

Employment

1. When using the police radio system, a trans policewoman is questioned about her identity by other police officers on three separate occasions. On one occasion, the operator does not believe that she is who she said she is because of her 'male voice'. On all three occasions, the policewoman feels forced to come out as trans in order to prove her identity. This coming out is heard by hundreds of officers and staff on the police radio channel, which leaves her feeling very distressed. After these incidents, she starts feeling very anxious and hesitant about using the police radio for fear of further incidents. Because the radio can be a lifeline for police officers, she feels that she should not have to feel apprehensive about using it.

- Based on a real case, in which a UK court found that the incidents were not severe enough to constitute discrimination or harassment
- To be covered by employment directive the individual has to be protected on the ground of "gender reassignment", which was not defined by the ECJ

2. A cis woman, who has worked for her employer for 20 years, is in a relationship with a trans man who has had gender reassignment surgery. The two want to get married, but are unable to do so, because it is not possible to change her partners "sex" in the birth certificate from female to male, and same-sex marriage is not legal in the country. Her employer informs the woman that because she is not married to her partner, her partner is not entitled to the survivor's pension for widowers, which all married staff members' partners are entitled to.

- This is the 2004 ECJ case *K.B. v NHS Pensions Agency and Secretary of State for Health*, in which the court ruled that this was discrimination
- The discrimination stems from the individual's legal inability to fulfil the necessary preconditions for granting the pension
- To be covered by employment directive the individual has to be protected on the ground of "gender reassignment", which is the case here

Goods and services

3. At a seminar at a university, a trans man outs himself and asks to be addressed with a male pronoun. However, his wish for being addressed with a male pronoun is ignored by the professor, who also invalidates all of his contributions on gender-related subjects. Despite multiple explanations and the support of other students from the seminar, the professor continues using the wrong pronoun and making dismissive comments. At one point, the professor points at the student in front of everyone and says "this woman wants to be a man!" and laughs. As a result, the student feels very sad and angry, but he is also afraid that if he insists further on clarifying the issue that it will negatively reflect on his marks. Other students in the seminar express that they feel uncomfortable, too, and that the working atmosphere is negatively affected by the professor's behavior.

- Based on a real case, which was not taken to court however
- Key question is whether this falls under "education" (not covered by goods & services directive) or "vocational training" (which would be covered by the employment directive). This depends on definitions within the different member states.
- To be covered by employment directive the individual has to be protected on the ground of "gender reassignment", which was not defined by the ECJ

Victim's Rights

4. A trans woman has repeatedly been verbally and physically assaulted on the street. After one incident, in which her attackers also shout transphobic abuse at her, she remains physically injured and has a mental breakdown. One of her friends suggests that she reports the incident to the police to get support, but the woman doesn't want to, because she has had very negative experiences with police officers. Instead, she decides to seek help at the local victim support centre, which receives funding from the government to support victims. At the support centre, the person in charge refuses to provide the woman with any information on available services, because she isn't an EU citizen and because she hasn't reported the crime to the police.

- If government does not provide services themselves, they can fund services, which also have to respect the rights of victims as laid out in the directive
- An individual assessment should take place which takes into account whether it is a hate crime, a bias crime or a crime committed with a discriminatory motive
- Transphobic violence also falls under the definition of gender-based violence
- "Provision of support should not be dependent on victims making a complaint with regard to a criminal offence to a competent authority such as the police" (Recital 40)
- "Delayed reporting of a criminal offence due to fear of retaliation, humiliation or stigmatisation should not result in refusing acknowledgement of the victim's complaint" (Recital 25)
- "The rights set out in this directive are not made conditional on the victim's residence status in their territory or on the victim's citizenship or nationality" (Recital 10)
- "Persons who are particularly vulnerable or who find themselves in situations that expose them to a particularly high risk of harm, such as persons subjected to repeat violence in close relationships, victims of gender-based violence, or persons who fall victim to other types of crime in a Member State of which they are not nationals or residents, should be provided with specialist support and legal protection" (Recital 38)

Asylum

5. A trans woman applies for asylum in an EU country because she repeatedly been subjected to severe physical and sexual assaults in her home country, including by police officers, and because her family has threatened to kill her if she returns. Since arriving in the EU, she has started taking hormones. The officer assessing her application claims that she is just a gay man, not a trans woman, and in any case, she didn't take the hormones in her home country, so she cannot use that as evidence for her gender identity. The officer suggests that she go back to her home country and live more discreetly in a bigger city, away from her family. Her application is dismissed through an accelerated (fast) procedure.

- Procedures directive: the person qualifies for special procedural guarantees, which means that it is unlawful to dismiss it through an accelerated procedure
- Procedures directive: the person assessing the application is clearly not competent to take account of the personal and general circumstances, which they have to be according to the law
- Qualification directive: a risk of persecution arising from acts engaged in after leaving the country of origin can suffice for qualification, if consistent with "convictions or orientations" held before departure
- 2013 ECJ judgement in *X, Y, Z v Minister voor Immigratie en Asielon* sexual orientation ruled that you cannot ask applicants to return and to be discreet
- Strong evidence of persecution from state and non-state actors