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

1996/0196(SYN) - 10/04/1997 - Text adopted by Parliament, 1st reading/single reading

In adopting the report by Mrs Ghilardotti (PSE, I), the European Parliament approved the proposal for a Council Directive on the burden of proof in cases of discrimination based on sex. The proposal, adopted under the Social Protocol procedure (i.e. by 14 Member States) includes the following amendments: - tightening the definition of 'indirect discrimination' so that it is applied uniformly in all Member States. Thus 'indirect discrimination' exists where 'an apparently neutral provision, criterion or practice disproportionately disadvantages the members of one sex...unless the aim pursued corresponds to a real need of the undertaking or meets a necessary aim of the social policy of a Member State, in itself completely unrelated to gender' - provision on the sharing of the burden of proof: persons who consider themselves wronged by failure to apply to them the principle of equal treatment must establish facts from which direct or indirect discrimination may be presumed to exist; it shall be for the respondent to prove that there has been no contravention of the principle of equal treatment; - greater transparency of procedures: persons wishing to establish a case for the presumption of discrimination must have access to all the necessary information on which to base their case; - provision for follow-up to the directive: the Commission must inform the Council and Parliament of the progress made in the application of the directive on the basis of information provided by the Member States with effect from 1 January 2002 and thereafter every three years; - provision for the directive to be transposed into Member States' law at an earlier date (1 January 2000 instead of 1 January 2001). At the same time Parliament calls for the Directive not to prevent the maintenance or adoption of measures to protect women, particularly as regards pregnancy, maternity, childbirth and breast-feeding, or those providing for specific advantages in order to make it easier for women to pursue a vocational activity. Moreover, the directive must on no account be used to justify a failure by the Member States to take positive action.