JOINT READER

SUPPORTING THE IMPLEMENTATION OF A COURSE ON “LEGAL PROTECTION AGAINST DISCRIMINATION IN SOUTHEASTERN EUROPE”
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PREFACE

The Joint Reader was developed by the Ludwig Boltzmann Institute of Human Rights and the South East European Law Schools Network within the project „Legal Protection against Discrimination in South-East Europe“ supported by German Cooperation and implemented by Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ). It is based on the lectures held during the Winter School that was implemented at the Law Faculty of the University of Belgrade in January 2018. The Winter School provided students with an overview about the concepts, forms, areas and grounds of discrimination defined at international and European level, from a comparative perspective of South-Eastern European countries. Students gained insights into protection mechanisms against discrimination, procedural aspects of discrimination cases and possible remedies for persons affected by discrimination. They also got the opportunity to actively involve themselves in discussions and workshops aiming at the practical application of the theoretical knowledge gained during the lectures. The program was based on the idea that discrimination is a system that creates and reproduces stories of norm and normality and uses real or perceived differences to label human beings. Discrimination creates hierarchies and results in unjust distributions of power and privileges. As discrimination hampers prosperity and curbs the development of individuals and societies, legislation protecting against and preventing discrimination has been established.

The description of the lectures and workshops displayed in the Joint Reader shall support the implementation of the course on “Legal Protection against Discrimination in Southeast Europe” at different law faculties, which are members of SEELS network, or support the introduction of various elements of the course into already established legal courses or legal clinics within the same. The descriptions of the learning objectives and the content (e.g. power point presentations), as well as the working sheets, case studies and information on background material are presented in a way so that they can be used as a solid foundation for lecturers who have basic knowledge of discrimination and want to prepare lectures and workshops on this topic.
We thank all of the academics who actively participated in the coordination meetings in Belgrade and Zagreb, helped define the structure of the Winter School, which resulted in the production of the curriculum for the course on “Legal Protection against Discrimination in Southeast Europe”, lectured during the Winter School in Belgrade and finally, contributed to the Joint Reader. You have all in your own manner, contributed to raising awareness among future judges, prosecutors, lawyers, and legal practitioners on discriminations as human rights violations and on how to make use of mechanisms of protection against discrimination.
LECTURE 1

“ANTHROPOLOGICAL AND SOCIOLOGICAL APPROACH TO DISCRIMINATION”

I. Information on the lecturer

<table>
<thead>
<tr>
<th>First and Last Name</th>
<th>Position and employer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dr. Antonija Petričušić</td>
<td>Assistant Professor at the Chair of Sociology, Faculty of Law, University of Zagreb</td>
</tr>
</tbody>
</table>

II. Basic information on the lecture and workshop

<table>
<thead>
<tr>
<th>Title</th>
<th>Key words</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anthropological and sociological approach to discrimination</td>
<td>ethnicity, race, cultural diversity, stereotypes, prejudice, social distance, inequality, racism, segregation, sexism, homophobia, immigrant background, hate speech, discrimination, Antisemitism, Gypsyism, victimization, harassment, ethnic profiling, equality data, models of ethnic coexistence, integration measures</td>
</tr>
</tbody>
</table>
Students attending this course should initially be equipped with an understanding of sociology as the study of social behaviour and anthropology as the study of human behaviour and societies in past and present. In addition, students attending this course are expected to be familiarized with the following basic concepts from sociology and anthropology: society, culture, social structure, social change, identity, inequality, etc. Understanding these sociological and anthropological concepts help to explain social grounds of discrimination and understand why and how such patterns of behaviour manifest in different settings.

III. Description of the lecture

The lecture introduces all substantive topics related to the theme of discrimination: race, gender, ethnic origin, status inequality, stereotypes, prejudice, social distance, racism, segregation, sexism, homophobia, victimization, harassment, hate speech, ethnic profiling, and the institutional inequality and discrimination. The lecture will raise the issue of e.g. race, ethnic origin or gender as social constructs, which means that they are not biological characteristics, but characteristics that are socially and culturally determined.

The initial part of the lecture establishes the correlation between stereotypes, prejudice and discrimination, since research, to a large extent, confirms that racial and ethnic prejudice lead to discrimination against racial and ethnic groups perceived as inferior in a given society.

The lecture distinguishes between individual discrimination, which individuals practice in their daily lives, and institutional discrimination are cases of discrimination where policies and practices of whole institutions in various social domains. Institutions such as education, employment, housing, medical care, law enforcement, credit markets, consumer interactions, affect large numbers of individuals in an unfavourable way because of their race, ethnicity, gender, disability, and other characteristics.

The lecture equips students with understanding that racial discrimination concerns
the unequal treatment of races, while racial inequality concerns unequal outcomes of people belonging to different racial categories. The lecture discusses examples of racist attitudes and policies, such as racial segregation, ethnic profiling, racial inequality, racism, hate speech etc.

The lecture tackles discriminatory practices on the basis of sexual orientation and gender stereotypes. The lecture furthermore addresses the widespread manifestation of Antisemitism and Gypsyism.

The lecture informs students that combating discrimination requires not merely vigorous enforcement of anti-discrimination law, but also active identification and analysis of discriminatory patterns in all areas of life, monitoring of the progress made in the elimination of discrimination, adoption of awareness-raising programmes and positive action measures to remedy the situation of those who suffer from disadvantages caused by discrimination.

Finally, the lecture emphasizes the importance of equality data, i.e. the data collected with regard to age, ethnic or racial origin, sexual orientation, gender identity, disability, religion or belief and multiple grounds. Reliable and comparable equality data are important to design anti-discrimination legislation and policies, and to monitor their effectiveness and put in place concrete measures. In addition, equality data are important for affirmative action measures to determine a baseline and targets, when the measure has achieved its goal.

**Brief description of how student learning will be enabled (teaching method/strategy)**

The lessons will be held through frontal classroom presentation with the help of technological support (PowerPoint or Prezi presentations and projection of short videos related to the topics of the course). Empirical cases and data will be used extensively in order to shed light on various examples of discrimination. Moreover, students will be encouraged to share their insights and knowledge on the topic by entering into debates with the lecturer.

**Objectives**

The aim of the lecture is to allow students to acquire an insight into several theories used in sociological inquiry. After successfully completing the course, students should be able to define terms such as stereotype, prejudice, discrimination, ethnic profiling,
segregation, affirmative action, etc. Students will understand that racial and ethnic belonging are social constructs still playing a role in contemporary societies. The students should understand that the historical attempts to place people in racial categories still have implications in present times. Students should be able to critically assess and recognize the scope of discrimination of certain societal groups and link discrimination with social structures. Finally, after successfully completing the lecture, students should be able to debate the importance of legislative measures to tackle discrimination, racial inequality, ethnic profiling and hate speech in contemporary democracies.

IV. Description of the workshop

Content and main questions addressed

The workshop that follows the lecture, will utilize the results of the European Union Minorities and Discrimination Survey and acquaint students with the importance of data collection for measuring and addressing discrimination.

The EU Agency for Fundamental Rights (FRA) launched its second EU Minorities and Discrimination Survey at the end of 2017. The report, conducted in 2008, follows up and expands on FRA’s first major EU-wide survey on minorities’ and migrants’ experiences with discrimination. The survey focuses on discrimination in different social domains, but also looks into police stops, victimization due to harassment and other forms of violence, rights awareness and societal participation. The survey involved more than 25,500 people with an immigrant or ethnic minority background in all 28 EU-MS.

Surveyed individuals believe their ethnic or immigrant background is the main reason for facing discrimination. They identify their names, skin colour and religion as additional triggers. The findings show that discrimination continues to affect large numbers of ethnic minorities, immigrants, and children of immigrants in the EU despite the EU directives prohibiting various forms of discrimination and legal protection against discrimination under the national legislation in the Member States, which sometimes goes beyond the legal framework established by the EU.
The workshop material will be visualized by PowerPoint presentations, and materials (worksheets) for group work will be distributed in the classroom. Students are primarily expected to use data sets provided by the EU Agency for Fundamental Rights (FRA). Furthermore, they will be encouraged to rely on census data and to exhaust different web-based tools in order to understand how the existence of empirical evidence of discrimination constitutes a ground for developing legislative frameworks and policies combating discrimination.

This workshop offers sociological and comparative perspectives on inequalities and discrimination across the EU Member States and explores the key mechanisms underlying discriminatory practices. Understanding these processes is a way to induce a critical awareness about discrimination and inequalities for law students, as well as for students of other social sciences.

The case-studies students will be discussing and presenting in groups should assist in introducing the students to a sociological way of examining the issues of discrimination, harassment, and victimization.

The workshop should raise awareness that the collection of equality data and empirical data can contribute to effectively tackling discrimination of certain societal groups. Namely, statistical and other equality data renders discrimination visible, making it possible to target it more effectively by means of informed action.

The workshop should in addition enhance the understanding of (law) students of how important antidiscrimination legislation is in addressing discrimination. After the workshop students will be aware that non-discrimination is one the European Union’s fundamental principles, and that the EU adopted specific legislation that prohibits various forms of discrimination: direct and indirect discrimination, harassment, instruction to discriminate and victimization.
V. Learning objectives

After students have participated in the lecture and the workshop the students will have learned ... (knowledge gained in relation to the objectives defined above)

By the end of this lecture and workshop, the students will be able to:

- Describe how major sociological perspectives view race and ethnicity
- Distinguish between terms such as racial segregation, racial discrimination, and racial inequality
- Recognize how and why such issues of social categorization are relevant today
- Discuss the advantages and disadvantages bearers of specific racial and ethnic identity are faced with
- Understand how empirical data can confirm that a considerable proportion of persons with immigrant or ethnic minority background face high levels of discrimination because of their ethnic or immigrant background, as well as related characteristics, such as skin colour and religion
- Understand the persistence of racial inequality in a supposedly post-racial society
- Identify examples of culture of prejudice
- Understand why terms such as ethnicity, race and cultural identity are generally understood as social constructs
- Take part in critical discussions about hate speech, homophobia, sexism, ethnic profiling, racism, anti-Semitism, Gypsyism and discrimination
- Perceive hate speech as form of expression that is based on the unjustified assumption that a person or a group of persons are superior to others
- Make students aware that addressing discriminatory phenomena such as homophobia, ethnic profiling, sexism, racism, anti-Semitism and Gypsyism require an involvement of a wide range of actors from different sectors of society (political, legal, economic, social, religious, educational)
- Understand the importance of equality data for developing an effective anti-discrimination legislation as well as policies and measures
VI. Literature and background material
for the lecture and workshop

Books


Academic papers / articles


Legislation (national and international)

Article 10 and Article 19 of the Treaty on the Functioning of the EU (TFEU), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT

Other (please specify)


Annex 1

Working sheet 1 – Reasons for discrimination (EU MIDIS Survey)

Main reasons for last incident of discrimination because of skin colour, ethnic origin or religion in 5 years before the survey, in the area of access to accommodation (multiple response) (%)

<table>
<thead>
<tr>
<th>Reason for Discrimination</th>
<th>(% of Respondents)</th>
</tr>
</thead>
<tbody>
<tr>
<td>My skin colour/my physical appearance</td>
<td>40</td>
</tr>
<tr>
<td>My first or last name</td>
<td>44</td>
</tr>
<tr>
<td>My accent/the way I speak (the language of the survey country)</td>
<td>13</td>
</tr>
<tr>
<td>The way I am dressed (such as wearing a headscarf/turban)</td>
<td>8</td>
</tr>
<tr>
<td>The reputation of the neighbourhood where I live (my address)</td>
<td>4</td>
</tr>
<tr>
<td>My citizenship</td>
<td>22</td>
</tr>
<tr>
<td>My country of birth</td>
<td>20</td>
</tr>
<tr>
<td>Other reason</td>
<td>7</td>
</tr>
</tbody>
</table>
Main reasons for last incident of discrimination because of skin colour, ethnic origin or religion in 5 years before the survey, in the area of work (multiple response) (%)

Background information: EU-MIDIS II collected information from 25,515 respondents with different ethnic minority and immigrant backgrounds (Turkey, North Africa, Sub-Saharan Africa, South Asia) across all 28 EU Member States. Respondents are, on average, 40 years of age (Russian minority respondents are on average 51 years old and recent immigrants 36 years old). Women constitute 51 % of the entire sample, with differences across aggregate target groups and countries. In Malta and Greece, the share of female immigrants interviewed was very low – at 6% and 5%, respectively. The respondents’ socio-demographic profiles vary considerably across countries of residence and countries/regions of origin.


Discuss the following questions:

1. What are the main reasons for discrimination on the grounds of skin colour, ethnic origin or religion?
   • when trying to find an apartment?
   • at work?

2. Can you think of explanations why the percentages for the main reasons for discrimination are rather different for the two areas (finding an apartment, at work)?

3. What do the two graphs (not) tell us?

4. What kind of further data would you need in order to make more meaningful statements about the two graphs?
Working sheet 2 – Census data

Population by mother tongue, as per the 2011 and 2002 census

<table>
<thead>
<tr>
<th>Population by mother tongue</th>
<th>2002 Census</th>
<th>%</th>
<th>2011 Census</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>REPUBLIC OF SERBIA</td>
<td>7,493,901</td>
<td>100</td>
<td>7,186,852</td>
<td>100</td>
</tr>
<tr>
<td>Serbian</td>
<td>6,620,699</td>
<td>88.30</td>
<td>6,330,919</td>
<td>88.09</td>
</tr>
<tr>
<td>Albanian</td>
<td>63,835</td>
<td>0.85</td>
<td>10,043</td>
<td>0.14</td>
</tr>
<tr>
<td>Bosnian</td>
<td>134,749</td>
<td>1.80</td>
<td>138,871</td>
<td>1.93</td>
</tr>
<tr>
<td>Bulgarian</td>
<td>16,459</td>
<td>0.22</td>
<td>13,337</td>
<td>0.19</td>
</tr>
<tr>
<td>Bunjevacki</td>
<td>-</td>
<td>-</td>
<td>6,835</td>
<td>0.10</td>
</tr>
<tr>
<td>Vlach language</td>
<td>54,818</td>
<td>0.73</td>
<td>43,065</td>
<td>0.60</td>
</tr>
<tr>
<td>Hungarians</td>
<td>285,508</td>
<td>3.82</td>
<td>243,148</td>
<td>3.38</td>
</tr>
<tr>
<td>Macedonians</td>
<td>14,355</td>
<td>0.19</td>
<td>12,706</td>
<td>0.18</td>
</tr>
<tr>
<td>German</td>
<td>2,279</td>
<td>0.03</td>
<td>2,193</td>
<td>0.03</td>
</tr>
<tr>
<td>Roma language</td>
<td>82,242</td>
<td>1.10</td>
<td>100,663</td>
<td>1.40</td>
</tr>
<tr>
<td>Rumanian</td>
<td>34,515</td>
<td>0.46</td>
<td>29,075</td>
<td>0.40</td>
</tr>
<tr>
<td>Rutenian</td>
<td>2,199</td>
<td>0.03</td>
<td>3,179</td>
<td>0.04</td>
</tr>
<tr>
<td>Ruthenian</td>
<td>13,458</td>
<td>0.18</td>
<td>11,340</td>
<td>0.16</td>
</tr>
<tr>
<td>Slovak</td>
<td>67,498</td>
<td>0.77</td>
<td>49,795</td>
<td>0.69</td>
</tr>
<tr>
<td>Slovenian</td>
<td>3,024</td>
<td>0.04</td>
<td>2,289</td>
<td>0.03</td>
</tr>
<tr>
<td>Croats</td>
<td>27,583</td>
<td>0.37</td>
<td>19,223</td>
<td>0.27</td>
</tr>
<tr>
<td>Macedonians</td>
<td>-</td>
<td>-</td>
<td>2,510</td>
<td>0.04</td>
</tr>
<tr>
<td>Other languages</td>
<td>19,392</td>
<td>0.27</td>
<td>39,463</td>
<td>0.55</td>
</tr>
<tr>
<td>Did not declare and unknown</td>
<td>63,877</td>
<td>0.85</td>
<td>128,191</td>
<td>1.78</td>
</tr>
</tbody>
</table>

Ranking of the ethnic communities by the average age of their members, the 2011 Census

- **Roma**: 33.48 years
- **Bosniaks**: 35.37 years
- **Germans**: 42.24 years
- **Albanians**: 38.28 years
- **Muslims**: 38.57 years
- **Republic of Serbia**: 42.59 years
- **Serbs**: 44.29 years
- **Romanians**: 44.57 years
- **Slovenes**: 44.97 years
- **Hungarians**: 45.04 years
- **Germans**: 45.12 years
- **Russians**: 45.21 years
- **Montenegro**: 45.47 years
- **Bunjevac**: 48.87 years
- **Yugoslavs**: 50.17 years
- **Bulgarians**: 50.87 years
- **Croats**: 51.02 years
- **Vlachs**: 51.27 years
- **Macedonians**: 51.81 years
- **Slovenes**: 57.83 years
Discuss the following questions:

1. How is census data collected?
2. How would you interpret the two graphs above?
3. What do the two graphs (not) tell us?
4. What are the challenges in collecting data on ethnic minorities?
LECTURE2

“SOURCES OF NON-DISCRIMINATION LAW (UN, COE AND EU)”

I. Information on the lecturer

<table>
<thead>
<tr>
<th>First and Last Name</th>
<th>Position and employer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ivana Grgurev</td>
<td>Full Professor at Faculty of Law, University of Zagreb, Croatia</td>
</tr>
</tbody>
</table>

II. Basic information on the lecture and workshop

<table>
<thead>
<tr>
<th>Title</th>
<th>Key words</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sources of non-discrimination law (UN, CoE and EU)</td>
<td>UN, ILO, ECHR, EU non-discrimination directives, CJEU</td>
</tr>
</tbody>
</table>

Brief description of the previous knowledge expected

Basic knowledge of EU law and international public law is expected.

III. Description of the lecture

Content and main questions addressed

The course is focused on the relevant UN sources of non-discrimination law (CEDAW, CRPD), ILO Conventions, CoE sources (Art. 14 of the ECHR, Additional Protocol No. 12 to the ECHR) the EU non-discrimination directives, and the settled case law of the CJEU. The emphasis is made on different non-discrimination clauses and supervisory mechanisms provided by the relevant sources of non-discrimination law.
The beginning of the international and regional non-discrimination law will be explained (the first non-discrimination clauses), then the status of non-discrimination clauses introduced with the relevant legal sources (not independent and independent clauses). After this the course will discuss the obligation of the State parties to various international and regional sources of law, then the role of ILO in prohibiting discrimination, then the significance of ILO Convention No. 100 for the development of EU non-discrimination law, the scope of EU non-discrimination directives, and the role of CJEU in developing the EU non-discrimination law.

Brief description of how student learning will be enabled (teaching method/strategy)

After explaining the concept of non-discrimination in various international and EU sources, students are encouraged to engage in discussion and analyze the most important international and EU sources of non-discrimination law.

Objectives

- Give the students an understanding of international and European (CoE, EU) non-discrimination sources of law (to make students familiar with the non-discrimination legal instruments and different non-discrimination clauses adopted by the UN, ILO, CoE and EU)
- Ensure that students know different approaches to the principle of non-discrimination adopted by various legal instruments
- Make students familiar with the supervisory mechanisms of various non-discrimination international and regional legal sources
- Ensure that students know the scope of the EU non-discrimination directives and the role of the CJEU in developing the EU non-discrimination law
IV. Description of the workshop

Content and main questions addressed

- Selective approach of EU non-discrimination law
- The interplay between various international, regional and national sources of law
- Consequences of CJEU case-law on national legislation (examples)

Brief description of how student learning will be enabled (teaching method/strategy)

Students are encouraged to analyze and discuss the challenging cases settled by the ECtHR and the CJEU. They can work either in groups or individually.

Objectives

- Ensure that students know where to find relevant legal instruments of non-discrimination law and the case law of the ECtHR and the CJEU
- Encourage students to challenge the legal reasoning in the settled case law of the CJEU

V. Learning objectives

After students have participated in the lecture and the workshop the students will have learned ... (knowledge gained in relation to the objectives defined above)

- Legal reasoning of the ECtHR and the CJEU in non-discrimination cases
- Limits and potential of EU non-discrimination law
- The interplay between various international, regional and national sources of law
• How international and regional sources of non-discrimination law are applied
• How to compare different non-discrimination clauses and the scope of their application

VI. Literature and background material for the lecture and workshop

Books

Academic papers / articles

Legislation (national and international)
Article 14 of the ECHR, Additional Protocol No. 12 to the ECHR
https://www.echr.coe.int/Pages/home.aspx?p=home
ILO Conventions No. 100 on Equal Remuneration; ILO Convention No. 111 Discrimination (Employment and Occupation) Convention, 1958; ILO Convention No. 156 concerning equal opportunities and equal treatment for men and women workers: workers with family responsibilities, 1981
https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx
UN Convention on the Rights of Persons with Disabilities, 2007

Recast Directive 2006/54


Case law / jurisprudence

Defrenne No 2, (equal pay for equal work; the principle of non-discrimination on grounds of sex is a general principle of EU law/a fundamental right)

Mangold, (the principle of non-discrimination on grounds of age discrimination is a general principle of EU law/a fundamental right)

P v S and Cornwall, (protection of transgender persons)

Chacon Navas, (reluctance of the CJEU to broaden the concept of non-discrimination; medical model of disability; sickness is not disability)

Thlimmenos v. Greece
Oršuš and others v. Croatia
LECTURE 3

“FORMS OF DISCRIMINATION AND JUSTIFICATION”

Prof. Asoc. Oriona Mucollari

Everyone is entitled to all the rights and freedoms set forth in the Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status;¹ also Art.2 (1), International Covenant on Civil and Political Rights (ICCPR); Art. 2 (2), International Covenant on Economic, Social and Cultural Rights (ICE- SCR); Art.14, European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR); Art.1, American Convention on Human Rights (ACHR); Art.2, African Charter on Human and People’s Rights (ACHPR); Art.20 (2), Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms (CIS); Art.3, Arab Charter on Human Rights.²

Virtually every human rights instrument includes a non-discrimination clause. Given that the very universality of human rights is based on the premise that all people are born “free and equal in dignity and rights,”³ a prohibition on discrimination in the enjoyment of those rights is inevitable. While some instruments enshrine a general prohibition on discrimination, others restrict the prohibition on discrimination to the extent necessary to ensure equal enjoyment of the rights and freedoms.

The non-discrimination provisions generally fall into two categories. Some of them stipulate that the human rights they codify will be guaranteed to all without discrimination. Such clauses are not independent, they may only be invoked in combination with the other substantive provisions of the treaties concerned. Others, on the contrary, have an independent status: they protect from discrimination in all fields, and not only in the implementation of human rights listed in the instruments in which they appear.⁴

This chapter is going to focus on the forms of discrimination and justification which are common to the various instruments.

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¹ Art.2, Universal Declaration of Human Rights (UDHR).
³ Art.1, UNDHR.
I. Information on the lecturer

<table>
<thead>
<tr>
<th>First and Last Name</th>
<th>Employer / position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oriona Mucollari</td>
<td>Prof.Asoc./Lecture of International Human Rights, Gender Balance, Legal Clinic, Public Service and good governance, Local decentralization and regionalism. At Public Department, Law Faculty, University of Tirana, Albania Trainer for the Council of Europe for human rights, youth and no hate speech.</td>
</tr>
</tbody>
</table>

II. Basic information on the lecture

<table>
<thead>
<tr>
<th>Title</th>
<th>Key words</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Definition and elements of discrimination 2. Prejudice, stereotypes, hate speech</td>
<td>For the lecture: direct, indirect, equality, dignity, vulnerable, social groups, minority. For workshop: racial hatred, xenophobia, anti-Semitism, intolerance, nationalism, ethnocentrism, social media.</td>
</tr>
</tbody>
</table>

Objectives

For the lecture and workshop:
- To raise awareness
- To support young people
- To reduce the levels of acceptance
- To support and show solidarity
- To advocate
- To develop youth participation and citizenship online

Brief description of the previous knowledge expected

The participant should have basic knowledge of law, specific subjects such as human rights, gender law, constitutional law.

III. Learning objectives

After students have participated in the lecture the students will have learned ...

(knowledge gained in relation to the objectives defined above)

These sessions are important for the participant to increase their level of knowledge regarding:
- Elements of discrimination direct and indirect one;
V. Teaching method/strategy

Brief description of how student learning will be enabled

The teaching methodology will be through some/few power point (elements and definition of notions) but mostly through cases and role-playing methods and workshops.

VI. Literature

Books
2. Oliver De Schutter, International Human Rights Law, (Cambridge)
5. Bookmarks a Manual for combating Hate Speech online through Human Rights Education

Legislation (national and international)
1. Universal Declaration of Human Rights
2. International Covenant on Civil and Political Rights
3. International Covenant on Economic, Social and Cultural Rights
4. International Convention on the Elimination of All Forms of Racial Discrimination
5. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
6. Declaration on the Elimination of Violence against women
7. Forced Labour Convention
8. EU Charter of Fundamental Rights
9. European Convention of Human Rights...

Case law / jurisprudence
1. Cases from European Court of Human Rights
2. Cases from books mention above, such as Compass.

3.1 Justification

Both EU law and the ECHR allow justification to discrimination. The ECHR allows a defense based on general justification, both for direct and indirect discrimination. The ECHR’s case law has established the criteria for such defense: in order to be justified,
a differential treatment must have an objective and reasonable justification, pursue a legitimate purpose, as well as satisfy the proportionality test.

In considering allegations of violations of Article 14 of ECHR, there are three key questions which arise.

First, is the complaint within the ambit of one of substantive provisions of the Convention? The court has repeatedly stated: ...Article 14 of the Convention complements the other substantive provisions of the Convention and the Protocols. It has no independent existence since it has effect solely in relation to “the enjoyment of the rights and freedoms” safeguard by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions-and to this extent it is autonomous-there can be no room for its application unless the fact at issue falls within the ambit of one or more of the latter.⁵

The second question is whether the applicant can properly compare themselves with a class of persons who are treated more favourably. The Court has not developed a single statement which it repeats in this regard. Over time, it has referred to the comparators being in “similar situations,”⁶ or in “relevantly similar situations”,⁷ or in “analogous situations”.⁸

The third question is whether the difference in treatment can be justified. The Court has made it clear that Article 14 is concerned with arbitrary discrimination, and has repeatedly stated the obligation in Article 14 in the following terms:

According to the Court’s case law, a difference in treatment is discriminatory for the purposes of Article 14 if it “has no objective and reasonable justification”, that is if it does not pursue a “legitimate aim” or if there is not a “reasonable relationship of

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proportionality between the means employed and the aim sought to be realized”. In that connection, the Court observes that the Convention is a living instrument, to be interpreted in the light of present-day conditions.\(^9\)

It is possible to view the enumerated grounds\(^{10}\) of discrimination in Article 14 as enjoying special protection, whereas discrimination based on “other status” is likely to be somewhat easier to justify. It is certainly clear that some forms of discrimination will require what the Court refers to as very weighty reasons to justify treating the protected group differently from the comparators.\(^{11}\)

In practice, the Court appears to ask a number of questions in addressing complaints of discrimination:\(^{12}\)

- Does the complaint of discrimination fall within the sphere of a protected right?
- Is there a violation of the substantive provision?
- Is there different treatment?
- Does the treatment pursue a legitimate aim?
- Are the means employed proportionate to the legitimate aim?
- Does the difference of the treatment go beyond a State’s margin of appreciation?\(^{13}\)

**Equality** is the cornerstone of all the democratic States. There is a clear link between the concept of equality and that of non-discrimination, indeed the rule of non-discrimination is basically the negative restatement of the principle of equality.\(^{14}\) With issues of equality and discrimination, the usual rule applies: a situation is discriminatory or unequal if like situations are treated differently or different situations are treated similarly. Unlike other aspects of human rights practicing equality, de jure equality, will not necessarily result in de facto equality.

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9 Fretté v. France (App.36515/97), Judgment of 26 February 2002; (2004) 38 EHRR 438, para.34 of the judgment. This statement is repeatedly made in the case law of the Court; it has become something of a mantra.

10 Or at least some of them.


14 Lerner, N, pg 25.
If two people start off in incomparable situations, treating them similarly will merely perpetuate this, further accentuating the differences. For this reason, realization of de facto equality may be dependent on affirmative action/positive discrimination policies whereby discrimination in favour of the person or group in the poorer position is allowed.  

The issue of **positive obligations** is somewhat different under Article 14 of the ECHR because of the requirement for the allegation of discrimination to fall within the ambit of one of the substantive articles of the ECHR.  

However, the Court has indicated that, whether the discrimination arises by positive actions or by a failure to ensure non-discrimination, the justification for the differential treatment must meet a legitimate aim and there must be a reasonable relationship of proportionality between that aim and its realization. It is also inherent in the scheme of the article that States are obliged to take steps to prevent discrimination falling within the ambit of the article. This obligation manifests itself in the Court’s conclusion that the right not to be discriminated against in the enjoyment of rights falling within the scope of the Convention will be violated where States fail to treat persons in different situations differently with- out any objective and reasonable justification for doing so. However, in this context the States enjoy a considerable margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a difference in treatment.  

The enunciation of the principle of the equality, and the prohibition of discrimination, were considered so fundamental as to be placed as the beginning of the Universal Declaration of Human Rights, and of the United Nations Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights. These principles also have a prominent place in many national constitutions.  

20 Arts.1 and 2.  
21 Arts.2 and 3.  
3.2 Forms of discrimination

Those individuals who are in similar situations should receive similar treatment and not be treated less favourably simply because of a particular “protected” characteristic that they possess – “direct” discrimination. Treatment, in some situations, based on seemingly neutral rule can be also amount to discrimination, if it disadvantages a person or a group of persons as a result of their particular characteristics – “indirect” discrimination.23

In certain cases, practices too will openly differentiate on the basic of grounds which may lack a reasonable and objective justification. However, discrimination may also result from the use of apparently neutral criteria, procedures, or practices, the effect of which will be similar to that direct discrimination: it is then referred to as indirect discrimination. Such criteria, procedures or practices, which result in de facto discrimination, may be calculated on order to exclude the members of certain category. Alternatively, even in the absence of any intention to discriminate, they may have a discriminatory impact because they are the result of established and unchecked routines, and fail to take into account the specific situation of certain groups.24

It should be noted, however, that both kinds of discrimination result in a difference of treatment in comparable situations. For example, a woman could be excluded from employment either because the employer does not want to employ women (direct discrimination) or because the requirements for the position are formulated in such a way that most women would not be able to fulfil them (indirect discrimination). In some cases, the division is more theoretical and it might be problematic to establish whether the situation constitutes direct or indirect discrimination.25

Direct discrimination will occur when:

- An individual is treated less favourably;
- By comparison to how others, who are in similar situation, have been or would have been treated;
- The reason for this is a particular characteristic they hold, which falls under a “protected ground.”26

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25 CJEU, C-267, 06, Tadao Maruko v. Versargungsanstalt der deutschen Buhnen (GC), 1 April 2008, where the Advocate General Ruiz-Jarabo Colomer and CJEU reached a different conclusion in this regard.

Procedurally, under the ECHR, an applicant must be able to show that he or she was “directly affected” by the measure complained of, in order to be able to lodge an application (victim status).  

**Protected ground:**
- Sex;
- Gender Identity;
- Sexual orientation;
- Disability;
- Age;
- Race, ethnicity, colour and membership of a national minority;
- Nationality or national origin;
- Religion or belief;
- Social origin, birth and property;
- Language;
- Political or other opinion;
- “Other status.”

At the heart of direct discrimination is the less favourable treatment to which the individual is subjected. This can be relatively easy to identify compared with indirect discrimination, where statistical data is often needed. Consequently, the first feature of direct discrimination is evidence of the difference of treatment. Direct discrimination can also arise from treating two people in different situations in the same way. The ECtHR has stated that “the right not to be discriminated against in the enjoyment of the rights guaranteed under the ECHR is also violated when states fail to treat differently persons whose situations are significantly different.” The less favourable treatment can be established by making the comparison to someone in a similar situation. A complaint about “low” pay is not a claim of discrimination unless it can be shown that the pay is lower than that of someone hired by the same employer to perform a similar task. Therefore, to determine whether a person was treated less favourably, it is necessary to identify a suitable “comparator”, that is, a person in materially similar circumstances, with the main differences between the two persons being the “protected ground.” Proving a comparator does not need to be contentious and discrimination may be established without an explicit discussion in

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28 The category “other status” has allowed the ECtHR to include those grounded (among others) that are expressly protected by the non- discrimination directives, namely: disability, age and sexual orientation.

29 Thlimmenos v. Greece (GC), No.34369/97, 6 April 200, para.44. Similarly, Pretty v. United Kingdom, No.2346/02, 29 April 2002, para.88.
this regard.\textsuperscript{30}

\textbf{Indirect discrimination} under the ECHR, the ECtHR has drawn on this definition in some of its judgment, stating that “a difference in treatment may take the form of disproportionately prejudicial effects of a general policy or measure which, though couched in neutral terms, discriminates against a group.”\textsuperscript{31} The elements of indirect discrimination are as follows:\textsuperscript{32}

- a neutral rule, criterion or practice;
- that effects a group defined by a “protected ground” in a significantly more negative way;
- in comparison to others in a similar situation.

The notion of indirect discrimination serves, thus, two distinct ends: first, to unmask instances of conscious discrimination which hide behind the use of apparently neutral criteria, in order to arrive at the same result as would follow from the explicit use of prohibited differentiation criteria; second, to challenge certain rules or practices which, although not calculated to produce such effect, impose a specific disadvantage on certain groups, or have a disproportionate impact on such groups, without there being justification for such disadvantage or such an impact. In this second conception, indirect discrimination may be completely detached from any kind of intention to discriminate, and its best seen as tool to revise permanently institutionalized habits and procedures, in order to make them more hospitable to difference. This is made possible by the use of statistical data, in order to measure the “disparate (or disproportionate) impact” of apparently neutral measures on certain groups.\textsuperscript{33}

The notion of indirect discrimination was slow to emerge in the case law of the ECtHR. The first explicit acknowledge of the notion by the Court occurred in the case of Thlimmenos v. Greece, decided in 2000. A Jehovah’s Witness had been denied the right to register as a chartered accountant, due to his criminal record following a conviction for having refused to do his military service. The Court noted that the Greek authorities should have taken into account that the conviction was based on behaviour motivated by the religious beliefs of Mr Thlimmenos, rather than on behavior raising doubts about his morality or trustworthiness, which would justify

\textsuperscript{30} Handbook on European non discrimination law, European Union Agency for Fundamental Rights and Council of Europe, Council of Europe, European Court of Human Rights, 2018 edition, pg44.

\textsuperscript{31} Biao v. Denmark (GC), No.38590/10, 24 May 2016, para. 103; D.H. and Others v. the Czech Republic (GC), No.57325/00, 13 November 2007, para.184.

\textsuperscript{32} Handbook on European non discrimination law, European Union Agency for Fundamental Rights and Council of Europe, Council of Europe, European Court of Human Rights, 2018 edition, pg54.

\textsuperscript{33} Oliver De Schutter, International Human Rights Law, cases, materials, commentary, Cambridge University Press, pg.626.
the rationale behind the rule excluding from the profession of chartered accountants all persons with criminal records. In arriving at the conclusion that Article 14 ECHR had been violated, taken in combination with Article 9 ECHR (freedom of religion), the Court noted that “the right under Article 14 of the ECHR not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is violated when States treat differently persons in analogous situations without providing an objective and reasonable justification...However,... the right not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is also violated when States without an objective and reasonable justification fail to treat differently persons whose situations are significantly different”. 34

**The first** identifiable requirement of indirect discrimination is an apparently neutral rule, criterion or procedure. In other words, there must be some form of requirement that is applied to everybody. But even in these cases, where those procedures, measures or rules may seem neutral for most of the people, but if they are not neutral or worst if they do discriminate, even one person, the institutions/mechanisms should be able to take measures to eliminate this situation of indirect discrimination.

Certain issues of fact that often accompany examples of discrimination, such as the existence of prejudice, or an intention to discriminate, are not actually of relevance to determining whether the legal test for discrimination has been satisfied. What must be proved in a case of discrimination is simply the existence of differential treatment based on a prohibited ground, which is not justified. This means that ancillary facts surrounding situations of discrimination do not need establishing to prove a claim. There is no need to prove that the defendant is motivated by prejudice. Thus, there is no need to prove the defendant has “racist” or “sexist” views to prove race or sex discrimination. General Law cannot regulate individuals’ attitude since they are entirely internal. Rather, it can only regulate actions through which such attitudes may manifest themselves. 35 That’s way they are called indirect discrimination.

**The second** identifiable requirement is that the apparently neutral provision, criteria or practice places a “protected group” at a particular disadvantage. Accordingly, indirect discrimination differs from direct discrimination in that it moves the focus way from differential treatment to different effects. When considering statistical evidence that the protected group is disproportionately affected in a negative way in

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34 Thlimmenos v. Greece (GC), No.34369/97, 6 April 2000, §42.

comparison to those in similar situation, the CJEU and ECtHR will seek evidence that a particularly large proportion of those negatively affected is made up of that “protected group”. For instance, in Di Trizio v. Switzerland, the ECtHR relied on statistics showing that 97% of persons affected by the applied method of calculation of disability benefits were women who wished to reduce their working hours after the birth of a child. Statistical data can play an important role in helping a claimant give rise to a presumption of discrimination. It is a particularly useful in proving indirect discrimination, because in these situations, the rule or practices in question are neutral on the surface. Where this is the case, it is necessary to focus on the effects of the rules or practices to show that they are disproportionately unfavourable to specific groups of persons by comparison to others in a similar situation.

We need to emphasize the importance of the statistical data, especially in the case of the indirect discrimination, where we need to focus on the effects instead of treatment. But in the countries where the democracy and the public institutions are still fragile, where the data and statistics are not always available or trusted source, in this case statistical data may not always be necessary to prove cases of indirect discrimination.

The third identifiable requirement is that in both cases direct and indirect discrimination, the court still needs to find a comparator to determine whether the effect of the particular rule, criterion or practice is significantly more negative than those experienced by other individuals in a similar situation. However, establishing indirect discrimination requires proving that there are two groups: one advantaged and one disadvantaged by the contested measure. Usually, the disadvantaged group does not exclusively consist of persons holding protected characteristics. For example, part-time employees disadvantaged by a certain rule are mostly women, but men can also be affected. On the other hand, not all persons holding a particular characteristic are disadvantaged. For example, in a situation in which having a perfect knowledge of a language is a condition for employment, it will mostly disadvantage foreign applicants, but there must be some people among those foreign candidates who are able to fulfil this requirement. In cases where a formally neutral criterion in fact affected an entire group, the CJEU has concluded that there had been direct discrimination.


Conclusion

To conclude, we must understand that human rights are not similar to other legal/standards norms. They are sensitive and linked with the high perception of freedom and rights in the specific territories or countries. It means that fighting discrimination or at least reduces it, is not always simple and has no concrete data regarding this violation. Sometimes there is no need to prove that there were intentions for prejudice, there is no need to prove to belong to a vulnerable group, or to prove it with statistics data. The direct or indirect discrimination can happen in all circumstances and it is a state obligation through its mechanism of protection to deal with the situation till the complete elimination of the discrimination or at least to reduce it. It is the obligation of states to prohibit and bring to an end, by all appropriate means, including legislation and mechanisms, discrimination by any person, group or organization.

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LECTURE 4

“MECHANISMS FOR PROTECTION AGAINST DISCRIMINATION”

I. Information on the lecturer

<table>
<thead>
<tr>
<th>First and Last Name</th>
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<tr>
<td>Anđelija Tasić</td>
<td>Faculty of Law, University of Niš/ Assistant Professor</td>
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II. Basic information on the lecture and workshop

<table>
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<th>Title</th>
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<td>Mechanisms for protection against discrimination</td>
<td>Civil court, criminal court, administrative court/bodies, mediation, remedies, sanctions, strategic/impact litigation, discrimination testing, statistical evidence</td>
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Brief description of the previous knowledge expected

Students participating in the lecture should be acquainted with the following:

- Criminal procedure law,
- Administrative procedure law,
- Civil procedure law,
- Protection of human rights at the international and constitutional level,
- Basic knowledge of ECHR.
III. Description of the lecture

Content and main questions addressed

Two elements are important to understand legal mechanisms for protection against discrimination – procedural law (civil, criminal, administrative) and the concept of remedies and sanctions. Procedural law defines the rules of the game, it protects the parties involved and it provides for remedies as well as sanctions/punishment. In general, remedies and sanctions have to be effective, just, lawful and equal for everyone.

One example of how remedies and sanctions are defined in the field of anti-discrimination law can be found in articles 17, 18 and 25 of EU Directive 2006/54/EC: “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.” (Art 17 Defense of Rights, para 1)

“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. 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.” (Art 18, Compensation or Reparation)

“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. The Member States shall notify those provisions to the Commission by 5 October 2005 at the latest and shall notify it without delay of any subsequent amendment affecting them.” (Art 25, Penalties)

According to various EU directives protecting against discrimination and promoting equality remedies/sanctions have to be “effective”, “proportionate” and “dissuasive”.
Discuss with the students what the aim of remedies and sanctions are and what the terms “effective”, “proportionate” and “dissuasive” mean.

Criminal, civil, labor and administrative courts can issue remedies, but remedies can also be part of the results of mediation procedures. Remedies can be the following:

- Punitive or non-punitive (e.g. (punitive) compensation)
- Backward-looking (e.g. remedial order) or forward-looking (e.g. preventive order)
- Attend to individual (e.g. reinstate a dismissed employee) or group needs (e.g. order the implementation of positive action measures targeting women).

Discuss with the students what are the advantages and risks of court proceedings. Compensation can be awarded for material and immaterial damages. Legislators have been struggling with defining what makes compensation effective and what should be considered when defining the amounts of compensation. Possible criteria for defining the amount are the past and future loss experienced by the victim(s), whether feelings of the victim(s) have been offended, whether the discrimination had an impact on the mental health of the victim(s) and whether the amount can be deemed as punishing the discriminator and setting an example for others. In this context, CJEU case law *Nils Draehmpaehl v Urania Immobilienservice OHG* (Case C-180/95) could be discussed, which determines under which circumstances upper limits for compensation may or may not be prescribed.

Possible remedies and sanctions in civil cases besides material and immaterial damages are an obligation to do the following:

- Stop discrimination
- Reinstate a situation without discrimination
- Publish the decision on the discrimination case
- Implement anti-discrimination policies and plans

In civil or administrative proceedings, intent to discriminate is not required. This is specified in *D.H. and Others v. Czech Republic* (Application no. 57325/00), in which the ECtHR ruled that a difference in treatment without objective and reasonable justification may violate Article 14 of the ECHR even absent discriminatory intent. Thus, where it has been shown that legislation produces an unjustified discriminatory effect, it is not necessary to prove any discriminatory intent on the part of the relevant authorities.

Gross acts of discrimination such as threatened or actual personal violence, forms of persistent harassment and the abuse of freedom of speech stirring up hatred and
provoking violence are prohibited by criminal law. Possible sanctions in criminal proceedings are community service, fines and imprisonment. Discrimination cases falling under criminal law have to follow different rules than civil and other proceedings. Such proceedings usually involve the police and public prosecutors, there is a need for establishing discriminatory intent and shifting the burden of proof is not possible, as it is in contrast with the presumption of innocence.

Experience has shown that the number of criminal discrimination cases and conviction rates are rather low due to a lack of awareness of discrimination among the police and prosecutors.

Think of areas in which criminal law applies and come up with some examples from the students national context. Possible areas of infringements are the violation of the right to use a language or alphabet, the right to expression of national or ethnic affiliation, the freedom of religion and performing religious service, injury to reputation due to racial, religious, ethnic or other affiliation or instigating national, racial or religious hatred and intolerance.

Provide the relevant legal provisions and share statistics on the characteristics (e.g. gender, age, educational background, status of employment, income level) of the victims and perpetrators and on the decisions taken by the court (e.g. number of dismissals, orders to conduct an investigation, charges, convictions) with your students.

Engage the students in a discussion about what the statistics displayed tell them. Statistics of crimes are not objective barometers, they are an expression of societal negotiations on what constitutes a crime. Crime statistics also reflect the systems of data collection established by e.g. the police (they count the number of reports filed) and the courts (they count the number of convictions) and penal reform. Some criminal offences in the area of discrimination might have only recently been introduced or sanctions might have been recently tightened – such developments will influence statistics. Criminal statistics also reflect the awareness of discrimination, the role of the media in reporting on cases as well as the level of measures fighting crime (e.g. the willingness of reporting a crime).

Discrimination cases can also fall within administrative legal provisions. Competent authorities dealing with discrimination cases can be government bodies, tribunals and labor, health, consumer or school inspectorates. Administrative sanctions can include fines. In Portugal, administrative sanctions can be imposed such as censure, confiscation of property, removal of the right to participate in trade fairs, suspension of licenses and other authorizations, removal of the right to benefits granted by public bodies.
Discrimination cases need not necessarily end-up in court, but there are a number of other institutions/organizations that can handle such cases. Among them are equality bodies, human rights commissions, national human rights institutions (e.g. ombudsman institutions), trade unions, amicable labor dispute resolution agencies and NGOs. It is also possible for the person affected by discrimination to directly negotiate with the person who acted in a discriminatory way.

Alternative dispute resolution (ADR) is a process other than judicial determination, in which a third person assists parties to resolve a dispute. All the EU Equal Treatment Directives provide for conciliation procedures as a means of remedying a discrimination case. Mediation is a form of ADR and most counties have adopted Laws on Mediation, which guide the procedure and set standards for those conducting mediations.

Mediation is possible when there is a victim (individual or group) affected by discrimination. The discriminatory act can be conducted by an individual (e.g. a co-worker, a boss), a group (e.g. several neighbors) or a legal entity (e.g. school denying to enroll a pupil of Roma origin.). An important pre-requisite for mediation is that both parties agree on this kind of dispute resolution voluntarily. Not all discrimination cases might be adequate for mediation.

The advantages of Mediation court proceedings include the following:

- Discrimination need not be established according to legal provisions
- Mediation is cheaper
- Quicker resolution
- Can preserve the relationship of victim and perpetrator
- Greater control leading to higher self-esteem and self-confidence of the victim
- Nullify entrenchment of positions before mediation starts
- Creative solutions tailored to the needs of the victim

The disadvantages of mediation in the area of discrimination are the following:

- Denial of the affirmation of public rights
- Few mediators experienced in discrimination cases are available
- Unequal bargaining powers of victim and perpetrator
- Undermining of the guarantee to one’s day in court (justice) and telling one’s story
- Undermining of the discovery process
- Prevention of closing legal gaps or interpreting important legal concepts of discrimination
- Prevention of public stigmatization of the discriminator
Equality bodies very often resort to mediation and some bodies like the Commissioner for Protection of Equality of the Republic of Serbia are obliged to conduct mediation before taking any other steps such as taking a case to court.

In criminal cases, we are not talking about mediation, but about restorative justice. The language of mediation is neutral, whereas restorative justice programs provide for naming and acknowledging the wrongdoing, which means that the wrongdoer must admit to some level of responsibility for the offence committed. Restorative justice is a problem-solving approach to crime, which involves the parties themselves, and the community generally, in an active relationship with statutory agencies.

The principles of restorative justice are the following:

- Making room for the personal involvement of those mainly concerned (particularly the offender and the victim, but also their families and communities)
- Seeing problems of crime in their social context
- Solving problems in a forward-looking (or preventative) way
- Flexibility of practice (creativity)

Restorative justice focuses on the injury of the victim(s), not on the sanctioning of the offender(s), on the responsibility of the person/group of persons who committed the discrimination and on promoting the active participation of all affected.

Brief description of how student learning will be enabled (teaching method/strategy)

The lecture is supported by PowerPoint presentations giving an overview of what kinds of remedies and sanctions against discrimination are available to the plaintiff, who – depending on the nature of the case – can turn to a civil court, a labor court, a criminal court or an administrative body that can decide on establishing discrimination. The lecture will show what remedies and sanctions are aiming at and why it is important that they are “effective,” “proportionate” and “dissuasive”. Case law will be used to discuss the difference between civil, criminal and administrative proceedings regarding intention to discriminate or shifting of the burden of proof.

Case studies on criminal cases of discrimination will be presented and discussed focusing on the legal definitions of discrimination in the context of criminal proceedings, possible remedies and sanctions and on the number of convictions. In the context of these case studies, the class will discuss criminal statistics and how they can be interpreted.
The lecture will also cover other institutions or organizations than courts that can involve themselves in out of court negotiations about discrimination cases. Last, but not least, the lecture sheds light on alternative dispute resolution such as mediation and restorative justice.

In addition to the Power Point presentations focusing on definitions, concepts and proceedings, case law and case studies will be used to illustrate what kind of sanctions can be used. In between these materials, the lecturer will raise questions that will trigger discussions.

### Objectives

The lecture will achieve the following:

- Give students an understanding of the legal framework for protection against discrimination
- Ensure that students know that discrimination law provides for different legal mechanisms of protection against discrimination (civil, labor, criminal, administrative)
- Enable students to identify the specificities of each of the different proceedings available
- Make students familiar with the aims of remedies and sanctions and the different types of remedies and sanctions available
- Give students an understanding of out of court possibilities of protection against discrimination, such as mediation and restorative justice
- Provide students with the opportunity to interpret criminal statistics in the area of discrimination
- Ensure that students can identify the advantages and disadvantages of different mechanisms of protection against discrimination

### IV. Description of the workshop

### Content and Main Questions Addressed

The workshop focuses on strategic litigation and the utilization of statistical evidence.

The objective of strategic litigation is to make significant changes in law or legal practice through litigation of carefully selected cases. Strategic litigation can promote
rule of law, legal education, the documentation of injustice, government accountability, change public attitudes and empower vulnerable groups.

According to Equinet, strategic litigation is a method used to select suitable cases (‘test cases’) to bring to court in order to achieve a specific outcome. The intention is that these legal proceedings will have a positive broader impact on law and policy development as well as setting a precedent for the outcome in similar cases. The objectives of strategic litigation can be:

Intra-legal - such as the interpretation, application and content of the law in question. For example, strategic litigation can establish whether certain treatment is direct or indirect discrimination.

Or strategic litigation can be extra-legal aiming at raising awareness and/or putting pressure on relevant actors to take measures to prevent discrimination.

The objective of strategic litigation is to achieve one or more of the results listed below:

- To clarify or establish a point of law / the meaning of a particular legal provision
- To effect a change in the law
- To obtain judicial clarity on the application of equality and non-discrimination law
- To establish that non-discrimination law covers or does not cover a particular situation
- To highlight a serious issue such as a policy or practice which has a negative effect on many people, as part of a wider campaign for legal and social change
- To ensure that non-discrimination law is upheld
- To overturn “bad” case law
- To establish legal precedent, enabling others to enforce their rights more confidently

It is key to define criteria for selecting cases that lend themselves to strategic litigation. There are strategic criteria for cases that could do the following:

- Clarify or strengthen the law
- Increase compliance with the law
- Shed light on a particular problem
- Concern serious infringement of the law with regard to its nature or scale
- Concern widespread infringement of law

Practical criteria such as:
• required resources are available and proportionate to the expected result
• type of client
• type of case
• facts of the case are clear and strong
• sufficient evidence of discrimination
• availability of partners ready to support the case
• impact assessment on affected groups and on the strategic goal sought in case of unsuccessful litigation
• how can the case be publicized to influence public opinion to support the strategic objective?

Discuss individual cases with the students and ask them why the specific cases do (not) qualify for strategic litigation. What are the advantages and disadvantages of strategic litigation? What are the risks? Who can be involved in strategic litigation (e.g. NGOs, attorneys specializing in anti-discrimination law, equality bodies, ombudsman institutions)?

Some examples of strategic litigation are: Brown v Board of Education Decision (US Supreme Court, 1954), Nachova and Others v. Bulgaria (ECHR, 2005), D.H. and Others v. the Czech Republic (ECHR, 2007), Bączkowski and Others v. Poland (ECHR, 2007) and Opuz v. Turkey (ECHR, 2009). The Equinet Handbook on Strategic Litigation contains examples of case law of strategic litigation (pp. 10 - 15).

Sound evidence is especially important in strategic litigation, as unsuccessful strategic litigation can have a strong impact on future development of legal provisions or large groups affected by discrimination. A special kind of evidence is statistical evidence, which can be especially helpful in proving indirect discrimination. The ECHR has in some recent cases (among them D.H. and Others v. Czech Republic (Application no. 57325/00)), in which the applicants alleged a difference in the effect of a general measure or de facto situation, extensively relied on statistics produced by parties to establish a difference in treatment between two groups in similar situations. The ECHR sees reliable and significant statistics as sufficient to constitute the prima facie evidence the applicant is required to produce, when the impact of a measure or practice on an individual or group is assessed. This indicates that the burden of proof is shifted to the respondent. Statistical evidence is not an exclusive proof of indirect discrimination.

What kind of statistics can the students think of that could be useful as evidence? E.g. share of women among the management staff of an enterprise, share of Roma children in a school, number of employees with disabilities in a company, amount of salary broken down by gender within a specific group of staff members at the same
seniority level, etc. What are the challenges in collecting data that show that certain measures have disparate impact on different groups? What are the risks involved in collecting data on groups potentially affected by discrimination?

One tool for generating data in proving direct discrimination is situation testing. Situation testing is an experimental method aiming to establish discrimination “on the spot”. This method brings to light practices whereby a person who possesses a particular characteristic (e.g. Roma origin, black skin) is treated less favorably than another person who does not possess this characteristic in a comparable situation.

A situation is set up, which is a sort of role play, where a person (e.g. a realtor letting or selling apartments, a human resource manager interviewing job applicant, bouncers at a nightclub, a manager of restaurants) is placed in a position where s/he may discriminate without suspecting that s/he is being observed. This person is presented with fictional “candidates”, some of whom possess a characteristic which may incite discriminatory behavior. Observers aim to measure his/her behavior towards people bearing this characteristic compared to others without it.

Discuss with the students what are the advantages and risks of discrimination testing. Challenges include the generation of comparable and representative data, guaranteeing fairness and credibility, ensuring careful planning and documentation and ethical issues when people are knowingly exposed to discrimination.

The booklet on “Proving discrimination cases, the role of situation testing” edited by the Center for Equal Rights & the Migration Policy Group contains many examples of situation testing and useful guidelines on how to implement discrimination testing. There is also a short guideline on testing the access to night clubs that is available in the booklet.

**Brief description of how student learning will be enabled (teaching method/strategy)**

The workshop will begin with inputs on strategic litigation and the collection and generation of data for proving indirect and direct discrimination.

Group work will focus on identifying which of the case studies distributed to the students would or would not be cases for strategic litigation. What could the strategic objective of the respective case be? Which strategic and practical criteria for selecting a case are fulfilled? Who could be strategic partners in litigating and publicizing the case?
A role play can look into how data generated by discrimination testing can be used in court to evidence direct discrimination. Select a case alleging discrimination on the ground of ethnicity in access to a nightclub or restaurant, on the ground of sexual orientation when wanting to rent an apartment, or on the ground of age when applying for a job. Students should think about how to plan and implement situation testing and how to argue the case in court. Possible roles for students could be judge, attorney, NGO representative or equality body representative, victim of discrimination, people involved in the testing and journalist.

### Objectives

The workshop

- Makes students familiar with the concept of strategic litigation
- Gives students an understanding of the objectives and the risks of strategic litigation
- Ensures that students understand the criteria for selecting adequate cases for strategic litigation
- Gives students the opportunity to apply the selection criteria for strategic litigation to real cases
- Ensures that students understand the importance of statistical data for proving both direct and indirect discrimination
- Encourages students to get acquainted with the challenges and risks of collecting data on groups at risk of discrimination
- Makes students familiar with the method and risks of situation testing
- Enables students to experience how discrimination testing is implemented and used in court in the framework of a role play.

### V. Learning objectives

After students have participated in the lecture and the workshop the students will have learned ...

(knowledge gained in relation to the objectives defined above)

Students will be able to do the following:

- Identify different mechanisms for protection against discrimination (in court, out of court)
• Recognize the differences in and specificities of the legal mechanisms of protection against discrimination (civil, labor, criminal, administrative)
• Analyze whether remedies and sanctions are effective, proportionate and dissuasive
• Select the adequate mechanism for protection against discrimination in the context of a discrimination case
• Choose the most suitable sanction in the context of a discrimination case
• Critically assess the meaningfulness of criminal statistics on discrimination cases
• Recognize the significance of strategic litigation in achieving change at societal level
• Assess the limitations and risks of strategic litigation
• Apply the selection criteria for strategic litigation to real cases
• Give examples of statistical data that can be used as evidence in proving discrimination
• Identify challenges and risks of collecting data on groups at risk of discrimination
• Recognize cases, in which situation testing is a valuable tool for generating evidence
• Make use of the method of situation testing

VI. Literature and background material for the lecture and workshop

Books

Lecture


Petrušić N, Krstić I, Marinković T, Komentar Zakona o zabrani diskriminacije, Beograd: Pravosudna akademija, 2014


Workshop


Academic papers / articles

Lecture


Petrušić N, Molnar A, The *status and correlations between the Ombudsman and the Commissioner for the protection of equality in the Serbian legal system*, Legal, social and political control in national, international and EU law: collection of papers, Niš : Faculty of Law, 2016, pp. 79-98. [link](http://www.prafak.ni.ac.rs/files/centar_pub/zbornik-skup-2016.pdf)


Toms N, *Remedies and sanctions for unlawful discrimination*, s.a., [link](http://www.era-comm.eu/oldoku/adiskri/04 remedies/2008_toms_en.pdf)


**Workshop**


**Legislation (national and international)**


National anti-discrimination laws National civil procedure codes

**Case law / jurisprudence**


ECtHR, Opuz v. Turkey, 9 September 2009, Application no. 33401/02, https://hudoc.echr.coe.int/eng#{%22itemid%22:[]}

ECtHR, D.H. and Others v. Czech Republic, 7 February 2006, Application no. 57325/00, https://hudoc.echr.coe.int/eng#{%22item_id%22:[]}


ECtHR, Bączkowski and Others v. Poland, 3 May 2007, Application no. 1543/06, https://hudoc.echr.coe.int/eng#{%22item id%22:[]}


Rev. 3602/10, Vrhovni kasacioni sud (Serbia), case on disability, https://www.vk.sud.rs/sr/%D1%80%D0%B5%D0%B2-360210-%D0%BD%D0%B0%D0%BA%D0%BD%D0%B0%D0%B4%D0%BD-%D1%88%D1%82%D0%B5%D1%82%D0%B5-%D0%B0%D0%BA%D1%82-%D0%B4%D0%B8%D1%81%D0%BA%D1%80%D0%B8%D0%B-C%D0%B8%D0%BD%D0%B1%86%D0%B8%D1%98%D0%B5
Annex 6

Guideline for testing night clubs for access discrimination based on race or ethnic origin

Carefully inquire about what domestic legal provisions protecting against discrimination say about discrimination testing, e.g. are there some procedural rules and/or pre-requisites to be fulfilled. In some countries, like in Serbia, the equality body (i.e. Commissioner for Protection of Equality), has to be informed about the testing, when the data generated will be used in litigation.

- **Selection of a club**: Pick a club, where people have (allegedly) been denied access because of their skin color or ethnic origin before. Examine the surroundings of the premises to find out where the test persons, the testing team and the media team can be placed during the procedure.

- **Careful selection of 2-3 test persons** (appearance, age, gender): Test persons should in their appearance conform to certain “stereotypical notions” of persons belonging to majority and minority groups. The characteristic skin color (as a ground for discrimination) is in the foreground of the test. Clothing and shoes should comply with the rules of the club tested.

- The **testing team** should consist of 2-3 persons. Their tasks: lead and coordinate the testing procedure, brief people involved, document the testing, protect test persons, talk to bouncers and club manager.

- **Briefing of the media team**: Ideally, involve journalists who are familiar with the topic and have already worked with it. Everybody should know what his/her role is during the testing procedure. During the procedure, special care must be taken that, while the test persons enter the restaurant individually, neither cameras nor journalists are visible to the bouncers.

- **Testing procedure**: The test persons try to enter the club one by one, the first test person returns to the testing team and the events are discussed. This is repeated until all test persons have tried to enter the club. If a person is denied access, the testing team asks the bouncer for the reason for the refusal of entry only after the last test person has attempted to enter the premises. When talking to the bouncers or the club manager it is important to name the name of the testing organization, to explain that the club has just been tested, to explain the testing process, and to ask for comments and explanations. NEVER send test persons themselves into confrontation and inquiry. The statements of the bouncer or the club manager must be documented including their names, the name of the club, the address, the date and the time of the events. The testing is also an opportunity to raise awareness among bouncers and club managers for the legal provisions on prohibiting discrimination on the ground...
of race or ethnic origin when accessing public goods and services.

- **After the testing** has been conducted, the process is discussed with the entire team and documented in precise way. Therefore, it is essential to take a notepad and a pen or a recording device with you. The documentation should include: the name and address of the club, the date and time of the events, the statements of the test persons for their treatment by the bouncers/club manager, the names of the bouncers/club manager, statements and justifications of the bouncers/club manager for the denial of access.
LECTURE 5

“PROCEDURAL ASPECTS (CIVIL PROCEDURE)” OR “SHOULD I LITIGATE OR SHOULD I (LET IT) GO?”

I. Information on the lecturer

<table>
<thead>
<tr>
<th>First and Last Name</th>
<th>Position and employer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anđelija Tasić</td>
<td>Assistant Professor,</td>
</tr>
<tr>
<td></td>
<td>Faculty of Law, University of Niš</td>
</tr>
</tbody>
</table>

II. Basic information on the lecture and workshop

<table>
<thead>
<tr>
<th>Title</th>
<th>Key words</th>
</tr>
</thead>
<tbody>
<tr>
<td>Procedural aspects (civil procedure) or Should I litigate or should I (let it) go</td>
<td>Civil procedure, litigation, strategic litigation, burden of proof, situation testing, statistics, decision, enforcement</td>
</tr>
</tbody>
</table>

Brief description of the previous knowledge expected

- General principles of civil procedure
- Basic knowledge about how to draft a civil lawsuit
- Rules on the jurisdiction
- Rules on burden of proof
- Concept of human rights - protection on the international and constitutional level
III. Description of the lecture

Content and Main Questions Addressed

Civil procedure in anti-discrimination lawsuits is a special procedural method of civil law protection against discrimination. The lecture will focus on the basic principles governing litigation in anti-discrimination lawsuits, the participants in these proceedings, as well as the form, the content and the effects of litigation, including special rules about shifting the burden of proof, which are essential for providing effective protection against discrimination. The specific rules about the parties’ legal capacity, the content and legal nature of claims, the course of proceedings, judicial decisions and legal remedies will be analyzed in detail.

Jurisdiction. In proceedings initiated for the purpose of protection against discrimination, apart from the local court of general jurisdiction, the court situated in the area where the plaintiff’s head office or residence is located shall also have jurisdiction over the proceedings.

This rule should be discussed with the students - should it also refer to the equality body (ombudsman/Commissioner/other state authorities) and organizations for protection against discrimination, or only to the victim of discrimination?

Parties. Various subjects are entitled to bring a lawsuit include the following:

- A person directly or indirectly affected by discrimination
- An equality body, an organization engaged in the protection of human rights or the rights of a certain group of people
- A person who had deliberately exposed him-/herself to discriminatory treatment intending to directly verify the application of the regulations pertaining to the prohibition of discrimination (‘test person’)

Discuss with your students which subjects are entitled to bring a lawsuit according to the national rules of procedure. Should it, perhaps, be an actio popularis?

Reminder on organizations entitled to bring a lawsuit: Member States shall ensure that associations, organizations 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 or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive (both Racial and Equality Directives).
The following questions should be raised:

- Could legal entities be affected by discrimination?
- Under which circumstances could groups be affected by discrimination?
- What about a member of a family, or a person close to the one affected by discrimination?

Try to come up with examples.

Students should be introduced to the term ‘situation testing’.

**Type of claims.** It should be explained that different claims could be issued:

- A ban on an activity that poses a threat of discrimination
- A ban on continuing a discriminatory activity
- A ban on repeating a discriminatory activity
- Establishing discrimination - the defendant has treated the plaintiff or another party in a discriminatory manner
- Redress the consequences of a discriminatory treatment
- Compensation for material and non-material damage
- Publishing of the decision

Students should recognize the answers to the following questions:

- Which goals are achieved with each claim?
- Which claims make general prevention possible?
- Who can redress the consequences of discrimination?

When taking a case to court the **prohibition of victimization** (i.e. prohibition of calling to account in many laws in SEE) is an essential protection mechanism for witnesses. **Discrimination shall exist if** an individual or a group of persons is unwarrantedly **treated worse than others** are treated or would be treated, solely or predominantly on **account of requesting** or intending to request **protection from discrimination**, or due to **having offered** or intending to offer **evidence of discriminatory treatment**.

Students should discuss whether those provisions are encouraging enough to pursue a claim or testify in front of a court.

**Shifting the burden of proof.** If the plaintiff proves the likelihood of the defendant having committed an act of discrimination, the burden of providing evidence that no violation of the principle of equality or the principle of equal rights and obligations has occurred shall fall on the defendant.

The preambles of the Race and Equal Treatment Directives states that “**[t]he rules on the burden of proof must be adapted when there is a prima facie case of discrimination and, for the principle of equal treatment to be applied effectively,**
the burden of proof must shift back to the respondent when evidence of such discrimination is brought.”

Discuss with your students the development of case law regarding the burden of proof in front of the ECtHR using the cases of Nachova v. Bulgaria and Stoica v. Romania.

From 2005 onwards, in cases where specific rules or particular measures have been shown to have a disproportionate impact on women or Roma, the ECtHR has called for the burden of proof to be shifted.

In order to achieve a shifting of the burden of proof, it is important to be able to provide evidence that proves the likelihood of the defendant having committed an act of discrimination. Collecting data and providing statistical evidence can be one way of proving this likelihood.

Data collection. According to the two above mentioned directives, data collection is relevant for the following:

- Cases of indirect discrimination
- Introducing and assessing positive action provisions
- Promoting social dialogue
- Enabling independent bodies to conduct independent surveys concerning discrimination
- Publishing independent reports
- Making recommendations on any issue relating to discrimination

Use of statistics. When it comes to assessing the impact of a measure or practice on an individual or group, the use of statistics may be relevant. In particular, statistics which appear on critical examination to be reliable and significant will be sufficient to constitute prima facie evidence of indirect discrimination. The ECtHR confirmed, however, that statistics are not a prerequisite for a finding of indirect discrimination.

The shortcomings of the existing legislative framework and difficulties in its enforcement when it comes to procedural rules should be examined on the basis of a critical analysis of legal norms and the research of case law. One way of alleviating these challenges could be the establishment of guidelines for the normative and practical development of a civil procedure in discrimination lawsuits, with the aim to increase the efficiency and effectiveness of such proceedings as remedies against discrimination.

The following are some ideas for procedural rules that could contribute to making proceedings more effective.

Introduce legal provisions speeding up court procedures – e.g. the first hearing should be appointed within a period of 15 days of the day the claim was submitted to court or the first instance decision should be taken within a period of six months.
- Always allow judicial review
- Ask the students to reflect on whether there should or should not be a time limit for taking a discrimination claim to court
- The plaintiff can demand the court to pass a temporary measure in order to prevent discriminatory treatment, with a view to eliminating the danger of violence or some major irreparable damage. The court can issue such a measure when a lawsuit is initiated, in the course of the proceedings and after the termination of the proceedings, until the court decision is enforced
- Measures aiming at significantly reducing the costs of proceedings for discrimination cases. The proceedings in front of equality bodies are always free
- Providing for free legal aid in discrimination cases

Encourage the students to assess which of the procedural rules above might encourage people affected by discrimination to take their case to court.

In order for judgments, in which discrimination is established, to have an effect on the situation of the plaintiff and for society as a whole, the judgments need to be enforced.

The most important aspects covered by the lecture are the following:
- Special elements of proceedings in discrimination cases (e.g. protection against victimization, shift of the burden of proof)
- Range of parties that can be involved in a discrimination case (e.g. victim, person close to the victim, NGO, equality body, ombuds institution, actio popularis)
- Legal protection of public and private interests in discrimination cases
- Prerequisites for shifting the burden of proof in a discrimination case
- Use of statistics in providing evidence in discrimination cases. The wide range of claims that can be submitted in discrimination cases

**Brief description of how student learning will be enabled (teaching method/strategy)**

The lecture is supported by a PowerPoint presentation, which contains key information on rules of procedure, such as jurisdiction, parties, claims, evidence/burden of proof and enforcement.
The lecturer should trigger the students’ interest by giving examples and raising questions concerning challenging aspects of proceedings in discrimination cases. Assign students individually to find decisions by the national equality body and compare both the proceedings and the decisions to court proceedings and judgments.

**Objectives**

The lecture makes students
- Recognize the specifics of litigating discrimination cases
- Understand the special elements of the rules of proceedings in discrimination cases
- Understand the importance of collecting evidence to prove the likelihood of discrimination
- See the importance of collecting and using statistic data
- Improve skills in identifying the essential elements of discrimination cases with a view to procedural issues

Recognize mechanisms which can increase the efficiency and effectiveness of proceedings

**IV. Description of the workshop**

**Content and Main Questions Addressed**

The workshop will cover two main issues:

1. Analyzing both the jurisprudence of national courts and the European Court of Human Rights (in EU Member States and candidate countries it might also be interesting to analyze CJEU case law)
2. Writing an anti-discrimination lawsuit

For the first part, special attention should be paid to shifting the burden of proof and to making use of evidence.

**Use of evidence.** Example of national case law (Serbia): A man and a woman applied for the position of waitress, the man applied even though it was stressed that the company was searching for a woman. A man was refused or offered another position.

An Interesting fact is that the case shows gender discrimination in an employment case in favour of a woman.
By role playing, students could exchange arguments from the position of the person discriminated, as well as from the position of the discriminator, trying to justify the discriminatory measures taken.

**Shifting the burden of proof** could be discussed through the following cases:

**Danfoss A/S trade union** brought a case on behalf of female workers working for the company Danfoss a/S. The employees’ union maintained that Danfoss’s practices regarding wages and salaries were discriminatory and therefore violated the provisions of the Danish law implementing the 1975 Equal Pay Directive. Statistics relating to the wages paid to 157 workers between 1982 and 1986 were generated. They showed that the average wage paid to men was 6.85% higher than that paid to women although the basic wages of female and male employees were the same, the employer made pay supplements calculated inter alia, on the basis of mobility, training and seniority. The European Court of Justice, now called CJEU, pointed out that “in a situation where a system of individual pay supplements which is completely lacking transparency is at issue, female employees can establish differences only so far as average pay is concerned. They would be deprived of any effective means of enforcing the principle of equal pay before the national courts if the effect of adducing such evidence was not to impose upon the employer the burden of proving that his practice in the matter of wages is not in fact discriminatory”. As a result, the Court decided that "the Equal Pay Directive must be interpreted as meaning that where an undertaking applies a system of pay which is totally lacking in transparency, it is for the employer to prove that his practice in the matter of wages is not discriminatory, if a female worker establishes, in relation to a relatively large number of employees, that the average pay for women is less than that for men.”

Dr Pamela Enderby, a speech therapist, brought a sex discrimination claim - members of her overwhelmingly female profession were appreciably less well paid than members of comparable professions (such as clinical psychologists and pharmacists) in which, at an equivalent professional level, there were more men than women. Usually a person alleging facts in support of a claim must adduce proof of such facts. Thus, in principle, the burden of proving pay discrimination on the ground of sex lies with the worker who alleges discrimination and brings legal proceedings against his/her employer with a view to removing the discrimination. However, it is clear from the case-law of the European Court of Justice that the onus may shift when it is necessary to avoid depriving workers who appear to be the victims of discrimination of any effective means of enforcing the principle of equal pay.

Where there is a **prima facie case of discrimination**, it is for the employer to show that there are objective reasons for the difference in pay.

Workers would be unable to enforce the principle of equal pay before national courts if evidence of a prima facie case of discrimination did not shift to the employer the onus of showing that the difference in pay is not in fact discriminatory.
Discuss the cases of Hoogendajk v Netherlands and D.H. v. the Czech Republic.

In the case of Hoogendajk v Netherlands, official figures showed that greatly more women than men were adversely affected by an amendment removing the discriminatory exclusion of married women from the relevant security scheme while at the same time seeking to keep the costs of the scheme within acceptable limits. In the case of D.H. v the Czech Republic, the ECtHR stated that “[w]hen it comes to assessing the impact of a measure or practice on an individual or group, the use of statistics may be relevant. In particular, statistics which appear on critical examination to be reliable and significant will be sufficient to constitute prima facie evidence of indirect discrimination. The Court confirmed, however, that statistics are not a prerequisite for a finding of indirect discrimination.”

Discuss with your students whether Europe learned something from the case of D.H. and Others v. the Czech Republic. Then introduce the case of Orsus and Others v. Croatia.

In the case of D.H. and Others v. the Czech Republic, the ECtHR found (based on statistical evidence) that there was no general policy to automatically place Roma pupils in separate classes in the two schools the plaintiffs attended. The statistics submitted did not suffice to establish that there is prima facie evidence that the effect of a measure or practice was discriminatory. However, indirect discrimination as established in the case of D.H. v. Czech Republic may be proved without statistical evidence. The ECtHR noted that the measure of placing children in separate classes on the basis of their insufficient command of the Croatian language was applied only in respect to Roma children in several schools in a specific county of Croatia, including the two schools attended by the plaintiffs. The ECtHR established that the measure in question clearly represented a difference in treatment.

Did Serbia learn something? Point to a complaint based on discrimination on the ground of nationality in the field of education, which was submitted to the Commissioner for Protection of Equality, who established discrimination, as Roma children were segregated in separate classes in elementary school (Pritužba D. z. r. d. m. protiv OŠ A. s. l. d. zbog diskriminacije na osnovu nacionalne pripadnosti u oblasti obrazovanja, see: http://ravnopravnost.gov.rs/ rs/prituza-d-z-r-d-m-protiv-os-a-s-l-d-zbog-diskriminacije-na-osnovu-nacionalne-pripadnosti-u-oblasti-obrazovanja/). Or maybe you find a similar national case of discrimination of children.

1. The lecturer should prepare an adequate example based on which students will compose a discrimination lawsuit. The following are some examples:

Example 1. Two Roma girls, pupils of a catering school, wanted to do an internship in a nearby bakery. The owner of the bakery refused them the opportunity to do an internship. She explained that customers would avoid the bakery if she provided the two Roma girls with an opportunity to do an internship. However, the owner of the
bake - er was willing to sign the document that they had finished their internship, since they could not pass their exam without providing the signed document to their school.

**Example 2.** Ms. A was on maternity leave after giving birth to her third child. When she returned to her job as a radiologist and head of the radiology department, the hospital stripped her of her position as head of the radiology department, she was allowed to stay on working as a radiologist. Another female doctor was given the position as head of the radiology department. Ms. A felt discriminated and pointed out that hospitals discriminated many women in the same way after returning to their job from maternity leave.

**Brief description of how student learning will be enabled**

(teacher method/strategy)

The lecturer could use the following methods:

- Discussion
- Individual assignments
- Group work
- Role play
- Moot court
- Composing a discrimination lawsuit

**Objectives**

The workshop will make students be able to do the following:

- Decide what kind of evidence is most appropriate for proving an act of discrimination
- Become familiar with case law involving shifting of the burden of proof
- Make proper use of statistics in evidencing discrimination
- Compose a discrimination lawsuit
V. Learning objectives

After students have participated in the lecture and the workshop the students will have learned ... (knowledge gained in relation to the objectives defined above)

In the context of anti-discrimination law, students will be able to do the following:

- Recognize how the rules of proceedings in discrimination cases differ from the rules of general procedure
- Identify who is entitled to bring a discrimination lawsuit in front of a court
- Differentiate which public and/or private interests can be protected by a discrimination lawsuit
- Assess when the prerequisites for shifting the burden of proof have been fulfilled
- Make use of statistics in order to evidence discrimination
- Identify what kind of claims a plaintiff can assert in a discrimination lawsuit
VI. Literature and background material for the lecture and workshop

Books


Academic papers / articles

Bodoreg B, Legal standing - the practical experience of a Hungarian organization, European anti-discrimination law review, 5/July 2007, pp. 23 - 29


**Legislation (national and international)**


National anti-discrimination acts National civil procedure codes

**Case law / jurisprudence**

*Nachova and Others v. Bulgaria*, Application no. 43577/98 and 43579/98, [https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-69630%22]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-69630%22]})

*Hoogendijk v. Netherlands*, Application no. 56641/00, [https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-68064%22]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-68064%22]})
Stoica v. Romania, Application no. 42722/02, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%222001-85308%22]}

D.H. and Others v. the Czech Republic, Application no. 57325/00, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%222001-83256%22]}

Orsus and Others v. Croatia, Application no. 15766/03, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%222001-97689%22]}

Rev 853/2014, Vrhovni kasacioni sud (Serbia),

Rev 3602/10, Vrhovni kasacioni sud (Serbia), https://www.vk.sud.rs/sr/%D1%80%D0%B5%D0%B2-360210-%D0%BD%D0%B0%D0%BA%D0%B-D%D0%B0%D0%B4%D0%B0-%D1%88%D1%82%D0%B5%D1%82%D0%B5-%D0%B0%D0%BA%D1%82-%D0%B4%D0%B8%D1%81%D0%B-A%D1%80%D0%B8%D0%BC%D0%B8%D0%B-D%D0%B0%D1%86%D0%B8%D1%98%D0%B5


Pritužba D. z. r. d. m. protiv OŠ A. s. l. d. zbog diskriminacije na osnovu nacionalne pripadnosti u oblasti obrazovanja, http://ravnopravnost.gov.rs/rs/ prituzba-d-z-r-d-m-protiv-os-a-s-l-d-zbog-diskriminacije-na-osnovu-nacionalne- pripadnosti-u-oblasti-obrazovanja/

Other (please specify)
Врховни касациони суд, у већу састављеном од судија: Љубица Милутиновић, председника већа, Јасминке Станојевић и Виљање Драгојевић, чланова већа, у парници тужиоца Повереника за заштиту равноправности кога заступа Наташа Косановић, адвокат из Београда, против туженог ,,Nicefoods restoran“ ДОО Београд, кога заступа адвокат из Адвокатског одговорног друштва „Државна, Бановска и Стојановић“ из Београда, ради дискриминације, одлукујући о резолуцији тужиоца изјављеној против решења Вишег суда у Смедереву Г ж 840/13 од 02.10.2013. године, у седници већа одржаној дана 03.09.2014. године, довео је:

РЕШЕЊЕ

УКИengeance СЕ решење Вишег суда у Смедереву Г ж 840/13 од 02.10.2013. године и решење Првог основног суда у Београду П 16041/2012 од 30.10.2012. године врши праће Првом основном суду у Београду на поправно судење.

ОБРАЗЛОЖЕЊЕ

Решењем Првог основног суда у Београду П 16041/2012 од 30.10.2012. године одбијена је тужба тужиоца поднета против туженог због дискриминације.

Решењем Вишег суда у Смедереву Г ж 840/13 од 02.10.2013. године одбијена је као неоснована жалба тужиоца и потврђено првостепено решење.

Против другостепеног решења тужилац је изјавио резолуцију због битних повреда одредних паричног поступка и погрешне примене материјалног права.

Тужени је дао одговор на резолуцију.

Испитујући правилности побијаног решења у смислу чланов 408. ЗПП („Спомени гласних РС“ бр. 72/2011), Врховни касациони суд је нашао да је резолуција основана.

Тужилац је поднео тужбу против туженог наводећи да је обезбеђење туженог 10.07.2012. године забрањено малолетњој деци ромске националне припадности узроком у ресторан „Mcdonalds“ у Новом Саду. Деша се у пратњи одређеног лица које се поводом овог догађаја обратило тужиоцу притужбе, те да су о овом догађају обзиром њеном младинском постепеном и медија. Предмет туженог захтева је да се утврди да је тужени забранило узвикно деци ромске националне припадности у ресторан „Mcdonalds“ у Новом Саду, Трг слободе број 3, извршио непосредну дискриминацију у пружању јавних услуга и коришћењу објеката и површина на основу националне припадности и да се због тога забрани туженом да узрокује обвештања његове делатности понуђања акт дискриминације одбијањем пружања услуга или забраним коришћењем објекта припадницима ромске националне мањине уз налог туженом да изузу пресуду објави.
Joint Reader - Supporting the Implementation of a Course on “Legal Protection Against Discrimination in Southeastern Europe”

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Revision 853/2014

Закључујући да Повереник, тужилац у овој парници, није прибављао сагласност дискриминисаних лица за подношење тужбе и да није спровело поступак по поднетој пратњи, нијестепени судови су закључили да тужилац нема активну легитимацију за подношење тужбе, због чега су одакле поднету тужбу одбијали.

Основано се у резултату указаје да је становниште нијестепених судова засновано на погрешној примени материјалног права, због чега је изостао и утврђено правно релевантних циљевица.

Према члану 41. Закона о забрани дискриминацији, („Службени гласник PC” број 22/09) свако ко је поверећи дискриминааторским поступцима има права да поднесе тужбу суду. По члану 43. истог закона тужбом из члана 41, став 1. овог закона може се тражити: 1. забрани извршена радња од које прети дискриминације, забрани даљег вришења радње дискриминације, односно забрани понављање радне дискриминације; 2. утврђење да је тужени дискриминааторски поступак према тужиоцу или другоме; 3. извршење рада ради уклањања последица дискриминааторског поступања; 4. накнада материјалне и нематеријалне штете; објављивање пресуде доцете поводом неке од тужби из тачке 1. – 4. овог члана. Чланом 46. прописано је да тужбе из члана 43. тачке 1, 2, и 3. и тачке 5. може поднети Повереник и организација која се бави заштитом људских права односно права одређене групе лица. Ставом 2. исте одредбе прописано је да ако се дискриминаторско поступање односно искључива на одређено лице, тужиоц из става 1. овог члана могу поднети тужбу само уз њихов присустанак у писменом облику. Поступање пред Повереником прописано је одредбама чл. 35. – 40. Закона о забрани дискриминације.

Из цитираних законских одредби прозилази да Повереник тужбу за утврђење дискриминације може поднети у име одређеног лица само уз његов присустанак у писменом облику. Међутим, ако се тужба за утврђење дискриминације односи на групу лица, о чему је у овој парници реч, Поверенику није, како то потражено сматрају нијестепени судови, потребно овлашћење. Наиме, тужба у овој правној ствари односи се на утврђење дискриминације коју је извршио тужени према одређеној групи лица – деци ромске националности. С обзиром да тужба није усмерена на утврђење дискриминације против одређеног лица у ком случају би поверенику било неопходно писмено пуномоће за подношење тужбе у овој правној ствари, већ за дискриминацију која је извршена према одређеној групи: неодређеном броју лица – деци ромске националности, Поверенику, по оценi Врховног касационог суда није било неопходно писмено пуномоће за подношење тужбе у овој правној ствари, витије подношење тужбе од стране повереника условљено подношењем пратње ни оконачањем поступка Повереника по уложеној пратњи.

С обзиром да Поверених има активну легитимацију у овом поступку, нијестепена решиња су морала бити укинута. У поновом поступку првостепени суд ће мериторно одлучити о основаности тужбеног захтева пошто претходно извеле све потребне доказе.

На основу члана 416. став 2. ЗПП у вези члана 420. став 6. ЗПП, одлучено је као у изречци.

Председник већа – судија
Љубица Милутиновић, с.р.

Захваћених одбија
Управник и директор
Марина Антонић

СР
# LECTURE 6

"SANCTIONING DISCRIMINATION"

## I. Information on the lecturer

<table>
<thead>
<tr>
<th>First and Last Name</th>
<th>Position and employer</th>
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<tbody>
<tr>
<td>Žaneta Poposka</td>
<td>Ass. Prof.</td>
</tr>
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<td></td>
<td>Law Faculty, University Goce Delčev – Štip</td>
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</tbody>
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## II. Basic information on the lecture and workshop

<table>
<thead>
<tr>
<th>Title</th>
<th>Key words</th>
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<tr>
<td>Sanctioning Discrimination</td>
<td>Remedies, sanctions, dissuasive, proportionate, effective remedy</td>
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**Brief description of the previous knowledge expected**

- Knowledge of the phenomenon of discrimination and constitutive elements of different forms of discrimination
- Basic knowledge of civil procedure law and tort law
III. Description of the lecture

Content and Main Questions Addressed

The phenomenon of discrimination has been recognized in international law, the European Convention on Human Rights and European Union law, subsequently the anti-discrimination Directives, and its personal and material scope of protection is clearly defined. Effective protection and mechanisms for countering discrimination including *inter alia* sanctions that are dissuasive, proportionate and effective in every national context are an obligation stipulated in anti-discrimination law on international and national level. Namely, as societies nowadays no longer only understand equality as formal equality (i.e. all are equal before the law), but also as substantive equality (i.e. assessing the impact of an action taken not only the treatment) the question of access to justice and effective remedies comes to the forefront of discussions. As stated by Directive 2006/54/EC “[t]he provision of adequate judicial or administrative procedures for the enforcement of the obligations imposed by this Directive is essential to the effective implementation of the principle of equal treatment.” (Preamble, recital 29). More precisely, without adequate remedies and sanctions as well as their enforcement there is no effective implementation of anti-discrimination legislation. Practice shows that effective remedies are seen as crucial to encourage victims to seek justice. But, the concept of sanctions evolved throughout the years, from a narrow sense of punitive and penalizing measures aimed at redress for victims of discrimination, to a broader sense of measures addressing discrimination at societal level.

This duty to provide for effective legal remedies in cases of discrimination is stipulated in the vast majority of international and regional human rights instruments, such as: International Convention on the Elimination of All Forms of Racial Discrimination (Article 6), Convention on the Elimination of Discrimination Against Women (Article 2(c)), Convention on the Rights of Persons with Disabilities (Article 13). In addition, the United Nations adopted the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law in 2005, where the types of compensation and remedy that should be available are elaborated. On regional European level, the European Convention on Human Rights (Article 13) as well as the Charter of Fundamental Rights of the European Union (Article 47) are clearly stipulating the duty for effective legal remedies. Furthermore, Article 17 of Directive 2000/78/EC provides that “Member States shall lay down the rules on sanctions 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 sanctions, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive.” Essentially the same substance can be observed in the provisions of other secondary legislation of the Union, such as Directive 2000/43/EC (Article 15), Directive 2004/113/EC (Article 14), Directive 2006/54/EC (Article 18 and 25), Proposal for a Directive COM(2008)246 final (Article 14), and Directive 2010/41/EU (Article 10).

Thus, the basic principle that an effective judicial defense of rights is necessary and procedural rules must be no less favourable is set, especially in requiring the sanctions to be effective, proportionate and dissuasive. However, the international human rights instruments do not provide detailed guidance regarding the nature of such sanctions. The Court of Justice of the European Union has so far provided guidance only on two issues - In the Asociatia Accept case. First, the Court noted that purely symbolic sanctions cannot be regarded as compatible with the correct and effective implementation of the non-discrimination principle. Second, this requirement should apply individually to each remedy made available in the national system (Case C-81/12 Asociatia Accept v Consiliul National pentru Combaterea Discriminarii [2013]). No other standards for sanctions have been set so far, the Member States have retained autonomy over procedural law, i.e. the interpretation of the standards for sanctions and deciding on the modus operandi. Thus, regimes of sanctions vary from country to a country, depending predominantly on the aim of the respective anti-discrimination legislation, the legal context and legal tradition in each country.

The lecture elaborates the position of the remedies and sanctions in the existing anti-discrimination legislation, specifically the European Union law. More precisely, the lecture analyzes the types of sanctions available in different national legislations, among others the administrative sanctions and fines, compensation of pecuniary and non-pecuniary damages, warning, mediation, and the obligation to implement anti-discrimination policies. Namely, the existing remedies and sanctions in the current anti-discrimination legislation, similarly to other types of legislation, can be clustered into two groups depending on the aim to achieve, one being backward-looking and the other one forward-looking. Most of the sanctions provided for in anti-discrimination law fall into the group of civil remedies, but sanctions can also include administrative penalties, criminal sanctions and exclusion from advancement. All types of sanctions - civil, administrative, disciplinary and criminal - can either be backward-looking or forward-looking. The type of sanction will be selected in a concrete case depends on the legal instrument on which the case is initiated and based, the aim to be achieved and the type of liability for violating the principle of non-discrimination in a given legal system. Most of the times, different types of sanctions will interact.
As stated by the Court of Justice of the European Union in Firma Feryn case “[i]f 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” (Case C-54/07 Centrum voor gelijkheid van kansen en racismebestrijding v Firma Feryn NV [2008], para 39).

More precisely, civil remedies are victim-focused and include relief and redress of a personal nature that benefits the victim of discrimination. Compensation is used as a civil remedy aiming at putting the victim in the same position as s/he would have been in, if the discrimination had not occurred. Compensation can include different aspects such as past and foreseeable future loss, injury to feelings and aggravated damages. All these types of compensation can be divided into pecuniary (material compensation) and non-pecuniary (immaterial compensation) damages. The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, stipulate that compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case. This includes (a) physical or mental harm, (b) lost opportunities, including employment, education and social benefits, (c) material damages and loss of earnings, including loss of earning potential, (d) moral damage and (e) costs required for legal or expert assistance, medicine and medical services, and psychological and social services (para 20).

As elaborated in detail by the Court of Justice of the European Union in its case law, most significantly in the Marshall case, no upper limit to compensation should exist, because it is contrary to the case law and requirements under the EU gender equality directives. As clearly pointed out by the Court, Article 6 of the Equal Treatment Directive 76/207/EEC requires that “[…] financial compensation for discriminatory dismissal […] must […] enable the loss and damage actually sustained […] to be made good in full” and therefore no upper limit to compensation can be imposed by national law (Case C-271/91 Marshall v Southampton Area Health Authority (No. 2) [1993]). However, limited exceptions to the Marshall case can be made, as stipulated by the Draehmpaehl case. The Court took a position that the Equal Treatment Directive 76/207/EEC does not preclude the imposition of an upper limit of compensation in cases in which the employer can prove that, because the person contracted had superior qualifications, the unsuccessful applicant would not have obtained the vacant position even if there had been no discrimination in the selection process (Case C-180/95 Draehmpaehl v Urania Immobilien- service OhG [1997]). The case law was harmonized throughout the years, and now the legal norm depict by Directive 2006/54/EC (Recast) in its Article 18 provides that “[…] compensation […] for the loss and damage sustained by a person injured as a result of discrimination on grounds of sex, [determined] in a way
which is dissuasive and proportionate to the damage suffered [...] 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 is the refusal to take his/her job application into consideration.

In addition to compensation, other civil remedies exist in different national systems. An analysis developed by Milieu (2011) presents some of those as follows: orders for the termination of discriminatory treatment (e.g. Belgium, Italy, Slovakia, Macedonia); publication of a decision (e.g. Belgium, Portugal, Slovenia, Macedonia); reinstatement to employment in the case of unfair dismissal (e.g. Cyprus, Ireland, Latvia, Romania, Slovakia, Slovenia, Spain); specific performance of obligations (e.g. Ireland); and binding recommendations that the defendant take action to obviate or reduce the adverse effects of discrimination (e.g. the United Kingdom). Other measures elaborated by Lordache and Lonescu (2014) include orders to desegregate schools (e.g. Slovakia), confiscate items (e.g. Czech Republic, Portugal), and publish a statement of public apology (e.g. Belgium, the Czech Republic, Romania). All these are forward looking remedies, which indicate commitment to tackling the pervasive effects of discrimination, and are systematic or substantive remedies which entail both a proactive, constructive approach and a punitive one (Lordache and Lonescu, 2014, pp.18-19). One can conclude that low levels of compensation are pointless, they encourage perpetrators of discrimination and they discourage victims to take cases to court. Only the complete compensation for all pecuniary and non-pecuniary damage and genuinely dissuasive forms of compensation or restitutio ad integrum can put an end to discrimination.

Another type of sanctions are administrative sanctions, which are of a repressive nature and aim at educating the perpetrator as well as the general public (Lordache and Lonescu, 2014, pp.15-17). Administrative sanctions range from the revocation or annulment of the relevant discriminatory administrative act, a decision or a clause in a contract; suspension of authorizations, licenses or permits; exclusion from public funding; to the imposition of administrative warnings and fines. In principle, the level of administrative fines must be lower than the level of criminal fines.

Finally, criminal sanctions are possible and some countries are pursuing them as effective legal remedies in cases of discrimination, mostly by mixing them with other types of sanctions, especially with civil ones. Criminal sanctions are perpetrator-oriented and would be applied in cases, in which discrimination is an aggravating feature of the offence, for instance where an individual carries out a violent racist or homophobic attack on another individual, i.e. hate crimes. The aim of a criminal sanction is not predominantly the relief of the victim of discrimination, but, on the contrary, keeping intact the social fabric by punishing the perpetrator for the sake of protecting a public interest. Similarly to the administrative sanctions, criminal sanctions are of a repressive nature, aiming at educating the perpetrator as well as
the general public. Criminal of- fences are usually punished by a fine or by imprisonment. While these sanctions aim at having a deterrent effect on potential perpetrators, they do not necessarily compensate the victim. Furthermore, criminal sanctions have one big disadvantage. Namely, convictions require a high legal threshold due to the principle in dubio pro reo, and therefore only few convictions can be expected. In Danilenkov and others v Russia, a case of discrimination based on the membership in a trade union, the European Court of Human Rights 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, and not via a civil action. The limitation could not be considered as adequate and practicable redress when at the same time criminal prosecution was dependent on proof “beyond reasonable doubt” of direct intent to discriminate against the trade-union members by the company’s key managers. In sum, the Court decided that the State had failed to fulfil its positive obligations to adopt effective and clear judicial protection against discrimination on the ground of trade union membership (Danilenkov and Others v. Russia, App no. 67336/01 [2009], paras 133-136).

Furthermore, the lecture identifies the key challenges and obstacles linked with adequate sanctioning in discrimination cases, especially in light of the principle of dissuasiveness, proportionality and effectiveness of the remedy. As elaborated above, anti-discrimination legislation, on international as well as national level, firmly establish that sanctions have to be effective, proportionate and dissuasive. At the same time, there is a lack of a fixed and tangible understanding of what these three concepts embody as well as what type and level of sanctions would fulfill these three requirements.

Effective means successful in achieving a desired outcome. This principle ensures that the sanction should be effectively relied on before the national courts or tribunals. In the von Colson case, the Court of Justice of the European Union held that although there is no requirement for a specific form of sanction for unlawful discrimination, the sanction must be such as to “guarantee real and effective judicial protection [...] moreover it must also have a real deterrent effect” (Case C-14/83 Sabine von Colson and Elizabeth Kamann v Land Nordrhein-Westfalen [1984], para 23). However, the judgement does neither elaborate what ‘real and effective’ nor ‘deterrent’ means, and it is left to the national court to decide upon that. Elements that should be taken into consideration are the duration of proceedings and procedural costs. If the costs of proceedings exceed or are equivalent to the compensation that may be granted, the remedy cannot be said to be effective. The adoption of effective remedies is seen as crucial in encouraging victims to seek justice. The effectiveness of the remedy is reflected by its impact, i.e. enforcements. In García Mateos v. Spain, a case of sex discrimination, the European Court of Human Rights made clear that the lack of an enforcement of a judgement in a discrimination case was to be considered a violation of the very same principle referring to the State obligation to provide litigants with a
system whereby they are able to secure the proper execution of domestic court decisions. (García Mateos v. Spain, App no. 38285/09, [2013]). As discussed by Lordache and Lonescu (2014), only a few countries have incorporated a mechanism into their national legal framework for monitoring or following up if recommendations are observed. Notable exceptions include Bulgaria, Cyprus, Denmark, France, Finland, Sweden and Romania. The small number of Member States monitoring the implementation of recommendations is worrying.

Proportionate means balanced, in terms of the gravity, nature and extent of loss and/or harm. In the von Colson case referred to above, the Court of Justice of the European Union states that “where a Member State chooses to penalize the breach of the prohibition of discrimination by the award of compensation, that compensation must in any event be adequate in relation to the damage sustained” (para 23). Furthermore, in the Asociatia Accept case, the Court of Justice of the European Union stressed that proportionality does not necessarily mean that only pecuniary sanctions are acceptable under Directive 2000/78/EC; however, non-pecuniary sanctions should be accompanied by a sufficient degree of publicity (para 69). In cases of compensation by way of civil sanctions caused by discriminatory acts or omissions, the remedy will be adequate 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. As mentioned above in the Marshall case, the Court of Justice of the European Union is standoff the opinion that no upper limit to compensation should be imposed by national law, because this may preclude the availability of an effective and proportionate remedy (para 30 and 32).

Finally, dissuasive means to deter or to serve as a persuasive argument against future acts of discrimination by potential discriminators such as employers or providers of goods or services. The Court of Justice of the European Union in its Draehmpaehl case, took up the position that the sanctions must have a “genuinely dissuasive effect” on employers; thus the Court is of the opinion that three months’ worth of wages are insufficient as a deterrent compensation. Furthermore, in the Asociatia Accept case, elaborated above, the Court of Justice of the European Union pointed out that Directive 2000/43/EC precludes national law under which sanctions are purely symbolic and that under certain conditions it would be in breach of the Directive if it is only possible to issue a warning in a case of discrimination. When analyzing the deterrent effect of sanctions in for example labour cases, the compensation should aim at dissuading the perpetrator from further acts of discrimination (special prevention), and should at the same time dissuade other employers from discriminating against their employees (general prevention). If the sanction enables both types of prevention, special and general, then it can be said that the sanction is dissuasive and in line with the standards. Thus, sanctions of the same level imposed on both natural and legal persons are unlikely to be sufficiently dissuasive for the latter, or same sanctions imposed for all legal entities without
differentiating among small, medium or large companies. The Court of Justice of the European Union has taken a stand that the principle of equivalence would make it possible to award specific damages, such as exemplary or punitive damages. Furthermore, in particular discrimination cases other sanctions can provide more deterring effects than compensation, such as: recommendation by a court and/or specialised body to a licensing authority to suspend/revoke a licence, allowing for public shaming of the perpetrator, a recent finding of discrimination could be grounds to disqualify the perpetrator from tendering in public contracts under European Commission rules, and including a non-discrimination clause into contract conditions. The Belgian sanctioning regime can serve as a good practice example of providing for deterrent effects. Namely, the system provides for a lump sum payment by the perpetrator of discrimination which is quasi-automatic in nature. Stakeholders report that this has a deterrent effect, because employers are more likely to explore in detail the legality of their decision before dismissing an employee.

The lecture uses results from research and surveys that have been conducted in the European Union and draws conclusions based on international, regional and national case law. Namely, an analysis developed by Milieu (2011) states that relevant national experts 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. The report shows that although judges may have a wide range of sanctions to apply, they rarely fully exploit the whole spectrum, either because the legal tradition of the country makes it difficult to impose strong sanctions in discrimination cases, or because the judges do not consider the full range of possibilities provided by law in discrimination cases. Furthermore, the costs and duration of proceedings as well as the emotional efforts involved in litigation coupled with the low amount of compensation generally awarded in discrimination cases could discourage victims from taking legal action and bringing their cases forward. Moreover, the absence of statistical data or the relative novelty of national anti-discrimination legislation, which has not yet been applied in court cases, makes it difficult to assess the likelihood of a discrimination claim being successful (Milieu, 2011, pp.40-44). There are some good practices from EU Member States that can contribute to facilitating access to justice and effective remedies for alleged victims of discrimination. Some of them are from general nature such as: strengthening the role of equality bodies and National Human Rights Institutions by broadening their mandate and increasing their resources, especially for strategic litigation and monitoring the compliance with their recommendations; strengthening the role of civil society organisation and social partners in bringing cases forward, especially those that deal with systemic discrimination or are actio popularis cases in their nature; developing systems for data collection; providing for continued capacity building for the judiciary and legal practitioners on anti-discrimination; raising awareness amongst legal practitioners and the general public, etc. Other examples are of a more specific nature, such as:
• Introducing exemptions from certain procedural fees in discrimination cases
• Providing for free legal aid in cases of discrimination
• Creating mechanisms aimed at avoiding court delays and thus reducing the duration of proceedings or defining the proceedings as ‘urgent’ in discrimination cases adjusting the sanctioning regime to the specific circumstances of a given case
• Determining aggravated liability, especially in cases of multiple discrimination
• Exclusion from State benefits and public contracts of the legal entity that has a track record of discrimination cases, etc...

The lecture draws the following conclusions. There is no universal regime of sanctions in discrimination cases, and the different solutions have to be assessed in the context of national legislation, legal culture and traditions and the aims sanctioning systems want to achieve. As showed by the comparative overview, sanctions vary from civil, administrative, disciplinary and criminal, through victim- or perpetrator-oriented, to backward-looking or forward-looking. The chosen approach of sanction regimes should guarantee that the quality of the remedies reflects the commitment of each society to effectively combat discrimination. While provisions in the area of anti-discrimination legislation relating to sanctions and remedies have been improved over time, the principles of effectiveness, proportionality and potential for dissuasiveness are still not fully guaranteed in practice. At the same time, there is a lack of a fixed and tangible understanding of what these concepts embody as well as what type and level of sanctions would fulfill the three requirements.

Practice in dealing with discrimination cases shows some of the following concerns:
• Tendency of courts to award low compensation
• High costs and long duration of proceedings
• Lack of sentencing or compensation guidelines
• Failure to ensure adequate monitoring of compliance
• Existence of a limited number of proactive remedies

However, there are good practices from EU Member States that can contribute to facilitating access to justice and effective remedies for alleged victims of discrimination, some general, others more specific.
The following methods will be used to enable more effective learning:

**Brief description of how student learning will be enabled (teaching method/strategy)**

- Teaching/lecturing method through using PowerPoint presentation
- Working on case studies
- Open discussion and brainstorming

The session will be interactive and will build upon the experience of the students on the phenomenon of discrimination and sanctioning using adult learning techniques. Also, it is highly recommended to use visualization tools.

**Objectives**

- To make students familiar with the position of the remedies and sanctions in anti-discrimination legislation and different types of remedies and sanctions
- To ensure that students know about the obligation for adequate sanctioning especially the scope of the principle of dissuasive, proportionate and effective remedy
- To give students an understanding of the key challenges and obstacles in sanctioning discrimination
- To share good practice examples of sanctioning regimes that facilitate access to justice and effective remedies
IV. Description of the workshop

Content and Main Questions Addressed

The workshop enables the students to identifying suitable remedies and sanctions in a variety of cases of discrimination (direct, indirect, harassment etc.). Namely, six cases are discussed in six small groups as follows:

- Criminal sanction – prison sentence, in relation to incitement to hatred on grounds of ethnicity and religion (having publicly displayed the Nazi flag on the eve of April 20, which is Hitler’s birthday)
- Civil sanction – compensation, for indirect discrimination on the ground of religion (not to exempt a student at a vocational school from the requirement to taste dishes of pork)
- Civil and other sanction – publishing the decision and imposing a fine, for direct discrimination on the ground of age (bank refusing to provide to a 78-year-old person a credit card)
- Civil and other sanction – publishing the decision and imposing a fine, for harassment on the ground of sexual orientation (failure of the employer to act against harassment by colleagues)
- Criminal sanction – prison sentence for homophobic crime of public incitement of hatred, violence or intolerance (property damage by attaching a gay-friendly bar and attacking a man standing outside the bar that suffered several bodily injuries)
- Other sanction – publishing the decision for direct discrimination on the ground of political affiliation (failure to establish a trainee position in the mayor’s office with view to the possible application of the political opponent’s daughter)

The following questions could be discussed by the working groups:

- Can discrimination be established in this case? If yes, what is the type and form of discrimination?
- Explain the ground or grounds of discrimination and the area of discrimination in more detail!
- What about the shifting of the burden of proof? Is it applicable in this case or not?
- Elaborate on the sanction(s)? Is/are the sanction(s) effective, proportionate and dissuasive?
Brief description of how student learning will be enabled (teaching method/strategy)

The following methods will be used to enable more effective learning:

- Working on case studies in small groups;
- Debriefing
- Open discussion
- Brainstorming

The session will be interactive and will build upon the experience of the students on the phenomenon of discrimination and sanctioning using adult learning techniques. Also, the workshop will use the legal concepts elaborated in the theoretical session and through analysis the students will discuss the presented cases. It is highly recommended to use visualization tools for presenting their findings through flipcharts or similar equipment. The lecturer should motivate the students to apply the knowledge gained and skills acquired.

Objectives

- To ensure that students know the different types of remedies and sanctions
- To encourage students to apply the principle of dissuasive, proportionate and effective remedy
- To provide students with the opportunity to identifying suitable remedies and sanctions in a variety of discrimination cases (direct, indirect, harassment etc.)

V. Learning objectives

After students have participated in the lecture and the workshop the students will have learned ...
(knowledge gained in relation to the objectives defined above)

- Recognize the position of the remedies and sanctions in the anti-discrimination legislation
- Identify the different types of remedies and sanctions
- Recognize the various aims and purposes of sanctions
- Recognize the obligation for adequate sanctioning, especially the scope and meaning of the principle of dissuasive, proportionate and effective remedy
- Identify the key challenges and obstacles in sanctioning discrimination
• Identify good practices within sanctioning regimes
• Identify and apply suitable remedies and sanctions in a variety of discrimination cases (direct, indirect, harassment etc.)

VI. Literature and background material for the lecture and workshop

Books


Academic papers / articles


**Legislation (national and international)**


**Case law / jurisprudence**


European Court of Human Rights, Danilenkov and Others v. Russia, App no. 67336/01, [2009], 10 December 2009, [online] available at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-93854%22]} [Accessed 19 October 2018].


N/A
FURTHER SUPPORTING DOCUMENTS FOR IMPLEMENTING THE COURSE ON

“LEGAL PROTECTION AGAINST DISCRIMINATION IN SOUTH EAST EUROPE”
## CASE LAW

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<td>Defrenne v Sabena (No 2)</td>
<td>Case 43-75 08/04/1976</td>
<td>International and EU sources of non-discrimination law // Protection against discrimination</td>
<td>Principle of non-discrimination on the grounds of sex/age is a general principle of the EU law/ a fundamental right – as part of primary EU law, the principle is directly applicable and takes supremacy over incompatible national law</td>
<td><a href="https://eur-lex.europa.eu/search.html?qid=1529309951248&amp;text=61975J0043&amp;scope=EURLEX&amp;type=quick&amp;lang=en">https://eur-lex.europa.eu/search.html?qid=1529309951248&amp;text=61975J0043&amp;scope=EURLEX&amp;type=quick&amp;lang=en</a></td>
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<td>Handels- og Kontorfunktionærernes Forbund I Danmark v Dansk Arbejdsgiverforening, acting on behalf of Danfoss</td>
<td>Case 109/88 31/05/1989</td>
<td>Procedural aspects (civil procedure)</td>
<td>Judgment of the Court, reference for a preliminary ruling: Fağlîge Voldgiftsret - Denmark - social policy - equal pay for men and women “[T]he equal Pay directive must be interpreted as meaning that where an undertaking applies a system of payment which is totally lacking in transparency, it is for the employer to prove that his practice in the matter of wages is not discriminatory, if a female worker establishes, in relation to a relatively large number of employees, that the average pay for women is less than that for men”</td>
<td><a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61988CJ0109">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61988CJ0109</a></td>
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<td>Dr. Pamela Mary Enderby v Frenchay Health Authority and Secretary of State for Health</td>
<td>Case C-127/92 27/10/1993</td>
<td>Procedural aspects (civil procedure)</td>
<td>Judgment of the Court, reference for a preliminary ruling: Court of Appeal (England) - United Kingdom - equal pay for men and women It is clear from the case-law of the Court that the onus of proving the existence of sex discrimination as to pay may shift from the worker to the employer when that is necessary to avoid depriving workers who appear to be the victims of discrimination of any effective means of enforcing the principle of equal pay.</td>
<td><a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1529318445605&amp;uri=CELEX:61992CJ0127">https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1529318445605&amp;uri=CELEX:61992CJ0127</a></td>
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<td>Lisa Jacqueline Grant v South-West Trains Ltd</td>
<td>Case C-249/96 17/02/1998</td>
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<td>Judgment of the Court, reference for a preliminary ruling: Industrial Tribunal, Southampton - United Kingdom - equal treatment of men and women - refusal of travel concessions to cohabitants of the same sex, unwillingness of the CJEU to expand the EU’s competences in the field of equality beyond the grounds listed in Art 13 (now Art 19)</td>
<td><a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1529311347788&amp;uri=CELEX:61996CJ0249">https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1529311347788&amp;uri=CELEX:61996CJ0249</a></td>
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<td>S. Coleman v Attridge Law and Steve Law.</td>
<td>Case C-303/06 17/07/2008</td>
<td>Discrimination based on specific grounds</td>
<td>Judgment of the Court, reference for a preliminary ruling: Employment Tribunal, London South - United Kingdom - social policy - Directive 2000/78/EC - equal treatment in employment and occupation - Articles 1, 2(1), (2)(a) and (3) and 3(1)(c) - direct discrimination on grounds of disability - harassment related to disability - dismissal of an employee who is not himself disabled but whose child is disabled - included - burden of proof</td>
<td><a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1529312804588&amp;uri=CELEX:62006CJ0303">https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1529312804588&amp;uri=CELEX:62006CJ0303</a></td>
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<td>Asociaţia Accept v Consiliul Naţional pentru Combaterea Discriminării</td>
<td>Case C-81/12 25/04/2013</td>
<td>Sanctioning Discrimination</td>
<td>Judgment of the Court, request for a preliminary ruling from the Curtea de Apel Bucureşti - Romania - social policy - equal treatment in employment and occupation - Directive 2000/78/EC - Articles 2(2) (a), 10(1) and 17 - prohibition of discrimination on grounds of sexual orientation - concept of 'facts from which it may be presumed that there has been discrimination' - Modified burden of proof - effective, proportionate and dissuasive sanctions - person presenting himself and being perceived by public opinion as playing a leading role in a professional football club - public statements ruling out the recruitment of a footballer presented as being homosexual</td>
<td><a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1529320006906&amp;uri=CELEX:62012CJ0081">https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1529320006906&amp;uri=CELEX:62012CJ0081</a></td>
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| European Court of Human Rights |                                               |                                              | Violation of Article 2 (right to life) of the Convention in respect of the death of Mr. Tsonchev  
Violation of Article 2 of the Convention in respect of the respondent State’s obligation to conduct an effective investigation  
Violation of Article 13 (right to an effective remedy) of the Convention No violation of Article 14 (prohibition of discrimination) of the Convention  
Failure to conduct an effective investigation on a case of police violence, Roma | https://hudoc.echr.coe.int/eng#{%22itemid%22:%22001-58831%22}  
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<td>Anguelova v. Bulgaria 38361/97 13/09/2002</td>
<td>Protection against discrimination</td>
<td>Violation of Article 2 (right to life) of the Convention in respect of the death of the applicant’s son Violation of Article 2 of the Convention in respect of the authorities’ failure to provide timely medical care Violation of Article 2 of the Convention in respect of the respondent State’s obligation to conduct an effective investigation Violation of Article 3 (prohibition of torture) of the Convention Violation of Article 5 (right to liberty and security) of the Convention Violation of Article 13 (right to an effective remedy) of the Convention No violation of Article 14 (prohibition of discrimination) of the Convention Government failed to provide a plausible explanation for the injuries indicative of inhuman treatment, the court denied the claim – police officers ‘and investigating authorities ‘perception of her son as a Roma was a decisive factor in their actions – as the allegations were not proved beyond a reason-able doubt</td>
<td><a href="https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-60505%22%5D%7D">https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-60505%22]}</a> Summary: <a href="http://www.errc.org/cikk.php?cikk=3858">http://www.errc.org/cikk.php?cikk=3858</a></td>
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<td>Hoogendijk v. Netherlands (dec.)</td>
<td>56641/00 06/01/2005</td>
<td>Procedural aspects (civil procedure)</td>
<td>Declared inadmissible</td>
<td><a href="https://hudoc.echr.coe.int/eng#%7B%22item">https://hudoc.echr.coe.int/eng#{%22item</a> id%22:[%222001-68064%22]}</td>
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<td>Woman with disability lost benefits to which she had been entitled as a consequence of amendments which the Dutch government introduced to remove the discriminatory exclusion of married women from the relevant security scheme while at the same time seeking to keep the costs of the scheme within acceptable limits, official figures showed that greatly more women than men were adversely affected by the particular amendment. The Court considers that where an applicant is able to show, on the basis of undisputed official statistics, the existence of a prima facie indication that a specific rule – although formulated in a neutral manner – in fact affects a clearly higher percentage of women than men, it is for the respondent Government to show that this is the result of objective factors unrelated to any discrimination on grounds of sex. If the onus of demonstrating that a difference in impact for men and women is not in practice discriminatory does not shift to the respondent Government,</td>
<td>Summaries: <a href="http://swarb.co.uk/hoogendijk-v-the-netherlands-echr-6-jan-2005/">http://swarb.co.uk/hoogendijk-v-the-netherlands-echr-6-jan-2005/</a> <a href="https://www.womenslinkworldwide.org/en/gender-justice-observatory/court-rulings-database/hoogendijk-v-the-nether-lands">https://www.womenslinkworldwide.org/en/gender-justice-observatory/court-rulings-database/hoogendijk-v-the-nether-lands</a> <a href="https://scindeks-clanci.ceon.rs/data/pdff/0550-2179/2013/0550-21791301057E.pdf">https://scindeks-clanci.ceon.rs/data/pdff/0550-2179/2013/0550-21791301057E.pdf</a></td>
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<td>it will be in practice extremely difficult for applicants to prove indirect discrimination. As no such objective factors have appeared or have been submitted by the respondent Government, the Court accepts as sufficiently demonstrated that the introduction of the income requirement in the AAW scheme did in fact have an indirect discriminatory effect in respect of married or divorced women having become incapacitated for work at a time when it was not common in the Netherlands for married women to earn an own income from work.</td>
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| Nachova and Others v. Bulgaria | 43577/98 and 43579/98 06/07/2005 | Protection against discrimination // Procedural aspects (civil procedure) // Example of strategic litigation | Violation of Article 2 (right to life) of the Convention in respect of the deaths of Mr Angelov and Mr Petkov  
Violation of Article 2 of the Convention in that the authorities failed to conduct an effective investigation into the deaths of Mr Angelov and Mr Petkov  
No violation of Article 14 (prohibition of discrimination) of the Convention taken in conjunction with Article 2 in respect of the allegation that the events leading to the death of Mr Angelov and Mr Petkov constituted an act of racial violence  
Violation of Article 14 of the Convention taken in conjunction with Article 2 in that the authorities failed to investigate possible racist motives behind the events that led to the deaths of Mr Angelov and Mr Petkov  
Fatal shooting of two Roma conscripts by military police soldiers  
European states have an obligation to investigate possible racist motives behind acts of violence, the manner in which the enquiry into the killing was carried out should lead to a shift of the burden of proof. | https://hudoc.echr.coe.int/eng#%22itemid%22:[%22001-69630%22]  
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<td>Bączkowski and Others v. Poland</td>
<td>1543/06 03/05/2007</td>
<td>Example of strategic litigation</td>
<td>Violations of Article 11 (freedom of assembly) and Articles 13 (right to an effective remedy) and 14 (prohibition of discrimination) taken in conjunction with Article 11 of the Convention. Presumption of legality as an important part of the effective exercise of freedom of assembly (violation of art 11), domestic law did not provide a reasonable time-limit within which authorities should provide decisions (violation of art 13 in conjunction with art 11), Mayor's opinions could easily have affected the decision-making process (violation of art 14 in conjunction with art 11). The applicants, a foundation for Equality and a group of individuals active in NGOs representing homosexual rights, had been refused permission for demonstrations raising awareness of discrimination against homosexuals. The administrative authorities, acting on behalf of the Mayor of Warsaw, refused to grant the applicants permission for the march and for the assemblies.</td>
<td><a href="https://hudoc.echr.coe.int/eng#%7B%22itemId%22:%22001-80464%22%7D">https://hudoc.echr.coe.int/eng#{%22itemId%22:%22001-80464%22}</a> Summary <a href="http://www.equalrightstrust.org/ertdocumentbank/">http://www.equalrightstrust.org/ertdocumentbank/</a> [Microsoft Word] Baczkowski%20and%20Others%20v.%20Poland%20assembly_.pdf</td>
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The authorities claimed the group had failed to submit a traffic organization plan as required for a march of this nature, and that the assemblies created a possibility of violent clashes, as other counter-demonstrations were occurring on the same day. Permission for these counter-demonstrations (i.e. anti-homosexual demonstrations) was granted on the same day as the permission for the applicants’ demonstrations was refused. The traffic plan was not required of other minority groups requesting permission for demonstrations. All groups except those representing homosexuals were granted permission as requested for their demonstrations. When asked about the permission request of the applicants, the Mayor responded “I haven’t read the request. But I will ban the demonstration regardless of what they have written. I am not for discrimination on the ground of sexual discrimination . . . But there will be no public propaganda of homosexuality.”
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| D.H. and Others v. the Czech Republic | 57325/00 13/11/2007 | Protection against discrimination// Procedural aspects (civil procedure) // example of strategic litigation | Violation of Article 14 (prohibition of discrimination) taken in conjunction with Article 2 of Protocol No. 1 (right to education) Roma, access to education A difference in treatment without objective and reasonable justification may violate Article 14 even absent discriminatory intent. Thus, where it has been shown that legislation produces an unjustified discriminatory effect, it is not necessary to prove any discriminatory intent on the part of the relevant authorities. When it comes to assessing the impact of a measure or practice on an individual or group, the use of statistics may be relevant. In particular, statistics which appear on critical examination to be reliable and significant will be sufficient to constitute prima facie evidence of indirect discrimination. The Court confirmed, however, that statistics are not a prerequisite for a finding of indirect discrimination. | https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-83256%22]}
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| Stoica v. Romania | 42722/02 04/06/2008 | Procedural aspects (civil procedure) | Violation of Article 3 (prohibition of inhuman or degrading treatment) of the Convention both under its substantive and procedural limbs  
No violation of Article 13 (right to effective remedy) of the Convention in so far as it concerns the possibility for the applicant to challenge the military prosecutor’s final decision  
Violation of Article 14 (prohibition of discrimination) taken in conjunction with Article 3 of the Convention  
Ill-treatment a Romanian national of Roma origin by police  
Authorities did not do everything in their power to investigate the possible racist motives behind the conflict, as is required of states when investigating violent incidents, Court remained concerned that the authorities’ had disregarded witness statements to the contrary and official police documentation describing the villagers’ alleged aggressive behaviour as “purely Gypsy”, which could not be considered completely racially neutral, the Court found that the burden of proof lies with the Government, regard having had to all the evidence of discrimination ignored by the police and the military prosecutor and the above conclusion of a racially biased investigation into the incidents. | https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-85308%22]}  
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| Opuz v. Turkey | 33401/02 09/09/2009                           | Protection against discrimination // Example of strategic litigation | Violation of Article 2 (right to life) of the Convention in respect of the death of the applicant’s mother Violation of Article 3 (prohibition of torture) of the Convention in respect of the authorities’ failure to protect the applicant against domestic violence perpetrated by her former husband Violation of Article 14 (prohibition of discrimination) of the Convention read in conjunction with Articles 2 and 3 Domestic violence, no due diligence by authorities in preventing violence, no effective investigation, authorities’ failure to take protective measures in of serious breaches of the applicant’s personal integrity by her ex-husband, judiciary passivity created a climate conducive to domestic violence | https://hudoc.echr.coe.int/eng#{%22itemid%22:33401-92845522}  
Summary: https://rm.coe.int/168069454d |
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<td>67336/01 10/12/2009</td>
<td>Sanctioning Discrimination</td>
<td>Violation of Article 14 (prohibition of discrimination) of the Convention taken together with Article 11 (freedom of assembly and association) in respect of the remaining applicants</td>
<td><a href="https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%22001-93854%22%7D">https://hudoc.echr.coe.int/eng#{%22itemid%22:%22001-93854%22}</a></td>
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<td>Discrimination on the ground of trade union membership</td>
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<td>State failed to fulfil its positive obligations to adopt effective and clear judicial protection against discrimination on the ground of trade union membership, deficiency of the criminal remedy (requires proof “beyond reasonable doubts” of direct intent on the part of one of the company’s key managers to discriminate against the trade-union members), civil proceedings would allow fulfilling the far more delicate task of examining all elements of relationship between the applicants and their employer, including combined effect of various techniques used by the employer to induce dockers to relinquish trade union membership, and granting appropriate redress.</td>
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<td>Case</td>
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| Oršuš and Others v. Croatia  | 15766/03 16/03/2010                           | Procedural aspects (civil procedure) | Violation of Article 6 § 1 (right to a fair and public hearing) of the Convention, violation of Article 14 (prohibition of discrimination) of the Convention read in conjunction with Article 2 of Protocol No. 1 (right to education)  
Right to a fair trial, right to education and discrimination of Roma children.  
Four-year period that the Croatian Constitutional Court took to decide the applicants’ case was excessive, the separation of Roma children was discriminatory. Despite the legitimate aim of ensuring Roma children received special attention to improve their understanding of Croatian, the actions of the State were disproportionate. | https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22197689%22]}  
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<th>Case</th>
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| García Mateos v. Spain | 38285/09 19/05/2013 | Sanctioning Discrimination | Violation of Article 6 § 1 (right to a fair and public hearing) in conjunction with Article 14 (prohibition of discrimination) of the Convention  
Supermarket employee, asked for a reduction in her working time, because she had to look after her son, who was then under six years old.  
Violation of the principle of non-discrimination on grounds of sex, as established by the Constitutional Court’s ruling in favour of Mrs García Mateos, had never been remedied on account of the non-enforcement of the relevant decision and the failure to provide her with compensation. | https://hudoc.echr.coe.int/eng#{%22itemid%22:%22001-116985%22}}  
Summary:  https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-4264379-5082962&filename=003-4264379-5082962.pdf |
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<tr>
<td>GRA Stiftung gegen Rassismus und Antisemitismus v. Switzerland</td>
<td>18597/13 09/04/2018</td>
<td>Prejudice, stereotypes, hate speech</td>
<td>Violation of Article 10 of the Convention Balancing Article 8 (right to respect for private life) and Article 10 (right to freedom of expression) “verbal racism”</td>
<td><a href="https://hudoc.echr.coe.int/en-g#%22fulltext%22:%22GRA%20Stiftung%20gegen%20Rassismus%2C%20und%20Antisemitismus%20v.%20Switzerland%22,%22document-collectionid2%22:%22GRANDCHAMBER%22,%22CHAMBER%22,%22itemid%22:%22001-179882%22%7D">https://hudoc.echr.coe.int/en-g#%22fulltext%22:%22GRA%20Stiftung%20gegen%20Rassismus%2C%20und%20Antisemitismus%20v.%20Switzerland%22,%22document-collectionid2%22:%22GRANDCHAMBER%22,%22CHAMBER%22,%22itemid%22:%22001-179882%22}</a></td>
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**United Nations**

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<tr>
<th>Case</th>
<th>Communication No.</th>
<th>Protection against discrimination</th>
<th>Articles 2, 3, 4, 5 and 6 ICERD - no violation of the Convention</th>
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<td><strong>US Supreme Court</strong></td>
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<td>Brown v Board of Education Decision</td>
<td>347 U.S. 483 (1954)</td>
<td>Example of strategic litigation</td>
<td>Landmark United States Supreme Court case in which the Court declared state laws establishing separate public schools for black and white students to be unconstitutional</td>
<td><a href="https://www.crmvet.org/tim/timhis54.htm#1954bvbe">https://www.crmvet.org/tim/timhis54.htm#1954bvbe</a></td>
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<tr>
<td>Gideon v. Wainwright</td>
<td>372 U.S. 335 (1963)</td>
<td>Example of strategic litigation</td>
<td>Landmark case in United States Supreme Court history. In it, the Supreme Court unanimously ruled that states are required under the Sixth Amendment to the U.S. Constitution to provide an attorney to defendants in criminal cases who are unable to afford their own attorneys. The case extended the right to counsel, which had been found under the Fifth and Sixth Amendments to impose requirements on the federal government, by imposing those requirements upon the states as well.</td>
<td><a href="https://www.courtlistener.com/opinion/106545/gideon-v-wainwright/">https://www.courtlistener.com/opinion/106545/gideon-v-wainwright/</a></td>
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Valuable source for case law

- European Equality Review (contains also case law on Croatia, Macedonia, Montenegro and Serbia) [https://www.equalitylaw.eu/publications/law-reviews](https://www.equalitylaw.eu/publications/law-reviews)
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<td>10/12/1948 proclaimed by UN General Assembly in Paris</td>
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<td><strong>International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)</strong></td>
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<td><a href="https://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx">https://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx</a></td>
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<td>Adopted by the UN General Assembly on 21/12/1965, entered into force 04/01/1969</td>
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<td><strong>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</strong></td>
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<td><a href="https://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx">https://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx</a></td>
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<td>Convention on the Rights of the Child (CRC)</td>
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<td>Adopted by the World Conference on Education for All Meeting</td>
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<td>Basic Learning Needs, Jomtien, Thailand, 05-09/03/1990</td>
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<td>International Convention on the Protection of the Rights of All</td>
<td>Part II Art 7, Part</td>
<td><a href="https://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx">https://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx</a></td>
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<td>Migrant Workers and Members of Their Families</td>
<td>III Art 13</td>
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<td>into force yet</td>
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<td>Declaration of the UN General Assembly on 20/12/1993</td>
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<td>Basic Principles and Guidelines on the Right to a Remedy and Reparation</td>
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<td>for Victims of Gross Violations of International Human Rights Law and</td>
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<td>Serious Violations of International Humanitarian Law</td>
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<td><strong>International Labor Organization</strong></td>
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<td>ILO C 100 Equal Remuneration Convention, No 100</td>
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<td>ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up</td>
<td>Para 2 (d)</td>
<td><a href="http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm">http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm</a></td>
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<td><strong>Council of Europe</strong></td>
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<td>Rome 04/11/1950</td>
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<td>European Social Charter (revised)</td>
<td>Art 20, Part V</td>
<td><a href="https://www.coe.int/t/democracy/migration/source/migration/conv_european_social_%20charter_163.doc">https://www.coe.int/t/democracy/migration/source/migration/conv_european_social_%20charter_163.doc</a></td>
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<td>Strasbourg, 03/05/1996</td>
<td>Art E</td>
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<td>equal opportunities and equal treatment of men and women in matters</td>
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<td>or Belief, Disability, Age or Sexual Orientation, SEC (2180),</td>
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<td>of 19 November 2008 on temporary agency work</td>
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<td>mobile applications of public sector bodies (Text with EEA relevance)</td>
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**JOINT READER** - Supporting the Implementation of a Course on “Legal Protection Against Discrimination in Southeastern Europe”
## NATIONAL CASE LAW PROTECTION AGAINST DISCRIMINATION

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<td>Serbia</td>
<td>Rev. 3602/10</td>
<td>Protection against discrimination//Procedural aspects (civil procedure)</td>
<td>Disability – legal access to free ticket (for blind person) and a reduced ticket (by 75%) for person accompanying the blind person – insults and threats, so the passengers bought new tickets – first instance: pecuniary damage – RSD 975 (EUR 9) – second instance: Pecuniary damage + non pecuniary damage RSD 20,000 (EUR 200) – Supreme Court: Pecuniary damage + non pecuniary damage RSD 120,000 (EUR 1,200)</td>
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<td><a href="https://www.vk.sud.rs/sr/%D1%80%D0%B5%D0%B2-360210-%D0%BD%D0%B0%D0%BA%D0%B0%D0%BD%D0%B4%D0%B0-%D1%88%D1%82%D0%B5%D1%82%D0%B5-%D0%B0%D0%BA%D1%82-%D0%B4%D0%B8%D1%81%D0%25B-A%D1%80%D0%B8%D0%BC%D0%B8%D0%B0%D0%B0%D0%B1%86%D0%B8%D1%98%D0%B5">https://www.vk.sud.rs/sr/%D1%80%D0%B5%D0%B2-360210-%D0%BD%D0%B0%D0%BA%D0%B0%D0%BD%D0%B4%D0%B0-%D1%88%D1%82%D0%B5%D1%82%D0%B5-%D0%B0%D0%BA%D1%82-%D0%B4%D0%B8%D1%81%D0%B-A%D1%80%D0%B8%D0%BC%D0%B8%D0%B0%D0%B0%D0%B1%86%D0%B8%D1%98%D0%B5</a></td>
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<tr>
<td>Serbia</td>
<td>Rev 853/2014</td>
<td>Procedural aspects (civil procedure)</td>
<td>The security guard of McDonald’s refused three Roma kids entry to the restaurant, when a woman who was passing by offered to buy the kids lunch. The woman was not entitled to take the case to court, and the Commissioner for Protection of Equality did not get the consent of the minors’ parents (they were unknown) to process the case. The Supreme Court allowed the case to be taken to court, and it seems that McDonald’s was fined by the Magistrates court.</td>
<td>Vrhovni kasacioni sud</td>
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<td>Complaint based on discrimination on the ground of nationality in the field of education Segregation of Roma children in separate classes in elementary school, the Commissioner established discrimination</td>
<td>Commissioner for Protection of Equality</td>
<td><a href="http://ravnopravnost.gov.rs/prituzba-d-z-osnovu-nacionalne-pripadnosti-u-oblasti-obrazovanja/">http://ravnopravnost.gov.rs/prituzba-d-z-osnovu-nacionalne-pripadnosti-u-oblasti-obrazovanja/</a></td>
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# QUIZ AND EXERCISES - RAISING AWARENESS

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Source:
This document is based on research and development done for various training activities within a Twinning Project called “Support to the Advancement of Human Rights and Zero Tolerance to Discrimination” implemented in Serbia with the Government Office for Human and Minority Rights and the Commissioner for Protection of Equality by the Ludwig Boltzmann Institute of Human Rights (Austria) and the Government Office for National Minorities of the Republic of Slovenia. The research and development work for the Twinning project was done by Karin Bischof and Dieter Schindlauer, Ludwig Boltzmann Institute of Human Rights.
1. Check of Understanding of Discrimination: Multiple-Choice Quiz Based on Cases

(bold = right answer)

Case 1: Nightshift
An online job portal «ads-for-job.info» publishes a job announcement: kiosk-seller, male, between 30 and 60 years old, willing to work nightshifts.

Q: Jelena, 25 years old, sees the ad and is convinced the ad is discriminatory. Is she right/wrong?
   - [ ] Right
   - [ ] Wrong

Q: Marko, 18 years old, sees the ad and is convinced that the ad is discriminatory. Is he right/wrong?
   - [ ] Right
   - [ ] Wrong

Q: Which of the following statements are true?
   - [ ] A: The ad is discriminatory on the ground of gender.
   - [ ] B: The ad is discriminatory on the ground of age.
   - [ ] C: The ad is discriminatory on the ground of disability.
   - [ ] D: The ad is discriminatory on the ground of gender and age.

Q: The kiosk owner claims that with the ad he is protecting women in insecure circumstances during night times. Which of the following statements are true?
   - [ ] A. He is right, as his intention is good. Nightshifts are too dangerous for women.
   - [ ] B. He is wrong. Women can do the job, as well. Direct discrimination cannot be justified like that.
   - [ ] C. It is unlawful to exclude people from the job market just on the basis of gender or age.
   - [ ] D. It is his business. It is his choice.
Case 2: The Unhappy Customer

(bold = right answer)

Mr. Branković owns a pub. Mr. Sain, of Roma origin, works for him as a waiter. One day, a guest enters the bar and orders a beer from Mr. Sain. Mr. Sain informs him that the bar closes in 5 minutes and the last round has already been served. The guest, disappointed, starts to yell at him calling him a heartless bastard and a crook. The owner witnesses the situation, but does not intervene. When the guest has finally left, Mr. Sain tells Mr. Branković that he wants to quit his job and file a lawsuit on racial harassment. He argues that Mr. Branković has witnessed how he has been racially harassed and has failed to intervene and protect him.

Q: How do you assess the case?

- A. This is a clear-cut case of racist harassment in employment. Mr. Sain has a claim against Mr. Branković and the customer.

- B. The insult has no direct racist content but as Mr. Sain is of Roma origin it is an indirect discrimination.

- C. The customer is clearly insulting Mr. Sain, but there is no hint that this is based on a protected ground by the Law on Prohibition of Discrimination.

- D. It depends. If Mr. Sain is dark-skinned it is racism, if not, he has no claim.
Case 3: The Frightened Doctor
(bold = right answer)

A well-respected businessman reveals to a newspaper that he is gay and living in a happy partnership. Two days later his dentist cancels the appointment they had made earlier. He asks the man to look for another dentist in the future, “because I do not have the necessary security equipment to treat HIV-positive clients”.

Q: One argues: As it is a preventive measure towards a risk group, the dentist is just acting diligently, not discriminatory in cancelling the businessman’s appointment. Is the argument right / wrong?

- Right
- Wrong

Q: Which of the following statements are true?

- A. This is a case of discrimination on the ground of sexual orientation.
- B. This is a case of direct discrimination on the ground of health.
- C. This is a case of harassment.
- D. If the businessman is really HIV positive there is no discrimination.
Case 4: Blind Spot

Ms. Dragović is a university teacher. She gets positive feedback for her job and her temporary contract is renewed every year for several years. She is blind and some adaptations have been agreed with the head of the university department. After her maternity leave, she contacts the university department to come back to work. The new head of the department tells her that it is impossible for a blind woman to lecture to a high professional standard and she is not offered a contract for the following year.

Q. The head of the university department is in charge of quality control and therefore she has a right to set the standards as high as she wishes. Is the statement right/wrong?
   ❑ Right
   ❑ Wrong

Q. The head of the university department is in charge of quality control and therefore she can exclude lecturers which are blind. Is the statement right/wrong?
   ❑ Right
   ❑ Wrong

Q. The treatment by the head of the university department is discriminatory, as persons without disability would have been treated differently in the same situation. Is the statement right/wrong?
   ❑ Right
   ❑ Wrong
Case 5: Kitchen Aid
(bold = right answer)

A woman with down syndrome is applying for a job as a waitress in a restaurant in Belgrade. She has completed her education and training for that job and has some working experience. When she appears at the job interview, the boss tells her that she cannot employ her as a waitress, as her customers would be irritated by her, but that she can offer her a job back in the kitchen.

Q: It is great that the woman gets a job offer at all. She should take the opportunity. No discrimination detectable. Is the statement right/wrong?
   - Right
   - Wrong

Q: It is outrageous! The woman is directly discriminated on the ground of her disability. Is the statement right/wrong?
   - Right
   - Wrong

Q: It is okay as this a protective measure and it is better to work in the kitchen than to be constantly exposed to disrespectful gazes of the costumers. Is the statement right/wrong?
   - Right
   - Wrong

Q: Even if she gets offered another job, the recruitment process is discriminatory, as her qualification and her actual career ambitions are disregarded. Is the statement right/wrong?
   - Right
   - Wrong
Case 6: Stand up!
(bold = right answer)

Ms. Džombić accuses her boss of having sexually harassed her and another female colleague in her department on several occasions. The other colleague chooses to remain totally silent on the matter. After an internal investigation of the allegations produces no further evidence, the case is dropped. Three month later Ms. Džombić is denied promotion that she was assured of earlier.

Q: Which of the following statements are true?
   - A. Given the facts of the case there is a strong suspicion that she has been victimized.
   - B. As her harassment has not been proven there is no case. The non-promotion isn’t connected with the alleged harassment.
   - C. She should not be surprised. If you make wrong allegations you don’t get promoted.
   - D. It is a case of indirect discrimination on the ground of gender because statistically, men get sexually harassed far less often than women.
2. Fragments of Identity

40 minutes

Goals

- Talk about the fact that identity can be seen / described on the basis of group membership;
- Recall that only certain characteristics of a person are chosen freely, while others are not;
- Identifying the diversity of each individual’s identity;
- Discuss prejudice and stereotypes toward certain groups (discussion of the effects and functions of prejudice / stereotype);
- Make it visible that
  - the reactions of persons / societies to individual fragments of an individual’s identity can (and may) be different from others;
  - people / society define the value of certain attributes of individuals and their identities;
  - this can be an advantage or disadvantage for a person or group of people;
- Encourage discussion about how society treats “others” and how such discussions foster inequality;
- Discuss the social dynamics of judging someone precisely because he / she (real or potential) is related to a particular group;
- Special emphasis can be drawn around the fact that we are inclined to forget about groups that seem obvious to most people in the group (white skin, male sex, nationality or majority language).

Material / Setup

- Worksheet “Fragments of Identity” (see below), pens
- Circle of chairs

Procedure

Step one (individual work)

Share the worksheets.
First, ask participants to personalize their worksheets by writing their name in the middle of the five fields displayed on the worksheet.

Secondly, invite the participants to put the name of the groups to which he or she belongs or is related to in each of the five fields.

Tell them to fill in as spontaneously as possible. The results should be “a snap-shot” of their current situation. Choosing the group you feel connected to today can change tomorrow or in a different situation with different people. If a participant asks you for examples (what does “group” mean ...?) you can indicate a profession, nationality, religion, hobby group, and so on. Be careful not to give too many examples, because the examples can influence which groups the participants choose to write down. Explain that this is not related to the personality traits or general characteristics that describe your personality. When most participants complete the task, tell them to highlight the group that is most important to them at that moment.

Step two (group work)
Ask the participants to create two working groups and share the results and experiences of step one for about 10 minutes.

Variation
If you want to, you can finish the activity here after a short discussion with all the participants. During this discussion focus on the following issues that underscore the link between identity fragments, prejudices, and discrimination.

- What did you feel during the activity?
- Was it easy / difficult to choose your own group / identity fragments?
- When you look at your working paper, what fragments can you easily associate with the prejudices that exist in your society?
- Which fragments will most likely be discriminated against in your society?
- When a person is discriminated against on the basis of identity fragments what can easily happen to other fragments?
- What did we learn from this activity about the relationship between identity and discrimination?
- What can we learn from this activity and what will it mean to us in a personal (professional) life?
Step three ("stand up")

Explain the following procedure: You will be reading different categories (see the list below). Whenever one of the participants feels that he/she can be identified with a particular group/fragment in relation to his/her identity (see your work-sheet), he/she should stand up (quietly without commenting on anything).

Let them keep standing until you tell them to sit back down. The only task of the participants is to look around and look at who stands and who does not – without commenting.

Start reading the list of categories – do it category by category. Always wait a bit before proceeding. While people are standing tell them to continue to stand if the category refers to the group they have recorded as the most important – others will be able to sit in the meantime. Only after a few seconds everyone will be allowed to sit down. Make sure everyone is sitting before you start with a new category! Do not rush! Wait a minute before you proceed if no one stands up.

List of categories
Religion Profession
Sex, gender Sexual Orientation
Ethnicity
Age
Social status
Hobbies, free time
Family
Friends
School, university
Sports
Non-profitable activities Political interests / convictions
Neighborhood, home Language
Music and other arts
Food (e.g. vegetarian)
Ask the participants to provide additional categories that have not been mentioned so far, and proceed with the same procedure with these categories.

You can customize the categories according to your needs, the list is just an example.

Step four (discussion)
- Was something very difficult / surprising about this activity?
- How did you feel when you stood alone or with almost the entire group?
- Did you recognize any differences?
- How did you feel when you sat alone or in a group of several participants?
- Have you felt uncomfortable when you were not permitted to sit down?
- Did you find out something new about someone in the group?

Attention: Be aware that these issues can lead to misunderstandings and stereotypes among participants. Explain that getting up when the category “sexual orientation” is read out, does not necessarily mean that the person is gay, but that it can mean that a man identifies himself as a heterosexual man, or standing up when the categories “religion” or “politics” are read out loud, can also mean that a person is atheist or not interested in politics and so on.
- Are there certain groups that are more difficult to stand up for or remain standing?
- Is there any difference when you like this kind of group membership?
- How much attention should be paid to a single fragment of identity (for example, someone’s sexual orientation)?
- How would you feel if you were only recognized through just one fragment of your identity? Why are people inclined to categorize people on the basis of one fragment of their identity instead of recognizing that we are more than their sum?
- Did you find out during this activity that you did not think about certain groups? What could be the reason for this?

Adaptation for large group settings
Make sure the participants get the worksheets (“Fragments of Identity”). Let the participants draw their own worksheets.

Explain the activity and let them fill in their worksheets (“Step 1: Individual work”). Invite them to discuss the results in pairs or groups up to 4 (“Step 2: Group work”) by using the questions from the variation-section.
Worksheet: Fragments of my Identity

Enter your name in the middle of the circle.
Put the names of the groups that you identify with in the five fields.
3. Bag of Destiny
40 minutes

Goals
- Changing perspectives;
- Strengthening the capacity for compassion;
- Asking the amount of information we have about certain groups;
- Addressing the source of information or our stereotypical attitudes about members of particular groups;
- Raising awareness of discriminatory barriers;
- Promote positive aspects that equality brings about.

Material
- Worksheets (see below);
- “Destiny cards” (see the optional list below): Write one “destiny” for each participant on a small piece of paper and put the papers into a bag (or hat ...);
- Pens;
- Circle of chairs.

Procedure
Tell the participants that this activity requires the capacity to imagine everyday situations under circumstances that can be quite different from their own reality.

First, each participant needs to draw a “destiny card”. Ask the participants to imagine that they wake up tomorrow morning and realize that the traits from the “destiny card” they drew suddenly becomes part of his / her identity. (If someone gets a “destiny card” that is already part of or similar to his / her personal life, let the person get another “destiny card”). Add that nothing else has changed except for the added properties from the “destiny card”. Share the worksheets with the participants and ask them to answer the questions.

Second, ask them to form smaller working groups in which they exchange the results and their experiences of this activity.

Third, start a discussion.
**Destiny cards**

<table>
<thead>
<tr>
<th>Woman / Man (change of gender)</th>
<th>Catholic</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lesbian</td>
<td>Blind</td>
</tr>
<tr>
<td>Homosexual</td>
<td>Buddhist</td>
</tr>
<tr>
<td>Child</td>
<td>Delinquent</td>
</tr>
<tr>
<td>Unemployed person</td>
<td>Emigrant</td>
</tr>
<tr>
<td>Russian</td>
<td>Vegetarian</td>
</tr>
<tr>
<td>Deaf</td>
<td>Homeless person</td>
</tr>
<tr>
<td>80 years old</td>
<td>HIV positive</td>
</tr>
<tr>
<td>EU citizen</td>
<td>In a wheelchair</td>
</tr>
<tr>
<td>Alcohol addict</td>
<td>Black / white (skin color change)</td>
</tr>
<tr>
<td>Asylum seeker</td>
<td>Drag Queen</td>
</tr>
<tr>
<td>Chinese</td>
<td>Cross-dresser</td>
</tr>
<tr>
<td>Muslim</td>
<td>Transsexual</td>
</tr>
</tbody>
</table>

**Discussion**

- Was it easy / difficult to imagine your life changing with this one attribute?
- How big was the change?
- Do you think that some fates are more challenging than others?
- During debriefing and assessing it is important to see how the students knew about the attribute. Was it through personal experience or some other source of information? Are you sure that the information and ideas you have about certain attributes (and groups) are reliable? Is information based on prejudices and stereotypes?
- Did you find out something new?
- Was it difficult to answer some of the questions? Why?
- Do you need further information? Do you miss some information?
- You can focus on some questions by discussing the answers, for example: “Who wants to answer questions in front of the whole group: Is there anything you can offer to society as this new person (with this additional characteristic), which you could not have offered before?”
Worksheet: Bag of Destiny

When you wake up tomorrow, the attribute on your “destiny card” has suddenly become a part of your identity. Imagine what your life will be and how it will go on. Think about what you need to change and how others will react to this change too.

Try to answer the following questions as complete and honest as possible.

Q1: How will your life change with a new identity? List at least five changes:


Q2: Will your attitudes / behaviors change and how?


Q3: Try to anticipate how others can react to your new identity. Take into account the particular possible reactions of your family, close friends, colleagues, and the rest of society.


Q4: What do you think will your position be at your workplace or within your company? Will it be stronger or weaker?

Q5: Now, as a new person, is there anything you could offer to society which you would not have been able offer before?

Q6: Do you need something now or do you expect something from others, which you did not need or expect before?

Q7: Will it be easier or harder to live in the neighborhood of your choice compared to before?
Q8: What do you think, could you be happy with your new life?
4. Step Forward
40 minutes

Overview

We are all equal, but some are more equal than others. Participants in this activity will experience how to be someone else in the company. Questions addressed include:

- Social inequality as a frequent source of discrimination and exclusion.
- Compassion and its boundaries.

Goals

- Changing perspectives;
- Promote compassion for others who are different;
- Raising awareness for unequal opportunities in society;
- Maintaining views on possible personal consequences of belonging to a particular social minority or cultural groups;
- Questioning the amount of information we have about certain groups;
- Addressing the source of information or our stereotypical attitudes about members of particular groups;
- Raising awareness of discriminatory barriers;
- Promote the benefits of equality;
- *(Optional)* Discussion of the first steps that can / should be taken to address inequalities.

Material / Setup

- Role cards (see below)
- List of “situations and events” (see below)
- Open space (corridor, large room or outside)

Procedure

Create a relaxed atmosphere (with light background music). Or ask the participants to be quiet. Randomly share role cards with participants, one card for each participant. Ask them not to reveal their card to others. Now, ask them to start.
They are in their role. To help them, read the following questions, but take a short break after each question, giving them time to think and imagine the picture of themselves and their own life in that role:

- What was your childhood like?
- What family were you born in?
- In which region of [country] do you live?
- What kind of house do you live in?
- What are your parents doing?
- What is your everyday life like?
- Who do you socialize with and where?
- What are you doing in the morning, afternoon and evening?
- What style of life do you have?
- Where do you live?
- How much do you earn monthly? What are you doing in your free time?
- What are you doing during the holidays?
- What excites you and what scares you?

Now, ask the participants to remain absolutely silent while they line up at an imaginary start line.

Tell participants that you will read the list of situations and events (see below).

They need to take one step forward if they can respond with a “yes” to a statement read by you. Otherwise, they should stay where they are and not move. Read the statements one at a time. Take a short pause after each statement to give people time to step forward and see where they stand in relation to others.

At the end, ask them all to identify and remember their final positions. After that give them two minutes to get out of the role (e.g. by making one symbolic step aside) before you start the discussion.

**Situations and events**

Read the statements below out aloud. After you have read each statement, give the participants time to make a step forward and to see where they stand in relation to other participants.
You have never faced a serious financial difficulty.
You live in a good house / apartment, which has a telephone and a TV set.
You feel that your language, religion and culture are respected in the society in which you live.
You feel that your opinion on social and political issues is taken into account.
People consult you about their various problems.
You are not afraid that the police stop you.
You know where to go for advice or help if you need it.
You have never felt discriminated against because of your origin. You enjoy adequate social and health care.
You can go on a holiday once a year. You can invite friends to dinner.
You lead an interesting life and you are sure of your future. You can study and have a profession of your choice.
You are not afraid to be disturbed or attacked on the streets or by the media. You can vote in local and national elections.
You can celebrate the main religious holidays with your loved ones or with your closest friends.
You can take part in an international seminar abroad.
You can go to the cinema or theater at least once a week. You are confident about the future of your children.
You can buy a new suit/dress at least once every three months. You can fall in love with a person of your choice.
You feel that your abilities are appreciated and respected in the society in which you live.
You can use the Internet and benefit from the Internet.

Discussion
Begin with the following question to the participants (ask them not to reveal their roles):
What happened and how did they feel during this activity? Continue to talk about the issues that will arise and the lessons the participants have learned.

- How did you feel when you took a step forward or how did you feel when you could not take a step forward?
For those who too steps forward more often, when did they notice that others lagged behind?
Has anyone felt that his / her basic human rights have been neglected?
Can the participants identify the roles of others? (Allow participants to disclose their roles in this part of the activity).

After the roles have been disclosed / discovered ... continue with the following questions:
- How easy or difficult was the role play?
- What did they imagine, what kind of person was linked to the role they were supposed to play?
- Does this activity reflect society in some way? How?
- What kind of phenomenon does this activity show / bring to the surface?
- What human rights are meant for each role?
- Can a participant say that his/her human rights were not respected or that he/she could not make use of them?
- What barriers surfaced?
- What first steps can be taken to address inequalities in society?

Advice
Initially, in the imagination phase, some participants may say that they do not know much about the life of the person whose role they should play. Tell them that it is not of particular importance and to try to make better use of their imagination.

The power of this activity lies with the impact that shows when the distance between the participants becomes visible, especially at the end, when the distance between those who have moved forward and those who could not move forward, becomes greater.

In order for this impact to be as high as possible, it is important to adapt the roles so that they reflect their own daily realities. While doing this, make sure to adjust the roles in such a way that only a handful of participants can move forward (i.e., the majority cannot answer with “Yes”). This also applies if you have a larger group of participants, in which case you have to develop further roles.

During debriefing and evaluation, it is important to explore where participants draw their knowledge on persons, whose role they have had to play. Whether the source of information was their personal experience or something else (such as news, books, or jokes). Are they sure that the information and ideas they have on these people are credible? This way you show how stereotypes and prejudices work.
Variation (for additional working group meetings)

After a brief discussion, form smaller working groups. Ask the participants to examine who in society has more and fewer opportunities, and what are the first steps that can be taken – and should be taken – to address inequalities. Or, ask the participants to take on the role of one character and to ask themselves what can be done, that is, which duties and responsibilities does the person him-/herself have, and which duties and responsibilities does the community and the government in relation to that person have.

Suggestions for accompanying actions

Depending on the social context you work in, you will probably want to invite representatives of groups who associate with specific cultural or social groups in order to talk with the participants. Find out about them for which issue they are currently fighting and how you can support them. Such face to face encounters provide for the possibility of addressing or re-examining some of the prejudices and stereo- types arising from the discussions.

Role cards

<table>
<thead>
<tr>
<th>Role Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>You are a single motherless unmarried mother.</td>
</tr>
<tr>
<td>You are the daughter of a local bank manager. You are studying economics.</td>
</tr>
<tr>
<td>You are an Arab Muslim who lives with his parents who are pious believers.</td>
</tr>
<tr>
<td>You study human rights at college. Your husband supports you financially.</td>
</tr>
<tr>
<td>You are a married Muslim woman who lives with her husband’s family, who are pious believers.</td>
</tr>
<tr>
<td>You are a soldier in the army.</td>
</tr>
<tr>
<td>You are a person with limited abilities and you can move only with the help of a wheelchair.</td>
</tr>
<tr>
<td>You are a 17-year-old Roma girl who has not finished elementary school.</td>
</tr>
<tr>
<td>You are the president of the local human rights NGO, which receives international donations.</td>
</tr>
<tr>
<td>You are an unemployed accountant, and you work as a taxi driver, and do a little agriculture to survive.</td>
</tr>
<tr>
<td>You are a teacher and now you have recently moved to [country], but do not speak fluent [language].</td>
</tr>
<tr>
<td>You are a carpenter, an [nationality] in [name of the capital of country].</td>
</tr>
<tr>
<td>You are a software engineer.</td>
</tr>
<tr>
<td>You are the first son of a farmer from [name of a small village in country].</td>
</tr>
<tr>
<td>You have three children and do everything you can to hide your homosexual identity.</td>
</tr>
<tr>
<td>You are a lesbian, you are 30 years old and live with a partner from Sweden.</td>
</tr>
<tr>
<td>You are married to an alcohol addict, whose children do not live with him / her.</td>
</tr>
<tr>
<td>You are a Chinese immigrant and you have a fast-food restaurant.</td>
</tr>
<tr>
<td>You are the daughter of the Russian ambassador in [country].</td>
</tr>
<tr>
<td>You are a pensioner with a monthly pension of EUR 90.</td>
</tr>
<tr>
<td>You are a widower of 27 years who lives in a remote village in the mountains.</td>
</tr>
<tr>
<td>You are the son of a famous politician. You have a master in political science and you have recently started working for your municipality.</td>
</tr>
</tbody>
</table>
5. Council of Europe – HELP Online Courses


In order to participate in the courses, the user has to register.

There are three courses available relevant for the topic of legal protection against discrimination.

Anti-discrimination

Languages available (among other): English, Bosnian, Albanian, Serbian

This course is conceptualized as a master distance learning course. It targets national judges, prosecutors and lawyers. It offers an in-depth examination of some of the most relevant and problematic aspects of anti-discrimination and a forum for discussion among colleagues.

- Welcoming addresses and curriculum
- Introduction to the ECHR and the functioning of the ECtHR
- Discrimination and the ECHR - Article 14
- Discrimination against Roma
- Discrimination against the SOGI Community
- Discrimination against the Disabled Community
- Discrimination against Minority Communities on Grounds of Race, Religion, Ethnicity

Modules consist of the following elements:

- Presentations
- Case studies
- Assessment (multiple choice test)
- Additional resources
- Useful links
- Videos and multi-media

More information on the content of each of the modules is available at:
Fight Against Racism, Xenophobia, Homophobia and Transphobia


Racism and xenophobia are a widespread problem in Europe today, with anti-immigrants attitudes on the rise. Across the EU, LGBTI persons and other vulnerable groups continue to face discrimination, violence and exclusion.

The course covers in an interactive way the European non-discrimination law (from the Council of Europe and EU) and the impressive body of case law of the European Court of Human Rights and of the Court of Justice of the European Union, in addition to decisions of the European Committee of Social Rights.

The course has been developed under the “HELP in the 28” Programme implemented by the Council of Europe. Funded by the EU, “HELP in the 28” is the largest training project within the EU on fundamental rights for judges, prosecutors and lawyers.

The course was last updated in March 2017. For more information on the course, please download the course brief below.

Course outline (4 modules):

1. Introduction:
   - Perceptions and bias
   - Key concepts

2. Legal framework:
   - ECHR/ESC - EU Law
   - Role of different actors
   - Extensive ECtHR & CJEU case-law

3. Racism and Xenophobia:
   - Hate crime/hate speech/harassment
   - Discrimination

4. Homophobia and Transphobia:
   - Hate crime/hate speech/harassment
   - Respect for private and family life
   - Discrimination
Hate Crime and Hate Speech

Languages available (among other): English, Bosnian, Macedonian, Albanian, Serbian

http://help.elearning.ext.coe.int/course/view.php?id=1758

Hate crime and hate speech harm represent growing a growing problem across Europe and harm individual victims, communities and society as a whole. The two phenomena are very much interconnected, given that hate speech creates an environment in which people are more likely to commit hate crime. The two problems do however require their own specific responses and solutions.

This course therefore deals, interactively, with the appropriate legal responses to these complex problems. The course focuses on criminal law, law enforcement and criminal justice aspects of the legal response, while mentioning other relevant aspects. The course aims to assist legal professionals throughout Europe in understanding hate crime and hate speech and how to deal with them in their daily work. Topics are explored in a practical way, by using presentations, interactive screens, knowledge tests and reflective exercises to gain and apply knowledge and skills.

The course is composed of five modules:

1. Hate crime and hate speech – introduction
2. Hate crime – concepts
3. Hate crime – international framework
4. Hate crime – stage through the criminal justice system
5. Hate speech
VIDEO SUGGESTIONS

TED Talk 1
Stella Young, April 2014, “I’m not your inspiration, thank you very much”, TEDxSydney Note: Croatian and Serbian subtitles and interactive transcript available
https://www.ted.com/talks/stella_young_i_m_not_your_inspiration_thank_you_very_much?language=en

Reflection Questions:
- What idea of normal and ordinary does Stella Young challenge?
- What is her message to people feeling pity for her?
- How does the perception of being exceptional limit people with dis-abilities?
- What do we learn about (anti-)discrimination when Stella Young points out she does not want to be an inspiration for able bodied people?

Interested in more, also listen to:
Note: Croatian subtitles and interactive transcript available
https://www.ted.com/talks/elise_royle_when_we_design_for_disability_we_all_benefit?language=en

TED-Talk 2

Note: Croatian and Serbian subtitles and interactive transcript available
https://www.ted.com/talks/michael_kimmel_why_gender_equality_is_good_for_everyone_men_included?language=en

Reflection Questions:
- What are your invisible privileges?
- How are men and women limited by gender inequality in the society you are living in?
- What are Michael Kimmel’s arguments for promoting gender equality?
TED-Talk 3
Jared Diamond, March 2013, “How societies can grow older?” TED Note: Bosnian and Serbian subtitles and interactive transcript available
https://www.ted.com/talks/jared_diamond_how_societies_can_grow_old_better?language=en
Reflection Questions:
  o How is the value/status of elderly people perceived in your society?
  o Thinking of the society you are living in, what are the tendencies to exclude older people?
  o What are the ideas proposed in the TED-talk on including older people into society? What measures would be needed to guarantee equal treatment of older people in your society?

TED-Talk 4
Jenni Chang & Lisa Dazols, May 2015, “This is what LGBT life is like around the world”
Note: Croatian subtitles and interactive transcript available
https://www.ted.com/talks/jenni_chang_and_lisa_dazols_this_is_what_lgbt_life_is_like_around_the_world/transcript?language=en
Reflection Questions:
  o What is LGBT life like in your country?
  o What is the link between gender equality and homophobia mentioned in the TED Talk?
  o What strategies have Jenni Chang and Lisa Dazols discovered around the globe to strengthen equality for LGBT people?
Video 1

Put racism in the right place

Note: The video is in Portuguese with English subtitles.

https://www.youtube.com/watch?v=6yVMik5Mfwk

A flight passenger complains to the flight attendant about having to sit next to a black passenger.

Reflection Questions:

- In which area is discrimination happening?
- What impact does the reaction of the flight attendant have?
- Do laws in your country prohibit this kind of discrimination?

Video 2

Low key actions can have a great impact – show moral courage

Note: The video was created by an Austrian NGO, called ZARA – Zivilcourage und Anti-Rassismus-Arbeit, the racist smearing shown says “Foreigners out”, at the end the statement say “Low key action, great impact. Show moral courage!”

https://www.youtube.com/watch?v=BEX7LWnsOyU

The video shows an old lady who removes racist smears in Vienna.

Reflection Questions:

- Would “Foreigners out” by classified as discriminatory in legal terms in your country?
- Why does such a low-key action have a great impact?
- What happens with racist smearings in your town?
Video 3

Racism is stupid

https://www.youtube.com/watch?v=YTynRESrgs

This video is part of the project “Stories from the schoolyard” implemented by Graphis 122 in partnership with the Policy Center for Roma and Minorities in Romania. It shows how a shop owner closely observes a young Roma guy coming to his shop, while another costumer pinches something.

Reflection Questions:

o In which area is discrimination happening?

o What would you ask the shop owner if you had observed this situation?

o What are the economic costs of discrimination?

Video 4

Disability discrimination

Note: This video is in English, no subtitles.

https://www.youtube.com/watch?v=uu7SjQdLXwE

The video shows how persons with disabilities are discriminated by barriers established by society.

Reflection Questions:

o What is the essence of this kind of discrimination against persons with disabilities?

o How does this commercial make use of the social instead of the medical model of disability?

o How can society organize in different ways so that this kind of discrimination is avoided?
Video 5

All different, all equal

Note: The video is in Slovenian with English subtitles.

https://www.youtube.com/watch?v=FiAaqV5PtnM

This video was produced by youngsters in Slovenia. A girl introduces her family members and acquaintances, who all add to the diversity of our societies.

Reflection Questions:

- How is diversity shown in the video?
- What do you (not) like about the slogan “We are a little bit strange, but we still love each other”?
- What is essential for making diversity work?

Video 6

Worlds Apart – an Experiment

Note: This video is in English, with English subtitles.

https://www.youtube.com/watch?v=etlqln7vT4w

The video is a Heineken spot and it shows strangers from different walks of life who meet in pairs for the first time. They get the opportunity to talk to each other and to get to know each other a bit, then they are shown videos about each other – new right and feminism, transgender person and transphobia, acknowledge and deny climate change. After they have seen the video they are given the opportunity to leave or stay and have a beer with the other person.

Reflection Questions:

- What are the surprising elements in the stories people tell about themselves?
- After the videos have been shown, what are the strategies people use in the conversations over a beer?
- What needs to be done to make mutual respect despite of differences possible?
Video 7

All that we share

Note: The video is partly in English and partly in Danish with English subtitles.

https://www.youtube.com/watch?v=jD8tjhVO1Tc

The video was shown on TV in Denmark, it analyses the concepts of “us” and “them”.

Reflection Questions:

- What kind of prejudices are displayed by the video?
- How are the concepts of “us” and “them” challenged?
- What kind of measures need to be taken to accommodate diversity in our societies?

Video 8

Awareness raising campaign about the personal nature of online racist abuse (Lithuania)

Note: The video is in English with Lithuanian subtitles and some text in Lithuanian in between.

https://www.youtube.com/watch?v=qNX1256eVw8&feature=youtu.be

The video shows a group of people who thought they were being invited to audition for an acting role in an advert being asked to wait on a sofa outside what they think is the interview room.

While being secretly filmed, another black actor who also appears to be waiting asks them to translate some of the comments he has received on his Facebook page as he has just moved to Lithuania and doesn’t know the language.

The friendly smiles and helpful expressions on the faces of the participants soon turn to shock and anguish as they start to read the abuse (like “monkey”, “go back to Africa” and “slave”) he has unwittingly received.

The Lithuanian Center for Human Rights (LŽTS) released the video to raise awareness of the effect online abuse has on people and how they can report it.

Reflection Questions:

- What kind of atmosphere is established in the video?
- How would you react in a situation like that?
- What kind of support could be offered to the guy who just arrived in Lithuania?
Video 9

Equal Opportunity Access to Economic Decision-Making

Note: The video is in Croatian with English subtitles.

http://www.equineteurope.org/Croatian-Ombudsperson-for-Gender

The Croatian Ombudsperson for Gender Equality launches a new video on equal access of women and men to economic decision-making in the framework of the EU-funded project “Dismantling the Glass Labyrinth – Equal Opportunity Access to Economic Decision-Making in Croatia”.

In Croatia, only 17.32% of board members of companies are women. The Croatian Ombudsperson for Gender Equality launched the project “Dismantling the Glass Labyrinth – Equal opportunity Access to Economic Decision-making in Croatia” to address this huge inequality and to encourage employers and policy-makers to promote economic participation of women.

The project is conducted with the support of the European Commission and in co-operation with the Ministry of Labor and Pension System, the Croatian Employers’ Association, the Institute for Labor Market Development and DIM — the Association for Civic Education and Social Development.

As part of the project, four empirical studies were conducted to assess under-representation of women in economic decision making in Croatia. The first two surveys have shown better representation of women in boards of limited liability companies (31.87%) and in supervisory boards (24.6%). However, they also clearly point out the existence of the strong gender-based segregation in economic decision-making.

Reflection Questions:

- What kind of impression do you get when you watch this video?
- What do the numbers at the end of the video tell us?
- What could be effective measures to increase the number of women as presidents of boards of directors?
Video 10

Transgender Europe (TGEU) Calls for a Stop to the Nightmare that is Legal Gender Recognition in 34 Countries in Europe

Note: The video is available in English, with subtitles in many European languages

http://www.equinet.eu/EU-Transgender-Europe-Calls-for-a

TGEU’s new 2-minute campaign video portrays the nightmare scenario that most trans people still face today when trying to legally change their name and gender, namely being forced to undergo sterilisation, divorce, and a diagnosis of mental illness, despite not being mentally ill.

As a result of these humiliating procedures, many trans people are not able, or refuse, to change their legal name and gender. This means that they have passports and other identity documents that don’t match their identity and appearance. When asked to prove their identity, for example when travelling, opening a bank account, or renting an apartment, trans people may be forced to come out as trans, accused of being a fraud, and become vulnerable to humiliation, discrimination and violence.

It is not a surprise therefore that 73% of trans people in the EU think that better legal gender recognition laws, that allow them to change their name and gender more easily, would allow them to live more comfortably.

In 2014, several countries have implemented or announced changes to their procedures, including Denmark and Malta. However, 34 countries in Europe still do not allow for the recognition of a trans person’s gender identity without invasive and abusive requirements that violate human rights, such as forced sterilisation, divorce and diagnosis of mental illness.

“Trans people have a right to access all areas of society, and we have a right to quick, transparent and accessible gender recognition procedures.” says TGEU Executive Director Julia Ehrn: “States across Europe continue to violate trans people’s rights by holding on to inhumane practices. Without ID documents matching their gender identity, trans people are denied a life in dignity and respect.”

The video marks the one year anniversary of TGEU’s “Access All Areas! Recognition Opens Doors” campaign on legal gender recognition, which calls upon European governments to introduce quick, transparent and accessible gender recognition legislation.

Reflection Questions:

- What is the impact of the legal conditions which are pre-requisites for transgender persons to be allowed to change their name and gender?
- What is the situation like in your country?
- How could the campaign of Transgender Europe be supported?
Video 11
Celebrating Equinet’s 10th Anniversary

Note: The video has English subtitles.

http://www.equineteurope.org/Conference-Together-for-an-Equal-Europe

Since 2007, Equinet has been promoting equality in Europe by supporting and enabling the work of national equality bodies. It supports equality bodies to be independent and effective as valuable catalysts for more equal societies. During the past decade, Equinet has grown from a project-based set-up to become the recognized European Network of Equality Bodies, with 46 national equality bodies in 34 European countries.

The national and European context in which equality bodies have evolved has changed a lot over the past 10 years, from key legislative achievements to greater economic and social challenges. During this conference, Equinet aimed to take stock of the progress made and the contribution of equality bodies in addressing the developments over the past decade, particularly on non-discrimination in Europe. The video shows many important stakeholders supporting the aim of an inclusive society.

Reflection Questions:

- What is the role of equality bodies in our societies?
- What is the added value of Equinet?
- What is the role of the equality body/bodies in your country? What are the most important stakeholders they cooperate with?
Video 12

I am not racist, but ... (examples of racism)

Note: The video has English subtitles.

https://www.youtube.com/watch?v=uiMJrv1Zp5o&feature=youtu.be

Over the years, the National Commission for the Promotion of Equality (NCPE), one of Equinet’s Maltese members, has developed a number of videos on racism as part of its campaigns.

Reflection Questions:

- Which areas of life are used as examples where racist incidents take place?
- What was most striking for you about the video?
- What kind of questions would you ask the people who behave in a discriminatory way?

Video 12

George the poet on hate crime

Note: Video is in English with English subtitles.


Reflection Questions:

- What is the essence of hate crime?
- What should be done about hate crime?
- What could you do about hate crime?
ADD YOUR OWN VIDEOS

Video

Title:
Link:
Description:

Reflection Questions:
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Video

Title:
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Reflection Questions:
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Video

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Sources:

This document is based on research done for an e-learning tool (Nulta tolerancija) and for a media campaign within a Twinning Project called “Support to the Advancement of Human Rights and Zero Tolerance to Discrimination” implemented in Serbia with the Government Office for Human and Minority Rights and the Commissioner for Protection of Equality by the Ludwig Boltzmann Institute of Human Rights (Austria) and the Government Office for National Minorities of the Republic of Slovenia. The research and development work for the Twinning project was done by Karin Bischof and Dieter Schindlauer, the research for the other videos was done by Barbara Liegl, all Ludwig Boltzmann Institute of Human Rights.
BRIEFING FOR REPRESENTATIVE OF CSOS AND EQUALITY BODIES/OMBUD INSTITUTIONS

Background information on the course on Protection against Discrimination in SEE

Countries of the Balkans have introduced special laws protecting against and preventing discrimination. Slowly, a system of a broad range of stakeholders preventing and protecting against discrimination is evolving. One key task of this system is to guarantee access to justice for individuals who have experienced discrimination and support them in getting their rights restored. The course promotes knowledge and skills which are key in this system of preventing and protecting against discrimination.

The course is based on the idea that discrimination is a system that creates and reproduces stories of norm and normality and uses real or perceived differences to label human beings. Discrimination creates hierarchies and results in unjust distributions of power and privileges. As discrimination hampers prosperity and curbs the development of individuals and societies, legislation protecting against and preventing discrimination has been established.

The course provides an overview about the concepts, forms, areas and grounds of discrimination defined at international and European level and from a comparative perspective of South-Eastern European countries. It gives an overview about protection mechanisms against discrimination, procedural aspects of discrimination cases and possible remedies for persons affected by discrimination. Students have the opportunity to actively involve themselves in discussions and practically apply the theoretical knowledge gained during the lectures.

Key in the course will practitioners sharing their experiences in promoting the protection against and the prevention of discrimination with the students. Your institution/organization is interesting for our students as you support people who have experienced discrimination in gaining access to justice, are involved in court proceedings on discrimination cases, are doing awareness raising and outreach work on discrimination issues and/or are doing research and publishing studies on discrimination. We are especially interested in the practical aspects of your work. We would appreciate you bringing examples of discrimination cases you have worked on to class and work with our students on these cases.

The following questions give you some ideas on the issues the students are interested in:
1) What kind of complaints are submitted to you? (forms, grounds, areas of discrimination)

2) What does the procedure of handling complaints look like?

3) How do you work with victims of discrimination when they approach your institution/organization with a complaint?

4) How do you reach a conclusion on whether discrimination can be established or not?

5) What kind of recommendations do you issue in order to remedy and pre-vent discrimination?

6) Which recommendations are (not) successful and why?

7) What opportunities does your institution/organization have to participate in court proceedings? What experiences have you gained when making use of these opportunities?

8) What is important when supporting a victim of discrimination in a court proceeding?

9) Do you do strategic litigation? If yes, how do you select the cases for strategic litigation? What were your most successful cases and why?

10) What kind of awareness raising/outreach work does your institution/organization do? Who are the most important target groups your institution/organization tries to reach? Is this work connected to the complaints you receive? How successful are you in doing awareness raising/outreach work?

11) Have you conducted discrimination testing? What was the aim of this exercise? How did you implement discrimination testing? What were the results?

12) What kind of studies have you implemented and published? What was the focus of the research? Why did you conduct the research? Was it connected to complaints received? What were the most important outcomes? Were you able to make use of some of the results in your everyday work?

13) Who are your most important cooperation partners? Why do you cooperate with these partners? What are the results of these different kinds of cooperation?
The following analysis is based on the recognized logic of proportionality, fully aware that different opinions on the logic of proportionality exist. Nevertheless, the four steps of the legitimate objective, appropriateness, necessity and reasonableness (proportionality in the narrow sense) may be identified as an essential skeleton in the judgments of the CJEU. If the legitimate objective is deemed an autonomous element to be examined separately before proportionality, the structure of proportionality consists of three elements. The methodology or, as other authors emphasize, rationality in balancing is key. This is irrespective of the next question of how subjective or how objective proportionality or balancing can be. Although the CJEU does not consistently examine the principle of proportionality, the court basically supports the logic of a three-step proportionality test. The most common formula used by the court is that:

“measures adopted do not exceed the limits of what is appropriate and necessary in order to attain the objectives legitimately pursued by the legislation in question; when there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued”.

Here we can find the previously identified four elements: the legitimate objective, the appropriate measure, ‘the least onerous measure’ criterion that can be attributed to the necessity test and the ‘not disproportionate to the aims pursued’ criterion as reasonableness/proportionality in the narrow sense. The Court itself refers to proportionality in Digital Rights Ireland and Tele2 Sverige as settled case law.
The EU Charter of Fundamental Rights (CFR) does not provide good support for the differentiation between the necessity and reasonableness requirement. But reasonableness is not directly referred to and may be derived from the repeated mentioning of proportionality, and therefore interpreted as proportionality in the narrow sense. From other jurisdictions and legal literature, it becomes clear that proportionality in the narrow sense is the final step of proportionality, whether as a separate step or included in one of the other elements of proportionality. Proportionality in the case law of the CJEU is very much characterized by the balancing of the interests and rights concerned.

a) appropriateness

It is common legal understanding that the appropriateness test is not very strict, as it is enough that a measure aims to support the legitimate objective. With regards to market freedoms, the CJEU usually requires only that it is not ‘manifestly inappropriate’. In order to prove this standard, even a rather vague argumentation is sufficient.

b) necessity

There is no universal doctrine on necessity. This is understandable given the different legal systems and cultures. Different views and intensity of examination may lead to varying or finally different results. But necessity is broadly recognized as an integral part of proportionality and has to be examined as the step subsequent to appropriateness and before proportionality in the narrow sense. This cannot explain the inconsistencies in the examination of necessity in the practice of the European courts. It is difficult to distinguish necessity from proportionality in the narrow sense if balancing or normative assessment is done within the frame of necessity. It may function as a rather neutral, scientific filter before appropriateness. Hence, necessity is deemed as an essentially fact-oriented examination if a milder means could have been used to achieve the same success. This view provoked the thesis that necessity may doctrinally be the most secure part of proportionality. According to the CJEU ‘as far as when there is a choice between several appropriate measures, recourse must be had to the least onerous’. If there is only one appropriate measure to follow the goal, then, in absence of an alternative, it is also the necessary one. If there are more appropriate measures at disposition, it needs to be the least onerous mean which still achieves the goal to the same extent.

c) reasonableness/proportionality in the narrow sense
The measure is appropriate, reasonable in the narrow sense, if the possible violation of other protected legal values and the legitimate aim are in a proportionate relationship. There must not be a disproportion between the level which is reached with regards to the aim pursued and the extent to which the measure is restrictive on the other protected value. Consequently, the protected value enhanced by the measure and the legal value restricted by the measure need to be weighed against each other on the virtual scale of proportionality. An open question is if the weight on both sides of the virtual scale needs to be equal, or if small disproportionalities are allowe