

# The Principles of Non-discrimination

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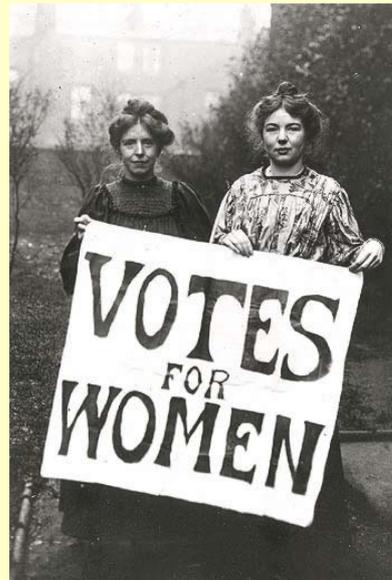
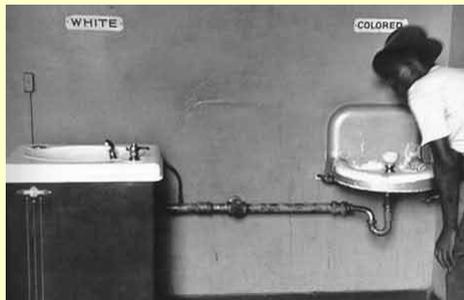
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## Equality issues once...



...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**

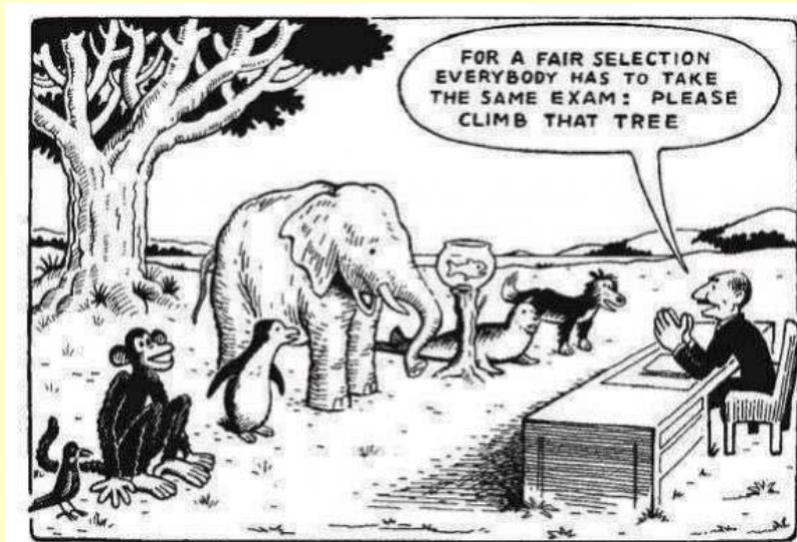
Female locker room  
attendant required!

**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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