

Seeking effectiveness: remedies and sanctions in sex discrimination cases

Asoc.prof. Kristine Dupate

Remedies and sanctions for breach of the EU law

National procedural autonomy:

- EU law in national legal systems applies according to the national laws (procedural + material law)

- **The CJEU** (decision in case *Raimund C-425/16* , 40.p.):

'In that context, it must be borne in mind that, in accordance with the Court's settled case-law, in the absence of EU rules governing the matter, it is for the domestic legal system of each Member State, in accordance with the principle of procedural autonomy, 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 EU law, the Member States having none the less responsibility for ensuring that those rights are effectively protected in each case [...]

Remedies and sanctions for breach of the EU law

- Although according to the principle of national procedural autonomy it is for the Member State to establish remedies and sanctions, they have to comply with:

- **Principle of effectiveness**
- **Principle of equivalence**

- **The CJEU** (decision in case Santana C-177/10, 89.p.)

'On that basis, as is apparent from well-established case-law, the detailed procedural rules governing actions for safeguarding an individual's rights under EU 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 EU law (principle of effectiveness) [...].'

Remedies and sanctions for breach of the EU law

Principle of effectiveness

- **The CJEU** (decision in case Santana C-177/10, 92.p.)

'As regards the principle of effectiveness, it is clear from the case-law of the Court that every case in which the question arises as to whether a national procedural provision makes the exercise of rights conferred on individuals under the EU legal order practically impossible or excessively difficult must be analysed similarly by reference to the role of that provision in the procedure, viewed as a whole, to the conduct and special features of that procedure before the various national judicial bodies. For those purposes, account must be taken, where appropriate, of the basic principles of the domestic judicial system, such as protection of the rights of the defence, the principle of legal certainty and the proper conduct of procedure [...].'

Remedies and sanctions for breach of the EU law

- Article 25 of Directive 2006/54/EC (Article 5 of Directive 2000/43/EC; Article 17 of Directive 2000/78/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. [...]’

Remedies and sanctions for breach of the EU law

- **The CJEU** (decision in case Firma Feryn C-54/07 (36.-37.p.):

‘36. Article 15 of Directive 2000/43 confers on Member States responsibility for determining the rules on sanctions for breaches of national provisions adopted pursuant to that directive. Article 15 specifies that those sanctions must be effective, proportionate and dissuasive and that they may comprise the payment of compensation to the victim.

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.

Remedies and sanctions for breach of the EU law

Amount of compensation

- If a Member State chooses as a compensation as a remedy, it has to correspond to following criteria:
 - 1) must guarantee real and effective judicial protection
 - 2) have real deterrent effect on the employer;
 - 3) be adequate in relation to damage sustained(The CJEU decision in case *Colson 14/83, 23.p.*)

Remedies and sanctions for breach of the EU law in Latvia

• **Administrative violation**

- Employment
 - Article 161 of the Labour Law
- Access to and supply of goods and services
 - -----

• **Bringing a claim under civil procedure**

- Employment
 - Articles 34(1), 60(3) and 95(2) of the Labour Law
- Access to and supply of goods and services
 - Article 3¹(11) of the Law on Protection of Consumers' Rights
 - Article 5 of the Law on Prohibition of Discrimination of Natural Persons – Parties to the Legal Transactions

Remedies and sanctions for breach of the EU law in Latvia

- **Administrative violation**

- Employment
 - Article 161 of the Labour Law - penalty to natural persons 28 to 70 units (EUR 140-350), penalty to legal persons 70 to 140 units (EUR 350 – 700)
- Access to and supply of goods and services
 - -----

- **Bringing a claim under civil procedure**

- Right to bring a claim on compensation for non-pecuniary damage - Article 29(8), 60(3) of the Labour Law, Article 3¹(11) of the Law on Protection of Consumers' Rights, Article 5 of the Law on Prohibition of Discrimination of Natural Persons – Parties to the Legal Transactions

Remedies and sanctions for breach of the EU law in Latvia Principle of effectiveness

- **Administrative violation**

- Access to and supply of goods and services
 - ----- ???
 - In which cases the breach of the principle of non-discrimination may be so grave a person may consider bringing a case before a court?

- **Bringing a claim under civil procedure**

- Right to bring a claim on compensation for non-pecuniary damage - Article 29(8), 60(3) of the Labour Law, Article 3¹(11) of the Law on Protection of Consumers' Rights, Article 5 of the Law on Prohibition of Discrimination of Natural Persons – Parties to the Legal Transactions
- **The amount of compensation awarded by a court:**
 - Whether proportionate in relation to damage sustained?
 - Whether ensure deterrent effect?

Remedies and sanctions for breach of the EU law in Latvia

Principle of effectiveness and equivalence. Time-limits

- **The CJEU** (decision in case Santana C-177/10, 93.p.)

“The Court has thus recognised that it is compatible with EU law to lay down reasonable time-limits for bringing proceedings, on pain of the action being time-barred, in the interests of legal certainty, since such time-limits are not liable to render practically impossible or excessively difficult the exercise of rights conferred by EU law. As regards such time-limits, the Court has also held that, in respect of national legislation which falls within the scope of EU law, it is for the Member States to establish those time-limits in the light, inter alia, of the significance for the parties concerned of the decisions to be taken, the complexities of the procedures and of the legislation to be applied, the number of persons who may be affected and any other public or private interests which must be taken into consideration [...]”

Remedies and sanctions for breach of the EU law in Latvia. Principle of effectiveness and equivalence. Time-limits

• **Time-limits in the Labour Law**

	Discrimination	Other breaches of the Labour Law
Recruitment	3 months (LL Art. 34(1))	-----
Termination of employment relationship during probation period	1 month (LL Art. 48)	-----
Employment conditions	3 months (LL Art. 95(2))	2 years (LL Art. 31(1))
including pay	3 months (LL Art. 60(3))	2 years (LL Art. 31(1))
Termination of employment relationship	1 month (LL Art. 122(1))	1 month (LL Art. 122(1))

Remedies and sanctions
for breach of the EU law in Latvia.
Principle of effectiveness and equivalence. Time-limits

• **Time-limits in the Labour Law**

- No practical difference between procedural time-limit as provided by Article 31(1) of the Labour Law and preclusive time-limit as provided by, for example, Article 60(3) of the Labour Law)?
- How many employees after bringing a claim against his/her employer continues employment relationship?