

**Genuine Occupational
Requirements**

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- Context of the GOR exception; ECJ jurisprudence
 - Effect of *Wolf v Stadt Frankfurt am Main* (2010)
 - Questions to be answered
 - Exception for religious organisations

Context and ECJ jurisprudence

- No defence to direct discrimination
- BUT exception for GORs

Directive 76/207 Article 2(2)

This directive shall be without prejudice to the right of Member States to exclude from its field of application those occupational activities and, where appropriate, the training leading thereto, for which, by reason of their nature or the context in which they are carried out, the sex of the worker constitutes a determining factor.

Directive 2000/43 recital 18

- In very limited circumstances, a difference of treatment may be justified where a characteristic related to racial or ethnic origin constitutes a genuine and determining occupational requirement, when the objective is legitimate and the requirement is proportionate. Such circumstances should be included in the information provided by the Member States to the Commission.

Directive 2000/78 Article 4(1)

Notwithstanding Article 2(1) and (2), Member States may provide that a difference of treatment which is based on a characteristic related to any of the grounds referred to in Article 1 shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate

Directive 2006/54 Recital 19

- Ensuring equal access to employment and the vocational training leading thereto is fundamental to the application of the principle of equal treatment of men and women in matters of employment and occupation. Any exception to this principle should therefore be limited to those occupational activities which necessitate the employment of a person of a particular sex by reason of their nature or the context in which they are carried out, provided that the objective sought is legitimate and complies with the principle of proportionality.

Scope of the GOR

- Permissive
- Characteristic *related to* the protected grounds
- *Wolf* – physical capacity a characteristic related to age
- May be a GOR because of the *nature* or *context* of the occupational activity

Johnston Case 222/84

- Women excluded from reserve police force
- Women police officers not to be armed
- *Nature* of the work was not a GOR
- *Context* – the particular issues in Northern Ireland in the 1980s – could be a GOR

Scope continued

- Specific activities only
- *Commission v France* Case 318/86
- *Kreil v Germany* Case C-285/98

- Principle of proportionality
- *Sirdar* Case C-273/97

Interpretation

- Directive is exhaustive
- *Johnston*
- States have a margin of discretion
- *Sirdar*
- *Dory v Germany* Case C-186/01
- Transparency
- *Commission v France* Case 318/86

Wolf v Stadt Frankfurt am Main

- Age limit of 30 for recruitment to become a firefighter
- Was it justified age discrimination under Art 6(1) of 2000/78/EC?
- Exceptionally high physical requirements
- Physical test as well as age limit
- Need for a balanced age structure

***Wolf* continued**

- Art.4(1) not referred by the German court
- ECJ takes the point and holds:
- Objective of ensuring operational capacity is legitimate
- The requirement for high physical capacity is a GOR
- It is related to age
- Age limit is proportionate

***Wolf* continued**

- No reference to earlier jurisprudence
- Expansion of concept of GOR?
- Detriment to concept of direct discrimination?

Outstanding questions

- Different standards of review?
- Application of GOR to different grounds
- Authenticity
- Security
- Privacy
- Access to employment

Organisations with a religious ethos

- Exception for “churches and other public or private organisations the ethos of which is based on religion or belief”
- Occupational activities in such an organisation
- “Genuine, legitimate and justified occupational requirement” having regard to the organisation’s ethos
- Need not be determining?

Organisations with a religious ethos continued

- Article 4(2) 2000/78/EC:
- Any difference of treatment must take account of:
- (a) Member States' constitutional provisions and principles
- (b) general principles of Community law
- (c) should not justify discrimination on another ground

Proviso to Article 4(2) 2000/78/EC

- Organisations with a religious ethos may “require individuals working for them to act in good faith and with loyalty to the organisation’s ethos”
- Cf. *Rommelfanger v Germany* (1989)
- Claim under ECHR Art.10 (freedom of expression)
- No breach to dismiss a doctor for criticising the church’s teaching on abortion