

NON-DISCRIMINATION IN THE CURRENT DIGITAL ERA IN RELATION TO THE LEGAL FRAMEWORK OF THE EUROPEAN UNION

Lorena G. NIȚOIU¹

Abstract: *Tackling discrimination is a core policy challenge in EU strategies for the construction of a shared legal identity. In the present quest, they constitute a reference framework for all interactions between competitiveness and economic growth on the one hand, and individual fundamental rights on the other. Discrimination and inequality constitute a major source of concern. The penetration level varies with the nature and weight of the discrimination but should not reach the autonomy of national competences. The rise of digital technologies has had a profound impact on almost every aspect of our societies. The new Digital Age, a period characterised by rapid and constant innovation, an urgent need for development, and new technologies, tools, has become a defining characteristic of our lives. In this scenario, the challenges of managing innovation, digitisation and new technology have been placed centre stage by the European institutions as one of the priorities in the development of the Union. The objective is clearly to take advantage of the opportunities that the new technologies bring for all Europeans and for society as a whole, while also reducing the associated risks of discrimination in digital spaces.*

Key words: *non-discrimination, digitalization, equality, algorithmic bias*

1. Introduction

Non-discrimination is a principle whereby population groups should not be treated differently, nor should they be treated less favourably, in a comparable situation without an objective and reasonable justification. For the purposes of this principle, discrimination is more particularly understood as being any distinction, exclusion, restriction or preference in the access to or supply of digital services which impairs the right of some people to receive or provide services available and accessible to the public (Cellini, 2015). The digital transformation has brought about substantial changes in the production and distribution of goods and services, and it is impacting different sectors to a greater or lesser extent. Employment, labour markets and access to digital services are core examples of such sectors where the evolution and growing need for digital services provide increasing opportunities for discrimination. This analysis reviews the evolution of the non-discrimination principle in the European Union, identifies the main digital

¹ Transilvania University of Braşov, lorena.nitoiu@unitbv.ro, senior lecturer.

phenomena where the risk of discrimination can arise and highlights recent regulatory and policy developments at the European and national levels.

2. Historical Context of Non-Discrimination

Legal protection against discrimination was first established Europe-wide by the Rome Treaty in 1957, which mandated equal pay for men and women. During the 1970s, directives on gender equality in the workplace laid the foundation for further developments in equality law. Landmark rulings by the European Court of Justice expanded the scope of discrimination law by interpreting concepts such as “pay” broadly and introducing “indirect discrimination” (e.g. differential treatment of full-time and part-time workers affecting women disproportionately). The 1999 Amsterdam Treaty extended protection to additional grounds — including racial or ethnic origin, religion, disability, age and sexual orientation — leading to legislation covering housing, healthcare and education. Central to the current framework are the Race Equality Directive, the Framework Equality Directive and the 2004 and 2006 Gender Equality Directives. Primary law provisions are drawn from the Treaty on the European Union, the Treaty on the Functioning of the EU and the Charter of Fundamental Rights of the EU (Weerts et al., 2023).

The principle of equality, first articulated in the Declaration of Human Rights of 1789, reappeared after the Second World War in the 1955 European Convention on Human Rights, the International Covenant on Civil and Political Rights and, more recently, the 2000 European Charter of Fundamental Rights. Anti-discrimination policy emerged internationally during the 1950s from two separate sources: the US Civil Rights Movement, which sought to end racial repression, and Swedish social democracy, which regarded gender inequality as unacceptable. Although both approaches initially aimed to achieve formal rather than substantive equality, local variations were substantial. Italy focused specifically on equality for workers, rather than for citizens, while Greece enforced a “gender-neutral” principle until 1985. Across much of Europe, anti-discrimination measures arrived comparatively late: Spain (1978), Netherlands (1975), the UK (1970, 1975) and, especially, Germany and France (Baldwin-Edwards, 2006).

3. The Legal Framework in the EU

The European Union’s (EU) legal framework against discrimination originates from the 1957 Rome Treaty, which established the principle of equal pay for men and women. A series of directives adopted in 1975 and 1976 on workplace equality furnished the Court of Justice with a basis for developing the law further. The scope of non-discrimination law was subsequently extended to encompass new subject matters and concepts, including the notion of indirect discrimination, where differential treatment places certain groups—such as part-time workers—at a disadvantage. The 1999 Amsterdam Treaty widened the array of protected grounds to include racial or ethnic origin, religion, disability, age, and sexual orientation (Weerts et al., 2023). Today, EU non-discrimination law comprises four main directives supplemented by provisions in the Treaty on the European Union, the Treaty on the Functioning of the EU, and the Charter of Fundamental Rights.

3.1. EU Treaties and non-discrimination

The European Union's commitment to non-discrimination derives from Treaty-based provisions and the Charter of Fundamental Rights (Howard, 2007). To understand the regulatory framework, it is first necessary to analyse Article 19 of the TFEU and Article 21 of the Charter, which provide quintessential examples of the particular policy instruments adopted by the EU to avoid discrimination in the sector of personal data processing.

Article 19 represents a major source of the EU's anti-discrimination legislation and establishes the Treaty foundation for the adoption of the recently adopted GDPR provisions while avoiding personal data processing regulation generally within the scope of the mentioned Treaty provisions due to the existence of a particular Data Protection policy instrument.

3.2. The Charter of Fundamental Rights

In line with the EU constitutional framework, the section on non-discrimination is maintained by the EU Charter of Fundamental Rights.

While the principle of non-discrimination is a general principle of the Union, the Charter gives it explicit expression under its Article 21. Indeed, the Charter, which is generally addressed towards the EU institutions, inter alia, the European Court of Human Rights and Union institutions can invoke the Charter as a source of law. It also binds the member States for actions conducted within the scope of Union law pursuant to Article 51(1) of the Charter. Furthermore, providing the guarantees of non-discrimination it is important to note that, under Article 52, the limits on the exercise of the rights and freedoms recognised by the Charter must be provided by law, must respect the essence of those rights and freedoms, and are subject to the principle of proportionality.

Article 21 prohibits any discrimination on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation. Looking deeper at the relationship between Charter Article 21 and different grounds of discrimination, it is important to note that although the Nondiscrimination Directive listed the grounds to be covered by EU non-discrimination laws and policies, it did not make an explicit link between these grounds (i.e. racism, ethnicity and religion) and the full set of fundamental rights of the EU. Charter Article 21 establishes this link clearly; it prohibits discrimination on a much wider grounds basis than is covered by the Directive and applies to a broader range of activities and fields beyond employment and occupation.

By virtue of Article 21, therefore, the EU's fundamental rights guarantee of non-discrimination adorns not only Union institutions but also member State action within the scope of Union law. Beyond the non-discrimination agenda, those who are vulnerable to discrimination, such as migrants and minorities, are also protected through other fundamental rights in the Charter. These rights cover the citizen's dignity, the right to asylum, the integration of persons with disabilities, the right to private and family life and the rights and interests of the child.

3.3. Equality Directives

The equality directives mark a critical step towards the construction of a Community framework that ensures respect for the principle of equal treatment, a fundamental right embedded within the European Union. Council Directive 2000/43/EC implements the principle of equal treatment between persons irrespective of racial or ethnic origin, while Council Directive 2000/78/EC lays down a general framework for equal treatment in employment and occupation. These directives address the societal challenges that discrimination continues to pose, instituting legal commitments that public authorities in the Member States must uphold. The 1957 EC Treaty contained a provision on equal pay between men and women, now enshrined in Article 157 of the Treaty on the Functioning of the European Union (TFEU). The first directive against sex discrimination, Directive 76/207/EEC, has been recast by Directive 2006/54/EC, and for the field of goods and services, sex-discrimination is prohibited by Directive 2004/113/EC.

Pursuant to these equality directives, the Court has clarified distinctions among various forms of discrimination and related concepts. Discrimination means either treating a person less favourably than another is or would be treated in a comparable situation or applying a provision, criterion, or practice which, although apparently neutral, is likely to place persons from a particular racial or ethnic origin at a particular disadvantage unless that provision is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary (Howard, 2018). Harassment consists of unwanted conduct related to racial or ethnic origin with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating, or offensive environment. As an example, in C-13/05 Chacon Navas, the Court found that the term "disability" may include a condition of chronic alcoholism and that such a person could be protected against dismissal. Signature forms of discrimination that warrant aggravation of penalties include victimization (the infliction of a detriment on a person for having invoked or sought to enforce his rights under the Directive) and instruction to discriminate (directing or encouraging others to discriminate).

3.4. The Romanian framework

Romania benefits from extensive legislation in the field of discrimination, starting with the Romanian Constitution, which in Article 16 provides for the equality of citizens before the law and public authorities without any discrimination or privileges, and Article 30 (freedom of expression) prohibits incitement to discrimination, which is also reiterated in Article 44 (right to private property) regarding the prohibition of nationalization or any other measures of forced transfer of property to public ownership based on discriminatory criteria.

The Civil Code reiterates equality before civil law, and the Criminal Code criminalizes incitement to hatred or discrimination in Article 369. More recently, the Administrative Code also enshrines the principle of equality in Article 7 and the right to equal treatment in Article 413, and raises the idea of non-discrimination in Article 447 (conduct in relations with citizens), Article 449 (objectivity and responsibility in decision-making), Article 467 (competition for public office).

Furthermore, special legislation such as Law No. 202 of April 19, 2002, on equal opportunities and treatment between women and men (republished) and Government

Ordinance No. 137/2000 on the prevention and punishment of all forms of discrimination (republished) defines the concept of discrimination (Article 2 of Government Ordinance No. 137/2000 rep) or classified as direct and indirect discrimination (Article 4 of Law No. 202/2002 rep). The classification of discrimination into direct and indirect discrimination is also included in the Labor Code, specifically in Article 5, which adds to this classification the concept of discrimination by association.

Obviously, there are special laws prohibiting discrimination in various sectors such as health, social assistance, national education, public procurement, broadcasting, free access to information of public interest, protection and promotion of the rights of persons with disabilities, unemployment insurance, and employment promotion.

4. Discrimination in Digital Spaces

The new Digital Age, a period characterised by rapid and constant innovation, an urgent need for development, as well as, new technologies, tools and business models, has become a defining characteristic of our lives.

In this scenario, the challenges of managing innovation, digitisation and new technology have been placed centre stage by the European institutions as one of the priorities in the development of the Union. The objective is clearly to take advantage of the opportunities that the new technologies bring for all Europeans and for society as a whole, while also reducing the associated risks.

Regulation (EU) 2024/1689 of the European Parliament and of the Council of June 13, 2024, on AI aims to ensure that artificial intelligence (AI) systems are developed and used responsibly. The law addresses risks linked to AI, such as bias, discrimination and accountability gaps, promotes innovation and encourages the uptake of AI. Within this regulation, non-discrimination is viewed from two perspectives, namely: the rules established by this Regulation should apply to providers of AI systems in a non-discriminatory manner, irrespective of whether they are established within the Union or in a third country, and to deployers of AI systems established within the Union; From the point of view of beneficiaries/recipients, practices that contravene the right to non-discrimination are prohibited.

However, there are still a number of risks associated with the use of artificial intelligence systems that may affect the right to non-discrimination, even though the aforementioned regulation considers that this should not happen.

4.1. Cyberbullying and online harassment

Digitalization and Information Communication Technologies (ICT) offer numerous benefits yet exacerbate inequalities such as cyberbullying and online discrimination. The misuse of fast digital information puts vulnerable groups and especially minors at great risk (Athanasίου et al., 2018).

Cyberbullying refers to sending or posting harmful, cruel, rude, and threatening content using digital means, while online harassment refers to a broader form of deliberate, repeated, and hostile behavior by individuals or groups, such as harassment, threats, embarrassment, or humiliation, via electronic communications. Victims often experience lasting emotional distress and social problems; many countries have established laws, remedies, and helplines for assistance. To counter cyberbullying,

automated techniques have been developed to detect, classify, and prevent the proliferation of such content.

4.2. The Digital Divide and Access Issues

The digital divide refers to the gap between individuals who have access to digital resources such as the internet and digital devices, and those who do not – hence creating a disparity between the “information rich” and the “information poor” (Kos-łabędowicz, 2017). The problem of the digital divide particularly affects rural areas, even in highly developed countries such as the United States, Japan, and the European Union. Geographic barriers including distance, remoteness, and high population dispersion hinder the effective implementation of ICT policies in such areas. Moreover, the aging rural population leads to depopulation and low digital skills among the older generation, reducing their ability to benefit from ICT opportunities. Addressing limitations in infrastructure quality and improving digital literacy are essential to enable rural communities to access digital resources. Ensuring adequate access and skills is crucial for economic productivity and competitiveness, as widespread lack of qualifications has far-reaching effects across the entire economic system.

In addition, digitization offers significant potential to democratise culture and make it more accessible to vulnerable groups, as cultural events are no longer tied to a particular physical space or time (Higgins et al., 2022). Despite these opportunities, many individuals remain excluded from digital tools primarily due to poverty or discomfort with technology. Digital inequality affects vulnerable citizens lacking sufficient access to equipment and information, thereby hindering their ability to engage with digital culture and access digital administration. Problems of poor digital connectivity and insufficient relevant skills — encompassing knowledge and training on how to access digital cultural resources — persist. For certain communities such as Travellers, the absence of an email address impedes access to digital cultural goods. Moreover, poor digital literacy continues to represent a substantial barrier, particularly for persons with disabilities, who also face concerns around privacy and reliance on others to use digital services. Vulnerability can compound these harms and intensify challenges, as marginalised groups including migrants, ethnic minorities, and persons with disabilities frequently encounter discrimination, paternalism, and victimisation.

4.3. Algorithmic Bias

AI systems can be influenced by inherent biases. Several studies show that automated decision-making systems encode and amplify the biases that are pervasive in the data used to train them. Systems such as facial recognition tools developed by well-known technology companies perform better for lighter-skinned men and exhibit worse performance for darker-skinned women (Weerts et al., 2023). It should be noted that even now, the prohibition in the Artificial Intelligence Regulation on biometric classification systems does not apply to sorting images based on hair color or eye color, which can be used, for example, in law enforcement.

AI systems that assign scores to individuals can generate discriminatory results, as individuals should be judged on their actual behavior rather than on behavior predicted

by AI. Artificial intelligence systems can also discriminate based on protected characteristics such as ethnicity. Yet the General Data Protection Regulation (GDPR) generally prohibits organisations from using special categories of data (e.g., ethnicity, religion, disability, age or gender) to “debias” systems unless legislators adopt a new exception for this purpose (van Bekkum and Zuiderveen Borgesius, 2022). Emerging technologies—such as machine learning and artificial intelligence—raise novel ethical challenges because they are both socially and politically transformative. Some technologies, such as contact-tracing apps, have direct biopolitical effects; others influence the distribution of opportunities in society, potentially exacerbating existing inequalities. It therefore seems that a careful ethics-by-design approach should be incorporated into the development of such systems. Moreover, instead of relying on abstract values such as “transparency” and “fairness,” it is generally more useful to consider the underlying concepts—such as how interventions may impact well-being, equality, or democracy. Understanding these concepts can help design more effective approaches to safeguarding ethical-guarantees in technological development. The European data-protection framework is well suited to this task, since it implements such fundamental-concepts and provides mechanisms for their enforcement.

5. Conclusion

The challenge ahead is to guarantee a uniform level of protection against discrimination for people irrespective of racial or ethnic origin, religion, beliefs, disability, age, or sexual orientation. The emphasis now lies on the effective enforcement of the anti-discrimination Directives, encompassing not only legislation but also practical application, societal attitudes, and everyday experiences. All Member States have implemented measures to combat discrimination, typically embedded within constitutional and legal frameworks, and frequently supplemented by policy measures. Nonetheless, these interventions remain inadequate, as victims seldom resort to legal proceedings out of apprehension about proving their cases, skepticism regarding the fairness of outcomes, or insufficient awareness. Despite these difficulties, there is a renewed determination throughout the EU to advance the fight against discrimination (Commission, 2004).

Speculation about future developments is always delicate, yet the likelihood that the problem of algorithmic discrimination will continue to raise attention is high.

Digital technologies are also key enablers of the right to education. Many problems can be resolved by raising awareness of the advantages of digital technologies. Education in digital literacy, in particular, is the basis for social inclusion and freedom of information and communication.

References

- Athanasίου, K., Melegkovits, E., K. Andrie, E., Magoulas, C., K. Tzavara, C., Richardson, C., Greydanus, D., Tsolia, M., & K. Tsitsika, A. (2018). *Cross-national aspects of cyberbullying victimization among 14–17-year-old adolescents across seven European countries*. Available at: <https://bmcpublichealth.biomedcentral.com/articles/10.1186/s12889-018-5682-4>

- Baldwin-Edwards, M. (2006). Implementing the EU anti-discrimination directives in Greece: Between marketization and social exclusion. *MMO Working Paper No. 8*, Jan. 2006. Available at: <https://www.researchgate.net/search.Search.html?query=Baldwin-Edwards%2C+M.+%282006%29.+Implementing+the+EU+anti-discrimination+directives+in+Greece%3A+Between+marketization+and+social+exclusion.+MMO+Working+Paper+No.+8%2C+Jan.+2006&type=publication>
- Cellini, M. (2015). *The Right to Non-Discrimination on the Ground of Sexual Orientation: An Analysis of the EU Law and the Jurisprudence of European Court of Justice*. Available at: https://www.researchgate.net/publication/287214836_The_Right_to_Non-Discrimination_on_the_Ground_of_Sexual_Orientation_An_Analysis_of_the_EU_Law_and_the_Jurisprudence_of_European_Court_of_Justice
- Commission, E. (2004). *Equal Rights in Practice*. Key Voices. Available at: <https://core.ac.uk/download/5128785.pdf>
- Higgins, N., Ferri, D., & Donnellan, K. (2022). *Enhancing Access to Digital Culture for Vulnerable Groups: The Role of Public Authorities in Breaking Down Barriers*. Available at: ncbi.nlm.nih.gov
- Howard, E. (2007). *The case for a considered hierarchy of discrimination grounds in EU law*. Available at: <https://repository.mdx.ac.uk/item/80w2v>
- Howard, E. (2018). *EU anti-discrimination law: has the CJEU stopped moving forward?* Available at: https://www.researchgate.net/publication/328143675_EU_anti-discrimination_law_Has_the_CJEU_stopped_moving_forward
- Judgment of the Court (Grand Chamber) of 11 July 2006, C-13/05 Chacón Navas. Available at: <https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX:62005CJ0013> Accessed at 15 october 2025
- Kos-Łabędowicz, J. (2017). *The issue of digital divide in rural areas of the European Union*. Available at: https://www.researchgate.net/publication/320834866_The_issue_of_digital_divide_in_rural_areas_of_the_European_Union
- Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024R1689> Accessed at 10th October 2025.
- The Constitution of Romania republished in the *Official Gazette No. 767* of October 31, 2003.
- van Bekkum, M., & Zuiderveen Borgesius, F. (2022). *Using sensitive data to prevent discrimination by artificial intelligence: Does the GDPR need a new exception?* Available at: <https://www.sciencedirect.com/science/article/pii/S0267364922001133>
- Weerts, H., Xenidis, R., Tarissan, F., Palmer Olsen, H., & Pechenizkiy, M. (2023). *Algorithmic Unfairness through the Lens of EU Non-Discrimination Law: Or Why the Law is not a Decision Tree*. Available at: <https://arxiv.org/abs/2305.13938>