



MASARYK UNIVERSITY  
FACULTY OF LAW

# Equal Treatment and Prohibition of Discrimination

## Part I



# Equality and prohibition of discrimination

- An equality before the law (legal equality)
- Equal treatment is considered in connection with some particular right.
- Similar cases should be treated alike, different cases should be treated in proportion to their unlikeness.
- Equality and difference are relational concepts.



# Equality and Prohibition of Discrimination

- „Discrimination“ – derived from „to discriminate“.
- In general it means to make a difference.
- Discrimination as a legal term: unlawful and unjustifiable difference on the grounds of the particular criterion.



# Equality and Prohibition of Discrimination in the EU law

- Principles of equal treatment and prohibition of discrimination are considered as one of the sources of the EU law.
- Regulated by:
  - Primary law
  - Secondary law



# Regulation in the primary law

## ■ TEU, Article 2:

*The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.*

## ■ TEU, Article 3:

*Internal market shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.*



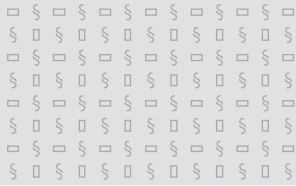
# Primary law: Prohibition on discrimination based on nationality

- TFEU, Art. 18:

*Within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.*

- TFEU, Art. 45:

*Freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.*



# Primary law: Prohibition on discrimination based on sex

- TFEU, Art. 8:

*In all its activities, the Union shall aim to eliminate inequalities, and to promote equality, between men and women.*

- TFEU, Art. 157:

*Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.*



# Primary law: Prohibition on discrimination based on other reasons

- TFEU, Art. 10:

*In defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.*





# Secondary law

## ■ Directives:

- 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation
- 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin
- 2000/78/EC establishing a general framework for equal treatment in employment and occupation
- **Regulation 492/2011** on freedom of movement for workers within the Union



## Framework Equality Directive (2000/78)

- The purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of:
  - religion or belief,
  - disability,
  - age or
  - sexual orientation

as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.



## Grounds of discrimination

- C – 13/05 „Chacón Navas“:

*Ms. Sonia Chacón Navas was dismissed by her employer on grounds of her sickness. Her sickness was long lasting (8 months). Ms Chacón Navas brought an action against her employer on account of the unequal treatment and discrimination.*

- Can sickness be regarded as a ground for discrimination?



# Framework Equality Directive (2000/78)

- Scope of application:
  - 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.



# Gender Equality Directive (2006/54)

- Scope of application:
  - access to employment, including promotion, and to vocational training;
  - working conditions, including pay;
  - occupational social security schemes



## Gender Equality Directive (2006/54)

### ■ Equal Pay:

*For the same work or for work to which equal value is attributed, direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration shall be eliminated. In particular, where a job classification system is used for determining pay, it shall be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex.*



## Racial Equality Directive (2000/43)

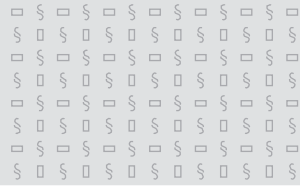
- The purpose of this Directive is to lay down a framework for combating discrimination on the grounds of racial or ethnic origin, with a view to putting into effect in the Member States the principle of equal treatment.



# Racial Equality Directive (2000/43)

- Scope of application:
  - Conditions for access to employment, to self-employment and 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;
  - Social protection, including social security and healthcare;
  - Social advantages;
  - Education;
  - Access to and supply of goods and services which are available to the public, including housing.





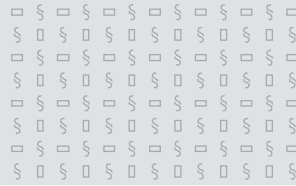
# General terms and definitions

- The three directives use more or less similar definitions and general terms.
- Definitions of:
  - Direct discrimination,
  - Indirect discrimination,
  - Harassment,
  - Positive action,
  - Burden of Proof.



## Direct and indirect discrimination

- **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 prohibited grounds.
- **Indirect discrimination** shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular characteristic recognized as prohibited ground of discrimination 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



# Direct discrimination

- C – 177/88 „Dekker“:  
*Mrs. Dekker applied for a job (instructor at the training center). She informed the committee that she was pregnant. Despite the fact she was recommended as a most suitable candidate. The management informed her that she would not be appointed. It was because of her pregnancy.*
- Was it a discrimination? Direct or indirect?
- Who were Mrs. Dekker compared with?
- Presentation: C - 54/07 Feryn



# Indirect discrimination

- C – 170/84 „Bilka Kaufhaus“:

*Mrs. Karin Weber von Hartz worked part-time. The Employer (Bilka Kaufhaus GmbH) had a special pension scheme for his employees. In order to get this pension, the employee must have worked least 15 years full time. Mrs. Weber von Hartz claimed the payment from the pension scheme.*

- Is there an apparently neutral provision?
- Is it indirect discrimination? Which group of persons is put at a disadvantage?
- Presentation: C - 7/12 Riežniece