Equality men-women, discrimination based on sex: burden of proof

1996/0196(SYN) - 17/07/1996 - Legislative proposal

OBJECTIVE: The proposal for a Council directive seeks to adjust the balance of the burden of proof in favour of persons liable to suffer discrimination on the grounds of sex, in accordance with the case law of the Court of Justice. SUBSTANCE: The Commission proposes that the burden of proof be transferred to the defendant in cases where the plaintiff has established a fact or facts from which less favourable treatment amounting to apparent discrimination may be presumed to exist (cf. Royal Copenhagen judgment of 31 May 1995). The defendant must then prove that there has been no violation of the principle of equal treatment, particularly by proving that the difference of treatment is based on objectively justifiable reasons unconnected with sex (cf. Enderby judgment of 27 October 1993). Once the discrimination has prima facie been established, Member States are asked to place on the defendant the burden of providing conclusive proof that the difference of treatment was not illegal. This is done by according the defendant the benefit of the doubt concerning the exact interpretation of the facts. Since this is a directive establishing minimum requirements, the proposal authorises Member States which wish to do so to impose a complete reversal of the burden of proof. The Commission also included a definition of the principle of equal treatment, as 'the absence of any discrimination based on sex, either directly or indirectly, particularly by reference to marital or family status'. A definition is also proposed, for the first time, of the notion of indirect discrimination. Such discrimination is held to exist 'where an apparently neutral provision, criterion or practice disproportionately disadvantages the members of one sex, by reference in particular to marital or family status'. Finally, the proposal includes an information requirement, namely that measures taken pursuant to the directive must be brought to the attention or all relevant persons by all appropriate means, for example at their place of employment.