

REPARATION AND PENALTIES IN DISCRIMINATION CASES

MARÍA AMPARO BALLESTER PASTOR
UNIVERSITY OF VALENCIA

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REPARATION AND PENALTIES: GENERAL ISSUES

- **Reparation and penalties in anti-discrimination Directives**
 - Legal action (art. 17 Dir. 2006/54; art. 7 Dir. 2000/43; art. 9 Dir. 2000/78)
 - Compensation or reparation (art. 18 Dir. 2006/54)
 - Penalties (art. 25 Dir. 2006/54; art. 15 Dir. 2000/43; art. 17 Dir. 2000/78)
- **Other channels for the effectiveness of anti-discrimination Directives**
 - Horizontal direct effectiveness
 - Principle of primacy

RIGHT TO LEGAL ACTION. Regulations

- Art. 17 Dir. 2006/54

1. *Member States shall ensure that, after possible recourse to other competent authorities including where they deem it appropriate conciliation procedures, judicial procedures for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged by failure to apply the principle of equal treatment to them, even after the relationship in which the discrimination is alleged to have occurred has ended.*

2. Member States shall ensure that associations, organisations or other legal entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainant, with his/her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive.

3. Paragraphs 1 and 2 are without prejudice to national rules relating to time limits for bringing actions as regards the principle of equal treatment.

RIGHT TO LEGAL ACTION. CJEU

- **Freedom of choice under the guarantee mechanism**

- Non-compulsory restitution (Marshall II, 1993)

- **Adequate compensation**

- Full compensation (Von Colson, 1984)

- Principle of equivalence (Commission v. Greece, 1989)

- Implicit deterrent effect (Von Colson, 1984)

EFFECTIVE AND DISSUASIVE PENALTIES

- Art. 25 Dir. 2006/54
- *Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive, and shall take all measures necessary to ensure that they are applied. The penalties, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive.*

EFFECTIVE AND DISSUASIVE PENALTIES

- **Separation between compensation and penalisation...**
- **... but with the possibility of dissuasive compensation**
 - Recovery of punitive damages in compensation for damages
 - The Arjona Camacho case (2015)
 - *Consequently, although Article 18 of Directive 2006/54 seeks to impose compensation or reparation for the loss and damage sustained by the person injured, it follows from the wording of Article 25 of that directive that that article grants Member States the option of adopting measures which seek to penalise discrimination on grounds of sex in the form of compensation paid to the victim (paragraph 39). Thus, Article 25 of Directive 2006/54 allows, but does not require, Member States to take measures providing for the payment of punitive damages to the person who has suffered discrimination on grounds of sex (paragraph 40).*

EFFECTIVE AND DISSUASIVE COMPENSATION

- **Article 18 of Directive 2006/54**
- *Member States shall introduce into their national legal systems such measures as are necessary to ensure real and effective compensation or reparation as the Member States so determine for the loss and damage sustained by a person injured as a result of discrimination on grounds of sex, in a way which is dissuasive and proportionate to the damage suffered. Thus, Article 18 of Directive 2006/54 requires compensation to be dissuasive (as well as effective). The following sentence from Article 18 of Directive 2006/54 is much more specific. It establishes the following: *d. Such compensation or reparation may not be restricted by the fixing of a prior upper limit, except in cases where the employer can prove that the only damage suffered by an applicant as a result of discrimination within the meaning of this Directive is the refusal to take his/her job application into consideration.**

EFFECTIVE AND DISSUASIVE COMPENSATION

- **Compensation or reparation**
- **Reiterating Article 18 of Directive 2006/54**
- **Real, effective, dissuasive and proportional reparation/compensation**
 - Moral prejudice: Liffers case (2006)
- **Non-application of upper limits for compensation**
 - Draehmpaehl case (1997)
- **Extension of Article 18 of Directive 2006/54**