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Perspectives on Discrimination and the European Law Combating IT

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Abstract: *By discrimination we mean that action whereby certain persons are treated differently from others or bear the restriction of certain rights unfairly, on the basis of groundless reasons.*
Direct discrimination, indirect discrimination, harassment and instigation to discrimination have been identified as forms of discrimination at social level. At the level of international society, preventing and combating any form of discrimination by resorting to the most appropriate legal measures represent a concern even today.
The right on non-discrimination prohibits those cases whereby persons or groups of persons in a similar situation are treated differently, and situations where persons or groups of persons in different situations are treated in the same way. The aim of the right on non-discrimination is to guarantee to all people equal and fair prospects of access to the opportunities granted by the society.
The discrimination's different manifestation forms, the criteria underlying discriminatory behavior, the areas where it manifests itself and some perspectives regarding the European non-discrimination law will be presented in this study.

Keywords: *discrimination; criteria; forms; European law; combating.*

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1. General perspectives on discrimination, its criteria and forms

Discrimination has been interpreted as the unlawful application of a less favorable treatment towards certain persons compared to others, having as criteria or reasons differences related to sex, race, religion, social affiliation, etc. (Mathias, et al., 1997).

In our country, discrimination from a legal point of view is defined by the Government Ordinance no. 137/2000 on preventing and sanctioning of all forms of discrimination (Law nr. 153/2017). According to art.2 para. (2) of this Ordinance, discrimination means "any difference, exclusion, restriction or preference based on race, nationality, ethnicity, language, religion, social category, beliefs, sex or sexual orientation, age, handicap, noncontagious chronic disease, HIV infection, belonging to a disfavored category, as well as any other criterion aiming to or resulting in the restriction or elimination of the recognition, use or exercise, in conditions of equality, of human rights and fundamental liberties or of rights granted by law in the political, economic, social and cultural field or in any other domains of public life."

The forms highlighted by discrimination are the following: direct discrimination, indirect discrimination, harassment, victimization and violation of human dignity.

Direct discrimination occurs when, based on any legally recognized criterion of discrimination, a person is treated unfavorably in comparison with the treatment applied to another who has been, is or may be in a similar situation.

Indirect discrimination occurs when some procedures, policies or practices of an organization result in disadvantaging persons who have a number of protected characteristics, even if this fact is not explicitly stated as in the case of direct discrimination.

Harassment consists of any manifestation that leads to a hostile, intimidating, offensive or degrading environment, on a criterion related to race, ethnicity, religion, sex, language, social category, beliefs, sexual orientation, age, disability, inclusion in a disadvantaged social category, refugee or asylum-seeker status or other criteria.

Victimization is represented by any adverse treatment as a reaction to an action or a complaint in court or before a competent institution, regarding the non-observance of the equal treatment and non-discrimination principles.

The order or decision to discriminate is the one received by a group of persons or by a person, from another group of persons or from another person, in order to discriminate.

As far as who can become a victim of discrimination, according to national and international legal provisions, the sphere of these people is not limited, so anyone can become a victim of discrimination.

The authors of discrimination may mainly be the agents and representatives of the State authorities, since this fundamental right of every person not to be subject to discrimination is achieved in particular in the relationship between him/her and the State. The obligation not to discriminate also belongs to other categories of persons, even if they do not act as representatives of the State, such as: employers, service providers, providers of educational, health, culture and social services.

2. Issues relating to European anti-discrimination rule of law

The ideal of the right regarding non-discrimination is to guarantee for all persons equal and fair possibilities to have access to the chances that arise in the society.

The term *European non-discrimination law* refers both to the scope of the European Convention on Human Rights and to European Union legislation in this area, where the standards of non-discrimination can be found among its key points in terms of human rights.

A. At the Council of Europe's level, a first legal instrument in the field is the European Convention on Human Rights (ECHR), being adopted with the aim of achieving its objectives, including the promotion of human rights. This Convention strengthens the prohibition of discrimination in its article 14. At the same time, Protocol No. 12 to this Convention broadens the scope of prohibiting discrimination by ensuring an equal regime regarding the exercise of any right, including those recognized under national laws.

In addition to the ECHR, the Council of Europe has established non-discrimination as a fundamental freedom in other legislative acts such as:

- The European Social Charter of 1996, which includes provisions on both the right to equal opportunities and the right to equal treatment in employment and occupation, guaranteeing protection against discrimination on grounds of sex
- Framework Convention on National Minorities

- Council of Europe Convention on Action against Trafficking in Human Beings
- Council of Europe Convention on Access to Official Documents
- Protocol to the Convention on Cybercrime.

B. As far as the European Union is concerned, it has evolved from the three European Communities. Their dominant concern was to support the development of the economic sector by allowing the free movement of goods, persons, services, capital and fair competition between Member States. In order to create the conditions necessary for such competition, the Treaty establishing the European Economic Community has included provisions prohibiting discrimination on grounds of sex in the sphere of employment.

Until 2000, the legislation on non-discrimination in the European Union had only been applicable in matters of employment and social security and concerned only the sex criterion. Subsequently, in 2000, two directives were adopted, namely:

- Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, which prohibited discrimination based on sexual orientation, age, religion and disability in this sphere;
- Directive 2000/43/EC refers to equal treatment between persons irrespective of racial or ethnic origin in employment and allowing social security and healthcare system and access to goods and services. By this act, the scope of union law on non-discrimination has become broader. This has resulted in an important broadening of the area of non-discrimination law at union level, which has recognized that, in order for individuals to reach their full potential on the labor market, it is fundamental that they are provided with equal access to areas such as health, education and housing.
- The Council Directive no. 2004/113/EC implementing the principle of equal treatment between men and women with regard to the access to and supply of goods and services. It has extended the scope of discrimination on grounds of sex to the scope of goods and services.

As an EU mechanism for the protection of human fundamental rights, the Charter of Fundamental Rights of the European Union was promulgated in 2000, which included a list of human rights according to the model of the rights recognized in the ECHR Convention and in the Constitutions of the Member States, and in the universal human rights treaties. However, it was not binding, but only declarative. The Treaty of Lisbon, in force since 2009, has changed its status into a legally binding one. As a result, all the Union's institutions and the Member States have an

obligation to observe these rights, the Member States, however, with the limitation of their obligations only to cases where they apply European Union law. Article 21 of the Charter contains the prohibition of discrimination on various grounds.

Other evidence of the EU concerns on non-discrimination is also the fact that all Member States take part in several UN human rights treaties that prohibit discrimination, such as:

- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- Convention against Torture
- Convention on the Rights of the Child (CRC)
- 2006 UN Convention on the Rights of Persons with Disabilities (CRPD)

With regard to the actual mechanisms for protection against discrimination on the basis of European Union law, we highlight that at Union level, appealing to *motivations* or *justifications* for resorting to different treatment, in each specific case, has been decided as a general protection measure, both in terms of direct and indirect discrimination. In this sense, it must be proved that the modality decided for the manifestation of the different treatment in order to achieve the justified purpose is in an equal proportion in relation to this purpose and is necessary for its fulfilment (Handbook on European Non-discrimination Law, 2011, p.51).

The means of EU protection law are set out in the adopted Directives on non-discrimination, where the following are mentioned:

- the genuine professional exigency, which is provided in all the directives except that on equal treatment between men and women as regards the access to and the supply of goods and services, and this is obviously because it is not related to employment. By resorting to this, employers are allowed to differentiate employees according to a certain protected characteristic, which is directly related to their ability to perform the duties of a particular job;
- the possibility of resorting to discrimination on grounds of religion and beliefs, given only to employers in religious organizations (Council Directive 2000/78/EC. Art. 4);

- accepting discrimination in certain cases on grounds of age (Council Directive 2000/78/EC. Art. 6).

Conclusions

Protection against discrimination at European level exists both in European Union law and in the acts and documents of the Council of Europe. The two systems are completing each other for the most part, however, a series of differences have also emerged that need to be known, especially by those who apply the law.

The European Convention on Human Rights ensures the protection of all persons who fall within the jurisdiction of the 47 States which are parties to it. The Directives adopted by the European Union relating to non-discrimination ensure only the protection of the European citizens in the EU Member States.

The ECHR Convention in Article 14 prohibits discrimination only with regard to the use of another right guaranteed by the treaty and according to Protocol 12 to it, the prohibition of discrimination becomes distinct.

Under EU law on non-discrimination, the prohibition of discrimination is autonomous, distinct, but limited only to certain situations such as employment.

The EU Charter of Fundamental Rights, including its provisions on non-discrimination, is binding on all EU institutions, while for the EU Member States, it is only binding when they put the rules of EU law into practice.

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