2015

www.equineteurope.org

AN EQUINET PAPER

THE SANCTIONS REGIME IN DISCRIMINATION CASES AND ITS EFFECTS

Katrin Wladasch

Equinet
European network
of equality bodies

Ludwig Boltzmann Institute
Human Rights

The Sanctions Regime in Discrimination Cases and its Effects is published by Equinet, the European Network of Equality Bodies.

Equinet brings together 45 organisations from 33 European countries which are empowered to counteract discrimination as national equality bodies across the range of grounds including age, disability, gender, race or ethnic origin, religion or belief, and sexual orientation. Equinet works to enable national equality bodies to achieve and exercise their full potential by sustaining and developing a network and a platform at European level.

Equinet members: Commissioner for the Protection from Discrimination, **Albania** | Austrian Disability Ombudsman, **Austria** | Ombud for Equal Treatment, **Austria** | Interfederal Centre for Equal Opportunities, **Belgium** | Institute for Equality between Women and Men, **Belgium** | Commission for Protection against Discrimination, **Bulgaria** | Office of the Ombudsman, **Croatia** | Ombudsperson for Gender Equality, **Croatia** | Ombudswoman for Persons with Disabilities, **Croatia** | Office of the Commissioner for Administration and Human Rights (Ombudsman), **Cyprus** | Public Defender of Rights – Ombudsman, **Czech Republic** | Board of Equal Treatment, **Denmark** | Danish Institute for Human Rights, **Denmark** | Gender Equality and Equal Treatment Commissioner, **Estonia** | Ombudsman for Equality, **Finland** | Non-Discrimination Ombudsman, **Finland** | Commission for Protection against Discrimination, **Former Yugoslav Republic of Macedonia (FYROM)** | Defender of Rights, **France** | Federal Anti-Discrimination Agency, **Germany** | Greek Ombudsman, **Greece** | Equal Treatment Authority, **Hungary** | Office of the Commissioner for Fundamental Rights, **Hungary** | Irish Human Rights and Equality Commission, **Ireland** | National Office Against Racial Discrimination, **Italy** | National Equality Councillor, **Italy** | Office of the Ombudsman, **Latvia** | Office of the Equal Opportunities Ombudsperson, **Lithuania** | Centre for Equal Treatment, **Luxembourg** | National Commission for the Promotion of Equality, **Malta** | National Commission for Persons with Disability, **Malta** | Protector of Human Rights and Freedoms (Ombudsman), **Montenegro** | Netherlands Institute for Human Rights, **Netherlands** | Equality and Anti-Discrimination Ombud, **Norway** | Human Rights Defender, **Poland** | Commission for Citizenship and Gender Equality, **Portugal** | Commission for Equality in Labour and Employment, **Portugal** | High Commission for Migration, **Portugal** | National Council for Combating Discrimination, **Romania** | Commissioner for Protection of Equality, **Serbia** | National Centre for Human Rights, **Slovakia** | Advocate of the Principle of Equality, **Slovenia** | Council for the Elimination of Ethnic or Racial Discrimination, **Spain** | Equality Ombudsman, **Sweden** | Equality and Human Rights Commission, **UK – Great Britain** | Equality Commission for Northern Ireland, **UK – Northern Ireland**

Equinet Secretariat | Rue Royale 138 | 1000 Brussels | Belgium
info@equineteurope.org | www.equineteurope.org
ISBN 978-92-95067-92-9

This publication was commissioned by Equinet and written by Katrin Wladasch, senior researcher and anti-discrimination expert at the Ludwig Boltzmann Institut of Human Rights (BIM). The views expressed in this publication belong to the author. Neither Equinet nor the European Commission are liable for any use that may be made of the information contained therein. This information does not necessarily reflect the position or opinion of the European Commission.

Acknowledgements

Publication Coordination: Tamás Kádár and Moana Genevey
Editing: Sarah Cooke O'Dowd

Author: Katrin Wladasch, Ludwig Boltzmann Institut of Human Rights
Freyung 6, 1. Hof , Stiege II, 1010 Wien, Austria
bim.office@univie.ac.at,
http://bim.lbg.ac.at

Equinet
European network
of equality bodies

Co-funded by the Rights, Equality and Citizenship Programme of the European Union

Table of Contents

1. Introduction

An acknowledgement of the need to use sanctions as a tool for fostering the factual implementation of the principles of equal treatment and non-discrimination is rooted in the EU Equal Treatment Directives. They oblige Member States to lay down rules on sanctions for cases of infringement of the said principles as defined in the respective Directives and to *take all measures necessary to ensure that they are applied. The sanctions, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive* (Article 15 of Directive 2000/43/EC, see also Article 17 of Directive 2000/78/EC). Different wording is used in Article 14 of Directive 2004/113/EC (penalties), Article 18 (compensation or reparation) and 25 (penalties) of Directive 2006/54/EC, Art. 10 of Directive 2010/41/EU (compensation or reparation).

The Directives however do not provide any guidance as to the nature of such sanctions, nor do they set a minimum standard or even lay down who should be the body in charge of issuing such sanctions. They leave the interpretation of what they would consider as 'effective, proportionate and dissuasive' to the national legislator. Consequently, the concrete regimes of sanctions and remedies are very diverse throughout Europe.

As a unifying factor, sanctions, penalties and other remedies that have been foreseen in national legislation have been criticised by equality bodies and NGOs in many Member States from the very beginning (of equal treatment legislation implementation). The criticisms range from the fact that (minimum) sanctions foreseen are very low, that judges are comparably hesitant in applying sanctions at all, specifically in 'first time cases' and/or tend to issue sanctions close to the minimum amount rather than trying to establish adequate amounts to the problem; to the fact that in many cases sanctions lack effectiveness as they are either not complied with or they are too low to stimulate change of attitude.

And even if in the course of the last 15 years (since the adoption of Directives 43/2000 and 78/2000) legislative provisions relating to sanctions and remedies have been improved, effectiveness, proportionality and potential for dissuasiveness are still not guaranteed in practice.[1]

When we presume that the aim of equal treatment legislation on the one hand should be to provide access to justice to those affected by discrimination – including access to a

[1] See European Commission COM (2014)2: REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL: Joint report on the application of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, available at: http://ec.europa.eu/justice/discrimination/files/com_2014_2_en.pdf (16.04.2015)

judgement delivering adequate sanctions and compensation – and on the other hand to promote a change of attitude on the side of employers, providers of goods and services and society as such, then we also have to consider effective sanctions as a key part of the equal treatment regime.

This acknowlegdement in mind, the European network of equality bodies, Equinet, has commissioned a study with the aim of identifying different types of sanctions, challenges in implementing them and ways to make them more effective. A specific focus is being given to the (potential) role of equality bodies in strengthening effectiveness, proportionality and dissuasiveness of sanctions' regimes.

2. Approach and Research Steps

The research was targeted at producing a **report on the sanctions regimes in discrimination cases and their effects in practice**.

It was based on the assumption that in order to be effective, sanctions have to be adequate in relation to their respective aims. Sanctions in discrimination cases however can have different aims, like

- providing remedy for single victims of discrimination (compensative character)
- constituting a punishment for the perpetrator (punitive character)
- being a tool for preventing further discrimination (preventive character)
- being a tool for fighting discrimination and fostering equality on a societal level (social-preventive character)

These aims are also reflected in the three parameters for sanctions and remedies defined in the EU Anti-Discrimination Directives, when they require sanctions and remedies to be characterised by **effectiveness** – producing the desired effect for the victim (compensation of damages), resulting in a punitive and preventive effect for the perpetrator and implementing the objective of the directive (fostering the effective implementation of the principles of equal treatment and non-discrimination – social-preventive effect), **proportionality** – extent of damage and loss suffered by the victims reflected in the sanction or remedy foreseen in a way that is appropriate (compensation of damages) and **dissuasiveness** – effectiveness of sanction not only towards the infringer but also as a tool to prevent others from doing likewise (preventive and social-preventive effects).

Led by the vision to identify the most effective, proportionate and dissuasive sanctions for these four aims and taking into account structural parameters of accessibility, enforceability and the (potential) role of equality bodies in this regard, the research was structured by **5 guiding questions**:

1. What are the aims of sanctions and remedies in discrimination cases?
2. Which type of sanction regime would be the most adequate tool for each of these aims?
3. How should a sanction regime look in order to be accessible for victims of discrimination?
4. How should a system of monitoring look in order to enhance effectiveness of sanctions, recommendations and other remedies?
5. What role can equality bodies play in order to promote and secure effectiveness of sanctions and remedies?

The research was carried out in four research steps as follows:

1) As a first step, a review of already existing research on sanctions in discrimination cases, their typologies, the relevance of sanctions for the individual case as well as their potential for fighting discrimination at the societal level was conducted.

2) As a second step, this was supplemented by an analysis of relevant legal sources of EU and international law as well as case law from international, EU and national courts and national equality bodies. The review based on these sources sought to identify differences in sanction regimes in relation to types of discrimination, discrimination grounds and fields of discrimination. Furthermore, it aimed to identify different types of sanction regimes in terms of approach, objectives, type of sanctions and structures (such as the body in charge).

3) This preliminary desk research has built the basis for developing a questionnaire (see Annex 2), which, as a third step, was sent to Equinet Members by the Equinet Secretariat on 5 June 2015. The questionnaires sought to obtain an overview of equality bodies' **experience** with and **assessment** of the respective sanction regimes in place in the countries they are operating in, as well as their views on **how a sanction regime should look** in order to be more effective. The questionnaire included questions about different **types and aims of sanctions**, about **differentiations** made for cases of multiple discrimination, for discrimination on different grounds and/or in different fields, in relation to a company's turnover, etc.. It also asked for **national case law** in relation to the level or appropriateness of sanctions and invited respondents to share their views about the **potential of Equality Bodies** toensure effective, proportionate and dissuasive sanctions. The initial response rate for the given return date (22 June) was very low. But finally 31 questionnaires were filled in and returned by the 14 July 2015.

4) In addition, as a fourth step, a series of interviews were conducted with representatives of:

- Swedish Equality Ombudsman (Sweden), 23.06.2015
- National Council for Combating Discrimination (Romania), 01.07.2015,
- Interfederal Center for Equal Opportunities (Belgium), 02.07.201
- National Office Against Racism (Italy), 01.07.2015 and
- Commissioner for Protection of Equality (Serbia), 14.07.2015

Interview questions addressed the following:

1. *According to your opinion, what would be the most adequate sanctions or remedies for the purpose of:*
    a. *Compensation for the individual victim*
    b. *Punishment for the perpetrator*
    c. *Individual prevention*
    d. *General prevention*
2. *What according to your opinion are victims of discrimination mostly interested in?*
3. *What is your opinion in relation to alternative forms of conflict resolution? Can they serve as remedies with effective, dissuasive and proportionate character?*
4. *Would you favour the establishment of guidelines on sanctions issued by (Supreme) Courts?*
5. *What could Equality Bodies do in order to enhance effectiveness of sanctions and remedies?*

Given the relatively limited input of the literature review, the responses to the questionnaires as well as the interviews were the main sources of information for the report, which was drafted as a final step. What has to be noted is that the final study findings are mostly based on information that was available in the period from May-July 2015 and that, to a large extent, they reflect the perspective of equality bodies. The study therefore cannot provide a complete and accurate overview of the sanctions system in place in all EU member states.

3. Overview of legislation, literature and case law

3.1. Legislative Framework

Access to an effective remedy as part of access to justice is referred to in most sources of international law. A provision on effective protection and remedies is for example included in the International Convention on the Elimination of All Forms of Racial Discrimination in its Article 6 (*adequate reparation or satisfaction for any damage suffered as a result of such discrimination*) and the Convention on the Elimination of Discrimination Against Women in its Article 2(c) (*ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination*). The Convention on the

Rights of Persons with Disabilities gives explicit attention to access to justice as a right in Article 13, but does not refer to sanctions and remedies as a necessary part of this.

The European Convention on Human Rights (ECHR) in Article 1 commits Member States in general terms to safeguard ECHR rights. Its Article 13 in concrete requires that *everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority.*

According to Article 19 of the Treaty on European Union, Member States have to *provide remedies sufficient to ensure effective legal protection in the fields covered by Union Law.*

Article 47 of the Charter of Fundamental Rights of the European Union establishes that *everyone whose rights and freedoms guaranteed by the law of the Union are violated* (in implementation of EU law) *has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.*

The Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law obliges Member States to ensure that offences concerning racism and xenophobia are punishable by *effective, proportionate and dissuasive criminal penalties.* Public incitement to violence or hatred on the basis of race, colour, religion, descent or national or ethnic origin shall be punished *by criminal penalties of a maximum of at least between 1 and 3 years of imprisonment* (Article 3). According to Article 4 *racist and xenophobic motivation* shall be moreover *considered as an aggravating circumstance or taken into account in the determination of the penalties.*

For the concrete case of the field of discrimination, Articles 15 of Directive 2000/43/EC and 17 of Directive 2000/78/EC require Member States to lay down rules on sanctions for cases of infringement of the national provisions adopted pursuant to respective Directives and to *take all measures necessary to ensure that they are applied. The sanctions, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive.* Similar requirements with slightly different wording are defined by Article 14 of Directive 2004/113/EC (penalties), Article 18 (compensation or reparation) and 25 (penalties) of Directive 2006/54/EC, Art. 10 of Directive 2010/41/EU (compensation or reparation).

Legal provisions that determine sanctions and remedies to be applied in discrimination cases are scattered throughout the legislation at the level of the national states. The Anti-Discrimination Directives have left the decision of how and where to address discrimination cases in terms of sanctions to the Member States, as long as they are laid down, that they are *effective, proportionate and dissuasive* and that all measures necessary are taken in order *to ensure that they are applied.*

The preamble of the Recast Directive[2] in order to provide more clarification on how such sanctions should look, refers to case law of the European Court of Justice in stating *that in order to be effective, the principle of equal treatment implies that the compensation awarded for any breach must be adequate in relation to the damage sustained. It is therefore appropriate to exclude the fixing of any prior upper limit for such compensation, except where the employer can prove that the only damage suffered by an applicant as a result of discrimination within the meaning of this Directive was the refusal to take his/her job application into consideration.*

Provisions determining sanctions and remedies in discrimination cases are included in criminal penal codes (mostly for cases of hate crimes and incitement to hatred), in administrative penal codes, in labour law and in specific equality and/or anti-discrimination legislation at the national level. Fines or imprisonment are sanctions foreseen in the area of criminal law, administrative sanctions range from the annulment of a discriminatory provision or act to the determination of an administrative fine, whilst in most countries compensations for the material and immaterial damages are foreseen in the area of civil law[3].

The range of sanctions and remedies foreseen in national legislation is very wide and the concrete application by courts, specialised tribunals and equality bodies very diverse. For the purpose of this study report, no concrete research on legislation at the national level could be conducted. An overview of the range of sanctions and remedies available, and of those applied in practise, was provided by representatives of equality bodies and is included in chapter 4.1.

3.2. Literature

Since the entry into force of the EU anti-discrimination regime, researchers and anti-discrimination experts have suggest taking a close look not only at the implementation of the material provisions of the EU Directives into national legislation, but also on the procedural ones, and specifically also on the requirements for sanctions and remedies.

Based on the experience in the UK, Barbara Cohen, in an article published within the project 'towards the uniform and dynamic implementation of EU anti-discrimination legislation: the

[2] 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)

[3] For the purposes of this publication the expression 'material damages' means pecuniary damages, i.e. damages that can be calculated, valued or estimated in terms of money. The expression 'immaterial damages' shall be understood as non-pecuniary damages or moral damages, i.e. damages that are not readily quantifiable or valued in money, including e.g. injury to feelings.

role of specialised bodies'[4], addressed the important aspects of how sanctions systems should look in order to be effective and the challenges in practise in this regard. She stressed the importance of institutions, like equality bodies, and the essential role of enforcement measurements. Some features of the UK sanctions system (in place since 2003) mentioned by her might be interesting for further consideration and for other legal contexts. They include awarding aggravated damages in cases, where the respondent is found to have behaved in an arbitrary, malicious, insulting or oppressive manner, exemplary damages with a punitive character and interim relief ordered by a court of tribunal in order to preserve a position (like a job) in the course of a litigation. Ideally, according to Cohen, sanctions should have the potential to protect other persons in a comparable situation. Cohen also points at the question of perspective in assessing effectiveness, proportionality and dissuasiveness, and she recommends taking into account what discriminators or potential discriminators least want to lose, when aiming to adopt remedies with a dissuasive character.

Monitoring the compliance with their (non-binding) recommendations was identified as a key aspect for enhancing the effectiveness of sanctions by a study on equality bodies published by the European Commission in 2010. The report includes an overview of equality bodies, their mandate and concrete activities and reveals that the issue of fines and sanctions does not seem to rank high on the agenda of equality bodies, with very few having the competence to issue fines and award compensation and most seeking to achieve soft solutions resulting in settlements of the parties.[5]

A report published by the European Commission in 2011 on access to justice in gender and anti-discrimination law gives several examples of remedies applied in discrimination cases, which illustrate the diversity of sanctions and even more so the different amounts of compensation payments in different national contexts – from EUR 200,- in the Czech Republic to EUR 12.000,- in Norway.[6] National experts and stakeholders consulted for this study did not consider the vast majority of sanctions in place for violations of anti-discrimination legislation at national level to be effective, proportionate and dissuasive. When comparing the amounts of sanctions awarded with the average national salary and taking into account the length and costs of procedures as well as the emotional efforts involved in litigation, the remedies typically awarded would discourage alleged victims from

[4] Cohen, Barbara (2004): Remedies and Sanctions for Discrimination in Working Life under the EC Anti-Discrimination Directives, In: Discrimination in the Working Life: Remedies and Enforcement, Towards the uniform and dynamic implementation of EU Anti-Discrimination Legislation: The Role of Equality Bodies, Report of the fourth experts' meeting, hosted by the Swedish Ombudsman Against Ethnis Discrimination, 14-15 October 2013. pp. 16-25. www.equineteurope.org/.../EN_-_Discrimination_in_Working_Life.pdf (02.06.2015)

[5] Ammer, M./N. Crowley/B. Liegl/E. Holzleithner/K. Wladasch/K. Yesilkagit (2010) Study on Equality Bodies set up under Directives 2000/43/EC, 2004/113/EC and 2006/54/EC – Synthesis Report, accessible via: http://ec.europa.eu/social/BlobServlet?docId=6454&langId=en (20.05.2015), p.96.

[6] Milieu (2011): Comparative study on access to justice in gender equality and anti-discrimination law, study prepared for the European Commission, available at: http://ec.europa.eu/justice/gender-equality/files/conference_sept_2011/final_report_access_to_justice_final_en.pdf (23.06.2015), p.39.

seeking justice. The study had a closer look at the compensatory and dissuasive functions of a remedy, acknowledging that *compensation for the damages caused by discriminatory acts or omissions* would *generally constitute an adequate remedy if it covers the material disadvantage suffered by victims and puts them in the situation they would have been in had the discrimination not taken place.*[7] In most countries however, damages awarded are considered as being too low to constitute real compensation. This is even more valid for non-pecuniary damages, which courts in some countries (like for example Estonia) are reluctant to apply. The report also highlights the fact that even if, in some areas (like in the field of labour) or regarding some grounds (like gender), adequate sanctions exist, this is not the case in other areas or for all grounds.[8] The dissuasive effect in most countries seems to be even more limited and non-effective in discriminatory practices of larger companies, even if they know that they might become liable to make a lump sum payment.[9] Bulgaria makes an exeption in this regard, as advice and recommendations of the Commmission for the Protection against Discrimination (CPD) are binding, discriminatory administrative acts can be revoked and average compensation awarded is comparably high. The set of options for the CPD in combination with its power to issue binding decisions and the readiness to award compensation payments, which have a dissuasive character, makes the Bulgarian sanctions' system effective, proportionate and dissuasive.[10]

A study commissioned by the Fundamental Righst Agency of the European Union (FRA) on access to justice in discrimination cases[11] laid a specific focus on the views of those affected by discrimination in relation to the effectiveness of sanctions and remedies. Main goals of complainants according to the study findings were the termination of discrimination, such as removal of barriers and re-instatement to the position lost, the recognition of discrimination and the prevention of discrimination to protect others in the future. Monetary compensation and an apology from or punishment of the discriminator were also mentioned but given less importance. Dissatisfaction resulted from having obtained non-binding decisions or the acknowledgement that also if a case had been won, no changes could have been obtained for their actual situation.[12] According to interviewees from equality bodies and intermediaries (like NGO representatives and lawyers) in eight EU Member States, whilst equality bodies' skills and competences and judges' knowledge and willingness to apply equal treatment legislation were acknowledged as essential in determining the outcome of a case, in practise a lack of resources on the side of equality bodies and a lack of expertise on the side of the judges was limiting the quality of outcomes.[13] Moreover it was stressed that compensation very often is too low to be dissuasive, and more generally the range of

[7] ibidem, p.40.
[8] ibidem, p.41.
[9] ibidem, p.42.
[10] ibidem, p.45.
[11] FRA (2012): Access to justice in cases of discrimination in the EU – Steps to further equality, available at: http://fra.europa.eu/sites/default/files/fra-2012-access-to-justice-social.pdf (20.05.2015).
[12] ibidem, p.45.
[13] ibidem, p.45.

remedies available did not always reflect complainants' aspirations. When complainants are seeking to remove barriers, compensation payments were not considered to be the most appropriate remedy, but they could play an important preventive role if they were proportionate. Decision-making bodies should have the authority to enforce compensation payments, representatives and intermediaries said.[14]

The most recent comparative overview of sanctions and remedies in discrimination cases in Europe and their compliance with the principles of effectiveness, proportionality and dissuasiveness[15] has underlined that:

- dissuasiveness in most countries can be affected by the limited number of proactive remedies and failures to ensure adequate monitoring
- proportionality can be affected by the absence of sentencing or compensation guidelines, and
- effectiveness may be affected be the creation of an 'equality hierarchy' meaning that different remedies are available depending on the ground protected or the field of discrimination

3.3. Case Law

ECtHR Case Law

The European Court of Human Rights (ECtHR) has addressed the obligation to foresee effective sanctions in discrimination cases for example in *Danilenkov and others vs. Russia.*[16] The claimants were members of a local branch of a trade union and had repeatedly been treated unfavourably on grounds of their union membership. The competent local courts had decided in favour of the complainants reversing the company's decisions and ordering payment of compensation for lost wages, but dismissed their discrimination complaints on the grounds that the existence of discrimination could only be established in the framework of criminal proceedings. The prosecutor however had also declined to open criminal proceedings as preliminary findings had failed to establish any direct intent of the company's director to discriminate. The Court found *crucially important that individuals affected by discriminatory treatment should be provided with an opportunity to challenge it and should have the right to take legal action to obtain damages and other relief. Therefore, States are required under Articles 11 and 14 of the Convention to set up a judicial system that ensures real and effective protection against . . . discrimination*. The court ruled that Russia had prohibited discrimination on grounds of union memberships, but that this provision was ineffective as long as it could be addressed in criminal proceedings only. The limitation could not be considered as adequate and practicable redress when at the same time criminal

[14] ibidem, p.46.

[15] Romanita Jordache, Iustina Ionescu (2014): Discrimination and its Sanctions – symbolic vs. Effective Remedies in European Anti-Discrimination Law, in: European Anti-Discrimination Law Review, No 19, pp.11-24, available at: http://www.equalitylaw.eu/content/media/Review%2019%20EN%20web%20version.pdf (16.04.2015)

[16] Danilenkov and Others v. Russia, ECtHR no. 67336/01, Chamber Judgment 30.09.2009.

prosecution was dependant on *proof "beyond reasonable doubt" of direct intent* by the company's key managers to discriminate against the trade-union members.

In *García Mateos v. Spain*[17], the Court made clear that the lack of an enforcement of a judgement in a discrimination case was to be considered as a violation of the very same principle. A mother had applied for reduced working hours in a specific way in order to take care of her son, who at that time was younger than six. This had been rejected by her employer, which was held by the Labour Court but subsequently considered as discriminatory by the Constitutional Court. The Labour Court again dismissed the claim and Ms Garcia Mateos applied to the Constitutional Court again, this time asking for compensation as the boy at some point had passed the age limit of six, which was denied. The Court in its judgement refered to the State obligation *to provide litigants with a system whereby they are able to secure the proper execution of domestic court decisions* and found that there had been a violation of Article 6.1 in conjunction with Article 14 of the Convention.

EU Case Law

Already in earlier case law (*von Colson* C-14/83)[18], the CJEU had made clear that even if the Directive (in this case Directive 76/207/EEC) *does not require any specific form of sanctions…., it nevertheless requires that …. in order to ensure that it is effective and that it has a deterrent effect, …. compensation must in any event be adequate in relation to the damage sustained….* The facts of the case were such that two women had applied for jobs as social workers at a prison in Werl (Germany) and two male candidates were appointed. The competent court had acknowledged the fact that discrimination on grounds of gender had taken place but had rejected the claim of offering alternative employment or compensation of six months salary arguing that only compensation for expenses actually occurred was an applicable form of sanctions. It therefore only accepted an alternative claim submitted by Ms von Colson requesting the reimbursement of travelling expenses of DM 7,20.[19] Such a purely nominal form of compensation clearly was characterised as not guaranteeing real and effective protection of the right of an individual.

The position of the Court of Justice of the European Union was underlined more recently in its judgement *ACCEPT* C-81/12[20], making clear that mere symbolic sanctions (in concrete a warning) cannot be considered as effective, proportionate and dissuasive. This judgement was important insofar as the emphasis placed by the Court on the element of deterrence in the previous sex discrimination cases, in a field of civil law with a traditional focus on

[17] García Mateos v. Spain, ECtHR no. 38285/09, Judgment 19.02.2013
[18] Sabine von Colson and Elisabeth Kamann v Land Nordrhein-Westfalen, Case 14/83, Judgment of the Court of 10 April 1984.
[19] an equivalent of EUR 3,50
[20] Asociaţia Accept v. Consiliul Naţional pentru Combaterea Discriminării, Case C-81/12, Judgment of the Court 25 April 2013

compensaton rather than on prevention, could have reflected the importance of sex equality, but would not necessarily have meant that this view would also be applied in cases of discrimination on other grounds.[21]

In *Decker* C-177/88[22], the Court referred to the question of responsiblity for the determination of a sanction, making clear that there was no need for proofing a fault of the person discriminating when applying the sanction foreseen in national legislation. In concrete, a potential employer had refused to appoint a pregnant women, referring to the possible adverse consequences due to national rules assimilating inability to work on account of pregnancy with inability to work on account of illness. In addition to the requirement of a sanction to guarantee real and effective protection as determined in *von Colson*, the Court also states that it has to *have a real deterrent effect on the employer.*

The question, if the requirement of dissuasiveness (in the concrete case as referred to in Article 18 of the Recast Directive) could eventually also *be interpreted as meaning that it enables the national court to award the victim reasonable punitive damages that are truly additional*, is currently the subject of a request for a preliminary ruling to the CJEU.[23] The request explicitly refers to sex discrimination cases and to the question, if an additional amount going beyond the *full reparation of the actual loss and damage suffered by the victim* (but still being proportionate) with the intention to *serve as an example to others (in addition to the person responsible for the damage)* would be considered as legitimate by the Court. *The national Court furthermore wants to know, if that would even then be the case, when the concept of punitive damages does not form part of the national legal tradition.*

In *Marshall C-271/91*[24] the Court furthermore made clear that the establishment of *a priori* upper limits of compensation for unfair treatment or exclusion of the payment of interest on the amount of time without employment in order to compensate losses incurred by the victim of discrimination, does not meet the terms of effective sanctions. This was recognised as the absence of real and effective judicial protection and the absence of the element of deterrence. Ms Marshall had been dismissed upon reaching retirement age, which was different for men and for women.

All these aspects were further confirmed in *Draehmpaehl* C-180/95.[25] A post of assistant had been advertised for women only. Here the Court made a distinction insofar as it declared as

[21] Concerns in this regard expressed in Ellis, E./P. Watson (2012): Remedies and enforcement", in: EU Anti-Discrimination Law (2nd edition), Oxford Eu Law Library. pp. 309f.
[22] Elisabeth Johanna Pacifica Dekker v Stichting Vormingscentrum voor Jong Volwassenen (VJV-Centrum) Plus, Case C-177/88, Judgment of the Court of 8 November 1990.
[23] Request for a preliminary ruling from the Juzgado de lo Social No 1 de Córdoba (Spain) lodged on 27 August 2014 — María Auxiliadora Arjona Camacho v Securitas Seguridad España, S.A., Case C-407/14
[24] M. Helen Marshall v Southampton and South-West Hampshire Area Health Authority, Case C-271/91, Judgment of the Court of 2 August 1993.
[25] Nils Draehmpaehl v Urania Immobilienservice OHG, Case C-180/95, Judgment of the Court of 22 April 1997.

not adequate in relation to the damage sustained, if an upper ceiling of three months' salary is fixed for cases, where the applicant would have obtained the job in question due to his/her qualification, whilst it states that this might be adequate for cases, where *the unsuccessful applicant would not have obtained the vacant post, even if there had been no discrimination in the selection process.*

In the *Feryn-C*ase[26] the CJEU gave further guidance in making clear that sanctions had to be effective, proportional and dissuasive even if there was no concrete victim. Moreover in its judgement, the Court also refers to the question of appropriateness of a sanction and states that, *if it appears appropriate to the situation at issue in the main proceedings, those sanctions may, where necessary, 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. They may, moreover, take the form of the award of damages to the body bringing the proceedings.*[27]

Here, the Court on the one hand stressed the need for appropriateness and proportionality, on the other by listing various options on how to address cases of discrimination, also showed an attitude of openness towards tailor-made sanctions for the specific case – as long as they are effective, proportional and dissuasive.

National Case Law

Guidelines on how to calculate damages have been elaborated at the national level. In *Vento v Chief Constable of West Yorkshire Police*[28] the England and Wales Court of Appeal within its judgement gave guidance on how to calculate compensation for injury to feelings, as follows:[29]

- 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, which do not merit an award in the highest band;
- 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.

Any compensation greater than the highest band should only be awarded in cases of utmost seriousness.

[26] Centrum voor gelijkheid van kansen en voor racismebestrijding v. Firma Feryn NV, C‑54/07
[27] C-54/07, Judgement of the Court,10 July 2008, par.39.
[28] England and Wales Court of Appeal, 2002, EWCA Civ 1871
[29] The original compensatory figures given in 2002 have been uprated according to inflation by *Da'Bell v NSPCC, 2009,* United Kingdom Employment Appeal Tribunal, UKEAT 0227_09_2809, but the bandings remain the same.

Further UK judgements, like *Buxton v Equinox Design,*[30] make clear that awards generally should not be too low (not lower than £500) as otherwise they risk not giving proper recognition to any injury of feelings. In *Elliot v The Leeds Teaching Hospitals NHS Trust*[31]*,* the employment tribunal awarded £750 taking into account that less than that would run the risk of diminishing respect for the discrimination legislation.[32]

In principle, and aside from the Vento Bands, discrimination awards in the UK are uncapped. The highest award made was £235,825 in the disability discrimination case of *Wilebore v Cable & Wireless Worldwide Services Ltd*, in which reasonable adjustments were not made for an employee, who had returned to work after having had treatment for cancer.

In the Czech Republic, the Supreme Court[33] decided on the relevance of the personal motivation of plaintiffs in bringing a case and the concrete circumstances of the discriminatory treatment for the determination of a compensation. In 2005, the Regional court in Ostrava decided in favour of a group of Roma plaintiffs, who were denied services in a restaurant. A group of Roma and a group of Czech people visited the restaurant (and several others) in order to explore if it was applying discriminatory admission policies. While the Czech group of testers was properly served, the Roma were denied service and told that the restaurant was a private club. Concluding that the group of Roma had been discriminated on grounds of ethnic origin, the Regional Court in Ostrava awarded compensation of 50.000 CZK (approx. 2000 EUR) to each of them. This amount was lowered on the appeal of the defendants by the Higher Court in Olomouc to 5000 CZK (approx. 200 EUR) to each of the plaintiffs. The Higher Court had concluded that the plaintiffs had voluntarily subjected themselves to discriminatory treatment and that they had been turned away in a quiet manner and without any noise.

On further appeal, the Supreme Court rejected the grounds given by the High Court for lowering the amounts of compensation. According to the Supreme Court, it was irrelevant that the plaintiffs were conducting situation testing, their personal motivation being 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.[34]

[30] United Kingdom Employment Appeal Tribunal, 1998, UKEAT 337_98_1911

[31] Employment Tribunal, 2011, ET case no. 1803268/10

[32] Information about the UK Case Law on sanctions was provided by the Equality and Human Rights Commission, UK

[33] Judgement of the Supreme Court No. 30 Cdo 4431/2007 (CZ)

[34] Information provided by Pavla Boučková, Network of Legal Experts in the non-discrimination field, http://www.equalitylaw.eu/index.php?option=com_edocman&task=document.download&id=1177&Itemid=295 22.07.2015

In Germany, a Labour Court Decision from 2014[35] refered 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.

In an Italian case of a disabled student confronted with a hostile attitude by his teacher, the national court[36] 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, with him and with his parents. The amount of damages was calculated taking into account the seriousness of the offences, their number and their length as well as the emotional stress produced by those acts for the student.

Lack of experience and the absence of any guidelines for the calculation of amounts of compensation can lead to very different conclusions in very similar cases, which is illustrated by two judgements by the very same court in Vienna.[37] The court was the Viennese Commercial Court acting as a court of appeal in two cases of discrimination, which occurred in restaurants/bars. In the first case[38], a dark skinned man had not been admitted into a restaurant to celebrate someone´s birthday, while his partner and her colleagues had been admitted without any problem. The court of first instance found discrimination and awarded a compensation payment of EUR 1.000 as the plaintiff had requested. An appeal by the restaurant owner was dismissed and the compensation of EUR 1.000 upheld. All procedural costs had to be paid for by the respondent. The main argument of judgment was that "*in view of the intended preventive effect of the compensation for immaterial damages by the Equal Treatment Act (...) the amount of compensation cannot be compared to the compensation for pain and suffering [*Schmerzensgeld*]* applied in general civil law . . . . *Insofar as the respondent wants to deduct any inappropriateness from a comparison with customary amounts of compensation for pain and suffering, he cannot convince the court.*"

[35] Labour Court Rheinland-Pfalz Az: 5 Sa 509/13, 14.08.2014
[36] Tribunal of Livorno, Decision of July, 6th 2015. Information provided by Chiara Favilli, Network of Legal Experts in the non-discrimination field, http://www.equalitylaw.eu/index.php?option=com_edocman&task=document.viewdoc&id=2885&Itemid=295 22.07.2015
[37] Viennese Commercial Court Rs.: 1R129/10g and 60R101/10y
[38] Judgement: Case Nr. 1R129/10g, names withheld, 19.01.2011

In the second case,[39]a dark skinned woman had not been admitted into a restaurant, as the doorkeeper had refused to let her in with a reference to her skin-colour. The court of first instance had found discrimination and awarded EUR 1.500 as the plaintiff had asked for. The appeal was partially allowed and the compensation was reduced from EUR 1.500 to EUR 250, which at the same time meant that the plaintiff (the victim) had to fully pay the costs of the proceedings and as a result suffered a financial loss of nearly EUR 700,-.[40] Th main aspect of judgment: "*The reason for the regulations on compensation for immaterial damages within the Austrian legal order is to balance the feelings of aversion* [Unlustgefühle] *caused by a certain incident. When judging on the amount, it is logical to refer to the amounts usually awarded to compensate pain and suffering* [Schmerzengeld]. *Those reach from EUR 100,- to EUR 300,- per day, graded in light, medium and grave pain. (...)*
The plaintiff has been discriminated against by the conduct of the doorkeeper, but the immaterial damage done was calculated with an amount clearly beyond the margin of discretion – especially when relating it to the amounts awarded for light pain. The court of appeal see an amount of € 250,-- to be an appropriate compensation for the personal damage suffered by the plaintiff."[41]

4. Sanctions and remedies in discrimination cases – the view of equality bodies

Equality bodies are key stakeholders in bringing principles into practice in discrimination cases. Their roles are very diverse, depending on their legal status in discrimination procedures, their financial and staff resources and their fields of competence. Independently of their factual role however, equality bodies are very well informed about judicial cases in their countries, about the system of sanctions and its functionality.

The following chapter is dedicated to presenting equality bodies' views on the sanctions regimes in their countries, which they shared with the author by providing answers to a questionnaire and in five interviews.

4.1. Sanctions and remedies in discrimination cases – an overview

[39] Judgment: Case Nr. 60R101/10y, names withheld, 14.09.2011
[40] In this case, already the costs of the respondent, the plaintiff in addition to her own costs, subsequently had to pay for amounted to EUR 925,61. As a result, the victim of discrimination suffered a financial loss of a minimum of EUR 675,61.
[41] Information, including citations of the (unpublished) judgements, provided by Dieter Schindlauer, Network of Legal Experts in the non-discrimination field, http://www.equalitylaw.eu/content/media/AT-18-confused%20court%20re%20compensation.pdf, 22.07.2015

Table 1. Overview of sanctions and remedies in discrimination cases[42]

Type of sanction or remedy	AT	BE	BG	CZ	DE	DK	EE	FI	FR	HR	HU	IT	LV	LT	MT	NI	NL	NO	PL	PT	RO	RS	SI	S	UK
Obligation/Rec. to stop discrimination		x	x	x	x	x	X	x	x	X	x	x	X	x	x			X	X	x		x	X		x
Reinstatement in situation without discrimination	x		x	x	x				x		x	x	X		x		x		X	X	X	x	X		x
Fines/administrative sanctions	x		x	x				x	x	X	x		X	x	X			X	X	X	X	x	X		
Compensation material damages	x	x		x	x		X	x	x	X	x	x	X	x	X	X	x	X	X	X	X	x	X	x	x
Compensation immaterial damages	x	x		x	x	x	X	x	x	X	x	x	X	x	X	X		X	X	X	X	x	X	x	x
Publication of decision	x	x	x	X			X		x		x				X		x			X	X	x	X		x
Suspension of a licence or of business activities	x			X					x		x									X	X				
Removal of right to receive public benefits, public contracts, public funding, etc.	x			X					x		x					X				X					
Obligation to implement anti-discrimination policies/plans			x	X					x						x						X	x	X		x
Criminal sanctions		x		x			X	x	x	X	x	x	X				x	x	X	X	X	x	X		
Non-compliance penalty (BE, FI) Invalidity of discr. rules (DE) Spec. measures: e.g.HR courses (IT) Reminder of the law (FR) Court statement (NL) Warning (LT, RO) Mediation (MT) Directions or recomm. (NI) Declaration of discr./ nullity (SI)		x			x			x	x			x		X	X	x	X				x		x		

[42] This overview reflects the views of equality bodies. It might differ from the formal provisions provided for in national legislation, as some respondents answered for the general system and others in relation to their own competencies. In some countries (CZ,HU,MA,PT) different answers were provided by different bodies – in such cases, the overview includes a summary.

Sanctions and remedies that are **most commonly applied** according to the assessment of equality bodies are compensations for material and immaterial damages (for example in AT, UK, DK, LV, DE, NI, SI, PL), as well as fines and administrative sanctions (for example in AT, CZ, BG, RO, PT). Criminal sanctions are usually applied in cases of hate crimes. Other widely used santions include imposing the obligation or issuing the recommendation to stop discriminatory practices (RS, LT, MT, HU), a (re-)instatement in a situation without discrimination (RS, RO, LV) and the publication of a decision (RS, NL, PT, MT, HU). Recommendations (NL) or orders (SI) to install equality policies or to ensure that equality policies are in place (MT) are applied less frequently. The same is valid for warnings (RO, LT), mediation procedures (MT,NO)[43] and property sanctions for legal entities (BG).

Courts are the entities in charge for issuing sanctions and remedies in all countries of research. There are some differences according to the competencies of different courts. Mostly labour courts and/or civil courts are in charge of compensation, whilst fines are issued by criminal courts (in cases of hate crimes) and administrative courts.

Equality bodies are in charge for issuing sanctions and recommendations in Belgium, Bulgaria, Denmark, Finland, France, Hungary, Latvia, Lithuania, Malta, Norway, Portugal, Romania and Serbia.

In many countries, administrative authorities can impose administrative fines, like for example in Austria, France and in Slovenia. Labour inspectorates fulfil the role of sanctioning bodies for example in the Czech Republic, in Poland and in Romania, in Estonia the authority in charge is called the Labour Dispute Committee. In some national contexts, sanctions in the field of consumer protection fall within the competence of specific authorities (HU) or offices (PL) for consumer protection.

Specialised tribunals are in charge of issuing decisions and sanctions in several countries, like for example the Social Security Affairs Tribunal in Sweden, Employment Tribunals in the UK, the Employment Commission and the Industrial Tribunal im Malta, similar to Northern Ireland, where an Industrial Tribunal and a Fair Employment Tribunal are in place.

In the Czech Republic a wide range of public entities are entitled to issue sanctions or remedies in discrimination cases: the State Labour Inspector, the Czech Trade Inspector, the Czech National Bank, the Energy Regulator Office and the Czech Telecommunication Office.

Courts can be approached in case of reviews of the decisions by the Board of Equal Treatment or the Commission for Protection against Discrimination (both equality bodies) in Denmark and Bulgaria respectively.

Trying to analyse sanctions and remedies foreseen by looking at their **objectives** resulted in the following picture:

[43] It must be noted however that mediation procedures were not considered as part of the sanctions' regime by all respondents.

Table 2. Overview of sanctions and remedies in discrimination cases and their objectives[44]

Objective of sanction or remedy	AT	BE	BG	CZ	DE	DK	EE	FI	FR	HR	HU	IT	LV	LT	MT	NI	NL	NO	PL	PT	RO	RS	SI	S	UK
To provide remedy for single victim of discrimination (compensative character)	x	x		x	x		X	x	x	x	x	x	X	x	x	x		X	X	x	x	x	X	x	x
To constitute a punishment for the perpetrator (punitive character)	x	x	x	x			x	x		x	x	x	X	x	x	x			X	X	X	x	X		x
To be a tool for preventing further discrimination (preventive character)	x	x	x	x	x	x	x	x		x	x		X	x	X	x				X	X	x	X		
To be a tool for fighting discrimination and fostering equality on a societal level (social-preventive character)	x	x	x	x		x	X	x		x	x	x	X	x	X	X	x	X		X	X	x	X	x	x
other: raise awareness (HU)											x														

[44] This overview reflects the views of equality bodies. In some countries (CZ,HU,MA,PT) different answers were provided by different bodies – in such cases, the overview includes a summary.

However, it also became clear both by the answers to the questionnaires as well as in the interviews, that for most sanctions and remedies it is very hard to group them according to the objective. Civil law sanctions and compensation, for example, can contain compensative, preventive and punitive elements (CZ). The factual effects are very much dependant on the context of the case and on the amount of the sanction foreseen. If the amount of a compensation is very low, it might not reach any effect; if it is middle range, it might have a compensatory as well as a punitive effect, but could not be enough to also serve as a preventive factor. If compensations are very high, their effect would be preventive or even social-preventive as they would have a deterrant effect for a whole sector.

4.2. Who can bring forward a case?

In most countries, a single victim has to be presented in order to claim. This is the case, for example in Austria, Denmark, Estonia, Finland, Germany, Northern Ireland and Poland.

This is not the case in countries where the equality body or associations are in principle entitled to bring a case in their own name or in the name of a group – and in the interest of strengthening the principle of non-discrimination, like in Belgium, Bulgaria, France, Norway, Portugal, Romania and Serbia.

In the Czech Republic there is no need to present a concrete victim when it comes to cases, where fines or administrative sanctions can be claimed for. In the Netherlands, organisations that, according to their statutes, are founded to help protect certain groups against discrimination, can file a complaint. If they do so, the only sanction foreseen is a publication of the opinion. The Hungarian Equal Treatment Authority (ETA) can act *ex officio* and it can also bring a claim in the interest of a larger group of persons that cannot be determined accurately, if a direct threat of violation is established (*actio poplaris*). In Malta, the National Commission for Persons with Disabilities (KNPD) is entitled to investigate cases without the presentation of a concrete victim. The National Commission for the Promotion of Equality (NCPE), also in Malta, may initiate *ex officio* investigations on any matter falling within its remit. In Great Britain, under certain circumstances the Equality and Human Rights Commission can take proceedings in its own name. This is the case, for example, in investigations in relation to health questions in recruitment and with discriminatory adverts.

4.3. Differences in sanctions and remedies

Th main factor causing differences in sanctions is the decision to consider it discriminatory treatment or an act in criminal law or in civil law. Due to the standards defined by the Anti-

Discrimination Directives, provisions addressing discrimination in relations of private entities between each other tend to be more consistent than criminal law provisions.

Criminal sanctions usually are applicable in cases of hate crimes and most penal codes include a provision that defines a discriminatory motivation in conducting other crimes as an aggravating factor in determining a fine. In many countries however, the criminalization of discriminatory hate speech and the relevance of a discriminatory motivation is limited to some grounds. The grounds chosen, namely citizenship, alleged race, colour, descent and national or ethnic origin, reflect that such provisions were introduced in order to fufill international obligations determined by the International Convention on the Elimination of All Forms of Racial Discrimination, the European Commission against Racism and Intolerance (ECRI) and the Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law. Only rarely do criminal law provisions also include a reference to sexual orientation or disability, like for example in the Netherlands. Sexual harassment is usually covered by a separate article of the penal code. Discrimination in access to goods and services is either not criminalized at all, or is subject to administrative law provisions, like for example in Austria.

The sanctions regime in criminal law cases is characterised by a very relevant difference to civil law cases, insofar as the shift of the burden of proof due to the rule *in dubio pro reo* cannot be applied.

National legislation covering discrimination in the sphere of civil law, falling in the scope of protection of the EU Anti-Discrimination Directives, very often reflects the different levels of protection enshrined in EU law. This leads to the highest level of protection in the field of employment in most Member States and different standards for different groups. Hence, the adoption of a Horizontal Directive, equalising the level and scope of protection for all grounds could be a main driver for equal standards of protection and remedies at the national leve.

Discrimination on grounds of gender tend to be sanctioned higher than discrimination on other grounds (e.g. minimum compensation is higher with regard to sexual harassment in Austria). In Finland there is a minimum amount of compensation only in cases of discrimination on grounds of gender.

Also the field of discrimination can make a difference. In Finland, compensation can only be awarded in cases of discrimination in the fields of education, at the workplace, interest groups and access to goods and services. In the Netherlands, discrimination in the public sphere can only be sanctioned by means of a fine or an obligation to fulfil community services.

In some countries, like for example the Czech Republic, the different competencies of bodies in charge result in different sanctions systems. The Czech School Inspectorates do not have any authority to impose fines, and there are no administrative bodies in place at all in other areas like health care.

Cases are also handled in different ways by equality bodies according to the field of discrimination. The Belgian Interfederal Centre for Equal Opportunities (the Centre) would usually try to negotiate a friendly settlement in civil cases, whilst in hate crime cases, it rather takes cases to Court so that criminal sanctions can be imposed.

In Romania, it makes a big difference if there is a single victim of discrimination or if a whole group is affected by the discriminatory act, with fines ranging from EUR 450,- for single victims' cases to EUR 24.000,-, when a whole group is affected.

4.4. Decision on the severity of the sanction

Various aspects are taken into account by equality bodies, courts and specialised tribunals in determining what amounts to a concrete sanction in discrimination cases. Apart from factors reflecting punitive and compensatory aspects (such as the severity of the discriminatory act, or the actual damage in both its material as well as its immaterial manifestation), other issues like the financial capacity of the perpetrator or the repetitive aspect of discriminatory acts, as well as cases of multiple discrimination, can be taken into account.

The turnover or financial capacity of the organisation that has been sued for discrimination is taken into account in several countries of research.

In Bulgaria, the Commission for the Protection against Discrimination (CPD) 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*."

In Hungary, the Equal Treatment Authority (ETA) has to take into account the perpetrator's financial capacity when imposing fines.[45] The Authority fines kindergardens, schools and social institutions established and financially supported by the state only in cases of severe infringements committed by them, because of their relatively low budget. Nevertheless, if they do not comply with the decision of the ETA, it will impose fines against them – as in the case of any other perpetrator – within an enforcement procedure.

[45] Paragraph (3) of Article 17/A. of *Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities*

In Finland, compensation may be reduced beyond the minimum amount, or the liability to pay compensation may be waived completely, if this is deemed to be reasonable in view of the offender's financial situation, the showing of good will by trying to prevent or eliminate the effects of the action and other circumstances of the case. If the severity and other circumstances of the discrimination provide grounds for doing so, the maximum amount may in fact be exceeded.

In the Rebublic of Serbia, in practise, courts, when determining the amount of compensation, can take into account the financial capacity of the infringing organisation. In Germany, the financial capacity is taken into account in the sense that sanctions must have a preventing character; however there are no concrete benchmarks on how the financial capacity has to be taken into account. In the Czech Republic, according to court practice/jurisprudence, the financial status of the perpetrator may be taken into account when imposing sanctions. If the perpetrator is in a bad financial situation he/she generally would not have to pay any court fees, even if found guilty of discrimination. In Portugal, the court takes into account a variety of facts, *inter alia* also the financial capacity of the party.

Different sanctions/amounts of compensation in cases were a **public entity** is responsible are foreseen only in Bulgaria, where the CPD issues instructions to the relevant public entity and imposes fines and financial sanctions only to private individuals and entities. In France, in practise, sanctions and remedies in the public sector on the one hand are applied more rigorously but on the other tend to include lower amounts of compensation, since public money is involved.

Repeat infringements as well as cases of **multiple discrimination** are taken into consideration as aggravating factors in many national legislations and/or practices (for example in AT, BE, HU, NL, RO, RS). And even, if theses factors are not addressed specifically in laws on non-discrimination, they are taken into consideration by courts or administrative authorities as general principles of law.

In Lithuania and in Portugal, in cases of repetition, fines under certain cirumstances can be doubled.

In the Netherlands repeated infringements are not specifically addressed by law but in practice they could lead to actions by the Netherlands Institute for Human Rights (NIHR), like an investigation on own initiative, letters to the parliament, press releases or meetings with the organisations – as an ultimate resource also to bring a case to court. In Norway, licenses to sell alcohol in bars and restaurants can be revoked in cases of repeated infringements of the principle of non-discrimination.

In Austria, multiple discrimination has to be taken into account when deciding on the amount of compensation for personal damage suffered.

The Czech Anti-Discrimination Act (ADA) stipulates that cases of multiple, repeated and prolonged discrimination which strongly affect the victim in its consequences, constitute severe forms of discrimination. Courts have to take into account those circumstances when sentencing and issuing sanctions.

In Germany, in measuring the amount of damages, the courts take into consideration how severe the infringement was. For example, the Labour Court Rheinland-Pfalz[46] dealt with a case where female workers earned less money than male workers and decided that the company was obliged to pay immaterial damages on grounds of gender discrimination. The court took into consideration that lots of women had received less money than their male colleagues over several years.

4.5. Which sanctions can be considered as effective?

When reflecting on the effectiveness of different types of sanctions, we have to differentiate between different perspectives. Some sanctions or remedies may be the most effective for the individual victims, but would not serve as a tool for fighting discrimination or changing the attitudes of the perpetrator or of society at large.

From an **organisational perspective,** sanctions and remedies that were considered to be the most effective by representatives of equality bodies were administrative fines, if the amount is high enough (AT, HU, LV, NL, PL, PT, RO, RS) and publications of the decision (BE, CZ, FI, HU, LV, NL, PT, RO). The latter were deemed to be effective because of the fear of negative publicity, using the force and pressure of the public to dissuade the perpetrator from future infringements, and because the publication as such can raise awareness and inform other people that discrimination is unlawful. Other sanctions and remedies mentioned as effective were:

- Obligations/Recommendations to stop discriminatory practices/structures/procedures (AT, LT, MT, RS)
- Compensations with a dissuasive character (AT, LV, MT, NO) or if they really improve the financial status of complainants (CZ), as they provide for financial redress for the individual and can serve as a disincentive for organisations, due not only to the financial penalty but also for reputational damage (NI)
- Reinstatement in situation without discrimination (RS)
- Imposing the obligation to fulfil community services (NL)

[46] Labour Court Rheinland-Pfalz, Az: 5 Sa 509/13, 14.08.2014

- Obligations/Recommendations to implement anti-discrimination policies and/or plans (AT, UK), as they can ensure change in the workplace[47]
- Warnings (RO)

Fines have to be high enough in order to have a punitive character, but they can also become preventive, when they are made public. In some cases even a warning is sufficient, the perpetrators very often have enough money to pay a fine, but a warning that is published can damage the image.[48] Publishing generally is considered to be the most effective remedy when the sanction is aimed to be dissuasive and (general) preventive, especially, if it is accompanied by media attention. Even in cases where publications of decisions are made anonymously like for example in Austria, they can serve as a tool for raising awareness about the unlawfulness of certain acts and as such have general preventive effects.

Generally speaking however, most respondents made clear that the right sanction has to be chosen for each case as it depends very much on the **aim of the victim** or the organisation in bringing a case forward. Financial compensation in theory could cover many objectives, as it contains compensative, punitive and preventive elements - but only if it is high enough.

But there are also cases where the obligation to stop discrimination or a reinstatement in situation without discrimination is the most effective solution for the victim of discrimination, as this is exactly what he or she wants. Sometimes victims are happy with an apology or they want a statement by an authority saying that they had been affected by discrimination. Some simply want the money.

In Sweden, most victims are not that interested in the money: nine out of ten want to have structural change.[49] The experience in Belgium has shown that victims want very different things: many of those affected by discrimination on grounds of disability want their problem to be solved; women wearing headscarves want to achieve a change of attitude; some also simply want to obtain compensation; while others want to know about the motivation of the perpetrator.[50] In Romania, what victims actually want depends very much on the case. Some want punishment, some want to achieve an objective (jobs, damages). Not many people want to change the system.[51]

[47] In the UK this will be possible only until October 2015.
[48] Interview with representative of the National Council for Combating Discrimination (RO), 01.07.2015
[49] Interview with representative of The Swedish Equality Ombudsman (S), 23.06.2015
[50] Interview with representative of the Interfederal Center for Equal Opportunities (BE), 02.07.2015
[51] Interviews with representative of the National Council for Combating Discrimination (RO), 01.07.2015

What role for alternative forms of conflict resolution?

Alternative forms of conflict resolution (ACR) are commonly applied by equality bodies. It is difficult to provide an overview of the extent of its usage, as only a few respondents qualified such procedures as part of the sanctions regime. Moreover, those who have addressed mediation and other alternative measures, have expressed very contrary opinions in relation to the effectiveness, proportionality and dissuasiveness of such.

Those in favour of ACR have pointed at the favourable factors for victims of discrimination, but they have also stressed that the procedures themselves can have beneficial effects. As a representative from the Interfederal Center for Equal Opportunities in Belgium pointed out, ACR can provide an occasion for the perpetrator to change his/her mind-set, more than court procedures, where the setting is confrontational. Victims, by ways of ACR, can get compensation or even a (re-)instalment without discrimination. Fines and damages issued by courts in Belgium, as in most other countries, tend to be very low, and as such do not have any real punitive, and especially also no preventive, character. Often, there are not even executed. Mediation outcomes can have a social preventive factor if they are published and people learn to understand that change is possible sometimes. This can be reached by bringing a case to court or to the equality body.

On the contrary, a representative from the Swedish Equality Ombudsman has made clear that *settlements as such run counter to the idea of sanctions, and tend to be used by perpetrators to avoid being held responsible (sanctioned) for their actions*. They furthermore argued that outcomes of mediations or monetary settlements can settle the issue only for the individual complainant, but not for others that are or risk being subject to discrimination by the same actor (e.g. in cases of sexual harassment or pay discrimination). Due to the perpetrator-victim perspective of ACRs, the focus on particular individuals and their interests prevail. In cases where victims have the possibility to achieve what they actually want (like promotions, a rise in salary, further education, access to education, etc.), ACRs generally work. On the other hand, they are not adequate tools to address structural problems, and they do not change the system.

More generally speaking, the responses to the role of ACR have shown that the national context is very important in order to qualifiy the relevance of ACR for a functioning system of sanctions in discrimination cases. In Serbia, for example, out of court settlements are not very common because court procedures are not expensive – and they are the only way for a single victims to obtain compensation.[52] In Malta, on the other hand, very often an amicable solution is reached before the case is taken to court. Given that Malta is a small country, once breach of law is pointed out companies and public entities are usually more compliant.

[52] Interview with representative of the Commissioner for the Protection of Equality (Serbia), 14.07.2015

4.6. Enforcement of sanctions and remedies

Once issued, sanctions and remedies are not always obeyed or followed smoothly. Apart from general judicial provisions in relation to the enforcement of court decisions, systems that aim to ensure that sanctions are complied with are in place in only a few countries.

In Belgium there is the possibility to impose a non-compliance penalty in the context of a summary proceeding. In the UK, a person can take court action if money is not paid following a tribunal decision, or in case an audit is not carried out, the claimant can return to the tribunal for enforcement action. In Serbia, the Commissioner for the Protection of Equality can inform the public in cases where a recommendation is not fulfilled. In Denmark, if the defendant does not pay the compensation – as the Board has decided – the case will be dealt with and settled in the court free of charge for the complainant.

In the Netherlands whenever the NIHR publishes an opinion where it finds discrimination, the file will go to its internal follow-up team. The opinion is sent to both parties with the explicit request to let the NIHR know what they will do to comply with the opinion. The NIHR wants to know if a complainant takes a case to court and if the defendant takes any measures for reparation of the situation. The NIHR thus keeps track of the effects of its opinions. If neither party responds, they will receive either another letter or a call from the follow-up team, to inquire why there has been no response. Over the past years, the NIHR has found that in about 75% cases (on average, in 2014 it was over 80%), the defendant will either take measures to compensate the individual or take measures of a more structural nature.

In Bulgaria, the sanctions, administrative measures and recommendations imposed by the Commission should be implemented within a set period. The Commission monitors and records their performance. Pursuant to Art. 82 of the Bulgarian Protection against Discrimination Act "*1. A person who fails to implement a decision of the Commission or the court issued under this Act shall be punished by a fine of BGN 2,000 to 10,000, unless he/she is liable to more severe punishment. 2. Should the violation continue three months after the entry into force of the decision or judgment under Paragraph (1), a fine of BGN 5,000 or exceeding this amount but not exceeding BGN 20,000 shall be imposed.*

In Romania, the National Council for Combatting Discrimination (NCCD) is entitled to monitor competencies in close cooperation with the National Financial Administration.

In Portugal, the Commission for Equality and Against Racial Discrimination[53] promotes a constant monitoring procedure, assuring that all sanctions are complied with.

In the Czech Republic, the Ministry of Justice keeps statistics of court cases related to discrimination and of misdemeanor and criminal sanctions in criminal cases. In civil proceedings, the Ministry records data on the types of the claim (a finding of discrimination, ban or elimination of discrimination, compensation, publication of the judgment) and whether it is approved or rejected. The Public Defender of Rights analyzes that data in its annual reports and makes recommendations for improving the system.

In Latvia, the Ombudsman's Office monitors the implementation of its own recommendations. A special official is designated to monitor the fulfillment of the decision for administrative procedures.

In Hungary, an individual complainant can initiate the enforcement of the ETA's decision as a public administration procedure. In the case of procedures launched *ex officio*, the Authority takes measures in order to enforce the decision on its own initiative. However, if the procedure was launched upon request and a wide range of potential victims of discrimination are concerned, the Authority follows up the implementation of the decision on its own initiative, as for example in equal access cases. In the case of non-compliance, they can also impose fines.

In Norway, the Equality Tribunal can issue fines if obligations to stop discrimination have not been fulfilled. As the Tribunal does not monitor the fulfilment itself, it is dependent on information from the parties or other sources. However the Tribunal has almost never set forth obligations to stop discrimination in its cases. The Ombud follows up every case and asks the parties to reach an agreement and sends cases over to the Tribunal when such agreements are not made in the respective cases.

In Northern Ireland, the Enforcement of Judgements Office (EJO) is a centralised unit for enforcing civil judgments related to the recovery of money, goods and property. The EJO can also enforce civil judgments made by other courts outside Northern Ireland, including England, Wales, Scotland and the European Union.

The Equality and Human Rights Commission (EHRC) in Great Briatin has enforcement powers and can undertake action, like conducting an enquiry.[54] The EHRC may also publish a report stating that a person has committed an unlawful act, require them to prepare an action plan to avoid repetition or continuation of the unlawful act, and make recommendations of actions to be taken for these purposes.

[53] Chaired by High Commission for Migration
[54] Section 16 Equality Act (EA), 2006

4.8. The role of equality bodies

According to the respondents of the questionnaires and the interviewees, the role of equality bodies in ensuring effective, dissuasive and proportionate sanctions should/could be very comprehensive. They could and should act for all target groups involved as well as on a whole society level within their remit of competence.

In relation to victims of discrimination and within a concrete case, this would include:

- Provide information (AT, NO, PT), assistance and guidance for those bringing claims (UK)
- Ensure that there are no further obstacles implemented for an individual's ability to take a case
- Always ensure that interests of victims are protected in the context of a negotiation (BE)
- Encourage the application of alternatives measures (BE)
- Ensure that compensation is not limited (UK)
- Pay attention to the amount and type of sanction (RO)
- Cooperate with the media in order to enhance the possibility of recommendations being fulfilled (RS)
- Ensure that effective action is taken to implement recommendations and opinions
- Take a case to court in order to obtain a ruling that conduct was unlawful, requesting such a conduct to be prohibited or that the court order the consequences of such a conduct to be rectified (NL)
- Take the case (RO)

Equality bodies should also share their expertise with other stakeholders involved in discrimination cases:

- Raise awareness amongst legislators and the judiciary and provide training for judges (RS, BE, PT)
- Provide trainings for employers, trade unions and raise awareness (RS) of Labour Inspectorates and dispute committees (EE)

On a whole society/strategic level, equality bodies should aim to:

- Identify shortcomings (AT)
- Ensure effective enforcement of legislation (NI)
- Make policy recommendations, for example to extend an equality body's mandate to act *ex officio* (EE)
- Take care of consistant application of existing sanctions (HU)
- Provide information on the application and effectiveness of sanctions to the legislator on a regular basis (HU)
- Litigate strategically (EE)

- Conduct or demand research on case law and sanctions/remedies at national level (BE, LV)
- Make a recommendation that fines should be higher (BE)
- Make their voice heard if sanctions are not up to standard, targeting the focus of equality in both de jure and de facto compliance (MT)
- Raise awareness that certain actions will not be tolerated and will be punished (CZ, DE, PT)
- Voice the importance of sanctions and remedies (MT)
- Formulate future requirements (AT)
- Publish equality bodies' opinions (NL)
- Undertake promotional activities (RS, PT)

In Romania, the Court has to ask the NCCD about its opinion in cases where there is any word related to discrimination. This is a very effective tool as courts take this opinion into account in their decision-making. However there are not bound to this opinion in relation to the content of the case and/or when determining the amount of damages.

When a case is settled out of court, the Equality Commission for Northern Ireland also looks beyond the concrete case and aims at reviewing equal opportunities' policies, training of staff and other actions to ensure that the situation does not arise again within the particular employer/ service provider.

4.9. Court cases with the involvement of equality bodies

In this section we list some key issues in relation to sanctions and remedies that have been or are being addressed in **court cases with the involvement of equality bodies**:

What to take into account when determining the amount of compensation?

In Denmark, the Board of Equal Treatment has handled a number of cases about airline pilots who had been dismissed because of their age. The cases subsequently were handled by the Supreme Court in Denmark, specifically about the amount of compensation. According to the decision of the Board of Equal Treatment, all previous court decisions were clear about the fact that the pilots, who had been dismissed because of a workforce reduction on grounds of their age and their eligibility for retirement benefits, had been treated in a discriminatory way. The question at stake for the Supreme Court was only the amount of compensation to be paid. In its decision, it referred to case law on gender discrimination and stated that the pilots would be eligible to more than six months of salary as compensation payments. However, according to the Court, there were a number of mitigating circumstances, which meant that the compensation in these cases should be

determined at a lower lever. The result was that the Court granted four months of salary in compensation to each of the pilots.
According to the Court the mitigating circumstances were the following:

- the dismissals were necessary because of work and workforce reductions;
- the criterion for dismissing the pilots (eligibility for retirement benefits) was
    - collectively negotiated with the pilot union;
    - the most humane and gentle in the situation given
- the intention of the management was to pay social regard to younger pilots and their families[55]

Can intersectional discrimination lead to cumulative compensation?

The Belgian Interfederal Centre for Equal Opportunities is currently involved in a proceeding of multiple discrimination. The question that is invoked concerns the **possibility to cumulate compensations that are foreseen in different legislations**. In the concrete case, a woman was dismissed because of long-term absence due to a treatment against cancer (criterion "current or future health condition") and her pregnancy (criterion gender). The legal interest of this case lies on whether the compensation payment that is provided for in the general Antidiscrimination Law can be cumulated with the one foreseen by the Gender Equality Law.

Can discriminatory treatment be sanctioned twice?

The question of **civil law compensation vs. administrative law sanctions** was the subject of a case in which the Public Defender of Rights of the Czech Republic was involved. A complainant had pointed out the failure of the labour inspection bodies in assessing discrimination on grounds of gender. She had submitted a claim against her director, whom she accused of having sexually harassed her and after having been fired due to her lack of interest in his sexual advances. Subsequently, the director of the facility offered to apologise to the complainant in writing, to pay a monetary compensation for intangible damage and to conclude a new employment contract for the same job, but with the place of work at different premises of the facility. The complainant agreed with everything except for the financial compensation. The director of the facility apologised to the complainant both in writing and orally, refrained from further sexual behaviour and was subsequently removed by the Regional Council. The complainant forwarded a copy of the written apology and claimed for imposing public-law sanctions on the employer for the conduct of the former director, as all private law claims had been satisified voluntarily.

[55] Supreme Court judgement of October 1, 2014. Case 322/2012. Information on the case provided by Pia Justesen, Network of Legal Experts in the non-discrimination field.
http://www.equalitylaw.eu/index.php?option=com_edocman&task=document.download&id=1298&Itemid=295

The Labour Inspectorate conducted inspection visits and came to the conclusion that no violation of the principles of equal treatment and non-discrimination had taken place. The Public Defender of Rights concluded that whilst the Labour Inspectorate had not been right in the material question at stake, initiating proceedings for an administrative offence in the case at hand, as claimed by the complainant, would violate the **principle of subsidiarity of criminal repression**, which the office was obliged to apply.[56]

Guidelines for sanctions/amounts of sanctions established by national courts

Guidelines for the calculation of damages were established by the Swedish Supreme Court in handling two cases brought forward by the Swedish equality body. The Swedish equality ombudsman had brought forward the question of how the amount of compensation (the only sanction foreseen in Swedish law) should be calculated. The Supreme Court subsequently developed guidelines for the calculation of compensation, clearly stating that the central question should be the assessment of damages. In order to ensure a deterrent effect, the amount in question should then normally be doubled (punitive and preventive character). The amount can be tripled in cases of severe infringement, or if the perpetrator holds a position that entails a special duty of care in relation to the victim (e.g. a doctor). When the damage suffered by the individual is considered to be comparably low, also smaller amounts can be applied. Due to the fact that compensation awarded is generally low in Sweden, the amounts in discrimination cases are also rather low (1000 – 4000 EUR in total) and according to the Swedish respondent to the questionnaire would deter only smaller companies. The approach determined by the Supreme Court was contrary to another approach that had been present in the preparatory work for legislation at that time. In that case, it had been foreseen to take into account the company's turnover and to issue adequate sanctions irrespective of the actual damage in order to be deterrant.[57]

In the UK, compensation is uncapped for discrimination claims brought forward to Employment Tribunals. Based on a Court of Appeal Case (Vento v Chief Constable of West Yorkshire Police) from 2002, three bands for compensations for injury to feelings are applied in practise.[58]

The question on whether guidelines for sanctions should be established by national courts, was also addressed in the interviews conducted. In principle, most interviewees agreed that

[56] Information about the case provided by Jiri Samanek in the questionnaire for this study report. The case is included in: Information about activities of the Public Defender of Rights, Report for the 3rd Quarter of 2014, http://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Reports/2014_3_Q_EN.pdf

[57] Information provided by a representative of the Swedish Equality Ombudsman in response to the questionnaire sent out for the purpose of this study report.

[58] Information provided by representatives of the Equality and Human Rights Commission, UK, in their response to the questionnaire sent out for the purpose of this study report.

guidelines would be an interesting tool in order to establish a more coherent system for sanctions in discrimination cases. However, as the Swedish case has shown, this very much depends on the approach the courts chose in establishing such guidelines. If the amounts of sanctions that are foreseen are too low and/or focus only on compensation for the individual, they are rather characterised as a hurdle than as a driver for change. For the Belgian case, the rules established by law seem to be quite clear, guidelines might be a good tool for interpretation. The interviewee would rather appreciate more general guidance, how to treat anti-discrimination cases and the role of equality bodies in this regard. The Romanian interviewee made clear that cases were too diverse to apply a set of guidelines.

5. Sanctions and remedies in discrimination cases – proposal for a typology

A typology is a classification system that serves to differentiate according to certain parameters. This means that as a first step, the decision has to be taken which criterion is to be applied for the differentiation. In the case of sanctions and remedies in discrimination cases, there are various parameters that could be applied:

- The objective of the sanction and/or remedy
- The body in charge for issuing the sanction or remedy
- The legal nature of the sanction or remedy (binding or not-binding, obliging to pay a certain fee or to take a specific action)

If we remember the approach of the EU Anti-Discrimination Directives, that sanctions and remedies in discrimination cases should be effective, proportionate and dissuasive, and recall the findings of previous research as well as the view of equality bodies obtained for this study, a focus on the purpose of a sanction or remedy as a parameter for classification emerges as the most relevant source of differentiation.

For the purpose of this study, we would therefore propose to classify sanctions and remedies in discrimination cases according to their aims as follows:

- Sanctions with a predominantly compensatory character
- Sanctions with a predominantly punitive character
- Sanctions with a predominantly preventive charcter
- Sanctions with a predominantly socio-preventive character

The table below shows an attempt to classify those sanctions and remedies, which are most commonly applied in national legal practice, in terms of their being the most adequate tool for each of these aims. The classification is based on the views expressed by equality bodies in their responses to the questionnaires and in interviews as well as on previous research.

Table 3. Grouping of sanctions an remedies according to their objective

Type of sanction or remedy	**Compensative character**	**Punitive character**	**Preventive character**	**Socio-preventive Character**
Compensation material damage	Yes	If high enough	If very high	If so high that deterrant effect for whole sector
Compensation immaterial damage	If adequate	If high enough	If very high	If so high that deterrant effect for whole sector
Criminal and administrative fines/ sanctions	If this is what victims wants	If high enough	If high and creating reputational damage	If very high and creating reputational damage for whole sector
Obligation/Rec. to stop discrimination	If this is what victims wants		If raises awareness and leads to organisational change	
Reinstatement in situation without discrimination	If this is what victims wants		If raises awareness and leads to organisational change	
Publication of a decision	If this is what victims wants	Yes	If very inconvenient to perpetrator + reputational damage	- If damaging reputation of whole sector - Might raise public awareness
Recommendations to install equality policies	If victim is interested in change	Rarely	If raises awareness and leads to organisational change	
Warnings	Rarely	Rarely	If raises awareness	Rarely
Suspension of a licence or of business activities		Yes	Yes	Yes
Removal of right to receive public benefits, public contracts, public funding, etc.		Yes	If very inconvenient to perpetrator	Yes

What the picture most clearly shows is that a consistent and precise classification of sanctions and remedies in discrimination cases according to their objectives is not possible.

This is mostly due to the fact that national legal systems differ significantly in how sanctions are applied but also in terms of awareness within society and the judiciary about the importance of effective, proportional and dissuasive sanctions in discrimination cases. This can make one type of sanction the most effective, proportionate and dissuasive one in a given national context and a rather inadequate option in another. The victim's perspective is another variable that determines the adequacy of a concrete sanction, its proportionality and effectiveness.

The amount of compensation, for example, is a decisive factor for defining its character and measuring its effectiveness. If it is low, it might still provide for (proportional) compensation for the individual victims, but not be sufficient to have a punitive effect on the perpetrator or a deterrant effect,serving as a tool for prevention at the individual or even society level. Even the existence of the compensative element is dependant on the concrete interest of the victim.

The reinstatement into a situation without discrimination or the obligation to stop discrimination can be the most effective and proportionate solutions for the individual person affected by a discrimination (compensatory character). Only when these measurements manage to have a dissuasive element, contribute to raising the awareness of the perpetrator and lead to organisational change, would they also have preventive effects.

Criminal/administrative fines and the publication of the decision are sanctions that have a punitive character that could in theory be adequate tools for all aims, as long as this is also what the victim wants and if they serve as a threat to the reputation of the organisation or even the whole sector. The latter however is very much dependant on the general attitude towards discrimination and its unlawfulness in a societal context.

Suspensions of a license or of business activities or the removal of rights to access public funding, participate in public contracting, etc. have a strong punitive element, but their main character is a preventive one. In such cases also the economic situation of a perpetrator and its eventual dependency on a specific form of (public) contract is highly relevant for the concrete effect of the sanctions chosen, for the determination of its character as punitive or preventive, its effectiveness, proportionality and dissuasiveness. Socio-preventive effects of a sanction on the other hand are very much dependant on the existence of a culture of rights and on what serves as a deterrant factor in a specific sector or at a whole society level.

6. Dissuasiveness, proportionality and effectiveness – obstacles and challenges

Sanctions or other remedies that would fulfil all the requirements laid down in the EU Anti-Discrimination Directives by being dissuasive, proportional and effective are very rarely issued in judicial practice. Also the practice of other bodies in charge of deciding in discrimination cases, like specialised tribunals, labour inspectorates, administrative authorities or equality bodies are hesitant in issuing sanctions generally, and even more so in determining those that could be considered as dissuasive and proportional. The effectiveness of the sanctions regime in discrimination cases is furthermore impeded by difficulties in accessing justice and in the widespread lack of enforcement mechanisms once a sanction is in place.

More concretely, the following obstacles and challenges were identified by literature reviewed[59] and by equality bodies involved in the research for this report:

- The acknowledgement that there is no ideal sanction for each and any case
- The fear of retaliation as a barrier to seek redress
- Complexity, lengthiness and costs of procedures (legal representation and court fees)
- Lack of legal aid
- Lack of knowledge about rights and remedies
- Lack of legal certainty about complainants' prospects of success (lack of case law)
- Low levels of compensation either foreseen in law and/or issued by courts (unproportionality, lack of dissuasiveness)
- Non-binding decisions issued by some quasi-judical equality bodies (lack of effectiveness)
- Lack of suitable tools beyond penalties and compensation (that would serve the interests of the victims, victims group and/or have a preventive character)
- Insufficient powers to remedy a situation, such as to reinstate people to their pre-discrimination situation
- Low chances to achieve adequate comensation, specifically for immaterial damages
- Lack of experience in and sensitivity for discrimination cases on the side of the judiciary
- Difficulty to prove the facts of discrimination and the effects thereof
- The limited awareness on the side of the judiciary about the need to taken preventive facts into consideration
- Limited follow-up on the enforcement of decisions
- Lack of structured and efficient monitoring procedures

[59] Mostly FRA (2012): Access to justice in cases of discrimination in the EU – Steps to further equality, available at: http://fra.europa.eu/sites/default/files/fra-2012-access-to-justice-social.pdf (20.05.2015), p.46.

Further factors are impeding the practical implementation of sanctions at the national level. In some national contexts like for example in Austria, there is a lack of criminal or administrative sanctions for discriminatory acts addressing a wider public, like housing advertisments. Without a legal standing of NGOs or equality bodies, there is no way to address such cases at court and to reach a penalisation of the perpetrator. Discrimination, even if recognised more often by judges as such, is not considered as a grave offence, and as a result, sanctions are either avoided at all or very low and ineffective. Even in countries like the UK where compensations awarded are very high in some cases, the reality of awards traditionally is not such.[60] Settlements can be an ideal tool for victims to achieve the most adequate solution for their individual case, while on the other hand they tend to lack a sanctioning element and can be used by perpetrators to avoid being held responsible for their actions.

Many respondents pointed to the fact that addressing their claims to equality bodies would save a lot of time and money to victims of discrimination. However in most national contexts, equality bodies are not in charge of issuing binding decisions (CZ) nor of awarding compensation (BG, MT, NO) and financial compensation consequently is only available in court proceedings, which are long, risky and costly (HU).

7. Strategies to ensure dissuasiveness, proportionality and effectiveness

Research undertaken for this report has led to the acknowledgment of two very important and interconnected factors, which have to be taken into account when deciding on the ideal sanction. This is valid for the questions what to claim for and which sanction to issue.

- Different models of sanctions and remedies are adequate for different objectives
- The choice of the objective is crucial and depends on various factors like the interest of the person or group affected by discrimination and/or the interest of an interest group or equality body

Having in mind these two aspects, it also becomes clear that neither the ideal sanction nor the ideal way of obtaining the ideal outcome of a case can be determined as a general rule. This means that every single case and the interest of every single person have to be analysed first in order to then develop a strategy. Nonetheless, a variety of factors that can foster more effectiveness, dissuasiveness and proportionality of sanctions and remedies in

[60] Milieu (2011): Comparative study on access to justice in gender equality and anti-discrimination law, study prepared for the European Commission, available at: http://ec.europa.eu/justice/gender-equality/files/conference_sept_2011/final_report_access_to_justice_final_en.pdf (23.06.2015), p.44.

discrimination cases could be identified and can be taken into account when developing **strategies for a concrete case** within a national context:

- Take into consideration all circumstances of the case as well as the individual wants of the person or group affected by discrimination
- Seek justice, where those making the decision are experts for discrimination cases (specialised tribunals, tribunal type equality bodies)
- Seek justice, where costs of procedures are low (most specialised tribunals and tribunal type equality bodies do not request any fees)
- Seek justice with a body that has a certain (legal) standing
- Seek justice with a body that can issue legally binding decisions
- Improve access to relevant information for (potential) victims of discrimination, making also relevant case law easily accessible
- Support to judges in understanding and applying the shift of burden of proof and in developing further sensitivity to issues of diversity and discrimination, in understanding and applying the concepts of immaterial and aggravated damages and of multiple discrimination
- Encourage widening the range of sanctions available so that the one most suitable to the case can be applied
- Make wider use of alternatives to compensations and fines, like court orders to stop the discrimination, revocation or annulment of the discriminatory act, reinstatement of an employee – when applicable in the national context
- Publicity of a decision, judgement and/or a concrete sanction issued, especially in order to enforce a judgement and/or ensure that a sanction is complied with
- Monitor enforcement of decisions

When strategically aiming at **improving the system of sanctions** for discrimination cases beyond the indivisual case in relation to effectiveness, proportionality and dissuasiveness, equality bodies and other stakeholders could make use of some of the following ideas and aspects:

In order not to achieve only compensation for the victim but also punitive, preventive and socio-preventive effects, in most countries the attitude of those making the decision on the sanction and the general court practise needs transformation. In this regard, making references to other areas of law, like for example competition law, could serve as a tool for making a change.

In order to allow for a critical mass of cases to achieve change and to provide for more legal certainty, instruments like public interest and strategic litigation should be used more widely. In national contexts, where this is not the case, the legal standing of NGOs and equality bodies to claim for collective redress has to be widened.

Equality bodies are key stakeholders enabling access to effective remedies. In many national contexts they need their powers to be improved in the areas of issuing binding decisions and orders to improve the situation of the claimant and others in similar circumstances and of enforcement and follow-up procedures.

Good practices

The following examples emerged as **good practices**[61] and could be considered when arguing for a change of the sanctions' system in a specific national context:

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.

The availability of a range of non-pecuniary measures, like the order to stop discrimination, to reinstate into the situation without discrimination, to take a specific action like the implementation of Anti-Discrimination or Equality of Opportunities policies and the publication of a decision can improve effectiveness, dissuasiveness and proportionality considerably.

Also, taking into account economic factors, like the financial status of the perpetrator and the level of earning and salaries in the relevant country, is considered a good approach in order to determine a satisfactory amount of compensation or fine, as in Romania.

Withdrawing licenses to run a business and/or excluding companies who have been convicted of discriminatory acts from public procurement or funding, can constitute very effective means to prevent further discrimination within a whole sector.

[61] Information provided by representatatives of EBs for the purpose of this study and published in Milieu (2011): Comparative study on access to justice in gender equality and anti-discrimination law, study prepared for the European Commission, available at: http://ec.europa.eu/justice/gender-equality/files/conference_sept_2011/final_report_access_to_justice_final_en.pdf (23.06.2015), p.61.

8. The role of equality bodies

Equality bodies have a very important role in promoting and securing effectiveness, dissuasiveness and proportionality of sanctions and remedies in discrimination cases. They are the ones designated to ensure that those affected by discrimination are provided assistance on the one hand but also to be drivers for change on the way to a more equal society. Effective protection against discrimination and an effective system of sanctions and remedies as part of this constitutes an important element and equality bodies can and should be responsible actors in this field. The following recommendations for equality bodies reflect what representatives of equality bodies shared with the author, as well as findings from previous research.

Make the right choice

When making the important choice regarding which aim a procedure should follow, the key role of equality bodies would be to assist victims of discrimination in opting for the aim that suits them most. If possible in the circumstances of the case, they could try to opt for a solution which on the one hand can be considered as actually solving the problem of the person or group who suffered disadvantage, and on the other hand which are dissuasive and preventive toward the perpetrator and ideally also a wider public.

Be THE source of expertise

In many countries, legislation in the area of (non-)discrimination is quite complex and scattered throughout the legal framework. This includes also the options for sanctions and remedies. Equality bodies should function as experts in relation to all provisions and possibilities to access one's rights in discrimination cases – not only in their field of concrete action.

Be THE source of knowledge

A lack of knowledge about one's rights and about the potential outcomes of a case, or even the probability of success, all make people affected by discrimination hesitant to seek justice. Equality bodies could not only take over the task to counsel those who approach them directly, but could also try to offer all relevant information and knowledge to a wider public, including relevant case law.

Be drivers for change

Apart from the focus on the individual and his/her interests, equality bodies due to their mandate and their field of action can and should also act as drivers for change. In some countries, there is a wide set of sanctioning options which could be applied by the judiciary, but remain unused or underused due to a lack of knowledge or a reluctance to award

sanctions uncommon to the national legal system. Equality bodies could try to motivate judges to apply those sanctions, which are available in law, also in practise.

Litigate strategically

Legal certainty due to a lack of concreteness of EU law, as well as of case law that would serve as a tool for interpretation, is rather limited in the field of discrimination, and more specifically in the field of sanctions and remedies in discrimination cases. Equality bodies can strive to bring cases to court, where the use and appropriateness of sanctions is of relevance.

Naming and shaming

Publication of decisions on discrimination, not only by equality bodies themselves, but also by Courts – has a deterrent effect for potential and/or repeat perpetrators, but also raises awareness about the unlawfulness of discrimination on a more general level (social-preventive effect)

Monitor and enforce sanctions and remedies

Sanctions issued by courts as well as recommendations issued by equality bodies themselves or specialised tribunals often lack enforcement. Equality bodies can take appropriate steps in order to ensure compliance, for example by way of:

- Monitoring enforcement
- Drawing media attention to the concrete case

Be innovative

Equality bodies can test out legal means (for example Article 47 of the Charter of Fundamental Rights of the European Union in relation to legal aid) or assist others in doing so in order to improve the sanctions system in discrimination cases and its effectiveness.

9. References

9.1. Literature

Ammer, M./N. Crowley/B. Liegl/E. Holzleithner/K. Wladasch/K. Yesilkagit (2010) Study on Equality Bodies set up under Directives 2000/43/EC, 2004/113/EC and 2006/54/EC – Synthesis Report, accessible via: http://ec.europa.eu/social/BlobServlet?docId=6454&langId=en (20.05.2015)

Cohen, Barbara (2004): Remedies and Sanctions for Discrimination in Working Life under the EC Anti-Discrimination Directives, In: Discrimination in the Working Life: Remedies and Enforcement, Towards the uniform and dynamic implementation of EU Anti-Discrimination Legislation: The Role of Equality Bodies, Report of the fourth experts' meeting, hosted by the Swedish Ombudsman Against Ethnis Discrimination, 14-15 October 2013. pp. 16-25. www.equineteurope.org/.../EN_-_Discrimination_in_Working_Life.pdf (02.06.2015)

Ellis, E./P. Watson (2012): Remedies and enforcement", in: EU Anti-Discrimination Law (2nd edition), Oxford Eu Law Library. pp. 301-315.

European Commission COM (2014)2: REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL: Joint report on the application of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, available at: http://ec.europa.eu/justice/discrimination/files/com_2014_2_en.pdf (16.04.2015)

FRA (2012): Access to justice in cases of discrimination in the EU – Steps to further equality, available at: http://fra.europa.eu/sites/default/files/fra-2012-access-to-justice-social.pdf (20.05.2015)

Jordache, Romanita/Ionescu, Iustina (2014): Discrimination and its Sanctions – symbolic vs. Effective Remedies in European Anti-Discrimination Law, in: European Anti-Discrimination Law Review, No 19, pp.11-24, available at: http://www.equalitylaw.eu/content/media/Review%2019%20EN%20web%20version.pdf (16.04.2015)

Milieu (2011): Comparative study on access to justice in gender equality and anti-discrimination law, study prepared for the European Commission, available at: http://ec.europa.eu/justice/gender-equality/files/conference_sept_2011/final_report_access_to_justice_final_en.pdf (23.06.2015)

Public Defender of Rights (2015): Discrimination in the Czech Republic: Victims of Discrimination and Obstacles Hindering their Access to Justice. (unpublished version July 2015)

Tobler, Christa (2005): Remedies and Sanctions in EC non-discrimination law "Effective, proportionate and dissuasive national sanctions and remedies, with particular reference to upper limits on compensation to victims of discrimination", European Network of Legal Experts in the non-discrimination field, http://www.non-discrimination.net/content/media/Remedies%20and%20Sanctions%20in%20EC%20non-discrimination%20law%20_en.pdf (25.06.2015)

9.2. Other materials

Presentations

Remedies and Sanctions for Discrimination, Susan L. Belgrave, Barrister, http://www.era-comm.eu/oldoku/Adiskri/04_Remedies/2011_09_Belgrave_EN.pdf (seems to be from 2011, accessed 25.06.2015)

Remedies and sanctions in discrimination cases, Prof. Dr. Christa Tobler, LL.M., Europa Institutes of the Universities of Basel (Switzerland) and Leiden (The Netherlands), EU law on equality between women and men in practice, ERA Seminar for legal practitioners, 14 and 15 March 2011, Trier, https://ius.unibas.ch/uploads/publics/7232/ERA_Remedies_March2011.pdf (30.06.2015)

Seminar for Judges, Trier, 19-20 May 2014, Krzysztof Śmiszek, Polish Society of Anti-Discrimination Law, http://www.era-comm.eu/oldoku/Adiskri/04_Remedies/2014_114DV45_Smiszek_EN.pdf (25.06.2015)

Remedies and Sanctions in Discrimination Cases, 3 November 2014 – ERA Academy of European Law, Me François MOYSE – Avocat à la Cour (Barrister), Luxembourg, http://www.era-comm.eu/oldoku/SNLLaw/13_Remedies/2014_Nov_Moyse.pdf
(25.06.2015)

Update on European Case Law: The most recent cases of the European Court of Justice
Prof. Dr. Christa Tobler, LL.M.
Europa Institutes of the Universities of Leiden (Netherlands) and Basel (Switzerland)
Legal Seminar of the European Commission, DG Justice Enforcement of equality and anti-discrimination law 28 November 2014, Brussels
https://ius.unibas.ch/uploads/publics/41985/Network_Legal_Seminar_2014.pptx.pdf
(30.06.2015)

Websources

http://www.equalitylaw.eu/ The Website of the European Equality Law Network was used as a source for information about the legal framework at the national level, specifically for the identification of relevant case law

http://www.rubensteinpublishing.com/ Michael Rubenstein Publishing is publishing the Equal Opportunties Review, a journal on equality, diversity and discrimination law and practice. It conducts an annual survey of sanctions in discrimination cases in the UK.

9.3. Case Law

- *Sabine von Colson and Elisabeth Kamann v Land Nordrhein-Westfalen*, Case 14/83, Judgment of the Court of 10 April 1984.
- *Elisabeth Johanna Pacifica Dekker v Stichting Vormingscentrum voor Jong Volwassenen (VJV-Centrum) Plus*, Case C-177/88, Judgment of the Court of 8 November 1990.
- *Nils Draehmpaehl v Urania Immobilienservice OHG,* Case C-180/95, Judgment of the Court of 22 April 1997.
- *M. Helen Marshall v Southampton and South-West Hampshire Area Health Authority,* Case C-271/91, Judgment of the Court of 2 August 1993.
- *Centrum voor gelijkheid van kansen en voor racismebestrijding v. Firma Feryn NV,* C‑ 54/07, Judgement of the Court 10 July 2008.
- *Asociaţia Accept v. Consiliul Naţional pentru Combaterea Discriminării,* Case C-81/12, Judgment of the Court 25 April 2013
- Request for a preliminary ruling from the Juzgado de lo Social No 1 de Córdoba (Spain) lodged on 27 August 2014 — *María Auxiliadora Arjona Camacho v Securitas Seguridad España, S.A.*, Case C-407/14, pending.
- *Danilenkov and Others v. Russia*, ECtHR no. 67336/01, Chamber Judgment 30.09.2009
- *García Mateos v. Spain*, ECtHR no. 38285/09, Judgment 19.02.2013

National Case Law

- *Buxton v Equinox Design*, 1998, UKEAT 337_98_1911 (UK)
- *Vento v Chief Constable of West Yorkshire Police,* 2002, EWCA Civ 1871 (UK)
- *Da'Bell v NSPCC, 2009*, UKEAT 0227_09_2809 (UK)
- *Elliot v The Leeds Teaching Hospitals NHS Trust,* 2011, ET case no. 1803268/10 (UK)
- Supreme Court Judgement of October 1, 2014. Case 322/2012 (DK)
- Labour Court Rheinland-Pfalz Az: 5 Sa 509/13, 14.08.2014 (DE)
- Tribunal of Livorno, Decision of July, 6th 2015. (IT)
- Judgment of the Supreme Court No. 30 Cdo 4431/2007 (CZ)
- Viennese Commercial Court Rs.: 1R129/10g and 60R101/10y (AT)
- Judgement: Case Nr. 1R129/10g, names withheld, 19.01.2011 (AT)

10. Annex – the survey questionnaire

The Sanctions regime in Discrimination Cases and its Effects Questionnaire for Equality Bodies

Please return the questionnaire to katrin.wladasch@univie.ac.at and tamas.kadar@equineteurope.org by 22 June 2015

Equinet, the European network of Equality Bodies is conducting a research on the sanctions regime in discrimination cases and its effects. The aim of the research is to identify different types of sanction regimes and to identify those that are most effective. The research should build the basis for formulating recommendations on how to increase effectiveness and sustainability of sanctions and remedies in discrimination cases. The (potential) role of equality bodies will be given a special focus in this regard.

The questions listed below reflect the questions identified as relevant for the aim of the research. Some of them might not be relevant and/or answerable for each national context. Please answer the questions as far as possible. You are also welcome to add any information you might consider as relevant.

Name of Equality Body: _____

Name of person filling in the questionnaire: _____

- **Which kind of sanctions and remedies are foreseen by your national legislation for discrimination cases? (*Please tick the relevant item, more options possible*)**
    - o Obligation to stop discriminatory practices/ structures/ procedures
    - o Reinstatement in situation without discrimination
    - o Fines / administrative sanctions
    - o Compensation for material damages
    - o Compensation for immaterial damages
    - o Publication of decision
    - o Suspension of a license or of business activities
    - o Removal of the right to receive public benefits, public contracts and/or public funding
    - o Obligation to implement anti-discrimination policies and/or plans
    - o Criminal sanctions
    - o Other, please explain: _____

- **Which sanctions and remedies are the ones most commonly applied in your national context? What are the reasons for their application?**

- **Who is the entity in charge for issuing sanctions and remedies? (*Please tick the relevant item, more options possible*)**
    - o Court, which one: . . .
    - o Equality Body
    - o Other public body, which one:
    - o Specialised Tribunal, which one: . . .

- **What is the main objective of sanctions and remedies foreseen?**
    - o provide remedy for single victim of discrimination (compensative character)
    - o constitute a punishment for the perpetrator (punitive character)
    - o be a tool for preventing further discrimination (preventive character)
    - o be a tool for fighting discrimination and fostering equality on a societal level (social-preventive character)
    - o other: _____

      Please indicate, if your answer is based on explanations or a preamble to legislation or on your own assessment.

- **Is there a need to present a concrete victim of discrimination in order to claim for a/ issue a sanction or other remedy?**

- **Are there any differences in sanctions and remedies based on the ground of discrimination? If yes, how do these differences look like?**

Differences in legislation

Differences in application in practise

- **Are there any differences in sanctions and remedies dependant of the field of discrimination? If yes, how do these differences look like?**

Differences in legislation

Differences in application in practise

- **Is the infringing organisation's turnover/financial capacity taken into account, when deciding on the amount of compensation? If yes, in which way?**

- **Are there different sanctions/amounts of compensation foreseen/ applied in cases, where a public entity is responsible? If yes, in which way?**

- **Are repeated infringements of the principle of equal treatment specifically addressed in law or in judicial practice (in relation to sanctions)? If yes, in which way?**

- **Are cases of multiple discrimination specifically addressed in law or in judicial practice (in relation to sanctions)? If yes, in which way?**

- **What kind of sanctions and remedies foreseen in your national context do you deem to be the most effective ones (even if only in theory)? Why do you think that these are the most effective ones?**

- **What do you identify as the main shortcomings of the sanctions system in your country?**

- **What would you identify as the main obstacles in access to remedies by those affected by discrimination in your country?**

- **Is there any system established ensuring that sanctions are complied with (enforcement and/or monitoring procedures)? What does this system look like?**

- **Have you been involved in cases, where questions in relation to sanctions or remedies have been the subject of legal interest? If yes, could you please provide a short summary of the case and the source, where the cases can be found?**

- **What do you think is or can be the role of equality bodies in ensuring effective, dissuasive and proportionate sanctions?**

- **Would you be ready to be interviewed via phone for the purpose of this research?**
  - o Yes, please provide your e-mail and phone-number:

    _____
  - o No

EQUINET MEMBER EQUALITY BODIES

ALBANIA
Commissioner for the Protection from Discrimination
www.kmd.al

AUSTRIA
Austrian Disability Ombudsman
www.behindertenanwalt.gv.at

AUSTRIA
Ombud for Equal Treatment
www.gleichbehandlungsanwaltschaft.at

BELGIUM
Institute for the Equality of Women and Men
www.igvm-iefh.belgium.be

BELGIUM
Interfederal Centre for Equal Opportunities
www.diversite.be and www.diversiteit.be

BULGARIA
Commission for Protection against Discrimination
www.kzd-nondiscrimination.com

CROATIA
Office of the Ombudsman
www.ombudsman.hr

CROATIA
Ombudsperson for Gender Equality
www.prs.hr

CROATIA
Ombudswoman for Persons with Disabilities
www.posi.hr

CYPRUS
Office of the Commissioner for Administration (Ombudsman)
www.ombudsman.gov.cy

CZECH REPUBLIC
Public Defender of Rights
www.ochrance.cz

DENMARK
Board of Equal Treatment
www.ast.dk

DENMARK
Danish Institute for Human Rights
www.humanrights.dk

ESTONIA
Gender Equality and Equal Treatment Commissioner
www.svv.ee

FINLAND
Non-Discrimination Ombudsman
www.syrjinta.fi

FINLAND
Ombudsman for Equality
www.tasa-arvo.fi

FRANCE
Defender of Rights
www.defenseurdesdroits.fr

GERMANY
Federal Anti-Discrimination Agency
www.antidiskriminierungsstelle.de

GREECE
Greek Ombudsman
www.synigoros.gr

HUNGARY
Equal Treatment Authority
www.egyenlobanasmod.hu

HUNGARY
Office of the Commissioner for Fundamental Rights
www.ajbh.hu

IRELAND
Irish Human Rights and Equality Commission
www.ihrec.ie

ITALY
National Equality Councillor
www.lavoro.gov.it/ConsiglieraNazionale

ITALY
National Office against Racial Discrimination - UNAR
www.unar.it

LATVIA
Office of the Ombudsman
www.tiesibsargs.lv

LITHUANIA
Office of the Equal Opportunities Ombudsperson
www.lygybe.lt

LUXEMBURG
Centre for Equal Treatment
www.cet.lu

(FYRO) MACEDONIA
Commission for the Protection against Discrimination
www.kzd.mk

MALTA
National Commission for Persons with Disability
www.knpd.org

MALTA
National Commission for the Promotion of Equality
www.equality.gov.mt

MONTENEGRO
Protector of Human Rights and Freedoms (Ombudsman)
www.ombudsman.co.me

NETHERLANDS
Netherlands Institute for Human Rights
www.mensenrechten.nl

NORWAY
Equality and Anti-Discrimination Ombud
www.ldo.no

POLAND
Commissioner for Human Rights
www.rpo.gov.pl

PORTUGAL
Commission for Citizenship and Gender Equality
www.cig.gov.pt

PORTUGAL
Commission for Equality in Labour and Employment
www.cite.gov.pt

PORTUGAL
High Commission for Migration
www.acm.gov.pt

ROMANIA
National Council for Combating Discrimination
www.cncd.org.ro

SERBIA
Commissioner for Protection of Equality
www.ravnopravnost.gov.rs

SLOVAKIA
National Centre for Human Rights
www.snslp.sk

SLOVENIA
Advocate of the Principle of Equality
www.zagovornik.net

SPAIN
Council for the Elimination of Ethnic or Racial Discrimination
www.igualdadynodiscriminacion.msssi.es

SWEDEN
Equality Ombudsman
www.do.se

UNITED KINGDOM - GREAT BRITAIN
Equality and Human Rights Commission
www.equalityhumanrights.com

UNITED KINGDOM - NORTHERN IRELAND
Equality Commission for Northern Ireland
www.equalityni.org

Co-funded by the Rights, Equality and Citizenship Programme of the European Union

ISBN 978-92-95067-92-9 |

www.equineteurope.org

facebook.com/EquinetEurope

@equineteurope

Equinet
European network
of equality bodies