

PROVING
DISCRIMINATION

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JUDGE OF THE HIGH COURT IRELAND

Funded by
the European Union

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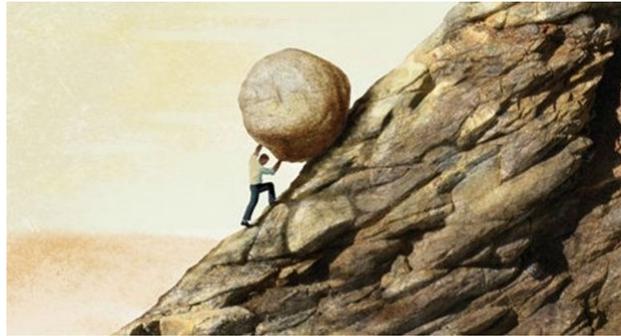
Shifting the Burden of Proof



The scope of European equality law is wide and strong
- JF v TP SA -

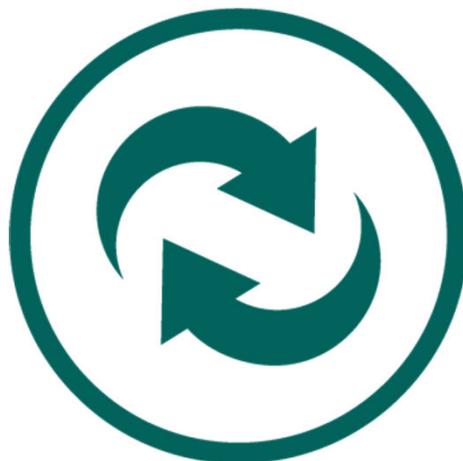
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It can be difficult to prove discrimination



3

Shifting the burden of proof provides a tool



4

The Equality Directives

Article 19(1) of the Reast Directive

“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.”

5

Danfoss

A non transparent pay system that did not allow workers to identify reasons for difference in pay was challenged as discriminatory. The ECJ found that national rules on the burden of proof could be adjusted in special cases where necessary for the effective implementation of the principle of equality.

6

Enderby



Where a prima facie case of discrimination is established, the burden of proving objective justification moves to the employer.

This can be done by statistics.

7

Dansk Industri

-
- Differential wages for male and female workers within a piecemeal wage scheme.
 - But that mere finding was not suffice to establish discrimination.

8

Feryn



The employer's burden of proof could be discharged by showing that the actual recruitment practice did not correspond to its racist statements.

9



Associata
Accept

10



to achieve
Justice

NH v Association
Avvocatura

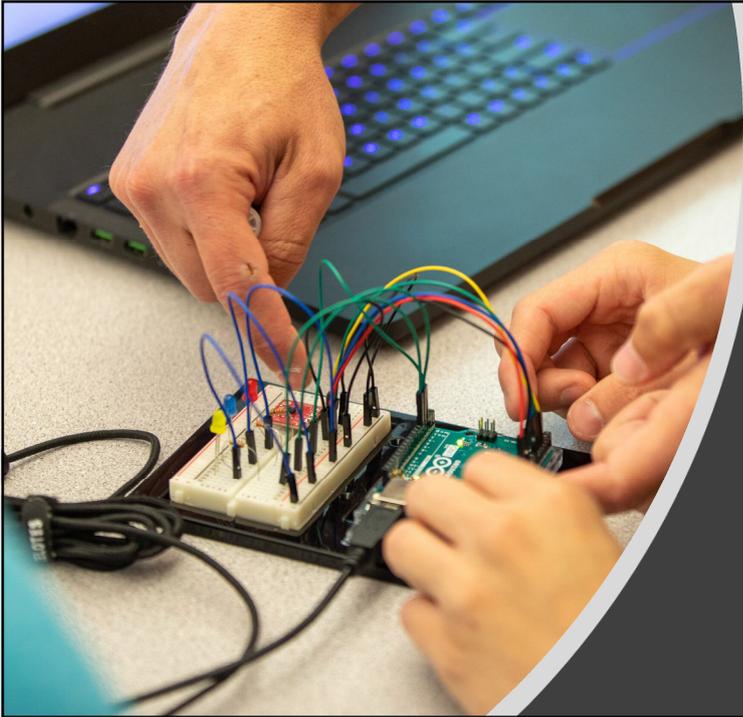
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Disclosure of Information

- Kelly v University
College Dublin
- Refusal of information
could deprive the
equality principle of its
effectiveness.

12

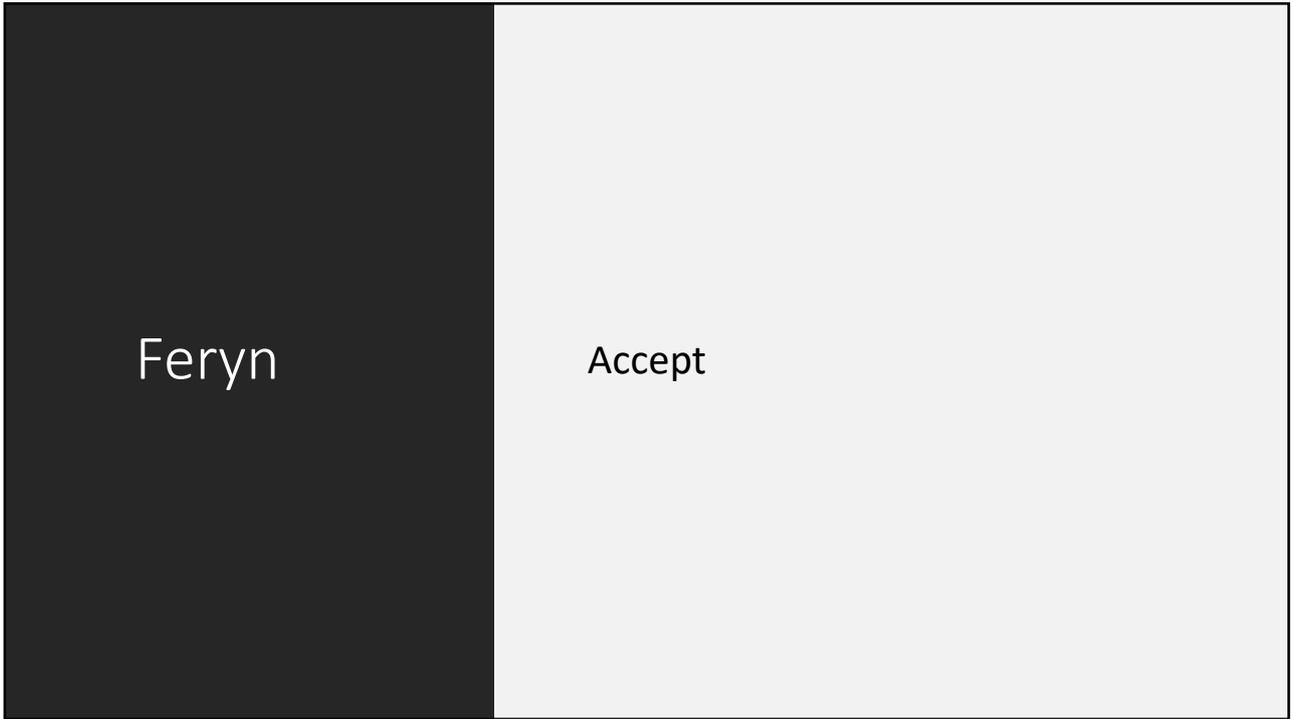


Meister

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Proving direct
discrimination

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Enderby



17

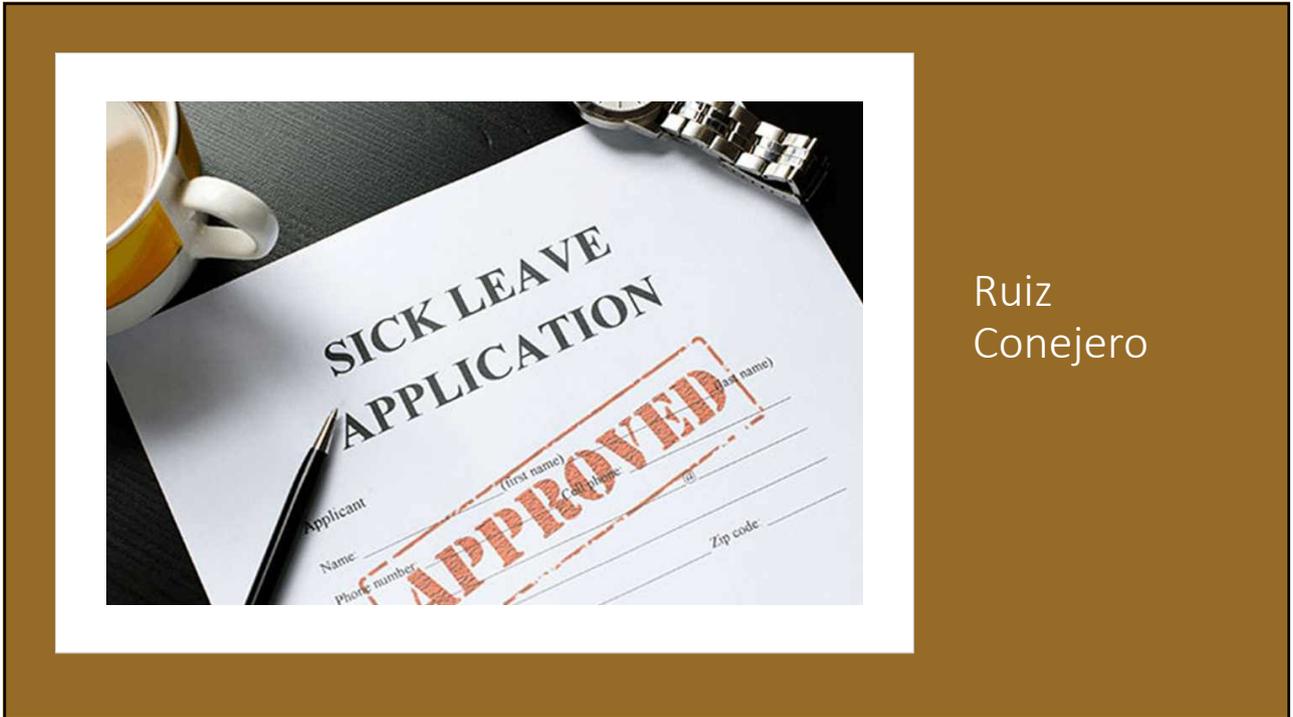


CHEZ

18



Jyske Finans



Ruiz
Conejero

Particular disadvantage

- *Achbita*
- *LF v SCRL*

21



Horgan

22



Essop

23



CONCLUSIONS

24