

Seeking effectiveness: remedies and sanctions in discrimination cases

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Directive 2006/54

on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation

Preamble:

(33) It has been clearly established by the Court of Justice that in order to be effective, the principle of equal treatment implies that the compensation awarded for any breach must be adequate in relation to the damage sustained.

(35) Member States should provide for effective, proportionate and dissuasive penalties for breaches of the obligations under this Directive.

Art 18

Member States shall introduce into their national legal systems such measures as are necessary to ensure real and effective compensation or reparation as the Member States so determine for the loss and damage sustained by a person injured as a result of discrimination on grounds of sex, in a way which is dissuasive and proportionate to the damage suffered.

Such compensation or reparation may not be restricted by the fixing of a prior upper limit, except in cases where the employer can prove that the only damage suffered by an applicant as a result of discrimination within the meaning of this Directive is the refusal to take his/her job application into consideration.

Art 25

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive, and shall take all measures necessary to ensure that they are applied. The penalties, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive.

The Member States shall notify those provisions to the Commission by 5 October 2005 at the latest and shall notify it without delay of any subsequent amendment affecting them.

Directive 2000/43/EC

implementing the principle of equal treatment between persons irrespective of racial or ethnic origin

- Preamble

(26) Member States should provide for effective, proportionate and dissuasive sanctions in case of breaches of the obligations under this Directive.

- Article 15 - Sanctions

Member States shall lay down the rules on sanctions applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are applied.

The sanctions, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive.

The Member States shall notify those provisions to the Commission by 19 July 2003 at the latest and shall notify it without delay of any subsequent amendment affecting them.

Directive 2000/78/EC

establishing a general framework for equal treatment in employment and occupation

- Preamble:

(35) Member States should provide for effective, proportionate and dissuasive sanctions in case of breaches of the obligations under this Directive.

- Article 17 - Sanctions

Member States shall lay down the rules on sanctions applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are applied.

The sanctions, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive.

Member States shall notify those provisions to the Commission by 2 December 2003 at the latest and shall notify it without delay of any subsequent amendment affecting them.

Constitutional Foundations of the Principle of Effective Judicial Protection

- Article 291 TFEU
 1. Member States shall adopt **all measures of national law necessary to implement** legally binding Union acts.
- C-271/91 Marshall II
 - 17 As the Court has consistently held, the third paragraph of Article 189 of the (EC) Treaty requires each Member State to which a directive is addressed to adopt, in its national legal system, all the measures necessary to ensure that its provisions are fully effective, in accordance with the objective pursued by the directive, while leaving to the Member State the choice of the forms and methods used to achieve that objective.
 - 18 It is therefore necessary to identify the objectives of the Directive and in particular to see whether, in the event of a breach of the prohibition of discrimination, its provisions leave Member States a degree of discretion as regards the form and content of the sanctions to be applied.

The “Procedural” Implications of the Supremacy of EU Legal Order

- **C-312/93 Peterbroeck**

As regards the first part of the question, as thus reworded, the Court has consistently held that, under the principle of cooperation laid down in Article 5 of the Treaty, **it is for the Member States to ensure the legal protection which individuals derive from the direct effect of Community law.**

In the absence of Community rules governing a matter, it is for the domestic legal system of each Member State **to designate the courts and tribunals** having jurisdiction and to **lay down the detailed procedural rules** governing actions for safeguarding rights which individuals derive from the direct effect of Community law.

However, such rules must not be less favourable than those governing similar domestic actions nor render virtually impossible or excessively difficult the exercise of rights conferred by Community law.

Načelo učinkovite sudske zaštite

- C-432/05 Unibet:

In that regard, the detailed procedural rules governing actions for safeguarding an individual's rights under Community law

- must be no less favourable than those governing similar domestic actions (principle of equivalence) and
- must not render practically impossible or excessively difficult the exercise of rights conferred by Community law (principle of effectiveness)

The Scope of the Principle of Effective Judicial Protection

- In principle, MS autonomously define their system of procedural guarantees, including sanction
- National “procedural autonomy” is limited by the autonomy of the EU legal order
 - The notion of supremacy of the EU legal order

40 Although the EC Treaty has made it possible in a number of instances for private persons to bring a direct action, where appropriate, before the Community Court, it was not intended to create new remedies in the national courts to ensure the observance of Community law other than those already laid down by national law

41 It would be otherwise only if it were apparent from the overall scheme of the national legal system in question that no legal remedy existed which made it possible to ensure, even indirectly, respect for an individual’s rights under Community law (Unibet)

- two “procedural” implications
 - **Equivalency requirement**
 - Rules applicable to similar national actions cannot be more favourable than those applicable to EU action
 - **“reasonable efficiency” requirement**
 - The applicable procedural rules cannot make the enforcement of the EU guarantees “practically impossible or excessively difficult”

National Procedural Autonomy and Antidiscrimination Protection

- **Case 14/83 Von Colson**

18 Article 6 requires member states to introduce into their national legal systems such measures as are necessary to enable all persons who consider themselves wronged by discrimination” to pursue their claims by judicial process”.

It follows from the provision that member states are required to adopt **measures which are sufficiently effective to achieve the objective of the directive** and to ensure that those measures **may in fact be relied on before the national courts** by the persons concerned .

Such measures may include, for example, provisions requiring the employer to offer a post to the candidate discriminated against or giving the candidate adequate financial compensation, backed up where necessary by a system of fines.

However **the Directive does not prescribe a specific sanction; it leaves Member States free to choose between the different solutions suitable for achieving its objective.**

EU Autonomy Rules Supreme

- C-271/91 Marshall II

23 As the Court held in the judgment in Case 14/83 Von Colson and Kamann v Land Nordrhein-Westfalen [1984] ECR 1891, at paragraph 18, Article 6 does not prescribe a specific measure to be taken in the event of a breach of the prohibition of discrimination, but leaves Member States free to choose between the different solutions suitable for achieving the objective of the Directive, depending on the different situations which may arise.

24 However, the objective is to arrive at real equality of opportunity and cannot therefore be attained in the absence of measures **appropriate to restore** such equality when it has not been observed. As the Court stated in paragraph 23 of the judgment in Von Colson and Kamann, cited above, those measures **must be such as to guarantee real and effective judicial protection and have a real deterrent effect** on the employer.

25 Such requirements **necessarily entail that the particular circumstances of each breach of the principle of equal treatment should be taken into account.**

In the event of **discriminatory dismissal** contrary to Article 5(1) of the Directive, a situation of equality could not be restored without **either reinstating** the victim of discrimination **or, in the alternative, granting financial compensation** for the loss and damage sustained.

Scrutinized Discretion

- „Controlled experimentation approach” (Afilalo, 1998)
 - national legislators are allowed to experiment with various forms of remedies and penalties as long as being under scrutiny of national courts empowered to ensure that the chosen sanctions met minimum standards
- decentralised system of remedies, based on the complementary cooperation of the Court of Justice and the national judge (Ravo, 2012)

The Standard of Judicial Scrutiny

- Any national "sanction" of choice must:
 - **guarantee real and effective judicial protection**
 - courts must be fully capable of
 - preventing ongoing discrimination
 - restoring equality by making up for negative effects of discrimination
 - **have a real deterrent effect**
 - put off (discourage) the particular offender as well as other potential wrongdoers
 - implies instructing order, correction, restraint and obedience of legal authority
 - does not entail chastisement, castigation, retribution,
 - **comply with the principle of equivalence**
 - must go beyond the minimum where national law provides for a stronger remedy for similar actions
 - **be proportional**

The Effective Judicial Protection against Discrimination as Individual Right

- C-222/84 Johnston

„17. U tom smislu treba prije svega napomenuti da članak 6. direktive državama članicama nameće obvezu da u svoj unutarnji pravni poredak uvedu potrebne mjere koje će svim osobama koje smatraju da im je nanesena šteta zbog diskriminacije omogućiti „ostvarivanje njihovih prava u sudskom postupku“. Iz te odredbe slijedi da su države članice obvezne poduzeti mjere koje će biti dovoljno učinkovite za postizanje cilja direktive i koje će zainteresiranim osobama osigurati da se mogu stvarno pozivati na tako stečena prava pred nacionalnim sudovima.

18. Sudski nadzor predviđen tim člankom izraz je ***općeg pravnog načela, koji je temelj ustavnih tradicija zajedničkih državama članicama***. To načelo također je predviđeno člancima 6. i 13. Europske konvencije za zaštitu ljudskih prava i temeljnih sloboda od 4. studenoga 1950. Kao što je to priznato zajedničkom izjavom Parlamenta, Vijeća i Komisije od 5. travnja 1977. (SL C 103, str 1.) i sudskom praksom Suda, načela na kojima se temelji navedena Konvencija moraju se uzimati u obzir u okviru prava Zajednice.”

EU Charter of Fundamental Rights

Art 47 - Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

EU Charter of Fundamental Rights

- Article 21 - Non-discrimination

Any discrimination based on any ground such as 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 shall be prohibited.

- Art 23 – Equality between women and men

Equality between women and men must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Implications of the individual right aspect

„basic” (fundamental) status of the individual right

- inherent structural feature of the legal order
- not depended upon the existence of an explicit provision of law (Prechal, 2005);
 - normative genetic code of the EU legal order
- two facets related to antidiscrimination protection
 - procedural justice: effective judicial protection
 - substantive justice: equal treatment

Fundamental Right: Effective Judicial Protection

- C-222/84 Johnston; C-222/86 Heylens
- more than a mere formal possibility, must be feasible in practical terms
 - the right to personal remedy
 - where there is right, there is remedy
 - reflect the gravity, nature and extent of the loss/harm
 - the right to fair proceedings and due process
 - C-305/05 Ordre des barreaux francophones et germanophones,
 - Art 6 ECHR case-law
 - Art 267 TFEU case-law
 - the right to swift proceeding
 - C-185/95 Baustahlgewebe,
 - Art 6 ECHR „reasonable time” case-law
 - the right of defence; to evidence; to representation
 - C-199/99 Corus UK; C-395& 396/96 Compagnie Maritime Belge; C-7/98 Krombach

Fundamental Right: Real Equality

- C-149/77 Defrenne; P v S; C-555/07 Küçükdeveci
- the right to „effective reliance” (on chosen remedies)
 - “the objective to arrive at real equality of opportunity cannot be attained in the absence of measures **appropriate to restore** such equality when it has not been observed”
 - reparational adequacy
 - extended protection (prohibition of victimisation)
 - special form of the remedy
 - remedial totality
 - comprehensive scope of damages
 - reasonableness of caps, ceilings, payment conditions
 - effective access to personal remedy
 - reasonable litigative manoeuvrability (statute of limitation; time limits; standing)
 - objectiveness of protection
 - unrelated to personal fault, focused on actual effects
- direct effectiveness

Direct Effectiveness

- Art 18 of the Directive 2006/54 cannot be considered as “unconditional and sufficiently precise” to guarantee some specific type of remedy
- It is “unconditional and sufficiently precise” to provide:
 - right to have some remedy for suffered discrimination
 - right to chosen remedy to be effective, proportionate and dissuasive
- C-407/14 Camacho (AG Mengozzi)

To recognise a power in the national court to impose punitive damages on an employer who has discriminated on grounds of sex, in the name of the effectiveness of Article 18 of Directive 2006/54, and in circumstances where national law is silent, inevitably raises the issue of whether that article has direct effect.

Reparational Adequacy: Real and Effective Protection

- **Case 14/83 Von Colson**

18 Article 6 requires member states to introduce into their national legal systems such measures as are necessary to enable all persons who consider themselves wronged by discrimination ' ' to pursue their claims by judicial process ' ' . It follows from the provision that member states are required to adopt **measures which are sufficiently effective to achieve the objective of the directive** and to ensure that those measures **may in fact be relied on before the national courts** by the persons concerned . Such measures may include, for example, provisions requiring the employer to offer a post to the candidate discriminated against or giving the candidate adequate financial compensation, backed up where necessary by a system of fines. However the Directive does not prescribe a specific sanction; it leaves Member States free to choose between the different solutions suitable for achieving its objective.

23 Although, as has been stated in the reply to question 1, full implementation of the Directive does not require any specific form of sanction for unlawful discrimination, it does entail that that **sanction be such as to guarantee real and effective judicial protection**. Moreover it must also have a real deterrent effect on the employer

- **C-407/14 Camacho (AG Megozzi)**

30 The Member States are required to adopt measures which are sufficiently effective to achieve the objective of that directive, and to ensure that those measures are capable of being effectively relied on by the persons concerned before national courts, although EU law does not prescribe any particular form that those measures must take. They may therefore take a variety of forms, such as an obligation to enter into a contract of employment with a candidate who has been discriminated against, the re-employment of a person who has been dismissed for discriminatory reasons, or adequate financial compensation.

31 In 1984, the year in which the Court delivered its judgments in von Colson and Kamann and Harz, it declined to interpret Article 6 of Directive 76/207 as requiring Member States to adopt a specific measure, which in those cases was a measure obliging an employer who had discriminated on grounds of sex to enter into an employment contract with a candidate whose application had been rejected for discriminatory reasons.

Specter of Remedies

- Restitutive measures
 - employment, promotion, reinstitution
- Compensation
 - Pecuniary; Non-pecuniary
- Annulment
- Declaration
- Publication
- Positive action

Reparational Adequacy: From Standard of Scrutiny to Rule of Form

- Instances where the EU (case) law specify specific type of remedies/sanctions:
 - Directive 2006/54 - Art 23
 - Member States shall take all necessary measures to ensure that:
 - (a) any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished;
 - (b) provisions contrary to the principle of equal treatment in individual or collective contracts or agreements, internal rules of undertakings or rules governing the independent occupations and professions and workers' and employers' organisations or any other arrangements shall be, or may be, declared null and void or are amended;
 - (c) occupational social security schemes containing such provisions may not be approved or extended by administrative measures.
 - Directive 2000/78 Art 18 / Directive 2000/43 Art 14
 - Member States shall take the necessary measures to ensure that:
 - (a) any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished;
 - (b) any provisions contrary to the principle of equal treatment which are included in contracts or collective agreements, internal rules of undertakings or rules governing the independent occupations and professions and workers' and employers' organisations are, or may be, declared null and void or are amended.
 - C-271/91 Marshall II
 - 24 However, the objective is to arrive at real equality of opportunity and cannot therefore be attained in the absence of measures appropriate to restore such equality when it has not been observed. As the Court stated in paragraph 23 of the judgment in Von Colson and Kamann, cited above, those measures must be such as to guarantee real and effective judicial protection and have a real deterrent effect on the employer.
 - 25 Such requirements necessarily entail that the particular circumstances of each breach of the principle of equal treatment should be taken into account. In the event of discriminatory dismissal contrary to Article 5(1) of the Directive, a situation of equality could not be restored without either reinstating the victim of discrimination or, in the alternative, granting financial compensation for the loss and damage sustained.

Reparational Adequacy:

Extended protection

- C-185/97 Coote

22 By virtue of Article 6 of the Directive, interpreted in the light of **the general principle** stated above, all persons have **the right to obtain an effective remedy in a competent court** against measures which they consider to interfere with the equal treatment for men and women laid down in the Directive. It is for the Member States to ensure effective judicial control of compliance with the applicable provisions of Community law and of national legislation intended to give effect to the rights for which the Directive provides (Johnston, paragraph 19).

23 As the Court has also held (Case C-271/91 Marshall, paragraph 34), Article 6 of the Directive is an essential factor for attaining the fundamental objective of equal treatment for men and women, which, as the Court has repeatedly held (see, inter alia, Case C-13/94 P v S and Cornwall County Council [1996] ECR I-2143, paragraph 19), is **one of the fundamental human rights** whose observance the Court has a duty to ensure.

24 The principle of effective judicial control laid down in Article 6 of the Directive would be deprived of an essential part of its effectiveness if the protection which it provides did not cover measures which, as in the main proceedings in this case, an employer might take as **a reaction to legal proceedings brought by an employee with the aim of enforcing compliance with the principle of equal treatment**. Fear of such measures, where no legal remedy is available against them, might deter workers who considered themselves the victims of discrimination from pursuing their claims by judicial process, and would consequently be liable seriously to jeopardise implementation of the aim pursued by the Directive.

Victimisation

- Directive 2006/54 Art 24
Member States shall introduce into their national legal systems such measures as are necessary to protect employees, including those who are employees' representatives provided for by national laws and/or practices, against dismissal or other adverse treatment by the employer as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment.
- Directive 2000/43 Art 9 / Directive 2000/78 Art
Member States shall introduce into their national legal systems such measures as are necessary to protect individuals from any adverse treatment or adverse consequence as a reaction to a complaint or to proceedings aimed at enforcing compliance with the principle of equal treatment.

Remedial Totality: Compensation

- Case 14/83 Von Colson

23 Although, as has been stated in the reply to question 1, full implementation of the Directive does not require any specific form of sanction for unlawful discrimination, it does entail that that **sanction be such as to guarantee real and effective judicial protection**. Moreover it must also have a real deterrent effect on the employer. It follows that where a Member State chooses to penalize the breach of the prohibition of discrimination by the award of compensation, **that compensation must in any event be adequate in relation to the damage sustained**.

- C-271/91 Marshall II

26 Where financial compensation is the measure adopted in order to achieve the objective indicated above, it must be adequate, in that it must **enable the loss and damage actually sustained** as a result of the discriminatory dismissal **to be made good in full** in accordance with the applicable national rules.

Types of Compensation

Pecuniary

(material interest)

- Monetary Compensation
 - Loss of physical asset
 - Loss of income
 - Loss of Health
 - Interests
 - default, compensatory
 - Stigma
 - Effluxion of time (loss of earning capacity)
 - Costs required for legal or expert assistance, medicine and medical services, and psychological and social services

Non-pecuniary

(injury to feelings)

- Monetary Compensation
- Apology
- Acknowledgment of the truth
- Publication of the judgment
- Commemorations and Tributes
- Registers of Decisions

Remedial Totality: Caps, Ceilings, Limits

- C-271/91 Marshall II

30 It also follows from that interpretation that the fixing of an upper limit of the kind at issue in the main proceedings cannot, by definition, constitute proper implementation of Article 6 of the Directive, since it limits the amount of compensation a priori to a level which is not necessarily consistent with the requirement of ensuring real equality of opportunity through adequate reparation for the loss and damage sustained as a result of discriminatory dismissal.

31 With regard to the second part of the second question relating to the award of interest, suffice it to say that full compensation for the loss and damage sustained as a result of discriminatory dismissal cannot leave out of account factors, such as the effluxion of time, which may in fact reduce its value. The award of interest, in accordance with the applicable national rules, must therefore be regarded as an essential component of compensation for the purposes of restoring real equality of treatment.

Effective Access to Personal Remedy: Procedural Time Limitation

- C-326/96 Levez

19 The Court has thus recognised that **it is compatible with Community law for national rules to prescribe, in the interests of legal certainty, reasonable limitation periods for bringing proceedings.** It cannot be said that this makes the exercise of rights conferred by Community law either virtually impossible or excessively difficult, even though the expiry of such limitation periods entails by definition the rejection, wholly or in part, of the action brought .

20 Consequently, a national **rule under which entitlement to arrears of remuneration** is restricted to the two years preceding the date on which the proceedings were instituted is not in itself open to criticism.

27 In the present case, the order for reference states that Mrs Levez was late in bringing her claim because of the inaccurate information provided by her employer in December 1991 regarding the level of remuneration received by men performing like work to her own.

28 It is clear, therefore, that it was because of that inaccurate - or indeed, deliberately misleading - information provided by the employer that Mrs Levez was in no position to realise that, even after December 1991, she had been the victim of sex discrimination.

32 In short, **to allow an employer to rely on a national rule such as the rule at issue would, in the circumstances of the case before the national court, be manifestly incompatible with the principle of effectiveness** referred to above. Application of the rule at issue is likely, in the circumstances of the present case, to **make it virtually impossible or excessively difficult** to obtain arrears of remuneration in respect of sex discrimination. It is plain that the ultimate effect of this rule would be to facilitate the breach of Community law by an employer whose deceit caused the employee's delay in bringing proceedings for enforcement of the principle of equal pay.

From Making Whole to Detering

- **Case 14/83 Von Colson**

18 Article 6 requires member states to introduce into their national legal systems such measures as are necessary to enable all persons who consider themselves wronged by discrimination “to pursue their claims by judicial process”. It follows from the provision that member states are required to adopt **measures which are sufficiently effective to achieve the objective of the directive** and to ensure that those measures **may in fact be relied on before the national courts** by the persons concerned . Such measures may include, for example, provisions requiring the employer to offer a post to the candidate discriminated against or giving the candidate adequate financial compensation, **backed up where necessary by a system of fines**. However the Directive does not prescribe a specific sanction; it leaves Member States free to choose between the different solutions suitable for achieving its objective.

22 **It is impossible to establish real equality of opportunity without an appropriate system of sanctions**. That follows not only from the actual purpose of the directive but more specifically from Article 6 thereof which, by granting applicants for a post who have been discriminated against recourse to the courts , acknowledges that those candidates have rights of which they may avail themselves before the courts .

23 Although, as has been stated in the reply to question 1, full implementation of the Directive does not require any specific form of sanction for unlawful discrimination, it does entail that that **sanction be such as to guarantee real and effective judicial protection**.

Moreover it must also have a real deterrent effect on the employer.

Variety of Sanction

- “a means of pressure which it would be unwise to disregard and which would prompt him to respect the principle of equal treatment.” (Von Colson, para 14)
 - Compensation (pecuniary, non-pecuniary)
 - condition of effectiveness:
 - consistent, swift and substantive compensation will prompt employer to “think twice”
 - aggravated damages (malice; multiple or intersectional discrimination)
 - need for interim injunctions and declarations
 - remedial orders (positive action measures)
 - Exemplary/Punitive damages
 - Fines (administrative, misdemeanor)
 - Criminal sanctions

Compensation as Sanction

- **14/83 Von Colson**

28 It should , however , be pointed out to the national court that although Directive no 76/207 , for the purpose of imposing a sanction for the breach of the prohibition of discrimination, leaves the Member States free to choose between the different solutions suitable for achieving its objective , it nevertheless requires that if a member states **chooses to penalize breaches of that prohibition by the award of compensation**, then in order to ensure that it is effective and that it has a deterrent effect , that compensation **must in any event be adequate in relation to the damage sustained and must therefore amount to more than purely nominal compensation** such as , for example , the reimbursement only of the expenses incurred in connection with the application.

It is for the national court to interpret and apply the legislation adopted for the implementation of the directive in conformity with the requirements of community law, in so far as it is given discretion to do so under national law.

- **C-407/14 Camacho**

33 Finally, according to the Court's case-law, where financial compensation is the measure adopted in order to achieve the objective of restoring genuine equality of opportunity, it must be adequate, in that it must enable the loss and damage actually sustained as a result of the discriminatory dismissal to be made good in full in accordance with the applicable national rules (see judgments in Marshall, C-271/91, EU:C:1993:335, paragraph 26, and Paquay, C-460/06, EU:C:2007:601, paragraph 46).

34 Consequently, it followed from Article 6 of Directive 76/207, both in its original version and as amended, and from the case-law of the Court referred to in paragraphs 29 to 33 of the present judgment, that **the genuine deterrent effect sought by Article 6 did not involve awarding, to the person injured as a result of discrimination on grounds of sex, punitive damages which go beyond full compensation for the loss and damage actually sustained and which constitute a punitive measure.**

35 That finding is supported by the alternative nature, in the case of discriminatory dismissal, of the compensation for loss and damage granted in punitive form, as indicated in paragraph 32 of the present judgment.

“Collective” Action

- the right of associations to take legal action
 - Directive 2000/43 Art 7(2); Directive 2000/78 Art 9(2); Directive 2006/54 Art 17(2)
 - support to the effective protection of the victim
- C-54/07 Feryn

Consequently, Article 7 of Directive 2000/43 **does not preclude** Member States from laying down, in their national legislation, the right for associations with a legitimate interest in ensuring compliance with that directive, or for the body or bodies designated pursuant to Article 13 thereof, to bring legal or administrative proceedings to enforce the obligations resulting therefrom **without acting in the name of a specific complainant or in the absence of an identifiable complainant**. It is, however, solely for the national court to assess whether national legislation allows such **a possibility**.

Detachment of Sanctions from Personal Injury

- C-54/07 Feryn

37 Article 15 of Directive 2000/43 thus imposes on Member States the obligation to introduce into their national legal systems measures which are sufficiently effective to achieve the aim of that directive and to ensure that they may be effectively relied upon before the national courts in order that judicial protection will be real and effective. Directive 2000/43 does not, however, prescribe a specific sanction, but leaves Member States free to choose between the different solutions suitable for achieving its objective.

38 In a case such as that referred by the national court, where there is **no direct victim of discrimination** but a body empowered to do so by law seeks a finding of discrimination and the imposition of a penalty, the **sanctions which Article 15 of Directive 2000/43 requires to be laid down in national law must also be effective, proportionate and dissuasive.**

39 If it appears appropriate to the situation at issue in the main proceedings, those sanctions may, where necessary, include **a finding of discrimination** by the court or the competent administrative authority in conjunction with **an adequate level of publicity**, the cost of which is to be borne by the defendant. They may also take the form of a **prohibitory injunction**, in accordance with the rules of national law, ordering the employer to cease the discriminatory practice, and, where appropriate, a **fine**. They may, moreover, take the form of **the award of damages** to the body bringing the proceedings.