

The Principles of Non-discrimination

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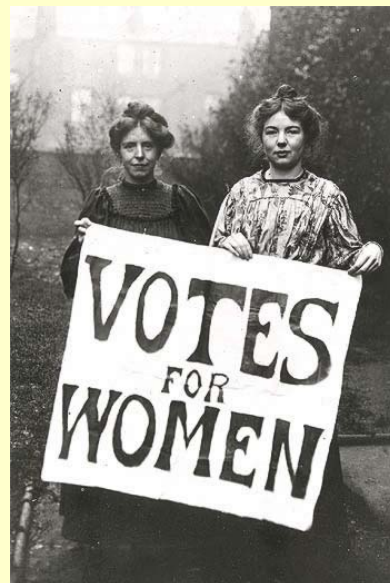
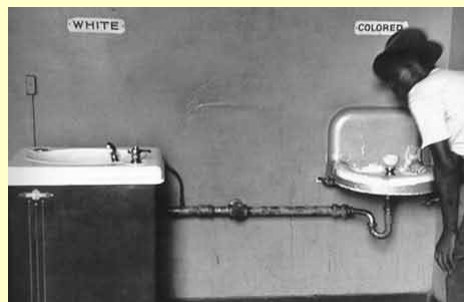
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Equality issues once...



...and now



Legal background

- **TFEU** Articles 10 and 157
- **Directives:**
 - 2000/78/EC (Employment Framework Directive)
 - 2006/54/EC (men and women)
 - 2000/43/EC (Race Directive)
 - 2004/113/EC (Services)

Direct Discrimination

Less favourable treatment

Compared with a **comparable** person

On the grounds of a **protected characteristic.**

Protected characteristics

- **Closed list:** gender, religion, belief, disability, age, sexual orientation, race
- **Many interpretational issues:**
 - The employee's child is disabled, not the employee (Coleman, C-303/06.)
 - Obesity as disability? (Kaltoft, C-354/13.)

Comparable person

- **Is/was/will be in „a similar situation“**
 - Can be from the past (Smith, C-129/79.)
 - Can be hypothetical/non-existing (Dekker, C-177/88.)
- The **situation** should **be similar**, not identical!
- **Specifically**, based on the circumstances of the case
(Hay, C-267/12.; Römer, C-147/08.)

Receives less favourable treatment

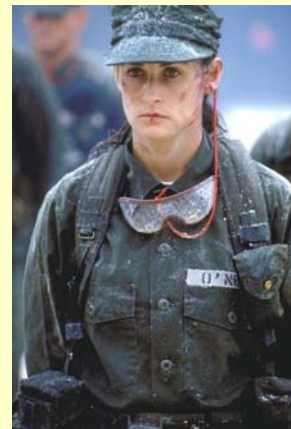
- **For example:** not recruited, dismissed, not promoted, lack of training opportunities, lower wage etc.
- **No need for a particular complainant**
- It can be a simple statement
(the employer is not going to recruit applicants of a certain origin, Feryn, C-54/07.)
- **It should not be intentional!**

Justification

- **Typical genuine and determining occupational requirement**

- Royal Marines: „point of the arrow head“, even the chef must be a man (Sirdar, C-273/97.)

- BUT: women cannot be excluded from all military posts in general (Kreil, C-285/98.)



„Bulletin board notices in Pest“

Chinese buffet

Female
dishwasher
required!

Public bath

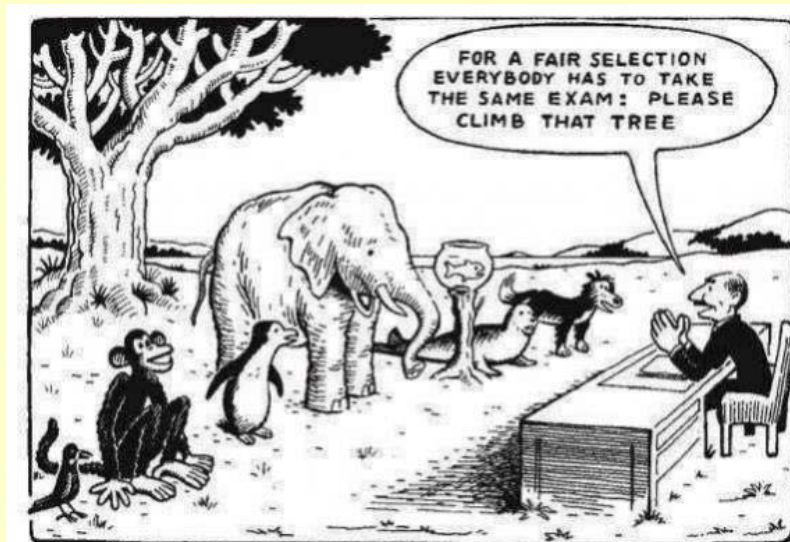
Female locker room
attendant required!

Warehouse

Forklift operator job is
available for men under
55!






Indirect Discrimination



A **seemingly neutral** requirement, condition or practice

puts a person **at a disadvantage** compared to other persons.

Example:
Pay for overtime worked by part-time employees
Recruited: more women in part-time jobs

Only for full-time working hours		Helmig, C-399/92.
Only if additional work exceeds three hours		Elsner-Lakeberg, C-285/02.
Overtime paid at a lower rate		Voß, C-300/06.

Justification

Bilka, C-170/84.:

- Justifiable by a legitimate aim,
- the means of achieving it are necessary
- and appropriate (proportionate)

In general: national court examines it

(Pl. Hill, C-243/95.; Seymour-Smith, C-167/97.)

Indirect or direct discrimination?

Priority for applicants who have completed military service

Indirect
(gender)

Schnorbus, C-79/99.

Same-sex partners at a disadvantage compared with married couples

Direct
(sexual orientation)

Maruko, C-267/06.

Harassment

**Unwanted
conduct**

Based on a
**protected
characteristic**

Violates an
**individual's
dignity.**

Main Features

- Not only sexual (gender-based)
- Should not be intentional (conscious)
- Can be carried out by an individual or group of individuals
- The employer's responsibility!
- **High latency:**
 - The vague boundaries of unwantedness
 - Extremely sensitive situations

A Hungarian example

BH2011. 347.

- Notary of the local government vs. a female subordinate
- Erotic text messages – is it simply „fun“?
- Eyewitness: „He put pressure“ on his subordinate, „pinning her to her chair“ – does it contradict to the office layout?



**Thank you for your
attention!**

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