

# Legal remedies and sanctions in case of gender discrimination

ERA Seminar  
Kraków 12-13 June 2017

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This training session is funded under the 'Rights, Equality and Citizenship Programme 2014-2020' of the European Commission.

## Introduction

- The equal treatment of men and women, including the equal remuneration for the same work or work of equal value constitute the fundamental principle of EU law.
- The effective implementation of the principle of equal treatment requires also the introduction of appropriate judicial or administrative procedures to enforce the obligations stemming from the anti-discrimination laws in force and the rights of victims to be exercised.
- The nature of the sanctions for infringement of the principle of non-discrimination is of a great importance as it determines the effectiveness of anti-discrimination legislation.



## framework

- 1. Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of **employment and occupation (recast)**
- 2. Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (**'Racial Equality Directive'**)
- 3. Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (**'Employment Equality Directive'**)
- 4. Council 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**
- 5. Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a **self-employed** capacity and repealing Council Directive 86/613/EEC



## Sanctions and remedies

- Above mentioned directives provide similar legal remedies and sanctions in case of discrimination in employment. It includes:
- **1. Judicial procedures for the enforcement of obligations under the directive (defence of rights)**  
*Member States shall ensure that, after possible recourse to other competent authorities including where they deem it appropriate conciliation procedures, judicial procedures for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.*



## Sanctions and remedies

- **2. Ensuring the right to the associations, organisations or other legal entities that have a legal interests in it to engage in any judicial and/or administrative procedure provided for the enforcement of obligations under the Directive**

*art. 17(1) Dir. 2006/54, art. 9(2) Dir 2000/78, art. 7(2) Dir. 2000/43, art. 8(3) Dir. 2004/113, art. 9 (2) Dir. 2010/41.*

*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/her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under the Directive.*



## Sanctions and remedies

- **3. Protection against victimization**

*art. 24 Dir. 2006/54, art. 11 Dir. 2000/78, art. 9 Dir. 2000/43, art. 10 Dir. 2004/113*

*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.*

## Sanctions and remedies

- **4. Introduction of the rules on penalties, which may comprise the payment of compensation to the victim, that must be effective, proportionate and dissuasive.**

*art. 25 Dir. 2006/54, art. 15 Dir. 2000/43, art. 17 Dir. 2000/78, art. 14 Dir. 2004/113, art. 10 Dir. 2010/41*

*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 the Directive is the refusal to take his/her job application into consideration.*



## Sanctions and remedies

- Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to the 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.

## Sanctions and remedies

- **5. Abolition or non-application of provisions contrary to the principle of non-discrimination**  
*art. 23 Dir. 2006/54, art. 14 Dir. 2000/43, art. 16 Dir. 2000/78, art. 13 Dir. 2004/113*

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.

### 6. Other sanctions

## Jurisprudence of the CJUE

- The principles provided by directives have a general character, but many answers have been given by CJUE jurisprudence, in particular:
  - C-14/83, *Von Colson i Kamann*;
  - C-177/88 *Dekker*;
  - C-271/91 *Marshall*;
  - C-180/95 *Draehmpaeh*;
  - C-295/04 & C-298/04 *Manfredi*;
  - C-460/06 *Paquay*;
  - C-231/06 & C-233/06 *Jonkmann*
  - C-57/07 *Ferdyn*;
  - C-246/09 *Bulicke*;
  - C-417/13 *Starjakob*;
  - C-407/14 *Arjona Camachos*.
  - C-441/14 *Dansk Industri*



## Interpretation

- Influence of the Charter of Fundamental Rights (art. 47) and European Convention of Human Rights (art. 6 and art. 13)
- The right to effective remedy and the right to an independent and impartial tribunal are connected with the principle of equivalence and effectiveness

## Compensation

1. What does the compensation cover?
2. What should be its amount?
3. What is the character of the compensation?
4. Does the compensation include the interest?
5. In what period is it possible to claim compensation?



## other sanctions

- If it appears appropriate to the situation sanctions may 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.



## other sanctions

- They may take the form of the award of damages to the body bringing the proceedings.
- Rules on sanctions applicable to breaches of national provisions adopted in order to transpose the directive must be effective, proportionate and dissuasive, even where there is no identifiable victim.  
(C-57/07 *Ferdyn*, 35-40)

Thank you for your attention!

