

EU Charter of Fundamental Rights 2000



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Key

Discrimination – treating a person or a particular group of people differently, especially in a worse way from the way in which you treat other people due to their disfigurement

Legislation – a law, or set of laws

Impairment – a symptom or condition (which may be temporary or permanent) which makes it harder for an individual to complete tasks in a usual manner or timeframe

Disfigurement – a physical change, for example a scar, which alters a person's appearance

Legally binding – a valid agreement enforceable under the law

Harassment – unwanted behavior which is offensive, intimidating or humiliating

Ratified – signing or giving official consent to a contract or agreement

Member State – a country which is part of the European Union

Am I better protected through Disability Law or Human Rights protections?

The scope of protection against discriminatory treatment is similar under the Charter of Fundamental Rights of the European Union “the EU Charter” and the European Convention on Human Rights “the ECHR”. Both are legally binding and must be respected by Member States that have signed and ratified them.

Disability Law – The Charter of Fundamental Rights of the European Union

Although wording to explicitly protect individuals based on facial disfigurements is not included within the EU Charter, the rights that are included are applicable to all EU citizens and those working or residing within the Union. There are a number of articles within the EU Charter that may provide protection to such individuals. For instance, Article 21(1) of the EU Charter provides a general prohibition on discrimination, Article 26 provides the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community and Article 15 provides the right for everyone to seek employment and engage with work, among others. Individuals with facial disfigurements could seek to enforce the rights under these articles against their Member State and also within the broader definition of disability developed through cases brought to court.

Case law recognizes disability under the EU Charter to include any limitations resulting from physical, psychological, or mental impairments, in interaction with various barriers, which prevent full and effective participation of the person concerned in professional life on an equal basis. This definition recognizes the relevance of social and environmental factors in limiting those with disfigurements and accepts that the attitudes of others can effectively disable an individual.

However, due to Article 51 of the EU Charter, protections contained within the EU Charter are only binding on EU Member States when they are implemented into national law. An individual is not able to directly enforce their rights under the EU Charter against others. Instead, individuals must identify laws within their Member State that contravene the EU Charter and then bring a claim against their Member State for this national legislation to be amended. Therefore, the EU Charter does not provide any direct legal protection to individuals, and its effectiveness is dependent on Member States’ implementation of the EU Charter into legislation at a national level.

Brexit

The European Union (Withdrawal) Act 2018 says that the EU Charter is not part of UK domestic law after Brexit. However, it is nevertheless likely to have an effect on the interpretation of UK law including with regard to pre-Brexit EU case law, which continues to apply in the UK. Article 44 of the EU Charter provides individuals residing within the European Union, including UK nationals, with the right to petition the European Parliament. Despite this, the United Kingdom and Poland have signed up to Protocol No. 30 of the EU Charter. This Protocol clarifies that the EU Charter does not give new powers, and the EU Charter will only be applicable to the extent that rights or principles are protected within local law.

Human Rights Legislation – European Convention on Human Rights

Similarly, the ECHR does not explicitly protect against discrimination based on facial disfigurement. However, the grounds of discrimination, which are prohibited under Article 14 are examples that do not form an exhaustive list. This means that new areas of protection can be added under the ECHR and facial disfigurements could be recognized as a characteristic protected under Article 14 of the ECHR as the cause of discrimination. However, there is no relevant case law of the ECHR discussing facial disfigurements in relation to discrimination so the position is unclear at present.

Must people with disfigurements **identify as ‘disabled’** to access protections under the Charter of Fundamental Rights of the European Union?

No.

However, individuals may access greater protections if they do.

All general rights under the EU Charter are available to all European Union citizens and those working or residing within the European Union regardless of whether they have a disability. Individuals do not need to identify as disabled to benefit from the general protections of the EU Charter. However, there is specific protection under Articles 21 and 26 of the EU Charter for persons with a disability, which may prove helpful to people with facial disfigurements.

Enforcement under the EU Charter is dependent on how the EU Charter’s provisions are applied within the domestic law of individual Member States. As the EU Charter does not provide a definition of ‘disability’, countries across the European Union have adopted different definitions with varying requirements relating to severity and long-term impacts.

This means that although individuals do not have to identify as disabled under the EU Charter, doing so may reduce the barriers to protection, even though the protections available may vary between EU Member States.





Does the Charter of Fundamental Rights of the European Union protect **citizens with disfigurements**?

Not expressly.

Although this does not mean that the EU Charter could not be interpreted to provide such protections. As above, Article 26 provides specific protections for those who have disabilities together with Article 21, protection against general discrimination of which disability is one of the grounds.

Does the Charter of Fundamental Rights of the European Union protect job applicants with disfigurements?

Not expressly.

Although this does not mean that the EU Charter could not be interpreted to provide such protections.

All individuals have the right to engage in work, and to pursue a freely chosen or accepted occupation under Article 15 of the EU Charter.

In addition to Article 15, further protections are provided under Article 16, which sets out an individual's right to conduct their own business. This is further supplemented by protections giving the right to access placement services (Article 29) and Article 26, which specifically recognizes the rights of those with disabilities to ensure their independence, social and occupational integration. The EU Charter also contains various protections for workers including the right to fair and just working conditions (Article 31), among others. These articles when interpreted with the general protections contained in Article 21 could arguably obligate Member States to assist individuals with finding and maintaining employment.



Does the Charter of Fundamental Rights of the European Union protect **employees with disfigurements**?



Not expressly.

Although this does not mean that the EU Charter could not be interpreted to provide such protections.

No explicit protections are afforded to protect those with facial disfigurements whilst in employment. However, the EU Charter provides a broad range of protections relevant to employment such as rights relating to working conditions, training, housing and health (Article 26).

Once employed, the EU Charter provides additional protections against unjustified dismissal (Article 30) and the right to fair and just working conditions (Article 31) along with a range of other rights afforded to all workers. These protections are afforded to all European Union citizens and are not dependent on an individual having a disability.

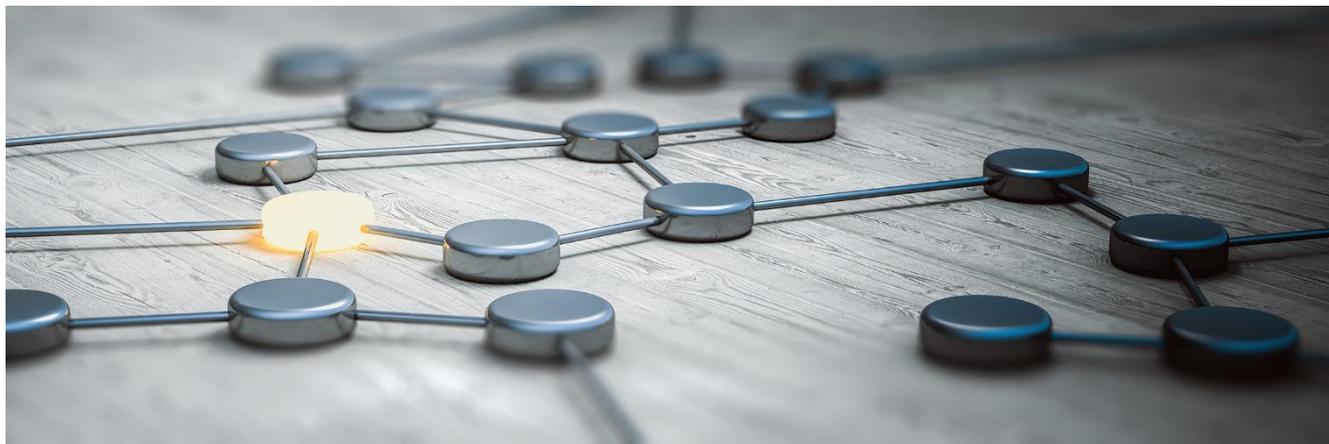


Does the Charter of Fundamental Rights of the European Union protect customers with disfigurements?

Not expressly.

Although this does not mean that the EU Charter could not be interpreted to provide such protections.

As in the responses above, a general prohibition against discrimination is afforded under Article 21 of the EU Charter. In addition to this, protections are also contained in Article 38, which provides for consumer protection against unfair treatment for everyone regardless of disability. These protections prohibit discrimination that would prevent an individual from accessing the services that a business provides. Again, there is no specific guidance for those with facial disfigurements in accessing rights as customers set out in the EU Charter. However, this does not mean that the EU Charter could not be broadly interpreted by Member States to offer such protection.



What are the three **biggest gaps** in the **protection** offered by the Charter of Fundamental Rights of the European Union to those with disfigurements?

Gap 1 – Limited protection

The EU Charter only applies to Member States in the context of the interpretation and implementation of the laws of each Member State. Individuals are not able to directly enforce individual rights. The protection of persons with facial disfigurements depends on the implementation of EU law into national law by the respective Member State.

Gap 2 – No clear definition of "disability"

Despite a definition of "disability" being formed by case law as "a limitation which results in particular from physical, mental or psychological impairments which, in interaction with various barriers, may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers", it is not applied consistently, and leaves room for legal uncertainty.

Gap 3 – Some states provide no protection

The European Union (Withdrawal) Act 2018, expressly removed the EU Charter from domestic law and so it will have reduced impact going forward.

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