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

1996/0196(SYN) - 15/12/1997 - Final act

OBJECTIVE: the directive aims to reverse the burden of proof in cases of discrimination based on sex, which means that where discrimination is alleged, it would be the responsibility of the employer to prove otherwise. COMMUNITY MEASURE: Council Directive 97/80/EC on the burden of proof in cases of discrimination based on sex. CONTENT: the directive aims to improve the efficiency of national measures that allow persons who consider themselves wronged by failure to apply to them the principle of equal treatment to have their rights asserted by judicial process. In applying the principles established by the courts, consideration is to be given to the specific nature of the legal systems in each of the Member States. The directive applies to both direct and indirect discrimination. For the purposes of applying the directive, indirect discrimination is deemed to have occurred 'where an apparently neutral provision, criterion or practice disproportionately disadvantages the members of one sex unless that provision, criterion or practice is appropriate or necessary and can be justified by objective factors unrelated to sex'. The directive applies in particular: 1) to situations covered by Article 119 of the Treaty establishing the European Communities and by the directives on equal pay and access to employment (Directives 75/117 /EEC and 76/207/EEC) and, insofar as discrimination based on sex is concerned, by the directives on the health and safety of pregnant workers (92/85/EEC) and parental leave (96/34/EC); 2) in the context of any civil or administrative procedure concerning the public or private sector which provides for means of redress under national law pursuant to the measures referred to in point 1. As regards the burden of proof, the directive establishes the following system: when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent (in other words, the employer) to prove that there has been no breach of the principle of equal treatment. However, provision is made for the Member States to be exempt, in some cases, from having to comply with this principle due to administrative procedures linked to their internal legal systems. Implementation of this directive shall under no circumstances be sufficient grounds for a reduction in the general level of protection of workers in the areas to which it applies. A report is to be drawn up by the Commission on the application of this directive two years after its implementation and forwarded to the European Parliament and to the Council. ENTRY INTO FORCE: The Member States must adopt the measures necessary for them to comply with this directive by 1 January 2001.