

Definition of key concepts

Direct discrimination

Indirect discrimination

Harassment

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EU Equality Directives

What is the aim of the presentation?

- getting familiar with the basic EU laws which regulate prohibition of discrimination
- understanding of basic concepts of discrimination
- understanding the main differences between them
- learning about risky situations where discrimination may occur

EU equality legal framework

Quite short history of European legislation in the area of non-discrimination on the grounds of race, ethnicity, age, sexual orientation, religion and belief

Biggest number of European Court's verdicts on gender discrimination comparing to other discrimination grounds

Legal concepts of gender discrimination served as a pattern for broadening the scope of protection on other grounds

EU equality legal framework

European Union law

Art. 10 TFUE
combating discrimination with regard to i.a. race and ethnic origin and sexual orientation in all actions and policies of the EU (equality mainstreaming)

Art. 19 TFUE (former Art. 13 of Amsterdam Treaty)

Mandate for the European Council (in cooperation with the EP) to legislate on the ban of discrimination)

EU equality legal framework

Directive 2000/43/EC „Racial Directive“

Personal scope - race and ethnicity.

No definitions of grounds.

Preamble „(6) The European Union rejects theories which attempt to determine the existence of separate human races. The use of the term "racial origin" in this Directive does not imply an acceptance of such theories“.

Material scope: broad, most of the areas of life
Institutional protection (equality body or bodies)

EU equality legal framework

Directive 2000/78/EC „Equality Employment Directive“

Personal scope - sexual orientation (+ religion or belief, disability, age)

Material scope: employment and occupation only

Lack of institutional protection

Direct discrimination

Art. 2 point 2 (a) 2000/78/EC

„direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1;“

- What is „less favourably“? (material scope of the Directives)
- What is „ground of ...“? (personal scope)
- What is „is, has been, would be treated“?
- What is „comparable situation“

Direct discrimination

less favorable treatment

- access to employment, vocational training and promotion and working conditions, including dismissals, as well as pay
- membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations;
- maternity/pregnancy - Polish case (breast feeding)

Direct discrimination

ground of ...

- „ground of ...“ is not always a concrete person's characteristic. stereotypes, biases, prejudices - Polish cases (labour court oficcer, dismissed father - paternity). Feryn case, Coman case.

The ground needs to be a reason (not always a main reason, but it has to be involved)

Direct discrimination

„is, has been, would be treated“
Comparator

- Currently employed
- Employed in the past (Polish case of Roma woman)
- Hypothetical comparator (biggest challenge and confusion). „What if“, „why she/he was trated this way“

Direct discrimination

no justification for direct discrimination

except genuine occupational requirement

Indirect discrimination

Art. 2 point 2 (b) 2000/78/EC

„indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary“

Indirect discrimination

- apparently neutral provision, criterion or practice
- particular disadvantage compared with persons (worse treatment)

Indirect discrimination

Indirect discrimination / justification

„the test of three questions“

- legitimate aim
- means of achieving that aim are appropriate and necessary
- proportionality between the burden of discrimination and the discriminator's interest

In case at least one of above-mentioned questions are answered negatively - indirect discrimination

Polish case of additional automatic benefits for workers

Harassment

„Harassment shall be deemed to be a form of discrimination within the meaning of paragraph 1, when unwanted conduct related to any of the grounds referred to in Article 1 takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. “

Harassment

- no need to prove the intention
- examination of purpose or effect only (from the perspective of individual person)
- no need for comparator

Key concepts of discrimination

Thank you for your attention!

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