

Disability discrimination under EU law

Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation:

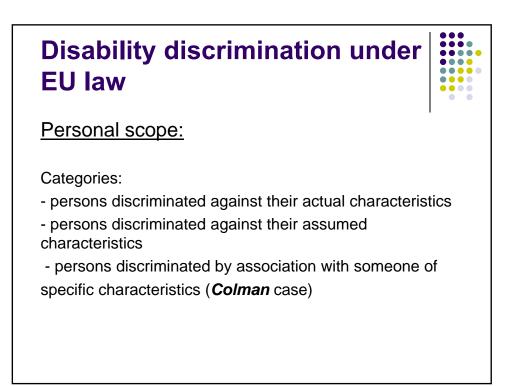
the only Equality Directive prohibiting discrimination on the ground of disability (together with age, sexual orientation, religion or belief);

unequal protection against discrimination, hierarchy of protected grounds (even the European primary law sets equal standards)

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<u>Directive 2000/78/EC – material scope (application in both public and private sectors):</u>

- conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion
- access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience
- employment and working conditions, including dismissals and pay
- membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations.



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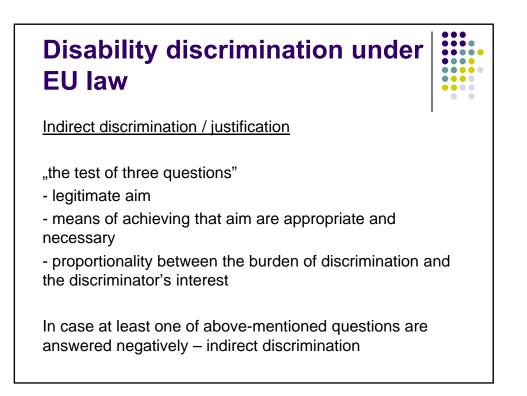
Direct discrimination:

shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds covered by the Directive

- comparator
- "what if not?" test
- Principle 1: no justification (few exceptions only)

- Principle 2: overt and intentional, examination of less favourable treatment





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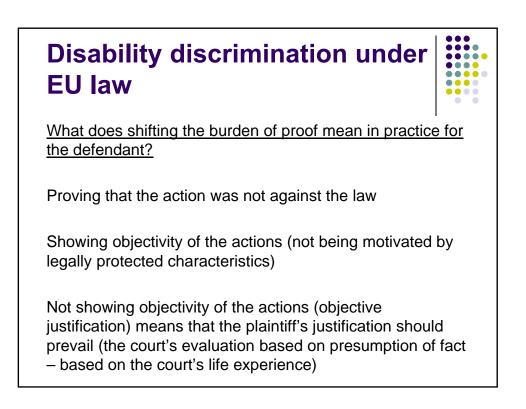
Burden of proof

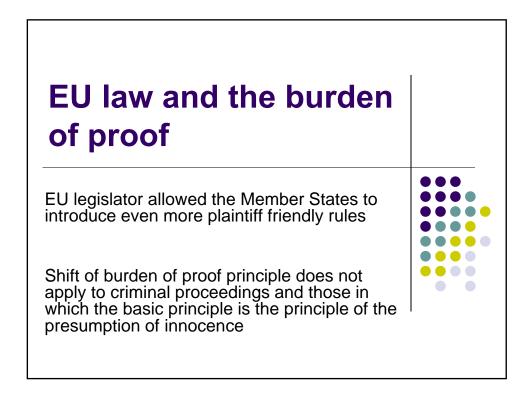
'Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment'.

Directives: 2000/43/WE, 2000/78/WE, 2004/113/WE, 2006/54/WE









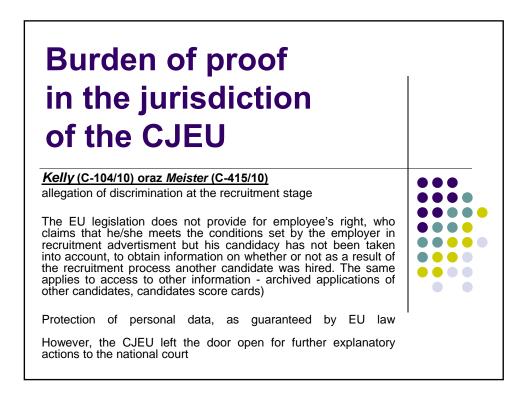
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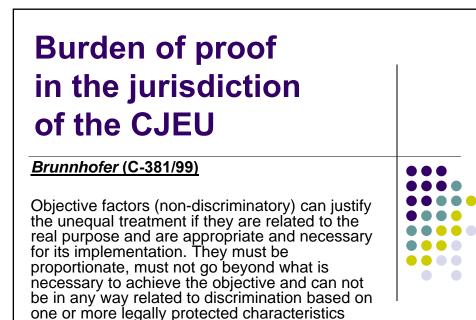
Burden of proof in the jurisdiction of the CJEU

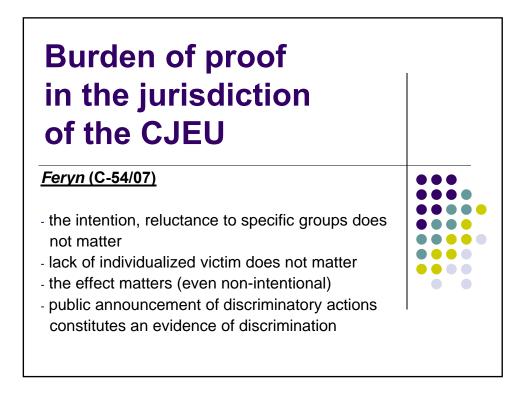
Danfoss C-109/88 (one of the first judgements in this area)

Lack of clarity in the remuneration system which does not allow to identify the criteria that were used by the employer, leads to transferring the burden of proof of lack of discrimination on the employer

The employee only needs to prove that the average salary of employees of one sex is less than of the opposite sex, compared with a sufficiently large number of employees



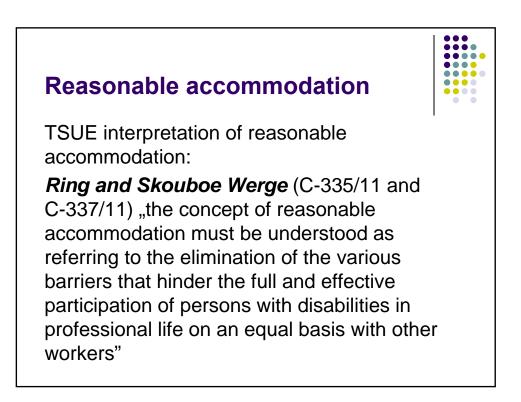




Reasonable accommodation

Art. 5, Directive 2000/78/EC

In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, reasonable accommodation shall be provided. This means that employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. This burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned.





Recital 20 (Directive 2000/78/EC):

"Appropriate measures should be provided, i.e. effective and practical measures to adapt the workplace to the disability, for example adapting premises and equipment, patterns of working time, the distribution of tasks or the provision of training or integration resources."

 reasonable accommodation concerns all aspects of employment

- CJEU: the list of measures defined in recital 20 is not ended and inlcudes other possibilities

