

**CASE C-81/12**

**ACCEPT V. CONSILIUL NATIONAL PENTRU  
COMBATEREA DISCRIMINARII**

JUSTINA IONESCU

# FACTS

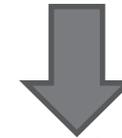
*“Not even if I had to close [FC Steaua] down would I accept a homosexual on the team. [...] Maybe he’s [the football player X] not a homosexual ... But what if he is? [...]It would be better to play with a junior rather than someone who was gay. No one can force me to work with anyone. I have rights just as they do and I have the right to work with whomever I choose.”*

**Interview George Becali, 13 February 2010**

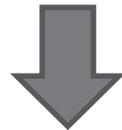
- **Presenting himself and being perceived in the media and by the public as playing a leading role in that club.**
- **Not necessarily having the legal capacity to bind it or to represent it in recruitment matters.**

# PROCEEDINGS AT THE NATIONAL LEVEL

<b>ACCEPT Association</b>  complaint claiming that the principle of equal treatment had been breached in recruitment matters	<b>George Becali</b>  S.C. Fotbal Club Steaua Bucuresti S.A	<b>Consiliul National pentru Combaterea Discriminarii</b>
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- Not within the scope of a possible employment relationship
- G. Becali's statements = harassment
- Warning (six month limitation period)



**CURTEA DE APEL BUCURESTI**

# PRELIMINARY QUESTIONS:

- (1) Do the provisions of Article 2(2)(a) of [Directive 2000/78] apply where a shareholder of a football club who presents himself as, and is considered in the mass media as, playing the leading role (or “patron”) of that football club makes a statement to the mass media in the following terms: ...
- (2) To what extent may the abovementioned statements be regarded as “facts from which it may be presumed that there has been direct or indirect discrimination” within the meaning of Article 10(1) of Directive 2000/78 ... as regards the defendant [FC Steaua]?
- (3) To what extent would there be probatio diabolica if the burden of proof referred to in Article 10(1) of [Directive 2000/78] were to be reversed in this case and the defendant [FC Steaua] were required to demonstrate that there has been no breach of the principle of equal treatment and, in particular, that recruitment is unconnected with sexual orientation?
- (4) Does the fact that it is not possible to impose a fine in cases of discrimination after the expiry of the limitation period of six months from the date of the relevant fact, laid down in Article 13(1) of [GD No 2/200]1 on the legal regime for sanctions, conflict with Article 17 of [Directive 2000/78] given that sanctions, in cases of discrimination, must be effective, proportionate and dissuasive?

# PRELIMINARY QUESTIONS:

1+2. 'Facts from which it may be presumed that there has been ... discrimination' (Articles 2(2), 10(1) of Directive 2000/78)

- Recruitment within a professional football club
- Capacity of the person that makes the statements

3. The modified burden of proof in case of sexual orientation vs. Right to privacy

4. Warning as the only possible penalty (after a six month limitation period) (Article 17 of Directive 2000/78)

# CJEU

## Preliminary considerations:

- Legal standing for NGOs (Article 8.(1) Directive 2000/78)
  - *Feryn Case*
  - Sport is subject to European Union law to the extent that it constitutes an economic activity.
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# CJEU

## Questions 1+2: Facts from which it may be presumed ...

- Not emanate directly from the employer (legal capacity to define, bind or represent)
  - A person who claims and appears to play an important role in the management
  - An employer who did not clearly distance itself from the statements concerned
  - The perception of the public or social groups concerned
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# CJEU

## Question 3: Burden of proof in cases regarding discrimination on the ground of sexual orientation

- Unnecessary to prove that persons of a particular sexual orientation have been recruited in the past
  - A body of consistent evidence:
    - clearly distancing itself and
    - the existence of express provisions concerning its recruitment policy aimed at ensuring compliance with the principle of equal treatment
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# CJEU

## Question 4: Sanctions

- A genuinely dissuasive effect
  - Purely symbolic sanctions vs. Non-pecuniary sanctions
  - Action for damages vs. Effectiveness of the sanctioning system
  - Consistent interpretation
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# IMPACT AT THE NATIONAL LEVEL

- **The case was projected by the Curtea de Apel Bucuresti; ACCEPT appealed it on grounds of law before the High Court of Cassation and Justice**
- **Legislative changes:**
  - The six month limitation period
  - Higher administrative fines
- **Practice of the national equality body:**
  - Higher administrative fines