

THE EVOLUTION OF THE PRINCIPLE OF EQUALITY IN COMMUNITY LAW

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The original Treaty of Rome, Article 119

Member States to maintain the principle of equal pay for equal work by the end of the first stage (beginning of 1962)

Materialistic reason for inclusion

Case 43/75 *Defrenne 2* [1976] ECR 455: Article 119 takes direct effect

- Legislative activity in the 1970s

Equal Pay Directive 1975 (Dir 75/117, OJ 1975 L45/19)

Equal Treatment Directive 1976 (Dir 76/207, OJ 1976 L39/40);
now the Recast Directive (Dir 2006/54, OJ 2006 L204/23)

Social Security Directive 1979 (Dir 79/7, OJ 1979 L6/24)

- The ECJ gets to work on the principle of equality

Why was it so enthusiastic about the principle?

The two types of discrimination: direct and indirect

Both types require proof of **adverse impact** and the victim's **membership of a protected class**

The Court's judgments profoundly affected the meaning and effect of the principle of equality

Notable examples include:

Case C-26288 *Barber v. Guardian Royal Exchange* [1990] ECR I-1889

Case C-271/91 *Marshall v. Southampton AHA (No.2)* [1993] ECR I-4367

Case C-32/93 *Webb v. EMO Air Cargo Ltd* [1994] ECR I-3567

Case C-13/94 *P v. S and Cornwall County Council* [1996] ECR I-2143

- There are limits beyond which the Court would not venture

Case C-249/96 Grant v. South-West Trains [1998] ECR I-621

Article 13

The events which triggered the use of Article 13

- The Race Directive (Dir 2000/43) and the Framework Directive (Dir 2000/78)

Race Directive: no discrimination in employment, vocational training, social protection, social advantages, education, access to and supply of goods and services

Framework Directive: no discrimination in employment or vocational training

Directive 2004/113 (OJ 2004 L373/37): no discrimination on the ground of sex over access to or the supply of goods and services

Query new goods and services directive?

- The problems which follow for the principle of equality

The comparison required

What has to be proved

The non-symmetrical protection of discrimination against the disabled and the notion of reasonable accommodation

The different defences available under the various grounds

The importance of the ECJ in the further evolution of the principle of equality