 Remedies and sanctions

Bucharest, 28-29 April 2014
National Institute of Magistracy

ERA – Academy of European Law
EU GENDER EQUALITY LAW
SEMINAR FOR MEMBERS OF THE JUDICIARY

lector: dr. Asztalos Csaba Ferenc
President,
National Council for Combating Discrimination - Romania

“Building trust in human rights”

General presentation

✓ remedies = sanctions = compensations?
✓ types of remedies and sanctions;
✓ criteria for establishing remedies, sanctions;
✓ limitation period for establishing sanctions and remedies;
✓ the role of remedies – sanctions;
✓ the role of the national judge in establishing sanctions and remedies;

“Building trust in human rights”
Terminology – EU legislation

✓ Directive 2006/54/EC:
  ▪ Preamble point 35: “effective proportional and dissuasive sanctions”;
  ▪ Art. 17 -the right to judicial proceedings;
  ▪ Art. 18: ”indemnification or remedies”;
  ▪ Art. 25: “sanctions” which may include the payment of a compensation to the victim”;
✓ Art. 17 2000/78/EC “sanctions which may include the payment of a compensation to the victim”
✓ Art. 15 2000/78/EC “sanctions which may include the payment of a compensation to the victim”
✓ Art. 47 The EU Charter of the Fundamental Rights – access to justice

Remedy

✓ means to redress or improve a situation, a condition, etc.; solution;
Ex.
  ▪ reinstatement of the quo antes status;
  ▪ publishing a decision;
  ▪ public apology;
  ▪ adoption of a non-discrimination code;
  ▪ modifying the criteria of assessment of discriminatory labour – correcting the discriminatory evaluation;
  ▪ organization of courses in the non-discrimination field;
  ▪ desegregation measures.
Sanction

- repressive measure, of constraint applied for breaching a law – the protection of the general interest
- system of measures of punishment, constraint taken against the party who does not comply with the obligations undertaken through a convention.

Ex. – enforcement:
- of a contraventional or criminal sanction – relation – state – natural or legal person.

Types of sanctions – main and complementary

- administrative:
  - contraventions: warning or fine;
  - suspension, withdrawal of the operating permit;
  - suspension of audio-video broadcasts;
  - publishing decisions;
  - termination of public contracts;
  - application of disciplinary sanctions (labour, sport);

- criminal:
  - criminal fine;
  - prison;
Compensation – indemnification

- **material:**
  - salary losses – labour efficiency, judicial expenses;
  - loss of skills, mobbing, harassment;
  - total compensation;

- **moral:**
  - suffering of the victim – violating the dignity of the victim;
  - moral indemnification ≠ unjust enrichment

Remedies
oriented towards the past or future

**Lato sensu**

- repressive measure applied for breaching a law,
- means to correct or improve a situation,
- payment of a damage.

**Stricto sensu**

- means to correct or improve a situation.
Minimum standard– remedies- sanctions

✓ EU directives require that member states:

- should determine the regime of applicable sanctions,
- should adopt measures to ensure the enforcement of these sanctions, which
- should be effective, proportional and dissuasive (discouraging).

Criteria for establishing sanctions - indemnification

✓ criteria, tools:

- circumstances of the perpetrated discrimination deed;
- advertisement of the discrimination deed;
- capacity of the perpetrator - public person, opinion maker;
- circumstances of the perpetrator – natural person, company;
- the victim is a determined individual, a determined or non-determined group of persons;
- analysis of the situation of the discrimination victim;
- use of expertise: technical, medical, psychological;
- perpetuation, re-offense;
- use of statistics, surveys.
Role of remedies - sanctions

“What are my odds? How long does it take? How much does it cost? What happens to me?”

✓ preventive;
✓ educative;
✓ the moral side – a sanction should not be transformed in a tax allowing the perpetration of a discrimination deed;
✓ they encourage the notification of discrimination deeds – a solution to under-reporting;
✓ they promote competitiveness, innovation and creativity – a form to prevent and combat corruption;
✓ they avoid economic losses and the social costs of discrimination;
✓ a tool of effective implementation in the organizational culture of the principle of equality and non-discrimination.

The stages of settlement of discrimination complaints

- Notification/self-notification – analysis of complaints
  - judicial guarantees.
- Remedies – sanctions
  - individualization of remedies and sanctions
- Monitoring
  - follow up;
  - verification of imposed obligations
CJEU case-law – relevant

- Judgment of the Court 8 November 1990*, Case C-177/88, Elisabeth Johanna Pacifica Dekker against Stichting Vormingscentrum voor Jong Volwassenen (VJV-Centrum) Plus
- Judgment of 22 April 1997, Draehmpaehl, C-180/95, Rec., p. I-2195, points 24, 39 and 40;
- Judgment of 8 June 1994, Commission/United Kingdom, C-383/92, Rec., p. I-2479, point 42;
- Judgment of 6 November 2003, Lindqvist, C-101/01, Rec., p. I-12971, points 87 and 88;
- Judgment of the Court – 25 April 2013, C-81/12, Accept Association against the National Council for Combating Discrimination;

“Building trust in human rights” - ERA Seminar - EU Gender Equality Law 2014 – asztalos.csaba@yahoo.com

Thank you! -there are no indiscreet questions, only answers

No one is born with hatred or intolerance.