

GALVENO JĒDZIENU DEFINĪCIJAS

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KOPĪGAIS

1. **Jēdzieni** (diskriminācija, netiešā diskriminācija, uzmākšanās, u.c.)
2. Horizontālās normas (pierādīšanas slogs, tiesiskās aizsardzības līdzekļi, piespiedu izpilde, pieejamība)
3. Saistība ar ES Pamattiesību hartu - vispārīga diskriminācijas aizlieguma princips

ATŠĶIRĪGAIS

1. Atšķirīga piemērošanas joma
2. Dažādi pieļautie izņēmumi (piemēram, attiecībā uz diskriminācijas aizlieguma jēdzienu)

PIEMĒROŠANAS JOMA

	Darba attiecības		Pensijas		Sociālie aspekti "aizsardzība"	Izgl.	Komercdarbība	
	Samaksa	Cits	valsts	Izdien.			Piekļuve	Preces/ Pakalpojumi
Dzimums								
2006/54	V	V		V				
79/7			V					V
2010/41								
2003/114	V							
LESD 157. panta III daļa								V
Rase, etniskā izcelsme								
2000/43	V	V			V	V		V
Vecums								
Invaliditāte								
Reliģija, ticības	V	V						
Seks. orientācija								
2000/78								

Dzimums	Rase, etniskā izcelsme	Vecums, invaliditāte, reliģija, seksuālā orientācija
DIRECTIVE 2006/54/EC	DIRECTIVE 2000/43/EC	DIRECTIVE 2000/78/EC
Article 1	Article 3	Article 3
Purpose	Scope	Scope
<p>The purpose of this Directive is to ensure the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.</p> <p>To that end, it contains provisions to implement the principle of equal treatment in relation to:</p> <ul style="list-style-type: none"> (a) access to employment, including promotion, and to vocational training; (b) working conditions, including pay; (c) occupational social security schemes. 	<p>1. Within the limits of the powers conferred upon the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:</p> <ul style="list-style-type: none"> (a) conditions for access to employment, to self-employment and to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion; (b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience; (c) employment and working conditions, including dismissals and pay; (d) 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; (e) social protection, including social security and healthcare; (f) social advantages; (g) education; (h) access to and supply of goods and services which are available to the public, including housing. 	<p>1. Within the limits of the areas of competence conferred on the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:</p> <ul style="list-style-type: none"> (a) conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion; (b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience; (c) employment and working conditions, including dismissals and pay; (d) 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.
DIRECTIVE 2004/113/EC		
Article 3		
Scope		
<p>1. Within the limits of the powers conferred upon the Community, this Directive shall apply to all persons who provide goods and services, which are available to the public irrespective of the person concerned as regards both the public and private sectors, including public bodies, and which are offered outside the area of private and family life and the transactions carried out in this context.</p> <p>3. This Directive shall not apply to the content of media and advertising nor to education.</p>		
	<ul style="list-style-type: none"> Patērētāju/privātās tiesības Sociālā aizsardzība/sociālie pakalpojumi/izgl. 	<ul style="list-style-type: none"> Izdienas pensijas Nodarbinātība (largo sensu) Pašnodarbinātība

KAS IR AIZLIEGTS UN KĀ?

DIRECTIVE 2006/54/EC

Article 4

Prohibition of discrimination

For the same work or for work to which equal value is attributed, direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration shall be eliminated.

Article 14

Prohibition of discrimination

1. There shall be no direct or indirect discrimination on grounds of sex in the public or private sectors, including public bodies, in relation to:

- (a) conditions for access to employment, to self-employment

Article 157

(ex Article 141 TEC)

1. Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.

Equal pay without discrimination based on sex means:

- (a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement;
- (b) that pay for work at time rates shall be the same for the same job.

DIRECTIVE 2000/43/EC

Article 2

Concept of discrimination

1. For the purposes of this Directive, the principle of equal treatment shall mean that there shall be no direct or indirect discrimination based on racial or ethnic origin.

DIRECTIVE 2000/78/EC

Article 2

Concept of discrimination

1. For the purposes of this Directive, the 'principle of equal treatment' shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1.

DISKRIMINĀCIJA

Article 2

Definitions

2. For the purposes of this Directive, discrimination includes:

- (a) harassment and sexual harassment, as well as any less favourable treatment based on a person's rejection of or submission to such conduct;
- (b) instruction to discriminate against persons on grounds of sex;
- (c) any less favourable treatment of a woman related to pregnancy or maternity leave within the meaning of Directive 92/85/EEC.

Formas:

1. Tiešā diskriminācija
2. Netiešā diskriminācija

Juridiskās fikcijas:

3. Uzmākšanās kā *diskriminācija*
4. Seksuāla uzmākšanās kā *diskriminācija*
5. Norādījums diskriminēt kā *diskriminācija*

Article 20

ES Pamattiesību harta

Equality before the law

Everyone is equal before the law.

Article 21

Non-discrimination

1. 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.

Article 23

Equality between men and women

Equality between men and women must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

EST, C-144/04, Mangold

EST, C-555/07, Küçükdeveci

EST, C-414/16, Egenberger:

⁷⁶ The prohibition of all discrimination on grounds of religion or belief is mandatory as a general principle of EU law. That prohibition, which is laid down in Article 21(1) of the Charter, is sufficient in itself to confer on individuals a right which they may rely on as such in disputes between them in a field covered by EU law (see, with respect to the principle of non-discrimination on grounds of age, judgment of 15 January 2014, *Association de médiation sociale*, C-176/12, EU:C:2014:2, paragraph 47).

⁷⁹ Consequently, in the situation mentioned in paragraph 75 above, the national court would be required to ensure within its jurisdiction the judicial protection for individuals flowing from Articles 21 and 47 of the Charter, and to guarantee the full effectiveness of those articles by disapplying if need be any contrary provision of national law.

TIEŠĀ DISKRIMINĀCIJA

1. For the purposes of this Directive, the following definitions shall apply:

(a) 'direct discrimination': where one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation;

(a) 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 grounds of racial or ethnic origin;

1. Interpretācija:

1. persona "*ir*"
2. "*ir bijusi*" vai
3. "*būtu*"

EST, C-54/07, Feryn

2. Mazāk labvēlīgs

EST, C-303/06, Coleman

3. Pamatojoties uz ... (dzimums, vecums, rase, u.c.)

EST, C-356/09, Kleist

4. Salīdzināma persona/ salīdzināma situācija

IZŅĒMUMI

<u>Gender / sex</u>	<u>Race, ethnic origin</u>	<u>Age, disability, religion, sexual orientation</u>
DIRECTIVE 2006/54/EC	DIRECTIVE 2000/43/EC	DIRECTIVE 2000/78/EC
- Darba raksturs (14. (2) pants) EST C-285/98, Kreil	- Darba raksturs (4. pants)	- Darba raksturs (4. pants)
- Pozitīva rīcība (3. pants)	- Pozitīva rīcība (5. pants)	- Pozitīva rīcība (7. pants)
- Grūtniecības aizsardzība (28. pants) EST, 184/83, Hofmann		- Saprātīga pieņemšana (invaliditāte) (5. pants)
		- Legitīms mērķis (vecums)(6. pants)

NETIEŠĀ DISKRIMINĀCIJA

(b) 'indirect discrimination': where an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary;

EST, 170/84, Bilka

1. Neitrāla norma

2. "ir, ir bijis, **nostādītu**"

3. personas (dsk.) grupā /uz pamatiem

EST, C-167/97 Seymour-Smith

4. īpaši neizdevīgs stāvoklis ~~Mazāk labvēlīgs stāvoklis~~

EST, C-249/97, Gruber

5. salīdzināma persona/ salīdzināma situācija

6. pamatojums iespējams !

PAMATOJUMS

Izņemot, ja:

“normu, kritēriju vai praksi objektīvi pamato:

1. leģitīms mērķis
2. piemēroti līdzekļi
3. nepieciešamība” (proporcionalitātes tests)

Neitrāli dzimuma, vecuma grupas, etniskās minoritātes apzīmētāji:

- augstums, bērnu aprūpe, vecāku atvaļinājums, kalpošanas laiks, fiziskais stāvoklis,
- darba modelis (nepilna laika darbinieki)..

UZMĀKŠANĀS

(c) ‘harassment’: where unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment;

1. negribēta rīcība
2. saistīta ar ... (dzimumu, vecumu, invaliditāti, rasi...)
3. kuras nolūks vai ietekme

- cieņas pārkāpums

un

- biedējošas, naidīgas, pazemojošas, aizskarošas vai aizvainojošas vides izveidošana

SEKSUĀLA UZMĀKŠANĀS

'sexual harassment': where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment;

1. negribēta **verbāla, neverbāla vai fiziska** rīcība
2. **seksuāla** rakstura
3. kuras nolūks vai ietekme
4. cieņas pārkāpums
- **konkrēti**, radot biedējošu, naidīgu, pazemojošu vai aizvainojošu vidi

JĒDZIENU PIELIETOŠANA

LESD 157. panta 1. punkts

Dzimums/
samaksa
Tieša vertikāla un
horizontāla
ietekme

Vienlīdzības direktīvas

Transponēšanas tiesību akti

Situācijas ar tiešu ietekmi

- pašizpilde
-"Publisks" darba devējs

ES Harta - ES tiesību vispārīgs princips