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EU- Equality Law
Seminar for legal practitioners

Trier, 16. – 17. September 2013
Overview of the existing EU gender legislation on equality and definition of key concepts

Monday, 16th September 2013
Outline

I. Background

II. Overview

III. Key Concepts

IV. Concluding Comment
New Member States and *Treaties*

1958: Belgium, Germany, France, Italy, Luxembourg, Netherlands (1952 Treaty establishing the European Coal and Steel Community)

*1/1958 Treaty establishing the European Economic Community*

1973: Denmark, Ireland, United Kingdom

1981: Greece

*7/1987 Single European Act*

1986: Spain, Portugal


1995: Austria, Finland, Sweden

*5/1999 EC Treaty - Treaty of Nice*

2004: Cyprus, Czech Republic, Estonia, Hungary, Latvia. Lithuania, Malta, Poland, Slovakia, Slovenia

*11/2009 TFEU. TEU, Charter of Fundamentals Rights of European Union*

2007: Bulgaria, Romania

2013: Croatia
01.01.1958
31.13.1961
08.04.1990

Defrenne II, Barber

Test Achats
Article 119 Treaty establishing the European Economic Community

Social Dialogue

Article 8 TFEU
• „Victim“

• Equality bodies

• Social dialogue

• Dialogue with non governmental organisations
New Concept

• Equal treatment outside the workplace

  . Reconciliation of work and family life - Social Dialogue

  . Domestic violence
Principle of equal pay for male and female worker

• **Art. 157 Abs. 1 and 2 AEUV:**

• 8. April 1976 (Case Defrenne II)

• employer and worker (community provision)

• direct effect = national courts have a duty to ensure the protection of the rights

• **Protocol No 33 concerning Art. 157 TFEU**

Benefits under occupational social security schemes shall not be considered as remuneration if and in so far as they are attributable to periods of employment prior to 17 May 1990,

• **Art. 1 Satz 2 lit. b und c RL 2006/54/EG**

pay and occupational social security schemes

• **Art. 4 RL 2006/54/EG**

Prohibition of discrimination

• **Art. 5-13 RL 2006/54/EG**

Equal treatment in occupational social security schemes
Art. 157 (3) and (4 TFEU)

• The European Parliament and the Council, acting in accordance with the ordinary legislative procedure
• shall not prevent any Member State from maintaining or adopting measures providing for specific advantages
Equal payment for men and women
Art. 157 Abs. 1 and 1 AEUV

Parental leave
Directive 2010/18/EU

Employment Conditions
Directive 2006/54/EC

Maternity
Directive 92/85/EEC

Self-employed capacity
Directive 2010/41/EU

Part-time work
Directive 97/81/EC with Directive 98/81/EC

Access to and supply of goods and services
Directive 2004/113/EC

Fixed-term work
Directive 1999/70/EC

Matters of social security
Directive 79/7/EEC

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Topical issues

• The burden of proof
• The protection of pregnant workers and the reconciliation of professional, private and family life
• Remedies and enforcement
• The scope for positive action measures
• The principle of equal pay for work of equal value
• Equal treatment outside employment: access to goods and services
Definition of key concepts in


employment and occupation (recast)
Definitions of key concepts

1. direct discrimination
2. indirect discrimination
3. sexual harassment
4. harassment
Definitions
For the purposes of this Directive, the following definitions shall apply:
(a) ‘direct discrimination’: where one person is treated less favourably on grounds of sex than another is, has been or would be, treated in a comparable situation;

(b) ‘indirect discrimination’: where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary;

(c) ‘harassment’: where unwanted conduct related to the sex (or other protected ground) of a person occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment;

(d) ‘sexual harassment’: where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment;
Direct Discrimination

Where one person is treated less favourably than another in a comparable situation
• The emphasis is on comparability between situations
• engaged in work of higher value than that of the person with whom a comparison is to be made
  • Murphy 1988 para 12
  • Alvarez 2010 para 39
Direct Discrimination

where one person ... **has been** ... treated less favourably on grounds of sex than another in a comparable situation

• ECJ, 27 March 1980, 129/79 (Macarthys v Smith)
Direct Discrimination

where one person ... would be treated less favourably on grounds of sex than another in a comparable situation

Direct Discrimination

The exception for finding a suitable “comparator” is where the discrimination suffered is due to **pregnancy**

- ECJ, 8 November 1990, C-177/88 (Dekker)
- Art. 3 II c of Directive 2006/54/EC
Discrimination

- by harassment
- by sexual harassment

discrimination by association
Harassment

• unwanted conduct
• offensive environment

discrimination by association
Discrimination

• by instruction to discriminate against
Discrimination by association

• ECJ 24 June 1986, 150/85 (Drake)
  A benefit provided by a Member State and paid to a person caring for a disabled person forms part of a statutory scheme providing protection against invalidity which is covered by Directive 79/7/EEC pursuant to Article 3 (1) (a) of that directive

• ECJ 17 July 2008, C-303/06 (Coleman) associated with disability the person suffered discrimination and harassment because of the disability of her child
Indirect Discrimination

- where an apparently neutral provision criterion or practice
- would put persons of one sex at a particular disadvantage
- compared with persons of the other sex,
- unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary

ECJ, 13. Mai 1986, C-170/84 (Bilka)
Indirect Discrimination

- Article 2 (1) b Council Directive 2006/54/EU

- ECJ, 20 October 2012, Case C-123/10 Brachner
III. Current and future developments
Since 2010 opening for other Human Rights instruments

- Art. 6 Abs. 3 of the Treaty on European Union (Preparation of the accession of the Union to the European Convention of Human Rights)

Treaty of Lisbon

Accession of the Union with reservations to the BRK

In preparation:
Accession to the Union EMRK
European Antidiscrimination legislation and International Human Rights Law

1. International Labour Organisation, XIII League of Nation 1918
2. United Nation 1945

   Universal Declaration of Human Rights (UDHR)

   - International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) 1965
     - 167 VS
   - International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966
     - 160 VS
   - International Covenant on Civil and Political Rights (ICCPR) 1966
     - 187 VS
   - Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)
     - 193 VS
   - Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (CAT) 1984
     - 150 VS
   - Convention on the Rights of the Child (CRC) 1989
     - 193 VS
   - Convention on the Rights of Persons with Disabilities (CRPD) 2006
     - 110 VS

3. Council of Europe 1949
4. European Community 1957
Concluding Comment

• Strengthen the substantive approach to realise the support of equal treatment alike the standard of the Convention on the Elimination of All Forms of Discrimination against Women; New York, 18 December 1979

• Condemn Discrimination (Article 2) CEDAW
States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women

• Stereotyped roles for men and women (Article 5) CEDAW
States Parties shall take all appropriate measures:
(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women
Access to Relevant Handbooks and Reviews

• **Handbook on European non-discrimination law**
  

• **European Gender Equality Law Review**
  
To conclude

Thank you for your attention!