

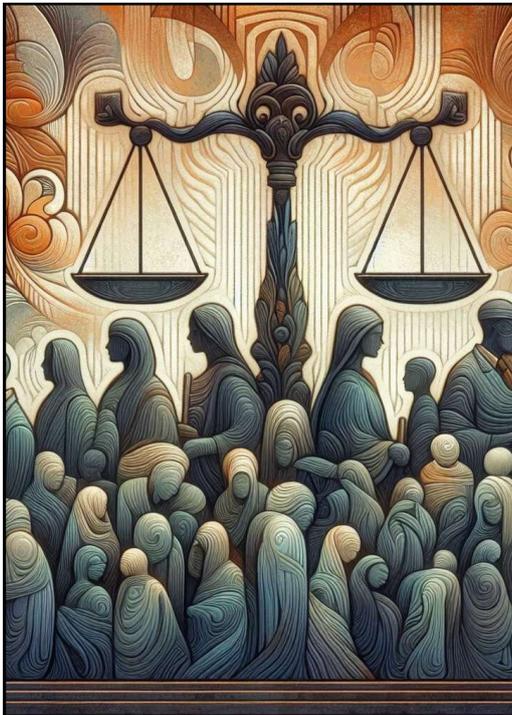


SEEKING EFFECTIVENESS: REMEDIES AND SANCTIONS IN DISCRIMINATION CASES



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PRESENTATION

INTRODUCTION – EU LAW TIMELINE

EFFECTIVENESS THROUGH ACCESS TO JUSTICE

COMPARATIVE SYSTEM EXAMPLES

WILLINGNESS: ANTITRUST ENFORCEMENT V.
DISCRIMINATION ENFORCEMENT

SUMMARY

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INTRODUCTION

Seeking effectiveness with respect to remedies and sanctions in discrimination cases is at the interstices of legal and political treatment of discrimination cases in general. Issues include repeat players (haves and have notes), access to justice as well as a willingness to the enforce the law.

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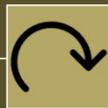
EU EQUALITY LAW TIMELINE



1957
Treaty of Rome
Equal pay by
1961



1970'S
EU Equal Pay,
Defrenne 2,
Equal
Treatment
"applied and
effective
means that the
principle is
observed [UK "



1996
Burden of
proof directive



2000
RED and
Employment
Equality
directives
"Sanctions,
effective,
proportionate
and dissuasive



2023
Pay
transparency
directive
Specifically
names access
to justice but
no reallocation

YEAR 2025

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EFFECTIVENESS

Defined through Access
to Justice

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ACCESS TO JUSTICE: EQUALITY OF ARMS

A fluid concept



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ACCESS TO JUSTICE/EQUALITY OF ARMS



1 INDIVIDUAL LEVEL

Aspects that affect the individual's ability to make successful claims

PROCEDURAL

Length of proceedings
 Statute of Limitations
 Class actions
 Who can file claims
 Pleadings
 Deposits
 Discovery of evidence

②

LEGAL AID

Need for an attorney
 Legal aid (state, pro bono)
 Sanctions on attorney misconduct

④

REMEDIES

Dissuasive amounts
 Equitable remedies: hiring, training, injunctions

③

ATTORNEYS' FEES

Loser pays
 Each party pays
 Defendant pays if defendant is not successful
 Define successful

⑤

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SYSTEMIC AREAS OF ACCESS TO JUSTICE



- Access to justice with respect to access to courts (physically, procedurally, paralegals)
- Access to justice with respect to judicial alternatives
- Access to justice with respect to judicial transparency
- Access to justice through language and legal design
- Access to justice with respect to social justice, digital justice, economic justice and environmental justice

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COMPARATIVE REMEDIES AND SANCTIONS	
UK	<ul style="list-style-type: none"> ▪ £ 4.6 million disability discrimination compensation award (2025) ▪ Name and shame website as to pay transparency
FRANCE	<ul style="list-style-type: none"> ▪ € 450,000 gender discrimination compensation award (2019) ▪ Equal pay index, sanction 1 % of corporate turnover [2024 €500,000 for failures]
SWEDEN	<ul style="list-style-type: none"> ▪ € 7,000 age discrimination compensation award (2021), one of the highest awards ▪ Discrimination compensation to be a combination of nominal damages with deterring amounts
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COMBINATION OF MONETARY AND EQUITABLE DAMAGES (ABERCROMBIE 2004)	
COMPENSATION	<ul style="list-style-type: none"> ▪ Financial compensation: A \$40 million settlement fund to compensate individuals who were subjected to discrimination in the company's recruitment, hiring, assignment, promotion, and discharge practices.
EQUITABLE REMEDIES	<p>Employment practices reform:</p> <ul style="list-style-type: none"> ▪ Implementation of new policies and programs to increase diversity in recruitment and hiring ▪ Creation of an Office of Diversity headed by a Vice President of Diversity ▪ Hiring of 25 diversity recruiters ▪ Refraining from targeting recruitment at predominantly white institutions <p>Marketing changes:</p> <ul style="list-style-type: none"> ▪ Commitment to include more diversity in marketing materials, including catalogs, posters, and website <p>Monitoring and compliance:</p> <ul style="list-style-type: none"> ▪ Appointment of external monitors to ensure compliance with the decree ▪ Regular reporting to the EEOC on progress in implementing the agreed-upon changes
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WILLINGNESS

Compared with
Competition Law

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EU COMPETITION SANCTIONS
- UP TO 30 % OF THE COMPANY'S ANNUAL SALES
RELATED TO THE INFRINGEMENT
- LARGEST FINE TO DATE € 2.93 BILLION

Machinery in place to enforce the law



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ERA 7 April 2025

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Significant access to justice issues need to be addressed, as well as the power balance between those who discriminate and those discriminated. Enforcement must be possible on the individual level, but there must also be state enforcement, as seen so clearly in competition law. Civil society can be a vital force here.

SUMMARY



THANK YOU

RECENT REPORTS:

MILIEU STUDY ON SANCTIONS FOR
DISCRIMINATION ON
RACIAL/ETHNIC/RELIGIOUS GROUNDS

MILIEU HOW CAN SANCTIONS EFFECTIVELY
PREVENT AND COMBAT DISCRIMINATION?