

Strategic litigation and access to justice for victims of discrimination

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A fight for equal pay for work of equal value before the Labour Court (AD 1996/ 41, AD 2001/13 and AD 2001/76)

Inspiration from successful litigating in similar cases in Ontario Canada,

Cooperation between JämO (Equal Opportunities Ombudsman) and the Swedish Association of Health Professionals

Active use of EU-legislation and caselaw from EC Court of Justice

Expert witnesses on EU law and on gender stereotypes

A strategy of four cases - to be ready to challenge losses

Costs deterring! The Court ordered JämO to pay the employer's costs. The work was of equal value but market forces – not gender – was said to explain the difference in pay.

*Legal tools on the subject of
access to justice*

ECHR Article 6 : Right to a fair trial

ECHR Article 13: Right to an effective remedy

Example of EU-legislation: *Council Directive
2000/78/EC* establishing a general framework for
equal treatment in employment and occupation,
Article 9 on Defence of rights

Paris Principles

adopted by UN resolution 48/134 of 20 December 1993

Competence and responsibilities

1. A national institution shall be vested with competence to promote and protect human rights.
2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.

Paris Principles - continued

”A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations.”

Paris Principles continued – duties

- (a) Seeking an amicable settlement through conciliation
- (b) Informing the party who filed the petition of his rights
- (c) Hearing any complaints or transmitting them to any other competent authority
- (d) Making recommendations especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

Canadian Human Rights Commission

The mandate of the Commission and its duties is stated in *the Canadian Human Rights Act*.

The Commission has to investigate every complaint. Exceptions are specified in the law.

The steps in the investigation procedure are described in the legislation.

The last step is referral to The Canadian Human Rights Tribunal

The Investigation Procedure – three stages

Stage 1: Before a formal complaint is filed an informal contact is taken in order to find out why somebody wants to complain

Stage 2: After a formal complaint is filed

Voluntary mediation. If mediation does not work, the investigation process starts. It ends with a report suggesting

a/ Complaint dismissed

b/ Complaint sent to conciliation

c/ Complaint referred to The Canadian Human Rights Tribunal

Investigation Procedure continues ...

Stage 3: After the Commission's Decision

Mandatory conciliation takes place. Both parties have to participate in a final attempt to resolve the conflict.

The Commission makes interventions before the Canadian Human Rights Tribunal in cases of public interest, when the outcome has the potential to clarify, influence, shape or define human rights law.

Annual report 2016 - results

- Commission received 1 488 complaints, 816 qualified for investigation, 358 referred to other dispute resolution
- Commission approved 268 agreements
- In 164 complaints the investigation did not give reason to go further
- Commission referred 41 disputes to the Tribunal

The Swedish Equality Ombudsman (DO)

The task of the Ombudsman is briefly described in the Discrimination Act (2008:567) as supervision that the Act is complied with.

The Act on the Equality Ombudsman (2008:568) prescribes advice and support to anyone who has been subjected to discrimination to claim their rights and to provide information and education

DO's Annual report 2016 - results

- Number of complaints related to grounds of discrimination: 1966
- Number investigated: 204
- Number taken to court: 10
- Agreements: 3
- "Supervisory decisions": approximately 40

Complaints to DO on disability discrimination 2017

DO received 682 complaints of disability discrimination

Direct discrimination 219 , Indirect discrimination 133,

Inadequate accessibility 259, Harassment: 71

Areas of discrimination - complaints on inadequate accessibility

Working life 116

Education 129

Goods and services 165

Quoting from DO's website ...

Complaints provide us with information and help us to make discrimination visible.

A complaint may also lead to DO undertaking a supervisory measure in regard to the party being reported. DO also takes a limited number of complaints to court each year.

Thus: Complaints are no longer handled as complaints.
Victims are made invisible and without remedies.
Information - not litigation- is the strategy of DO.

Sociology of law about norms and law

When rules by law, so called intervening norms, are introduced in order to change discriminatory structures and achieve human rights, three factors are indispensable for a good result:

1/ an effective supervision

2/ effective sanctions

3/ to be aware of the performative effects of law and of court decisions. Bad legislation and bad court decisions petrify discrimination

What strategies are successful? To discuss:

- What is your opinion on mediation and conciliation as tools for achieving remedies in disputes on disability discrimination?
- Could violation of human rights be eradicated by information about the legislation on discrimination? (Information contra litigation)
- What changes in Swedish legislation should be proposed?