

Addressing Female Discrimination

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ABSTRACT: Although the anti-discrimination policy promotes the elimination of any differences, ensuring equal opportunities for women and men to the same extent, the simple provision of these things in the legal norms is not able to ensure the intended effect of gender policies. There is a need for changing mentalities, for a greater assumption by women of the roles that equal chances and opportunities imply for them, in all areas of public or private life.

KEYWORDS: discrimination, law, freedoms, gender policies

It is easy to see how in contemporary Romanian society, gender differences are encountered at all levels. Thus, in the economy, in politics, in relations with institutions, even in crime, women have a different weight compared to men, which is, as a rule, lower compared to them. Discrimination, although prohibited by law, is present and, in most cases, to the disadvantage of women but also to the disadvantage of other categories such as children, the elderly, etc.

The problem of discrimination started from the defense of human and citizen rights.

The *concept of human rights* (Mazilu 2000, 35-42), so used in the last decades, as it is received by human communities and by each of their members as a natural institution, implies:

- complete and accurate understanding of the status of the human being in its most different poses;
- knowledge of the political, legal, social and economic means necessary to comply with this statute;
- guaranteeing the fulfillment of the requirements involved in this statute through appropriate measures to punish those guilty of violating the rights and freedoms inherent to all people.

Placed in the context of the rule of law, considered "*a symbol of a civilization*" (J. Gicquel), the above-mentioned concept is enshrined by rules of behavior, which express the general will of the majority of society's members, official, impersonal, binding rules and susceptible to realization through coercion, proportionalizing and enrolling in procedures to prevent the excess, orienting not so much against the punishable, but especially for the purpose of safeguarding the general interest.

Considering the importance of human rights and public freedoms (Mazilu 2000, 29), in society, their exceptional significance for the life and existence of each of us, the concern for their consecration in national and international regulations occupies a priority place in the exercise of governance.

The norms enshrined in national European and world legal instruments must be correctly applied in social relations in each country, in each community and even in each branch and sector of activity. The exercise of governance based on democratic principles, such as: political pluralism, separation of powers in the state, legality, equality and freedom represents the *sine qua non* condition for the protection and guarantee of the fundamental rights and freedoms of the human being.

The concern for the protection of fundamental human rights and freedoms, the elimination of any differences in treatment and the assurance of full equality of the person in front of state institutions and in front of international institutions is reflected in the adoption, establishment and support of various instruments, bodies and international organizations such as: *the Commission on*

Human Rights, the Sub-committee on the Prevention of Discrimination and the Protection of Minorities, the Committee on Human Rights, the Committee on the Elimination of Racial Discrimination, the Committee against Torture, the Committee on the Elimination of Discrimination against Women, the Committee on the Rights of the Child, the European Commission of Human Rights and the European Court of Human Rights, intended to fight for the previously mentioned desideratum.

Therefore, the challenge launched many years ago regarding the defense and guarantee of respect for fundamental human rights and freedoms, which acquired various aspects over time, now has as its spearhead the fight to combat one of the important enemies, namely, discrimination (Mazilu 2000, 29). This fact has become the standard of national and international policies, translated into numerous combat instruments, in continuous improvement and transformation.

Discrimination is the differential treatment applied to a person by virtue of his or her real or supposed membership in a certain social group. It is an individual action, but if the members of the same group are systematically treated in a similar way, it also constitutes a social pattern of aggregate behavior (Banton 1998, 2). In the social sciences, the term refers, in general, to a prejudiced treatment, with negative effects on the person concerned.

The research conducted identified the existence of several types of discrimination. In general, a distinction is made between *direct and indirect discrimination*. The first type occurs when the differential treatment is generated intentionally, while the second type occurs when this treatment is based on an unfair decision taken previously. According to another opinion, a distinction is made between intentional and conscious discrimination and unintentional discrimination, as well as between discrimination practiced by individuals and that practiced by institutions (Mallick in Magill (coord.) 1995, 35).

While discrimination represents a form of behavioral manifestation, prejudice represents a negative attitude towards each individual member of a group, which is motivated only by his membership in the group (Allport, 1948, 71). Discrimination is related to stereotypes, which represent the negative component of prejudice (Capozzo and Volpato in Bouhis and Leyens, 1996, 23). These representing a stable and relatively rigid cognitive structure, help to maintain the negative attitude and to perpetuate differentiated behaviors based on them. Another phenomenon with which discrimination is related is that of stigma, the stigmatized becoming more easily *The Target* of differentiated treatments.

The groups most often subject to discrimination and on which most studies have focused are: ethnic, racial, religious minorities, immigrant groups. A particular concern existed for the discrimination against women. Recently, a special interest is given to studies regarding the discrimination of sexual minorities, people with special abilities, as well as the elderly. The most investigated areas of manifestation of discrimination were the educational system, the labor market, coexistence.

To reduce discrimination, a series of strategies have been developed to ensure equal opportunities in areas where people who belong to traditionally discriminated groups have been systematically represented. In the United States these strategies are called *Affirmative Action*, while in Great Britain they are known as *Positive Discrimination*. These strategies do not imply “*reverse discrimination*”, but are intended to ensure equal opportunities for all citizens, regardless of the group to which they belong. Positive Discrimination and Affirmative Action presuppose, on the one hand, the recognition of the disadvantages accumulated by the respective groups, as well as the development of policies and practices that help to overcome the difficulties. The main areas in which the actions of the strategies to eliminate discrimination were focused are the labor market, education and coexistence.

Researching the area of Romanian legislation, we cannot ignore the guarantees of the rule of law regarding the protection of the person given by the rule of law principle, of the subordination of power to the law by creating mechanisms designed to ensure good functionality in the process of guaranteeing the fundamental rights and freedoms of citizens (Nistoreanu and Boroi 2004), through the nomination in an entire title of the Constitution of the rights, freedoms and fundamental duties of citizens, the simple enumeration of some of these rights and freedoms being sufficient not only to highlight the weight these constitutional texts have in the economy of our fundamental law, but also to shed light on the important premises on which a genuine action to build the rule of law rests. It is about the equality of citizens before the law and public authorities, without privileges and without discrimination (art. 16); free access to justice for the defense of the rights, freedoms and legitimate interests of citizens (art. 21); the right to travel in the country and abroad (art. 25); the right to information and education (art. 31 and art. 32); the right to choose and be chosen (art. 25); the right to choose the profession and workplace (art. 38); the right to private property (art. 41); the right to life and to physical and mental integrity (art. 22) etc.

These rights are doubled by freedoms that actually constitute the framework that ensures their effective exercise. Among them we mention: individual freedom (art. 23), freedom of conscience (art. 29), etc.

The Constitution makes only one reference to the term discrimination, when it enshrines as a principle, in art. 16, the equality of citizens before the law and public authorities, “*without privileges and without discrimination*”, and in para. 3 specifies that: “*public, civil and military functions and dignities can be occupied, under the law, by persons who have Romanian citizenship and resident in the Country. The Romanian state guarantees equal opportunities between women and men for the occupation of these positions and dignities*”.

The notion of discrimination (Thomson 1997, 79-81) is regulated in two normative acts: Government Ordinance no. 137/2000, regarding the prevention and sanctioning of all forms of discrimination (G.O. no. 137/2000 underwent a series of changes through Law no. 48/2002, G.O. no. 77/2003 and Law no. 27/2004 regarding the approval of G.O. no. 77/2003) and Law no. 202/2002 on equal opportunities between women and men, appeared in the context of placing the issue of equal opportunities at the center of the *European Employment Strategy*.

Therefore, we have two normative acts that have the same regulatory area, namely, *discrimination*, with the difference that Law no. 202/2002 only guarantees equal opportunities for men and women, when discrimination is based on gender, while O.G. no. 137/2000 mentions 14 discrimination criteria.

Law no. 202/2002 defines discrimination as “*the difference in treatment of a person against him due to his belonging to a certain sex or due to pregnancy, birth, maternity or the granting of paternity leave*” (direct discrimination) or “*the application of provisions, criteria or practices, apparently neutral, which, through the effects they generate, affect people of a certain sex*” (indirect discrimination).

According to the last amendment brought to Government Ordinance no. 137/2000 by law no. 27/2004, discrimination means “*any difference, exclusion, restriction or preference, based on race, nationality, ethnicity, language, religion, social category, beliefs, sex, sexual orientation, age, disability, non-contagious chronic disease, infection HIV or belonging to a disadvantaged category whose purpose or effect is to restrict or eliminate the recognition, use or exercise, under conditions of equality, of human rights and fundamental freedoms or rights recognized by law, in the political, economic, social and cultural fields or in any other areas of public life*”.

As can be seen from the quoted texts, the spheres in which discrimination can manifest are multiple and mainly aim at: conditioning a person's participation in an economic activity or the

choice or free exercise of a profession, access to public administrative and legal services, health, to other services, goods and facilities, access to education, freedom of movement, the right to free choice of residence and access to public places, the right to personal dignity.

Conclusions

The capture of discriminatory manifestations (Thompson 1997, 83) in a given society and in a certain dimension of time represents an approach that must take into account, equally, the discriminations practiced by individuals, groups of individuals, or at the level of some institutions (Banton 1998, 5).

According to a study by the Center for Social Development Cedes Romania, regarding discriminatory manifestations in the employment process, the conclusion that would be drawn would be that - the existence of anti-discrimination laws does not ensure the solution of the problem and that it does not only require the involvement of the state authorities, but a national program of promotion, of support, with an effect on people's minds, which would lead to changes in the perspective of employers, but also of each individual. It is stated that the reduction or elimination of discriminatory manifestations cannot be achieved only by sanctioning discriminatory behaviors, or by instituting affirmative actions or special measures, but through a concentrated legislative, attitudinal and behavioral effort, invoking in this sense the sayings to Michel Crozier (Crozier 1979), according to which, "*society cannot be changed by decree*," but, we believe, it needs complete laws, aimed at achieving the purpose for which they were created.

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