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EU Gender Equality Law Definition of key concepts

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Direct discrimination: definition

Directive 2006/54/EC, art. 2(1)(a)

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

Direct discrimination: elements (I)

- Less favourable
 - >> not just interference with rights
 - >> any disadvantage
 - >> it's facts/results that count, not motives
 - >> comparator needed
 - >> includes instructing others to treat less favourable

- On grounds of sex
 - >> men/women
 - >> including pregnancy/maternity
 - >> gender reassignment (transgenders)

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Direct discrimination: elements (II)

- Is / has been / would
 - >> comparison can be made with current / past / future comparator

- Comparable situation
 - >> comparability of the situation needs to be established by facts (f.i. job description, number of tasks etc.)
 - >> sometimes the rule or practice clearly indicates the discrimination itself

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Justification of direct discrimination

- Direct discrimination more strictly regulated than indirect discrimination
- Only justified on the basis of one of the limited grounds or exceptions contained in the EU Treaties or Directives
 - >> only relevant one in case of sex discrimination = ‘genuine and determining occupational requirement’ (GDOR) exception
- No ‘open ended’ objective justification possible

Indirect discrimination: definition

Directive 2006/54/EC, art. 2(1)(b)

“... 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: elements

- apparently neutral
 - >> identical for both sexes
- provision, criterion or practice (PCP)

- particular disadvantage
 - >> any detriment for group of certain sex
 - >> more heavily negatively affected
 - >> proof of disadvantage: no requirement of presenting statistics, but such data may help to establish that a members of one sex are negatively affected more by PCP than members of other sex

Objective justification test

- Legitimate aim
 - >> PCP needs to pursue a legally permitted objective, not inherently discriminatory

- Appropriate and necessary means to achieve that aim
 - >> Appropriate: able to achieve the objective
 - >> Necessary
 - Proportionality: the measures utilised are proportionate to the achievement of the objective
 - Subsidiarity: can the objective be achieved with less differentiating means?

Harassment: definition

Directive 2006/54/EC, art. 2(1)(c)

“ ... 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”

- Concept of harassment may be defined in accordance with national laws/practice of Member States
- Indirect (by proxy) harassment possible

Sexual harassment: definition

Directive 2006/54/EC, art. 2(1)(d)

“... 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”

Prohibition of victimization

Directive 2006/54/EC, art. 24

- National legal system needs to protect employees against dismissal or other adverse treatment by the employer as a reaction to a discrimination complaint or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment

Enforcement: sanctions / penalties

Directive 2006/54/EC, art. 25

Sanctions/penalties

- may comprise the payment of compensation to the victim
- must be effective, proportionate and dissuasive