

SEEKING EFFECTIVENESS: REMEDIES AND SANCTIONS IN DISCRIMINATION CASES

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REMEDIES UNDER EUROPEAN ANTI-DISCRIMINATION LAW

Sanctions/remedies/penalties: “effective, proportionate and dissuasive”

Directive 2006/54, preamble, para.35, Arts.18, 25

Directive 2000/78, **Art.17**

Directive 2000/43, Art.15

ECJ, *Von Colson and Kamann* (1984): “available in fact”, “have a real and deterrent effect”, compensation is “adequate in relation to the damage sustained”.

CJEU, *Asociația ACCEPT* (2013).

REMEDIES IN ROMANIA

Legal standing for NGOs

Civil case

Interest

Damage

Civil compensation

(General measures)

Administrative complaint - NEB

Administrative sanction=>**Warning**/Recommendation

Administrative fine

FACTS

“Not even if I had to close [FC Steaua] down would I accept a homosexual on the team. [...] Maybe he’s [the football player X] not a homosexual ... But what if he is? [...] It would be better to play with a junior rather than someone who was gay. No one can force me to work with anyone. I have rights just as they do and I have the right to work with whomever I choose.”

Interview George Becali, 13 February 2010

- **Presenting himself and being perceived in the media and by the public as playing a leading role in that club.**
- **Not necessarily having the legal capacity to bind it or to represent it in recruitment matters.**

PROCEEDINGS AT THE NATIONAL LEVEL

ACCEPT Association complaint claiming that the principle of equal treatment had been breached in recruitment matters	George Becali S.C. Fotbal Club Steaua Bucuresti S.A	Consiliul National pentru Combaterea Discriminari
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- Not within the scope of a possible employment relationship
- G. Becali's statements = harassment
- Warning (six month limitation period)

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CURTEA DE APEL BUCURESTI

PRELIMINARY QUESTIONS:

- (1) Do the provisions of Article 2(2)(a) of [Directive 2000/78] apply where a shareholder of a football club who presents himself as, and is considered in the mass media as, playing the leading role (or "patron") of that football club makes a statement to the mass media in the following terms: ...
- (2) To what extent may the abovementioned statements be regarded as "facts from which it may be presumed that there has been direct or indirect discrimination" within the meaning of Article 10(1) of Directive 2000/78 ... as regards the defendant [FC Steaua]?
- (3) To what extent would there be probatio diabolica if the burden of proof referred to in Article 10(1) of [Directive 2000/78] were to be reversed in this case and the defendant [FC Steaua] were required to demonstrate that there has been no breach of the principle of equal treatment and, in particular, that recruitment is unconnected with sexual orientation?
- (4) **Does the fact that it is not possible to impose a fine in cases of discrimination after the expiry of the limitation period of six months from the date of the relevant fact, laid down in Article 13(1) of [GD No 2/200]1 on the legal regime for sanctions, conflict with Article 17 of [Directive 2000/78] given that sanctions, in cases of discrimination, must be effective, proportionate and dissuasive?**

CJEU

Preliminary considerations:

- Legal standing for NGOs (Article 8.(1) Directive 2000/78)
- *Feryn* Case: hypothetical victim
- Sport is subject to European Union law to the extent that it constitutes an economic activity.

CJEU

Question 4: Sanctions

- A genuinely dissuasive effect
- Purely symbolic sanctions vs. Non-pecuniary sanctions
- Action for damages vs. Effectiveness of the sanctioning system
- Consistent interpretation

IMPACT AT THE NATIONAL LEVEL

- **Legislative changes:**
 - The six month limitation period
 - Higher administrative fines (from €90- €1.818 to €227- €22.727)
 - Publicity of the decision
- **Practice of the national equality body:**
 - Higher administrative fines
 - Publicity of decisions
- The case was rejected by the Court of Appeal of Bucuresti and the High Court of Cassation and Justice

TYPOLOGY OF DISCRIMINATION REMEDIES ACROSS THE EU MEMBER STATES

- 1. Civil remedies**
 - victim focused, back-ward looking.
 - amount of compensation?
 - who can bring the complaint?
 - general measures?
- 2. Administrative and criminal law sanctions**
 - repressive nature, aimed at educating.
 - who can file a complaint?
 - hierarchy of equality?
- 3. Forward-looking non-pecuniary remedies**
 - aimed at systemic changes
 - pro-active, positive remedies, punitive remedies
 - mechanism of monitoring or following up?