use resulted in a finding of direct discrimination.[84] Other than this, no reference was made to specific building or accessibility requirements in the Finnish case law discussed in this article. However, that case law does stand out for the frequent references to the

81 Austria, District Court Josefstadt, Dec. Nr. 4C 707/11z of 14 November 2011.
82 Bulgaria, Ordinance No. RD-02-20-2/26.01.21 and the earlier Ordinance No. 4/09.
83 Bulgaria, SAC, Judgment No. 1312 of 7 February 2023 in Administrative Case No. 6434/2022.
84 Finland, National Equality and Non-Discrimination Tribunal, 6x/2015, xx.xx.2016.

CRPD and other relevant international law provisions or instruments concerning the rights of persons with disabilities.

In Ireland, the Equality Tribunal has stated, on several occasions, that it does not have the competence to assess compliance with accessibility standards set out in building regulations,[85] while the Workplace Relations Commission has largely failed to engage with such standards in the case law discussed in this article. Both bodies have also failed to engage with the CRPD in the relevant decisions, although complainants have sometimes sought to rely on arguments based on the CRPD.[86] Given that international human rights instruments have no status within the Irish (dualist) legal systems, and that the CRPD has not been incorporated into domestic law, this approach to the CRPD is common to other courts and quasi-judicial bodies in Ireland. Nevertheless, in *Harrington v. Cavan*[87] the Tribunal took account of the building regulations[88] and related guidance documents when determining what was 'reasonable' for the respondent hotel to have done to meet the reasonable accommodation duty, finding that the hotel had breached this duty. Furthermore, in *Ms H v. A Multi-National*[89] the Tribunal referred to the same building regulations, and these seem to have influenced its finding that it was reasonable for the respondent company to construct an accessible toilet on its premises, even though the regulations were not applicable to the building in question because of the date when it was constructed.

Therefore, while not all judgments in which inaccessibility have been found to amount to a form of disability discrimination have involved a reference to relevant building or accessibility regulations or standards, this has happened on occasions. However, in Ireland the Equality Tribunal in particular has gone to some lengths to stress that it does not have a role in enforcing such standards, and has sometimes not engaged with arguments made by complainants relating to an alleged breach of such regulations. As noted above, the Tribunal only has the competence to assess compliance with laws that fall within its jurisdiction.[90]

5. Fields in which inaccessibility has been found to amount to disability discrimination

As noted in Section 1 above, Article 9 CRPD refers to accessibility in the context of the physical environment, transportation, information and communications, including information and communication technologies, such as websites. The case law discussed in this article which has found a link between disability discrimination and inaccessibility concerns the physical environment, including

85 See: Ireland, Equality Tribunal, *Harrington v. Cavan Crystal Hotel*, DEC-S2008-117, 10 December 2008; Equality Tribunal, *Hallinan v. Mayo Education Centre*, DEC-S2008-063, 1 October 2008; Equality Tribunal, *Hallinan v. Moy Valley Resources*, DEC-S2008-025, 1 April 2008.

86 See: Irish Workplace Relations Commission, *Creevey v. Córas Iompair Éireann*, DEC-S2017-028, 12 September 2017.

87 Ireland, Equality Tribunal, *Harrington v. Cavan Crystal Hotel*, DEC-S2008-117, 10 December 2008.

88 Ireland, Technical Guidance Document M - guidance and use.

89 Ireland, Equality Tribunal, *Ms H v. A Multi-National Retailer*, DEC-E2014-030, 15 April 2014.

90 Under the Building Control Acts 1990-2020, local government authorities are responsible for the enforcement of building regulations. The authorities have the power to inspect buildings, to issue enforcement notices, and to apply for court orders directing compliance with the building regulations. The Irish Government plans to establish a national building standards regulatory authority, which will assume these functions when it is established: Dáil Éireann Debate, State Bodies, 25 February 2025. The European Accessibility Act has been transposed into Irish law by SI No. 636/2023 - European Union (Accessibility Requirements of Products and Services) Regulations 2023. The Regulations came into force on 28 June 2025. Failure to comply with the law is not linked to disability discrimination.

a shop (Austria), 'architectural environments' open to the public (Bulgaria), a restaurant (Finland), hotels (Finland and Ireland), housing (Finland), a school (Finland), a building used for training (Ireland) and a workplace (Ireland). A link was also found in the context of the following services: transport (Ireland), hotel services (Finland and Ireland) and a good (Austria). What is notable is that no case law concerning information and communication technologies was identified.

6. Conclusion

As noted above, the CRPD Committee's General Comment No. 2 specifies that at least two situations involving inaccessibility should be regarded as disability discrimination. The first such situation is '[w]here the service facility was established after relevant accessibility standards were introduced'. Case law from Austria,[91] Bulgaria,[92] and Finland[93] evidence courts and quasi-judicial bodies (and legislation) adopting such an approach. However, in Ireland, the Equality Tribunal has explicitly rejected that it has a role in enforcing accessibility or building regulations, although non-compliance with such regulations does seem to have influenced the Tribunal's decisions indirectly on occasions.

The second situation in which the CRPD Committee regards inaccessibility as a form of disability discrimination is 'where access could have been granted to the facility or service (when it came into existence) through reasonable accommodation'.[94] Case law from Austria, Ireland and Finland discussed in Section 3.2.3 above reveals how courts and quasi-judicial bodies have on occasions found a breach of the reasonable accommodation duty when a barrier to accessibility was not removed through the provision of an accommodation. This article therefore reveals evidence of national legislation and case law which is compatible with the CRPD Committee's understanding of how inaccessibility can result in disability discrimination. More broadly, this article has revealed how links can be made, in both legislation and case law, between inaccessibility and disability discrimination. It has shown how a failure to provide accessibility can be regarded as direct discrimination, indirect discrimination or as an unjustified failure to make a reasonable accommodation, depending on the national legislation and the circumstances at stake. However, this article only looks at legislation and a handful of cases from four Member States – in most Member States the legislative and jurisprudential link between inaccessibility and disability discrimination is not made, or is less obvious and prominent than in the examples discussed here.[95] The many instances of inaccessibility which persons with disabilities face are therefore unlikely to be regarded as disability discrimination, and individuals may well have no remedy or enforcement mechanism available to them when regulations either inadequately address accessibility, or where relevant regulations are not complied with. The evolving understanding of disability discrimination evidenced by the CRPD Committee in General Comment No. 2, and in some of the legislation and case law discussed in this article, is therefore of great importance.

91 Austria, District Court Josefstadt, Dec. Nr. 4C 707/11z of 14 November 2011.
92 Bulgaria, SAC Judgment No. 1312 of 7 February 2023 in Administrative Case No. 6434/2022.
93 Finland, National Equality and Non-Discrimination Tribunal, 6x/2015, xx.xx.2016.
94 UN CRPD, General Comment No. 2 (2014) Article 9: Accessibility, CRPD/C/GC/2, Para. 31.
95 This statement is based on brief submissions made by country experts from all EU Member States in the network. The decision to focus on the four countries covered in this article was based on that overview, which revealed that these four counties had legislation and/or case law which did make the link between discrimination and lack of accessibility.

Evidence of discrimination on the ground of racial and ethnic origin in employment cases, in the context of the GDPR: the French example

Sophie Latraverse *

Introduction

More than 20 years after the adoption of Directive 2000/43 of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin,[1] claimants of European civil law countries still face major difficulties in presenting evidence of racial/ethnic discrimination in employment. The legal barriers resulting from the traditions of the French legal system are archetypical in this respect.

First, the general principles of traditional French civil law[2] provide that 'he who claims the performance of an obligation must prove it'. In labour and civil cases, they require that 'each party has the burden to prove, in accordance with the law, the facts necessary for the success of his claims'. These general principles have historically been interpreted so as to prevent civil claimants from establishing their case by requiring respondents to file unfavourable evidence in their possession. Despite the transposition of the EU directives regarding the shift in the burden of proof in discrimination cases, this judicial conception of evidence created such a deadlock that it led to a long line of strategic litigation that was essentially dedicated to the affirmation of the right to have access to evidence as a condition of the effectivity of judicial redress.

Secondly, once this principle was affirmed, a whole new course of defensive legal arguments emerged against the production of comparable evidence of unequal treatment in employment, following the path opened by the European General Data Protection Regulation (GDPR).

The question of the legality of evidence arose both at the stage of the right to obtain communication of the evidence and at the stage of arguing its probative value.[3] The GDPR was put forward by employers to allege (1) that the transmission of nominative information to support evidence of apparent discrimination violated rules protecting the confidentiality of personal data, and (2) that this data would be communicated to support illegal uses of sensitive information i.e. the classification of

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1 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (Directive 2000/43).

2 Articles 1315 and 1353 et seq of the French Civil Code and Article 9 of the Code of Civil Procedure.

3 Goubeaux, G. (1981) 'Le droit à la preuve', in Perelman, C. and Foriers, P. (eds) *La preuve en droit*, Bruylant.

employees on the ground of racial/ethnic origin to support allegations of discrimination. Henceforth, a significant number of cases reached the Court of Cassation to clarify the conditions to be met in order to recognise the legal right to have access to evidence while complying with the requirements of the GDPR.[4]

The Court of Cassation solved both these issues by deciding that the GDPR could not be interpreted to contradict the right to judicial redress.[5] Access to evidence and admissibility of evidence are the two faces of the right to evidence, meant as a facet of the right to present one's case.

1. The jurisprudential construction of a specific right of claimants to have access to evidence in discrimination cases

The law provides for a shift in the burden of proof of discrimination, but claimants must still overcome the burden of presenting elements of evidence from which an appearance of direct or indirect discrimination based on race or ethnic origin can be inferred.

The essential difficulty for a victim of discrimination in employment is that the elements supporting evidence of the unfavourable treatment are generally in the possession of the discriminating party: the employer-defendant is the one who holds the evidence about the situation of all his or her employees.

Over the last 20 years, the reluctance of judges to order defendants to provide access to evidence has resulted in numerous challenges that have reached the Court of Cassation and created an important corpus of jurisprudence.[6]

1.1 Access to evidence is inseparable from access to rights in discrimination cases

As early as the 2000s, the social chamber of the Court of Cassation focused its outlook on discrimination law on issues relating to the evidentiary process.

In a landmark decision from 2000, the Court revolutionised French procedural law by recognising that:

> '…while the judge is not required to take the place of the employer, it is up to him to verify, in the presence of alleged union discrimination, the conditions under which the career of the persons concerned has unfolded, and when the burden of proof of the discrimination does not lie with the employee'.[7]

4 In March 2025, the social chamber of the Court of Cassation published Special Newsletter No. 3, Evidence of discrimination (Preuve de la discrimination).

5 Créplet, A-C. (2024) 'Les décisions emblématiques de la Cour de cassation en matière de droit à la preuve', in Mercat-Bruns, M. and Latraverse, S. (eds) Les enjeux du contentieux de la lutte contre les discriminations, RAJD and Trans Europe Experts, Société de Législation Comparée, Paris, p. 25.

6 To facilitate claimants' access to judicial redress, the French equality body, Défenseur des droits (Defender of Rights), issued Framework Decision No. 2022-139, presenting 20 years of jurisprudence supporting the right of claimants to access to evidence and the shift in the burden of proof in discrimination cases. In this document, the Defender of Rights demonstrates to the reader that the comparative method in relation to a ground of discrimination is key method to approaching objectively the differential treatment suffered by a claimant.

7 Court of Cassation, social chamber, 28 March 2000 No. 91-45258.

In order to study the employee's situation, perceive all the consequences that 'a measure' may have had on his or her conditions of employment, and compare the employee's situation with that of other employees who would not have been faced by this 'measure', the judge must proceed with all the verifications that are necessary to make his or her determination.

The French judge's new role is deemed to stem from the legislation transposing the rules applicable to the burden of proof in non-discrimination law.[8] It is codified in Article 4 of the final law of transposition No. 2008-496 of 27 May 2008 and Article L. 1134-1 paragraph 3 of the Labour Code, which both stipulate that 'the judge shall form his or her opinion after ordering, if necessary, all investigative measures he or she deems useful'.

The Court of Cassation has repeatedly ruled that the power of the judge to order all investigative measures includes the power to order the communication of documents.[9]

In discrimination cases, the judge often orders the communication of nominative pay slips over a period of time of all employees included in a comparison panel.[10] These pay slips not only document the development of the employee's salary and career, but also the applicable collective agreement, his or her employment classification, and his or her ranking.

As early as 2012, in its famous *Radio France* ruling of 19 December 2012,[11] the Court of Cassation went one step further: it stated that in 'pre-judicial procedures',[12] the employee has a right to build his or her claim by requesting that an employer communicate the information necessary to enable him or her to present facts giving rise to a presumption of discrimination. The Court found that if the employee maintains, in support of his or her claim for unequal pay or career development, that the proof of the facts is in the hands of the employer, the employee's request for communication is legitimate and can be admitted, 'provided that the judge is satisfied that the measures requested derive from a legitimate motive and are necessary to protect the rights of the party who requested them'.[13]

8 In application of Directive 97/80 on the burden of proof in cases of discrimination based on sex, Directive 2000/43 and the Employment Equality Directive 2000/78.

9 Court of Cassation, social chamber, 7 June 1995, No. 91-42604; Court of Cassation, social chamber, 13 February 2008, No. 06-43.928; Court of Cassation, social chamber, 3 December No. 07-42976; Court of Cassation, social chamber, 3 November 2010, No. 09-67.493; Court of Cassation, social chamber, 25 October 2011 No. 10-34.397.

10 If the judge deems himself insufficiently informed, even if the case has already been referred to him on the merits, he can issue a preliminary ruling under Articles 482 and 483 of the Code of Civil Procedure, ordering the parties to provide him with all the information he needs to form his opinion. In addition, from the conciliation stage before the Labour Court, Article R1454-14 enables the judge to order all investigative measures, and thus the communication of a certain number of documents. This article states that: 'The conciliation and orientation office may, despite any procedural exception and even if the defendant does not appear, order [...] all investigative measures, even ex officio [and] all measures necessary for the preservation of evidence or disputed objects'.

11 Court of Cassation, social chamber, 19 December 2012, No. 10-20526.

12 Motion presented before the initiation of any proceeding authorised by Article 145 of the Code of Civil Procedure, which provides: 'If there is a legitimate reason to preserve or establish, prior to any legal proceedings, proof of facts on which the resolution of a dispute may depend, legally admissible investigative measures may be ordered at the request of any interested party, by petition or in summary proceedings.' (Author's translation).

13 Court of Cassation, social chamber, 12 June 2013 No. 11-14458; more recently see Court of Cassation, 26 March 2025, No. 23-16068.

1.2 The right to evidence may justify the communication and treatment of personal and sensitive data

In response to the jurisprudence ordering communication of documents, employer-defendants challenged the scope of the claimant's right to communication of evidence in a number of cases, even prior to the entry into force of the GDPR. They raised arguments based on the protection of their employees' personal life, both in terms of the nature of the information communicated and of the rights of claimants' colleagues.

As early as 2007, the social chamber of the Court of Cassation concluded that, as long as the evidence is necessary to ensure enforcement of the claimant's right of action, the right to privacy of other employees could not in itself be an obstacle to access to evidence.[14] In 2016, however, the Court refined its appreciation of 'other employees' right to privacy' by importing a proportionality test, instructing the trial judge to evaluate the necessity of accessing evidence to ensure that 'the infringement is proportionate to the aim pursued'.[15]

This jurisprudential trend further developed through four landmark decisions rendered after the GDPR came into force.

In the first case, from 16 December 2020,[16] the Court of Cassation was called upon to rule on the practice of lower courts of dismissing requests for access to evidence on the grounds that the scope of the request was too wide.

Relying on Articles 6(1) and 8 of the European Convention of Human Rights (ECHR) – and without reference to the GDPR – the Court held that in discrimination cases, when the request of claimants was legitimate given the necessity of the case, the judge had to evaluate and determine 'which measures were indispensable to the protection of their right to evidence and proportionate to the aim pursued, if necessary by limiting the scope of the production of documents requested'.[17]

Then, in a decision of 16 March 2021,[18] the Court was faced with a motion for injunctive relief against an employer who refused to implement the appeal court's order to communicate information to a claimant seeking redress for discrimination on the basis of sex, on the ground that it was nominative and contained personal data. The ruling was rendered prior to the adoption of the GDPR. The Court of Cassation was requested to decide whether the data of comparable employees that was communicated was to be nominative or anonymised. The claimants argued that nominative data is essential to check the composition of the comparative panel as well as the completeness and reliability of the information that is shared by the defendant employer.

The Court affirmed once again that the procedure of access to evidence could not be set aside in matters of discrimination on the ground that it contained personal data. In particular, the Court rejected the employer's argument that it was obliged to request prior authorisation from employees, stating

[14] Court of Cassation, social chamber, 23 May 2007, No. 05-17.818; Court of Cassation, social chamber, 10 June 2008, No. 06-19.229.
[15] Court of Cassation, social chamber, 9 November 2016, No. 15-10.203.
[16] Court of Cassation, social chamber, 16 December 2020 No. 19-17637 et seq.
[17] Court of Cassation, social chamber, 16 December 2020, No. 19-17.637 et seq; position reiterated in Court of Cassation, social chamber, 12 July 2022, No. 21-14.313.
[18] Court of Cassation, social chamber, *ST Microelectronics*, 16 March 2021, No.19-21.063.

that it is up to the trial judge to 'determine whether the communication of nominative information was necessary to exercise the right to prove the alleged discrimination and proportionate to the aim pursued'.

In March 2023, the Court of Cassation rendered its first decision addressing the compatibility of judicial requests for nominative information and documents with the GDPR, and the Court of Cassation introduced the additional requirement of minimisation of the data that is communicated.[19]

The Court of Appeal had ordered that the nominative pay slips for different periods of eight comparable employees be disclosed. To minimise the disclosed data, it ordered that non-relevant personal information be blacked out and decided that necessary information was limited to surnames and first names, contractual classification, detailed monthly remuneration and total gross remuneration accumulated per calendar year. The employer-defendant sought to quash this decision before the Court of Cassation. In support of its appeal, the employer argued that this communication was contrary to the requirements of the GDPR in that, first, it led to the disclosure of personal data to a third party without the said employees having consented or having any reason to anticipate such communication, and secondly, the judge's order did not conform to the requirements for protection of personal data in that it did not provide for sufficient guarantees of security, confidentiality and limitation of conservation period.

On 8 March 2023, a few days after the decision of the Court of Justice of the European Union (CJEU) on the issue of the compliance with the GDPR of demands to access evidence in *Norra Stockholm Bygg AB v. Sweden*,[20] the Court of Cassation rendered its decision. Referring to the introduction of the GDPR, it ruled that it follows from Recital 4 of the GDPR that the right to protection of personal data is not an absolute right and must be considered in relation to its function in society and balanced against other fundamental rights. It pointed out in particular the right to an effective remedy and to access to an impartial tribunal. It went on to reiterate, in accordance with its ruling of 16 December 2020,[21] that in application of Articles 6 and 8 of the ECHR, the right to evidence can justify the production of information infringing on the personal life of other employees provided that this evidence is indispensable to the exercise of a legal right and that the violation is proportionate to this objective.

While the Court of Cassation did not refer to the decision of the CJEU in *Norra Stockholm Bygg AB,* it followed a similar reasoning, and ruled that there is no need to obtain the consent of the specific comparable employees. The requesting party and his or her lawyer become 'controller' of the data, as provided by Article 4(7) of the GDPR. In this capacity, the judge must seek to set out measures imposing undertakings on their part to ensure the protection of the personal data that has been communicated.[22] The Court goes on to propose to trial judges a methodology to implement the right to have access to evidence while meeting the requirements of the GDPR:[23]

19 Court of Cassation, social chamber, 8 March 2023, No. 21-12.492; following the same principle see Court of Cassation, social chamber, 1 June 2023, No. 22-13.238.
20 CJEU, 2 March 2023, *Norra Stockholm Bygg AB v. Sweden,* C-268/21, ECLI:EU:C:2023:145.
21 Court of Cassation, social chamber, 16 December 2020 No. 19-17637 et seq.
22 Court of Cassation, Social chamber, 16 December 2020 No. 19-17637 et seq.
23 Mazars, M.F. (2024) '*Accès à la preuve et protection des données à caractère personnel'*, in Mercat-Bruns M. and Latraverse, S. (eds) *Les enjeux du contentieux de la lutte contre les discriminations*, RAJD and Trans Europe Experts, Société de Législation Comparée, Paris, p. 31.

- first, the judge must verify the requirements of the legal framework determining the facts to be established;
- secondly, in a case alleging unequal treatment, the judge must ascertain what data is necessary for the exercise of a claimant's right to evidence;
- thirdly, when the information requested is likely to infringe on the personal life of other employees, the judge must aim to minimise the scope of the data that is communicated and identify strictly, on a case-by-case basis, which measures are indispensable to the exercise of the right to evidence, and proportionate to the aim pursued;
- finally, if necessary, the judge must limit the scope and readable content of the documents by, for example, requesting that irrelevant information relating to the social security number, address, date of birth, bank information, etc. of the comparable employees, be blanked out.

The Court then stated that the assessment of the legal basis and indispensable nature of the data requested will fall within the sovereign appreciation of the trial judge.

Further to this decision, the Court of Cassation was faced with a considerable number of requests by employers questioning the scope and legitimacy of demands for the communication of nominative comparable data in discrimination cases. In 2024, the First President of the Court selected a case and mandated the second civil chamber of the Court of Cassation competent to determine applicable rules of civil procedure, to render the decision setting guidance for all jurisdictions on compliance with the GDPR in the communication of the personal data of employees in discrimination cases. In turn, to make its determination, the second civil chamber requested an opinion from the social chamber of the Court.

In this case, the claimant, who had been an employee since 1982, and a trade union representative since 1992, brought a claim before the Labour Court in 2017, alleging having been victim of discrimination in his career by reason of his trade union activities. In support of his claim, he requested from the employer the nominative career histories and cumulative December pay slips, over a period of 10 years, of 9 nominatively designated employees alleged to be in a comparable situation. The Court of Appeal upheld this request, but the employer sought to quash the decision alleging that the Court of Appeal's order forced the employer to violate his duty towards his employees regarding the protection of their personal data in application of the GDPR.

In conformity with its decision of 8 March 2023, the social chamber reported to the second civil chamber that, in application of the decision of the CJEU in *Norra Stockholm Bygg AB v. Sweden* of 2 March 2023,[24] the Court of Appeal's order to communicate the requested data to the claimant without obtaining the consent of the targeted employees, met the requirements of Articles 6(1)(e) and 23(1)(f) and j) of the GDPR.[25]

However, while it asserted that the protection of the data did not require that it be conveyed solely for the attention of the judge, it concluded that the particular nature of the elements communicated, including mandatory pay slip information that is essential to the adjudication of the case, contained

[24] CJEU, Norra Stockholm Bygg AB v. Sweden, 2 March 2023, C-268/21.
[25] Court of Cassation, social chamber, 24 April 2024, No. 21-20979.

overreaching data. This required that the judge select the data to be communicated to the claimant by applying a principle of limitation ('*cantonnement*') and minimisation in accordance with Article 5(I)(c) of the GDPR. Therefore, it concluded that it was the judge's duty to identify the overreaching information and order that it be disguised prior to transmission.

In a decision of 3 October 2024,[26] the second civil chamber adopted the position of the social chamber and concluded that the communication of data in the context of judicial proceedings (Article 23(1)(f) of the GDPR) is authorised in the context of civil demands (Article 23(1)(j)), if it is necessary for the exercise of the right to evidence and proportionate to the aim pursued. It expressly asserted that the communication of documents containing personal data without the consent of the targeted employees is lawful and conforms to the GDPR (Articles 5, 6 and 23) and to the right to a fair trial under the Charter of Fundamental Rights of the European Union.

The second civil chamber emphasised that personal data may be used in court proceedings to demonstrate possible trade union discrimination, provided that the processing of the information complies with the purposes and procedural guarantees ordered by the Court. To this end, it proposed that trial judges adopt a four-step process of reasoning:

- the judge must ensure that the communication of data is necessary and limited to elements strictly essential to the evidence;
- the judge must verify which information is indispensable to the right to evidence and proportionate to the objective sought;
- the judge must order measures to ensure that the principle of data minimisation is respected by concealing irrelevant information;
- the judge must order the parties to restrict the use of the data that is communicated exclusively to the judicial case at hand.

Hence, the appeal decision was quashed on the basis of arguments that were raised *ex-officio* by the Court: the judge must order all necessary measures, which includes ordering specific conditions on claimants and his or her lawyers to prevent any misuse of the data that is communicated. The second civil chamber criticised the Court of Appeal for not having sufficiently circumscribed and protected the conditions for the communication of the ordered personal data in application of the principle of minimisation of data provided at Article 5(I)(c) of the GDPR, which is essential to the implementation of the principles of European data protection law.

Not only must the claimant limit his or her demands and establish that the required data is indispensable to access judicial redress, but he or she must manage the consequences of the minimisation of the data transmitted, and ensure compliance with the order protecting the use of this data.[27] In practice, this intends to prevent claimants in individual cases from using fishing expeditions to obtain a maximum of information and share it with other potential claimants and/or negotiating trade unions. Finally, on 9 April 2025, the Court of Cassation established for the first time the

[26] Court of Cassation, 2nd civil chamber, 3 October 2024, No. 21-20979.

[27] Klein, J. (2024) *Quand le droit à la preuve se heurte à la protection des données personnelles* (When the right to proof comes into conflict with the protection of personal data), *RTD Civ.*, p.965.

applicability of the principle of access to nominative evidence of personal data of comparable employees in class actions in discrimination cases.[28]

2. The right to present evidence based on sensitive data, and its application to the grounds of ethnic origin and race

The French landmark decisions discussing the requirements of evidence of discrimination in employment deal not only with the right to have access to evidence, but also with its corollary, the right to use the data and present an analysis of the data that supports the demonstration of unequal treatment.

While this application raises no difficulties when dealing with the grounds of age or sex, it is a quagmire when dealing with the grounds of race and ethnic origin because they are linked to concepts whose legitimacy are very controversial, particularly in France where such data should neither be collected nor analysed.

Because French lawyers had to fight a great many cases arguing over the methodological legitimacy of demonstrations of discrimination, there is now a very rich corpus of jurisprudence discussing admissibility and method in relation to the parties' relative burden of proof. These resources formed the background against which a few cases were sufficient to map out the scope of data related to origin as well as mechanisms that could be used by claimants to demonstrate unequal treatment on the ground of race or ethnic origin.

2.1 Evidence of discrimination based on quantitative comparison with other employees in a comparable situation

The definitions of direct and indirect discrimination in Directive 2000/43/EC that have been transposed into French law by Article 1 of Law No. 2008-496 of 27 May 2008 are based on a rhetoric of comparing situations between employees, anchored in the concepts of 'less favourable treatment' and/or of a result that shows 'a particular disadvantage'.

Article 8 of Directive 2000/43/EC prescribes a shift in the burden of proof that is not based on proof of a discriminatory act per se, but on the proof of 'facts from which it may be presumed that there has been direct or indirect discrimination'. This provision was transposed in Article 4 of the Law of 27 May 2008 and Article L. 1134-1 of the French Labour Code, which both provide that the claimant's burden is 'the presentation of factual elements that support a presumption of the existence of discrimination'.[29]

The legal system therefore relies on the presentation of a body of elements pointing to the reasonable assumption of the existence of discrimination. They are based on the identification of one or many

[28] Court of Cassation, social chamber, 9 April 2025, No. 22-23639.
[29] Article 4 Law No. 2008-496 of 27 May 2008: 'Toute personne qui s'estime victime d'une discrimination directe ou indirecte présente devant la juridiction compétente les faits qui permettent d'en présumer l'existence'.

persons that are linked to a prohibited ground of dis crimination, who are subject to unequal treatment or the unfavourable impact of a measure, and their comparison with a reference group.

The claimant must present direct or indirect evidence aimed at establishing the unfavourable treatment of the persons identified. To do this, he or she must establish a link between the data presented and the prohibited criterion. Considering the restrictions on the collection of data on race and ethnic origin in France, the question to be solved is: what is the admissible source of this information and what methods can be used to analyse and present it?

Recital 15 of Directive 2000/43/EC sheds some light on the means available to support the claimant's argument:

> 'The appreciation of the facts from which it may be inferred that there has been direct or indirect discrimination is a matter for national judicial or other competent bodies, in accordance with rules of national law or practice. Such rules may provide in particular for indirect discrimination to be established by any means including on the basis of statistical evidence.'

In France, Article 1358 of the Civil Code sets out the universal rule of freedom of proof in civil matters:

> 'Apart from cases for which legislation provides otherwise, proof may be established by any means'.[30]

In its abundant case law on the criteria of gender and trade union activity, the social chamber of the Court of Cassation has followed the lead of the CJEU and confirmed the relevance of the statistical approach. In so doing, it has precisely defined the methodology to be used to establish the appearance of discrimination resulting from unequal treatment between a group linked to a discrimination criterion and a reference group.

As early as 2000, it stated that in order to verify the existence of discrimination on the ground of sex, the judge could make an overall comparison of the situation of men and women of a working group with regard to pay or benefits.[31] Since then, it has systematically recognised that the claimant may submit a statistical analysis of employees' data in support of his or her claim, based on information at his disposal and/or made available by the opposing party.[32]

The Conseil d'État, which is the supreme court in administrative law competent for public agents, has also recognised this method in a decision where it admitted statistics relating to the age of candidates held admissible by a jury, to support a presumption of discrimination and shift in the burden of proof.[33]

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30 Cartwright, J. and Fauvarque-Causson, B., The law of contract, the general regime of obligations, and proof of obligations, official English translation of the civil code, available at: https://www.justice.gouv.fr/sites/default/files/migrations/textes/art_pix/Translationrevised2018final.pdf.

31 Court of Cassation, social chamber, 19 December 2000, No. 98-43.331.

32 Court of Cassation, social chamber, 10 November 2009, No. 07-42.849, D. 2009. 2857; Court of Cassation, social chamber, 3 July 2012, No. 10-23.013; Court of Cassation, social chamber, 3 July 2012, No. 10-25.747; Court of Cassation, social chamber, 9 November 2016, No. 15-10.203; Court of Cassation, social chamber, 29 November 2019, No. 18-10.807; Court of Cassation, social chamber, 14 December 2022, No. 21-19.628 V., Médard Inghilterra, R. (2021) 'Les statistiques au service du droit de la non-discrimination' in *Cahiers de la LCD* No. 13, pp. 85-103; Sauvignet, X. (2022) 'Du bon usage des statistiques des discriminations dans l'entreprise', *RDT* 2022. 450; Leclerc, O. (2013) 'Égalité des personnes et modes de preuve. À propos des usages du raisonnement statistique dans la preuve des discriminations', in Borenfreund, G. and Vacarie, I. (eds), *Le droit social, L'égalité et les discriminations*, Dalloz, p. 77.

33 Conseil d'Etat, 16 October 2017, No.16-102017.

2.2 Evidence of unfavourable treatment on the ground of race or ethnic origin

Since the adoption of Directive 2000/43/EC and its first transposition into French law in November 2001,[34] European Union law has posed a dilemma for the French legal framework: how can the claimant prove the subjective assumptions that underlie discrimination based on ethnic origin or race in a jurisdiction that does not recognise these very concepts?

On 15 November 2007, the French Constitutional Council reinforced this difficulty by adopting a decision enshrining the political doctrine that forbids the recognition and observation of ethnic origin and race, and above all that refuses all classifications based on these criteria.[35]

This raises the question whether the right to evidence in discrimination cases has changing limits depending on the discrimination criteria invoked. In a context where the European Court of Human Rights (ECtHR)[36] has recognised that racial and ethnic discrimination constitute the most serious and unjustifiable forms of discrimination, can the law be interpreted in such a way that proof of discrimination based on ethnic origin or race is impossible?

Despite legal attempts at silencing information documenting race or ethnic origin per se, national judiciaries were faced with a legal duty to seek procedural solutions to overcome these difficulties and allow the presentation of evidence of unequal/unfavourable treatment on the ground of race and ethnic origin.

2.2.1 The scope of the prohibition of processing personal data based on origin

Article 6(I) of Law No. 78-17 of 6 January 1978 relating to information technology, files and freedoms[37] (the Data Protection Act) and Article 9(1) of the GDPR both codify the prohibition of 'processing personal data revealing racial or ethnic origin…'.

The Latin maxim *idem est non esse et non probari* clearly sets out the problem: absence of proof is tantamount to the absence of rights. Without an authorised means of proof, victims are not entitled to the fundamental right to equal treatment[38] and victims of discrimination on the grounds of race or ethnic origin find themselves at a dead end, with no means of recognising the violation of their rights. Given the interpretation by the Court of Cassation of the Data Protection Act and the GDPR, we can consider that a specific derogation applies to elements presented before the judge, and consequently to the parties, in the context of a judicial debate.

In discrimination cases, considering that the issue is to demonstrate the discriminator's *modus operandi* and/or discriminatory result, it is precisely the prohibited behaviour or mechanism in relation to the ground of race or ethnic origin that must be put into evidence.

Once the question of the admissibility of evidence of discrimination on the grounds of race and/or ethnic origin has been solved in principle, the question still arises as to the method to be deployed to

[34] The first law transposing Directive 2000/43 was Law No. 2001-1066 of 16 November 2001.
[35] Constitutional Council, 15 November 2007, No. 2007-557 DC.
[36] ECtHR, 13 December 2005, No. 55762/00 and 55974/00, *Timichev v. Russia*.
[37] France, *Loi 78-17 relative à l'informatique , aux fichiers et aux libertés*.
[38] Henry, M. (2001) *Le nouveau régime probatoire applicable aux discriminations*, doctoral thesis, p.194.

establish the composition of the group created by the subjectivity of the perpetrator, which cannot be identified by objective means.[39]

2.2.2 Experimenting with possible ways of constructing the proof of perception of race and/or ethnic origin

It should be remembered that the Court of Cassation has a longstanding jurisprudence that has defined the claimant's burden of proof as that of assembling a body of evidence which, as a whole, leads to a presumption of discrimination.[40]

While banning 'ethnic data', the decision of the French Constitutional Council of 15 November 2007 authorised the computation of data based on nationality, deciding that it constituted the only admissible 'objective' indicator of ethnic origin. Therefore, when it is relevant to the description of the group discriminated against, nationality is an 'objective indicator' that is available to the claimant and can be taken into account as a criterion of discrimination based on origin. It was used in many cases, such as the famous case against the French national railways denouncing historical unfavourable working conditions imposed on non-French nationals, such as Moroccan and Algerian workers.[41]

However, in most cases, the group includes victims of French nationality, and this approach becomes unusable.

In its decision, the Constitutional Council had also authorised 'research into discrimination based on origin'. This opened possibilities for French researchers, who since then have been working on the parameters of stereotypical behaviour on the part of perpetrators of discrimination, and on methods for identifying people discriminated against on the grounds of origin. This research has set out a path for claimants' lawyers.

One approach favoured by lawyers is to propose to corroborate claimants' evidence by presenting the results of social science studies documenting the discriminatory practice before the trial judge. The corroborative value of findings of social science research was validated by the Court of Cassation in a case relating to the state's responsibility for racial profiling in police checks.[42]

More recently, it formed the basis of a decision of the Paris Labour Court[43] in a case alleging the ill treatment of non-documented African workers on a construction site. In this case, the court analysed the evidence presented in correspondence with the findings of a sociological study describing ethnic segregation and working conditions organised according to racial criteria and origin on construction building sites, to reach a finding of systemic discrimination based on race and ethnic origin.[44]

In a criminal case concerning discrimination in recruitment on the ground of origin, the investigating magistrate relied on a 'directory' with photographs of model candidates to establish the discriminatory

39 Constitutional Council, 15 November 2007, No. 2007-557 DC.
40 Court of Cassation, social chamber, No. 17-18190, 19 December 2018; Defender of Rights (2022), Framework decision No. 2022-138 of 31 August 2022.
41 Labour Court of Paris, *Chibanis v. SNCF*, 21 September 2015, No. 05/12309; Court of Appeal of Paris, 31 October 2018, No. 15/1139.
42 Court of Cassation, 1st civil chamber, 9 November 2016, No. 15-25.873, Public State Agent.
43 Conseil de prud'hommes de Paris.
44 Labour Court of Paris, 17 December 2019, No. 17/10051, RDT 2020. 137, obs. F. Guiomard.

criteria used.[45] This evidence was complemented by quantitative studies and situation testing based on the surnames of the candidates.

A surname is an external sign by which the stereotype that triggers the discriminator's behaviour can be identified. As the law provides for the admissibility of discrimination testing involving the claimants before criminal and civil courts,[46] tests based on surnames made it possible to document the results of recruitment and selection processes, whether for hiring, access to housing or admission to higher education.[47] This approach, known as the onomastic method, has been tried and tested in the social sciences, and is recognised by the French Data Protection Agency (*Commission nationale de l'informatique et des libertés* – CNIL when used by researchers and independent experts.[48]

However, the use of this onomastic method by litigants to categorise existing workforces and analyse managerial practices has given rise to much controversy, because it uses a presumption in order to do exactly what the ban on ethnic statistics is intended to prevent: it allows a claimant, and in turn the employer-defendant, to count workforces identified according to their 'apparent origin' in order to demonstrate or counter alleged inequality of treatment.

In a decision of 14 February 2022,[49] the Court of Cassation has ruled on the matter: the claimant can use all available information to assign origin to a list of employees in support of a *prima facie* case of discrimination on the ground of origin. The Court recognised the validity of this onomastic method and addressed, in an unusually detailed decision, the employer's objections alleging its impossible burden of proof given the ban forbidding employers to count employees on the ground of origin.

The Court's solution is rooted in the mechanics of the shift of the burden of proof.

2.2.2.1 *A first case resulting from the experimental approach of the French equality body*

The social chamber of the Court of Cassation had already ruled on similar facts in 2011, in a case presented by the former equality body, the Haute autorité de lutte contre les discriminations (HALDE

In 2007, the HALDE experimented with using the onomastic approach as a method of evidence. Using its investigative powers, it requested that an employer provide a list of employees hired on fixed-term contracts and as permanent hires over a period of six years. It then commissioned an onomastic analysis of the surnames of all those employees by an independent expert. The study revealed that only two people with non-European surnames[50] had been hired on permanent contracts in six years, while at the same time, those with non-European surnames represented 30 % of the pool of employees on fixed-term contracts from which most new hires were made. This quantitative evidence and its expert analysis were submitted by the HALDE in the employment discrimination case initiated by the employee. The trial judge and the Court of Appeal accepted the Halde's quantitative evidence

45 Court of Appeal of Paris, 6 July 2007, No. 06/07900, *SOS Racisme*.
46 Burnier, C.F. and Pesquié, B. (2007) 'Test de discrimination et preuve pénale', *Horizons stratégiques*, 2007/3, p. 60; in civil matters, Law No. 2017-86 of 27 January 2017 relating to equality and citizenship, Art. 42.
47 L'Horty, Y. and Petit, P. (2023) 'Mesurer des discriminations ethno-raciales en France: l'apport des testing', *Appartenance et Altérités*, 3/2023. See Observatoire national des discriminations et de l'égalité dans le supérieur, REMEDES, Université Gustave Eiffel.
48 Defender of Rights and CNIL (2012), *Mesurer pour progresser vers l'égalité des chances*, re-edited in 2019.
49 Court of Cassation, social chamber, 14 December 2022, No. 21-19.628.
50 Surnames were used as a proxy of origin and the expert was given a mandate to assign origin to each surname in order to constitute quantitative data on appearance of foreign origin.

and held the onomastic analysis to be conclusive.[51] Referring also to the lack of transparency in the recruitment process and the unfavourable hiring reports for employees 'with North African-sounding surnames', the Court shifted the burden of proof and concluded that the employer had not provided any relevant evidence to justify its refusal to hire the claimant.

In this case, the employer's appeal before the Court of Cassation did not raise the admissibility of the quantitative evidence, its relevance or the sufficiency of the onomastic evidence presented by the HALDE; it only argued that the employer-defendant had properly justified the absence of discrimination.

Merely implying its agreement with the onomastic method, the Court of Cassation concluded that the employer had not provided evidence to establish that its choice of another candidate was based on relevant, non-discriminatory factors.[52]

2.2.2.2 *The Court of Cassation's decision of 14 December 2022: the recognition of the right to quantitative evidence of discrimination based on origin*

The contentious and evidentiary context of the 14 December 2022 decision brought decisive progress in recognising a method of quantitative analysis of managerial practices and results, in terms of composition of the workforce and discrimination based on origin.

Once again, this case concerned an employee hired on a fixed-term contract, whose application was rejected when he applied to be recruited on a permanent basis.

Here, the onomastic analysis was not carried out by an independent expert or the French equality body. Rather, it was carried out by the claimant himself, based on an empirical analysis of data from the employees' official directory and the company's organisation chart, two documents provided by the employer at the claimant's request.

The claimant presented his evidence by subjectively assigning his own reading of origin to the last names of employees. He then drew up a quantitative analysis of the origins of the surnames of the members of the workforce and argued that given the very low number of non-European last names, the list of employees showed an appearance of discrimination in hiring on the part of the employer.[53]

The Court of Appeal held that this evidence was admissible and that the claimant's evidence 'taken in its globality' was sufficient to shift the burden of proof. The employer-defendant was held to have presented no valid reply. The employer-defendant's appeal before the Court of Cassation to quash the decision of the Court Appeal specifically questioned the claimant's assignment of a subjective supposed origin to employees in order to compile ad hoc 'ethnic data'.

The Court's decision clarifies the place of the right to evidence in relation to the legal restrictions imposed on the processing of personal data, and uses the parties' relative burden of proof to circumvent the controversy surrounding the method chosen to assign an apparent origin to members of the corpus of employees.

51 Court of Appeal of Toulouse, 19 February 2010, No. 08/06630.
52 Court of Cassation, social chamber, 15 December 2011, No. 10-15.873, available on the website of the Defender of Rights, French equality body.
53 Court of Cassation, Social chamber, 14 December 2022, No. 21-19.628.

Does the subjective onomastic analysis meet the claimant's burden of proof?

First, the employer argued before the Court of Cassation that the evidence provided in support of the presumption of systemic discrimination was insufficient: not only the method of proof, but also the relevance of the demonstration, which was made without providing any independent onomastic expertise or other evidence to justify the accuracy of the analysis, was put into question.

The employer questioned the choice to shift the burden of proof based on simple percentages of hiring results and differentiated headcount. He raised two grounds: the employee did not present an explicit demonstration involving the analysis and weighting of all applications and individual profiles with regard to the positions to be filled and nor did he prove the true origin of the surnames used in his classification.

The data presented was: 18.07 % of employees with 'European surnames' recruited on temporary fixed-term contracts were subsequently recruited on permanent contracts, i.e. one-third, compared to 6.9 % of employees with 'non-European surnames'; employees with a non-European surname accounted for 8.17 % of all employees on fixed-term temporary contracts, i.e. 22 out of 269, but only 2.12 % of all employees on permanent contracts for the same positions; and finally, 80.93 % of the company's employees with a European surname were on permanent contracts, compared to only 21.43 % of employees with a non-European surname.

The Court of Cassation considered that the extent of the discrepancies in hiring and headcount under temporary and fixed-term contracts revealed by the data was sufficient in itself to shift the burden of proof of discrimination based on origin.

The employer's argument that the demonstration was insufficient considering that the claimant had not weighted the demographics of the workforce and hires against candidates' required skills was rejected. Relying on longstanding jurisprudence, it decided that in matters of origin as in matters of gender, proof of facts from which it may be presumed that discrimination has taken place only requires that the claimant establish a significant difference, without any further demonstration being required.[54]

The Court had already pointed out that the legal framework of the burden of proof does not require the victim to produce direct proof of discrimination.[55] The very nature of the concept of discrimination in EU law is to link its definition to the burden of proof. Its analytical approach is to facilitate proof of the facts by relying on the quantitative approach. Thus it is possible for the court to identify legal findings that result from showing an unfavourable discrepancy giving rise to a presumption of discrimination. Such a presumption is to be seen as a legal mechanism for drawing a legitimate conclusion from a suspect situation.[56] Its purpose is precisely to ease the legal reasoning by providing for a burden of proof that is based on establishing a serious likelihood of the overall discriminatory reality.[57] The employer also questioned the reliability of the onomastic analysis based on 'supposedly

54 Icard, J. (2023) 'Discrimination: causalité ou corrélation?', RDT 2023, 457.
55 Court of Cassation, Social chamber, 28 January 2010, No. 08-41959.
56 Lochak, D. (1987) Réflexion sur la notion de discrimination, doctoral thesis, 1987, 778.
57 Tharaud, D. (2023) 'La recherche d'une égalité réelle, moteur d'innovations procédurales et probatoires', RDT 2023, p. 85.

European and non-European' surnames. He argued that the absence of proof of the actual origin of the surnames cited rendered this demonstration inconclusive.

This argument gave the Court the opportunity to rule on the requirements of onomastic proof. In keeping with its overall assessment of the evidence presented, the Court specifically stated that this method does not require any particular research into the origin of surnames. In fact, it aims to reflect the common man's reaction to appearances.

The Court lowered the threshold for the sufficiency of evidence in support of the appearance of discrimination, and recognised the claimant's right to argue an appearance of discrimination by using the information available. It therefore concluded that the Court of Appeal was not obliged to ask for more, and could be satisfied with the employee's empirical presentation without further demonstration.

A mechanism that seeks to shift the burden of expertise to the employer

The trial judges should not be challenged for not requiring claimants to demonstrate analytical relevance, statistical reliability or onomastic expertise. In the Court's view, the Court of Appeal was justified in shifting the burden of proof and imposing on the employer the duty to present data to contradict the demonstration of the claimant: it is up to the employer to contradict the presumption he is facing. In taking this approach, the Court made it all the easier for the employee to prove his case.

This facilitation of the claimant's burden of proof therefore adds to the justifications the employer must provide to contest the claimant's presumption. The employer, unlike the employee, is in possession of all the information and thus it is the employer who must demonstrate his position once the burden of proof has shifted.[58]

The Court's decision must, however, be put back in context: the employer was in a position of denial and did not attempt to address at all his burden of establishing the absence of discrimination. He was content to challenge the relevance of the claimant's statistical evidence without presenting an explanation or an alternative statistical analysis, claiming that such an analysis was unavailable, forbidden and illegal. The Court replied by reiterating the requirements of the defendant's burden of proof when facing a *prima facie* case based on quantitative evidence. The employer also argued his right to make his own recruitment choices: he claimed he only had to demonstrate that his choice was based on another motive, in this case, his right to pursue a policy based on age! In effect, the employer was arguing that he had the right to prefer younger, entry-level candidates to the claimant, an experienced 44-year-old applicant, as part of a strategic choice to train the next generation and offer opportunities to young people. This argument and defence strategy failed. The Court decided that it did not meet the requirements of the wording of Article L. 1134-1 paragraph 2 of the Labour Code which requires the proof of 'objective factors unrelated to any discrimination'. Finally, the employer

[58] Danis-Fatôme, A. (2016) 'Le dispositif propre à la charge de la preuve, frein ou outil de lutte contre les discriminations', *RDDH* 9/2016; Leclerc, O. (2013) 'Égalité des personnes et modes de preuve. À propos des usages du raisonnement statistique dans la preuve des discriminations', in Borenfreund, G. and Vacarie, I. (eds), *Le droit social, L'égalité et les discriminations*.

presented anecdotal evidence of goodwill gestures, such as the training given to managers or the hiring on a permanent basis of four temporary workers of non-European origin.

Both the Court of Appeal and the Court of Cassation dismissed these justifications as insufficient. The Court of Cassation replied: 'the employer did not provide any analysis *refuting* the claimant's demonstration' (author's emphasis), apart from a few fragmentary elements on the analysis of the workforce and its hiring policy.

The employer has a precise burden of proof that his specific decision not to hire the claimant is 'justified by objective factors unrelated to any discrimination'. He therefore had to justify that the differences exposed were either false, or that they were not the result of discrimination.

By using the verb 'to refute' (*réfuter*), after the Court of Appeal had used the words '*disprove* the claimant's demonstration' (author's emphasis), the Court clearly indicated that in the presence of a significant quantitative difference, the employer's burden of proof is to render implausible the claimant's demonstration of the appearance of discrimination.

The employer's impossible burden to establish forbidden evidence

The employer had invoked the prohibition on statistics based on origin to argue that, since it was forbidden to draw up such statistics, transferring the burden of 'disproving the claimant's demonstration' to the employer was contrary to his rights as the defendant.

The Court did not specifically respond to this plea. But one can consider that by affirming the employer's obligation 'to refute' the quantitative evidence presented by the claimant, the Court deferred to the principle of freedom of judicial evidence enshrined in the Civil Code, the Data Protection Act and the GDPR, and safeguarded the judicial forum as an area where adversarial proceedings are free from any constraints other than rules of evidence. The Court in fact preserves the sphere of judicial proceedings as an area that is not subject to the ban on classifying persons according to assumed race and/or ethnic origin.

3. Conclusion

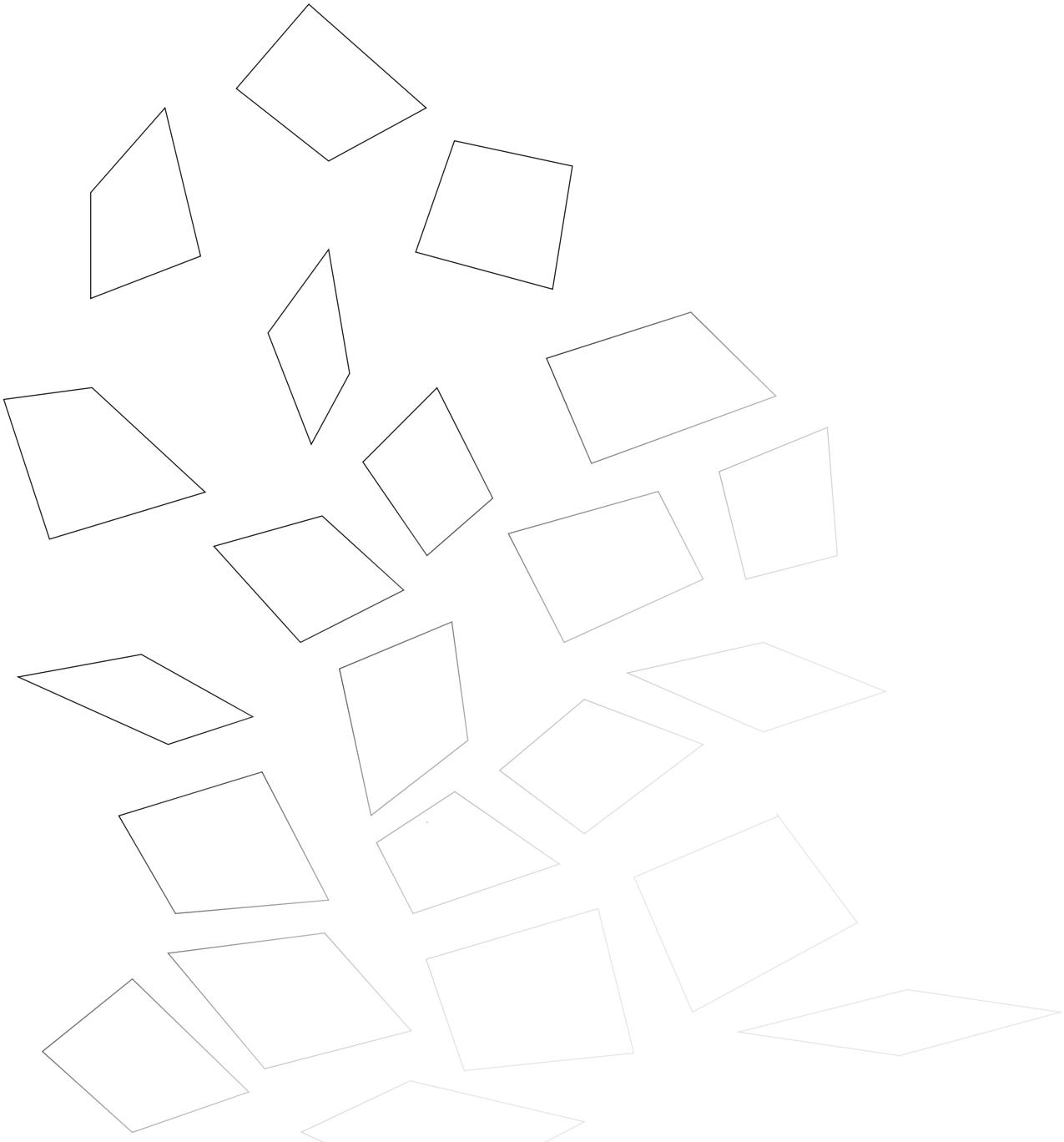
In line with its jurisprudence on the right to evidence and the principle of freedom of proof, the decision of the Court of Cassation of 14 December 2022 distances itself from all claims that the claimant must adopt an expert approach to establish evidence of discrimination on the ground of origin.

The Court is judging the behaviour of a common perpetrator. In so doing, it recognises that the claimant is free to present empirical quantitative evidence of a 'supposed origin', in order to support his claim of discrimination based on origin. Henceforth, it also recognises the employee's right to be provided with and to present quantitative evidence in relation to indications of origin. If the data appears to show a significant phenomenon, the employer's burden of proof will be increased accordingly.

In the back-and-forth that constitutes the strategic construction of discrimination litigation, this decision enshrines the fact that the legal regime and its recognition of the freedom to prove discrimination apply to all sources of discrimination, including race and ethnic origin. But it goes further. By using the rhetoric of the burden of proof to give full meaning to the words 'presumes the existence of discrimination', it eases the claimant's burden of proof. The Court does not require the

victim of discrimination based on origin to demonstrate the scientific value of his or her analysis. Appearance of origin is sufficient, and it is up to the employer to 'refute' the demonstration.

The decision of the social chamber of the Court of Cassation concludes that the onomastic method of evidence is admissible and leads us to believe that after more than 20 years of experimentation, and notwithstanding the GDPR, the courts are spaces that allow claimants the freedom to create and present a wide range of evidence strategies. From now on, evidence of discrimination on the ground of race and ethnic origin is governed by nothing less than the legal requirements of access to rights and the play of the shift of the burden of pro



European case law update

This section provides summaries of selected cases pending or decided by the Court of Justice of the EU and the European Court of Human Rights, as well as the references of other relevant cases, from 1 July 2024 to 30 June 2025.

Summaries of selected cases

Court of Justice of the European Union

C-184/22, *KfH Kuratorium für Dialyse und Nierentransplantation, Judgment* of 29 July 2024, EU:C:2024:637

Sex

In this reference for a preliminary ruling, the German Bundesarbeitsgericht asked whether a collective agreement provision that awards overtime supplements to part-time care assistants only for hours worked beyond the normal weekly working time of full-time care assistants constitutes prohibited discrimination under EU law. The dispute arose when two part-time care assistants, performing the same duties as their full-time colleagues but working 40 % and 80 % of full-time hours, sought overtime pay for hours exceeding their contractual hours. Under the applicable collective agreement, however, overtime supplements are paid only for hours beyond the full-time threshold of 38.5 hours per week, meaning that part-time workers receive no supplement for hours worked between their individual contract hours and 38.5 hours, whereas full-time workers receive supplements from the first hour beyond the threshold. The applicants, who are predominantly women, argued that this arrangement breaches Article 157 TFEU, Directive 2006/54/EC on equal treatment in employment and occupation (in particular Article 2(1)(e) on the concept of pay and Article 4 on indirect discrimination), and Clause 4 of the Framework Agreement on part-time work annexed to Directive 97/81/EC, which prohibits treating part-time workers less favourably than comparable full-time workers and requires the principle *pro rata temporis*.

The Court held that overtime pay forms part of the autonomous EU concept of pay and falls within the 'employment conditions' covered by Clause 4(1) of the Framework Agreement. It further found that part-time and full-time care assistants performing identical tasks in the same establishment are 'comparable' workers. By applying a uniform threshold for overtime pay at the full-time working-time level without reducing it pro rata to reflect part-time contracts, the provision treats part-time workers less favourably than their full-time counterparts, in breach of Clause 4(1) and the *pro rata temporis* requirement of Clause 4(2). The Court also emphasised that this uniform threshold gives rise to indirect discrimination. A seemingly neutral rule disadvantages part-time workers, who are overwhelmingly women, by depriving them of overtime supplements for hours that full-time workers are compensated for, thereby creating a gendered pay gap. Such indirect discrimination may only be justified by objective grounds which are appropriate, necessary and based on transparent criteria.

It is therefore for the referring court to determine whether the aims of deterring excessive overtime and preventing full-time workers from being treated less favourably constitute such objective grounds and whether the measure is proportionate. The judgment clarifies that EU law demands equal overtime-pay conditions for comparable part-time and full-time workers unless a genuine, objectively justified need – demonstrated by precise, transparent criteria – permits a differential rule.

Age

C-408/23, *Rechtsanwältin und Notarin v Präsidentin des Oberlandesgerichts Hamm*, Judgment of 17 October 2024, EU:C:2024:901

This request for a preliminary ruling was submitted by the Oberlandesgericht Köln (Higher Regional Court, Cologne, Germany) and concerned the compatibility with EU law of an upper age limit of 60 years for the first appointment to the position of lawyer commissioned as notary.[51] The applicant in the main proceedings had applied for such a position when she was more than 60 years old, but her application was rejected for this reason. She claimed that the age limit amounted to age discrimination and challenged the rejection of her application before the referring court. While the referring court held that the national provision at hand pursued legitimate aims, it questioned whether it must be regarded as going beyond what was necessary to achieve the intended aims, in that it did not allow any derogation from the age limit, even where advertised notary positions remained vacant due to the lack of younger, qualified candidates. In this regard, the referring court referenced notably the judgment of the Court of Justice of 3 June 2021, *Ministero della Giustizia (Notaries)*.[52]

The Court of Justice first noted that the intended aims pursued by the provision at hand were notably to ensure the continued exercise of the profession of notary for a sufficiently long period before retirement and to ensure a balanced age structure in order to facilitate natural turnover. While these aims must be regarded as being capable of providing objective and reasonable justification for a difference of treatment based directly on age, the Court further examined whether the age limit at hand was appropriate and necessary to achieve these aims. In this regard, the Court compared the provision at hand with that addressed in the case of *Ministero della Giustizia*, underlining notably that the age limit in that case was 10 years lower, and was held to be legitimate. The Court noted a further difference between the two cases, in that there are two separate categories of notaries in the present case, while there was only one category in the *Ministero* case. The age limit at hand in the present case applied to both categories of notaries and relevant statistics showed that the number of candidates for the available positions of 'permanent notaries', was contrary to the situation with regard to positions of 'lawyer notaries' such as that for which the applicant in the main proceedings had applied. In this context, the Court noted that the age limit cannot be considered to exceed what was necessary to achieve the aim of ensuring natural turnover of the profession of notary. The Court finally provided some guidance to the referring court in light of the determination of whether the provision at hand was necessary to achieve the aims pursued. It concluded that the Employment Equality Directive does not preclude a provision such as the one at hand, as long as it is appropriate and necessary to achieve a legitimate aim.

Racial or ethnic origin

C-417/23, *Slagelse Almennyttige Boligselskab, Afdeling Schackenborgvænge v MV, EH, LI, AQ and LO*, Opinion of Advocate General Ćapeta delivered on 13 February 2025, EU:C:2025:98

The request for a preliminary ruling was submitted by the Østre Landsret (High Court of Eastern Denmark, Denmark) and concerned national legislation regarding development plans for public

[51] 'Lawyers commissioned as notaries' are lawyers who exercise notarial functions concurrently with their legal practice, in the same local court district. Their office ends when they reach the age of 70.

[52] CJEU, judgment of 3 June 2021, *Ministero della Giustizia (Notaries)*, C-914/19, EU:C:2021:430. For further information, see *European equality law review 2021/2*, pp. 61-62.

housing units in certain residential areas that are called 'parallel societies' (previously, 'ghettos') because the majority of the population are 'immigrants and their descendants from non-Western countries'. The list of 'non-Western countries' is drawn up for statistical purposes by the Danish statistics authority. The cases before the referring court concerned the implementation of this legislation in two different areas of Denmark, where development plans resulted in the unilateral termination of a number of leases in public housing units. The referring court thus asked the Court to clarify whether the terms 'racial or ethnic origin' within the meaning of EU law, covers a group of persons identified as 'immigrants and their descendants from non-Western countries'.

The Advocate General (AG) first responded to two preliminary questions raised during the proceedings, stating firstly that social housing, in the Danish context, should fall under 'access to a service' rather than 'social advantages' as argued by the Commission. She then went on to examine whether the Racial Equality Directive is applicable to a social housing policy without encroaching on national competences. In this regard, the AG noted that while Member States are free to have a system of public housing – or not – and to determine how it will function, they cannot establish such a system that discriminates on the ground of racial or ethnic origin.

With regard to the concept of 'racial or ethnic origin', the Advocate General analysed the findings of the Court in the judgments in *CHEZ*[53] and *Jyske Finans*,[54] noting that both country of birth and nationality can be considered as factors to determine ethnic origin. She further recalled that while ethnicity cannot be determined based on a single criterion but rather on a number of factors, some subjective and others objective, the Court did not include any subjective factors when attempting to determine ethnicity in either of the two judgments discussed. The AG then noted that contrary to the Roma community in the CHEZ case, 'non-Westerners' in the present case are an ethnically diverse group, united instead by their common exclusion from the group of 'Westerners'. In this regard, the AG agreed with the position presented by the Commission that this exclusion was based on the general perception that Western immigrants and their descendants form, together with Danish citizens, an ethnically homogeneous group, which facilitates their integration into Danish society. Despite the lack of a common ethnicity among the non-Western group disfavoured by the legislative provision at hand in the present case, the distinction between the groups is thus still made based on ethnic origin. The AG thus concluded that 'If "ethnicity" is understood as a division into "us" and "them", and if the Race or Ethnic Origin Directive is interpreted as aiming to provide "them" with equal rights in "our" societies, then, in order to live up to its purpose, that directive must be applicable whenever persons are treated less favourably simply because of their perceived ethnic "otherness"' (paragraph 92). In this regard, she underlined that such a finding has already been made by the Court – indirectly – in the *Feryn* judgment, where it was found that discrimination against all 'immigrants',[55] i.e. an ethnically diverse group, was prohibited by the Racial Equality Directive.[56] The AG thus proposed that the Court find the Directive applicable and that the distinction between 'non-Westerners' and 'Westerners' is based on ethnic origin. In response to the second question referred to the Court, regarding the direct or indirect nature of the discrimination in this case, the AG found that there were two forms of less favourable treatment: the unilateral termination of leases and the stigmatisation of an ethnic group. With regard

53 CJEU, judgment of 16 July 2015, *CHEZ Razpredelenie Bulgaria*, C-83/14, EU:C:2015:480.
54 CJEU, judgment of 6 April 2017, *Jyske Finans*, C 668/15, EU:C:2017:278.
55 The Dutch term used was '*allochtonen*', translated as 'immigrants' in the English-language version of the judgment.
56 CJEU, judgment of 10 July 2008, *Feryn*, C-54/07, EU:C:2008:397.

to the former, more obvious form of discrimination, the AG noted that the law at hand made a distinction directly based on vulnerable areas where the majority of the population was of 'Western' origin (where no development plans were required and therefore no unilateral termination of leases was imposed) and vulnerable areas where the majority of the population was of 'non-Western' origin (where development plans were required). She thus concluded that the less favourable treatment was directly based on the ethnic criterion, amounting to direct discrimination. She further referred to the saying that 'the road to hell is paved with good intentions', noting that structural inequalities cannot be resolved by discriminating against an already disadvantaged ethnic group. With regard to stigmatisation of an ethnic group as a form of direct discrimination, the Advocate General referred to acts such as the preparatory works of the law at hand in the present case as well as a policy strategy adopted by the Government. Both documents generalised certain characteristics perceived as negative and unacceptable in Denmark and attributed them to all immigrants and their descendants from non-Western countries, perpetuating stereotypes and stigmatisation of this group.

To conclude, the AG also examined, as an alternative solution, whether the measure at hand could amount to indirect discrimination. This solution, which was suggested by the Commission, would be based on the fact that the tenants whose leases were terminated were not selected based on the ethnic criterion. However, the AG noted that 'simple mathematics' brings the conclusion that there is a higher risk that the lease of a 'non-Westerner' is terminated than that of a 'Westerner' given that the areas concerned are selected based on the ethnic criterion. Finally, the AG provided some guidance regarding the proportionality analysis to be undertaken if the referring court were to find that indirect rather than direct discrimination had taken place.

The Court's ruling in this case will be decisive for several similar cases pending before other Danish courts.

Sex

C-584/23, *Alcampo and Others*, Judgment of 10 April 2025, EU:C:2025:261

In this reference for a preliminary ruling, the Juzgado de lo Social No. 3 de Barcelona asked whether Spanish rules that calculate a permanent incapacity pension for an accident at work on the basis of the salary actually received in case of reduced working hours due to childcare responsibilities constitutes prohibited indirect sex discrimination under EU law. The case arose in proceedings brought by a cashier who had reduced her working hours by 50 % under Article 37(6) of the Workers' Statute in order to look after her child, with a proportionate cut in pay. Some months later, the initial claimant suffered an accident at work. When she was declared permanently incapacitated, the Spanish social security authorities applied Article 60(2) of the Decree on accidents at work to calculate her pension on the basis of the part-time salary she was receiving at the time of the accident. She contended that, since over 90 % of those who benefit from a childcare-related reduction in hours are women, computing her pension on the reduced salary amounted to indirect discrimination on grounds of sex under Article 4(1) of Directive 79/7/EEC and Article 5 of Directive 2006/54/EC.

The Court of Justice first held that the permanent incapacity pension at issue falls within the social security scheme governed by Directive 79/7/EEC and not within the scope of Directive 2006/54/EC, which does not apply to statutory social security regimes covered by Directive 79/7. It noted that Member States enjoy wide discretion to organise their social security systems but must comply with the principle of equal treatment enshrined in Article 4(1) of Directive 79/7, which prohibits indirect

discrimination unless an apparently neutral measure that disadvantages one sex can be objectively justified by a legitimate aim and is appropriate and necessary. The Court observed that the contested rule applies neutrally to any worker who has reduced hours to care for children (or other dependants), that under Article 237(3) of the General Law on Social Security contributions continue to be credited at 100 % for the first two years of reduced hours, and that any adverse effect only materialises from the third year onward. It further noted that the general statistical evidence showing that 90 % of reduced-hours beneficiaries are women did not specifically target the subgroup of workers incapacitated by an accident after the initial two-year period, nor prove that that subgroup is predominantly female.

Accordingly, the Court ruled that Article 4(1) of Directive 79/7/EEC does not preclude national legislation under which a permanent incapacity pension for an accident at work is calculated on the basis of the salary actually received on the date of the accident, even if that salary reflects a childcare-related reduction in working hours in respect of which the group of beneficiaries is overwhelmingly female. The Court left to the referring court the task of assessing, should more precise evidence emerge, whether the measure pursues a legitimate aim and is necessary and proportionate.

Sex

C-623/23, *Melbán*, Judgment of 15 May 2025, EU:C:2025:358

This request for a preliminary ruling concerns two sets of proceedings by two Spanish fathers, who each receive at the time of their retirement a contributory pension and who applied for a flat-rate child raising supplement. Under Spanish law, female pensioners with biological or adopted children automatically qualify for this supplement, whereas men must meet additional conditions. The Instituto Nacional de la Seguridad Social refused the applications by both fathers, who then challenged the refusals as unlawful sex discrimination.

They contended that the differential treatment breached Article 4(1) of Council Directive 79/7/EEC, which prohibits direct sex discrimination in the calculation of social security benefits. They further argued that Article 7(1)(b) of Directive 79/7 permits Member States to grant advantages to parents and that, in any event, any unequal treatment could be justified as a positive action measure under Article 23 of the Charter of Fundamental Rights. The Spanish court referred questions to the Court of Justice asking whether the scheme amounted to direct discrimination and, if so, whether it could be justified under EU law.

The Court of Justice held that the parental supplement is a ‘benefit’ within the material scope of Directive 79/7 and that automatically granting it to women while imposing extra conditions on men constitutes direct sex discrimination prohibited by Article 4(1). It ruled that Article 7(1)(b) does not authorise Member States to impose different eligibility criteria on men and women. Nor could the measure be justified as positive action under Article 23 of the Charter, since the supplement is a general parenthood benefit rather than a targeted remedy for a specific disadvantage suffered by one sex.

European Court of Human Rights

Racial or ethnic origin

***Salay v. Slovakia*, Application No. 29359/22, Judgment of 27 February 2025**

The case concerned the allegedly discriminatory enrolment and schooling of the applicant, a child of Roma origin, in classes for children with intellectual disabilities. The applicant alleged a violation of Article 14 of the Convention, in conjunction with Article 2 of Protocol No. 1. The academic maturity of the child was tested ahead of his enrolment in first year of primary school, and in the following years he underwent numerous tests, including of his intellectual capacity and learning development, with the result that he was first placed in a 'year zero' class,[57] attended almost exclusively by Roma pupils, and then in special classes for children with intellectual disabilities, attended exclusively by Roma pupils. Such special classes followed and provided an inferior curriculum and facilities compared with mainstream classes, and in general, the tests used for selecting pupils for such classes took no account of the specificities of Roma children and were thus biased. One of the tests of the applicant resulted in a finding that he could be transferred to mainstream education, and his parents then requested such a transfer. However, instead of being transferred, he was subjected to further tests and retained in the 'special class'. The applicant finally lodged an anti-discrimination action before the national courts against the school and against the state (through the Ministry of Education).

First, the Court noted that the overrepresentation of Roma children in special education for children with intellectual disabilities in Slovakia has been recognised not only by international bodies such as the European Commission against Racism and Intolerance (ECRI) and the UN Commissioner for Human Rights, but also by the Slovak Public Defender of Rights as well as a recent Slovak court decision.[58] Noting that the assessment tests taken by the applicant all failed, with one exception, to consider the specific situation of Roma students, the Court concluded that the available figures revealed a dominant trend of a general policy or measure with a disproportionately prejudicial effect on the Roma. A *prima facie* case of indirect discrimination was thus established, and the burden of proof was shifted to the respondent state. Finding it unnecessary to rule on the legitimacy of the applicant's enrolment in special classes, the Court then examined its proportionality, notably with regard to the testing and the *de facto* permanent nature of enrolment in the special education system in Slovakia. The Court concluded, based on the types of tests used and the actions taken on the basis of their results, that the state had failed to provide adequate safeguards to consider, when providing education to the applicant, the special needs of Roma pupils as members of a disadvantaged class. Consequently, his education did not offer 'the necessary guarantees stemming from the positive obligations of the State to undo a history of racial segregation in special education'. In a situation where there was a *prima facie* case of discrimination, the state had further failed to prove that it provided the guarantees needed to avoid the misdiagnosis and inappropriate placement of Roma pupils. The Court therefore concluded that the applicant must have suffered discriminatory treatment, and that there had been a violation of Article 14 of the Convention, taken in conjunction with Article 2 of Protocol No. 1.

[57] Under the applicable law at the material time, 'year zero' was a form of upbringing and education intended for children who, at the age of six, did not have the requisite level of academic maturity, were from a disadvantaged background and, in view of the social or language related aspects of that background, could not be expected to master the curriculum of the mainstream year one.

[58] Slovakia, Prešov Regional Court, judgment of 28 February 2023 in case No. 20Co 21/22. See also *European equality law review 2023*, p. 174.

L. and Others v. France, Application Nos. 46949/21, 24989/22, 39759/22, Judgment of 24 April 2025

Gender

The case concerns three minors, aged 13, 14 and 16 at the time of the alleged offences, each of whom was raped by an adult male. They complained that French law and practice did not provide them effective protection against sexual violence, nor adequate investigation and prosecution of their complaints, and failed to take proper account of their age and vulnerability.

The applicants relied on Article 3 (prohibition of inhuman or degrading treatment) and Article 8 (right to respect for private life), in both their substantive and procedural branches, arguing that the absence of a specific offence of rape of minors and the authorities' passivity breached France's positive obligations. The first applicant also invoked Article 14 (prohibition of discrimination) taken in combination with Articles 3 and 8, submitting that institutional indifference to rape of minors disproportionately affected girls.

The Court observed that, at the material time, French criminal law treated sexual acts against children under 15 as 'defilement', requiring proof of violence or coercion, without recognising the inability of minors to consent. Investigations were superficial, charging decisions led to acquittals, and domestic courts did not assess all relevant circumstances or sufficiently account for the applicants' particular vulnerability due to their ages.

The Court concluded that France had failed to comply with its positive obligations in respect of the three applicants and, accordingly, that there had been a violation of Articles 3 and 8 of the Convention in all three applications. It also found, with regard to the first applicant, that there had been a violation of Article 14 taken together with Articles 3 and 8, based on the secondary victimisation and discriminatory treatment to which the applicant had been subjected. The Court awarded each applicant just satisfaction in respect of non-pecuniary damage.

The case underlines that states must take into special consideration the status of minors, establish prompt and thorough investigation procedures, and ensure that the vulnerability of under-age victims is central to the criminal proceedings.

Other relevant cases

Court of Justice of the European Union

References for preliminary rulings – Advocate General Opinions

C-38/24, *G.L. v AB SpA [Bervidi]*, Opinion of Advocate General Rantos delivered on 13 March 2025, EU:C:2025:184

Disability

Equal treatment in employment and occupation – Article 1 – Article 2(1) and (2)(b) – Prohibition of discrimination on grounds of disability – Indirect discrimination by association – Worker who, without being herself disabled, claims to have been put at a particular disadvantage in the workplace on the ground of the disability of her child, to whom that worker provides the primary care and assistance

needed by that child – Article 5 – Employer's obligation to make reasonable accommodation for that worker.

Sexual orientation

Gender identity

C-769/22, *European Commission v Hungary*, Opinion of Advocate General Ćapeta delivered on 5 June 2025, EU:C:2025:408

Failure of a Member State to fulfil obligations – National legislation introducing stricter measures against 'paedophile offenders' and amending certain laws to protect children – Legislation primarily targeting content portraying or promoting gender identities that do not correspond to the sex assigned at birth, sex reassignment or homosexuality – Article 56 TFEU – Directive 2000/31/EC – Directive 2006/123 – Directive 2010/13/EU – Restriction of provision of services – Charter of fundamental rights – Article 21 – Non-discrimination – Article 7 – Right to private and family life – Article 11 – Freedom of expression – Article 1 – Human Dignity – Article 2 TEU – Values of the European Union – Justiciability – Criterion for finding an infringement of Article 2 TEU.

References for preliminary rulings - judgments

Sex

C-314/23, *Air Nostrum*, Judgment of 4 October 2024, EU:C:2024:842

Social policy – Equal treatment between men and women in matters of employment and occupation – Directive 2006/54/EC – Article 2(1)(e) – Concept of 'pay' – Article 4 – Prohibition of indirect discrimination on grounds of sex.

Age

C-349/23, *HB v Bundesrepublik Deutschland [Zetschek]*, judgment of 17 October 2024, EU:C:2024:889

Equal treatment in employment and occupation – Directive 2000/78/EC – Article 2(2)(a) – Prohibition of discrimination on grounds of age – Mandatory retirement age – National legislation precluding any postponement of the retirement of federal judges – Possibility for federal civil servants and Land judges to request the postponement of retirement – Difference in treatment on grounds of membership of a socio-professional category or place of work.

Sex

C-441/23, *Omnitel Comunicaciones and Others*, Judgment of 24 October 2024, EU:C:2024:916

Social policy - Directive 2008/104/EC – Temporary agency work – Article 3(1) – Temporary-work agency – User undertaking – Definition – Assignment of a worker – Contract for the provision of services – Article 5(1) – Principle of equal treatment – Directive 2006/54/EC – Article 15 – Maternity leave – Invalid or unfair dismissal – Declaration that the temporary-work agency and the user undertaking are jointly and severally liable.

Sex

C-531/23, *Loredas*, Judgment of 19 December 2024, EU:C:2024:1050

Social policy - Protection of the safety and health of workers – Organisation of working time – Daily and weekly rest – Article 31(2) of the Charter of Fundamental Rights of the European Union – Directive 2003/88/EC – Articles 3, 5, 6, 16, 17, 19 and 22 – Requirement to establish a system enabling the

duration of time worked by domestic workers to be measured – Derogation – National legislation exempting domestic workers from the obligation to record actual time worked.

References for preliminary rulings – Orders of the Court

C-65/24, *Wiener Linien GmbH & Co KG v SwiftSuit Legal Tech GmbH*, Order of the Court of 10 September 2024, EU:C:2024:728

Racial or ethnic origin

Equal treatment of persons irrespective of racial or ethnic origin – Directive 2000/43/CE – Article 2(2)(b) – Prohibition of indirect discrimination on the ground of racial or ethnic origin – Price of public transport tickets for students dependant on the place of residence – Requirement to justify the reasons for needing a response from the Court – Insufficient justification – Manifestly inadmissible.

European Court of Human Rights

Hanovs v. Latvia, Application No. 40861/22, Judgment of 18 July 2024

Sexual orientation

Article 3 and Article 8 (and Article 14) • Positive obligations • Effective investigation • Discrimination on the basis of sexual orientation • Failure to adequately protect the applicant from a homophobic attack by ensuring the effective prosecution of the perpetrator • Failure to prosecute the attack as a hate-motivated offence • Conviction for misconduct in administrative-offence proceedings and EUR 70 fine for attack, without addressing hate motives • Sanction manifestly disproportionate to severity of act • Recourse to such proceedings trivialised incident and failure to provide a robust response fostered a sense of impunity for hate-motivated offences.

Djeri and Others v. Latvia, Applications Nos. 50942/20 and 2022/21, Judgment of 18 July 2024

Racial or ethnic origin

Article 14 (and Article 2 of Protocol 1) • Discrimination • Right to education • Non-discriminatory legislative amendments increasing the use of the only state language, Latvian, in compulsory second stage of public and private preschool education (children aged five to seven), and thus reducing the use of Russian as the language of instruction • Russian-speaking and Latvian-speaking pupils in a relevantly similar situation • Legitimate aims of protecting and strengthening the Latvian language, ensuring the unity of the education system and preparing children for primary education • Conclusions reached in *Valiullina and Others* v. *Latvia* and *Džibuti and Others* v. *Latvia* fully relevant to Court's analysis on preschool education which was also part of the State educational system • Somewhat wider margin of appreciation afforded to States with respect to preschool education • Legislative amendments implemented gradually, considering stakeholders' views and with sufficient scope for adaptation to the needs of those affected • Margin of appreciation not overstepped • Difference in treatment on grounds of language consistent with legitimate aims pursued and proportionate • Non-compulsory first stage of preschool education (children aged one and a half to five) not 'within the ambit' of Article 2 of Protocol 1 taken together with Article 14 and, in any event, inadmissible for non-exhaustion of domestic remedies.

Article 14 (and Article 2 of Protocol 1) • Discrimination • Right to education • No discrimination between Russian-speaking children with special needs and Russian-speaking children without special needs at

the second stage of preschool education as alleged by the first and second applicants • State provided support mechanisms, general and individualised, for children with special needs • Bilingual approach ensured throughout preschool education • Failure to substantiate allegations.

Article 2 of Protocol 1 • *Ratione materiae* • Application of conclusions drawn in *Valiullina and Others* v. *Latvia* and *Džibuti and Others* v. *Latvia* • Article 2 of Protocol 1 does not include the right to access education in a particular language • Latvian being the only official language, applicants could not complain about decreased use of Russian as the language of instruction in Latvian schools per se • Constitutional Court's findings that the right to education under the Constitution comprised both stages of preschool education did not expand scope of Article 2 of Protocol 1 • Broader interpretation entailing stronger protection in the domestic legal system than the Convention consistent with Article 53.

Disability

***S. v. Czechia*, Application No. 37614/22, Judgment of 7 November 2024**

Article 14 (and Article 2 of Protocol 1) • Discrimination • Right to education • Positive duties • Absence of criticism of the diligent action required of the school to enable a child with autism spectrum disorders to follow his first school year in conditions equivalent, as far as possible, to those enjoyed by other children • Question of whether the State made, in favour of the applicant, the 'necessary and appropriate modifications and adjustments' which did not impose a 'disproportionate or undue burden'.

Gender

***Vieru v. The Republic of Moldova*, Application No. 7106/18, Judgment of 19 November 2024**

Article 2 and Article 3 (procedural aspects) • Positive obligations • Failure to conduct an effective investigation into credible allegations of physical and psychological domestic violence and into circumstances of applicant's sister's death • Failure to ensure prompt prosecution and punishment of domestic violence perpetrator.

Article 3 (substantive aspect) • Positive obligations • Failure to protect applicant's sister from domestic violence against backdrop of documented and repeated failure by domestic authorities to prevent and stop violence against women, including domestic violence as a form of gender-based violence • Domestic legal framework at the material time and manner it was put into practice failed to effectively address and prevent a pattern of domestic violence characterised by long-term but low-intensity physical violence and unaccounted psychological violence • Investigating authorities' failure to act rapidly, diligently and consistently in all instances of domestic violence • No assessment of the real and immediate nature of the risk of the recurrence of violence, taking due account of the specific domestic violence context and failure to take preventive and protective measures to avert that risk.

Article 14 (and Articles 2 and 3) • Discrimination • Domestic authorities' failure to adequately address domestic violence against women • Applicant's *prima facie* case of a general institutional passivity and/or lack of awareness of domestic violence as well as gender-based violence not rebutted.

Ferrero Quintana v. Spain, Application No. 2669/19, Judgment of 26 November 2024

Age

Article 1 of Protocol 12 • General prohibition of discrimination • Age limit of 35 years imposed on a public competition for the recruitment of first-rank police officers • Operational or executive functions performed by these police officers involving particularly enhanced physical aptitude in light of the years of service to be completed after being recruited • Difference in treatment on the basis of age being appropriate to the objective of ensuring the operational character and proper functioning of the police service concerned and not going beyond what was necessary to achieve that objective • Wide margin of appreciation • Relevant and sufficient reasons.

M.Ș.D. v. Romania, Application No. 28935/21, judgment of 3 December 2024

Gender

Article 8 • Positive obligations • Private life • Inadequate criminal legal framework, at the material time, not affording the applicant protection against acts of online harassment committed by her former intimate partner consisting of the non-consensual public dissemination of intimate photographs of her • Failure to conduct prompt and thorough criminal investigation.

Panayotopoulos and Others v. Greece, Application No. 44758/20, judgment of 21 January 2025

Racial or ethnic origin

Article 3 (procedural) • Ineffective investigation into the allegations of ill-treatment of the three applicants, all of Roma ethnicity, by the police during their arrest, transfer to and detention at the police station • Article 14 (and Article 3) • Authorities' failure to take all possible steps to investigate whether discrimination might have played a role in the impugned events.

Article 3 (substantive) • Inhuman treatment • Excessive force used by the police officers to overcome alleged resistance by the first and third applicants to their arrest • Article 14 (and Article 3) • Discrimination • Not established that racist attitudes played a role in their ill-treatment.

Article 3 (substantive) • Inhuman or degrading treatment • Article 14 (and Article 3) • Discrimination • Minor abrasions on the second applicant not sufficient to reach required Article 3 threshold • Absence of *prima facie* evidence capable of shifting the burden of proof on to the respondent Government • Given the lack of an effective investigation, Court unable to conclude whether the second applicant was subjected to ill-treatment.

I.C. v. The Republic of Moldova, Application No. 36436/22, judgment of 27 February 2025

Gender

Article 2 and Article 3 (procedural aspects) • Positive obligations • Failure to conduct an effective investigation into credible allegations of physical and psychological domestic violence and into circumstances of applicant's sister's death • Failure to ensure prompt prosecution and punishment of domestic violence perpetrator.

Article 3 (substantive aspect) • Positive obligations • Failure to protect applicant's sister from domestic violence against backdrop of documented and repeated failure by domestic authorities to prevent and

stop violence against women, including domestic violence as a form of gender-based violence • Domestic legal framework at the material time and manner it was put into practice failed to effectively address and prevent a pattern of domestic violence characterised by long-term but low-intensity physical violence and unaccounted psychological violence • Investigating authorities' failure to act rapidly, diligently and consistently in all instances of domestic violence • No assessment of the real and immediate nature of the risk of the recurrence of violence, taking due account of the specific domestic violence context and failure to take preventive and protective measures to avert that risk.

Article 14 (and Articles 2 and 3) • Discrimination • Domestic authorities' failure to adequately address domestic violence against women • Applicant's prima facie case of a general institutional passivity and/or lack of awareness of domestic violence as well as gender-based violence not rebutted.

Gender

***X v. Cyprus*, Application No. 40733/22, judgment of 27 February 2025**

Article 3 (procedural) and Article 8 • Investigative and prosecutorial authorities' response to rape allegations fell short of the state's positive obligation to apply relevant criminal provisions in practice through effective investigation and prosecution • Significant shortcomings • Re-victimisation • Applicant's credibility assessed through prejudicial gender stereotypes and victim-blaming attitudes • Risk of creating a background of impunity discouraging trust of victims of gender-based violence in the criminal justice system despite existence of a satisfactory legislative framework • Article 34 • Applicant's acquittal by the Supreme Court for false reporting/public mischief acknowledging various failures in the initial stages of her rape allegation not depriving her of victim status.

Disability

***Á.F.L. v. Iceland*, Application No. 35789/22, judgment of 10 June 2025**

Article 14 (and Article 8) • Discrimination • Family life • Non-discriminatory decision depriving the disabled applicant of the custody of his daughter not based on his disability but in the child's best interests once all support measure were exhausted • Domestic authorities implemented multiple individualised and flexible support measures to strengthen the applicant's ability to provide parental care for his daughter • Efforts tailored to correct factual inequality created by his disability • Applicant's parental capacity assessed with reference to support measures provided • Comprehensive and detailed analysis of the facts • Well-reasoned and reasonable conclusions.

Gender identity

***T.H. v. The Czech Republic*, Application No. 33037/22, judgment of 12 June 2025**

Article 8 • Private life • Refusal of applicant's request to change his personal numerical code (birth number) denoting gender on national identity card on the grounds he had not undergone gender reassignment surgery as required by domestic law • Decision amounted to the refusal to recognise the change of the applicant's gender • Making legal recognition of new gender identity of transgender persons conditional on undergoing a surgical operation entailing or possibly entailing sterilisation against their wishes, amounted to making the full exercise of their right to respect for private life conditional on relinquishing full exercise of the right to respect for physical integrity • Domestic authorities disregarded fair balance to be struck between the general interest and the interests of the individual.

***Seydi and Others v. France*, Application No. 35844/17, judgment of 26 June 2025**

Racial or ethnic origin

Article 14 (and Article 8) • Alleged discrimination during police identity checks • Particularly reasoned decisions of domestic courts having fulfilled their obligation to investigate whether discriminatory motives could have played a role in identity checks • Existence of an internal legal and administrative framework compatible with the targeted conventional requirements • Absence of *prima facie* evidence that discriminatory attitudes based on racial grounds played a role in the identity checks of five of the six applicants • Body of serious, precise and consistent evidence likely to create a presumption of discriminatory treatment against one of the applicants, that the Government has failed to refute. Article 13 (and Articles 14 and 8) • Access to an effective remedy before the national jurisdictions.

Key developments at national level in legislation, case law and policy

This section provides an overview of the latest main developments in gender equality and non-discrimination law (including case law) and policy at the national level in the 27 EU Member States, Albania, Georgia, Iceland, Liechtenstein, Montenegro, North Macedonia, Norway, Serbia, Turkey and the United Kingdom, from 1 July 2024 to 30 June 2025.

Albania AL

LEGISLATIVE DEVELOPMENTS

All grounds

Anti-discrimination provisions in new legislation on state police

A law was adopted on 26 July 2024, defining the mission, organisation and functioning of the state police, as well as the rights and obligations of State Police employees.[61]

According to Article 7, the principle of non-discrimination should guide the activities of the state police, both in the exercise of their mandate and in their role as employer. It should thus be a fundamental principle of the recruitment procedures for state police employees, and in the admission process of students to training programmes at the Security Academy, who are not employees of the state police.

When exercising their powers, police officers must act in accordance with the principles of equality and non-discrimination. They must report the illegality of another police officer's behaviour; in this case, they enjoy protection from the legislation on protection from discrimination, in addition to this law and the State Police Regulation.

The law provides for the types of disciplinary violations, including discriminatory acts related to race, ethnicity, colour, language, nationality, political, religious or philosophical beliefs, economic, educational or social status, gender, gender identity, sexual orientation, sex characteristics, living with HIV/AIDS, pregnancy, parental affiliation, parental responsibility, age, family or marital status, civil status, residence, health status, genetic predispositions, appearance, disability, membership of a particular group, or any other reason, when these acts are committed for more than one reason, more than once, the act has lasted for an extended period or has brought serious consequences for the victim.

Gender

New general guidelines for the medium-term budget programme include instructions for gender-sensitive budgeting

On 18 October 2024, the Minister of Finance issued Instruction No. 12/2024,[62] introducing amendments to the general guidelines for the medium-term budget programme, which include provisions on gender-sensitive budgeting:

- When submitting budget requests, central government units must include explanatory reports that incorporate a gender analysis of the situation, along with measures taken to address gender inequalities.

- Appendix 5 on gender-responsive budgeting provides a definition of what a gender analysis entails, outlining its purpose and scope. It establishes that gender analysis aims to fully integrate the gender equality perspective into policies, programmes, and budgets through specific instruments that ensure:

61 Albania, Law No. 82/2024 of 26 July 2024.

62 Albania, Instruction No. 12, of the Albanian Minister of the Finances 'On some additions and changes in the Instruction No. 7, dated 28.2.2018, on the standard procedures for the preparation of the Medium-term Budget Programme', Official Journal of 18 October 2024.

- recognition of gender differences;
- identification of the distinct needs and priorities of women and men, girls and boys;
- design of public policies that reflect these differences and priorities;
- allocation of public budgets accordingly; and
- expenditure of public funds in a way that ensures equal benefits for women and men, girls and boys.

Gender

Public consultation on a new draft law on gender equality

The 2008 Law on Gender Equality (LGE)[63] has not been amended since it was first adopted. However, in 2020, through amendments to the Law on Protection from Discrimination (LPD) the Commissioner for Protection from Discrimination (CPD) was given the duty to monitor the implementation of the LGE.[64]

The National Plan of European Integration (NPIE), approved in January 2024, provided for amendments in the LGE to be done within the third quarter of 2025, with no updates until the close of this reporting period.[65] Instead of amending the existing LGE, a new draft LGE was presented for public consultation. The consultation ran from 10 March to 7 April 2025, and was an initiative of the Albanian Council of Ministers (upon a proposal of the Minister of Health and Social Protection).[66] The text has been harmonised with relevant European legislation.[67]

The new draft LGE contains the following additions:

- It introduces the reversal of the burden of proof in Articles 3(3) and 48(1-3). The wording used in the articles differs, which may raise problems when resolving disputes:
    - In Article 3(3) – 'The basic principles' – clearly indicates a reversal of the burden of proof, with the burden falling on the defendant or the subjects against whom a claim for gender discrimination is filed;
    - In Article 48(1-2) – 'Dispute resolution procedures' – the claimant must present facts on the basis of which it can be assumed that their rights have been violated; this article provides for a shifted burden of proof, not reversed,68 as in Article 3(3);
    - Article 48(3) regulates the burden of proof in court proceedings: '(...) according to the principle of the reversed burden of proof, according to which when a party presents facts

63 Albania, Law No. 9970, 24 July 2008.
64 EELN, flash report Albania, *Adoption of amendments to the anti-discrimination law*, 18 December 2020.
65 Albania, Decision of the Council of Ministers (DCM) No. 16, dated 11.1.2024 'On the approval of the National Plan of European Integration 2024-2026', Official Journal No. 11 of 17 January 2024, p. 2079.
66 Albanian Official webpage of the Electronic Register for the public announcements and consultations.
67 Albania, 'Report on the approval of the draft law on gender equality', pp. 8-9; the EU Charter of Fundamental Rights: Chapters III and IV (Article 20-38), Directive 2019/1158/EU, Directive 92/85/EEC, Directive 79/7/EEC, Directive 2010/41/EU, Directive 2004/113/EC, Directive 2022/2381/EU, Directive 2006/54/EC, Directive 2023/970/EU, Directive 2024/1385/EU.
68 These provisions of the draft LGE distinguish between reversing the burden of proof (where the burden of proof falls on the defendant/perpetrator) and shifting the burden of proof (where the claimant must present facts on the basis of which it can be assumed that their rights have been violated).

on the basis of which it is assumed that his/her rights have been violated according to this law (…), it is up to the defendant and/or the court to prove that the facts do not constitute non-equal treatment.' However, this doesn't resolve the shift of the burden of proof, in cases of gender discrimination in the field of access to goods and services in the Courts of General Jurisdiction (civil court hearings) as there is no amendment in the Civil Procedure Code (CPC) on the shift. This will still be an unresolved issue or remain a problem of different interpretations by judges, because in civil proceedings they proceed according to the CPC and the positive change will remain only in administrative proceedings of the CPD or other public bodies deciding on the issue of discrimination.

Definitions have been revised or added:

- revised definitions include: gender equality; gender mainstreaming; gender identity; gender affiliation.

- added definitions include: gender-responsive budgeting; violence, harassment or sexual harassment; gender-sensitive language; unpaid work; sexism; gender data; gender impact assessment.

- These entities are listed with obligations under the proposed LGE: the Parliament, the CPD, all ministries and other public administration institutions according to their field of competencies, non-governmental organisations, and private subjects.

- Article 23(2) sets standards for equal gender representation in decision-making processes for private subjects, too.

- As regards gender equal protection and treatment in specific sectors, some of the added sectors are: scientific research and technological development; information technology and information society; agriculture and rural development; sports; health and social protection; defence and security; infrastructure and urban planning.

CASE LAW

Age

Discrimination in access to goods and services on the ground of age

The complainant addressed the Commissioner for Protection from Discrimination (CPD), claiming that the requirement of a regional directorate of social insurance that applicants apply for retirement pension benefits only through an online platform (e-Albania) constitutes discriminatory treatment due to several grounds such as age, educational status, economic status, family and professional status and digital skills.

The CPD noted that since the approval of Council of Ministers Decision No. 252/2022, on 1 May 2022, all public services, including those provided by the Social Insurance Institute, are carried out online, and that all offices for physical interaction with citizens have been closed. The complainant, due to her age as well as her educational status, digital skills, and economic situation, is unable to apply online for retirement pension benefits and is thus, according to the CPD, subject to unequal and unfair

treatment. The CPD further noted that according to information provided by the Prime Minister's Office, every institution responsible for providing online services has made available one or more employees to assist citizens who, for various reasons, have difficulty accessing online services independently. The Social Insurance Institute had not taken any such measures and failed to prove that the unequal treatment of the complainant had a reasonable and objective justification. The CPD thus concluded that the practice at hand, while apparently equal for all, is in violation of Law No. 10221/2010 on Protection from Discrimination. It further concluded that the case constituted intersectional discrimination, as all the alleged grounds for discrimination interact with each other simultaneously and inseparably.[69]

POLICY AND OTHER RELEVANT DEVELOPMENTS

Age

Policy document on ageing and Action Plan 2025-2030[70]

On 4 June 2025, the Government adopted the Policy Document on Ageing and the Action Plan 2025–2030, (the policy) following a lengthy public consultation process involving international organisations in Albania, government institutions, independent bodies, and NGOs. The policy was drafted in accordance with key principles, including equal rights, social integration, improved healthcare and guaranteeing access to social services and institutional support. It aims to provide a comprehensive and sustainable approach to improving the quality of life for older people in Albania.

The policy provides the following two policy objectives (detailed in 5 strategic/specific objectives and 19 activities):

First, to ensure economic and social protection of older people in need, i.e. by creating an environment that enables a dignified life for women over 60 and men over 65. The policy thus aims to:

- promote financial independence for older men and women, primarily through pensions and employment opportunities;
- improve access to appropriate, integrated and quality social and health services for older people, being as close as possible to the individual; and
- mainstream ageing across all sectors, strengthening cooperation between all levels of government.

Secondly, to raise awareness in society about dignified ageing, which also means taking measures to prevent loneliness and encourage healthy ageing. The policy thus aims to:

- carry out media campaigns to raise awareness and educate the public; and
- promote interaction between generations through educational programmes for youth and the community, creating opportunities for activism and participation.

69 Albania, Commissioner for Protection from Discrimination, decision No. 134 of 2 June 2025.
70 Albania, Decision of the Council of Ministers No. 315 of 4 June 2025, Official Journal of 12 June 2025.

The Ministry of Health and Social Protection is responsible for implementing the policy. There will be two phases of monitoring: the intermediate evaluation (2024-2026) to assess changes in the general context and to determine whether the objectives and priority measures remain important, and the final evaluation for the period 2026-2028. The action plan contains an analytical and detailed classification and categorisation of expenses. The total cost for implementing the action plan for the period 2025–2030 is approximately EUR 91 million (ALL 8 844 280 000). However, the Government has identified some limitations in the calculation of costs, which require further revision.

Austria AT

LEGISLATIVE DEVELOPMENT

Disability

Reform concerning the disability ground

In July 2024, a reform was adopted to amend the legal framework related to disability rights.[71] The reform introduced the following main amendments to the Federal Disability Act:

- The creation of an independent commission within the Federal Disability Council to make recommendations to the Council. The Council and the commission will advise the Government on disability-related issues, including discrimination. The commission is functional as of January 2025 but there have been no publicly notable outputs so far.

- Further definition of the role of the Ombud for Persons with Disabilities by explicitly mandating the body to initiate reconciliation processes and request information from employers and federal institutions in individual cases of alleged discrimination. The functional period of the Ombud has been prolonged from four to five years and the details of the nomination, remuneration and duties of a deputy Ombud have been clarified. In addition, the reform also amended the Act on the Employment of Persons with Disabilities by, most importantly, introducing a duty for all ministries, the high courts, the Parliament and the Ombudsman Board to create the position of an 'accessibility officer' to highlight issues of accessibility within the institution. The position is to be unpaid and executed 'alongside the professional duties and preferably without disturbance of the operational duties'.

CASE LAW

Racial or ethnic origin

Religion or belief

Refusal of services by a swimming pool provider based on wearing a burkini is discrimination

In March 2019, a district court in Lower Austria ruled on a discrimination claim brought by three Muslim women (a mother and her two daughters) against a swimming pool where they had been refused service. When accessing the pool, two of the claimants were wearing a 'burkini' covering their bodies and hair, while one daughter wore another type of bathing suit. A guard at the pool asked them to leave the pool area as they were considered to be breaking the internal regulation regarding appropriate swimming wear, and they were made to leave. The court found that this difference in

[71] Austria, Federal Act amending the Federal Disability Act and the Act on the Employment of Persons with Disabilities, BGBl. I No. 98/2024 of 18 July 2024.

treatment constituted direct discrimination on the ground of ethnic affiliation and that the daughter without a burkini had been subjected to discrimination by association as the discriminatory behaviour towards her group did not leave her the opportunity to enjoy the services in a manner free from discrimination.[72] The court did not explain its reasoning with regard to the finding of ethnic discrimination, while the clothing had clear religious connotations.

BE Belgium

CASE LAW

Religion or belief

National court decision on religious clothing in employment following the CJEU ruling in the *S.F. v SCRL* case

The case originated from a request for a preliminary ruling submitted before the Court of Justice of the EU by the Labour Court of Brussels. It concerned an employer who did not take into consideration a spontaneous application for an internship submitted by the claimant, as she refused to comply with the policy of neutrality of the company by removing her Islamic veil.

On 7 October 2024, following the CJEU ruling from 2022,[73] the Labour Court of Brussels ruled that there was no indirect discrimination based on religion.[74] The company employed workers of 14 different nationalities and had in the past experienced serious workplace conflicts linked to the religious beliefs of its workers. To maintain social peace, a neutrality clause had been included in the employment regulations. On this basis, the Labour Court ruled that the neutrality clause served a legitimate purpose and that the means of achieving this purpose were appropriate and necessary.

Religion or belief

Supreme Court decision on the provision of associative support for non-veiled women only

Mothers for Mothers is a non-profit association that provides comprehensive assistance to mothers and single fathers in need by distributing food packages and providing material help such as children's clothing, baby materials etc. It also runs a reception and care room for babies, a food and drink area and a sewing workshop.

Since 1996, women who wear an Islamic veil must remove it to enter the building of the association. Those who refuse may receive an assistance package in the entrance but cannot rely on the other services offered in the building itself. The headscarf ban was introduced at a time when the number of women wearing headscarves made other groups of women no longer feel 'at home' in the building.

On the basis of a complaint brought by the national equality body Unia, the Antwerp Court of first instance ruled in January 2021 that this policy amounted to direct discrimination based on religion. The objective of the non-profit organisation was based on the (alleged) Islamophobic feelings of certain mothers and was not legitimate. This ruling was overturned on appeal on 14 November 2022 on the basis that anti-discrimination law did not apply in the case as the association does not exercise a public social activity, but only offers assistance within the private sphere, at defined times, to the

[72] Austria, District Court Purkersdorf, decision No. 6C 177/24s-40 of 9 March 2025.
[73] CJEU, judgment of 13 October 2022, *SCRL*, C-344/20, ECLI:EU:C:2022:774.
[74] Belgium, first instance Labour Court of Brussels, 7 October 2024, No. 19/2070/A.

limited group of mothers who have been referred by official bodies such as the police, social aid public centres, birth and childcare offices, etc.

On 18 November 2024, the Court of Cassation ruled that the interpretation of the legislation made by the Court of Appeal was erroneous.[75] According to the Court of Cassation, only purely private relationships between individuals, including relationships between members of an association, are outside the scope of the law. The economic, social, cultural or political activities of an association aimed at a wider public fall within the scope of the Anti-Discrimination Act and the Flemish Decree on Equal Opportunities. The fact that the association imposes certain conditions for effective participation in the activity or only organises the activity at specific times does not change its public nature. Since the Court of Cassation does not rule on the merits of cases, it referred this case to a different court of appeal for a new ruling.

National court decision on religious clothing in public employment following the CJEU ruling in the *Commune d'Ans* case

Religion or belief

The claimant is responsible for handling the municipal authority's public contracts and primarily performs her duties without being in contact with the public. After five years of employment, she officially informed the municipal authority that she intended to wear an Islamic veil in the workplace. Her request was rejected, and the employer amended its terms of employment to explicitly spell out a previously unwritten neutrality policy.

At first instance, the Labour Court of Liège found that the policy appeared to constitute indirect discrimination as its application varied in consistency. The Court therefore allowed the claimant to wear the veil when working in the 'back office', not exercising any position of authority. In the meantime, the Court referred the case to the CJEU, which issued its Grand Chamber ruling in November 2023.[76]

On 3 December 2024, the Labour Court thus ruled that indirect discrimination based on religion had occurred.[77] The Court considered that the employer had not put forward any concrete elements linked to the specific context of the *Commune d'Ans* that could justify an absolute ban on all religious symbols. In particular, it considered the fact that there were no incidents or tensions in the workplace within the municipality. A specific fact of the case was that the claimant was kept at her post throughout the procedure and did not work in contact with the public or in a position of authority.

Criminal conviction for sexist and homophobic violence: first recognition of the offence of sexism in a physical assault[78]

Gender

Gender identity

Sexual orientation

After leaving a cabaret show in Brussels, the complainant and her friends were verbally attacked with sexist and homophobic slurs such as '*sale pute*' ('dirty whore') and were violently assaulted. The complainant suffered serious injuries and was temporarily incapacitated for work.

75 Belgium, Court of Cassation, 18 November 2024, No. C.23.0090.N.
76 CJEU, judgment of 28 November 2023, *Commune d'Ans*, C-148/22, EU:C:2023:924. For a summary of the judgment, see *European equality law review 2024*, p. 81.
77 Belgium, first instance Labour Court of Liège, 3 December 2024, No. 21/27/C.
78 Belgium, French-speaking court of first instance of Brussels, judgment No. 23F00598S – 90th Criminal Chamber, 23 January 2025.

The Brussels Criminal Court recognised the following:

- The expression '*sale pute*' constituted an act of sexism as defined by the 2014 Act combating sexism in public space,[79] as it targeted the victim based on her gender and violated her dignity.
- The assault was further aggravated by a discriminatory motive based on gender expression and (presumed) sexual orientation, within the meaning of Article 405*quater* of the Criminal Code.[80]
- The intersectional nature of the violence was acknowledged: the aggressor perceived the group as homosexuals based on their appearance and behaviour, without actual knowledge of their sexual orientation.

The perpetrator was sentenced to three years of imprisonment, suspended under conditions including psychological follow-up and participation in a group for offenders focusing on victim awareness and conflict management. The complainant received EUR 9 000 in damages. Both equality bodies, UNIA (Interfederal Centre for Equal Opportunities) and the IEFH/IGVM (Institute for the Equality of Women and Men), were each awarded a symbolic compensation of EUR 1. This is the first known criminal conviction in Belgium where the offence of sexism was explicitly applied in the context of a physical assault. It contributes to clarifying and broadening the scope of the 2014 Act combating sexism in the public space.[81]

The judgment takes into account the complex overlap of discrimination grounds (gender, sexual orientation, gender expression), reflecting real-world experiences of targeted violence. The case illustrates successful collaboration between UNIA and the IEFH/IGVM in supporting victims and advancing anti-discrimination jurisprudence.

Disability

National railway company liable for failure to accommodate a wheelchair user

The claimant is a Paralympian athlete with severe multiple disabilities who uses an electric wheelchair. He lives in a village of 3 000 residents, around 500 metres from a railway station which is, itself, fully accessible for wheelchair users. However, because of the height difference between the platforms and the trains, the claimant is unable to board the trains without assistance. In less than a third of Belgian train stations, it is possible to book assistance for boarding, for example by means of an access ramp, but the train station used by the claimant is not one of them.

In 2015, the claimant complained to Unia (the national equality body) about the refusal of the national railway company (SNCB) to provide assistance at the train station. Unia found that this amounted to a refusal of reasonable accommodation, which is prohibited in the General Federal Anti-Discrimination Act (2007). When Unia's various attempts at mediation to find a solution with the SNCB were

79 Belgium, Law aimed at combating sexism in public spaces and amending the law of 10 May 2007 aimed at combating discrimination between women and men in order to penalise acts of discrimination of 22 May 2014.
80 Belgium, Act amending article 405*quater* of the Criminal Code and Article 2 of the Act of 4 October 1867 on mitigating circumstances (1), of 14 January 2013.
81 Belgium, Law aimed at combating sexism in public spaces and amending the Law of 10 May 2007 aimed at combating discrimination between women and men in order to penalise acts of discrimination, of 22 May 2014.

unsuccessful, the body took legal action on behalf of the claimant, who was also represented by a team of lawyers. In 2017, the court of first instance dismissed the discrimination claims, finding notably that the potential advantages for the claimant were disproportionate to the disadvantages for the SNCB. The court followed SNCB's reasoning that additional assistance at the relevant station would be too costly and unreasonable as it would restrict assistance at other stations. Unia and the claimant brought an appeal against this decision. On 31 March 2025, the Brussels Court of Appeal found that the SNCB was in breach of Article 14 of the 2007 General Federal Anti-Discrimination Act by failing to make the necessary reasonable accommodation to enable the claimant, as a user of an electric wheelchair, to get on and off the trains at the relevant station.[82] The Court ordered SNCB to take the necessary measures within the next three months to enable the claimant to access the trains once a day, on weekdays, if the SNCB is notified 24 hours in advance. Failing this, the SNCB will be liable to pay a penalty of EUR 250 per offence. In addition, the claimant was awarded compensation for non-material damages of EUR 1 950. No compensation was awarded to Unia, as the proceedings concerned only the cessation of unlawful discrimination, and the court also rejected the request to impose an obligation on SNCB to publish the judgment in railway stations, as the action concerned an individual situation.

Bulgaria BG

LEGISLATIVE DEVELOPMENT

'LGBTIQ+ propaganda' banned in Bulgarian schools following amendments to the Preschool and School Education Act

Sexual orientation

Gender identity

In August 2024, Parliament passed amendments to the Preschool and School Education Act,[83] banning activities consisting of 'carrying out propaganda, promotion or incitement in any way, directly or indirectly, of ideas and views related to non-traditional sexual orientation and/or determination of gender identity other than biological'. The amendments also provide the following definition of 'non-traditional sexual orientation': 'different from the generally accepted and Bulgarian legal tradition notions of emotional, romantic, sexual or sensual attraction between persons of opposite sexes'.

The amendments were proposed by the parliamentary group of the nationalist party and adopted by a majority of 154 votes out of 240. They were adopted at first and second reading in a single day, which is a procedure typically reserved for emergency issues (Covid-19 measures, civil unrest, natural disasters, etc).

The explanatory notes rely on considerations such as the supposed construction of society on the existence of two opposite sexes, each of which is charged with specific biological and social functions and responsibilities, as well as the determination of biological sex at birth, which constitutes the basis of 'civil sex', as determined by the Constitutional Court. The explanatory notes further refer to the constitutional regulation of marriage as a voluntary union between a man and a woman exclusively. They also claim that public propaganda has imposed an 'unacceptable' model of normalisation of

[82] Belgium, Court of Appeal of Brussels, decision of 31 March 2025. See also Unia (2025), 'SNCB convicted for discrimination against a person in a wheelchair' press release, 1 April 2025.

[83] Bulgaria, *Act amending and supplementing the Law on Preschool and School Education*, 15 August 2024. See also the Explanatory notes, adopted on 7 August 2024.

'non-traditional sexual orientation' in recent years, notably considering the severe demographic crisis in Bulgaria. They also claim that placing advertising and information campaigns promoting such 'socio-cultural models' close to schools is not compatible with the Bulgarian legal tradition. Furthermore, the notes claim that adolescents are the most susceptible to this type of 'propaganda' due to their inability to form an independent and objective judgement about information they receive. Finally, the explanatory notes claim that the amendments should have a positive impact in 'strengthening the traditional basic Christian family values, love and respect in the family, kinship and intergenerational ties in accordance with the Bulgarian cultural, educational and legal tradition'.

A proposal for sanctions (fines and suspensions from exercising a profession) for violations of the new provisions was pending adoption at the time of writing.

CASE LAW

Sexual orientation

Transgender

Supreme Administrative Court confirms discrimination by a political party against the LGBTI community

Two individuals and an NGO submitted a complaint to the Commission for Protection against Discrimination (CPD) regarding a social media post by a political party. The post, made in response to the screening of a film during the Sofia Pride Film Fest, contained derogatory and stigmatising language towards the LGBTI community, characterising them as 'immoral' and associating them with 'perversion' and 'paedophilia'. The CPD initially ruled that the statements did not constitute discrimination.[84] However, the Sofia City Administrative Court overturned this decision, finding that the statements created a hostile and offensive environment for LGBTI persons.[85]

The respondent appealed the ruling before the Supreme Administrative Court, arguing that their statements were directed at the event organisers rather than the LGBTI community as a whole, and that their political speech should be protected as freedom of expression.

In September 2024, the Supreme Administrative Court dismissed the appeal and upheld the lower court's decision.[86] It confirmed that the respondent had violated the dignity of LGBTI individuals and contributed to a hostile and degrading environment. The statements thus constituted harassment under the Protection against Discrimination Act and could not be justified by freedom of expression.

Following the referral of the casefile back to the CPD, it delivered its new decision in December 2024, imposing a fine of EUR 500 (BGN 1 000).[87] The decision was not appealed.

Gender

Adoption of amendments to the Regulation on the implementation of the Law on Protection from Domestic Violence

On 30 August 2024, the Council of Ministers issued a decree amending the Regulation on the implementation of the Law on Protection from Domestic Violence (LPDV).[88] This act regulates, among

84 Bulgaria, Commission for Protection against Discrimination, decision No. 123 of 5 April 2023 in case No. 407/2021.
85 Bulgaria, Sofia City Administrative Court, decision No. 5976 of 12 October 2023 in case No. 3833/2023.
86 Bulgaria, Supreme Administrative Court, decision No. 9763 of 16 September 2024 in case No. 1198/2024.
87 Bulgaria, Commission for Protection against Discrimination, decision No. 354 of 3 December 2024 in case No. 407/2021.
88 Bulgaria, Decree No. 304 of the Council of Ministers promulgated in SG 74 from 30 August 2024 for the amendments of the Regulation on the implementation of the Law on Protection from Domestic Violence, promulgated in State Gazette 45/ 2010.

others, the rules and conditions for the minimum standards for the provision of specialised services and programmes under the LPDV, including their financing and supervision.[89] These services encompass:

- operation of a national helpline for victims of domestic violence and those at risk;
- social, psychological services and programmes, and legal advice, as well as rehabilitation and support programmes for victims or witnesses, including those in a sheltered housing;
- providing a specialised programme for overcoming aggression and coping with anger for perpetrators of domestic violence, including social and psychological counselling.This process of amendments in the field of protection from domestic violence started with the amendments to the LPDV in August 2023, based mainly on the existing drafts developed since 2019. Most amendments were published in 2023 and entered into force in January 2024, with a special addendum to include intimate relationships within the scope of protection against domestic violence.[90] The implementation of the specialised services for victims of domestic violence entered in force in January 2024.

The changes in the law are extensive. Only three articles of the 27 articles in the LPDV were not amended. Some of the key changes include:

- 'Emotional' violence is no longer explicitly mentioned.
- The concepts of 'intimacy' and intimate relationship are introduced as follows:

  > 'Domestic violence is any act of physical, sexual, mental or economic violence, as well as the attempt at such violence, the forced limitation of private life, personal freedom and personal rights committed against persons who are in a related relationship, who are or have been in a family relationship or in a de facto cohabitation or in an intimate relationship.'
  >
  > '"Intimacy" is a set of voluntary and lasting personal, intimate and sexual relationships between two individuals - male and female, regardless of whether they share a household and whose origin, content and termination are not subject to legal regulation by another law. Lasting within the meaning of the preceding sentence are relationships lasting at least 60 days.'

- Article 4(2) – at the request of the injured person, state and municipal authorities, medical institutions and legal persons carrying out activities on prevention and protection against domestic violence are obliged to forward to the relevant district court within 24 hours the application for initiation of proceedings for issuing a protection order.
- Article 5(4) – prohibiting the offender from making contact with the victim in any form,

[89] Bulgaria, Law on Protection from Domestic Violence, promulgated in SG 27/2005, in force since 1 April 2005, last amended by SC 66/ 2023 and 69/ 2023.
[90] Bulgaria, State Gazette 69/2023.

including digital, under conditions and time limits determined by the court.

- The creation of the National Council for Prevention and Protection from Domestic Violence, as a specialised, permanent collective and consultative body for the implementation of the state policy on prevention and protection from domestic violence through coordination, monitoring and evaluation of the policies and measures for prevention and protection. The Council is chaired by a Vice-Prime Minister and is composed of representatives of different ministries, representatives of NGOs, experts, etc. The activity is regulated by special rules of procedure. The Council has been operating since the beginning of 2024.

The Council has a three-year programme which provides activities and respective budget for: training for professionals, training in educational establishments, campaigns, seminars and conferences, specialised services for the provision of protection, assistance and support to victims of domestic violence or those at risk, including child victims and witnesses of violence, national helpline, counselling centres, safe houses, and specialised programmes for perpetrators.

Racial or ethnic origin

Supreme Administrative Court ruling on incitement to ethnic hatred in a media article

The case concerned an article published on a news website in November 2022, entitled 'Gypsies stole iron from a construction site near the Montana stadium'. The NGO Centre for Interethnic Dialogue and Tolerance Amalipe brought a complaint against the de facto controller of the website before the Commission for Protection against Discrimination (CPD), which found the respondent liable for indirect ethnic discrimination and incitement to discrimination by publishing the article.[91] The CPD imposed a fine of EUR 250 (BGN 500) and ordered a prohibition against future similar publications. When his appeal was rejected by the Sofia City Administrative Court (SCAC),[92] the (initial) respondent brought the case before the Supreme Administrative Court, arguing that the decisions of the CPD and of the first-instance court violated substantive law and procedural rules and infringed his freedom of expression.

In May 2025, the Supreme Administrative Court (SAC) dismissed the appeal as unfounded, confirming that the article's title and content placed undue and offensive emphasis on the ethnic identity of the alleged perpetrators.[93] The wording used (notably 'insolent bandits') was discriminatory and contributed to stigmatisation and the reinforcement of negative stereotypes towards the Roma ethnic group, creating an offensive environment for its members. The Court found that the publication constituted both indirect discrimination and incitement to discrimination, as prohibited by national law. The judgment did not infringe the right to freedom of expression under the ECHR because such freedom must not be exercised in a discriminatory manner. Finally, the administrator of a media outlet bears responsibility for the published content and failures to prevent discriminatory content. The Court noted that the imposed fine was close to the statutory minimum and proportionate, given two distinct violations. Thus, the SAC upheld the judgment of the SCAC, and the cassation appeal was dismissed.

91 Bulgaria, Commission for Protection against Discrimination, decision No. 394 of 29 November 2023.
92 Bulgaria, Sofia City Administrative Court, decision No. 13999 of 6 August 2024 in case No. 3/2024.
93 Bulgaria, Supreme Administrative Court, Decision No. 5014 of 14 May 2025 in case No. 10780/2024.

Croatia HR

Gender

LEGISLATIVE DEVELOPMENTS

Gender quotas in company boards

On 15 November 2024 the Parliament adopted amendments to the Companies Act, including the transposition of the Gender Balance on Company Boards Directive.[94] The amendments entered into force on 5 December 2024, apart from the provision of new Article 272.t (implementing Article 6 of the Directive), which will enter into force on 1 July 2026.

The Act on Amendments to the Companies Act[95] was adopted just in time to meet the formal transposition deadline in Article 11(1) of the Directive. At first glance, the transposition of objectives under Article 5 of the Directive seems correct. The new Subsection 2.D on 'Gender-balanced representation of women and men in company's bodies' was added to the Companies Act, inserting new Articles 272.s – 272.z,[96] mostly transposing Articles 5, 6 and 10 of the Directive. Other provisions from the Directive are scattered in different sections and articles of the Companies Act. New Annexes 7 and 8, which basically copy the Annex of Directive, have been added to the Companies Act.

The most important provisions implementing the Directive are set out below.

- Under Article 272.s(1) of the Companies Act, listed companies are obliged to have a gender-balanced representation of non-executive director positions (i.e. members of supervisory boards in dual board system companies; or non-executive directors in the management boards in unitary board system companies) in line with the target numbers provided in Annex 7 to the Companies Act (i.e. corresponding to the objective in Article 5(1)(a) and target numbers from the Annex of the Directive).

- Under Article 272.s(2), listed companies can be exonerated from the above obligation if they achieve gender-balanced representation of all director positions (i.e. total members of supervisory and management boards in dual board system companies; or total number of members of management board and executive directors in unitary board system) in line with the target numbers provided in Annex 8 of the Companies Act (i.e. corresponding to the objective in Article 5(1)(b) and target numbers from the Annex of the Directive).

- Gender-balanced representation is calculated according to the actual number of elected and appointed board members, and not the number indicated in the company's statutes.

- If neither of these objectives are met, the supervisory board (in dual board system companies) or management board (in unitary board system companies) will have to adopt rules on the selection of candidates for members of supervisory boards or non-executive directors in the management boards to guarantee the application of clear, neutrally formulated,

[94] Directive (EU) 2022/2381 of the European Parliament and of the Council of 23 November 2022 on improving the gender balance among directors of listed companies and related measures.
[95] Croatia, Act on Amendments to the Companies Act, Official Gazette No. 136/2024.
[96] Croatia, Act on Amendments to the Companies Act, Article 13.

unambiguous and non-discriminatory hiring criteria, and to ensure that priority is given to the candidate of the underrepresented sex when choosing between two equally qualified candidates for the election of the member of the *supervisory board* (Article 272.t(1) and (3) of the Companies Act). This provision allows preference for the underrepresented sex only in relation to election of members of supervisory boards, and not the members of management boards who are non-executive directors in unitary board system companies. This provision is not correctly transposed, because Article 6(2) of the Directive mentions 'director positions', and 'director' according to Article 3 of the Directive means 'a member of a board', while this provision does not mention management boards in unitary board system companies. This might be an inadvertent omission, because sanctions are prescribed for disregarding preference for a member of the underrepresented sex in a *supervisory* or *management* board (Article 630(1)(33.a) of the Companies Act).

- An unsuccessful candidate of the underrepresented sex is authorised to initiate misdemeanour proceedings against a company. If the candidate establishes facts from which it may be presumed that they were as equally qualified as the candidate of the other sex who was selected, it is for the listed company to prove that there has been no breach of preference (Article 272.t of the Companies Act). This is the only shifting of burden of proof provision (Article 6(4) of Directive).

- If the company has once complied with at least one criteria from Article 272.s, but no longer does because a member has left; or if a non-executive director was appointed as an executive director; or if the imbalance between women and men occurred due to a change in the representatives of workers on the supervisory board or a change in a member of the supervisory or management board appointed by an individual shareholder exercising their right, the company is not required to adopt rules on candidate selection if the disrupted balance is restored at the time of the next election (Article 272.t(2) of the Companies Act). This provision seems to be a quite liberal reading of the obligation in Article 6 of the Directive, leaving a broad leeway for companies to escape from adopting the rules applicable to the selection process.

- Article 272.t of the Companies Act is the only new provision from the Act of Amendments to the Companies Act that enters into force on 1 July 2026.

- The Ombudsperson for Gender Equality is a designated body for the promotion, analysis, monitoring and support of gender balance on boards.

- Supervisory or management boards of listed companies are required to set individual objectives for participation of members of the underrepresented sex in the management at least once in two years. The company is free to determine the quantitative objectives, by setting the number and share of the underrepresented sex in the planned period, measures to achieve those objectives, and the deadline for their accomplishment, which should not exceed 18 months (Article 272.u of the Companies Act).

- Sanctions and penalties: failure to comply with the main obligations of the Directive are punishable as misdemeanours under Article 630(1)(31a.), (33.a), and (35.a) of the Companies

Act) with a monetary fine of up to EUR 10 000. Whether a monetary fine in this amount is dissuasive is debatable, but it is the highest monetary fine under the Companies Act, applicable to numerous other violations as well. The fine amount was actually increased from EUR 6 630 to EUR 10 000 with these amendments.

Gender

New legislation increasing parental leave

On 21 February 2025 the Parliament adopted the Act on Amendments to the Act on Maternity and Parental Benefits. The Act entered into force on 1 March 2025.[97]

Crucial amendments include the extension of the duration of paternity leave and an increase of the amounts of material rights/benefits granted under the Act for all categories of recipients (employed, self-employed, parents earning income other than from employed or self-employed activities, unemployed, farmers, parents outside of the labour market). Although equal sharing of parental responsibilities is mentioned as an important objective of these amendments, they are primarily targeted at improving the financial and economic status of families with children as part of family and pronatalist policies.

The most important amendments concerning employed and self-employed parents include:

- Duration of paternity leave is doubled: from 10 days for one child and 15 days for twins, triplets or more to 20 and 30 working days respectively.

- Duration of 'other adoptive parent's leave'[98] is doubled: from 10 working days in the case of adopting one child to 20, and from 15 in the case of adopting twins or the simultaneous adoption of two or more children, or a child who, through adoption, becomes the third or any subsequent child in the family, or the adoption of a child with developmental difficulties, to 30 working days.

- The amount of benefits for employed and self-employed beneficiaries has been increased:

- The upper limit for parental benefit is increased from 225.5 % of the budget calculation base[99] (EUR 995.45) to 680 % of the budget calculation base (EUR 3 001.79) per month (in duration of six months if only one parent takes parental leave, or eight months if both do). This means that almost all employees taking parental leave will continue to receive the amount equal to their full previous salary for the entire duration of parental leave.[100]

97 Croatia, Act on Amendments to the Act on Maternity and Parental Benefits, Official Gazette No. 34/2025.

98 Croatian: '*dopust drugog posvojitelja*'; which is an equivalent of paternity leave for adopting parents, granted on the occasion of joint adoption of a child to one adoptive parent (i.e. one adoptive parent is granted adoption leave, which is an equivalent to maternity leave, and the other adoptive parent is granted 'other adoptive parent's leave', which is an equivalent to paternity leave).

99 The budget calculation base is the basis for the calculation of allowances and other income paid from the state budget, which is determined at a fixed amount each year. The budget calculation base in 2025 is EUR 441.44. See Act on Execution of the State Budget of the Republic of Croatia for 2025, Official Gazette No. 149/2024, Article 39(1) and (2).

100 This substantially improves the level of adequacy of compensation and requirement to ensure decent living conditions mentioned in recital 31 of the WLB Directive. For perspective, the average monthly net earnings of persons in paid employment in legal entities (regardless of their status and type of ownership) in Croatia in December 2024 was EUR 1 361, while the median net earnings amounted to EUR 1 156. See Croatian Bureau of Statistics, Average monthly net and gross earnings of persons in paid employment for December 2024.

- The upper limit of parental benefit for parents of twins, third, and every subsequent child in the remaining part of parental leave after the first six or eight months until its expiry (28 or 30 months, depending on whether only one or both parents take the leave) is increased from 125 % of the budget calculation base (EUR 551.80) to 182 % (EUR 803.42) per month.

- The upper limit for other benefits (such as part-time use of parental leave; special leave options for children with a disability or long-term illness) has also increased, but less substantially (i.e. depending on the type or right, from 25 % up to 100 % in comparison to the previous limit).

- If an employed or self-employed parent does not meet the legally prescribed previous insurance period (as a qualifying period for the calculation of the amount of benefit in relation to the previous salary) the benefit granted under the Act increases from 125 % of the budget calculation base (EUR 551.80) to 159 % (EUR 701.89) per month for full-time employment.

- Financial compensation granted under the Act to employed or self-employed parents cannot be lower than 159 % of the budget calculation base (EUR 701.89) instead of the previous 70 % (EUR 309.01), provided full-time employment is maintained.

- The financial support for all groups of beneficiaries cannot be less than 114 % of the budget calculation base (EUR 503.24) instead of the previous 70 % (EUR 309.01).

- The amount of the one-time financial support for a newborn child is doubled for all groups of beneficiaries, increasing from the current EUR 309.01 to EUR 618.02.

POLICY AND OTHER RELEVANT DEVELOPMENTS

All grounds

Concluding observations of the UN Human Rights Committee on the implementation of the International Covenant on Civil and Political Rights

On 11 September 2024, after considering the fourth periodic report of the Republic of Croatia,[101] the UN Human Rights Committee adopted its concluding observations on the implementation of the International Covenant on Civil and Political Rights.[102]

The Committee expressed concern regarding discrimination against Roma, particularly about continued reports of segregation of children in the education sector, low enrolment rates in preschool and high dropout rates at the primary and secondary levels among Roma children. The Committee also expressed concern about de facto residential segregation and the high percentage of Roma living in informal settlements with poor quality housing and very limited access to basic services, as well as the high level of unemployment and discrimination faced by Roma in access to employment. The Committee also expressed concern that national strategies, policies and action plans lack goals and specific activities targeted towards the prohibition and prevention of discrimination, prejudice and hate

[101] Croatia (2022), *Fourth periodic report of the Republic of Croatia* submitted by Croatia under Article 40 of the Covenant pursuant to the optional reporting procedure, May 2022.
[102] UN Human Rights Committee (2024), *Concluding observations on the fourth periodic report of Croatia on implementation of International Covenant on Civil and Political Rights*, September 2024.

crimes against LGBT persons, and noted indications that transgender persons face discrimination and prejudice in access to healthcare and that LGBT children suffer discrimination and harassment in educational institutions.

Concern was also raised about reports of the continued prevalence of hate speech and hate crimes, in particular against members of the Roma and Serb minorities, non-citizens and LGBT persons, that criminal hate speech and hate-motivated violence are mainly prosecuted as misdemeanours and therefore inadequately punished, that the number of convictions is low and that incidents are often not reported owing to a lack of trust in the relevant law enforcement agencies and judicial authorities.

In relation to the areas of gender equality, violence against women, and women's sexual and reproductive rights, the Committee voiced a series of concerns over recurring issues, such as stereotypes about women's role in society and the ensuing underrepresentation of women in public, political and economic life, particularly in decision-making positions; issues in relation to the practical effectiveness of the legal framework aimed at protecting women against violence and providing adequate legal, social and psychological assistance for victims of violence and their families; and enduring financial, geographical and ideological barriers impeding access to safe, legal and confidential abortion services, as well as violations of women's rights in reproductive healthcare settings.

Following the above findings, the Committee issued a series of recommendations, such as for instance, to intensify the efforts to address segregation of Roma in housing and education, reduce the substantial disparities in educational attainment and rates of employment among Roma compared with the general population and guarantee non-discriminatory access to adequate housing and basic services, to integrate more specific goals and activities in policy documents concerning LGBT persons, to combat discrimination and harassment of LGBT children in educational institutions, to ensure that alleged hate crimes are investigated, prosecuted and properly punished etc.

Further recommendations include the necessity to reassess the effectiveness of the gender quota system for political party candidate lists, and to ensure effective enforcement of the existing sanctions for non-compliance with gender quotas and publication of information on fines handed down for this misdemeanour. Reflecting its concerns in the area of violence against women, in particular concerning the persisting practice of 'dual arrests' and treating domestic violence offences as isolated incidents, the Committee recommended further strengthening the practical application of the criminal and misdemeanour legal framework to guarantee the systematic investigation and prosecution of offences of violence against women, commensurate punishing of perpetrators, and consistent application and effective enforcement of protective measures. Providing stable and sufficient funding for civil society organisations was recommended to ensure accessible remedies for victims of violence, as well as further training of public officials to correctly implement the victim-oriented approach in practice. Centralised gender-based violence data collection should be improved, in particular concerning information on the relationship between victim and perpetrator. Important recommendations in the area of reproductive health and abortion rights involve the guarantee of effective and equal access to abortion and post-abortion care regardless of the widespread exercise of conscientious objection among medical professionals, documenting and monitoring denials of care, ensuring coverage within the national social security system, and access in particular for undocumented migrant women, training of medical professionals to counter stigmatisation of women seeking abortion-related

services, and ensuring proper investigation and sanctioning of any alleged violation of women's rights in reproductive healthcare settings.

CY Cyprus

LEGISLATIVE DEVELOPMENT

Gender

Adoption of national legislation for the implementation of ILO Convention 190 on Violence and Harassment

Cyprus ratified the ILO Convention No. 190 on Violence and Harassment with Law 17(III/2024), which was adopted on 12 December 2024.[103] On 11 April 2025, the Parliament adopted Law 42(I)/2025 on preventing and tackling violence and harassment at work with the aim of better implementing the provisions of ILO C190.[104]

The legislation aims to prevent and address violence and discrimination at work through civil and penal law measures, as well as, through extrajudicial procedures (Article 3(1)). More specifically, the aim is to protect complainants and witnesses against victimisation, to protect privacy and uphold confidentiality to the extent that such confidentiality is not abused and to recognise and mitigate the impact of domestic violence at work (Article 3(2)).

The legislation has a broad personal scope, which includes workers, employers and third parties (Article 4). The notion of worker includes all those who work anywhere and under any contract type, apprentices, domestic workers, those working under telework arrangements, workers not affiliated to social security and those in the recruitment process (Article 2). The employer is also broadly defined to include all public and private sector bodies, including the armed forces and generally, anyone who exercises power as an employer. In relation to third-party violence and harassment, third parties include clients, anyone providing services at the workplace or to the employer and members of the public that visit the workplace or the employer. Following C190, the notion of workplace includes not only the physical workplace, but also spaces where workers rest, accommodation provided by the employer, company events, spaces where training is provided, company trips, traveling to and from work and all forms of communication used for work purposes.

A key new provision concerns the obligation on employers to adopt a policy with preventive measures against violence and harassment in consultation with workers' representatives (Article 6). Employers are required to have procedures in place to examine any complaints by their workers. They are also expected to adopt a relevant code of conduct in consultation with workers' representatives (Article 7). If an employer has not adopted a code of conduct, they may be considered liable to the same extent as the perpetrator(s). There is detailed guidance on what the code should include. Importantly, the legislation establishes a broad duty on employers to create a workplace culture against violence and harassment. The legislation introduces penal offences against violence and harassment at work, punishable with up to 3 years' imprisonment and up to EUR 10 000; juridical persons can be punished

[103] Cyprus, Law 17(III/2024) on the International Labour Organisation Convention on Violence and Harassment at the Workplace (Convention Number 190) (Ratifying Law) of 2024.
[104] Cyprus, On Preventing and Tackling of Violence and Harassment at the Workplace Law of 2025 (Law 42(I)/2025).

with up to EUR 20 000.

The law also provides extrajudicial mechanisms to handle complaints. Victims may lodge complaints with the equality body and with labour enforcement authorities. Labour inspectors can exercise a wide range of authority to ensure compliance.

Overall, the legislation establishes a comprehensive framework to fight violence and harassment at work. Its adoption is certainly a welcome development. Yet, effective implementation especially in relation to the most vulnerable, such as those in atypical and precarious work, migrants, minorities and others, remains a challenging task.

Czechia CZ

CASE LAW

Sex

Racial or ethnic origin

Supreme Administrative Court decision on compensation for forced sterilisation of, mainly, Roma women

In July 2021, legislation was adopted to guarantee a right for monetary compensation to women who were victims of forced and involuntary sterilisation between 1966 and 2012.[105] Since the legislation entered into force in January 2022, victims of this practice, which mainly affected Roma women, have been applying for and obtaining the statutory compensation of CZK 300 000 (approximately EUR 12 200). The deadline for applications was initially set at December 2024 but due to the high number of applications received and following pressure from, notably, the Council of Europe Commissioner for Human Rights,[106] this deadline has been extended to 2 January 2027.[107]

In July 2024, the Supreme Administrative Court ruled that the Ministry of Health must revise its approach when examining applications for compensation for illegal sterilisations, particularly in situations where medical documentation is missing.[108] The court rejected the Ministry's current practice of requiring claimants to provide documentary evidence for their claims, emphasising that this approach placed victims at a significant disadvantage, especially when documentation no longer exists or has been unlawfully destroyed. The court ruled that the Ministry must actively review compensation claims and gather evidence to determine whether sterilisations were conducted unlawfully. Claimants should be informed about ways to support their claims, such as through witness statements. In cases where documentation is missing, the court stated that it would be sufficient for the claimant to present a credible initial claim that an unlawful sterilisation occurred.

In addition, in a subsequent decision, the Supreme Administrative Court further concluded that the sterilisation of a woman in 1979 must be found to have been illegal when the medical records lack a written acknowledgement from the patient about the irreversible nature of the sterilisation, as required

[105] Czechia, Act No. 297/2021 Sb.
[106] Council of Europe, Commissioner for Human Rights (2024), 'Czech Republic: the authorities should extend the law on compensation for victims of forced sterilisations' press statement of 11 December 2024.
[107] Czechia, Act. No. 289/2025 Sb, in force as of 13 August 2025. See also *Romea* (2025), 'Czech President signs law extending opportunity to apply for compensation for forced sterilizations until 2 January 2027' news article, 27 June 2025.
[108] Czechia, Supreme Administrative Court, decision of 4 July 2024, No. 9 As 61/2023.

by the laws in force at the time.[109] The Ministry of Health will thus need to reconsider its rejection of the application for compensation in this case, which may have consequences for a number of other similar applications.

Gender

Constitutional Court ruling on midwives' role in home births

On 3 September 2024, the Constitutional Court issued a landmark ruling regarding the role of midwives in assisting home births.[110] This was the first time the court directly addressed whether midwives could provide such services outside of hospital settings. Although previous legal interpretations allowed home births, the law restricted midwives to practising exclusively in hospitals.

The case was brought before the court by a midwife and a woman who sought her assistance for a home birth. The woman contested the authorities' refusal to extend the midwife's authorisation to include home birth services, arguing that this restriction infringed upon her rights. However, both administrative bodies and lower courts held that, while home births were legally permissible, midwives could only practise in locations meeting the Ministry of Health's standards for healthcare facilities, which is practically unattainable in home settings.

This regulatory gap created a situation where women could legally choose to give birth at home but could not rely on the assistance of qualified midwives. A midwife assisting in a home birth would risk fines of up to approximately EUR 40 000 (CZK 1 million) for providing healthcare services without proper authorisation.

Although the Constitutional Court rejected the petition, stating that midwifery services at home do not qualify as healthcare under current regulations, it highlighted the inconsistency in the law. The Court reasoned that if the law permits women to seek assistance from non-professionals during childbirth, there is no logical reason why professionally trained midwives should be excluded from providing assistance in home settings.

This ruling echoes a decision from 2020 by the regional court in Pilsen,[111] which overturned a fine imposed on a midwife for assisting in home births, aligning with the European Court of Human Rights' position. The European Court previously ruled that Czech legislation restricting midwife care during home births violated the right to private and family life.

In conclusion, while the Constitutional Court's ruling maintained that midwife-assisted home births are not legally regarded as healthcare services, it suggested a need for legislative changes to resolve this inconsistency. The decision leaves those who opt for home births without the guarantees and protections that come with standard healthcare services.

All grounds

Calculation of damages in cases of unequal pay for work of equal value

On 20 November 2024, the Supreme Court issued a ruling in a case concerning unequal pay between postal service drivers employed in the same job classification in different regions of the country. The

[109] Czechia, Supreme Administrative Court, decision of 27 March 2025, file No. 6 Ad 14/2024- 36.
[110] Czechia, Constitutional Court, judgment of 3 September 2024, No. I. ÚS 2746/23.
[111] Czechia, Judgment No. 77 A 159/2020-114.

claimant argued that the difference in pay amounted to a violation of the principle of equal pay for work of equal value under the Labour Code.

Previous case law of both the Supreme Court and the Constitutional Court have upheld the principle of equal pay for equal work, irrespective of differences in average salaries between different regions of Czechia and have also confirmed the burden of proof of employers to substantiate wage differences. In the present decision, the Supreme Court confirmed these earlier rulings and went further by establishing a clear methodology for quantifying damages when ruling on such cases.

The Court thus clarified that the level of damages should be calculated based on the highest salary among employees performing the same work or work of equal value. The court dismissed other options such as applying average or median values. The Court stated that the employers must justify wage differences with legitimate, objectively verifiable reasons. The Court also dismissed arguments that employees earning less than the claimant are relevant for assessing damages.[112]

Gender

Constitutional Court's decision on the right of a victim of sexual violence to an effective investigation

On 9 April 2025, the Czech Constitutional Court issued a ruling in which it addressed a case of sexual violence.[113] The complainant had reported rape by her former partner. The complainant had been engaging in light consensual bondage and discipline, dominance and submission, sadism and masochism (BDSM) practices with her partner, based on which the police authorities and the prosecutor's office decided to dismiss the case. The law enforcement authorities concluded that the fact that the complainant resisted and expressed resistance during the sexual violence was part of the BDSM practices.

The complainant first filed a complaint against the police authority's decision. The District State Prosecutor's Office in Tábor rejected it for being unfounded. She then filed a complaint with the Regional State Prosecutor's Office in České Budějovice, which also dismissed the complaint for being unfounded. Subsequently, the applicant filed a constitutional complaint, arguing that her right to an effective investigation and to a fair trial had been violated, as well as her fundamental rights as a result of secondary victimisation.

The Constitutional Court upheld the complaint. It stated that it was the duty of the law enforcement authorities to investigate all kinds of sexual violence, to explain their conclusions thoroughly and to prevent secondary victimisation of the victims. In the present case, the Constitutional Court pointed out that the complainant's allegations in the police file were not unreliable or improbable, but were possible and consistent. The police authorities had completely failed to recognise that even BDSM practices are based on the consent of all parties involved and should recognise the possibility that one of the parties might withdraw their consent during the sexual act.

The police authorities reached a conclusion directly contrary to the case file considering both the complainant and the suspect agreed on their testimony that their BDSM practices consisted of only

[112] Czechia, Supreme Court, judgment No. 21 Cdo 2000/2024 of 20 November 2024, not yet published.
[113] Czechia, Constitutional Court, judgment of 9 April 2025, No. IV. ÚS 3248/24.

light imitation of violence, not a mock rape. The prosecuting authorities therefore reached a conclusion which was inconsistent with the contents of the case file.

At the same time, the Constitutional Court pointed to the unconstitutional assessment of the complainant's conduct during and after the alleged act. The Court stated that the fact that the complainant reacted in a 'conciliatory' manner is a natural reaction in cases of rape, as it is an extremely stressful threat to life and the victim, out of fear, chooses rather non-confrontational resistance.

In further proceedings, the district prosecutor's office will now remedy the constitutional deficiencies pointed out by the Constitutional Court and assess the legality of the police authorities' actions. It is not clear whether the prosecuting authorities will initiate criminal proceedings next time a similar case appears, but the examination of the reported rape must already be carried out in accordance with constitutional requirements.

The ruling of the Constitutional Court is crucial in that it clearly states that even originally consensual specific sexual practices that involve some elements of violence could at a certain moment change to sexual violence, if one of the parties withdraws consent. The Court also reiterated the need for careful reasoning, investigation and consideration of all the circumstances in cases of sexual violence. Succumbing to preconceived or simplistic conclusions led to a declaration of unconstitutionality because the content of the case file was inconsistent with the decisions of the prosecuting authorities.

DK Denmark

CASE LAW

Disability

Rejection of admission of a student with disabilities to a private school

As a result of diagnosed arthrogryposis multiplex congenita, which causes tightening of his joints, the complainant is a permanent wheelchair user. In May 2022, the complainant applied for admission to 7th grade in a private school. The complainant's mother then received a series of emails from the school principal expressing that the school board was unsure whether the private school was the right place for her son. The school board feared that the school would have to reduce the number of students because they imagined that the personal assistant, who should help with various practical tasks, would take up a spot in the classroom. When the mother explained via email that this would not be the case, she was met with silence. On 1 September 2022, the complainant was rejected from admission to the school. The only explanation provided was that the school board assessed that the school was not the right place for the complainant.

The Danish Institute for Human Rights, the national equality body, brought the case before the quasi-judicial Board of Equal Treatment, alleging that the rejection of admission amounted to disability discrimination. The school claimed that there was no available spot for the complainant and underlined that he was never removed from the school's waiting list; the school further argued that the complainant was offered a spot for the following year but that his family had declined this offer.

The Board of Equal Treatment found that the rejection of admission was fully or partially based on the complainant's disability. It emphasised the email correspondence between the complainant's

mother and the school, which illustrated among other things that the school did not have experience with personal assistants in the classroom. The Board thus concluded that the complainant had been subjected to direct discrimination because of disability and awarded the complainant compensation of EUR 2 681 (DKK 20 000).[114]

Racial or ethnic origin

Racial profiling at border controls

A woman filed a complaint to the Board of Equal Treatment arguing that she had been subjected to discrimination based on ethnic origin when she and her family were selected for border control at the border between Denmark and Germany. She further stated that she is subjected to border controls almost every time that she crosses the border into Denmark. The complainant argued that by failing to put in place a system of tracking who has been stopped and on what criteria, the police must use ethnic profiling, thereby discriminating against ethnic minorities.

The police authority argued that the complainant had not been subjected to discrimination and referred to the fact that she is not registered in the case management system of the police authority. As two months had passed since the specific border control stop, the police authority assessed that it served no purpose to obtain a statement from the relevant police district regarding the specific situation.

The Board of Equal Treatment assessed that the police authority's handling of border control did not fall within the scope of the Act on Ethnic Equal Treatment. It further found that there was no information that gave reason to believe that the complainant was subjected to direct or indirect discrimination during the specific border control occasion. The Board therefore dismissed the complaint.[115]

The legal situation in Denmark has previously been unclear regarding the question whether the Act on Ethnic Equal Treatment applies to police activities. This ruling clarifies that police conduct and ethnic profiling is not encompassed by a prohibition of discrimination in the Act on Ethnic Equal Treatment and that the Board is not competent to look into complaints about allegedly discriminatory police work.

Furthermore, there is no specific prohibition against ethnic discrimination and ethnic profiling in other legislation, such as the Danish Police Act.

Disability

Duty of employers to reassign employee with a disability to a different position

The case concerned a social worker with a disability employed in a flexible job position by a public employer, the Copenhagen Region of Denmark. She worked 20 hours per week but informed her employer that her health condition had deteriorated and that she would only be able to work 10 hours per week. At a meeting concerning her potential dismissal, it was agreed that she would receive job postings for relevant positions until her possible termination. She applied for a position as a social worker with a weekly working time of 10 hours within another department of the Region but was not offered the position following an interview. Subsequently, she was dismissed on the grounds that she was no longer available to perform the essential functions required by her position, which could not

[114] Denmark, Board of Equal Treatment, Decision No. 9888 of 9 September 2024.
[115] Denmark, Board of Equal Treatment, Decision No. 9878 of 23 September 2024.

be carried out with only 10 hours per week.

The parties agreed that the Region was not obligated to adjust the employee's position by reducing the weekly working time to 10 hours. The question before the Supreme Court was whether the Region, prior to the dismissal, had breached the duty of reasonable accommodation by failing to reassign the employee to the other position for which she had applied.

Referring to the CJEU judgment in C-485/20 (*HR Rail*), the Supreme Court stated that when an employer cannot make adjustments to the current position of an employee with disabilities, they have an obligation, prior to dismissal, to investigate and, if necessary, test the possibilities for reassigning the employee to a vacant position within the employer's organisation. According to the court, an employer cannot merely refer the employee to independently identify and apply for vacant positions in competition with other applicants. If there is a vacant position for which the employee is qualified, suitable, and available, the employer is obligated to reassign the employee to that position unless doing so would impose a disproportionate burden on the employer.

In the case in question, the Supreme Court found that the employer did not investigate the possibilities of reassigning the employee prior to the dismissal. The Court thus concluded that the employer had not demonstrated that it would have imposed a disproportionate burden to reassign the employee to the other position, and the failure to reassign her therefore constituted a breach of the employer's duty to provide reasonable accommodation. On that basis, the complainant received compensation amounting to nine months' salary.[116]

The judgment demonstrates that an employer's obligation to reassign is not limited to the employee's specific workplace but encompasses the entire scope of the employee's employment area. It also illustrates that the administrative law principle requiring a public employer to hire the most suitable candidate for a position does not outweigh the employer's duty to provide reasonable accommodation in the form of reassignment.

POLICY AND OTHER RELEVANT DEVELOPMENTS

Racial or ethnic origin

Government initiative to combat racism and prejudice against Greenlanders living in Denmark

On 27 January 2025, the Danish Government launched an action plan containing 12 new initiatives to combat racism and discrimination against Greenlanders in Denmark. Around 17 000 persons born in Greenland currently live in Denmark. According to the Government, the initiatives aim to strengthen trust between communities by actively combating racism and discrimination against Greenlanders in Denmark.

The 12 initiatives are as follows:

1. Establishing a new state entity for equal treatment to coordinate efforts to ensure equal treatment of Greenlanders in Denmark.

[116] Denmark, Supreme Court, judgment of 3 December 2024 in Case No. BS-19728/2024-HJR.

2. Ensuring that Greenlandic nationality will be listed in passports.

3. Initiating a dialogue with boarding schools in Denmark attended by Greenlandic pupils, to raise awareness of their conditions and well-being.

4. Ensuring (continued) mandatory education on the North Atlantic and the history of the kingdom of Denmark, to ensure greater tolerance by raising awareness and understanding of historical and contemporary relations within the kingdom.

5. Establishing a partnership between the Ministry of Higher Education and academic institutions and other key stakeholders to ensure the wellbeing of Greenlandic students in Denmark.

6. Establishing a fund to support civil society projects that actively combat prejudice and discrimination against Greenlanders in Denmark.

7. Improving interpretation services for Greenlanders in Denmark.

8. Allocating funding to provide support for interpreters working with Greenlanders, including improved conditions for interpretation training.

9. Initiating a comprehensive study on the extent and experiences of racism against Greenlanders living in Denmark.

10. Ensuring that the services of the discrimination hotline maintained by the Danish Institute for Human Rights are available in Greenlandic.

11. Continuing existing support for employment initiatives for unemployed Greenlanders in Denmark.

12. Increasing support for 'Greenlandic Houses' to enhance their operations.

In addition, the Government seeks to create the best possible framework for joint discussions with Greenland on addressing the Greenlandic Self-Government's request to explore whether Greenlanders in Denmark wish to be recognised as a national minority.[117]

In the past, racism against Greenlanders in Denmark has typically not been recognised by Danish society at large.

Racial or ethnic origin

Government launches general anti-racism action plan

On 21 February 2025, the Government launched a general action plan to combat racism containing 36 initiatives but not specifying the timeframe for their implementation.[118] It is the first national anti-racism action plan since a 2010 plan on 'ethnic equality and respect for the individual'.[119] The first 12

[117] Government of Denmark (2025), 'The Government wants to combat racism and discrimination against Greenlanders in Denmark through 12 new initiatives', press release, 27 January 2025.
[118] Government of Denmark (2025), Action plan against racism, 21 February 2025.
[119] Government of Denmark (2010), Action plan on ethnic equality and respect for the individual, July 2010.

initiatives were launched as a separate action plan to fight discrimination against Greenlanders in January 2025.[120]

The 2025 action plan describes how 'Racism can affect everyone. Both ethnic Danes and minorities.' It further states that 'It is the government's hope that the action plan will constitute a new, significant step in our common fight against racism and at the same time create a new and necessary debate about what is understood as racism. And just as importantly – a debate about what is not understood as racism.' The Government underlined that 'the work of Danish authorities to combat racism continues to be based on the definitions that already exist in Danish and international law.'

The 36 initiatives are funded mainly by Government funds in the amount of EUR 2.44 million (DKK 18.2 million) for 2025 and 2026.

The 24 initiatives to promote the general fight against racism in Denmark are divided into the following 9 topics:

More knowledge about racism in Denmark:

- Measurement of ethnic discrimination in Denmark
- Mapping of the last 10 years of research on racism and ethnic discrimination
- Investigation of racially motivated extremism
- Evaluation of the scope of the Act on Ethnic Equal Treatment to determine whether there are any unintentional gaps in the protection provided

Children and youth – togetherness strengthens understanding:

- Friendship classes in a small country with big differences
- Travel fund to Greenland and the Faroe Islands
- Strengthening of the Jewish Information Centre
- Study trip fund to concentration camps, etc. aimed at upper secondary education

Strengthening efforts against discrimination and racism in nightlife:

- Accountability of restaurateurs (withdrawal of alcohol licence as a potential sanction for discrimination)
- Strengthening the competencies of doormen

Strengthening efforts against discrimination and racism in the labour market:

[120] See further information above, p. 129-130.

- Prevention of discrimination in connection with apprenticeship applications
- Social dialogue about perceived discrimination in job applications
- Meetings and campaign on offensive behaviour based on ethnicity in the workplace

A housing market with less discrimination:

- Efforts against discrimination in access to housing – investigation of rental to private tenants by landlords who manage 100 or more rental units

Hate crimes and racially motivated extremism:

- Strengthening cooperation with civil society organisations at the national level
- Continuous development and quality assurance of police registration of hate crimes
- Capacity building of police and other authorities, on racially motivated extremism
- Capacity building of police districts in their work with radicalised persons to ensure better handling of racially motivated extremism
- Preventive efforts in environments affected by racially motivated extremism

The shared responsibility:

- Increased support for civil society's fight against racism

Digital democratic education as a defence against racism:

- Equal access to the democratic conversation online
- Monitoring and countering racism on the platforms of tech giants
- Digital education and wellbeing of children and young people

Combating racism through international forums:

- Denmark follows the international work on combating racism in, among others, the UN, the Council of Europe, and the OSCE

Racial or ethnic origin

Government presents initiatives to fight racism against Greenlanders living in Denmark

In June 2025, the Government presented 12 detailed and specific initiatives aiming at promoting equal

treatment and the fight against racism against Greenlanders living in Denmark,[121] in accordance with the specific action plan launched earlier in the year.[122] The 12 specific initiatives are listed below:

1. Mapping of the interpretation sector and proposals for initiatives to address any challenges.

2. Strengthening church services for Greenlanders living in Denmark to better meet their needs for religious services. EUR 187 630 (DKK 1.4 million) will be allocated annually from 2026 to 2028.

3. Strengthening advocacy support in the four 'Greenlandic Houses' in the different parts of Denmark to promote equal treatment. EUR 67 011 (DKK 0.5 million) will be allocated in 2025 and in 2026.

4. Continued efforts to strengthen casework and collaboration in child welfare cases involving Greenlandic families, to promote equal treatment in municipal social services. EUR 134 021 (DKK 1 million) will be allocated in 2026.

5. Building bridges and enhancing youth inclusion across cultures, to combat prejudice and discrimination. EUR 40 206 (DKK 0.3 million) will be allocated in 2025.

6. Strengthening educational services in the Greenlandic Houses, to spread knowledge and combat prejudice and discrimination. EUR 53 609 (DKK 0.4 million) will be allocated annually in 2025 and 2026.

7. Providing support to the newly created National Organisation of Greenlanders in Denmark, which will represent Greenlanders in Denmark, work to strengthen their rights and serve as a consultative body on legislative and administrative initiatives affecting them. EUR 67 011 (DKK 0.5 million) will be allocated to the organisation in 2025 and EUR 134 022 (DKK 1 million) in 2026.

8. Providing support to the Greenlandic Houses to raise public awareness about hate crimes. EUR 26 804 (DKK 0.2 million) will be allocated in 2025 and in 2026.

9. Providing increased funding to support boarding schools attended by students from the Faroe Islands and Greenland, notably to keep schools open during holidays throughout the school year. EUR 335 053 (DKK 2.5 million) will be allocated annually from 2026 onward.

10. Mapping of discrimination against Greenlanders on social media and in gaming environments. EUR 26 804 (DKK 0.2 million) will be allocated in 2025 and EUR 67 011 (DKK 0.5 million) in 2026.

[121] Denmark, Ministry of Foreign Affairs and Integration (2025), 'Government presents new initiatives for equal treatment of and combating against racism against Greenlanders in Denmark', press release, 20 June 2025.
[122] For further information, see above p. 129-130.

11. Dissemination of a nationwide rights-awareness campaign featuring materials in both Danish and Greenlandic. EUR 67 011 (DKK 0.5 million) will be allocated in 2025 to the Greenlandic House in Copenhagen.

12. Providing support to Inuna Radio to expand its Danish-language content, thereby spreading knowledge about Greenlandic issues to a wider audience. EUR 26 804 (DKK 0.2 million) will be allocated in 2025.

Estonia EE

CASE LAW

Gender

Direct sex discrimination: analysis of the handling of harassment at Estonia's leading university

A director at an Estonian university stalked a female employee for a year, digitally documenting his observations and his sexual fantasies. He then handed her a memory stick containing a diary-like document of about 100 pages. The female employee reported the occurrence to the Dean's Office, informed her colleagues through an internal mailing list, and submitted her resignation. The University Council reviewed the case and determined that both management errors and misconduct by the director had occurred, leading to a formal warning being issued to the director.

The contents of the memory stick revealed that she had been observed for an entire year and that the director had hired her in the summer of 2023 not for professional reasons, but because he hoped to establish an intimate relationship with her. The complainant was uncertain whether her situation met the criteria for sexual harassment and therefore did not report it to the police. Instead, she adhered to the university's guidelines on equal treatment, which outline the principles of fairness and address workplace bullying.[123] These guidelines provide detailed instructions for employees and students on reporting breaches of equal treatment principles and describe the procedures for addressing cases of discrimination and bullying.

On 19 June 2024, the Rector of the university was notified about the incident by the Dean of the Faculty of Arts and Humanities. The University Senate discussed the 'incident' and noted that this was the director's first management error. While his behaviour was deemed unacceptable, the university decided to issue only a warning because he acknowledged his mistake, understood its impact, expressed regret, and apologised multiple times. Since the university had decided that the director would receive only a warning and continue as the head of the institution, the victim felt that she had no other choice but to resign. The employer failed to ensure a psychologically and socially safe environment.

The case was exposed by a newspaper,[124] leading to public pressure that prompted the Rector of the university to issue a public statement explaining why the disciplinary action was limited to an official

[123] University of Tartu (2023) 'Guidelines for equal treatment', April 2023.
[124] Vainküla, K. and Vedler, S. (2024), 'The Director of the Viljandi Culture Academy secretly and for a long time observed a female subordinate. Eventually, he shocked her with his sexual fantasies', *Eesti Ekspress,* 6 July 2024.

warning to the director.[125] On 8 July 2024, the director resigned from his position, even though the university did not require it. The following day, in a radio programme, Liisa Oviir, adviser to the Gender Equality and Equal Treatment Commissioner, explained how to recognise harassment in the workplace, using this case as an example.[126]

In response, several opinion articles were published,[127] sparking public outrage over the downplaying of the incident's seriousness. By the end of July 2024, alumni and staff of the university submitted written appeals to the Rector, highlighting the inadequate response to the harassment case and urging the Rectorate, Senate and Council to take appropriate action.[128] The guidelines for equal treatment were updated in the spring 2025.[129]

Under Estonian law, sexual harassment is defined as any conduct that is 1) sexual in nature, 2) the purpose or effect of which is to violate a person's dignity, and 3) is unwanted. Article 3(1)(5) of the Gender Equality Act provides that sexual harassment occurs when any form of unwanted verbal, non-verbal or physical conduct or activity of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating a disturbing, intimidating, hostile, degrading, humiliating or offensive environment. The Gender Equality Act is clear in defining both harassment and sexual harassment on the grounds of sex as discrimination.

The punishment for sexual harassment (Article 153.1 of the Penal Code) is less severe than the punishment for stalking (Article 157.3 of the PC).[130] The act of sexual harassment is punishable by a fine of up to 300 fine units (EUR 2 400) or by detention, stalking is punishable by a fine or up to one year of imprisonment.

POLICY DEVELOPMENT

Gender

Accession to the Optional Protocol of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

On 17 May 2024, Estonia presented its seventh periodic report in Geneva. The CEDAW Committee welcomed the progress made since its review of the State Party's combined fifth and sixth periodic reports in 2016, particularly in implementing legislative reforms. However, the Committee encouraged the ratification of the Optional Protocol to the Convention and to accept the amendment to Article 20(1) of the Convention regarding the Committee's meeting time as soon as possible.[131] As of 18 November 2024, the draft Act for Accession to the Optional Protocol to the CEDAW, along with the Approval of the Amendment to Article 20(1) of the Convention, was ready for adoption.[132] The Act on

125 Asser, T. (2024), 'Rector's address to university members regarding the case of improper behaviour by director of Viljandi Culture Academy', 6 July 2024.
126 On 9 July 2024, in the Vikerraadio programme *Uudis+*, Liisa Oviir used the university harassment case as an example to explain how to recognise harassment in the workplace. The programme was hosted by Lauri Varik.
127 Lauk, A. (2024), 'The University of Tartu is still deliberately avoiding holding harassers accountable', *Eesti Päevaleht,* 31.07.2024.
128 The public address is no longer available, but it was widely circulated through social media channels in July 2024.
129 The guidelines for equal treatment were introduced at the University of Tartu in 2016. Updated version here.
130 Republic of Estonia (2002) Penal Code, Riigi Teataja.
131 CEDAW (2024). Concluding observations on the seventh periodic report of Estonia, CEDAW/C/EST/CO/7, 6 June 2024. Geneva.
132 Estonian Information System for Draft Legal Acts (n.d). File No. 24-0877.

the Accession to the Optional Protocol was adopted by Parliament on 23 April 2025.[133]

The accession to the Optional Protocol allows individuals and advocacy organisations to better protect women's rights when all domestic remedies have been exhausted.

Study on invisible and unpaid labour

The Ministry of Economic Affairs and Communications commissioned a study on the invisible part of the economy and the cost of care work.[134] The study revealed that authors from various disciplines use different concepts to describe the same phenomena or methods, ranging from 'reproductive work' to 'unpaid care work', 'household non-market sector of economy' to 'unpaid care economy', 'gross household product' to 'gross unpaid care product' as well as names for the methods used in this study. The study's results highlight that in Estonia, many people are engaged in unpaid care work, which can be measured both in terms of time and money. Women's contribution is particularly significant, being approximately 1.6 times greater than that of men. According to the authors of the study, the concept of 'work' should be understood more broadly than merely as a synonym for paid employment. Instead, unpaid care work should be recognised as productive labour that creates social value.

The authors of the study assessed the monetary value of unpaid care work using different methods. For all methods, data from the 2019–2021 Time Use Survey (TUS) by Statistics Estonia was used.[135] The most time-consuming unpaid care work activities were cooking, household maintenance, and shopping or running errands. Women in all age groups spent more time on unpaid care work than men, averaging 211 minutes per day compared to men's 158 minutes.[136] The authors highlight the need to continue awareness-raising efforts and implement gender equality policy measures aimed at balancing household responsibilities between women and men. The high employment rate of women in Estonia and the small gender employment gap have not led to an equal distribution of unpaid care work between women and men.

The survey findings show that when the replacement wage method was applied, which uses the wages of relevant specialists (e.g., childcare workers) to determine the value of time used on unpaid care work, the estimated monetary value of women's unpaid care work was approximately 1.65 times that of men (EUR 3.8 billion compared to EUR 2.3 billion).

The authors stress that, considering the care crisis, it is important for part of the care work to be taken over by the market and the state. It is also essential for men to increase their contribution to unpaid care work and build close relationships with those receiving care.

According to Article 9(1) of the Gender Equality Act, the state and local government authorities are required to promote gender equality systematically and purposefully. Their duty is to change the

[133] Estonian Riigikogu (2025) Act on the accession to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and approval of the amendment to Article 20(1) of the Convention, Riigi Teataja.

[134] Jezierska, I. M., Sepper, M.-L., Kletter, T., Toim, K., Laurimäe, M., Raihhelgauz, M., Pall, K. (2024), *The Invisible Part of the Economy: What is the Cost of Unpaid Care Work?* Tallinn: Mõttekoda Praxis (Think Tank Praxis). The study was conducted as part of the project *Feministeerium and Praxis Promote Gender Equality* by the think tank Praxis and Feministeerium (NGO Oma Tuba), supported through a strategic partnership with the Ministry of Economic Affairs and Communications.

[135] Statistics Estonia – Time Use Survey.

[136] These data have been weighted and pertain exclusively to adult respondents.

conditions and circumstances that hinder the achievement of gender equality. Hopefully, the Ministry of Economic Affairs and Communications will use the new insights gained from the study for activities and policy development that contribute to the advancement of gender equality.

FR France

All grounds

LEGISLATIVE DEVELOPMENT

Reform of enforcement conditions for collective action in discrimination cases

Law No. 2016-1547 on the modernisation of the justice system in the XXIst Century[137] provides for collective redress ('group action'), in the fields of consumer law, environmental law, health and safety, data protection and anti-discrimination law. In matters of discrimination, it allows associations in existence for more than five years and trade unions to act unilaterally in the interest of more than one individual victim, for claims of discrimination arising from the same event or similar facts.

Such group actions were more limited in the case of alleged discrimination in the area of employment than in other areas. First, in employment, they could only result in a court order putting an end to discriminatory behaviour (*action en cessation de manquement*), while, in other areas, they could also result in an award of compensation. In employment matters, the victim(s) would thus have to request compensation in separate proceedings before the labour court. Secondly, in employment (except recruitment), group action could exclusively be initiated by trade unions. To promote social dialogue between the trade unions and employers, a group action must also be preceded by a formal letter of demand requesting the correction of the discrimination, giving the parties six months to seek solutions. These different limitations had a significant detrimental effect on the effectiveness of group action in discrimination cases.[138]

In 2023 and 2024, a bill to reform the existing framework for group actions was passed but the process was delayed due to the dissolution of the National Assembly in June 2024.[139] On 30 April 2025, the reform was thus finalised through the adoption of fast-track legislation transposing various provisions of EU law.[140] The reform extends access to group action to certified NGOs in discrimination cases in all areas, ending the former monopoly of trade unions in employment-related matters. It also grants group action standing to NGOs with one year of existence, or two years if the NGO only requests the end of the violation. The law further extends to employment the possibility to claim compensation for damages together with the request to put an end to the discriminatory behaviour. However, it maintains the notice period of six months imposed in the area of employment to favour social dialogue.

In this context, the law provides for a procedure of collective management of compensation and even allows an order for the payment of provisions by respondents to facilitate enforcement of the decision.

137 France, Articles 62 to 88 of Law No. 2016-1547 of 18 November 2016.
138 See notably an information report published by the National Assembly: Vichnievsky, L. and Gosselin, P. (2020), *Information report No. 3085 on the results and prospects for group actions*, 11 June 2020.
139 France, Bill relating to the legal framework of group actions.
140 France, Law No. 2025-391 of 30 April 2025 implementing various provisions of European Union Law in economic, financial, environmental, energy, transport, health, and freedom of circulation matters.

In addition, the judge may order the respondent to deposit sums in consignment to safeguard amounts available for the payment of damages.

Finally, the law establishes a civil law sanction independent of compensation, payable by private and public parties liable for a violation of legal or contractual obligations committed in the course of a professional activity. The award is to be deposited in a fund to finance group actions. This sanction requires (1) deliberate fault committed to obtain a gain or save on spendings and (2) damages caused to a number of physical or legal persons placed in a similar situation. The sanction is however limited: if the perpetrator is a physical person it cannot be superior to doubling the profit or saving made; if it is a legal person it can reach five times the profit or savings made. Finally, the law provides that a physical or legal person cannot cover the risk of civil sanction through an insurance contract.

CASE LAW

Confirmation of the legality of ministerial instruction forbidding abayas and qamis in public school as constituting ostentatious religious signs

Religion or belief

In August 2023, the Minister of Education instructed public school authorities to forbid the wearing of abayas (long gowns worn as part of an Islamic religious costume by women notably together with the Islamic veil) and qamis (long gowns worn as part of an Islamic religious costume by men), as they were considered to constitute ostensible manifestations of religious obedience forbidden by Article L 145-5-1 of the Code of Education, that would no longer be tolerated on school premises.[141]

Several NGOs challenged the Ministerial Instruction on the merits and through injunctive relief before the Conseil d'État (Council of State). In September 2023, the Council of State quashed the claimants' petition for injunctive relief.[142]

On 27 September 2024, the Council of State issued its ruling on the merits of the case.[143] It first rejected all arguments invoking a violation of the Constitutional right of equal access to education, as the Ministerial Instruction under scrutiny is limited to an application of the Law of 15 March 2004 regarding the prohibition of ostentatious religious signs in public school, which had been examined by the Constitutional Council. As regards the alleged violation of Article 8 of the ECHR, the Council of State noted that the prohibition provided by the Ministerial Instruction results from the application of the Law (Article L141-5-1 of the Code of Education), and pursues one of the legitimate aims enumerated in Article 8(2), i.e. the protection of the rights and freedoms of others, which requires that students benefit from a public education exempt of any form of exclusion and pressure in the respect of pluralism and freedom of others as systematically recognised by the ECtHR[144] and the CJEU.[145] Considering that access to education of students refusing to forgo their ostentatious religious signs is ensured through other means of access to instruction, the limitation at hand does not appear to be disproportionate and in violation of Article 2 of Protocol No. 1 to the Convention.

141 France, Ministry of Education, Ministerial Instruction No. MENG2323654N of 31 August 2023.
142 France, Council of State, decision No. 487891 of 7 September 2023. See also *European equality law review 2024*, pp 118-119.
143 France, Council of State, decisions Nos 487944, 487974, 489177 of 27 September 2024.
144 The Advocate General expressly referred to ECtHR, *Mykias et al*, No. 50681/20, 16 May 2024.
145 CJEU, judgment of 28 November 2023, *Commune d'Ans*, C-148/22, EU:C:2023:924.

Racial or ethnic origin

Local authorities ordered to pay periodic penalty payments for failure to implement mandatory halting sites for travellers

In September 2019, the Court of Appeal ordered the local authorities of the Marseille Metropolitan area to make available to travellers, within two years, the halting sites set out in the applicable plan for the reception of travellers. In January 2024, the claimant NGO from the initial court proceedings noted the failure of the authorities to implement the court decision and petitioned the court to impose injunctive measures to enforce it. The respondent authorities alleged that the delay in implementing the decision was caused by the unavailability of land and the administrative constraints involved.

In December 2024, the Administrative Court of Appeal ruled on the case, noting first that the local authorities had only established that they had initiated preparatory studies and set up precarious temporary solutions. The Court further held that recent regulatory changes have facilitated the implementation of the required sites rather than justifying delays. Thus, the Court found that, to ensure execution of the 2019 decision, it is necessary to impose penalties and reporting obligations upon the respondent authorities.

The Court imposed periodic penalty payments of EUR 500 per day of delay from the date of notification of the judgment, as long as the authorities do not prove, within a period of three months, that they have acquired control of the land for the relevant sites. The rate will then rise to EUR 1 000 per day of delay if, within three months of the expiry of the previous deadline, the authorities do not justify having undertaken the corresponding development work. The rate will reach EUR 1 500 per day of delay if, within three months of the expiry of the preceding deadline (i.e. within 9 months of the decision), the authorities have not brought the halting sites into service. Finally, the authorities must also report to the Court on its implementation of the decision.[146]

More than 25 years after the adoption of legal obligations for local authorities to provide infrastructure to ensure the right of access to halting sites of travellers, and despite the well-documented failure of local authorities to implement these obligations, this is the first French court decision imposing periodic penalty payments and reporting obligations on local public authorities in such a case.

Age

Differentiated compensation for redundancy on the ground of age

When the claimant, who has a disability, was dismissed for incapacity, his severance pay was reduced due to his age, as determined by the applicable collective agreement. Due to an applicable retirement age set at 60, the collective agreement stipulated a reduction of the severance pay as of the age of 61. The claimant argued that this reduction amounted to age discrimination. The respondent alleged that the objective of sharing work between generations and integrating young workers into the workforce justified the legality and proportionality of the relevant provision of the collective agreement.

The Court of Appeal found in favour of the respondent, and the claimant challenged its decision before the Court of Cassation. He alleged that the Court had failed to examine whether the respondent's

[146] France, Administrative Court of Appeal of Aix-en-Provence, decision No. 24MA00189 of 17 December 2024.

claims were supported by precise and concrete evidence and whether the reduction in severance pay was necessary to achieve the aim pursued.

The Court of Cassation ruled on the case in January 2025, recalling relevant case law of the Court of Justice of the EU.[147] The Court underlined notably that the CJEU had confirmed that a differentiation on the basis of age in the benefits paid under a social security plan pursued the objective of reducing or excluding the right to benefits of persons who would not, to the same degree as other workers, face the disadvantages of losing their employment, due to the economic coverage of retirement benefits. It had also noted, with regard to the appropriateness of the provisions in question, that the reduction in the amount of redundancy pay did not appear unreasonable in view of the purpose of such social plans, which is to provide greater protection for workers for whom the transition to a new job proves difficult because of their limited financial means.

The Court of Cassation thus upheld the decision of the Court of Appeal, finding that the relevant provisions of the collective agreement were appropriate and necessary to achieve a legitimate employment policy objective.[148]

Gender

Pélicot trial and its impact in France

For 10 years, Dominique Pélicot (72) drugged and raped his ex-wife, Gisèle Pélicot. He also recruited 50 men online to rape her while she was heavily sedated. Additionally, he filmed these crimes.

On 19 December 2024, the Criminal Court of Avignon, after 15 weeks of hearings, sentenced Dominique Pélicot to the maximum penalty of 20 years' imprisonment with a period of 13 years of unconditional detention for aggravated rape. He was also found guilty of having uploaded on his computer sexually explicit pictures of his wife, his daughter and daughters-in-law. His 50 co-defendants were sentenced to terms ranging from three years' imprisonment to a maximum of 15 years' detention. On 30 December 2024, 17 of the co-defendants, excluding Dominique Pélicot, had appealed the decision to the Court of Appeals of Nîmes. In the decision, the judges considered that Gisèle Pélicot was 'a victim having been drugged, with disregard to her health [...], and a victim of sexual abuse, soiled and humiliated for over ten years to satisfy a fantasy, the one of Dominique Pélicot, [...] who took pleasure in raping and seeing her being abused by other men, as he admits himself.' According to the judges, Dominique Pélicot was the 'instigator and organiser of the criminal process that was designed to heavily sedate his spouse in order to sexually abuse her and get other men to rape her.'[149]

The issue of non-consent in the definition of rape and aggravated rape:

In French law, the definition of rape does not explicitly require proof of consent or lack thereof. This case instead focuses on proving aggravated rape through the concept of 'chemical submission' as it applies to cases of sexual violence. The main defendant, Dominique Pélicot, was convicted for

147 Notably CJEU, judgment of 6 December 2012, *Odar* v. *Baxter*, C-152/11, EU:C:2012:772.
148 France, Court of Cassation, social chamber, decision No. 23-15410 of 8 January 2025.
149 *Le Monde* (2024), 'Mazan rape case: appeal hearing scheduled for late 2025, 17 defendants have appealed the verdict', 30 December 2024.

administering anti-anxiety medication to his wife –drugs prescribed to her by her doctor – in order to rape her and facilitate her being raped by other men.

The use of drugs to commit crimes or misdemeanours against others, particularly in cases of sexual violence, is not a new issue in French law. The concept of 'chemical submission' has been recognised and applied in several cases, both in France and internationally, under the broader category of drug-facilitated crimes. It is used in the case of sexual violence and some authors consider it could be introduced more clearly in the letter of the law, outside of case law, including for elder and child abuse.

Mass rape and systemic rape culture reflecting gender-based violence:

Some co-defendants used the unconscious state of the victim to reject the notion of intention needed for any rape (or criminal offence), considering they did not know the victim did not consent to the heavy sedation, rape and filming by the husband. This argument was rejected by the court.

New Government measures following the Pélicot mass rape trial:

In the spring of 2024, a former Minister of Justice expressed his openness to reconsidering the definition of rape. He voiced interest in an initiative led by the Delegate for Women's Rights in the General Assembly, who, at the end of 2023, requested an investigative report on various forms of rape. This initiative was spearheaded by representatives of the two political parties Renaissance (liberal) and the EELV (the green party).

On 26 November 2024, another former Minister of Justice advocated for updating the legal definition of rape to explicitly include consent. His proposal received the backing of the President.

In response to the Pélicot trial, a former Prime Minister launched a new campaign aimed at combating violence against women, with a focus on raising awareness about 'chemical submission'. As part of the initiative, the French national health insurance system announced plans to provide state-funded drug test kits on a trial basis in select regions. However, no timeline for the rollout was defined, and the subsequent change in Government has left the initiative's future uncertain. Under the proposal, pharmacies would issue 'morning-after' test kits, via medical prescription, to someone who was suspected to have been drugged. Additionally, the Government had announced plans to expand a system that allows female victims of (sexual) violence to file complaints directly at hospitals, either in the emergency room or gynaecology department. In this system, hospitals contact the police or the public prosecutor's office to lodge a complaint on behalf of the victim. Already available in many French hospitals, this programme was set to be extended to 377 facilities by the end of 2025. The proposed budget for 2025 also included an increase in universal emergency aid to support victims of domestic violence, particularly those leaving their homes. Funding was slated to rise from EUR 13 million in 2024 to EUR 20 million in 2025. However, the final budget, adopted late on 6 February 2025, only provides that donations to organisations fighting domestic violence are now 75 % tax deductible.[150] The Government also plans to establish a specialist centre for women in every regional department of France by the end of 2025.

[150] France-Info, *Donations to organisations fighting domestic violence are now 75% tax deductible*, 6 February 2025.

Criminal conviction due to the use in public of derogatory racial terms

Racial or ethnic origin

In 2020, a French stand-up comedian of African origin was convicted at first instance of public insult against a private individual on the grounds of her origin, membership or non-membership of a particular ethnic group, nation, race or religion. The relevant legal provision defines as such an insult any outrageous expression, term of contempt or invective which does not contain the imputation of any specific fact.[151]

The case concerned statements made during a video broadcast published online in the context of a public argument between the two parties where the defendant criticised the claimant for forgetting her African origins and rather choosing to insist on her Jewish origins. The defendant argued in this context that the claimant would never be accepted into the Jewish community, claiming that all religious communities disregard black people and place them 'in the garbage'. He then stated that she would always remain 'a poor Negress' until the end of time.[152] In October 2023, the Court of Appeal quashed the conviction, finding that the statements were not isolated and did not, due to the context in which they were made, constitute an expression of contempt or invective.[153]

In January 2025, the Court of Cassation quashed the decision of the Court of Appeal and confirmed the criminal conviction.[154] The Court held that the defendant had defined the claimant by the colour of her skin and her African origins using outrageous terms, uttered to diminish her and reduce her to the status of an inferior being, preventing her from being considered as a member of the Jewish community to which she belongs. The facts thus justified qualifying the terms used as constituting an insult.

This is the first decision of the Court of Cassation concerning statements using the N-word while targeting a specific person. It sets a very important precedent that using such terms amounts to an insult prohibited by criminal law, which cannot be justified by the identity of the author or by the specific context of the statements.

POLICY AND OTHER RELEVANT DEVELOPMENTS

National survey on experiences of discrimination in France

All grounds

In November 2024, the National Statistics Institute, INSEE published three studies related to experiences of discrimination.[155]

1. Experiences of discrimination of the second generation of persons of foreign origin[156]

While the social situation of children of immigrants of all origins is better than that of their parents, they report experiencing a similar or higher level of discrimination. Immigrants born outside Europe

[151] France, Article 29 paragraph 2 of the Law of 29 July 1881 on the Freedom of Press.
[152] He said: '*Tu resteras une pauvre négresse à la fin de l'histoire*'.
[153] France, Court of Appeal of Paris, decision No. 348/2023 of 5 October 2023, Case No. 22/05502.
[154] France, Court of Cassation, criminal chamber, decision No. 23-86.340 of 21 January 2025.
[155] France, National Institute of Statistics and Economic Studies (INSEE) (2024), France: social portrait, 2024 edition, published on 21 November 2024.
[156] This general population survey was carried out with INED (National Demographic Institute) in 2019 and 2020 among 27 000 people aged 18 to 59.

and their descendants are more likely to report discrimination (26-27 %) than those born in Europe (13-19 %). In addition, they experience twice as many occurrences of racist behaviour in their lifetime (insults, openly racist attitudes) than descendants of European immigrants. Finally, 45 % of all immigrants, and more than 29 % of non-European descendants, feel that they are 'not seen as French'. INSEE concludes from this survey that geographical origin is the most common ground of

discrimination in France today.

1. Discrimination and related violence: grounds and characteristics of victims[157]

In mainland France, Martinique, Guadeloupe and La Réunion, 1.9 % of respondents declared that they had been discriminated against at least once on the grounds of skin colour, origin, religion, sexual orientation, gender, disability or any other criterion covered by law. The most frequently mentioned grounds were origin (48 %), skin colour (29 %), and religion (25 %). In addition, 2.7 % of respondents said they had been victims of at least one type of discriminatory violence (physical, verbal or psychological) in the same year. Some 42 % of victims cited gender as the reason, 32 % physical appearance, 23 % age and 21 % origin. Comparatively, young people, persons with disabilities and sexual minorities report a higher incidence of both discrimination and violence.

2. Experience of mistreatment and disability[158]

Adults with disabilities living at home are more likely to report having suffered some form of mistreatment and/or discrimination because of their health, disability or advancing age, than adults without disabilities. Comparatively, functional limitations play a greater role than socio-demographic characteristics in the risk of experiencing mistreatment or discrimination related to health or age. The extent of these risks varies according to the type of functional limitation.

Racial or ethnic origin

Introduction of data on origin in French national census 2025

Every year, the population census is carried out by the National Statistics Institute (INSEE) together with local authorities. The structure of the questionnaire dates to 1954, but three new questions were added for the 2025 census, including one about parents' place of birth. The data protection authority and the Council of State had both given prior approval of this new question.

According to INSEE, the new question will enable analysis of the diversity of the population, spatial segregation and residential mobility between generations. Parents' country of birth has been included in many surveys since 2009, but the number of respondents of these previous surveys has not allowed for detailed annual analysis of data by origin. Gathering this information in a very broad survey such as the annual census, at local level, together with other variables covered by the census such as level of education, social category, age, etc. will provide a better understanding of social and residential segregation, inequalities and discrimination across two generations, notably with regard to

[157] This survey was carried out by the statistical service of the Ministry of Interior in 2021 and 2022.
[158] This survey was carried out by the Directorate of Statistics of the Ministry of Social Affairs in 2023.

descendants of immigrants.[159]

Changes to the census questionnaire are rare and the addition of the new question on origin was decided following a comprehensive two-year consultation process by an ad hoc working group of the National Council of Statistical Information involving elected representatives, trade unions, associations and researchers. In 2007, the Constitutional Council declared that studies relating to diversity of origin, discrimination and integration can be based on objective information, but that ethnic origin and race are not objective concepts and are contrary to Article 1 of the Constitution.[160] Since then, country of birth was deemed by national statistics authorities as the only acceptable objective indication of origin that could be taken into account in social sciences and statistical studies.

Racial or ethnic origin

Religion or belief

Report of two working groups on the fight against antisemitism

In the context of a substantial rise of antisemitic acts since 7 October 2023, the Government organised a national conference on combating antisemitism on 13 February 2025. Identifying the sectors of education and justice as particularly sensitive, two working groups were mandated to interview relevant experts, researchers and stakeholders and present structural recommendations. On 28 April 2025, they submitted their report to the Ministers of Education and of Equality, presenting 15 recommendations.[161]

The working group on education noted that despite commendable efforts of educators and memorial institutions as well as antiracist NGOs, the present response is insufficient. Better training of teachers is needed as well as transformation of school programmes structured around the geopolitical and historical contexts of the Jewish community and antisemitism, with the support of dedicated research resources and specialists.

The working group on justice advised against the introduction of a statutory definition of antisemitism, as it is an evolving concept. It also underlined the singularity of antisemitism among other forms of hatred and invited the Government to adopt the definition developed by the International Holocaust Remembrance Alliance since 2016. On this basis, it could draw up a criminal policy circular, which could be regularly adapted, to educate public prosecutors' offices on the judicial handling of antisemitic comments and acts.

The working group also proposed the following measures, among others:

Extending the aggravating circumstance currently applicable to offences punishable by imprisonment to also apply to offences punishable by a fine and minor offences.

- Increasing the quantum of penalties for racist and antisemitic hate speech. The group also presented the arguments for and against simplifying the legal regime applicable to hate

[159] National Statistics Institute (INSEE) (2025), 'In 2025, the census questionnaire is changing and it doesn't happen often', blog post of 14 January 2025.
[160] France, Constitutional Council, decision No. 2007-557 DC of 15 November 2007.
[161] Working Groups on Education and Justice (2025) *Report of the two working groups coming from the conference on the fight against antisemitism*, 28 April 2025.

speech, falling currently within the scope of the Law of 29 July 1881 on freedom of the press instead of the Criminal Code.

- Taking appropriate measures to improve the protection of civil servants who are victims of racist or antisemitic attacks, and to severely punish civil servants who commit the same acts.

Racial or ethnic origin

CNCDH annual report 2024 on racism, antisemitism and xenophobia

On 18 June 2025, the National Consultative Commission on Human Rights (Commission nationale consultative des droits de l'homme, CNCDH) presented its annual report to the Prime Minister on the state of affairs regarding racism, antisemitism and xenophobia in 2024.[162]

Regarding the general political context, the report notes that 2024 was marked by political tension, institutional instability and growing public distrust of institutions, as well as stigmatising and discriminatory comments made by certain political leaders and a general institutional disengagement from the fight against racism and discrimination. In this context, the report presents worrying results of the CNCDH annual barometer on racist, antisemitic and xenophobic opinions and stereotypes, as well as data showing that racist stereotypes remain deeply entrenched, notably for groups such as the Roma and Muslims.

The report also contains the results of a survey conducted by the Ministry of Interior, noting that 1.2 million people declare having been the victim of at least one racist attack, although 97 % had not filed any complaint. The report further shows that the rate of convictions for racist acts was very low compared with other criminal acts, while the rate of dismissals was well above the average. The Ministry noted a significant increase in complaints in 2024 however, regarding both racist acts and violent crimes. In addition, the cyber criminality platform PHAROS reported a 20 % increase in racist and/or antisemitic hate speech complaints.

The report also contains data on acts of racism resulting in lodged complaints or police action, as reported by the National Directorate of Territorial Intelligence. In 2024, 3 144 such incidents were recorded, including 1 570 antisemitic incidents, a level that remains very high after an explosive increase recorded in 2023.

The thematic focus of this year's CNCDH report is the impact of racism on health. In this regard, the report notes that victims of racism often experience health issues such as stress, depression and anxiety, as well as headaches and high blood pressure. These issues may be the consequence of racial stereotypes and discrimination, which degrade the quality of medical care. The report also points out racist biases in the implementation of medical treatment: men and people perceived as white or North African receive better and faster medical care than black persons, particularly women, notably because black patients are suspected of exaggerating their symptoms.

[162] National Consultative Commission on Human Rights (2025), *The fight against racism, antisemitism and xenophobia 2024*, 17 June 2025.

The CNCDH report makes the following concluding recommendations to the Government:

- Better implementation of the National Plan to combat Racism, Antisemitism and Discrimination based on origin and, notably, better training of magistrates, judges, and medical personnel;
- Measures allowing the judiciary to consider the intersectionality and accumulation of discrimination in determining sanctions;
- Support for research on antisemitic, racist and xenophobic acts/discrimination;
- Response to the requests from the UN Panel of Experts on People of African Descent and from the International Mechanism of Independent Experts to Promote Racial Justice and Equality in the Context of Policing to visit France as soon as possible.

Georgia GE

LEGISLATIVE DEVELOPMENTS

All grounds

Adoption of the Foreign Agents Registration Act

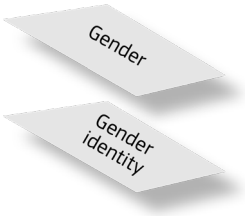
The newly adopted Foreign Agents Registration Act (FARA) obligates any individual or organisation deemed to represent 'foreign interests' to register as a foreign agent.[164] The definition of 'foreign principal agent' and the criteria for determining foreign interest are vague and broad. Under the Act (Article 1), a 'foreign principal agent' is any person who acts as an agent, representative, employee, or in any capacity under the direction, request, instruction, or control of a foreign principal or whose activities are wholly or mainly supervised, managed, controlled, funded, or subsidised by a foreign principal — and who meets any of the outlined conditions, such as engaging in political activity, acting as a PR adviser, raising or disbursing funds, or representing the foreign principal before public officials. The Anti-Corruption Bureau is the assigned exclusive authority to enforce the law, including the power to inspect documents, demand financial disclosures, and initiate administrative and criminal procedures.

For failure to register or disclose required information, individuals and organisations face fines of EUR 3 122 (GEL 10 000) and/or imprisonment of up to five years (Article 8(1)(b)). Failure to submit financial statements or to publicly identify as a 'foreign agent' is punishable by a EUR 1 500 (GEL 5 000) fine or imprisonment for up to six months (Article 8(1)(b)). This law follows the adoption of the Transparency of Foreign Influence Act[165] in May 2024, but expands its scope to include individuals and introduces criminal liability. Civil society actors fear that the real objective is to intimidate and suppress dissent, and enable Georgia's authoritative path. This is particularly relevant for civil society organisations and individuals working on equality and non-discrimination, as they overwhelmingly rely on foreign funding and engage in advocacy to influence local laws and policies in these areas.

[163] Georgia is only covered with regard to developments related to gender equality.
[164] Georgia, Foreign Agents Registration Act, 399-IIმს-XIმპ, 1 April 2025.
[165] Georgia, Transparency of Foreign Influence Act, 4194-XIVმს-Xმპ, 28 May 2024.

Some of the issues raised include:

- While formally inspired by USA's FARA, the Georgian law lacks the institutional safeguards, judicial oversight and precise criteria that limit abuse in the USA context.
- The Anti-Corruption Bureau, prosecutor's office and courts are granted disproportionate and unchecked powers under the law.
- Risk of selective and arbitrary enforcement is high, particularly against human rights defenders, investigative journalists, and grassroots organisations, including the ones focusing on equality and non-discrimination.
- The law could violate ECHR rights to freedom of expression and association (Articles 10 and 11) and contravene Georgia's international human rights obligations.
- The Office for Democratic Institutions and Human Rights at the Organization for Security and Co-operation in Europe (ODIHR/OSCE) has expressed concern that the law undermines democratic pluralism and will negatively affect civic space.
- The legislation appears politically motivated, aiming to silence critical voices to maintain the power of the ruling party and is part of a broader trend of democratic backsliding.



Removal of gender and gender identity terminology from legislation

On 2 April 2025, the Parliament passed a package of amendments eliminating all uses of the terms 'gender' and 'gender identity' in several laws.[166] This includes provisions related to anti-discrimination, criminal justice, education, labour, and public administration. The amendments were adopted without public consultation and have been widely criticised by civil society and international actors, especially on the following points:

- The removal of 'gender' undermines existing legal and policy frameworks aimed at addressing inequality and discrimination against women and LGBTQI+ individuals.
- Gender-based violence laws are at risk of being weakened, as they depend on the recognition of harmful gender stereotypes and structural inequality.
- The elimination of 'gender identity' erases legal protections for transgender, non-binary, and gender-diverse individuals, heightening their vulnerability to discrimination and violence.
- The amendments contradict Georgia's international human rights obligations, including under CEDAW and the Istanbul Convention, which require states to recognise and address gender-based discrimination.

[166] For example, the amendments in the Law on Gender Equality, which was renamed as the Law on Equality Between Woman and Man.

- The move reflects a broader pattern of democratic backsliding and disregard for an inclusive and rights-based framework in Georgia.

Germany DE

Gender

LEGISLATIVE DEVELOPMENTS

Law on street harassment of those seeking an abortion

On 27 September 2024, the Bundesrat (upper house of Parliament) approved the proposed changes to the Pregnancy Conflict Act,[167] which came into effect on 13 November 2024. The Act is aimed at protecting women and practitioners from harassment by those who oppose abortions.

Abortion is not legal in Germany. Rather, it is not punishable under the conditions of Section 218a of the German Criminal Code.[168] Accordingly, voluntary abortions, in the sense that they are not indicated by medical or criminological reasons, can only be exempt from punishment if the woman undergoes counselling. These places of counselling and abortion facilities are often the focus of anti-abortion protests.

The changes are supposed to protect those seeking an abortion and abortion practitioners from street harassment by anti-abortion protesters. Accordingly, the Pregnancy Conflict Act prohibits certain unacceptable behaviour that is likely to impair the use of or access to advice and abortion facilities within a 100-metre radius around the entrance of the facility. This includes actions that intentionally block or make it difficult to enter the facilities, forcing their own opinion on the women against their apparent will, or putting the women under significant stress using untrue statements and disturbing content.

To improve the general understanding of the care situation and fulfil the care mandate, the Act also changes the way statistical data on abortions is collected and evaluated. This includes federal statistical information on the regional distribution of abortions below the state level. There will also be annual information on the places where abortions are performed.

The regulation and limitation of abortions continue to be controversial in Germany. Various legal changes in recent years have been the subject of public debate and preceded by significant campaigning. Most notably, this included the abolition of Section 219a of the Criminal Code in 2022,[169] which prohibited the advertisement of abortions but *de facto* made it impossible for medical

[167] Germany, Second Law to Amend the Pregnancy Conflict Law of 7 November 2024, BGBl. I 2024 Nr. 351.

[168] Germany, *Fassung aufgrund des Fünfzigsten Gesetzes zur Änderung des Strafgesetzbuches - Verbesserung des Schutzes der sexuellen Selbstbestimmung* (Version based on the Fiftieth Law amending the Penal Code - Improvement of the protection of sexual self-determination) of 4 November 2016 (BGBl. I S. 2460), in force since 10 November 2016.

[169] Germany, *Gesetz zur Änderung des Strafgesetzbuches – Aufhebung des Verbots der Werbung für den Schwangerschaftsabbruch (§ 219a StGB), zur Änderung des Heilmittelwerbegesetzes, zur Änderung des Schwangerschaftskonfliktgesetzes, zur Änderung des Einführungsgesetzes zum Strafgesetzbuch und zur Änderung des Gesetzes zur strafrechtlichen Rehabilitierung der nach dem 8. Mai 1945 wegen einvernehmlicher homosexueller Handlungen verurteilten Personen* (Law amending the Criminal Code – Repeal of the prohibition on advertising for abortion (§ 219a StGB), amending the Medical Advertising Act, amending the Pregnancy Conflict Act, amending the Introductory Act to the Criminal Code and amending the Law on the criminal rehabilitation of persons convicted for consensual homosexual acts after May 8, 1945) of 11 July 2022.

staff/doctors to provide accurate medical information on abortions and abortion procedures.

The current Government now places the debate on access to abortions within a human rights discourse, specifically women's right to self-determination. While the legal changes do not legalise abortion per se, they aim to ensure barrier-free access for all. It is noted that potential street harassment puts pressure on women who are already experiencing physical and psychological stress and impairs the counselling activities. It is also noted that activities are rarely focused on a voluntary exchange of accurate information and arguments. As such, it is considered important to ban such activities around the facilities, to ensure that 'the pregnant woman has ultimate responsibility in this highly personal matter' and that the practitioner can perform their tasks undisturbed.

Gender

Violence assistance act

On 14 February 2025, the Bundesrat approved the Act for a reliable support system for gender-based and domestic violence (*Gewalthilfegesetz*).[170] The Act ensures under federal law that women affected by violence have a right to free protection and counselling. Most of the law came into force on 28 February 2025. However, Section 5 on the states' obligation to provide protection and counselling services will only come into force on 1 January 2027. The legal right to protection and counselling in cases of gender-based and domestic violence for women and their children will only come into force on 1 January 2032.

As per Section 1, the Act aims to provide 'a needs-based assistance system for gender-based and domestic violence. The tasks of a needs-based assistance system are to protect against gender-based and domestic violence, to intervene in cases of gender-based and domestic violence, to mitigate its consequences and to take preventive action.'

Section 1(2) refers to three key measures: (1) provision of sufficient and needs-based protection, counselling and support services for persons affected by violence; (2) prevention, including measures aimed at persons who commit violence and public relations work; and (3) support for structured networking within and between the assistance system and other support services and authorities, healthcare facilities, public and private child and youth welfare providers, police and regulatory authorities, the judiciary, educational institutions, civil society structures and other relevant institutions or professionals.

Gender-based and domestic violence is defined broadly in Sections 2(1) and (2) of the Act. Accordingly, 'Gender-based violence within the meaning of this Act is violence against women and thus any physical, sexual, or psychological act of violence by one or more persons directed against a woman because she is a woman, or which affects women disproportionately and leads or can lead to harm or suffering.' Domestic violence refers to 'any physical, sexual, or psychological act of violence against a woman by one or more members of the family environment, within existing or terminated marriages, existing or terminated registered civil partnerships, existing or terminated partnerships, or by other persons living in the household of the woman affected by violence. A permanent residence of the woman affected by violence or permanent membership in the household is not required.' The

[170] Germany, Act for a reliable support system for gender-based and domestic violence (*Gewalthilfegesetz*) (BGBl I 2025 No. 57).

definitions are intentionally broad to ensure a broad material scope and they are based on the Directive (EU) 2024/1385. Only once these forms of violence are present can the specialised support services under the Act be used.

The Act includes:

- A legal right to protection and counselling for all women and their children affected by gender-based and domestic violence. Access to the services without needing to convince the police or courts that they are in danger.
- The obligation of the states to provide a comprehensive, needs-based network of protection and counselling services.
- Free protection and counselling services for those affected.
- Minimum standards for shelters and specialised counselling centres, for example, regarding staff, facilities, and professional work.
- Uniform principles for the state recognition of providers of shelters and specialised counselling centres.
- Reliable, public funding of the assistance system by the states (with federal participation).

The Act serves the further implementation of the Istanbul Convention and partly the implementation of Directive (EU) 2024/1385, for example in relation to access to shelters and protection, data collection and some preventive work.

The GREVIO report (7 October 2022)[171] among other things identified various shortcomings in the German implementation, including the lack of a federal general strategy and coordination of measures for the prevention of gender-specific and domestic violence, a lack of data collection, lack of general education to prevent gender based violence, lack of further education for judges, prosecutors, and those working in health and social services, and a significant lack of shelters and counselling. Some of these issues have been addressed since, for example regarding the introduction of an independent monitoring agency (Deutsches Institut für Menschenrechte - German Institute for Human Rights), the collection of data in relation to gender-based or domestic violence, and the development of cross-departmental strategies to prevent gender-based or domestic violence and provide protection in case of violence and effective law enforcement. The *Gewalthilfegesetz* is the newest product of the development. It recognises the pillars already established in the Istanbul Convention: intervention, mitigation, prevention.

The Act is thus viewed as a significant step towards the effective prevention of and protection from gender-based or domestic violence. However, significant aspects of the Act are delayed, either to correlate more closely with the Directive's implementation deadline or even longer in relation to the legal entitlement to shelter and counselling. As such, there is still significant scope for modifications

[171] GREVIO (2022) *Preventing and Combating Violence against Women and Domestic Violence*.

or limitations of the Act. The first evaluation of the Act will also only take place eight years after its approval. While there has been some investment in the establishment and modernisation of shelters for women and their children,[172] the number of available places is significantly lower than the indicated one family place per 10 000 per capita[173] and unlikely to provide the required support based on a realistic estimation of the actual need. Significant expansion of the services is thus required.[174]

Several commentators also consider the Act's reference to the place of residence problematic, especially regarding women with refugee, asylum seeker or irregular migrant status. While the Act provides a legal right to protection and advice, regardless of residence status, it does not ensure equal access free from (intersectional) discrimination. It has been outlined[175] how residence requirements/obligations prevent the free decision about where to live and significantly restrict the freedom of movement of those migrant women which makes it much easier to find them. While it is possible to lift these requirements for 'compelling reasons' or to 'avoid hardship', it requires a lengthy procedure. If it is not granted, a stay in a women's shelter can jeopardise the right of residence. Moreover, women are required to register when they are admitted to a women's shelter, which poses a specific risk for those with irregular migrant status.

There is also significant doubt whether Article 59 of the Istanbul Convention on the right of residence is implemented in a sufficient manner.

POLICY AND OTHER RELEVANT DEVELOPMENTS

Racial or ethnic origin

Monitoring report of the Anti-Gypsyism Reporting and Information Centre

On 2 April 2025, the national Anti-Gypsyism Reporting and Information Centre (Melde- und Informationsstelle, MIA), financed by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, published the monitoring report *Anti-Gypsyism in education using schools and daycare centres as examples*.[176] The report analysed 484 cases of alleged anti-Gypsyism in the education sector reported to the Centre since 2023. It concluded that the right to education of the Sinti and Roma in Germany is systematically violated as structural and institutional discrimination have become everyday experiences. German, immigrant and refugee Sinti and Roma children are exposed to anti-Gypsyism manifested in verbal and physical attacks, threats and insults from classmates, teachers, daycare and school managers and educators as well as social workers and employees of public authorities. The report classified unjustified referrals of Sinti and Roma children to schools for children with special educational needs and to so-called 'welcome classes' for children from other countries as significant discrimination. In addition, the report noted that immigrant or refugee Sinti and Roma children often wait a disproportionately long time before being admitted to a daycare centre or school. Sinti and Roma refugee children from Ukraine were facing difficulties getting access to education and were taught separately from other Ukrainian refugee children. The report also concluded that the generally hostile environment that Sinti and Roma children experience in Germany is additionally marked by the fact that anti-Gypsyism appears not to be taken seriously by teaching staff and school

172 Germany, Federal investment programme.
173 Recital 67 and Article 2(2) Directive 2024/1385.
174 Gumnior, L. (2024), *Nationwide violence protection facilities: So close and yet so far*.
175 Braun, R. et al. (2025), *Not a question of origin: Protection from violence in the context of flight and migration*.
176 Anti-Gypsyism Reporting and Information Centre (2025), *Anti-Gypsyism in education using schools and daycare centres as examples*, 2 April 2025.

management. The Managing Director of MIA called for educational justice and suggested the implementation of various instruments to combat discrimination, such as the establishment of an independent complaints mechanism to offer advice to victims of racism in education, expansion of awareness-raising programs for educators, school staff and authorities with regard to anti-Gypsyism and the deployment of national advisers to promote non-discriminatory education.

All grounds

Measures against discrimination in Government coalition agreement

On 9 April 2025, the three political parties composing the new Government coalition concluded a coalition agreement mapping out the policy aims of the new Federal Government.[177] The agreement contains some information about anti-discrimination policies, with a particular focus on equality of women and men. The suggested measures include the following:

- Further reform of the cybercrime law and the closing of loopholes in criminal liability, for example, in cases of image-based sexual violence, including potential sanctions for platforms.
- Reform of criminal law, including the definitions of murder, dangerous bodily harm, aggravated robbery and stalking; increased sanctions for crimes such as gang rape and the inducement of pregnancy; and the potential inclusion of unwanted, and serious verbal and non-physical sexual harassment.
- Creation of a uniform legal basis in the Violence Protection Act for the court order of electronic ankle bracelets according to the so-called Spanish model and for mandatory anti-violence training for perpetrators.
- More effective prevention of violence against women, including the protection of vulnerable individuals such as children, frail people, and persons with disabilities. The welfare of children in the context of custody agreements is specifically mentioned.
- In the context of integration: better protection of refugee women from domestic violence, and eased residence requirements for victims of domestic violence.
- In the context of the protection of democracy: reinforcement of the role of civil society for inclusion and non-discrimination, notably with regard to violence against persons motivated by the fact that they belong to or are associated with certain groups.

The agreement further states that the Federal Anti-Discrimination Agency will continue to be operative and the National Action Plan against Racism is to be renewed. It also underlines the Government's commitment to pluralism of sexual and gender identities and the protection of 'queer life'. The agreement also notes that the Government is planning to evaluate the law on the recognition of self-determined gender identities (Law on self-determination with regard to gender entry), particularly with regard to children, the protection of women and practical problems related to name changes. The rights of trans- and intersexual persons are to be protected. Significant space is dedicated to the inclusion of persons with disabilities, with reference to the UN CRPD. Reference is made to assistance

[177] The Coalition Agreement was signed on 5 May 2025 by the Christian Democratic Union (CDU), the Christian Social Union (CSU) and the Social Democratic Party of Germany (SPD).

(e.g. sign language, guide dogs) as well as general inclusion in the labour market and a reform of the 'workshops for disabled people'.

The agreement indicates the envisaged course of the incoming Government and reflects the different political ideologies of the governing parties. It agreement continues existing policies without adding substantial or innovative elements such as a reform of the General Act on Equal Treatment. There is no mention of specific legal instruments of EU law on discrimination, including proposed legislation such as the reform of equality bodies. The Pay Transparency Act is not mentioned at all although it will need to be significantly modified due to the pending implementation of the Pay Transparency Directive.

Racial or ethnic origin

Religion or belief

Alarming increase of antisemitic, anti-Muslim and anti-Gypsyism incidents in 2024

Three reports published in June 2025 indicate a significant increase of antisemitic, anti-Muslim and anti-Gypsyism incidents in Germany in 2024. The Federal Association of Research and Information on Antisemitism (*RIAS*) published its annual report for 2024 on 4 June 2025, documenting a historic peak in antisemitic incidents.[178] The report noted 8 627 incidents, an increase of 77 % compared to 2023. Assessing the consequences of 7 October 2023, it established a direct link between the rise of antisemitism in Germany in 2024 and the war in Gaza, given that 68 % of all documented antisemitic incidents were related to Israel and the ongoing military conflict in the Middle East. Although the report noted that antisemitism in Germany in 2024 affected all areas of life, a particularly alarming increase of 300 % of incidents in educational institutions was reported, compared to 2023.

The Alliance Against Islamophobia and Anti-Muslim Hate (CLAIM) published a report on 17 June 2025 entitled, *Civil Society Situation Report on anti-Muslim Racism in Germany*.[179] It reported 3 080 anti-Muslim incidents and cases of discrimination in 2024, reflecting a 60 % increase compared to the previous year. The report noted that anti-Muslim racism is connected to the intense political discourses in Germany on security, migration and asylum issues and manifested in various implicit and explicit forms not only at interpersonal but also at institutional levels. The report also underlined the fact that anti-Muslim racism is also directed against persons who are perceived as Muslims based on their appearance, language or name.

Finally, the Anti-Gypsyism Reporting and Information Centre (*MIA*) published its third annual report on 23 June 2025, reporting 1 678 incidents of anti-Gypsyism in Germany in 2024.[180] The incidents represent an increase of approximately 40 % compared to 2023 and show that Sinti and Roma in Germany face exclusion, discrimination and violence in almost all areas of life. Verbal stereotyping (856 cases) and discrimination (666 cases) were the most common types of anti-Gypsyism incidents, while an alarmingly high number was also reported in the context of state institutions (369 cases). The report focuses however on the educational sector and suggests that Sinti and Roma children and young people are experiencing discrimination and bullying by both classmates and teachers on a

178 Federal Association of Research and Information on Antisemitism (2025), *Anti-Semitic Incidents in Germany in 2024*, 4 June 2025.

179 Alliance Against Islamophobia and Anti-Muslim Hate (CLAIM) (2025), *Civil Society Situation Report on anti-Muslim Racism in Germany*, 17 June 2025.

180 Anti-Gypsyism Reporting and Information Centre (2025), *Incidents of Anti-Gypsyism in Germany in 2024: Third Annual Report of the Anti-Gypsyism Reporting and Information Centre*, 23 June 2025.

regular basis (313 cases) and are confronted with the severe consequences of such behaviours for their future educational perspectives. In 94 cases, a direct link between anti-Gypsyism and Nazi ideology could be established. As already noted, the current geopolitical situation with the ongoing war in Israel is a key factor in relation to the alarming increase of antisemitic and anti-Muslim incidents. All three reports also mirror other trends leading to increased xenophobia and antisemitism, accompanied by the rise of political forces of the extreme right.

Greece EL

LEGISLATIVE DEVELOPMENTS

Age

Discriminatory age limit abolished following court decision

In May 2024, the single-member Court of First Instance of Athens ruled unconstitutional the exclusion of two former members of the administrative board of a sports federation from re-joining the Board, given that this exclusion was based on their age.[181] According to the contested legal provisions,[182] persons over the age of 70 were not allowed to apply to join the administrative board of a sports federation.

The court concluded that, to the extent that there was no tangible social evidence to support that the age limit legitimately served the purposes of the good administration of the sports federation, the provision could not be implemented because it conflicted, among other things, with the Constitution and the anti-discrimination law No. 4443/2016, which transposes the Employment Equality Directive.

The decision was published on 5 July 2024 and, only a few days later, a bill was submitted to Parliament to abolish the discriminatory age limit. The bill was adopted on 30 July 2024.[183]

Gender

The à la carte transposition of the VAW Directive

The transposition of EU Directive 2024/1385[184] on combating violence against women (VAW) and domestic violence (DV) (the VAW Directive) into the Greek legal order has been partial.

Articles 1-21 (Part A) of Act 5172/2025[185] partly transposed the VAW Directive and modified several provisions of the existing DV law.[186] Over half of the provisions of the Directive were not transferred

181 Greece, single-member Court of First Instance of Athens, case No 4421/2024 on 'obstacle to the election of candidates over the age of 70 to the Administrative Board of a sports federation', 1 May 2024.
182 Greece, Article 6 of Law 4726/2020 on the reform of the institutional framework of the internal elections in sports organisations, distinguished companions of athletes with disabilities, establishment of a National Platform for Sports Integrity, Hellenic Olympic Committee (HOC), Hellenic Paralympic Committee (HCO) and other provision, Official Journal 181 A/18.09.2020. See also Article 7 of Law No. 2725/1999 on amateur and professional sports activities and other provisions, Official Journal 121 A/17.06.1999.
183 Greece, Law No. 5128/2024 on Regulations for the digital education portal and the digital tutor, vocational guidance in secondary education, measures to support the education system in remote areas and other regulations of the Ministry of Education, Religion and Sports, Official Journal 118 A/30.07.2024.
184 Directive (EU) 2024/1385 of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence (VAW Directive).
185 Greece, OJ A 10/29-1-2025.
186 Greece, Act 3500/2006, OJ A 232/24.10.2006.

without any justification.[187] This amounts to an à la carte transposition of the Directive, which is in breach of good law-making principles. The National Commission of Human Rights (NCHR) criticised the transposition in its report on the bill.[188] In addition, the public consultation lasted only 15 days, coinciding with the festive season (24 December 2024 until 7 January 2025). There was no prior consultation with the NCHR and women's NGOs. In this regard, the NCHR recalled GREVIO's (2023)[189] and CEDAW's (2024)[190] call for collaboration and consultation with women's NGOs, which through their expertise can better respond to the pressing needs of the victims, especially in crimes characterised by underreporting. The NCHR also pointed out that a large part of the 392 comments submitted to the public consultation involved hate speech against women, which is an alarming indication of ineffective consultation. Last but not least, the Act is an omnibus law dealing with more than one issue,[191] following a poor practice that has become standardised over the past decade.

The Plenary of Bar Associations[192] complained about the lack of participation, the short-term and badly timed consultation, and the ineffective transfer of the Directive, which was obviously decided under the pressure of recent VAW cases. The Greek Association of Criminal Law Lawyers also found the transposition of the Directive to be faulty and inadequate.[193] A general strike of all Bars organised on 23 and 24 January 2025 led to some last-minute amendments. However, the NCHR's call for the urgent criminalisation of femicide, in view of the alarming raise of femicides in Greece,[194] was not heeded. The Act includes provisions on the definitions[195] of female genital mutilation,[196] forced marriage,[197] cyber stalking,[198] cyber harassment,[199] reporting of VAW or DV,[200] measures to remove certain online material,[201] emergency barring orders, restraining orders and protection orders,[202] compensation from offenders,[203] new types of emergency protecting orders,[204] the irrevocable conviction of the offender with a prison sentence of at least 6 months for similar crimes committed

187 Including those on the prevention of VAW, the specialist support of VAW and DV victims and victims of sexual violence, sexual harassment at work, guidelines for law enforcement and prosecutorial authorities, the training of professionals etc.
188 NCHR (2025), Report on the Bill, January 2025.
189 EELN (2024), flash report (Greece) of 12 February 2024 'Implementation of the Istanbul Convention by Greece'.
190 EELN (2024), flash report (Greece) of 20 June 2024 'CEDAW's concluding observations on Greece'.
191 The transposition of the Directive, amendments to the Criminal Code and the Code of Criminal Procedure, new provisions on the treatment of adult and juvenile delinquency and other provisions.
192 Lawspot.gr. (2025), 'Nationwide strike of lawyers on January 23 and 24, 2025', 17 January 2025.
193 Greek Association of Criminal Law Lawyers (2025).
194 EELN (2021), flash report (Greece) of 15 October 2021, 'Alarming rise of "intimate" femicides in Greece'.
195 The definition of VAW does not include violence against girls, falling short of the Directive whereas the definitions of 'domestic violence' and 'partner' do not amend the existing definitions of Act 3500/2006- Article 4 of Act 5172/2025, transferring Article 2 of the VAW Directive.
196 Greece, Article 5 of Act 5172/2025, amending Article 315 of the Penal Code and transferring Article 3 of the VAW Directive.
197 Greece, Article 6 of Act 5172/2025, amending Article 330 of the Penal Code and transferring Article 4 of the VAW Directive.
198 Greece, Article 7 of Act 5172/2025, amending Article 333 of the Penal Code and Article 13 of Act 5172/2025, modifying Article 7(2) Act 3500/2006, both transferring Article 6 of the VAW Directive.
199 Greece, Article 8 of Act 5172/2025, amending Article 337 of the Penal Code and Article 9 of Act 5172/2025, amending Article 184 of the Penal Code, transferring 7(c) and (d) correspondingly of the VAW Directive.
200 Greece, Article 10 of Act 5172/2025, transferring Article 14 of the VAW Directive.
201 Greece, Article 12 of Act 5172/2025, transferring Article 23 of the VAW Directive.
202 Greece, Article 14 of Act 5172/2025, amending Article 19 of the VAW Directive.
203 Greece, Article 15 of Act 5172/2025, transferring Article 24 of the VAW Directive.
204 The prohibition of any kind of communication with the victim, the delivery to the relevant police authority of weapons that he legally owns, his electronic surveillance using location and movement technology, his appearance at the relevant police station and the provision of contact information available to the authorities at all times, his participation in treatment or counseling or drug addiction programmes. Article 18 of Act 5172/2025, amending Article 18 of Act 3500/2006 and transferring Article 19 of the VAW Directive.

within the last 10 years,[205] provisions on jurisdiction,[206] new provisions on the penal mediation,[207] and new provisions on the method of examination of underage and adult DV victims.[208] Pharmacists and physical therapists have been added to the list of the professionals who have an obligation to report DV crimes.[209] Moreover, the existing provisions[210] on social support, obligations of the professionals, individual assessment of victims and management of secondary victimisation apply by analogy to all crimes of VAW or DV under the new Act.[211]

The NCHR asked for clear-cut criteria for the lump sum compensation paid to victims by the Greek Compensation Authority and called for the disclosure of the relevant data. Moreover, quoting GREVIO's findings,[212] the NCHR called on the authorities to ensure that police officers, prosecutors, mediators and all other stakeholders in the field of criminal justice have specific guidelines and training that focus on the dynamics of VAW and DV and their impact on the victims' ability to enter a mediation process at the same level as the offender. According to the NCHR, penal mediation in DV incidents should not result in the potential elimination of the State's criminal claim against the DV perpetrators; instead, it should operate on the basis of specific guarantees.

Disability

Positive action and accessibility measures for persons with disabilities

In February 2025, Law 5178/2025 was adopted, implementing several programmes to ensure equal opportunities for persons with disabilities.[213] The following four measures are included.

- Subsidised accessibility

The Law introduces a pilot programme to subsidise accessibility infrastructure in homes and workplaces of persons with disabilities, as well as, for the first time, in public buildings. Persons with mobility, visual or hearing disabilities who have a disability certificate from a competent health committee will benefit from the programme even if their registration in the Digital Registry of Persons with Disabilities is in progress.

205 Greece, Article 21 of Act 5172/2025, transferring Article 11(a) of the VAW Directive.
206 Greece, Article 21(3) of Act 5172/2025, transferring Article 12(1) of the VAW Directive.
207 For the initiation of penal mediation, the alleged offender has to cover the immediate financial needs of the victim. In the same context, the prosecutor can reject a mediation agreement or can interrupt the initiated one by a reasoned order (Articles 16 and 17 of Act 5172/2025, amending Articles 12 and 13 of Act 3500/2006).
208 For the protection of the mental or physical health of the DV victim, the court may opt for her examination by technological means or to have her statement read (Article 19 of Act 5172/2025, amending Article 19 of Act 3500/2006).
209 Greece, Article 20 of Act 5172/2025, amending Article 23(1) of Act 3500/2006.
210 Greece, Articles 21, 23 and 23A of Act 3500/2006.
211 Greece, Article 11 of Act 5172/2025, transferring Articles 14, 16, 17, 18, 25, 26, 27 and 30 of the VAW Directive.
212 GREVIO (2023), *First baseline evaluation report on Greece*, point 248: 'GREVIO strongly encourages the Greek authorities to take all necessary measures to ensure that the use of mediation in cases of violence against women is based on full respect for the rights, needs and safety of victims. In particular, mediation should only be applied to women victims of violence who are in a position to decide freely whether to accept or refuse the procedure. The Greek authorities should ensure that police officers, prosecutors, mediators and all other relevant parties in the criminal justice sector are provided with specific guidelines and training focusing on the gendered dynamics of domestic violence and its impact on the ability of victims to enter a mediation process on a par with the perpetrator'.
213 Greece, Law No. 5178/2025 on measures for balanced gender representation in management positions of listed companies, unlisted public limited companies and public enterprises. Incorporation of Directive (EU) 2022/2381 of the European Parliament and of the Council of 23 November 2022. Arrangements for the strengthening of pilot programmes for the enhancement of social cohesion. Demographic Development Program and other provisions, Official Journal 22 A/14.02.2025.

- Personal assistance

The Law extends a previous pilot programme providing personal assistance to persons with disabilities, in place since 2021, until the end of the Recovery and Resilience Fund programme. New beneficiaries will be selected by a lottery of applicants aged 16 to 65, with a total disability rate equal to or greater than 67 %.

- Employment for persons with autism

The Law also introduces, for the first time, a comprehensive pilot programme for supported employment for persons on the autism spectrum. The first phase concerns 200 individuals, who are not required to be registered in the Digital Disability Registry as long as they are registered as unemployed. In addition, a register of trained mediators related to persons on the autism spectrum is being created, to provide both guidance to employers on appropriate adaptations for persons with autism and support to persons with autism to ensure their successful professional integration.

- Modernised welfare benefits

The Law also aims to simplify and modernise the payment method of welfare benefits while ensuring speed, transparency and security in the transactions of beneficiaries.

CASE LAW

Age

Successful equality body intervention for the removal of age discrimination in recruitment advertisement

In September 2024, the Pharmaceutical Association of Attica published an advertisement for the recruitment of three administrative office employees.[214] The Ombudsman received a complaint about the upper age limit of 38 years which constituted one of the required qualifications. The Ombudsman informed the Association, recalling the prohibition of age discrimination in both public and private employment, and noting that age is often stereotypically linked to physical characteristics and special physical abilities that are considered to be found only in younger people, even where such abilities are not necessary for the exercise of the duties of the specific position concerned. The Ombudsman further emphasised that the disputed age limit did not seem to correspond to a feature of essential and decisive importance for the performance of the duties of the job to be filled. The Ombudsman thus concluded that the age limit amounted to direct age discrimination, which needed to be specifically and sufficiently justified in accordance with national law. The Ombudsman thus called on the Association to notify them of the specific reasons for the age limit and the purpose it serves, in order to establish whether it complied with the principle of proportionality. Finally, the Ombudsman requested that, if the above conditions were not met, the Association review the age limit.[215] Following the intervention of the Ombudsman, the Association withdrew the previous advertisement and published a new one, without age restriction and with an extension of the deadline for submitting applications.

[214] Call for Expression of Interest with Protocol Number 5260/05.09.2024 on behalf of Pharmaceutical Association of Attica.
[215] Greece, Ombudsman case No. 358210/47113/23-09-2024, published on 22 October 2024.

Administrative fine imposed on a TV channel for gender discrimination, stereotyping and sexism

Gender

In response to citizens' complaints, the National Council for Radio and Television (NCRTV)[216] imposed an administrative fine of EUR 30 000 on a TV channel for violating the principle of gender equality and perpetuating gender stereotypes.[217] The violation occurred during a show broadcast in May 2020, which covered an acid (vitriol) attack on a woman on her way to work. The judgment reinforces NCRTV's established case law,[218] which has been repeatedly endorsed by the Council of State (Supreme Administrative Court), further strengthening its authority.[219]

The NCRTV determined that the TV show depicted the case using gender stereotypes and 'simplifications of social origin', including the repeated use of phrases such as 'good girl', 'normal life' and 'did not give cause'. The presentation was further characterised by 'creeping sexism', as evidenced by the focus on the victim's clothing, style and body. The show also repeatedly displayed photographs of the victim, emphasising her body, and drew arbitrary conclusions about her personality based on content from social media.

According to the NCRTV, what is implied is that acts of violence are seen as more 'explainable' or 'justifiable' when a woman is perceived to have provoked such violence, whereas they are met with surprise and questioning when the victim is perceived as not having provoked it. This reasoning reflects deeply ingrained gender stereotypes and latent sexism, which dangerously perpetuates the justification of violence. NCRTV emphasised that the provisions on gender equality and against stereotyping and sexism apply regardless of whether the victim consented. In this context, the defendants' claim that the victim's lawyer had implicitly approved the show's content by participating in the broadcast was rejected.

As to the law, the judgment makes reference to the CEDAW, the International Covenant on Civil and Political Rights, Article 21(1) of the EU Charter of Fundamental Rights, the Council of Europe's Recommendation CM/Rec(2019)1 on preventing and combating sexism, Articles 4(2) (gender equality in all fields) and 116(2) (statutory obligation for positive action in favour of the underrepresented sex, in particular women) of the Greek Constitution and national secondary law, including legislation on the non-stereotypical presentation of persons in the media.[220] The NCRTV stated that this legislation imposes an obligation on radio and TV stations to broadcast programmes that eliminate sexism and gender stereotypes, promote gender equality, combat gender discrimination, and contribute to the

[216] The Greek National Council for Radio and Television (NCRTV) is an independent administrative authority that supervises and regulates the radio/television market, founded in 1989 by virtue of Act 1866/1989, OJ A 322/06.10.1989, as amended by Act 2863/2000, OJ A 262/29.11.2000 and Act 3051/2002, OJ A 220/30.09.2002.

[217] The judgment No. 73/09.10.2024 was posted at the site of NCRTV and made accessible to the public on 23 November 2024.

[218] EELN (2022) flash report (Greece), 22 April 2022, 'Administrative fine imposed to a TV channel for gender discrimination and stereotyping'.

[219] CS judgments Nos 82/2024, 856/2022. See EELN (2024) flash report (Greece), 27 June 2024, 'Fines for gender hate speech and sexism in a TV broadcast ratified by the Council of State'.

[220] Greece, Article 24 Act 4604/2019, OJ A 50/26.03.2019 provides that the social media (including electronic ones) and advertising should act for the promotion of substantive equality by presenting a non-stereotypical image of persons. This can be achieved through the adoption of provisions that aim to realise substantive equality and to eradicate sexism and gender stereotypes in the codes of ethics and in self-binding rules; moreover, the social media should draft a yearly report on the adoption of the above provisions and submit it to the competent ministry. Radio and the television should promote the presence of women in all the areas of social, economic, cultural and political aspects of life in the country.

fight against gender stereotypes. Additionally, it grants NCRTV the authority to monitor the compliance of broadcasters with these obligations. Surprisingly, no reference was made to Article 23(1) of the EU Charter on gender equality in all fields or to the Istanbul Convention (Articles 17 and 40), despite their applicability. The persistence of harmful stereotypes in Greece has been a concern raised by both GREVIO[221] and the CEDAW.[222] It is positive that regulatory bodies such as the NCRTV are addressing these issues, however, the delayed handling of such cases highlights systemic challenges in responding effectively to these concerns. This significant delay raises questions about the efficiency of these proceedings and their capacity to deliver timely remedies.

Sexual orientation

Council of State decision on blood donation requirements

Until 2022, all prospective blood donors were excluded from donation if they had had 'even one homosexual relationship since 1977'. In 2021, the Blood Donation Advisory Committee issued an opinion that recommended the amendment of the 'Blood donor history' form and the exclusion from blood donation of, among others, men who have had at least one sexual encounter with men in the last twelve months (case 1) and women who have had at least one sexual encounter with a man who has had at least one sexual encounter with a man in the last twelve months (case 2). However, when the Ministry of Health adopted a new Ministerial Decision in 2022 to replace the discriminatory requirement, it did not follow the Committee's recommended approach. Instead, the new Ministerial Decision removed all references to homosexual relationships in the requirements for potential blood donors.[223] This change was challenged before the Council of State by six associations of persons with Mediterranean anaemia. In April 2025, the Council of State ruled on the legality of the 2022 Ministerial Decision.[224] While the Council of State noted that the contested decision moved in a positive direction, it did not follow the recommendations of the Blood Donation Advisory Committee, which was based on the analysis of the country's epidemiological data, scientific data, as well as data regarding the national blood donation system. Consequently, the new regulation was not legally established, as it failed to exclude from blood donation, persons covered by cases 1 and 2 above, without establishing that other scientific studies or reports of epidemiological data were considered. The Court further noted that the exclusion of prospective blood donors due to sexual behaviour was not discriminatory as long as it was justified by the prevention of the risk of transmission of infectious diseases to vulnerable transfusion patients.

The Ministry of Health will thus need to issue a new ministerial decision to impose lighter restrictions on blood donation, substantiated with scientific justifications.

221 In its first evaluation report on Greece regarding the implementation of the Istanbul Convention, GREVIO highlighted the prevalence of gender stereotypes and sexist hate speech across various sectors, including the media, and urged decisive measures to address this issue. Specifically, GREVIO expressed deep concern over the frequent sensationalism in media reporting on gender-based violence, including femicides.

222 CEDAW (2024) *Concluding Observations on Greece's combined eighth and ninth periodic reports*, issued during its 2041st and 2042nd meetings on 6 February 2024. The CEDAW called on Greece to intensify efforts – through awareness-raising and education campaigns – to eliminate stereotypes about the roles and responsibilities of women and men in the family and society.

223 Greece, Ministerial Decision GP.oik 900/2022 of the Minister of Health for the determination of the content of the form 'Record of blood donor', Official Journal B 36/10.01.2022.

224 Greece, Council of State, decision of 4 April 2025 in case No. 540/2025.

POLICY AND OTHER RELEVANT DEVELOPMENTS

Gender

Unlawful rejection of a father's request for the two-months' allowance for parental leave

A father working in the private sector who had taken up parental leave submitted to the Greek Public Employment Service (DYPA) a request for the two-months' allowance provided by Article 28 of Law 4808/2021.[225] His request was rejected with the reasoning that for the same child 'the right to the (parental leave) allowance had been exhausted', as the child's mother had previously collected the relevant two-months' allowance upon exercising her individual right to parental leave. Following the intervention of the Ombudsman,[226] the case was re-opened and the very next day a corrective act granting the relevant allowance to the applicant was issued.[227] Although the implementing law acknowledges the right to parental leave and to the relevant allowance as an autonomous and individual right of each parent, this case shows the existence of deeply rooted stereotypes, which can lead to malpractice.

Disability

Ombudsman opinion on access of persons with disabilities to banking services

The complainant has a mobility disability and complained to the Ombudsman that the National Bank of Greece requested that he come to the bank in person to declare his change in mobile phone number, which was necessary to activate e-banking services. Due to his disability, he was unable to go to the bank without hiring an ambulance, which would entail disproportionate costs and inconvenience. During the investigation of the case, the Ombudsman contacted the National Bank, underlining the need to establish minimum standards to ensure the accessibility of banking services for persons with disabilities, through reasonable adjustments. The Ombudsman noted that it has received numerous complaints regarding the difficulties faced by persons with disabilities in accessing banking services, due in particular to the absence of reasonable and appropriate adjustment measures.

In his non-binding opinion, the Ombudsman referred to Article 9 of the UN Convention on the Rights of Persons with Disabilities regarding accessibility requirements 'in all aspects of life', and to Law 4488/2017 which aims at removing the obstacles that hinder the full and equal participation of persons with disabilities in the social, economic and political life of the country. Moreover, the Ombudsman noted the importance of ensuring easy access to electronic or remote banking services, as it is a means of facilitating transactions, especially for persons with disabilities.[228]

In response, the National Bank informed the Ombudsman in writing that it has adopted relevant instructions to serve vulnerable groups of the population. Subsequently, the Ombudsman was informed that a solution was found for the complainant.

[225] According to Article 28 Act 4808/2021, implementing Articles 5 and 8 of the Parental Leave Directive 2019/1158, each working parent exercising parental care has an individual and non-transferable right to parental leave for the upbringing of the child, lasting four (4) months, to be taken up continuously or partially, until the child reaches the age of eight (8), in order to fulfill the minimum obligations of upbringing towards the child.

[226] The Ombudsman is the Greek equality body, and is competent for the implementation of the Parental Leave Directive.

[227] Greek Ombudsman (2024) 'Summary of mediation regarding the granting of subsidized parental leave to a working father', November 2024.

[228] Greek Ombudsman (2025), non-binding opinion of 27 November 2024 in case No. 359424/2024, published on 14 April 2025.

Gender

Shortcomings in risk assessment and management in preventing and combating VAW

In March 2025, GREVIO published its fifth report, 'Thematic perspectives on the implementation of the Istanbul Convention'. The section on risk assessment and risk management in preventing and combating violence against women (VAW) under the Istanbul Convention (IC) makes reference to findings of the first baseline evaluation report on Greece.[229] Nonetheless, these findings have not been considered in the transposition of the VAW Directive by Greece.[230]

i. Risk-assessment procedures are not always fully integrated into MARACs.[231] The risk-assessment tools were based almost exclusively on information from law-enforcement authorities. There was no efficient mechanism in place to consider, in a standardised and timely manner, information from other relevant sources, including the judiciary, women's specialist services or supervised visitation facilities such as family meeting points.[232]

ii. Domestic homicide (femicide) review mechanisms. GREVIO has highlighted the need for a system to analyse cases of gender-based murder or attempted murder, such as a domestic homicide review mechanism, with the aims of prevention, preserving the safety of women and holding accountable both the perpetrator and the multiple agencies on a case.[233] In-depth reviews offer an opportunity to identify gaps in the responses given by agencies and support services and to improve their responses and cross-sector collaboration.

iii. Inadequate risk assessments and screening. The shortcomings identified mainly pertain to the failure to conduct a risk assessment or screening for domestic violence in custody and visitation rights cases. There was an absence of such screening and judges did not conduct risk assessments or ask for its disclosure and for safety plans drawn up by law-enforcement agencies and/or other competent authorities before establishing the best interests of a child.[234]

iv. Risks to women and children overlooked or minimised in family law settings.[235] The inadequacy or lack of formal procedures to identify risks faced by women and children from an abuser is compounded by the frequent portrayal of mothers as 'alienating' the other parent or as being 'uncooperative'. Particularly when they highlight a perpetrators' past or ongoing abusive behaviour or seek sole custody of children after separation from their abusive spouse.

[229] The first baseline evaluation report on Greece was adopted by GREVIO at its 31st meeting (23 - 26 October 2023). On 5 December 2023 the Committee of the Parties to the IC, acting under the terms of Article 68(12) IC, adopted the recommendations on the implementation of the IC by Greece identified in GREVIO's baseline evaluation report. See EELN (2024) flash report of 12 February 2024, 'Implementation of the Istanbul Convention by Greece'.

[230] Greece, Articles 1-21 (Part A) of Act 5172/2025, OJ A 10/29-1-2025, partly transferred Directive (EU) 2024/1385. See EELN (2025) flash report (Greece) of 1 May 2025 'The à la carte transfer of the VAW Directive'.

[231] Multi-agency risk assessment conferences (MARACs) are meetings which bring together public and private organisations concerned with domestic abuse to discuss high-risk cases and formulate co-ordinated action plans.

[232] GREVIO (2023), *First baseline evaluation report on Greece*, paragraph 270. According to GREVIO, in requiring multi-agency cooperation to coordinate safety and support and protect high-risk victims, the drafters of the IC intended that risk-assessment processes also include mechanisms such as a safety plan for the victim.

[233] GREVIO (2023), *First baseline evaluation report on Greece*, paragraph 276. Reports have identified some of the defining characteristics of the review mechanisms: the analysis of all previous contact between the victim and the relevant support services or institutions and with the perpetrator, intersectoral co-ordination when reviewing such cases, data-collection efforts and the formulation of recommendations to improve the relevant interventions.

[234] GREVIO (2023), *First baseline evaluation report on Greece*, paragraph 197.

[235] EELN flash report (Greece) of 26 April 2023, 'AFEM's shadow report to GREVIO on mandatory shared custody for all children in breach of the Istanbul Convention'.

> GREVIO has revealed the use of such notions and labels in Greece and has pointed to the impact this has: minimising evidence of domestic violence and masking the level of risk women and children are exposed to.[236,237]

GREVIO's baseline evaluation report on Greece calls on the authorities to ensure wider levels of training on patterns of domestic violence, concepts of coercive control, manipulation and abuse, including psychological violence, which may also involve the use of technology or may be perpetrated online. Separation from an abusive partner often increases the risk to children, which is why dynamic risk assessment procedures and screening are crucial, including within family law proceedings. Understanding the level of risk for women and children who leave abusive relationships, including situations of psychological abuse, is vital for adequate decision making on custody and visitation rights cases. Research increasingly points to child custody and visitation proceedings as an arena for continued abuse after separation, often taking the form of malicious litigation. Such proceedings and subsequent visitation rights may also result in the targeting of children, which family law professionals need to be aware of. For these reasons, GREVIO frequently points to the need for a more thorough understanding of how post-separation abuse manifests itself in proceedings concerning custody and visitation rights. Robust screening and risk-assessment procedures are thus vital to upholding the Istanbul Convention's safety first premise.

Ombudsman recommendations on equal access to digital services concerning social welfare programmes

Age

Disability

On 13 March 2025, the Ombudsman published a special report[238] based on previous complaints from persons who lack access to mobile phones or devices with contactless payment technology, emphasising the need to ensure the participation of all, regardless of digital skills, in social welfare programmes that require the use of a digital debit card with contactless transaction capabilities via mobile phone.[239]

The Ombudsman noted that modern technology should not exclude vulnerable persons, such as older persons and those with disabilities, from participating in social and economic opportunities. According to the equality body, the inability to access digital services can be linked to various factors, including disability and age, causing limitations in accessing basic services, such as participation in subsidised programmes. The Ombudsman proposed the adoption of alternative non-digital procedures for

[236] In its baseline evaluation reports on Greece, GREVIO has found these notions to be 'invoked without a proper understanding of the dynamics of domestic violence against women and its effects on children', and 'in the absence of a thorough risk assessment and case-by-case examination'.

[237] GREVIO (2023), *First baseline evaluation report on Greece*, paragraphs 194-197. In particular, it found the application of such concepts, including the scientifically unfounded concept of 'parental alienation syndrome' to downplay the level of abuse, to disregard the gender-based nature of domestic violence and to ignore essential aspects of child welfare. For this reason, GREVIO consistently refers to the statement of December 2017 by the European Association for Psychotherapy (EAP), which draws attention to the fact that the concepts of 'parental alienation syndrome' (PAS) and 'parental alienation' (PA) are unsuitable for use in any psychotherapeutic practice. Similarly, the United Nations Special Rapporteur on violence against women and girls, its causes and consequences, has pointed to the harmful impact recourse to such scientifically unfounded concepts as 'parental alienation' lead to. A/HRC/53/36, 'Report of the Special Rapporteur on Violence against Women and Girls, Its Causes and Consequences – Custody, Violence against Women and Violence against Children' (2023), para. 15.

[238] Greece, Ombudsman (2025) *Special report*, 13 March 2025. It should be noted that this report does not constitute an opinion that concerns specific respondents etc, but a report with recommendations based on previous cases/complaints. Such special reports are often produced by the Ombudsman in Greece.

[239] The case concerned specifically the programme 'Tourism for all'. See Joint Ministerial Decision No. 7219/2024 on 'Programme "Tourism for All" of the year 2025', Official Journal B 7219/30.12.2024.

submitting applications to social welfare programmes in the future, taking into account the diversity of citizens' digital skills. The Ombudsman concluded that the digital transformation should benefit everyone without discrimination, including in particular older persons, persons living in rural areas, persons with disabilities, marginalised and vulnerable persons or persons deprived of their rights and those acting on their behalf. The Ombudsman thus suggested that social welfare programmes should be designed so as to provide alternative procedures and relevant support services to prevent automatic exclusions, otherwise the possibility of participation should be provided through procedures outside the digital environment.

HU Hungary

LEGISLATIVE DEVELOPMENTS

Gender

Extension of the time period for taking paternity leave

In October 2024, an omnibus bill was submitted on provisions concerning labour issues,[240] which was later adopted by the Parliament, and promulgated on 28 November 2024.[241] This law amended, among others, the rules regarding paternity leave for workers in the private sector, governed by the Labour Code,[242] and for seven groups of workers in the public sector: public servants;[243] judicial employees;[244] judges;[245] prosecutors;[246] military employees;[247] tax and customs administration personnel;[248] and teachers in the public education system.[249]

Due to these amendments, a father, in the event of the birth of his child, is entitled to ten working days of leave (paternity leave) by no later than the end of the *fourth* month following the birth[250] of the child, whereas previously it was only available until the end of the *second* month. The new rules entered into force in January 2025.

Despite mentioning in its reasoning the need for a longer deadline for paternity leave in special cases,[251] the new rules – namely, the four-month deadline instead of the previous two months – apply not only to the special cases but to all fathers within the workers' groups governed by the amended laws. Yet, for certain groups of workers in the public sector, the paternity leave rules have not been amended, and the deadline is still two months (regardless of special circumstances): this is true for

240 Hungary, Bill No. T/9718 on Provisions Concerning Labour Issues (*T/9718. törvényjavaslat a munkaügyet érintő rendelkezésekről*).
241 Hungary, Act LVII of 2024 on Provisions Concerning Labour Issues (*2024. évi LVII. törvény a munkaügyet érintő rendelkezésekről*).
242 Hungary, Act LVII of 2024, Article 20(b).
243 Hungary, Act LVII of 2024, Article 8.
244 Hungary, Act LVII of 2024, Article 13.
245 Hungary, Act LVII of 2024, Article 14.
246 Hungary, Act LVII of 2024, Article 15.
247 Hungary, Act LVII of 2024, Article 23.
248 Hungary, Act LVII of 2024, Article 24.
249 Hungary, Act LVII of 2024, Article 26.
250 Note: in the context of adoption, most of the relevant rules specify that the starting point is not the birth of the child, but the finalisation of the adoption decree.
251 Hungary, Collection of Reasoning (*Indokolások Tára*), 19 November 2024, p. 882. According to the related reasoning: 'the amendment would extend the forfeiture deadline for taking paternity leave from two months to four months, considering certain special cases, such as premature births, pathological newborns requiring hospital care for other reasons, and when paternity is established by the court. Therefore an increased number of fathers would be able to utilise paternity leave, and [the measure] would achieve its objective, by strengthening the bond between fathers and their children and promoting the active involvement of fathers in childcare, on a broader scale.'

civil servants;[252] government officials;[253] employees of bodies with a special legal status (certain authorities, secretaries etc.);[254] law enforcement professionals;[255] and military personnel.[256]

Gender

Measures aimed at supporting parents in higher education

In October 2024, an omnibus bill on the amendment of certain laws related to higher education, family affairs, and culture was submitted,[257] which was later adopted by the Parliament, and promulgated on 20 December 2024.[258]

This omnibus law, among other measures, provides the following:

- amendment to[259] the rules governing the availability of the 'fee for caring for children at home' (*gyermekek otthongondozási díja*); an allowance for parents providing long-term care for their children, by extending eligibility to PhD students[260] (who were previously excluded along with all other full-time students) from 21 December 2024;

- amendments to[261] the rules governing the availability of the 'fee for caring' (*ápolási díj*), an allowance for those providing long-term care for their relatives (other than their children), by also extending eligibility to PhD students[262] from 21 December 2024;

- stipulated[263] that, from 1 February 2025, students in higher education may suspend their student status for up to four consecutive semesters (the general rule allows a maximum of two semesters) if they receive[264] maternity allowance (*csecsemőgondozási díj*)[265] or parental allowance (*gyermekgondozási díj*);

- from 1 February 2025,[266] when determining the maximum duration for utilising a Hungarian state-funded (partial) scholarship in higher education, the following semesters do not need to be counted: semesters starting from the one following the birth or adoption of a child by a

252 Hungary, Act CXCIX of 2011 on Civil Servants (*2011. évi CXCIX. törvény a közszolgálati tisztviselőkről*), Article 102(4).
253 Hungary, Act CXXV of 2018 on the Governmental Administration (*2018. évi CXXV. törvény a kormányzati igazgatásról*), Article 157/A(1).
254 Hungary, Act CVII of 2019 on bodies with a special legal status and the legal standing of their employees (*2019. évi CVII. törvény a különleges jogállású szervekről és az általuk foglalkoztatottak jogállásáról*), Article 47(11a).
255 Hungary, Act XLII of 2015 on the service relationship of professional members of law enforcement organisations (*2015. évi XLII. törvény a rendvédelmi feladatokat ellátó szervek hivatásos állományának szolgálati jogviszonyáról*), Article 145(1); 289/P(10).
256 Hungary, Decree No. 6/2024. (VI. 28.) of the Ministry of Defence on personnel regulations for members of the professional and contractual staff (*6/2024. (VI. 28.) HM rendelet a hivatásos és szerződéses állomány tagjára vonatkozó személyügyi szabályokról*).
257 Hungary, Bill No. T/9717 on the amendment of certain laws related to higher education, family affairs, and culture (*T/9717. törvényjavaslat egyes felsőoktatási, családügyi és kulturális tárgyú törvények módosításáról*).
258 Hungary, Act LXXVI of 2024 on the amendment of certain laws related to higher education, family affairs, and culture (*2024. évi LXXVI. törvény egyes felsőoktatási, családügyi és kulturális tárgyú törvények módosításáról*).
259 Hungary, Act LXXVI of 2024, Article 1(a).
260 Hungary, Act III of 1993 on social governance and social benefits (*1993. évi III. törvény a szociális igazgatásról és szociális ellátásokról*), 27 January 1993, Article 39/B(1)(c).
261 Hungary, Act LXXVI of 2024, Article 1(b).
262 Hungary, Act III of 1993 on social governance and social benefits, 27 January 1993, Article 42(1)(c).
263 Hungary, Act LXXVI of 2024, Article 91.
264 Hungary, Act CCIV of 2011 on national higher education (*A nemzeti felsőoktatásról szóló 2011. évi CCIV. törvény*) Article 45(1a).
265 In case of servicewomen, this is termed as 'allowance provided relating to service exemption due to maternity' (*szülési szolgálatmentességre tekintettel folyósított illetmény*), provided by Government Decree 137/2024 (VI. 28.) on the legal status of military personnel (*37/2024. (VI. 28.) Korm. rendelet a honvédek jogállásáról*), Artice 32(20)(h).
266 Hungary, Act LXXVI of 2024, Article 92(1).

married student; starting from the one following the marriage of a student with a child, up until the semester following the one that includes the student's 30th birthday;[267] even if the student's marriage is dissolved in the meantime.[268]

- by default, from 1 February 2025,[269] a married student must be provided with the Hungarian state-funded scholarship in higher education starting from the semester following the birth or adoption of their child; similarly, a student with a child must be provided with the scholarship from the semester following their marriage, until they turn 30 (or until the end of the semester that includes their 30th birthday);[270]

- from 21 December 2024, [271] higher education institutions must allow students raising a child under the age of 14 to be absent from lectures and seminars for childcare purposes, provided that their absence does not exempt them from the basic academic requirements of their programme;[272]

- from 21 December 2024,[273] the deadline for submitting a doctoral dissertation may be extended by up to three academic years due to the PhD student's childbirth;[274]

- in relation to the Higher Education Act, the amendment defined[275] a 'child' as a biological or adopted child[276] and 'student with a child' as a student exercising parental custody.[277]

The new provisions align with previous policies and legal measures strategically aimed at encouraging childbirth in families with parents actively engaged in the labour market and/or higher education (or having the potential to attain a high level of education), while still relatively young. Previous examples of such measures include personal income tax breaks for mothers under 30,[278] and student loan forgiveness for new mothers under 30 who are students in higher education or have recently graduated.[279]

In addition to the demographic goal and the preference for marriage-based families implied in several measures, the new provisions can, to some extent, be interpreted as relevant from the perspective of work-life balance, although these measures are related to higher education, and not directly to the world of work. The relevant elements include recognising unpaid caregiving work, enhancing the employability of parents raising children, and fostering the labour market integration of women.[280] Thus, in terms of their impact, these measures are also relevant from a gender equality perspective,

267 Hungary, Act CCIV of 2011, Article 47(6)(g).
268 Hungary, Act LXXVI of 2024, Article 92(2).
269 Hungary, Act LXXVI of 2024, Article 93.
270 Hungary, Act CCIV of 2011, Article 48(5)–(7).
271 Hungary, Act LXXVI of 2024, Article 94(2).
272 Hungary, Act CCIV of 2011, Article 49(11).
273 Hungary, Act LXXVI of 2024, Article 107(c).
274 Hungary, Act CCIV of 2011, Article 53(4).
275 Hungary, Act LXXVI of 2024, Article 101(2).
276 Hungary, Act CCIV of 2011, Article 108(6b).
277 Hungary, Act CCIV of 2011, Article 108(6c).
278 EELN (2023), flash report, Hungary, 'Women under the age of 30 who bear or adopt children are entitled to personal income tax break', 20 March 2023.
279 EELN (2023) flash report, Hungary, 'Women under the age of 30 who give birth or adopt a child during their studies or not later than two years after graduation are entitled to student loan forgiveness', 20 March 2023.
280 Notably, the majority of the new provisions are designed in a gender-neutral manner, with the exception of the dissertation deadline postponement, which is available only to new mothers.

and can be examined in light of EU norms, even though they are not directly related to fulfilling specific EU requirements (e.g. transposing directive provisions).

Sexual orientation

Transgender

Proposed amendments severely affecting the rights of LGBTIQ people and banning the Pride march

Since 2019, the Hungarian Government has been conducting an increasingly intensive anti-LGBTIQ campaign, followed by a series of hostile legislative developments.[281] These included, notably, the prohibition of legal gender recognition (May 2020); the insertion into the Fundamental Law of the text 'the mother is female, the father is male', and of an obligation on Hungary 'to protect the right of children to their identity aligning with their sex by birth' and 'ensure an upbringing in accordance with the values based on our homeland's constitutional identity and Christian culture' (December 2020); and the prohibition of presenting to persons under 18 years of age 'content that is pornographic or that depicts sexuality in a self-serving manner or that depicts or promotes divergence from self-identity corresponding to the sex at birth, sex change or homosexuality' ('Child Protection Act', June 2021).

Although the European Commission launched an infringement procedure due to the adoption of this latter prohibition,[282] the anti-LGBTIQ campaign has continued, and public authorities are applying the hostile legislation.[283] Following harsh statements made by the Prime Minister in February 2025 in his State of the Nation address,[284] members of his party submitted several bills to the Parliament the following month.

First, they proposed to amend the Fundamental Law to insert the text 'The person is male or female. The father is male, the mother is female.' The reasons attached to the Bill referred to the preservation of 'the natural developmental process of children' and of the Hungarian 'cultural identity, which includes respect for the natural order of men and women'. They further claimed that 'The definition of human sex is based on biological reality [...]. Modern science clearly confirms that biological sex is an objective and immutable factor. [...] The prohibition of changing sex at birth makes it clear that the state takes biological reality as the basis for both law-making and the organisation of society. This regulation contributes to the maintenance of legal certainty, the protection of children and the stability of the family and social order.'[285] The amendment was passed by the Parliament on 14 April 2025 and promulgated on the same day.[286]

The second bill proposed to amend the Equal Treatment Act to guarantee consistency with the pending change in the Fundamental Law and therefore proposed to delete 'gender identity' from the list of protected grounds and replace the term 'sex' with the term 'sex and corresponding identity'.[287] The

[281] For further information on the context, see *European equality law review 2021/2*, pp 103-104 and *European equality law review 2024*, pp 151-153.
[282] Case pending before the Court of Justice of the EU, C-769/22.
[283] See for example, EELN (2024) flash report, Hungary, 'High Court decision on restrictions on the open distribution of LGBTIQ-themed books for young people', 9 December 2024.
[284] See: Cabinet Office (2025) 'State of the Nation address', 22 February 2025.
[285] Hungary, Bill No. T/11152 on the 15th Amendment to the Fundamental Law, submitted on 11 March 2025. An unofficial English translation of the submitted text is available here and the original Hungarian version is available here.
[286] Hungary, Fifteenth Amendment to the Fundamental Law of Hungary, 14 April 2025.
[287] Hungary, Bill No. T/11153 on Amending Certain Acts of Parliament in Relation to the 15th Amendment to the Fundamental Law, submitted on 11 March 2025. The submitted text is available here in Hungarian here.

amendment was also passed by the Parliament on 14 April 2025 and promulgated on 24 April 2025.[288]

Finally, a third bill was submitted on 17 March 2025, adopted on 18 March in a fast-track procedure and promulgated on 19 March.[289] It entered into force on 15 April 2025 and inserted, among other things, a new provision into the law on the Right to Assembly, to prohibit holding an assembly that violates the above-mentioned provision of the 'Child Protection Act' or 'displays a substantial element of the content prohibited' under that provision. On this basis, the Budapest Pride, which has been organised for the past three decades, was banned by the police.[290]

Racial or ethnic origin

Law on the protection of 'local identity' with potential discriminatory impacts

As of 15 April 2025, Article XXVII of the Fundamental Law (Constitution) was amended to stipulate that 'everyone – who legally resides in Hungary – has the right to the freedom of movement and to choose their domicile. The exercise of the right to choose one's domicile shall not violate the fundamental right to self-identity of the local communities of Hungary'. With reference to this amendment, on 11 June 2025, the Parliament passed Act XLVIII on the protection of local identity.[291]

Article 2 of the new law stipulates, among other things, the following:

1. Based on the right to local self-identity, municipal communities may exercise self-defence to protect and preserve their societal structures, ways of life, traditions, customs and characteristics.

2. Based on the same right, they may prevent the undesired increase of the population and may take action against the undesired directions of societal developments.

3. As a local matter of public interest, municipal communities shall have the right to determine who may move into the municipality and under what conditions.

The law authorises municipal councils to adopt local decrees to achieve these objectives. The council may prescribe that a right of first refusal applies to local real estate in the following order of priority: (i) the municipal council or a company owned by it; (ii) owners of neighbouring properties; (iii) owners of other properties in the municipality. The council may also prescribe that persons moving into the municipality shall not register a residential address in the municipality or may prescribe certain conditions for such registration. In this latter case, the council may prescribe that the person wishing to register shall meet some reasonable preliminary criteria or make a reasonable undertaking that is relevant for the municipal community's identity, customs or traditions. Furthermore, the council may introduce a settlement tax on those who wish to buy property or register a residential address in the municipality.

[288] Hungary, Act V of 2025 on certain amendments of laws related to the Fifteenth Amendment to the Fundamental Law, 24 April 2025.

[289] Hungary, Bill No. T/11201 on Amending Act LV of 2018 on the Freedom of Assembly in Relation to the Protection of Children and Amending Related Acts of Parliament, submitted on 17 March, adopted on 18 March, and promulgated on 19 March 2025 as Act III of 2025. The adopted text is available here in Hungarian.

[290] However, it was held as an event of the Municipality of Budapest on 28 June 2025. There is a legal debate on the nature of the event, and criminal proceedings have been launched against the mayor of Budapest for organising a banned demonstration.

[291] Hungary, Act XLVIII on the Protection of Local Identity, adopted 11 June 2025, entry into force 1 July 2025.

Although Article 4(1) of the law expressly states that these measures 'shall be applied without violating human dignity and applying unreasonable differentiation, in accordance with the principle of equal treatment', human rights NGOs warn that municipalities may use them to keep Roma people and other 'unwanted' groups out.[292] For instance, it is clear that the introduction of an education census can have a highly disproportionate impact on the Roma who are extremely overrepresented among those with the lowest levels of education among the Hungarian population. Many – including Roma rights activists and social policy experts – were concerned from the very beginning that the new law may be applied by several municipalities to keep out the Roma.[293]

CASE LAW

Court clarifies conditions for legal standing in *actio popularis* lawsuits against social care home facility for persons with disabilities

All grounds

In 2017, an NGO lodged an *actio popularis* lawsuit against a number of respondents to challenge the well-documented living conditions in a care home for persons with disabilities, including excessive and unlawful use of restraints, malnutrition and physical neglect as well as violence and abuse. The NGO claimed that the respondents, including several state and local authorities, had infringed the residents' personality rights and had failed to supervise the functioning of the institution.[294]

One of the defences invoked by the respondents was that the NGO had no legal standing, as an *actio popularis* claim may only be submitted if the violation 'affects a larger group of persons that cannot be accurately determined', and in this case, the affected persons can be identified from the records of the facility. In its 2024 judgment, the regional court rejected this argument, holding that the individual victims could not be identified as the NGO's claims concerned a period of over 14 years and several types of violations.[295] On the merits, the Court held that the public authorities had failed to carry out their statutory obligation to supervise and manage the facility. Thereby they had infringed the personality rights, including the right to equal treatment and the right to dignity, of the residents.

The NGO had requested the Court to impose several specific obligations on some of the respondents, notably that the operator of the facility be obliged to close it down within 12 months of the judgment becoming final, and to place the residents according to international standards. The Court however imposed no such sanctions and simply made a declaration of violation. Both the claimant and the respondents appealed against the judgment. In September 2024, the Appeals Court upheld the first instance judgment.[296] With regard to the requested injunctive measures, the Court held that it would not be fair to impose sanctions on the new operator 'even if the continuation of the violations is likely, since it cannot immediately provide the residents with adequate conditions', invoking the state of the building and the number of staff etc. In such a situation, the Court held that the Equal Treatment Act

[292] See for example Czifrik, K. (2025), 'Human rights activists believe that the pending law on the protection of municipalities may be turned against the Roma', 6 May 2025:.

[293] See for example: Szabó, E. (2025): 'It is racist and against the market', 29 April 2025; Stubnya, B. (2025): 'It is up to the municipalities what the impact of the law on the protection of local identity will be', 7 May 2025; and Kende, Á. (2025): '"We cannot sell the house to Gypsies"', 28 March 2025. These fears have been confirmed since the entry into force of the law, after the cut-off date for this issue of the law review.

[294] During the proceedings, a new operator was assigned to manage the facility, and the first respondent – i.e. the original operator of the facility – was dissolved without a legal successor. The NGO then sued the new operator too on the basis that the dire physical conditions cannot be eliminated overnight.

[295] Hungary, Regional Court of Budapest, judgment No. 19.P.24.597/2017/234 of 27 February 2024.

[296] Hungary, Appeals Court of Budapest, judgment No. 2.Pf.20.235/2024/9 of 12 September 2024.

only aims at the 'gradual elimination of the impugned situation', and that the measures already taken by the operator meet these requirements, 'even if they have not resulted in the immediate or full elimination of the violations'.

With regard to the issue of legal standing, the Appeals Court reinforced the arguments of the first instance court, arguing notably that the specific circumstances of the individual case must be taken into account when a decision about standing is made, as *actio popularis* litigation aims to promote the access to rights of societal groups in a disadvantaged situation. In cases regarding intellectual disabilities, the concerned persons are in most cases not in a position to assert their rights themselves, specifically due to the protected ground, as a result of which most concerned persons are under guardianship. In this regard, the court highlighted the fact that the claimant NGO was prevented from contacting the guardians of the residents, so they could not be informed about the possibilities of individual litigation. Finally, the court pointed out that the aim of the lawsuit was not to remedy an individual breach but to protect the rights of a larger group of society in the face of a severe systemic deficiency. On the basis of these arguments, the Appeals Court found that the NGOs' legal standing to initiate an *actio popularis* claim could not be questioned.[297]

Sexual orientation
Transgender
Gender

High court decision on restrictions of the open distribution of LGBTIQ-themed books for the youth

Following the introduction in 2021 of strict limitations on the portrayal of homosexuality and any 'deviation' from gender identity aligning with sex at birth in, notably, advertising, media contents and education,[298] specific conditions were prescribed for the sale of children's products depicting deviation from gender identity aligning with sex at birth, gender reassignment or portraying or promoting homosexuality.[299] In July 2023, the Budapest Government Office imposed a consumer protection fine of approximately EUR 30 300 (HUF 12 million) on the operator of one of the country's biggest bookstore networks, due to copies of a popular LGBTIQ-themed graphic novel for youth being placed in a bookstore's section of children's and youth literature without closed packaging.

In February 2024, the Metropolitan Regional Court quashed the fine, finding that the respondent authority had misinterpreted the text of the relevant provision and thus imposed the fine unlawfully.[300] The Court held that the issue was of a purely grammatical nature and that there was no need to examine the text from a teleological perspective as the grammatical interpretation of the text was clear and could not lead to any alternative findings. It thus found that the only possible interpretation was that closed packaging was only required when a product was distributed separately from other products.[301] Following this judgment, the relevant legal provision was amended by the Government. As of 8 May 2024, it is thus clear that any children's product that 'depicts deviation from [gender]

297 The case was subsequently brought before the European Court of Human Rights by the claimant NGO on behalf of one of the residents. See ECtHR, *Validity Foundation on behalf of T.J. v. Hungary*, judgment of 10 October 2024, Application No. 31970/20.

298 Hungary, Act LXXIX of 2021 on Harsher Action Against Paedophile Criminal Perpetrators and the Amendment of Certain Laws with a View to Protecting Children, of 23 June 2021. See also *European equality law review 2021/2*, pp 103-104., 23 June 2021.

299 Hungary, Decree 210/2009. (IX. 29.) on the Conditions of Performing Commercial Activities, of 29 September 2009, as amended.

300 Hungary, Metropolitan Regional Court, judgment No. 105.K.702.795/2023/15 of 8 February 2024.

301 For further details regarding the decision of the Metropolitan Regional Court, see *European equality law review 2024*, pp 151-152.

identity aligning with sex at birth, gender reassignment or sexuality in a self-serving manner, or portrays or promotes homosexuality' must be put on sale separately *and* in closed packaging.

The respondent submitted a request for an extraordinary review to the Kúria, Hungary's Supreme Court, which quashed the judgment of the regional court in October 2024 and referred the case back for re-adjudication.[302] Disregarding (without any justification) the linguistic expert opinion and its own earlier jurisprudence regarding the relationship between the grammatical and the teleological interpretation of legal norms, the Court simply claimed that the two language versions of the sentence concerned have the same meaning and that 'a potential grammatical mistake concerning the commas [in a text] shall not serve as the basis of attributing to a legal provision a meaning that does not follow from the text, that cannot be inferred from it'. The claimant's argument that the subsequent amendment of the Decree aptly substantiates that the original text of the provision did not convey the meaning that the Government Office attributed to it, was also put aside by the Court on the basis that, on the one hand, the amendment of the Decree only took place after the Government Office launched its procedure, and, on the other, according to the explanatory memorandum of the amending decree, the amendment is only a 'clarification [refinement] of the provisions for the sake of unambiguous and unified implementation'. Furthermore, the Court emphasised that the legislative intention was clear: the protection of children by banning the presentation of the concerned products in public in a manner that everyone and anyone could freely see them. In this part of the decision, the Court uses a phrase (*mutogat*) that is not a neutral expression, but one with a clearly pejorative connotation (the closest translation would be 'flaunting', i.e. showing off provocatively the products concerned).

Finally, the Court disregarded altogether the claimant's request of making a preliminary reference to the CJEU and, instead, referred the case back to the Metropolitan Regional Court for re-adjudication and ordered it to interpret the relevant provision in accordance with its findings. While it may be argued that the omission of the comma in the relevant provision was a mistake in light of the professed intentions of the legislature, the burden of such a mistake should have been borne by the legislature, especially in the case of a punitive measure (c.f. the *nullum crimen* and *nulla poena sine lege* principles). The Court disregarded these principles, without providing sufficient reasons for doing so.

POLICY AND OTHER RELEVANT DEVELOPMENTS

General Comment of the Minority Ombudsman on the segregation of Roma children through kindergarten admission practices

Racial or ethnic origin

The catchment areas of the different kindergarten units run by a municipality were set based on the distance to the home of each child, leading to segregated units with almost only Roma children in segregated areas. Parents may request a transfer to another unit if it has available places, but the kindergarten principal only admitted transfer requests from the unit concerned when the parents were not of Roma origin. Transfer requests of Roma families were left unanswered, leading not only to the unit being almost exclusively segregated, but also depriving the Roma families of any form of remedy (as there was no rejection they could challenge). With the help of a local NGO, concerned parents of Roma children filed a complaint with the Minority Ombudsman in February 2023. During the investigation, the unit was closed by the municipality, and the children attending the unit were initially

[302] Hungary, Supreme Court (Kúria), decision No. Kfv.VI.37.280/2024/8 of 17 October 2024.

placed in segregated groups within different units of the municipality. Subsequently however, the newly appointed kindergarten principal took measures to integrate the Roma children. In addition, the kindergarten districts were redrawn considering the aspects of integration. In January 2025, the Minority Ombudsman issued a General Comment on the case, recommending that the kindergarten principal and the municipality should continue their efforts to ensure that the right to equal treatment of Roma children is guaranteed both in the admission to kindergarten and in the distribution in kindergarten groups.[303]

Racial or ethnic origin

General Comment of the Minority Ombudsman on the discriminatory impacts of the absence of local public transportation and school bus services

In April 2024, two NGOs, the European Roma Rights Centre (ERRC) and the National Association of Disadvantaged Families, filed a complaint with the Minority Ombudsman against a municipality and the relevant state authority responsible for the management of public education, challenging the lack of available transportation to school for Roma children living in one district of the municipality, 6 to 7 kilometres from the school. In Hungary, elementary education is a shared responsibility of municipalities and the state authority, and in the present case, the mayor and the authority disagreed on who would be responsible for organising a school bus service. While the authority argued that they were only obliged to run such a service if it was necessary to transport children living outside the perimeters of the town, the municipality was only willing to buy a bus if the Roma parents would contribute to its maintenance.

The Minority Ombudsman investigated the complaint and issued a General Comment in March 2025, concluding that the failure of the authorities to take steps to address the problem amounted to a violation of the children's right to non-discrimination, education, and a fair procedure.[304] The Ombudsman concluded that the State Secretariat responsible for Social Inclusion should organise a professional consultation (with the participation of the two concerned ministries, the mayor, the school district and the relevant Roma minority self-government) and prepare an action plan with concrete measures, deadlines, assigned responsibilities and financial resources.

IE Ireland

LEGISLATIVE DEVELOPMENT

Gender

All grounds

Maternity leave and non-disclosure agreement provisions

The Maternity Protection, Employment Equality and Preservation of Certain Records Act was signed by the President on 28 October 2024 and came into operation on 20 November 2024.[305] There were two amending provisions to the maternity legislation:[306]

1. In the event that an employee has a serious medical condition (physical or mental), her maternity leave may be postponed for a period of between 5 and 52 weeks. Once the period

303 Hungary, Minority Ombudsman, General Comment No. 3/2024 of 31 January 2025.
304 Hungary, Minority Ombudsman, General Comment No. 4/2024, 31 March 2025. A summary of the complaint in English is available here.
305 Ireland, Maternity Protection, Employment Equality and Preservation of Certain Records Act 2024.
306 Ireland, Maternity Protection Act 1994.

of illness leave is over, the employee is entitled to her maternity leave or the balance of her leave. Such serious medical condition may be to receive treatment such as chemotherapy or being an in-patient in the case of psychiatric illness.

2. Members of Parliament (upper or lower house/*Dáil* or *Seanad Éireann*) may be absent from their duties in Parliament for a period of 26 weeks maternity leave. Such persons would also be entitled to leave in the event of a serious medical condition.

There was an anomaly in the legislation as there was leave for the mother in the event that the baby was hospitalised, i.e. that the mother's maternity leave could be postponed. Members of Parliament were not entitled to maternity leave and were instead treated as being on sick leave.

The Act of 2024 also stipulated new rules concerning non-disclosure agreements. Accordingly, a new Section 14B was inserted in the Employment Equality Act 1998.[307] First, a 'relevant disclosure' means a disclosure of information relating to either or both:

(a) the making by the employee of an allegation that they were discriminated against or subjected to victimisation, harassment or sexual harassment in relation to their employment or prospective employment by the employer; and/or

(b) any action taken by the employer or employee in response to the making of the allegation in (a) including any action taken in relation to any complaint made or proceedings taken by the employee in relation to the subject matter of the allegation.

An employer must not enter into a non-disclosure agreement with an employee[308] and where such an agreement is entered into, it will be null and void.[309]

However, this provision does not apply to a non-disclosure agreement entered into under the terms of a mediated agreement under the Equal Status Act 2000 (goods and services) or under the Employment Equality Act 1998 at the Workplace Relations Commission (WRC).[310] In addition, the provision does not apply to an excepted non-disclosure agreement. An employer may enter into an excepted non-disclosure agreement with an employee only where:

(a) the employee requests the employer to do so; and

(b) prior to entering into the agreement, the employee has received independent legal advice in writing from a legal practitioner in relation to the legal implications of entering into the agreement. The employer must discharge the reasonable legal costs and expenses of the legal practitioner who provides the legal advice.

An excepted non-disclosure agreement must:

307 Ireland, Employment Equality Act 1998.
308 This includes a current and former employee.
309 Ireland, Section 14B(1) of the Employment Equality Act 1998.
310 Ireland, Section 14B(2) of the Employment Equality Act 1998.

(a) be in writing;

(b) be of unlimited duration, other than where the employee elects otherwise;

(c) insofar as possible be in—(i) clear language that is easily understood, and (ii) a format that is easily accessible, by the parties to the agreement, including by any party with a disability;

(d) provide that the employee has a right, where he or she so elects to withdraw from the agreement without penalty no later than 14 days from the date on which the agreement is entered into; and

(e) include a provision stating that the agreement does not prohibit the making by the employee of a relevant disclosure. Where an excepted non-disclosure agreement is entered into, the employer will provide the employee a copy of the executed agreement.

An excepted non-disclosure agreement does not prevent an employee concerned making a relevant disclosure to one or more of a list of professionals,[311] if at the time the relevant disclosure is made, the professional is acting in the course of their office, employment, business, trade or profession.

A non-disclosure agreement can only be entered into where the employee requests that the employer do so. Then, if there is a non-disclosure agreement there are a number of safeguards for the employee to include the employer paying for reasonable legal costs in respect of advice for the employee and also there is a 14 day-cooling-off period.

POLICY AND OTHER RELEVANT DEVELOPMENTS

All grounds

Revision of Irish equality legislation

Revision of equality law is a priority item in the Irish Government's legislative programme, which was published on 18 February 2025. An outline of the proposed changes is set out in the General Scheme of the Equality (Miscellaneous Provisions) Bill 2024.[312] The main planned amendments are as follows:

Employment Equality Acts:

1. Inclusion of Article 5 of the EU Pay Transparency Directive – employers are to provide information about salary levels or ranges in a job advertisement or prior to interview.

2. Employers are prohibited from asking job applicants about their own pay history.

[311] This list of professionals includes: (a) a member of the Garda Síochána (police force), a legal practitioner, a registered medical practitioner within the meaning of the Medical Practitioners Act 2007, a mental health professional, an officer of the Revenue Commissioners, an officer of the Ombudsman, or an official of a trade union, and (b) such individual, or a member of such class of individuals, as may be specified in the agreement as a person to whom a relevant disclosure may be made by the employee.

[312] Government of Ireland (2023), The Equality Acts Review: Summary of the submissions received to the 2021 Public Consultation on the Review of the Equality Acts; General Scheme of the Equality (Miscellaneous Provisions) Bill 2024 (published on 15 January 2025); Government Legislation Programme Spring 2025 (published on 18 February 2025); IHREC letter on the General Scheme of the Equality (Miscellaneous Provisions) Bill 2024 (published on 21 February 2025).

3. An expanded definition of vocational training, which currently covers only training exclusively concerned with an occupational activity, would align Irish law with the Employment Equality Directive.

4. The definition of 'positive action' is extended to grounds other than gender and includes 'prospective employees'.

5. Deletion of a provision that permits employers to pay a worker with a disability lower pay based on their productivity.

6. Inclusion of a requirement that employers show that the specific criteria that they seek in respect of a job applicant is necessary and proportionate for a particular role.

7. Extension of time limits to apply for redress from 6 months to 12 months.

8. Adjudicators will be required to ensure that any compensation awarded 'should be effective, proportionate and dissuasive'.

9. A person who has left their employment prior to the date of reference of the case without necessarily having been dismissed may be awarded the maximum compensation of two years' remuneration. Currently, such persons cannot be awarded more than EUR 13 000.

Equal Status Acts:

1. Inclusion of a provision that a 'discriminatory practice' includes a practice based on one or more prohibited grounds of discrimination 'or on the effect of a combination of prohibited grounds'. This essentially would allow for intersectional discrimination complaints, however, there is no provision for additional redress.

2. A 'disproportionate burden' threshold would replace the 'nominal cost' ceiling for the reasonable accommodation duty as regards public bodies, financial and insurance institutions, credit unions and public transport operators.

3. Victimisation would constitute a separate claim (as it is under the Act of 1998). It is currently provided for as a discrimination ground.

4. Presently, persons who wish to refer a complaint must notify the person alleged to have discriminated them within two months of the alleged act of discrimination. It is proposed to extend the notification period to four months.

5. Extension of time limits to apply for redress from 6 months to 12 months.

6. The maximum compensation limit would be increased from EUR 15 000 to EUR 75 000.

7. Jurisdiction in relation to prohibited conduct which occurs on or at the point of entry to licensed premises would transfer from the district court to the Workplace Relations Commission.

These proposals comprise the Government's preliminary response to the review of non-discrimination that it initiated in 2021. In June 2023, the Department of Children, Equality, Disability, Integration and Youth published a synthesis of the 569 submissions received from a public consultation, 100 of which were submitted by organisations.

Several of the draft recommendations address potential compliance issues with EU law, such as removing the provision on lower pay for workers with disabilities, and expanding the definition of vocational training. The extension of time limits for referring complaints and the transfer of discrimination complaints against licensed premises to the WRC would address some of the access to justice concerns raised in the submissions to the review. Enabling intersectional discrimination claims has also been recommended by several international human rights bodies, although it is not evident why the Government's proposal is confined to the Equal Status Acts.

The national equality body, the Irish Human Rights and Equality Commission, has noted that several of its recommendations have not been addressed. For instance, it had called for the amendment of the gender ground to refer to and define gender identity, gender expression and sex characteristics, the introduction of a socio-economic status ground, and provisions to strengthen and expand the public sector equality and human rights duty. It has also sought clarification on the burden of proof in indirect discrimination cases, as well as amendments to the Equal Status Acts to include public functions in the definition of services and the repeal of a provision that exempts actions taken by law from challenge. It remains to be seen whether these concerns will be addressed over the coming months. Up to the end of this reporting period, the draft legislation had not yet been published.

Gender

Gender pay portal

The Minister for Children, Disability and Equality announced on 8 March 2025 that a new gender pay reporting portal for 6 000 public and private sector organisations will be launched in late 2025.[313] The portal will bring reports from all private and public sector organisations together instead of having them published on individual websites. The portal will be fully searchable by the public.

Reporting began in 2022 for employers with over 250 employees and was extended to employers with over 150 employees in 2024. In 2025, employers with over 50 employees are required to report on their gender pay gaps. Employers are required to choose a 'snapshot' date in June each year and base their reporting on the employees they have on that date. This year, employers are required to publish their report in November. Further regulations will be required to provide for this new portal. Employers can upload their gender pay gap reports with more information on their own websites should they so wish. The relevant legislation is the Gender Pay Gap Information Act 2021, which requires employers to report on their gender pay gap across a range of metrics as set out in the regulations under the Act. On 18 October 2023, the Central Statistics Office published results of the 2022 Structure of Earnings Survey, which shows that the gender pay gap in Ireland continues to narrow. The gender pay gap in Ireland in 2022 was 9.6 %, that is, the average male earned 9.6 % more than the average female.

[313] Ireland, Law Reform Commission – Employment Equality Act 1998 – see section 20A inserts the provisions of the Gender Pay Gap Information Act 2021, and Press release.

It is a significant move to announce the commencement of a national pay portal as all information will be contained on pay for employments of over 50 persons. This development will remove the necessity to look up each employer's website to seek gender pay gap information.

All grounds

National data published on experiences of discrimination

On 16 June 2025, the Irish Central Statistics Office (CSO) released the results of a national survey on people's perception of experiencing discrimination.[314] The data was gathered in 2024 from 7 852 respondents. Similar surveys were conducted in 2004, 2010, 2014, and 2019.[315]

Participants were asked whether, in the previous two years, they experienced discrimination in the workplace, while seeking work, in contact with the police, or in accessing services from public or private sector providers. Respondents were also asked to identify the perceived reason for the discriminatory treatment, with possible answers corresponding to the grounds provided for under Irish anti-discrimination legislation (age, civil status, disability, family status, gender, race, religion, sexual orientation, and membership of the Traveller community). Two additional perceived grounds for discrimination were included for the first time in this survey, 'criminal conviction', and 'socio-economic background' (described as e.g. 'your address, accent, level of education, type of housing, employment status or any other similar circumstance etc.'). These were added as two proposed new grounds identified in the Government's ongoing review of the Equal Status Acts and the Employment Equality Acts.[316] Further questions concern individuals' understanding of their rights, the type of action they took, if any, in response to discrimination, and the impact of discrimination.

One in five respondents (22 %) had experienced discrimination in the previous two years, an increase of four percentage points from the previous survey. The highest rates of overall discrimination were reported by people whose sexual orientation was gay/lesbian (59 %) or bisexual (55 %), persons of a Black Irish/Black African/other Black background (49 %), transgender/non-binary people (46 %), and members of the Irish Traveller/Roma community (42 %).

Experience of discrimination across the grounds varies in different fields. In the workplace, for instance, the top three grounds were race (27 %), gender (24 %) and socio-economic background (21 %). The highest level of discrimination while looking for work was experienced by members of the Irish Traveller/Roma communities, at a rate of 16 % compared with 3 % of people whose ethnicity was White Irish. Socio-economic background (32 %), race (27 %), and age (22 %) were the most significant grounds in the field of housing. The data on socio-economic background should support the addition of a socio-economic status ground to the legal framework, as recommended by the national equality body.[317] At 33 %, race was the most prevalent basis for discrimination in social settings such as shops, pubs, restaurants, and retail outlets. Within that category, respondents from a Black Irish/Black African/other Black background experienced the highest levels of discrimination in social settings at 26 %. The data suggests that underreporting of discrimination is an enduring issue. According to the CSO surveys carried out over the past two decades, most people who experience discrimination take

314 Central Statistics Office, Equality and Discrimination 2024, published 11 June 2025.
315 Data from the Irish Central Statistics Office surveys for 2004, 2010, 2014, and 2019, is available here.
316 For further information, see 'Revision of Irish equality legislation', above p. 173-175.
317 Irish Human Rights and Equality Commission (2024), *Policy Statement on Socio-Economic Status as a ground of discrimination under the Equality Acts*.

no action. This was the case for 73 % of respondents in 2024, while only 3 % of persons who experienced discrimination made an official complaint, and only 1 % took legal action. The rationale for these distinct reactions to discrimination was not explored with respondents.

IT Italy

Gender

LEGISLATIVE DEVELOPMENT

Gender equality provisions in the Budget Act for 2025

The Budget Act for 2025[318] introduced several measures to support women's participation in the labour market, assist families, and combat gender-based violence.

One key provision is the confirmation of the nursery or babysitting bonus for families with children up to three years old who have a serious illness or disability. The eligibility threshold remains an income of up to EUR 40 000, but the previous requirement that another child under ten be present in the family has been repealed. Additionally, the allocated funds for this measure have been increased (Article 1, paragraphs 210-211).

Another measure is the partial reduction of social security contributions for working mothers with two children, which applies until the youngest turns ten. While this benefit is subject to income limits and excludes domestic workers, it has now been extended to self-employed individuals and those with business income. Furthermore, for mothers of three or more children, the contribution exemption will be granted until the youngest child turns 18, starting in 2027 (Article 1, paragraph 219).

The Act also introduces improvements to parental leave regulations.[319] Parents can now take three months of non-transferable leave until their child turns 12, covered by an allowance of 30 % of their last monthly salary. Additionally, for one of these three months, and until the child turns six, one parent (alternating between them) can receive an increased allowance of 80 % of their last monthly salary. Previously a temporary measure, this provision has now been made permanent (Article 1, paragraph 217). In response to the ongoing issue of gender-based violence (GBV), the Act further increases funding for the Fund for Policies Relating to Families, Youth, and Equal Opportunity Rights starting in 2025. These funds will support pathways to autonomy and economic independence for victims of GBV, expand the 'Freedom Income', and finance professional training programmes. Additionally, resources will be directed toward educational and preventive initiatives for lower and upper secondary school students, focusing on sexual health and effective education (Article 1, paragraphs 221-222).

The shift from temporary to permanent measures – such as the contribution reduction and the higher parental leave allowance – is a positive step in providing stability for women's labour market

[318] Italy, Act N. 207 of 30 December 2024, Budget Act for 2024, published in OJ No. 305 of 31 December 2024, ordinary supplement No. 43.

[319] Under Article 32 of Decree No. 151/2001 each parent is entitled to an autonomous, non-transferable, right to three months' remunerated parental leave and a further three months can be used by the parents as an alternative to each other. As a consequence, in case both parents take up non-transferrable parental leave and one of them takes up the alternative parental leave as well, the period covered by the allowance is nine months. The maximum length of parental leave which can be taken for the same child is in any case ten month, which are extended to a total of eleven months when the father takes up at least three months of leave. Single parents are entitled to a maximum of 11 months of parental leave and 9 months are covered by the allowance.

participation. However, as in previous years, no new measures promote a more equal distribution of caregiving responsibilities within families, which remains essential for achieving equality. Additionally, while the Budget Act increases funding for gender equality, these allocations remain largely focused on addressing GBV rather than broader structural changes for equal opportunities in the labour market.

CASE LAW

Gender

Indirect discrimination case under Constitutional Court examination

The Council of State raised a question of constitutionality in an appeal against the ranking of an internal competition for inspectors, initiated by some assistants of the Penitentiary Police Corps.[320] The issue concerns Article 44 (paragraphs 7 to 11) of Legislative Decree No. 95 of 29 May 2017, specifically the provisions that distinguish the number of positions available in competitions for prison police inspectors based on gender. Notably, there is a significant predominance of positions allocated to male staff.

Judgment of the Constitutional Court No. 181 of 19 November 2024 ruled that the provisions mentioned above were not consistent with the principle of equal treatment between male and female workers laid down by national and Community law.

The Court observed that the significant predominance of posts reserved for male candidates is not justified by the nature of the tasks, which are identical for both genders. These tasks now primarily involve management and coordination, with a focus on operational responsibilities. The stark disparity between male and female representation reflects, in a vastly different context, the structure of roles historically tied to agents and assistants who perform operational duties in close contact with inmates. Considering the managerial and coordination responsibilities assigned to inspectors, the limited representation of women lacks a reasonable justification based on essential and decisive requirements for the role, as outlined in Article 14(2) of Directive 2006/54/EC.

The impugned inequality does not, therefore, pursue a legitimate objective, linked to the need to preserve the functionality and efficiency of the Penitentiary Police Corps, and conflicts with the principle of proportionality, precisely because of the breadth of the gap it generates. Therefore it violates the principle of equal treatment,[321] with distorting effects that affect the very efficiency of the public service.

In this judgment, the Court declared the constitutional illegitimacy of Article 44, paragraphs 7 to 11, of Legislative Decree No. 95 of 2017. Specifically, it invalidated the provisions that differentiate the number of competition posts for inspectors of the Penitentiary Police Corps based on gender. The total number of staff, as determined by the legislature, remains unchanged.

Disability

Dismissal for exceeding sick leave limits and the obligation of reasonable accommodation

In November 2024, the Supreme Court ruled on the issue of dismissal of workers with disabilities for

[320] Italy, Constitutional Court, Judgment No. 181 of 19 November 2024.

[321] Italy, Article 3, paragraph 1, of the Constitution states that 'All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinions, personal and social conditions'.

exceeding the maximum sick leave period.[322] The case concerned a worker with a severe disability who had been dismissed for unjustified absence after refusing to return to his original workplace, having repeatedly and unsuccessfully requested a transfer closer to the hospital where he was undergoing cancer treatment. The lower courts upheld the dismissal, but the Supreme Court overturned their decisions, stressing that the obligation to provide reasonable accommodation had been disregarded. According to the Court, the refusal to grant such accommodation constitutes a discriminatory act under both EU and domestic law, and the case was referred back to the Court of Appeal for a new decision.

This ruling is part of a broader line of Italian case law addressing the relationship between illness and disability in the context of dismissals for exceeding sick leave limits. The jurisprudence has been divided: some judgments have favoured employers, emphasising the absence of statutory rules granting longer sick leave to workers with disabilities, while others have sided with employees, recognising that a strict application of neutral rules on sick leave can amount to indirect discrimination. In several recent decisions (2023–2024), the Supreme Court has clarified that employers must assess whether absences are linked to a disability and, where appropriate, adopt reasonable accommodation measures such as extending sick leave, failing which the dismissal may be considered unlawful and discriminatory.

Gender

Indirect discrimination as a limit to entrepreneurial organisational power case

The Regional Equality Advisor of Tuscany filed a collective action pursuant to Article 37 of Decree No. 198/2006 for indirect discrimination related to working hours imposed uniformly on the entire workforce of an insurance company.[323] In particular, the collective action denounced an apparently neutral rule: the same scheduling of working time (such as the same fixed lunch break from 13:00 to 14:30 on the days from Monday to Thursday, with consequent afternoon exit at 18:30) applied to all employees, including those of the Administration Office who had requested a reduction of the lunch break for reasons of caring for minors or assisting the elderly.

In judgment No. 1 of 26 February 2025, the Court of Appeal of Florence deemed this organisational provision to be indirectly discriminatory. According to the reasoning of the Court, the apparently neutral rule places workers with a protected factor (in this case, those with care duties) at a particular disadvantage compared to other workers and the company did not provide any evidence of the justification for this poorer treatment as essential to its activity. As provided for by Article 37 of Decree No. 198/2006, following the ascertainment of the indirect discrimination, the judge ordered a removal plan, aimed at protecting the effectiveness of the ban, and compensation for damages, in a remedial and dissuasive function, in favour of the Equality Advisor. The decision is consistent with the evolution of the notion of indirect discrimination, which focuses on the qualitative impact of the treatment, disregarding the evidence of its proportionately higher effect on the disadvantaged group. According to the Court, even more so in cases of collective action promoted by the Equality Advisor, the discriminatory effect must be assessed in potential and qualitative terms, as a condition of greater difficulty in reconciling work and family care needs, not detecting actual and additional consequences with respect to the delayed return. Furthermore, the ruling represents a rare case of application of

[322] Italy, Supreme Court, Judgment of 21 November 2024, *X v. Y*, No. 30080.
[323] Court of Appeal of Florence, Judgment No. 1 of 26/02/2025. Italy, *Art 25 and 37 of* Decree n. 198 of 11 April 2006, The Code for Equal Opportunities between men and women, *published in OJ N. 125 of 31 May 2006, o.s. n. 133.*

added Paragraph 2*bis* of Article 25 of Decree No. 198/2006, which expressly extended the ban on discrimination to all employer's 'act, agreement or conduct including those of organisational nature or incidents on working hours". The detailed reasoning on the impact of the distribution of working hours on the reconciliation with family needs, which is very attentive to the effects of these organisational choices on working women lives, denotes a new sensitivity of the judiciary.

The content of the plan for the removal of discrimination as well as the decision on the compensation for damages are coherent with the approach mentioned above. The plan required the defendant company to inform the employees with caring duties of its Administration Office of Florence of the possibility of requesting the reduction of the lunch break. The Court also awarded compensation for damages in favour of the Equality Advisor in an equitable amount of EUR 10 000 plus costs.

POLICY AND OTHER RELEVANT DEVELOPMENTS

Adoption of a National action plan against racism, xenophobia and intolerance (2025–2027)

Racial or ethnic origin

On 23 May 2025, the Government adopted a new National action plan against racism, xenophobia and intolerance, through the inter-ministerial steering committee coordinated by UNAR (National Office against Racial Discrimination).[324] This is the first national strategy since 2016 and represents an attempt to align Italy with the EU's call for Member States to adopt comprehensive national action plans within the context of the EU Anti-Racism Action Plan 2020–2025.

The plan specifically addresses discrimination based on racial and ethnic origin and is intended to apply across all major fields of social and economic life. It builds on the structure and objectives of the EU Action Plan and identifies the following six priority areas: employment, housing, education (including culture and sport), health, security and justice, and communication and media. In addition, it sets out transversal measures such as the training of public officials, awareness-raising campaigns and the consolidation of territorial networks. A permanent multi-level governance model has been introduced to coordinate the implementation of measures and to ensure accountability. Notably, the Ministry of the Interior has been entrusted with the task of monitoring data collection and carrying out a study on ethnic profiling, which the plan is explicitly acknowledging as a problem. This recognition marks a significant departure from previous governmental statements that denied the existence of ethnic profiling in Italy.

Latvia LV

LEGISLATIVE DEVELOPMENT

Gender

Gender Equality Plan 2024-2027

In June 2024, the Cabinet of Ministers adopted the Gender Equality Plan for 2024-2027. The new plan, which replaces the 2021-2023 plan,[325] outlines three key areas: (1) promotion of equal

[324] UNAR, National plan against racism, xenophobia and intolerance, 23 May 2025.
[325] Latvia, the Cabinet of Ministers Order No. 500 on the 'Gender Equality Plan for 2024-2027', Official Gazette No. 119, 20 June 2024.

opportunities between women and man in employment and education; (2) combating negative gender stereotypes; and (3) integrating a gender mainstreaming approach into policy planning documents.

The previous Gender Equality Plan had similar strategic directions, with the notable exception of the second focus area. In the earlier plan, the second focus was on combating domestic violence and violence against women. The new plan shifts this focus to a broader goal of combating negative gender stereotypes. This change is due to the ongoing development of a separate action plan specifically aimed at addressing violence against women. In terms of substantial actions, the new plan maintains continuity, emphasising further education and information dissemination on gender equality issues. This includes education on gender stereotypes, equal pay, and the application of gender mainstreaming in policy making.

POLICY AND OTHER RELEVANT DEVELOPMENTS

All grounds

First report by the Ombudsman's Office on the state of discrimination

In June 2025, the Ombudsman's Office published the study, *The Situation of Discrimination in Latvia,* which was commissioned by the Office and aims to provide a qualitative analysis of the practices related to discrimination in Latvia.[326] Its objectives include examining the legal protections against discrimination, analysing the criteria embedded in legislation, evaluating the Ombudsman's activities in the field from 2021 to July 2024, reviewing previous research on non-discrimination, and summarising media coverage of discrimination-related issues. The study also seeks to identify gaps in public awareness and propose recommendations for improving legal coherence and institutional responses.

The study identified 34 laws prohibiting discrimination, listing 28 different protected grounds. The most frequently cited grounds are gender (in 27 laws), race and skin colour as well as religious belief (in 26 laws). Definitions of discriminatory acts vary across legislative documents, and the horizontal embedding of anti-discrimination provisions leads to inconsistent interpretation and enforcement challenges. Some legal terms are outdated or unclear – for example, 'nationality' is often confused with ethnicity rather than citizenship, 'genetic characteristics' could be better described as 'genetic origin,' and 'social origin' is considered obsolete, with alternatives like 'social status' or 'affiliation' recommended. The distinction between 'equality' and 'equity' is also often blurred.

The study found that many individuals confuse general unfairness or exclusion with legal discrimination, while vulnerable groups such as seniors, youth, and persons with cognitive or mental health issues often lack awareness of their rights and available remedies. Fear of litigation costs or retaliation discourages legal action. Media analysis further indicated that the term 'discrimination' is frequently used imprecisely in the media, often applied to unpleasant situations that do not meet the legal definition.

Between January 2021 and July 2024, the Ombudsman received 164 submissions regarding potential breaches of anti-discrimination provisions, averaging 30–40 per year. The most frequent complaints

[326] Latvia, Ombudsman's Office (2025), *A study of Discrimination in Latvia*. See also the Ombudsman's press release dated 27 June 2025, 'The study reveals the fragmentation of discrimination criteria and the lack of a unified approach in legislation'.

concerned health status and disability (42 submissions), language (40), and gender (31). Fewer complaints involved national/ethnic affiliation (10), age (9), religious affiliation (3), sexual orientation (3), social origin/property status (1) and none were submitted regarding gender identity. Some 23 submissions involved other grounds, while 3 concerned multiple/intersectional discrimination. By sector, most complaints related to public sector activities (59), employment (50), access to goods and services in the private sector (30) while 17 concerned education, 7 healthcare, and only 1 concerned housing. In the first seven months of 2024, there was a sharp increase in the number of submissions, reaching a total of 97. This surge was most pronounced in complaints concerning possible discrimination based on language.[327]

Experts interviewed in the study recommend harmonising definitions and criteria across legislation, revising outdated terminology, and improving clarity in translated EU legal texts. While opinions are split on the need for a unified anti-discrimination law, there is consensus on strengthening coherence across existing laws. The Ombudsman should be designated as the lead body for anti-discrimination monitoring and coordination, with visibility ensured in all relevant legislative texts. Public awareness campaigns should be launched for vulnerable populations, and access to complaint mechanisms and support services should be simplified. Experts also emphasise the need for inclusive, methodologically sound sociological studies, particularly in institutional settings, and for greater attention to underrepresented groups such as Roma, persons with severe impairments, and victims of trafficking or abuse.

Lithuania LT

LEGISLATIVE DEVELOPMENT

Disability

Extension to all areas of the duty to provide reasonable accommodation

On 26 June 2025, an amendment was adopted to the Law on Equal Opportunities, extending the duty to provide reasonable accommodation for persons with disabilities not only to employers but also to other public and private institutions covered by the Law.[328] The amended provisions will enter into force on 1 January 2026. Following this amendment, service providers, employers, as well as educational, healthcare, and other institutions and organisations will thus be required not only to comply with general accessibility standards but also to ensure specific accommodations that a person with a disability may need in order to visit a doctor, attend school, dine at a restaurant, shop at a store, access banking services, or participate in other activities.

The law was further supplemented with a new definition of reasonable accommodation: 'a modification of circumstances and/or removal of barriers that is necessary in a particular case to ensure that persons with disabilities can exercise their human rights and freedoms, and where such modification of circumstances and/or removal of barriers does not impose a disproportionate or undue burden on the subject concerned.' It is also clearly stated that failure to ensure reasonable accommodation constitutes discrimination on the grounds of disability (either direct or indirect discrimination).

[327] Mostly concerning ethnic Latvians when foreign language (predominantly Russian) proficiency is required for a job.
[328] Lithuania, Law amending Articles 2, 5, 6, 7, 8, 9, and 15-1 of the Law on Equal Opportunities of the Republic of Lithuania, No. XV-355, 26 June 2025.

CASE LAW

Sexual orientation

Constitutional Court declares that a provision restricting information on same-sex families to minors, is unconstitutional

In 2009, the Law on the protection of minors from the detrimental effects of public information was amended to provide that information that denigrates family values and promotes a concept of marriage and family formation different to that enshrined in the Constitution and the Civil Code, has a detrimental effect on minors. The preparatory documents show that the amendment aimed at strengthening the institution of the family based on marriage and forming certain value attitudes towards minors; protecting the concept of family and marriage as enshrined in the Constitution, according to which marriage is entered into by mutual consent between a man and a woman, and that information about any other family models should be considered to have a negative impact on minors.

Following the failure of the Parliament to repeal the law despite a European Court of Human Rights judgment from 2023 finding that censoring a children's book depicting same-sex relationships in a positive light amounted to a violation of the ECHR,[329] the Government appealed to the Constitutional Court.

On 18 December 2024, the Constitutional Court ruled that the law was unconstitutional, as restrictions on the dissemination of information to minors must not imply that other values enshrined in the Constitution should be denied or disregarded.[330] Therefore, no legal regulation may imply that information on any family patterns and relationships between individuals is in itself inappropriate for underage children. Such a legal framework, which imposes restrictions on the freedom to receive, and impose limitations on the dissemination of, information, including on a variety of family models and relationships, hinders the development of minor children as mature, well-rounded individuals. It is thus inconsistent with the state's constitutional duty to ensure the harmonious and full development of the child, based on respect for human rights and dignity, and on the values of equality, pluralism and tolerance that are inherent to democratic societies.

The Constitutional Court reiterated its previous case law, stressing that the constitutional concept of the family cannot be derived solely from the institution of marriage, as it is only one of the foundations for the establishment of family relations. The Constitution protects all families which are consistent with the constitutional concept of the family, based on the content of the relationship between family members, whether permanent or not, i.e., mutual responsibility, understanding, emotional attachment, assistance, and similar ties, as well as the voluntary decision to assume certain rights and obligations. Unlike the constitutional concept of marriage, the constitutional concept of family is, among other things, gender neutral.

The Court pointed out that the legislature did not clearly define what information must be categorised as having a negative impact on minors. It further clarified that restricting information on family models other than those based on marriage between a man and a woman to minor children was not necessary to protect the constitutional values protected by the Constitution.

[329] ECtHR, *Macatė v. Lithuania*, Application No. 61435/19, judgment of 23 January 2023.
[330] Lithuania, Constitutional Court, decision of 18 December 2024.

Thus, it was found that the legislature has, by imposing restrictions on the dissemination of information on family models, created the preconditions for narrowing the content of the constitutional institution of the family, unreasonably limiting the freedom of information for minors. In doing so, it has created the conditions for denying or disregarding the values enshrined in the Constitution, and has failed to ensure the obligation to disseminate to minors information which is objective and which reflects real social relations, and which contributes to the formation of a worldview based on constitutional values, including respect for the rights of other human beings and their dignity.

Therefore, the provision of the law violated the requirements of Article 25(1), (2) and (3) of the Constitution, and did not comply with the concept of the family as a constitutional value, which can be created not only on the basis of marriage.

Racial or ethnic origin

Court conviction for discrimination against Roma customers

In July 2022, a group of Roma women were refused service at a café and instead referred to the option of ordering takeaway food. The café staff claimed that 'gypsies litter' and, when the group expressed their dissatisfaction, an employee grabbed their clothes with his hands and forcefully pushed them outside. The victims claimed EUR 5 000 each in compensation for non-pecuniary damage.

On 5 July 2024, a district court ruled that the staff had discriminated against the claimants based on their ethnic origin (Roma) but only awarded them EUR 600 each in compensation.[331] In addition, the staff member who had forcibly removed the claimants from the café was convicted of a breach of public order. On 8 January 2025, the decision was upheld by the Kaunas Regional Court and the compensation amounts were increased.[332] The regional court stated that the amount of material compensation for non-pecuniary damage must be determined by examining and assessing the individual circumstances of the non-material damage, taking into account the individual characteristics of the victim. It further noted however that the principle of full compensation cannot be objectively applied in its entirety, since it is impossible to accurately assess non-pecuniary damage in pecuniary terms. It underlined that the function of non-pecuniary damage compensation is to compensate the victims by 'alleviating' the physical and mental damage suffered, to restore their mental and physical wellbeing, and to provide them with satisfaction. The court also found that the employee who forcibly removed the claimants should pay a higher proportion of the damages than those who refused to serve them. The court awarded damages ranging from EUR 1 800 to EUR 2 700 to the claimants.This is one of very few convictions (perhaps the first) for discrimination under the Criminal Code.

Malta MT

LEGISLATIVE DEVELOPMENT

Gender

Urgent family leave

Legal Notice 28/2025[333] has amended the provisions on urgent family leave by increasing the number of hours that can be availed of in such cases from 15 to 32 hours. The hours should be paid in full

331 Lithuania, Kaunas District Court, decision of 5 July 2024 in case No. 1-468-814/2024.
332 Lithuania, Kaunas Regional Court, decision of 8 January 2025 in case No. 1A-26-1049/2025.
333 Malta, L.N. 28 of 2025, Employment and Industrial Relations Act (Cap. 452) Urgent Family Leave (Amendment Regulations), 2025.

subject to such balance of leave and sick leave being available to the pertinent employee.

In the case of an event that requires the absence of an employee from the place of work for urgent family reasons, there is no obligation for advance warning, unless it is possible for the employee to give prior notification of at least 24 hours to the employer. Part-time employees are entitled to pro-rata leave. The employer has the right to establish the maximum number of hours that can be availed of at any time as urgent family leave. However, there needs to be a minimum of one hour per case, unless there is specific agreement from the employee. The leave applies to 'immediate family member', which includes spouse, child, siblings and parents of the employee, irrespective as to whether they reside with the employee. It also includes individuals with the legal custody of a child.

The law not only more than doubles the availability of urgent family leave but also introduces the concept of using sick leave to care for family members in case of sickness or an accident of a family member that requires the presence of the employee.

ME Montenegro

LEGISLATIVE DEVELOPMENT

Disability

Withdrawal of draft amendments to legislation on professional rehabilitation and employment of persons with disabilities

In February 2025, the Government proposed draft amendments to the Law on Professional Rehabilitation and Employment of Persons with Disabilities.[334] The amendments would, among other things, increase the threshold for 'severe disability' from 50 % to 80 % as well as abolish or reduce different forms of subsidies for employers who employ persons with disabilities. The main reasoning behind the amendments is to reduce misuse, as available data indicates an increase of almost 600 % in recent years in the number of both employed persons with disabilities and their employers. Consequently, the amounts paid by the state in subsidies to employers also increased dramatically. State authorities have repeatedly expressed suspicion that this data indicates misuse, with some employers also reporting unrealistically high wages for their employees with disabilities. The draft amendments faced strong criticism from representative organisations of persons with disabilities as well as the Independent mechanism for the promotion, protection and monitoring of implementation of the UN CRPD. Procedural aspects, such as the failure to involve representative organisations and the speedy process of adoption, as well as the contents of the amendments, were criticised. In addition to having a deterrent effect on employers from further employing persons with disabilities, the amendments would also lead to a reduction in wages, as well as the loss of jobs, of persons with disabilities who were previously employed. Such consequences would further deepen social deprivation and marginalisation of persons with disabilities, who according to indicators make up 30 % of the total number of unemployed persons. In March 2025, representative organisations held protests, demanding the withdrawal of the pending amendments and the formation of a new working group to draft an alternative proposal. They argued that a new proposal should be drafted with the participation

[334] Montenegro, Draft Law on amendments and supplements to the Law on professional rehabilitation and employment of persons with disabilities, 13 February 2025.

of persons with disabilities and that the proposed conditions, criteria and procedures for exercising the right to subsidies should be based on analysis and accurate data.[335]

On 19 March 2025, the Government finally withdrew the draft amendments for further consultation.[336]

Gender

Representation of women on electoral lists

The Parliament of Montenegro adopted amendments to the Law on the Election of Councillors and Members of Parliament on 25 June 2025.[337]

Montenegro has taken significant steps toward institutionalising gender equality on electoral lists, beginning as early as 2011. However, the actual impact of gender quotas has remained limited. In 2011, Montenegro introduced a legal requirement stipulating that at least 30 % of candidates on electoral lists must be women. This was followed in 2014 by a provision mandating that at least one woman be included in every group of four consecutive candidates on a list.

In the most recent parliamentary elections, held in 2023, women accounted for 36 % of all candidates, while men made up 64 %. All electoral lists complied with the national minimum quota of 30 %; however, only one list was headed by a woman and included as many as 58 female candidates – yet this list did not surpass the electoral threshold.

Recent amendments to the electoral law go a step further by introducing a new requirement: within every group of three consecutive candidates on an electoral list (i.e. the first three positions, the next three, and so on, at least one must belong to the less represented gender. An electoral list that does not meet these conditions will be considered to have deficiencies preventing its proclamation, and the list submitter will be called upon to correct the deficiencies. Non-correction of the stated deficiencies will lead to rejection of the proclamation of the electoral list.

What gives these legislative changes particular significance is the fact that all political parties agreed to amend the Law on the Election of Councillors and Members of Parliament – specifically, to increase the gender quota from 30 % to 40 %. This broad consensus demonstrates a shared commitment among political actors to promoting gender equality in political representation.

POLICY AND OTHER RELEVANT DEVELOPMENTS

Racial or ethnic origin

Strategy of Minority Policy in Montenegro 2024–2028

In July 2024, the Government presented a new Strategy for Minority Policy for 2024-2028.[338] It envisages a comprehensive plan of measures and activities for the next four years, which includes legal, political, economic, social, cultural-informative, educational and other environments with the aim

335 See *Radio Slobodna Evropa*, 'Authorities warn of abuse of wage subsidies for people with disabilities in Montenegro' news article, 23 June 2025.
336 See *aktuelno.me*, 'The Law on Professional Rehabilitation and Employment of Persons with Disabilities was withdrawn from the procedure for further consultations' news article, 19 March 2025.
337 Official Gazette of Montenegro, No. 81/25.
338 Government of Montenegro, Strategy of Minority Policy in Montenegro 2024-2028, July 2024.

of improving the position of minorities and their essential integration into the social, economic and political life of Montenegro.

In the area of employment, the strategic goal is the integration of members of minority national communities through the implementation of existing normative solutions and employment instruments. Activities are focused on educating employers and employees and increasing the employability of minority groups, notably through solutions related to the use of minority languages and scripts; organising training for other stakeholders such as employment agents and members of the judiciary; conducting research on the representation of minority nations in state bodies, etc. In the area of education, the goals are to increase the capacity of the education system and to ensure an inclusive educational environment.

MK North Macedonia

LEGISLATIVE DEVELOPMENT

All grounds

Adoption of a new rulebook for the Commission for Prevention and Protection against Discrimination

In December 2024, a new rulebook for the Commission for Prevention and Protection against Discrimination (CPPD) was adopted.[339] The rulebook of the CPPD, which is the national equality body in North Macedonia, specifies the internal procedures of the equality body, detailing how the Commission structures its work, handles complaints, and makes decisions. Its provisions are binding on all Commission members and staff for case processing, session organisation, documentation, and decision making.

The following are the main issues covered in the rulebook:

- organisational framework,
- complaint intake and registration,
- case processing and timeframes,
- decision making and voting,
- publication, transparency, and anonymity,
- internal bodies and administration,
- ethical standards and recusal, and
- entry into force and amendments.

[339] North Macedonia, Rulebook of the Commission for Prevention and Protection against Discrimination, 19 December 2024, Official Gazette No. 04/2025.

The rulebook is a comprehensive procedural roadmap that codifies how the CPPD operates, including measures for balancing transparency, accountability, legal rigor, and confidentiality. This rulebook replaces the previous one, adopted in 2021.

Gender

Gender identity

Revision of several education laws raises concern over regress on gender equality

In an expedited procedure, and only days apart, the Parliament adopted amendments to the following laws: Law on Primary Education,[340] Law on Secondary Education,[341] and Law on textbooks for primary and secondary education.[342] These amendments not only deleted references to gender, gender equality, and gender identity, as well as to sexual and reproductive health and sexual and reproductive education, but also to the Law on Prevention and Protection against Discrimination (ADL).[343] The amendments entered into force on 18 April 2025.

The Law on Primary Education was amended in several respects. Care for sexual and reproductive health was removed from Article 4 and Article 48, paragraph 1, as a principle on which the law is based. The references to the ADL in Article 5, paragraph 8, and Article 16, paragraph 8, were removed and replaced with the Constitution. The rationale behind this is likely to shorten and close the list of protected grounds. However, given that the Law on Education is a *lex generalis* on equality issues compared to the ADL, which would be *lex specialis*, this amendment does not produce a restricting legal effect.

The Law on textbooks for primary and secondary education was amended to remove the reference to the ADL in Article 23 and replace it with the Constitution. This article prescribes that the textbooks cannot contain discriminatory content, linking to the Constitution the grounds originally referring to the ADL. The Law on Secondary Education also was amended without recognising any form of violence other than physical violence, and without establishing an obligation for sexual and reproductive health education. The largest network of CSOs working on equality and non-discrimination – Network for Protection against Discrimination (MZD) reacted to the amendments asking the Parliament to explain the need for them, given that no relevant stakeholder has requested such changes. They suggest that the amendments come as a result of lobbying by anti-gender organisations.[344]

The change in the laws is not based on the findings of any of the reports and analysis in the field of education. This shows a move away from the country's official policy-making methodology, which should be one of adopting evidence-based policies.

Moreover, it shows that the Government did not set out to achieve a specific legal result, which suggests that the motive lies beyond the law. The most worrying aspect of it is that the amendments

340 North Macedonia, Law on Primary Education (*Закон за основно образование*).
341 North Macedonia, Law on Secondary Education (*Закон за средното образование).*
342 North Macedonia, Law on textbooks for primary and secondary education (*Закон за учебниците во основното и средното образование*).
343 North Macedonia, Law on the Prevention of and Protection against Discrimination (Official Gazette No. 258/2020).
344 Network for protection against discrimination (MZD), 'Violence, Discrimination, and Ignorance in Formal Education are the New 'Normal' Promoted by the Government, Parliament, and the President' (*Насилството, дискриминацијата и незнаењето во формалното образование се новото „нормално" што го промовираат Владата, Парламентот и Претседателката на државата*) (11 April 2025).

favour the anti-gender movement, and are a step towards dismantling the legal framework on gender equality, sexual orientation and gender identity.

CASE LAW

Racial or ethnic origin

Equality body finds segregation of Roma children in education

On 8 January 2025, the Commission for Prevention and Protection Against Discrimination (CPPD) issued an opinion in response to a complaint submitted in October 2024 concerning allegations of ethnic segregation of Roma pupils at a primary school in the municipality of Veles.[345] The complaint claimed that Roma students at the school were being assigned almost exclusively to certain classes, resulting in systemic separation from students of other ethnicities and thereby violating their right to equal education under the Law on Prevention and Protection Against Discrimination.

The CPPD initiated an investigative procedure and requested documentation and data from the school and relevant institutions. The equality body examined school enrolment and class distribution records for three academic years (2022 until 2025), focusing on the ethnic composition of all parallel classes from first to ninth grade.

The findings revealed a consistent pattern across all three years: out of 17 parallel classes, Roma students were the majority in 15 of them each year, while the remaining two classes consisted predominantly of Macedonian students. No class was found to have a representative ethnic mix that reflected the overall school population, and no Albanian-majority class existed despite the presence of Albanian students in the school. The Commission concluded that such disproportionate representation of Roma students in nearly all classes could not be explained by neutral administrative criteria or coincidence. Instead, the consistent segregation was indicative of indirect discrimination based on ethnicity. The CPPD emphasised that while there may not have been an explicit policy of ethnic separation, the effect of the school's class assignment practices was discriminatory in nature. By failing to ensure ethnically mixed learning environments, the school had contributed to the marginalisation of Roma children and limited their right to equal educational opportunities. The Commission thus found that the actions of the school and of the municipality constituted segregation, and it recommended corrective measures to ensure a more integrated and inclusive approach to class formation in the future.

Racial or ethnic origin

Equality body opinion on harassment in the form of ceremonial honouring of fascist forces

In an opinion issued on 13 January 2025, the Commission for Prevention and Protection against Discrimination (CPPD) found that the actions of a mayor, who had installed a controversial plaque on a school building, amounted to continued harassment against the residents.[346] The specific school building is officially protected as a site of exceptional cultural heritage and the plaque, written in Albanian, glorified the fascist occupation in 1941 by fascist Italy and the Kingdom of Albania. The plaque caused public outrage and emotional distress among many residents across various ethnic and

[345] North Macedonia, Commission for Prevention and Protection against Discrimination, Opinion No. 08-38/01 of 8 January 2025.

[346] North Macedonia, Commission for Prevention and Protection against Discrimination, Opinion No. 08-64/01 of 13 January 2025.

national communities, who perceived it as an insult to the memory of anti-fascist fighters.

The CPPD noted that the school building in question holds historic value, having educated many individuals who later joined the National Liberation War, and stated that installing a plaque that honours fascist forces constitutes a violation of shared historical memory and undermines the anti-fascist legacy, which is recognised as a universal value.

The CPPD concluded that the mayor's actions amounted to discriminatory harassment, given the emotional impact and symbolic harm caused. As a remedy, the Commission recommended the immediate removal of the plaque, a public apology from the mayor, and a commitment to avoid future discriminatory behaviour that could deepen societal divisions.

POLICY AND OTHER RELEVANT DEVELOPMENTS

All grounds

Establishment of a national coordination body to monitor non-discrimination

On 31 December 2024, the Government of North Macedonia established a new National Coordination Body for Monitoring the Situation with Non-Discrimination and Implementation of Laws and Strategic Documents,[347] replacing the previous coordination body which had existed since 2022.

The new body consists of 63 members, including representatives from state ministries; independent institutions such as the Commission for Prevention and Protection against Discrimination and the Ombudsperson; civil society organisations; trade unions and human rights bodies.

The body has the following tasks:

- promote equality and non-discrimination across all public institutions;
- propose annual measures to ensure integration of equality principles into sectoral policies;
- monitor harmonisation of national legislation with EU laws and standards on equality;
- participate in drafting and guiding the National Strategy for Equality and Non-Discrimination;
- oversee implementation of relevant laws, bylaws, and strategic documents; and
- follow international recommendations and set national priorities annually.

The body is coordinated by the Ministry of Social Policy, Demography, and Youth and may also include external experts and observers from international entities like the OSCE, UN Human Rights Office, and the EU Delegation in Skopje.

[347] North Macedonia, Decision to establish a National Coordinative Body for Monitoring the Situation with Non-Discrimination and Implementation of Laws and Strategic Documents, 31 December 2024, Official Gazette No. 04/2025.

All grounds

Problematic appointment of an equality body member

On 2 April 2025, a public hearing took place in Parliament with the aim of appointing a new member of the Commission for Prevention and Protection against Discrimination (the national equality body). Less than 24 hours after the hearing, a new member was proposed, without the minimal experience required under the law – five years of experience in equality and non-discrimination. The draft decision was opposed by civil society, including the largest network of CSOs working on discrimination.[348] They objected to the lack of experience of the candidate and to his performance during the interview, challenging his capability to deal with issues such as gender identity, which is one of the grounds for which the equality body holds competence. However, the Parliament proceeded with the appointment.[349]

This appointment is a continuation of the manner in which the members of this body are appointed, which is strongly based on political party preferences, coupled with a very loose reading of the criteria in the law.

NO Norway

LEGISLATIVE DEVELOPMENTS

Gender

Extension of legal limit for abortion from 12 to 18 weeks

A new Abortion Act entered into force on 1 June 2025.[350] Now, a pregnant person has the right to self-determined abortion up to the end of the 18th week of pregnancy. The pregnant person also gets a statutory right to information, guidance and follow-up from health personnel.

The right to abortion has existed in Norway since 1975.[351] In the old act it was stated that if a pregnancy went further than 12 weeks, permission for abortion from a medical board was required. Rejections in the boards have been very rare, but the restriction had been viewed as an impediment to self-determination. On 3 December 2024, Parliament negotiated a proposal from the Government for a new abortion act extending the legal limit from 12 to 18 weeks. Legislators voted by a broad majority in favour of a proposal by the Centre-Labour Party Government[352] that has been split on the issue.

Healthcare personnel's right of reservation against assisting in abortion for reasons of conscience is enshrined in law. Supporters of the new legislation have called the old system obsolete, conservative and paternalist, saying the new act allows individuals to have more control over their own bodies. Opponents, including the small Christian Democratic Party,[353] argued that late abortions are often

348 Network for protection against discrimination (MZD) (2025), 'The Assembly undermines the essence of the Commission for Protection Against Discrimination through partisan appointments', 2 April 2025.
349 Parliament of the Republic of North Macedonia, 24th session of the Commission on Elections and Appointments (*24та седница на Комисија за прашања на изборите и именувањата*).
350 Norway, Act on abortion of 20 December 2024 No. 96 (Norwegian).
351 The new act changes the Act on abortion of 13 June 1975 No. 50.
352 The Government is a coalition between the Labour Party and the Centre Party.
353 Kristelig folkeparti (Christian Democratic Party).

linked to foetus viability and abortion, therefore, amounted to 'eliminating the patient' rather than 'eliminating the illness'.

There are several important changes in the new Abortion Act compared to the act from 1975. It has gender-neutral language which may ensure that all pregnant people –regardless of gender – can access abortion care, recognising diverse identities and experiences.[354] The most important change is the right to self-determined abortion until the end of the 18th week of pregnancy. After the end of the 18th week, permission from an abortion board is still required to carry out an abortion that interrupts the pregnancy.

Also, Section 4 in the new Act states that a pregnant person will have until the end of 18th week of pregnancy to decide to reduce the number of fetuses in the event of twin or triplet pregnancies. Previously, someone who was pregnant needed permission from the abortion board for all applications for reductions in number of fetuses.[355]

The proposed appointment of new independent abortion boards to process claims for abortion between 18 and 22 weeks of pregnancy was also approved.[356] According to Section 11 of the Act, the boards must consist of a doctor as its head, a lawyer and a person with health or social work expertise. The doctor must have relevant specialist training. In cases of reduction in the number of fetuses, the doctor must have expertise in fetal medicine. The boards must consist of at least two women compared with the previous act which had no such criterion. Rejections may be brought before the abortion appeal board. Another significant change is that according to Section 22, the new Act will assess the accessibility of abortion care within the primary health care system. Until now abortions have only been accessible at regional hospitals.

Under Section 24, health personnel who, for reasons of conscience, wish to do so shall still be exempted from performing or assisting in abortions, including requisitioning and prescribing drugs for medical abortion. However, the right to exemption in the new act does not include care before, during and after the abortion. This is an important change from the old act.

Gender

Sex without explicit consent is now defined as rape

According to the previous Section 291 of the Norwegian Penal Code, rape was defined as violence, threats or taking advantage of a vulnerable person.[357] This means that prosecutors had to prove that an attacker used violence or threatening behaviour or had sexual intercourse with someone who was unable to resist, to secure a conviction for rape. Nonconsensual sex was not defined as rape in the previous act. On Friday 6 June 2025, the Norwegian Parliament adopted amendments to Chapter 26 of the Penal Code on sexual offences.[358] The amendment entered into force 1 July 2025 and now applies to the existing criminal statute.[359] The rape provision in Section 291 is expanded with a new

[354] The term pregnant in the act refers to all pregnant people, regardless of their legal sex. This applies even if the pronouns 'she', 'her' and 'hers' and the word 'woman' are used for the pregnant woman in the text in the proposition.
[355] Norway, Section 2a in the Act on abortion of 1975.
[356] See proposition from Norwegian Ministry of Health and Care Services to Parliament of 8 November 2024.
[357] The Norwegian Penal Code of 20 May 2005 No. 28.
[358] Norway, Prop 132 L (2024-2025) Innst 451 L (2024-2025) and legislative decision from the Parliament 112 (2024-2025).
[359] Press statement from the Government No. 76-2025.

provision on sexual intercourse without consent that is also defined as rape.

The provision is based on the 'only yes means yes' model inspired by the provision in Sweden and is aimed at anyone who has sexual intercourse with someone who has neither consented to it in word nor deed. The new provision affects anyone who has sexual intercourse with a person who is passive, unless there is concrete evidence that the passivity must be interpreted as a consent. The consent must be clearly expressed verbally or with a gesture. The penalty is imprisonment for up to six years.

There has been over time a broad consensus on the severity of rape as a crime, and the need to prevent and address it. However, there have been several debates on whether to change the act into a consent-based rape offence. At times the discussion has been a clash of views calling for nuanced approaches to move the debate forward.[360]

The arguments against the provision on consent have varied. One concern is that it could shift the focus of legal cases from what was done to what was said in the situation, making it more difficult to prove rape, which may lead to more acquittals. Other arguments include concerns that the law could destroy spontaneous and 'natural' sexuality, and that it could make the victim more vulnerable by requiring active consent.

However, under the current system with no provision on consent, too many rape cases have been closed.[361] Only a few rape cases go to the courts. In the experts' view, the new provision on consent will lead to more rape cases being investigated, and if the evidence holds up, fair treatment in the courts will be the result. An evaluation of the Swedish act shows that more offenders are accused of rape and that the act has led to more convictions. A consent-based definition of the crime of rape also aligns with the Istanbul Convention's standards and definition in Article 36 on rape. In its report to Norway, GREVIO has emphasised the importance of legislative reforms towards a consent-based definition of sexual violence.[362]

CASE LAW

Racial or ethnic origin

Equality and Anti-Discrimination Tribunal decision on alleged ethnic segregation in education

The case concerned a primary school where the pupils born in 2014 had first been divided into three classes, then two, then three again. In class C, there was a significantly higher number of pupils with darker skin colour than in the other two classes. The school argued that they had not taken skin colour into consideration when deciding on the distribution of the pupils into the classes, but had applied the following criteria:

- Each pupil shall have at least one person in the class that they feel secure with
- Even distribution of pupils with diagnoses/special needs, and/or learning or social difficulties

[360] Jacobsen, J. and Skilbrei, M. (2020) *Reforming the rape offence in Norwegian criminal law.*
[361] Article from the Norwegian newspaper Aftenposten updated 6 March 2025 which states that just 1 % of all rape cases end with a conviction. At the same time rape is a big problem.
[362] GREVIO (2022) *Baseline Evaluation Report Norway*.

- Even distribution of pupils with minority language background (parents and pupil)
- Even distribution of genders.

The complainant, the mother of one pupil, argued that this was not enough, and that the stigma of visible difference and racism made the distribution of pupils unreasonable.

The case was brought before the Equality and Anti-Discrimination Tribunal, which was divided as to their conclusions. The head of the tribunal concluded that since the school had not taken skin colour into consideration, and could not do so in order to avoid an uneven distribution of pupils with darker skin and hair colour, there was no discrimination. The two other members both found that there was no intention of segregation, and no direct discrimination, but the main question was if there was *de facto* segregation. If such was found to be the case, they both found that this would constitute indirect differential treatment, raising the question of whether it was justified.

One of the tribunal members found that there was an even distribution of language background both among pupils and parents, and that the term 'ethnic background' is vague and subjectively interpreted, and has no direct link to looks. They concluded that most likely there was not an uneven distribution of ethnic backgrounds.

The other member referred to the fact that self-definition is not a requirement for ethnic minority background, which may be ascribed or assumed by others. They concluded that there was an uneven distribution of racialised pupils, amounting to *de facto* segregation, which constituted a disadvantage in itself, and that while the aims were legitimate, the differential treatment was unnecessary and unreasonable.

The majority of the tribunal thus concluded that there was no discrimination in violation of the General Equality and Anti-Discrimination Act, albeit for different reasons.[363]

Equality and Anti-Discrimination Tribunal on ethnic discrimination in access to bank services

Racial or ethnic origin

The complainant is a Polish citizen working in Norway who made an application to open a Norwegian bank account in order to receive his wages. The bank demanded the following documents from citizens of non-Nordic countries applying to open such an account:

- Residence permit or proof of police registration of residence
- Work contract
- Recommendation letter from the applicant's current provider of banking services
- A fee of NOK 750, approximately EUR 63.

[363] Norway, Equality and Anti-Discrimination Tribunal, decision No. DIN-2023-795 of 10 January 2025.

The complainant considered that these requirements were unreasonable and brought the case before the Equality and Anti-Discrimination Tribunal. While the tribunal found that the requirements pursued the legitimate aim of preventing money laundering, it held that they were unnecessary, since the bank had not performed any individual assessment of the complainant that indicated that such documentation was required.

The tribunal concluded that the differential treatment was both unnecessary and unreasonable and therefore constituted discrimination on the ground of ethnicity.[364] There was no mention of any sanctions imposed.

Disability

Equality and Anti-Discrimination Tribunal decision on part-time work, seniority and indirect discrimination on the basis of disability

The bus sector general trade union agreement states that seniority for part-time workers is calculated on the basis of the actual time worked, while for full-time workers it is calculated based on the date of entering employment.

The complainant, who has only been able to work 50 % for several years due to a disability, claimed that the difference in treatment between part-time and full-time workers constituted indirect discrimination on the basis of disability, and that her employer had discriminated against her by applying it. Together with the Professional Drivers' Association, the complainant brought the case before the Equality and Anti-Discrimination Tribunal.

The tribunal referred to CJEU cases C-17/05 *Cadman* and C-109/88 *Danfoss*, as well as Section 69 of the EEA agreement, which corresponds to Article 157 of the Treaty on the Functioning of the European Union. It stated that the key question was whether the complainant had been put in an objectively worse position than other part-time workers, especially those who have other, non-voluntary reasons for working part time. The tribunal found, unanimously, that she was not put in a worse position, and concluded therefore that the bus sector agreement was not discriminatory and the employer was not liable for discrimination.[365]

Racial or ethnic origin

First compensation for non-pecuniary losses due to ethnic harassment in employment

The complainant works in a canteen managed by a company. The chef and head of the kitchen where she worked made numerous racist remarks to the complainant, during a significant period of time. She was assigned 100 % sick leave due to the remarks, as noted in the medical certificate. She notified the manager above the chef, but no measures were taken.

At the initiative of the human resources manager and of a trade union advisor, a meeting was held between the complainant, the manager and two trade union representatives. During the second part of the meeting, the chef also attended, stating that he found it strange that the complainant reacted the way she did to his comments, and implied that she was mentally ill. The trade union advisor demanded measures be taken, and it was agreed that regular follow-up meetings were to be held. Shortly afterwards, the complainant returned to sick leave and it was later discovered that the chef

364 Norway, Equality and Anti-discrimination Tribunal, decision No. DIN-2023-767 of 10 February 2025.
365 Norway, Equality and Anti-discrimination Tribunal, decision No. DIN-2023-384 of 29 April 2025.

had given her only the lowest level tasks and had yelled at her for being too slow. At her own request, she was transferred to other canteens.

The Equality and Anti-Discrimination Tribunal found that the chef's remarks constituted harassment on the basis of ethnicity, and that his identity was known to the employer, making the employer liable. While the company managing the canteen has employees with a large variety of ethnic backgrounds, and while policies for diversity and inclusion are in place, the chef had not complied with this policy. On this basis, the Tribunal concluded that the company had not fulfilled its duty to prevent harassment. It was also found that the company had not done enough to stop further harassment after being notified by the complainant, and that the chef had victimised her after she notified the management about his behaviour.

The complainant was not awarded damages for the EUR 4 230 (NOK 50 781) she had paid for legal aid, since it is not within the mandate of the tribunal to decide that the losing party pays for the costs of the other party. She was, however, awarded compensation for non-pecuniary losses, of EUR 4 166 (NOK 50 000).[366] This is the first time a claimant has been awarded such compensation for victimisation in relation to discrimination. It is also the first time that compensation has been awarded for non-pecuniary losses due to harassment on the basis of ethnicity.

Poland

PL

Gender

LEGISLATIVE DEVELOPMENTS

New definition of rape

On 28 July 2024, the Parliament passed an amendment to the Criminal Code providing for a new definition of rape.[367] It was signed by the President on 9 of August 2024[368] and entered into force on 13 February 2025.

Previously, the definition of rape, which had been in place since 1932, only covered situations where sexual intercourse was achieved through violence, unlawful threats, or deception. In this view, rape occurred when the victim actively objected and resisted; it did not apply where the victim did not consent. The amendment introduces the lack of consent as an additional ground for qualification as rape. According to the new wording, rape is leading another person to have sexual intercourse by force, unlawful threat, deception or in any other manner despite the lack of consent (Article 197, paragraph 1). Under the new amendments, rape by violence, threats, or deception will continue to be punishable. These prerequisites will be sufficient to attribute criminal responsibility to the perpetrator without the need for additional proof of 'lack of consent'. Additionally 'other conduct' involving procuring sex under conditions of non-consent will also be punishable.

The offence would carry a minimum sentence of three years' imprisonment. During parliamentary discussions, the draft was revised – both in legal criteria and severity of the punishment. However,

366 Norway, Equality and Anti-discrimination Tribunal, decision No. DIN-2023-536 of 5 May 2025.
367 Poland, Draft Law on Amendments to the Law - Penal Code and Certain Other Laws, Sejm Print No. 209.
368 Poland, Proceedings of the legislative process, Sejm Paper No. 209.

according to the amendment's authors, the final version of the law still achieves the goal of providing stronger protection for rape victims. During the Senate debate, the representative of the drafters emphasised that the amendment fulfils the obligations set by the Istanbul Convention on preventing and combating violence against women and domestic violence regarding the definition of rape. She clarified that in Polish law, 'consent' is inherently considered to be both informed and voluntary, which is why these specific terms were excluded from the amendment to the Criminal Code.[369]

The amendment also includes a provision imposing the same punishment as for rape on individuals who engage another person in sexual intercourse by exploiting the person's inability to understand the nature of the act or to control their behaviour.[370] This means that the punishment for rape is the same regardless of whether the victim is a person with intellectual disabilities or not, as this provision covers conditions such as intoxication, external influences, and intellectual disabilities.

Redefining the crime of rape based on the concept of consent is a step towards providing better protection for rape victims, which aligns with the Istanbul Convention's requirement to introduce criminal liability for sex without free consent. However, the abandonment of the emphasis on the informed and voluntary nature of consent, while retaining redundant prerequisites such as violence, unlawful threat, and deception raises concerns. Additionally, it remains uncertain how the changes will be reflected in case law.

The proposed changes were not introduced unanimously, and the newly enacted definition is controversial, as evidenced by the parliamentary debate and media discourse. Most policy makers and legal experts strongly support the change, arguing that the law will better protect victims who have no visible signs of violence. Critics, however, argue that the new laws shift the burden of proof to the accused, threaten the presumption of innocence and the right to defence, and could be misused in disputes between partners.[371]

Gender

Racial or ethnic origin

Age

Regulation extending protection against hate speech put in limbo by the President

On 6 March 2025, the Sejm (lower house of the Parliament) passed an amendment to the Act of 6 June 1997 Criminal Code extending the protection against hate speech, by increasing the catalogue of protected characteristics to include sex, age and sexual orientation.[372] At the draft stage, the addition of gender identity as a ground was also discussed, but was eliminated during parliamentary proceedings. By virtue of the amendment, the provisions defining the directives for the assessment of punishment and some provisions of the specific part of the Criminal Code were amended: Article 119 prohibiting discrimination, Article 256 prohibiting the propagation of totalitarianisms and incitement to hatred, and Article 257 prohibiting public insult based on prejudice and hate. The changes mean that hate crimes against these characteristics would be prosecuted *ex officio* without the need for a private indictment. Also, crimes committed in the mistaken belief of the victim's characteristics would be criminalised.

369 Poland, Legal information portal infor.pl.
370 Poland, Article 197(1a) of the Criminal Code.
371 Mikowski, M. (2024) New definition of rape without amendment. What will Andrzej Duda do?, 26 July 2024, news article, Rzeczpospolita rp.pl.
372 Poland, proceedings of the Sejm.

Article 53(2a)(6) of the Criminal Code, according to which committing a crime motivated by hatred on grounds of national, ethnic, racial, political or religious affiliation or on grounds of lack of religious affiliation constitutes a particularly aggravating circumstance, had been supplemented with grounds of gender, age and sexual orientation.[373]

The Senate did not make any amendments to the law. On 28 March 2025, the law was forwarded to the President for signature, who referred it to the so-called Constitutional Tribunal, under preventive control.[374] In the application, the President indicated that, in his assessment, 'there are justified doubts as to whether the Act (...) complies with the constitutional principle of legal determinacy, and in particular with its qualified case, which is the principle of sufficient determinacy of criminal law provisions, in the context of an unauthorised violation of the limits of the freedom of expression guaranteed to the individual.'[375]

The enacted amendment was supposed to be a step towards strengthening protection against criminal behaviour motivated by premises of sex/gender, age and sexual orientation. The changes aimed to ensure a more complete implementation of the constitutional prohibition of discrimination on any ground, as well as the implementation of international recommendations on the standard of protection against hate speech and hate crimes. It would have been an important element in building a system of protection against gender-based violence, including digital violence. Appealing the law to the so-called Constitutional Tribunal, whose legality of adjudication is rightly questioned, in practice, completely removes the possibility of its entry into force.

Hate crimes in which the premise of violence is sex/gender or sexual orientation are one of the fronts of the ideological war waged by Polish politicians. These topics are used as election fuel. The law was passed in the course of the election campaign before the presidential elections which took place on 18 May (first round) and 1 June (second round) 2025. In parliamentary discussions, the opposition argued that the legislation would restrict freedom of expression, that it was directed against those holding traditional views and would introduce censorship. Such views were also propagated in the media supporting the opposition parties.[376]

Money for Granny

Age

Gender

The Parliament passed the Act on Supporting Parents in Professional Activity and Childrearing ('Active Parent') providing benefits to facilitate work-life balance to the parents of children from 12 to 35 months of age. It entered into force on 1 October 2024.[377]

The 'Active Parent' act establishes the following three support options:

- Option 1 - 'active parents at work' (colloquially known as: nanny benefit): the benefit of EUR 347 (PLN 1 500), or EUR 440 (PLN 1 900) in the case of a child with a disability, for

[373] The provisions defining offences under Articles 119, 256 and 257 of the Criminal Code have also been supplemented with gender, age and sexual orientation grounds.
[374] Official website of the President of the Republic of Poland, Motion to the Constitutional Tribunal on the amendment of the Criminal Code.
[375] Poland, Application to the Constitutional Tribunal on the amendment of the Code, p. 3.
[376] Portal e-prawnik.pl, The law on hate speech went to the Tribunal, 24 April 2025.
[377] Poland, Proceedings of the legislative process, Sejm Paper No. 319.

working parents who entrust a child to the care of a babysitter or family member. If the parents choose to arrange an activation contract with that person, the state will also cover the premiums on this contract.

- Option 2 - 'actively in day care': the benefit of EUR 347 (PLN 1 500), or EUR 440 (PLN 1 900) in the case of a child with disabilities, for working parents whose children use a children's club or a day-care provider. The benefit may not be higher than the amount of the fee for the child's stay in the institution. This benefit replaces the subsidy of up to EUR 93 (PLN 400) for childcare institutions for children up to the age of three available under the Maluch + programme.[378]

- Option 3 - 'active at home': this EUR 115 (PLN 500) benefit is for parents who are not eligible or who, of their own free will, decide not to take advantage of the 'active parents at work' or 'active at day care' benefit. Entitlement is on the same basis as the current family care capital,[379] with the difference that parents are also able to claim it for their first and only child.

Only one of the benefits can be paid for a child for a given month. Parents can, however, switch the type of benefit multiple times.

The Act stipulates that the condition of being active at work applies in principle to both persons jointly caring for a child. Pursuant to Article 10(1) of the Act, the condition for receiving the 'active parents at work' benefit is that the carers are subject to pension and disability insurance from a base which totals not less than 100 % of the minimum wage. At the same time, the basis on which the pension and disability insurance contributions of each parent are paid may not be less than: 50 % of the minimum wage, or 30 % of the minimum wage in the case of persons conducting non-agricultural economic activity. In the case of single parents, the benefit is due if the parent is subject to pension and disability insurance from a basis that is not less than 100 % of the minimum remuneration for work (Article 10(2) of the Act).

It is positive that the Government is tidying up the system of benefits aimed at parents of young children, actively supports and values parents' professional involvement and understands the limitations in returning to professional activity. However, the solutions introduced raise doubts both at the axiological level and as to the eligibility for benefits. The main objective of the new regulations is the professional activation of mothers. The new benefits are intended as a response to the poor statistics on women's return to work from maternity leave. Thus, the 'active parents at work' benefit merits particular attention as the other two options were available in some form before. Given that it is common practice in Poland to use grandmother support for childcare - more than 70 % of mothers who return to work after maternity leave would prefer to entrust their children to their grandmothers - the new benefit has been christened 'the grandmother benefit'. The name adopted fully reveals the

[378] Polish Ministry of Family, Labour and Social Care, Programme "Aktywny Maluch" (Active Toddler) (formerly: the Maluch + (the Toddler +) programme).

[379] Under the Family Care Capital Act of 17 November 2021, the RKO benefit is granted for each second and subsequent child in a family aged between 12 and 35 months, in a maximum amount of PLN 12 thousand per child. Parents decide how its payment is spread out: for one year at PLN 1 000 per month or for two years at PLN 500. The Family Care Capital Act ceased to be in force on the date of entry into force of the Act of 15 May 2024 on supporting parents in their professional activity and in the upbringing of their child - 'Active Parent'.

paradox underlying the new regulation: the introduction of such a benefit reinforces the patriarchal system in which women are entirely responsible for performing care functions. Indeed, there is a significant risk that the solution, which aims to encourage young women to return to the labour market, will at the same time stimulate the outflow from the labour market of older women of working age, i.e. the grandmothers. Indeed, the benefit may be an incentive to retire early, which in turn may generate further problems for women's social security.

On the plus side, the solution whereby if the parents decide to finance the childcare provided by the pensioner's grandmother on the basis of an activation contract (which is the same type of contract as that of a nanny), the contributions on the contract will be paid from the state budget. This will enable the pension to be valorised annually.

At the level of specific solutions, the fact that all economically active parents are able to count on the benefit, irrespective of the form of employment (employed, self-employed or contracted) is positive. However, the earnings threshold for receiving the benefit, set by the legislature at the level of the minimum wage, raises doubts. This requirement means that persons who do not reach the minimum monthly wage, e.g. those returning to work part time, will not be entitled to receive the benefit - even though they are relatively those who need it most. Thus, the adopted solution does not seem to support in practice the use of flexible forms of work.

There is also some concern about the impact of the 'actively in day care' benefit on local government decisions. In the explanatory notes to the draft, the Government indicated that, due to the new regulations, the number of municipalities without childcare facilities for children up to 3 years of age will decrease (currently 1 056 municipalities). Additionally, the availability of day care is expected to increase by approximately 10 %.[380] Meanwhile, a side effect of the introduction of the new regulations is the increase of day-care fees introduced by many local governments. For example, in Koszalin, the fee for a child's stay in a municipal institution jumped from EUR 134 (PLN 580) to EUR 405 (PLN 1 750). In Częstochowa, the nursery school fees are, as from 1 October 2024, EUR 347 (PLN 1 500), instead of the previous EUR 167 (PLN 721.40).[381] The increases are motivated by the entry into force of the Active Parent programme. The benefit for placing a child in daycare is credited directly to the daycare account of the municipality or private provider, thereby covering the parents fees. The increase in prices is thus a path to obtain greater state support and reduce the burden on municipalities subsidising day care.[382]

All grounds

Introduction of the principle of pay transparency at the recruitment stage

On 6 June 2025, the Parliament passed an amendment to the Act of 26 June 1974 Labour Code (hereinafter: LC)[383] making it mandatory for employers to inform candidates at the recruitment stage

380 Poland, Draft Law on supporting parents in active professional activity and child rearing – 'Active Parent', Sejm Print No. 319.

381 Hyra, M. (2024) *Gazeta Wyborcza*, 'Higher fees for the nursery in Częstochowa voted through. "We are not increasing the burden on parents in any way"', 22 August 2024.

382 Hyra, H. (2024) 'The 'money-for-granny' is coming. Częstochowa, like Koszalin, will sharply increase fees for municipal nurseries', 21 August 2024, portal: Wyborcza.pl Częstochowa.

383 Poland, Law of 4 June 2025 on amendments to the Labour Code (Journal of Laws 2025, item 807).

of the offered salary. The President signed the Law on 18 June 2025.[384]

According to a newly enacted Article 18^{3ca} of the LC, a job applicant shall receive information on: the salary, its initial amount or a range thereof - based on objective, gender-neutral criteria, in particular in terms of gender, and the relevant provisions of the collective agreement or the remuneration regulations - where the employer is covered by a collective agreement or has remuneration regulations in force. The employer shall provide this information to the applicant well in advance: i.e. in the vacancy announcement; or before the interview. The employer shall ensure that job advertisements and job titles are gender-neutral and that the recruitment process is carried out in a non-discriminatory manner. The legislation passed is a piecemeal implementation of the Directive (EU) 2023/970 to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms.

The law enters into force on 24 December 2025. The initial draft of the amendment was much broader, but in the end only a rudimentary regulation was passed. An initial draft amendment provided not only for the principle of openness of salaries before the employment relationship but also during the employment relationship, and also for the entitlement of employees to request 'information regarding their individual level of remuneration and average levels of remuneration, broken down by gender, in relation to categories of employees performing the same work as them or work of equal value'.[385]

The draft received a negative opinion from, among others, the Solidarity Trade Union,[386] which pointed out that the regulation does not exhaust the issues contained in the Directive, is insufficiently precise, and the selective implementation of only some of the provisions of the EU Directive may hinder the adoption of its entirety in the future. It was also pointed out that projects of this type of regulation should be subjected to broader social consultation, including within the Social Dialogue Council, which was not the case. Recommendations to undertake work on the comprehensive implementation of the Directive and to include broader social consultation in the legislative process were also made by other organisations.[387]

Representatives of employers, coming from the exact opposite position to that of employee representatives, questioned the risks of disclosure by the employer of the remuneration of individual employees and the breach of data protection legislation. They also pointed out that the obligation to specify remuneration in recruitment advertisements may be difficult to implement in practice, especially when remuneration is made up of many different flexible elements. One has to agree that the provisions only implement the EU Directive to a small extent. The adopted amendment, although formally referring to the provisions of the Directive, is far from being sufficient, as it does not take into account the key elements of the Directive, such as: reporting obligations, mechanisms for monitoring and reporting on the wage gap and sanctions for employers. Clearly, further legislative action is needed.

384 Poland, Course of the legislative process on the Sejm website.
385 Poland, Parliamentary bill - print no. 934.
386 Position of the Solidarity Trade Union.
387 Including: Employers' Conference Lewiatan (Konfederacja Pracodawców Lewiatan), All-Poland Alliance of Trade Unions OPZZ (Ogólnopolskie Porozumienie Związków Zawodowych) and Federation of Polish Entrepreneurs (Federacja Polskich Przedsiębiorców).

CASE LAW

Introduction of a widow's pension

On 26 July 2024, the Sejm (lower house of the Parliament) passed a law amending the Act on Pensions from the Social Insurance Fund and certain other acts. It establishes a new rule regarding the overlap of rights to various survivor pensions, including those for military, police, and agricultural insurance, with other pension benefits available to widowers and widows. A civic bill to introduce the widow's pension was first submitted to the Sejm on 21 April 2023.[388] The draft, inspired by a left-wing parliamentary group, faced obstruction from the then ruling Law and Justice party, which directed it into the so-called 'parliamentary freezer', suspending further legislative proceedings on the matter. The amendment was eventually passed by the Sejm in its current Xth term on 26 July 2024.[389] The Senate passed the bill without amendments. It was signed by the President on 9 of August 2024[390] and entered into effect on 1 January 2025.

Previously, when a spouse passed away, one could either keep their own pension or choose to receive 85 % of the deceased spouse's pension, known as the survivor's pension. Now, the widow's pension introduces the option to combine part of one's own pension with the deceased spouse's one. The law introduced Article 95a, section 1, points 1 and 2 of the Act on Old Age Pensions and Social Insurance Pensions, according to which the widow's pension – based on the eligible person's choice – will either be paid as a survivor's pension plus 25 % of their own pension or as their own pension plus 25 % of the survivor's pension.

A widower or widow is entitled to receive the pension if three conditions are met: (i) they have reached the retirement age as specified in Article 24(1) (60 years for women and 65 years for men); (ii) they have been in a marital relationship with the deceased until the spouse's death; and (iii) they have acquired the right to the survivor's pension from the deceased spouse no earlier than five years before reaching retirement age. The widow's pension will only be granted if the combined amount of the person's own pension and the widow's pension does not exceed three times the minimum pension (3 x PLN 1 780 = PLN 5 342, or approximately EUR 1 240).

According to the law, the second benefit will be paid at a rate of 15 % from 1 July 2025 until 31 December 2026, increasing to 25 % from 1 January 2027. A person entitled to a widow's pension will need to choose which benefit they wish to receive. If they do not make a choice, the higher benefit will automatically be paid.

The design of the new widow's pension is highly controversial. Key points of contention include the amount of the widow's pension and the income criteria applied. Initially, the authors of the amendment proposed allowing eligible persons to receive their own pension plus half of the deceased spouse's benefit, or vice versa. However, the Sejm ultimately decided on a lower rate. Additionally, the total combined benefits have been capped at three times the minimum pension. The original draft proposed

388 Poland, Citizen's bill on amending the act on pensions from the Social Insurance Fund and some other acts in order to introduce a widow's pension, print no. 32.
389 In accordance with the principle of Article 4, paragraph 3 of the Law on the Exercise of Legislative Initiative by Citizens that citizens' projects do not become discontinuous with the end of the term of the Sejm.
390 Poland, Proceedings of the legislative process, Sejm print No. 32.

a higher cap of three times the average pension paid by ZUS, the Polish Social Insurance Institution, amounting to over PLN 7 000 or approximately EUR 1 625.

Critics argue that the new benefit will only be accessible to a limited number of pensioners. The law introduces stricter eligibility criteria compared to those for receiving a survivor's pension after the death of a spouse, as outlined in Article 70 of the Pension Act. As a result, not everyone eligible for a survivor's pension (even if they meet the income criteria) will qualify for the new widow's pension. Those excluded include individuals who did not share marital property with their spouse but were receiving alimony from them (Article 70, Section 3 of the Pension Act) and those who were widowed more than five years before reaching retirement age.

Women who are widowed before the age of 55 and men who are widowed before the age of 60 will still qualify for a survivor's pension but will not be eligible for the new widow's pension. Given the difference in retirement ages between men and women – where women can retire at 60 and men at 65 – there are concerns that the new law may unfairly discriminate against men, as they qualify for the widow's pension five years later.

In the media, concerns have been raised about the preferential treatment of married individuals, arguing that the widow's pension favours married people and unfairly disadvantages those in informal unions or single individuals, who do not receive any additional benefits from the state.[391] Experts point out that the legislation in this area is inconsistent. On one hand, the law encourages marriage by requiring a person to remain married until their partner's death to qualify for the widow's pension. On the other hand, the law discourages remarriage, as the right to the pension is lost if the widow or widower remarries. Widow's pension payments stop on the day before the person remarries.[392] This creates a situation where one must decide what is financially more advantageous: to keep the widow's pension and remain in a cohabiting relationship, or to remarry, risking the loss of the widow's pension but potentially gaining new pension benefits in the future.[393]

PT Portugal

LEGISLATIVE DEVELOPMENTS

Gender

Work-life balance: Transposition of Directive 2019/1158 – new developments on the definition of carer

The Parental Leave Directive[394] was transposed into national legislation.[395] However, the definition of 'carer' in the Portuguese Informal Caregiver Statute[396] was only adjusted to agree with the content of Article 3(1)(d)(e) of the Directive.[397] A recent Decree-Law further expands this definition beyond the

391 Szumlewicz, P. (2024) Seniors of a better sort. A vote against widow's pension, portal: Wyborcza.pl, added: 1 August 2024.
392 According to the new Article 95a, Section 3 of the Pension Act.
393 Leśniak, G.J. (2024) Widow's pension without amendments adopted by the Senate, Portal prawo.pl, added: 31 July 2024.
394 EU Directive 2019/1158 of 20 Jun 2019.
395 Portugal, Law No. 13/2023, of 3 April 2023.
396 Portugal, approved by Law No. 100/2019 of 6 September 2019.
397 Portugal, approved by Law No. 20/2024 of 8 February 2024.

Directive's requirements.[398]

The Parental Leave Directive defines 'carer' as 'a worker providing personal care or support to a relative, or to a person who lives in the same household as the worker, and who is in need of significant care or support for a serious medical reason, as defined by each Member State'.[399] To this end, 'relative' means 'a worker's son, daughter, mother, father, spouse or, where such partnerships are recognised by national law, partner in civil partnership'.[400]

In its original wording, the Portuguese Informal Caregiver Statute included two types of carers:

1. The 'primary informal caregiver': 'the spouse or partner, relative or similar up to the 4th degree of the straight line or collateral line of the person being cared for, who accompanies and cares for them on a permanent basis, who lives in the same household and who does not receive any remuneration from professional activity or the care provided to the person being cared for';

2. The 'non-primary informal caregiver': 'the spouse or partner, relative or similar up to the 4th degree of the straight line or collateral line of the person cared for, who accompanies and cares for this person on a regular, but not permanent, basis, and may or may not receive remuneration for professional activity or for care provided to the person being cared for.'

For the purposes of the Parental Leave Directive, the 'non-primary informal caregiver' is of relevance, as the primary informal caregiver does not work.

In the beginning of 2024, the notion of 'non-primary informal caregiver' was expanded to include those who do not have a family relationship with the person cared for but live in the same household.[401] In the recent Decree-Law,[402] this notion expanded further, considering as 'carers' not only those who do not have any family relationship with the person cared, but also those who do not live in the same household.[403]

Gender

Promoting the rights of people with endometriosis or adenomyosis

Law No. 32/2025 of 27 March 2025[404] promotes the rights of people with endometriosis, by strengthening their access to healthcare and creating a regime of justified absences from work and classes. This regime came into force on 26 April 2025.

Access to healthcare is reinforced to ensure a fast diagnosis, as well as access to all complementary means of diagnosis and therapy and necessary consultations. The law determines that the Directorate-General for Health must create standards and technical guidelines to be implemented in all health units. Moreover, a reimbursement scheme is created for medicines intended for the treatment and relief of symptoms of endometriosis and adenomyosis, progestogens or others, prescribed in the

398 Portugal, Decree-Law No. 86/2024 of 6 November 2024.
399 Article 3(1)(d) of the Directive.
400 Article 3(1)(e) of the Directive.
401 Portugal, Law No. 20/2024 of 8 February 2024.
402 Portugal, Decree-Law No. 86/2024 of 6 November 2024.
403 Portugal, Article 2(3) of the reformed Law No. 100/2019.
404 Portugal, Law No. 32/2025 of 27 March 2025.

National Health System (NHS) by a specialist doctor. Furthermore, people with endometriosis or adenomyosis can preserve their fertility, namely through the cryopreservation of their oocytes, and the NHS is responsible for providing a response for collection and storage. However, these provisions only come into force with the next state budget.

This piece of legislation adds Article 252-B to the Portuguese Labour Code,[405] under which a worker who suffers from severe and disabling pain caused by endometriosis or adenomyosis during the menstrual period is entitled to be justifiably absent from work, without loss of any right, including remuneration, for up to three consecutive days for each month of work. To prove the reason for the absence, it is enough for the worker to deliver to the employer the medical prescription attesting to endometriosis or adenomyosis with disabling pain, without need of a monthly renewal.

Similarly, this law provides the right to be justifiably absent from classes, without loss of any right, up to three consecutive days per month, with the medical prescription attesting to endometriosis or adenomyosis with disabling pain as proof, without the need of a monthly renewal.

Gender

Law prohibiting the marriage of minors

Law No. 39/2025 of 1 April 2025[406] (and Rectifying amendment No. 21/2025/1 of 22 April 2025)[407] prohibits the marriage of minors and includes child, early or forced marriage in the set of dangerous situations that legitimise intervention to promote the rights and protection of children and young people at risk. Previously, those under the age of 16 could not get married, but between the ages of 16 and 18, authorisation for marriage could be given by parents or legal guardians. Now, all those under the age of 18 are prevented from getting married. Article 1877 of the Civil Code[408] was also changed, now stating that children are subject to parental responsibilities until they reach the age of majority, and there is no longer mention of the possibility of emancipation by marriage. Emancipation was provided for in Articles 132 and 133 of the same law, which have been revoked.

From now on, the possibility of fully governing oneself and disposing of one's assets occurs only after reaching the age of majority (Article 130 of the Civil Code).[409]

This new law includes child, early and forced marriage among the set of dangerous situations that legitimise intervention to promote the rights and protection of children and young people at risk, modifying the Law on the Protection of Children and Young People at Risk, approved by the Annex to Law No. 147/99, of 1 September 1999.[410]

According to this amendment a child or young person is considered to be in danger when, in particular, they have been subjected to child, early or forced marriage, or similar union, as well as to the practice of acts that aim at such union, even if not carried out. Child, early or forced marriage, or similar union, shall be understood as any situation in which someone under the age of 18 lives with another person

405 Portugal, Labour Code, Law No. 7/2009 of 12 February 2009.
406 Portugal, Law No. 39/2025 of 1 April 2025.
407 Portugal, Rectifying amendment No. 21/2025/1 of 22 April 2025.
408 Portugal, Civil Code, Law-Decree No. 47344.
409 Portugal, Civil Code, Law-Decree No. 47344.
410 Portugal, Law No. 147/1999 of 1 September 1999.

in conditions similar to those of spouses, whether or not they have been forced into such union, regardless of their cultural, ethnic or national origin.

CASE LAW

Disability

Court decision ordering the state to eliminate physical barriers to access court buildings

In November 2024, the Administrative and Fiscal Court of Leiria convicted the Portuguese state for failure to comply with the technical rules of accessibility for persons with disabilities, according to the requirements set by Decree-Law 163/2006, 8 August. The court ordered the state to comply with the applicable rules and specified which adjustments should be introduced (for instance, ramps and elevators and dimensions of hallways, desks and benches) to several court buildings in the Leiria district.[411]

The fact that a court has ordered the state to specifically comply with accessibility regulations is a novelty in Portugal, as is the fact that the action was brought as an *actio popularis* claim by an association against the state. This clarifies that even though national law explicitly only refers to some grounds that allow for *actio popularis* (public health, environment, quality of life, consumer rights, cultural heritage and public domain) this is a non-exhaustive list, and non-discrimination should be considered to be included.

POLICY AND OTHER RELEVANT DEVELOPMENTS

Racial or ethnic origin

2024 report on the Plan for the Prevention of Manifestations of Discrimination in the Security Forces

The 'Plan for the Prevention of Manifestations of Discrimination in the Security Forces' has been in force since 2021 and was prepared by the General Inspectorate of Internal Affairs, together with the National Republican Guard, the Public Security Police and the Foreigners and Borders Office.[412] The plan defines five strategic intervention areas: the recruitment process; training; social networks; image of security forces; prevention and monitoring. Since its inception, annual reports have been produced to monitor and evaluate advances in the field.

According to the latest annual report, issued in March 2025,[413] four disciplinary proceedings were brought against police officers in 2024 for discriminatory manifestations (racial and other discrimination, including publications on social networks, crimes against cultural identity and personal integrity). The report also contains data on discrimination complaints brought to the attention of the Public Security Police. In 2024, they recorded 287 such complaints concerning racial and ethnic origin, colour, nationality, ancestry or territory of origin. The highest number of complainants were of Brazilian nationality (108), followed by Portuguese (87). While the Plan itself is to be considered a 'promising

411 Portugal, Administrative and Fiscal Court of Leiria, decision of 7 November 2024 in case No. 190/19.9BELRA.
412 Portugal, General Inspection of Internal Affairs, Plan for the Prevention of Manifestations of Discrimination in the Security Forces, March 2021.
413 Portugal, General Inspection of Internal Administration, Annual report 2024 on the Plan for the Prevention of Manifestations of Discrimination in the Security Forces, March 2025.

practice',[414] the report has raised some discussions in the media, particularly concerning the lack of information about the follow-up given to these complaints.[415]

RO Romania

CASE LAW

Disability

Constitutional Court discusses the prohibition on terminating an employment contract when the employee is declared fit for work under specific conditions

In the context of a labour dispute, an employer challenged the constitutionality of the provisions of the Labour Code that prohibit employers from terminating an employment contract when the employee is assessed by the occupational medicine doctor as 'able to work under certain conditions' if special 'workplace adjustments' are put in place.[416]

Under Article 61 of the Labour Code, whenever an occupational medicine doctor finds that an employee is unfit to complete the tasks for which they are employed because of their 'health',[417] the employer can terminate the contract only after observing a statutory duty to propose alternative positions based on the employee's professional background and work capacity as assessed by the occupational medicine doctor. However, when the doctor issues a conditional medical approval for work, which specifies that the employee can work only under certain requirements, the employer cannot terminate the contract. The employer in the current dispute argued before the Constitutional Court that the two scenarios are in principle the same and should be treated the same. In this regard, the employer claimed that, in practice, in some circumstances, employers cannot make necessary adjustments at work and terminating the employment relation is the only option to avoid harming the health of the employee and to guarantee the rights prescribed by Article 31(1) of the EU Charter, which provides

that every worker has the right to working conditions which respect his or her health, safety and dignity.

In March 2024, the Constitutional Court found the argumentation to be unfounded and ruled that the challenged legal provisions are constitutional, the two scenarios presented being significantly different.[418] It found that existing legislation is meant to protect the employee and their right to work, including when there are limitations to their ability to work, limitations which cannot be considered to be the fault of the employee. The Court underlined that it is the employer's obligation to make the necessary adjustments to ensure that the working conditions do not negatively affect the employees' health. In this regard, the Court stated that 'the opinion of the occupational health doctor of being "able to work under certain conditions" places an obligation on the employer to take measures to ensure social protection at the workplace, to ensure safety and health at work: some of these measures may include adapting the workplace by technical means, where possible.' The Court further concluded that 'the intention of the legislature, in full accordance with the constitutional provisions, is precisely to maintain those obligations (to ensure the security and health of the employees), so that

414 See EU Fundamental Rights Agency (2024), *Report on Addressing Racism in Policing*.
415 See, for instance, Politico.pt (2025), 'Discrimination: Four disciplinary proceedings against PCP officers this past year', 8 April 2025.
416 It is to be noted that no reference was made by the Constitutional Court to 'reasonable accommodation'.
417 It is assumed, albeit not legally established, that 'health' includes disability.
418 Romania, Constitutional Court, Case No. 91 of 5 March 2024.

the reduction in the employee's physical and/or mental fitness to carry out his work does not lead to the dramatic consequence for him of losing his job and the salary by which he secures the income necessary for his subsistence.'

Sexual orientation

Gender

National equality body fails to sanction refusal of printing leaflets due to lesbophobia

The complainant wanted to print a leaflet for the March for the Safety of Women in October 2023, including educational information regarding violence against lesbians. She agreed with the respondent printing company on the number of copies and on the price for the printing service. However, one day later, she was informed by the respondent that they were not willing to provide the service when they saw the content of the leaflets. The complainant recorded the telephone conversation where the respondent justified their refusal due to their opinion about lesbians and the LGBT community in general.

The complainant brought the case before the quasi-judicial National Council for Combating Discrimination (NCCD), invoking multiple discrimination on grounds of gender and sexual orientation in access to services, and the infringement of the right to personal dignity. Due to reporting in the media, a member of the NCCD also initiated an *ex officio* procedure which was halted on procedural grounds.

On 17 January 2025, the majority of the members of the NCCD (8 out of 11) found that there was no discrimination.[419] The respondent successfully invoked the right to contractual freedom as well as 'the religious option of the defendant' and jurisprudence from the United States. The NCCD decision presented the printing service of the leaflet as a 'message' to be protected under the freedom of expression. It also noted that the respondent 'thinks that his right to religious belief would be infringed' if he were to perform the required service. The decision also assessed the content of the leaflet, finding that 'the claimant did not have as an exclusive goal the promotion of combating violence against lesbian women, but also the promotion of the rights and of the identity of lesbian women, as well as of sexual minorities defined by the group named LGBT.' It was this 'promotion of rights of lesbian women and of sexual minorities' which was deemed objectionable by the respondent. Based on this assessment, the NCCD presented the refusal of the printing shop as a conscientious objection 'against the message and not against a particular person or group of persons.'

Two of the members of the NCCD signed a lengthy dissenting opinion, and the decision has been challenged by the complainant before the Court of Appeal Bucharest.

Serbia RS

LEGISLATIVE DEVELOPMENT

Racial or ethnic origin

Amendments to the Law on the foundations of education and upbringing

In accordance with the 2025 amendments to the Law on the foundations of education and upbringing, several new provisions have been introduced to regulate the employment, oversight and professional

[419] Romania, National Council for Combating Discrimination, decision No. 37 of 17 January 2024, petition No. 8628/01.11.2023, OD v. Easy Print Centre SRL. Not available online.

development of religious instruction teachers in primary and secondary schools.[420] These changes seek to strengthen the relationship between the state education system and traditional churches or religious communities, ensuring that religion teachers adhere to the doctrines, morals and values of their faith while maintaining appropriate professional standards.

Under the revised Article 139(7), teachers of religious instruction in a primary or secondary school must hold, at the time of recruitment and throughout their employment, the formal consent of the competent authority of the church or religious community to which they belong. If the church or community rescinds its consent because the teacher's conduct, viewpoints or activities are held to undermine the reputation of the faith or contravene its teachings, morals or values, the employment contract is terminated immediately upon written notification to the school. This amendment may arguably be giving private religious bodies an unconstitutional degree of control over publicly funded teachers and jeopardise fundamental rights and principles. In addition, the Minister of Education is mandated to regulate, on the proposal of the state body responsible for relations with churches and religious communities, and after receiving the input of these churches and communities, all aspects of the ongoing professional development of religious instruction teachers.

In combination, these amendments place the personnel policies of state-funded schools under unilateral control of private religious organisations, in conflict with constitutional principles such as the right to equal protection in employment, the autonomy of educational institutions, the prohibition on discrimination based on belief or expression, and the safeguards of due process, academic freedom, and separation of powers.

CASE LAW

Gender

Digital gender-based violence case

This case concerns a female high school student, subjected to digital gender-based violence by a male peer.[421] He manipulated her images using software to create explicit content and publicly disseminated the material. The incident was categorised as third-degree digital violence under the Rulebook on Protocol of Conduct in Institutions in Response to Violence.[422] The psychological and social consequences for the victim were severe.

Initially, the school reacted by relocating the perpetrator to another class. However, this decision was reversed by the Ministry of Education's sector for inspection, citing procedural shortcomings. Unable to feel safe, the female student was forced to withdraw from regular classes and continue her education online. The NGO 'Atina' filed a complaint on her behalf, citing gender-based discrimination and the school's failure to protect her adequately. The Commissioner for the Protection of Equality (CPE) applied the Law on the Prohibition of Discrimination,[423] relying also on the Law on the

420 Serbia, Amendments to the Law on the Foundations of Education and Upbringing of 6 March 2025, Official Gazette No. 19/2025.

421 Serbia, AA. v. G. Gymnasium, the Commissioner for the Protection of Equality, no. 07-00-567/2024-02, 29 January 2025.

422 Official Gazette of the Republic of Serbia, Rulebook on the Protocol of Procedure in Institutions in Response to Violence, Abuse and Neglect (*Pravilnik o Protokolu postupanja u ustanovi u odgovoru na nasilje, zlostavljanje i zanemarivanje)*, 11/2024, 14 February 2024.

423 Articles 12 (prohibiting harassment and degrading treatment as a form of discrimination) and 19 (prohibiting discrimination in education) of the Law on the Prohibition of Discrimination (*Zakon o zabrani diskriminacije*), Official

fundamentals of the education system.[424]

The Commissioner found that while the school formally complied with procedures by initiating disciplinary measures and involving various actors, such as the school team, psychologist and external partners, its actions fell short regarding substantive protection of the victim and failing to provide a safe and supportive environment for the victim, thereby violating the Law on the Prohibition of Discrimination. Key findings and recommendations include:

- *Failure to Prevent Secondary Victimisation:* The school's reversal of its decision to relocate the perpetrator, despite clear expert recommendations that the students should not share space, placed an undue psychological burden on the victim, leading her to feel unsafe and marginalised.

- *Burden Shifted to the Victim:* The school's measures effectively placed on the victim the responsibility for adjusting by encouraging or accepting her transfer to online education. The CPE stressed that protection measures should focus on preventing re-traumatisation and not limit victim's rights, particularly the right to inclusive, equal access to education.

- *Inadequate Implementation of Protection Protocols:* Although the school complied with formal steps, they failed to ensure that the outcome met the fundamental obligation to protect the victim.

- *Lack of Gender-Sensitive Institutional Response:* The case highlighted systemic gaps in the school's capacity to respond to gender-based digital violence in a sensitive and effective manner. This reflects a broader lack of institutional understanding and internalised practices to address gendered aspects of violence, especially in digital contexts.

- *Recommendations*: Taking further support measures for the victim to complete her education without fear or marginalisation; organising peer education sessions focused on gender-based digital violence; implementing capacity-building and training programmes for staff on recognising and effectively addressing gender-based violence and discrimination, especially in digital spaces.

The opinion is notable for affirming that gender-based digital violence is a serious form of discrimination that requires gender-sensitive, victim-centred institutional responses. It further underscores that formal compliance does not suffice if the measures fail to ensure substantive equality and protection of victims.

Gazette of the Republic of Serbia, Nos. 22/2009, 52/2021, 26 March 2009. It entered into force eight days after it was published in the Official Gazette, on 3 April 2009 (except for the provisions relating to the CPE which entered into force on 1 January 2010). The Law was amended in 2021.

[424] Official Gazette of the Republic of Serbia, Law on the Fundamentals of the Education System (*Zakon o osnovama sistema obrazovanja i vaspitanja*), Nos. 88/2017, 27/2018 - other laws, 10/2019, 6/2020, 129/2021, 92/2023, 19/2025, 7 October 2017. Article 8(2) prescribes, as one of the primary goals of education, the provision of a stimulating and safe environment for the holistic development of children, students, and adults, the promotion of non-violent behaviour, and the establishment of zero tolerance towards violence.

Racial or ethnic origin

Supreme Court ruling on allegedly discriminatory electricity billing practices in Roma settlement

The claimants are of Roma origin and live in an informal Roma settlement. They brought a suit against the public electricity provider and its distribution subsidiary, claiming that the respondents discriminated against them on the grounds of ethnic origin and poverty, by introducing inaccessible collective electricity meters resulting in non-transparent billing of consumption and charging at a higher tariff, by double-counting their electricity usage, by concluding an oral agreement on debt repayment under unclear conditions, by imposing restrictions on electricity supply without prior warning, and by labelling them on the invoice as 'Roma Settlement Crvena Zvezda.'

The first and second instance courts dismissed the claims, notably finding that the claimants lacked legal standing as they were not registered residents of the settlement, and ordering them to pay the respondents' litigation costs.[425] In March 2025, the Supreme Court reviewed the case and found no procedural or substantive error in the lower courts' rulings, thereby dismissing the claimants' revision claims and rendering the appellate judgment final.[426] This decision underlines two core principles in Serbian discrimination law. First, that legal standing requires a direct, material-legal connection to the allegedly discriminatory measure and that claimant proximity or community ties alone are not sufficient. Secondly, that procedural safeguards in civil litigation are strictly applied even in 'urgent' discrimination matters. By insisting on formal residence registration as a precondition for standing, the Supreme Court's ruling risks entrenching the very exclusion it was asked to remedy, as many Roma in informal settlements lack officially registered addresses. By denying standing to these claimants, courts effectively bar these communities from challenging discriminatory billing practices or other utility policies in court. Also, as collective meters and opaque billing regimes disproportionately affect under-served neighbourhoods, the decision permits utilities to continue practices that impose higher costs or service interruptions on informal settlements – without fear of judicial scrutiny.

Disability

Equality body opinion on access to social housing for persons with intellectual disabilities

The case concerned a complaint brought before the Commissioner for the Protection of Equality by a citizens' association against the City Administration of Belgrade. The claimant association challenged as discriminatory on the ground of disability, certain provisions of the Decision on Social Welfare Rights and Services, which limit access to the supported housing service for persons with intellectual or mental disabilities to those assessed as having 'mild or moderate' impairments and cap the duration of support at five years. In its defence, the Secretariat for Social Welfare explained that supported housing in Belgrade is still nascent, with only one licensed provider, and argued that eligibility and duration restrictions ensure client safety and service turnover to avoid persons with more severe disabilities remaining indefinitely in housing without advancing autonomy.

The Commissioner issued its Opinion in April 2025, noting that the UN Convention on the Rights of Persons with Disabilities and its General Comment No. 5 require that eligibility criteria for community-based support services be defined in a non-discriminatory, individualised, human rights-based manner

[425] Serbia, Higher Court in Niš, decision of 10 February 2020 in case No. P 1/2018 and decision of 26 March 2021 in case No. P 56/21; and Appellate Court in Niš, decision of 9 October 2024 in case No. Gz 2860/2024.

[426] Serbia, Supreme Court, *A.A., B.B., and V.V. v. Public Enterprise Elektoprivreda Srbije and Distribution System Operator EPS Distribucija d.o.o. Belgrade*, decision of 26 March 2025, Rev. 4234/2025.

focused on each person's support needs rather than on diagnostic categories or presumed capacities.[427] The functional assessment prescribed by regulation establishes support levels but does not justify exclusion of those deemed unable to achieve a predetermined level of independence within a fixed period. The Serbian Social Welfare Institute's own guidelines affirm that supported housing may be lifelong for some and longer term than five years for others. The Commissioner further criticised the use of outdated and stigmatising terminology, such as 'mild,' 'moderate,' and 'severe' impairments and 'developmental disorders', urging the use of language emphasising functional abilities and support needs in line with contemporary standards. Concluding that the contested provisions unjustifiably deny equal social welfare rights and obligations, the Commissioner recommended that the City Administration amend these provisions to grant all persons with intellectual or mental disabilities access to supported housing without severity or time limitations; adopt empowering, non-discriminatory terminology; and comply fully with anti-discrimination obligations going forward.

Equality body opinion on reasonable accommodation for employee with disability

The case concerned a complaint brought before the Commissioner for the Protection of Equality by an employee with a disability against his employer, a private company. The claimant, whose official work-capacity assessment prohibits prolonged standing, was hired in August 2021 as a production line operator, a role that obliges him to stand continuously. Although the employer's staffing plan included 'seated' positions (occupied by staff with as well as without disabilities), they repeatedly refused the claimant's requests to be reassigned to such a post, claiming that no suitable role existed. In this context, the employer also threatened to impose disciplinary sanctions for allegedly unjustified absence on a public holiday, which the Commissioner considered as further evidence of a pattern of pressure and disadvantageous treatment linked to the claimant's disability. Moreover, while the employer in its initial exchanges with the claimant insisted that no suitable positions were available, during the proceedings before the Commissioner it effectively admitted that it had never conducted the required risk assessment or examined other possible posts outside the production sector. This inconsistency revealed that the refusal to accommodate was not based on a genuine assessment of available roles, but on an unsubstantiated denial.

The Commissioner found that the burden of proof shifted to the employer, who failed to prove that it had taken all reasonable steps to accommodate the claimant's disability, as required by Article 101 of the Labour Law, which implements the EU principle of reasonable accommodation for persons with disabilities. In the absence of any evidence that the employer explored alternative positions or adjusted the claimant's workstation, the Commissioner concluded that their conduct placed the claimant in an unjustifiably disadvantaged position on the sole ground of his disability, which amounted to direct discrimination. The Commissioner recommended that the employer rectify its conduct by immediately assigning the claimant to a properly adapted or seated role in accordance with his capacity and notify the Commissioner of its compliance within 30 days.[428]

[427] Serbia, Commissioner for the Protection of Equality, Opinion No. 949/25 of 7 April 2025.
[428] Serbia, Commissioner for the Protection of Equality, Opinion No. 280/25 of 10 June 2025.

POLICY AND OTHER RELEVANT DEVELOPMENTS

Racial or ethnic origin

Research on perception of discrimination among the Roma population

In August 2024, the Commissioner for the Protection of Equality published, together with two research centres, the results of a survey conducted among members of the Roma community in Serbia, indicating entrenched prejudice and persistent barriers across nearly every sphere of life.[429] While 9 out of 10 respondents have heard of discrimination, half of them feel that Roma are treated differently from other citizens, and roughly 1 in 5 believe they suffer more discrimination at home than abroad. Deeply rooted stereotypes and cultural differences are widely blamed for the exclusion that Roma encounter. Three quarters of respondents say that Roma children attend largely segregated schools, face marginalisation in the classroom and verbal abuse because of their ethnicity. Nearly half of respondents report obstacles to basic public services while schools, health centres and social work offices are perceived as difficult to reach or unwelcoming, and two thirds believe they are viewed with suspicion or insufficiently protected by the police.

Employment prospects are bleak: nearly half of respondents feel that employers refuse to hire Roma, and two thirds say they have fewer opportunities for promotion. Healthcare settings and public transport are also cited as sites of unequal treatment, while more than three quarters hear hateful language about Roma in the media and online. Over 1 in 4 families report a direct experience of discrimination and 1 in 10 report violence motivated by ethnicity. Despite these hardships, only half believe that existing laws can protect them, and just 1 in 6 feel comfortable turning to official bodies when they or their family members are mistreated. Civil society actors – Roma coordinators, pedagogical assistants, health mediators and non-governmental organisations – therefore remain the community's main recourse.

The research concludes that, while legal frameworks exist, their uneven implementation and widespread lack of awareness among both Roma and public institutions undermine progress. Sustained, community-based outreach, continuous monitoring and robust enforcement of anti-discrimination measures are essential to rebuild trust in institutions and foster genuine social inclusion.

All grounds

Report on the attitude of public authority representatives towards discrimination

In December 2023, the Commissioner for Protection of Equality conducted a face-to-face survey among a random, representative sample of 520 public authority representatives over the age of 18.[430] The findings were published in September 2024 and show that a majority of public officials perceive discrimination in Serbia as rare, with only a minority viewing it as a serious problem. The most commonly perceived grounds for unequal treatment are sexual orientation and gender identity, disability, and political affiliation. Discrimination is seen as particularly present in employment, education, media, and social protection. Groups perceived as most frequently exposed to discrimination include Roma, LGBTIQ+ persons, and migrants, while ethnic minorities such as Hungarians, Croats, and Albanians are considered less discriminated against.

[429] Serbia, Commissioner for the Protection of Equality, Centre for Research of Public Policies and Faktor Plus (2024), *Report on the Attitude of representatives of public authorities towards discrimination in Serbia* August 2024.

[430] Serbia, Commissioner for the Protection of Equality and Faktor Plus (2024), *Report on the Attitude of representatives of public authorities towards discrimination in Serbia*, 5 September 2024.

A relatively small proportion of respondents had witnessed discrimination or personally experienced it, and an even smaller number had reported it. Awareness of the legal framework is limited, with many respondents unaware of the existence or content of anti-discrimination legislation. While the ability to recognise discriminatory conduct has improved compared to five or ten years ago, knowledge about hate speech and its legal framework remains low. Most respondents recognise hate speech on digital platforms and in media, and many associate it with negative attitudes towards Roma, migrants, and LGBTIQ+ persons.

Public officials' attitudes toward discrimination remain complex. While many disagree with the notion that victims are to blame for being discriminated against, some believe that certain groups contribute to their own marginalisation. Courts and prosecutors are seen as less likely to treat citizens equally than other institutions. A significant number of officials are reluctant to challenge discriminatory behaviour among colleagues, and reporting of such incidents remains low.

Despite this, the role of institutions like the Commissioner for the Protection of Equality is evaluated positively, and affirmative measures are seen as most acceptable in areas such as employment, social protection, healthcare, and education. However, continuous efforts are needed to raise awareness, provide training to public officials, and encourage them to oppose and report discriminatory conduct. There is also a need for more discussion on indirect and subtle forms of discrimination. Enhanced visibility of the Commissioner's office and the effectiveness of legal protection mechanisms would contribute to better outcomes in the fight against discrimination.

Strategy for the Development of Artificial Intelligence in the Republic of Serbia (2025–2030)

Gender

The Strategy for the Development of Artificial Intelligence in the Republic of Serbia for the period 2025–2030[431] is the second policy document that primarily focuses on establishing a strong legal, institutional and educational foundation for AI integration across sectors. While the document does not explicitly focus on gender, here are the key highlights from a gender and equality perspective:

1. The strategy emphasises the importance of enhancing education at all levels and expanding public outreach. The emphasis on inclusive access to AI education opens opportunities to promote the participation of women and girls in STEM and AI-related fields.

2. The strategy calls for raising awareness about the transformative potential of AI and involving citizens in shaping AI applications. This provides an opportunity to advocate for gender-sensitive policies and to ensure that AI systems do not perpetuate gender biases.

3. The strategy highlights the need for a comprehensive legal framework aligned with international standards, including data protection and anti-discrimination laws. It references the Law on the Prohibition of Discrimination[432] as a key legal instrument, suggesting an openness to gender-sensitive safeguards in AI deployment.

[431] Serbia, Strategy for the Development of Artificial Intelligence in the Republic of Serbia for the period 2025–2030, 10 January 2025.
[432] The Official Gazette of the Republic of Serbia, Nos. 22/2009, 52/2021.

4. The strategy promotes using AI in public services, including healthcare and education. These areas are particularly relevant for advancing gender equality, provided implementation avoids reinforcing existing inequalities.

5. It supports continuous digital upskilling for all citizens, particularly through formal and lifelong education reforms. This can be strategically aligned with gender equality objectives by ensuring tailored programmes for women and girls.

6. The strategy anticipates the adoption of a special AI law by the end of 2025 and includes references to Serbia's Law on Gender Equality and anti-discrimination legal framework. This is crucial for integrating gender mainstreaming in future AI policies and tools.

7. Developing ethical guidelines for responsible AI use is a cornerstone of the strategy. Although not gender-specific, these guidelines can be interpreted and expanded to ensure AI does not reinforce gender stereotypes or discrimination.

While lacking explicit gender perspective or tailored objectives for women and girls, it establishes a foundation that could facilitate the integration of gender equality, particularly in education, ethics, legal safeguards, and citizen engagement. Future implementation should ensure that gender-sensitive approaches are embedded across AI policy and practice to prevent digital gender divides.

This is a significant gap considering the global emphasis on ensuring that AI development is inclusive and does not exacerbate existing inequalities. The strategy highlights ethical use, privacy protection, and international cooperation. Still, it fails to recognise that, without careful attention to data bias and representation, AI systems can reinforce gender stereotypes, perpetuate discrimination and deepen the digital gender divide.

All grounds

Annual report of the Commissioner for the Protection of Equality for 2024

In March 2025, the Commissioner for the Protection of Equality published its annual report for 2024.[433] The report showed notably that during 2024, the Commissioner's office had a marked increase in citizen engagement with over 3 600 cases handled, with a rise in both formal complaints and informal inquiries, reflecting growing public trust in equality mechanisms. The most frequently invoked grounds for discrimination were gender (often intersecting with pregnancy and family status), disability, health condition, age and ethnic origin, with a majority of cases arising in public administration, healthcare and employment contexts. To address these violations, the Commissioner utilised different mechanisms within its competence: processing individual complaints; issuing 422 formal recommendations to public bodies; submitting 16 legislative amendment initiatives and 26 expert opinions on draft laws; referring matters to the Constitutional Court; initiating strategic litigation and three criminal charges; and using situation testing to document inaccessible services. Compliance was high, with over 98 % of equality recommendations implemented and an overall follow-through rate of 85 % when including remedial measures accompanying formal opinions. The annual report calls on all public authorities to carry out equality impact assessments for any new legislation or policy and to submit draft laws to the Commissioner for review. It urges amendment or adoption of laws in line with

[433] Serbia, Commissioner for the Protection of Equality (2025), Annual report for 2024, 15 March 2025.

international standards, covering areas from social protection and land registry procedures to family support and business capacity, to secure substantive equality for all. To address multiple forms of discrimination, it recommends targeted action plans for national minorities, strengthening of integrated local services (including personal document access, housing, health, education and social protection), expansion of health mediators and pedagogical assistants, and affirmative measures to boost Roma children's school enrolment and prevent segregation. Inclusive early-childhood services should be made universally available, and free school textbooks guaranteed in every municipality. For persons with disabilities, a national barrier-removal plan and rigorous application of universal design across public transport, digital content, voting facilities and health services are essential. Finally, the Commissioner stresses the importance of simplifying administrative procedures, providing digital inclusion training for older persons, strengthening informal caregiver support, and developing strategic frameworks for adult education, to ensure that equality measures are sustained and effective over time.

Annual Report of the Commissioner for the Protection of Equality concerning gender equality

Gender

Based on the 2024 Annual Report of the Commissioner for the Protection of Equality (CPE),[434] submitted to the Parliament on 15 March 2025, the following are key gender equality and women's rights issues:

- Legal protection mechanisms for gender equality continued to rely heavily on the Law on the Prohibition of Discrimination,[435] the Labour Law,[436] the Criminal Code,[437] and the Law on Gender Equality.[438] The CPE plays a key role in the implementation of these mechanisms by receiving complaints, issuing opinions and recommendations, and initiating court proceedings in certain cases. However, its powers remain limited when enforcing sanctions or ensuring reparations, as the Commissioner cannot impose fines or provide binding remedies beyond public disclosure and litigation support.

- Statistical data for 2024 show that out of a total of 714 complaints received, 192 were based on sex or gender, and 37 on marital and family status, with the vast majority of these submitted by women. The number of complaints referencing gender remains among the highest across all protected grounds. For instance, 161 out of 179 sex-based complaints were filed by women, pointing to persistent systemic inequalities and gendered experiences of discrimination. A significant number of complaints filed with the CPE concerned gender-based

434 Serbia, Commissioner for the Protection of Equality (2025) *Regular Annual Report for 2024*, 15 March 2025.
435 Serbia, Law on the Prohibition of Discrimination (*Zakon o zabrani diskriminacije*), Official Gazette of the Republic of Serbia, Nos. 22/2009, 52/2021, 26 March 2009. It entered into force eight days after it was published in the Official Gazette, on 3 April 2009 (except for the provisions relating to the CPE which entered into force on 1 January 2010). The Law was amended in 2021.
436 Serbia, Labour Law (*Zakon o radu*), Official Journal of the Republic of Serbia, Nos. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 – Constitutional Court decision, 113/2017, 95/2018, 23 March 2005. The Law was amended several times, in 2005, 2009, 2013, 2014, 2017 and 2018.
437 Serbia, Criminal Code (*Krivični zakonik*), Official Gazette of the Republic of Serbia, Nos. 5/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, 35/2019. 94/2024, 1 January 2006. It was amended several times, with latest amendments in 2024.
438 Serbia, Gender Equality Act (*Zakon o rodnoj ravnopravnosti*), Official Gazette of the Republic of Serbia, No. 52/2021, 1 June 2021.

discrimination, particularly in the field of healthcare – the most commonly reported form of direct discrimination involved cases of obstetric violence.

- The CPE continued to monitor the position of women in employment, especially workplace discrimination based on gender, notably cases involving the termination of contracts during pregnancy or maternity leave. Women in precarious jobs or low-paid sectors, such as domestic and care work, remain particularly vulnerable. A rapid assessment conducted in cooperation with civil society highlighted the challenges female cleaners and caregivers faced, including a lack of protection and low pay.

- Femicide remained a critical concern. The CPE reiterated the need for Serbia to establish a national femicide monitoring mechanism, which would improve data collection and institutional coordination in preventing and responding to gender-based killings. Although the CPE had submitted this initiative multiple times to the Ministry of Justice, the mechanism has not yet been adopted.

- Digital and online GBV also emerged as an escalating threat. The CPE emphasised the urgency of amending the Criminal Code to address new forms of violence, including the abuse and publication of factual or fabricated sexually explicit content without consent.

- Intersectional discrimination, particularly the compounded discrimination faced by Roma women, women with disabilities, and LBT+ women requires stronger institutional responses to combat stereotypes and prejudices, particularly through targeted training for public officials.

- In 2024, the Law on Gender Equality faced a significant legal challenge. On 27 June 2024, the Constitutional Court initiated proceedings to assess the constitutionality of the law, effectively suspending its application until a final decision is rendered. This suspension means that all activities based on the law, including adopting individual acts and actions by employers and public authorities, are on hold. Consequently, obligations such as submitting annual reports on gender equality measures are currently non-binding, with only recommendations in place. The Ministry for Human and Minority Rights and Social Dialogue has announced plans to launch an electronic application to facilitate future submissions. However, the legal framework remains uncertain until the Court's decision. The suspension not only halts the implementation of crucial gender equality measures but also signals a broader challenge in safeguarding women's rights and combating discrimination.

- Finally, despite the existence of legal frameworks, the CPE noted challenges in the practical implementation of gender equality standards. For example, Serbia had not yet adopted the bylaw required for courts to systematically share anonymised anti-discrimination rulings with the CPE, hindering transparency and informed policy making.

These issues demonstrate that while legal protections exist, systemic gaps remain in ensuring equality and dignity for all women in Serbia. The report calls for comprehensive institutional efforts and stronger political will to translate legal commitments into tangible outcomes.

National Action Plan on Women, Peace and Security in Serbia (2025-2027)

Gender

The new national action plan (NAP) for the implementation of UN Security Council Resolution 1325 (Women, Peace and Security)[439] for the period 2025–2027 was adopted on 15 April 2025.[440] It sets out a framework aimed at strengthening women's security, participation, and protection, particularly in the context of conflict, post-conflict recovery, and emergencies.

The general objective of the NAP 2025–2027 is to improve the security of women in society through the integrated application of Resolution 1325. This is pursued through four specific goals:

1. Strengthening institutional mechanisms and actors: Activities under this goal focus on establishing and enhancing the professional capacities of institutional bodies at all levels. This includes enhanced cooperation and coordination among institutional actors and the promotion of best practices.

2. Enhancing individual and collective capacities: This goal emphasises education and awareness-raising on women's roles in peacebuilding, conflict prevention, and emergency response. Specific actions include training in public administration, education on risks posed by climate change and digital threats to women and girls, and education on the protection and rights of migrant and refugee women.

3. Increasing participation: The plan emphasises the importance of enhancing women's inclusion in peace and security decision-making, including their participation in negotiations, peacekeeping operations, and civil missions. Activities include promoting women's roles through media campaigns, events, and recognising contributions made by women in peace and security.

4. Strengthening protection and recovery mechanisms: The NAP outlines actions for improving the safety and support for women and girls, particularly those from vulnerable groups. This includes mechanisms to address gender-based violence, support during recovery phases, and ensure services are available to survivors.The NAP also incorporates indicators for evaluating progress, such as the Gender Equality Index (domain of power), percentage of women experiencing violence, number of awareness campaigns, and participation in training and public debates.

Notably, the NAP takes into account emerging challenges, such as the impact of climate change, cyber threats, and human trafficking on women's safety, expanding the scope of the Women, Peace and Security agenda beyond traditional conflict contexts.

Implementation and monitoring responsibilities are primarily assigned to the Ministry of Defence, with input from other ministries, independent institutions such as the Commissioner for the Protection of Equality, and civil society organisations. Funding is to be secured through the national budget, with no

[439] United Nations Security Council, Resolution 1325 S/RES/1325, (2000).
[440] Serbia, National Action Plan for the implementation of UN Security Council Resolution 1325 (Women, Peace and Security) for the period 2025–2027.

additional compensation for government staff participating in the implementation structure.

This is the third NAP that has experienced significant delays. The previous NAP covered the period from 2017 to 2020[441] following the first plan, which was implemented from 2010 to 2015.[442] However, evaluating the previous plan and developing a new one spanned four years, exceeding the duration of the second plan itself. This prolonged timeline may indicate a lack of genuine political commitment to prioritising the women, peace and security agenda.

SK Slovakia

CASE LAW

Racial or ethnic origin

Court decisions on access of Roma child to education during the Covid-19 pandemic

The claimant is a Romani girl living in a marginalised Roma community who claims that distance learning, introduced by the Government during the Covid-19 pandemic, required resources such as access to the internet and computer equipment, which the claimant and her family lacked. In November 2023, the court of first instance had found that by failing to provide such resources, the Ministry of Education, Research, Development, and Youth had violated the principle of equal treatment.[443] The Ministry appealed the decision.

In October 2024, the regional court issued its decision, annulling the judgment of the first instance court and referring the case back for a new first instance ruling.[444] The court concluded that it did not consider that the state had committed indirect discrimination. Instead, the state had created the conditions for the adoption of measures which sought to ensure the educational process for all pupils in the most reasonable way. The court noted the exceptional circumstances caused by the pandemic, when the protection of public health was the priority and amounted to an objective, legitimate and rational justification for the temporary measure at hand. The court also upheld the Ministry's claim that the court of first instance had not sufficiently addressed the issue of passive standing and had not sufficiently justified the amount of compensation for non-material damage awarded.

The case was remanded back to the district court, which issued a new ruling on the case in January 2025.[445] The court first confirmed that the state represented by the Ministry of Education had legal standing in this case, emphasising that the state is responsible for measures and policies in the field of education and recognising the respondent's role in implementing distance learning. As such, any challenge to these measures under the Anti-Discrimination Act falls within its legal standing. The court

441 Serbia, National Action Plan for the Implementation of United Nations Security Council Resolution 1325 – Women, Peace and Security in the Republic of Serbia (2017–2020), (*Nacionalni akcioni plan za primenu Rezolucije 1325 Saveta bezbednosti Ujedinjenih nacija - Zene, mir i bezbednost u Republici Srbiji (2017-2020)*), Official Gazette of the Republic of Serbia, No. 53/2017, 30 May 2017.

442 Serbia, National Action Plan for the Implementation of United Nations Security Council Resolution 1325 – Women, Peace and Security in the Republic of Serbia (2010–2015), (*Nacionalni akcioni plan za primenu Rezolucije 1325 Saveta bezbednosti Ujedinjenih nacija - Zene, mir i bezbednost u Republici Srbiji (2010-2015)*), Conclusion 05 No. 337-9657/2010, 23 December 2010.

443 Slovakia, District Court of Prešov, decision of 6 November 2023, No. 18C/96/2022-254. See also *European equality law review 2024*, p. 197.

444 Slovakia, Regional Court of Prešov, decision of 22 October 2024, No. 3Co/10/2024-294.

445 Slovakia, District Court of Prešov, decision of 20 January 2025, No. 18C/96/2022-307.

then confirmed the findings of the regional court, by which it was legally bound.

The judgment represents a setback for all Roma children who were denied equal access to education during the Covid-19 pandemic due to the lack of access to digital technologies and skills. The ruling was appealed by the claimant, and is now pending again before the regional court.

Disability

Administrative court decision on discrimination of a child with a disability in access to education

The claimant is a primary school student with multiple health issues as well as attention deficit hyperactivity disorder (ADHD). In May 2023, the claimant's parents applied to a primary school to request enrolment of their child, but the application was rejected.[446] The school claimed a lack of capacity and the inability to provide reasonable accommodation for a pupil with a disability. The claimant challenged the decision, which was upheld by the municipality as appellate authority (founder of the school). Among other arguments, they referred to the statement of a special education teacher, who concluded that during a brief adaptation process, the claimant had difficulty entering the school, did not respond to stimuli, and showed no interest in visiting the classroom. The claimant had previously been admitted to the 1st grade in another school, but when the respondent school had informed the parents of available spots and experience with students on the autism spectrum, the parents had decided to change schools. They therefore argued that the respondent school had created a misleading expectation of admission, and sought judicial review of the legality of the respondent's decision to reject the application for enrolment. The claimant alleged that the denial breached his rights to inclusive primary education at his local school and constituted discrimination based on his disability.

In February 2025, the Administrative Court in Bratislava annulled the decisions of both the school itself and of the municipality as the school founder and returned the matter to them to decide on the claimant's school application again.[447] Although the proceedings were based on the Administrative Procedure Code rather than the Anti-Discrimination Act,[448] the court discussed issues related to disability discrimination, reasonable accommodation and inclusive education in some detail. In its reasoning, the Court stated that it is generally recognised that the presence of children with disabilities in mainstream classrooms is mutually enriching for all pupils, and that the claimant would benefit from such an environment. The court referred to the concept of inclusive education as an educational system that seeks to involve all children in the mainstream educational process regardless of their disabilities, based on the principle that every child has the right to education and that it is essential to create an environment in which the child can fully develop his or her potential. The Court further noted that inclusive education allows children with disabilities to form friendships and develop social skills, leads to better educational outcomes and helps boost their self-confidence. Such education also benefits children without disabilities, who learn to accept and respect differences, communicate effectively, and collaborate with peers who have diverse needs. The Court noted that inclusive education prepares all children for life in a diverse and inclusive society and emphasised the value and

446 Decision of Primary School in Ivanka pri Dunaji No. 2/5/2023, of 24 May 2023.
447 Slovakia, Administrative Court of Bratislava, decision of 21 February 2025, file No. 1S/88/2023.
448 The case was most likely brought under administrative law rather than anti-discrimination law as the former offers quicker procedures and more effective remedies, including the annulment of the decisions of the school and of the municipality.

contribution to society of each individual. Therefore, it is essential that schools have sufficient funding, staff, and resources to support inclusive education and accommodate children with disabilities. The Court also stated that teachers should receive regular training in inclusive education and in working with children with special educational needs, while parents should be actively involved in the inclusive education process of their children.

Racial or ethnic origin

Supreme Court decision on alleged discrimination of Roma children in classes for children with intellectual disabilities

In January 2016, three Romani children initiated anti-discrimination proceedings, alleging that, due to inadequate psychological assessments, they were unlawfully placed in special classes for pupils with mild intellectual disabilities. The action was directed against the counselling centre, the local primary school and the Slovak Republic, represented by the Ministry of Education. In February 2023, at second instance, all respondents, including the state, were found liable for discrimination.[449] The judgment was final, subject only to an extraordinary appeal (*dovolanie*)which was submitted by two of the respondents – the Ministry of Education and the counselling centre. Both respondents argued that the Court of Appeal's procedural errors prevented them from exercising their procedural rights to such an extent as to violate their right to a fair trial. On 27 March 2025, the Supreme Court upheld the respondents' extraordinary appeals, annulled the appeal court's decision and remanded the case back to the lower courts for further proceedings and decision.[450] The Supreme Court found procedural errors by the lower courts, notably with regard to the assessment of the evidence adduced. In particular, the Supreme Court criticised the lower courts for failing to consider one of the pieces of evidence, namely an expert opinion that could have affected the assessment of the factual circumstances of the case. In the view of the Court, this amounted to a violation of the right to a fair trial.

Arguably, the Supreme Court could have considered the fact that the respondent state is currently implementing various reforms regarding the elimination of the unlawful placement of Roma children in special education for children with intellectual disabilities. Instead, it focused only on a strict assessment of the procedural aspects of the case. The Court also disregarded a recent ECtHR judgment in a similar case.[451]

SI Slovenia

CASE LAW

Disability

Social Inclusion of Disabled Persons Act held partially unconstitutional by the Constitutional Court

Until 2004, persons with certain disabilities[452] were subject to family solidarity, meaning that their parents had an obligation to support them even after they reached the age of majority. When this

[449] Slovakia, Regional Court of Prešov, decision of 28 February 2023, No. 20Co/21/2022-680. For further information about the facts of the case and about the first and second instance court decisions, please see *European equality law review 2023*, p. 174.

[450] Slovakia, Supreme Court, decision of 27 March 2025, No. 5Cdo/36/2024.

[451] European Court of Human Rights, *Salay v. Slovakia*, judgment of 27 February 2025, application No. 29359/22.

[452] Persons whose disability arose before the age of majority or, in the case of persons attending school, not later than the age of 26 or persons with moderate to severe brain injury or impairment, persons with autistic spectrum disorders and

obligation was abolished in 2004, these groups of persons were also subject to the regime under the then applicable Social Protection of Mentally and Physically Handicapped Persons Act, which had previously applied (only) to those whose parents did not support them. In 2007, the Constitutional Court declared that the situation of the groups of persons with disabilities in question had deteriorated as a result, found the relevant statutory regulation insufficient and incompatible with the Constitution, and reinstated the obligation of parents to provide maintenance until the new regulation was adopted.[453] This legal vacuum was only filled by the Social Inclusion of Disabled Persons Act, which entered into force in 2019, and introduced exclusive social solidarity, meaning that the families of adult persons with disabilities were no longer obliged to support them, as they became entitled to social benefits.

In July 2024, the Constitutional Court reviewed the Social Inclusion of Disabled Persons Act, as the petitioner argued that the legislature had unconstitutionally and excessively worsened the situation of the groups of persons with disabilities concerned. The Court held that the Act was unconstitutional and, due to the identified unconstitutional legal vacuum, also determined how the decision was to be implemented. The Court decided that for those persons with disabilities, who have such great needs arising from their disability that they are not covered by social benefits under the Social Inclusion of Disabled Persons Act, the obligation of parents to support their adult children shall be temporarily (re)established, as was the case before the legislature abolished this obligation.[454] In its decision, the Constitutional Court considered international legal instruments such as the Convention on the Rights of Persons with Disabilities and emphasised that the special constitutional protection of persons with disabilities entails the requirement that the state must ensure a decent standard of living and thus the possibility of living independently. Persons with disabilities are thus granted additional, specific rights which are justified by their circumstances. First, the disability allowance is granted to all persons with disabilities and secondly the assistance allowance which is supposed to be based on the individual needs and circumstances of each beneficiary. However, the Court noted that the challenged provisions refer to the Pension and Disability Insurance Act in this regard, which, by dividing the group of persons with disabilities in question into (only) two subgroups, does not take into account the special needs of this group of persons with disabilities and is therefore incompatible with the Constitution.

The Constitutional Court found that the fact that the legislature has in the past entirely replaced family solidarity with social solidarity is not in itself unconstitutional. However, it recalled that the legislature should therefore enact a social solidarity regime that covers all the special needs of this group of persons with disabilities and ensure that their situation is not worsened. Since the contested law did not ensure this for certain persons, in particular those who have very high needs due to their disability, the Constitutional Court considered that the Social Inclusion of Disabled Persons Act is also incompatible with the Constitution in this respect.

deafblind persons, whose disability may arise later but before their first employment, or if they do not acquire any rights under the disability insurance.

453 Slovenia, Constitutional Court, Decision No. U-I-11/07 of 13 December 2007.

454 Slovenia, Constitutional Court, decision No. U-I-65/21-12 of 4 July 2024.

ES Spain

Gender

LEGISLATIVE DEVELOPMENTS

New law on equal representation and balanced presence of women and men

The new Organic Law 2/2024, which came into force on 22 August 2024, aims to promote sex parity across various sectors and decision-making positions.[455] It extends the principle of balanced presence, which was established in the Organic Law 3/2007 on Effective Equality[456] in relation to electoral lists and appointments made by public powers. However, the 2007 law did not impose strict alternation in the electoral lists, nor did it oblige the Government to comply with sex parity. In addition, it did not contemplate sanctions for companies that did not comply with the recommendations regarding the presence of women in their management bodies.

The law defines equal representation and balanced presence as a situation where the number of individuals of each sex is between 40 % and 60 % in a given area. This criterion may be adjusted in accordance with the principle of positive action if the representation of women exceeds 60 %, though such an imbalance must be justified. It stipulates that electoral candidacies must have an equal composition of women and men, with the lists being arranged by candidates of alternating sex (known as zipper lists). This will apply to all electoral processes.[457] Chapter V of the Organic Law 2/2024 transposes Directive 2022/2381.[458] Article 529*bis* of the Law on Capital Companies is modified to require that the board of directors of listed companies has a composition of at least 40 % of their members belonging to the less represented sex. Article 529*bis*(4), in accordance with Article 6(1) and 6(2) of the Directive, stipulates that if a listed company fails to achieve balanced representation on its board of directors, it must modify its selection processes to ensure that balanced representation is attained. The law details several guarantees during selection processes, including the priority for the candidate of the least represented sex when they are equally qualified. To ensure adequate monitoring of compliance with these obligations, an annual report on the representation of the least represented sex on the board of directors has to be integrated into the sustainability report of the company, which is then transmitted to the National Securities Market Commission (Article 529*bis*(5)).

Additionally, the law mandates that listed companies ensure balanced representation within senior management. This requirement is extended to public interest entities with over 250 employees or an annual turnover exceeding EUR 50 million. However, these entities are exempt from the obligation to submit annual reports to the National Securities Market Commission if they are not listed companies.

Finally, the law requires balanced presence in several other decision-making areas: organisations of professional associations, the information councils of state public radio and television, the representative, governing and administrative bodies of trade unions and business associations, the

455 Spain, Organic Law 2/2024 on equal representation and balanced presence of women and men, 1 August 2024.
456 Spain, Organic Law 3/2007 on Effective Equality between Women and Men, 22 March 2007.
457 The principle of balanced presence also applies to the Constitutional Court (Article 2), the Council of State (Article 3), the Public Prosecution Council (Article 4), the Court of Accounts (Article 5), and the General Council of the Judiciary (Article 6). Furthermore, the legislation regarding government composition has been revised to ensure a balanced representation in appointments to vice-presidencies and ministries.
458 Directive (EU) 2022/2381 of the European Parliament and of the Council of 23 November 2022 on improving the gender balance among directors of listed companies and related measures.

governing and representative bodies of foundations, of third sector social action organisations and social economy entities.

Although the law came into force on 22 August 2024, different deadlines are established to fulfil the obligations contained therein.

Sexual orientation

Transgender

New legislation on measures to be adopted by companies for the equality of LGTBI persons

Law 4/2023 for the real and effective equality of trans people and for the guarantee of the rights of LGTBI people, adopted in February 2023, stipulated an obligation for companies with more than 50 employees to have a planned set of measures and resources, to achieve real and effective equality for LGTBI people, including an action protocol for dealing with harassment or violence against LGTBI people.[459] In October 2024, the Government adopted Royal Decree 1026/2024, which establishes the planned set of measures.[460] While the regulation only applies to companies with more than 50 employees, other companies may adopt them on a voluntary basis. Furthermore, all 'planned measures' are to be negotiated and adopted through collective agreements between employers and workers' organisations.

Annex I of Royal Decree 1026/2024 sets out the following planned measures:

1. Collective agreements shall contain equal treatment and non-discrimination clauses to create a favourable environment for diversity and work towards the eradication of

   discrimination against LGTBI people.

2. Companies shall contribute to eradicating stereotypes in access to employment for LGTBI people, notably through training those involved in the selection processes.

3. Agreements must regulate criteria for classification, professional promotion and advancement in a way that does not lead to direct or indirect discrimination against LGTBI people.

4. Specific modules on the rights of LGTBI people in the workplace, with special emphasis on equal treatment and opportunities and non-discrimination, should be included company training plans.

5. Heterogeneity in the workforce will be promoted to achieve diverse, inclusive and safe working environments. Companies will notably include protocols against anti-LGTBI harassment and violence in their training plans. The protocols must include procedures for filing a complaint or denunciation, as well as the maximum time limit for it to be resolved.

[459] Spain, Law 4/2023 of 28 February 2023, Article 15.1. For further information about the adoption of this law, see *European equality law review 2023*, pp 181-182.
[460] Spain, Royal Decree 1026/2024 of 8 October 2024.

6. Collective agreements must cater for LGTBI diverse families, spouses and partners, guaranteeing access to employment related rights such as social benefits without discrimination based on sexual orientation, sexual identity and gender expression.

7. Companies' disciplinary codes must include offences and sanctions for behaviour that violates the 'sexual freedom, sexual orientation and identity and gender expression' of its employees.

Companies with more than 50 employees were required to initiate the procedure for negotiating the planned measures by setting up a special negotiating body no later than three months after 11 October 2024.

All grounds

New regulation on the Independent Authority for Equal Treatment and Non-Discrimination

On 6 May 2025, a Royal Decree was published, noting in its preamble that, in order to facilitate the operationalisation of the new Independent Authority for Equal Treatment and Non-Discrimination, it is imperative to establish regulatory provisions designed to ensure the proper performance of the functions of the new Authority, until its statutes and the list of job positions are approved.[461] In this context, the Decree provides the following. First, the new 'Independent Administrative Authority' will be attached to the Ministry of Equality of the Government of Spain, through its head.[462] The provision specifies, however, that this attachment shall in no event affect the full independence and functional autonomy of the Authority, which shall not receive or accept instructions in the performance of its duties and the exercise of its competences. The provision further establishes that the person appointed as President of the Authority shall be regarded as a senior official, holding a rank equivalent to undersecretary.

Secondly, the following provisions are included as a 'Guarantee of Operation of the Independent Authority for Equal Treatment and Non-Discrimination':

1. The Ministry of Equality will provide the necessary services and administrative support to guarantee the start of the Independent Authority's activities until the date to be determined by order of the Minister of Equality.

2. Until the Independent Authority has its own budget, its activities will be financed from the budgetary appropriations of the Ministry of Equality.

3. Until the Independent Authority approves its statute and its own budget, the staff providing services to it will be remunerated from the budgetary appropriations of the Ministry of Equality, being provisionally assigned to the undersecretariat of that ministerial department.

[461] Spain, Royal Decree No. 360/2025 of 6 May amending Royal Decree 246/2024 of 8 March developing the basic organic structure of the Ministry of Equality and amending Royal Decree 1009/2023 of 5 December establishing the basic organic structure of ministerial department.

[462] While it is noteworthy that Law 15/2022, when stipulating the creation of a new equality body, used the terminology 'Independent Authority' and the new Royal Decree uses the term 'Independent Administrative Authority', it is not certain that this will imply any legal modification of the status of the new Authority.

4. The Ministry for Digital Transformation and the Civil Service, upon a proposal from the Ministry of Equality, will approve the provisional list of job positions for the Authority, which shall remain in effect until the statute of the Independent Authority and its definitive list of job positions are approved.

Disability

Amended legislation imposes a requirement to offer reasonable accommodation before dismissing workers with permanent incapacity

In January 2024, the CJEU ruled that the automatic termination of employment contracts due to the employee's total permanent incapacity to perform their tasks, could amount to a violation of Article 5 of the Employment Equality Directive, which imposes a duty to provide reasonable accommodation to employees with disabilities.[463] Such automatic termination was provided by the Workers' Statute Law in the event of the death, severe incapacity, or total or absolute permanent incapacity of the worker.[464] While the legislation did not mention disability explicitly, workers with 'permanent incapacity' are considered to be persons with disabilities.

Following the ruling of the CJEU, legislation was passed in April 2025 to amend the relevant provisions.[465] The new provisions stipulate that in the case of severe, total permanent or absolute permanent incapacity, the contract will only be terminated if it is not possible to make reasonable accommodation because it would constitute an excessive burden on the employer, there is no vacant position matching the professional profile and situation of the worker, or the worker refuses the proposed adjustments. When determining whether the burden of proposed reasonable accommodation is excessive, account must be taken of the cost of the measures in relation to the size, economic resources, economic situation, and total turnover of the company. The burden will not be considered excessive when it is sufficiently alleviated by public measures, aid, or subsidies. There are specific regulations regarding what is considered as an 'excessive' burden for companies employing fewer than 25 workers.

The new legislation also states that the worker will have 10 calendar days from the date when they are notified of their classification as permanently incapacitated, to express in writing to the company their willingness to maintain the employment relationship. In addition, the company will have a maximum period of three months, from the date when it is notified of the classification of their worker as permanently incapacitated, to either make reasonable adjustments or change the job position, or terminate the contract if the burden of the adjustment would be excessive or there is no vacant position.

Finally, Law 2/2025 provides that the prevention services will determine, in accordance with the applicable regulations and after consulting with the workers' representatives on occupational risk prevention, the scope and characteristics of the accommodation measures as well as the positions compatible with the worker's new situation.

[463] CJEU, 18 January 2024, *J.M.A.R. v Ca Na Negreta SA*, C-631/22, EU:C:2024:53. See also *European equality law review 2024*, pp. 82-83.
[464] Total permanent incapacity meant that the worker was unable to do their job while absolute permanent incapacity meant that they were unable to do any job.
[465] Spain, Law No. 2/2025 of 29 April.

Gender

CASE LAW

Birth-related leave for single-parent families

The Supreme Court ruling of 19 February 2025,[466] regarding the regulation of birth-related leave and allowance in the case of single-parent families, resolves an interpretive conflict that has created contradictory solutions in different Spanish courts in recent years.

In 2019, Spanish legislation replaced maternity and paternity leaves with a single, personal, equal, and non-transferable birth-related leave for the biological mother and the other parent.[467] The leave, which came into full effect in 2021, consists of 16 paid weeks, 6 of which are mandatory and must be used simultaneously by both parents at the time of birth. Spanish jurisprudence had established that these 6 weeks have a different purpose for the biological mother (physical recovery) and for the other parent (fulfilling the care duties of Article 68 of the Civil Code). After this period, the mother and the other parent have another 10 weeks of voluntary paid leave each that can be used flexibly during the baby's first year.

The cases under litigation concerned single-parent families (generally single mothers) who wanted the Social Security Institute (INSS) to recognise the leave (and the allowance) that would have been due to the other parent in addition to their own paid leave. The INSS has denied these requests because the law does not provide a more extensive allowance for single-parent families[468] and because birth-related leave is non-transferable. The courts offered a variety of solutions: some upheld the INSS decision; other courts granted the claimants the full leave that would have been due to the other parent (16 paid weeks); and still others granted them the 10 weeks of voluntary, non-concurrent leave that the other parent would have been entitled to.

The reasons given by the courts that recognised the leave also varied, including indirect discrimination based on sex, intersectional discrimination (sex plus family type), the best interests of the child, and discrimination on grounds of birth. The courts that denied the extension of the leave considered that the legislature had explicitly excluded specific regulations for single-parent families and that extending the leave exceeded the judicial interpretative function and would constitute a substitution of the legislature. The interpretative conflict reached a peak when the Supreme Court arrived at different conclusions itself: the social chamber ruled against recognising the extension of the leave,[469] while the administrative chamber held a favourable position.[470]

In a ruling of 6 December 2024, the Constitutional Court[471] finally intervened to establish the unconstitutionality of Article 48(4) of the Workers' Statute and Article 177 of the General Social Security Law, since, by not providing a special regime for single-parent families, it results in discriminatory treatment of children born into these types of families. Therefore, until the legislature makes a decision on the matter, in single-parent families, the 10 weeks of non-simultaneous leave

466 Spain, Judgment of the Supreme Court, 19 February 2025, ECLI:ES:TS:2025:875.
467 Spain, Royal Decree-Law 6/2019 on urgent measures for ensuring equal treatment and opportunities for women and men in employment and occupation, 1 March 2019.
468 However, the General Law on Social Security regulates explicitly a different non-contributory maternity leave for single mothers.
469 Spain, Judgment of the Supreme Court, 2 March 2023, ECLI:ES:TS:2023:783.
470 Spain, Judgment of the Supreme Court, 15 October 2024, ECLI:ES:TS:2024:4948.
471 Spain, Judgment of the Constitutional Court, 6 December 2024, ECLI:ES:TC:2024:140.

that would have been due to the other parent must be added to the biological mother's 16 weeks of leave.

Since this ruling, the doctrine has been unified, and the social chamber of the Supreme Court has modified its own doctrine recognising the right of the sole parent to accumulate the 10 weeks of leave that would have been due to the other parent. In the interest of the principle of legal certainty, the Constitutional Court established that its ruling is not retroactive and that final judgments or situations for which no application had been filed before the date of the constitutional ruling cannot be reviewed.

Gender

Remuneration of childcare leave

Following the end of the transposition period for Directive (EU) 2019/1158 on work-life balance for parents and carers on 2 August 2022, and responding to the announcement of infringement proceedings, the Spanish Government adopted a Royal Decree-Law in 2023 to complete the transposition of some pending issues.[472] Although this bill did not resolve all the transposition issues, it introduced a leave of eight weeks for the care of children under eight years of age, despite making no reference to its remuneration.[473] The issue of remuneration for this leave has been debated ever since. Initially, the introduction of remuneration of at least four weeks was planned in the draft Family Law.[474] However, this law has been stalled in an endless process of amendments and is unlikely to see the light of day. The alternative was to adopt remuneration for the leave through the Budget Law, but several internal political vicissitudes have also made this alternative unviable.

In the meantime, some administrative courts – which hear cases involving childcare leave of public employees' – have begun to rule that the leave must be paid.

In January 2025, an administrative court in Cuenca issued the first final ruling – that is, no further revision is possible – recognising the right of a public employee to eight weeks of paid parental leave, in direct application of Directive 2019/1158. The court states that the Directive is clear, unconditional, and sufficiently precise, allowing for its direct application. It reasons that the lack of transposition by the Spanish state cannot be detrimental to the worker, and that the Administration's refusal to grant paid leave violates the principles of equality and work-life balance recognised in European legislation and the Spanish Constitution.

Sexual orientation

Transgender

Constitutional Court decision on legal standing of associations in administrative proceedings

In July 2016, the Autonomous Community of Madrid adopted Law No. 3/2016 on comprehensive protection against LGTBI-phobia and discrimination on grounds of sexual orientation and gender

[472] Spain, Royal Decree-Law 5/2023, which adopts and extends certain response measures to the economic and social consequences of the Ukrainian War, to support the reconstruction of the island of La Palma and other situations of vulnerability; transposition of European Union Directives on structural modifications of commercial companies and reconciliation of family life and professional life of parents and caregivers; and execution and compliance with European Union Law (*Real Decreto-ley 5/2023 por el que se adoptan y prorrogan determinadas medidas de respuesta a las consecuencias económicas y sociales de la Guerra de Ucrania, de apoyo a la reconstrucción de la isla de La Palma y a otras situaciones de vulnerabilidad; de transposición de Directivas de la Unión Europea en materia de modificaciones estructurales de sociedades mercantiles y conciliación de la vida familiar y la vida profesional de los progenitores y los cuidadores; y de ejecución y cumplimiento del Derecho de la Unión Europea*), 28 June 2023.

[473] Spain, Article 48*bis* of the Workers' Statute, 23 October 2015, and Article 49.g of the Civil Servants' Basic Statute, 30 October 2015.

[474] Spain, Draft Law on Families (121/000011), 5 March 2024.

identity.[475] Among other matters, this law provided for measures to protect LGTBI persons against any infringement of their right to equality taking place in the fields under the competence of the Community of Madrid, creating an administrative procedure before the Madrid regional administration to address infringements of the prohibition of discrimination against LGTBI individuals. The Law recognised certain entities as 'interested parties' (*interesados*), effectively granting them legal standing to trigger or take part in such administrative protection procedures. Specifically, Article 65 stated that LGTBI associations, entities, and organisations, as well as those having as their object the defence and promotion of human rights, would be deemed to have collective legitimate interests and, consequently, legal standing to act as interested parties in the administrative procedure aimed at protecting the principle of non-discrimination of LGTBI persons.

Subsequently, in December 2023, the Community of Madrid modified Law 3/2016 through Law 18/2023, stipulating that the legal standing of interested parties in administrative procedures for the protection of LGTBI individuals would not apply to criminal proceedings or to administrative sanctioning procedures.[476] In this context, the President of the Government of Spain challenged this regulation before the Constitutional Court, alleging an unlawful encroachment by the Autonomous Community of Madrid upon the powers reserved to the state and non-compliance with Law 15/2022, of 12 July 2022, on equal treatment and non-discrimination.

The Constitutional Court decided as follows:[477]

1. The exclusion of LGTBI associations and organisations from having legal standing in

2. criminal proceedings under the Madrid law, is unconstitutional, as the power to regulate legal standing in judicial proceedings is reserved exclusively to the state.

3. The exclusion of LGTBI associations and organisations from having legal standing in administrative proceedings that may result in an administrative sanction, is in violation of (Federal) Law 15/2022 on equal treatment and non-discrimination, which grants collective legal standing, in any administrative procedure (including those leading to sanctions), to trade unions, professional associations of self-employed workers, consumer and user organisations, and associations and organisations legally constituted for the defence and promotion of human rights.

This second finding is important, as the legal counsel for the Community of Madrid had argued that the relevant provision of Law 15/2022 (Article 31(2)) does not directly confer the status of interested party, but merely allows for the possibility that these organisations 'may have' such status, the effect of which is that their standing must be determined by the administrative body on a case-by-case basis. The Constitutional Court rejected this interpretation, holding that Law 15/2022 recognises *ex lege* the status of interested party for the associations and groups mentioned therein in all administrative procedures relating to situations of discrimination as defined by the Law.

[475] Spain, Autonomous Community of Madrid, Law No. 3/2016, of 22 July.
[476] Spain, Autonomous Community of Madrid, Law No. 18/2023, of 27 December.
[477] Spain, Constitutional Court, judgment of 9 April 2025 No. 96/2025.

Sweden

SE

Gender identity

LEGISLATIVE DEVELOPMENT

New Gender Identity Act

Act (2024:238) on determination of gender in certain cases (Gender Identity Act),[478] repealing Act (1972:119), effective 1 July 2025, introduces a simplified administrative process for anyone who wishes to change their legal gender, abolishing previous requirements for diagnosis of gender dysphoria and contact with gender-affirming care. The age limit is lowered from 18 to 16 years, with parental consent required. According to the guidelines published by the National Board of Health and Welfare in connection with the entry into force of the law, only one medical visit is required to obtain the certificate needed to change legal gender, which can be conducted digitally, for example, via video call. The requirement for the applicant to have lived as the other gender for an extended period is abolished. It is sufficient that the person can be expected to live in accordance with the desired gender identity in the foreseeable future.[479]

Due to political disagreement within the Government, the legislative process for this law did not follow the usual path. One of the three Government parties, the Christian Democrats (KD), along with the supporting party outside the Government, Sweden Democrats (SD), strongly opposed this legislative change, citing concerns about mental health and comorbidity among young people with gender dysphoria, and that the simplified processes risk overlooking important healthcare needs. Instead of the usual legislative procedure where the Government presents the proposal as a Government Bill, the bill was submitted by the Committee of Health and Welfare in the Parliament. It was then adopted by part of the Government, together with the opposition parties.[480] There were also disagreements and divisions within some parties that voted for the adoption of the bill.

While the original gender reassignment law (in effect since 1972)[481] and its subsequent amendments have enjoyed strong support, the new law has sparked considerable debate and public opposition. The RFSL (Swedish Federation for Lesbian, Gay, Bisexual, Transgender, Queer and Intersex Rights) and RFSL Ungdom (RFSL Youth) have both expressed strong support for the reform, describing it as a long-awaited step toward increased autonomy and dignity for transgender individuals. However, they have also emphasised that it does not go far enough and that legal gender recognition should be an administrative process based on the individual's self-declared identity. Both organisations have been active in advocating for this legislative change.

On the other hand, a number of Government agencies and other actors have advanced critiques relating to medical matters and mental health aspects, as well as concerns that the law could lead to situations where criminal individuals change gender identity to evade justice or debts.[482] The LHB Association (Lesbians, Homosexuals and Bisexuals) opposed the legislative changes, arguing that there

478 Sweden, Act (2024:238) on the Determination of Gender in Certain Cases (Gender Identity Act), 25 April 2024.
479 Sweden, National Board of Health and Welfare, Guideline (2025-5-9568) and Information Sheet (2025-5-9577).
480 Sweden, Parliamentary Committee Report, Bet. 2023/24:SoU22, Communication from the Riksdag rskr. 2023/24:159.
481 Sweden was the first country in the world to introduce a formal legal option for changing one's gender after review, along with the introduction of free gender reassignment treatment that same year.
482 Proposal referred to the Council on Legislation (*Lagrådsremiss*) Improved opportunities to change legal gender (*Förbättrade möjligheter att ändra juridiskt kön*) July 28 2022, p. 81.

is a risk that the rights of women and lesbians will take a back seat to biological men who claim a female gender identity, that the legislative changes may erode the rights of homosexuals and bisexuals, and criticising the medicalisation of young people with non-normative identities and gender expressions. Criticism has also been put forward by women's organisations. Even in 2018, when self-identification of gender was made subject to formal investigation by an inquiry chair, women's organisations were objecting to a law on the matter. For instance, the Swedish Women's Lobby and the Women's Front in Sweden have repeatedly argued that self-identification is a threat to women's rights and safety, claiming that the law could lead to situations where ill-intentioned men can access spaces previously reserved for women simply by claiming to be women. Arguments referring to women's safety have also been stressed by the two large associations for Swedish women's shelters, Roks and Unizon. Another claim has been that the law undermines the definition of female gender identity and reduces the category of women to external attributes such as clothing and appearance. In disagreement with her own party, the President of the Social Democratic Women's Association (S-Kvinnor) opposed the legislative proposal, expressing concerns that the law may undermine women's rights. The preparatory works confirm that lawmakers were aware of the criticisms raised but proceeded with the legislative proposal, emphasising that the individual's right to self-determination and gender identity should be central.

CASE LAW

Disability

Discrimination of a pupil with a disability due to local government failure to assess needs

The claimant attended a municipal elementary school but left the school in April 2018, a few months after being diagnosed with autism. During his time at school, he had certain difficulties with concentration and social interaction, which the school had taken some measures to alleviate for more than two years. When the claimant left the school, he had been having worryingly high levels of school absences for approximately one year.

In May 2017, the school principal was informed that the absences would mean that the claimant would not meet the knowledge requirements. In October 2017, the school's special education teacher completed their report, determining that the claimant needed special support. An action programme for the claimant was drawn up in February 2018, less than two months before he left the school.

In parallel, the School Inspectorate carried out a review of the school's actions and found in 2018 that the school had not taken sufficient measures to satisfy the claimant's right to support measures according to the Education Act. In particular, the school's investigations had taken too long and had failed above all in terms of an analysis of the claimant's need for special support. The School Inspectorate instructed the municipality to take measures so that the claimant's right to support measures and to education would be satisfied.

The claimant argued that the municipality subjected him to discrimination in the form of inadequate accessibility from May 2017 to 3 April 2018. More specifically, the school failed to act with sufficient speed to assess the claimant's needs and adopt a programme of measures based on that assessment even though the municipality already knew of the need for special measures. The municipality denied liability for disability discrimination as it was not until March 2018 that it was informed of the formal autism diagnosis.

In June 2024, the Supreme Court ruled on the case, reversing the decision of the appeal court and finding that the municipality, being liable for the school, subjected the claimant to discrimination through inadequate accessibility during the period from 13 October 2017 to 3 April 2018. The claimant was awarded discrimination compensation in the amount of EUR 1 741 (SEK 20 000).[483] The Supreme Court thus underlined that a diagnosis is not a prerequisite to the duty to provide reasonable accommodation. A school cannot be passive when it is obvious that a pupil needs support. Furthermore, even if a pupil is fulfilling the basic knowledge requirements, according to the Education Act, the school has a duty to provide special support if there are other indications of difficulties in school.

Disability

Discrimination of a military service applicant due to a diagnosis of Asperger's syndrome

The complainant had a diagnosis of Asperger's syndrome and applied to the admissions test for basic military education (BME). The Armed Forces rejected his application with the justification that his diagnosis was not compatible with admission to BME, nor was there any support for accepting an 'exonerating' investigation. The complainant submitted a complaint to the Swedish equality body, the Equality Ombudsman (DO), which then filed a lawsuit on his behalf.

The DO argued that the failure of the Armed Forces to undertake an individual examination or assessment of the complainant's actual functional capacity and suitability for BME, amounted to discrimination. Discrimination is prohibited under the Discrimination Act 'in connection with enlistment for and during the performance of national military service or civilian service' and there is no exception for disability in this regard. The complainant's application was rejected even though Asperger's syndrome is not in all cases equivalent to a lack of a characteristic or ability necessary for BME. Noting that the rejection of the complainant's application resulted in a missed opportunity for education provided during BME training, which is valuable on the Swedish labour market, the DO argued that discrimination compensation should be awarded in the amount of EUR 3 916 (SEK 45 000).

The Armed Forces denied that the complainant was disadvantaged and asserted that his individual assessment, based on his diagnosis, resulted in a level of service ability rated as zero. Thus, there was no liability to provide discrimination compensation.

In November 2024, the district court ruled on the case and held that the Armed Forces' rejection of the complainant's application constituted direct discrimination.[484] The criteria of a disadvantage, a comparable situation and a connection to disability were established, and it was therefore up to the Armed Forces to show that discrimination had not occurred. This was not possible as it was clear from the application process that no individual assessment had taken place. While only the best suited persons are to be enrolled for BME, given the circumstances in this case, an individual assessment is required. The state, through the Armed Forces, was ordered to pay EUR 3 916 (SEK 45 000) in discrimination compensation. The preventive share of the compensation award was somewhat higher than usual due to, among other reasons, the systematic nature of the discrimination and the fact that it was carried out by the state. The court also ordered the payment of EUR 70 107 (SEK 808 015) in legal fees to the DO.

[483] Sweden, Supreme Court, case No. T 3151-23, decision of 13 June 2024.
[484] Sweden, District Court of Stockholm, case No. T 17322-22, decision of 19 November 2024.

The state has appealed the decision of the district court.

Racial or ethnic origin

Discrimination by a municipality against a Syrian refugee family

In 2022, a Syrian refugee family was placed in the municipality of Staffanstorp by the Migration Authority and arrived at the local airport. Under law, the municipality thus had an obligation to meet the family at the airport and arrange for housing etc. However, the municipality had recently adopted a political decision to only accept refugees from Ukraine, and therefore did not provide any services to the family. A local antidiscrimination bureau helped the family file a complaint with the Equality Ombudsman (DO), but the DO found that there was no discrimination. The bureau then decided to file a small claims case on behalf of the family, arguing that the failure of the municipality to provide services to the family constituted ethnic discrimination. The district court ruled on the case in December 2024.[485] It held that, while the political decision of the municipality to only provide services to Ukrainian refugees fell outside the material scope of the Discrimination Act, the refusal to provide services did not. Therefore, the deliberate inaction of the municipality placed the family in a precarious situation which amounted to a disadvantage in the sense of the Discrimination Act. The fact that the municipality would presumably have offered their usual services to a family of Ukrainian ethnicity established a link between the disadvantage and the ethnicity of the family, which the municipality was unable to refute. The court thus concluded that the inaction of the municipality amounted to direct ethnic discrimination and ordered it to pay EUR 610 (SEK 7 000) to each of the four family members. The decision has been appealed.

TR Türkiye

CASE LAW

Disability

Failure of the Constitutional Court to examine potential discrimination with regard to the right to education of persons on the autism spectrum

The application was submitted due to an alleged infringement of the right to education in the form of a failure to remedy the moral harm inflicted by the inadequate education provided to individuals with autism. The applicant temporarily enrolled their high school-aged child, previously diagnosed with autism, in a class for individuals with autism at the beginning of the 2012 academic year. Following the beginning of the academic year, the class was briefly suspended due to the class teacher's extended medical leave. The child's registration was annulled, and they were directed to a Rehabilitation Centre, where they completed the 2012 academic year. On 17 September 2013, the applicant initiated legal proceedings for moral damages, asserting that the education received at the Rehabilitation Centre was deficient in both duration and substance, which led to a deterioration in the child's condition, subsequently inflicting significant distress upon the family. After the administrative courts' dismissal of the compensation claim, the individual application was assessed by the Constitutional Court without regard to the prohibition of discrimination, resulting in a determination that the positive obligations stemming from the right to education had been infringed.[486] While the applicant failed to claim a violation of the right to non-discrimination, the Court may indeed on its own

[485] Sweden, District Court of Lund, *Malmö mot Diskriminering (MmD) v Staffanstorps kommun*, case No. FT 1671-24, decision of 23 December 2024.
[486] Türkiye, Constitutional Court, *Ersan Özgümüş*, decision of 2 October 2024 in case No. 2021/54675.

initiative examine the case in the context of rights that were not explicitly invoked. However, in this case, the Court only made an assessment in the context of the right to education, failing to make an assessment in terms of the prohibition of discrimination. This has led to the omission of certain principles that could have served as guidelines on positive obligations, special measures and reasonable accommodation.

Gender

Case of regression in gender equality in public employment was reversed

On 30 December 2024, Karadeniz Technical University advertised a job opening for an office staff position, specifying that only male applicants would be considered.[487] A female applicant filed a complaint with the Public Audit Institution (PAI) arguing this was discriminatory. The University defended the restriction and stated that previously hired female staff in similar roles had requested reassignment after encountering 'coarse language' and 'unpleasant behaviour', and that complaints led to the belief that only a man could withstand the 'harshness' of this task in practice.[488] The PAI found the gender requirement violated constitutional principles of equality (Article 10) and the right to enter public service (Article 70). It was recommended that the advert be withdrawn and that the university ensure that future recruitment follows objective, non-discriminatory criteria. Higher education in Türkiye is a vital public service predominantly provided by the state. Accordingly, essential public services require permanent public officials.[489] The Public Servants Act No. 657 reinforces this by providing job security to public servants, ensuring the continuity of knowledge, expertise, and state traditions.

Between 2000 and 2010, during Türkiye's EU accession process, public officials, including senior public servants, received training on gender equality and non-discrimination. However, after 2010, the erosion of merit-based appointments and loss of employment continuity disrupted the transfer of accumulated expertise. As the EU process stalled, training programmes were discontinued. Recently, disciplinary action was even taken against two teachers for using the term 'gender' in their courses, reflecting growing political backlash.[490] As a result, Türkiye has seen a regression in gender equality, including the reappearance of discriminatory job advertisements.

Back in 2006, similar discriminatory adverts triggered public outrage, prompting intervention by the then Minister responsible for Women and Family,[491] which led to the adverts being cancelled and preventing similar incidents for years. In contrast, following the discriminatory advertisement in this case, another appeared again this year.[492]

Although Türkiye's public servant legislation does not explicitly prohibit gender-based discrimination, such practices are banned under international and regional conventions to which Türkiye is party, including CEDAW, as well as under the Constitution (Articles 10 and 70), the Penal Code, and the Act

487 Resmi Gazete, 30 December 2024.
488 AA, 'The Ombudsman Institution has advised the university that imposed a gender requirement in its recruitment process to annul the announcement', 20 June 2025.
489 Bakirci, K. (2003), 'Kamu İktisadi Teşebbüsleri Personel Rejiminin Yeniden Yapılandırılmasına İlişkin Çözüm Önerileri' (Proposed Solutions for the Restructuring of the Personnel Regime of State Economic Enterprises) in *Başbakanlık Devlet Personel Başkanlığı ve TÜHİS'in Türkiye'de Kamu Personel Rejiminin Yeniden Yapılandırılması Sempozyumu*, TÜHİS Yayını, Ankara, 2003.
490 BirGün, 'Condemnation of the use of gender equality', 13 June 2025.
491 Yeni Şafak, 'Minister Çubukçu Slams Job Ads Discriminating Against Women', 30 May 2006.
492 Memurlar Net, 'Yozgat Bozok University announces recruitment of 25 contract employees', 15 January 2025.

on the Human Rights and Equality Institution of Türkiye.[493] The PAI's decision emphasised that job requirements must be genuinely aligned with the demands of the role. Any gender-based condition without a valid, objective link to the nature of the job is unconstitutional and violates the principles of equality and the right to enter public service. It further affirmed that exceptions, such as in prisons where certain roles may require gender-specific staff, must be concretely justified. It concluded that qualifications for public service must be based on objective, general criteria, not subjective or discriminatory judgements.

Racial or ethnic origin

Decision of the Human Rights and Equality Institution regarding legal standing of NGOs

The application was submitted by a Roma NGO, and it pertains to claims that a column published in a local newspaper in 2024 contained discriminatory, marginalising and hateful speech directed at Roma individuals. According to national law, individuals who claim to have experienced discrimination may submit an application to the Human Rights and Equality Institution, if the assertion of 'damage' is incorporated in the application. Associations, as private legal entities, can only file a petition with the Institution if they have experienced an infringement of their legal rights. In the case at hand, it was concluded that no infringement of the association's rights as a legal body was established; hence, the association lacked victim status and did not fulfil the conditions for legal standing before the Institution.[494] This approach contradicts EU law and undermines the efficacy of NGOs in addressing discrimination.

POLICY AND OTHER RELEVANT DEVELOPMENTS

Disability

Parliamentary research committee on the rights of persons with disabilities

To enhance the engagement of persons with disabilities in social life, ascertain the challenges they encounter and formulate enduring solutions to these issues, a parliamentary inquiry was initiated in May 2025 in accordance with Article 98 of the Constitution and Articles 104 and 105 of the Rules of Procedure of the Grand National Assembly of Türkiye.[495] The resolution establishing the parliamentary research committee was ratified by the General Assembly on 15 May 2025 and its term of office will in principle be set at three months as of the election of the members of the research panel.[496] The conclusions of this research panel may lead to legislative reforms in combating discrimination towards individuals with disabilities in the coming years. Furthermore, the reports generated by this committee may render previously inaccessible information regarding disabilities available to the public.

493 Bakirci, K. (2022), 'Country report, Gender equality: How are EU rules transposed into national law? Turkey', European network of legal experts in anti-discrimination and gender equality, 2022.
494 Türkiye, Human Rights and Equality Institution, decision of 11 February 2025 in case No. 2024/1573.
495 Türkiye, Grand National Assembly, Resolution No. 1449 on establishing a Parliamentary Research Committee on Strengthening the participation of people with disabilities in social life, identifying the issues they face and developing permanent solutions to these issues, 15 May 2025.
496 The members of the research panel were elected after the cut-off date for this review, on 1 July 2025.

United Kingdom UK

LEGISLATIVE DEVELOPMENT

All grounds

Pending Employment Rights Bill

The Employment Rights Bill, which was pending adoption at the time of writing, will introduce a number of changes with an impact on equality issues.[497]

First, Clause 19 of the Bill will amend the Worker Protection (Amendment of Equality Act 2010) Act 2023 so that the employer's duty to take reasonable steps to prevent sexual harassment will require employers to take *all* reasonable steps.[498] This will increase the level of effort that employers must take to prevent sexual harassment. In addition, Clause 20 will introduce measures to protect employees from harassment by third parties on *all* grounds covered by the harassment provisions at Section 26 of the Equality Act 2010.

Clause 21 will confer a power for ministers to specify reasonable steps through regulations (such as carrying out assessments, publishing action plans or policies). Such specification could provide greater clarity and certainty for employers, but the detail is left to regulations. Finally, Clause 22 will extend protection under the protected disclosures provisions of the Employment Rights Act 1996 (Sections 43B and 43L), to disclosures relating to sexual harassment.

CASE LAW

Racial or ethnic origin

Justified dismissal due to nationalist and Islamophobic beliefs

The claimant in this case claimed that he was dismissed due to his beliefs, and the question for the Employment Appeals Tribunal was whether the beliefs were protected beliefs. The beliefs related to an English nationalism holding that there is no place in British society for Muslims or Islam itself. Among the claimant's views are that Muslims should be forcibly deported from the United Kingdom.

The tribunal held that these views were not capable of protection under the European Convention of Human Rights on the basis that they would offend Article 17 which provides that 'Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.' The tribunal accepted a distinction between the right to hold the views and the right to claim protection from discrimination on the basis of those beliefs. It therefore concluded that the dismissal did not amount to discrimination on the ground of beliefs.[499]

[497] United Kingdom, Employment Rights Bill. The first reading of the bill was on 10 October 2024 and at the time of writing, it was at the report stage in the House of Lords.

[498] The legal duty on employers to take steps to prevent harassment of employees from third parties was first introduced in the 2010 Equality Act under Section 40 but was repealed in 2013. The Worker Protection (Amendment of Equality Act 2010) Act 2023 reinstated the duty in relation to sexual harassment only, adding a new Section 40A to the 2010 Equality Act, in force as of 26 October 2024.

[499] United Kingdom, Employment Appeals Tribunal, *S Thomas v Surrey and Borders Partnership NHS Foundation Trust & Anor*, [2024] EAT 141, 5 September 2024.

Gender identity

Meaning of 'sex' in the Equality Act 2010: the judgment of the Supreme Court in *For Women Scotland* v *The Scottish Ministers*

The case[500] concerned the meaning of the terms 'man', 'woman' and 'sex' in the Equality Act 2010 (EA).[501] The Supreme Court was asked to decide whether sex within the Act means 'biological sex' (the term used by the Court to describe sex assigned at birth) or 'certificated sex', which includes sex certified by means of a gender recognition certificate acquired under the provisions of the Gender Recognition Act 2004.[502] The case arose as a result of a challenge to Scottish ministerial guidance on the meaning of 'sex' for the purposes of the Gender Representation on Public Boards (Scotland) Act 2018,[503] legislation which introduced an objective that 50 % of non-executive members of public boards should be women. The guidance stated that 'women' in this legislation had the same meaning as it did under the Equality Act 2010 and further stated that, where a full gender recognition certificate had been issued to a person, their sex would be the same as their acquired gender. For Women Scotland, a campaign group, challenged this definition. Section 212 of the EA defines 'woman' as 'a female of any age' but does not specify whether this should refer to sex assigned at birth or should include sex certified by a gender recognition certificate.

The Supreme Court was unanimous in finding that 'man', 'woman' and 'sex' were references to biological sex. It reached this decision as a matter of statutory interpretation, finding that this must have been the intention of Parliament when enacting the Equality Act, on the basis that an alternative interpretation based on certificated sex would make parts of it 'incoherent' or 'unworkable.' Important considerations in reaching this conclusion on Parliament's intention included:

- that the provisions of the Act relating to pregnancy and maternity were only workable if 'man' and 'woman' were given a biological meaning;
- that a certificated sex interpretation would give trans people who possess a gender recognition certificate greater rights under the Equality Act than those who do not – something that would be unworkable in practice;
- that a 'certificated sex' interpretation would weaken the protections given to those with the protected characteristic of sexual orientation;
- that the provisions of the Equality Act governing the provision of separate or single-sex services would not be coherent if the definition of sex was certificated sex.

The Supreme Court made clear that its judgment was not to be understood as having significance beyond the narrow question of the interpretation of the Equality Act, stating that 'it is not the role of the court to adjudicate on the arguments in the public domain on the meaning of gender or sex, nor is it to define the meaning of the word "woman" other than when it is used in the provisions of the EA 2010.' It noted, in particular, that the judgment had no impact on the legal effect of gender recognition certificates in the context of marriage, pensions, retirement and social security. The Court also stated

500 United Kingdom, *For Women Scotland Ltd* (Appellant) v *The Scottish Ministers* (Respondent) [2025] UKSC 16, judgment of 14 April 2025.
501 UK, Equality Act 2010, 2010 c.15.
502 UK, Gender Recognition Act 2004, 2004 c. 7.
503 UK, Gender Representation on Public Boards (Scotland) Act 2018, 2018 asp 4.

that a biological sex interpretation would not have the effect of disadvantaging or removing protections from trans people. This is because, it argued, trans people would continue to have protection from discrimination based on the protected characteristic of gender reassignment and would also be protected from discrimination based on being perceived as or associated with a sex which differed from their biological sex.

It should be noted that the judgment does not affect the interpretation of equality legislation in Northern Ireland (the Equality Act 2010 does not generally apply in Northern Ireland).

Technically, this judgment does not represent a change in the law but a clarification of the meaning of the relevant provisions of the Act. However, before the judgment, the definition of sex in the Equality Act was widely understood to mean certificated sex – including by the Equality and Human Rights Commission (EHRC) and the Government. The judgment has therefore given rise to considerable debate, and concern, as to its implications for those with relevant rights and obligations. Despite the view of the Court that the rights of trans people should not be diminished by the judgment, important questions remain as to, for example, the circumstances under which employers, educational establishments and services providers will be required to provide single-sex facilities only for those of the same biological sex. Indeed, one of the criticisms of the judgment has been that the Supreme Court focused on problems of the coherence and workability of sections of the Equality Act caused by a certificated sex interpretation, but did not adequately engage with the legal and practical complexities created by a biological sex interpretation.

An important source of concern has been the interpretation of the implications the judgment by the EHRC in its guidance – interim guidance published immediately after the judgment has been subject to legal challenge (ongoing) and to criticism by both the Joint Committee on Human Rights and the Women and Equalities Committee for, among other things, failing to set out adequately how the rights of trans people could be guaranteed. The EHRC is currently reviewing the guidance, following consultation, and a final version is awaited.

A challenge to the judgment of the Supreme Court, made on behalf of the first openly transgender judge in the UK has now been sent to the European Court of Human Rights. The initial basis of the challenge is the refusal of the Supreme Court to allow her to intervene in the original proceedings to give evidence as to the potential impact of the judgment.

Religion or belief

Unjustified dismissal due to gender critical beliefs

The claimant was employed as a school pastoral assistant, but was dismissed for gross misconduct after a complaint was raised about personal social media posts expressing gender-critical beliefs and views critical of sex and relationship education. The claimant claimed that this was discriminatory because it related to protected beliefs (religious beliefs and gender critical beliefs). She brought claims against the school, notably for direct discrimination on the grounds of protected beliefs.

The Employment Tribunal ruled on the case on 6 October 2020. It found that the claimant's beliefs constituted protected beliefs. However, her claim failed on the basis that she was not dismissed because of her protected beliefs, but because the language of the posts created a reasonable concern that she would be perceived as holding homophobic or transphobic beliefs, and that these could affect the school's reputation.

The Employment Appeal Tribunal (EAT) allowed the claimant's appeal in a decision of 16 June 2023, and the case was then appealed to the Court of Appeal, which upheld the EAT decision on 12 February 2025. The Court of Appeal found that the school's dismissal of the claimant was not objectively justified. The dismissal was due to the manifestation of the claimant's belief, which would be directly discriminatory unless the dismissal was for an objectively objectionable feature of that manifestation.[504] The basis for this decision involved a purposive reading of the Equality Act 2010 in the light of Article 9 of the European Convention on Human Rights. On 4 June 2025, permission to appeal to the Supreme Court was refused, and the decision of the Court of Appeal became final.

All grounds

Employment Appeals Tribunal decision on the definition of a 'protected act' with regard to the protection against victimisation

The claimant was the only non-white member of staff employed on a full-time basis. She claimed that she was the only employee who was a victim of bullying due to having shouted at work but did not explicitly claim that the treatment was because of her race. The Employment Tribunal held that the grievances could not be a 'protected act' for the purposes of victimisation as they had not raised concerns about race.

The Employment Appeal Tribunal overturned the ET decision and held that, when considering whether a 'protected act' has occurred in a victimisation claim, tribunals should always consider the wider context. The allegation relied on as a 'protected act' need not state explicitly that an act of discrimination has occurred. All that is needed is for facts to be asserted which are capable in law of amounting to an act of discrimination. The tribunal should then consider the wider context in determining whether victimisation has occurred. In this case, the tribunal should have considered that the employer would know that the claimant was the only black employee, that the complaint was specifically about difference in treatment, and that the claimant had mentioned during the grievance that shouting may be connected to black women in a negative way.[505]

[504] United Kingdom, Court of Appeal of England and Wales, *Higgs v Farmor's School*, [2025] EWCA Civ 109, 12 February 2025.

[505] United Kingdom, Employment Appeals Tribunal, *Kokomane v Boots Management Services Ltd*, [2025] EAT 38, 11 March 2025.

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