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

1996/0196(SYN) - 10/07/1997 - Council position

The Council's common position differed significantly from the Commission's proposal and took over only a few of the amendment adopted by the European Parliament at first reading. The main amendments adopted by the Council related to the following points: - the need to take account of the specific features of some of the Member States' legal systems in connection with the burden of proof: the Council provided a derogation from the principle laid down in the directive on the burden on proof because of administrative procedures linked to the legal systems in certain Member States. This derogation was aimed mainly at satisfying the British delegation, which, since the conclusion of the Treaty of Amsterdam, was able to take part in discussions on social policy with due regard for the provisions of the Social Protocol; - the definition of 'indirect discrimination': the Council's definition differed from that proposed by the Commission and therefore from that used by the Court in its judgments on equal treatment. However, the Council did refer in its definition to an 'apparently neutral criterion or practice' which affected 'a substantially higher proportion of the members of one sex'. Similarly, the Council was less precise than the Commission in its definition of the 'facts' which defined the existence of discrimination; - the reference to marital or family status: the Council deleted all references to marital status or family circumstances as a basis for discrimination; - the scope (reference to specific directives): like the European Parliament, the Council added the reference to the Directive on parental leave, but it excluded all references to Directives 79/7/EEC, 86/378/EEC and 86/613/EEC on social security. Moreover, it limited references to Directives 92/85/EEC and 96/24/EC on pregnant women and parental leave in cases of discrimination based on sex. Similarly, the Council did not agree with the Commission's suggestion seeking the inclusion of situations covered by any measures adopted in future; - the benefit of the doubt: the Council did not specify that the plaintiff would benefit from any doubt that might subsist (as specified in the original proposal); - the procedures: the Council deleted the Commission's article on information to the parties to a dispute; - reference to positive action: the Council did not include the specific reference to the measures for positive action referred to in the Commission's amended proposal; - date of implementation: the time limit suggested by the European Parliament for the implementation of the directive in Member States (1 January 2000) was not approved by the Council. It decided instead to retain the initial date suggested by the Commission (1 January 2001); - report on implementation: the Council took over the European Parliament's amendment on the drawing-up of a report on the application of the directive two years after its implementation. However, it did not deem it necessary to repeat this exercise every three years. As regards Parliament's amendments, the Council only took over those concerning parental leave and the report on implementation. Finally, the Council called for the report on implementation to also consider the question of the scope of the directive, particularly as regards the application of the principle of non-discrimination in Community social legislation.