

Prohibition of discrimination (Article 14)

Article 14 requires that “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”.

Article 14 does **not give a free standing right**. It can only be used **in conjunction with another right** given by the Convention (or Protocols, if ratified). It may, however, be breached when read with that other right even if the other right on its own is not breached.

List of grounds for discrimination not exhaustive: The words “such as” and “or other status” flag up that the list is only illustrative. The Court has also recognised, for example, **conscientious objection, disability, illegitimacy and sexual orientation** as prohibited grounds of discrimination, and may add more.

Discrimination is harder to justify on some grounds than on others: though all the grounds are important, the Court has said it will require particular weighty reasons to justify discrimination on grounds of sex, sexual orientation, race, colour, nationality (except in regard to immigration), illegitimacy and religion.

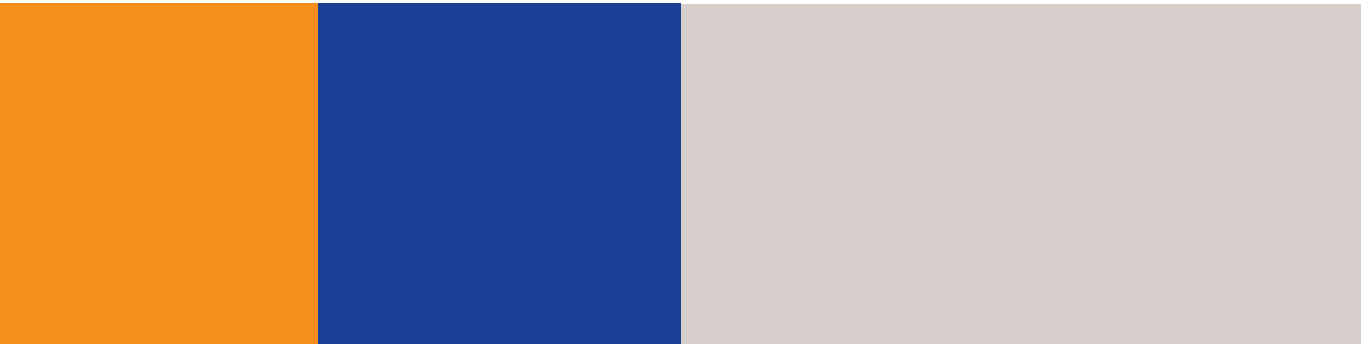
What is discrimination? It is **treating people in analogous situations differently, or people in different situations alike, without objective and reasonable justification.** So, not all differential treatment is discrimination.

“Objective and reasonable justification”: the Court, through its case law, has introduced this concept similarly to the permitted exceptions in the second paragraphs of Articles 8 to 11: that is the burden is on the State to prove the justification, which must also be proportionately applied.

Violence motivated by discrimination is particularly serious and important for agents of the State authorised to use force to avoid.

Indirect discrimination is where a generally applicable law or policy has a disproportionately adverse effect on members of a particular group, even if there is no discriminatory intent.

Discrimination on any of the grounds identified in Article 14 or by the Court can arise in almost any instance where officials deal with the public in relation to areas within the ambit of the Convention rights and freedoms. Great care and vigilance are needed by all officials to refrain from differential treatment that amounts to discrimination.



Protocol No. 12

This protocol repeats the **prohibition on discrimination** in identical language to that in Convention Article 14, but with the **key difference that it makes it a free standing right, not tied to the ambit of another Convention right**. So far relatively few States are parties and there is very little decided case law, so it is hard to give guidance on its likely effect.



The complete toolkit: <http://echr-toolkit.coe.int>

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