UNIVERSITY OF LJUBLJANA | PF Faculty of Law

Zbornik znanstvenih razprav – letnik LXXXV, 2025
Ljubljana Law Review – Vol. LXXXV, 2025 • pp. 125–134
ISSN 1854-3839 • eISSN: 2464-0077

AGORA – Evolving Perspectives on Anti-Discrimination Law and Human Rights: Challenges and Judicial Responses
DOI: 10.51940/2025.1.125-134
UDC: 340.1:342.722:061.1EU
316.647.82:342.7:341

Tilen Štajnpihler Božič

(R)evolution Interrupted? A Collective Reflection on Equality and Anti-discrimination Law in a Climate of Regression

Abstract

The article reassesses the trajectory of European anti-discrimination law from the "revolution" of 2000—marked by the EU Racial Equality and Employment Equality Directives—to the more sobering climate surrounding their 25th anniversary in 2025. While the Directives broadened protection and introduced potent enforcement tools (including burden-of-proof rules and requirements for effective sanctions), the momentum of EU equality law has largely stalled. The clearest symbol is the Horizontal Directive proposal, blocked in the Council since 2008, alongside only modest and often consolidating developments in EU secondary law, mostly in the gender field. The author, therefore, asks how anti-discrimination law can be advanced in a political and social landscape increasingly different from the one that enabled the 2000–2004 expansion. Drawing on collective reflection at the 12th Annual Berkeley Center on Comparative Equality and Anti-Discrimination Law Conference in Ljubljana (2025), the author distils three interlinked themes. First, he maps contemporary challenges: entrenched discriminatory attitudes, institutional bias, weak enforcement marked by political and judicial obstacles, data deficits, and the practical difficulty of addressing intersectional and algorithmic discrimination. Second, he outlines possible responses that build on a dual strategy of defence and adaptation: the principle of non-regression o human rights standards as a shield against rollback, alongside equality mainstreaming, strategic litigation, and complementary policy tools that may bypass legislative deadlock. Third, he highlights the importance of inspiration as a professional and civic resource, emphasising professional responsibility, coalition-building beyond the juridical field, and persistence amid setbacks.

Key words

anti-discrimination law, EU non-discrimination law, equality, diversity, inclusion.

* *Associate Professor of Law, University of Ljubljana, Faculty of Law, tilen.stajnpihler@pf.uni-lj.si*

1. Prologue

The year 2000 marked a "revolution" for equality law in Europe.[1] With the adoption of the Racial Equality Directive (2000/43/EC) and the Employment Equality Directive (2000/78/EC), the European Union moved decisively beyond its original market-oriented focus on equal pay regardless of gender, establishing a broad, albeit fragmented, legislative architecture for combating discrimination. These instruments not only expanded the material scope of protection but also introduced powerful enforcement mechanisms—such as the shift in the burden of proof and the requirement for effective sanctions—that would ripple through national legal systems for decades.

However, as we commemorated the 25th anniversary of this transformative moment in 2025, the mood was more one of critical reflection than celebration.[2] The ambitious trajectory envisioned at the turn of the millennium has largely stalled. The proposal for a Horizontal Directive,[3] intended to level the hierarchy of protection by extending protection on the grounds of age, disability, religion or belief, and sexual orientation beyond the workplace, has languished in the Council since 2008, a victim of waning political will. There has been little development in the relevant EU secondary law since. There have been notable exceptions,[4] although these have been relatively modest and largely confined to gender equality, often consolidating existing law rather than significantly expanding the anti-discrimination framework as a whole. And it seems that a "second wave" of equality law development, comparable to the period 2000–2004, is nowhere in sight.

One of the fundamental questions faced by legal scholars and practitioners today is how to advance anti-discrimination law in a political and social landscape radically different from the one that gave birth to the 2000 Directives. In this context, the stra-

---

1 Some speak of birth of EU anti-discrimination law "as a field in its own right". See Belavusau & Henrard, 2019, p. 615.

2 The 12th Annual Conference of the Berkeley Center on Comparative Equality and Anti-Discrimination Law, with the title *The (R)evolution of Equality Law: Reflecting on 25 Years of Anti-Discrimination Law in Europe & Beyond*, took place at the Faculty of Law, University of Ljubljana, Slovenia, 2–4 July 2025.

3 Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation COM (2008) 426 final, 2 July 2008, 2008/0140 (APP).

4 These are foremost, but not exclusively: Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast); Directive 2010/41/EU on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity; Directive (EU) 2019/1158 on work-life balance for parents and carers; Directive (EU) 2024/1499 on standards for equality bodies in the field of equal treatment between persons; Directive (EU) 2024/1500 on standards for equality bodies in the field of equal treatment and equal opportunities between women and men in matters of employment and occupation.

tegic imperative is unclear. Should we fully embrace a defensive posture—consolidating existing gains and strictly enforcing the *acquis* against the threat of regression? Or does the current climate, despite its hostility, demand a more ambitious, perhaps even uncompromising, push for the expansion of legal instruments to address new and systemic forms of inequality?

2. The Main Act

It is not difficult to imagine that, in times of uncertainty, such questions might surface within a community of scholars, practising lawyers, advocates, and activists working in the field of anti-discrimination law, particularly when engaged in collective self-reflection as part of an interdisciplinary inquiry and deliberation at a global academic conference. Although the title of the conference invited retrospection on the development of anti-discrimination law in the first quarter of the 21st century, it primarily revealed a shared concern about the fate of equality law and policy in the current political and social climate.

In this context, three major themes emerged from the community that gathered in Ljubljana in 2025: mapping the challenges faced by anti-discrimination law today; considering both old and new strategies, tactics, and methods for addressing these challenges; and seeking inspiration for the way ahead. I will illustrate these three pillars by drawing on three keynote speakers who were invited to address the community.

2.1. Challenges

The challenges to realising the full vision of anti-discrimination law are manifold. As Neža Kogovšek Šalamon, Judge and Vice President of the Constitutional Court of the Republic of Slovenia, began in her keynote address:

> "The challenges in all of our countries that we are facing are multifaceted and deeply rooted in the historical, social, legal, and economic systems. Of course, these challenges vary a lot by region, but they also share common themes that hinder progress towards equality."[5]

Painting with a broad brush, and aiming to portray a global picture not limited to the European context, she went on to identify issues that echoed in many other conference papers. She spoke about the normalisation of deep-seated social attitudes, as part of social phenomena such as racism, sexism, homophobia, xenophobia, ableism, and so on. She cautioned that cultural traditions or religious beliefs are sometimes invoked to justify discrimination, and highlighted the lack of access to decision-making positions for marginalised groups, which perpetuates cycles of exclusion. She also drew attention

[5] Kogovšek Šalamon, 2025.

to the embedded bias permeating our social institutions—for example, legal systems, policing, education and healthcare—and to the complexities of recognising and addressing compound and intersectional discrimination. She paid particular attention to political and judicial obstacles hindering efforts to address the social and systemic factors briefly listed above.[6] As she noted, in many countries anti-discrimination law is well defined on paper but poorly enforced for various reasons, including a lack of judicial independence, judicial bias, corruption in the broader political system, and other factors that often hinder victims' ability to seek justice. In addition, in many situations, there is limited or no disaggregated data available to measure discrimination.[7]

Her discussion of these issues directs our attention not only to persistent doctrinal and structural deficiencies in the legal framework itself, but also to emerging external threats posed by a rapidly changing global context. The most recent challenge is of a different order: a general political climate that is arguably hostile to the very premise of anti-discrimination law and to the pursuit of equality. If, in the last two decades, the main concern was "legislative inertia",[8] we are now witnessing an active political backlash against equality initiatives and the system of protection from discrimination.[9] David Oppenheimer, Clinical Professor of Law at UCLA Berkeley Law School and the Co-Director of the Berkeley Center on Comparative Equality and Anti-Discrimination Law, placed this at the centre of his keynote address:

> "I hope to address this morning the rising tide of a war on diversity and DEI, which is occurring at extraordinary speed and force in the United States, but is occurring all over the world. Here in Europe, in many parts of Europe, there is an anti-woke movement, and elsewhere. And it is a very frightening phenomenon for those of us who are equality lawyers"[10]

This war on equality is not merely rhetorical. In several European countries, populist governments have moved to dismantle the institutional infrastructure of equality—by defunding equality bodies,[11] withdrawing from the Istanbul Convention,[12] and framing

---

6 Ibid.

7 Ibid.

8 Alexandris Polomarkakis, 2022, p. 9.

9 See, for example, the UNRISD & UN-Women, 2025, report *Understanding Backlash against Gender Equality*.: "Opposition to gender equality is not new. Yet almost 30 years after the adoption of the Beijing Declaration and Platform for Action, anti-gender equality organizations and movements have found avenues to grow in strength and visibility. In 2025, the latest wave of 'gender backlash' is threatening hard-won gains for women and girls."

10 Oppenheimer, 2025.

11 See, for example, Mirzac-Watson, pp. 25–27.

12 Note the latest attempt by the Latvian Parliament in October 2025. See Engīzers, "The Monster Screaming the Loudest".

non-discrimination principles as "gender ideology" foreign to national values.[13] These examples hint at a gradual shift from a "post-legislative" era—characterised by the lack of consensus for further developing legal tools for addressing discrimination—to an "anti--legislative" era, in which consensus on existing human rights commitments seems to be fracturing and the standards of protection against discrimination in existing legislation might come under attack. In such a context, the main question becomes whether there is any room to address effectively the sophisticated challenges posed by, for example, the proliferation of AI and algorithmic discrimination, or by intersectionality, when the basic legitimacy of equality law is under siege.

2.2. Opportunities

Taking the new political reality outlined above as a point of departure, the focus inevitably turns to how to respond to these challenges. A common impulse surfaced in the conference discussions: to defend what has already been achieved. It is becoming apparent that the *acquis* of the last 25 years is not a baseline to be taken for granted; it is contested territory to be defended. Here, legal theory offers a promising tool: the principle of non-regression.[14]

Commonly associated with environmental law and social rights, non-regression prohibits the State from lowering the level of protection already afforded to a right. As Kogovšek Šalamon put it:

> "This principle of non-regression has been applied in various contexts, including environmental protection, climate change commitments, and the protection of economic, social and cultural rights. I believe it should be extended to human rights law in general, including non-discrimination law. The legal developments in this field were so fundamental and have positively impacted people's lives, in such a transformative manner, in how they can live their lives in a dignified way, that it would be a civilisational disaster to reverse them. I believe that in the current times, where dangers to human rights and equality are actually lurking from all possible corners of the political spectrum, this principle is among the most important ones."[15]

By anchoring equality in the immutable core of the legal order, we remove it from the fluctuating whims of the "anti-woke" political marketplace.

However, defence alone might prove insufficient. Stagnation is a form of regression in a rapidly changing world. Therefore, we need to continue thinking about how to

[13] For example, we are witnessing the rise of moral panics over equality issues, as Kotevska portrays it, noting outcries against "wokeism" "gender ideology", and "feminism gone mad". See Kotevska, "Intersectionality lost?", p. 122.

[14] See, for example, Warwick, "Concepts of Non-Retrogression in Economic and Social Rights".

[15] Kogovšek Šalamon, 2025.

complement a robust defence of the (constitutional) core of equality with a nuanced expansion of anti-discrimination tools capable of bypassing legislative gridlock and a hostile political climate. Many such mechanisms have been well established in the last few decades. For example, the statutory duty on public bodies "to ensure that their policies are formulated with due regard to the importance of all equality issues"[16] (equality mainstreaming) or zooming in and micro-targeting inequalities on a case-by-case basis through strategic litigation, which remains a vital engine for expansion by shifting the locus of development (back) to the judiciary.[17] Other directions for possible subtle improvement are grounded in conceptual foundations that are relatively well developed theoretically, but adequately operationalising them for practical use has proved difficult. The primary example in this context is the theory of intersectionality, which can deepen protection against discrimination by helping us refine how we interpret existing categories.[18] Another avenue worth exploring is complementing legal tools with other instruments, including financial mechanisms—for example, by examining the "budget as a values-oriented policy instrument".[19]

In a room occupied predominantly by lawyers discussing strategies for strengthening the resilience of anti-discrimination law in the face of contemporary challenges, an important moment proved to be a step back from the law. The conference highlighted that, in pursuit of legal development, allies and resources may be found beyond what Bourdieu would call the juridical field.[20] This seemingly simple but powerful point is best illustrated in the words of Nika Kovač, the founding director of the 8th of March Institute, a prominent NGO active in the field. At the beginning of her keynote address, she argued:

> "I see [law] as one of the crucial pillars of society. But what I also see is that law is never […] in a bubble. Law is never non-ideological; it's always established in a specific time and in a specific context. And as an activist, I'm always curious how to change time and context to make some legal change."[21]

Law, like any other social phenomenon, is context-dependent; therefore, examining the social parameters that shape its functioning can be an effective strategy for addressing the challenges mentioned above.

16 Allen QC, 2007, p. 54.

17 Cebulak, 2024, pp. 383 ff.

18 For conceptual analysis of intersectional discrimination, see Atrey, 2019; for a critical evaluation of the EU's limited, performative approach to intersectionality, see Kotevska, 2025, pp. 124–129.

19 Fisicaro, 2022, p. 699.

20 Bourdieu, 1987.

21 Kovač, 2025.

2.3. Inspiration

I have identified the third common theme emerging from the many discussions in Ljubljana as inspiration. On the one hand, it may not be as obvious as mapping the challenges facing anti-discrimination law and seeking a way forward in its development, because searching for inspiration and hope is hardly at the object-level of an academic legal conference; it would probably be considered a meta-level undertaking in this context. On the other hand, if we understand the conference in Ljubljana as a community gathering, as I have tried to do here, positioning inspiration as one of the three thematic pillars becomes less peculiar.

In what may at times feel like a dystopian atmosphere, when in some parts of the world the "aggressiveness of this new war on DEI [diversity, equity and inclusion] is hard to overstate",[22] for the community of equality scholars, advocates and activists, the quest for inspiration becomes part of a wider process of self-reflection, with professional responsibility at its core. This also emerges from the keynote speeches. For example, in her concluding remarks, after describing an unsuccessful campaign, Kovač argued that failure is a part of the struggle:

> "You always need to have a next step. You always need to have a plan B; you always need to have a next idea. […] And this is something that I always have in mind when we lose a battle. I always say to myself, it's not the last battle. It's just a stage, and now a window is opening for something else, and we won't stop."[23]

But this idea of subtly providing inspiration—grounded in a sense of responsibility inherent in professional engagement with the law, in one way or another—is perhaps best exemplified by Oppenheimer. After his account of systematic attempts to dismantle the anti-discrimination infrastructure and subvert equality and diversity commitments in the US, he turned to John Stuart Mill for inspiration. Oppenheimer recalled the foundations of Mill's liberal political philosophy[24] and his active involvement in the socio-political turmoil of the time to highlight not just the idea and value of diversity, but the importance of professional engagement in defence of this idea by anyone in a position to do so:[25]

> "At the heart of these policies is a war on what I call the diversity principle. […] This idea [of diversity] is not new. It has a long and storied history. […] Those ideas have been at the foundation of the modern university […]. And it's our job as equality scholars and equality teachers, and as experts on the history of equality and diversity, it's our job right now to speak out. There's no one better equipped to do so. […] So, I hope that all of us will stand together in opposition to this war on

[22] Starr in Lakier, 2025.

[23] Kovač, 2025.

[24] In particular, Mill, 2004/1859.

[25] Oppenheimer, 2025

diversity and DEI. Because this is our moment as scholars of diversity and equality, not to be silent."[26]

3. Epilogue

The collective self-reflection, as I have labelled the 12th Annual BCCE Conference in Ljubljana, will undoubtedly yield many inspiring insights. Among them are the three articles presented in this section—by Laura Carlson,[27] Vibeke Blaker Strand,[28] and Jule Mulder.[29] They do not merely reflect the three thematic pillars briefly outlined above, they operationalise them. By examining specific legal frontiers—exploring how human rights justifications raise several systemic risks to human rights in the context of migration; outlining the challenges and possibilities relating to the role of the rule on the burden of proof in enhancing the principle of equality and non-discrimination, particularly in relation to algorithmic discrimination; and exploring the dialogue between the CJEU and national courts on the scope and meaning of religious discrimination in EU law—these authors demonstrate how the ideas discussed at the conference can be translated into concrete legal and social strategies to safeguard the evolution of anti-discrimination law and the pursuit of equality.

As we look towards the next 25 years, lamenting the passing of the presumed "golden age" of legislative expansion of EU anti-discrimination law will contribute little to changing things on the ground. These articles, however, remind us that the (r)evolution of equality law continues with academic rigour, legal vigilance, and persistent civic engagement. By examining the role of human rights justifications, seeking tools to shield us from algorithmic "black boxes", and illuminating the judicial dialogue between the CJEU and national courts, the community of equality scholars ensures that anti-discrimination law remains resilient against regression.

References

Alexandris Polomarkakis, K. (2022) 'Gendered Capital and Litigants in EU Equality Case-Law'. *The Modern Law Review* 85(6), pp. 1387–1418.

Allen QC, R. (2007) 'Article 13 EC, evolution and current contexts'. In H. Meenan (ed.) *Equality Law in an Enlarged European Union – Understanding the Article 13 Directives*, Cambridge: Cambridge University Press, pp. 38–72.

[26] Ibid.

[27] Carlson, 2025.

[28] Blaker Strand, 2025.

[29] Mulder, 2025.

Atrey, S. *Intersectional Discrimination*. Oxford University Press, 2019.

Belavusau, U. & Henrard, K. (2019) 'A Bird's Eye View on EU Anti-Discrimination Law: The Impact of the 2000 Equality Directives'. *German Law Journal* 20(5), pp. 614–636.

Blaker Strand, V. (2025) 'The Burden of Proof Rule Under EU Non-discrimination Law and Algorithmic Discrimination: Addressing Challenges and Possibilities'. *Ljubljana Law Review* 85, pp. 165–182.

Bourdieu, P. (1987) 'The Force of Law – Toward a Sociology of the Juridical Field'. *The Hastings Law Journal* 38, pp. 805–853.

Carlson, L. (2025) 'The Changing Paradigm of Human Rights Justifications: Challenges for Civil Society'. *Ljubljana Law Review* 85, pp. 135–164.

Cebulak, P. (2024) 'Mapping the Potentials and Pitfalls of Using European Law for Strategic Litigation against Illiberal Reforms'. *International Journal of Law in Context* 20(3), pp. 379–400.

Engīzers, K. (2026) 'The Monster Screaming the Loudest'. *Verfassungsblog* [e-source], 7 January 2026, <https://verfassungsblog.de/istanbul-convention-latvia>.

Fisicaro, M. (2022) 'Beyond the Rule of Law Conditionality: Exploiting the EU Spending Power to Foster the Union's Values'. *European Papers – A Journal on Law and Integration* 7(2), pp. 697–719.

Kogovšek Šalamon, N. 'Global challenges in anti-discrimination: Between traditional biases, political turmoils, and technological advancement'. Conference paper presented at 12th Annual Conference of the Berkeley Center on Comparative Equality & Anti-Discrimination Law. *The (R)evolution of Equality Law: Reflecting on 25 Years of Anti-Discrimination Law in Europe & Beyond*, 2–4 July 2025.

Kotevska, B. (2025) 'Intersectionality lost? : Intersectional inequalities at the crossroads of rising illiberalism and EU enlargement'. In: J. Džankić, B. Kotevska & L. Mokra (eds.) *The (Geo)politics of Democracy in Wider Europe*, Florence: European University Institute, pp. 122–133.

Kovač, N. (2025) 'Defending Equality: From Attacks on Diversity to the Fight for Reproductive Rights'. Conference paper presented at the 12th Annual Conference of the Berkeley Center on Comparative Equality & Anti-Discrimination Law. *The (R)evolution of Equality Law: Reflecting on 25 Years of Anti-Discrimination Law in Europe & Beyond*, 2–4 July 2025.

Mill, J. S. (2004/1859) *On Liberty*. New York: Barnes & Noble Publishing.

Mirzac-Watson, I. (2025) 'Strengthening the EU Anti-Discrimination Framework: The Directives on Minimum Standards for Equality Bodies', *Industrial Law Journal*, advance online publication.

Mulder, J. (2025) 'The Dialogue Between the Courts Revisited – An Analysis of National Preliminary References and Their Impact on Advancing CJEU Case Law on Religious Discrimination', *Ljubljana Law Review* 85, pp. 183–210.

Oppenheimer, D. (2025) 'War on DEI'. Conference paper presented at the 12th Annual Conference of the Berkeley Center on Comparative Equality & Anti-Discrimination Law'. *The (R)evolution of Equality Law: Reflecting on 25 Years of Anti-Discrimination Law in Europe & Beyond*, 2–4 July 2025.

Starr, S. & Lakier, G. (2025) 'The Constitution and the War on DEI'. *Public Law and Legal Theory Working Papers* 25–35 (August 2025), <https://chicagounbound.uchicago.edu/public_law_and_legal_theory/941>.

UNRISD & UN-Women (2025) *Understanding Backlash against Gender Equality: Evidence, Trends and Policy Responses*, <https://knowledge.unwomen.org/en/digital-library/publications/2025/09/understanding-backlash-against-gender-equality-evidence-trends-and-policy-responses>.

Warwick, B. (2025) 'Concepts of Non-Retrogression in Economic and Social Rights'. *Human Rights Quarterly* 47(1), pp. 115–140.