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# Definition of Key Concepts in EU Anti-Discrimination Law

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## Key Concepts

1. Direct Discrimination
2. Indirect Discrimination
3. Harassment

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## 1. Direct Discrimination: the Concept.

- **prejudice, stereotyping.**
- **overt and covert.**



Image Source: <https://www.coe.int/en/web/compass/discrimination-and-intolerance>

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## Direct Discrimination: Legislative Definition

**‘where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin’.**

**Art 2(2)(a), Directive 2000/43 + similar texts in Directive 2000/78, Art 2(2)(a); Directive 2006/54, Art 2(1)(a); Directive 2004/113, Art 2(a); Directive 2010/41, Art 3(a); Directive 2023/970, Art 3(1)(i).**

- ✓ **Less favourable treatment than a person of different characteristics [eg ethnic origin, religion, etc] in a comparable situation.**
- ✓ **On grounds of that characteristic.**

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# What is a comparable situation?

Married Partners	Legally-Recognised Partners
Opposite Sex	Same Sex

Case C-267/12 *Hay* ECLI:EU:C:2013:823.

CJEU: ‘it is required not that the situations be identical, but only that they be comparable’.

‘the assessment of that comparability must be carried out not in a global and abstract manner, but in a specific and concrete manner in the light of the benefit concerned’ ( § 33).

His status was comparable to marriage as regards pay or working conditions.



Source:  
<https://www.freeimages.com/photo/rainbow-gay-pride-flag-1192851>



Source:  
<https://www.freeimages.com/photo/weddingrings-3-1482254>

# Is the treatment on grounds of the characteristic?

Case C-54/07 *Firma Feryn* [2008] ECR I-5187.



Director of a company that installed doors stated that he did not recruit ‘immigrants’ because of objections by customers.



CJEU: there was less favourable treatment on grounds of ethnic origin.



Establishing direct discrimination does not require evidence of prejudice on the part of the respondent.


Less favourable treatment than a person in a comparable situation

+

On grounds of a protected characteristic

=

Direct discrimination



BUT there may be legislative exceptions!

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Direct discrimination is not open to justification unless there is an exception in the legislation.

Genuine occupational requirement

Public security, public order, prevention of crime, protection of health, protection of the rights of others

⚠ Differences of treatment on the ground of age

Religious ethos requirements

Disability / age and the armed forces

Positive action

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**Cases C-159/10 & C-160/10 *Fuchs & Köhler* [2011] ECR I-6919.**



**Prosecutors required to retire at 65.**

**Direct discrimination on grounds of age, but could this be permitted under Art 6(1), Directive 2000/78?**

**Legitimate aims:**

- Promoting access to a profession for young people.
- Having a mix of generations amongst employees.
- Preventing disputes over fitness to work.

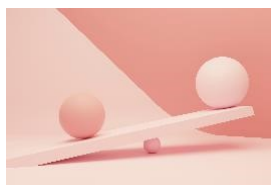
**Considerable discretion left to national authorities in relation to permitting mandatory retirement.**

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## **2. Indirect Discrimination: the Concept.**

- **Measures that treat people in the same manner, but which have discriminatory effects.**



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## Legislative Definition

‘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:

(i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary’.

Directive 2000/78, Art 2(2)(b). See also, Directive 2000/43, Art 2(2)(b); Directive 2006/54, Art 2(1)(b); Directive 2004/113, Art 2(b); Directive 2010/41, Art 3(b); Directive 2023/970, Art 3(1)(j).

⇒ is there particular disadvantage?

⇒ is it objectively justified?

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## Example: Disability & Indirect Discrimination

Cases C-335/11 & 337/11 *Ring and Skouboe Werge* ECLI:EU:C:2013:222

- Danish legislation permitted dismissal with 1 month of notice after 120 days of paid sick leave in any 12 month period.
- CJEU: disabled workers have a greater risk of experiencing sick leave.
- ‘it is thus apparent that the 120-day rule ... is liable to place disabled workers at a disadvantage’ (para. 76).
- The law pursued the legitimate aim of promoting labour market flexibility, but was there sufficient consideration of the impact on people with disabilities?



Source:  
<https://www.freemages.com/photo/flip-calendar-1-1149834>

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## Example: Ethnic Origin & Indirect Discrimination



Case C-83/14 *CHEZ* ECLI:EU:C:2015:480.

- Electricity meters were placed at a height of 6m in a district mainly inhabited by persons of Roma origin.
- CJEU: ‘particular disadvantage’ means ‘it is particularly persons of a given ethnic origin who are at a disadvantage because of the measure at issue.’ (§100).
- The measure is not justified if: (1) less restrictive means enabling those aims to be achieved exist.
- OR (2) that practice prejudices excessively the legitimate interest of residents in having access to the supply of electricity in conditions which are not of an offensive or stigmatising nature (§128).

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## 3. Legislative Definition: Harassment

‘where unwanted conduct related to racial or ethnic origin 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’

Directive 2000/43, Art 2(3).

See also: Directive 2000/78, Art 2(3); Directive 2006/54, Art 2(c); Directive 2004/113, Art 2(c); Directive 2010/41, Art 3(c); Directive 2023/970, Art 3(1)(j).

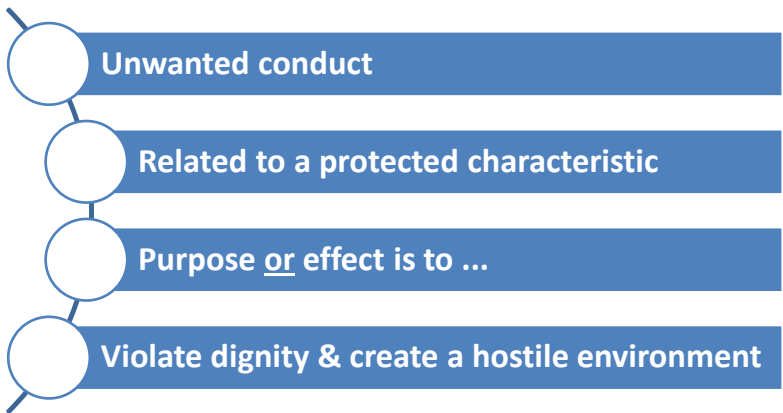
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# Definition of harassment

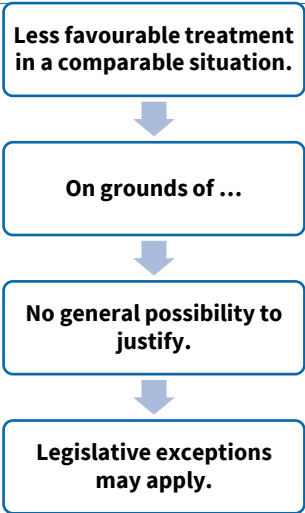


Source: <https://pixabay.com/vectors/harassment-workplace-abuse-incident-4499303/>

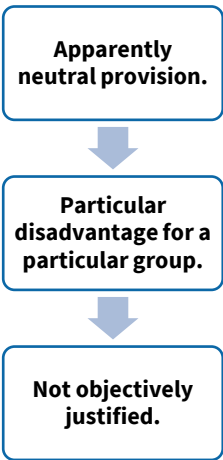


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## Direct Discrimination



## Indirect Discrimination



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**Thank you. Questions?**