

Seminar 13 April 2010

Discrimination bans with
regard to access to and
supply of goods and services

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Historical development in EU law

- 1970's-2000, only provisions on non-discrimination on grounds of nationality and sex, and as far as gender was concerned mainly in employment and occupation
- After 2000, broader bans on discrimination on a number of grounds and in other areas, including goods and services

EU-law and contract law

- Primary EU law
 - Free movement,
 - Fundamental rights, the Charter
- Directives
 - 2000/43/EC (ethnic discrimination)
 - 2004/113/EC (sex discrimination, goods and services)
 - COM(2008)426 (age, religion, disability, sexual orientation)

Constitutionalisation of non-discrimination

- The case law of the ECJ since Defrenne II
- EU Charter of Fundamental Rights 2000
- The Treaty of Lisbon

EU Charter of fundamental Rights

- Freedom to choose an occupation and right to engage in work and Freedom to conduct a business, art. 15 and 16
- Equality before the law, art. 20
- Non-discrimination, art. 21

Art. 15 and 16

- 15(1). Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
- 16. The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.

Charter art. 20 and 21

- 20. Everyone is equal before the law.
- 21(1). 1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

Freedom of contract in EU-law

- No explicit protection of freedom of contract in EU primary law
- Many limitations of freedom of contract in secondary law
- Freedom of contract in the case law of the ECJ

Case law on freedom of contract

- Case C-518/06 on Italian legislation imposing an obligation to contract on insurance undertakings: 66. the imposition by a Member State of an obligation to contract such as that at issue constitutes a substantial interference in the freedom to contract which economic operators, in principle, enjoy.

Case C-518/06 continued

- 67 In a sector like that of insurance, such a measure affects the relevant operators' access to the market, in particular where it subjects insurance undertakings not only to an obligation to cover any risks which are proposed to them, but also to requirements to moderate premium rates.

Freedom of contract and non-discrimination

- Discriminatory refusal to enter into contracts,
- Discriminatory conclusion of contracts
- Discriminatory performance of contracts
- Discriminatory contractual conditions

Concepts of discrimination

- Direct discrimination
- Indirect discrimination
- Harassment
- Sexual harassment
- Instruction to discriminate