

Definition of key concepts Direct discrimination Indirect discrimination Harassment and sexual harassment

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EU Gender Equality Directives

What is the aim of the presentation?

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

EU gender equality legal framework

Long history of European legislation in the area of gender equality

First decades of legislation devoted to equal pay and employment issues

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 gender equality legal framework

Primary law

- Initially, in the integration process (starting from 50's) the issue of equality between women and men was placed mainly in the field of employment and occupation. The issue of gender equality was regulated as a tool for mainly economic reasons (Member States wanted to eliminate distortions in competition that could have arisen from cheaper female labour in different Member States).
- Not a clear human rights perspective as it is perceived today.
- In the last 60 years gender equality became one of the fundamental principles of the UE law (thanks to the very dynamic interpretation by the CJEU)

EU gender equality legal framework

- The Directive on equal treatment of men and women in statutory schemes of social security (79/7)
- the Pregnant Workers' Directive (92/85)
- the Directive on equal treatment of men and women in the access to and the supply of goods and services (2004/113)
- the Recast Directive (2006/54) which has modernized and simplified existing provisions and which, with effect from 15 August 2009 onwards, has repealed a number of older directives

Direct discrimination

Art. 2 006/54/EC

„(...) where one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation.“

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

Direct discrimination

less favorable treatment

- occupational social security schemes,
- 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 sex

- women
- men
- trans persons (sex reassignment) - dynamic interpretation of gender equality by CJEU
- „ground of sex“ is not always a concrete person's sex stereotypes, biases, prejudices - Polish cases (labour court officer, 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 treated this way“

Direct discrimination

no justification for direct discrimination

except genuine occupational requirement

Indirect discrimination

2006/54/EC, Art. 2

„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"

Indirect discrimination

- apparently neutral provision, criterion or practice
- particular disadvantage compared with persons of the other sex (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

„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“

Harassment

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

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“

Polish case on sexual harassment - high standards of protection

sexual harassment

- Examples of unlawful behaviour (quid pro quo, intimidating working environment)
- Polish case on sexual harassment - high standards of protection

Key concepts of discrimination exceptions

Thank you for your attention!

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In my presentation I have included materials of François Moysse's paper on burden of proof

