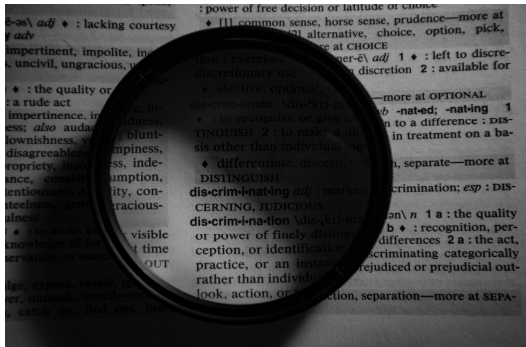


SEEKING EFFECTIVENESS: REMEDIES AND SANCTIONS IN DISCRIMINATION CASES

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ERA, Applying EU
Anti-Discrimination Law
Milan, 5 October 2023

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PRESENTATION

- Legal framework and conceptual clarifications
- Case law of the Court of Justice of the European Union
- The principles of effectiveness, proportionality, and dissuasiveness
- Sanctions in EU Member States
- Obstacles for a correct application of the three principles
- Good practices
- Conclusions

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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.

COUNCIL DIRECTIVE 2000/43/EC OF 29 JUNE 2000 IMPLEMENTING THE PRINCIPLE OF EQUAL TREATMENT BETWEEN PERSONS IRRESPECTIVE OF RACIAL OR ETHNIC ORIGIN

THE INTERPRETATION OF «SANCTIONS»

1. Sanctions in a stricter sense

2. Sanctions in a broader sense

THE AIMS OF SANCTIONS

1.
Compensatory
aim

2. Punitive aim

3. Preventive
aim

4. Social-
preventive aim

Katrin Wladasch, 'The Sanctions Regime in Discrimination Cases and Its Effects', *An Equinet Paper*, 2015.

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CASE LAW OF THE COURT OF JUSTICE OF THE EU

Compensation

(von Colson, Marshall,
Draemphael)

Procedural rules

(Dekker, Feryn,
Associazione
Avvocatura per i diritti
LGBTI)

Sanctions

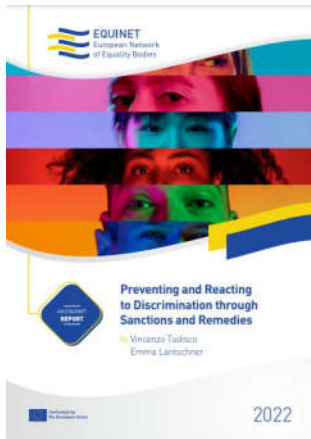
(Draemphael, Asociația
Accept, Arjona
Camacho)

Effectiveness and dissuasiveness

(von Colson, Braathens)

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THE PRINCIPLES OF SANCTIONS



1. Effectiveness: a sanction is effective if it produces the desired effect for the victim and makes fully good the harm produced by the discrimination, it results in a punitive effect for the perpetrator, and it contributes to achieving the objective of the directive, namely fostering the effective implementation of the principles of equal treatment and non-discrimination.

2. Proportionality: a sanction is proportionate to the extent that the damage and loss suffered by the victims are reflected in the sanction or remedy foreseen in a way that is appropriate. Proportionality should also be considered with reference to the social damage and the sanction be commensurate to the seriousness of the breach of the principle of equal treatment.

3. Dissuasiveness: a sanction is dissuasive when it constitutes an appropriate preventive tool both for the infringer from committing the same violation and for society as a whole.

SANCTIONS IN MEMBER STATES

Competent authorities: (administrative, civil, labour, criminal, specialised) courts, Equality Bodies, other public authorities

Most common sanctions

- Obligation to stop discriminatory practises/structures/procedures
- Reinstatement in situation without discrimination
- Compensation for material damages
- Compensation for immaterial damages
- Compensation as alternative to reinstatement
- Publication of decision
- Non-compliance penalty
- Declaration of the act as void

Less common sanctions

- Removal of the right to receive public benefits, public contracts, and/or public funding
- Forfeiture of items
- Expulsion

SANCTIONS IN MEMBER STATES

Most commonly applied sanctions

- Compensation (material and immaterial)
- Obligation to stop discriminatory practises/structures/procedures

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OBSTACLES FOR A CORRECT APPLICATION OF THE THREE PRINCIPLES

1. Amount of compensation and moral damages

2. Combined and forward-looking sanctions

3. Collective redress

4. Role of Equality Bodies

5. Data collection and training

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GOOD PRACTICES

- **Belgio:** 2023 reform of non-discrimination law (Loi portant modification de la loi du 30 juillet 1981 tendant à réprimer certains actes inspirés par le racisme ou la xénophobie, de la loi du 10 mai 2007 tendant à lutter contre certaines formes de discrimination et de la loi du 10 mai 2007 tendant à lutter contre la discrimination entre les femmes et les hommes)
- **Spagna:** new 2022 law (Ley 15/2022, de 12 de julio, integral para la igualdad de trato y la no discriminación)
- **Svezia:** compensation for immaterial damages and prevention
- **Francia:** Clerc method (compensation – labour law)

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CONCLUSIONS

- Prevention
- Comparison with other states and with other areas of law

1. Amount of compensation and moral damages

2. Combined and forward-looking sanctions

3. Collective redress

4. Role of Equality Bodies

5. Data collection and training

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Case law

- Judgment of the Court of 10 April 1984, *Sabine von Colson and Elisabeth Kamann v Land Nordrhein-Westfalen*, C-14/83, EU:C:1984:153.
- Judgment of the Court of 2 August 1993, *M. Helen Marshall v Southampton and South-West Hampshire Area Health Authority*, C-271/91, EU:C:1993:335.
- Judgment of the Court of 22 April 1997, *Nils Draehmpaehl v Urania Immobilienservice OHG*, C-180/95, EU:C:1997:208.
- Judgment of the Court of 10 July 2008, *Centrum voor gelijkheid van kansen en voor racismebestrijding v Firma Feryn NV*, C-54/07, EU:C:2008:397.
- Judgment of the Court of 25 April 2013, *Asociația Accept v Consiliul Național pentru Combaterea Discriminării*, C-81/12, EU:C:2013:275.
- Judgment of the Court of 17 December 2015, *María Auxiliadora Arjona Camacho v Seguridad España, SA*, C-407/14, EU:C:2015:831.
- Judgment of the Court of 23 April 2020, *NH v Associazione Avvocatura per i diritti LGBTI - Rete Lenford*, C-507/18, EU:C:2020:289.
- Judgment of the Court of 15 April 2021, *Diskrimineringsombudsmannen v Braathens Regional Aviation AB*, C-30/19, EU:C:2021:269.

Thank you for listening!