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Religious Discrimination in Employment Relationships

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ABSTRACT: Discrimination in legal employment relationships means that an employer applies differential treatment as a result of the non-recognition of protected criteria established in the applicable legislation, with the effect of restricting or suppressing the use or exercise of employees' rights. The article analyses discrimination on the grounds of religion and belief, with reference to the European and national legal framework, and contains elements of case law on the subject. Discrimination entails imposing differentiations between employees, usually in comparable situations, but also applying the same treatment to employees, even though they have different roles in the work process, with similar effects in terms of denying them their rights. Opinions are included on the right of employers to objectively justify their conduct, the exceptions allowed to certain organizations, and the role of European courts in the evolution of the regulatory framework.

KEYWORDS: discrimination, rights, criteria, religion, institutions

Introduction

Although discrimination can be found in different areas of social life, becoming a "problem for the whole international community" (Marinescu 2019, 59), in the context of legal employment relations, the regulation is particularly topical, as the protected criteria are continually evolving, thus affecting the limits of employers' conduct. In this field, the imposition of non-discrimination rules is all the more necessary given the subordinate relationship between employers and employees, which cannot limit the recognition of fundamental rights, in application of the principle of non-discrimination (Cernat 2014, 51).

We can appreciate that, initially, the purpose of non-discrimination was predominantly economic, in relation to the full use of the individual qualities of the workers (Barret 2003, 120). Workplace tolerance thus considered the possibility for workers (Pelissier, Auzero and Dockes 2010, 174) to enjoy all the fundamental rights and freedoms in the work process.

The regulations on equal treatment (Marinescu 2020, 490) of employees in access to and conditions of work were initially laid down in the international framework (Popescu 2008, 340), then in the European framework (Fuerea 2006, 26), mainly by means of directives, with the interpretation of the rules on the subject being carried out by the case law of the CJEU.

Religion or belief is a particularly topical criterion of discrimination in doctrinal analysis, originated from the evolution of European legislation, with a dual character, establishing a protection regime, but implicitly also a way to justify the exceptions allowed in the matter. Excluding acts of discrimination on the grounds of religion is thus possible because of the individualistic nature of what we know as religious freedom, but also because the concept of belief is broadened.

As regards the methods of discrimination, it can be seen that the courts generally examine cases of indirect discrimination, as a seemingly neutral action by employers, through which collective inequality of treatment is brought about against members of minorities or groups, who are subsequently included among the disadvantaged. Discrimination as a disadvantaged group will be based on various aspects, such as common geographical origin or history, common descent, the existence of traditions, religions or beliefs not usually found in the majority population.

With regard to the term belief, freedom of religion extends to the category of ideas, personal, philosophical or moral convictions, and in this sense, atheism can be included in this category. Other beliefs such as pacifism, the Church of Scientology, Sikhism, Jehovah's Witnesses are also accepted, provided there are religious practices on which they are based.

Thus, in the European area, discrimination on belief and religious grounds has derived from the analysis of how employers approached workers from such minority groups in their legal employment relationships (Muscalu 2015, 223), which went beyond the ideal of imposing recognition of the general principle of equality as a priority. In this respect, it can be seen that discrimination based on this criterion has dominated the attention of decision-makers in this field since the European area became a destination point for immigrants of Islamic origin from conflict zones. This phenomenon of migration has led to a proliferation of marginalization and exclusion, including in the field of legal employment relations, based not only on issues relating to the direct religious manifestations of these groups, but also on issues relating to their clothing and traditions.

As a result, limiting cases involving the segregation of members of these minority groups, when it is not easy to analyze directly the behavior underlying a particular religion, as religious communities have different ways of expressing their belief, has led to the issuing of specific regulations in this field. We can state that religious discrimination has become a priority area of regulation in the European space, as phenomena related to the migration of the population of Islamic origin took place, resulting in marginalization and segregation, reflected in labor relations through unequal access to employment.

On the other hand, interpreting discrimination cases raises the question of whether religious orientation can be considered a strict matter of a person's decision, as opposed to other issues like personal characteristics such as age or disability that cannot be unilaterally changed. In this respect, the general view was that the criteria for discrimination cannot be separated in this way and religion cannot be excluded on the grounds that it is a strictly subjective component that can be changed at any time by the mere act of a person's will.

International and European context

Specific regulations on non-discrimination on belief and religion grounds were first issued in international and later European legislation and transposed into the national laws of the Member States. These regulations have been the subject of doctrine and case law and have been continuously interpreted and supplemented, which has led to legislative developments over time.

In this regard, we mention as normative acts at the level of international legislation, the United Nations International Convention on Civil and Political Rights of 1966, the United Nations Convention on the Elimination of Racial Discrimination of 1965, the Universal Declaration of Human Rights, the United Nations Convention on the Elimination of All Forms of Discrimination against Women, the United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, as well as Convention No 111 of the International Labor Organization on the prohibition of discrimination in respect of employment and occupation.

In the European context, the regulations originate from the TFEU through the provisions of Articles 10 and 19 (formerly Article 13 of the Amsterdam Treaty), in particular the right of the European Council to legislate against discrimination on belief and religious grounds, the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, the 1996 Charter of Fundamental Rights of the European Union, through Articles 10 and 12, Council Directive 2000/78/EC of November 27, 2000 establishing a general framework for equal treatment in matters of employment and occupation (the previous protection was achieved through Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, replaced by Directive 2000/78/EC) and Council Directive 76/207/EEC of February 9, 1976 on the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

Under the European Treaties, Member States are allowed to establish extensive rules and protection measures other than those contained in the Charter of Fundamental Rights of the European Union or the European Convention on Human Rights. There are also exceptions to the rule prohibiting discrimination, and it is possible to introduce additional legal provisions in favor of certain advantages and disadvantages, in order to establish an equal degree of access to certain rights and to apply the principle of non-discrimination (Roș 2017, 37).

However, it can be considered that, in European law, in matters of non-discrimination, the secondary legislation represented by directives takes precedence over the primary legislation of the Treaties, but with a limitation on the legal grounds that can be invoked. In this respect, the European Convention on Human Rights regulates freedom of religion through the provisions of Article 9 on freedom of thought, conscience and religion, and non-discrimination on religious grounds through Article 14 on the exercise of rights and freedoms without discrimination. The principle of non-discrimination enjoys a certain autonomy, derived from the ECHR jurisprudential interpretations, a situation (Weiwei 2004, 14) also analyzed in the American law system with respect to racial discrimination.

According to the Convention, everyone has the right to freedom of thought, conscience and religion, to choose another religion or belief, to manifest their religion or belief in public or in private, limited only on grounds of public safety or morals, public order, health or the protection of the rights and freedoms of others. On the other hand, according to the European Court of Human Rights, the interpretation of Article 9, in terms of the manifestation of religion, presupposes the performance of acts that are essentially religious in nature, for example worship, and that contain a fundamental belief, which would thus exclude any contrary legal duties imposed by a potential employer in an employment relationship.

It can be seen that Article 9 does not define the concept of religion and is thus subject to interpretation and application to all religions and beliefs, but also to an extension of protection to the category of philosophical ideas or concepts that are of course accepted in democratic societies, in the context of employment relationships, where an employee is required to perform duties contrary to the requirements of his or her religion.

A specific situation occurs with the concept of caste, as the European Parliament Resolution of October 10, 2013 on caste discrimination, based on the assumption of the provisions of international conventions, defines it in a socio-religious context, considering the existence of societies made up of groups classified according to descent and occupation. We can consider in this respect the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) or the Convention on the Rights of the Child and International Labor Organization Convention No. 111. In this case, the establishment of protection rules was based not only on the existence of political discrimination, but also on that found in the labor market, in order to limit exclusion and inequality, usually in the Asian space. In practice, the non-recognition of the principle of non-discrimination led to an increase in illegal practices and in the number of people who became victims of forced or bonded labor.

We can see that, in line with the UN Guiding Principles on Business and Human Rights and the OECD Guidelines, non-discrimination in legal employment relationships, as a fundamental labor right, includes caste discrimination. Thus, it is considered a violation of human rights to recognize and maintain caste-based hierarchies, implying a restriction of rights within a framework of continued and accepted segregation.

For example, we consider the issue of inequalities identified in the case of Dalit women, as well as those found in the case of other women in communities or societies that admit the existence of caste systems, especially as potential victims are reluctant to report the violence to which they are subjected for fear of their own safety or exclusion from their communities.

The legislator sought to introduce mechanisms for the recognition of UN principles in order to limit cases of caste-specific discrimination on grounds of occupation and descent. As a result,

the promotion of non-discrimination policies in this regard became necessary for the social inclusion of caste members, including in legal employment relationships.

Jurisdictional interpretation

In this respect, the ECHR initially interpreted the provision requiring protection against discrimination restrictively, recognizing as an exception the situation where the employee has voluntarily accepted a certain limitation of their beliefs, on the grounds that they may at any time proceed to change their place of work, thus identifying the concept of voluntary withdrawal from the right to religious freedom.

In this respect, we note the case of Steadman vs. United Kingdom (1997), concerning the violation of religious freedom and belief by obliging an employee to work on Sundays, which was considered to be without interference with his individual religious right where this day was considered to be a non-working day, there being the option of changing their workplace. The concept of voluntary acceptance of restrictions on religious freedom is also found in the ECHR decision in X vs. United Kingdom (1981), concerning the restriction of a Muslim teacher's ability to pray at work on Fridays, where their individual employment contract was held not to affect their religious freedom, as they voluntarily accepted it, even though it contained working hours to be performed during that time.

Subsequently, ECHR case law has allowed decisions contrary to the above, thus restricting the concept of voluntary acceptance as a possibility for a victim of discrimination to opt for another job. In practice, in Darby vs. Sweden (1990), the Court held that the possibility for a victim to change his or her place of employment to another employer in order to manifest his or her religious belief is not in reality a reasonable option for the victim, and that this requirement is disproportionate, onerous and incompatible with the right invoked.

The same interpretation is also found in Copsey vs. WBB Devon Clays Ltd (2005), not accepting voluntary agreement as an exception to discrimination on religious grounds, although the ECHR reasoned the dismissal of the complaint on the grounds of voluntary acceptance and lack of interference with Article 9 of the Convention, as the employee was dismissed as a result of their refusal to work on Sundays, which is prohibited by Christian doctrine. The Court stated that the option of giving up the post occupied, as the only way of exercising one's religion, was in fact an indirect obligation on the victim to accept the condition of unemployment as a personal sacrifice, which was not in keeping with the fundamental nature of the rights in question.

On the contrary, it was accepted that a way of excluding discrimination provided for in Article 9 of the Convention, in conjunction with Article 4(2) of Directive 2000/78/EC, was motivated by the autonomy of churches or organizations whose ethos is based on religion to proceed to limit the individual rights of their staff, theoretically in order to preserve their image and credibility. Thus, under the provisions of Article 4(2), it does not constitute discrimination to apply a difference in treatment based on a person's religion if the nature of the activities imposed on the basis of religion constitutes genuine, legitimate occupational requirements justified by the ethos of that organization within churches or public or private organizations ethically based on religion or belief.

Thus, in Muhammed vs. Leprosy Mission International (2009), the subject matter of the discrimination complaint concerned the requirements of that religious organization in relation to employment practices. In this regard, Leprosy Mission International refused the application for the position of financial administrator submitted by an applicant of Muslim origin, on the grounds that employing a non-Christian would affect the maintenance of the Christian ethos, considering that the desire to recruit a person of Christian faith was a legitimate and proportionate occupational requirement.

Mr. Muhammed filed the complaint, considering himself the victim of a case of discrimination on the grounds of religion, which was rejected by the court on the grounds that the

employer's action was legitimate, as a genuine occupational requirement, since the Christian ethos was found in all aspects concerning that organization, although the applicable national law did not provide for such an exception.

A similar interpretation of Article 4(2) of Directive 2000/78/EC was given in Rommelfanger vs. Germany (1989), the complaint related to the dismissal of a doctor employed by a Catholic hospital who had publicly expressed his opinion in support of abortion. The German Constitutional Court guaranteed the religious autonomy of organizations, in this case the Catholic Church, considering that religious freedom took precedence over freedom of expression, motivated by a duty of loyalty to such religious institutions to which one adheres by voluntary contracts.

In practice, in the case in question, although the Member States are under an obligation to declare rules contrary to the principle of equal treatment null and void, the employer's claim that the prohibition on employees expressing public opinions in favor of abortion was a reasonable requirement between freedom of expression and the nature of the job was considered objective. Moreover, the proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation 2008/0140 is based on freedom of thought, conscience and religion envisaged a ban on differential treatment outside the labor market as well, without prejudice to the status of churches and non-denominational organizations or religious communities in the Member States.

Another legal act in this field is the Charter of Fundamental Rights of the European Union, which, on the other hand, in terms of non-discrimination, stipulates in Article 21 some protected criteria, including religion or belief. In this respect, Article 52(3) contains conditions similar to the rights guaranteed in the ECHR.

With regard to the provisions of Directive 2000/78/EC establishing a general framework for equal treatment in matters of employment and occupation, the interpretation of the forms of discrimination contained therein, direct, indirect, multiple, will be left to the discretion of the courts. The scope of the Directive covers the public and private sectors, access to employment, selection criteria, vocational guidance and training, recruitment, promotion, further training and retraining, and dismissal and payment.

In the case of the direct method, the party who discriminates, even if erroneously, has to apply unfavorable treatment on the basis of religion or belief, not only if the victim belongs to a particular religion or belief, but also if the victim is associated with other persons who practice a particular religion, for example if the victim is related to another person belonging to a religious group. In this sense, discrimination also exists when it stems from an employer's religious beliefs, if the employer applies unequal treatment because their own religion differs from that of their employee, who for example is dismissed on the grounds that they married a previously divorced person. With regard to direct discrimination on grounds of religion and belief, we can see that the employer can prove absolutely limited justifications for their actions, such as the need for job requirements that are only compatible with a particular religion, such as requirements imposed in churches or public organizations based on ethos or affirmative action.

On the other hand, indirect discrimination allows for exceptions. In this respect, the application of differences in treatment justified by the prevention of or compensation for disadvantages to members of groups characterized by practicing the same religion or belief is not considered to be discrimination, and more favorable provisions for other persons may be permitted in this case. It is also not considered discrimination if it is proved that the employer has genuine and justified occupational requirements in relation to the differential treatment of its employee, and the court is entitled to examine the objectivity and reasonableness of such measures, aspect found in the case Bilka Kaufhaus GMBH vs. Karin Weber von Hartz (1986).

In this respect, an apparently discriminatory act becomes justified, for example by applying the provisions of internal regulations issued in a religiously neutral manner and respecting the proportionality of the measures taken by the employer to guarantee religious freedom. The court

will consider the reasons for the employer's action, for example to introduce unique work uniforms, including for employees of a particular religious group, which may contravene the requirements of their own religion, but the aim of the measure must be linked to the desire to limit potential accidents at work which may result from wearing clothing unsuitable for the workplace.

On the contrary, upholding the worker's religious freedom does not allow the unlawful application of positive measures, such as the right of priority access to promotion for an employee with a particular religion, even if he or she is part of a religious minority in that workplace compared to others in the same structure. Positive measures aim to compensate for possible drawbacks faced by members of a religious group considered to be disadvantaged; differential treatment does not amount to discrimination, although members of other groups of a different religion will not have similar rights.

On the other hand, in the case of incitement as a form of discrimination, the provisions of the Directive imply, for example, the existence of a request issued by a particular employer to a recruitment company not to consider applicants belonging to certain religious groups, and the harassing conduct of some of the victim's colleagues in repeatedly making jokes about the clothing of another employee of Muslim origin, when the employer did not take any measures to protect the victim, even though it was aware of this.

Discrimination legislation in Romania

National legislation on discrimination comprises a set of rules found in Articles 4(2), 16(1) and 30(7) of the Constitution on the equality of citizens before the law, equal pay and the incitement to discrimination, Articles 5(1) and 6(3), 39(1)(d) and (e), 59(a), 159(3) of the Labor Code on equal treatment, equal pay, dignity at work and dismissal, applicable to legal employment relationships (Ţiclea 2015, 21; Vartolomei 2009, 201; Panaite 2017, 22; Dorneanu 2012, 86, 88; Ştefănescu 2014, 741).

The regulations are supplemented by the provisions of Government Ordinance No 137/2000 on the prevention and punishment of all forms of discrimination, which constitutes the general framework (Athanasiu and Vlăsceanu 2017, 27), i.e. the common law on discrimination and which transposes (Popescu 2014, 99) the provisions of Directives No 2000/43/EC which aims to promote the principle of equal treatment between persons irrespective of racial or ethnic origin and No 2000/78/EC which requires equal treatment in employment and occupation and establishes protection in regards to working conditions, recruitment criteria, promotion or vocational training, and establishes the National Council for Combating Discrimination (CNCD).

The Ordinance requires that treatment based on membership of a particular religion or belief be defined as discrimination when the effect is to create an intimidating, hostile, degrading, humiliating or offensive environment, resulting in the restriction, removal of the recognition, use or exercise of rights on an undifferentiated basis.

Article 1(2)(i) of the Ordinance regulates a guarantee of equal treatment in legal employment relationships, with the aim of guaranteeing the equal right to work, the free choice of occupation and the maintenance of fair and satisfactory working conditions, and also criminalizes the refusal of an employer to employ a person on the grounds that he or she belongs to a particular religion or belief, as well as the making of the employment of a person conditional on his or her belonging to these criteria (Atanasiu and Vlăsceanu 2017, 28).

In terms of interpreting discrimination cases, it must be proven that a certain person is treated less favorably than another person in a comparable situation, with the application of unlimited discrimination criteria relating to race, nationality, ethnicity, language, religion, social category, beliefs, gender, sexual orientation, age, disability, membership of a disadvantaged group, and any criterion that has as its effect that of creating an unequal legal situation is analyzed, Romanian law establishing a regime of favor compared to the European one.

The Ordinance regulates as forms of discrimination the direct discrimination, the indirect discrimination through apparently neutral practices of the perpetrator, instigation, harassment, victimization as a form of adverse treatment of the perpetrator towards the victim who has lodged a complaint against them, the multiple discrimination through the accumulation of several criteria, but also the concept of positive discrimination as the introduction of specific rules favoring disadvantaged groups, whom the majority has an attitude of rejection or marginalization, and who are thus in a situation of inequality with those belonging to the majority.

Achieving the beneficial effect presupposes the possibility for the national court to classify as an act of harassment the employer's conduct to create a hostile environment, for example in terms of pay (Gâlcă 2018, 96), by not granting a proportionate remuneration, without recognizing the protected criteria.

Law no. 202 of 19 April 2002 on equal opportunities and equal treatment for women and men has as its legal basis the elimination of all forms of discrimination based on sex, respectively the guarantee (Dimitriu 2016, 324) of equal opportunities between women and men. Law no. 232/2018 amended the Law no. 202/2002, introducing a new concept on non-discrimination, namely that of psychological harassment, without identifying other forms (Brenneur 2012*,* 70), such as strategic harassment.

Dispute resolution. Procedural aspects

The person who considers him/herself a victim of discrimination has the right to refer the matter to the National Council for Combating Discrimination (CNCD), according to GO no. 137/2000 on preventing and sanctioning all forms of discrimination, art. 20 para. 1, within (Tăbârcă 2008, 347) 1 year from the date of the discriminatory act or from the date on which the victim could have become aware of the discriminatory act, or to file a claim with the competent court, asking for compensation, restoration of the previous situation and annulment of the situation arising from the discrimination, within 3 years. According to the provisions of Article 30(1), where the complaint of employees who consider themselves discriminated against on grounds of sex has not been settled by mediation at the level of the employer, the victim of such discrimination has the possibility to lodge a complaint with the competent institution or court within 3 years of the date of the offence in question.

According to Law no. 202/2002, employees who consider themselves discriminated against on the grounds of their sex have the right to lodge complaints or appeals (Vieriu 2016, 410) against the employer, to address the trade union or the employees' representative in the workplace in order to settle the dispute, to lodge a complaint with the competent institution or with the court, within 3 years from the date of the offence in question. In this regard, National Agency for Equal Opportunities receives complaints or grievances concerning acts carried out against the normative provisions on the application of the principle of equal opportunities and treatment between women and men, as well as in cases of discrimination on the basis of sex. The provisions of Article 29(1) also provide for trade union confederations to deal with requests from employees regarding the receipt of complaints from victims of discrimination and mediation with employers.

These provisions may in practice create a certain parallelism of possible actions by the employee, giving rise to different solutions by the courts.

The decision of the CNCD to admit the existence of discriminatory acts has a strong probative value before the court, but the court is not bound to respect this decision, which has the value of an advisory opinion. The CNCD procedure is similar to that of the courts, but these institutions do not issue decisions at the same legal level. In practice, if the CNCD has decided that an employee is the victim of discrimination, a court may decide that there is no such discrimination.

If the decision of the CNCD has been challenged in administrative proceedings and the administrative law court has upheld it, we will have two different court decisions by different

courts, but with the same subject matter. By Decision No 211 of January 18, 2019, the High Court of Cassation and Justice ruled that, in the case of an action in tort for damages arising from wage discrimination, the alleged act of discrimination occurring in the context of an employment relationship, i.e. a relationship governed by the Labor Code, jurisdiction belongs to the labor law court in whose district the plaintiff is domiciled and not to the administrative court, since there is no employment relationship, as a relationship governed by special law.

On the other hand, the Constitutional Court ruled through Decisions No 818 - 821/2008, 997/2008, 1325/2008 on the unconstitutionality of articles 2 (3), 20 (3) and 27 (1) of the ordinances, insofar as they would imply that the courts or the National Council for Combating Discrimination have the power to annul or refuse the application of legal acts, considering them to be discriminatory, or to replace them with judicially created rules or other legal acts.

Conclusions

With regard to combating discrimination on the grounds of religion and belief, the exception of positive measures is accepted as direct intervention by states through the introduction of regulations to grant additional rights to persons or groups considered disadvantaged. On the other hand, it can be noted that European regulations, as well as the national laws of the Member States in which they have been transposed, do not contain a list of cases in which the principle of equal treatment has been infringed, which would enable the courts to assess with certainty whether discrimination has occurred. As a result, Member States have the right to extend their rules in this area beyond the restrictive provisions of the directives, for example by limiting the criteria for discrimination.

In the case of religion, the regulation becomes deficient, as there are no unequivocal rules in this respect, so that the victim has to prove differential treatment and does not directly obtain protection of their religious freedom. The vagueness of the regulation has thus led to the need for interpretation by means of European case law, with the courts not infrequently giving subjective rulings on cases of discrimination, generally when considering acts of indirect discrimination which are apparently neutral in nature, since the victim is not always easily identifiable and the principle of equal treatment cannot therefore be acknowledged.

We have also noted, with regard to the freedom of religious organizations, a regime of exception accepted at European level, favorable to these institutions, to the detriment of the fundamental rights of their employees. In this respect, the inequality derives from the limitation of the effects of the legal relationship derived from the individual employment contract, strengthening the religious perspective, with the obligation to respect the ethos of the organization, even when employees have a different faith. Thus, the ethos of the organization becomes a justified objective motivating non-discrimination, constituting a real underlying clause of the individual employment contract, although the legality of such a directly introduced clause may be questionable in terms of the fundamental rights of employees in a legal employment relationship.

In terms of proving the case of discrimination, the employee's public expression against the ethos of the organization is sufficient evidence, considering the negative impact on the public image of the institution in question. In this respect, the shortcomings in defining the criterion of religion will also allow agnostic or atheist organizations to benefit from the same rights as religious ones, as the non-compliance of their own employees with their requirements becomes a justified objective in proving non-discrimination.

In conclusion, we can appreciate the existence of contrary provisions by the legislator in the area of discrimination based on religion and belief. In practice, although it accepts the concept of loyalty to the ethos of a religious organization, it regulates against discrimination on the basis of religion or belief. However, the legislator, while protecting the rights of religious organizations, does not act in favor of the employees of these institutions. In this respect, the rights of employees

are not equally protected, since the legislator, for the purposes of legal equilibrium, does not impose a mirror obligation on religious organizations to offer employees other positions in accordance with their ideology or even to adapt the positions they hold, which is obligatory, for example, in the case of the criterion of disability.

Last but not least, various situations can be identified in employment relationships, for example where a direct order given by an employer to perform a work task is incompatible with the employee's own faith, thus making it impossible for the employee to comply with it. In the field of public law, a civil servant has the right to refuse to comply with a direct order given by his/her superior when he/she considers it to be unlawful. The dismissal of the employee in question, even though they had previously shown good performance in fulfilling the duties set out in the individual employment contract, thus becomes questionable from the point of view of legality, as the European or national regulations on discrimination on grounds of religion do not indicate the conditions under which such an order can represent a real and determining occupational requirement which would exclude a discriminatory conduct by the employer, a religious organization.

References

Athanasiu, A. and Vlăsceanu, A.M. 2017. *Dreptul muncii. Note de curs (Labor law. Course notes)*. Bucharest: C.H. Beck Publishing House.

Barret, G. 2003. *Re-examing the concept and principle of equality in EC law*. Yearbook of European Law, vol. 22.

Brenneur, B. 2012. *Stresul și suferința la locul de muncă (Stress and suffering at work)*. Bucharest: C.H. Beck Publishing House.

Cernat, C. 2014. *Dreptul muncii. (Labor law. 5th edition revised and added)*. Bucharest: Universul Juridic Publishing House.

Dimitriu, R. 2016. *Dreptul muncii. Partea generală (Labor law. The general part)*. Bucharest: Rentrop Straton Publishing House.

Dorneanu, V. 2012. *Dreptul muncii. Partea generala (Labor law. The general part)*. Bucharest: Universul Juridic Publishing House.

Fuerea, A. 2006. *Drept comunitar al afacerilor* (*Community business law)*. Bucharest: Universul Juridic Publishing House.

Gâlcă, C. 2018. *Drept comunitar al muncii. Transpunerea în dreptul muncii român (Community labor law. Transposition into Romanian labor law)*. Bucharest: Roseti Internațional Publishing House.

Marinescu, D.M. 2019. "The discrimination - a risk factor for social security in the European Union." *Proceedings of The 15th International Scientific Conference Strategies XXI. „Strategic Changes in Security and International Relations"*. Volume XV, Part 1, pp. 59- 68, Bucharest, April 11-12, „Carol I" National Defence University, Security and Defence Faculty.

Marinescu, D.M. 2020. "The evolution of the concepts of equal opportunities and migration in the legislation of the European Union", in *Proceedia of the International Scientific Conference "Global Security and National Defence",* pp. 490-494, "Carol I" National Defence University, Doctoral School, 25-26 June.

Muscalu, M.L. 2015. *Discriminarea în relațiile de muncă (Discrimination in labor relations)*. Bucharest: Hamangiu Publishing House.

Panaite, S. 2017. *Drept european al muncii (European labor law)*. Bucharest: Hamangiu Publishing House.

Pelissier, J., Auzero, G., and Dockes, E. 2010. *Droit du Travail*. 25ème édition, Dalloz.

Popescu A. 2008. *Dreptul internațional și European al muncii (International and European labor law)*. Second Edition, Bucharest: C.H. Beck Publishing House.

Popescu, R.R. 2014. *Dreptul muncii (Labor law)*. Bucharest: Universul Juridic Publishing House.

Roș, N. 2017. *Dreptul muncii. Curs universitar (Labor law. University course)*. Bucharest: Pro Universitaria Publishing House.

Ștefănescu, I.T. 2014. *Tratat teoretic și practic de drept al muncii (Theoretical and practical treaty of labor law)*. Bucharest: Universul Juridic Publishing House.

Țiclea, A. 2015. *Codul muncii comentat* (*Labor code commented). Updated Sixth Edition*, Bucharest: Universul Juridic Publishing House.

Vartolomei, B.V. 2009. *Dreptul muncii pentru învățământul economic* (*Labor law for economic education)*. Bucharest: Economică Publishing House.

Weiwei, L. 2004. *Equality and Non-discrimination Under International Human Rights Law*. Norvegian Center for Human Rights, Research Notes 03.