

KEY CONCEPTS IN DISCRIMINATION

Philip Rostant
Employment Judge



This training session is funded under the 'Rights, Equality and Citizenship Programme 2014-2020' of the European Commission.

Key Concepts in Discrimination

- Direct effect
- Indirect effect
- Harassment
- Victimisation

Council Directive 2000/78/EC of 27 November 2000 (the Framework Directive)

Article 2

“Concept of discrimination

*For the purposes of this Directive, the "principle of equal treatment" shall mean that there shall be no **direct** or **indirect discrimination** whatsoever on any of the grounds referred to in Article 1”.*

+

harassment (Article 2(3))

victimisation (Article 11).

Direct Discrimination

Article 2(2)

“2. For the purposes of paragraph 1:

***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** referred to in Article 1;”*

Direct Discrimination

Comparable situation



G. Horvat

G. Marić



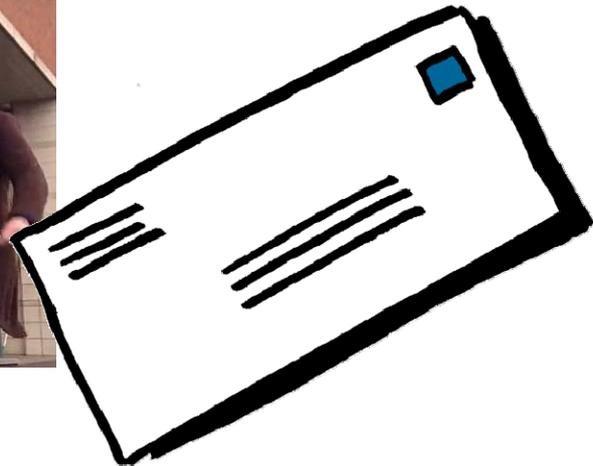
Direct Discrimination

Treated less favourably



Direct Discrimination

On any of the grounds



Direct Discrimination

- Hypothetical Comparator
- Association
- Hypothetical victim?

Direct Discrimination-an exception

Article 4(1) Directive 2000/78

Genuine and determining occupational requirement.

“a requirement that is **objectively dictated** by the **nature of the occupational activities** concerned or of the **context in which they carried out**. It cannot, however, cover subjective such as the willingness of the employer to take account of the particular wishes of the customer.”

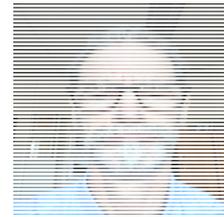
Case C-188/15 Bougnaoui

Direct Discrimination-an exception

Article 6

Justification of differences of treatment on grounds of age

- 1...Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if...they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.



Indirect Discrimination

Article 2(2)

“2. For the purposes of paragraph 1:

- (b) **indirect discrimination** shall be taken to occur where an *apparently neutral provision, criterion or practice* would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless:
 - (i) 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

Case C-157/15, Achbita v G4S



Indirect Discrimination

neutral provision, criterion or practice

- *“employees are prohibited, in the workplace, from wearing any visible signs of their political, philosophical or religious beliefs and/or from engaging in any observance of such beliefs”*

G4S Workplace Regulations

Indirect Discrimination

neutral provision, criterion or practice

Or, as the Court put it in Achbita

- *“Treating all workers...in the same way by requiring them, in a general and undifferentiated way, inter alia, to dress neutrally”*

Indirect Discrimination

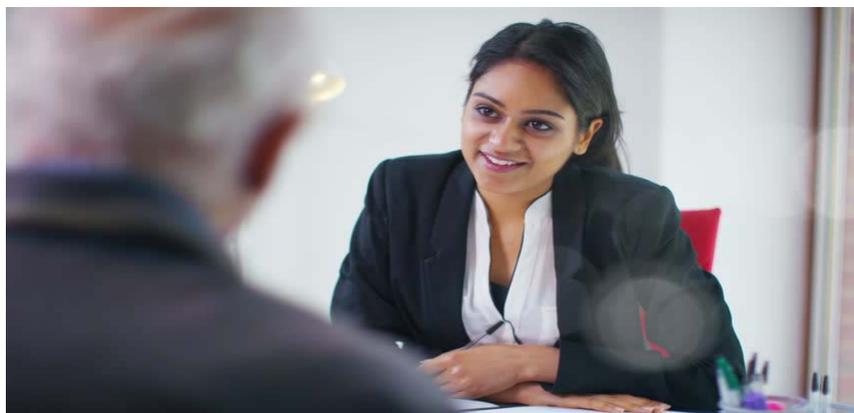
persons having a particular religion or belief



particular disadvantage

Indirect Discrimination

Compared with other persons



Objectively justified?

Legitimate aim?

Appropriate rule?

Is it strictly necessary?



Indirect Discrimination

Association

- “the concept of ‘discrimination on the grounds of ethnic origin’,... must be interpreted as being intended to apply in circumstances such as those at issue before the referring court —irrespective of whether that collective measure affects persons who have a certain ethnic origin or those who, without possessing that origin, suffer, together with the former, the less favourable treatment or particular disadvantage resulting from that measure”.

C-83/14 CHEZ Razpredelenie Bulgaria AD

Harassment

- Article 2(3)
- “3. Harassment shall be deemed to be a form of discrimination within the meaning of paragraph 1, when *unwanted conduct related to any of the grounds* referred to in Article 1 takes place with the *purpose or effect* of *violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment*. In this context, the concept of harassment may be defined in accordance with the national laws and practice of the Member States.”

Harassment

Unwanted conduct



Harassment

Related to any of the grounds



Harassment

Purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment



Snr Lopez

Victimisation

Article 11

“Victimisation

Member States shall introduce into their national legal systems such measures as are necessary to protect employees against dismissal or other adverse treatment by the employer as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment.”

Victimisation

Dismissal or other adverse treatment



Hvala vam puno
Hvala vam puno
Hvala vam puno

The End

Thank You
Hvala vam puno