





Treaty on the Functioning of the European UnionUnion

- Art. 19 TFEU: the EU has the competence to "take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation"
- Art. 45 TFEU: "Free movement of workers shall be secured within the EU. It entails the abolition of any discrimination based on **nationality** between workers of the Member States (...)"
- Art. 157 TFEU: the EU shall adopt measures aimed at ensuring equal treatment of men and women in matters of employment and occupation

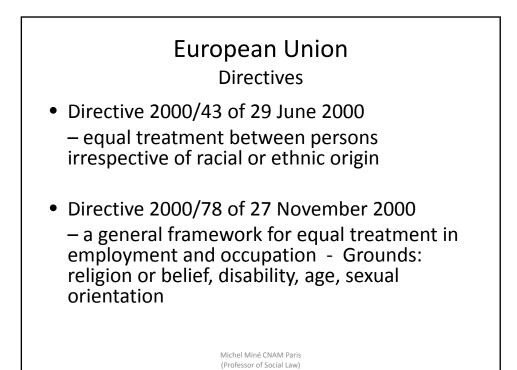
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CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION (Art. 6 TUE)

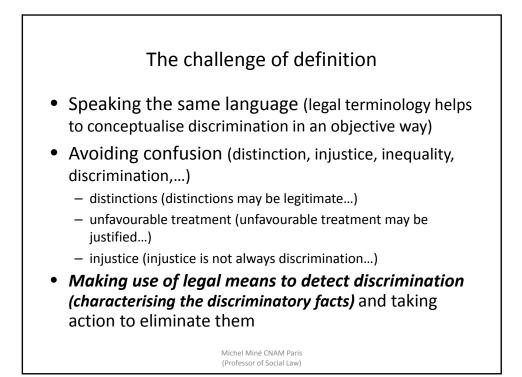
Article 21 Non-discrimination

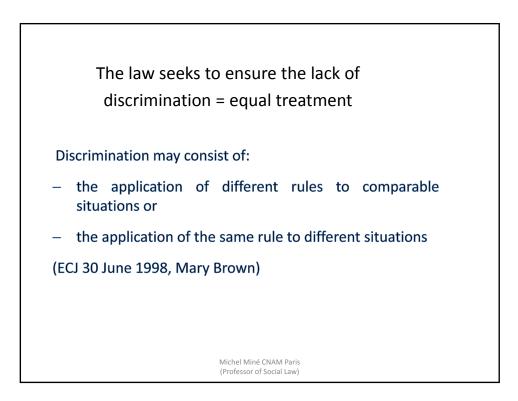
- "1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
- 2. Within the scope of application of the Treaties ... any discrimination on grounds of nationality shall be prohibited."

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Key Concepts in EU Anti-Discrimination Law





Generally, discrimination is expressed through a measure that is:

- unfavourable (acts of management: access to employment, including promotion and training, conditions of work and employment, including pay, ...)
- unjustified
- **unlawful**, linked to a criterion that must not be applied to this decision sex (gender), nationality, racial/ethnic origin, religion, age, disability, sexual orientation

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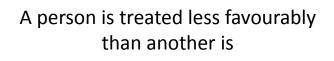




- where one person is treated less favourably than another
 - -is (present concrete circumstances)
 - has been (successive concrete circumstances)
 - -would be (hypothetical circumstances)

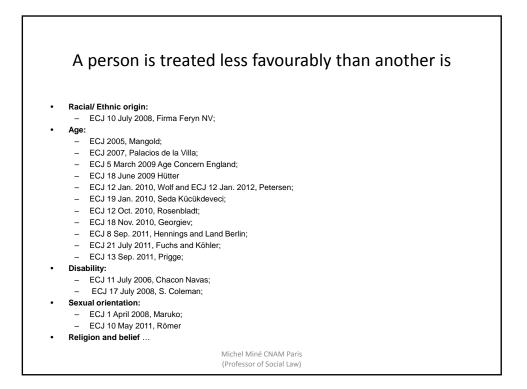
in a comparable situation

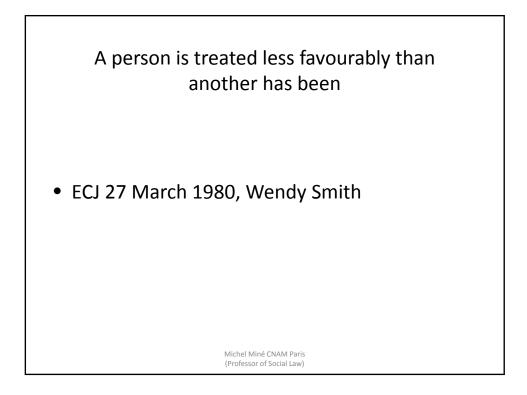
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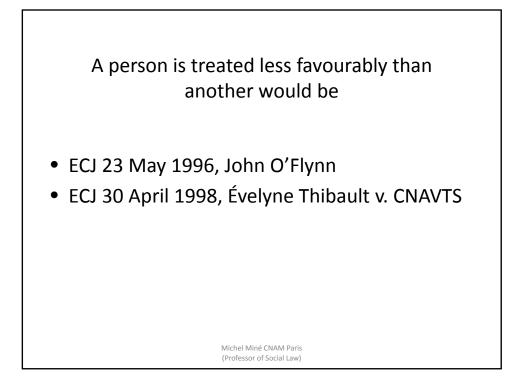


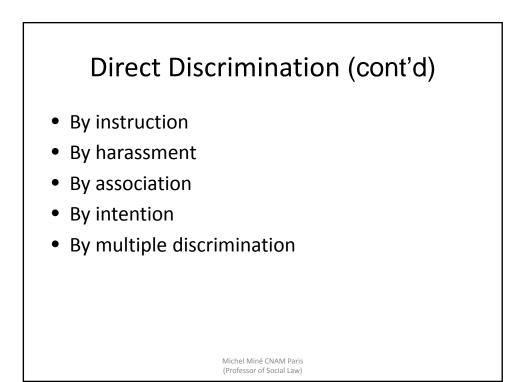
- Sex (equal treatment for men and women)
 - ECJ 1971, 1976, 1978, Gabrielle Defrenne
 - ECJ 1 July 1986, Rummler v. Dato-Druck,
 - ECJ 17 October 1989, Danfoss,
 - ECJ 27 October 1993, Pamela Enderby,
 - ECJ 9 February 1999, Regina v. Seymour-Smith,
 - ECJ 10 February 2000, Deutsche Post,
 - ECJ 26 June 2001, Susan Brunnhofer,
 - ECJ 4 October 2001, TeleDanmark,
 - ECJ 1 March 2011, Association belge des consommateurs Test-Achats ASBL
 - etc.
 - Sex change
 - Nationality:
 - ECJ 15 Oct. 1969, Ugliola;
 - ECJ 17 Dec. 1980, Com. v. Belgium;
 - ECJ 11 March 2008, Commission v. France; etc.
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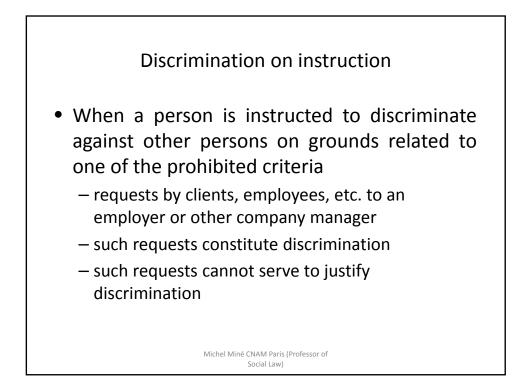
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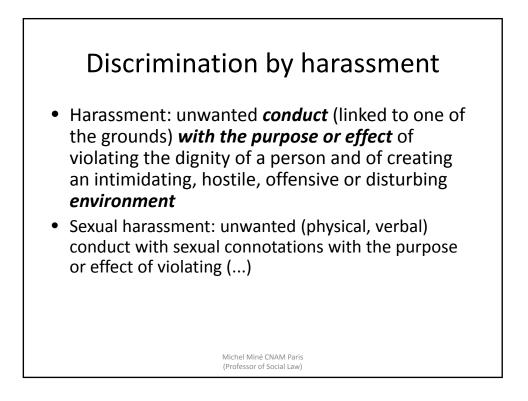


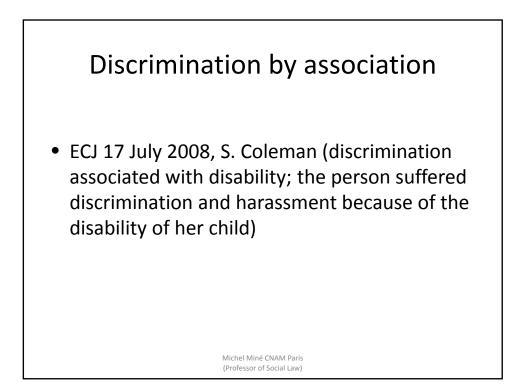




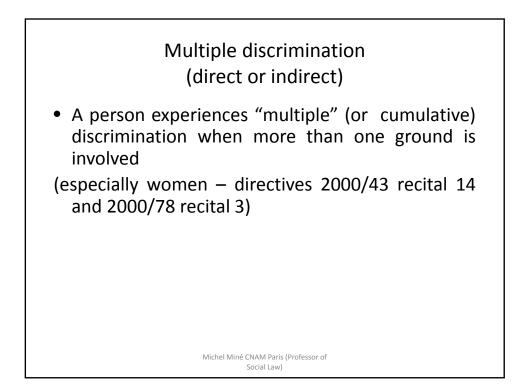


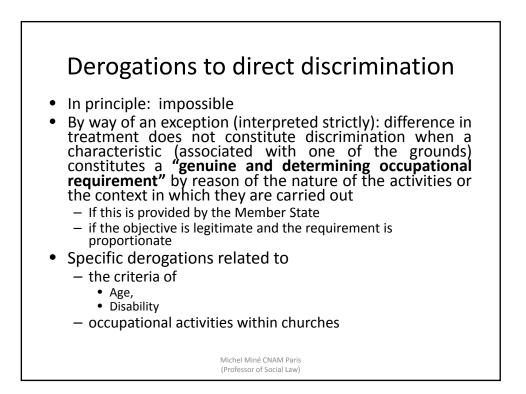








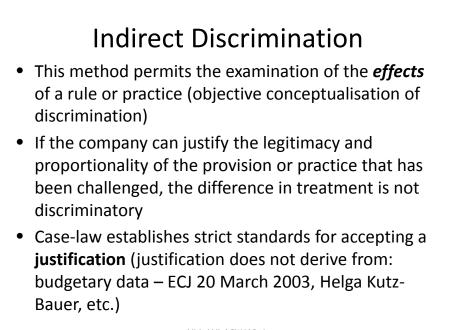




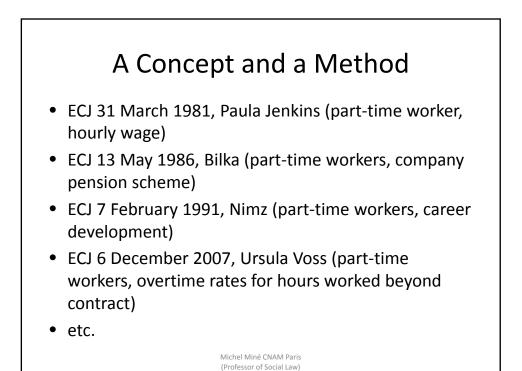
II. Indirect Discrimination

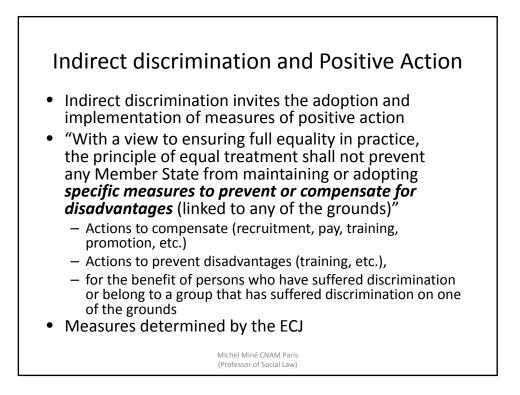
- where an apparently neutral provision or practice applied (by the company...) would put persons of a particular group (linked to one of the grounds) at a particular disadvantage compared with other persons
- unless the entity (company...) applying the provision or practice proves that it is
 - objectively justified by a legitimate aim (pertinence)
 - and that the means for achieving it are appropriate and necessary (proportionality)

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