

Racial Discrimination and Discrimination Based on Sexual Orientation: Main Features and Jurisprudence of the CJEU

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Overview Presentation

EU Law
Materials

discrimination patterns
(direct / indirect
discrimination &
discrimination by association)

other jurisprudence

Teil 2

Teil 4

Teil 1

Interpretation methods
& horizontal effect of
the relevant Directives

Teil 3

selected jurisprudence
based on the Directives

Teil 5

EU Law

DIR 2000/43/EC (Racial Equality Directive)

Scope:

Working life, access to goods and services, education, social protection and advantages

DIR 2000/78/EC (Employment Equality Directive)

Scope:

Working life

(debates about levelling-up)

Other

Art 19 TFEU (enabling the Union to take action in the realm of non-discrimination)
Art 2, 3 TEU (equality and non-discrimination as fundamental values)
Art 10 TFEU (EU considers addressing discrimination in all its actions)
Art 21 CFR (non-discrimination)
Equality principle
Other DIRs, Regulations, etc.

Interpretation of the DIRs

Horizontal Effect

- purposive interpretation
- DIRs as expression of equality principle
- other (also non-EU) laws and materials serve as interpretation guides; i.e., ECHR (C-83/14 *CHEZ* [2015]), but also, e.g., Yogyakarta principles (C-258/17 *E.B.* [2019]), etc.

Interpretation of the DIRs

Horizontal Effect

- “direct effect” of EU law – Case 26-62 *Van Gend en Loos* (1963)
- “supremacy” of EU law – Case 6-64 *Costa/ENEL* (1964)
 - What about horizontal conflicts?
- C-144/04 *Mangold* (2005), C-555/07 *Kücükdeveci* (2010) – discrimination based on age
 - DIRs are an expression of the equality principle
 - National courts have to interpret national law in accordance with the equality principle (as expressed by the DIRs); if it contradicts EU law, it has to be disapplied
- expansion to discrimination based on sexual orientation (C-147/08 *Römer* [2011]), ethnic origin (C-83/14 *CHEZ* [2015]), etc.
- C-441/14 *DI - Ajos* (2016):
 - Interpretation of national law in accordance with EU law / disapplication – also in conflicts between private entities!
 - no limitation based on legal certainty / transparency

Discrimination

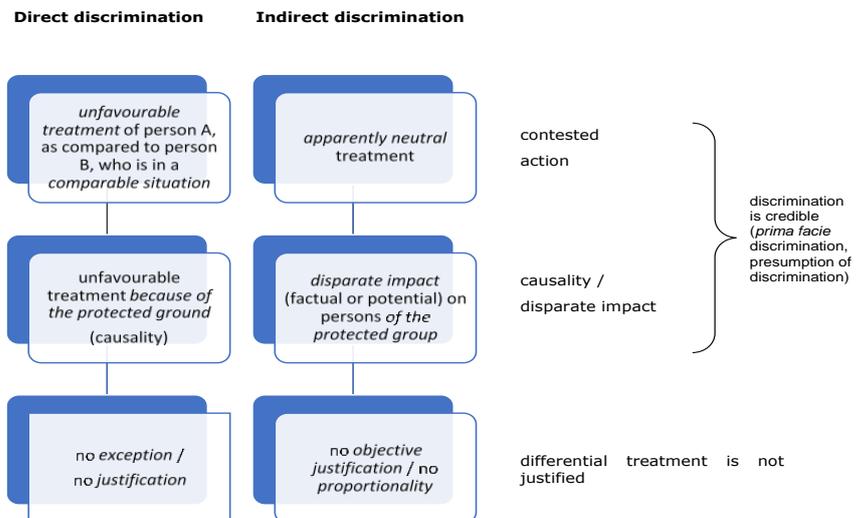
- direct discrimination – Art 2(2)a DIRs:
 - “direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation *on any of the grounds referred to in Article 1 / on grounds of racial or ethnic origin*”
- indirect discrimination – Art 2(2)b DIRs:
 - an apparently neutral provision, criterion or practice would put certain persons belonging to a protected group at a particular disadvantage compared with other persons
 - unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary (proportionality test)

Discrimination

Justification of differential treatment:

- direct discrimination:
 - general exception
 - exception according to Art 2(5) of DIR 2000/78 – Employment Equality DIR
- indirect discrimination:
 - proportionality test

Discrimination



Discrimination

Discrimination by association:

- C-202/06 *Coleman* (2008)
- C-83/14 *CHEZ* (2015)

Selected Jurisprudence

Working Life / Education

Access Art 3(1)a DIRs

C-54/07 *Feryn* (2008), C-81/12 *ACCEPT* (2013), C-507/18 *NH* (2020) :

- public statements
- no specific victim
- Ssanding of organisations

C-423/14 *Kratzer* (2016):

- no discrimination without real interest in job

Pay & Working Conditions Art 3(1)c DIRs

C-267/06 *Maruko* (2008), C-147/08 *Römer* (2011), C-267/12 *Hay* (2013):

- equivalence of same-sex partnership to marriage? → direct discrimination!

C-443/15 *Parris* (2016):

- no obligation of MS to introduce transitional measures

C-258/17 *E.B.* (2019):

- reduction of civil servant's pension as sanction

Education Art 3(1)g Racial Equality DIR

C-457/17 *Heiko Jonny Maniero* (2018):

- stipends issued by private fund = falls under scope of DIR

Selected Jurisprudence

Ethnic Origin

"Ethnic origin" – Racial Equality DIR:

- C-83/14 *CHEZ* (2015)
 - "...the concept of ethnicity, which has its origin in the idea of societal groups marked in particular by common nationality, religious faith, language, cultural and traditional origins and backgrounds, ..." (para 46)
- C-668/15 *Jyske Finans* (2017)
 - "As a consequence, a person's country of birth cannot, in itself, justify a general presumption that that person is a member of a given ethnic group such as to establish the existence of a direct or inextricable link between those two concepts." (para 20)

Other Cases

CFR

Citizenship DIR 2004/38/EG

Qualification DIR 2011/95/EU

C-528/13 *Léger* (2015)

- Art 21 CFR
- prohibition of blood donations

Asylfälle unter der Qualifikations-RL

- C-199/12 to C-201/12 X, Y & Z (2013)
- C-473/16 *Bevándorlási* (2018)

C-673/16 *Coman* (2018)

- Citizenship DIR
- title of residence for family members from third country
- Romania: no recognition of same-sex marriage or same-sex partnerships
 - Does same-sex spouse from third country count as spouse / family member under the DIR?
- in limited context: YES!

Thank you!



For follow-up question, etc. you can reach me at

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