


In pursuit of effectiveness: solutions and sanctions ruled by courts in cases of discrimination on grounds of sex

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1

EU legal framework



- **Article 21 of the Charter of Fundamental Rights of the European Union**

“Non-discrimination” - (1) 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.

- **Article 23 of the Charter of Fundamental Rights of the European Union**

“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.

2



EU legal framework

- **Article 47 of the Charter of Fundamental Rights of the European Union**
“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.
- **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)**
- **Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin**

3



EU legal framework

- **Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation**
- **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**
- **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**

4

Prohibition of any form of discrimination



Article 4 - Chapter 1 – "Equal pay" (Directive 2006/54/EC)

Prohibition of any form of discrimination

For the same work or for work to which equal value is attributed, **direct and indirect discrimination** on grounds of sex with regard to all aspects and conditions of remuneration shall be eliminated.

In particular, where a job classification system is used for determining pay, it shall be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on grounds of sex.

5

Prohibition of any form of discrimination



Article 14 - Chapter 3 – "Equal treatment as regards access to employment, vocational training and promotion and working conditions" (Directive 2006/54/EC) –

Prohibition of discrimination

(1) There shall be no direct or indirect discrimination on grounds of sex in the public or private sectors, including public bodies, in relation to:

(a) conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;

(b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;

6



Prohibition of any form of discrimination

(c) employment and working conditions, including dismissals, as well as pay as provided for in Article 141 of the Treaty;

(d) membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations.

(2) Member States may provide, as regards access to employment including the training leading thereto, **that a difference of treatment which is based on a characteristic related to sex shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that its objective is legitimate and the requirement is proportionate.**

7



Defence of rights

Article 17 (Directive 2006/54/EC) - Defence of rights

(1) 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.

(2) 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 this Directive.

8



Defence of rights

(3) Paragraphs 1 and 2 are without prejudice to national rules relating to time limits for bringing actions as regards the principle of equal treatment.

(see also Article 9 (2) of Directive 2000/78/EC, Article 7(2) of Directive 2000/43/EC, Article 8(3) of Directive 2004/113/EC, Article 9(2) of Directive 2010/41/EU)

9



Compensation or reparation

Article 18 (Directive 2006/54/EC) - **Compensation or reparation**

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.

(see also Article 17 of Directive 2000/78/EC, Article 15 of Directive 2000/43/EC, Article 10 of Directive 2010/41/EU)

10



Compensation or reparation

To keep in mind:

- Member States shall introduce into their national legal systems such measures as are necessary to ensure compensation or reparation which are real and effective
- Compensation may not be restricted by the fixing of a prior upper limit
- The Directive does not define the terms “effective” (able to cause the effect desired by the victim), “proportionate” (the suffering of the victim as related to the compensation), “dissuasive” (not just sanctioning the respective case, but also for the purposes of prevention)
- A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods (Article 288 TFEU)

11



Compliance

Article 23 (Directive 2006/54/EC) - **Compliance**

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.

(see also Article 14 of Directive 2000/43/EC, Article 16 of Directive 2000/78/EC, Article 13 Directive 2004/113/EC)

12

Victimisation



Article 24 (Directive 2006/54/EC) - **Victimisation**

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.

(see also Article 11 of Directive 2000/78/EC, Article 9 of Directive 2000/43/EC, Article 10 Directive 2004/113/EC)

13

Penalties



Article 25 (Directive 2006/54/EC) - **Penalties**

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

(see also Article 15 of Directive 2000/43/EC, Article 17 of Directive 2000/78/EC, Article 14 Directive 2004/113/EC, Article 10 of Directive 2010/41/EU)

States decide at national level what type of remedies they put in the law (civil, criminal, administrative, pecuniary etc.), the nature of the sanctions (punitive or not), aim, level etc.

14

EUCJ case-law - the principle of proportionality



- In the absence of harmonisation of the Community legislation in the field of penalties applicable where conditions laid down by arrangements under such legislation are not observed, the Member States are empowered to choose the penalties which seem appropriate to them. They must, however, exercise that power in accordance with Community law and its general principles, and consequently with the *principle of proportionality*. (CJ, C-430/05, Nttonik)
- 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. 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. (CJ, C-14/83, von Colson and Kamann)

15

EUCJ case-law - compensation shall not be limited to a an upper limit fixed *a priori*



- The interpretation of Article 6 of Directive must be that reparation of the loss and damage sustained by a person injured as a result of discriminatory dismissal may not be limited to an upper limit fixed *a priori* or by excluding an award of interest to compensate for the loss sustained by the recipient of the compensation as a result of the effluxion of time until the capital sum awarded is actually paid. (CJ, C-271/91, Marshall)
- The directive does not preclude provisions of domestic law which prescribe an upper limit of three months' salary for the amount of compensation which may be claimed by an applicant where the employer can prove that, because the applicant engaged had superior qualifications, the unsuccessful applicant would not have obtained the vacant position even if there had been no discrimination in the selection process. The directive precludes provisions of domestic law which, unlike other provisions of domestic civil and labour law, impose a ceiling of six months' earnings on the aggregate amount of compensation which, where several applicants claim compensation, may be claimed by applicants who have been discriminated against on grounds of their sex in the making of an appointment where that applicant would have obtained the vacant position if the selection process had been carried out without discrimination. (CJ, C-180/95, Draehmpaehl)

16

EUCJ case-law – In cases of discrimination, sanctions must not be purely symbolical



- In cases of discrimination, sanctions must not be purely symbolical (par. 64). It is true that the mere fact that a specific sanction is not pecuniary in nature does not necessarily mean that it is purely symbolic, particularly if it is accompanied by a sufficient degree of publicity and if it assists in establishing discrimination within the meaning of that directive in a possible action for damages. (para. 68). Article 17 of Directive 2000/78 must be interpreted as meaning that it precludes national rules by virtue of which, where there is a finding of discrimination on grounds of sexual orientation within the meaning of that directive, it is possible only to impose a warning such as that at issue in the main proceedings where such a finding is made after the expiry of a limitation period of six months from the date on which the facts occurred where, under those rules, such discrimination is not sanctioned under substantive and procedural conditions that render the sanction effective, proportionate and dissuasive. (CJ, C-81/12, Asociația Accept)

17

EUCJ case-law – the principles of equivalence and effectiveness



- Assuming that a Member State decides to adopt measures which enable the award of punitive damages to the discriminated person, it is for the national legal order of each Member State to establish the criteria allowing the determination of the scope of the sanction, provided that the principles of equivalence and effectiveness are observed (see for analogy the Ruling of the Court in Manfredi and others, C-295/04-C-298/04). Article 18 of Directive 2006/54/EC must be interpreted as meaning that, in order for the loss and damage sustained as a result of discrimination on grounds of sex to be the subject of genuine and effective compensation or reparation in a way which is dissuasive and proportionate, that article requires Member States which choose the financial form of compensation to introduce in their national legal systems, in accordance with detailed arrangements which they determine, measures providing for payment to the person injured of compensation which covers in full the loss and damage sustained. (CJ, C-407/14, Arjona Camacho)

18

EUCJ case-law – the principles of equivalence and effectiveness



The primary law of the European Union and Article 9 of Council Directive 2000/78/EC must be interpreted as not precluding a national procedural rule under which a victim of discrimination in recruitment on grounds of age must make a claim against the perpetrator of that discrimination within two months in order to obtain compensation for pecuniary or non-pecuniary damage, provided: firstly, that that time-limit is not less favourable than that applicable to similar domestic actions in employment law, secondly, that the fixing of the point from which that time-limit starts to run does not render practically impossible or excessively difficult the exercise of rights conferred by the Directive. It is for the national court to ascertain whether those two conditions are met. Article 8 of Directive 2000/78 must be interpreted as not precluding a national procedural rule, adopted in order to implement the Directive, which has the effect of amending earlier legislation which provided for a time-limit for claiming compensation for discrimination on grounds of sex. (CJ, C-246/09, Bulicke)

19

EUCJ case-law – the principles of equivalence and effectiveness



- The principle of effectiveness must be interpreted as meaning that it does not preclude a national limitation period for claims which are founded in EU law from starting to run before the date of delivery of a judgment of the Court which has clarified the legal position on the matter. (CJ, C-417/13, Starjakob)
- In a situation where national provisions cannot be interpreted in a manner which is consistent with Directive 2000/78, the national court is obliged, within the scope of its powers, to guarantee the legal protection conferred on individuals by that directive and to guarantee that that protection is fully effective, by disapplying, if need be, any contrary provision of national law. (CJ, C-396/17, Leitner)

20

EUCJ case-law – the principles of equivalence and effectiveness



- Articles 7 and 15 of Council Directive 2000/43/EC, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding a national law which prevents a court that is seised of an action for compensation based on an allegation of discrimination prohibited by that directive from examining the claim seeking a declaration of the existence of that discrimination where the defendant agrees to pay the compensation claimed without however recognising the existence of that discrimination. It is for the national court hearing a dispute between private persons to ensure, within its jurisdiction, the judicial protection for litigants flowing from Article 47 of the Charter of Fundamental Rights by disapplying as necessary any contrary provision of national law. (CJ, C-30/19, Braathens Regional Aviation)

21

EUCJ case-law – no identifiable victim



- The fact that an employer states publicly that it will not recruit employees of a certain ethnic or racial origin constitutes direct discrimination in respect of recruitment within the meaning of Article 2(2)(a) of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, such statements being likely strongly to dissuade certain candidates from submitting their candidature and, accordingly, to hinder their access to the labour market. Public statements by which an employer lets it be known that under its recruitment policy it will not recruit any employees of a certain ethnic or racial origin are sufficient for a presumption of the existence of a recruitment policy which is directly discriminatory within the meaning of Article 8(1) of Directive 2000/43. It is then for that employer to prove that there was no breach of the principle of equal treatment. It can do so by showing that the undertaking's actual recruitment practice does not correspond to those statements.

22



EUCJ case-law – no identifiable victim

- It is for the national court to verify that the facts alleged are established and to assess the sufficiency of the evidence submitted in support of the employer's contentions that it has not breached the principle of equal treatment. Article 15 of Directive 2000/43 requires that rules on sanctions applicable to breaches of national provisions adopted in order to transpose that directive must be effective, proportionate and dissuasive, even where there is no identifiable victim. (CJ, C-54/07, Feryn)
- Holding the perpetrator of a discrimination accountable is not tied to proving any irregularity or the lack of any justification. (CJ, C-177/88, Dekker)

23



EUCJ case-law – consistent interpretation

- A national court hearing a dispute between two individuals is obliged, where it is not possible for it to interpret the applicable national law in conformity with Article 4(2) of Directive 2000/78, to ensure within its jurisdiction the judicial protection deriving for individuals from Articles 21 and 47 of the Charter of Fundamental Rights of the European Union and to guarantee the full effectiveness of those articles by disapplying if need be any contrary provision of national law. (CJ, C-414/16, Egenberger)
- The principle of *consistent interpretation* requires that „national courts to do whatever lies within their jurisdiction, taking the whole body of domestic law into consideration and applying the interpretative methods recognised by domestic law, with a view to ensuring that the directive in question is fully effective and achieving an outcome consistent with the objective pursued by it.” (CJ, C-282/10, Dominguez)

24

EUCJ case-law – defence of rights



- Directive 2000/78 must be interpreted as not precluding national legislation under which an association of lawyers whose objective, according to its statutes, is the judicial protection of persons having in particular a certain sexual orientation and the promotion of the culture and respect for the rights of that category of persons, automatically, on account of that objective and irrespective of whether it is a for-profit association, has standing to bring legal proceedings for the enforcement of obligations under that directive and, where appropriate, to obtain damages, in circumstances that are capable of constituting discrimination, within the meaning of that directive, against that category of persons and it is not possible to identify an injured party. (CJ, C-507/18, Associazione Avvocatura per i diritti LGBTI)

25

National case-law



- The intensity and the length of the discriminatory behavior must be taken into consideration (Labour Court, Germany); the damage may be assessed similarly to the moral harassment (mobbing) – see the decisions of the labour courts of Italy: Agrigent (01.02.2005), La Spezia (04.07.2005), Sondrio (31.03.2006), Sondrio (22.07.2006), Bergamo (08.08.2006), Bergamo (14.06.2007)
- In **Vento v Chief Constable of West Yorkshire Police**, the England and Wales Court of Appeal within its judgement gave guidance on how to calculate compensation for injury to feelings, as follows: awards up to £6,000 are appropriate for less serious cases, such as where the act of discrimination is an isolated one or did never take place concretely; the middle band of between £6,000 and £18,000 should be used for serious cases; the top band should normally be between £18,000 and £30,000. Sums in this range should be awarded in the most serious cases, such as where there had been a lengthy campaign of discriminatory harassment.

26

National case-law



- According to the Supreme Court, the personal motivation of the plaintiffs was irrelevant. Also the fact that the incident had not been noisy and that the personnel had not behaved in a rude manner towards the plaintiffs would not reduce the intensity of the violation of the plaintiffs' personal rights.
- In Germany, a Labour Court Decision of Rheinland-Pfalz (Az: 5 Sa 509/13, 14.08.2014) referred to the principles of adequacy and proportionality in determining an amount of compensation. The plaintiff, as many other women, had been paid less than their male colleagues for the same work. The amount of damage due to the gravity and the length of discriminatory treatment was considered as such that a compensation payment should be „noticeable“. Furthermore the fact that the discriminatory treatment had been direct and intentional was mentioned as a relevant factor whilst the fact that the unequal payment had not been hidden but practised openly was not considered as exculpatory.

27

National case-law



- The Tribunal of Livorno, Italy, in its Decision of 6 July, 2015, in a case of a disabled student confronted with a hostile attitude by his teacher, found that several acts of discrimination and harassment had taken place and sentenced the school to pay an amount of EUR 10.000 for non-pecuniary damages. The student had continuously been excluded from collective activities, had been closed in a separate room as an extreme remedy to his supposedly violent attitude and difficulties arising from his disability, had repeatedly been discussed in front of the class. The amount of damages was calculated taking into account as well the emotional stress produced by those acts for the student.

28

What sanctions may be deemed efficient?



- administrative sanctions if they have a punitive character
- publication of decision
- compensation set at a level so as to be dissuasive
- requirements/recommendations to dismantle discriminatory structures/procedures
- reinstatement in situation without discrimination
- application to carry out non-paid work
- requirement to introduce anti-discriminatory policies - if these can lead to effective changes
- warnings - if these have image-deteriorating potential

29

What sanctions may be deemed efficient?



- Obligation/recommendation to stop discriminatory practices/procedures (AT, LT, MT)
- Dissuasive compensation (AT, LV, MT) or if these truly improve the financial status of the plaintiffs (CZ), as these provide financial compensation for natural persons and may act as a deterrent for organisations, not only because of the financial sanction, but also because they bring prejudice to reputation
- Imposing the obligation to fulfil community services (NL)
- Obligations/recommendations to implement policies and/or change the anti-discrimination plans (AT, UK), as these may ensure a change at the workplace

30

Guidelines to assess the dissuasive effects of a sanction



- The sanction is not dissuasive if victims could be reluctant in exercising their rights, repeated infringements could indicate that the sanction does not reach its goal, it is not purely symbolical, not necessarily pecuniary, it is necessary as well in cases where there is no direct victim.
- The role of the national judge: bound to interpret and apply national legislation adopted to enforce the relevant directives in compliance with the requirements of EU law; if this national legislation is not compliant with EU law, it may be disapplied by the national court.
- Several factors are taken into consideration in deciding about the level of compensation, such as: perpetrators' financial resources; perpetrators' status (public authority or natural person/undertaking); number of discriminatory acts (reoffending); extent of discrimination (multiple discrimination)

31

Challenges and barriers



- There is no ideal sanction for each individual case
- Conclusions linked to retaliation/victimisation
- Insufficient knowledge of rights and remedies
- Limited level of compensation awarded
- Non-binding decisions issued by bodies promoting equality (lack of effectiveness)
- Lack of experience and awareness of judges
- Lack of practical mechanisms to enforce the law
- The dissuasive character in most EU Member States may be affected by the limited number of pro-active remedies and by the failure to ensure adequate monitoring

32

Challenges and barriers



- Procedures are too complex, lengthy and costly (legal representation and judicial fees)
- Proportionality may be affected by lack of guidelines regarding sentencing or compensation
- Fear of reprisals as a barrier for the remedies
- Lack of legal certainty regarding the plaintiffs' prospects of success (lack of case-law)
- Lack of compensation levels provided in the law and/or issued by courts (lack of proportionality, lack of dissuasive character)
- Choosing the goal is essential and depends on various factors, such as the interest of the individual or group affected by discrimination and/or of a group of interests or of a body promoting equality

33

National solutions



- End on discrimination; reinstating *status quo antes*; ensuring compensation for loss and damage sustained and future loss of earnings; reestablishing criminal and administrative sanctions; a lump sum is not dissuasive, essentially (Marshall, para. 32), except if the negative effect would have still occurred
- Criminal and administrative sanctions - a limited number of states - they include warnings or administrative fines, criminal fines, disciplinary measures (Cyprus, Portugal, Finland, Italy, Norway, the Czech Republic, Austria, Slovakia). Article 7 para. (2) of the Directive is minimal requirement in certain countries, the national legislation acknowledges *actio popularis* or collective action (Hungary, Slovakia, Germany, Austria, Norway, the Netherlands)
- In case of multiple discrimination, there is no explicit solution, even though various elements may be added to act as a deterrent - it may require that the sanction should be higher than it might have been the case if discrimination were only connected to one of the protected

34

National solutions



- A very efficient measure would have been to include perpetrators on a black list of discriminatory undertakings and to prevent them from taking part in tenders and receive subsidies in the public sector – There is such as black list in the US kept by the Office of Federal Contract Compliance Programs (OFCCP) under the US Department of Labor;
- In Bulgaria, the advice and recommendations of the Commission for the Protection against Discrimination (CPD) are binding, discriminatory administrative acts can be revoked and average compensation awarded is comparably high The Commission for the Protection against Discrimination takes into account the annual turnover of the organisation, when determining whether the fine should be close to the maximum or to the minimum amount provided for by law. According to art. 27 (2) of Bulgarian Administrative Violations and Sanctions Act: “in meting out the punishment, account shall be taken of the gravity of the violation, the motives or inducements for the commission thereof and other extenuating and aggravating circumstances, as well as the property status of the offender.”

35

National solutions



- In Belgium, a lump sum payment can be ordered to be payed by the perpetrator in order to compensate for economic and non-economic loss, but also to ensure a punitive element. Employers are reported to be more likely to explore in detail the legality of their decision before undertaking a discriminatory action when a quasi automatic lump sum payment is menacing.
- Katrin Wladasch -The Sanctions Regime in Discrimination Cases and its Effects -
https://www.archive.equineteurope.org/IMG/pdf/sanctions_regime_discrimination_-_final_for_web.pdf

36

A few elements of Romanian legislation and case-law



Directive 2000/43/EC and Directive 2000/78/EC were also transposed in the Labour Code. At the same time, Law No. 202/2002 on equal opportunities and equal treatment between women and men is also a partial transposition of Directive 2006/54/EC and Directive 2010/41/EU. Pursuant to Government Ordinance No. 137/2000, the following are deemed as administrative offences - gender discrimination in the following cases: denial of access to public administrative, legal and health services, other services, goods and facilities; denial of access to education; violation of the freedom of movement, of the right to the free choice of domicile and access to public places; infringement on personal dignity. Administrative offences shall be penalized with a fine ranging from RON 1,000 (around EUR 200) to RON 30,000 (around EUR 6,000), if the discrimination is aimed at a natural person and with a fine ranging from RON 2,000 (around EUR 400) to RON 100,000 (around EUR 20,000), if the discrimination is aimed at a group of persons or a community. Law No. 167/2020 has introduced a new paragraph since 10 august 2020: "Moral harassment at the workplace perpetrated by an employee infringing the rights or dignity of another employee shall be deemed as administrative offence and shall be penalized with a fine ranging from RON 10,000 (around EUR 2,000) to RON 15,000 (around EUR 3,000)."

37

A few elements of Romanian legislation and case-law



It has not been proven that Fotbal Club Steaua București S.A. has ever identified with the statements of defendant GB or, as an employer, has ever practiced a discrimination policy on the grounds of sexual orientation. These statements express the defendant's personal opinion, as they are placed in a context linked to his faith and were not acknowledged by the football club. The applied warning is not compatible with Article 17 of Directive 2000/78 and cannot be *de plano* considered as a *purely symbolical* sanction. When applying this sanction, CNCD has the benefit of a margin of appreciation within which it assesses several elements, in the context of which the context of the infringement, its effects or result and the perpetrator played a determining role. Not least, the publicity accompanying the decision to penalize the perpetrator of the discrimination who has excessively exercised his freedom of speech had a deterrent effect in society. (*High Court of Cassation and Review - The Chamber of Tax and Administrative Litigation, Decision No. 2224 of 29 May 2015*) - *Asociația Accept*

38

A few elements of Romanian legislation and case-law



CNCD justly deemed that the public use of offensive language (“filthy fag”, “stinking transvestite”, “lousy faggots” etc.), with a discriminatory character, referring to the sexual orientation of the plaintiff and that of the customers of the bar the former managed (the gay friendly Club Diva), violated the principle of equal treatment and brought prejudice to the personal dignity of these persons, such as it is provided under Article 15 of GO No. 137/2000 as republished. The court ordered that the plaintiff, a president of a branch of a political party, should be fined Ron 4,000. The use of offensive language directed against a bartender of the same club (“you came here to screw from behind, you lousy faggot”, “get out, you genetic mutant”) justifies the award of EUR 500 as moral compensation. (*Court of Appeals of Constanța, Civil Ruling No. 128/CA of 27 April 2011; Court of Appeals of Constanța, Civil Ruling No. 532/C of 18 December 2013*)

39

Thank you!



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40