



EQUAL TREATMENT ACT

HANDBOOK



ESTONIAN HUMAN
RIGHTS CENTRE

EQUAL TREATMENT ACT

Handbook

Third updated version

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The authors of the first two versions: Merle Albrant, Marianne Meior, Ülle-Marike Papp

The authors of the third version: Marianne Meior, Kelly Grossthal

Language editor: Grete Anton

Design and layout by: ...

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Preface

The publication you are currently reading is the third updated version of “The Handbook on the Equal Treatment Act”. The first version was published in 2010, being the first such handbook on the Equal Treatment Act. There have been a number of changes over the last twelve years that are worth reporting on. The case law in the field has also developed significantly, and both the work of the Equal Treatment Commissioner and the Labour Dispute Committee have contributed to the progress in this field. Organisations on the civil society side of things that have kept an eye on the equal treatment topics and drawn attention to the shortcomings are the Estonian Human Rights Centre in cooperation with the Equal Treatment Network which, in addition to the Centre includes the Estonian LGBT Association, the Estonian National Youth Council, the Estonian Chamber of Disabled People, the Estonian Vegan Society, the Estonian Union for Child Welfare, NGO Oma Tuba, Federation of Estonian Student Unions, the Estonian Refugee Council, the Estonian Women’s Support and Information Centre and the URALIC Centre.

The aim of the handbook has not changed – to provide a primary overview of the topic of equal treatment and non-discrimination of persons and related laws in Estonia. Even though these concepts were introduced into the Estonian legal system in 1992 by the Constitution of the Republic of Estonia, the first special law prohibiting discrimination did not come about until 2004, when the Gender Equality Act entered into force. The Equal Treatment Act was also passed in 2008, extending the prohibition of discrimination to other grounds: nationality (ethnicity), race, colour, religion or belief, age, disability and sexual orientation.

At the same time, for more than ten years the NGOs, various institutions and international organisations have been drawing attention to the hierarchy of protection of rights contained in the Equal Treatment Act, but so far, despite several plans to do so, the law has not been amended. In particular, the current Equal Treatment Act does not comply with the general principle of equality laid down in paragraph 12 of the Constitution, since its scope of application is not uniform to all minorities. Discrimination on the grounds of religion or belief, age, disability or sexual orientation is prohibited only in matters related to employment and obtaining vocational training. The prohibition of discrimination on the grounds of nationality (ethnicity), race or colour is more extensive, and unequal treatment is also prohibited in the areas of social welfare, health and social security services and benefits, education and access to goods and services provided to the public (including housing). We hope that at one point this distinction at the level of the law will disappear and that the authors will have a reason to update the handbook again.

The publication is intended for a broad readership who, for one reason or another, have contact with the Equal Treatment Act in their work, or who for some other reason is interested in the field. The handbook is also suitable for both training preparation and independent study. It has been drawn up in an attempt to decipher the issue of equal treatment and non-discrimination as simply and comprehensibly as possible, while also providing information on the general social context in which these principles must operate.

The handbook does not address in greater depth the issues of gender discrimination and gender equality, which are different in nature and scope and go far beyond the protection of persons belonging to minority groups covered by the Equal Treatment Act. Also, several publications have already been issued on the Gender Equality Act.¹

¹ Albi, K., Laidvee, J., Papp, Ü.-M. and Sepper, M.-L. (2010) „Soolise võrdõiguslikkuse seadus. Kommenteeritud väljaanne“ [Gender Equality Act. Executive edition]. Juura, Tallinn; Ministry of Social Affairs (2004) „Mõjude hindamine sugupoolte aspektist. Juhendmaterjal“ [Gender impact assessment. Guidance material]; Sepper, M.-L. (edit.) (2010) „Naised ja mehed. Võrdsed õigused, võrdne vastutus. Ülevaade soolise võrdõiguslikkuse seadusest“ [Women and men. Equal rights, equal responsibility. Overview of the Gender Equality Act]. Ministry of Social Affairs. Donlevy, V., Silvera,

The handbook consists of five chapters, the *first* of which provides an overview of the basic concepts of ‘equality’ and ‘equal treatment’ and the related concepts; the *second* chapter delves into the concept of discrimination; the *third* chapter explains the obligations and responsibilities of the various actors involved; the *fourth* chapter explains how to act in case of a suspected discrimination and how to document the circumstances of the discrimination and who and to what extent is subject to the burden of proof; the *fifth* chapter provides tips on how a person and/or a representative of an advocacy organisation must proceed when a suspicion of a less favourable treatment has arisen and what must an organisation do that is being suspected of discrimination.

The greatest value of the third version of the handbook is complementing the previous versions with numerous practical examples and summaries of court cases. We, therefore, hope that the handbook is of help to all people in Estonia – the employees and their representatives, NGOs, officials and employers, local governments, heads of educational institutions and teachers who have to follow the norms of equal treatment. This handbook in the field of human rights could also be additional material for lawyers and law students, guiding them not only to the provisions of law but also to its implementation in courtrooms.

The Estonian Human Rights Centre

May 2022, Tallinn

R. „Kasu ja tasakaal. soolise võrdõiguslikkuse edendamise retseptiraamat Eesti ettevõtete juhtidele” [Benefits and balance. Recipe book for promoting gender equality for Estonian business leaders], Ministry of Social Affairs, 2010.

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Introduction

All societies are characterized by socio-economic stratification and inequality. In the name of sustainable development of society there has been a trend established in an effort to achieve greater equality and reduction of such social, economic, status-based inequalities that prevent members of society from exercising all of their rights and freedoms.

Respect for the human rights and fundamental freedoms of all “without distinction as to race, sex, language or religion” is a goal of all international human rights treaties. This principle, which has been developed since the end of the Second World War, has become a fundamental rule of human rights in all international treaties and national constitutions. In customary international law, the prohibition of discrimination on the basis of sex, race and ethnic origin is the norm, adherence to which has been agreed on by the international community as a whole, and separate agreements for further recognising this rule are not necessary (Makkonen 2007). Most other grounds for non-discrimination also relate to innate characteristics or other factors (attributed characteristics) that are beyond the person’s own judgment.

The anti-discrimination legislation of the European Union arises from the requirements for the creation of the common market in the Community, the need to avoid unfair competition that could harm the international market. For example, at France’s request, the norm was established in Article 119 of the Treaty of Rome, which was concluded in 1957, for women and men to be paid equal pay for the same work, in order to exclude other Member States from receiving unfair advantages because they did not have a prohibition on such discrimination under national law. The special provision, which was initially limited to pay discrimination, has become a general requirement in the course of the general recognition of the principle of equal treatment at national and EU level as a result of secondary EU law and the case law of the European Court of Justice.

By now, measures on gender discrimination, reducing gender inequalities and promoting equality in the older EU Member States have a multi-decade history. There is also a growing conviction that the right to equal treatment and non-discrimination is not only a fundamental human right and a common value, but also an essential condition for economic growth and social cohesion. Ensuring equal protection of all fundamental rights and freedoms and fair competition for employers in the Member States by establishing uniform non-discrimination rules in an essential part of this.

In Estonia, Riigikogu adopted the Equal Treatment Act in autumn of 2008. Its purpose is to ensure that persons are protected from discrimination on the grounds of nationality (ethnicity), race, colour, religion or belief, age, disability or sexual orientation.

The materials of the proceedings of the draft act in Riigikogu show that the adoption of the act was deemed necessary primarily for the transposition of the respective European Union equal treatment directives and that the act is based on the minimum requirements set out in Directives 2000/43/EC (The Race Equality Directive) and the 2000/78/EC (Equal Treatment in Employment Directive) adopted on the basis of Article 13 of the Treaty of Amsterdam. The opinion at the time was that there was no massive violation of human rights in Estonia and that legal protection was guaranteed by the norms of the Constitution.

This shows that the recent history of Estonia and Eastern European countries has left a deep imprint on people’s minds and perceptions about human rights. Our values and attitudes are still influenced by the Soviet period that did not actually value democracy and people. The word ‘equality’, which was often used in that period, here has not yet been given the meaning it has in Western countries with a longer democratic tradition. The effects of this era are still

evident in the language usage, the way of thinking, the concepts used in debates, and in fears and prejudices.

Adopting the mindset according to which humanity should be seen in every human being, recognising the individual freedoms and human dignity of every person still takes time. However, the rules on the protection and promotion of equal treatment of minority groups should contribute to the development of this way of thinking. They also influence the development of cohesion and tolerance in society.

1. WHAT IS EQUAL TREATMENT?

Freedom and equality are seen as a general good, a prerequisite both for the individual self-fulfilment and for contributing to human development. Freedom and equality are concepts that are used a lot, but the deeper content of which is not much discussed in ordinary life, as they may seem self-evident.

There is also a tendency to confuse concept pairs *difference-similarity* and *equality-inequality*. The difference is the nature of a normal society. All people differ from each other in their appearance, interests and activities, choices and abilities, but they are equally human. Most generally, the concept of equality refers to the relationship between two or more people or groups of people in a field or situation of life. The concept of *equality* does not refer to making everyone the same or to the equal reallocation of material resources alone. Equality presupposes the right to be different.

The objective of equality between people is to have the same rights, obligations, responsibilities and opportunities. Everyone must have equal opportunities to obtain a good education, to work in their profession and to access services, depending on their own efforts, free from historical-cultural constraints that either hinder these efforts or reduce their desire to achieve something.

Social inequality, stratification and social exclusion

In every society, people have so-called acquired social traits (e.g., education, occupation, marital status, income) and so-called attributed traits (e.g., gender, age, race, ethnicity) that are relatively unchanged. The so-called acquired status is based on self-dependent achievements and is not absolute, but may change over time. Attributed status, however, is a socially constructed and rigidly fixed social characteristic that does not depend on specific personal characteristics, but on the membership of a particular culturally defined and labelled group.

Different valuations of people with certain social characteristics create *social inequalities* in the ownership of resources, power and property, and ultimately, the low status of several social groups (e.g., people with disabilities, the elderly) and the low level of community involvement. This, in turn, affects the self-determination, self-esteem and real power relations of different groups in society.

Due to their different positions in the social hierarchy, young and old, healthy and disabled persons have different opportunities and limitations. They have different (material, temporal, informational) resources, different access to power and decision-making, and thus different statuses in society. Such an arrangement has the tendency to reproduce itself and to deepen the stratification of society, which is also supported by stereotypical perceptions and prejudices of society.

For example: the work of a person and the pay receive for it, leisure time, attitudes and permitted and prohibited activities are largely divided in our society by whether they are a woman or a man.

Differences, which reflect inequalities in the rights, responsibilities and opportunities of different groups, are evident in the statistical analysis of the percentage of members of the minority group participating in one area or another and whether this corresponds to the

majority participation rate. It is also necessary to analyse the causes – prejudices, stereotypes, attitudes, mechanisms of domination and subjugation, discourses and symbols that perpetuate this inequality. Particularly, in order to understand the latter, you need to know how the identity of one group or another has evolved and how belonging to it affects the individual's image of self,² the power relations, practices and division of labour between social groups, and how these groups are displayed and depicted in society, for example, through which symbols and texts.

International law requires countries to take measures to improve the social situation of disadvantaged groups and to reduce stratification as a human rights limiting phenomenon.³

Social inequality and stratification lead to *social exclusion*. As a result, the feeling of powerlessness and frustration of the marginalised increases. In this way, society loses as a resource a whole group of people who could take an active part in society and in political, economic and social processes.

The Constitution of the Republic of Estonia distinguishes between equality before the law and equal protection of laws (equality rights). *Equality before the law* means the application of one law equally to all, regardless of the content of the law. *Equal protection of the law*, i.e., *equality in law* means the requirement that the law also essentially treats all persons in a similar situation in the same way, but also that persons in an unequal situation may be treated differently if it is objectively and legally justified. A law is considered discriminatory if it contains prejudices or if its application causes disadvantage – discrimination – of one or another social group.

Examples

If the police carry out a raid to catch drunk drivers, but only stop black Mercedes brand cars and let only their drivers blow into a breathalyser, it is an unequal application of the law, i.e., a violation of *equality before the law*.

If the law stipulates that only drivers of black Mercedes brand cars must not be intoxicated by alcohol, then there is inequality at the level of the law, i.e., *equal protection of the law* has been violated.

According to the law, everyone has the right to freely receive information disseminated for general use – thus equality in the application of the law is guaranteed – everyone has the opportunity to defend their rights.

However, if the law also provides, for example, that Braille, audio recordings, large print or other appropriate means must be used to make written information and documentation accessible to visually impaired persons, it is an equal protection of the law.

There is also a distinction between equality *de jure* – formal, legal equality, and equality *de facto* – substantive inherent equality. Equality *de jure* requires that the law treat all the same (equivalent to the equal protection of the law). At the same time, treating people the same

² Identity is “part of an individual's self-concept that results from knowledge of belonging to social groups with the value and emotional significance attributed to them”. (Tajfel 1981, translation to Estonian by Valk 2003).

³ UN Committee of Economic, Social and Cultural Rights (1994). General Comment No. 5. Persons with disabilities. § 9.

does not guarantee equality, as people have different starting positions and opportunities.⁴ For example, people with disabilities have a *de jure* right to education, but if in practice the educational establishment is only accessible via stairs, people with reduced mobility cannot exercise this right.

According to the idea of substantive equality related to the principle of the social state, persons belonging to minority groups must be created equal opportunities to participate in society according to their needs. In doing so, the prohibition of discrimination is only one part of the policies of creating equal opportunities for minority groups. It is often not taken into account that the so-called free will of the people is not really free from traditional stereotypes, discriminatory prejudices, outdated norms and people's own experiences established in the social environment and culture. Using the example of disabled people and education again – the educational establishment will be adapted to suit disabled people, including ramps to ensure access for students with mobility disabilities, adaptation of teaching aids for students with visual and hearing impairments, but the general school culture will not be made more tolerant and capable of valuing differences.

Gender equality as equality of outcomes

The aim of eliminating gender inequality is to achieve substantive equality between two social groups of comparable size – women and men. *Gender equality* is defined in the Gender Equality Act as equality of results – “equal rights, equal obligations, equal opportunities and equal responsibility for women and men in working life, acquiring education and participating in other areas of society” (§ 3 (1) 1) of the Gender Equality Act). In order to measure the level of gender equality, the situation of two social groups – women and men – is compared in different areas of life. For example, gender equality is reflected in different participation of women and men in decision-making processes, different status in the labour market and economy, different responsibilities in family life, different educational choices, differences in access to resources, including time, information, networks, etc. In order to achieve inherent equality, inequalities must be reduced and the maintained values, attitudes, stereotypes and gender ideologies that have led to differences in society must be changed.

The right to equal treatment is the fundamental right of each person

The principle of equal treatment presupposes that person in an equal situation are treated equally and those in an unequal situation are treated unequally. Therefore, it is justified that employers pay employees with similar duties and responsibilities a similar remuneration, but not employees with different duties and responsibilities.

The principle of *equal treatment stated in law* protects the equal from unequal treatment and the unequal from equal treatment. Disregarding this principle means discrimination in case there is an absence of objective and reasonable and legally justified grounds for unequal treatment.

Discrimination, in turn, is unequal treatment on irrelevant grounds. Therefore, any unequal treatment may not be illegal. Unlawful unequal treatment or discrimination is only a different treatment of people and groups, which is prohibited by law and has no objective justification.

⁴ The Supreme Court has taken the view that in certain cases the state has a duty to eliminate or alleviate factual inequalities arising from legal equality by legal methods. See RKÜKo 3-3-1-47-03, p 25–26; RKHKo 3-3-1-42-08, p 27.

The norm of *equal treatment* acquires a specific meaning where the law(s) define who must be treated equally (to whom the prohibition of discrimination applies) and in which cases (in which fields and for which rights and freedoms). Implementation of the principle of equal treatment presupposes knowledge and recognition of what constitutes direct and indirect discrimination, and the victims of possible discrimination are aware that their options are limited by their nationality, ethnicity, age or other affiliation.

What causes unequal treatment?

A formal legal approach to individual cases or events of discrimination on a prohibited bases and in defined fields may overlook indirect discrimination resulting from structural, social, institutional or organisational processes.

The scale of discriminatory behaviour is broad, ranging from teasing and bullying to disparaging and ignoring different lifestyles or even physical violence.

This is often not so much because of malice on the part of individuals and institutions, but rather because of indifference and ignorance about the consequences of decisions, actions or omissions, practices, established practices in organisations, opinions expressed and speech imagery used.

It is a case of discriminatory and dominant behaviour when people are negatively attuned or prejudiced towards a person or a group, they are subjected to stereotyping, marginalisation, being made invisible, portrayed as childish, trivialised, etc.

Prejudice is about forming an opinion without prior knowledge. Prejudice is also acquired through the process of socialisation and are very difficult to change or eradicate. Prejudices, ideas and views developed in society towards certain groups of people are influenced by history, politics, economic and social structures. Prejudiced attitudes are learned, and relatively persistent positive or negative assessments of something or someone that does not directly determine that behaviour, but are related to adopted values.

An individual is often viewed with prejudice solely because of the group he or she is categorised into, attributing to a particular person traits that are considered characteristic of the group. Prejudices are also generalisations and estimates of the whole group based on the behaviour of one member. A single observation or individual experience develops into a prejudice especially when it is supported by social norms in the community or the attitudes of other people. In most cases, they arise in relation to groups of people with whom there are no close social relations and from whom they distinguish themselves.

Prejudices often lead to discrimination in society, and discrimination, in turn, reinforces the prevailing prejudices in society. Both relate to *stereotyping* – the excessive generalisation of categories of groups, where some characteristic features are attributed to the whole group. Many minority groups (ethnic, religious, gender and other social categories) are stereotyped in society. Stereotypes are persistent, not prone to rebuttal by logical debates or evidence; stereotypes have value-based, mainly negative connotations, are deeply rooted – people do not notice their existence or how they affect perceptions and activities.

For example: An employer who does not employ a female candidate does not do so specifically because of her gender, but because of his stereotypical prejudice that women are not suitable for that job.

Getting caught up in stereotypes feeds prejudices and prevents seeing other people as personalities. This creates a risk of discrimination, because an individual is judged on the basis of his or her group membership.

Usually, the group that perpetuates prejudice and stereotypes has a better social position in society. Stereotypes are thus ideological and protect the social interests of dominant groups. Manipulating stereotypes allows to influence people's attitudes towards certain groups. The existing stereotypes and social expectations, in turn, lead people belonging to minority groups to choose respective life strategies, behaviours, relationships with others, and thus have a restrictive effect on their free development.

Stigmatisation or vilification is an activity that aims to emphasise a person's distinctive characteristic trait. Calling a person nigger and slit-eyed, lame or four-eyes is negative and discriminatory. Stigmas often stem from existing prejudices and stereotypes.

For example: Homosexuality is stigmatised through rigid gender norms ("lesbians are masculine"), relationships and sexual behaviour ("they have many casual partners") and the imaginary causes of homosexuality ("the parents of a homosexual boy wanted a daughter", "there was no father figure in the boy's life", "he is a victim of sexual abuse").

Marginalisation is a process that refers to distinction and exclusion of certain groups of people in a community, organisation or society as a whole. For example, top female politicians are marginalised in the media by creating social attitudes that challenge their femininity, coping with family responsibility, etc. Media crime reports are sure to indicate the person's ethnic origin if the act was committed by a person not belonging to the dominant group.

Making invisible is similar to marginalisation, but refers to how groups are represented in language, speech, or images. The main mechanism, for example, is that media presents the dominant majority in terms of status, prestige and influence, but not the other groups, as if they were invisible.

Discrimination as a process takes place in society on three interrelated levels – personal, cultural, and structural (Thompson 2003). Treating discrimination solely as a behaviour of an individual overlooks the wider environment – cultural, social and economic factors. Every individual lives and operates in a cultural environment. The beliefs, values, attitudes and actions that he has adopted largely reflect environmental norms and expectations. The structural level reflects the social practices of the exercise of power, and the division of power and resources also depends on which social groups are distinguishable.

Therefore, it is not enough to tackle individual cases of unequal treatment, but non-discrimination must consciously and consistently be promoted, with particular attention to attitudes and values shared by society.

Unequal attitudes are mostly expressed in language usage, texts and speeches by which social representations, social relations and social structures are established, constructed, confirmed, normalised, assessed and legitimised (Dijk 2005a).

2. WHAT IS DISCRIMINATION?

The principle that all people are equal before the law and no one must be discriminated against is protected on national level, in particular by the Constitution. Section 12 of the Constitution states: “Everyone is equal before the law. No one shall be discriminated against on the grounds of nationality, race, colour, gender, language, origin, religion, political or other belief, property or social status or other circumstances.” Several lawyers and the Supreme Court have interpreted the expression “due to other circumstances” as an unexhaustive list of grounds for discrimination, which means that no discrimination is allowed on any grounds that are not relevant to making a particular decision. For example, other grounds that are not explicitly mentioned in the second sentence of subsection 1 of section 12 of the Constitution may include disability, sexual orientation and age.

The definitions of discrimination used in laws and international treaties often refer to the inferior treatment of person(s) due to them belonging to a socio-demographic group that is distinguished on the basis of one or another social category.

In addition to the Constitution, the principles of prohibition of discrimination are defined in Estonian legislation by the Gender Equality Act and the Equal Treatment Act. The provisions of the Gender Equality Act and the Equal Treatment Act are also referred to in the Employment Contracts Act, the Civil Service Act and other acts.

Discrimination means imposing any restrictions on a person (or persons), the development of a disadvantage, which reduces the opportunities for the exercise/execution of their rights solely due to their race, colour, gender, religious, political or other beliefs, sexual orientation, national or ethnic origin or other circumstances.

Whether persons are to be treated the same, or whether some differences need to be taken into account and they are to be treated according to it, can be decided in each particular case and in a particular situation. Attention must be paid to whether the situations and legal and factual situations in which people find themselves are different or similar and whether unequal treatment is justified by a legitimate aim.

The principle of equal treatment requires that the equal be treated equally and the unequal be treated differently. Thus, discrimination can occur in two ways:

- a. if the persons are in a substantially similar situation, unequal treatment of one or the other party is permitted only if it has an objective and reasonable justification (e.g., the exceptions established in the Equal Treatment Act).
- b. if the persons are in substantially different situations, for example, factually, then they may need to be treated differently.

Example

Discrimination situation a – different treatment in a similar situation:

In a company where a flexible work schedule can in principle be applied, two middle managers with the same work responsibilities requested flexible working arrangements from

their employer – a 35-year-old male employee due to caring responsibilities to his 90-year-old grandmother, and a 60-year-old male employee due to the illness of his 59-year-old spouse. The employer decides to allow flexible working hours for the older employee, but refuses it for the younger employee. This may be unequal treatment based on age.

Discrimination situation b – same treatment in different situations:

A production company occasionally requires overtime and working on weekends. According to the collective agreement, overtime is compensated either financially or by giving time off in proportion to overtime. Two production managers are required to be present during the production process, one of whom is Jewish and must therefore also work during the Sabbath (Friday evening to Saturday evening) when Judaism prohibits any work. The production manager who follows Jewish religious customs is at a disadvantage, and if the employer does not allow a working time arrangement that takes into account the need to perform religious customs it can be considered to be discrimination.

In order to assess whether there may be discrimination within the meaning of the Equal Treatment Act, it is necessary to pass a four-step test:

Is it discrimination?			
1. Legal right to which access has been denied (for example, right to training, fair work conditions, etc).	2. Situation / circumstance between persons or groups is comparable.	3. The criteria used to distinguish are nationality, age, disability, religion or other belief or sexual orientation.	4. There is no objective and reasonable justification for unfair treatment.

It is important to note here that the intent or unwillingness of the person suspected of discrimination does not play a role in the identification discrimination.

2.1. Legal rights

The Equal Treatment Act provides different legal protection against discrimination to individuals depending on whether the discrimination was based on nationality (ethnicity), race or colour, or on the basis of religion or belief, age, disability or sexual orientation. In the first case, the protection is more extensive than in the second case, i.e., the Equal Treatment Act has established a hierarchy of protection afforded against different cases of discrimination, depending on the basis of discrimination.

While discrimination on the grounds of religion or belief, age, disability or sexual orientation is prohibited only in matters relating to *working life* and obtaining professional training (§ 2 (2) of the Equal Treatment Act), discrimination on the grounds of nationality (ethnicity), race or colour is also prohibited in respect to *social welfare, health care and social security services and benefits, education and right to access goods and services provided to the public (incl. housing) in the public as well as the private sector (§ 2 (1) of the Equal Treatment Act).*

Scope of the Equal Treatment Act	
Working life	
The recruitment process, including recruitment and selection criteria and promotion in all areas of activity and at all levels. For example:	
	<ul style="list-style-type: none"> • becoming a self-employed person, incl. right to receive start-up support • conditions for access to the profession
Working conditions, incl. conclusion of an employment contract, establishment of working conditions, issuing orders, remuneration, termination of employment contract, termination or dismissal of the employment contract. For example:	
	<ul style="list-style-type: none"> • circumstances related to the performance of duties or the provision of services and the appointment or election to office • both open-ended and fixed-term contracts • working conditions, incl. remuneration • terms of collective agreements • working environment conditions, including work clothes and work equipment • opportunities to reconcile work and family life • reimbursement of transport and communication costs, other benefits provided by the employer, bonuses, etc • termination of employment, incl. retirement on employer's initiative
Vocational, retraining or further training, career counselling, internships. This includes:	
	<ul style="list-style-type: none"> • any vocational training leading to a qualification or the necessary traineeship for a specific profession, incl. all post-school education • traditional forms of training, probationary period, apprenticeship • access to practical work experience
Membership of employees', employers' and professional associations, and granting of benefits by such organisations.	
Social welfare services and benefits (see Social Welfare Act)	
	Activities related to the provision of social services, social benefits, emergency social assistance and other assistance.
Health services and benefits (see Regulation No. 13 of the Minister of Social Affairs of 10 January 2002 "Establishing the list of health services")	
Social security services and benefits (see State Pension Insurance Act)	
Education	
	<ul style="list-style-type: none"> • access to all levels and types of education • conditions for admission, study and graduation • all possible measures to encourage school attendance • grants and financial assistance to students, access and conditions for them • content of education, incl. educational materials
Goods and services offered to the public (incl. housing)	
Goods and services that are available to the public and are provided outside the scope of private and family life and related activities. For example:	
	<ul style="list-style-type: none"> • telecommunications, electronic communications, availability and provision of information in accessible form • availability and provision of financial services and insurance

- availability and provision of culture, sports and entertainment
- availability and provision of childcare services
- accessibility and provision of public buildings, modes of transport and other public places and facilities
- provision of housing and other related aspects

2.2. Comparable situation

A point of comparison with someone else is important in establishing the existence of discrimination. Discrimination means treating a person worse or better than someone else. Thus, there is a need for a person (real or hypothetical person or group of persons) with whom to compare – a person who has been treated, is treated, or may be treated more favourably in the same situation and the only difference is a specific basis (e.g., race, gender, etc). For example, a complaint about low pay is not a complaint of discrimination as long as there is no other person to compare your pay with.

Examples

The European Court of Justice has found that in certain cases married couples and couples who have entered into a civil partnership (in Estonian context: have a registered partnership contract) are in a comparable situation. Frédéric Hay's employer provided a one-off grant to those entering marriage. Hay entered into a civil partnership with his same-sex partner because same-sex marriage was not possible in France at the time. Hay then sought the marriage grant from his employer, but received a negative response. First, the European Court of Justice found that the grant in question forms part of the remuneration and is therefore protected under the protection of a legal right – working life. The Court then explained that 'comparable' does not presuppose situations being identical. Comparability must be assessed in the light of the specific grant and not in the abstract. Since it is not possible for same-sex couples to marry, a civil partnership must be considered comparable to marriage in the light of this grant. (C-267-12 *Frédéric Hay vs Crédit agricole mutuel de Charente-Maritime et des Deux-Sèvres*)

European Court of Justice had to decide whether stricter visual acuity requirements for drivers of heavy goods vehicles compared to other drivers were in breach of the rules of equal treatment. Other drivers, by way of exception, were able to obtain driver's licences in case of visual impairment if they passed an additional check confirming their ability to drive. However, the Court found that drivers of heavy goods vehicles and other drivers were not in a comparable situation. The difference consisted in the size of the vehicles, the possible number of passengers and the amount of responsibility involved in driving a vehicle of this size. The characteristics of the vehicle in question justify different requirements for these categories of drivers. (C-356/12, *Wolfgang Glatziel vs Freistaat Bayern*)

The Supreme Court discussed the complaint of Heino Insler, a 67-year-old working old-age pensioner. Heino challenged subsection 6 of section 57 of the Health Insurance Act. Subsection 5 of the same section provided for the right of an insured person to receive sickness benefits for a total of up to 250 days a year. However, according to subsection 6 of the same section, an insured person over the age of 65 is only entitled to sickness benefits for up to 90 days a year. The Supreme Court found that "in the event of illness, a guaranteed

income for a shorter period puts persons aged 65 years and over in a worse position than persons under 65 years of age". Thus, insured persons over the age of 65 (including 67-year-old Heino) are in a comparable situation to insured persons under the age of 65, and the only difference is their age. (RKPJKo 3-4-1-12-10)

European Committee of Social Rights examined a complaint from medical professionals who had not refused to perform an abortion on patients because of their beliefs. As a result, they were disadvantaged at work in terms of their workload, division of tasks, career prospects, health and safety. The Committee confirmed that medical professionals who had not refused to perform an abortion were in a comparable situation to those who refused to perform it because they had similar professional qualifications and worked in the same field of expertise. (*Confederazione Generale Italiana del Lavoro vs Italy*, 91/2013)

Austrian law allowed an additional day off on Good Friday, but only for members of specific Christian churches. If the member did not want to use the day off, he or she received a bonus for working on Good Friday. The applicant did not belong to any of the churches mentioned in the law and alleged that he had been discriminated against on the basis of religion. The Court found that the applicant was in a comparable situation to that of members of those churches. The court noted that, although Good Friday was an important religious holiday for those churches, the provision of a day off or a bonus was linked only to whether the employee was formally a member of that church. Whether he actually took part in religious rituals that day was not decisive, and he could decide to fill Good Friday with recreational activities. He was, therefore, in a situation comparable to that of a non-member of the churches in question, who may also have wanted to spend his free time that day or receive a bonus for working. (C-193/17, *Cresco Investigation GmbH versus Markus Achatzi*)

A comparable person is not required to establish the existence of discrimination in a situation where discrimination is likely to have taken place. Such a situation arises when the manager of a company publicly declares that people of a certain nationality, age or social group will not be employed or promoted.

Example

If an employer publicly declares that he is not hiring employees of a particular ethnic or racial origin, this is considered direct discrimination in recruitment, as such notices are likely to discourage certain candidates from applying and consequently prevent them from accessing the labour market. (C-54/07, *Centrum voor gelijkheid van kansen en voor racismebestrijding v Firma Feryn NV*)

2.3. Prohibited grounds of discrimination

The nature of the grounds for prohibited discrimination is not legally defined, as the terms used reflect the characteristics (designations, constructs) attributed by the social environment rather than any immutable characteristic of the people themselves. However, an attempt has been made below to reveal the substantive meaning of the so-called prohibited grounds of discrimination and the most common prejudices and manifestations of discrimination against them.

The Equal Treatment Act particularly prohibits discrimination on grounds of nationality (ethnicity), race or colour, religion or belief, age, disability and sexual orientation. According to the Equal Treatment Act (§ 2 (3) of the Equal Treatment Act), other prohibited grounds for discrimination may also include the performance of family duties, social status, representation of the interests of employees or membership of an association of employee, language skills or the duty to perform mandatory service in the defence forces. These other grounds include skills that can be acquired (language skills), activities and responsibilities, and social status. The legislator has also added two different criteria of employment relationships as possible grounds for discrimination in the Equal Treatment Act (§ 11¹) – fixed-term or indefinite duration of employment and part-time or full-time employment, which by their nature belong to the field of labour law and working condition norms.

A person does not have to prove whether and to which so-called protected group of persons her or she belongs. Discrimination can also be suspected and established in court or in a labour dispute committee on the basis of a perceived or presumed nationality (ethnicity), religion or belief, disability, age or sexual orientation (Bell 2002). Therefore, if a person is discriminated against on the grounds of their supposed sexual orientation, they do not need to prove whether or not they actually are of that sexual orientation.

ADDITIONAL INFORMATION

Gender and gender identity

The Equal Treatment Act does not address the prohibition of discrimination on the grounds of gender or gender identity. There is a separate Gender Equality Act for such cases, which is why this publication will not discuss this ground of discrimination any further.

Let it be said that what is considered inherent in women in one cultural environment or another and what is considered inherent in men is in its nature agreed upon and ideological, changing in time and culture as well as changeable (the so-called social or socio-psychological gender). Although gender seems to be an obvious human trait, differences in the behaviour, social roles, responsibilities and opportunities of women and men do not arise from unchanging biological-physiological differences, but are socially constructed. The representation, advantages, problems, needs and opportunities of one or the other gender are shaped by the gender system in force in a particular society (gender roles, gender stereotypes, gender ideology, gender relations, gender segregation and stratification), not by the free will of the person. Gender as a basic category in society determines the different status of women and men in society, which is constructed through psychological, cultural and social means and power relations.

Prejudices and stereotypes	Discriminatory practice
Stereotypes opposing the work and roles of women and men – the woman is responsible for children and family; the man is the breadwinner	Due to pregnancy or childcare, the employee is offered a fixed-term employment contract, lower pay or, in the worst case, the employer decides to terminate the employment relationship.

2.3.1. Race, ethnicity and colour

The term 'race' is a social construct, an understanding used in everyday language to indicate visible differences between people, at the same time it cannot describe biological or psychological differences between people. In addition, people with different skin colours may have different colours of hair, blue and brown eyes are also found all over the world, and their skin colour is not the same.

Nationality and/or ethnic origin means both political and legal affiliation ('nationality' as a person's existing status) and historical or ethnic origin. 'National origin' relates to a person's past, referring to national origin and cultural differences. 'Ethnic origin' means cultural, linguistic or religious origin of an individual or group of persons.

The term 'racial or ethnic origin' has a broader meaning than the term 'racial or ethnic group' because a group presupposes the existence of an actual community. One of the main elements of ethnicity may also be religion, making it not easy for a person to distinguish discrimination on grounds of religion from discrimination on grounds of ethnic origin.

National groups differ to the extent that they have retained their original appearance, customs, language and surnames from their country of origin. However, no one can decide from the outside which persons belong to a racial or ethnic group: unless there is a different justification, the persons concerned determine their own identity themselves.

Linguistic minority groups whose members are culturally related to each other in a significant way other than the language can also be considered as 'ethnic groups' (e.g., *Setud, Peipsiääre vanausulised*)

Examples

The applicant kept a shop in a district with a predominantly Roma population. She complained that she was unable to monitor her electricity consumption, because unlike in other areas in the same city, electricity meters were put on the pylons out of sight of customers. The applicant claimed that there was discrimination on the grounds of ethnic origin, even though she herself was not of Roma origin. The Court found that Roma origin was ethnic origin according to the EU equal treatment regulation: "The concept of 'ethnic origin' is based on the assumption that ethnic groups are primarily characterised by common nationality, religion, language, cultural and traditional origin and a living environment." The Court of Justice of the European Union found indirect discrimination in this case. This is discussed in more detail in chapter 2.5.4. (C-83/14, *CHEZ Razpredelenie Bulgaria AD versus Komisia za zashtita ot diskriminatsia*)

However, according to the Court of Justice of the European Union, a person's country of origin is not the same as ethnic origin. A Danish credit institution required a person applying for a loan who was not from a EU Member State or from Scandinavia for a form of identification to provide additional proof of identity. The applicant was born in Bosnia and Herzegovina but had been a Danish citizen since 2000. Their partner, a Danish national by birth, did not have to submit additional documents when applying for the same loan. However, the Court found that there could not have been discrimination on the grounds of ethnic origin, as a person's country of birth alone, without additional facts such as religion, language, nationality, etc., did not constitute ethnic origin. Thus, since the credit institution required additional identity documents only on the basis of the country of birth, it was excluded from the EU equal treatment regulations. (C-668/15, *Jyske Finans A/S versus Ligebehandlingsnævnet*)

Prejudices and stereotypes	Discriminatory practice
Black people are lazy and they steal.	The employer does not invite a Roma man to a job interview because they assume that a Roma person is not hardworking.
Roma women only tell fortune, manipulate and deceive.	Strict language requirements are applied at recruitment, although the tasks themselves do not require good language skills.
The collective's internal climate is better when people are of the same nationality and culture.	

2.3.2. Age

Age is a relative concept that is created both socially and personally. Perceptions of, for example, who is young or old often depend on the assessor's own age.

Age is also a changing status, prescribing age-appropriate behaviour in accordance with societal norms and rules. The terms 'old', 'older' and 'old age' have no specific definitions. These are relative terms that can be defined according to individual or group opinion or the needs of national policy.

The laws establish the lowest minimum age for going to school, admission to full-time work, election rights, marriage, etc.

Examples

Tartu Administrative Court ordered the Estonian National Social Insurance Board (SKA) to pay a significant discrimination compensation in favour of a specialist made redundant due to their age on the basis of the Equal Treatment Act. The applicant worked at SKA as a specialist. At the beginning of December 2013, the applicant received a notice of dismissal from their employer and by a directive formalised in the middle of the same month they were dismissed from service on 31 December due to redundancy. The court found the dismissal to be unlawful and found that SKA had discriminated against the applicant in violation of the provisions of the Equal Treatment Act. Notifying the then 65-year-old applicant of the impending redundancy, the immediate manager sent them an e-mail stating, among other things: "The decision is certainly not based solely on age criteria, but still mainly." The court ordered SKA to pay the applicant a three-month average salary of 1,830 euros and 8,200 euros in compensation for non-patrimonial damage caused by discrimination. In addition, SKA had to pay the applicant's 486-euro procedure expenses. (Administrative case no 3-14-164/38)

The European Committee of Social Rights discussed a provision of Norwegian law that allowed employers to terminate a seafarer's employment contract when the seafarer has reached the age of 62. The Committee recalled that termination of an employment contract on the grounds of age is justified only if it has an objective and reasonable legitimate aim and that the means chosen to achieve it are appropriate and necessary. The Norwegian Government justified the upper age limit by the need to ensure health and safety at sea. The Committee considered that these were, in principle, legitimate aims. At the same time, the Committee considered the means chosen to be inappropriate. First of all, the government could not prove why they believed that a seafarer's health would deteriorate by the age of 62

to such an extent that he is incapable of continue working. Secondly, there are other ways to ensure operational requirements of safety and shipping, including regular and sufficiently thorough medical checks. (*Fellesforbundet for Sjøfolk (FFFS) v. Norway*, 2 July 2013)

The Court of Justice of the European Union discussed a case concerning a provision of law according to which the level of remuneration of an official was determined by their age at the time of recruitment. The government justified this with a desire to reward previous work experience. The Court considered that, in order to achieve this objective, it would be appropriate to take into account the length of the staff member's service and to combine it with their professional experience. In this case, however, the remuneration at the time of recruitment was not related to previous work experience but only to age. Consequently, there was discrimination on grounds of age. (Joint cases C-501/12 until C-506/12, C-540/12 and C-541/12, *Thomas Specht and Others v Land Berlin and Bundesrepublik Deutschland*)

The job advertisement of a Hungarian governmental authority included the upper age limit of the candidate – 40 years. The equal treatment authority initiated proceedings. The government authority explained that this was a mistake and that in practice no one over 40 was left out. In addition, 18 of the 87 applications were from people over the age of 40. However, the equal treatment authority took the view that this requirement in the job advertisement was likely to discourage a number of potential candidates, even if there were those who did apply. Therefore, this was discrimination. (Bazalová et al, 2018, page 24)

In the Netherlands, the equal treatment authority investigated a case involving a man of retirement age working as a firefighter at the port. The human resources manager wrote to him in an e-mail that his employment contract would be terminated because they did not want to keep employees who were already at retirement age. The equal treatment authority found that the e-mail created a presumption of discrimination, whereupon the port had to provide an objective justification. The port explained that the firefighter must walk well, be able to inspect vessels and move quickly in the event of a crisis. The authority decided that the justifications provided were not objective. (Bazalová et al, 2018, page 27)

Both Swedish and Romanian institutions responsible for equal treatment have found that not granting bank loans to older people (over 60) constitutes direct discrimination based on age. There are alternatives for assessing a person's creditworthiness – an individual assessment of the client's financial situation, including their income and other guarantees. Refusal to grant a loan solely on the basis of age is not permitted. (Bazalová et al, 2018, pages 34–35)

Prejudices and stereotypes	Discriminatory practice
Older people are not capable of learning.	Failure to provide training for older employees.
Older people get sick and are absent from work more often.	Refusal to promote employees aged 50+ to middle management, as a younger employee was recruited for that position with the idea that “the company needs fresh blood”.
Young people lack necessary experience.	
Productivity of older workers is lower.	

<p>Young people are superficial and can't focus.</p> <p>Older people do not fit into a working environment consisting mainly of young people.</p> <p>Older workers are not flexible and do not want innovations in the workplace.</p>	<p>A job advertisement published in a newspaper looking for an employee up to the age of 30.</p> <p>The minimum age mentioned in the job advertisement is 25, so the aim is to exclude students.</p>
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2.3.3. Disability

Unlike other prohibited grounds for discrimination, disability is defined in the Equal Treatment Act (§ 5): “the loss of or an abnormality in an anatomical, physiological or mental structure or function of a person which has a significant and long-term unfavourable effect on the performance of everyday activities.” This definition, unlike the current one (§ 2 of the Social Benefits for Disabled Persons Act)⁵ and the international interpretation,⁶ sets everyday activities as a criterion for disability. According to the Estonian Chamber of Disabled People, daily activities include mobility, dexterity, physical coordination, urinary retention, the ability to lift, carry or otherwise move everyday objects, speech, hearing, sight, memory or the ability to concentrate, learn or understand, perceive risk or danger.

Clearly, when interpreting the ground for discrimination (disability), it is necessary to take into account international and European human rights instruments, including, for example, the recommendations of the European Court of Human Rights and case-law solutions, and to treat as a disability those obstacles which limit the participation of a person in social and professional life as well. In addition, it should be taken into account that certain physical or mental limitations may have the character of ‘disability’ in a particular societal context, but not in another.

Disability is a concept that changes in time, the definition of which also largely depends on perceptions, attitudes and agreements that exist in society, and therefore it is not completely uniformly definable. In the case of medical treatment of disability, only the health aspects of the disability are addressed – as a person’s health disorder. The social approach to disability focuses on societal barriers, viewing disability as society’s inability or unwillingness to respond to the needs of the individual. The international UN Convention on the Rights of Persons with Disabilities considers disability from a human rights point of view to be the result of interaction between persons with certain health disorders and behavioural and environmental barriers which prevent their full and effective participation in society on an equal basis with others.

Disability is the relationship between a person and the environment (“various obstacles”) around them. Disability prevents a person from coping in an environment where buildings, streets, public transport, communication, education, information and other public services are suitable only for people without disabilities. Disability is a problem in a society where the problems and needs of disabled people are not known or simply not taken into account. A

⁵ According to the Social Benefits for Disabled Persons Act, disability is a loss or abnormality of the anatomical, physiological or psychological structure or function of a person which, in conjunction with various behavioural and environmental obstacles, prevents participation in social life on an equal basis with others.

⁶ Judgment C-13/05 *Sonia Chacón Navas v Eurest Colectividades SA* of the Court of Justice of the European Union reveals the lack of precise definition of ‘disability’ and its openness to interpretation according to medical achievements and the specific social environment.

person whose ability to operate in a particular environment is limited may not be restricted if the environment has been adapted or if the person can operate in another environment.

The purpose of anti-discrimination legislation is not to define persons with disabilities, but to define illegal behaviour and to protect potential victims. The term ‘disability’ is interpreted as covering not only actual disability but also perceived disability and thus discrimination based on disability. Disability-based discrimination can also affect people without disabilities, for example, when the employer mistakenly believes that the person has an impairment that significantly limits them. In clarifying the rules set out in EU law, it has been emphasized that Member States should protect at least the following persons from discrimination on the grounds of disability (Waddington and Lawson 2009):

- People with existing disabilities
- People who may develop a disability in the future (as defined by genetic tests)
- People with a perceived disability
- People associated with a disabled person due to family or other relationships

Examples

In 2022, the Estonian Supreme Court declared unconstitutional and invalid the provisions of a government regulation which required a prison officer with weakened hearing to be dismissed from service and did not allow the hearing loss to be corrected, for example, with a hearing aid, or the duties of the official to be changed, if necessary. The Supreme Court *en banc* pointed out that both the Estonian Constitution and European Union and international law emphasize the need to take reasonable measures to ensure equal treatment of persons with disabilities. Therefore, before releasing a person from work due to disability, the state has the obligation to look for solutions that allow him or her to continue working, provided this does not impose disproportionate burden on the employer. The case under discussion concerned a woman who had worked as a guard in Tartu Prison since 2002 and was dismissed from service in 2017 when a medical examination revealed that the hearing in one of her ears did not meet the health requirements of prison officials imposed by a government regulation in 2013. The Supreme Court found that the provision of the government regulation violated the fundamental right to freedom of profession and the right to equal treatment guaranteed by the Constitution and is also in conflict with the principle that persons with disabilities are under special protection of the state. (RKÜKo 5-19-29)

The Court of Justice heard a case in which Ms Coleman worked as a legal secretary at Law’s legal firm. She gave birth to a disabled child who needed specific and individual care. After maternity leave, her employer (Mr Law) did not give her back her job, although he was required to do so under British law. The employer also did not allow for flexible working hours, called Ms Coleman lazy when she needed to take care of her child, threatened her with dismissal if she was late for work, etc. All in all, the employer treated Ms Coleman much less favourably than other workers with children. Ms Coleman quit her job. The Court ruled that the prohibition of discrimination is not only limited to people with disabilities themselves. If an employee who herself is not disabled but is caring for a child with a disability is treated worse than another employee without a duty of care in a similar situation, and it has been proven that this is based on the disability of her child, this constitutes discrimination. (C-303/06 *S.Coleman v Attridge Law and Steve Law*)

Spanish law allowed the dismissal of a person due to sporadic, albeit justified absences. The applicant was dismissed from work because he was absent from work due to bouts of illness resulting from his disability. The Court of Justice of the European Union ruled that national laws should not allow dismissal in situations where the absences arise from disability. Laws should therefore always allow disability to be taken into account in such circumstances. (C-270/16, *Carlos Enrique Ruiz Conejero versus Ferroser Servicios Auxiliares SA ja Ministerio Fiscal*)

Similar were Danish cases, where Danish law allowed for dismissal at reduced notice if an employee had been on sick leave for more than 120 days within 12 months. Two employees who had been dismissed under this provision went to court. The employer considered that their state of health was not covered by the term 'disability'. The Court of Justice of the European Union recalled that, according to the EU equal treatment regulation, disability does not necessarily mean the total exclusion of a person from working life. This provision, although externally neutral, put disabled persons at a disadvantage, therefore constituting indirect equal treatment. The Court found that people with disabilities generally find it more difficult to return to the labour market and have specific needs in terms of working conditions, and states should take these aspects into account in their laws. (C-335/11, *HK Danmark, acting on behalf of Jette Ringi versus Dansk almennyttigt Boligselskab* and, C-337/11, *HK Danmark, acting on behalf of Lone Skouboe Werget versus Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S*)

The Court of Justice of the European Union has also ruled that, in certain cases, obesity may also qualify as a disability within the meaning of the equal treatment regulation. Karsten Kaltoft was a kindergarten teacher who was dismissed after working for the same employer for 15 years. He weighed 150 kg, and his employer had been worried about his weight for some time. Consequently, Kaltoft thought that he had been dismissed because of his weight. The Court of Justice of the European Union found that obesity qualifies as a disability if an employee's obesity "entails a limitation which results in particular from physical, mental or psychological impairments that in interaction with various barriers may hinder the full and effective participation of that person in professional life on an equal basis with other workers". Thus, there must be both an impairment and a consequent restriction. If the impairment does not cause a restriction, if the employee is hindered by other people's false assumption and prejudices, then obesity may not qualify as a disability. (C-354/13, *Fag og Arbejde (FOA) v Kommunernes Landsforening*)

Easyjet refused to let three unaccompanied disabled passengers board a flight. According to Easyjet's rules, unaccompanied people with disabilities had to prove their ability to travel individually. This was justified by the fact that their employees were not trained to help people with disabilities. The French court found that the relevant international and national rules allow disabled people to be denied boarding only due to safety requirements. Easyjet was unable to prove the existence of this need. The court noted that Easyjet had a duty to train its employees in accordance with international and national law. The court imposed Easyjet an administrative fine. (FRA and EN, 2022, page 189)

Mr Daouid had an accident at work which resulted in his elbow being put in a cast, and he was unable to work while recovering. He was dismissed. The question arose in court whether

his injury was long-term, which is a prerequisite for the existence of a disability in the EU equal treatment law. The court found that if the duration of the injury is unknown, it has a long-term effect. In principle, any restriction that is not expected to be short-term can be considered to be long-term. (C-395/15, *Mohamed Daouidi versus Bootes Plus SL and others*)

In a case concerning a woman who could not have children because she did not have a uterus, the Court of Justice of the European Union ruled that her condition did not qualify as a disability. Ms Z had a child through surrogacy. She applied for maternity leave, but since she had not given birth or adopted the child herself, she was not entitled to it. She claimed that she was being discriminated against on the grounds of her disability and that her inability to have children due to her lack of a uterus was a disability. The Court of Justice of the European Union accepted that it was indeed a deficiency, but because it does not prevent her from having access to or participating in working life, this deficiency is not covered by the EU right to equal treatment. (C-363/12, *Z versus A Government department and The Board of management of a community school*)

In Denmark, a woman who had been dismissed from work complained that she had been discriminated against because of her disability. After her knee surgery, she suffered from dizziness and visual disorders. The causes of these symptoms were not known, but she was constantly absent from work because of them. After 6 months on partial sick leave, she was dismissed. The employer claimed that she was dismissed because of her behaviour. The Danish Supreme Court explained that in order for an impairment to qualify as a disability, it does not have to be caused by a medically diagnosed illness. Instead, in order to determine a disability within the meaning of equal treatment regulation, all the circumstances of the case must be assessed in a multifaceted manner. The applicant must prove the existence of the disability and its long-term nature. However, the Supreme Court ruled that there was no discrimination, since the employer had only limited information about the reasons for the employee's absence and had tried to meet the employee's special needs. According to the Supreme Court, the dismissal was related to the employee's conduct. (European Commission, 2018a, pages 74–75)

Prejudices and stereotypes	Discriminatory practice
<p>A person with a disability is only ill or frail and must be “cured” or “healed”.</p> <p>People with disabilities are predominantly mobility impaired and some of them can be dangerous.</p>	<p>The job advertisement emphasizes the existence of good health.</p> <p>People with reduced mobility do not have access to institutions, service facilities, etc.</p> <p>A student candidate with visual impairment cannot participate in the competition because the tests require sight and reading.</p>

2.3.4. Sexual orientation

Sexual orientation is the result of a combination of complex biological, psychological, social and cultural factors. The concept of sexuality does not only mean sex or who a person wants to have sex with. Sexuality includes universal human emotional needs, the need for a sense of security provided by another person, etc. The term ‘sexual orientation’ means sexual attraction to other people, whether of the same sex, opposite sex, or both (Raudsepp and Kotter).

The types of sexual orientation are heterosexuality (people of the opposite sex are preferred), bisexuality (sexual relationships are formed with partners of both sexes) and homosexuality (people of the same sex are preferred). In practice, there are no very clear boundaries between these so-called distinctions. In an international context, the abbreviation LGBT is used to refer to lesbian, gay, bisexual and transgender people.

The Estonian Human Rights Centre’s example of strategic litigation

The Estonian Human Rights Centre represents in court or supports the way through courts of people who have been treated unequally. Over the years, through initial counselling and litigation, we have helped hundreds of people whose concerns have been from such areas as the right of people with disabilities to transport and personal assistance, adaptation of dwellings, age discrimination in recruitment, the right to petition, discriminatory funding policies in local government and many more.

Thanks to cooperation between the centre and the law firm Sirel and Partners, we achieved an important victory in 2019 for families with same-sex partners. Namely, the Supreme Court declared unconstitutional and invalid the part of the Social Tax Act which excludes payment of social tax to a person raising a child under the age of 8 who is maintained by his or her registered partner (who has concluded a registered partnership contract). The Supreme Court acknowledged that a family is a family, i.e., families in a similar situation must be treated equally.

Marina and Jelena had lived together as a couple for more than ten years, during which time Jelena gave birth to a child. In 2016, the couple signed a registered partnership contract and Marina adopted Jelena’s son, whom the couple had planned, expected and raised together from the first moments. As a result of the adoption, both Marina and Jelena were marked as parents on the child’s birth certificate. Marina was on parental leave after the birth and adoption of the child, but returned to work, and then Jelena was at home with the child. In Estonia, the spouse who stays at home and raises the child usually gets health insurance from the state, but in case of a lesbian couple, the state refused to provide it.

The disputed issue concerned specifically § 6 of the Social Tax Act (SMS), which covers special cases of payment of social tax. Subsection 1 point 8 of this section provides that the state or a legal person governed by public law shall pay social tax for the dependent spouse of a person specified in points 1, 2, 4, 5 or 55 of subsection 2 of § 5 or subsection 3 of the Health Insurance Act who is raising at least one child under 8 years of age. Jelena turned to the Estonian National Social Insurance Board, but was refused with the explanation: “The implementing acts of the Registered Partnership Act have not yet been adopted and the circle of entitled people has not been extended. Therefore, we cannot provide health insurance for a dependent spouse to people who have entered into a registered partnership contract.”

The only discrepancy in the exercise of this right was due to the fact that § 6 of the SMS prescribes another spouse as the entitled person, but the family status of the applicant is fixed by entry into a registered partnership contract. The Supreme Court judgment changed the situation both for the particular family and ensures equal treatment for all similar families where children are raised. (RKPJKo 5-19-42)

Examples

A donor of a local football club said in an interview that he would never hire a homosexual player. At the same time, the donor did not have legally binding powers in recruitment matters. However, the Court of Justice of the European Union found that the football club had discriminated on the grounds of sexual orientation in working life – particularly in recruitment – despite the fact that there was no ongoing recruitment process at the time, neither a specific identifiable victim. The Court noted that if the club had distanced itself from the donor's statement and had proved the existence of an explicit rule ensuring compliance with the principle of equal treatment in recruitment policy, the club could not be accused of discrimination. (C-81/12, *Asociația Accept v Consiliul Național pentru Combaterea Discriminării*)

A man who had sexual relations with men was not allowed to be a blood donor. The government considered that it was an increased risk of transmitting serious blood-borne infectious diseases. The Court of Justice of the European Union noted that such a permanent ban applied to homosexual men donating blood is compatible with EU law only if there are no less burdensome methods that offer the same level of health protection. If they do not exist, consideration should be given to whether a questionnaire and interviewing the person could not identify a potential risk to the health of blood recipients. (C-528/13, *Geoffrey Léger v Ministre des Affaires sociales, de la Santé et des Droits des femmes and Etablissement français du sang*)

The European Committee of Social Rights discussed a complaint concerning the homophobic content of educational materials. While states have freedom to decide on the content of the curriculum, they have a duty to ensure that the nationally approved education is non-discriminatory. Croatia's educational material in the field of sexual and reproductive education clearly described people with homosexual orientation with bias, in discriminatory and degrading manner. (*Interights v. Croatia*, 30 March 2009)

Polish court found that dismissal of an employee for taking part in an equality parade in support of LGBT people was discrimination on the grounds of association. The court found that the victim's own sexual orientation is not relevant. What is relevant is whether the person discriminating thinks he or she is a homosexual. In this case the victim was discriminated against for taking part in a parade associated with the LGBT community. (Warsaw Regional Court, V Ca 3611/14, 18 November 2015)

Atlasz Sports Club provided an LGBTQ-friendly sports environment. The club contacted a swimming pool and sports complex to rent two swimming lanes for the annual Atlasz Sports Day. The company initially confirmed the booking, but later, when it found out that Atlasz is an LGBTQ sports club, cancelled it. The Hungarian equal treatment authority found that data

did not confirm the company's claim that the pool was overbooked. The company also claimed that the sports club had wanted to bring its own instructor, but this was not in line with the swimming pool's internal rules. However, the rules had been amended accordingly at the beginning of the discrimination proceedings and at the time of the incident there was no such rule. Thus, discrimination was established on the grounds of sexual orientation and gender identity of the members of the sports club. (European Commission, 2018a, pages 130–131)

Prejudices and stereotypes	Discriminatory practice
Coexistence of same-sex partners is unstable.	Intolerance, hatred, finger pointing, negative attitude of the media and opinion leaders, threats, physical violence, exclusion and bullying by peers at school. Employers refuse to recruit LGBT people. Legal and bureaucratic obstacles to rights and services used by hetero couples. There is no possibility to adopt the child of a cohabitating partner, etc.
Gays and lesbians can't be good parents.	
Homosexuality is contagious and endangers society.	
Talking about homosexuality may promote homosexuality.	
Relationships of same sex partners are only sexual.	

2.3.5. Religious or other belief

A belief is a political, worldview or ethical belief on which a person's thoughts are based. Every person thinks, believes, imagines what they think is right or what they want. A person's views and internal beliefs may grow into expressing their views or realising their thoughts, which may be worldview, political, religious, ethical, but may also remain hidden. In that case no one but the person themselves can decide whether and with which group they identify themselves or on what grounds they perceive discrimination.

There are several opportunities for collective identification, religious rituals are accompanied by a sense of belonging and joint action, and religion is often one of the key elements of an ethnic group's identity, helping to maintain common values and norms in life, to cope in a society. It depends on the perceptions, norms and practices in society, whether and how people are defined and valued on the basis of their beliefs.

Examples

The European Court of Human rights heard complaints from four Christians alleging discrimination in the workplace. Regarding two of the applicants, the question arose about their right to wear the Christian cross in a visible place. The Court found that, in case of an airline employee, the prohibition on visible wearing of a cross was discriminatory as it did not affect their professional appearance. However, in the case of a medical professional, the Court found that the prohibition on visible wearing of a cross served the purpose of protecting the health and safety of other medical professionals and patients. The other two applicants had been dismissed from their jobs because they had refused to perform certain duties that they

saw as approving homosexuality, and that would not have been in line with their religious beliefs. In one case, they were an official of the vital statistics office who had refused to register civil partnerships, thus violating the right of others not to be discriminated against, and in the other case they were a relationship and psychosexuality counsellor whose refusal to advise contradicted their employer's rules of non-discrimination. (*Eweida and Others v. the United Kingdom*, 15 January 2013)

The Estonian Equal Treatment Commissioner advised a restaurant whose chef refused to eat during Ramadan as well as taste the food he had prepared. The employer was concerned that the chef might collapse without eating for a long time, and working next to a hot stove could get into an accident for which the employer would be responsible. The Commissioner advised the employer to reorganise the chef's duties, if possible, in order to ensure compliance with safety requirements and at the same time to respect his religious beliefs. As the last resort, the employer may offer the chef another job that he can perform. At the same time, it must be borne in mind that an employee does not have the right to refuse to perform a significant part of their work because of their religious beliefs. (Ast et al, 2017, page 43)

A similar situation, but in the field of education, found a different solution in Denmark. A Muslim culinary student refused to taste pork because it would have been contrary to their religious beliefs. The school confirmed that all students must taste the food they have prepared and this rule also applies to vegetarians. However, the Court found that there was indirect discrimination, since the seemingly neutral rule, which applied to everyone, affected students of Islamic faith in particular. (Ast et al, 2017, page 42)

In a German case (which was similar to the Estonian case) where a Muslim employee refused to sell alcohol, the Court reached the same conclusion as the Commissioner. As the employee had been dismissed in this case, the Court clarified that the dismissal could only be considered if the employer had no other duties or work to give the employee. (Ast et al, 2017, page 43)

In Norway, a Catholic doctor lost their job for refusing to install a spiral for a woman because it can have a pregnancy-disrupting function – the female body rejects already fertilized eggs. The Court found that their dismissal was justified. The same conclusion was reached by the Swedish court, which had to assess whether the dismissal of a midwife who refused to perform an abortion on religious grounds was justified. The court found that this was justified because midwives rotated between different apartments and had to be prepared to perform all of their duties, including abortion. It was no less important that women had access to all gynaecological health care, including termination of pregnancy. (Ast et al, 2017, pages 46–47)

In the UK, there were two cases where an employee was unable to work at a certain time of the week because of his religious beliefs. A Baptist nursing home worker was unable to work on Sundays and a Muslim security guard wanted to visit a nearby mosque at noon on Fridays. In both cases, employers tried to find solutions to the situation, but failed, and the employees were dismissed. The Labour Tribunal found that dismissal was justified in both cases. (Ast et al, 2017, pages 48–49)

In Albania, a case was heard in court where a 16-year-old student wearing an Islamic headscarf was not allowed to attend school. The school explained that since the state is secular, religious symbols cannot be allowed in public educational institutions. The court

found that there was discrimination and demanded that the student be given access to education on an equal basis with other students. (Ast et al, 2017, pages 57–58)

In Belgium, a woman wearing an Islamic headscarf wanted to go study fashion design, but was rejected because of her headscarf. The school justified its decision saying that in this field the student would have to draw men, touch their bodies, and sometimes ask more intimate questions, which is why there is no place for religious beliefs in the fashion design course. The equal treatment authority identified discrimination. The ban on religious symbols in school was lifted and those who had enrolled to courses were better informed about what the course entails and what the content of the training is. (Ast et al, 2017, pages 59)

The Serbian equal treatment authority recommended that several preschool institutions take into account the special needs of children when preparing menus, whether they are due to health, religious or other needs. (Ast et al, 2017, page 66)

A Sikh man wearing a turban complained about the requirement of security staff at the airport to remove his turban, even though he had already agreed to pass through security gates. However, the European Court of Human Rights found that this requirement was justified by the objective of ensuring the safety of other passengers and was also proportionate to it. (*Phull v. France*, 2005)

Most local court cases concerning refusal to serve women wearing traditional Islamic headscarves have found that this is not justified. Such conclusions were reached in Belgium, where cafes refused service, in France, where a restaurant refused service, also in the Netherlands, where the apartment owner refused to rent an apartment, as well as in Norway, where a hairdresser refused service. (Ast et al, 2017, pages 73–74)

In the area of social benefits and services, there is an example of a Jehovah's Witness who refused to do sales work, as he would have had to sell lottery tickets and it was not in line with his religious beliefs. However, the Swedish unemployment insurance fund found that he was not making sufficient efforts to find work, and in addition to no longer being able to participate in the programme, the payment of his benefits was suspended for 45 days. The court found that the state authority should have taken his religious beliefs into account. (Ast et al, 2017, page 103)

An institution in Finland providing emergency accommodation required all the residents to attend prayer. A Muslim was also forced to participate in prayers that did not correspond to his religious beliefs. The equal treatment authority found that there had been discrimination and awarded the victim compensation in the conciliation procedure. (Ast et al, 2017, page 104)

Prejudices and stereotypes	Discriminatory practice
Religious belief is only a person's internal matter, it does not need to be taken into account in working life.	A person's adherence to dressing practices or religious customs are considered an obstacle to recruitment and promotion.

All Christians are anti-abortion and against marriage equality.	<p>Organised catering does not take into account the possibilities of food choices arising from religious beliefs.</p> <p>The organisation of work does not allow the employee flexibility to follow the customs of their religious beliefs</p>
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2.3.6. Multiple discrimination

The development of anti-discrimination laws and policies has led to the introduction of the concept of multiple discrimination. These concepts reflect the observation that the identity of each natural person is complex and multifaceted and consists simultaneously of nationality, gender, age, etc.

Multiple discrimination is referred to when a person's rights are restricted on several different grounds of discrimination, either simultaneously or independently of each other (Makkonen 2002). For example, a person belonging to a certain minority nationality who is female and has reduced mobility, may experience discrimination on all of these grounds at the same time, or in one situation feel that they are treated unfavourably because of their disability, but in other situations because of their nationality. Interpretation of discrimination is also influenced by gender. For example, men of homosexual orientation interpret discrimination in working life as unequal treatment on the grounds of their sexual orientation, whereas lesbians in a similar situation interpret it on the grounds of their gender. (Mustola and Vanhala, 2004).

The preambles to the EU equal treatment directives emphasise the need to take into account the aspect of gender equality in the case of discrimination on other grounds, thus referring to the fact that women often suffer from multiple discrimination. They emphasise that exceptions which are permitted on other grounds are not permitted on the basis of sex (Article 6 (2) of 2000/78/EC). The need to address the problem of multiple discrimination through defining it as discrimination and providing effective remedies has been recognised at EU level, but the development of legal definition of such discrimination is still to come. (European Commission 2007; Burri and Schiek 2009).

Examples

The case concerned the ban on face coverings in public spaces. The European Court of Human Rights recognised that this ban has a particularly negative impact on Muslim women, who, because of their religious beliefs, want to wear a full face covering in public. However, the Court found that in this case there was an objective and reasonable justification for the unequal treatment. The Court found that this justification could not be the security of other people and property or the risk of identity fraud; however, the need to live together in harmony and within the limits of the law was a sufficient justification for the Court. Wearing clothing in public that conceals the whole face is not in accordance with the "basic rules of social interaction". Consequently, the minimum respect for the set of values of an open democratic society overrides the individual's choice to wear a full face covering. It was a decision taken in a democratic way in society after years of debate in society, in parliament

and in the courts. The Court also noted that the contested provision does not focus on religious attire, but prohibits all covering of the entire face. (*S.A.S. v. France*, 1 July 2012; see also a similar case regarding a ban imposed in Belgium *Belcacemi and Oussar v. Belgium*, 11 July 2017)

The applicant brought a civil case against the hospital for medical negligence in the course of her gynaecological surgery. The court of first instance ruled in her favour and awarded compensation. The court of second instance also found that there was medical negligence, but decided to reduce the amount of compensation. The court justified this by stating that the applicant was a 50-year-old woman who already had two children and that sexuality was no longer as important for a woman of that age as it would be for a younger woman. The court found that, given the age of her children she was likely to have to take care of just her husband. The European Court of Human Rights found discrimination on multiple grounds at once – the question was not her age or gender but the assumption that sexuality is not as important to a 50-year-old woman and a mother of two as to a younger woman. With this the local court expressed an outdated understanding of a woman's sexuality, which seemed to be related only to having children and ignored the physical and psychological relevance of a woman's sexuality to her wider self-realisation. This was not just the failed wording of the local court; this was the decisive factor in making the decision. (*Carvalho Pinto de Sousa Morais v. Portugal*, 25 July 2017)

2.4. Objective and reasonable justification

2.4.1. How is it defined?

Unequal or different treatment does not necessarily mean discrimination. Unequal treatment is considered to be discrimination if there is no objective and reasonable justification for it. Unequal treatment of equal people and equal treatment of unequal people is permitted only if there is an objective and reasonable legitimate aim.

Example

In order to ensure road safety, it is reasonable to limit the possibility of certain persons with visual and/or hearing impairments to work as drivers, for example. Legal provisions refer to the need to treat unequal people unequally, which, for example, in the case of women have been set up in relation to their reproductive function, and in the case of workers with special needs, the requirement to design workplaces to suit their needs.

The existence of an objective and reasonable justification for unequal treatment is often identifiable on a case-by-case basis. The following aspects are considered in defining it:

- whether unequal treatment has a legitimate aim, which is in accordance with the Constitution and other laws, such as language requirements depending on the post, and
- Whether unequal treatment is proportionate to the harm caused to the person, as well as the aim pursued. It must be questioned whether the measure which led to unequal treatment is necessary, appropriate and proportionate to achieving the legitimate aim. This means that there are no other alternatives to achieve the aim, that it causes the least

damage and that the aim is important enough to justify the damage suffered by the person as a result of unequal treatment.

In any case, unequal treatment must not reduce the impact of anti-discrimination rules and should ultimately promote substantive equality and recognition of human dignity.

Examples

The European Court of Human Rights has stated in its case concerning disciplinary sanctions against military personnel that different treatment of military personnel and civilians in the application of the disciplinary system is justified. This is because the armed forces have conditions and requirements that are different in nature from those in civilian life. [Engel and others *versus* Netherlands, ECHR, 8 June 1976]

Unequal treatment of married and cohabiting partners is generally justified, as partners are generally free to choose whether or not to marry and acquire the rights and obligations that come with it. [Danning *vs.* Netherlands, UN Human Rights Committee, 1984]

The state does not have to provide free transport to students of a private school, even if students of public schools have this option. The UN Human Rights Committee found that by placing the child in a private school, parents make an informed decision to waive the benefits that would accompany a public school. [*Blom, Lindgren et al vs. Sweden*, UN Human Rights Committee, 1988]

§ 14 (1) of the Civil Service Act makes proficiency in the Estonian language a precondition for an official to enter services in accordance with the criteria established by law. In certain cases, according to § 95 (1) of the Civil Service Act, an official may be dismissed from service due to insufficient proficiency in the Estonian language.

2.4.2. Specific reasons

In addition to the general possibility to define the justification provided for in national law, the Equal Treatment Act provides for individual pre-defined justifications – exceptions to the equal treatment requirement. In situations that fall under these specific justifications, unequal treatment is not considered discrimination.

According to the general approach, the exceptions set out in the Equal Treatment Act to the prohibition of discrimination rules can be considered exhaustive – these exceptions relate to professional requirements, including professional requirements in religious associations, differences on the grounds of age and disability, differences in working relationships and positive measures applied to achieve actual equality or to reduce historical inequalities.

Professional requirements

On the basis of an exception emphasising professional requirements, a person may be preferred only if the nature of the work or duties or other circumstances requires that it is performed by a person who is of a certain nationality, race or ethnic origin, of a certain colour, religion or belief, of a certain age, disability or sexual orientation. The condition is that such a characteristic is essential and decisive, the aim is legitimate and the requirement is proportionate (§ 10 (1) of the Equal Treatment Act).

The provision clearly states that the identity/characteristics of a person must be related to the professional activity or the conditions related to it and must be essential and decisive. It is

obvious that whether there is an essential and decisive requirement for a person to have characteristics corresponding to one of the characters stated in the Equal Treatment Act in terms of professional activities must be assessed and considered in the context of each specific professional and occupational activity, above all avoiding prejudices and stereotypes.

In very limited circumstances, different treatment may be justified, for example, when a characteristic linked to racial or ethnic origin constitutes an essential and decisive occupational requirement. For example, it may be justified and purposeful to recruit a person with a specific external feature (skin colour, age) to play a specific role in a play or a film. It may be justified to choose a model of a certain age if the product being advertised is intended for the relevant age group. Similarly, it may be justified for a person belonging to an ethnic minority group to be elected as the leader of a project by local government towards an ethnic minority group (Pitt 2009).

Before applying an exemption for professional requirements, it must be considered:

- whether the nature of the professional activity determines the identity, race, nationality, ethnic origin, age, disability, religious or other belief or sexual orientation of the person applying for it, and
- whether the requirement arises from the nature and conditions of the professional activity, and
- whether the aim is legitimate and proportionate.

Example

The Court of Justice of the European Union considered the age limit as a professional requirement. In the local government, the upper age limit for recruitment to the police was 30 years of age. The Court of Justice of the European Union recognised that physical ability can indeed be a professional requirement, and what's more – physical ability is indeed related to age. The Court accepted that the operational capability and proper functioning of the police were legitimate aims. However, the Court of Justice of the European Union found that in this case the upper age limit was disproportionate. The same aim can be achieved with exclusive physical tests. Neither the training requirements for this post nor the need to ensure a reasonable active period before retirement age justify this upper age limit upon recruitment. (C-416/13 *Mario Vital Pérez v. Ayuntamiento Oviedo*)

At the same time, in the opinion of the Court of Justice of the European Union, the upper age limit of 35 years for recruitment to the police was justified. This was due to the fact that the duties of police officers were physically demanding, a police officer over the age of 35 no longer had the full capacity to perform their duties and recruiting a candidate over the age of 35 does not leave them a long enough period to perform their duties. The police wanted to achieve an age pyramid that would ensure that the police had a sufficient number of police officers who could be assigned the most physically demanding tasks. This can be achieved by recruiting younger people, who will gradually replace older police officers. (C-258/15, *Gorka Salaberria Sorondo v Academia Vasca de Policía y Emergencias*)

Many discussions have been caused by wearing of traditional Islamic head coverings, face coverings and other garments in public spaces. Depending on the context and, in particular, the place of work and the tasks, the courts have ruled in one way or another.

The European Court of Human Rights found that the requirement for a social worker working in a hospital not to wear a headscarf is in line with the requirement of neutrality of the

hospital service. Thus, the Court ruled that the non-renewal of the employment contract after she refused to comply with this requirement was justified. (*Ebrahimian v. France*, 26 November 2015)

The Court of Justice of the European Union found that also in the field of security services, the prohibition on wearing a headscarf with a uniform is justified on the basis of requirement of neutrality. The Court did specify that it is justified only if it concerns workers who come into direct contact with customers and if this ban is applied consistently and systematically and it is enshrined in internal rules. The dismissal of an employee affected by the ban is only permitted if they cannot be offered a job where they do not come into contact with clients. (C-157/15, *Samira Achbita & Centrum v. G4S*)

However, an Austrian court found that not wearing a headscarf in a notary's office cannot be a professional requirement. The applicant worked as a secretary at an Austrian notary office. After she converted and started wearing a headscarf and an abaya, a traditional Islamic garment covering her whole body, her contact with clients was restricted. The Austrian court found that this was not justified and that not wearing a headscarf cannot be a professional requirement. The applicant was dismissed after she started wearing a face covering that covered her whole face. Here the Court maintained that dismissal in such a context was justified because the workplace in question required unhindered communication with customers, colleagues and employers. Thus, not wearing a face covering can be a professional requirement that justifies different treatment. (FRA and EN, 2022, pages 214–215)

A Belgian court found that in a situation where the employee had been wearing an Islamic headscarf without any problems for more than 20 years, it is not justified to punish her for wearing a headscarf now. Especially since she did not come into contact with clients while performing her duties. (Ast et al, 2017, page 32)

The Court of Justice of the European Union heard a case in which an employer required an employee not to wear an Islamic headscarf after a client made a complaint about it. The Court found that this ban can theoretically be a professional requirement, but it has to stem from the nature or context of the professional activities during which duties are performed and it has to be fixed in interior rules of the employer in neutral terms. In this case, a specific employee was given an oral subjective order which, moreover, was directed against a particular religious expression. In this form, the ban cannot be an essential and decisive professional requirement. (C-188/15 *Asma Bougnaoui and Association de défense des droits de l'homme (ADDH) v. Micropole SA*)

Religious and other beliefs

The exception to the requirement of equal treatment also applies to religious and other belief-based organisations. For example, the employment of persons with similar ethos in religious associations and/or other religion or belief-based organisations in positions where this belief is an essential professional requirement cannot be considered discrimination (§ 10 (2) of Equal Treatment Act). Such a profession can primarily be related to performance of religious rituals and holding of a clerical office.

When these organisations recruit for professional activities and tasks which, by their nature, do not require existence of a particular religion or belief, the principle of non-discrimination must be followed at recruitment. A religious or other belief that coincides with the main ethos of the organisations is not a determining professional requirement for occupations and duties such as gardener, cleaner, construction worker, etc.

However, according to the Equal Treatment Act, organisations based on religious and other beliefs have the right to require persons working for them to act in good faith and to be loyal to the general moral character of the organisation (§ 10 (3) of the Equal Treatment Act).

Example

A case was brought to a German court where a social worker had been dismissed from a kindergarten run by a Catholic association after they had left the Catholic Church. The court found that in this case the dismissal was justified. The workplace was not religious in nature, but the employee's religious beliefs were still a legitimate and justified professional requirement. (FRA and EN, 2022, page 103)

The Croatian ombudsman received a case where a Catholic faculty held a public competition for two posts: head of the general and legal departments and the head of postgraduate and doctorate studies. Among other things, candidates were required to submit a christening certificate. The ombudsman considered that, since these were administrative posts, religion could not be an important, legitimate and justified professional requirement. Neither were there special conditions for religious belief in the internal rules of the religion-based faculty itself. (Ast et al, 2017, page 40)

In Germany, the court ruled that the exclusion of an otherwise qualified nurse from a vacancy in a Catholic hospital because she was not a Catholic constituted discrimination. (Ast et al, 2017, page 41)

In UK, there were three guesthouse cases, all involving discriminatory treatment of same-sex couples. In the first case, the guesthouse refused to give a single-bed room to a same-sex couple because this would have been contrary to the religious beliefs of the owners. In the second case the owners refused to give a room to anyone who was not married. The court confirmed that marriage and civil partnership have no substantive differences and the owners' refusal to give a room to a same-sex couple in a civil partnership constituted discrimination on the grounds of their sexual orientation. In the third case the owners of the guesthouse had posted statements on their website saying that it was a heterosexual friendly B&B and "Man + Woman = Marriage". The equal treatment authority asked them to remove them from their website, which they did. Thus, religious beliefs do not play a role in the provision of ordinary, non-religious services to the public. (Ast et al, 2017, pages 77–78)

A Polish court found that refusal to print LGBT Business Forum's roll up banner violated the equal treatment regulation. The court explained that this was purely a photocopying service and included only technical activities. Refusal to provide a service would be justified if it were contrary to, for example, the artist's religious beliefs. (European Commission, 2018b, page 150)

Age

In certain limited cases, people may be treated differently because of their age. Age-related exemptions may arise from statutory provisions or be justified by objective employment and labour market policy aims and/or legitimate vocational training aims (§9 (2) of the Equal Treatment Act).

Under EU law, such age exceptions may include, for example (Art. 6 (1) of Council Directive 2000/78/EC):

- establishment of special conditions for access to employment and vocational training, access to employment and occupation, and dismissal and pay for young people, older workers and persons subject to maintenance obligations, if the aim is to promote their professional integration or to ensure their protection;
- establishment of minimum conditions for access to employment or certain benefits relating to age, experience or seniority;
- setting the upper age limit for recruitment on the basis of the training requirements for the post in question or in order to allow a reasonable period of service prior to retirement.

There are situations where different treatment of a person simply because of their age may be justified in the public interest. Examples include a minimum age for access to work or certain goods (e.g., alcoholic beverages) and services (obtaining driving licenses and weapons licenses), as well as preferential tariffs for certain age groups when using public transport. There may also be no discrimination when insurers and banks use age as an actuarial factor in assessing a client's risk profile. However, this is only where the age criterion is relevant, gender-related and based on objective evidence (§ 14¹ (2) of the Insurance Activities Act).

Example

The Lufthansa collective agreement set the mandatory retirement age for pilots at 60 years. This upper age limit was lower than the general retirement age in national regulation. The Court of Justice of the European Union accepted that, in principle, ensuring aviation safety is a legitimate aim, but found that in this case the upper age limit set by the agreement was not proportionate. Firstly, various international as well as national laws allowed continuation of activities until the age of 65. Secondly, it is unlikely that a pilot will lose the necessary physical abilities in their field at the age of 60. (C-447/09 *Reinhard Prigge and Others v. Deutsche Lufthansa AG*)

A few years later, the Court of Justice of the European Union heard another Lufthansa dispute, where a 65-year-old pilot was sent to retirement because according to German law those who are 65 and older were not allowed to be pilots on commercial flights. The Court of Justice of the European Union found that, in this case, the upper age limit was justified, as it was set specifically for commercial flights, where the aircraft used are technically more complex and there are more concerned people involved. The aim of this rule is to ensure flight safety – to minimise the problems caused by human error and to ensure that only people with the necessary physical capacity are involved. However, the Court found that such a restriction was not justified in the case of an instructor and/or examiner (who does not operate the aircraft themselves) or in the case of pilots of ferry flights. (C-190/16, *Werner Fries versus Lufthansa CityLine GmbH*)

The Court of Justice of the European Union also dealt with the Hungarian law, which lowered the mandatory retirement age for judges, prosecutors and notaries to 62 years. The government defended this change with two objectives: the harmonisation of the mandatory retirement age for the public sector and the creation of a more balanced age structure by encouraging young lawyers to enter these positions. The Court found that, in principle, those aims were legitimate, but that the means used to achieve them were disproportionate. Namely, the pension age was reduced very sharply: from 70 to 62 in just one year, without any transitional measures that would have helped the affected persons to prepare themselves. In addition, the Court found that the chosen measure would not actually achieve a more balanced age structure in those occupations. Initially, this would lead to diversity in age of the workforce, but it would slow down after a while. (C-286/12 *European Commission v Hungary*)

Exceptions due to gender and care obligations

Exceptions that are not considered to be discrimination on the grounds of gender are stated in the Gender Equality Act. The Equal Treatment Act also states an exception according to which the granting of preferences in employment relationships due to pregnancy and childbirth is not considered discrimination. The provision is directly linked to ensuring the principle of equal treatment, which takes into account the biological and social differences between men and women.

The Equal Treatment Act also considers granting preferences due to caring for minors or incapacitated adult children and incapacitated parents a justified unequal treatment. At the same time, persons who care for persons of a certain age (minors and incapacitated parents) or persons with disabilities who are unable to work (incapacitated adult children) must not be treated unequally compared to others.

Performing employee representation functions

It cannot be interpreted as discrimination against other employees if an employee is given advantages because they represent employees or are a member of a union of employees (§ 9 (3) 1) of the Equal Treatment Act). For example, trustees may examine working conditions without hindrance, including work organisation, receive training for the performance of their duties (maintaining average wages during training), use the employer's premises and other resources necessary for the performance of their duties, perform duties during working hours in agreement with the employer, etc (Employees' Trustee Act).

At the same time, it is important to know that according to § 19 (2) of the Trade Unions Act it is prohibited to restrict the rights of an employee and a jobseeker depending on whether or not they belong to a trade union, are an elected representative of a trade union or are involved with other lawful trade union activities.

Public order, ensuring security, etc

Measures taken to ensure public order and security, to prevent crime, to protect health, rights and freedoms of others shall not be deemed to be discrimination (§ 9 (1) of the Equal Treatment Act). But only if they are proportionate to the aim pursued.

This provision literally transposes Article 2 (5) of EU Council Directive 2000/78. Its preamble emphasises that the armed forces, police, prison or rescue services do not have to recruit or retain persons who do not have the appropriate capabilities to perform the tasks that may be required of them in order to maintain the operational capacity of those services. For example, in order to ensure the combat capability of the armed forces, unequal treatment on the grounds of age or disability may be justified.

Since, for example, certain physical abilities are often required when recruiting into force structures, it must be borne in mind that they are appropriate and not too general, but take into account requirements for a particular profession or post.

Example

The UN Human Rights Committee considered a case where a railway worker of Sikh faith refused to wear a helmet while working, claiming that it discriminated against him on the grounds of religion because he could not wear a turban with a helmet. However, the Committee found that Canada had not breached the principle of equal treatment, since wearing a helmet protects workers from injury and electric shock and is therefore a reasonable requirement in direct relation to the objective. [*Karnel Singh Bhinder vs. Canada*, UN Human Rights Committee, 1989]

Disabled persons

Taking into account the special needs – mobility, hearing and speech difficulties, visual impairments, learning difficulties – of disabled persons is not considered discrimination (§ 11 of the Equal Treatment Act). The principle of equal treatment requires that given the special needs arising from disability, educational institutions and employers provide them with certain advantages or create learning and working environments that enable them to work and receive training. The provision of the Equal Treatment Act directs employers to focus on assessing a person's abilities instead of assessing a disability and linking those abilities to the requirements for a specific job:

- by applying a recruitment procedure (e.g., announcement, interview, evaluation, selection) that ensures that access to employment is realistically accessible to people with disabilities
- by taking reasonable steps to adapt the workplace conditions, including teleworking, part-time work and working from home, to meet the specific needs of disabled workers; and
- by increasing awareness of management and staff of disabled persons through appropriate training

According to § 11 (2) of the Equal Treatment Act, employers must take appropriate and necessary measures on case-by-case basis, to enable disabled persons to gain access to employment, to work, and to have access to promotions and training. The requirements for creating a work environment that meets special needs vary, depending on the specific needs of the disabled person and the possibilities of the employer.

In order to avoid discrimination of jobseekers on the grounds of disability, different types of disability must be taken into account already in the recruitment process. In the recruitment process, attention must be paid to the forms of delivering job advertisements, access to job interviews, conducting a job interview, for example, with a person with hearing impairment or a person using sign language, etc. Prior to selection and job interviews, the selection criteria

must also be reviewed in order to assess people on the basis of their abilities and skill and not to exclude people with disabilities.

Upon employment of disabled persons, the employer may assess not only the suitability of the disabled person but also the measures that need to be taken to enable the disabled person to work. Such measures to enable disabled people to work include among other things:

- adjustments in the work environment
- adjustments to the workplace (for example, a different chair, a room to rest in)
- conversion of machinery and work equipment
- working time and working rhythm
- transferring the employee to another job or another branch or department with the same salary rate
- special vocational training offered to the candidate
- personal support (a mentor or an assistant)
- changing the organisation of work (e.g., possibility to work from home)
- changing the mentality of other employees (i.e., that co-workers must make an effort to adapt to the situation of the disabled person)
- sometimes just making the workplace accessible to a person in a wheelchair

Example

The European Court of Human Rights heard a complaint from a student who was not admitted to the academy of music due to their visual impairment. The student successfully passed the competitive entrance exams to the school. The Court found that if a school refuses to take appropriate and reasonable measures to help a disabled student obtain a school education, there is discrimination on the grounds of disability. In this case, the school had not made any effort to identify the needs of the student. The school was also unable to explain how or why a student's visual impairment is an obstacle to learning music, and the school also did not agree to adapt teaching methods so that they are accessible to visually impaired students. (*Çam v Turkey*, 23 February 2016)

The European Court of Human rights also made the same decision in another case where the state and the university had not taken reasonable measures to ensure that a student with a disability could continue their university studies on an equal footing with other students. Enver Sahin was paralyzed from his lower body after the accident. In order to continue his studies at the university, he asked his faculty to make the university buildings accessible to him so that he could continue his studies. The university claimed that in this time frame and with their limited financial resources, they could not make the necessary adjustments. Instead, they offered to appoint him an assistant to help him, but Sahin refused because he felt such an arrangement would interfere with his privacy. The Court found that in making this proposal the university had not assessed the applicant's specific situation or his right to live as independently and autonomously as possible. Adaptations to buildings cannot be refused simply because the building was built a long time ago (before the relevant guidelines were adopted) and that adaptations are made when funds are available for this purpose. It must be assessed whether the proposed alternative solution is sufficient for this person and whether it allows him to continue his studies on an equal footing with other students, while not overburdening the university. (*Enver Sahin v. Turkey*, 30 January 2018)

The Court of Justice of the European Union discussed a Danish case where two employees were dismissed due to disability-related absences. This case is described in further detail in chapter 2.3.3. In addition to defining the concept of disability, the Court noted that employers have a duty to take appropriate measures to enable disabled people to go to work and progress at work. These measures do not only mean material measures, but can also mean organisational measures. For example, it is appropriate to reduce working hours so that the employee is still able to continue working. Whether this would be a measure which would not impose a disproportionate burden on the employer must be decided on a case-by-case basis. (C-335/11, HK Danmark, acting on behalf of Jette Ring *versus* Dansk almennyttigt Boligselskab and, C-337/11, HK Danmark, acting on behalf of Lone Skouboe Werge *versus* Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S)

An analyst working for a brokerage and research company had health problems after a bicycle accident (dizziness, fatigue and headaches) and consequently worked adjusted work hours. Over time, however, they were occasionally asked to work in the evenings, and the expectation that they would continue to do so began to develop. Finally, the applicant quit and complained of discrimination on the grounds of disability. The Court pointed out that employers should be wary of repeated requests to work in certain ways, including longer working hours, as this could put pressure on employees. That, however, is a practice that puts a person with disabilities at a disadvantage. (European Commission, 2018b, pages 174–175)

A local UK court discussed a case where the employee returned from an operation and was no longer able to do his current manual work as a road cleaner. He had applied for one hundred other, administrative, jobs within the company, but without success. He was dismissed. The court found that if an employee is no longer able to do his job due to his disability, it would be a reasonable measure to recruit him to another job within the company. (Elizondo-Urrestarazu, 2021, page 25)

An employee at a prison wanted to change his workplace from one prison to another. They had trouble sitting for a long time, so they wanted to work closer to home. The other prison did not want him. The court found that this would have been a reasonable measure, which would have been beneficial in every way to the employer, as the other prison had a suitable vacancy, it was also financially possible and there were no other suitable local options for the prison officer. (Elizondo-Urrestarazu, 2021, page 28)

The Greek equal treatment authority dealt with a case where a nurse requested exemption from the afternoon and night shifts due to the need to eat and inject at specific times. The authority calculated that they should be found a replacement on every fifteenth day of duty. It was found that this was not a disproportionate burden on the hospital, so such an arrangement would be a reasonable measure. (Elizondo-Urrestarazu, 2021, page 30)

A bank in Lithuania rejected a candidate with a hearing impairment. The equal treatment authority recalled that recruitment requires an assessment of each candidate and their ability to carry out specific work on an individual basis. The bank could not prove that they had done so. In addition, the authority noted that the bank's written explanations and job description

indicated that the tasks would have been primarily related to the bank's internal processes, i.e., computer work. (Elizondo-Urrestarazu, 2021, page 31)

Avoidance of implementing such measures may be considered discrimination on the grounds of disability, unless the employer can prove that the necessary measure(s) would impose a disproportionately high cost. In determining the proportionality of cost, account shall be taken of (§ 11 (3) of the Equal Treatment Act):

- financial and other costs of the employer,
- the size of the entity or enterprise,
- resources, their nature, and the possibilities to obtain public funding or funding from other sources.

ADDITIONAL INFORMATION

The European Commission has compiled guidance material "[How to put reasonable accommodation into practice – guide of promising practices](#)". In addition to explaining the concept of reasonable measures, the guidance material also provides many examples of best practices from both the public and private sectors.

Among other things the guidance material provides a checklist to help assess whether the measure is reasonable:

- Does the measure work? Does it meet the specific needs of a disabled employee?
- Is the measure practical?
- Does the measure entail unsustainable direct and indirect costs for the employer?
- Are there external resources (financial support and expertise) available to support employers in the event that costs arise?
- Does the measure interfere with the work of other employees?
- Can the measure be implemented without affecting health and safety?

Positive measures

The Equal Treatment Act provides for the possibility of positive measures aimed at preventing and reducing structural and institutional discrimination (Fredman 2005). This is particularly important for people who belong to disadvantaged groups and who are not themselves able to defend their rights in court and whose disadvantage cannot directly be blamed on anyone.

ADDITIONAL INFORMATION

Systemic and structural discrimination

At society level, we can speak of *systemic and structural discrimination*, where it is not possible to define an active agent – the discriminator, but where the essentially discriminatory situation is treated as the normal functioning of society.

Structural discrimination is based on deep-rooted views, approaches, opinions and values and ideologies in every particular society. The social structure and culture that maintains it, as well as the customary norms, largely determine what is expected from the behaviour of a

person belonging to one group or another. At the same time, certain characteristics are assumed from a person that are attributed to them for belonging to their race, national, ethnic, gender or other social group. Such expectations limit people's free choice and are therefore discriminatory.

According to the concepts internalised and accepted through culture and experience, reality is seen as normal, unchanging and ordinary. The inequalities that have arisen in this way and that are perceived as normal and self-evident endanger people's dignity, equality between them and social justice. This less favourable treatment of certain groups will continue until it is not acknowledged, noticed or analysed.

Structural discrimination is more difficult to detect than discrimination committed by someone, and individual complaints cannot improve the situation. In order to reduce the established inequality (because this is what causes the disadvantage of some groups again), positive measures and reduction of inequalities will be implemented through various policy measures, including the obligation to promote equal treatment.

The manifestation of structural discrimination is also when people belonging to lower-status groups experience less favourable treatment not only in situations where discrimination is legally prohibited (mainly in relation to working life) but on a daily basis – expressed either in derogatory terms, degrading behaviour, suppression of free will, labelling, accusations, insults, violence against them, etc., whether by other persons or institutions (e.g., the media).

The starting point for specific measures is the understanding that people cannot always exercise their rights to the same extent, because inequalities already exist in society, which limit the opportunities of people belonging to one or another group, because the positions and situations are different.

Thus, positive measures can be applied to:

- prevent, reduce or remedy the disadvantages, potential discrimination and inequalities due to attitudes, behaviour patterns, practices and social structures
- accelerate the improvement of the situation of a particular group and achieve *de facto* equality in the fields of working life, education and social services, or
- achieve cultural changes in society that support dispelling of stereotypes and myths, reduction of prejudice, humiliation and violence, etc.

The achievement of these objectives is also supported by § 6 of the Equal Treatment Act. The provision also specifies the conditions for implementation of positive measures:

- objectively justified – the aim pursued serves to improve the existing situation and is based on statistical and other data
- proportionate to the aim pursued, including the fact that the chosen measure restricts the fundamental rights of other persons as little as possible
- applied until one or another type of inequality is eliminated, i.e., the goal is achieved
- it can be implemented by state and local government agencies, education institutions and employers

Any automatic preference by the employer for persons with lower qualifications is not permitted and must be interpreted as discrimination against other persons.

The aim of a positive measure is to provide equal opportunities, not equal results (Hardwick, 2014, page 25). The Court of Justice of the European Union has therefore stated that the automatic quota system does not fulfil this function. In any case, the other party must be able to indicate the reasons specific to them, which will tilt matters in their favour. For example, in the Abrahamsson case, the Court found that giving priority to a female candidate in a situation where she has sufficient, but not equal qualifications to that of a male candidate would be going too far and would be discriminatory. (C-407/98, *Katarina Abrahamsson and Leif Anderson v Elisabet Fogelqvist*).

The employer may support disadvantaged persons with prior training and education before the recruitment process. For example, the employment of support persons supporting the schooling and education of Roma children can be applied, the creation and distribution of information materials in special languages to persons who are less proficient in Estonian can be applied.

The European Network of Equality Bodies has formulated a positive action checklist based on existing case law (Hardwick, 2014, page 26). A legitimate positive measure must fulfil the following conditions:

1. There is a proven under-representation (inequality).
 2. The absence of balance is due to unequal opportunities / disadvantages.
 3. A measure must be proportionate, i.e., legitimate, effective and necessary.
- Consequently:
- a. the absence of balance must be proved;
 - b. the aim of the measure must be to remove and improve the reasons for lesser opportunities;
 - c. the measure should pursue the set objective;
 - d. the measure must be based on objective and transparent criteria;
 - e. automatic or unconditional preference of an underrepresented group is not allowed. It must always be possible to assess the individual values or personal circumstances of a representative of an over-represented group;
 - f. automatic preference may be given in the context of allocation of training places and invitations to interviews, provided that the over-represented group is not completely excluded if they have equal qualifications;
 - g. the measure has to be temporary.

ADDITIONAL INFORMATION

Examples of positive measures

Norway experimented with a project in which certain public authorities had to invite to interview at least one person with a non-Western ethnic minority background if there were candidates with such a background. This gave them the opportunity to be assessed in the context of a particular job and they were not excluded already because of their name. Of all minorities invited to interviews, 32% received a job offer. Within the 1.5 years of the project, the rate of employees with minority backgrounds increased from 3.6% to 5.1%.

In Germany, depersonalised CVs have been used in the recruitment process. This yielded especially good results for women, but also candidates with an immigrant background, whose chances of being called for an interview increased. The same practice has been used by the Office of the Commissioner for Equal Treatment in Estonia for finding new employees. This is the so-called talent recruitment method or anonymised candidates' method. Candidates are

assessed and selected anonymously until the interview round, which helps to avoid the impact of prejudices and subjective attitudes and to prevent discrimination against job seekers on the grounds of gender, age, nationality, family responsibilities and other characteristics protected by law. The principle is that the most suitable candidate is found by focusing on the skills, knowledge, experience and motivation of job seekers, rather than gender, nationality, ethnicity, age or other characteristic related to the person.

In several countries, including Austria, Croatia and Slovenia, training was provided to people with an immigrant and ethnic minority backgrounds to improve their professional qualifications.

Croatia and Latvia pay a grant to employers who hire workers of Roma background. Serbia and Slovenia use the same measure to encourage hiring of young people. In France and the Netherlands, grants are paid for hiring both young and older people.

In Estonia, the Unemployment Insurance Fund helps to finance the adaptation of offices and/or equipment to the needs of a disabled person. In some countries, including Estonia, Poland and Slovakia, it is possible to receive tax incentives in one form or another when employing disabled or older people.

In the case of services, the provision of concessions to young people, the elderly and/or disabled people is a very common positive measure.

The implementation of positive measures is essential and necessary in the light of the principle of equal treatment in order to reduce inequalities and stratification that have been established on irrelevant grounds, to reduce the exclusion of some people and to make their chances of participation in society more equal. There is a growing appreciation for positive measures that seek to compensate for the lack of substantive equality in society.

Example

The European Court of Human Rights found that Hungary had violated its obligation to adopt positive measures to end the historical racial segregation in its school system. Namely, the Hungarian government used seemingly neutral tests to decide whether a student should be referred to a special school. As a result, Roma children were referred to special schools for children with disabilities. Hungary had not created suitable conditions for Roma children to study in regular schools according to the standard programme. (*Horváth and Kiss v. Hungary*, 29 January 2013)

More than 40 years ago, a case before the European Court of Justice concerned the recruitment of linguists into EU institutions. Prais participated in a public competition. He was informed of the date of the test, which fell onto an important Jewish holiday, which is why Prais asked for an alternative date. He was refused. The court ruled that there was no violation in this case, but also noted that employers could ideally consider larger religious holidays when setting such dates. (C-130/75, *Vivien Prais v Council*)

2.5. Forms of discrimination

In order to describe the nature of discrimination, the Equal Treatment Act distinguishes between different forms of discrimination. The law regards as prohibited discrimination the following:

- direct discrimination
- harassment
- indirect discrimination
- an order and/or command to discriminate
- victimisation

2.5.1. Direct discrimination

Direct discrimination is defined as cases where, in any field where discrimination is prohibited, one person is treated, has been treated in the past or may be treated less favourably than another person in a similar situation (§ 3 (2) of the Equal Treatment Act) because of their nationality (ethnicity), race or colour, religion or belief, age, disability or sexual orientation. Intent or lack of it is irrelevant – discrimination is assessed on the basis of the outcome, i.e., the disadvantage.

Example

A man applying to be a police officer was asked in a job interview about his and his wife's origins and their religious practices. In the course of the investigation, the French equal treatment authority found that these issues were not related to the future duties of a police officer. The authority recalled that asking questions in a job interview that were not related to future assignments was discriminatory. (Malisianou, 2016, page 14)

A person in a wheelchair was denied entry to a nightclub. On the first occasion, the security guard said that there was no room at the club, but a little later the person accompanying the person with reduced mobility was allowed into the club without any restrictions. Two weeks later, the applicant tried to enter the club with a television crew, this time the explanation for refusal was that there was a private event at the club that night. Later, however, the other person was allowed in freely. (Riga Regional Court, case no nr 04386004, C 20203)

A similar incident took place in Latvia with a group of young people of various ethnic backgrounds who were trying to get into a club. As with the person in a wheelchair, they were told that there was a private event at the club. However, the video shows that immediately after them the locals were allowed in. (Malisianou, 2016, page 16)

In France, an apartment owner refused to rent an apartment to people with a foreign-sounding name. On the phone, the owner said they wanted only "Europeans, such as Swedes or Germans, and not people from North Africa and Africa in general" to live in his apartment. The owner was fined. (Malisianou, 2016, page 17)

The Cypriot ombudsman recommended changing the medical school admission criteria that were discriminatory on the grounds of disability. Following a complaint from the parent of an applicant with a hearing impairment, the ombudsman examined the admission criteria of the national medical school, which included, among other things, the requirements that the candidate be between 17 and 35 years of age and have excellent hearing. The rules of

admission allowed people with disabilities (2%) to be admitted to school, provided that their disability did not affect their activities as a nurse, but persons who were admitted under this rule were not disabled within the meaning of the Persons with Disability Act No 127(I)/2000 but suffered from thalassemia, diabetes, etc. The ombudsman found that the admission criteria constituted direct discrimination on the grounds of disability. The ombudsman recommended that the rules containing the new admission criteria, which were currently being drafted, should only be based on how the characteristics of the candidates affect their progress in school and should not take into account their future ability to perform their duties, the ombudsman also recommended that the age limit be excluded from the admission requirements. The relevant authority decided to follow the recommendations of the report. (European Commission, 2006b)

In order to identify direct discrimination, there does not necessarily have to be a real person with whom to compare. A comparable person is not required in order to make a hypothetical comparison. The construction of a hypothetical comparable person can be based on known data on the most common forms of discrimination in society. Nor is there a need to present a comparable person if the discriminator has expressly stated that a specific ground for prohibited discrimination was decisive in the decision.

Example

A man of Roma background was looking for a job at a security company. He had the necessary qualifications for a security guard, but a company employee told him that Roma would not be recruited. The man filed a complaint with the labour inspectorate, which checked the compliance with the Hungarian non-discrimination provisions. During the proceedings, the owner of the company acknowledged the discrimination and expressed regret, but stated that the company's customers did not want Roma security staff. The labour inspectorate fined the company 100,000 forints (400 euros). The man also filed a separate complaint against the company for non-patrimonial damage under the Labour Code and the Equal Treatment Act. The 2004 October judgment of the labour court confirmed that the applicant had been directly discriminated against on the grounds of his national origin and awarded him 500,000 forint (2000 euros) in damages. The owner of the company, who had admitted direct discrimination in court, appealed, but the labour dispute committee and the court of the following instance upheld the decision in May 2005. (European Commission, 2006b)

2.5.2. Harassment

Harassment is one of the types of direct discrimination and is therefore prohibited. Unlike other cases of direct discrimination, the Equal Treatment Act has explicitly stated that there is no need to define a comparable person in the case of harassment.

Harassment is unwanted behaviour that degrades the dignity of a person and creates an intimidating, hostile, derogatory, degrading or offensive atmosphere (§ 3 (2) of the Equal Treatment Act).

Systemic harassment on one basis or another can also create one group's disadvantage and subordination to the dominant group.

The victim of harassment determines whether the behaviour in question is undesirable to them. Unpleasant attention usually becomes harassment if it continues even after a person has clearly declared that it is offensive to them. However, depending on the severity, every single incident can be harassment.

Harassment in the workplace can take various forms – physical or mental, which is expressed in individual cases or in systematic behavioural patterns. Harassment can occur among colleagues, between a superior and a subordinate, or between partners and clients, by and towards patients, buyers, etc.

We recommend that you read:

Guidelines issued with the support of the Ministry of Social Affairs and by the Estonian Human Rights Centre “Prevention of Sexual and Gender Harassment in the Workplace”. The guide can be found on the websites of the Estonian Human Rights Centre and the website of the Ministry of Social Affairs.

The aim of the guide is to convey as easily and clearly as possible what is gender and sexual harassment. It also clarifies the responsibilities and obligations imposed on the employer by law, and the rights and opportunities of the employees.

Copyright: Marianne Meiorgh and Estonian Human Rights Centre, and Ministry of Social Affairs, 2015

Example

In a French case, the employee claimed that their direct superior constantly criticised her, used inappropriate language and relocated her to a smaller office. The court explained that the employer is liable for harassment if he has not taken appropriate preventative measures and has not stopped the harassment after being notified of it. The court found that in this case the employer had not done enough to prevent harassment, including not informing or training the employees. (FRA and EN, 2022, page 66)

The Hungarian equal treatment authority discussed a complaint against teachers who had told their students of Roma origin who had behaved badly that they had been reported to the “Hungarian defence”. This is a far-right organisation that commits acts of extreme violence against the Roma. It was found that teachers indirectly supported the racist views of the organisation by their action and also created an atmosphere of fear that amounted to harassment. (FRA and EN, 2022, pages 66–67)

The equal treatment commission of Northern Ireland discussed a complaint of a man claiming to be discriminated against and harassed because of his sectarian beliefs. His colleagues called him offensive names, spat at him and drew offensive and threatening graffiti. He became ill and took sick leave due to stress. He also made a complaint to his employer. The employer found that he could change jobs. Finally, the employer issued him with a final warning regarding his sick leave for absences from work. The case was settled out of court, the man was paid £50,000 in compensation and the employer met with the equal treatment

commission to review their practices, policies and processes. The Commission's recommendations were implemented, including staff training. (*Ast et al, 2017*, pages 38–39)

In Austria, a doctor refused to examine a woman wearing a traditional Islamic headscarf. In addition, the doctor repeatedly expressed their doubts about the Islamic religion, her position in society as a woman and her consent to being oppressed because she was wearing a headscarf. The Austrian equal treatment authority found that this was gender-based anti-Islamic harassment. (*Ast et al, 2017*, page 75)

In Denmark, a man with an Islamic name made an offer on a used cars' website. To that the seller of the car sent him an email with the message "Fuck you, Muslim". The Danish equal treatment authority found that this was harassment on the basis of the man's ethnic origin. (*Ast et al, 2017*, page 75)

The Austrian court found that in certain cases, a single incident can also create a threatening, hostile, or degrading atmosphere for a person. The applicant's immediate superior said: "I'm going to throw this scrambled egg in your face, you ugly nigger (neger)!" The court found that it was sufficient to identify harassment. (*Schindlauer, 2018*, page 90)

However, in another Austrian case, where a former employee received a letter using derogatory expressions regarding their ethnic origin, the court found that it did not amount to harassment. According to the court, it could not create a harassing environment that indicates a lasting situation, because the person no longer worked there. (*Schindlauer, 2018*, page 90)

§ 12 (1) of the Equal Treatment Act provides the obligation of the employer to protect the employee from harassment by taking the necessary measures. This is in line with the generally accepted principle that an employer must protect an employee from harassment by both co-workers and customers. Also, in the case of gender-based and sexual harassment, the employer is also required to actively ensure that harassment does not occur (§ 11 (1) 4) of the Gender Equality Act).

Example

A kindergarten teacher of Turkish origin had worked in the same kindergarten for nearly 5 years. A hearing-impaired child was placed in their group. The parents of the child complained to the head of the kindergarten that the teacher did not speak correct Danish and could therefore not serve as a suitable linguistic example for their child. The headteacher accommodated the parents in several ways: informed them of the kindergarten teacher's work schedule in order to avoid the latter being the only teacher in the group room with that child, and while the teacher was on sick leave, the headteacher assigned them another classroom to reduce their contact with the parents. The teacher did not agree to this change and they were dismissed because of absences due to their illness. The teacher claimed that their illness was the result of insecurity, stress and depression as a result of constant criticism from the parents and a lack of support from the headteacher. The Danish equal treatment authority accepted this and found that, as a result, and because the headteacher did not inform them of the parents' concerns and the accommodations, it was found that the employer had not provided the kindergarten teacher with a sufficiently harassment-free work environment. (European Commission, 2018b, page 106)

2.5.4. Indirect discrimination

In the case of indirect discrimination, a provision, criterion or a course of action which is neutral at first glance shall prove discriminatory in terms of its results (§ 3 (4) of the Equal Treatment Act). This means that a person or a group of people corresponding to a particular ground of prohibited discrimination is placed at a disadvantage compared to others and is not objectively justified by any legitimate aim or by the appropriateness and necessity of the means of achieving it.

Indirect discrimination can be identified by statistical evidence, but also through a “pretend situation” (FRA and EN, 2022, pages 242–248). For example, the supervisory body may verify the existence of discriminatory personnel policy by submitting CVs with surnames referring to different nationalities when applying for jobs. If candidates with foreign names are not invited to job interviews, this may indicate discriminatory practice.

Example

A woman of Roma origin applied for a job at a pharmacy, but was told the position was no longer available. A few minutes later, a non-Roma woman of the same age, acting as a test person and equipped with a concealed recording device, was offered a job interview, and although she stated she did not have the necessary training and experience, the manager of the pharmacy indicated that she might be recruited. The applicant took the matter to court with the support of Czech NGOs. The Prague City Court awarded the applicant an apology and compensation for non-patrimonial damage in the amount of 50,000 Czech *korunas* (1670 euros). The pharmacist apologized and paid damages. (European Commission, 2006b)

In order to detect indirect discrimination, a three-part test must be carried out:

1. a “distinguishing rule” must be defined, which divides people into groups of different status on the basis of a neutral provision, criterion or practice
2. then it must be analysed whether representatives of a minority group are predominantly represented in one group, and then
3. it must be ascertained whether such division is justified by a legitimate aim and whether the means of achieving that aim are sufficiently appropriate and necessary to justify the disadvantage of a group.

Indirect discrimination is often the result of institutional discrimination. It refers to practices or procedures applied in a company, institution or community that are structured in such a way that they have a tendency to produce discriminatory results.

Thus, organisations and companies have often developed specific jobs to which employees of a certain gender or ethnicity are recruited, or the principle of promotion of predominantly persons of a certain age has developed in the culture of the organisation.

Institutional discrimination is often unintentional. If this is intentional, it is more appropriate to use the term institutionalised discrimination. For example, institutionalised discrimination is when physical tests for admission to police school establish the same standards for women and men. If its covert purpose is to increase the number of boys entering the institution, this constitutes institutionalised discrimination.

Examples

The European Court of Human Rights discussed a case about tests assessing students’ intellectuality and suitability for mainstream schools. Those who did not perform well in tests were transferred to special schools for students with intellectual disabilities and other learning

difficulties. The same test was used on all students who were considered for transfer to a special school. The test was developed on the basis of the vast majority in the Czech Republic, and students of Roma origin inadvertently scored worse. As a result, 50–90% of students of Roma origin studied outside mainstream schools. The Court found that there was indirect discrimination. (*D.H. and others v Czech Republic*, 2007)

The case in Romania was somewhat similar, where several local governments had set a certain level of education as a prerequisite for access to social housing. The court assessed statistics showing that 59% of the Roma population had not finished school (compared to 15% of Romanians or Hungarians) and that more than 50% of Roma live on less than 4 square metres (compared to 10% of other ethnic groups). Local governments explained that the aim of the educational restriction was to stimulate social and professional inclusion. The court found that the chosen measure was not proportionate to that aim. In addition, the court explained that although the local government has some discretion in such matters, it does not contain the possibility of acting abusively, arbitrarily, without a legal basis and without any control. The right to decide is subject to the principle of proportionality. (European Commission, 2018b, pages 154–155)

An example of institutional discrimination is a case in which a provision of the Health Insurance Act was declared to be in violation of the constitution, which excludes the right of an insured person aged 65 and over to receive sickness benefits for more than 90 calendar days a year, but for insured persons under 65 years of age the same Act allows compensation for 250 days per year. Pursuant to the explanatory memorandum to the Health Insurance Act, the legislator had intended to encourage persons over the age of 65 to restrict their working in the interests of saving their health. The court doubted that non-payment of sickness benefit could lead a rational person to reduce their working. It is also unlikely that a person will immediately become more ill when they reach the age of 65. (RKPKo 3-4-1-12-10)

The applicant ran a shop in a district with a predominantly Roma population. She complained that she was unable to control her electricity consumption because, unlike in other areas of the same city, in this part of the city, electricity counters were placed out of sight of customers at the top of pylons (at the height of 6 – 7 metres, compared to 2 metres elsewhere). The applicant alleged that there had been discrimination on the grounds of ethnic origin, even though she herself was not of Roma origin. The Court of Justice of the European Union confirmed that this is in principle possible if a person is affected by discriminatory practices affecting a particular ethnic community in the same way as the community itself. The Court then explained that all customers of the same electricity company in the same city, regardless of the region in which they live in that city, were in a comparable situation. Whether there is direct or indirect discrimination requires a multi-level assessment. Firstly, it must be ascertained whether the practice in question was based on the ethnic origin of the vast majority of the inhabitants of the district. If so, there is direct discrimination. However, if this practice was based on objective factors that did not have a direct link to ethnic origin (for example, there was an exceptionally high number of cases of manipulation of electricity meters in this region), then there could be indirect unequal treatment if the chosen measure negatively affected the Roma-majority regions in particular. Such unequal treatment would be objectively justified if there are no better and less restrictive means of achieving the desired

objective (correct accounting of electricity transmission security and electricity consumption). The chosen measure must not be offensive or stigmatising in nature and allow people to monitor their electricity consumption regularly. (C-83/14, *CHEZ Razpredelenie Bulgaria AD versus Komisia za zashtita ot diskriminatsia*)

Also, all the cases so far concerning the ban on face coverings in public spaces constitute indirect unequal treatment, as in these cases face coverings of Muslim women were not directly prohibited. At the same time, Muslim women in particular have been affected by these bans. Depending on the context, the court and equal treatment authorities have found that these prohibitions are either justified or not. (See case summaries below chapters 2.3.6. and 2.4.2)

2.5.3. Victimisation

Victimisation is persecution or other activity (e.g., punishment) that treats a person less favourably than others, or they suffer negative consequences because they have complained about discrimination or supported another person who has complained about discrimination (§ 3 (6) of the Equal Treatment Act). The purpose of this provision is to ensure adequate legal protection for victims of discrimination in the event of such conduct.

Example

An employee with a physical disability had worked for the same employer for several years, also progressing on the career ladder. When the employer reorganised the workplace, the employee and two other managers lost their positions. A few months later it was decided that as there was no suitable vacancy for the applicant, their employment contract would be terminated. During the same period, the employee had made several complaints about employer's treatment of him, including making insulting remarks about his disability and deliberately deteriorating his working conditions. As a result of this the employer sent a letter to the employee requesting clarification on his complaints and imposing a disciplinary penalty when he did not reply to the letter. Finally, the employer filed an action before the court asking to terminate the employment relationship with the employee. The employee filed a counterclaim requesting that the employer find him a suitable job and that discrimination and victimisation be identified. The latter because the employer had asked him to explain the complaints. The court found both discrimination and victimisation in the request for explanations, which resulted in his dismissal. (European Commission, 2018b, pages 93–94)

Varallo, a local government in Italy, distributed racist posters. Four persons and one NGO filed a complaint against the local government in court. The court rejected it because the applicants were Italian and therefore could not be victims themselves and, moreover, did not live in Varallo. This was followed by new posters naming and ridiculing the applicants. Four applicants turned to court again because of the new posters claiming that they had been victimised. The court agreed with them and explained that protection against victimisation also extends to those who are not victims of discrimination themselves, but suffer damage as a result of their actions to promote equal treatment. The court ruled that the activities of people who fight against discrimination, although not themselves victims of discrimination, should be strengthened and protected. (European Commission, 2018b, page 92)

2.5.5. An order or command to discriminate

In the same way as it is prohibited to discriminate against a person, it is also prohibited to give an order and/or a command to discriminate against persons (§ 3 (5) of the Equal Treatment Act). According to the provision, the employer is liable for direct or indirect discrimination on a prohibited ground, not their subordinate who, for example, carried out the discriminatory order.

For example, an order or command can be discrimination if:

- The head of human resources receives an order from the head of company not to invite people of another nationality to a job interview;
- The head of human resources receives an order from the head of company to exclude disabled people from recruitment, etc.

Discrimination outside of the group and inside of the group

In order to understand the nature of discrimination, a distinction can be made between discrimination outside the group and inside of the group. A person may feel discriminated against in society (for example, as a person belonging to the Roma population) while being in a subordinate state and discriminated against in their group because they belong to a group that is less valuable in the eyes of the group (for example, women have far fewer rights than men in the Roma community). Examples include ethnic or religious groups with a hostile attitude towards sexual minorities. It is recognised that the experience of discrimination does not always make a group or one of its members more sensitive to discrimination on other grounds.

Effects of discrimination

At the level of the *individual*, discrimination can lead to a chain reaction of deterioration of living standards. Long periods of job searching, not getting a job, being underpaid, displays of indifference or hostile attitudes can accumulate and lead to a decline in self-esteem. Low self-esteem limits further efforts, all disadvantages begin to amplify each other – an unfavourable situation in one area can lead to disadvantage in others. If such processes that affect the deterioration of life occur over a longer period of time and on a wider scale, the person will find themselves in a situation where negative attitudes (including stereotypes and prejudices) towards the group and cases of discrimination against its members begin to amplify each other. Such a situation is called a vicious cycle of discrimination or a trap of discrimination (Makkonen 2007).

At *society* level, it is important to understand that discrimination leads to socio-economic differences between groups and individuals over time. The public sees the differences as “normal”, as evidence of less value or lack of other necessary characteristics. This creates the phenomenon of “victim blaming” – “they themselves do not want to / cannot do it”. This amplifies existing stereotypes that support further discrimination, etc. Socio-economic differences between groups of people increase social distance, as people from different

economic and social groups are less inclined to interact voluntarily. The discrimination trap continues to operate unhindered.

Generally hostile attitude towards a minority group (in the organisation, in the media, in public, etc), for example, sexual minorities, may result in people belonging to that group refraining from positions where their orientation would come under unhealthy and derogatory attention (Makkonen 2010). As a result, society loses an important resource.

From the *employer's* point of view, the problem is that anxiety and stress caused by discrimination usually lead to the victim taking sick leave, lower efficiency at work or giving up work, and looking for a job elsewhere. If forced to leave a job, the workers will suffer retroactive consequences and this will undermine their prospects of finding a new job, both in the short and long term. If the productivity of employees decreases because people have to work in an environment where their dignity is not taken into account, this has a direct impact on the economic efficiency of the company.

As all people, victims of discrimination basically have two options: 1) to improve the situation, and 2) to reduce emotional tension. The options are influenced by a person's self-esteem and self-confidence. Above all, people try to restore and balance their psychological well-being. The most common is the so-called denial strategy, where the incident is described in some other terms, blaming oneself, or considering the incident normal, or ignoring it. Efforts are also often made to *avoid* situations where one might feel discriminated against, justifying it with "free will". The extreme option is *self-denial*, abandoning some aspect of one's identity in order to resemble other members of society and/or to meet more common expectations in society. For example, it is quite common in Estonian culture not to talk about one's age, to hide one's religious beliefs or avoid talking about mental disorders (European Commission 2006a).

The strategy of avoidance and self-denial actually lead to the goal of discrimination and perpetuate disadvantage.

If a person instils an image of themselves as a person of lesser value, because they have experienced discriminatory situations, for example, in recruitment, and gives up further job search, while also giving up a part of their identity, one of the main goals of discrimination – to remove differences from society – has been achieved.

3. WHO IS RESPONSIBLE AND FOR WHAT?

3.1. Employer

It is the duty of employers, including state and local government agencies, to prevent discrimination on the grounds prohibited by law already in the recruitment process, as well as when concluding an employment contract or a contract for provision of services and upon entry into service. Personal preferences can lead to costly recruitment errors and discrimination (intentional or unintentional), which can lead to legal problems that damage the reputation of the company/organisation.

Employers have the *obligation to inform* their employees of the employees' rights as well as of employers' obligations that are provided by law (§ 12 (2) of the Equal Treatment Act). The method of notification is up to the employer, the only criterion being the suitability of the notification method for the employees. Thus, among other things, account must be taken of the language skills of the employees and of some disabilities, and the accessibility of relevant information for persons with disabilities.

Employers have the responsibility to protect employees from discrimination that may occur by co-workers as well as customers or other target groups of the organisation. The law emphasizes the proactive nature of such protection – the implementation of necessary measures (§ 12 (1) of the Equal Treatment Act). The nature of necessary measures and the way of application depend on each specific organisations and its situation. The necessary measures can be identified by analysing the previous situation and consulting employees or their representatives. Such proactive measures may include, for example, codes of conduct, non-discrimination rules set in the organisation's internal rules, or rules for dealing with harassment, and/or possible disciplinary penalties.

Employers

Employers are natural or legal persons who

- allow work under an employment contract or a contract for the supply of services, and state and local government agencies (§ 4 (2) of the Equal Treatment Act)
- conduct recruitment process (e.g., interviews) with job applicants (§ 12 (1) of the Equal Treatment Act)

The *promotion* of equal treatment should be considered as part of managing the organisation and staff through data collection and processing, product and service development and public relations, in the selection and recruitment of staff, staff development, in the development of the organisation's culture and identity.

Recommendations for employers in the recruitment process

- Decide on the basis of skills, knowledge and experience what the company needs to perform a specific task or position
- Prepare a "job description" and personal requirements for the skills and experience needed to fill the position
- Make sure that the job description does not exclude anyone's application based on race, ethnic origin, religion, gender, sexual orientation, age or disability
- Adapt your requirements to encourage people with disabilities to apply
- Avoid verbal recruitment

- Consider various information measures (employment centres or labour market offices, national or local press, schools, colleges or universities, small format publications, internet)
- Assure that all applications from the community are welcome
- Do not impose age restrictions in job postings
- Talk with potential applicants informally, this may help engage people who might otherwise be concerned about their age, gender or any of their shortcomings
- Give individual feedback to candidates who were not selected
- Allow flexible working hours for your employees

It is the responsibility of the employers to analyse how their decisions on remuneration, other working conditions, training, career and promotions have affected, affect, or may affect employees belonging to more vulnerable groups. As the disadvantage of person(s) belonging to one or another group(s) may be caused by a practice or activity that is considered neutral and self-evident in the organisation, employers must review the basis and criteria for the remuneration of the work, the qualifications and other skill requirements for employees, the working conditions, in consultation with all the parties.

The aim is not only to identify deliberate discrimination on the part of someone on any prohibited grounds, but to make the climate of the whole organisation tolerant of differences. The grounds for discrimination differ in nature and each of them require countermeasures that are specific to their characteristics. Only together with representatives of minority groups can the situations be found where someone may be at a disadvantage. For example, in case of employees with some religious beliefs, it should be considered that they need other holidays, etc.

Creating a discrimination-free working environment can help companies avoid costs related to litigation, high labour turnover and absenteeism.

Employers are also responsible for ensuring that there is no harassment in the work environment. In addition to the same non-harassment and non-discrimination standards in force in all EU Member States, a framework agreement was concluded at EU level between the social partners and approved in 2008 by the EU Social Committee to combat harassment and violence in the working environment. It aims to reduce workplace harassment and violence, which can be physical, mental, sexual, either an isolated incident or a more systematic pattern of behaviour between colleagues, between managers and subordinates, clients, patients or students, ranging from minor acts that violate human dignity to criminal acts. The framework agreement sets out the principle on the basis of which cases of harassment and violence should be dealt with, including requirements for prompt response, confidentiality, hearing of parties and collection of necessary information, zero tolerance of false accusations, etc.

Employers, as well as employees themselves, play a major role in creating a working environment that does not condone any forms of harassment. It is therefore important to discuss the current taboo topic together and to agree on appropriate standards of conduct. In order for an employer to be able to fulfil their obligations, victims of harassment must know how and who to turn to and what formal and informal options can be applied to end harassment.

3.2. Educational and training institutions

According to the general prohibition of discrimination, educational and research institutions must fulfil *all the obligations imposed on employers* and ensure equal treatment of persons

belonging to a minority group in vocational guidance, education, special and vocational training and retraining, as well as in other matters related to the organisation of studies.

The Equal Treatment Act has imposed an obligation on all educational and research institutions, training institutions and persons to keep in mind the objective of promoting the principle of equal treatment in *determining the content of studies and the organisation of studies* (§ 13 of the Equal Treatment Act).

Educational institutions are among the few where people's knowledge, values, skills and behaviour can be consciously shaped. Therefore, it is important that the content of the subjects taught help to open up the nature and meaning of human rights, increase understanding of different cultures, and develop tolerance. The aim should be for children to learn at an early age to be friends with pupils from different ethnic or religious minority groups and to learn to respect each other.

Knowledge of people with disabilities should also be part of curricula. Accessible places of study and training must be provided for students with disabilities, with individual support and reasonable adaptation (including equipment) if necessary.

Equal treatment in education means not only equal access to education, but also equal participation and equal outcomes, at least within the scope of basic education. This cannot be achieved by treating all students equally and in an environment where bullying, harassment or other forms of discrimination are permitted. The principle of equal treatment is adopted in an environment where democratic values and people's right to be different are recognised.

In order to comply with law, it is necessary to be aware of the problems of students with special needs as well as the situation of other minorities.

For example, in its 2000 recommendations to the Member States, the Committee of Ministers of the Council of Europe defined guiding principles for the education policy of Roma children in Europe (Recommendation No R (2000) 4). It stated that schools should have curricula for Roma children and specially designed educational materials that take into account the Roma children's different backgrounds and cultural identities. The aim of the educational materials is to introduce the history and culture of Roma to reflect their cultural identity. In Estonia, these recommendations have not yet been taken into account at national level.

Both educational and research institutions can contribute to promoting equal treatment by examining and identifying the problems and needs of disadvantaged minority groups and presenting the results of their research. New information that analyses society is needed for everyone to understand and make sense of their surroundings and to avoid discrimination, but also to develop positive measures to create equal opportunities for people who belong to minority groups.

4. SUSPICION OF DISCRIMINATION – WHAT HAPPENS NEXT?

Discrimination cases do not normally take place in a public and easily identifiable manner. Therefore, it may be difficult to prove discrimination, as the offender does not generally state the grounds for it. Cases where the grounds for unlawful unequal treatment are clearly expressed are rare. Exceptions are job advertisements looking for people of a certain age or gender (e.g., women aged 25–35 for the position of an assistant). At EU level, for example, there is the Feryn case (see Chapter 2.2), where the owner of a company stated both verbally and through a job advertisement that he would not hire any immigrants and the Court of Justice of the European Union found that there was direct discrimination on the grounds of racial or ethnic origin.

In general, however, it is an offense even if the offender does not declare that they deliberately treat someone differently, or if there does not appear to be any reason for doing so. For example, an older job seeker may be told they are not getting hired because of a lack of appropriate qualifications, and it may therefore be difficult for the victim to prove that they were directly discriminated against on the grounds of their age.

However, in discrimination disputes, the defendant does not have to prove that the applicant is of a certain race, nationality or ethnicity, adheres to a certain religion or belief, has a certain disability, age or sexual orientation, nor does the victim have to do so – such proof is not absolutely necessary in order to establish discrimination, since such a claim would infringe the right to privacy and many people would certainly refrain from going to court as a result (Bell 2002). When investigating a case of discrimination, the main focus must be on whether the person was discriminated against on the alleged grounds, and not, for example, on whether the person's injury can be considered a disability in accordance with the law (Whittle 2002).

In cases of discrimination, it is also irrelevant whether the alleged discriminator had prejudices leading to discrimination or whether they had a conscious plan to discriminate, but it is necessary to focus on the objective facts of the case. The exception is criminal proceedings where intent is of decisive importance.

In order to prove past or ongoing indirect discrimination, statistical data shall be used to compare the situation of minority groups with that of majority groups.

4.1. Burden of proof

Discrimination cases can be heard in Estonia in civil and administrative law, but also in criminal proceedings. On the basis of different procedural laws, the requirements and the burden of proof differ in these proceedings – for example, the burden of proof in criminal proceedings is significantly higher.

In discrimination cases the burden of proof is shared, which is not applicable in administrative and criminal proceedings.

The principle of a shared burden of proof was originally developed by the case law of the European Court of Justice and was later incorporated into the European Union legislation on gender equality with the adoption of EU Council Directive 97/80/EC. In Estonian law, the shared burden of proof is also included in the law, following the example of EU legislation (§ 8 of the Equal Treatment Act).

The shared burden of proof means that if a complaint or an application describes the facts and circumstances on the basis of which it can be presumed that discrimination has taken place, the alleged offender must prove that they have not violated the principle of equal treatment (§ 8 of the Equal Treatment Act). If the person fails to explain the reasons or motives for their behaviour or the decision made, it shall be equal to admission of discrimination.

At the same time, the victim of discrimination has the obligation to submit all the facts on the basis of which it can be presumed that the discrimination has taken place, when applying to a court, a labour dispute committee or the commissioner for gender equality and equal treatment (§ 8 (1) of the Equal Treatment Act). The motivation or intent of the perpetrator of discrimination is irrelevant in the proof stage. The actual result is decisive. If the employer himself does not want to discriminate against his employee, but does so because the customer wants it, this does not prove non-discrimination. Non-discrimination is also not proved by the fact that the intention was to do good, but to the surprise of the doer, it had a negative effect on the target group.

The transfer of the burden of proof is particularly important in identifying a breach of rules of equal treatment, because the person may not know on which grounds they were treated less favourably, but they may have doubts as to what it was.

Examples

In the case of the European Court of Human Rights concerning the placement of Roma children in special schools, the Court confirmed that the applicant only had to show that there was a difference in treatment. It is then up to the institution/person accused of discrimination (in this case the government) to prove that the difference in treatment was justified. (*D.H. and Others v. the Czech Republic*, 2007 – the case is described in Chapter 2.5.4)

The Swedish Supreme Court heard a case where a lesbian couple was asked to leave a restaurant because they kissed and hugged. The Supreme Court established the facts and found that 1) the women were on the premises of the restaurant, 2) they hugged and kissed, 3) they were asked to stop, 4) people in the restaurant are usually not asked to stop hugging and kissing and to leave because of it. The court then applied the shared burden of proof and required the restaurant to prove that the reason for requesting them to leave was some other legitimate aim not related to sexual orientation. The restaurant could not prove the existence of another aim and the court awarded damages. (*HomO v. Restaurang Fridhem Handelsbolag*, T 2100-05)

The applicant applied for the position of software developer, but was not recruited. She found that she fulfilled all the requirements for the post, but was not recruited because of her gender, age and ethnicity. The Court of Justice of the European Union stated that an employer has no legal obligation to justify why a candidate who fulfils all the conditions set out in the job advertisement was rejected. However, the refusal to provide this information is one element of the assumption that discrimination took place. (C-415/10, *Galina Meister v. SPeech Design Carrier Systems GmbH*)

In two separate cases, the Court of Justice of the European Union discussed public statements of a person in a position of leadership, which led to the assumption that employees in these organisations were discriminated against on a prohibited ground. In the Feryn case, the head of the company stated that he does not hire employees who are not white, and in the Accept

case, the donor of the football club stated that he does not hire homosexual players. In the first case, it would have been necessary to demonstrate that actual recruitment practices did not treat white and non-white people differently, and that non-white people were routinely recruited. In the second case, it would not have been appropriate to show the actual recruitment practice, as it would have violated the players' right to privacy. However, it would have been enough if the football club had distanced itself from the statements of its donor and proved that there are explicit points in the recruitment policy that ensure that the principle of equal treatment is observed. (C-54/07 *Centrum voor gelijkheid van kansen en voor racismebestrijding v Firma Feryn NV* and C-81/12, *Asociația Accept v Consiliul Național pentru Combaterea Discriminării*)

4.2. Documentation

Although the shared burden on proof means that the burden of proof is not just on the victim of discrimination, it is still in the victim's own interest to provide evidence to substantiate their case.

Regardless of the institution to which the discrimination case is referred, it is advisable to first open up the facts of the case in detail, systematise and collect additional materials to help convince the court or provide detailed information to the labour dispute committee or the gender equality and equal treatment commissioner to make their statement.

Sample control questionnaire:

1. Who?	Name, position or other important title of the person who was the direct perpetrator, for example: colleague First name Last name, recruitment company personnel specialist First name Last name
2. Did what? What happened?	Describe what happened. For example: he informed the victim that he did not want her on his team because she was a woman.
3. To whom?	The victim's name and any other persons who may have experienced the same violation.
4. When?	Date(s) and time(s) as accurately as possible.
5. Where exactly?	Place and address, for example: Name office's shared kitchen, meeting room (Tee 7-16, Tallinn)
6. In what way?	The way it happened, for example: via e-mail, during a conversation.
7. What was the consequence?	The victim's subjective feeling as a result of the violation, for example, felt humiliated in front of other colleagues because it happened in their presence.

8. Who is responsible for what happened?	Other people or institutions can be mentioned here in addition to the direct violator of the equal treatment norm, for example: their employer who refused to deal with the incident.
9. Are there any witnesses?	Give the names of witnesses, if possible, contact details and their role in the situation, for example: eyewitness, representative of the public authority.
10. Are there other materials or documents directly confirming or supporting the incident?	Submit other materials supporting the incident, for example: relevant e-mail correspondence, internal rules of procedure that contributed to the incident, police report, etc.
11. Is there any additional material that would help to understand the extent and nature of what happened?	Submit or refer to relevant studies, statistics, expert opinion.

5. WHAT HAPPENS NEXT?

A person who finds that their nationality, ethnic origin, age, disability, religious belief, sexual orientation or other ground of prohibited discrimination specified in the Equal Treatment Act prevented them from finding employment because they have suffered harassment or other discrimination is often faced with the choice of what to do next.

According to the Equal Treatment Act, a person who suspects that they have been treated less favourably on one basis or another has several opportunities to defend their rights.

In the event of suspicion of discrimination, there are the following options for legal protection:	
•	submit a written request to the alleged discriminator in order to obtain a written explanation of their actions
•	make a statement to the commissioner for equality and equal treatment
•	initiate the conciliation proceedings with the Chancellor of Justice if the incident took place in the private sector
•	apply to the Chancellor of Justice if the incident took place in the public sector
•	submit a complaint with the labour dispute committee
•	go to court

In order to protect a person's rights, the Equal Treatment Act contains a number of provisions that should support the appeal of persons to the competent institutions if they feel that they have been discriminated against, harassed or victimised on any prohibited ground of discrimination.

Police

If there is suspicion that a misdemeanour or criminal offence has been committed, it is easiest to contact the police, because misdemeanour and criminal proceedings cannot be initiated by an individual, the burden on proof lies with the state prosecutor. The Penal Code contains a number of provisions relating to equal treatment:

- § 151 (prohibition of incitement of hatred) publicly inciting to hatred, violence or discrimination on the basis of nationality, race, colour, gender, language, origin, religion, sexual orientation, political opinion, or financial or social status if this results in danger to life, health or property of a person
- § 152 (violation of equality) – unlawful restriction of the rights of a person or granting of unlawful preferences to a person on the basis of his or her nationality, race, colour, sex, language, origin, religion, sexual orientation, political opinion, financial or social status
- § 153 (discrimination based on genetic risks) – unlawful restriction of the rights of a person or granting of unlawful preference to a person on the basis of his or her genetic risks

In the case of harassment, other provisions concerning the physical integrity of a person may also become relevant.

What these provisions mean and which acts fall under them is outside the scope of the current manual, but in the case of further interest the executive edition of the Penal Code provides some answers.

Based on the provisions of the Equal Treatment Act, victims of discrimination may claim compensation for proprietary and moral damage (§ 24 and 25 of the Equal Treatment Act), several possibilities have been created for making an extrajudicial complaint/application (§ 16, 17, 23 of the Equal Treatment Act). People who need the rights most to protect themselves are often the least able to claim their rights. Therefore, a person may turn to these institutions themselves or be represented by a lawyer or by organisations with a “legitimate interest” (trade unions, minority ethnic associations, disabled people’s organisations, religious associations, etc.) (§ 17 (1) of the Equal Treatment Act, § 23 (2) of the Chancellor of Justice Act). A person does not have to prove the existence of discrimination on their own (§ 8) and fear persecution after submission of a complaint (§ 3 (6)).

Before contacting the relevant institutions

In order to choose the most suitable option for protecting your rights, the following questions could be considered:

- What outcome does the complainant want?
- What is the basis of the complaint?
- Is there a rush to file the complaint? How much time is left?
- Do the criteria set out in the Equal Treatment Act extend to the complainant?
- What is the likelihood of success?
- Is it essential to have a legally binding solution?
- Is there sufficient evidence to establish a presumption of discrimination?
- Is the involvement of a professional lawyer necessary in this case?
- Is it possible to obtain compensation?
- Is it possible to lodge complaint on behalf of a group of people?
- What are the potential costs and expenses of using different redress mechanisms?

As the websites of the relevant institutions are sufficiently informative and explain step by step how to address them and what the procedure looks like, there is no need to rewrite it in this handbook. Instead, a table has been drawn up giving brief information on the institutions concerned, the time limits for contacting them, the form and the outcome of the procedure. They have been divided into two: disputes in employment and service relationships and other legal relationships.

Time limits for filing complaints and applications and how legally binding is the outcome, along with additional comments (tinted boxes represent procedure that can be initiated or attended by a representative organisation, either jointly representing the victim or on its own initiative).

Employment and service relationships			
Time limit	Form	Result	Comments
County court (www.kohus.ee)			
30 calendar days – cancellation of an employment contract (§ 106 of the Employment Contracts Act, § 6 (2) of the Individual Labour Dispute Resolution Act)	Statement of claim	Binding	Private sector. An application shall not be filed simultaneously with a labour dispute committee or court. If there is discrimination in an employment relationship (e.g., the employment contract with the person has been terminated because the person’s sexual orientation has become public), the term may also be 1 year, because in the event of a conflict of laws, the principle of effective legal protection should be followed. A state fee must be paid.
4 months – rights arising from employment relationships (§ 6 (1) of the Individual Labour Dispute Resolution Act)			
3 years – wages (§ 6 (3) of the Individual Labour Dispute Resolution Act)			
Administrative court (www.kohus.ee)			
30 calendar days – annulment of an administrative act (§ 46 of the Code of Administrative Court Procedure)	Statement of claim	Binding	Public sector – in the case of an order, directive, decision, precept or other legislation issued by an authority or other official for the regulation of an individual case, but also in the case of a contract under public law (a contract regulating public relations) and an act under public law.

3 years – for compensation for damage caused, declaring an administrative act or procedure unlawful (§ 46 of the Code of Administrative Court Procedure)			<p>An appeal may be filed with any courthouse of an Estonian administrative or county court (§ 40 of the Code of Administrative Court Procedure).</p> <p>An appeal against an individual or a legal person in private law may be filed within the term provided by law.</p> <p>A state fee must be paid.</p>
Chancellor of Justice (www.oiguskantsler.ee)			
4 months – conciliation procedure (§ 35 ⁶ of the Chancellor of Justice Act)	Petition	Binding	<p>Private sector.</p> <p>From the time the person became aware or should have become aware of the alleged discrimination.</p> <p>A person who has legitimate interest in observing compliance with the requirements for equal treatment may also be a representative (§ 23 (2) of the Chancellor of Justice Act).</p> <p>The conciliation procedure is strictly voluntary for both parties.</p> <p>There is no state fee.</p>
1 year – monitoring procedure (§ 34 the Chancellor of Justice Act)	Application	Not binding	<p>Public sector.</p> <p>The so-called monitoring procedure – to verify whether a state agency, local government authority or body, a legal person in public law or a natural or legal person governed by private law performing public functions complies with the principle of equal treatment.</p> <p>There is no state fee.</p>
Labour Dispute Committee (www.ti.ee)			
4 months – rights arising from employment relationships (§ 6 (1))	Petition	Binding	Private sector.

of the Individual Labour Dispute Resolution Act)			An application shall not be filed simultaneously with a labour dispute committee or court.
30 days – cancellation of an employment contract (§ 6 (2) of the Individual Labour Dispute Resolution Act)			Disputes with financial claims of up to 10,000 euros.
3 years – wages (§ 6 (3) of the Individual Labour Dispute Resolution Act)			The petition may be submitted by the person himself or as their representative by a person who has a legitimate interest in monitoring compliance with the requirements for equal treatment (§ 14, (2 ¹) of the Individual Labour Dispute Resolution Act).
			There is no state fee.
Gender Equality and Equal Treatment Commissioner (www.svv.ee)			
Unspecified term – obtaining an assessment of whether the principle of equal treatment has been violated (§ 17 of the Equal Treatment Act)	Petition	Not binding	Private and public sector. The Commissioner may refuse to accept very old cases because the possibility for a person to go to court after the opinion is limited to a term of 1 year. A person who has a legitimate interest in monitoring compliance with the requirement of equal treatment may also address the Commissioner (§ 17 (2) of the Equal Treatment Act) There is no state fee.
Non-employment relations			
County court (www.kohus.ee)			
1 year – discrimination, misdemeanours and crimes by private individuals (§ 25 of the Equal Treatment Act)	Statement of claim	Binding	Private sector. A state fee must be paid.

Administrative court (www.kohus.ee)			
30 calendar days – annulment, issue of an administrative act, taking an administrative measure (§ 46 of the Code of Administrative Court Procedure)	Statement of claim	Binding	Public sector – in the case of an order, directive, decision, precept or other legislation issued by an authority, official or other official for the regulation of an individual case, but also in the case of a contract under public law (a contract regulating public relations) and an act under public law. An appeal may be filed with any courthouse of an Estonian administrative or county court (§ 40 of the Code of Administrative Court Procedure). An appeal against an individual or a legal person in private law may be filed within the term provided by law. A state fee must be paid.
3 years – compensation for damage caused in a public law relationship, declaring an administrative act or a procedure unlawful (§ 46 of the Code of Administrative Court Procedure)			
1 year – against an individual or a legal person in private law (§ 25 of the Equal Treatment Act)			
Chancellor of Justice (www.oiguskantsler.ee)			
4 months – conciliation procedure (§ 35 ⁶ of the Chancellor of Justice Act)	Petition	Binding	Private sector. From the time the person became aware or should have become aware of the alleged discrimination. A person who has legitimate interest in observing compliance with the requirements for equal treatment may also be a representative (§ 23 (2) of the Chancellor of Justice Act). The conciliation procedure is strictly voluntary for both parties. There is no state fee.

1 year – monitoring procedure (§ 34 the Chancellor of Justice Act)	Application	Not binding	Public sector. The so-called monitoring procedure – to verify whether a state agency, local government authority or body, a legal person in public law or a natural or legal person governed by private law performing public functions complies with the principle of equal treatment. There is no state fee.
Gender Equality and Equal Treatment Commissioner (www.svv.ee)			
Unspecified term – obtaining an assessment of whether the principle of equal treatment has been violated (§ 17 of the Equal Treatment Act)	Petition	Not binding	Private and public sector. The Commissioner may refuse to accept very old cases because the possibility for a person to go to court after the opinion is limited to a term of 1 year. A person who has a legitimate interest in monitoring compliance with the requirement of equal treatment may also address the Commissioner (§ 17 (2) of the Equal Treatment Act) There is no state fee.
Submission of claim for compensation for material and non-patrimonial damage.			
<p>A person who suspects discrimination can demand:</p> <ul style="list-style-type: none"> • that discrimination be terminated (§ 24 (1) of the Equal Treatment Act) • that damage caused by discrimination be compensated (§ 24 (3) of the Equal Treatment Act) • that non-patrimonial (moral) damage be compensated <p>A person cannot demand the conclusion of an employment contract or a contract for the provision of services or the appointment or election to office (§ 24 (1) of the Equal Treatment Act)</p>			
1 year (§ 25 of the Equal Treatment Act)	Petition	Binding	Private and public sector. From the day the person became aware of the damage or should have become aware of it.

			<p>The petition must be submitted to the labour dispute committee or to court.</p> <p>A state fee must be paid.</p>
3 years (§ 46 of the Code of Administrative Court Procedure)	Statement of claim	Binding	<p>Public sector.</p> <p>From the day the person became aware of the damage or should have become aware of it, but no later than 10 years of the activity which caused the damage.</p> <p>An appeal may be filed with any courthouse of an Estonian administrative or county court (§ 40 of the Code of Administrative Court Procedure).</p> <p>A state fee must be paid.</p>

Summary

There are people of different gender identities and gender expressions living in our society, we are of all ages, with disabilities, of different racial or ethnic origin, religion or sexual orientation. The population of working ages is just as diverse, with different skills, experiences, ideas and ways of seeing. The fact that everyone should be guaranteed equal opportunities to participate in education and the labour market and access to services is not only a question of protecting fundamental rights, or a moral decision, but an essential prerequisite for a sustainable society. The cohesion of society is influenced by the ability and willingness to value, support and implement diversity in the best way. Rait Maruste has said: “Over the last 50 years, Europe has moved steadily towards respecting and paying attention to human dignity and equal opportunities. For this purpose, both legislative drafting as well as administrative and judicial practice have been implemented. Ultimately, it is a question of the cohesion of society, so that everyone feels dignified and contented, that they do not feel unequally treated and bitter. Then people feel that society is fair to them and they are content.”⁷

Successful protection of the rights of individuals in court, better laws and their implementation are important, but it is also necessary that the issues of equal treatment are noticed on a daily basis. We hope that the third version of our handbook, along with many examples, helped to better understand the nature of discrimination, its occurrence and the possibility of avoidance.

As authors, we remain optimistic that many perceptions and stereotypes in society are already changing in a positive way and that the socio-economic, cultural and political environment is increasingly beginning to support tolerance and respect for everyone’s human dignity. This certainly does not happen on its own, but requires active and purposeful action both from lawyers and legal experts, NGOs and specialists in various fields, as well as officials and politicians.

⁷ Paris.

Resources

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C-190/16, Werner Fries v Lufthansa CityLine GmbH (5.07.2017)

C-193/17, Cresco Investigation GmbH v Markus Achatzi (22.01.2019)

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Annex 1. Important institutions in Estonia

State Agencies

Chancellor of Justice

Kohtu 8, 15193 Tallinn

Phone: 6938404

Fax: 6938401

E-mail: info@oiguskantsler.ee

<http://www.oiguskantsler.ee/index.php>

Gender Equality and Equal Treatment Commissioner

Gonsiori 29, 15027 Tallinn

Phone / Fax: 6269259

E- mail: info@svv.ee

<http://www.svv.ee/>

Ministry of Social Affairs, department of gender equality

Gonsiori 29, 15027 Tallinn

Phone: 6269301

Fax: 6992209

E- mail: info@sm.ee

<http://www.sm.ee/>

Labour Inspectorate

Mäealuse 2/3, 12618 Tallinn

E- mail: ti@ti.ee

Phone: 640 6000

<http://www.ti.ee/>

Non-governmental organisations

The Estonian Human Rights Centre

Ahtri 8, 10151 Tallinn

Phone: 6445148

E- mail: info@humanrights.ee

<http://www.humanrights.ee/>

Estonian Institute of Human Rights

Telliskivi 60A/A2, Tallinn 10412

Phone: 642 1000

E-post: info@eihr.ee

<http://www.eihr.ee>

Annex 2. Equal treatment norms and prohibition of discrimination in Estonian law (as of 18.05.2022)

Legislation	The established norm
The Constitution of the Republic of Estonia	§ 12 Everyone is equal before the law. No one may be discriminated against on the basis of nationality, race, colour, sex, language, origin, religion, political or other views, property or social status, or on other grounds. Incitement to ethnic, racial, religious or political hatred, violence or discrimination is prohibited and punishable by law. Incitement to hatred and violence between social classes or to discrimination against a social class is also prohibited and punishable by law.
Gender Equality Act	Prohibition of discrimination on grounds of gender in all areas of life, obligation to promote gender equality in the private and public sectors.
Equal Treatment Act	Prohibition of discrimination on the basis of race, nationality, ethnic origin, age, disability, religious belief, sexual orientation, as well as on the basis of performance of family obligations, social status, representation of employees' interests or membership of an association of employees, language skills or the duty to perform mandatory service in the defence forces in the field of employment, on racial and ethnic grounds in the field of social affairs, in education and access to services.
Penal Code	§ 152 (Violation of equality) – violation of equality presumes that in the case of groups distinguished by nationality, race, colour, gender, language, origin, religion, political beliefs, property or social status, a member of one group (“us”) denies the equivalence of persons belonging to the other group (“them”). In the case of the composition of § 151 of the Penal Code (incitement of hatred), the constituent act consists not only in denying the equivalence of persons belonging to another group, but also in inciting the other persons to do so. § 153 prohibition of discrimination based on genetic risks.
Administrative Procedure Act	§ 107 (2) An administrative authority shall, at its discretion, determine the manner, extent, time and procedure for taking a measure and shall observe the limits of the right of discretion and the principles of equal treatment and proportionality
Employment Contracts Act	§ 3 (Principle of equal treatment) – An employer shall ensure the protection of employees against discrimination, follow the principle of equal treatment and promote equality in accordance with the Equal Treatment Act and Gender Equality Act.

	§ 89 (4). Extraordinary cancellation of employment contract by employer for economic reasons: Upon cancellation of an employment contract, the employer shall take into account the principle of equal treatment.
Working Conditions of Employees Posted to Estonia Act	§ 5 (1) 5) Employers shall ensure that the following working conditions established in Estonia are applied to a posted employee: ...equal treatment and equal opportunities
Civil Service Act	§ 13 (Principle of equal treatment) The authorities shall have to ensure the protection against discrimination of the persons who apply to take up the service and of those who are employed in the service, follow the principle of equal treatment and promote equality.
Human Genes Research Act	§ 25 (Prohibition on discrimination) (1) It is prohibited to restrict the rights and opportunities of a person or to confer advantages on a person on the basis of the structure of the person's DNA and the genetic risks resulting therefrom. (2) It is prohibited to discriminate against a person on the basis of the person being or not being a gene donor. § 26 (Discrimination in employment relationships) (1) Employers are prohibited from collecting genetic data on employees or job applicants and from requiring employees or job applicants to provide tissue samples or descriptions of DNA. (2) Employers are prohibited from imposing discriminatory working and wages conditions for people with different genetic risks. § 27 (Discrimination in insurance relationships) (1) Insurers are prohibited from collecting genetic data on insured persons or persons applying for insurance cover and from requiring insured persons or persons applying for insurance cover to provide tissue samples or descriptions of DNA. (2) Insurers are prohibited from establishing different insurance conditions for people with different genetic risks and from establishing preferential tariff rates and determining insured events restrictively.

Annex 3. Prohibition of discrimination in international legislation

Treaties on human rights	Prohibited grounds for discrimination	Closed or open catalogue of grounds for discrimination	Rights, field, situations
UN Universal Declaration of Human Rights (available online at: https://www.ohchr.org/en/human-rights/universal-declaration/translations/english), Art 2	Race, language, colour, gender, religious, political or other belief, national or social origin, property, status or other status	Open	All fields that are considered human rights and basic freedoms
UN International Covenant on Civil and Political Rights (State Gazette, 1993, 10/11, 11), Art 2	Race, colour, gender, language, religion, political and other beliefs, national or social origin, property, birth or other status	Open	Rights stated in the Covenant
UN International Covenant of Economic, Social and Cultural Rights (State Gazette II 1993, 10, 13), Art 2	Race, colour, gender, language, religion, political or other beliefs, national or social origin, property, birth or other status	Open	Rights stated in the Covenant: economic, social and cultural rights
UN International Convention on the Elimination of All Forms of Racial Discrimination (State Gazette II 1995, 5, 30)	Race, colour, descent, national or ethnic origin	Closed	Political, economic, social, cultural or any other field of social life
UN Convention on the Elimination of All Forms of Discrimination against Women (State Gazette II 1995, 5, 31)	Sex	Closed	All human rights and basic freedoms in all fields
European Convention on Human Rights (State Gazette II 1996, 11, 34; RT II 2000, 11, 57), Art 14	Sex, race, colour, language, religion, political or other opinions, national or social origin, association with a national minority, property, birth or other status	Open	Rights and freedoms reflected in the main text of the Convention or in the Additional Protocols

Charter of Fundamental Rights of the European Union (OJ 2007/C 303/01), Art 21	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	Closed	Any discrimination in the exercise of fundamental rights is prohibited
UN Convention on the Rights of the Child (State Gazette II 1996, 16, 56), Art 2	Child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status	Open	Rights and freedoms of persons under 18 established with this Convention
Revised European Social Charter (State Gazette II 2000, 15, 93), Art E	Race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status	Open	Social rights named in the Charter
UN Convention on the Rights of Persons with Disabilities (State Gazette II, 04.04.2012, 6), Art 5	Persons with long-term physical, mental, intellectual or sensory impairment which, in interaction with various obstacles, may hinder their full and effective participation in society on an equal footing with others	Closed	Participation in social life

In addition to the legislation set out in the table, it is important to point out that the opportunities for minority groups to participate in public life and in the labour market are also guaranteed by other legal and political measures. For example, International Labour Organisation Convention No 111 on discrimination in employment and occupation (State Gazette II 2005, 17, 51) obliges the acceding Member States to implement policies promoting equal opportunities and equal treatment at work and in the profession, and is aimed at eliminating discrimination.

Committee of Ministers of the Council of Europe, however, has adopted a recommendation on the protection of human rights and human dignity of persons with mental health disorders and a memorandum explaining it in 2004. The Council of Europe Framework Convention for the Protection of National Minorities (State Gazette II 1996, 40, 154) sets out general requirements for the integration of national minorities, with a view to ensuring that members of society belonging to national minorities have equal opportunities with representatives of indigenous peoples to participate in society and in the labour market.