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Disability and discrimination

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Legislation

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- UN Convention on the Rights of Persons with Disabilities
- Treaty on Functioning of European Union
- Constitution of the Republic of Latvia, Article 91
- Labour Law, Sections 7, 9, 29, 32, 33, 34, 109, etc.
- Administrative Procedure Law, Section 6
- Law on Child Protection, Section 3
- Criminal Procedure Law, Section 8
- etc.



UN Convention on the Rights of Persons with Disabilities

- Equality and prohibition of discrimination is stipulated by both Article 3 as principles and Article 5 as rights.
- These are also tools of interpreting regards all other principles and rights provided by the Convention. Principles like equality and non-discrimination serve as the corner stone of the international protection guaranteed by the Convention. Promotion of equality and prevention of discrimination are cross-cutting obligations to be implemented with immediate effect.
- Article 5 of the Convention provides for autonomous rights irrespective of other provisions. It prohibits *de iure* or *de facto* discrimination in any area regulated and protected by state authorities.

EU legislation

- EU Charter of Fundamental Rights, Article 21: Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, **disability**, age or sexual orientation shall be prohibited.
- Treaty on the Functioning of the European Union, Article 19 Without prejudice to the other provisions of the Treaties and within the limits of the powers conferred by them upon the Union, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, **disability**, age or sexual orientation.
- EU Council Directive 2000/78/EC, Article 1: The purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, **disability**, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.



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Latvian legislation

- Article 91 of Satversme [Constitution]: All human beings in Latvia shall be equal before the law and the courts. Human rights shall be realised without discrimination of any kind.
- Section 7 of the Labour Law: The rights provided for in Paragraph One of this Section shall be ensured without any direct or indirect discrimination - irrespective of a person's race, skin colour, gender, age, disability, religious, political or other conviction, ethnic or social origin, property or marital status, sexual orientation or other circumstances.
- Law on the Prohibition of Discrimination of Natural Persons - Performers of Economic Activity, Section 2 Differential treatment in relation to the performer of economic activity due to person's gender, age, religious, political or other conviction, sexual orientation, disability, race, or ethnic origin in relation to his or her access to economic activity is prohibited.



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Disability definition, scope Manifestations of discrimination.



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Disability (definition, scope)

- Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others (*UN Convention on the Rights of Persons with Disabilities, Article 1*).
- The concept of 'disability' must be understood as referring to a limitation which results in particular from physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers (*Judgment of the European Union Court of Justice of 11 April 2012 in merged cases C-335/11 and C-337/11 HK Denmark, Paragraph 38*).
- For the purpose of law prohibition of discrimination, the meaning of the concept "disability" is much broader than the one usually assigned to this concept by the national law aimed at social protection of people with disabilities.

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Types of discrimination

- **Direct discrimination** – refusal to employ somebody due to disability.
- **Indirect discrimination** – access to a building in a wheelchair is not provided or decisions regarding a person with disability are adopted without consulting him/ her.
- **Discrimination due to association** – less favourable attitude to a person who is not disabled, if the cause of the less favourable attitude is the fact that this person takes care of a person with disability(*EJC Judgment of 17 July 2008 in case C-303/06 Coleman*).
- **Multiple discrimination** – applicability of several characteristics of discrimination to a single individual jointly causing much more unfavourable effect than if the individual possesses only one of the discrimination characteristics.

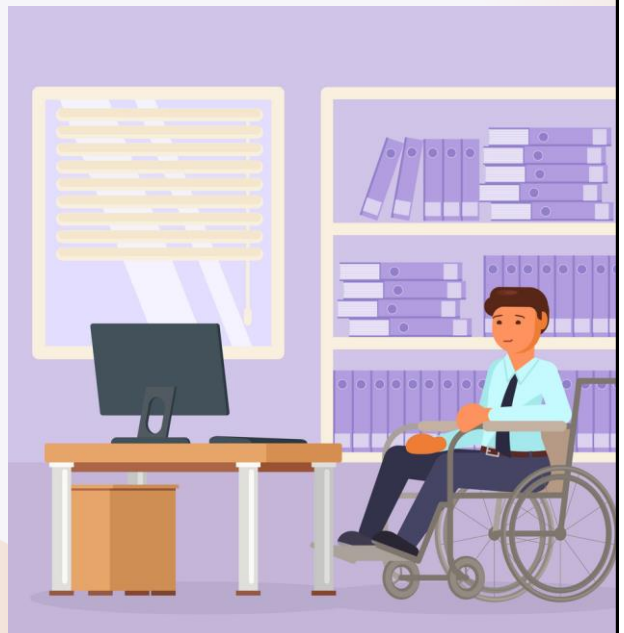
Manifestations of discrimination

Rīgas pašvaldības uzņēmums “Rīgas nami” galīgajā instancē zaudējis tiesu Elgai Klēģerei. Tiesa likusi izmaksāt 1000 eiro morālā kaitējuma kompensāciju par diskrimināciju invaliditātes dēļ, kā arī nodrošināt Klēģeri ar darbu. Uzņēmums “Rīgas nami” pārskaitījis kompensāciju, taču tiesas noliktajā termiņā Elgu Klēģeri ar darbu nav nodrošinājis.



Case law

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ECJ case law - *Judgment in case C-303/06 Coleman (2008)*

- Ms Coleman worked for her former employer as a legal secretary. She gave birth to a son who suffers from apnoeic attacks and congenital laryngomalacia and bronchomalacia. Her son's condition requires specialised and particular care. The claimant in the main proceedings is his primary carer.
- Ms Coleman accepted voluntary redundancy, which brought her contract of employment with her former employer to an end. She lodged a claim with the court, alleging that she had been subject to indirect dismissal and had been treated less favourably than other employees because she was the primary carer of a disabled child. She claims that that treatment caused her to stop working for her former employer.
- Directive 2000/78 must be interpreted as meaning that the prohibition of harassment laid down by those provisions is not limited only to people who are themselves disabled. **Where it is established that the unwanted conduct amounting to harassment which is suffered by an employee who is not himself disabled is related to the disability of his child, whose care is provided primarily by that employee, such conduct is contrary to the prohibition of harassment.**

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ECJ case law – FOA (2014)

- K. Kaltoft was working as a childminder. He was “obese” within the meaning of the definition of the World Health Organization (WHO).
- Due to staff reduction, K. Kaltoft was selected to be the employee to be dismissed. The fact obesity was mentioned during the discussion. However, they are in disagreement over how K. Kaltoft’s obesity was mentioned during the meeting and on the extent to which it had been a factor in the decision-making process leading to his dismissal.
- Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as meaning that **the obesity of a worker constitutes a “disability” within the meaning of that directive where it entails a limitation resulting in particular from long-term physical, mental or psychological impairments which in interaction with various barriers may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers. It is for the national court to determine whether, in the main proceedings, those conditions are met.**

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ECJ judgement *Tartu Vangla* (2021)

- Case C-795/19 refers to a prison employee with hearing impairment who was dismissed on the ground that “his level of auditory acuity did not meet the minimum standards of sound perception” prescribed by Estonian regulation.
- The court in its judgment stated that **this absolute provision without allowing it to be ascertained whether employees are capable of fulfilling their duties, where appropriate after the adoption of reasonable accommodation measures was discrimination on the grounds of disability, which is contrary to the EU law**, in particular Directive 2000/78 on equal treatment in employment.

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Case law of the Constitutional Court of Latvia

- Matters regarding social insurance are covered by the scope of Article 109 of Satversme. Therefore, the Constitutional Court evaluated compliance of the disputed provision with Article 91 of Satversme in conjunction with Article 109.

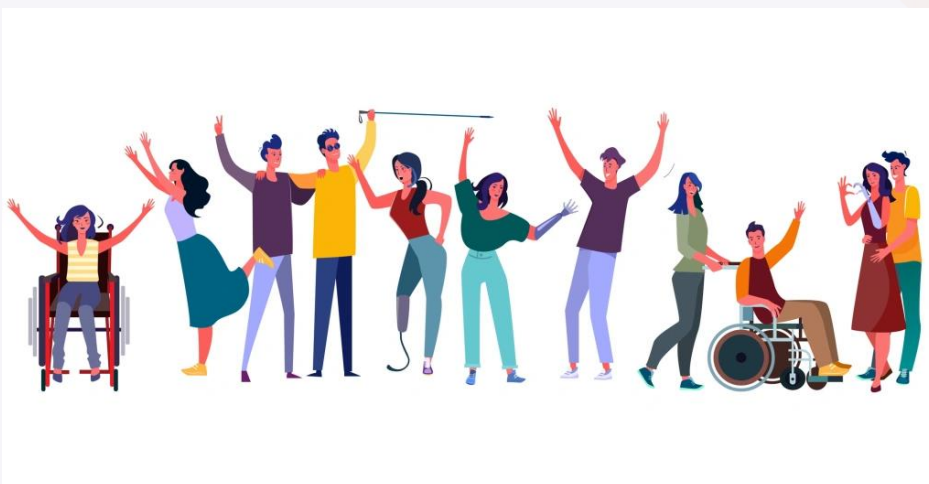
Applied methodology of examination of disputed provisions for compliance with Satversme:

- whether persons belong to comparable groups of persons;
- whether the treatment provided by the disputed provision is different;
- whether the different treatment provided by the disputed provision is justifiable;
- Whether the different treatment complies with the objective of the specific measure (in particular cases, for example, social insurance).

Judgment of the Constitutional Court of 10 July 2020 in case No. 2019-36-01.



Future perspective



European Accessibility Directive (Directive 2019/882)

Until **28 June 2022** all the Member States of the European Union must transpose the requirements of the Directive in their national legislation. Product manufacturers and service providers will start applying the Directive as from **28 June 2025** (with some exemptions).

On the internal market of the European Union it will only be allowed to distribute and provide accessible products and services (i.e., usable with more than one sensor channel):

- universal computers (*computers, tablets, smartphones*) and their operating systems;
- self-service terminals (*ATM, ticketing machines, waiting list number machines, etc.*);
- e-books and their e-readers;
- banking services; e-commerce (including online shopping);
- etc.



Thank you !



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