Contents

FOREWORD	vii
TABLE OF ABBREVIATIONS	lv
TABLE OF CASES	lxi
TABLE OF LEGISLATIVE INSTRUMENTS	lxxvii

INTRODUCTORY CHAPTER A COMPARATIVE PERSPECTIVE ON NON-DISCRIMINATION LAW

1.	PRELIMINARY REMARKS	1
2.	NON-DISCRIMINATION LAW IN THE EUROPEAN UNION	2
3.	STRUCTURE AND DELIMITATIONS OF THE POOK	4
4.	SOURCES OF NON-DISCRIMINATION LAW	7
4.1.	INTERNATIONAL SOURCES OF NON-DISCRIMINATION LAW	8
4.2.	NON-DISCRIMINATION AND THE COUNCIL OF EUROPE	9
4.3.	THE EC DIRECTIVES ON NON-DISCRIMINATION	11
	THE RACIAL EQUALITY DIRECTIVE	11
	THE EMPLOYMENT EQUALITY DIRECTIVE	12
	THE GENDER EMPLOYMENT DIRECTIVE	12
	THE GENDER GOODS AND SERVICES DIRECTIVE	13
5.	COMPARATIVE NON-DISCRIMINATION LAW	13
5.1.	COMMON LAW COUNTRIES	14
5.2.	CIVIL LAW COUNTRIES IN EUROPE	17
5.3.	SPECIAL CASE: THE NETHERLANDS	21
5.4.	NORDIC MEMBER STATES	22
5.5.	SUMMARY OF COMPARISON AND RELEVANCE FOR REST OF THE BOOK	25
6.	AIMS AND CONCEPTS OF NON-DISCRIMINATION LAW	25
6.1.	(NON-)DISCRIMINATION OR EQUALITY?	26

6.2.	FORM AND SUBSTANCE	26
6.3.	EQUALITY AND DISTRIBUTIVE AND CORRECTIVE JUSTICE	29
6.4.	INDIVIDUALS AND GROUPS	30
6.5.	ENFORCING NON-DISCRIMINATION LAW	31

CHAPTER ONE DISCRIMINATION GROUNDS

1.1. INTRODUCTION		33
	NDS OF DISCRIMINATION cember 2005, <i>Timishev v. Russia</i> . Freedom of movement of	35
Chechens		37
1.CoE.2. ECtHR, 21 Feb treatment of property ow	oruary 1986, James and Others v. The United Kingdom. Different	nt 37
1.3. THE GROUNDS OF	DISCRIMINATION	39
1.3.1. INTRODUCTION	<u>~</u> ?.	39
1.3.2. RACE; ETHNIC, R	ACIAL AND NATIONAL ORIGIN; BELONGING	
TO A NATIONAL O	R ETHNIC MINORITY; SKIN COLOUR	41
1.3.2.A. DEFINITIONS		41
RACE	200	41
1.CoE.4. European Com	reatment Act. Explanatory Notes mission against Racism and Intolerance, ECRI General No. 7 on national legislation to combat racism and racial	43
discrimination		44
	1 2	45
1.GB.6. British Rece Rela		45
1.CoE.7. ECtHR, 13 Dec Chechens	cember 2005, Timishev v. Russia. Freedom of movement of	46
MEMBERSHIP OF AN I	ETHNIC OR RACIAL GROUP	47
not members of a "racial	- 0 F	47
	he Elimination of Racial Discrimination. General	4.0
		48 49
TRAVELLERS AND GY	(PSIES	51
no requirement for establ	5	51
feeling of belonging to the	al, <i>O'Brien</i> v. <i>Killarney Ryan Hotel</i> . Irrelevance of subjective ne "traveller community" al, <i>Commission for Racial Equality</i> v. <i>Dutton</i> . Gypsies as an	52
ethnic group		53

1.NL.14. Equal Treatment Commission, <i>Opinion 1999-65</i> . Unequal treatment of caravan dwellers constitutes racial discrimination	55
MEMBERSHIP OF A (NATIONAL) MINORITY—NATIONAL ORIGIN 1.CoE.15. Council of Europe, <i>European Framework Convention for the Protection of</i>	56
National Minorities 1.PL.16. Polish National and Ethnic Minorities and Regional Languages Act	56
<i>of 6 January 2005</i> 1.PL.17. Comments of the Polish Parliamentary Office to the Draft National Minorities Act	58 59
LANGUAGE	60
ETHNICITY AND RELIGION	60
1.3.2.B. SUSPECTNESS	61
1.CoE.18. ECtHR, 18 January 2001, <i>Chapman</i> v. <i>United Kingdom</i> .	62
1.3.3. NATIONALITY	63
 1.3.3. NATIONALITY 1.3.3.A. DEFINITION DIFFERENT SITUATIONS DEFINITION OF NATIONALITY 1.3.3.B. SUSPECTNESS 	63
DIFFERENT SITUATIONS	63
DEFINITION OF NATIONALITY	64
1.3.3.B. SUSPECTNESS	66
1.CoE.19. ECtHR, 16 September 1996, <i>Gaygusuz y. Austria</i> . "Very weighty reasons" test applied to nationality discrimination	66
 1.CoE.20. ECtHR, 20 October 2005, Niedzwiecki v. Germany. No "very weighty reasons" test applied to nationality discrimination 1.EC.21. ECJ, 20 October 1993, Joined Cases C-92/92 and C-326/92, Phil Collins v. Imtrat Handelsgesellschaft mbH and Patricia Im- und Export Verwaltungsgesellschaft mbH and Leif Emanuel Kraul v. EMI Electrola 	67
<i>GmbH</i> . Importance of the prohibition of nationality discrimination 1.EC.22. ECJ, 11 July 2002 Case C-224/98, <i>M.N. D'Hoop</i> v. <i>Office national</i>	68
de l'emploi. Importance of prohibition of nationality discrimination	69
1.3.4. GENDER, SEX AND RELATED GROUNDS	70
1.3.4.A. DEFINITION	70
GENDER AND SEX	70
SYMMETRICAL AND ASYMMETRICAL DEFINITIONS 1.ES.23. Estonian Law on Gender Equality 1.DE.24. German Constitution	71 71 71
1.UN.25. International Convention on the Elimination of All Forms of Discrimination against Women	71
GENDER RELATED GROUNDS—PREGNANCY AND GENDER—SPECIFIC ILLNESS	73
1.EC.26. ECJ, 9 November 1990, Case C-177/88, <i>Dekker</i> v. <i>Stichting VJV</i> . Discrimination based on pregnancy constitutes sex discrimination	73

1.EC.28. ECJ, 8 November 1990, Case C-179/88, Handels- og Kontorfunktionaerernes Forbund i Danmark, acting on behalf of Birthe Vibeke Hertz v. Dansk Arbejdsgiverforening	73
1.EC.29. ECJ, 17 February 1998, Case C-249/96, Grant v. South-West Trains. Sex	75 76
1.EC.30. ECJ, 30 April 1998, Case C-13/94, P. v. S. and Cornwall County Council.	76 77
1.DE.31. Regional Court of Munich, Civil Division, 30 June 2003. Does	77 78
	79
	80
	80
1.CoE.35. ECtHR, 27 March 1998, Petrovic Austria. No very weighty reasons	81
	82
	83 83
1.IE.36. Irish Equal Status Act 2000	83 83 83
	84 84
	85
OTHER FORMS OF SEXUAL ORIENTATION, PREFERENCE OR BEHAVIOUR 1.NL.40. Equal Treatment Commission, <i>Opinion 1996-108</i> . Discrimination against	86
transvestites is not sexual orientation discrimination	87
1.CoE.41. ECtHR, 21 December 1999, Salgueiro da Silva Mouta v. Portugal.	88
1.CoE.42. ECtHR, 9 January 2003, L. and V. v. Austria. Very weighty reasons test	88 89
	91
1.3.6.A. DEFINITIONS	91

MARITAL STATUS	91
 1.EC.43. ECJ, 17 April 1986, Case 59/85, State of Netherlands v. Ann Florence Reed. No residence permit for unmarried partner 1.EC.44. ECJ, 13 May 2001, Joined cases C-122/99 P and C-125/99, P, D. and Sweden 	
v. <i>Council</i> . Discrimination of same-sex partners with a registered partnership	93
 FAMILY STATUS AND MARITAL STATUS 1.BG.45. The Bulgarian Protection against Discrimination Act 1.IE.46. Equality Tribunal, Travers & Maunsell v. The Ball Alley House. Definition of family status 	94 94 95
1.3.6.B. SUSPECTNESS	96
1.CoE.47. ECtHR, 4 June 2002, <i>Wessels-Bergervoet</i> v. <i>The Netherlands</i> .Very weighty reasons test applied to discrimination based on sex and marital status	90 96
1.3.7. BIRTH, PARENTAGE AND DESCENT	97
 1.CoE.48. ECtHR, 13 June 1979, <i>Marckx</i> v. <i>Belgium</i>. Illegitimate birth as a suspect ground for discrimination 1.CoE.49. ECtHR, 28 October 1987, <i>Inze</i> v. <i>Austria</i>. Very weighty reasons 	98
test applied to discrimination based on illegitimate birth	99
 1.CoE.50. ECtHR, 8 July 2003, Sahin v. Germany. Discrimination against parents of illegitimate children 1.CoE.51. ECtHR, 13 July 2004, Pla and Puncernau v. Andorra. Discrimination 	100
	101
1.3.8. RELIGION AND BELIEF; POLITICAL ON PERSONAL	
CONVICTION	102
1.3.8.A. DEFINITION	102
	102
	103
	103
	103
1.UN.55. Universal Declaration of Human Rights 1.UN.56. Declaration or the Elimination of All Forms of Intolerance and of	104
	104
1.CoE.57. European Convention of Human Rights	104
1.EC.58. Charter of Fundamental Rights of the European Union 1.CoE.59. Human Rights Committee, General Comment No. 22: The right to	104
	105
RELIGION—RECOGNITION AND SECTS	105
1.DK.60. N.E. Hansen, Report on measures to combat discrimination:	
1.IT.61. A. Simoni, Report on measures to combat discrimination:	106
Directive 2000/43/EC and 2000/78/EC. Country report Italy	107
1.CoE.62. ECtHR, 13 April 2006, Kosteski v. The Former Yugoslav	108
Republic of Macedonia. Proof of adherence to a religion	109
THE FREEDOM NOT TO HAVE A RELIGION	110

	1.CoE.63. ECtHR, 18 February 1999, <i>Buscarini et al. v. San Marino.</i> Freedom of conscience covers freedom not to have a religion	111
1	1.NL.64. Equal Treatment Commission, Opinion 2003-114. "Religion" encompasses	
	"not having a religion"	112
	MANIFESTATION OF RELIGION AND RELIGIOUS EXPRESSIONS 1.CoE.65. ECtHR, 25 May 1993, <i>Kokkinakis v. Greece</i> . Religious expression	112
i	is protected by the freedom of religion	113
	1.UN.66. Human Rights Committee, <i>General Comment No. 22:</i> The right to freedom of thought, conscience and religion	113
1	1.NL.67. Equal Treatment Commission, Opinion 1998-18. Subjective	
	approach to religious practice 1.CoE.68. EComHR, 16 May 1977, <i>Arrowsmith</i> v. UK. Objective approach	114
t	to religious practice	116
	1.CoE.69. ECtHR, 10 November 2005, <i>Leyla Sahin</i> v. <i>Turkey</i> . Headscarf as religious expression	116
	BELIEF	117
	1.CoE.70. ECtHR, 25 February 1982, Campbell and Cosans V. VK.	11/
	Definition of "philosophical convictions" and "belief" 1.NL.71. Equal Treatment Commission, <i>Opinion 2005, 28</i> , Definition of	118
	"belief" and "religion"	118
]	RELATION BETWEEN RELIGION AND BELIEF	120
	1.DE.72. The German Federal Administrative Court, 27 March 1992. Religion or belief?	121
		121
	POLITICAL CONVICTION OR OPINION 1.CoE.73. EComHR, 16 May 1977, <i>Arrowsmith</i> v. UK. Objective	121
6	approach to religious practice	122
	1.NL.74. Equal Treatment Commission, <i>Opinion 1998-45.</i> "Political conviction" does not cover criminally punishable behaviour	123
	.B. SUSPECTNESS	124
1	1.CoE.75. ECtHR 23 June 1993, Hoffmann v. Austria. Religion based discrimination	
	is highly suspect 1.CoE.76. ECTHR, 16 December 2003, <i>Palau Martinez</i> v. <i>France</i> . Margin of	124
	appreciation in religious discrimination cases	125
1.3.9	. DISABILITY AND (CHRONIC) ILLNESS	127
	A. DEFINITION	127
	1.EC.77. Charter of Fundamental Rights of the European Union 1.EC.78. Convention on Human Rights and Biomedicine	127 128
1	1.FI.79. Finnish Non-Discrimination Act	128
	1.NL.80. Dutch Act on Equal Treatment on the Grounds of Disability or Chronic Illness	128
]	HANDICAP OR DISABILITY?	129
1	1.UN.81. UN General Assembly, Standard Rules on the Equalization of	100
	Opportunities for Persons with Disabilities	129
	SYMMETRICAL OR ASYMMETRICAL APPROACH?	130

SOCIAL CONSTRUCT OR MEDICAL IMPAIRMENT? 1.UK.82. Disability Discrimination Act 2005	131 131
1.UN.83. World Health Organisation, <i>Towards a Common Language for Functioning, Disability and Health</i>	131
1.EC.84. ECJ, 11 July 2006, Sonia Chacón Navas v. Eurest Colectividades SA.	
Definition of disability and illness	136
PERMANENT OR LONG-TERM PHYSICAL OR MENTAL IMPAIRMENT 1.DE.85. German Federal Constitutional Court, 8 October 1997. Disability	138
as a long-term physical, mental or psychological function	138
1.NL.86. The Dutch Second Memorandum of Reply with respect to the Act on Equal Treatment on the Grounds of Disability or Chronic Illness of 2003	139
LIMITATION TO PARTICIPATION IN SOCIAL OR PROFESSIONAL LIFE	140
1.BE.87. Executive Regulation adopted on 30 January 2004 by the Flemish Governmen	
to implement certain provisions of the Decree of 8 May 2002	140
1.CY.88. Cypriot Law concerning Persons with Disabilities 1.EP.80. Erarch 4 at 2005, 102 on the Eauglity of Biolite and Opportunities	141
1.FR.89. French Act 2005-102 on the Equality of Rights and Opportunities, the Participation and Citizenship of Disabled Persons	141
1.LT.90. Lithuanian Law on the Social Integration of the Disabled	141
	141
_	142
FUTURE DISABILITY 1.DE.92. SGB IX, Social Law Code, Book IX	142
1.SE.93. Swedish Disability Discrimination Act 1999	142
CHRONIC ILLNESS, SICKNESS AND HEALTH 1.HU.94. Hungarian Act CXXV. of 2003 on equal treatment and on fostering equal	143
opportunities	143
1.PT.95. Portuguese Labour Code	144
1.NL.96. Dutch Explanatory Memorandum to the Act on Equal Treatment on the	1.1.1
Grounds of Disability or Chronic filness of 2003	144
1.IE.97. Equality Tribunal, <i>Fernandez</i> v. <i>Cable & Wireless.</i> Illness as disability 1.IE.98. Equality Tribunal <i>A Civil Servant</i> v. <i>The Office of Civil Service and Local</i>	144 145
Appointments Commissioners. Asthma and irritable bowel syndrome as disability	143
1.3.9.B. SUSPECTNESS	147
1.3.10. AGE	148
1.3.10.A. DEFINITION	148
1.IE.99. Irish Equal Status Act 2000, as amended by Equality Act 2004	149
1.3.10.B. SUSPECTNESS	149
1.IE.100. Supreme Court, 15 May 1997, Case 118/1997, In the Matter of Article 26 and in the Matter of the Employment Equality Bill 1996. Limited scope of age	
discrimination prohibitions	151
1.EC.101. ECJ, 22 November 2005, Werner Mangold v. Rüdiger Helm. Strict test of	151
proportionality in age-discrimination cases	151
1.3.11. PART TIME AND FIXED-TERM WORK	152
1.3.11.A. DEFINITION	152

1.EC.102. Council Directive 97/81/EC of 15 December 1997 concerning the Framework	Ċ
Agreement on part-time work concluded by UNICE, CEEP and ETUC – Annex (Framework Agreement on Part-Time Work) 1.EC.103. Council Directive 1999/70/EC of 28 June 1999 concerning the framework	153
agreement on fixed-term work concluded by ETUC, UNICE and CEEP – Annex (Framework Agreement on Fixed-Term Work)	153
PART-TIME AND FULL-TIME WORK 1.UN.104. ILO Convention No. 175: Part-Time Work Convention	154 154
1.IE.105. Irish Protection of Employees (Part-time Work) Act 2001 1.GB.106. The Part-Time Workers (Prevention of Less Favourable	156
Treatment) Regulations 2000	157
1.FR.107. French Labour Code	159
1.NL.108. Dutch Act on Equal Treatment based on Working Hours	159
FIXED-TERM CONTRACTS 1.NL.109. Dutch Act on Equal Treatment based on Temporary and Permanent	159
Contracts	161
1.PL.110. Polish Labour Code	161
1.NL.111. Dutch Explanatory Memorandum to the Act on Equal Treatment based on Temporary and Permanent Contracts	161
1.3.11.B. SUSPECTNESS	161
1.4. DISCRIMINATION ON GROUNDS OF ASSUMED CHARACTERISTICS AND DISCRIMINATION BY ASSOCIATION	163
1.4.1. DISCRIMINATION ON GROUNDS OF ASSUMED	
CHARACTERISTICS	163
1.CoE.112. ECtHR, 13 December 2005, Timishev v. Russia. Freedom of movement	
of Chechens	163 164
1.AT.113. Explanatory Notes to the Austrian Equal Treatment Act 1.HU.114. Hungarian Act CXXV. of 2003 on equal treatment and on fostering equal	104
opportunities	164
1.IE.115. Irish Equal Status Act 2000, as amended by the Equality Act 2004	165
1.GB.116. House of Lords, 24 March 1983, <i>Mandla</i> v. <i>Dowell Lee</i> . Sikhs as an ethnic group	165
1.NL.117. Equal Treatment Commission, Opinion 2004-67. Discrimination based on	
assumed disability	166
1.NL.118. Equal Treatment Commission, <i>Opinion 2002-84</i> . Ascribed political conviction	168
1.4.2. DISCRIMINATION BY ASSOCIATION	169
1.IE.119. Equality Tribunal, 27 January 2004, <i>Six Complainants</i> v. <i>A Public House, Dublin.</i> Discrimination by association	169
1.5. MULTIPLE DISCRIMINATION	170
1.5.1. INTRODUCTION	170
1.5.2. PROBLEMS OF MULTIPLE DISCRIMINATION	172
DIFFERENCES IN PERSONAL AND MATERIAL SCOPE	172

DIFFERENCES IN EXEMPTIONS	173
ESTABLISHING (INDIRECT) DISCRIMINATION: WHO IS THE COMPARATOR?	173
 1.5.3. PRACTICAL SOLUTIONS TO CASES OF MULTIPLE DISCRIMINATION 1.UN.120. Fourth World Congress on Women, Beijing Declaration and Platform for Action 	174 174
1.UN.121. Committee on the Elimination of Racial Discrimination, <i>General Recommendation No. 25 : Gender related dimensions of racial discrimination</i> 1.CoE.122. ECtHR, 28 November 1984, <i>Rasmussen</i> v. <i>Denmark</i> .	175
Intersectional discrimination under the ECHR 1.IE.123. Equality Tribunal, 18 December 2001, <i>Maughan v. The Glimmer</i>	176 178
<i>Man.</i> Cumulative discrimination 1.NL.124. Equal Treatment Commission, <i>Opinion 1998-48.</i> Intersectional discrimination against a Jewish employee	178
1.6. COMPARATIVE ANALYSIS	180
1.6. COMPARATIVE ANALYSIS CHAPTER TWO DIRECT DISCRIMINATION	
CHAPTER TWO	
DIRECT DISCRIMINATION	
2.1. INTRODUCTION	185
2.2. RECOGNISING DIRECT DISCRIMINATION	187
2.2.1. DISCRIMINATION AND THE COUNCIL OF EUROPE 2.CoE.1. ECtHR, 23 July 1968, Case 'relating to certain aspects of the laws on the	187
<i>use of languages in education in Belgium</i> . <i>Belgium</i> . The concept of discrimination under article 14	188
2.CoE.2. ECtHR, 6 April 2000, <i>Thlimmenos</i> v. <i>Greece</i> . Failure to treat differently persons in different situations	189
2.2.2. DISCRIMINATION AND THE EUROPEAN UNION	191
2.2.3. GENERAL CONCEPTS OF DIRECT DISCRIMINATION IN NATIONAL LAW	194
2.BE.3. O. De Schutter, <i>Report on measures to combat discrimination:</i> <i>Directive 2000/43/EC and 2000/78/EC. Country report Belgium</i> 2.ELA T. Maldanan, <i>Banat on maganas to combat discrimination</i>	194
 2.FI.4. T. Makkonen, <i>Report on measures to combat discrimination:</i> Directive 2000/43/EC and 2000/78/EC. Country report Finland. 2.FI.5. T. Makkonen, <i>Report on measures to combat discrimination:</i> 	195
Directive 2000/43/EC and 2000/78/EC. Country report Finland	197
2.2.3.A. UK	197
2.2.3.B. FRANCE	200
2.2.3.C. THE NETHERLANDS 2.NL.6. M. Gijzen, Report on measures to combat discrimination: Directing 2000/42/EC and 2000/22/EC. Country report Netherlands	201
Directive 2000/43/EC and 2000/78/EC. Country report Netherlands	201

xxi

2.2.3.D. GERMANY 2.DE.7. Workplace Constitution Act (Betriebsverfassungsgesetz)	203 203
2.3. ESTABLISHING DIRECT DISCRIMINATION	204
 2.3.1. CAUSATION AND COMPARATORS 2.EC.8. ECJ, 30 April 1996, Case C-13/94, P v. S and Cornwall County Council. Sex discrimination and transsexuals 2.FR.9. Court of Cassation, 14 June 2000, CFDT Inter-Co v. Fort. Role for comparators in identifying cause of treatment 	205 207 209
 2.3.1.A. CHOOSING THE APPROPRIATE COMPARATOR 2.EC.10. ECJ, 27 April 2006, Case C-423/04, <i>Richards</i> v. Secretary of State for Work and Pensions. Sex discrimination and transsexuals 2.EC.11. ECJ, 17 February 1998, Case C-249/96, Grant v. South-West Trains. Sex discrimination and sexual orientation 	210 211 213
 2.3.1.B. DIRECT DISCRIMINATION WITHOUT A COMPARATOR 2.EC.12. ECJ, 8 November 1990, Case C-177/88, <i>Dekker v. VJV Centrum</i>. Comparators and pregnancy discrimination 2.EC.13. ECJ, 7 December 2000, Case C-79/99, <i>Schnorbus v. Land Hessen</i>. More favourable treatment of persons having completed military service 	215216217
 2.3.1.C. HYPOTHETICAL COMPARATORS 2.NIR.14. House of Lords, 27 February 2003, Shanoon v. Chief Constable of the Red Ulster Constabulary. Hypothetical comparators 2.IE.15. Equality Tribunal, 7 May 2003, O'Brien v. Iarnród Eireann. Hypothetical comparators 	218 <i>pyal</i> 219 221
 2.3.1.D. EQUAL PAY COMPARATORS 2.EC.16. ECJ, 13 January 2004 Case C-256/01, Allonby v. Accrington & Rossendale College. Comparators in equal pay 	223 223
 2.3.1.E. COMPARATORS IN AGE DISCRIMINATION 2.IE.17. Equality Tribunal, 24 September 2001, <i>Perry v. The Garda Commissioner</i>. Hypothetical comparators and age discrimination 	224 225
2.3.2. INTENT, MOTIVE AND STEREOTYPING	226
2.3.2.A. MOTIVE2.BE.18. Labour Court of Ghent, 24 January 1985, <i>MVT</i> v. G. Third party pressure	227
and direct discrimination	228
 2.3.2.B. STEREOTYPING 2.GB.19. House of Lords, 9 December 2004, <i>R (European Roma Rights Centre)</i> v. <i>Immigration Officer at Prague Airport and another</i>. Stereotyping and direct racial discrimination 2.ES.20. Spanish Constitutional Court, 14 December 1992, <i>Rodriguez Valencia</i>. Stereotyping and direct sex discrimination 	229230232
2.3.3. LESS FAVOURABLE TREATMENT	233
2.NIR.21. House of Lords, 27 February 2003, <i>Shamoon</i> v. <i>Chief Constable of the Reulister Constabulary</i> . The meaning of detriment	oyal 234

	2.DE.22. Federal Labour Court, 12 November 1998. Detriment and rejected	
	job applicants	235
2.4.	 PROVING DIRECT DISCRIMINATION 2.FR.23. Court of Cassation, Criminal Division, 25 November 1997, Case 96-85670, <i>Potier</i>. No explanation other than direct discrimination 	237 238
2.4	1. SHIFTING THE BURDEN OF PROOF	239
2.4.	 1.A. EUROPEAN UNION 2.EC.24. ECJ, 17 October 1989, Case 109/88, Handels- og KontorfunktionWrernes Forbund I Danmark v. Dansk Arbejdsgiverforening acting on behalf of Danfoss. Equal pay and the burden of proof 2.EC.25. Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of 	239 240
	discrimination based on sex	241
2.4.	1.B. NATIONAL LAW AND THE BURDEN OF PROOF	242
	UNITED KINGDOM 2.GB.26. Court of Appeal, 18 February 2005, Igen Ltd (Formerly Leeds Careers Guidance) and Others v. Wong; Chamberlin and Another v. Enokpae;	242
	Webster v. Brunel University. Guidance on the application of the burden of proof	243
	FRANCE	245
	THE NETHERLANDS 2.NL.27. Equal Treatment Commission, <i>Opinion</i> 2002-41. Racial discrimination	246
	and the burden of proof 2.NL.28. Equal Treatment Commission, <i>Opinion</i> 2004-67. Disability discrimination	246
	and the burden of proof	247
	2.IT.29. A. Simoni, <i>Report on measures to combat discrimination:</i> <i>Directive 2000/43/EC and 2000/78/EC Country report Italy</i>	248
2.4	1.C. COUNCIL OF EUROPE	249
	2.CoE.30. ECtHR, Grand Chamber, 6 July 2005, <i>Nachova and others</i> v. <i>Bulgaria</i> . Article 14 ECHR and the burden of proof	249
	2.CoE.31. ECtHR, 13 December 2005, <i>Timishev</i> v. <i>Russia</i> . Article 14 and the burden of proof	251
2.4.2	2. TRIGGERING Á SHIFT IN THE BURDEN OF PROOF	253
2.4.2	2.A. STATISTICS	253
	2.GB.32. Court of Appeal, 21 May 2004, <i>Rihal v. London Borough of Ealing.</i> Statistics and evidence of direct racial discrimination	254
2.4.2	2.B. SITUATION TESTING2.HU.33. Kisvárda Town Court, 28 November 2000. Racial discrimination in entry	255
	to disco	255
2.5.	SEGREGATION	257
2.5.	1. INTERNATIONAL, EUROPEAN AND NATIONAL LEGAL INSTRUMENTS	259

2.HU.34. A. Kádár and L. Farkas, <i>Report on measures to combat discrimination: Directive 2000/43/EC and 2000/78/EC. Country report Hungary</i>	260
 2.5.2. CASE-LAW ON SEGREGATION 2.EC.35. ECJ, 10 March 2003, Case C-196/02, Nikoloudi v. Organismos Tilepikinonio Ellados AE (OTE). Sex-specific category of workers 2.GB.36. Employment Appeals Tribunal, 14 November 1979, Pel Ltd v. Modgill and 	261 n 261
others. Racial segregation in employment	263
 2.HU.37. Nyíregyháza Town Court, 1 December 1998, Anonymous Plaintiffs v. Local Government of Tiszavasvári Town. Roma segregation in education 2.RO.38. National Council for Combating Discrimination, 23 June 2003, Decision No. 218 on Petition No. 1704/12.05.2003 from the Roma Centre for Social Intervention and Research (Romani CRISS) in relation to Cehei School. Roma segregation in 	264 '
education	267
2.RO.39. National Council for Combating Discrimination, 25 May 2004, <i>Decision No. 160 on Petition No. 1174/11.05.2004</i> . Roma segregation in education	267
2.6. JUSTIFICATIONS AND EXCEPTIONS	269
2.6.1. INTRODUCTION	269
2.6.2. JUSTIFICATION OF DIRECT DISCRIMINATION	271
2.6.2.A. COUNCIL OF EUROPE	272
2.6.2.B. EUROPEAN UNION	273
2.6.2.C. NATIONAL JURISDICTIONS	274
2.6.3. EXCEPTIONS APPLYING TO SEVERAL DISCRIMINATION	
GROUNDS	275
2.6.3.A. GENUINE OCCUPATIONAL REQUIREMENTS 2.NL.40. Dutch Decree of 19 May 1989 concerning the establishment of a	276
governmental decree regarding occupational activities for which sex can be determinant 2.GB.41. House of Lords, 26 April 2004, <i>R</i> (<i>Amicus-MSF and others</i>) v. Secretary of State for Trade and Industry and Christian Action Research Education and others.	277
Sexual orientation requirements and organised religions	280
2.NL.42. M. Gijzen, <i>Report on measures to combat discrimination:</i> Directive 2000/43/EC and 2000/78/EC. Country report Netherlands	281
2.EC.43. ECJ, 15 May 1986, Case 222/84, <i>Johnson v. Chief Constable of the Royal Ulster Constabulary (RUC)</i> . GOR exception and sex discrimination in policing 2.GB.44. Court of Appeal, 4 April 1990, <i>Lambeth London Borough Council v.</i>	283
Commission for Racial Equality (CRE). Ethnicity requirements and GOR	
exceptions 2.DE.45. Federal Labour Court, 12 November 1998. Sex as a genuine occupational	286
requirement	287
2.NL.46. Equal Treatment Commission, <i>Opinion 1997-51</i> . Advert for Moroccan male youth officer	288
-	
2.6.3.B. RESPECT FOR HUMAN RIGHTS AND FREEDOMS 2.EC.47. ECJ, 8 November 1983, Case 165/82, <i>Commission v. UK.</i> Privacy and the	289
right to non-discrimination	290

2.IE.48. High Court, 10 June 2005, <i>The Equality Authority v. Portmarnock Golf Club and others.</i> Sex discrimination in membership of a golf club	293
 2.6.3.C. PUBLIC SECURITY ISSUES 2.EC.49. ECJ, 11 March 2003, Case C-186/01, <i>Dory</i> v. <i>Germany</i>. National service and sex discrimination 	294 295
 2.6.3.D. HEALTH AND SAFETY 2.NL.50. Equal Treatment Commission, <i>Opinion 2004-67</i>. Disability discrimination and the burden of proof 2.UK.51. Court of Appeal, 11 April 2001, <i>Jones v. Post Office</i>. Disability discrimination and health and safety 	297 299 300
2.6.3.E. PROVISION OF FINANCIAL SERVICES 2.EC.52. D. Schiek, Freedom of contract and a non-discrimination principle – irreconcilable antonyms?	301 304
2.6.4. EXCEPTIONS APPLYING TO SPECIFIC GROUNDS OF DISCRIMINATION	304
 2.6.4.A. SEX 2.EC.53. ECJ, 12 July 1984, Case 184/83, <i>Hofmann v. Barmer Ersatzkasse</i>. Sex discrimination and paid maternity leave 	305 305
2.6.4.B. RELIGION	306
 2.NL.54. Equal Treatment Commission, <i>Opinion 2003-112</i>. Restrictions on wearing religious symbols 2.NL.55. Equal Treatment Commission, <i>Opinion 1998-38</i>. Religious ethos exception 	310
and sexual orientation	311
2.6.4.C. AGE	313
 2.EC.56. ECJ, 22 November 2005, Case C-144/04, <i>Mangold</i> v. <i>Helm</i>. Age discrimination in employment contracts 2.NL.57. Equal Treatment Commission, <i>Opinion 2004-118</i>. Justification for 	314
age discrimination	316
2.LV.58. G. Feldhune, <i>Report on measures to combat discrimination: Directive 2000/43/EC and 2000/78/EC. Country report Latvia</i>	320
2.7. COMPARATIVE ANALYSIS	321

CHAPTER THREE INDIRECT DISCRIMINATION

3.1. INTRODUCTION	323
3.2. RATIONALES AND CONCEPTIONS OF INDIRECT	
DISCRIMINATION LAW	324
3.2.1. RATIONALES	324
3.2.1.A. PREVENTING CIRCUMVENTION OF PROHIBITION	325

3.2.1.B. SOCIAL ENGINEERING	327
3.2.2. CONCEPTUAL ISSUES	328
 3.2.2.A. FORM AND SUBSTANCE 3.ES.1. Spanish Constitutional Court, 1 July 1991, Case 145/91, <i>Pilar Rodriguez de la Fuente and 138 others</i> v. <i>City of Madrid</i>. Discrimination by assigning employees to different employment categories per gender 	328 a 328
3.2.2.B. DISTRIBUTIVE AND CORRECTIVE JUSTICE	330
3.2.2.C. GROUPS AND INDIVIDUALS	330
3.2.2.D. CONCEPTUAL HYBRIDISM OF INDIRECT DISCRIMINATION LAW	332
 3.2.3. LIMITS OF INDIRECT DISCRIMINATION LAW 3.SE.2. K. Lundstrøm, Indirect Sex Discrimination in the European Court of Justice's Vision 	332 333
3.3. ORIGINS OF INDIRECT DISCRIMINATION LAW	333
3.3.1. INTERNATIONAL HUMAN RIGHTS LAW	334
3.3.1.A. EARLIER EMANATIONS OF THE CONCEPT	334
3.UN.3. Permanent International Court of Justice, 19 September 1923, <i>Poland.</i> Whether evacuation order violates the Treaty on protection for Polish minorities	334
3.3.1.B. MODERN INTERNATIONAL LAW AND INDIRECT DISCRIMINATION— UNITED NATIONS	336
GENERAL HUMAN RIGHTS PACT. 3.UN.4. International Covenant on Civil and Political Rights (UN) 3.UN.5. UN Human Rights Committee, 8 August 2003, Communication No.998/2001, Althammer v. Austria. Indirect discrimination against	336 336
pensioners	337
SPECIFIC UN NON-DISCRIMINATION CONVENTIONS 3.UN.6. International Convention on the Elimination of All Forms of Racial	338
Discrimination 3.UN.7. Convention on the Elimination of All Forms of Discrimination against Women	338339
3.UN.8. Committee on the Elimination of Racial Discrimination, 5 August 2003, Communication No. 31/2003, <i>L.R. et.al (represented by European Roma Rights Centre)</i> v. <i>Slovakia.</i> Indirect ethnic discrimination – City Council withdrawing funding programme favouring Roma families in response to a racist motion by majority citizens	340
3.UN.9. General Recommendation No. 25, on Article 4, paragraph 1, of the Convention	1
on the Elimination of All Forms of Discrimination against Women, on temporary special measures	341
3.3.1.C. EUROPEAN HUMAN RIGHTS LAW AND INDIRECT DISCRIMINATION 3.CoE.10. ECtHR, 6 January 2005, <i>Hoogendijk v. The Netherlands</i> . Whether	341
submitting a claim for a social benefit to a means test constitutes sex discrimination	343

 3.CoE.11. ECtHR, 7 February 2006, D.H. and others v. Czech Republic. Whether article 14 includes prohibition to indirectly discriminate 3.CoE.12. European Committee on Social Rights, 10 March 2004, International Association Autism – Europe (IAAE) v. France. Whether denying autistic children adequate schooling (including access to mainstream schools) amounts to (inter alia) discrimination 	344 346
3.3.1.D. SUMMARY ON INTERNATIONAL LAW	347
 3.3.2. ORIGINS OF MODERN INDIRECT DISCRIMINATION LAW: US, UK AND IRISH LAW 3.US.13. U.S. Supreme Court, Co 401 U.S. 424 (1971), <i>Griggs et al.</i> v. <i>Duke Power</i> <i>Co.</i> Requiring high score in tests and high school diploma as indirect racial discrimination 	348 348
3.3.3. INDIRECT DISCRIMINATION IN EUROPEAN COMMUNITY LAW—DEVELOPING THE DEFINITION	352
3.3.3.A. INDIRECT DISCRIMINATION IN INTERNAL MARKET LAW AND IN EQUALITY LAW	352
3.3.3.B. INDIRECT DISCRIMINATION IN EQUALITY LAW: CASE-LAW AND LEGISLATIVE DEFINITIONS	353
ESTABLISHING THE CONCEPT BY CASE-LAW 3.EC.14. ECJ, 12 February 1974, Case 152/73, <i>Sotgue v. Deutsche Post</i> . Whether disadvantage on grounds of permanent residence outside Germany	353
amounts to discrimination on grounds of nationality 3.EC.15. ECJ, 31 March 1981, Case 96/80, <i>Jenkins v. Kingsgate (Clothing Productions) Ltd.</i> Whether lower hourly rates for part time work constitute sex discrimination	353 354
3.EC.16. ECJ, 13 May 1986, Case 170/84, <i>Bilka – Kaufhaus GmbH v. Karin Weber von Hartz.</i> Whether requiring fuil time work to be included in occupational pension scheme is indirect discrimination	356
CODIFYING THE DEFINITION 3.EC.17. Directive 2000/43/EC of 29 June 2000 implementing the principle of equal	357
treatment between persons irrespective of racial or ethnic origin (Racial Equality Directive) 3.EC.18. Directive 2000/78/EC establishing a general framework for equal treatment	358
in employment and occupation (Employment Equality Directive) 3.EC.19. Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, amended by Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 (Gender Employment Directive)	358 359
3.4. PROBLEMS OF COMPARISON	359
 3.4.1. INDIRECT DISCRIMINATION IN FRENCH LAW 3.FR.20. Court of Cassation, 10 January 1995, <i>Baggio</i>. Rule of 	360
Sunday rest as indirect sex discrimination	361

3.FR.21. Court of Cassation, 27 June 1995, <i>Mme Marrie et Sauty</i> . Rule of Sunday rest as indirect sex discrimination	362
3.FR.22. Court of Cassation, 9 April 1996, <i>Soufflet</i> v. <i>CPAM</i> . Discrimination against part time workers and (indirect) sex discrimination	363
3.FR.23. Court of Cassation, 28 March 1995, <i>CNAV</i> v. <i>Thibault</i> . Performance evaluation and pregnancy discrimination	364
3.FR.24. Ph. Martin, <i>Droit social et discriminations sexuelles: à propos des discriminations générées par la loi.</i>	365
3.FR.25. Court of Appeal Rennes, 5 February 2002, <i>S.A. Cogifer</i> v. <i>Ferre, Gruel, Robert et Tarib.</i> Reduction in working time and indirect discrimination	365
3.4.2. INDIRECT DISCRIMINATION IN SCANDINAVIAN LAW 3.FI.26. K. Ahtela, <i>The Revised Provisions on Sex Discrimination in European</i> <i>Community Law: A Critical Assessment</i>	367 367
3.4.3. INDIRECT DISCRIMINATION IN GERMAN LAW 3.DE.27. Federal Constitutional Court – 1st Senate, 2nd chamber, 28 September 1992, 1 BvR 496/87. Whether the Federal Labour Court's judgment following the EC judgment in Bilka violates constitutionally protected rights	369 CJ 369
3.4.4. INDIRECT DISCRIMINATION IN BRITISH AND IRISH LAW	371
3.4.5. INDIRECT DISCRIMINATION IN DUTCH LAW	371
3.4.6. INDIRECT DISCRIMINATION IN OTHER MEMBER STATES	371
3.5. INDIRECT DISCRIMINATION—SPECIFIC ELEMENTS	372
3.5.1. ESTABLISHING DETRIMENTAL EFFECT	372
3.5.1.A. TO WHAT IS THE DETRIMENTAL EFFECT ATTRIBUTED?	373
SPECIFIC REQUIREMENT OR CONDITION	373
 3.GB.28. Court of Appeal, 1 February 1983, Perera v. The Civil Service Commission and The Department of Customs and Excise. Whether referring to three criteria is sufficient to establish a "specific requirement" 3.IE.29. Equality Tribunal, 27 February 2003, Bukola Ogunlade and Sola Oyefeso v. Michael Guiner Limited Cork. Indirect racial discrimination by denying access to persons on their identification as past troublemakers 	373 375
3.EC.30. ECJ, 27 October 1993, C-127/92, <i>Enderby</i> v. <i>French Health Authority</i> . Indirect wage discrimination by applying different collective agreements to predominantly female and male groups of employees	515
respectively 3.GB.31. Court of Appeal, 23 March 2001, <i>Allonby</i> v. <i>Accrington and Rossendale Con</i>	376
Whether "downgrading" part time lecturers to self employed service providers constitutes indirect discrimination	377
3.GB.32. Race Relations Act as amended by The Race Relations Act 1976 (Amendment) Regulations 2003 Statutory Instrument 2003 No. 1626	379
A WIDER APPROACH (A COLLECTIVE APPROACH) 3.FI.33. Finnish Supreme Court, 14 June 2004, Case 59/2004, <i>Employees</i> v. <i>Town of</i>	380
<i>Kajaani.</i> Indirect discrimination, laying off a significant number of staff	380

	3.DE.34. Federal Labour Court, 8 February 2003, <i>A Claimant v. Freie Hanse Stadt Hamburg.</i> Indirect discrimination: denying full time employment to pre-school teachers	381
	3.FR.35. Court of Cassation, 9 June 1998, <i>Société Bureau moderne informatique et négoce interprofessionnel</i> v. <i>Mme Gaborit.</i> Whether dismissal from a position usually occupied by women is indirect discrimination	382
	3.NL.36. Supreme Court, 10 December 1982, <i>Van Binderen v. Kaya.</i> Whether a housing association is guilty of indirect ethnic discrimination when granting a disproportionately low percentage of their tenancies to foreign workers	383
	WHAT IS THE PRECISE FACTOR FROM WHICH DETRIMENTAL EFFECT FLOWS IN EQUAL PAY CASES?	384
	Special quality of equal pay cases and relevance of indirect discrimination	385
	ECJ case-law	387
	3.EC.37. ECJ, 1 July 1986, Case 237/85, <i>Rummler v. Dato Druck</i> . Indirect discrimination: work requiring less muscle power in lower wage group 3.EC.38. ECJ, 17 October 1989, C-109/88, <i>Handels- og Kontorfunktionærernes Forbund I Danmark v. Dansk Arbejdsgiverforening, acting on behalf of Danfoss.</i>	387
	 Whether a gender pay gap resulting from a system of bonuses establishes detrimental effect 3.EC.39. ECJ, 31 May 1995, C-400/93, Specialarbejderferendet i Danmark v. Dansk Industri, formerly Industriens Arbejdsgivere, acting for Royal Copenhagen A/S. Wheth statistical differences in pay between three groups of workers are sufficient to establishes 	
	detrimental effect of a pay system	391
	National case-law	393
	 3.DE.40. Federal Labour Court, 23 September 1992, 4 AZR 30/92. Whether categorising most men in a higher wage group than most women amounts to indirect discrimination 3.ES.41. Spanish Constitutional Court, 28 February 1994, Case 58/1994, Works 	393
	 council de Antonio Puig S.A. on behalf of 140 workers v. Antonio Puig S.A. Wage categories and (indirect) sex discrimination 3.ES.42. Spanish Constructional Court, 16 October 1995, Case 147/1995, E.S.K. – C.U.I.S. representing 25 workers v. Gomaytex S.A. Whether granting lower remuneration to staff in departments predominantly staffed by women amounts to 	394
	indirect pay discrimination	395
	CONCLUSIONS AND PRESENT DEFINITION IN EC LAW	397
3.5.	1.B. HOW IS DETRIMENTAL EFFECT ESTABLISHED?	397
	STATISTICAL AND OTHER APPROACHES—THE POLICY DEBATE	397
	DISPARATE IMPACT ESTABLISHED BY STATISTICS	399
	Overview	399
	3.DE.43. Federal Labour Court, 23 September 1992, 4 AZR 30/92. Whether categorising most men in a higher wage group than most women amounts to indirect discrimination	400
	Choosing the pool of comparators	401

 3.EC.44. ECJ, 30 November 1993, C-189/91, <i>Kirsammer-Hack v. Sidal.</i> Whether exempting establishments with less than 5 employees from statutory employment protection is indirect sex discrimination, if employees working less than 10 hours a week do not count towards the minimum 3.EC.45. ECJ, 31 May 1995, C-400/93, <i>Specialarbejderforbundet i Danmark v. Dansk Industri, formerly Industriens Arbejdsgivere, acting for Royal Copenhagen A/S.</i> Whether statistical differences in pay between three groups of workers are sufficient to establish detrimental effect of a pay system 3.DE.46. Federal Constitutional Court, 27 November 1997, 1 BUL 12/91. Whether excluding part time employees working less than 18 hours a week from an additional pension scheme constitutes indirect sex discrimination 3.GB.47. Court of Appeal, 21 December 1992, <i>Jones v. University of Manchester.</i> Whether a requirement for a university graduate career adviser to be aged 27-35 	401 403 404
indirectly discriminated against women	405
<i>Establishing disparate impact (which numbers are to be compared exactly?)</i> 3.EC.48. ECJ, 9 September 1999, C-281/97, <i>Krüger v. Kreiskrankenhaus Eberswalde.</i> Whether denying a year end bonus to part time employees working less than 10 hours a week constitutes indirect gender discrimination 3.EC.49. ECJ, 23 October 2003, C-4/02, C-5/02, <i>Hilde Schönheit v. Stadt</i> <i>Frankfurt a. M. and Sylvia Becker v. Land Hessen.</i> Whether degressively reducing a	407 407
 public servant's pension for years worked part time constitutes indirect sex discrimination 3.GB.50. House of Lords, 22 July 1999, <i>Barry v. Midland Bank Plc.</i> Whether paying less severance grant to those who have worked part time constitutes indirect sex 	408
discrimination	410
3.GB.51. Court of Appeal, 21 May 1998, <i>London Underground Ltd v. Edwards.</i> Whether changing a train operator's costering scheme is indirect discrimination 3.NL.52. Equal Treatment Commission, <i>Opinion 1997-4.</i> Indirect sex discrimination by disregarding seniority of tormer stand-by stewardesses who proceed to regular	411
employment 3.DE.53. Federal Labour Court, 20 August 2002, 9 AZR 750/00. Whether	412
excluding from the right to reduce working time upon reaching the age of 60 such employees as can cali in a pension is indirect discrimination	413
Degree of adversity ("considerably higher") 3.EC.54. ECJ, 9 February 1999, C-167/97, Regina v. Secretary of State for	414
<i>Employment, ex parte Nicole Seymour-Smith and Laura Perez.</i> Two year qualification period for employment protection as indirect sex discrimination 3.GB.55. House of Lords, 17 February 2000, <i>R v. Secretary of State for Employment, ex parte Seymour-Smith and another.</i> Two year qualification period for employment	414
protection as indirect sex discrimination	416
3.NL.56. Equal Treatment Commission, <i>Opinion 1998-66.</i> Indirect sex discrimination by composing a redundancy list in accordance with seniority	1 418
Special causation requirements 3.GB.57. Employment Appeal Tribunal, 15 July 1977, Price v. Civil Service Commission. Indirect sex discrimination by maximum age-limit in relation to civil	419
service	419

	3.DE.58. Federal Labour Court, 2 December 1992, 4 AZR 52/92. Whether excluding part time employees from regular promotions constitutes indirect sex discrimination	
	Agreement on disparate impact 3.SE.59. Labour Court, 21 September 2005, Equal Opportunity Ombundsman (JämO) v. Teknikarbeitsgivarna and VOLVO Car Co. Whether requiring a height between 163 and 195 cm indirectly discriminates against women	422 422
	QUALITATIVE ARGUMENTS TO ESTABLISH DETRIMENTAL EFFECT	423
	The new formula in the recent directives and its background 3.EC.60. ECJ, 23 May 1996, C-237/94, O'Flynn v. Adjudication Officer. Whether requirement of a burial to be within a country indirectly discriminates against nation from other Member States	423 ^{als} 423
	 Factors where detrimental effect has been assumed prior to implementation of younger directives 3.EC.61. ECJ, 17 October 1989, C-109/88, Handels- og Kontorfunktionærernes Forbun Danmark v. Dansk Arbejdsgiverforening, acting on behalf of Danfoss. Whether a gend pay gap resulting from a system of bonuses establishes detrimental effect. 3.NL.62. Equal Treatment Commission, Opinion 1996-56. Whether an occupational doctor may be denied working time reduction for study purposes on the grounds that works part time 3.ES.63. Spanish Constitutional Court, 28 February 1994, Case 58/1994, Works council de Antonio Puig S.A. on behalf of 140 workers v. Antonio Puig S.A. Wage categories and (indirect) sex discrimination 3.IE.64. Equality Tribunal, 6 February 2004, Marin McDonagh v. Navan Hire 	er 425
	 S.H04. Equality Hibbinal, 6 February 2004, Marin McDonagh V. Navan File Limited. Whether not hiring a sanding machine to customers without a permanent address is indirect racial discrimination 3.NL.65. Equal Treatment Commission, <i>Opinion 1996-109</i>. Indirect religious discrimination by referring to headscarf 	428 429
	3.NL.66. Equal Treatment Commission, <i>Opinion 2004-112</i> . Indirect discrimination on grounds of religion by refusing to serve persons wearing head-coverings	429
	Assessing detrimental effect without statistical evidence following the younger directives 3.NL.67. Equal Treatment Commission, <i>Opinion 2004-143</i> . Whether requiring an	430
	 employee for telephone marketing to speak Dutch without a foreign accent constitutes indirect racial discrimination 3.SE.68. Labour Court, 4 December 2002, <i>Ombudsman ethnic discrimination (DO)</i> v. <i>Tjänsföretagens Arbetsgivarförbund and GfK Sv. Aktiebolag.</i> Whether requiring a 	431
	 telephone interviewer to speak Swedish without a foreign accent amounts to indirect discrimination on grounds of race 3.BE.69. Court of Appeal Antwerpen, 14 June 2005, <i>9 appellants</i> v. <i>Provincial Administration of Limburg</i>. Prohibiting wearing any headcovers as indirect 	431
	discrimination on grounds of religion 3.DK.70. L. Roseberry, Tørklædediskrimination på arbejdsmarkedet	433 434
	ASSESSMENT	435
3.5.2	2. OBJECTIVE JUSTIFICATION	435

3.5.2.A. A "JUSTIFICATION PROPER"" OR AN ELEMENT OF CAUSATION?	436
OBJECTIVE JUSTIFICATION AS "JUSTIFICATION PROPER" 3.EC.71. ECJ, 17 October 1989, C-109/88, <i>Handels- og Kontorfunktionærernes</i>	436
	436 438
3.NL.73. Equal Treatment Commission, <i>Opinion 1997-4</i> . Indirect sex discrimination be disregarding seniority of former stand-by stewardesses who proceed to regular	ру
employment	438
"OBJECTIVE JUSTIFICATION" AS CAUSAL LINK TEST—AN INTEGRATED APPROACH	439
3.GB.74. Court of Appeal, 23 March 2001, <i>Allonby v. Accrington and Rossendale College</i> . Whether "downgrading" part time lecturers to self employed service	
providers constitutes indirect discrimination	440
Assessment	442
3.5.2.B. STANDARDS OF SCRUTINY	443
COMMUNITY LAW AND ECJ CASE-LAW	443
Strict standard of scrutiny in relation to employers (sex equality law)	443
	444
3.EC.75. ECJ, 9 February 1999, C-167/97, Regime V. Secretary of State for Employment, ex parte Nicole Seymour-Smith and Laura Perez. Two year qualification	
	444
Indirect sex discrimination by reducing the pool of comparable employees for part time employees to other part time employees in cases of dismissal for economic	
reasons	445
	447
3.GB.77. House of Lords, 17 February 2000, <i>R</i> v. Secretary of State for Employment, ex parte Seymour-Smith and another. Two year qualification period for employment	
protection as indirect sex discrimination	448
3.NL.78. Eq. a) Treatment Commission, <i>Opinion 1996-56</i> . Whether an occupational doctor may be denied working time reduction for study purposes on the grounds that she works part time	449
3.SE.79. Labour Court, 21 September 2005, Equal Opportunity Ombundsman (JämO))
v. <i>Teknikarbeitsgivarna and VOLVO Car Co.</i> Whether requiring a height between 163 and 195 cm indirectly discriminates against women	450
3.5.2.C. OBJECTIVE JUSTIFICATION—PRACTICAL EXAMPLES AND APPLICATION AT NATIONAL LEVEL	N 452
ECONOMIC ARGUMENTS AS OBJECTIVE JUSTIFICATION	452
EC law	452
3.EC.80. ECJ, 6 April 2000, C-226/98, Birgitte Jørgensen v. Foreningen af Speciallæger (FS) and Sygesikringens Forhandlingsudvalg (SF). Whether forcible	

reclassification of medical practices to part time following decrease of turnover indirectly discriminates against women 3.EC.81. ECJ, 23 October 2003, C-4/02, C-5/02, <i>Hilde Schönheit v. Stadt Frankfurt a.</i>	453 M
<i>and Sylvia Becker</i> v. <i>Land Hessen</i> . Whether degressively reducing a public servant's pension for years worked part time constitutes indirect sex discrimination	м. 455
National law	456
 3.FI.82. Finnish Supreme Court, 14 June 2004, Case 59/2004, <i>Employees v. Town of Kajaani</i>. Indirect discrimination, laying off a significant number of staff 3.DE.83. Federal Labour Court, 26 January 2005, 4 AZR 509/03. Whether reducing wages in a predominantly female sector in order to avoid outsourcing amounts to indirect sex discrimination 	457 459
OBJECTIVE JUSTIFICATION IRRESPECTIVE OF "GROUNDS", TRULY	109
NEUTRAL JUSTIFICATIONS 3.BE.84. Court of Appeal Antwerpen, 14 June 2005, 9 appellants v. Provincial	460
 Administration of Limburg. Prohibiting wearing any headcovers as indirect discrimination on grounds of religion 3.NL.85. Equal Treatment Commission, Opinion 1996-109. Indirect religious 	460
discrimination by referring to headscarf3.NL.86. Equal Treatment Commission, <i>Opinion 2004-112.</i> Indirect discrimination on grounds of religion by refusing to serve persons wearing head-coverings	462 462
Neutral justifications in relation to ethnic origin – Language requirements 3.NL.87. Equal Treatment Commission, <i>Opinion 2004-143</i> . Whether requiring an employee for telephone marketing to speak Dutch without a foreign accent	463
 constitutes indirect racial discrimination 3.SE.88. Labour Court, 4 December 2002, <i>Onbudsman ethnic discrimination (DO)</i> v. <i>Tjänsföretagens Arbetsgivarförbund and GfK Sv. Aktiebolag.</i> Whether requiring a telephone interviewer to speak Swedish without a foreign accent amounts to indirect 	
discrimination on grounds of race	463
Neutral justification in relation to different grounds with contradictory results 3.DE.89. Federal Labour Court, 9AZR 750/00. Whether excluding from the right to reduce vorking time upon reaching the age of 60 such employees	464
 as can claim a pension is indirect discrimination 3.DE.90. Federal Labour Court (BAG), 9 AZR 122/03. Whether denying part time work on grounds of age to a disabled person entitled to a pension is indirect 	465
discrimination	466
3.5.2.D. COMPARABILITY OF SITUATIONS AS A NEW AND SPECIAL HURDLE 3.EC.91. ECJ, 8 June 2004, C-220/02, <i>Österreichischer Gewerkschaftsbund</i> ,	468
<i>Gewerkschaft der Privatangestellten</i> v. <i>Wirtschaftskammer Österreich</i> 3.EC.92. ECJ, 12 October 2004, 313/02, <i>Wippel</i> v. <i>Peek and Cloppenburg.</i> Legislation providing for minimum and maximum working time – exception for part time	468 469
3.5.2.E. Assessment	471
3.6. COMPARATIVE ANALYSIS	472
3.6.1. INDIRECT DISCRIMINATION LAW BETWEEN LEGAL TRANSPLANT AND IUS COMMUNE	472

3.6.2. CONSOLIDATION OF THE CONCEPT IN NATIONAL AND	
COMMUNITY LAW	473
3.6.2.A. ESTABLISHING DISADVANTAGE—STATISTICAL AND	
NON-STATISTICAL APPROACHES	473
3.6.2.B. OBJECTIVE JUSTIFICATION	474
3.6.3. CHALLENGES	475

CHAPTER FOUR HARASSMENT

4.1.	INTRODUCTION	477
	4.EC.1. Directive 2000/43/EC of 29 June 2000 implementing the principle of equal	
	treatment between persons irrespective of racial or ethnic origin and Directive	
	2000/78/EC of 27 November 2000 establishing a general framework for equal	
	treatment in employment and occupation	479
	4.EC.2. Directive 2000/43/EC of 29 June 2000 implementing the principle of equal	
	treatment between persons irrespective of racial or ethnic origin and Directive	
	2000/78/EC of 27 November 2000 establishing a general jramework for equal	
	treatment in employment and occupation	479
	4.EC.3. Directive 2006/54/EC of the Europear Parliament and of the Council of	
	5 July 2006 on the implementation of the principle of equal opportunities and equal	
	treatment of men and women in matters of employment and occupation (recast)	480
	4.EC.4. Commission Recommendation of 27 November 1991 on the protection of the	401
	dignity of women and men at work (92/131/EEC)	481
	4.EC.5. Commission Recommendation of 27 November 1991 on the protection of the dignity of women and work (00/121/EEC)	482
	<i>dignity of women and men a work (92/131/EEC)</i> 4.EC.6. Commission of the European Communities, <i>Sexual harassment in the</i>	402
	Workplace in the European Union	483
4.2.	HISTORICAL DEVELOPMENT	484
4.2.	1. THE LEGAL RECOGNITION OF RACIAL AND "SEXUAL	
	HARASSMENT" IN THE US	485
	4.US.7. Fifth Circuit Court of Appeals, 454 F.2d 234 (1971), Rogers v. EEOC.	
	Whether racial harassment is actionable race discrimination	486
	4.US.8. District of Columbia Circuit Court of Appeal, 561 F.2nd 983 (1977),	
	Barnes v. Costle. Quid pro quo sexual harassment as actionable sex discrimination	488
	4.US.9. Equal Employment Opportunity Commission, Guidelines on Sexual	
	Harassment	490
	4.US.10. Eleventh Circuit Court of Appeals, 682 F.2d 897 C.A.Fla (1982),	
	Henson v. City of Dundee. "Hostile environment" harassment as actionable	
	sex discrimination	491
	4.US.11. US Supreme Court, 477 US 57 (1986), Meritor Savings Bank v. Vinson.	105
	"Hostile environment" harassment as actionable sex discrimination	493
	4.US.12. US Supreme Court, 523 U.S. 75 (1998), Oncale v. Sundowner Offshore	10.5
	Servs., Inc. Same-sex sexual harassment as sex discrimination	496

4.US.13. Seventh Circuit Court of Appeals, 231 F.3d 1080 (2000), <i>Spearman</i> v. <i>Ford Motor Co.</i> Harassment based on sexual orientation not sex discrimination	498
4.2.2. THE RECOGNITION OF HARASSMENT AND SEXUAL HARASSMENT IN INTERNATIONAL LAW	500
 4.UN.14. Committee on the Elimination of Discrimination against Women, <i>General Recommendation No. 19: Violence against women</i> 4.UN.15. Committee on the Elimination of Race Discrimination, CERD/C/62/ D/26/2002 (2002), <i>Hagan v. Australia</i>. Exposure to racially offensive 	501
material amounts to discrimination 4.INT.16. H. Hoel, K. Sparks & C.L. Cooper, <i>The Cost Of Violence/Stress At Work</i>	502
and The Benefits of a Violence/Stress-Free Working Environment 4. INT.17. V. Di Martino, H. Hoel and C.L. Cooper, Preventing violence	504
and harassment in the workplace 4.GB.18. Guidance on Bullying, UNISON, 1996 4.INT.19. V. Di Martino, H. Hoel and C.L. Cooper, Preventing violence	505 506
 4.IN1.19. V. Di Martino, H. Hoer and C.L. Cooper, <i>Preventing violence</i> and harassment in the workplace 4.INT.20. J. Aeberhard-Hodges, <i>Sexual harassment in employment: Recent judicial a</i> 	507 md
arbitral trends	508
4.3. THE REGULATION OF HARASSMENT AND SEXUAL HARASSME IN THE EU AND ITS MEMBER STATES PRIOR TO 2000	ENT 509
4.EC.21. Commission of the European Communities, <i>Sexual harassment in the Workplace in the European Union</i>	509
4.3.1. HARASSMENT AND SEXUAL HARASSMENT IN THE EU 4.EC.22. Commission of the European Communities, <i>Sexual harassment in</i>	512
 the Workplace in the European Union 4.EC.23. European Commission's Advisory Committee on Safety, Hygiene and Hea Protection, Opinion on Violence at the workplace 4.EC.24. Commission of the European Communities, Communication from the Commission: Adapting To Change In Work And Society: A New Community Str 	515 ategy
On Health And Safety At Work 4.3.2. HARASSMENT AND SEXUAL HARASSMENT IN THE EU	517
MEMBER STATES 4.EC.25. Sexual Harassment in Post-Communist Countries	517 517
4.3.3. ADDRESSING HARASSMENT AND SEXUAL HARASSMENT OUTSIDE THE FRAMEWORK OF DISCRIMINATION LAW	519
4.3.3.A. PENAL PROVISIONS 4.PT.26. Portuguese Penal Code	519 519
 4.3.3.B. CIVIL PROVISIONS 4.IT.27. A. Simoni, Report on measures to combat discrimination: Directive 2000/43/ and 2000/78/EC. Country report Italy 	520 EC 520
4.PT.28. Portuguese Civil Code	521
4.3.3.C. HEALTH AND SAFETY PROVISIONS	521
4.3.3.D. GENERAL LABOUR LAW PROVISIONS	522

4.EC.29. Commission of the European Communities, <i>Sexual harassment in the Workplace in the European Union</i>	523
4.3.4. HARASSMENT AND SEXUAL HARASSMENT WITHIN THE	
CONTEXT OF DISCRIMINATION LAW	523
4.GB.30. Sex Discrimination Act 1975	525 524
4.GB.31. Court of Session: First Division, 14 January 1986, Strathclyde Regional Co	
v. <i>Porcelli</i> . Sexual harassment can amount to sex discrimination	524
4.GB.32. Employment Appeal Tribunal, 4 May 1994, <i>Stewart v. Cleveland</i>	524
<i>Guest (Engineering) Ltd.</i> "Pin ups" did not discriminate against women	526
4.GB.33. Employment Appeal Tribunal, 27 July 2004, <i>Brumfitt v. Ministry of Defence</i>	
Sexual abuse did not discriminate against women	527
4.GB.34. House of Lords, 31 July 2001, Pearce v. Governing Body of Mayfield Schoo	
Homophobic harassment is not sex discrimination	
-	<u> </u>
4.3.5. EXPRESS REGULATION OF SEXUAL AND OTHER	
HARASSMENT	530
4.DK.35. High Court for Eastern Denmark, 31 October 2001. Sexually explicit	
insults not sex discrimination	531
4.IE.36. Irish Employment Equality Acts 1998 to 2004	532
4.IE.37. Equality Tribunal, A complainant v. A company Only a fooling girl	532
4.FR.38. French Penal Code	533
4.DE.39. German Law for the protection of the persons employed from sexual	50.4
annoyance on the job of 24 June 1994	534
4.BE.40. Belgian Federal Act of 11 June 2002 on violence, mobbing and sexual	5 Q 5
harassment at work	535
4.SE.41. The Swedish Equal Opportunities Act 1991 (as amended in 1998)	535
4.BE.42. Belgian Federal Act of 11 June 2002 on violence, mobbing and sexual	526
harassment at work	536
4.3.6. ENFORCING PROHIBITIONS ON HARASSMENT AND SEXUAL	
HARASSMENT: PROBLEMS OF VICARIOUS AND DIRECT LIABILITY	536
4.IE.43. High Court, BC v. a Health Board. Sexual assault not "within the course of	
employment"	537
4.GB.44. Race Pelations Act 1975	537
4.GB.45. Court of Appeal, Jones v. Tower Boot Co Ltd. Whether employer is liable	
for abusive conduct of fellow employees	538
4.IE.46. Labour Court, AEE/02/6 Determination No.029, 9 October 2002.	
Employers' liability for harassment	538
4.NL.47. Equal Treatment Commission, Opinion 1997-122. Employer's liability for	
harassment	540
4.NL.48. Equal Treatment Commission, Opinion 1997-82. Liability for harassment	
by third party	542
4.GB.49. House of Lords, 31 July 2001, Pearce v. Governing Body of Mayfield	
School. Liability for harassment by third parties	543
4.SE.50. The Swedish Equal Opportunities Act 1991(as amended in 1998)	544
4.EC.51. General Report On Developments In EU Gender Equality Law of the	
Commission's Network of legal experts in the fields of employment, social affairs and	
equality between men and women (June 2004 – May 2005)	545
4.SE.52. The Swedish Equal Opportunities Act 1991(as amended in 1998)	545

4.INT.53. V. Di Martino, H. Hoel and C. L. Cooper, <i>Preventing violence and harassment in the workplace</i>	545
4.4. REGULATION OF HARASSMENT AND SEXUAL HARASSMEN AFTER IMPLEMENTATION OF DIRECTIVES 2004/43/EC, 2000/7	
AND 2002/73/EC	547
4.4.1. DEFINITIONS OF "HARASSMENT" AND "SEXUAL	
HARASSMENT"	547
4.FR.54. French Labour Code	548
4.BE.55. Belgian Act to combat discrimination of 25 February 2003	549
4.NL.56. The Dutch General Equal Treatment Act	549
4.NL.57. M. Gijzen, Report on measures to combat discrimination:	
Directive 2000/43/EC and 2000/78/EC. Country report Netherlands	550
4.IE.58. Irish Employment Equality Acts 1998 to 2004	551
4.GB.59. Race Relations Act 1976	552
4.GB.60. Sex Discrimination Act 1975	552
4.4.2. "HARASSMENT" AND "DISCRIMINATION"	553
4.UK.61. Disability Discrimination Act 1995	554
4.4.3. LIABILITY FOR HARASSMENT	554
4.DK.62. The Danish Labour Market Discrimination Act	555
4.DK.63. N.E. Hansen, Report on measures to combat discrimination:	
Directive 2000/43/EC and 2000/78/EC. Country report Denmark	555
4.NL.64. M. Gijzen, Report on measures to comba ascrimination:	
Directive 2000/43/EC and 2000/78/EC. Country set ort Netherlands	556
4.IE.65. Irish Employment Equality Acts 1998 to 2004	558
4.EC.66. <i>Directives 2000/43/EC and 2000/78/EC</i>	559
4.5. COMPARATIVE ANALYSIS	559

CHAPTER FIVE INSTRUCTIONS TO DISCRIMINATE AND VICTIMISATION

5.1. INSTRUCTIONS TO DISCRIMINATE	561
5.1.1. DEVELOPMENT OF EUROPEAN AND INTERNATIONAL LAW	561
5.1.1.A. INCITEMENT TO DISCRIMINATE	561
5.UN.1. International Covenant on Civil and Political Rights	562
5.UN.2. Human Rights Committee, General Comment No.11: Prohibition of	
propaganda for war and inciting national, racial or religious hatred	562
5.UN.3. Convention on the Elimination of Racial Discrimination	563
5.UN.4. Committee on the Elimination of Racial Discrimination, General	
Recommendation 15, Measures to eradicate incitement to or acts of discrimination	564
5.EC.5. The Council of the European Union, Joint Action of 15 July 1996 adopted	! by
the Council on the basis of Article K.3 of the Treaty on European Union, concerning	
action to combat racism and xenophobia	565

5.EC.6. European Commission, <i>Staff Working Paper, Legal reasoning for not referring</i> <i>the concept of "public incitement to discrimination" in the Commission's proposal for a</i>	ı
Council Framework Decision on combating racism and xenophobia 5.EC.7. Council of the European Union, Proposal for a Council Framework Decision on Combating Racism and Xenophobia	566 567
 5.1.1.B. INSTRUCTIONS TO DISCRIMINATE 5.EC.8. Council Directive 2000/43 of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin 	568 568
5.1.2. NATIONAL LAW	569
5.1.2.A. INSTRUCTIONS TO DISCRIMINATE AS PART OF INCITEMENT TO	005
DISCRIMINATE 5.LT.9. Lithuanian Penal Code	569 569
5.LU.10. Council of State, Opinion of 7 December 2004	569
5.BE.11. Belgian Act of 30 July 1981 on the punishment of certain acts motivated by	
racism or xenophobia	570
5.BE.12. Belgian Penal Code 5.BE.13. Criminal Court, 27 March 1995, Openbaar Ministerie, Hamid B, Stephan A,	570
George S, Azeen M, Singh R, CGKR v. Martine M, Mario G, Marc D. An instruction	
bar manager to his employees not to serve foreigners in order to incite them to leave place	
5.BE.14. Criminal Court, 24 December 2002, <i>Openbaar Ministerie, Saida K, Hatem I</i>	
Mohmed H, Abdelgaafer H v. AVH, police Commissioner; 2. (); 3. KDB,	
politie-inspecteur. Violation of article 1.2 and 4 of the "Act of 30 July 1981 on	
punishment of certain acts motivated by racism or xenophobia"	572
5.1.2.B. PENAL CODE PROVISIONS ON ACCOMPLICES	573
5.FR.15. French Penal Code	573
5.FR.16. French Penal Code	574
5.FR.17. French law on press freedom of 29 July 1881	575
5.FI.18. Preparatory Works to the Finnish Non-Discrimination Act, HE 44/2003	
[Government Proposal 44/2003], extract concerning section 6	576
5.1.2.C. INSTRUCTIONS TO DISCRIMINATE AS A FORM OF DISCRIMINATION 5.GB.19. Race Relations Act 1976	577 578
5.GB.20. Employment Appeal Tribunal, 15 November 1982, <i>B.L Cars Ltd and anothe</i>	
(appellants) v. Brown and others (respondents). Instructions to discriminate can also	
amount to a detriment in a claim for direct discrimination 5.GB.21. Employment Appeal Tribunal, 23 October 1983, <i>Showboat Entertainment</i>	578
<i>Centre Ltd</i> v. <i>Owens</i> . An employee, who is dismissed for failing to follow instructions discriminate against customers	s to 579
5.DE.22. Labour Court, 3rd Chamber, 10 December 2003. An instruction not to emp	
Turks if there are sufficient applicants of other backgrounds is not unlawful	580
5.1.2.D. BEYOND INSTRUCTIONS TO DISCRIMINATE	583
5.GB.23. Sex Discrimination Act 1975	584
5.GB.24. Race Relations Act 1976	584
5.GB.25. Employment Appeal Tribunal, 17 December 1982, <i>The Commission for Rac Equality v. The Imperial Society of Teachers of Dancing.</i> Meaning of inducing or	cial

attempting to induce a person to discriminate. Meaning of procuring or attemptin	
procure	585
5.NIR.26. Fair Employment and Treatment (Northern Ireland) Order	587
5.GB.27. Equality Act 2006	587
5.GB.28. <i>Equality Bill</i> , Standing Committee A, Hansard, 6 December 2005	588
Clause 54. Instructing or causing discrimination	588
5.IE.29. Irish Employment Equality Act 1998	589
5.IE.30. Irish Equal Status Act 2000	590
5.1.2.E. AIDING UNLAWFUL ACTS	590
5.HU.31. Hungarian Act CXXV of 2003 on equal treatment and on fostering equal	591
opportunities 5.HU.32. Hungarian Act XXII of 1992 on the Labour Code	591
5.HU.33. Hungarian Act XXII of 1992 on the Labour Code 5.HU.33. Hungarian Act XXII of 1992 on the legal status of civil servants	591
5.HU.34. Hungarian Act XLIII of 1992 on the legal status of civil servants 5.HU.34. Hungarian Act XLIII of 1996 on the service status of professional member	
the armed services	592 s
5.HU.35. Hungarian Act IV of 1959 on the Civil Code	592
5.GB.36. Race Relations Act 1975	593
5.NIR.37. Fair Employment and Treatment (Northern Ireland) Order	594
5.GB.38. House of Lords, 22 March 2001, <i>Hallam and another (applicants)</i>	
v. Cheltenham Borough Council and others (Respondents). A degree of knowledge	of the
consequences of one's actions is needed to show that one has "knowingly aided" a	
to discriminate	595
5.GB.39. House of Lords, 22 March 2001, Anyanwa and another (applicants) v. So	uth
bank University Students Union and South Bank University (respondents), Commiss	ion for
Racial Equality (Interveners). Distinguishing aiding discrimination from inducing	or
procuring discrimination	597
5.1.3. COMPARATIVE OVERVIEW	601
5.2. VICTIMISATION	603
5.2.1. DEVELOPMENT OF EC LAW	603
5.EC.40. Council Directive 76/207/EEC of 9 February 1976 on the implementation of	f the
principle of equal treatment for men and women as regards access to employment,	(0.0
vocational training end promotion, and working conditions	603
5.EC.41. Council Directive 86/378/EEC of 24 July 1986 on the implementation of th	
principle of equal treatment for men and women in occupational social security scheme	
5.EC.42. <i>Council Directive 2000/43 of 29 June 2000 implementing the principle of eq</i>	<i>jual</i> 604
treatment between persons irrespective of racial or ethnic origin	004
5.EC.43. <i>Council Directive 2000/78 of 27 November 2000 establishing a general framework for equal treatment in employment and occupation</i>	604
5.EC.44. Council Directive of 9 February 1976 on the implementation of the principl equal treatment for men and women as regards access to employment, vocational trai	
and promotion and working conditions (76/207/EEC) as amended by Directive 2002/7.	
5.EC.45. ECJ, 22 September 1998, C-185/1997, <i>Belinda Jane Coote</i> v.	, 004
<i>Granada Hospitality Limited</i> . Victimisation covers the employer's actions in relation	n
to the employee after the employment relationship has ended	606
5.EC.46. M. M. Sierra, <i>Towards Equal Treatment: Transposing the Directive – Anal</i>	
and Proposals	608
4	

5.2.2. NATIONAL LEGISLATION AND CASE-LAW	608
5.IE.47. Equality Tribunal, A claimant v. A department store. Seriousness of	
victimisation	609
5.FI.48. Finnish Non-Discrimination Act	610
5.FI.49. Finnish Act on Equality between Women and Men	611
5.NL.50. Dutch General Equal Treatment Act	611
5.IE.51. Irish Employment Equality Act 1998–2004	612
5.IE.52. Irish Equal Status Act 2000	612
5.GB.53. Court of Appeal, 3 July 1997, Waters v. Commissioner of Police of	
the Metropolis. Protection from victimisation requires claimant to reveal facts	
capable in law of amounting to an act of discrimination	614
5.GB.54. Employment Equality (Religion and Belief) Regulations 2003	616
5.DE.55. German General Equal Treatment Act	617
5.GB.56. House of Lords, 16 July 1999, Swiggs and others v. Nagarajan. Motivation	
of discrimination irrelevant to a victimisation claim	619
5.2.3. COMPARATIVE OVERVIEW	624
5.3. COMPARATIVE ANALYSIS	624
5.3.1. COMMONALITIES BETWEEN INSTRUCTION AND	
VICTIMISATION	624
5.3.2. MEMBER STATES' RESPONSES TOWARDS UNSOLVED ISSUES	625
5.3.3. POWER RELATIONS CAUSED BY DISCRIMINATION AND	
INSTRUCTIONS TO DISCRIMINATE	626

CHAPTER SIX REASONABLE ACCOMMODATION

....

6.1. INTRODUCTION	629
6.EC.1. Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation	629
6.1.1. THE DUTY TO MAKE A REASONABLE ACCOMMODATION—THEORETICAL BACKGROUND	631
6.1.2. REASONABLE ACCOMMODATION AND THE NON-DISCRIMINATION REQUIREMENT	632
6.1.3. GOALS OF THIS CHAPTER	633
6.2. THE MEANING OF THE TERM "REASONABLE	
ACCOMMODATION"	634
6.2.1. THE MEANING OF THE TERM "REASONABLE"	635
6.2.1.A. AN ACCOMMODATION THAT DOES NOT RESULT IN EXCESSIVE	
DIFFICULTIES FOR THE EMPLOYER	635
6.FI.2. Finnish Non-Discrimination Act 21/2004	635

	6.FI.3. <i>Extracts from the Preparatory Works to the Finnish Non-Discrimination Act</i> 6.IE.4. <i>Irish Equal Status Act 2000</i>	636 636
	6.IE.5. Irish Employment Equality Act 1998	637
	6.IE.6. Labour Court, 23 January 2000, A Company (represented by the Irish Business and Employers' Confederation) v. A Worker (represented by Irish Municipal, Public and	s ad
	<i>Civil Trade Union</i>). Failure to do all that is reasonable to accommodate an employee	
	failure to reassign tasks and provide parking space	638
	6.IE.7. Equality Tribunal, 4 February 2002, <i>An Employee (represented by IMPACT) Local Authority.</i> Failure to do all that is reasonable to accommodate an employee –	v. A
	failure to follow expert advice	640
	6.IE.8. Equality Tribunal, 1 August 2000, Mr John Roche v. Alabaster Associates Lim	
	<i>t/a Madigans</i> . Refusal to allow access to a restaurant of a guide dog amounts to a fail to provide reasonable accommodation	lure 642
	6.BE.9. Belgian Act of 25 February 2003 to Combat Discrimination and to Amend the of 15 February 1993 to Establish a Centre for Equal Opportunity and to Combat	Act
	Racism	645
	6.BE.10. Belgian Guide toReasonable Accommodations for Persons with a Disability Work, March 2005	<i>at</i> 645
	6.DE.11. German Social Law Code, Book Nine, Rehabilitation and Participation of	
	disabled persons	647
	6.US.12. Americans with Disabilities Act	649
	6.US.13. Equal Employment Opportunity Commission (EEOC), Regulations on the	
	ADA 15	649
	6.US.14. 7th Circuit 1995, 44 F.3d 538, Vande Zande State of Wisconsin Department	it of
	Administration. No failure to make a reasonable a commodation not allowing an	
	employee to work full time at home and by not adapting kitchen	651
	6.US.15. Supreme Court of the United States 2002 535 U.S. 391, US Airways, Inc. v.	
	Barnett. An accommodation which conflicts with a seniority rule will generally not b	
	reasonable	653
6.2.1	.B. AN ACCOMMODATION THAT IS EFFECTIVE	658
	6.NL.16. Dutch Act on Equal Treatment on the Grounds of Disability or Chronic Illnes	s
	2004	658
	6.NL.17. Equal Treatment Commission, Opinion 2004-140. Failure to provide	
	accommodated examples at same price as ordinary exams amounted to discrimination 6.NL.18. Equal Treatment Commission, <i>Opinion 2005-18</i> . Requirement to react in	659
	adequate and timely manner to request for an accommodation	661
	6.IE.19. Irish Equality Act 2004	662
	6.FR.20. French Labour Code	664
	A REASONABLE ACCOMMODATION WITH REGARD TO RELIGIOUS PRACTICES	664
	6.US.21. The US Equal Employment Opportunity Commission	664
	0.05.21. The OS Equal Employment Opportunity Commission	004
6.2.1	.C. BOTH AN ACCOMMODATION WHICH DOES NOT RESULT IN EXCESSIVE DIFFICULTIES FOR THE EMPLOYER AND AN "EFFECTIVE	
	ACCOMMODATION"	665
	THE EMPLOYMENT EQUALITY DIRECTIVE	665

6.EC.22. Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation	665
LEGISLATIVE PROVISIONS IN EU MEMBER STATES BASED ON ARTICLE 5 OF THE FRAMEWORK DIRECTIVE 6.LV.23. Latvian Labour law, amended 7 May 2005 6.BE.24. Decree Flemish Community, 8 May 2002 concerning balanced participation in the labour market	666 666 667
UNITED KINGDOM 6.UK.25. The Disability Discrimination Act 1995, as amended	667 667
6.2.1.D. COMPARATIVE OVERVIEW	669
6.2.2. THE MEANING OF THE TERM "ACCOMMODATION" AND THE KINDS OF ACCOMMODATIONS THAT ARE REQUIRED	670
6.2.2.A. GENERAL CLASSIFICATIONS OF ACCOMMODATION	671
EMPLOYMENT-RELATED ACCOMMODATIONS—"HARD" AND "SOFT" COSTS 6.US.26. M. A. Stein, The Law and Economics of Disability Accommodations	671 671
STAGE WITHIN THE EMPLOYMENT PROCESS	672
CHARACTERISTICS OF BENEFICIARIES	672
6.2.2.B. TERMINOLOGY	672
6.2.2.C. THE QUALITIES REQUIRED FOR ANY ACCOMMODATION 6.BE.27. Belgian Guide to Reasonable Accommodations for Persons with a	673
Disability at Work, March 2005	673
6.IE.28. Irish Employment Equality Act 1998-2004, Amended Section 16 6.SK.29. Slovakian Act No. 29/1984 Coll. on the system of primary and secondary schools (the School Act) as amended	675 675
6.ES.30. Spanish Law 51/2003 For Equal Opportunities and Against the Discrimination of Disabled Persons	676
6.2.2.D. THE KINDS OF ACCOMMODATIONS WHICH ARE REQUIRED	677
STATUTORY PROVISIONS	677
United Kingdom 6.UK.31. The Disability Discrimination Act 1995, as amended 6.UK.32. The Disability Discrimination Act 1995, as amended	677 677 678
Ireland 6.IE.33. Irish Equal Status Act 2000	679 679
GUIDELINES ACCOMPANYING LEGISLATION	680
United Kingdom 6.GB.34. Disability Discrimination Act 1995 – Code of Practice – Employment and	680
Occupation	680
Belgium	682

6.BE.35. Belgian Guide to Reasonable Accommodations for Persons with a Disability at Work, March 2005	682
GUIDELINES RELATED TO ACCOMMODATING RELIGIOUS PRACTICES— US AND UK	683
6.US.36. Code of Federal Regulations, Title 29, Volume 4, Part 1605, Guidelines on Discrimination because of Religion	684
6.GB.37. Advisory, Conciliation and Arbitration Service (ACAS), A Guide for Employers and Employees. Religion or Belief and the Workplace	685
EXAMPLES FROM CASE-LAW—TRANSFER OF EMPLOYEE TO ANOTHER POSITION	687
6.NL.38. Equal Treatment Commission, <i>Opinion 2004-21</i> . Transfer to another position can be an effective accommodation	687
6.UK.39. House of Lords, Session 2003-04, <i>Archibald</i> v. <i>Fife</i> . Transfer to another position without requiring standard competitive interview can be a reasonable	(00
adjustment 6.IT.40. Court of Pistoia, Labour Section, 30 September 2005, <i>Laura Neri</i> v. <i>Ministry of Justice</i> . Failure to allow disabled employee to continue working near to a place of residence and to insist on transfer to another office can be a form of	689
discrimination	692
 6.2.2.E. CHOICE AS TO THE APPROPRIATE ACCOMMODATION 6.DE.41. State Labour Court of Lower Saxony, 1 July 2003, <i>Anonymous</i>. Right to reasonable accommodation/right to be employed in a way that allows a severely disabled employee to utilise and improve skills and knowledge to the full extent 	693
possible – variety of means of achieving this so the	694
6.2.2.F. COMPARATIVE OVERVIEW	696
6.3. ENTITLEMENT TO CLAIM A REASONABLE ACCOMMODATION AND OBLIGATIONS ON BOTH PARTIES	696
6.3.1. THE GENERIC CATEGORIES	697
6.3.1.A. PEOPLE WITH DISABILITIES	697
6.3.1.B. MEMBERS OF RELIGIOUS MINORITIES AND INDIVIDUALS WISHING TO MANIFEST THEIR RELIGION) 697
6.BG.42. Bulgarian Protection against Discrimination Act (effective as of 1 January 2004)	697
6.ES.43. L. Cachón, <i>Report on measures to combat discrimination:</i> Directive 2000/43/EC and 2000/78/EC. Country report Spain. Spanish Cooperation Agreements	698
6.GB.44. Court of Appeal, 25 July 2005, <i>Copsey</i> v. <i>WBB Devon Clays Ltd.</i> Employers might be obliged to accommodate needs of religious employees in certain circumstances	700
6.3.1.C. OTHER GROUPS 6.FR.45. French Labour Code	701 701
6.3.2. SPECIFIC REQUIREMENTS—PEOPLE WITH DISABILITIES	702

6.3.2.A. EMPLOYMENT	702
PERSON WITH DISABILITY MUST BE QUALIFIED FOR THE JOB/EMPLOYMENT-RELATED ACTIVITIES	702
<i>Employment Equality Directive</i> 6.EC.46. ECJ, 11 July 2006, Case C-13/05, <i>Sonia Chacón Navas</i> v. <i>Eurest</i> <i>Colectividades.</i> Discrimination occurs where an individual with a disability is dismissed where they would be competent, capable and available to perform the essential functions of the post following the making of a reasonable accommodation 7	703 703
 6.IE.47. Employment Equality Act 1998–2004 6.IE.48. Labour Court, ED/00/8 Determination No. 013, 18 July 2001, A Computer Component Company v. A Worker. Employee with a disability not required to be able 	705 705 706
6.NL.49. Equal Treatment Commission, <i>Opinion 2004-59</i> . No obligation to make an accommodation where it is unclear that this would enable an individual to	708 708
THE OBLIGATION ON THE PERSON WITH A DISABILITY TO INFORM THE EMPLOYER	710
	710 710
6.NL.51. Equal Treatment Commission, Opinion 2005-18. Claimant is obliged to	711 711
Latvia	713 713
THE OBLIGATION ON THE EMPLOYER TO CONSIDER AND IDENTIFY A REASONABLE ACCOMMODATION	713
United Kingdom 6.UK.53. Employment Appeals Tribunal, 6 June 2001, Casgrove v. Caesar & Howie. Obligation to consider whether any reasonable adjustments is possible lies with	713
	714
6.IE.54. Labour Court, ED/02/59 Determination No. 037, 18 February 2003, <i>A Health and Fitness Club</i> v. <i>A Worker</i> . Employer is obliged to engage in a two stage	716 716
	718
IMPOSSIBLE OR UNREASONABLY DIFFICULT TO ACCESS SERVICES	718
	718 719

6.UK.56. C. Gooding and C. Casserley, <i>Disability Discrimination Laws and Goods and Services</i>	719
A REACTIVE DUTY OWED TO INDIVIDUALS OR AN ANTICIPATORY DUTY OWED TO THE GROUP OF PEOPLE WITH DISABILITIES?	720
United Kingdom	721
6.GB.57. Code of Practice – Rights of access : services to public, public authority functions, private clubs and premises 6.UK.58. C. Gooding and C. Casserley, Disability Discrimination Laws and Goods	721
and Services	721
6.3.3. SPECIFIC REQUIREMENTS—RELIGION	722
 6.3.3.A. AN INDIVIDUAL MAY NEED TO PROVE THAT THEY ARE OF A PARTICULAR FAITH 6.CoE.59. ECtHR, 13 April 2006, <i>Kosteski</i> v. <i>The Former Yugoslav Republic of Macedonia</i>. An individual who claims a right to take a public holiday to celebrate a Muslim holiday can be required to provide evidence that he is a Muslim. 	722
6.3.4. COMPARATIVE OVERVIEW	723
6.4. LIMITATIONS ON THE DUTY TO ACCOMMODATE	724
 6.4.1. INTRODUCTION AND EXPLORATION OF THE ISSUES 6.EC.60. ECJ, 11 July 2006, Case C-13/05, Sonia Chaeon Navas v. Eurest Colectividades. Discrimination occurs where an infinite dual with a disability is dismissed where they would be competent, capable and available to perform the essential functions of the post following the making of a reasonable accommodation 6.EC.61. Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation 	724 n 726 729
6.4.2. NATIONAL LEGISLATIVE PROVISIONS	730
6.4.2.A. FINANCIAL CONSIDERATIONS	730
 6.BG.62. Bulgarian Protection Against Discrimination Act (effective as of 1 January 2004) 6.BE.63. Belgian Guide toReasonable Accommodations for Persons with a 	730
Disability at Work, March 2005	731
 6.4.2.B. IRELAND—FINANCIAL ISSUES AND THE IMPACT OF THE EMPLOYMEN EQUALITY DIRECTIVE 6.IE.64. Supreme Court, 15 May 1997, <i>In the matter of Article 26 of the Constitution in the matter of the Employment Equality Bill, 1996.</i> Obligation to make an 	733
accommodation unless this amounted to undue hardship breached the right to carry business and earn a livelihood 6.IE.65. Irish Employment Equality Act 1998	y on a 734 736
 6.4.2.C. NON-FINANCIAL ISSUES WHICH JUSTIFY A FAILURE TO MAKE ACCOMMODATION 6.SK.66. Slovakian Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination, amending and supplementing certain other laws 	737
(Anti-discrimination Act) of 20 May 2004	737

6.AT.67. Austrian Act on the Employment of People with Disabilities (effective as of 1 January 2006)	738
6.4.3. COMPARATIVE OVERVIEW	739
6.5. FITTING THE DUTY TO ACCOMMODATE INTO THE NON-DISCRIMINATION FRAMEWORK	740
 6.5.1. FAILURE TO MAKE A REASONABLE ACCOMMODATION AS A FORM OF DIRECT DISCRIMINATION 6.SE.68. Swedish Prohibition of Discrimination in Working Life of People with Disability Act (1999:132) 	741 741
 6.5.2. FAILURE TO MAKE A REASONABLE ACCOMMODATION AS A FORM OF INDIRECT DISCRIMINATION 6.SK.69. Slovakian Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination, amending and supplementing certain other laws (Anti-discrimination Act) 	742 743
6.5.3. FAILURE TO MAKE A REASONABLE ACCOMMODATION AS A SUI GENERIS FORM OF DISCRIMINATION	744
6.5.4. FAILURE TO ELABORATE ON THE STATUS OF AN UNJUSTIFIED FAILURE TO MAKE A REASONABLE ACCOMMODATION	744
6.5.5. COMPARATIVE OVERVIEW	745
6.6. REASONABLE ACCOMMODATION AND POSITIVE ACTION	745
6.6.1. INTRODUCTION AND EXPLORATION OF THE ISSUES	745
 6.6.2. A CLEAR SEPARATION OF REASONABLE ACCOMMODATION FROM POSITIVE ACTION 6.UK.70. House of Loras, Session 2003-04, <i>Archibald</i> v. <i>Fife Council</i>. Reasonable adjustments can involve an element of more favourable treatment where this is 	748
needed in order to achieve equality 6.UK.71. P. Hughes, Disability Discrimination and the Duty to Make Reasonable Adjustments: Recent Developments	748 750
6.6.3. AMBIGUITY OR CONFUSION	750
 6.6.4. REASONABLE ACCOMMODATION AS AN EXCEPTION TO THE PRINCIPLE OF EQUAL TREATMENT 6.EE.72. Law of Republic of Estonia on Employment Contracts 	752 752
 6.6.5. REASONABLE ACCOMMODATION LABELLED AS A FORM OF POSITIVE ACTION 6.PT.73. Portuguese Labour Code 	753 753
6.6.6. COMPARATIVE OVERVIEW	753
6.7. COMPARATIVE ANALYSIS	754

CHAPTER SEVEN POSITIVE ACTION

7.1. INTRODUCTION	757
 7.2. THE DEFINITION OF POSITIVE ACTION 7.UN.1. International Convention on the Elimination of All Forms of Discrimination against Women 7.CoE.2. Framework Convention for the Protection of National Minorities 	759 760 761
7.3. A TYPOLOGY OF POSITIVE ACTION AND OTHER MEASURES	761
7.3.1. TYPOLOGY	762
	702
7.3.2. MEASURES NOT (NECESSARILY) IMPLYING PREFERENTIAL TREATMENT	763
 7.3.2.A. MONITORING 7.NL.3. Dutch law on the Promotion of Labour Participation of Ethnic Minorities 7.NIR.4. Fair Employment and Treatment (Northern Ireland) Order 1993 7.DE.5. Hesse Women Equality Act in the public administration 	763 763 766 770
7.3.2.B. REDEFINING MERIT 7.DE.6. Hesse Women Equality Act in the public administration	771 772
 7.3.2.C. OUTREACHING 7.DE.7. Hesse Women Equality Act in the public administration 7.GB.8. The Employment Equality (Sexual Orientation) Regulations 2003 7.DE.9. Hesse Women Equality Act in the public administration 	772 773 774 774
7.3.3. POSITIVE ACTION MEASURES IMPLYING PREFERENTIAL TREATMENT	775
 7.3.3.A. PREFERENTIAL TREATMENT OF EQUALLY QUALIFIED MEMBERS OF THE UNDERREPRESENTED GROUP 7.DE.10. Bremen Act on Equal Treatment for Men and Women in the Public Service 7.DE.11. German Law on Civil Servants of the Land 	775 775 776
 7.3.3.B. STRICT QUOTAS 7.SE.12. Swedish Equality Act 1991:433 7.SE.13. Swedish Regulation concerning certain professors' and research assistants' posts created with a view to promoting equality 1995:936 7.DE.14. Hesse Women Equality Act in the public administration 7.NIR.15. Police (Northern Ireland) Act 2000 	776 776 777 777 778 778
7.3.4. POSITIVE ACTION REQUIRING PREFERENCE—AIMS AND SCRUTINY	780
7.4. POSITIVE ACTION UNDER INTERNATIONAL LAW	781
7.4.1. UNITED NATIONS HUMAN RIGHTS INSTRUMENTS 7.UN.16. International Convention for the Elimination of All Forms of Racial	781
Discrimination	781

7.UN.17. International Convention for the Elimination of All Forms of Discrimination against Women	782
7.UN.18. CEDAW Committee, General recommendation No. 23: Political and public life	783
7.UN.19. Committee on the Elimination of Discrimination against Women, <i>General recommendation No. 25</i>	785
7.UN.20. Human Rights Committee, Communication n°198/1985, <i>Stalla Costa</i> v. <i>Uruguay</i> . Reinstatement in the Uruguayan public service of unfairly dismissed civil servants	787
 7.UN.21. Human Rights Committee, Communication n°943/2000, <i>Guido Jacobs v. Belgium.</i> Compatibility with art. 25(c) and art. 26 CCPR of a quota in favour of under-represented sex in the Belgian public service 7.UN.22. UN Committee on Economic, Social and Cultural Rights, <i>General Curves of Curves </i>	788
Comment No. 5: The rights of persons with disabilities 7.4.2. COUNCIL OF EUROPE HUMAN RIGHTS INSTRUMENTS	790
	793
7.4.2.A. THE EUROPEAN CONVENTION ON HUMAN RIGHTS 7.CoE.23. European Convention on Human Rights, The Explanatory Report to Protocol 12	794 795
7.4.2.B. THE EUROPEAN SOCIAL CHARTER	796
7.4.2.C. THE FRAMEWORK CONVENTION ON THE PROTECTION OF NATIONAL	L
MINORITIES 7.CoE.24. Advisory Committee of the Framwork Convention on the Protection of	798
National Minorities, <i>Opinion on Ireland</i> , 22 May 2003	800
7.5. POSITIVE ACTION UNDER EUROPEAN UNION LAW	801
 7.5.1. COUNCIL DIRECTIVE 76/207/EEC AND THE KALANKE RULING (1995) 7.EC.25. Council Directive 76/207/EEC of 9 February 1976 on the implementation of 	801
 the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions 7.EC.26. Recommendation 84/635/EEC on the promotion of positive action for women 7.EC.27. ECI, 1, October 1995, C-450/93, Eckhard Kalanke v. Freie Hansestadt Bremen. Admissibility of an absolute preference in favour of the member of the 	
under-represented sex ("flexible quota") under the Gender Employment Directive	803
7.5.2. POST-KALANKE	806
7.5.2.A. CONSTITUTIONALISING POSITIVE ACTION BY CHANGING ARTICLE 141 EC (IGC AMSTERDAM)	806
7.EC.28. ECJ, 30 September 2004, Case C-319/03, <i>Serge Briheche</i> v. <i>Ministère de l'intérieur, de la sécurité intérieure et des libertés locales</i> . Compatibility with article 3(1) and article 2(4) of the Gender Equality Directive	807
7.5.2.B. THE <i>MARSCHALL</i> LINE OF CASE-LAW (1997–2002) 7.EC.29. ECJ, 11 November 1997, C-409/95, <i>Hellmuth Marschall</i> v. Land	809
<i>Nordrhein-Westfalen.</i> Whether preferential rule with a "savings clause" is compatible with the gender employment directive	809

 7.EC.30. ECJ, 28 March 2000, C-158/97, <i>Badeck and others</i>. Compatibility with the gender employment directive of provisions imposing the adoption of advancement plans and other measures in favour of women 7.EC.31. ECJ, 6 July 2000, Case C-407/98, <i>Katarina Abrahamsson, Leif Anderson and Elisabet Fogelqvist</i>. Compatibility with the gender employment directive of a rule providing for the automatic recruitment of a sufficiently qualified member of the under-represented sex, unless this would give rise to a breach of the requirement of objectivity in making appointments 	811 d 815
7.5.2.C. Adapting Directive 76/207/EEC to Article 141(4) EC	820
 7.5.3. THE FUTURE OF POSITIVE ACTION UNDER EUROPEAN UNIO LAW 7.EC.32. Directive 2000/78/EC establishing a general framework for equal treatment 	821
in employment and occupation [Employment Equality Directive]	821
7.6. POSITIVE ACTION BEFORE THE NATIONAL COURTS	826
7.6.1. THE ADMISSIBILITY OF POSITIVE ACTION MEASURES 7.BE.33. Court of Arbitration, 27 January 1994, Case 9/94, A. Asztalos V. Office national des pensions. Compatibility with the constitutional requirements of equality and non-discrimination of a difference of treatment on grounds of sex in the	826
 allocation of benefits to the elderly 7.FR.34. Constitutional Council, 16 March 2006, Decision n. 2006-533 DC. Compatibility with the constitution of the law on equality of wages between women 	827
and men 7.SK.35. Constitutional Court of the Slovak Republic, 18 October 2005.	828
Compatibility of the positive action provision of the anti-discrimination act with the constitutional principles of the rule of law and of equality 7.NL.36. Equal Treatment Commission, <i>Opinion 1996-97.</i> Compatibility with national legislation implementing the gender employment directive of a scheme	830
aimed at improving the representation of women in the police force 7.DE.37. Federal Labour Court, 21 January 2003, 9 AZR 307/02. Compatibility of "flexible quotas", comprising a "savings clause", with the German <i>Grundgesetz</i> and	835
with European community law 7.NL.38. Equal Treatment Commission, <i>Opinion 1999-32</i> . Compatibility with the	838
 general equal treatment act of preferential recruitment of applicants of immigrant origin 7.NIR.39. High Court of Justice in Northern Ireland, Queen's Bench Division (Judicial Review), 23 July 2002. <i>In the Matter of an Application by Mark Parsons for</i> 	842
<i>judicial review</i> . Compatibility of the recruitment system of the police in northern Ireland with article 14 ECHR	847
 7.6.2. THE POSITIVE OBLIGATION TO ADOPT A POSITIVE ACTION MEASURE 7.IR.40. Equality Tribunal, 29 August 2003, <i>Gillen v. Department of Health and Children (Represented by the Chief State Solicitor)</i>. The refusal to adopt a positive 	850
action policy (on the grounds of age) as a form of discrimination	850
7.6.3. PHASING OUT POSITIVE ACTION	851

	7.GB.41. House of Lords, 5 May 2005, <i>Regina</i> v. <i>Secretary of State for Work and Pensions (Appellant) ex parte Hooper and others (FC) (Respondents)</i> Obligation to put an end to widow's benefits not recognised to widowers, in response to the gradua historic trend towards greater economic activity by women	
7.7.	POSITIVE ACTION POLICIES AND THE PROTECTION OF PRIVATE	L
	LIFE IN THE PROCESSING OF PERSONAL DATA	854
	7.UN.42. Medis Projects (Measurement of Discriminations), <i>Comparative Study on the collection of data to measure the extent and impact of discrimination within the</i>	
	United States, Canada, Australia, Great-Britain and the Netherlands	856
	7.CoE.43. Advisory Committee on the Framework Convention on the Protection of	
	National Minorities, Opinion on Germany, 1 March 2002	857
	7.EC.44. European Parliament, European Parliament resolution on non-discrimination	
	and equal opportunities for all – a framework strategy	859
	7.EC.45. Directive 95/46/EC of the European Parliament and of the Council of	
	24 October 1995 on the protection of individuals with regard to the processing of	
	personal data and on the free movement of such data [Personal Data Directive]	860
	7.NIR.46. C. McCrudden, Consociationalism, Equality and Minorities in the Northern	!
	Ireland Bill of Rights Debate: The Role of the OCSE High Commissioner on National	
	Minorities	864
	7.CoE.47. A.W. Heringa, G. Malinverni and J. Marke Comments by Council of Europ	е
	experts on certain aspects of a future Bill of Rights for Northern Ireland	865
	7.NIR.48. Northern Ireland Human Rights Commission, Progressing a Bill of Rights	
	for Northern Ireland: An Update	866
7.8.	COMPARATIVE ANALYSIS	867

HAPTER EIGHT ENFORCEMENT BODIES

8.1. INTRODUCTION	871
8.1.1. WHY DO WE NEED EQUALITY BODIES?	871
8.1.2. THE BROAD RANGE OF EUROPEAN EQUALITY BODIES	872
8.2. SINGLE OR MULTIPLE EQUALITY BODIES?8.EC.1. B.D. Jacobsen and E.O. Rosenberg Khawaja, <i>Legal Assistance to</i>	875
Individuals. Powers and Procedures of Effective and Strategic Individual Enforcement 8.UK.2. C. McCrudden, The contribution of the EU Fundamental Rights Agency to	876
Combating Discrimination and Promoting Equality.	877
8.3. OVERVIEW OF MODELS FOR INTERVENTION	880
8.3.1. OMBUDS	881
8.3.1.A. SWEDEN 8.SE.3. The Swedish Disability Ombudsman Act of 9 June 1994	881 882
8.3.1.B. OTHER COUNTRIES	883
8.3.1.C. SIGNIFICANT DIFFERENCE	883

8.3.2. COMMISSIONS	883
8.3.2.A. OVERVIEW	883
8.3.2.B. EXAMPLES OF DIVERSITY IN COMMISSIONERS	883
8.4. LEGAL NORMS FOR ENFORCEMENT BODIES	884
8.4.1. INTERNATIONAL NORMS	884
 8.4.1.A. THE PARIS PRINCIPLES 8.UN.4. Office for the United Nations High Commissioner for Human Rights, Principles relating to the status and functioning of national institutions for protection and promotion of human rights 	884 884
8.4.1.B. WIDER APPLICATION OF THE PARIS PRINCIPLES	886
8.4.1.C. ECRI RECOMMENDATIONS FOR EUROPEAN EQUALITY BODIES	887
 8.4.2. REQUIREMENTS FOR EQUALITY BODIES UNDER EUROPEAN LAW 8.4.2.A. INTRODUCTION 8.EC.5. Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin 	887 887 888
 8.4.2.B. MINIMUM STANDARDS 8.EC.6. Council Directive 2002/73/EC of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment vocational training and promotion and working conditions 	888 889
8.4.3. CRITICISMS OF EU REQUIREMENTS	890
8.4.3.A. GENERAL COMMENTS	890
8.4.3.B. THE RACIAL EQUALITY DIRECTIVE 8.EC.7. C. O'Cinneide, <i>The Race Equality Directive as a Basis for Strategic</i>	890 890
Enforcement 8.5. FUNCTIONS	890 891
8.5.1. LEGAL CASEWORK	891
8.5.1. LEGAL CASE WORK 8.5.1.A. PROVISION OF LEGAL ASSISTANCE TO VICTIMS	891
 8.EC.8. B. D. Jacobsen and E. O. Rosenberg Khawaja, <i>Strategic Enforcement:</i> <i>Powers and Competences of Equality Bodies</i> 8.EC.9. B. D. Jacobsen and E. O. Rosenberg Khawaja, <i>Legal Assistance to</i> 	894
Individuals: Powers and Procedures of Effective and Strategic Individual Enforcement 8.IE.10. N. Crowley, Equality Authority, Annual Report 2004	894 895
8.5.1.B. MEDIATION	897
 8.EC.11. European Commission, Specialized bodies to promote equality and/or combat discrimination. Final report 8.EC.12. European Commission, Specialized bodies to promote equality and/or 	898
combat discrimination. Final report	899

 8.BE.14. Centre for Equal Opportunities and Opposition to Racism, Report: Fighting Racism in Belgium. Civil Actions brought in 2000 90. 8.EE.15. Irish Employment Equality Acts 1998 to 2004 90. 8.GB.16. House of Lords, 3 March 1994, R. v. Secretary of State for Employment ex parte Equal Opportunities Commission and another. Part time workers rights to claim redundancy payments 90 8.G.B.17. Queen's Bench Division, 30 July 2004, Burke v. General Medical Council. Guidance on the withdrawal of artificial nutrition and hydration 90 8.IE.18. E. Barry, Interventions and Amicus Curiae Applications. Making Individual Enforcement More Effective 90 8.IE.19. E. Barry, Interventions and Amicus Curiae Applications. Making Individual Enforcement More Effective 90 8.IE.20. E. Barry, Interventions and Amicus Curiae Applications. Making Individual Enforcement More Effective 90 8.IE.21. Belgian Act of February 25, 2003 pertaining to the combat of discrimination and to the amendment of the Act of February 15, 1993 pertaining to the foundation of a centre for equal opportunities and opposition to recision 90 8.FR.22. French Act No. 2004-1486 dated 30th December 2004 concerning the creation of the high authority against discrimination an of or equality of opportunity 90 8.FR.23. French Act No. 2006-319 of 31 March 2006 on equality of opportunity 90 8.FR.24. I. Rorive, Situation tests in Europe: myths and realities 91 8.HU.25. Hungarian Government Decree 362/2004. (XII. 26.) Korm. on the Authority of Equal Treatment and the Detailed Rules of its Procedures 8.EC.27. O. de Schutter, Methods of Proof in the context of combating discrimination 8.5.2. QUASI-JUDI TAL FUNCTIONS 91 8.LU.29. J. Goldschmidt, Impl	8.BE.13. Belgian Act of February 15, 1993 pertaining to the foundation of a centre for	99
Racism in Belgium. Civil Actions brought in 2000 90 8.IE.15. Irish Employment Equality Acts 1998 to 2004 90 8.G.B.16. House of Lords, 3 March 1994, R. v. Secretary of State for Employment exparte Equal Opportunities Commission and another. Part time workers rights to claim redundancy payments 90 8.S.1.D. INTERVENTIONS 90 8.G.B.17. Queen's Bench Division, 30 July 2004, Burke v. General Medical Council. Guidance on the withdrawal of artificial nutrition and hydration 90 8.IE.18. E. Barry, Interventions and Amicus Curiae Applications. Making Individual Enforcement More Effective 90 8.IE.19. E. Barry, Interventions and Amicus Curiae Applications. Making Individual Enforcement More Effective 90 8.IE.20. E. Barry, Interventions and Amicus Curiae Applications. Making Individual Enforcement More Effective 90 8.IE.21. Belgian Act of February 25, 2003 pertaining to the combat of discrimination and to the amendment of the Act of February 15, 1993 pertaining to the foundation of a centre for equal opportunities and opposition to review 90 8.F.R.22. French Act No. 2004-1486 dated 30th December 2004 concerning the creation of the high authority against discrimination and for equality 90 8.F.R.23. French Act No. 2006-369 of 31 March 2006 on equality of opportunity 90 8.F.C.24. I. Rorive, Situation tests in Europe: myths and realities 91 8.F.C.25. Crench Act No. 2006-369 of 31 March 2006 on equality of opportunity	1 11 11	00
 8.GB.16. House of Lords, 3 March 1994, R. v. Secretary of State for Employment exparte Equal Opportunities Commission and another. Part time workers rights to claim redundancy payments 90 8.GB.17. Queen's Bench Division, 30 July 2004, Burke v. General Medical Council. Guidance on the withdrawal of artificial nutrition and hydration 90 8.GB.17. Queen's Bench Division, 30 July 2004, Burke v. General Medical Council. Guidance on the withdrawal of artificial nutrition and hydration 90 8.IE.18. E. Barry, Interventions and Amicus Curiae Applications. Making Individual Enforcement More Effective 90 8.IE.20. E. Barry, Interventions and Amicus Curiae Applications. Making Individual Enforcement More Effective 90 8.IE.21. Belgian Act of February 25, 2003 pertaining to the combat of discrimination and to the amendment of the Act of February 15, 1993 pertaining to the foundation of a centre for equal opportunities and opposition to review 90 8.FR.23. French Act No. 2004-1486 dated 30th December 2004 concerning the creation of the high authority against discrimination are for equality 90 8.EC.24. I. Rorive, Situation tests in Europe: myths and realities 91 8.HU.25. Hungarian Governmen Decree 36/212004. (XII. 26.) Korm. on the Authority faqual Treatment and the Detailed Rules of its Procedures 91 8.FR.26. French Act No. 2006-369 of 31 March 2006 on equality of opportunity 91 8.EC.27. O. de Schutter, Methods of Proof in the context of combating discrimination in stitutions for protection and functioning of national institutions for protection and promotion of human rights 91 8.S.2.A. THE NETHERLANDS 91 8.S.2.3. European Commi	Racism in Belgium. Civil Actions brought in 2000 90	
parte Equal Opportunities Commission and another. Part time workers rights to claim 90 8.5.1.D. INTERVENTIONS 90 8.GB.17. Queen's Bench Division, 30 July 2004, Burke v. General Medical Council. Guidance on the withdrawal of artificial nutrition and hydration 90 8.IE.18. E. Barry, Interventions and Amicus Curiae Applications. Making Individual Enforcement More Effective 90 8.IE.20. E. Barry, Interventions and Amicus Curiae Applications. Making Individual Enforcement More Effective 90 8.BE.21. Belgian Act of February 25, 2003 pertaining to the combat of discrimination and to the amendment of the Act of February 15, 1993 pertaining to the foundation of a centre for equal opportunities and opposition to racion 90 8.FR.22. French Act No. 2004-1486 dated 30th December 2004 concerning the creation of the high authority against discrimination are for equality of opportunity 90 8.FR.23. French Act No. 2006-369 of 31 March 2006 on equality of opportunity 90 8.FL24. I. Rorive, Situation tests in Europe: myths and realities 91 8.FR.25. Hungarian Government Decree 362/2004. (XII. 26.) Korm. on the Authority of Equal Treatment and the Detailed Rules of its Procedures 91 8.FR.26. French Act No. 2006-369 of 31 March 2006 on equality of opportunity 91 8.SEC.27. O. de Schutter, Methods of Proof in the context of combating discrimination of Equal Treatment and the Detailed Rules of its Procedures 91 8.JCL25.		01
 8.5.1.D. INTERVENTIONS 90 8.GB.17. Queen's Bench Division, 30 July 2004, Burke v. General Medical Council. Guidance on the withdrawal of artificial nutrition and hydration 90 8.IE.18. E. Barry, Interventions and Amicus Curiae Applications. Making Individual Enforcement More Effective 90 8.IE.19. E. Barry, Interventions and Amicus Curiae Applications. Making Individual Enforcement More Effective 90 8.IE.20. E. Barry, Interventions and Amicus Curiae Applications. Making Individual Enforcement More Effective 90 8.BE.21. Belgian Act of February 25, 2003 pertaining to the combat of discrimination and to the amendment of the Act of February 15, 1993 pertaining to the foundation of a centre for equal opportunities and opposition to recisin 90 8.FR.22. French Act No. 2004-1486 dated 30th December 2004 concerning the creation of the high authority against discrimination and for equality 90 8.FR.23. French Act No. 2006-369 of 31 March 2006 on equality of opportunity 90 8.5.1.E. SITUATION TESTING 90 8.EC.24. I. Rorive, Situation tests in Europe: myths and realities 91 8.HU.25. Hungarian Government Decree 36212004. (XII. 26.) Korm. on the Authority of Equal Treatment and the Detailed Rules of its Procedures 91 8.FR.26. French Act No. 2006-369 of 31 March 2006 on equality of opportunity 91 8.EC.27. O. de Schutter, Methods of Proof in the context of combating discrimination 91 8.S.2. QUASI-JUDICIAL FUNCTIONS 91 8.UN.28. Office for the United Nations High Commissioner for Human Rights, Principles relating to the status and functioning of national institutions for protection and promotion of human rights 91 8.S.2.A. THE NETHERLANDS 91 8.NL.29. J. Goldschmidt, Implementation of Equality Law: a task for specialists or for human rights experts? 91 8.EC.30. European Commission, Specialized bodies to promote equality andlor combat discrimination. Final report 91<!--</td--><td>parte Equal Opportunities Commission and another. Part time workers rights to claim</td><td>02</td>	parte Equal Opportunities Commission and another. Part time workers rights to claim	02
 8.GB.17. Queen's Bench Division, 30 July 2004, Burke v. General Medical Council. Guidance on the withdrawal of artificial nutrition and hydration 90 8.IE.18. E. Barry, Interventions and Amicus Curiae Applications. Making Individual Enforcement More Effective 90 8.IE.19. E. Barry, Interventions and Amicus Curiae Applications. Making Individual Enforcement More Effective 90 8.IE.20. E. Barry, Interventions and Amicus Curiae Applications. Making Individual Enforcement More Effective 90 8.IE.21. Belgian Act of February 25, 2003 pertaining to the combat of discrimination and to the amendment of the Act of February 15, 1993 pertaining to the foundation of a centre for equal opportunities and opposition to recism 90 8.FR.22. French Act No. 2006-1486 dated 30th December 2004 concerning the creation of the high authority against discrimination and for equality 90 8.FR.23. French Act No. 2006-369 of 31 March 2006 on equality of opportunity 90 8.FR.24. I. Rorive, Situation tests in Europe: myths and realities 91 8.HU.25. Hungarian Government Decree 362/2004. (XII. 26.) Korm. on the Authority of Equal Treatment and the Detailed Rules of its Procedures 91 8.FR.26. French Act No. 2006-369 of 31 March 2006 on equality of opportunity 91 8.EC.27. O. de Schutter, Methods of Proof in the context of combating discrimination 91 8.5.2. QUASI-JUDICIAL FUNCTIONS 91: 8.UN.28. Office for the United Nations High Commissioner for Human Rights, Principles relating to the status and functioning of national institutions for protection and promotion of human rights 91 8.S.2.A. THE NETHERLANDS 91 8.NL.29. J. Goldschmidt, Implementation of Equality Law: a task for specialists or for human rights experts? 8.EC.30. European Commission, Specialized bodies to promote equality andlor combat discrimination. Final report 91 8.NL.31. E		
Enforcement More Effective 90 8.IE.19. E. Barry, Interventions and Amicus Curiae Applications. Making Individual 90 8.IE.20. E. Barry, Interventions and Amicus Curiae Applications. Making Individual 90 8.IE.20. E. Barry, Interventions and Amicus Curiae Applications. Making Individual 90 8.IE.20. E. Barry, Interventions and Amicus Curiae Applications. Making Individual 90 8.IE.21. Belgian Act of February 25, 2003 pertaining to the combat of discrimination 90 8.BE.21. Belgian Act of February 25, 2003 pertaining to the combat of discrimination 90 8.IE.22. French Act No. 2004-1486 dated 30th Deember 2004 concerning the creation 90 8.FR.22. French Act No. 2004-1486 dated 30th Deember 2004 concerning the creation 90 8.FR.23. French Act No. 2006-369 of 31 March 2006 on equality of opportunity 90 8.S.1.E. SITUATION TESTING 90 8.EC.24. I. Rorive, Situation tests in Europe: myths and realities 91 8.HU.25. Hungarian Government Decree 362/2004. (XII. 26.) Korm. on the Authority 91 8.EC.27. O. de Schutter. Methods of Proof in the context of combating discrimination 91 91 8.L.20. European Commission, Specialized bodies to promote equality and/or 91 8.S.2.A. THE NETHERLANDS 91 8.NL.30. European Commission, Specialized bodies t	8.GB.17. Queen's Bench Division, 30 July 2004, <i>Burke</i> v. <i>General Medical Council</i> .Guidance on the withdrawal of artificial nutrition and hydration90	
Enforcement More Effective 90 8.IE.20. E. Barry, Interventions and Amicus Curiae Applications. Making Individual Enforcement More Effective 90 8.BE.21. Belgian Act of February 25, 2003 pertaining to the combat of discrimination and to the amendment of the Act of February 15, 1993 pertaining to the foundation of a centre for equal opportunities and opposition to racism 90 8.FR.22. French Act No. 2004-1486 dated 30th Detember 2004 concerning the creation of the high authority against discrimination on for equality 90 8.FR.23. French Act No. 2006-369 of 31 March 2006 on equality of opportunity 90 8.FL.24. I. Rorive, Situation tests in Europe: myths and realities 91 8.HU.25. Hungarian Government Decree 36212004. (XII. 26.) Korm. on the Authority of Equal Treatment and the Detailed Rules of its Procedures 91 8.FR.26. French Act No. 2006-369 of 31 March 2006 on equality of opportunity 91 8.FR.26. French Act No. 2006-369 of 31 March 2006 on equality of opportunity 91 8.FR.26. French Act No. 2006-369 of 31 March 2006 on equality of poportunity 91 8.FR.26. French Act No. 2006-369 of 31 March 2006 on equality of opportunity 91 8.FR.27. O. de Schutter, Methods of Proof in the context of combating discrimination 91 91 8.LC.27. O. de Schutter, Methods of Proof in the context of combating discrimination 91 91 8.LC.29. J. Goldschmidt, Implementation of Equ		06
 8.IE.20. E. Barry, Interventions and Amicus Curiae Applications. Making Individual Enforcement More Effective 90 8.BE.21. Belgian Act of February 25, 2003 pertaining to the combat of discrimination and to the amendment of the Act of February 15, 1993 pertaining to the foundation of a centre for equal opportunities and opposition to racism 90 8.FR.22. French Act No. 2004-1486 dated 30th December 2004 concerning the creation of the high authority against discrimination and for equality 90 8.FR.23. French Act No. 2006-369 of 31 March 2006 on equality of opportunity 90 8.EC.24. I. Rorive, Situation tests in Europe: myths and realities 91 8.HU.25. Hungarian Government Decree 362/2004. (XII. 26.) Korm. on the Authority of Equal Treatment and the Detailed Rules of its Procedures 91 8.FR.26. French Act No. 2006-369 of 31 March 2006 on equality of opportunity 91 8.EC.27. O. de Schutter, Methods of Proof in the context of combating discrimination 91 8.5.2. QUASI-JUDICIAL FUNCTIONS 91 8.UN.28. Office for the United Nations High Commissioner for Human Rights, Principles relating to the status and functioning of national institutions for protection and promotion of human rights 91 8.5.2.A. THE NETHERLANDS 91 8.EC.30. European Commission, Specialized bodies to promote equality and/or combat discrimination. Final report 91 8.NL.31. Equal Treatment Commission. The Difference Made. Evaluation of the Equal Treatment Act and the Activities of the Equal Treatment Commission, 1999-2004 91 8.NL.32. Supreme Court, 13 November 1987, St. Bavo v. Gielen. Role of a commission decision in an equal pay case 91 		07
and to the amendment of the Act of February 15, 1993 pertaining to the foundation of a centre for equal opportunities and opposition to recisin 90 8.FR.22. French Act No. 2004-1486 dated 30th December 2004 concerning the creation of the high authority against discrimination on 1 for equality 90 8.FR.23. French Act No. 2006-369 of 31 March 2006 on equality of opportunity 90 8.5.1.E. SITUATION TESTING 90 8.EC.24. I. Rorive, Situation tests in Europe: myths and realities 91 8.HU.25. Hungarian Government Decree 362/2004. (XII. 26.) Korm. on the Authority of Equal Treatment and the Detailed Rules of its Procedures 91 8.FR.26. French Act No. 2006-369 of 31 March 2006 on equality of opportunity 91 8.EC.27. O. de Schutter, Methods of Proof in the context of combating discrimination 91 8.5.2. QUASI-JUDI IAL FUNCTIONS 91 8.UN.28. Office for the United Nations High Commissioner for Human Rights, Principles relating to the status and functioning of national institutions for protection and promotion of human rights 91 8.5.2.A. THE NETHERLANDS 91 8.SL.29. J. Goldschmidt, Implementation of Equality Law: a task for specialists or for human rights experts? 91 8.EC.30. European Commission, Specialized bodies to promote equality andlor combat discrimination. Final report 91 8.NL.31. Equal Treatment Commission. The Difference Made. Evaluation of the Equal Treatment Act and the Activities of the Equal Treatment Commission, 1999–2004 91 8.NL.32. Supreme Court, 13 November 1987, St. Bavo v. Gielen. Role of a commission decision in an equal pay case 91	8.IE.20. E. Barry, Interventions and Amicus Curiae Applications. Making Individual Enforcement More Effective 90	07
of the high authority against discrimination are for equality908.FR.23. French Act No. 2006-369 of 31 March 2006 on equality of opportunity908.5.1.E. SITUATION TESTING908.EC.24. I. Rorive, Situation tests in Furope: myths and realities918.HU.25. Hungarian Government Decree 362/2004. (XII. 26.) Korm. on the Authority91of Equal Treatment and the Detailed Rules of its Procedures918.FR.26. French Act No. 2006-369 of 31 March 2006 on equality of opportunity918.EC.27. O. de Schutter, Methods of Proof in the context of combating discrimination918.5.2. QUASI-JUDICIAL FUNCTIONS918.UN.28. Office for the United Nations High Commissioner for Human Rights, Principles relating to the status and functioning of national institutions for protection and promotion of human rights918.5.2.A. THE NETHERLANDS918.5.2.30. European Commission, Specialized bodies to promote equality and/or combat discrimination. Final report918.NL.31. Equal Treatment Commission. The Difference Made. Evaluation of the Equal Treatment Act and the Activities of the Equal Treatment Commission, 1999–2004918.NL.32. Supreme Court, 13 November 1987, St. Bavo v. Gielen. Role of a commission decision in an equal pay case91	and to the amendment of the Act of February 15, 1993 pertaining to the foundation of a centre for equal opportunities and opposition to recism	08
 8.FR.23. French Act No. 2006-369 of 31 Merch 2006 on equality of opportunity 90 8.5.1.E. SITUATION TESTING 90 8.EC.24. I. Rorive, Situation tests in Europe: myths and realities 910 8.HU.25. Hungarian Government Decree 362/2004. (XII. 26.) Korm. on the Authority of Equal Treatment and the Detailed Rules of its Procedures 91 8.FR.26. French Act No. 2006-369 of 31 March 2006 on equality of opportunity 91 8.EC.27. O. de Schutter, Methods of Proof in the context of combating discrimination 91. 8.5.2. QUASI-JUDICIAL FUNCTIONS 91. 8.UN.28. Office for the United Nations High Commissioner for Human Rights, Principles relating to the status and functioning of national institutions for protection and promotion of human rights 91 8.5.2.A. THE NETHERLANDS 91 8.S.C.30. European Commission, Specialized bodies to promote equality and/or combat discrimination. Final report 91 8.NL.31. Equal Treatment Commission. The Difference Made. Evaluation of the Equal Treatment Act and the Activities of the Equal Treatment Commission, 1999–2004 91 8.NL.32. Supreme Court, 13 November 1987, St. Bavo v. Gielen. Role of a commission decision in an equal pay case 		00
 8.EC.24. I. Rorive, Situation tests in Europe: myths and realities 914 8.HU.25. Hungarian Government Decree 362/2004. (XII. 26.) Korm. on the Authority of Equal Treatment and the Detailed Rules of its Procedures 91 8.FR.26. French Act No. 2006-369 of 31 March 2006 on equality of opportunity 91 8.EC.27. O. de Schutter. Methods of Proof in the context of combating discrimination 91 8.5.2. QUASI-JUDI CIAL FUNCTIONS 8.UN.28. Office for the United Nations High Commissioner for Human Rights, Principles relating to the status and functioning of national institutions for protection and promotion of human rights 91 8.5.2.A. THE NETHERLANDS 91 8.EC.30. European Commission, Specialized bodies to promote equality and/or combat discrimination. Final report 91 8.NL.31. Equal Treatment Commission. The Difference Made. Evaluation of the Equal Treatment Act and the Activities of the Equal Treatment Commission, 1999–2004 91 8.NL.32. Supreme Court, 13 November 1987, St. Bavo v. Gielen. Role of a commission decision in an equal pay case 		
 8.HU.25. Hungarian Government Decree 362/2004. (XII. 26.) Korm. on the Authority of Equal Treatment and the Detailed Rules of its Procedures 91 8.FR.26. French Act No. 2006-369 of 31 March 2006 on equality of opportunity 91 8.EC.27. O. de Schutter. Methods of Proof in the context of combating discrimination 91 8.5.2. QUASI-JUDI CIAL FUNCTIONS 91 8.UN.28. Office for the United Nations High Commissioner for Human Rights, Principles relating to the status and functioning of national institutions for protection and promotion of human rights 91 8.5.2.A. THE NETHERLANDS 91 8.5.2.A. THE NETHERLANDS 91 8.EC.30. European Commission, Specialized bodies to promote equality and/or combat discrimination. Final report 91 8.NL.31. Equal Treatment Commission. The Difference Made. Evaluation of the Equal Treatment Act and the Activities of the Equal Treatment Commission, 1999–2004 91 8.NL.32. Supreme Court, 13 November 1987, St. Bavo v. Gielen. Role of a commission decision in an equal pay case 91 		
 8.FR.26. French Act No. 2006-369 of 31 March 2006 on equality of opportunity 8.EC.27. O. de Schutter, Methods of Proof in the context of combating discrimination 91. 8.5.2. QUASI-JUDI TAL FUNCTIONS 8.UN.28. Office for the United Nations High Commissioner for Human Rights, Principles relating to the status and functioning of national institutions for protection and promotion of human rights 91. 8.5.2.A. THE NETHERLANDS 8.NL.29. J. Goldschmidt, Implementation of Equality Law: a task for specialists or for human rights experts? 91. 8.EC.30. European Commission, Specialized bodies to promote equality and/or combat discrimination. Final report 91. 8.NL.31. Equal Treatment Commission. The Difference Made. Evaluation of the Equal Treatment Act and the Activities of the Equal Treatment Commission, 1999–2004 91. 8.NL.32. Supreme Court, 13 November 1987, St. Bavo v. Gielen. Role of a commission decision in an equal pay case 	8.HU.25. Hungarian Government Decree 362/2004. (XII. 26.) Korm. on the Authority	
 8.EC.27. O. de Schutter, Methods of Proof in the context of combating discrimination 91. 8.5.2. QUASI-JUDI TAL FUNCTIONS 91. 8.UN.28. Office for the United Nations High Commissioner for Human Rights, Principles relating to the status and functioning of national institutions for protection and promotion of human rights 91. 8.5.2.A. THE NETHERLANDS 91. 8.NL.29. J. Goldschmidt, Implementation of Equality Law: a task for specialists or for human rights experts? 91. 8.EC.30. European Commission, Specialized bodies to promote equality and/or combat discrimination. Final report 91. 8.NL.31. Equal Treatment Commission. The Difference Made. Evaluation of the Equal Treatment Act and the Activities of the Equal Treatment Commission, 1999–2004 91. 8.NL.32. Supreme Court, 13 November 1987, St. Bavo v. Gielen. Role of a commission decision in an equal pay case 91. 		
 8.UN.28. Office for the United Nations High Commissioner for Human Rights, Principles relating to the status and functioning of national institutions for protection and promotion of human rights 91 8.5.2.A. THE NETHERLANDS 8.NL.29. J. Goldschmidt, Implementation of Equality Law: a task for specialists or for human rights experts? 91 8.EC.30. European Commission, Specialized bodies to promote equality and/or combat discrimination. Final report 8.NL.31. Equal Treatment Commission. The Difference Made. Evaluation of the Equal Treatment Act and the Activities of the Equal Treatment Commission, 1999–2004 91 8.NL.32. Supreme Court, 13 November 1987, St. Bavo v. Gielen. Role of a commission decision in an equal pay case 		
Rights, Principles relating to the status and functioning of national institutions for protection and promotion of human rights918.5.2.A. THE NETHERLANDS918.NL.29. J. Goldschmidt, Implementation of Equality Law: a task for specialists or for human rights experts?918.EC.30. European Commission, Specialized bodies to promote equality and/or combat discrimination. Final report918.NL.31. Equal Treatment Commission. The Difference Made. Evaluation of the Equal Treatment Act and the Activities of the Equal Treatment Commission, 1999–2004918.NL.32. Supreme Court, 13 November 1987, St. Bavo v. Gielen. Role of a commission decision in an equal pay case91	.5.2. QUASI-JUDICIAL FUNCTIONS 9	14
 8.5.2.A. THE NETHERLANDS 91 8.NL.29. J. Goldschmidt, Implementation of Equality Law: a task for specialists or for human rights experts? 91 8.EC.30. European Commission, Specialized bodies to promote equality and/or combat discrimination. Final report 91 8.NL.31. Equal Treatment Commission. The Difference Made. Evaluation of the Equal Treatment Act and the Activities of the Equal Treatment Commission, 1999–2004 91 8.NL.32. Supreme Court, 13 November 1987, St. Bavo v. Gielen. Role of a commission in an equal pay case 		
 8.NL.29. J. Goldschmidt, Implementation of Equality Law: a task for specialists or for human rights experts? 91. 8.EC.30. European Commission, Specialized bodies to promote equality and/or combat discrimination. Final report 91. 8.NL.31. Equal Treatment Commission. The Difference Made. Evaluation of the Equal Treatment Act and the Activities of the Equal Treatment Commission, 1999–2004 91. 8.NL.32. Supreme Court, 13 November 1987, St. Bavo v. Gielen. Role of a commission decision in an equal pay case 	<i>institutions for protection and promotion of human rights</i> 9	15
human rights experts?918.EC.30. European Commission, Specialized bodies to promote equality and/or combat discrimination. Final report918.NL.31. Equal Treatment Commission. The Difference Made. Evaluation of the Equal Treatment Act and the Activities of the Equal Treatment Commission, 1999–2004918.NL.32. Supreme Court, 13 November 1987, St. Bavo v. Gielen. Role of a commission decision in an equal pay case91		15
 8.EC.30. European Commission, Specialized bodies to promote equality and/or combat discrimination. Final report 8.NL.31. Equal Treatment Commission. The Difference Made. Evaluation of the Equal Treatment Act and the Activities of the Equal Treatment Commission, 1999–2004 8.NL.32. Supreme Court, 13 November 1987, St. Bavo v. Gielen. Role of a commission decision in an equal pay case 		16
 8.NL.31. Equal Treatment Commission. The Difference Made. Evaluation of the Equal Treatment Act and the Activities of the Equal Treatment Commission, 1999–2004 91 8.NL.32. Supreme Court, 13 November 1987, St. Bavo v. Gielen. Role of a commission decision in an equal pay case 	0 1	10
Treatment Act and the Activities of the Equal Treatment Commission, 1999–2004918.NL.32. Supreme Court, 13 November 1987, St. Bavo v. Gielen. Role of a commission decision in an equal pay case91	1	17
commission decision in an equal pay case 91	Treatment Act and the Activities of the Equal Treatment Commission, 1999–2004 9	17
	-	19
8.NL.33. Equal Treatment Commission. <i>The Difference Made. Evaluation of the Equal</i> <i>Treatment Act and the Activities of the Equal Treatment Commission, 1999–2004</i> 92	8.NL.33. Equal Treatment Commission. The Difference Made. Evaluation of the Equal	
8.5.2.B. IRELAND 92	.5.2.B. IRELAND 92	21

8.5.3. INVESTIGATIONS AND INQUIRIES	922
8.EC.34. M. White, Formal Investigations and Inquiries	923
8.EC.35. M. White, Formal Investigations and Inquiries	924
8.GB.36. R. Karim, A Legal Strategy to Combine and Coordinate Different Tools	
available	925
8.NL.37. Equal Treatment Commission, Equality law and the work of the Dutch Equa	
Treatment Commission	928
8.SE.38. The Office of the Ombudsman against Discrimination on	
Grounds of Sexual Orientation, Report 2005	928
8.5.4. RESEARCH AND REPORTS	929
8.EC.39. N. Reuter, T. Makkonen, O. Oosi, Study on Data Collection to measure the	
extent and impact of discrimination in Europe	930
8.5.5. MAKING RECOMMENDATIONS TO GOVERNMENT	930
8.NL.40. Equal Treatment Commission, <i>Equality law and the work of the</i>	930
Equal Treatment Commission in the Netherlands	931
	<i>JJ</i> 1
8.5.6. PROMOTING GOOD EQUALITY/PRACTICE	932
8.NL.41. Equal Treatment Commission, <i>Equality law and the work of the</i>	
Equal Treatment Commission in the Netherlands	932
8.NL.42. Equal Treatment Commission, Equality law and the work of the	
Equal Treatment Commission in the Netherlands	933
8.5.7. POSITIVE DUTIES TO PROMOTE EQUALITY	933
8.EC.43. L. Griffiths, Positive Duties to Promote Equality	934
8.6. PROTECTION OF INDEPENDENCE	936
INDEPENDENCE FROM GOVERNMENT	026
8.UN.44. Office for the United Nation: righ Commissioner for Human	936
Rights, Principles relating to the status and functioning of national	
institutions for protection and promotion of human rights	937
8.EC.45. European Commission, Specialized bodies to promote equality and/or	151
combat discrimination	938
8.SE.46. Swedish Report on coherent discrimination legislation	939
8.EC.47. European Commission, Specialized bodies to promote equality and/or	
combat discrimination	939
8.CoE.48. European Commission against Racism and Intolerance, Third report on	
Italy	940
8.6.1.A. UNITED KINGDOM	941
8.UK.49. UK Parliament, Joint Committee on Human Rights, Commission for	
Equality and Human Rights: the Government's White Paper, 16th Report of Session	
2003–2004	941
8.UK.50. UK Parliament, Joint Committee on Human Rights, 4th Report of Session	
2005–2006	943
8.GB.51. Equality Act 2006	944
8.6.1.B. THE NETHERLANDS	944
8.NL.52. Dutch Equal Treatment Act 1994	945
8.6.1.C. FRANCE	946

8.FR.53. French Act No. 2004-1486 dated 30 December 2004 concerning the creation of the high authority against discrimination and for equality	946
8.6.1.D. IRELAND 8.IE.54. Irish Employment Equality Acts 1998 to 2004	947 947
 8.6.1.E. HUNGARY 8.HU.55. Hungarian Government Decree 362/2004. (XII. 26.) Korm.on the Authority of Equal Treatment and the Detailed Rules of its Procedures 	949 950
8.6.2. INDEPENDENCE FROM OTHER SOURCES OF INFLUENCE 8.SE.56. K. Linna, The role of specialised bodies and of trade unions	951 951
8.7. COMPARATIVE ANALYSIS	952
Synopsis of the Content of the EU Anti-discrimination Legislation	955
INDEX	967
INDEX	

liv