

# LEGISLATION ON ANTI-DISCRIMINATION IN THE PROTECTION OF HUMAN RIGHTS IN SOUTHEAST EUROPE

Zoran Filipovski, page 9-20

## ABSTRACT

Anti-discrimination, ie, legislation to combat discrimination is an integral part of the legislation of the countries of Southeast Europe, especially in the countries of the Western Balkans. The integration processes of these countries are foundation for reforms in the rule of law, including the fight against discrimination. In this context, reforms undertaken in chapters 23 and 19, ie the judiciary and fundamental rights and employment and social issues, are aimed at harmonizing the laws of these countries with the EU legislation, which only suggests that legal protection against discrimination on gender, nationality, religion, sexual orientation or political affiliation is guaranteed by national laws in the countries of Southeastern Europe. In this scientific work will be presented the situation of human rights and freedoms in the countries of southeastern Europe, with a particular aspect of the cases relating to discrimination based on sex, religion, sexual orientation, with particular reference to political cases against discrimination, which is growing in the last period in this region. It will also be elaborated situations in which people who are victims of discrimination, because of lack of awareness about these social issues, rarely fail to complete the complex procedure of infringement granted to legal protection. Through the comparative analysis of the legislation of these countries with the legislation of the European Union, the reasons and factors which prevent access to justice for victims of discrimination will be clarified.

**Keywords:** European Union legislation for the prevention of discrimination; political discrimination; reform processes in the countries of Southeast Europe in order to prevent discrimination.



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## **INTRODUCTION**

Discrimination throughout history has had various forms in which it can be recognized, and in that context must be mentioned the discriminatory provisions valid in the United States in the 19th century, which allowed the segregation of the black population by limiting the corpus of their basic human rights. In this context, they were restricted to the right to participate in the elections, the right to work, which reduced the possibility of economic and social development. This type of systematic discrimination was an integral part of the apartheid policy in South Africa, which was abolished in the 1990s.

The most striking example of discrimination is the politics of genocide and the systematic destruction of a whole social group before and during the Second World War, victims of which were Jews, Roma, homosexuals, people with disabilities, and others. These examples show that discrimination is not only an individual phenomenon, but it can also receive wider, systemic dimensions. That is why many countries and the international community establish various mechanisms to combat all forms of discrimination, even when they appear in dimensions that are insignificant.

What will be the subject of elaboration in this paper and concerns the protection of human rights from all types of discrimination can not be accepted if it does not specify. From here discrimination in international and domestic literature is defined as the treatment of a person or group as separate, superior or inferior to the other, based on arbitrary criteria such as race, color, sex, language, religion, political persuasion or national and social origin. Racial discrimination always constitutes a violation of human rights, and is a distinction, exclusion, limitation or preference based on race, color, ancestor, national or ethnic origin which aims to distort recognition, enjoyment or performance under equal conditions, corpus rights and fundamental freedoms in the political, economic, social and cultural rights of man and citizen.

In some countries, besides these are listed other criteria for discrimination such as religion, political or other belief, social background, property, membership in trade union organizations, education, social status, marital

or family status, age, health status, handicap, genetic heritage , gender identity and expression, on sexual orientation (Law on Anti-Discrimination of the Republic of Croatia).

Discrimination limits people's freedom. It limits the development of their abilities, self-determination and contributes to the development of a sense of humiliation, helplessness and injury. This situation adversely affects society as a whole, because discrimination hampers obstacles and prevents the development of individual talents, affecting productivity, competitiveness and overall economic development. Due to discrimination, social differences are increasing, which inevitably occurs state of disrupting social inclusion, cohesion and solidarity.

No society is immune to discrimination. Many people are exposed to a worse situation because of skin color, gender, sexual orientation, age, language, religion, health status, disability, education, financial status and for other personal attributes. The defrauding of their rights usually consists of unequal recognition, enjoyment and exercise of rights or the performance of duties in political, economic, social, cultural and other areas of social life (Neža Kogovšek and Brankica Petković).

International law bans racial discrimination in a range of areas including education, health, and providing access to public goods and services. States have a positive obligation to prevent and punish any activities that are aimed at allowing racial discrimination, as well as to check their own legislation to no correlation with discrimination against ethnic groups living on their territory.

All of this suggests that discrimination, as a global phenomenon, has a negative effect on all aspects of life for the reason that leads to exclusion, marginalization and dehumanization.

Part of the scientific and expert public believes that the right to freedom from discrimination is a universal human right and defines it as an unacceptable and unjustified distinction of persons based on some of their characteristics.

## **2. CONSEQUENCES OF DISCRIMINATION**

Victims of discrimination are pushed to the brink of society. Marginalization and social exclusion of certain groups, which often are passed generation, are direct consequences of discrimination. It has a negative effect not only on the discriminated person or group, but the whole society, because it causes imbalances and damage it.

Various seemingly harmless kinds of discrimination, often a foundation for the development of other, more serious forms of discrimination, and therefore society should be tackled at an early stage of the manifestations of this phenomenon. An illustrative example is apartheid, which began by dividing toward racial affiliation of the people, and then continued resettlement and certain areas, banning marriages and limit the transfer of property between members of different groups. Discrimination changed shape and became a segregation that was evident with the prescribed provisions on separate lines waiting for buses, individual seats on benches in parks, separate toilets and fountains. Thus, discrimination on the basis of race entered all the pores of social life.

What is essential is that the impact of discrimination has negative repercussions on social and economic development that can be far-reaching and long-lasting, and lead to an increase in chronic illnesses, depressive conditions and an increase in suicidal behavior in certain social groups (Neža Kogovšek and Brankica Petković).

## **3. INTERNATIONAL LEGAL FRAMEWORK FOR PROTECTION FROM DISCRIMINATION**

The onset of a systematic fight against discrimination is linked to the demands for the abolition of slavery and the demands for equal rights for women. This trend continues in the 20th century, with the movement for civil rights in the United States through feminist, gay and lesbian movements, as well as numerous actions and initiatives of civil society such as boycotts, protests and other forms of civil disobedience through which discriminated groups fought for equality.

Since its inception, the United Nations Organization as a fundamental international governmental organization has achieved visible results in

setting legal standards for the protection of the corpus of secular freedoms and human rights on an international scale. Bearing this in mind, the principle of equal treatment and the right to non-discrimination constitute the foundation for this intergovernmental organization and are incorporated into the most important of its documents, such as: The Universal Declaration of Human Rights; The UN Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); The International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention on the Rights of the Child, as well as the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (Analysis of the Mechanisms for Prevention and Protection against Discrimination in the Republic of Macedonia, 2012).

The first article of the Universal Declaration of Human Rights states that "all human beings are born free and equal in dignity and rights". The principle of equality is also incorporated in the provisions of Articles 2 and 7 of this Declaration: *„All firsts and slaves mentioned in this Declaration belong to all people, regardless of their differences, as follows: race, gender, sex, language, religion, other political or abusive, social or other social, personal, rational, or other status“*, ie article 7, *“All people are equal before the law and all are entitled, without any discrimination, to equal protection by law. Everyone is entitled to equal protection against any discrimination which is inconsistent with this Declaration and from any incitement to such discrimination”*. Its universality is reflected in the fact that it is the foundation of increasingly international, regional as well as national treaties dealing with the protection of human rights and freedoms.

Confirming the commitment of the United Nations to protect discrimination is the UN Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). In the provisions of this document through Article 2 *"Member States condemn racial discrimination and commit themselves by all appropriate means and without delay to implement policies that aim to abolish all forms of racial discrimination and to promote understanding between all races"*

this intergovernmental organization substantially advocates the elimination of racial discrimination in all its forms.

The protection of human rights and freedoms and the suppression of all forms of discrimination through the provisions of the Articles of 1966 of the International Covenant on Civil and Political Rights are made possible through the protection of civil and political rights. Article 2 reads: *"Each State Party to the present Covenant undertakes to respect and guarantee the rights recognized in the present Covenant to all persons within its jurisdiction, without prejudice to any grounds, such as race, color, sex, language, religion, political or other belief, national or social origin, property, birth or other status", the principle of non-discrimination, is further addressed in Article 26 of the Covenant, which states: "All persons are equal before the law and are provided without discrimination the right to equal protection before the law. To this end, the law will prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any grounds such as race, color, sex, language, religion, political or other belief, national or social origin. , property, birth or other status".* Some other articles such as Article 7 (right to freedom from torture and other inhuman or degrading or degrading treatment or punishment), Article 16 (right to be recognized as a person before the law), Article 23 (right to form a family) and others, underline the importance of the right to liberty, dignity and equality of the people before the law.

This international document was signed on 18 January 1994, while the Optional Protocol to the International Covenant on Civil and Political Rights was ratified by the Republic of Macedonia on 12 December 1994. The 1966 International Covenant on Economic, Social and Cultural Rights is another instrument of the United Nations to promote and protect basic human rights. The importance of the principle of non-discrimination is explicitly emphasized in Article 2 of the provisions of this document, which stipulates that States Parties will take actions to ensure that the rights set forth in this international document are exercised without discrimination on any grounds such as race, skin color, gender, language, religion, political or other beliefs, social origin, property.

Unlike international documents that prohibit activities aimed at discriminating against certain human rights and freedoms, fundamental

documents or sources of European non-discrimination law appear in European Union Law and the European Convention on Human Rights (ECHR). Council of Europe; The European Social Charter; Council of Europe Convention on Action against Trafficking in Human Beings; Framework Convention of the Council of Europe for the Protection of National Minorities; Charter of Fundamental Rights and the EU Non-Discrimination Directive.

It must be acknowledged that a clear distinction cannot be made internationally with EU legislation in the field of protection against discrimination as all EU Member States are signatories to the UN human rights treaties, which contain prohibition provisions. on discrimination. All of these agreements recognize the protection against discrimination in securing, protecting and promoting rights.

It must be acknowledged that no clear distinction can be made between international and Union law on protection against discrimination because all EU Member States are signatories to UN human rights treaties, which contain prohibition provisions. on discrimination. All of these agreements recognize the protection against discrimination in securing, protecting and promoting rights.

The term "European non-discrimination legislation" suggests that there is a single European system of rules relating to non-discrimination. However, it is made up of different sources: law that focuses on the European Convention on Human Rights and EU law. These two systems have different origins, structures and goals, but although the two systems operate separately, there are numerous links between them. The Court of Justice of the European Union (CJEU) refers to the ECHR and the European Social Charter (ESC) as guidelines for interpreting EU law. Both acts are mentioned in the framework of the EU treaty: the provision of Article 6 of the Treaty on European Union (TEU) explicitly recognizes the ECHR as a source of inspiration for the development of fundamental rights in the EU, while the provision of Article 52 of the Charter the EU stipulates that the meaning and scope of the relevant rights of the Charter are the same as those laid down in the ECHR (although EU law may provide greater protection).

The Treaty of Lisbon contains a provision obliging the Union to accede to the European Convention on Human Rights, and amendments to Protocol 14 to the ECHR make it possible (*Handbook on European non-discrimination law, 2018*).

#### **4. ANTI-CRIMINAL REGULATION AND MEASURES IN SOUTH-EAST EUROPEAN COUNTRIES**

Anti-discrimination is enshrined in the constitution of the countries of Southeast Europe (SEE) and is enshrined in their substantive law. SEE countries face a reaffirmation of a strong focus on the "basics" principle and reform priorities in key areas of the rule of law, including the fight against discrimination. Concerning the priorities arising from the EU accession process, the SEE countries have implemented reforms to comply with the relevant EU legislation in the areas of judiciary and fundamental rights and employment and social issues. Accordingly, legal protection against discrimination on the grounds of sex, nationality, religion, sexual orientation and political affiliation is most guaranteed by national laws in the SEE countries.

In the Republic of Northern Macedonia, legislation on protection against discrimination also existed before codification of the legislation on discrimination and the adoption of the Law on Prevention of Discrimination. Today, apart from the existing anti-discrimination legislation, such provisions can be found in the Constitution and other national laws such as Law on Protection against Harassment in the Workplace; Law on Equal Opportunities for Men and Women, Law on Labor Relations, Law on Protection of Children; The Criminal Code; Law on Child Protection, Law on Political Parties; Law on Misdemeanors; Law on Civil Procedure; Law on the Ombudsman.

The National Strategy for Equality and Non-Discrimination on the Basis of Gender, Age, Ethnicity, Mental and Physical Disability is a strategic document that defines the goals, measures, indicators, key policy makers for promoting equal rights and equal opportunities in different areas of life, stakeholders and all stakeholders in the establishment of the principle of equality and non-discrimination in the Republic of Northern Macedonia. The purpose of this national document is to improve the status of the most vulnerable categories of citizens in society and to ensure continuous development in achieving equality and non-discrimination.

For the realization of the strategic goals, a Commission for Protection against Discrimination has been established, which first of all has to deal with possible cases of discrimination in the public and private sectors. Its core responsibilities are:

- *Act upon complaints, provide opinions and recommendations on specific cases of discrimination;*
- *Provides the complainant with information about his or her rights and opportunities to institute judicial or other protection proceedings;*
- *To initiate proceedings before the competent authorities for violations of this law;*
- *To submit an annual report to the Parliament of the Republic of Macedonia. Macedonia;*
- *To inform the public on cases of discrimination and take actions to promote and educate equality, human rights and non-discrimination;*
- *To monitor the implementation of this law, initiate amendments to the regulations for the implementation and promotion of the protection against discrimination.*

In the Republic of Croatia, the Law on Prevention of Discrimination was enacted in 2009, and it can be seen from the analysis that since then the case law has been insignificantly small and characterized by a small number of cases before the judicial authorities. This law specifically lists areas that prohibit any activity that would cause discrimination on the basis of race or ethnicity, color, sex, language, religion, political or other opinion, national or social origin, property status, membership in trade unions, education, social status, marital status, age, health status, handicap, genetic inheritance, gender identity, expression and sexual orientation and more. Discrimination has various manifestations that are incriminated in specific misdemeanor provisions in the Criminal Code: Violation of Citizens' Equality and Racial and Other Discrimination.

According to this law, in the Republic of Croatia the Ombudsman is responsible for combating discrimination, and in such cases victims of discrimination are obliged to report it to this or the Special Ombudsman. The Ombudsman can act on complaints about actions that have taken place since January 2009, and within its powers prepares cases with all the evidence and necessary documents and informs victims of discriminatory treatment of their rights and obligations and the possibility of judicial protection.

Article 21 of the Constitution of the Republic of Serbia establishes the principle of equality whereby it is emphasized that everyone is equal before the Constitution and the law and that everyone has the right to equal protection without discrimination. According to constitutional provisions, any discrimination, direct or indirect, on any grounds, particularly on race, sex, nationality, social origin, birth, religion, political or other opinion, property status, culture, language, age, mental or physical disability.

Prior to the enactment of the Law on Prohibition of Discrimination, the Republic of Serbia had adopted the Law on Protection against Discrimination of Persons with Disabilities, and three years later in April 2009, the Law on Prohibition of Discrimination was adopted. The Law provides successful and effective protection as well as prohibition of discrimination in the legal system in the Republic of Serbia.

Unlike from other countries in Southeast Europe and the Western Balkans in this law is inserted and hate speech as a ban on expressing ideas, information and opinions that incite discrimination, violence and hatred against a person or group of persons because of their personal characteristics . In this context, the provisions of the law prohibit any act aimed at harassment or torture aimed at violating dignity and creating a hostile and humiliating atmosphere.

This legal solution also covers special cases of discrimination related to discrimination in the proceedings before the public authorities, discrimination in the field of labor disputes, discrimination in the provision of public services as well as use of public facilities and premises, prohibition of religious discrimination, discrimination. in the field of education, sex discrimination, discrimination of children and discrimination on the grounds of sexual orientation.

Victims of discrimination for Protection of equal rights can turn to the Equality Trustee as an independent, public institution that seeks to protect citizens from any form of discrimination. It is a particularly independent and impartial body tasked with co-ordinating activities related to the prohibition of discrimination and has the authority to impose appropriate measures on the authorities and persons carrying out acts constituting acts of discrimination.

## **CONCLUSION**

From the analysis of the legislation of the EU member states, as well as those with candidate status belonging to the Western Balkans region, can conclude that they have similar legislative solutions for protection against discrimination. The protection system in most countries is similar in that citizens are not able to exercise their rights as victims of discrimination without legal action before the Ombudsman and the courts.

There are two levels of protection against discrimination that institutions can take. It is about protecting employees in the institutions against discrimination, and the second one about protecting the users of the services or services of the institution / company against possible discriminatory behavior of employees.

In the Republic of Northern Macedonia the Ohrid Framework Agreement is a foundation for resolving discrimination on the grounds of ethnicity, but awareness of other forms of discrimination is not very high.

To overcome this problem, which is not very different in the Western Balkan countries, even in some of the countries that are almost EU member states, the need to promote the informational and educational role of the media is essential. Only socially responsible, accessible and objective media are necessary to improve the level of social inclusion and improve the situation of discrimination in the Western Balkans.

Only sensible and inclusive media can become important social actors in the fight against discrimination. To achieve this, it is necessary to replace the sensationalist approach with socially responsible ones and to constantly promote the idea of human rights and equal opportunities for all citizens.

It must be acknowledged that the continuous capacity building of the institutions responsible for preventing and protecting against discrimination, as well as the full specialization and professionalism of quasi-judicial institutions and courts, is essential for achieving effective protection against discrimination.

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