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Reverse Discrimination in EC Law

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Reverse Discrimination in EC Law

Alina Tryfonidou



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For my Family

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Alina Tryfonidou
Leicester, September 2008

List of Abbreviations

All E R	All England Law Reports
AJCL	American Journal of Comparative Law
ARIEL	Austrian Review of International and European Law
CEE(s)	Charge(s) having equivalent effect to customs duties
CEPS	Centre for European Policy Studies
CJEL	Columbia Journal of European Law
CLJ	Cambridge Law Journal
CLP	Common Legal Problems
CMLR	Common Market Law Reports
CMLRev	Common Market Law Review
CYELS	Cambridge Yearbook of European Legal Studies
EBLRev	European Business Law Review
EC	European Community
ECJ	European Court of Justice
ECR	European Court Reports
ECSC	European Coal and Steel Community
EEC	European <i>Economic</i> Community
EIPA	European Institute of Public Administration
EIoP	European Integration Online Papers
EJML	European Journal of Migration and Law
ELJ	European Law Journal
ELRev	European Law Review
EPL	European Public Law
ERPL	European Review of Private Law
EU	European Union
Fordham Int'l LJ	Fordham International Law Journal
GLJ	German Law Journal

ICEL	Irish Centre for European Law
ICLQ	International and Comparative Law Quarterly
IJCLLIR	International Journal of Comparative Labour Law and Industrial Relations
IJEL	Irish Journal of European Law
ILJ	Industrial Law Journal
IR	Irish Reports
JCMS	Journal of Common Market Studies
JEPP	Journal of European Public Policy
JSSL	Journal of Social Security Law
JSWFL	Journal of Social Welfare and Family Law
KCLJ	King's College Law Journal
LIEI	Legal Issues of European Integration/Legal Issues of Economic Integration
LS	Legal Studies
MEP	Member of the European Parliament
MEQR(s)	Measure(s) having equivalent effect to quantitative restrictions
MJ	Maastricht Journal of European and Comparative Law
MLR	Modern Law Review
OJ	Official Journal of the European Communities
OJLS	Oxford Journal of Legal Studies
OUP	Oxford University Press
Riv dir Internaz	Rivista di Diritto Internazionale
SEA	Single European Act
TEU	Treaty on European Union ('Maastricht Treaty')
TFEU	Treaty on the Functioning of the European Union
YEL	Yearbook of European Law

Chapter 1

Introduction

I INTRODUCTION

This work is a study of the problem of reverse discrimination in EC law. In particular, the question that this book aims to answer is whether reverse discrimination emerging in the context of the Community's internal market policy, is still a permissible form of differential treatment in the Community.

The term 'discrimination' always has a negative connotation. Discrimination is not, merely, differential treatment. It is differential treatment of similar situations that is not justified. It is the use of the term in the context of anti-discrimination law and, in particular, that of sex and racial equality, that is mostly known amongst laymen. In the twentieth century, as a result of the action of various political and human rights movements, it became generally acknowledged that it is inherently bad to differentiate between groups of persons, if the *only* ground on which the differential treatment is based is an immutable characteristic such as sex, colour or race. It is considered to be blatantly wrong to treat a group of persons more harshly than others, just because they possess a characteristic which cannot be changed and for which they cannot be held responsible. It is only if the differentiation is grounded on some other (acceptable) criterion and merely happens to disadvantage a particular group of persons who share a certain characteristic, that is considered to be justified and thus can escape the characterization of 'discrimination'.

Certain characteristics are the 'usual suspects' for turning instances of differential treatment into discrimination; in other words, persons who carry those characteristics usually form a group which is 'expected' to be discriminated against, even though this is totally wrong. In the context of EC anti-discrimination law, apart from sex which has, since the genesis of this Community policy, been