



MASARYK UNIVERSITY  
FACULTY OF LAW

# Equal Treatment and Prohibition of Discrimination

## Part II



# Direct discrimination case law

- Case law presentation: C – 363/12



## Reasonable accommodation for disabled persons

- 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.
- Case law presentation: Joined Cases C-335/11 and C-337/11



# 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?



# Indirect discrimination

- C – 136/95 „Thibault“:

*Mrs. Évelyne Thibault worked for a company where a collective agreement was applicable. The collective agreement lay down the procedure for career advancement of employees based solely on length of service. Every year the salary is raised of 2 % if employee is present at work for at least 6 months of the year. In 1983 Mrs Thibault was not present at work for more than 6 months partly for sickness and partly for maternity leave. She did not meet the conditions for the salary advancement.*

- Is it an indirect discrimination?
- Which group of persons is put at a disadvantage?



# Justification of the Indirect discrimination

- C – 144/04 „Mangold“:  
*German law made it possible to renew fixed term contract with no limitation if the employee has reached the age of 52. Mr. Werner Mangold was 56 years old and his fixed term contract was renewed several times.*
- Is there a legitimate aim?
- Are means of achieving that aim appropriate and necessary?



## Terms and definitions

- **Harassment** shall be deemed to be a form of discrimination within when unwanted conduct related to any of the prohibited grounds 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.
- **Sexual harassment** where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.
- Case law presentation: C - 303/06 Coleman



# Terms and definitions

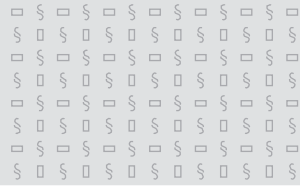
## ■ **Positive action:**

With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to any of the grounds of discrimination.

## ■ **Justifiable different treatment:**

Differences of treatment on grounds of discrimination criteria shall not constitute discrimination, if, within the context of national law, 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.

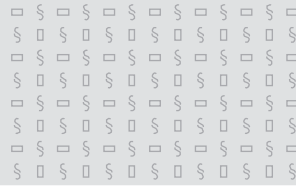




# General terms and definitions

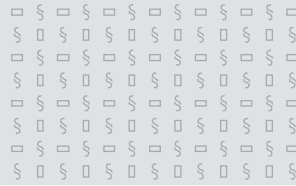
## ■ Burden of Proof:

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.



## Positive action

- C – 450/93 „Kalanke“:  
*City of Bremen had a legal act on appointing new employees and officials. And there was a provision that woman with the same qualification applying for the same job as man, must be given priority in the sectors where women are under-represented. Mr. Eckhard Kalanke applied for a job and was refused. Priority was given to a female applicant.*
- Was this an appropriate positive action?
- Was Mr. Kalanke discriminated?

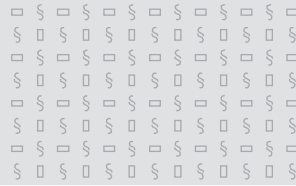


## Positive action

- C – 409/95 „Marschall“:

*Mr. Hellmut Marschall was a teacher and he applied for a higher post in the school. The school had a similar rule that equally qualified woman must be given a priority, unless there are some specific reasons for the male candidate and it is reasonable to choose the male applicant. Mr. Marschall wanted to be promoted, but priority was given to a female applicant.*

- Was this an appropriate positive action?
- Was Mr. Marschall discriminated?



## Positive action

- C – 476/99 „Lommers“:

*Mr. Lommers worked for the Ministry of Agriculture in Netherlands. The employer had a special nursery scheme for his employees' children. The number of nursery places was limited.*

*The employer refused to give Mr. Lommers' child access to the nursery scheme on the ground that access is in principle reserved only for female officials of the Ministry.*

- Was this an appropriate positive action?
- Was Mr. Lommers discriminated?