

# María Carro Pitarch\*

## Non-discrimination on the basis of nationality

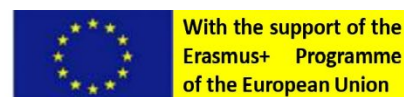
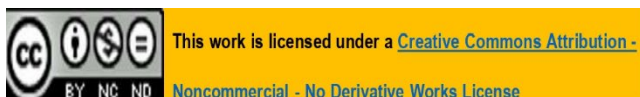
### SLIDE 1

Hello, welcome. I'm Maria Carro and in this video, I'm going to talk about non-discrimination on grounds of nationality.

### SLIDE 2

Nationality discrimination is the unfavourable treatment of an individual compared to others in a similar situation because of a characteristic they possess that falls within a 'protected ground' (such as nationality, age, gender, etc.).

In the EU legal framework, the prohibition of discrimination on grounds of nationality is enshrined in several provisions. In Article 2 of the Treaty on European Union, among other values on which the Union is founded, such as democracy, freedom and respect for human dignity, is the value of equality and the affirmation that the society of the Member States is characterised by non-discrimination. Furthermore, Article 18 of the Treaty on the Functioning of the European Union states that



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"Within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited". This wording is also used in Article 21(2) of the Charter of Fundamental Rights of the European Union.

### **SLIDE 3**

When talking about the prohibition of discrimination based on nationality within the European Union, it is necessary to make a distinction between the status and the protection derived from it of workers, on the one hand, and that of Union citizens in general, on the other.

Thus, it should be remembered that workers have enjoyed special protection since the Union was born as an economic project and, therefore, the main concern was initially to protect workers from potential discrimination, so that they could exercise their rights to freedom of movement by facilitating the movement of factors within the European territory.

Today, the basic legislation to be taken into account is, on the one hand, Article 45 of the Treaty on European Union and, on the other hand, Regulation 49/2011 on the free movement of workers and, in particular, its article 7 on equal treatment.

Focusing on article forty-five, it states that:

1. Freedom of movement for workers within the Union shall be secured.

2. Freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work.

This provision has, according to the case law of the European Court of Justice (at the time) direct effect. Direct effect means that individuals can invoke the provision enshrining freedom of movement and the abolition of discrimination between workers before a national court against the State (vertical direct effect) and against other individuals (horizontal direct effect).

## **SLIDE 4**

On the other hand, it is necessary to talk about European citizenship, which was introduced with the Maastricht Treaty of 1992 and taken over by the Lisbon Treaty.

The legislation applicable to the prohibition of discrimination on grounds of nationality between citizens of the Union is mainly Article 21 of the Treaty on European Union on the right of movement and residence of European citizens and Directive 2004/38/EC on the right of citizens of the Union and

their family members to move and reside freely within the territory of the Member States.

In order to apply this prohibition enshrined in the original and secondary legislation, a transnational element is, in principle, necessary. We recall the beginning of Article 18 of the Treaty on the Functioning of the European Union, which states: "Within the scope of application of the Treaties...". In other words, for this legislation to apply, we must be within the scope of application of Union law. And when is this the case? Well, when there is a transnational element, i.e. when freedom of movement is exercised from one Member State of the Union to another.

However, the Court of Justice of the European Union has extended the protection enshrined here to purely internal situations where this right to freedom of movement has not been exercised. The most paradigmatic cases are the *García Avello* case and the *Ruiz Zambrano* case. In both cases, even though there has been no intra-Union movement, the potential problems that could arise in the future for Union citizens when exercising their rights were sufficient to apply the prohibition of discrimination on grounds of nationality.

## **SLIDE 5**

I hope you have found this brief overview of the principle of non-discrimination on grounds of

nationality in the European Union interesting. That is all I had to say.

Thank you very much for your attention.

See you in the video on "The fight against other forms of discrimination" by Professor Maria Torres Perez.