

European anti-discrimination law in a nutshell

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1. Developing anti-discrimination law across the European Union

- Two anti-discrimination Directives were adopted in 2000 laying down minimum common standards in EU Member States' laws in the field of discrimination on the grounds of racial or ethnic origin, religion or belief, disability, age and sexual orientation.
- These pieces of European legislation are (being) incorporated in the national laws of all EU Member States.
- European legislation against gender discrimination is developed along the same lines.

2. Protection of all persons against identified forms of discrimination

- *Direct discrimination*, i.e. where a person is treated less favourably than another is, has been or would be treated in a comparable situation on one of the grounds of discrimination listed.
- *Indirect discrimination*, i.e. where a provision, criterion or practice that *appears* to be neutral and non-discriminatory would in fact disadvantage persons of a particular racial or ethnic origin, religion or belief, disability, age or sexual orientation, compared to other persons, unless it is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.
- *Harassment*, i.e. where unwanted conduct related to any of the listed discrimination grounds 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.
- *Instruction to discriminate*, i.e. instructing another person to discriminate amounts to discrimination.
- Anyone who suffers discrimination because the person discriminating against them thinks or *assumes* they are of a certain race, religion etc. is also protected, even if that is not the case. Similarly, someone who is discriminated against because they associate with a person of a certain race, religion, sexual orientation etc. is also protected.

3. Areas of life in which discrimination is illegal

- Conditions of access to employment, self-employment or an occupation, including selection criteria and recruitment; access to all types of vocational training and guidance, including practical work experience; employment and working conditions, including dismissals and pay; and the membership or involvement in workers' organisations, employers' organisations and professional organisations.
- Governments are under an obligation to abolish any discriminatory laws or other provisions, and to ensure that any discriminatory provisions in contracts or collective agreements or internal rules of organisations are rendered ineffective.

4. Exceptions to the principle of equal treatment

- The law makes exceptions to the non-discrimination guarantee. Positive action measures – which inherently treat some groups more favourably than others - are allowed to be taken in order to prevent or compensate for disadvantages linked to one of the listed discrimination grounds.

5. Enforcement

- Breaches of anti-discrimination laws must be met with effective, proportionate and dissuasive sanctions.
- Member States may impose criminal sanctions for certain forms of discrimination, especially fines and imprisonment. Otherwise civil, labour and administrative law sanctions, especially compensation, may be applied. Financial compensation may include compensation for past and future loss.
- Because instances of discrimination are by their nature difficult to prove, the law requires that in discrimination cases, the level of proof needed from the alleged victim is less than would normally be required: once the claimant has established facts from which it may be *presumed* the discrimination took place, the '*burden of proof*' shifts to the respondent who must bring evidence that disproves the alleged discrimination. This rule applies in civil and administrative courts and procedures. However, it does not affect criminal procedures, where the traditionally higher standards of proof still apply, or investigative procedures.
- In bringing their case to court, victims can be supported by organisations that have a legitimate interest in enforcing the principle of equal treatment, for example interests groups and NGOs working in the field of discrimination. Usually victims have to give their consent to such support.
- The law requires a body for the promotion of racial and ethnic equality. The competence of such bodies must include providing independent assistance to victims of discrimination in pursuing their complaints about discrimination, conducting independent surveys concerning discrimination and publishing independent reports and recommendations on any issue relating to such discrimination. Many equality bodies also have the mandate to promote equality on other grounds, despite the fact this is not required by EU law.