

Legal Seminar

Making Equality Rights Work in Practice

9 November 2010

Indirect Discrimination

Romanita IORDACHE





- Romanian Anti-discrimination Law (2000, amended and consolidated in 2006):
 - Open-ended **list of grounds** going beyond the EU six; (?!?)
 - Wide list of **provisions** protecting against discrimination; (?!?)
 - Material scope** going beyond the EU Equality Directives;
 - Remedies and enforcement:** possibility to choose between courts and national equality bodies;

Legal Seminar

Making Equality Rights Work in Practice

2

Relevant Legal Provisions

- Article 2 (3) of the Anti-discrimination Law prohibits:
‘any provisions, criteria or practices apparently neutral which disadvantage certain persons on grounds of one of the protected grounds from para.(1), unless these practices, criteria and provisions are objectively justified by a legitimate aim and the methods used to reach that purpose are appropriate and necessary.’

Legal Seminar

Making Equality Rights Work in Practice

3

Implementation challenges

- 2005 NCCD case regarding authorisation for free practice of the medical profession – **Syrian citizen,**
- 2009 NCCD case on refusal to pay by bank order the monthly indemnity for a **person with a severe disability who was immobilized in bed,**

Legal Seminar
Making Equality Rights Work in
Practice

4

Implementation challenges -2- the really tough ones-

- (?!?) How far can you go in sanctioning indirect discrimination?:
 - 2008 NCCD case of **persons suffering from mental disabilities hospitalised in Predeal hospital** when compared to patients in other hospitals.
 - 2007-2010 long list of cases regarding salary related rights and benefits for **different categories of personnel working for the Justice machinery**→ NCCD, courts, Constitutional Court→ European Court of Justice

Symposium on Reasonable
Accommodation -ROMANIA-

5

Instead theoretical conclusions:

- The anti-discrimination principle is understood as an anti-oppression principle; it will prohibit entirely neutral classifications if they perpetuate or lead to discrimination and will allow classifications if they are benign and not acting out of discriminatory animus.

Legal Seminar
Making Equality Rights Work in
Practice

6

Instead theoretical conclusions:

- **Ground:** should be linked to past or current experience of oppression and marginalization and not merely differentiation,

Instead theoretical conclusions:

Scope: all actions undermining the social and political standing of minorities, including conduct not purposely directed against minorities but with unintended consequences of increasing or preserving socially disadvantaged position→ calls for affirmative measures as a must to alleviate the substantive condition of the disadvantaged.
