


The EU anti-discrimination directives

Definition of key-concepts

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A graphic of a spiral-bound notebook with a white page and a black border. The spiral binding is at the top. The text is centered on the page.

A short history of the
development of
Directives 2000/43/EC
and 2000/78/EC

1985:

„Inquiry into the rise of fascism and racism in Europe“: voicing a need for competence given to the Community in these issues.

1986

„ Joint Declaration against racism and xenophobia” by the Council of Ministers, the Commission and the European Parliament. Not yet with actual implementation steps

1992:

„Starting – Line Group“: NGO – Platform:

- Proposing a prohibition of discrimination in the EC-Treaty
- Lobbying supported by Commission

1994:

Corfu Summit

Kohl and Mitterrand agree on
„Consultative Commission
on Racism and
Xenophobia“

1995:

Kahn-Report – proposals:

- Erradication of discrimination as prerequisite for freedom of movement
- Legal basis for anti-racism in EU-Treaty
- European Observatory on Racism and Xenophobia

1997:

Europäisches Jahr gegen Rassismus
Irische Präsidentschaft

**Vertrag von Amsterdam
Art.13**

Treaty of Amsterdam 1997

- Artikel 13: „... within the limits of the powers conferred by it upon the Community, the Council, acting unanimously (...), may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation..“
- Two anti-discrimination directives:
 - Horizontal directive for the workplace,
 - Vertical directive against ethnic discrimination
- Anti-discrimination defined as a subgoal of National Action Plans for Employment
- Support programmes (EQUAL, INTI etc.)

ARTICLE 2.2(A) DIRECT DISCRIMINATION

‘...where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of race or ethnic origin.

DIRECT DISCRIMINATION

‘on grounds of’ includes:

- **assumed ethnicity**
- **association**
- **race or ethnic origin being the cause for less favourable treatment**

the ‘*but for*’ test

DIRECT DISCRIMINATION

- **what is a ‘comparable situation’?**
- **looking for an appropriate comparator**
- **hypothetical comparator possible**

DIRECT DISCRIMINATION

- motive or intent is not relevant - if effect is less favourable treatment
- cannot be justified but for genuine and determining occupational requirements or positive action

INSTRUCTION TO DISCRIMINATE

‘An instruction to discriminate against persons on grounds of racial or ethnic origin shall be deemed to be discrimination’

INSTRUCTION TO DISCRIMINATE

power relationship – moves
responsibility up the line of command

- relationship of authority, or one in which A could be expected to act on instructions of B
- the act is the giving of an instruction – not actual act of discrimination

INDIRECT DISCRIMINATION

ARTICLE 2.2(A)

‘where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless ...

INDIRECT DISCRIMINATION

... that provision criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary'

INDIRECT DISCRIMINATION

justification test

- does the provision, criterion or practice have a legitimate aim?
- ‘appropriate and necessary: could this aim be achieved by other means?’
- test of proportionality

- **unwanted conduct related to racial or ethnic origin**
- **with the purpose or effect of**
 - **violating the dignity of a person and**
 - **creating an intimidating, hostile, degrading, humiliating or offensive environment**

HARASSMENT

- **no need to identify a comparator**
- **Purpose or effect – no need to prove intention**
- **Victims perspective & objective elements**

ARTICLE 9 VICTIMISATION

‘Member States shall introduce... such measures as are necessary to protect individuals from any adverse treatment or adverse consequences as a reaction to a complaint or proceedings aimed at enforcing compliance with the principle of equal treatment.’

VICTIMISATION

‘protected acts’

- **complaining of discrimination**
- **proceedings in relation to discrimination**
- **supporting/assisting another person to complain/bring proceedings relating to discrimination**

not limited to acts by the original ‘victim’