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SEEKING EFFECTIVENES:

**REMEDIES AND SANCTIONS IN
DISCRIMINATION CASES**

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Content

- Characteristics of two main stakeholders: equality bodies and courts
- Mandate, structure and means of equality bodies
- Interaction between courts and equality bodies
- Sanctions

Characteristics of two main stakeholders

- The role of the national courts:
 - rule in individual cases
 - interpret and uphold the law
 - neutral
- The role of the equality bodies:
 - provide assistance to victims of discrimination
 - implement EU-law and promote equality
 - partial? (‘a hammer has a tendency to see only nails’)

EU requirement to establish equality bodies

- Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment irrespective of racial or ethnic origin (Art. 13)
- Directive 2002/73/EC amending Council Directive 76/207/ECC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (now Recast Directive 2006/54/EC) (Art. 8a)
- Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (Art. 12)
- Proposal for a Council directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM(2008)426 final) (Art. 12)

Objective of equality bodies

- *“Protection against discrimination based on sex should itself be strengthened by the existence of a body or bodies in each Member State, with competence to analyse the problems involved, to study possible solutions and to provide concrete assistance for the victims”* (Directive 2004/113/EC, Preamble para. 25)
- Acknowledgement of that laws are not sufficient to achieve equality
- Narrow: Secure implementation of EU law in Member States
- Broad: Secure implementation of equality norms and values

Minimum requirements to equality bodies (1)

- Member States shall designate a *body or bodies* for the *promotion, analysis, monitoring and support* of equal treatment of all persons without discrimination on grounds of sex. These bodies *may form part of agencies with responsibility at national level with the defence of human rights or the safeguard of individual's rights.*

Minimum requirements to equality bodies (2)

- Member States shall ensure that the *competences* of these bodies include:
 - [...] providing independent *assistance to victims of discrimination in pursuing their complaints about discrimination*;
 - conducting independent surveys concerning discrimination;
 - publishing independent reports and making recommendations on any issue relating to such discrimination;
 - at the appropriate level exchanging available information with corresponding European bodies.

Examples of different models

- Commissions (ex. UK and France)
- Ombud institutions (ex. Sweden and Norway)
- Quasi-judicial bodies (ex. Denmark and France)
- Part of NHRI (ex. Denmark and UK)
- Often a mixture
- Single strand/horizontal approach

Assistance to victims of discrimination in practice

- Informing about rights and means of redress
 - by the equality body itself
 - In cooperation with national stakeholders
- Legal aid and other assistance
 - conciliation/mediation
 - settlement negotiations
 - facilitating court or similar proceedings
- Investigating complaints and making decisions

Interaction between equality bodies and courts

(1)

- The importance of participating in national court proceedings
 - neutrality vs promoting equal treatment (‘dynamic interpretation’)
 - evidentiary issues (courts ideal for bringing forth evidence)
 - enforcement issues (court rulings can be enforced)

Interaction between equality bodies and courts

(2)

- A right under EU and/or national law for equality bodies to participate in national court proceedings?
 - Member States shall ensure that associations, organisations or other legal entities, which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive.
(directive 2000/43, art. 7.2)

Interaction between equality bodies and courts

(3)

- Means of participation in national court proceedings
 - representing individuals
 - class actions
 - bringing legal proceedings in own name
 - interventions
 - amicus curiae

Potential clashes

- Procedural barriers
 - statute of limitation issues
 - the need for an ‘attorney’ when appearing in court
 - the procedural rights of the equality body as non-party
 - will the judge refer the issue to the EU-court?
- Court overrules administrative body’s decision
- A necessary means (evil?) to exhaust national remedies

Sanctions

- EU-standard: *”The sanctions, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive”*
- Damages
 - pecuniary
 - non-pecuniary
 - is the amount appropriate?
- Other
 - an excuse (The Australian Human Rights Commission)