

Case-law of the CJEU 2014-2015

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Overview of the case-law



CASES PER DIRECTIVE	
Directive	Number of cases
Directive 2010/41/EU (Self-employment)	0
Directive 2010/18/EU (Parental leave)	1
Directive 2006/54/EC (Recast Sex Equality Directive)	3
Directive 2004/113/EC (Gender Goods & Services Directive)	0
Directive 2000/78/EC (Employment Equality Directive)	12
* Age	9
* Disability	1
* Sexual orientation	1
* Other (fixed-term work)	1
Directive 2000/43/EC (Racial Equality Directive)	3
Directive 1999/70/EC (Fixed Term Work)	1
Directive 1997/81/EC (Part-time work)	2
Directive 1992/85/EEC (Pregnancy)	3
Directive 1979/7/EEC (Social Security Directive)	1
Other (Directive 2004/33/EC)	1
NB: various cases concern multiple Directives.	

Overview of the case-law



CASES PER COUNTRY	
Country	Number of cases
Austria	4
Belgium	1
Bulgaria	2
Denmark	2
France	2
Greece	1
Italy	1
The Netherlands	1
Rumania	1
Spain	2
Other (staff cases, infringement procedures)	4

Cases to be discussed today:



- Case C-222/14 Maïstrellis (gender)
- Case C-416/13 Pérez (age)
- Case C-530/13 Schmitzer (age)
- Case C-354/13 FOA (disability)
- Case C-83/14 CHEZ (race/ethnic origin)

C-222/14 Maïstrellis: the case

Issue at stake:

No right to
parental leave for
fathers when the
mother is not
employed.



The Court in Maïstrellis

**Not allowed under the
Parental Leave
Directive.**

+

**Discrimination under
the Recast Sex
Equality Directive.**



Remarkable about Maïstrellis

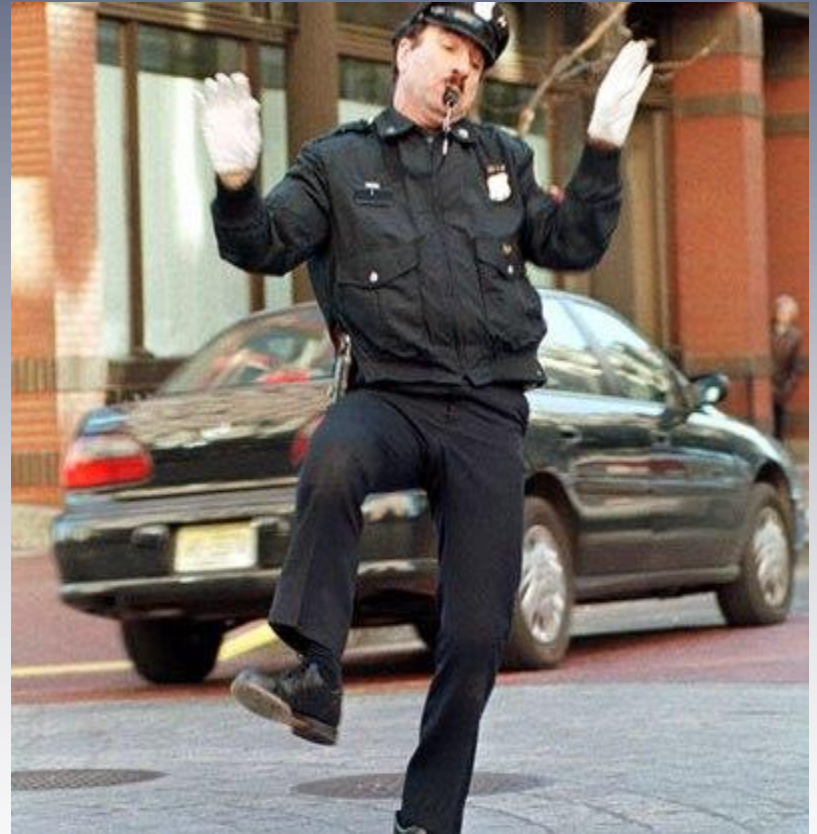
- In line with Roca Álvares (2010): legislation should not strengthen traditional division of roles
- Not in line with Montull (2013) where the court held: If the mother does not have a primary right to parental leave the father cannot have a derived right.



C-416/13 Pérez: the case

Legal issues at stake:

- Is Article 21 of the Charter applicable besides the Directive?
- Is an age limit (30) for recruitment of police officers discrimination?



The Court in Pérez on issue 1:



When both are applicable, “(T)he Court examines the question solely in the light of the Directive.”

The Court in Pérez on issue 2:

The age limit is directly discriminatory under art. 2(2) and cannot be objectively justified under arts. 4(1) and 6(1) of Dir 2000.78/EC.

NB: Contrary to Wolf (2010): age limit for fire-fighters is justifiable.



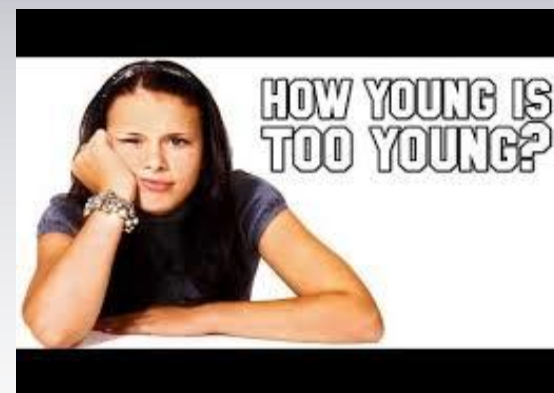
C-540/13 Schmitzer: the case



Issue at stake:

Is continuation of age
discrimination in transitional
arrangements remedying past
discrimination justifiable?

(NB: see also Hutter C-88/08 – 2009)



The Court in Schmitzer:



“Budgetary considerations cannot in themselves constitute a legitimate aim within the meaning of Art. 6(1) of the Directive.”



C-354/13 FOA: the case

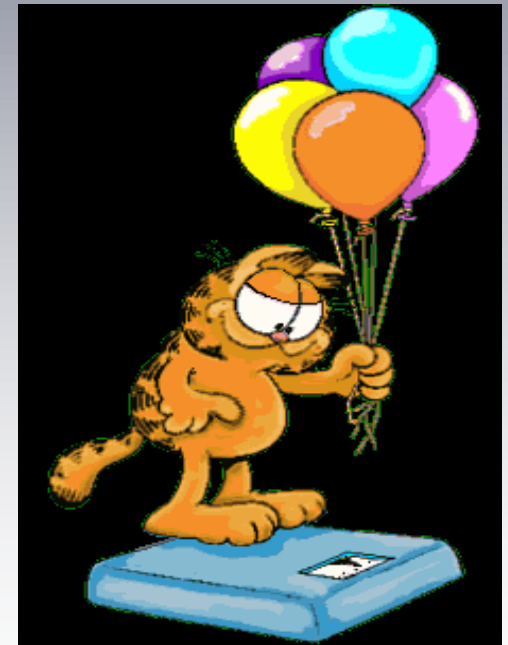
Can obesity constitute a disability?



The Court in FOA:

EU law does not lay down a general principle of non-discrimination on grounds of obesity as such.

However, under the given circumstances, obesity can fall within the concept of 'disability'.



C-83/14 CHEZ: the case

Placing electricity meters
out of reach of
consumers (only) in
Roma districts.



CHEZ: why so important?

First case on Roma
discrimination decided
on substance by the
Court under Dir.
2000/43 EC

Three important legal
issues



C-83/14 CHEZ: the main legal issues:

- 1: Is it possible for a non-Roma person to complain about this?
- 2: Is this direct or indirect discrimination?
- 3: In case of indirect discrimination: objectively justifiable?



The Court in CHEZ issue 1

Yes, someone who is not Roma herself can complain about this policy / practice.

The principle of equal treatment refers not to a particular category of persons, but to non discrimination grounds.



The Court in CHEZ: 1



Para 56: “The principle (of equal treatment) is intended to benefit also persons who, although not themselves a member of the race or ethnic group concerned, nevertheless suffer less favourable treatment or a particular disadvantage **on one of those grounds.**”

(see, by analogy, *Coleman*, C-303/06, EU:C:2008:415, paragraphs 38 and 50)

The Court in CHEZ issue 2



The electricity company's policy can constitute **direct discrimination** on the ground of race ethnicity.



The Court in CHEZ: 2



The condition for it to be direct discrimination:

If an apparently neutral practice has in fact been imposed in selected Roma areas **on account of ethnic origin**.

In this context **stereotypes** and **prejudice** may play a role. (see para 82)

The Court in CHEZ: 2



The electricity company's policy may also constitute **indirect discrimination** on the ground of race ethnicity.



The Court in CHEZ: 2



Article 2(2) (b)

“precludes a national provision according to which, in order for there to be indirect discrimination on the grounds of racial or ethnic origin, the particular disadvantage must have been brought about for reasons of racial or ethnic origin.” (para 109)

The Court in CHEZ issue 3



The objective justifications brought forward by CHEZ must be **strictly scrutinized** by the national court!



The Court in CHEZ: 3



The aim to prevent fraud can be legitimate.

The defendant cannot merely contend that such conduct and risks are ‘common knowledge’.

The disadvantages caused by the practice may not “unduly prejudices the legitimate interests of the persons inhabiting the district concerned.”

The end

Thank you for your attention.

Any questions?

