

Remedies and sanctions

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

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CONSILIUL NAȚIONAL PENTRU COMBATAREA DISCRIMINĂRII

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;

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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

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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.

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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.
- enforcement of a disciplinary sanction: relation – employer – employee.

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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;

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Compensation – indemnification

✓ equivalent of a loss,
damage – to
compensate;

✓ general tort
provisions:

✓ 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

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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.

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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).

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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.

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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.

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The stages of settlement of discrimination complaints



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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 5 July 2007, Nttonik and Pikoulas, C-430/05, Rep., p. I-5835, point 53;
- ✓ Judgment of the Court of 10 July 2008, Feryn (C-54/07, Rep., p. I-5187)
- ✓ Judgment of the Court – 25 April 2013, Accept Association against the National Council for Combating Discrimination;

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



No one is born with hatred or intolerance