

Legal Seminar

Making Equality Rights Work in Practice

9 November 2010

Indirect Discrimination

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- Romanian Anti-discrimination Law (2000, amended and consolidated in 2006):
 - Open-ended **list of grounds** going beyond the EU six; (!?)
 - Wide list of **provisions** protecting against discrimination; (!?)
 - Material scope** going beyond the EU Equality Directives;
 - Remedies and enforcement:** possibility to choose between courts and national equality bodies;

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Relevant Legal Provisions

- Article 2 (3) of the Anti-discrimination Law prohibits:
‘any provisions, criteria or practices apparently neutral which disadvantage certain persons on grounds of one of the protected grounds from para.(1), unless these practices, criteria and provisions are objectively justified by a legitimate aim and the methods used to reach that purpose are appropriate and necessary.’

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Implementation challenges

- 2005 NCCD case regarding authorisation for free practice of the medical profession – **Syrian citizen,**
- 2009 NCCD case on refusal to pay by bank order the monthly indemnity for a **person with a severe disability who was immobilized in bed,**

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Implementation challenges -2- the really tough ones-

- (?!?) How far can you go in sanctioning indirect discrimination?:
 - 2008 NCCD case of **persons suffering from mental disabilities hospitalised in Predeal hospital** when compared to patients in other hospitals.
 - 2007-2010 long list of cases regarding salary related rights and benefits for **different categories of personnel working for the Justice machinery**→ NCCD, courts, Constitutional Court→ European Court of Justice

Symposium on Reasonable
Accommodation -ROMANIA-

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Instead theoretical conclusions:

- The anti-discrimination principle is understood as an anti-oppression principle; it will prohibit entirely neutral classifications if they perpetuate or lead to discrimination and will allow classifications if they are benign and not acting out of discriminatory animus.

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Instead theoretical conclusions:

- **Ground:** should be linked to past or current experience of oppression and marginalization and not merely differentiation,

Instead theoretical conclusions:

Scope: all actions undermining the social and political standing of minorities, including conduct not purposely directed against minorities but with unintended consequences of increasing or preserving socially disadvantaged position→ calls for affirmative measures as a must to alleviate the substantive condition of the disadvantaged.

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Indirect discrimination

The Case of Redlining

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Peter Rodrigues



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Indirect discrimination


- Unequal treatment
- Differentiation on neutral grounds
- Disadvantage for protected group
- No objective justification



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Indirect discrimination


- Objective justification
 - Legitimate aim
 - Appropriate means
 - Necessity



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Indirect discrimination

- Redlining
- Post code discrimination
- Certain area's are excluded
- Financial services: mortgages
- Limiting financial risks



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Indirect discrimination


- Dutch Equal Treatment Commission
- Research on own initiative
- Unequal treatment of ethnic minorities
- Temporary residence permit
- Wrong neighbourhood



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Indirect discrimination





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Indirect discrimination



Stad	Wijk	Wijknummer	Wijknaam	Wijktype	Wijkstatus
Amsterdam	1	101	Centrum	Stadsdeel	Wijk 101
	2	102	West	Stadsdeel	Wijk 102
	3	103	Oost	Stadsdeel	Wijk 103
	4	104	Zuid	Stadsdeel	Wijk 104
Rotterdam	1	101	Centrum	Stadsdeel	Wijk 101
	2	102	West	Stadsdeel	Wijk 102
	3	103	Oost	Stadsdeel	Wijk 103
	4	104	Zuid	Stadsdeel	Wijk 104
The Hague	1	101	Centrum	Stadsdeel	Wijk 101
	2	102	West	Stadsdeel	Wijk 102
	3	103	Oost	Stadsdeel	Wijk 103
	4	104	Zuid	Stadsdeel	Wijk 104
Utrecht	1	101	Centrum	Stadsdeel	Wijk 101
	2	102	West	Stadsdeel	Wijk 102
	3	103	Oost	Stadsdeel	Wijk 103
	4	104	Zuid	Stadsdeel	Wijk 104

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Indirect discrimination

- Amsterdam, Rotterdam, The Hague and Utrecht
- On the grounds of race and nationality
- Redlining means exclusion
- No objective justification
- Non-discriminatory selection criteria are available

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Indirect discrimination

- Ruling of the ETC
- Research took 3 years
- Code of conduct Mortgage Lenders
- Proof of indirect discrimination
- Again in 2009: housing insurance

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Indirect discrimination


- Lessons learned:
 - Indirect is mostly structural discrimination



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 - Indirect discrimination is not always on purpose, but still forbidden



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 - Disparate impact can be hard to proof



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Indirect discrimination

- Lessons learned:
 - Indirect is mostly structural discrimination
 - Indirect discrimination is not always on purpose, but still forbidden
 - Disparate impact can be hard to proof
 - Investigation or research is helpful

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