

Risks for Companies: Discrimination in Employment Relationship

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The term “discrimination” is used beyond current law, human and political sciences. He came into common usage. Today, this demonstrates awareness of the existence of discrimination and mobilization issues that aim to combat discrimination is able to provide. The extensive use often produces confusion with related notions. However, for the analysis of concrete problems, the ambiguities and uncertainties are a serious obstacle. Today, we have the advantage that the meaning of the concept of discrimination has been firmly circumscribed by legal instruments, the result of long law maker developments, and necessarily to use - and thus to learn - the regulatory context.

The fighting of discrimination is the expression of the ideal of equality between people. In most contexts “principle of equality” is defined as the absence of any direct or indirect discrimination. Does this mean the obligation of a uniform treatment in all conditions, in relation to any aspect of identity? The answer is negative, whereas some individuals or groups need to be helped by treatments that enable them to overcome personal or social barriers.

Our world is diverse; it requires people with the identity variable to interact, generating behaviors of cooperation and charity, sometimes competing and exclusive attitude. The discrimination based on identity or motives of choice are mostly sex, race, nationality, ethnicity, language, religion, social category, beliefs, sexual orientation, age, disability, non-contagious chronic disease, HIV infection, belonging to a disadvantaged category. The fighting of discrimination is, however, to any other criteria that determined the unfair treatment of a person.

The previous definitions called various forms of discrimination (direct, indirect, harassment and victimization), that are evaluated against the variable requirements of a treatment, when equal, when different”. For this reason, it was necessary to develop a “depth” definition of discrimination that puts in relief also the types of actions that discriminate, and the scope of discrimination.

Discrimination is any distinction, exclusion, restriction or preference (based on one of the grounds of discrimination) which has the purpose or effect the restriction, removal of recognition, use or exercise, on an equal conditions, of human rights and fundamental freedoms, rights recognized by law in the political, economic, social and cultural domain, or any other public areas of life.

The non-discrimination principle is an important pillar of EU social policy and equal opportunities are necessary to achieve the social policy at national and European level. The existence of rules which require effective safeguards against discrimination and discriminatory practices are absolutely necessary in a democratic society. Fighting discrimination is indispensable to the process of absolute equality for all people. The international human rights law provides both the right to equality and the right not to be subjected to discrimination on the specific criteria listed. For example, the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights and the European Convention on Human Rights and Fundamental Freedoms (ECHR), all contain provisions on non-discrimination field. These legal instruments have internationalized the issue of human rights protection, which gradually became one of the most important concerns.

Also, the discrimination derives from the standards of European law, namely, the European Union Council Directive no.2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation and European Union Council Directive no.97/80/EC of 15 December 1997 on the proof task in cases of discrimination based on sex (“Directive on the proof task”). These directives have arisen following the adoption of the Amsterdam Treaty of 10 November 1997, the art.13 of which gave new assignments to the European Community to combat discrimination based on sex, racial or ethnic origin, religion, belief or sexual orientation.

Since 2000, in the EU Member States, in addition to provisions designed to ensure equal treatment between men and women, the anti-discrimination legislation is applied to ensure minimum levels of equal treatment and protection for all citizens who live and work in Europe. These provisions aimed at ensuring implementation of equal treatment irrespective of: race or ethnic origin, religion or belief, disability, sexual orientation, age, etc. The equality refers to many aspects of daily life: both at work and in various sectors such as education, health care and access to goods and services.

Adhere to certain international instruments (Universal Declaration of Human Rights, ECHR, etc.) Romania has assumed the primary obligation to respect human rights and dignity for every person under its jurisdiction. One aspect of human rights protection concerns the ensuring of equal opportunities and treatment to all persons regardless of criteria, thereby guaranteeing the non-discrimination principle.

European Court of Human Rights, in its case law, has held that differential treatment between persons placed in similar situations or compatible is discriminatory if it is not based on objective and reasonable justification (if it does not pursue a legitimate aim or if there is a report reasonable proportionality between the means employed and the aim pursued).

ECHR case law points out that 14 of the Convention is violated not only if the states apply different treatment to persons who are in similar or comparable situations, but if the states do not treat differently persons whose situations are significantly different. The extent of margin of appreciation varies depending on the specific circumstances of each case, the fields and the context in question, and the presence or absence of a “common denominator” of the legal systems of the States Parties at the Convention, may be a factor in this respect.

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