UNIVERSITETI I EVROPËS JUGLINDORE
УНИВЕРЗИТЕТ НА ЈУГОИСТОЧНА ЕВРОПА
SOUTH EAST EUROPEAN UNIVERSITY

FAKULTETI I GJUHËVE, KULTURAVE DHE KOMUNIKIMIT
ФАКУЛТЕТ ЗА ЈАЗИЦИ, КУЛТУРИ И КОМУНИКАЦИЈА
FACULTY OF LANGUAGES, CULTURES AND COMMUNICATION

POSTGRADUATE STUDIES – SECOND CYCLE

THESIS:

Non-Discrimination in International Law: The Case of the Republic of Macedonia

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Acknowledgment

Abbreviations

CEDAW	Committee on the Elimination of Discrimination against Women
CEDR	Committee on the Elimination of Racial Discrimination
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECOSOC	Economic and Social Council
EU	European Union
HRC	Human Rights Committee
ICJ	International Court of Justice
ILO	International Labor Organization
LRL	Labor Relations Law
RNM	Republic of North Macedonia
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNESCO	The United Nations Educational, Scientific and Cultural Organization

Abstract

The principle of non-discrimination is included in Article 13 (1) of the United Nation (UN) Charter, which states that: "The General Assembly will initiate research and will make suggestions in order to assist in the realization of fundamental human rights and freedoms for all, with no distinction based on race, gender, language and religion." Furthermore, according to Article 2 of the Universal Declaration of Human Rights (UDHR) "all rights and freedoms provided for in this Declaration shall be guaranteed to all persons, without prejudice to their distinctions, such as race, color, sex, religion, political or other belief, national or social origin, wealth, birth or other status".

The aim of non-discrimination law is to allow all individuals an equal and fair prospect to access opportunities available in a society. This thesis offers an overview of the sources of non-discrimination and the historical development of the concept, and examines in detail the scope of the principle of non-discrimination. The thesis emphasizes the domestic implementation of the principle with a discussion of its application in the Republic of North Macedonia (RNM). The aim of the thesis is to bridge different understandings of non-discrimination and to build a framework of the notion in order to establish the variety of context. Specifically, the it aims at identifying organization that deal with Non-discrimination law; context of different laws; and other aspects of this law such as legal framework and strategy in the Republic of North Macedonia.

The research objectives of the thesis can be set as follows: (i) to familiarize with the notion of equality before the law and the principle of non-discrimination as understood by international human rights law; (ii) to illustrate how these principles are being applied in practice at the universal and regional levels; (iii) to identify some groups that may be particularly vulnerable to discriminatory treatment; (iv) to explain what legal steps, measures and/or actions judges, prosecutors and lawyers must take in order to safeguard the notion of equality before the law and the principle of non-discrimination.

In summarizing, we would like to repeat some of the recommendations aimed at strengthening the principle of equality and non-discrimination in the Republic of North Macedonia: (i) Make the list of characteristics on which discrimination is prohibited open to the possibility of applying the provision in cases of discrimination; (ii) Adopt a more comprehensive legislation to prevent discrimination in all spheres of social life; (iii) Develop a concept to distinguish between discrimination and differences that are not discrimination, but which are legitimate and reasonable; (iv) Foresee the possibility of implementing affirmative measures in those areas where the state estimates that such steps should be taken; (v) Create special body that will have powers only in the protection of the principle of equality and non-discrimination; (vi) Finally, to further develop the compensation (damages) procedure and release from the heavy discrimination.

Abstrakt

Parimi i mos-diskriminimit përfshihet në Nenin 13(1) të Kartës së Kombeve të Bashkuara, ku thuhet: "Asambleja e Përgjithshme do të iniciojë kërkime dhe do të bëjë sugjerime për të ndihmuar në realizimin e të drejtave dhe lirive themelore të njeriut për të gjithë", Për më tepër, sipas nenit 2 të Deklaratës Universale të të Drejtave të Njeriut (UDHR) "të gjitha të drejtat dhe liritë e parashikuara në këtë Deklaratë u garantohen të gjithë personave, pa paragjykuar dallimet e tyre, të tilla si raca, ngjyra, gjinia, feja, besimi politik ose tjetër, origjina kombëtare ose sociale, pasuria, lindja ose ndonjë status tjetër".

Qëllimi i ligjit për mos-diskriminim është të lejojë të gjithë individëve një perspektivë të barabartë dhe të drejtë për të hyrë në mundësitë e disponueshme në një shoqëri. Kjo tezë ofron një pasqyrë të burimeve të mos-diskriminimit dhe të zhvillimit historik të konceptit, dhe shqyrton në detaje fushën e parimit të mosdiskriminimit. Kjo teme thekson zbatimin e brendshëm të parimit me një diskutim për aplikimin e saj në Republikën e Maqedonisë. Qëllimi i tezës është të lidhë kuptime të ndryshme të mos-diskriminimit dhe të ndërtojë një kornizë të nocionit me qëllim të krijimit të larmisë së kontekstit. Në mënyrë të veçantë, ajo ka për qëllim identifikimin e organizatëve që merren me ligjin për mos-diskriminim; konteksti i ligjeve të ndryshme; dhe aspekte të tjera të këtij ligji si kuadri ligjor dhe strategjia në Republikën e Maqedonisë Veriore.

Objektivat e hulumtimit të tezës mund të vendosen si më poshtë: (i) njohja me nocionin e barazisë para ligjit dhe parimin e mos-diskriminimit siç kuptohet nga ligji ndërkombëtar për të drejtat e njeriut; (ii) për të ilustruar se si këto parime po zbatohen në praktikë në nivelet universale dhe rajonale; (iii) identifikimi i disa grupeve që mund të jenë veçanërisht të prekshme ndaj trajtimit diskriminues; (iv) të shpjegojë se cilat hapa, masa dhe/ose veprime ligjore duhet të marrin gjyqtarët, prokurorët dhe avokatët për të mbrojtur nocionin e barazisë para ligjit dhe parimin e mos-diskriminimit.

Si përmbledhje, dëshirojmë të përsërisim disa nga rekomandimet që synojnë forcimin e parimit të barazisë dhe mos-diskriminimit në Republikën e Maqedonisë Veriore: (i) Të jetë e hapur lista e karakteristikave mbi të cilat është e ndaluar diskriminimi për mundësinë e zbatimit të dispozitës në rastet e diskriminimit; (ii) Të miratohet një legjislacion më i plotë për të parandaluar diskriminimin në të gjitha sferat e jetës shoqërore; (iii) Të zhvillohet një koncept për të dalluar diskriminimin dhe dallimet që nuk janë diskriminim, por që janë legjitime dhe të arsyeshme; (iv) Të parashikohen mundësitë e zbatimit të masave afirmative në ato zona ku shteti vlerëson që hapat e tillë duhet të merren; (v) Të krijohet një organ i veçantë që do të ketë kompetenca vetëm në mbrojtjen e parimit të barazisë dhe mos-diskriminimit; dhe (vi) Së fundi, të zhvillohet më tej procedura e kompensimit (dëmeve) dhe lirimin nga diskriminimi i rëndë.

Апстракт

Принципот на недискриминација е вклучен во член 13 (1) од Повелбата на ОН, во кој се вели: "Генералното собрание ќе иницира истражувања и ќе дава предлози за да помогне во остварувањето на основните човекови права и слободи за сите, без разлика што се заснова на раса, пол, јазик и религија ". Освен тоа, според член 2 од Универзалната декларација за човекови права (УДЧП) "сите права и слободи предвидени во оваа Декларација им се гарантираат на сите лица, без оглед на нивните разлики, како што се раса, боја, пол, религија, политичко или друго убедување, национално или социјално потекло, богатство, раѓање или друг статус ".

Целта на законот за недискриминација е да им се овозможи на сите поединци еднаква и фер перспектива за пристап до можностите достапни во едно општество. Овој труд нуди преглед на изворите на недискриминација и историскиот развој на концептот и детално го разгледува опсегот на принципот на недискриминација. Тезата ја потенцира домашната примена на принципот со дискусија за неговата примена во Република Северна Македонија. Целта на тезата е да се премостат различните сфаќања за недискриминација и да се изгради рамка на идејата со цел да се утврди разновидноста на контекстот. Поточно, целта е да се идентификува организацијата која се занимава со Законот за недискриминација; контекст на различни закони; и други аспекти на овој закон, како што се законската рамка и стратегијата во Република Северна Македонија.

Целите на истражувањето на тезата можат да бидат поставени на следниов начин: (i) да се запознаат со поимот еднаквост пред законот и принципот на недискриминација, како што е сфатен со меѓународното право за човекови права; (ii) да илустрира како овие принципи се применуваат во пракса на универзално и регионално ниво; (iii) да се идентификуваат некои групи кои можат да бидат особено ранливи на дискриминаторски третман; (iv) да објаснат какви правни чекори, мерки и / или дејства треба да ги преземат судиите, обвинителите и адвокатите со цел да се заштити идејата за еднаквост пред законот и принципот на недискриминација.

Во резимирање, би сакале да повториме некои од препораките насочени кон зајакнување на принципот на еднаквост и недискриминација во Република Македонија: (i) Да се направи листа на карактеристики на кои е забрането дискриминација отворени за можноста за примена на одредбата во случаи на дискриминација; (ii) Донесување на посеопфатно законодавство за спречување на дискриминација во сите сфери на општествениот живот; (iii) Развивање на концепт за разликување на дискриминацијата и разликите кои не се дискриминација, но кои се легитимни и разумни; (iv) да ја предвидат можноста за спроведување на афирмативни мерки во оние области каде што државата проценува дека треба да се преземат такви чекори; (v) Креирање посебно тело кое ќе има овластувања само во заштитата на принципот на еднаквост и недискриминација; (vi) Конечно, за понатамошно развивање на постапката за надомест (штета) и ослободување од тешката дискриминација.

Introduction

Together with equality, before the law and equal protection of the law without any discrimination, non-discrimination provides the foundation for the enjoyment of human rights. As Shestack (1984) has observed, equality and non-discrimination "are central to the human rights movement." This thesis offers an overview of the sources of non-discrimination and the historical development of the concept, and examines in detail the scope of the principle of non-discrimination. The thesis emphasis the domestic implementation of the principle with a discussion of its application in the Republic of Macedonia.

The principles of equality and non-discrimination are part of the foundations of the rule of law. As Member States noted in the Declaration of the High-Level Meeting on the Rule of Law, "all persons, institutions and entities, public and private, including the State itself, are accountable to just, fair and equitable laws and are entitled without any discrimination to equal protection of the law". They also dedicated themselves to respect the equal rights of all without distinction as to race, sex, language or religion.

The international human rights legal framework contains international instruments to combat specific forms of discrimination, including discrimination against indigenous peoples, migrants, minorities, people with disabilities, discrimination against women, racial and religious discrimination, or discrimination based on sexual orientation and gender identity.

Aims of the research

The aim of the thesis is to bridge different understandings of non-discrimination and to build a framework of the notion in order to establish the variety of context. Specifically, the thesis aims at identifying organization that deal with Non-discrimination law; context of different laws; and other aspects of this law such as legal framework and strategy in the Republic of Macedonia.

Affirmative action policies are a modern technique used to combat discrimination and to that end, it is necessary to establish the legal foundation of affirmative action as well as the

dynamic or possible hierarchy between these policies and equality. The thesis aims to determine the compatibility between these two notions, both at a transnational level as well as a national constitutional level, where they ultimately interact and determine each other's legitimacy and functionality.

The term 'Non-Discrimination International Law' suggests that a system of rules relating to non-discrimination exists; however, it is in fact made up of a variety of contexts. This thesis draws mainly from International and the ECHR and EU law.

The research objectives can be set as follows:

- To familiarize with the notion of equality before the law and the principle of non-discrimination as understood by international human rights law.
- To illustrate how these principles are being applied in practice at the universal and regional levels.
- To identify some groups that may be particularly vulnerable to discriminatory treatment.
- To explain what legal steps, measures and/or actions judges, prosecutors and lawyers must take in order to safeguard the notion of equality before the law and the principle of non-discrimination.

Hypotheses

General hypothesis:

Discrimination is embedded in society and that individuals are not in a position of similarity or identical status and that substantive equality allows for preferential treatment in order for equality to be reflected in the realities of a community.

Supportive hypothesis:

Equality is for the disadvantaged group yet to be achieved.

The system of non-discrimination in international law is in different levels if we are making comparison between the EU legal framework and the Republic of Macedonia. The problem is also that in Republic of Macedonia this topic is still a little bit taboo. Our society and the experts discussing it scientifically with the public do not interpret the issue freely and continuously. The other problem is that Macedonia doesn't have independent body for

discriminations and non-discriminations. The challenge is in: What should Macedonia change and what is the most effective model for Macedonia in reporting with discrimination?!

Research Methodology

To accomplish this master thesis, it will be compared and analyzed the literature of the various local and international authors which have been mentioned below at the section of the bibliography.

Through a composition of EU legislation and international law, we will compare the facts regarding the implementation in terms of discrimination and non-discrimination.

Direct discrimination

Direct discrimination will have occurred when

- an individual is treated unfavorably
- by comparison to how others, who are in a similar situation, have been or would be treated, and
- the reason for this is a particular characteristic they hold, which falls under a 'protected ground'.

Indirect discrimination

The elements of indirect discrimination are

- a neutral rule, criterion or practice
- that affects a group defined by a 'protected ground' in a significantly more negative way
- by comparison to others in a similar situation.

Importance of the thesis

The aim of non-discrimination law is to allow all individuals an equal and fair prospect to access opportunities available in a society. We make choices on a daily basis over issues such as with whom we socialize, where we shop and where we work. We prefer certain things and certain people over others. While expressing our subjective preferences is commonplace and normal, at times we may exercise functions that place us in a position of authority or allow us to take decisions that may have a direct impact on others' lives. We may be civil servants,

shopkeepers, employers, landlords or doctors who decide over how public powers are used, or how private goods and services are offered. In these non-personal contexts, non- discrimination law intervenes in the choices we make in two ways:

Firstly, it stipulates that those individuals who are in similar situations should receive similar treatment and not be treated less favorably simply because of a particular 'protected' characteristic that they possess. This is known as 'direct' discrimination. Direct discrimination, if framed under the ECHR, is subject to a general objective justification defense; however, under EU law defenses against direct discrimination are somewhat limited.

Secondly, non-discrimination law stipulates that those individuals who are in different situations should receive different treatment to the extent that this is needed to allow them to enjoy particular opportunities on the same basis as others. Thus, those same 'protected grounds' should be taken into account when carrying out particular practices or creating particular rules. This is known as 'indirect' discrimination. All forms of indirect discrimination are subject to a defense based on objective justification irrespective of whether the claim is based on the ECHR or EU law.

Structure of the thesis

This thesis is structured as follows:

The first chapter treats the principle of non-discrimination within the United Nations. Generally, it deals with the internationalization of human rights. It further elaborates the UN Charter and the provisions of human right and the promotion of discrimination. Also treats the issue of equality and non-discrimination in the Universal Declaration of Human Rights (UDHR). Section four of this chapter deals with the International Pact on Civil and Political Rights. Thereafter the International Covenant on Economic, Social and Cultural Rights is explained. What is most important and treated with much interest in this chapter is identifying sourcing for the elimination of all racial discrimination. In the next section we provide the definition of "discrimination" under the Convention, which is continued with the legitimate differentiation

between nationals and foreigners under the Convention, achievements of factual basis, and together with elimination of all forms of discrimination against women.

Chapter two deals with the principle of non-discrimination in the practice of the European Court of Human Rights by highlighting the importance of the system European Union for the Protection of Human Right and the European system for the protection of human rights based on the European Convention on Human Rights (ECHR). Section two of this chapter presents the system of human rights protection within the EU and the relationship of this system with that established by the ECHR to the EU's single European defense system. The content and importance of Protocol 12 to the ECHR are described in section 2.3. This section is followed by the principle of non-discrimination in the practice of the European Court of Justice with emphasis on the prohibition of discrimination based on gender, with Union acts, and in the Charter of Fundamental Rights.

Chapter three is focused in the Republic of North Macedonia. It begins with the principle of non-discrimination in the legal system of North Macedonia by analyzing the legislative aspects. It elaborates the principle of equality in the Constitution of the Republic of Macedonia. The last two sections provide evidence on the prohibition of discrimination in the Criminal Code and in the Field of Civil Law with more emphasis on the Employment Relationships.

Chapter four deals with the role of the Ombudsman in protection against discrimination by providing explanation and elaboration of the affirmative measures to achieve real equality in Republic of North Macedonia.

1 Chapter One - The principle of non-discrimination within the United Nations

1.1 Internationalization of human rights

The idea of international human rights protection means the acceptance, on the part of sovereign states, of a form of oversight mechanism organized by the international community in respect of the respect of the rights of individuals under their jurisdictions.

For the construction of such a defense system can be talked about after the Second World War, and within the framework of the newly formed Organization - United Nations (UN), when the process of internationalization of human rights.

Until the end of the Second World War, human rights were under the exclusive authority of sovereign states.

No foreign state, nor the international community, have had the right to engage in this field of state competence. Any implication in this regard can be interpreted as a mixture in the internal affairs of the state.

This is a normal interpretation, assuming that, according to the international classical law, only sovereign states are subjects of international law, and accordingly, the holder of rights and obligations, while the individual has only the quality of the object. If the state has had any obligation to the individual, this is counted as the obligation of the state to the other state whose nationality is indivisible rather than individually.[1]

However, within the framework of classical international law, there were developed institutions for the protection of individuals or groups when the conduct of a state against individuals under its jurisdiction is extremely brutal, or when this required the common interests of the international community, which at this time was still underdeveloped.

These institutions are the first steps towards the international protection of human rights.[2]

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[1] L.F.L. Oppenheim ,International law , vol. 1,2. Ed 1912. P.362
[2] Tomas Burgental,Medunarodska ljudska prava , Beograd ,1997 , p.29-43

As most important institutions are humanitarian interests, the state's responsibility for the damage caused to foreigners, the prohibition of trade with the scoundrels, the protection of minorities (including the League of Nations system) and humanitarian and war crimes.[3]

As an idea emerged at the end of the period between the two-world warfare, the idea for the internationalization of human rights was relegated after the Second World War.

The idea was to foresee international obligations for all states for respecting a group of elementary rights, an idea that was strengthened by fears of minorities as special groups and the guarantee of special rights for them, and the aim of protecting minorities through this general system of human rights protection for all individuals, namely through ensuring full equality and non-discrimination in the enjoyment of those rights by minority members.

The experience and the bitter consequences of World War II had a decisive impact on the beginning of building an international system for the protection of human rights.

The lack of respect and the systematic violation of fundamental human rights, calling it to racial superiority, has led to the creation of a perceived awareness and the violation of such human rights cannot be treated as an exclusively internal question of a particular state, because from this question to great extent also depends on peace and security in the world.

In accordance with the position that minorities should be protected through their full equality with majority members and the prohibition of discrimination in the enjoyment of rights, there was no evidence of their special protection. Therefore, neither the Charter of the United Nations nor the Universal Declaration of Human Rights (UDHR) contains provisions for the protection of minorities.

There was a resistance to the protection of minorities as special groups and there was no will to foresee special rights because it was thought that the interest of minorities would be well protected through the proper and fair application of the principle of non-discrimination.[4] The general assembly did not completely abolish the special minority protection,[5] but the results in that regard were not.

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[3] Tomas Burgendal,same.
[4] M.Sorennsen,"the quest of equality " in International Conciliation ,no.507,1956,p.291.302-307.
[5] E.W Vierdag, p.148-161

1.2 The UN Charter and the provisions on human rights and the promotion of discrimination

The questions regarding the prohibition of discrimination before 1945 were considered only under the treaties on minorities, which, on the other hand, were very limited in the possibility of action and application.

With the adoption of the United Nations Charter, the principle of non-discrimination becomes a part of the international law.

Unlike the Charter of the League of Nations, which does not contain any provision for equality and non-discrimination, the Charter of the United Nations, the promotion of human rights, in particular equality and non-discrimination, attaches special importance to the provisions which regulate this question are its basic provisions. The provisions of Articles 1 (3), 55,56,13,62,68 are especially important.

During the preparation of the Charter, there are many suggestions that respect for human rights, especially equality and the prohibition of racial discrimination, be among the goals of the United Nations.[6]

The founders of the UN system were clear that stable international peace can only be achieved if the causes of international conflicts are eliminated.

The Charter of Nations stresses the need for international cooperation with the aim of solving those international problems that are the cause of conflict between the states.

Disrespect of human rights is a cause for the appearance of the international conflicts, so the UN Charter links them with the achievement of peace and security.

This is done in such a way that the basic goals of the Charter are foreseen to “advance and promote respect for human rights and fundamental freedoms for all, regardless of race,

[6] Warwick McKean,Equality and discrimination under international law ,OUP , New York ,1983 p.4

gender or religion" (Article 1.3).[7] According to Article 55 (4), the United Nations will promote "respect and universal care for fundamental human rights and freedoms for all, irrespective of race, gender, language and religion", while member states are obliged (with go to 56) "to undertake joint and individual action, in cooperation with the Organization, for the achievement of the aims set out in Article 55".

The principle of non-discrimination is included in Article 13 (1) of the Charter, which states that:

"The General Assembly will initiate research and will make suggestions in order to assist in the realization of fundamental human rights and freedoms for all, with no distinction based on race, gender, language and religion."

Under Article 62, the Economic and Social Council (ECOSOC) may make suggestions for the promotion and care of human rights and freedoms for all, while Article 68 obliges the Economic and Social Council to establish a commission for the promotion of human rights.[8]

From the quoted articles it is seen that the Charter does not define human rights, no human rights list, nor does it provide for states express obligations for their respect.

The obligation of Member States only arises in the promotion of respect for human rights (Articles 55 and 56).

Also, Charter does not foresee the oversight mechanism for respecting the obligations under these articles.

However, the importance of the Charter of Freedoms and Human Rights is very large. The main reason for this is that with the Charter of the United Nations, freedoms and human rights were removed from the group of questions that are in the exclusive competence of states.

The provision of human rights provisions in the Charter shows the serious determination of the international community to start building an international system for the protection of human rights as a prerequisite for achieving international peace and security.

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[7] Ljudska Prava, Pet decenija od usvajanja Opste Deklaracija o Pravima Coveka, Obrad Racic, Beograd,1998 p.7-10

[8] Thomas Buergenthal, medunarodna ljudska prava (u sazetom obliku)Sarajev 1998 ,p38.

The Charter attaches even greater importance to the principle of equality and discrimination. The Card that nearly all its provisions relating to human rights, demands that the same be guaranteed and respected without discrimination, undoubtedly shows the importance of the Charter's creation to the realization of this principle.

Although human rights are not numbered, there are no explicit obligations for states to respect human rights, and all anti-discrimination clauses are included in all of these provisions.

So, in Article 1 (3) and Articles 55 and 56, where the purposes of the United Nations and the Member States are to be counted against human rights and freedoms, it is clear that the sole purpose of their obligation is to promote respect and enjoyment of human rights. However, what is of interest to us, this promotion must be made without discrimination based on race, gender, language and religion.

The Charter disputes relating to human rights and freedoms, in particular the anti-discrimination clause contained in those provisions, are criticized for unduly limiting the possible bases for the purchase of unlawful distinction, namely only race, gender, language and religion, and given the fact that other grounds for purchase of distinction, such as ancestry, citizenship, social or property tax, may also be presented.

However, we must have assumed that the numbered bases have been the most frequent forms of discrimination at the time of the preparation of the Charter and there is no intention to close the circle of prohibited bases for anti-discrimination. The expression “for all” in Article 62 (2) is a testimony to this.[9] The mandatory character of the provisions of the Charter are devoted to human rights and the prohibition of discrimination.

A provision of the Charter that caused a lot of controversies, especially with regard to the question of human rights and non-discrimination, is the provision from Article 2 (7), under which the UN can’t intervene in matters that are of exclusive competence of States.

However, it is more accepted that human rights and freedoms are a matter of international obligations and, as one of the main goals of the Organization, are not exclusive to the question of the exclusive nature of the state.

[9] Nehemiah Robinson , Universlal Declaration of Human rights, New York,1958 p.104

Which was accepted since the establishment of the UN,[10] although some states (anyway, the South African Republic[11]) and theoreticians denied the obligations of states to respect human rights, especially the prohibition of discrimination on the basis of the Charter, stating that the provisions it's are too general and that it does not specify what rights are being made, therefore the states do not have any obligations in this regard.

This argument does not stand, especially when it comes to the right to protection from discrimination based on the numbered grounds, the express right provided for in the UN Charter.

For this reason, it is not possible to establish the existence of the obligation of States, not only do they not allow new forms of race-based discrimination. language or religion, but also to stop and cancel the existing forms of such discrimination, the forms that existed at the time of UN membership.[12] The justification of such interference comes from the practice of the UN bodies, especially the General Assembly and the International Court of Justice (ICJ).

The General Assembly in all its resolutions dealing with the criticism and condemnation of apartheid and discrimination policy in the South African Republic and India, The Assembly takes the view that "conduct towards the Hindus in the Union must be in accordance with the agreements between the two Governments and the relevant provisions of the Charter".[13]

In the subsequent resolutions of 1952, it is stated that the commission of racial discrimination is "contrary to the obligations of member states under Article 56 of the Charter".[14] Even in the subsequent resolutions of the Assembly reiterates the assertion that the South African Republic "still does not respect the obligations of the Charter" because it continues with the apartheid policy.[15]

The international justice trial in Namibia's deliberate opinion undoubtedly confirms the attitude of the Assembly, claiming that the distinction, exclusion and restriction that is made

[10] CJR Dugard "The legal effect of United Notions Resolutions on Apartheid" South Africa Law Journal,1966 p.44,53
[11] UN doc.A/C1 & 6/1 str.4
[12] Aleksandar Peles, Rasna diskriminacija i medunarodna pravo, Sarajevo,1977 p.50
[13] UN doc.A/64/Add.1.p.69.
[14] Rez.616 B(VII)1952.
[15] Rez 721 (VIII),820(IX)917(X) 1016(XI.1178(XII).1284(XIII).

"only on the basis of race, color of the skin, its predecessors, national or ethical descent presents a flammable goals and principles of the Charter".[16]

If we have provided that the Charter prohibits discrimination based on sex, language and religion, it is apparent from the opinion of the ICJ that permitting or the provision of unauthorized law on any of the grounds mentioned above is also a flagrant violation of the Charter.[17]

Today there is a generally accepted view that the principle of equality and non-discrimination. As fundamental elements of the international human rights law, form part of the norms ius conges with obligatory action and *erga omnes* in international law.

The International Court of Justice upholds this position with the Barcelona traction case.[18]

The Court, in this case, the principles and rules that are devoted to fundamental human rights, including here the protection from racial or racial discrimination, placed in the same category with the rules that are accountable as ius cogens norm, such as which are the prohibition of acts of aggression and genocide.

1.3 Equality and non-discrimination in the Universal Declaration of Human Rights (UDHR)

In the UN founding convention in San Francisco in 1945, it was proposed that the UN Charter be accompanied and supplemented by a special statement or charter that would envisage the fundamental human rights and their content.

This was unfortunately not accepted. Such a document was deemed necessary because, first, the Charter did not contain a list of fundamental rights and freedoms; Second, there were

[16] Nobia opinion ICJ Reports,1971 ,p.131
[17] UNdoc,E/cn.6/552
[18] Barcelona Traction,Light and Power Co.case ,ICJ Reports,1970 p.33-34 and Ian Brownlie, Principles of Public International Law, Oxford ,1979.p.596-598

different opinions about the nature of human rights, which was the result of various philosophical, moral and religious experiences of peoples, cultures and civilizations.

Soon this idea was reaffirmed and the Human Rights Commission [19]was established, whose main purpose was the preparation of the International Charter on Human Rights, including the Universal Declaration of Human Rights.[20]

The statement was approved by the United Nations General Assembly on December 10, 1948 and represents an act by which the UN's legislative activity begins in the international regulation of human rights.[21]

Even though the Declaration was adopted in the form of a non-binding document in order to understand the human rights in which the Charter is administered and to serve the general standard to be achieved by all peoples and states, today no one tries to deny the normative and mandatory legal character of the Declaration ,and as a tool for the interpretation of the Charter, as part of the customary international law and as a whole legal principle accepted by the civilized nations.[22]

1.3.1 The content of Article 2 and Article 7 of the UDHR

After a comprehensive analysis, the Human Rights Commission decided to have two separate articles in the Declaration that would address the issue of equality and non-discrimination.

In the Third Committee of the General Assembly there were proposals to exist only one such article. The Commission's proposal for the existence of two articles remains the same, and Article 2 which governs the principle of non-discrimination for all, without distinction, in the enjoyment of the rights guaranteed by the Declaration, and Article 7 which provides protection from discrimination against individuals within the state and their national legal system.

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[19] The Human Rights Commission was founded in 1946 by ECOSOC under Article 68 of the Charter of the United Nations.

[20] The international Declaration of Human Rights,the International Covenant on civil and Political Rights ,the Inetrenatonal Convenant on Economic ,Social and Culural Rights ,and the Optional Protocol to the PNDCP,are part of the International Human Rights Charter.

[21] Resolution 217 A (III)

[22] L.Henkin ,The age of rights,1990. P.19 L.B.Sohn, The new iternatiomal law :Protection of the rights of individuals rather then states,32 Am U.L.Rev 1,1982 p16-17 ,J.P.Humphrey ,The Universal Declaration of Human Rights :It’s history ,impact and juridical character ,B.Ramcharan ,Human Rights :Thirty years after the Universal Declaration,1979,p28-37.

According to Article 2 “all rights and freedoms provided for in this Declaration shall be guaranteed to all persons, without prejudice to their distinctions, such as race, color, sex, religion, political or other belief, national or social origin, wealth, birth or other status.”[23]

This provision contains anti-disclaimer clauses in respect of the enjoyment of the rights set forth in the Declaration. Two characteristics are important for this article. The justification is that the anti-discrimination clause is of the open type when it comes to the basics prohibited to discriminate. This is clearly seen by the fact that before the bases are numbered, the phrase “as they are” is used. [24]This is done in order to know that the numbering of such bases is not completely finished. The second feature is that this article does not have an independent character, but it has an accessory character. This means that the application of the provision is linked to other articles of the Declaration that guarantee the concrete rights. This article guarantees equal enjoyment and non-discrimination only of the rights guaranteed by the Declaration. On the other hand, Article 7 of the Declaration provides that “all are equal before the law and have the right, regardless of the equal protection of the law. Everyone has the right to equal protection against any discrimination, contrary to this Statement, and against any incitement to such discrimination. “

Article 7 contains four concepts of equality and non-discrimination. The first, contains general clauses of equality before the law; second, equal protection of the law; third, equal protection from the law against any discrimination contrary to the Declaration, and fourth, protection against the incitement to discrimination.

The first file of article 7 contains the first two concepts. Equality before the law means equitable and impartial application of the law by courts and other bodies, to all, without taking into account the content of the law.

[23] Cuba has proposed that there should be only one article on equality and non-discrimination on the UDHR, in which the Chinese representative has been opposed to the Third Committee. One and the other proposals, the Minutes of the Third Committee Meetings, UN General Assembly, 21st September - 8th December 1948. p. 130.

[24] UN Doc.E.CN.4/52 more in the “Universal Declaration of Human Rights Common Approach Standards –published by Asbjorn Eide and Gudumundur Alfredson , The Hague 1999 p. 80-82.

The wording “equal protection of the law” has a wider meaning because it does not mean equal application in every case, but that no distinction should be made to any unreasonable and arbitrary basis.[25]

This second part of the first sentence introduces the question of factual or real equality and the need for the application of affirmative measures in order to guarantee equal protection of the law.

It is important for the first sentence that its application does not limit itself only to the right of the garbled be declarations, but it ruins all the rights that the individual enjoys the legal system of the state under whose jurisdiction the individual is.

Thus, the State challenges the Declaration (Article 7) if it discriminates against any right that guarantees to the citizen in its own legal system, without taking into account that the Universal Declaration does not foresee that right. This means that this clause has an independent character and protects all rights (provided in the Declaration and those outside it) that the legal system guarantees to the individual. The limitation is that the article prohibits only the discrimination done with the right, during its adoption or application (more often than the laws).[26]

The second sentence of Article 7 relates only to the rights guaranteed by the Declaration and in this way its function is seen in the reinforcement of Article 2 by stipulating that the law must protect any discrimination on the rights listed in the Declaration.

With regard to the second part of the second sentence of Article 7, provides for the equal protection of individuals from the law against the promotion of discrimination, which is a unique feature of the Declaration. Such protection is not found in subsequent human rights documents.

1.4 International Pact on Civil and Political Rights

[25] G.Evans, Benign Discrimination and the right to equality , 6 Fed , Law Review ,1974 p.26
[26] W.McKean Equality and discrimination under international law p.69

Following the approval of the UDHR, the Human Rights Commission continues its work towards the preparation of international treaties on human rights as legally binding [27]instruments as well as implementation measures as part of the International Charter on Human Rights.

The International Pact for Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were adopted in 1966, while ten years had to be ratified by the necessary number of states that came into force.[28]

The Optional Protocol to the International Covenant on Civil and Political Rights [29]was also adopted during the same year, envisaging the possibility of exercising individual petitions to the Human Rights Committee (HRC) regarding the possible violation of the rights contained in the Covenant by member states.[30]

This possibility is also important for the admission of non-discrimination because, considering these petitions, the Committee is able to establish its own practice and take a stand in relation to the implementation of the Articles of the Pact that are related to the principle of equality and not -discrimination. The Pact contains two very important articles dealing with the prohibition of discrimination. They are articles 2 and 26.

Under Article 2, "the Pact States are obliged to respect and guarantee to all who are in the territory and fall under their jurisdiction the rights recognized in this Pact without any distinction, such as race, color, sex, religion, political or other opinion, national or social origin, property, birth or other status". the obligations for "respect" and "insurance" show that for states there are double obligations. The first challenge is a negative character according to which the state must adhere to the restriction or violation of the rights contained in the Covenant, while the second positive obligation it requires from states to take steps and positive measures to enable individuals under their effective enjoyment of rights under the Pact.

Furthermore, the obligation to ensure and enjoy the effective enjoyment of rights also goes towards the prevention of violations resulting from the actions of private entities in society.

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[27] Ljubomir Danaillov Frckoski "Medunarodna parvo za pravata na covekot Skopje 2001 , p.90-91.

[28] AP ,2200 A(XXI) from December 16.1966. The ICCPR entered into force on23 March 1976 under to the provisions of Article 49, while PNDESK entered into force on 3Jnuary 1976 under to the provisions of Article 27.

[29] AP ,2200 A (XXI) from 16 December 1966 entered into force on 23 Mrch 1976, under to the provision of Artile 9.

[30] Vojin Dimitrijeviq Komitet za Ljudska prava 1-2/1989 p.63 and next.

Article 2 has an ancillary character because it is not independent (silence is Article 26) and may have been infringed only if it is related to the other part of the Covenant which guarantees any specific right.

It is sufficient to argue that a right outlined in the Covenant cannot be equally enjoyed, nor is the same degree of protection provided because of any unreasonable or non-objective distinction.

The state violates Article 2 of the Covenant if it does not provide its full protection degree to all individuals under its jurisdiction.

As far as the basics are forbidden to distinguish, their list is of an open type, seen from "as are" and "other statuses".

The human rights commutator in his practice has verified that, for example, sexuality is included in the numbered "gender" base, while citizenship[31], although not counted as a special base, can be estimated to be within the category " other status" and is thus protected by Article 2 of the Covenant.[32]

There are different interrelations about what other bases, except those expressly numbered, are covered with the article 2.

There are authors who think that bases that are not numbered can be estimated to be included if they are materially similar to those numbered.[33]

However, this intercourse is very restrictive because the Pact does not require such a thing but merely says "other status". We think that any difference, made on any basis, that is not objective and reasonable, is negligent.[34]

But the definition of the ballability of the bass to make a distinction is made for every concrete case, not the a priori, depending on the way in which the distinction is made, whether it is reasonable and objective, or not.

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[31] Toonen v. Australia .Communication no 488/1992

[32] Gueye et al. V France Communication No 196/1985 ,Raport of the human rights committee UNdos. A/44/40 p.189-195.

[33] Parick Thornbery , International law and the Rights of Minorities ,Oxford 1991 p.281

[34] Manfred Nowak ,UN Cvenant on Civil and Political rights:CCPR Commentary (Kehl,N.P. Engal) 1993f.283

Article 26 of the International Covenant on Civil and Political Rights contains one of the most important provisions for non-discrimination in the international human rights instruments. The main reason for this is that this article contains an independent prohibition of discrimination, similar to that of Article 7 of the UDHR.

Under Article 26 of the Pact "all are equal before the law and are entitled, without discrimination, to the equal protection of the law". In this sense, the law will stop any discrimination and all will provide you with equal protection and effective against any discrimination, on any gender basis are race, color, gender, language, religion, political or other conviction, national or social origin, property, birth or other status.

Both in theory and in the practice of the Committee on the Rights of the One, from the moment of the adoption of the Covenant, the question was raised whether Article 26 only protects the rights guaranteed by the Pact or protects all the rights envisaged in a system legal, so it is a general principle of non-discrimination.[35]

Even though the second opinion on the independent character of Article 26 prevailed, this was definitely confirmed by the Committee in one case, it was necessary to take a precise and concrete view on this matter.

The case was initiated in an individual petition exercised by a Dutch national in 1984 to the Committee, in accordance with the provisions of the Optional Protocol to the Pact. In connection with this petition, the Committee adopted its own assertion on 9 April 1987.[36]

The Dutch petitioner (petitioner) who has been married lost the pines' decision in 1979, and continues to receive compensation for the unhappy persons under Dutch legislation. But this compensation has only been accepted for a certain time because, in order to continue paying the compensation, she had to prove that she was family nutritionist. This condition, on the other hand, did not have to fill the married and unemployed men.

They have received such compensation in the foreseeable time when they would lose the right and without obligation to prove they are family nutritionists.

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[35] Ramchan,B.G.Equality and nondiscrimination ,te L.Henkin(red) The international Bill of Rights ,New York 1981 p. 249.

[36] F.H.Zwaan-de Vries v the Netherland ,Communication No 182/1984 16Apill 1987 CCPR/C/29/D/182/1984

According to him, the claim that it was caused only because it cannot accept the compensation is its gender, which constitutes unlawful discrimination contrary to Article 26 of the Covenant.

The Dutch Government, not challenging the factual situation, invokes a restrictive interference with Article 26 of the Pact, the right that this article contains an obligation to prohibit discrimination, but when it comes to civil and political rights. Other (economic, social and cultural) rights are the subject of another UN institution and have another regime.[37]

The Committee acknowledged that Article 26 of the Pact has broader scope of application and anti-discrimination clauses apply to all rights envisaged by a legal system.

According to the Committee, Article 26 is not a simple repeat of the guarantees under Article 2 but derives from the principle of equal protection of the law without discrimination, proclaimed in Article 7 of the Universal Declaration.

The Committee stresses that Article 26 does not provide for obligations to guarantee by law (including economic, social and cultural rights) the same must be in accordance with the principle of non-discrimination.

Concretely, although the concrete right was not envisaged in the Covenant, if the legislation of a state provides for the same, that right must be guaranteed equally to all.

there will be a violation of Article 26 of the Covenant if a right envisaged in a legal act of The state is not provided to all individuals under its jurisdiction.

According to Article 26, states have double obligations and during the adoption of laws (or other acts) (equal protection of the law) as well as the application of the law "Equality before the Law". Thus, when a law approved by the state body its content should not be discriminatory.

Also, when the law is applied by courts or other bodies, its application should not be discriminatory. State obligations also extend to the prohibition of discrimination committed by

[37] F.H.Zwaan-de Vries v the Netherland ,Communication No 182/1984 16Apill 1987 CCPR/C/29/D/182/1984

private entities in society, especially in the so-called semi-public sector, such as employment, education, public transport, hotels, restaurants, cafeterias, theaters, parks, beaches etc.[38]

The list of numbered bases according to which discrimination is prohibited is the same as in Article 2 and is not completed. Fundamentals that are not mentioned include the term "other status", but whether there will be discrimination or not, will depend on any specific case, depending on the way in which the distinction is made.

The way to distinguish is very important because not every difference is discrimination, even though Article 2 refers to "discrimination of any kind". The Human Rights Committee clarifies the dilemma and states that "not every difference in treatment is discrimination, whether the criteria for that distinction are reasonable and objective and whether it is intended to achieve a legitimate purpose under the Covenant".[39]

Even in the case of Zwaan-de Vries, the Committee stresses that the difference does not constitute discrimination if it is based on objective and reasonable criteria. But the gender difference, according to which female gender members are placed in a worse position than male members and is required to prove they are family nutritionists to enjoy a right, normally does not present legitimate differentiation, so it is in contradiction and hampers Article 26 of the Pact.[40]

The committee, therefore, in any case dealing with differences that applicants consider to be discriminatory, should carefully seek and find out whether these differences are based on legitimate and objective criteria and measures.

Thus, on the occasion of the individual petition (applications) HSVas v the Netherlands, the fact that the invalid woman, after the death of the husband, has been interrupted by the payment of maternity allowance on the basis of the marriage and the same is replaced with other compensation of the Dutch law does not, in the opinion of the Committee, constitute discrimination based on marital status, although the second compensation was lower than the one

[38] Manfred Nowak, UN Covenant on Civil and Plitical rights p.466-469-478.

[39] Human Rights Committee, General Comment No18 (Non-discrimnaion) from9 Noveber 1989, UN Doc. CCPR/21/REV .1/ADD1.P.13

[40] F.H.Zwaan-de Vries v the Netherlands , Communication No 182/184 p.14

who received it on the basis of the marriage.[41] The same way Komotet operates in Danning v. the Netherlands.[42]

As opposed to Article 2, the article of the International Covenant on Civil and Political Rights contains in itself the expression "discrimination". Although the Pact does not define discrimination, this is done by the Human Rights Committee in its General Committee No. 18.

According to the Committee, the meaning of "discrimination" as used in the Covenant must be understood as "any distinction, exception, restriction or privileging made on any ground such as race, color, gender, language, religion, political or other belief, national or social origin, property, birth or other status, which has the purpose or effect of denying or impairing the recognition, enjoyment or exercise of all rights and freedoms on an equal basis by all".[43]

The definition of discrimination is extensive and includes both intentional discrimination and negligent behavior (causing or neglecting), but having a discriminatory effect or effect. In this regard, it is highly questionable whether this definition of discrimination involves indirect discrimination as well, knowing that the article prohibits "any discrimination", especially because the definition of discrimination given by the Human Rights Committee includes even discriminatory effects that result in a differentiation made (appropriate or not).

For these reasons, we are of the opinion that the article also prohibits indirect discrimination.

According to this, one can find that there will be a violation of this article if the application of any criterion or neutral norm will result in a situation where all or most of the members of a group (women, foreigners, persons with disabilities) you stand in the worst position.[44]

This is confirmed by the case of Simunek, Hastings, Tuzilova and Prochazka v. The Czech republic.[45] In this case the applicants are persons to whom the property was confiscated

[41] H.S.Vas the Netherlands ,Communication No 218/1986 CCPR/C/35/D/218/1986/Rev1 from 2Maj 1989.
[42] Danning V. the Netherlands ,Communication No180/1984 p.14
[43] CCPR ,General Comment No18 Non discrimination from 10.11.1989.
[44] Katarina Frostel ,Gender Difference and the non-diskrimination principle I the CCPR and the CEDAW ,1999 p.45-48
[45] Stimunek ,Hastrings ,Tuzilova and Prochazku V. The Czech Republic ,Communication no 516/1992 ccpr/c/54/d/516/1992

without compensation from the previous regime and which persons have requested the property to be recovered according to the positive regulations, specifically according to an approved law (ACP 18/1991) for compensation of unjustly and without compensation.

Applicants at the time of application are not nationals or permanent resident of the Czech Republic. And this fact was the main reason for the application (application, individual petition). According to Law 87/1991, the possibility of compensation is provided, but only for persons who have been citizens or permanent resident of the Czech Republic.

The applicants did not meet either of these two conditions. Their attitude to the application to the Committee has been that the foreseen conditions, although at first sight, have discriminatory effect on persons who have also been confiscated property without compensation, which at the time of application of the law are not seventh or permanent resident of the Czech Republic.

Although the Committee reiterates that any difference in treatment does not mean discrimination, however, in this case, the differentiation made under the foreseen conditions is not reasonable because the right to compensation must be provided to all persons who have suffered indemnification in the form of receiving property without compensation.[46]

Even though the state representatives did not state that the purpose of the legislators to discriminate at the moment of the adoption of Law 87/1991, the Committee considers that the purpose of the League is not a condition for the existence of a violation of Article 26 of the Covenant.

Quite a law has discriminatory effect.[47] For this reason, the Committee found, in this case, the violation of Article 26 of the Pact. The prohibition of discrimination does not exclude the application of affirmative measures. On the contrary, states should take such steps in order to reduce or eliminate conditions that affect or impede that the prohibition of discrimination with the Pact continues to exist, conditions that deny that part of the population can not enjoy human

[46] Same p.11.6
[47] Same p.11.7

rights. While such measures are feasible for achieving real equality, it is not about discrimination but legitimate differentiation.[48]

1.5 The International Covenant on Economic, Social and Cultural Rights

As mentioned above, there is often a distinction between civil and political rights, on the one hand, and economic, social and cultural rights, on the other.[49]

For this reason, the Human Rights Commission prepared two special international human rights instruments, the second of which contains economic, social and cultural rights.

The specifics of economic, social and cultural rights stand in the way that these rights cannot be fully implemented for a short time because the means for their implementation are limited and depend on the degree of development of a state.

Therefore, the obligations of States to implement them, these rights differ from the obligations that States have towards the implementation of civil and political rights.

Unlike the International Covenant on Civil and Political Rights, which contains irrevocable obligations for states to guarantee the rights contained in the Covenant under the International Covenant on Economic, Social and Cultural Rights, states have an obligation to "take steps, to the maximum of the available means, in order to ensure the gradual realization of the realization of the rights recognized in this Pact through all relevant means".[50]

But, some rights from the International Covenant on Economic, Social and Cultural Rights are recognized as rights that can be implemented without annulment. Such rights are "the right to equal remuneration for equal work (Article 7), the right to a trade union organization (Article 8), the right of parents to choose a school for their children (Article 13 (3) in free - scientific and creative activities (Article 15 (3)".[51]

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[48] General comment no.18 HRC p.10
[49] Vojin Dimitijeviq Ljudska Prava , Beograd ,1997 p.364-365
[50] Article 2.par.1 i CESCR
[51] CESCR General Comment no.3 from14.12.1990, Doc E/1995/22

Similarly, the obligation of states to non-discrimination in respect of the rights contained in the present Covenant is of a non-viable nature. This obligation is foreseen in Article 2 (2) which states: 'The States Parties to the present Covenant are obliged to ensure that all rights provided for therein will be realized without any discrimination based on peace, gender, language, religion , political or other conviction, national or social origin, birth or any other circumstance.

As we see the provision itself, the same includes a non-compliant obligation for the states. It will violate this provision if it does not undertake all necessary measures for the purpose of securing (for individuals under their jurisdiction) the enjoyment of economic, social and cultural rights without discrimination.

The Committee for Economic, Social and Cultural Rights asserts that private affiliates [52](employers and other entities providing public services) are bound by the provisions of the Non-Discrimination Pact.[53]

The list of fundamentals outlined is the same as that of Articles 2 and 26 of the International Covenant on Civil and Political Rights. The same is not closed, which means that the other basis of the base can be counted as prohibited because it will be included in the expression “other status”. The Committee in its General Commentary states that Article 2 (2) undoubtedly includes itself discrimination based on invalidity (disability).[54]

As the parquet of citizenship as an illicit basis to make differentiation in the enjoyment of rights, it is assumed that this base is also included in the expression “other status”. However, a problem with this question appeared in relation to Article 2, paragraph 3, which states that “developing countries, taking into account their human rights and their national economics, may determine to what extent to guarantee the eco-nomic rights included in this Pact for persons who are not their nationals “.

[52] The Committee on Econimic,Social and Cultural Rights is the plenum of the Committee on Human Rights ,which oversees the implementation of the obligations contained in the Covenant by the member states.

[53] CESCR General Comment no 5 from 09.12.1994 Doc.E/1995/22 p.11

[54] CESCR General Comment no 5 from 09.12.1994 Doc.E/1995/22 p.5

This provision is introduced in the Covenant in order to enable developing nations (arising from colonialization) to acquire property and other possessions from colonial power.[55] However, knowing that the right to private property is not guaranteed by the Pact, the question arises as to what is related to the restriction of other economic rights, such as the right to work, the right to organize trade unions etc.[56]

However, these restrictive measures may only be imposed on developing countries: secondly, they apply only to economic rights, and thirdly, this provision has no effect on other human rights instruments. In this way, the possibility of the reason for making a differentiation based on the citizenship of the Albanians in the enjoyment of the rights of the Covenant is indeed very limited, and on the other hand, practically, no state invokes this provision to limit the rights of the pact of foreign states.[57]

Article 2 (2) contains the term "discrimination", but does not define it, the economic, social and cultural rights of women defy discrimination based on disability[58], and it makes it very reminiscent that the Committee on Rights Human's. Moreover, it is assumed that the definition given by the Committee on Human Rights, mutatis mutandis, is also applicable to Article 2 of the International Covenant on Economic, Social and Cultural Rights.

However, Article 2 of the International Covenant on Economic, Social and Cultural Rights has an ancillary character, the question is how to act if the state discriminates against any economic, social or cultural rights, but that right is not adhered to in the International Covenant on Economic, Social and Cultural Rights.

Its discrimination, mentioned above, is upheld by Article 26 of the International Covenant on Civil and Political Rights, which is applicable in the light of the type of law and of the circumstances if the right in question is involved in Cactus or not. Affirmative measures are also permitted under this Covenant.

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[55] E.Dankwa,Working paper on Article 2(3)of the international Covenant on Economic ,Social and Cultural Rights Quarterly v.9 . 1987 p.230-249

[56] Matthew Craven ,Raija Hanski and Markku Suksi 1999p.125-151

[57] Same , p.136

[58] CESCR General Comment no.5 p.15

According to the Committee on Economic, Social and Cultural Rights, as regards persons with disabilities, states are obliged to undertake positive measures and not only to refrain from undertaking such measures that would have negative effects for these persons.

Measures of this kind will have a goal, in particular, to reduce the structural subordination of this group and to provide a pre-primary treatment that would allow equality and full participation for these people in the society.[59]

1.6 Sourcing for the elimination of all racial discrimination

Racism and racial discrimination, as a form of limiting the enjoyment of human rights under equal conditions, have had a far greater impact on the established system of human rights protection within the UN framework.

In fact, finding the relevant responsibilities against these negative phenomena influenced the development of key components of this system. The united nations were created in time of the existence of colonialism, racial segregation and the appearance of apartheid official politics in the South African Republic.

All these internationally-based situations were based on theories of racial superiors, which are the theoretical basis of racism and racial discrimination.[60]

The main international instrument prohibiting racial discrimination and racism is the International Covent on the Elimination of All Forms of Racial Discrimination adopted in 1965, which entered into force in 1969.[61]

This Convention establishes a Committee on the Elimination of Racial Discrimination (Article 8), which has the right, inter alia, to review individual or group petitions exercised by

[59] CESCR General Comment no5 p.9

[60] Michael Banton , International action against racional discrimination ,OUP,Oxford .

[61] CEDR has been approved by Rezulate AP 2106 A (XX) on December 1965,which entered into force on 4January 1969 under the provisions of Article 19 of the Convention.

individuals or groups subject to the jurisdiction of a Member State of the Convention, that they are victims of the violation of a right guaranteed by the Convention.[62]

1.7 The definition of "discrimination" under the Convention

At the time of Contex's preparation, most states defined racism from his political point of view, especially with regard to US black's treatment policies, apartheid in RWA, and policies related to colonialization.

The definition contained in the Convention does not focus solely on these state policies and practices, but includes all discriminatory acts of racial nature, even those of individuals and private groups.

The doctrines of racial superiority, as well as apartheid and racial [63]segregation are prohibited by the Convention.[64]

The Convention, when defining discrimination, starts from previously accepted definitions of ILO and UNESCO conventions dealing with the prohibition of discrimination in the field of employment and vocational education respectively.

The definition is given in Article 1.1 of the Convention as "any distinction, exclusion, restriction or privilege based on race, color, primacy or national or ethnic origin, with the purpose or effect of denying or impairing the recognition, enjoyment or of fundamental rights and freedoms on equal terms ".

The list of prohibited differentiation bases in this definition, as seen, is completed. However, this may be misleading because, when talking about overcoming racial discrimination, the five numbered bases, in fact, include a wider field.

"race"[65] and "color" basics have to do with physical characteristics.

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[62] Kevin Boyle and Anneliese Baldaccini ,A critical evaluation of international human rights approaches to racism,-Discrimination and human rights –the case ose racism, Sandra Fredman Oxfoed 165-176.

[63] Human Rights –internationlas acts summary Tirane ,1993 p.139-146

[64] The Preamble to the Convention ,point 6 and Articles 3 and 4.

The “primordial” base (predecessor - is responsible for the origin of the individual) is foreseen to cover the situations when the society is redistributable to the individual's individuality in any social group, which is determined by the origin, which is inherited.

According to this criterion, without taking into account the other characteristics of the individual, he belongs to that social group determined by origin. Specifically, this base is numbered to cover the situation with castles, characteristic of India.[66]

According to this criterion, without taking into account the other characteristics of the individual, he belongs to that social group determined by origin. Specifically, this base is numbered to cover the situation with castles, characteristic of India.

There is an extensive interlocutor in which religious groups can be protected by the Convention, including those in the notion of “ethnic group” if members of the religious group have other links other than religion.

This is because religion is an important element of ethnic identity. The same is true for linguistic groups, if there are other cultural links between group members, except the language.

If an individual belongs to a race or ethnic group depends on the personal expression of the individual, unless the opposite is true, the state can’t determine which racial or ethnic group belongs to an individual.[67]

The state can’t determine which groups are racial or ethnic groups according to the definition of the Convention and according to it enjoy protection. This is done according to the same and objective criteria. The Committee on the Elimination of Racial Discrimination stresses that the application of the various criteria leading to the admission of some, and the exclusion of other groups from the notion of “racial or ethnic group” can lead to different treatment of groups within one population.[68]

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[65] K.Boyle and A.Bladaccini A critical evaluation of international human rights approaches to racism p. 152

[66] UN,Doc A/C.3/L 1216 A.Peles Rasna diskriminacija I medunarodna parvo ,Sarajev ,f.17

[67] Cerd ,General Recommendation VIII the year 1990 has to do with identification with any racial or ethnic group (UN Doc A/45/18)

[68] CERD ,General Reco,,emdation XXIV the year 1990 has to do with Reports on persons belonging to different racial grups ,national ethnic or special needs groups p.2and 3 (UN Doc A/54/18 Annex V)

1.8 The legitimate differentiation between nationals and foreigners under the Convention

By introducing the "national" base in the definition of discrimination, a need for a comprehensive provision was made to clarify that this notion does not have the same meaning as citizenship. the numbering of the "nationality" base caused a problem because, if this notion equates to the meaning of citizenship, then, in fact, it is forbidden to differentiate in the enjoyment of rights between nationals and foreigners, which was absolutely unacceptable.

Therefore, a new paragraph 2 was added, which expressly excludes the application of the Convention to differentiation made on the basis of citizenship of individuals.

According to paragraph 2 of Article 1 "The Convention shall not apply to the distinction, exclusion, restriction or privilege of a Member State, between hostages and aliens".

A provision of this kind was necessary because it can't be demanded by states that foreigners in the territory of the state of the country treat them the same as nationals of the country. This distinction is also made in other international instruments on human rights. But even a provision of this can't be interrogated.

First, the state cannot otherwise treat foreign nationals among themselves, whether they are nationals of a state, and differentiate according to any other criterion. (race, color, gender, ethnicity etc) if they have different nationalities.[69]

Secondly, this provision cannot be interpreted so that the state does not respect the rights and freedoms contained in other human rights instruments.[70]

And third, which is even more important, differentiation based on citizenship can only be a pretext for racial discrimination prohibited by Article 1 of the Convention.

This will be especially the case when it comes to categories of foreigners who, in terms of physical characteristics, are distinctly distinguished by majority members, and are thus the easiest cake for racial discrimination.

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[69] CRED General Recommendation XI from 1993 p.1 (UN Doc A/46/18)
[70] CRED General Recommendation XI from 1993 p.3

In such situations, although the state may make legitimate differentiation between nationals and foreigners, the purpose, purpose and consequences of this differentiation must not include elements of discrimination based on race, color, birth or origin national or ethnic.[71]

Thus, the Committee on the Elimination of Racial Discrimination (CEDR) in a Case Stresses that after differentiation made on the basis of nationality, it can be excluded from racial discrimination, which is prohibited by Article 1 of the Convention, the petitioner has been a Tunisian citizen residing in Denmark.

He was denied the loan from a bank only because there was no citizen, reasoning that there was no security for the bank to repay the loan.

The client states that it is not very important what citizenship the loan applicant is, the most relevant is where the applicant works and has wealth. Therefore, the Committee is of the opinion that the real causes in the bank's policy for the lack of credit to foreigners should be sought, these criteria may not include racial discrimination.[72]

1.9 Covent and achievement of factual basis

CEDR, among its provisions, promotes real equality in society. Of particular importance are the provisions of articles 2.2 for the application of "special measures", the provisions of Article 1.4 that allow affirmative measures, as well as the provision defining discrimination, which prohibits the proper differentiation, has the effect or effect of denying the recognition, enjoyment or exercise of rights and freedoms under equal conditions.

The latter provision, in fact, includes indirect discrimination. In this way, the Convention promotes equality in the outcome of equality that is very sensitive to the differences that exist between individuals in their initial positions and the subordination of their own in the past. Which has influenced the presentation of the circumstances and conditions for systematic

[71] Mahalic and Mahalic"The limitation provisions of the International convention for the Eliminationof all Forms of Rcional Dicrimination" 9HRQ 1987 p.74-75 K.Boyle and A.Baldaccini p.154-155.

[72] CERD Comunication No 10/1997 Ziad ben Ahmed Habassi v. Denmark p.93 (CRED /C/54/D/10/1997)

discrimination against them, the circumstances and conditions that may continue to exist and to keep “in life” and discrimination if a neutral policy is practiced.[73]

The main characteristic of affirmative measures under the Convention is their limited action, which is their characteristic on definition.[74]These measures will only be applied in order to enable the enjoyment of racially motivated racial or ethnic grounds under the same conditions for particular racial or ethnic groups: these measures do not constitute discrimination but represent the Convention, and thirdly, such measures are limited and will last until the goal is achieved for what they have been foreseen.

Their meticulous application means unreasonable privilege of racial or ethnic groups in favor of which such measures are applied, which is not permitted by the Convention.

The textual reading of the Convention does not convey that the same does not protect the rights of minorities for the preservation and development of their in-depth, the rights related to the development of their culture, language, religion. This conclusion is based on the fact that these rights, by their nature, are never limited in time. However, from the practices of States and the practice of the Committee on the Prohibition of Racial Discrimination, it appears that minority rights are in line with the Convention.[75]

The concept of discrimination accepted by KEDR also includes indirect discrimination. This results from stopping differentiation that would have the effect or effect of denying the recognition and enjoyment of human rights.

The Committee also interprets the Convention as if it prohibits indirect discrimination. According to the Committee, indirect discrimination is an act or act with which, regardless of purpose, there is the unreasonable shock of any group distinguished on the basis of race, color, predestination or national or ethnic origin.[76]

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[73] K.Boyle and A.Baldaccini A critical evaloution of international human rights approaches to racism p,157

[74] Human rights committee, General Comment 1/ 1989 p.10

[75] Ryszard Cholewinski, The racial Convention and the Protection of Cuktural and Lingustic Ethnic Minorities ,Rev. de Droit International 69,1991.

[76] CERD, General Recommendation No XIV on 1993 article 1.1 of Convents ,p.2(UN Doc A/48/18).

Such an approach has the Committee in the case of B.M.S. v. Australia.[77]In this case, he worked for an Australian citizen of Hindus who has obtained a diploma for a medical faculty abroad. Australian rules have foreseen, in such a case, a kind of knowledge control for those who wanted to working in Australia, and earning a diploma abroad.

Since such an examination has been foreseen only for the persons whose knowledge and diplomas have been acquired abroad, the Committee, however, considers that the knowledge control system may not have a negative (discriminatory) effect on persons of any race or the ethnic group. The Committee does not find any violation of the Convention either from the point of view of indirect discrimination.[78]

The Convention also prohibits discrimination by private entities in society. With en2.2 (d) the States are obliged to stop any discrimination done by any individual, group or organization by taking appropriate and appropriate measures, especially legislative ones.

The committee in its work has confirmed that the provisions of the Convention are also dedicated to the adoption in the private sphere, private organizations, private placement and renting of private dwellings.

According to the Committee, "in the field where private institutions influence the exercise of rights or the achievement of opportunities, member states are obliged to ensure the outcome, neither the purpose nor the consequences, the presence or further existence of racial discrimination".[79]

Other important provisions of the Convention relate to the prohibition of racial segregation and apartheid (Article 3) limiting the freedom of expression by prohibiting propaganda and organizations based on racial verdict theory (Article 4) equality before the law without taking into account the differences such as political, economic, social and cultural rights (Article 5), as well as providing for the obligation for states to provide a viable and effective legal remedy to victims of trafficking in human beings, racial discrimination.[80]

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[77] CERD, Communication no 8/1996 B.M.S.v. (CERD /C/54/D/8/1996)

[78] Same p.9.3

[79] CERD General Recommendation XX 1996 which has to do with te non-discriminatory implementation of rights and freedoms p.5 (UN/Doc.4/51/18)

[80] It's same with Ziad Ben Ahmed Habassi v. Denmark p.10.

1.10 Convention on the Elimination of All Forms of Discrimination against Women

Similar to racial discrimination, gender discrimination and its ban has been the topic for which the United Nations has been interested since their establishment. This is also apparent from the fact that gender, as a basis prohibited to make unequal differentiation, is also foreseen in the UN Charter.

The Convention on the Elimination of All Forms of Discrimination Against Women is subsequently adopted by the adoption of the CEDR[81] due to the existence of opposing political and ideological positions regarding women's rights, their position in society, as well as their equality with men.

Committee on the Elimination of Discrimination against Women (CEDAW) represents an international instrument that processes the principles of the International Charter on Human Rights,[82] including those specific areas where there is gender discrimination, and envisages measures that states are obliged to undertake in order to eliminate this type of discrimination.

The importance of the Convention is also seen in the possibility of exercising individual petitions based on the Optional Protocol, which entered into force in 2000.

The Convention defines gender discrimination as “any differentiation, exclusion or restriction of a gender which has as a consequence or for the purpose of violating or denying the recognition, enjoyment or exercise of human rights and fundamental freedoms by women on the basis of equality between men and women in political, economic, social, cultural and civil fields, or in any other field, without taking into account the marital status”. the definition of discrimination is based on the definition given in CEDAW, with the exception that, after the words “any difference, exception or restriction”, the word “preference” is not used, which can be interpreted as, for example, employability, when all other circumstances are Equal, one can

[81] CERD 34/180 on 18 December 1979 while it has come into force 3 September 1981, article 27(1).

[82] H.J.Steiner ,P.Alston ,International Human Rights in Context,1996 p.907, A.H.Robertson ,Human Rights in the world , 1996 p.101 and Lj.D.Frckoski p.113.

prefer a man than a woman during the work.[83] As far as the last part of the definition is concerned, the Convention demonstrates its intention to stop discrimination based on marital status.

The Convention also recognizes the special measures to be taken by states in order to achieve real equality. [84]With this approach, the Convention recognizes that guaranteeing formal equality before the law between the sexes does not automatically mean that there is real equality.

Affirmative measures are needed to eliminate discrimination which continues to exist even after the guarantee of formal equality and the practice of neutral policies. This type of discrimination continues to exist because of the subordination and unequal position of women against men in the past.

Special measures are suggested by the Committee on the Elimination of Discrimination against Women. According to the Committee, these measures should be more often practiced, especially privileged treatment and quota system, in order to improve the integration of women into education, economics, politics and employment.[85]

The committee stresses that special actions are of a temporary nature and the same will be clamped at the moment of reaching the goal foreseen. Every continuation of their application after their arrival meant that the purpose of their existence meant the emergence of new inequalities between men and women.[86]

Also, the Convention provides for the interference of special measures by states with a view to protecting amnesia. Even these special measures naturally do not discriminate and are limited in terms of their extension (Article 4 (2)).

The Convention's convention is also Article 2 (e) which obliges Member States to take measures with the aim of eliminating gender discrimination in the public and private spheres, namely discrimination by any entity, organization or undertaking.

[8383] Merja Pentikainen,The Prohibition of Discrimination and the 1979 UN Convention on the Eliminitation of all Forms of Discriminiation against Women L.Hannikainnen and E.Naykanen New Trends in Discrimination Low -international prespective,1999 p,66.

[84] Same p.68

[85] CREDAW General Recommendation No 5 1988 (UN/doc .A/43/38)

[86] Article 4(1) of Charter.

Accordingly, it is not enough for the United States to prohibit "vertical" discrimination against women, but states must also prohibit discrimination in the "horizontal" direction, including here, in particular, semi-public spheres, such as employment, but entering a measure even in the private sphere.

According to the Committee, the obligation of States for the prevention of discrimination is not limited to the prohibition of acts and actions of state bodies, but they also respond to the actions of private entities, whether they give rise to the obstruction of rights violations or the investigation and punishment of acts of violence or ultimately to provide adequate compensation.[87]

The Committee estimates that the definition of discrimination also exacerbates violence against women practiced solely because of their gender (gender-based violence).[88]The State lays down the obligations of the Convention unless the necessary measures are taken to ensure the effective protection of such violence, without prejudice to whether it is exercised by public (governmental) or private entities.[89]

A special feature of the Convention is that, in part, it comes out of the public sphere and goes deeper in the private sphere of individuals. The Convention requires States to take measures in order to overcome habits, practices and prejudices and to change the cultural and social patterns of behavior and understanding, based on traditional and social behavior on the role of man and woman in society and the superiority or inferiority of one of the sexes.[90]

Normally, there are authors who articulate this form of regulation with the assertion that, knowing that the practices and customs of these are determined by religious or ethnic affiliation, these obligations of states are contrary to other rights guaranteed by the rights instruments of man, and especially with the right to privacy.

CEDAW is one of the instruments on the rights of the individual to whom a large number of states have been proclaimed to prohibit discrimination. This is especially the case with Islamic

[87] CREDAW General Recommendation No19 1992 p.9(UN Doc.4/47/38)
[88] Same p.6
[89] Same p.8 and p.24
[90] Artticls 2,5 and 10 of of Convention.

states in which women are not equal with men, mainly based on the beliefs of the culture and civilization of these states.[91]

According to the Committee, these obligations for states are foreseen because traditional attitudes towards women's submission to men or their stereotype roles affect the sustainability and survival of some practices such as violence, domestic violence, violent marriage, genital mutilation of women and so on.

Prejudices and practices justify violence against women as a form of protection or control over them. The effect of violence against physical and mental integrity on women is that they can't recognize, enjoy and exercise human rights and fundamental freedoms.

In this way they influence women to remain in the position of men, have very low levels of women's political participation and low levels of education and employment opportunities.[92]

[91] 31 December 1997 UN Doc. ST/LEG/SER/E/16 p. 172,174-175 Cees Filterman and Catherrine Henderson

[92] CEDAW General Recommendation No 19 1992 p.11 (UN Doc A/47/38)

2 Chapter Two - The principle of non-discrimination in the practice of the European Court of Human Rights

2.1 The importance of the system European Union for the Protection of Human Right

2.1.1 The European system for the protection of human rights based on the European Convention on Human Rights (ECHR)

Parts of the international system for the protection of human rights also represent regional defense systems, based on international agreements of regional character. The establishment of regional systems is of special importance because in their area it is easier to adopt rules (conventions, agreements) of a legal and obligatory character for each income, as well as for the guarantee of human rights.

Also, the controlling mechanisms for fulfilling the obligations under these rules are relatively easily established. Such regional systems are the European system for the protection of human rights, the inter-American system and the African system on human and peoples' rights.[93]

The European system is established within the Council of Europe (EC) as the first intergovernmental organization founded in 1949.

Under Article 2 of the Council of Europe's Status, each Member State is obliged to incorporate in its legal system the principles of the rule of law and respect for human rights and fundamental freedoms of individuals under jurisdiction, principles which also present condition for membership in EC.

The European System of Legal Basis consists of two special international treaties, the European Convention on Human Rights (ECHR),[94] which guarantees civil and political rights

[93] Thomas Buergenthal Medunarodna Ljudska prava Sarajev 1998.

[94] The orginal designation of the Convention is the Convention for the Proctetion of Human Rights and Fundamental Freedoms.

and the European Social Charter which contains economic and social rights.[95] Both treaties envisage the existence of oversight mechanisms for the fulfillment of the obligations that the states have undertaken.

The ECHR was adopted on 4 November 1950, and entered into force on 3 September 1953. At the time of adoption, the Convention guaranteed these rights: the right to life, the prohibition of torture, the prohibition of slavery and violent labor, the right to freedom and security, right to a fair trial, prohibition of retroactive action of laws, right to private and family life, freedom of religion, conscience and religion, freedom of expression and peaceful assembly, right to marriage and family establishment, the right to an effective legal remedy.

Article 14 of the Convention provides for the principle of non-discrimination, namely, the right to enjoy the rights of the Convention without discrimination. Later, by protocols, as special international treaties, the list of guaranteed rights extends the right to free and periodic elections (protocols 1) the prohibition of deprivation of liberty due to non-fulfillment of contractual obligations, freedom of movement, the prohibition of the expulsion (deportation) of citizens and the collective relocation of foreign nationals (Protocol 4), the prohibition of the death penalty (Protocol 6) and some legal safeguards for foreigners during deportation, the right to appeal in criminal proceedings, the right to compensation due to the unpaid sentence, the principle of ne bis in idem and the equality of spouses (protocol).

What the European system for the protection of human rights makes important and developed by other regional systems is the efficiency of its control mechanism.

Two main features are worth mentioning: the first was the establishment of a controlling body (the Commission and the Court), which ensured the application of the Convention, which was the main purpose of the memo and the preparation of the Convention, because the idea was overwhelming that without judicial review, be made in the field of human rights protection, secondly, individual complaints can be made before these organs, with which the individual gains a very important role in the protection of personal rights, something that until then was guaranteed only for the states.[96]

[95] Lj.D.Frckoski Medunarodna parvo za pravata na covekot Shkup 2001 p.213-217
[96] Vojin Dimitrijevic Ljudska prava ,Beograd 1997 p.116

With the entry into force of the Protocol 11, the Commission ceases to exist and the so-called New European Court of Human Rights (ECtHR) has been established as a permanent and only competent body for the examination and resolution of cases in relation to applications of (states, individuals and non-governmental organizations).

This was done with the aim of facilitating access to the Court and increasing the efficiency of court proceedings for the protection of guaranteed rights.[97] To the Court, the Committee of Ministers has an active role in this system. Contrary to the past, when the Committee could merely decide on concrete cases, it now has only the function of controlling the execution of the Court's decisions by states, which are more likely to be the form of compensation payment in cash for violating the law or changing the legislation or practice that is affecting human rights.[98]

2.2 The system of human rights protection within the EU and the relationship of this system with that established by the ECHR to the EU's single European defense system

A specific system for the protection of human rights has been created within the European Communities (European Communities). The system is specific due to, firstly, it's evolutionary development towards strengthening, and secondly, because it is presented as a parallel to the system established within the Council of Europe and the jurisdiction of the ECHR. which means the existence of two parallel systems, which can also come into collision.

[97] Protocol 11 provides a faster and more efficient preocedure. Protocol 11 entered into force on 1 November 1998.

[98] For the proceedings before the Court and the role of the Committee of Ministers in the procedure Admissibility of the Appeal before the European Court of Human Rights ,Information Centar for Civil Society ,Skopje 1999

EU treaties do not provide for specific provisions for the protection of one's rights.[99]Understandably, some rights are guaranteed, but only to the extent that the normal functioning of the common market is possible, and only these rights are guaranteed by the European Court of Justice (ECJ).[100]

But, by the time, the ECJ begins to offer legal protection to other rights, which are not expressly provided for in the Agreement on the Establishment of the Communities.

This is done in such a way that the European Court of Justice sees human rights as a part of the general principles of the law that the Court had before the application and interception of treaties. this step is interfered by the Luxembourg Court because of the risk of some of the Member States (especially Germany) in which the protection of human rights was at a higher level than the one offered by the EU, the Constitutional Courts of these States declare that they are against the constitution, and with that there are some acts of the Communities that violate the fundamental rights and freedoms guaranteed by the national law of those countries in file or with the ECHR.

From this, it would come under the premise and the highest legal power of the acts of the Communities to the national legal acts. After the initial refusal to offer protection of rights that were not foreseen expressly in the founding agreements,[101] the Court changes this position in the case of Stauder ,[102] While in the case of Internationale Handelsgeslsch v Einfuhr und Vorratselle Fur Gedteide und Futtermitte.[103]

The Court expressly argues that “the respect of fundamental rights is an integral part of the general principles of the Community law that the Court of Justice advocates. By deciding on a case in which the Court will give you protection, a practical its rich, increasing the number of protected rights in the continents”.

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[99] With the Amsterdam Treaty of 1997 (entered into force on 1 Maj1999) the rights and interests of nationals of Member States are strengthened in a series of provisions which foresee the principle of non-discrimination, the fight against racism etc.

[100] Even within the EU, the main responsibility for respect for human rights falls within the member states. The EJC is the body that controls the applications, interception and formulation of Union law.

[101] Case 1/58 Strokv. Hight Authority 1959 ERC 17, Cases 36,37,38 40/59 Geitiling v.High Authority 1960 ERC 423 Case 40/64 Segarlata and others v. Commission 1965 ERC 215 1966 CMLR 314.

[102] Case 29/69 Studer v. City of Ulm 1969 ERC 419.

[103] Case 11/70 Internationale Hnadelseschaft v. Einfuhr und Vorratsele fur Getreide und Futtermitte 1970 ECR 1125

Today, it is assumed that in this district all parts recognized in international law are protected, including the right to equality and the prohibition of discrimination.[104]

When deciding on this, "the Court is inspired by the constitutional traditions of member states and the directions provided by international treaties on the protection of human rights, the ECHR has particular importance in this regard."[105]

But the jurisprudential protection of human rights within the EU accepted by the ECJ was presumed not to consist of the nature of human rights.

It was also assumed that there is not enough legal certainty in terms of determining the nature and extent of the rights that are protected.

For this reason, there was a dilemma on how to strengthen the system of human rights protection in the EU. All of this: either incorporation of the ECHR into the EU legal system or the adoption of a special charter for fundamental rights. In 2000 EU bodies were placed in favor of the second alternative to adopting a special instrument for the protection of human rights - EU Charter of Fundamental Rights.[106]

This Charter provided for those rights that were then defined as protected rights in the ECJ judicial practice, but also foreseen some new rights (such as the prohibition of cloning). Although the Charter does not have the character of a mandatory legal document, EU institutions, including the First Instance Court, are called upon in this document during their work. Also, the Charter is also incorporated into the EU Draft-Constitution.[107]

It seems that, with the adoption of the Charter on Fundamental Rights, the EU has been set up to create a special defense system, which will create the situation of the existence of two parallel defense systems in Europe, one for the EU Member States and one for the other states, which also means the repression of the system established within the Council of Europe and the ECHR.

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[104] Strasho Angeleski ,Zastita na osnovite covekovi prava vo Evropska Unija,kon edinstev Evropski sudski system na zashita ,Skopje 2004 p.36

[105] Case 4/73 Nold v. the Commission 1974 ECR 491 p.13

[106] The Charter of Fundamental Rights was signed and solemny approved by the Presidents of the European Parlament,the Council and the European Commission on 7 December 2000, on be half of the three institutions.

[107]Strasho Angeleski Zastita na osnovite covekovi prava vo Evropska Unija ,kon edistven Evropski sudski system na zastita p.120

With the formalization of the Charter, we will automatically have the existence of two parallel systems that can bring about conflicting decisions in identical cases. The possibility of interfering with anti-court decisions by the two European courts is noted in some concrete cases.

With the formalization of the Charter, we will automatically have the existence of two parallel systems that.[108]

2.3 The content and importance of Protocol 12 to the ECHR

Protocol 12 to the ECHR was approved by the EC Committee of Ministers on 27 June 2000 and opened for signature in November 2000. Protocol 12 will enter into force after the expiration of 3 months after ratification of 10 member states of the Council of Europe.[109]

Protocol 12 was adopted with a view to strengthening Article 14 and its limited nature in the protection against discrimination. Article of the Protocol contains a prohibition of discrimination, which, contrary to the provision of Article 14, is a general and independent prohibition.

"The enjoyment of any right guaranteed by the law shall be protected without discrimination on any ground such as gender, race, color, language, religion, political or other opinion, national or social origin, relevance to any national minority, property, birth or other status ". Under the second paragraph "no one shall be discriminated against by any public authority under any ground such as those referred to in paragraph 1".[110]

The list of grounds prohibited in Article 1 of Protocol 12 is the same as that of Article 14 of the Convention. During the preparation of the Protocol, consideration has been given to the possibility of counting the new bases, which are recently presented as frequent grounds for

[108] Mathews v.UK Judgement of 18.02.1999 (appl.No 24833/94) Paul Craig, Gainne De Burca ,EU Law ,text cases and materials OUP ,Oxford 2003 p.366-368.

[109] With status as of June 1 ,2007 the Protocol has been ratified by 15 member states of the Council of Europe ,namely Albania,Ermene ,Bosnia and Hercegovina ,Croatia,Cyprus,Finland ,Georgia,Luxembourg,Montenegro ,The Netherlands,Romania,San Marino,Serbia ,Ukraine, and Macedonia. Protocol 12 entered into force on 1 april 2005.

[110] Under Article 3 of the Protocol,the obligations provided for therein do not change or derogate from article14 ,but shall apply to the ratification States of Protocols.See in Explanatory Report , para.33.

discrimination (such as age, sexual orientation, physical or mental handicap), but such possibility has been rejected as unnecessary because even so far the Court has applied Article 14 on grounds which are not explicitly listed in the Article.

On the other hand, the numbering of new bases would negatively affect (argumentum a contrario) on other bases that would not be numbered, as if the first (numbered) are more important than the two (unmarked).[111]

Knowing that neither Protocol 12 defines discrimination, the Court has developed the concept of discrimination developed by applying Article 14 of the Convention, which means that, however, the objective and reasonable justification test will apply.[112]

The greatest achievement of Protocol 12 is that it contains a general and independent prohibition of discrimination. As opposed to Article 14 of the Convention, the application of Article 1 of Protocol 12 is not confined to the rights and freedoms guaranteed by the Convention but will be applied regarding all the rights guaranteed by the positive right, in general.

The expression "right" covers not only domestic law but also international law. Thus, the Court is empowered to consider whether a right by another international instrument to which the particular State is obliged is discriminated against.

In addition to that under Protocol 12, the question whether the facts and circumstances of a case fall within the scope of one of the articles of the case review, that would be no question of law for the States that have ratified the Protocol as a special international instrument.[113]

The extended scope of application of Protocol 12 in comparison with Article 14 of the Convention, especially includes cases where an individual is discriminated against:

1 In the enjoyment of any right of the individual expressly guaranteed by the national (internal) law.

2. In the enjoyment of the right which can be derived from a clear obligation of the state in national law to behave in a certain way.

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[111] See in Explanatory Report . para.20.
[112] Protocol 12 , 6Decebmer 1999 (Doc .8608).
[113] Oddny Mjoll Arnadottir p.38

3. By public authorities in the exercise of discretionary powers (subsidy allocation, for example)

4. Action or other action by state authorities (for example, behavior of police officers during the control of the masses).[114]

As far as the positive obligations of the state are concerned, in the Explanatory Memorandum of Understanding 12 the current practice of the Court is established in principle, principally on the negative obligations of the state, with only a few exceptions.

According to the Explanatory Report, the main purpose of Protocol 12 is to protect individuals from discrimination committed by public authorities, including here legally binding, executive and judicial bodies. The Protocol does not intend to create positive obligations for the signatory States in the incorporation or compensation of all forms of discrimination between private entities.

The main purpose is to create negative obligations for states, which means states do not discriminate against indivoduals under their jurisdiction.[115] However, on the other hand, it is not possible to exclude the obligation of the state to undertake positive measures.

Such obligation, for example, will exist in the event of a lack of legislation prohibiting discrimination.[116] Also, the state has positive obligations also in the public domain governed by the law, where there is also a certain responsibility.

Such cases will be arbitrary obstacles to employment, access to some public places such as restaurants or other public services that private entities provide to the public such as medical aid, water supply, electricity, etc.

The complex forms of obligations that the states will have will depend on the concrete case and the circumstances of the state. Understandably, this does not apply to all private relations where the mixture by the state would be in contravention of the rights and freedoms

[114] Explanatory Report para22.
[115] Exanatory Report .para.24-25
[116] Explanatory Report. para.26 The Netherland, Judgement of 26.03.1985 ,Series A, no.91.

guaranteed by the Convention, such as the right to private and family life, the right to privacy, of the union, etc.[117]

The operative provisions of Protocol 12 do not make any mention of the affirmative measures (positive discrimination) that the state would have to apply with purpose, of achieving real equality or, for example, compensating for the discrimination suffered in the past by the members of any group.

However, as explained in connection with the application of the approximation measures under Article 14 of the Convention, the possibility for the State to take such measures is not excluded. The preamble to the Protocol 12 reaffirms the Court's view that such measures can be taken with a view to achieving full and real equality.

Such measures will not be considered as discriminatory if they have objective and reasonable justification, and that is the achievement of factual equality in society. However, the primary position remains that neither Protocol 12. as Article 14 of the Convention, do not provide such expressive obligations to the States.

2.4 The principle of non-discrimination within the EU

2.4.1 Principle of non-discrimination in the practice of the European Court of Justice (prohibition of discrimination based on gender)

As explained above, [118]the European Court of Justice has played a very important role in the protection of human rights in the EU because it begins to offer legal protection even before it is incorporated as a concept into the acts of the Union.[119]The ECJ develops the concept of human rights as part of the general legal principles, incorporating the legal traditions of national systems in EU law.

[117]Explanatory Report.para.28

[118] In the same chapter, 1.2

[119] The founding treaty does not incorporate human rights as a concept but only guarantees certain rights that are important to the functioning of the common market(article 119 of the Treaty Rome)

In the case of Internationale Handelsgeselschaft v. Einfuhr und Vorratselle fur Getreide und Futtermitte, [120]The EJC verifies that the rules of Community law may be annulled if they violate the fundamental rights guaranteed in the legal systems of the Member States and whether those rights are accorded to the very structure and purposes of the EU - and its right. Defending fundamental rights and freedoms as part of the general legal principles.[121] The ECJ undoubtedly as one of these principles declares the principle of non-discrimination.

So in the case of Reyners v. Belgium ECJ concludes that the prohibition of discrimination among Union citizens is one of the fundamental principles of Community law.[122]

In the Defrenne case 3 the Court declares the prohibition of discrimination based on sex as one of the fundamental principles of Union law.

In this case, the Court first invokes human rights as part of the general principles of Community law, which must be part of the general principles of Community law, which the Court itself must provide, and then strengthens the attitude towards the principle of non-discrimination by emphasizing that the elimination of gender-based discrimination is a part of the perfection of these fundamental rights.[123]

In its practice, the Court behaves differently in relation to discrimination, depending on the grounds of discrimination. The Court especially develops the concept of (prohibition of) gender-based discrimination and its practice in this field is very well formed and could be used during the interposition of EU law on the prohibition of discrimination, which right is developing, summing up the largest number of banned bases.

Some aspects of the prohibition of gender discrimination are also expressly regulated by Union acts. Thus, in the Treaty of Rome, Article 119 guarantees equal compensation for men and women for equal work. This provision was implemented[124] by the 1976 Equal Treatment

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[120] Case 11/70 Internacionale Hndelsgeslschaft v. Einfuhr und Varratselle fur Getreide und Futtermitte (1970) .ECR 1125.

[121] L.Neville Brown ,Tom Kennedy ,The Court of Justice of the European Cpmmunities ,London 1994 p.324-325.

[122] Reners v. Belgium 2/74,1974 ECR 631 para.24

[123] Defrene v. Sabena (III) Case 149/77 1978 para 26-27

[124] Although the ECJ in Defrenne case,it is true that such a provision of the Treaty may also have direct effect.

Directive, which includes other areas such as access to employment (employment), persuasion, employment promotion and working conditions.[125]

but, given that these acts are very general, there remains much room for the Court to further develop the concepts associated with this type of discrimination.

So, in the case of the Defrenne Court, the Court emphasizes that the provision for equal compensation from the founding treaty of Rome may also have direct application.

In the case of Enderby, the Court foresees an obligation for the employer, in the event of a difference in salaries among the members of the different sexes, to prove that the difference made is based on objective and reasonable factors and has no discrimination based on sex.

In the Jenkins case the Court accepts the concept of indirect discrimination. According to the court, the difference in salary for the same work between full time workers and part-time workers is not discrimination in itself, but will go to discrimination in case when in a organization, the structure of workers is such that mostly women are those who work half-time, while men are engaged in full time.

The ECJ further develops the concept of indirect discrimination and provides for three conditions for the existence of this type of discrimination: first, the existence of a neutral criterion that is less favorably favored than men (women) , secondly, the criterion itself (isolated) is not discriminatory, and the third, the distinction of this has no objective and reasonable justification (no purpose or measures are non-pro-active). In the Grant case, discrimination based on sexual orientation is not considered as gender discrimination.

The court in its practice develops the concept of affirmative measures as measures of achieving real equality between the sexes.[126] These measures are also foreseen in the Equal Treatment Directive of 1976 in Article 4 (2). But, however, some Court decisions are interesting in which the measure is considered as discriminatory, even though they are undertaken with the aim of achieving real equality between the sexes.

Such a case is the Jenkins case, which is one of the most quoted in the literature that raises the question of discrimination. In this case, as a measure which contradicts Article 2 (4) of

[125] Equal Treatment Directiv (EEC) 76/207 23.09.2002.
[126] Dr Enderby v. Frenchay Helath Autgority and Secreatary of State of Health 127/92 ECR 1993

the Directive, it is considered the priority to be given to the employer for employment in the public service, if it is equally qualified as the candidates - male even if the women are represented then you have 50% in the concrete position. According to the Court, an absolute and unconditional priority to women is calculated and exceeds the limits of the aforementioned provision. The national rules which foresee such measures, for this reason, are discriminatory.[127]

2.5 Prohibition of discrimination with Union acts

Because of the non-systematic resolution of discrimination in the EU, it was unreasonable to arrange this question with the Union's agreements. Knowing that protection from discrimination, as well as the protection of other rights, was to be part of the general legal principles, [128]it was further strengthened the view that provision should be made for special prohibition of discrimination in Union Agreements.

With this, apart from strengthening the principle of non-discrimination, the extension of prohibited bases was also insisted, including those that were not included until then in the ECJ's warehouse or up until recently, such as sexual orientation, ethnic origin or race, age and disability.

For the first time, the general principle of non-discrimination includes the EU Agreement with Amsted changes, with which the principle of discrimination for the first time is expressly provided for in a primary act of the Union.

according to Article 13 of the EU Agreement: without prejudice to other provisions of this Agreement and the limits of authorizations given to Union, the Council acting by the People and after consultations with the European Parliament may take appropriate measures in the fight against discrimination based on gender, racial or ethnic background, de or belief, disability, age or sexual orientation.

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[127] C-409-95 Marchall v. Land Nordhein Westfalen 1997 ECR 1-6363, C-407-98 Abrahamason Fogelqvist 2000 ,Henry G.Schermers ,Denis F.Wealbrock , Judicial protection in the Euroean Union London/New York 2001 p.93-94.

[128] L. Newile Brown , Tom Kennedy The Court of Justice of the European Communities ,London .324-325

For this provision it is important to firstly present the first anti-discrimination provision in the primary acts of the Union and at the same time provide a legal basis for the adoption of directives related to the prohibition of discrimination, since the provisions of The agreement could not be applied directly, but it is only the basis for undertaking appropriate measures on the part of the Council.

Also, it is characteristic that the provision contains a closed list of prohibited bases and includes only gender, race or ethnic origin, religion and belief, disability, age and sexual orientation.

The directive on the implementation of the principle of equal treatment of persons irrespective of racial or ethnic origin[129]

Article 13 of the EU Treaty gives the Council the freedom to choose what measures it will take to combat discrimination. In this way, in 2000, the Council adopted a Directive on the implementation[130] of the principle of equal treatment of persons without taking into account racial or ethnic origin, thus making it decisive to regulate the issue of discrimination.

This Directive obliges States to fulfill the obligations set forth therein, but with the free choice of enforcement measures. This Directive prohibits discrimination based only on race or ethnic origin and therefore has a very limited effect.

Other bases listed in Article 13 of the EU Agreement are not included at all. The Directive does not cover discrimination based on nationality (Article 3.2), but the distinction made on the basis of nationality may be counted as indirect discrimination if it is based on racial or ethnic origin, if it proves that such discrimination affects non-pro rata members of a based group of citizens.

The directive prohibits both direct and indirect discrimination. [131]For the existence of direct discrimination, the existence of a comparator,[132] the person who is in a similar situation, is required, compared with whom the applicant is most ill-treated.

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[129] 29 June 2000, Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin OJ L 180/22.

[130] R.Vukadinovic ,Pravo Evropske Unije ,Beograd 1996 p.43

[131] For defeating two types of discrimination see Chapter one under 3.1 and 3.2

The directive also prohibits direct and indirect discrimination. For the existence of direct discrimination, the existence of a comparator is required, namely the person found in similar situations, and in the rate at which the applicant is most ill-treated.

The directive allows the comparison to be made with a person currently present in a similar situation (actual compiler) or a person who has previously been found in a similar situation (previous operator) or a person who can be found in such similar situations (hypothetical comparator).

As opposed to indirect discrimination, direct discrimination cannot be justified by objective and reasonable causes, except in the cases expressly listed in the Directives, as are the affirmative measures under Article 5 thereof.

The prohibition of indirect discrimination is important especially when it comes to racism based on race or ethnic origin because the discrimination of this kind is generally judged and is therefore concealed. For the existence of indirect discrimination, it must be proved that a provision, criterion or neutral practice affects the appearance of a (non-selective) disadvantageous effect on members of a (racially than ethnic) group compared to other group members.

When arguing the existence of indirect discrimination, static data can be used, especially for the existence of a negative disadvantageous effect that may have a provision.[133]

The distinction made that is alleged to be discriminatory can be justified when such difference is justified, and that is to say if such distinction is legitimate and the interim measures are necessary (for the purpose of achieving that aim).

The scope of application of the Directive is laid down in its Article 3. This article represents the second essential restriction in relation to the application of the Directive, except for the first restrictions - the grounds for discrimination (only race or ethnicity).

Thus, the Directive prohibits discrimination in the definition of employment conditions and the pursuit of independent professions, including the criteria for elections, without taking into consideration the type of profession and at all levels of the profession, including job

[132]Sandra Fredman Discrimination law p.95-102
[133] See the Preamble to the Directive p.15

promotion, access to all types of vocation and vocational training, pre-qualifications, including work experience, employment, and working conditions, including the termination of employment and compensation for work performed, membership and activities in labor organizations including the social security and health protection, the provision of social benefits, education, access to and provision of goods and services offered to the public, including choice of housing (housing).

Article 4 provides for a limited exclusion from the prohibition on making difference based on race and ethnic origin. Such a distinction can be made if it is a necessary condition for employment in a job.[134]

Article 5 provides for the possibility of applying positive measures (affirmations). In fact, here is followed the accepted acceptance in the EU that member states are not obliged but are allowed to apply affirmative measures with a view to preventing or compensating for the disadvantaged treatment that is the result of the distinction made on the basis of race or ethnic origin.

Affirmative measures, in accordance with their temporal character, will be applied until full equality is achieved among the members of different racial or ethnic groups.

With the directive in question, provision is also made for the protection mechanism, in order to ensure that the state must provide and implement them in their legal systems.

above all, member states are obliged that persons who claim that the principle of equal treatment is not applied to them as envisaged in the Directive, allow access to administrative and / or linguistic procedures.

In procedures initiated by an individual claiming to be a victim of discrimination may be associated with associations and organizations which have a legitimate interest in the application of the provisions of the Directive.

The mitigating circumstance for the potential victim is that when facts and evidence exist for the existence of the distinction, the burden of proving passes to the respondent party which

[134] For example, the engagement of an actor who should play the role of a white character authorizes that, during the selection, make a race-based distinction that will not be discriminatory.

has to prove that the distinction made does not constitute discrimination (there is some specific justification) (Article 8.1).

Member States are obliged to provide for effective penalties to be applied in the event of infringement of national rules adopted in accordance with the Directive.

these penalties must also include rules regarding the possibility of compensation for the person-victimization and discrimination (Article 15).

States are obliged to report to the European Commission[135] on the application of the Directive (Article 17), and to establish special bodies with the obligation of promoting equal treatment between persons without taking their racial or ethnic origin into consideration.

The obligation of such bodies will also be to assist individuals-victims of discrimination in judicial proceedings, the preparation and conduct of investigations, and the publication of independent reports on certain aspects of discrimination related to the application of the Directive (Article 13 of the Directive).

Derivative for the overall framework of equal treatment in the field of employment and occupations[136]

Similar to the prohibition of discrimination based on racial or ethnic origin. The Union has no legal tradition either in the prohibition of discrimination based on religion or belief, disability, age and sexual orientation.

Moreover, in some of the cases reviewed, the European Court of Justice claims that discrimination based on sexual orientation, for example, does not fall under the law of the Union.[137]

Following the provision of Article 13 in the EU Agreement, the Council, in addition to the Directive on Equality of Ethnicity Equality, which we have analyzed above, the

[135]Equality and non-discrimination Annual report 2004, European Comission, may 2004 p.15-16.

[136] Council Directive 2000/78 EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, article 2.2 303/16

[137] C-249/96 Grant v. South west trains Ltd 1998 ERC I-621.

implementation of Article 13 also adopts the second important Directive, Directive on the general framework for equal treatment in the field of employment and occupation, from November 2000.

In most respects, the directive is similar, do not say the same. In particular, they are identical provisions in the purposes of the Directive, definition of disparity, non-application of national based deductions, affirmative measures, differences made during employment where necessary criteria, protective mechanisms etc.

Two essential differences exist between the two derivatives. First, in the foreseeing of different lists of grounds prohibited to distinguish, and secondly, the scope of their application.

The Framework Directive on Equality in the Field of Employment as a Prohibited Base for Discrimination provides for those which until the moment of its adoption have not been foreseen.

They are the bases listed in Article 13 of the EU Agreement, apart from gender or race or ethnic origin, for which specific directives exist. These bases are religion or belief, disability, age, and sexual orientation.

The second essential difference between the two directives is related to their application. The Chronic Employment Equality Directive applies in a narrower and narrower field. It applies only in the field of employment, and mainly in terms of employment, access to professional advice and training, working conditions and membership and access to workers 'and employers' organizations, including hereafter those who come out of this membership. The expressive directive excludes its application in all types of payments made by the state, including security and social protection (Article 3.3).

The framework directive also provides an open opportunity for justification of discrimination, which is in case of undertaking the necessary measures to maintain public safety, public order and preventing criminal acts, the protection of health and the freedoms and rights of other individuals (Article 2 .5).

Also, for some of the specific bases listed, the Directive contains restrictive provisions. Thus, Article 3.4 Spas does not apply to armed forces regarding invalidity and age as a concrete basis for making differentiation.

Article 4.2 provides for the possibility for religious organizations to make distinctions based on religion or belief during the engagement of persons for carrying out concrete activities. Article 6 provides for general justification for the distinction made on the basis of age, if it is to be objectively and reasonably justified.

On the other hand, the Directive provides for an obligation for employers to take measures to accommodate persons with disabilities in order to provide access, participation or priority during employment, or to have special training, unless such measures would be unprofessional on the employer.

The two above-mentioned Directives allow more space for intertwining, so the role of the ECJ in the penetration of the provisions from the Directives and their application will be great. The Court has a wealth of practice to prohibit discrimination based on sex, which will help to interpose these provisions and take the stand for concrete questions regarding discrimination in the areas covered by these Directives.

2.6 Prohibition of discrimination in the Charter of Fundamental Rights

On November 7, 2000, the Council, the Parliament and the Commission solemnly proclaimed the Charter of Fundamental Rights. The Charter contains a large number of rights which must be protected within the EU, while its adoption was made in order to “make it more visible to Union citizens on fundamental rights protected within the framework of EU law - that”.[138]

In the Charter, Article 21 (1) provides for a non-discriminatory clause containing a broad list of prohibited grounds. The same is not closed: "any discrimination based on any basis such

[138] Presidency conclusions, Cologne European Council ,3-4 june1999 Annex IV EU Bull 6-1999

as gender, race, color, ethnic or social background, genetic characteristics, language, religion or belief, political or other opinion, national minority affiliation, wealth, origin disability, age or sexual orientation will be forbidden. " The application of this provision will be subtle given the large number of rights provided by the Charter. But the application of the Charter of Fundamental Rights is limited by the fact that it has no mandatory character. It is a part of the EU Constitution, [139]but until the entry into force of the Constitution, the start of the Charter is unclear in the hell of Union.

Much this question will depend on the European Court of Justice's standing on the Charter when dealing with cases involving human rights and freedoms. In some concrete cases, the Court refuses to explicitly call on Kart's defaults, even though, in the same cases, this is done by the General Advocate.[140]

However, the Court is more careful in this regard and, although not explicitly invoked in the provisions of the Charter, has laid down its provisions.

[139] Strasho Angeleski Zastita na osnovite covekovi prava vo Evropska unija , kon edinstven Evropski sudski na zastita p.127.

[140] D and Sweden v. Council ,Cases C-122/99p and C-125/99P

3 Chapter Three - Principle of non-discrimination in the legal system of North Macedonia (legislative aspects)

As in all contemporary legislation, and in that of the Republic of Macedonia, the principle of equality is accepted and the same is involved in the whole legal system, gaining in different spheres of different dispositions, depending on the concept of equality accepted in certain social reports. This is to say, given the changing content of the principle of equality, which comes to our legal system as well.

However, the provisions on the prohibition of discrimination are not very precise and developed, and do not represent a consistent whole, which is the main disadvantage of our legal system in this area.

In the legal system of the Republic of Macedonia there is no special law prohibiting discrimination, but such provisions are laid down in more laws.

In Macedonia there is no theoretical debate about discrimination, and especially there is no judicial practice in this area, which also depends on the adoption of a law that would prohibit discrimination and facilitate the work of the courts.

This is because the Republic of Macedonia's legal system is part of the continental legal system group, where the role of courts is only the application of laws adopted by parliament.

3.1 The principle of equality in the Constitution of the Republic of Macedonia

The Constitution of the Republic of Macedonia of 1991 is expressly defined for the principle of equality between citizens in the enjoyment of all guaranteed rights.

According to Article 9, "the citizens of RNM are equal in freedoms and rights without regard to gender, race, color of skin, national and social origin, political and religious belief, property and social status".

Under paragraph 2 of the same article "citizens are equal before the Constitution of the Laws". According to these provisions two conclusions emerge: (i) one that during the regulation of social relations with legal norms the numbered bases are not allowed to be taken as a criterion for the different juridical position of the citizens, and (ii) secondly, the Constitution and the laws must apply equally to all citizens, by the subjects that apply them.

It is understood, a general provision such as this cannot contain the criteria of when people are equal and when not, and when they are treated equitably and when unequally.

This has been left to the legislative body when adopting laws from different areas of social life.

Also, Article 54 paragraph 4 of the Constitution contains a clause against discrimination in cases of restriction of human and citizen's freedoms and rights, which is also a unique stand in international law.[141]

In this section we should mention some shortcomings of the Constitution regarding the principle of non-discrimination. Firstly, in the main provision for equal enjoyment of human rights, discrimination is prohibited only in respect of some discriminatory grounds numbered, namely the list of these grounds of discrimination (characteristics, properties) is closed.

There are no grounds for discrimination in the list, which are now internationally covered by an international instrument such as age, disability, sexual orientation, etc.

This can be interrogated as if these circumstances can be taken as grounds for discrimination! At least, the list of numbered bases should not be included in the terms "as they are" and "or other circumstances".

Another reminder that can be done is that this provision of the Constitution speaks of the principle of equality only between citizens, namely the citizens of the Republic of North Macedonia.

The question is raised that foreign citizens can enjoy guaranteed rights without being discriminated, as right in life, for example.

[141] For example, the International Covenant on Civil and Political Rights, Article 4.2 European Convention on Human Rights, Article 27.

It is a stance that foreign nationals cannot enjoy all rights in the country of the country as nationals of the country. Or they cannot enjoy them under the same conditions. But, on the other hand, there are many rights, especially civil rights, which foreign citizens enjoy under the same conditions as nationals of the country.

Therefore, it would be better to have the constitutional provision first to foresee that all people (and not citizens) are equal in the enjoyment of the rights and freedoms without discrimination, and then foresee a specific provision where it will be given the possibility for the state to make a difference based on citizenship in the enjoyment of certain concrete rights, a distinction which would not discriminate.

The third observation is that the Constitution should provide for the possibility of imposing affirmative measures as measures to achieve full and real equality in society. Affirmative action Macedonia applies in some areas, so we think that they should have the legal basis in the Constitution.

3.2 Prohibition of Discrimination in the Criminal Code

In the field of criminal legislation, the Criminal Code of the Republic of Macedonia foresees two offenses that deal directly with discrimination. The first criminal offense is Violation of Equality of Citizens (Article 137) and concerns the prohibition of discrimination in general, while the second is the prohibition of discrimination in general, while the second is racial or other discrimination (Article 417) and has only to do with racial discrimination.[142]

Having in mind that the Constitution guarantees the right to equality in the enjoyment of citizens' rights, it is incriminated a conduct which the person or the citizen, according to the circumstances listed, will be taken away, restricted or privileged in relation to the rights defined by the definition of the work reveal some of its features: the first, the list of prohibited bases of distinction is not exhausted.

[142] There are also perpetrators related to discrimination in the CC such as Genocide (Article403), a disgrace of national, racial and religious hatred, the spread of ideas about the superhero of a race (article 417.3)

The same explicitly foresees gender, race, color of skin, national and scholar origin, political and religious belief, property and social status and language. Although some of the accepted bases (age, disability) are not mentioned, they may enter into the term "other personal or circumstance" used.

The second feature of the offense is that the same is presented if someone is taken, restricted or apprehended on the basis of one of the numbered circumstances.

According to this, the offense does not exist if the rights are only taken, limited, or privileged in respect of a specific right, but only exists if it is based on any of the characteristics listed, by which the person concerned is placed in position worse or less worthy of other persons, which actually represents the essence of discrimination.

Third, as the perpetrator of the offense can be represented by any person (delictum communium) seen from the phrase "he was" at the beginning of the sentence.

It is understood that, as a perpetrator, persons who are in fact likely to make differences in the treatment of persons enjoying the guaranteed rights will be present.

Such are the workers (unequal treatment of workers, for example, in relation to the wage) persons performing public services (transport, water supply, energy, access to cafeterias, restaurants, swimming pools, beaches etc.).

Also, the state may also be presented as a subject that discriminates but the state's "criminal responsibility" is transformed in the general of the official person, which is presented as a special act that is punished with seriousness.[143]

Article 317 prohibits a particular type of discrimination and racial discrimination as a violation of human rights recognized by the international community on the grounds of race, color of skin, national and ethnic origin. For this work it is characteristic that only racial discrimination is prohibited, and therefore the list of grounds of discrimination is similar to the list of the International Convention for the Prevention of All Forms of Racial Discrimination (Article 1).

[143] Statement of non-discrimination under the Stability Pact for South Eastern Europe “the former Yugoslav Republic of Macedonia, Strasburg, October 2003.

It is characteristic that the offense is presented if there is a "violation" of the rights and it is not subject to removal, restriction or privilege, specific elements of discrimination.[144]

Finally, the existence of the offense will be difficult to be verified by the court of the Republic of Macedonia because it will have to determine what are the rights recognized by the international community, which international instruments will be considered relevant. This will come to the fore, especially, in some cases with disagreeable.[145]

In the part of the criminal legislation that relates to the prohibition of discrimination, there are some shortcomings. The first is that there is no distinction between direct and indirect discrimination. This is a general characteristic of our legal system. Secondly, there is no distinction between discrimination and discernible distinction which does not go through discrimination.

In this regard, even the courts do not create any judicial practice or test to make this distinction. This is also a key weakness of the RM system. Especially when it comes to gender-based differentiation, how will the court assess whether it is a matter of discrimination based on nationality or national origin (whether it is defined as an offense) or whether it is allowed to leave on grounds of nationality, which in some cases is allowed.

3.3 Prohibition of Discrimination in the Field of Civil Law (Employment Relationships)

The summary provision on the prohibition of discrimination and specifically on the issue of labor relations, contains the new Labor Relations Law (LMP).[146]

It is understood, as noted, these provisions come to light and apply only in the field of labor relations. It would be good for these provisions to be an example for the adoption of a

[144] Compared to Article 1 of the International Convention on the Elimination of all forms of rcial discrimination (CERD) discrimination is defunct.

[145] Sasho Georgievski , Primenata a Madunarodna parvo vo ustaviniot poredok na Repubika Makedonija ,zbornik vo cest na evgenij Dimitrov , Skopje 1999p.481-502.

[146] See the CERD commentary on chapter 2 of the book.

special law on discrimination that will be applied in all areas of public life such as education, health, access and supply of goods and services, access to services and public places.

From the provisions of the LRL that deal directly with discrimination, we will outline some of the characteristics that emerge from them, and are important for discouraging the emergence of the international norms of this sphere, especially those of the EU Directives of the year 2000, as explained above (third heading).

These features should be taken as an example when adopting general anti-discrimination legislation. The first feature is that it is forbidden to discriminate more on grounds (circumstances, features) than those enumerated in the Constitution (Article 9), and the list of these grounds is not exhausted, arising from the expression used "or because of of other personal circumstances "(Article 6 of the LRL).

In addition, this list mentions some grounds for prohibiting discrimination with EU Directives, such as age, disability, family status and sexual orientation.

Secondly, LRL prohibits and also defines direct and indirect discrimination (articles 7.2 and 7.3). Direct discrimination is defined as "an action with which the person was determined, placed or could have been placed in the most implausible position by other persons in comparative situations".[147]

Indirect discrimination exists where "any provision, criterion or practice, at first sight neutral, places or places in an indefinite position the candidate for employing the worker compared to other persons".

These definitions are accepted responsibly in international law and jurisdictions, and particularly the impact of the EU Directives mentioned.

The third characteristic of LMP is that the same defines the field of relations in which discrimination is prohibited (Article 7.4). According to the Dispositions of the Law, discrimination is prohibited as at the moment of candidacy, respectively application for a job as regards the conditions for employment and the conditions and criteria for the election of the candidate, as well as the rights that arise from the employment relationship such as advancement

[147] Law on Employment Relations "Official Gazette of the Republic of Macedonia"no 62/05 of 28.07.2005.

at work, access to all levels of vocational training, pre-qualification and up-to-job qualification, work conditions and all other employment-related rights (explicitly mention the equality of salaries). which arise from membership in workers' organizations, namely to employees.

Also, collective agreements and employment contracts with which LMO's prohibited discrimination (Article 7.5) are void are void. In short, LRL prohibits discrimination in the field of employment relationships, from the moment of application, rights and obligations arising out of employment relationship and up to the notice of employment contract.

Another characteristic of the law is that the Law contains special provisions allowing it to be distinguished on the basis of the characteristics listed in Article 6, a difference which will not be considered as discrimination if such personal characteristics of a person are important and are presented as a necessary condition for carrying out their duties (Article 8).

An important feature of the LRL, which relates to the achievement of factual or real equality in society, is the ability to apply approximative measures (positive measures, positive discrimination).

Such measures may be foreseen by laws, collective agreements or employment contracts, consisting in the special protection of certain categories of workers such as invalids, old workers, pregnant women or women who enjoy specific rights based on amnesia Article 8.

This legal provision is important because it is the first of its kind in the legal system of RM. However, the LRL does not foresee explicit opportunities for the application of these measures with the aim of achieving the pro-ethnic representation of ethnic communities in the field of labor relations, namely for the pro-ethnic representation of minorities which are not proportionally represented in this sphere.

These measures deal with other parts of Macedonia's legislation,[148] while some western state legislation foresees such measures with legislation regulating labor relations by providing

[148] With the constitutional changes that are in place to implement the principle of the Ohrid Summoners , apart from the others , one of the fundamental values of the constitutional order of the Republic of Macedonia is foreseen the " adequate and fair representation of the citizens of all communities in the bodies of the state power and institutions other public at all levels."

for the obligation to apply these measures also to private employers, not just the state [149], Macedonia does not take such an ambitious step.

The other provision that deserves a comment is that of Article 10 which provides for the right to compensation for the discrimination against persons who have been victims of discrimination.

This provision is important because there was no such provision until the adoption of the LMP. This does not mean that persons who have been discriminated against did not have the right to compensation, but it was very difficult for the courts, especially to determine the amount of compensation because the general provisions of the Law on Obligational Relations regulating the causation and compensation bull.

Now, not only does the right to compensation for persons who have had (suffered) discrimination is foreseen, but it is a relief for the courts in determining the amount of compensation that many have to pay the subject (most often the employer) who discriminates.

Lastly, it is important to mention the provision which makes the separation of evidence in cases of discrimination (Article 11). It is widely accepted, however, that the victim of discrimination must prove the existence of discrimination under this provision if the latter issues evidence that the employer has acted in violation of the law, then the employer must prove (the burden of proving passes to the employer) that the distinction he has made has not been discriminatory and that it was permitted under the terms of this Law.

[149] Mark Bell Anti-Discrimination Law and the European Union, Oxford p.145-180.

4 Chapter Four - The role of the Ombudsman in protection against discrimination

Article 13 of the EU Directive on the implementation of the principle of equal treatment of persons without prejudice to racial or ethnic origin provides for the obligation for EU Member States to establish separate and independent bodies which will promote the principle of equality between individuals, will provide legal aid to victims who are discriminated against in court proceedings, and will conduct inquiries and prepare reports on discrimination-related aspects.

In Macedonia such a body has not been established. Certain authorizations have been given to the Ombudsman who, in addition to the main competencies, takes measures and actions in respect of the protection of the principle of non-discrimination and the principle of fair and adequate representation of the ethnic communities in the organs of state power, the bodies of the units local self-government, public institutions and services.[150]

In pursuit of this purpose, the People's Advocate follows the situation regarding the observance of these principles (Article 29), may initiate (not propose) to the proposed proponents amendments to laws and by-laws, propose them The Constitutional Court to make the assessment of the lawfulness of the laws or the assessment of the legality and the laws of other by-laws (Article 30).

The ombudsman has the right to collect information and to make inquiries for the allegations of the victim who suffered discrimination (Articles 24-27). When it finds a violation of the principle of non-discrimination, the People's Advocate may make proposals, suggestions and opinions on the manner of avoiding such violations, propose again to conduct a procedure in accordance with the law, initiate the initiation of disciplinary action against official or responsible person, as well as request from the Public Prosecutor to initiate criminal liability proceedings (Article 32).

[150] Law on the Ombudsman of RM "Offiial Gazzete of the Republic of Macedonia " no 60/03 of 22.09.2003 Article 2.

In the end, the People's Advocate will request a provisional annulment of the execution of the administrative act if it finds that this would consequently have an uncompromising charge against the right of the person concerned (Article 33).

The position of the Ombudsman in the fight against discrimination has an elementary deficiency that can be noticed.

It is that the Ombudsman's powers lie within the framework of initiating initiatives and providing suggestions and opinions on the way of avoiding violations, or for instituting criminal or disciplinary procedures for change in legislation or for assessing the condition of the state and legality of legal acts.

Only in case of a request for annulment of the execution of the administrative decision (Article 33) the body is obliged to annul the decision.

The non-binding and non-enforceable measures of the Ombudsman in low political culture conditions and the lack of sense of responsibility for the official persons remain without effect, inter alia, in the sphere of protection from discrimination.

We are of the opinion that the most effective assistance will be provided to the citizens in proving the existence of discrimination and rewarding compensation due to the alleged discrimination, as well as the finding of discrimination cases and their abolition if a body or body was established which would have the sole competence to prosecute discrimination cases.

Such a measure for Macedonia is also suggested by the European Commission against Racism and Intolerance (ECRI).[151]

This body would have the authority, apart from prosecuting discrimination cases, to provide legal assistance to victims of discrimination so that it would appear directly in the proceedings before the courts or before the other organs before which the procedure is being conducted.

[151] These measures are suggested in ECRI's Second Report, whereas in the Third Report adopted on 25 June 2004, the Commissions is satisfied with the enhanced powers of the Ombudsman in the protections of the principle of non -discrimination, with concrete suggestion for the way of action.

This specialized body would have been authorized to propose the adoption and application of affirmative measures as forms of preferential treatment in the social spheres where it would be necessary to apply them and to be involved in overseeing their implementation.

Such authorizations would strengthen the mechanism of protection of the principle of equality and non-discrimination and would be in accordance with the above-mentioned EU directives, the goals of which Macedonia must achieve before becoming a member of the Union.

4.1 Affirmative measures to achieve real equality in RNM

Affirmative measures are applied in order to achieve effective equality between the members of different groups, when equality cannot be achieved only with the prohibition of discrimination and equal treatment because their positions are different.

Whether members of a group have been discriminated against in the past (which will be the most frequent reason for applying the affirmative measures) if discrimination is prohibited, it is not known if the members of the discriminated group are in equal position with the members of the other group.

For this reason, affirmative measures are taken to ensure that the members of the disadvantaged group are brought to a level whereby they can equally race to behave on an equal level of chances with the other group members.

Affirmative measures take a certain period of time (temporary) in which the state period which practices them to depart from the concept of the principle of aesthetically the same treatment, on the contrary, tries to guarantee the most appropriate treatment (which will says unequal) to reach the equal equality between the people of the various groups (equality of result).

Also, their characteristic is that their application depends on the concept of equality and go in favor of this purpose, but there are legislations that, by accepting the concept of formal equality and insistence on equal treatment of citizens, without taking into account the circumstances the different ones in which they are, do not accept the affirmative measures and, in turn, they regard them as discriminatory.

Therefore, international instruments, including the two above-mentioned Directives, allow, but do not provide for an explicit obligation for States that practice such measures.

Macedonia applies affirmative measures in some spheres.

Firstly, in order to reach the number of students belonging to non-majority ethnic communities in the state universities, the Government of the Republic of Macedonia in the year of 1992 issued a decision on the application of a special and guaranteed 10% of all non-majority ethnic groups. In 1995 this percentage increased significantly from the percentage of the ethnic group to the total number of the population.[152]

Second, positive measures Macedonia also practices in the direction of fair and adequate representation of members of ethnic groups and state authorities and other public institutions. Such constitutional provision (Article 8) is implemented in other laws that regulate employment at different levels of administration. Meanwhile, there are also various forms of training and education of cadres belonging to the communities that are not adequately represented in the public administration as positive measures to meet the criteria for employment.

The third example of affirmative measures is the intention of the legislator to achieve equality between the sexes regarding the participation of both sexes in the central representative bodies (the Republican Assembly) and local (councils councils).

For this reason, the electoral legislation prescribes the obligation for the submitters of the lists of deputies, i.e. councilors, who, in the upper and the lower part of the list, have representatives of both sexes of at least 30%.[153]

The problem of affirmative measures in the legal system of the Republic of Macedonia is that they are not foreseen in the Constitution or in any systemic law (except LMP, now).

[152] The need for the timely existence of these quotes in state universities, given that the peoples of the ethnic Albanian community in Macedonia have the opportunity to study at the third state university in Tetovo in Albanian, which automatically means a significant increase in the number of Albanian students in upper secondary education.

[153] Law on Election of Disputes in the Assembly of the Republic of Macedonia" Official Gazette of RM" n 4205 Article 34 paragraph 3.

We are of the opinion that there should be some general provision that will allow the implementation of such measures in order to achieve real equality in society and will make their legalization.

Without such a provision, such positive measures do not have a legal basis and therefore there is often a problem in the way that the members of the other group to whom they do not apply are perceived as discriminatory measures.

On the other hand, such a provision would enable and pave the way for the courts to start addressing the topic of discrimination, including the affirmative measures.

Courts may decide on the measures taken to respond to that provision, or possibly eventually override the frameworks provided for by that provision, and are therefore discriminatory.

In short, we would like to repeat the suggestions aimed at strengthening the principle of equality and non-discrimination in the Republic of Macedonia:

Always, when it comes to prohibiting discrimination, without taking into account what legal action this is, the list of characteristics on which discrimination is prohibited must be open to the possibility of applying the provision also in cases of discrimination based on the characteristics that are not taximeter numbered in it.

There is a need to adopt a more comprehensive legislation to prevent discrimination in all spheres of social life, especially in the fields of education, health, housing, access to the supply of goods and services, access to services and public places (restaurants, clubs, cafeterias etc.). With this legislation, according to the LMP example, to prohibit direct and indirect discrimination, exemptions from the existence of discrimination and positive measures for certain social groups are foreseen.

In the legal system in general, a concept should be developed to distinguish between discrimination and differences that are not discrimination, but which are legitimate and reasonable. This concept is especially developed by the European Court of Human Rights (ECHR) on the basis of the so-called pro-test (for objective and reasonable differences). For example, in the Republic of Macedonia, the right to vote is guaranteed to citizens who are 18

years old and not younger, for 45-year-old candidates for mayoral candidates, marriage can only connect people with opposite sex, and not even homosexual people, some professions in RM are guaranteed only to Macedonian citizens, not to foreigners, etc. These differences made by the Macedonian legislation are not currently considered as discriminatory. But there must be a concept of how this will be argued. It will also be easy for the courts to choose cases of discrimination, to make a distinction between objective and reasonable discrimination and differentiation.

It should be foreseen the possibility of implementing affirmative measures in those areas where the state estimates that such steps should be taken. As mentioned, such measures Macedonia is implementing, but they must have legal grounds not to be discriminated against but this reasoning and knowing that the same apply for the purpose of achieving real equality.

The role of the People's Advocate in the fight against discrimination, considering his powers, we think that he is not in the right level to respond to the needs of citizens and to help them with concrete effects. As we mentioned, his authorizations end in giving suggestions, suggestions and suggestions. On the other hand, the role of the Ombudsman is to protect the rights and freedoms when they are violated by the administration bodies. Therefore, we are of the opinion that a special body should be created that will have powers only in the protection of the principle of equality and non-discrimination and will have more concrete powers in prosecuting and reviewing cases and petitioners of citizens regarding discrimination , and not only discrimination by state bodies, but also by private entities that provide public services, as well as to provide legal aid to persons in the proceedings before the bodies where they are conducted.

Finally, we are of the opinion that the compensation (damages) procedure due to the heavy discrimination is not sufficiently developed. The reason for this is, it means, the non-existence of legislation prohibits discrimination, which may initiate proceedings and require compensation. An important step is made by the Law on Labor Relations that sets out the legal basis that courts will apply to the cases of discrimination covered by the Law (in the field of labor relations). In cases that do not cover the Law on Discrimination nor is it forbidden. We have the file for prohibition in the civil sphere, because in the Criminal Code there are mentioned acts for the prohibition of discrimination. But in addition to criminal responsibility, there must

also be civil liability in terms of compensation for the serious discrimination. If there are no such provisions (such as the LMP), the general rules for causing and compensating the (non-material) damage from the Law on Mandatory Relations shall apply, while the courts of RM are very "cautious" when determining compensation for non-material damage.

5 Conclusions and Recommendations

This thesis aimed at offering an overview of the sources of non-discrimination and the historical development of the concept, and also examined in detail the scope of the principle of non-discrimination. Furthermore, it provided an emphasis on the domestic implementation of the principle with a discussion of its application in the Republic of North Macedonia.

The thesis achieved its aim by bridging different understandings of non-discrimination and by building a framework of the notion in order to establish the variety of context. Specifically, it identified the organizations that deal with Non-discrimination law; context of different laws; and other aspects of this law such as legal framework and strategy in the Republic of North Macedonia.

In the concluding part of this thesis, we aim at providing some selected shortcomings of the non-discrimination international law, and also to emphasize the shortcoming of the RNM Law.

Starting with the provision for the protection of minorities, in accordance with the position that minorities should be protected through their full equality with majority members and the prohibition of discrimination in the enjoyment of rights, there was no evidence of their special protection. Therefore, neither the Charter of the United Nations nor the Universal Declaration of Human Rights (UDHR) contains provisions for the protection of minorities.

Based on this fact, taking into consideration the importance of minorities in different states, we recommend incorporation of either specific Charter of the UN, or Universal Declaration of Human Rights (UDHR) that contains special Article on the provisions for the protection of minorities.

Regarding the legal system of the Republic of North Macedonia, there is no special law prohibiting discrimination, but such provisions are laid down in more laws. Instead, we recommend that the RNM, or more precisely the legislative body, should adopt special law directly related with the prohibiting discrimination, i.e. non-discrimination Law.

Based on the general provision which does not specify criteria's of when people are equal and when they are not, and consequently when they are treated equitably and when unequally, it is recommended to apply unique provision which specifies criteria of when people are equal and when not.

In this section we should mention some shortcomings, that are already highlighted in Chapter four, of the Constitution regarding the principle of non-discrimination. Firstly, in the main provision for equal enjoyment of human rights, discrimination is prohibited only in respect of some discriminatory grounds numbered, namely the list of these grounds of discrimination (characteristics, properties) is closed. There are no grounds for discrimination in the list, which are now internationally covered by an international instrument such as age, disability, sexual orientation, etc.

This can be interrogated as if these circumstances can be taken as grounds for discrimination! At least, the list of numbered bases should not be included in the terms "as they are" and "or other circumstances".

Another reminder that can be done is that this provision of the Constitution speaks of the principle of equality only between citizens, namely the citizens of the Republic of North Macedonia. The question is raised that foreign citizens can enjoy guaranteed rights without being discriminated, as right in life, for example.

Therefore, it would be better to have the constitutional provision first to foresee that all people (and not citizens) are equal in the enjoyment of the rights and freedoms without discrimination, and then foresee a specific provision where it will be given the possibility for the state to make a difference based on citizenship in the enjoyment of certain concrete rights, a distinction which would not discriminate.

The third observation is that the Constitution should provide for the possibility of imposing affirmative measures as measures to achieve full and real equality in society. Affirmative action Macedonia applies in some areas, so we think that they should have the legal basis in the Constitution.

In the part of the criminal legislation that relates to the prohibition of discrimination, there are some shortcomings. The first is that there is no distinction between direct and indirect

discrimination. This is a general characteristic of our legal system. Secondly, there is no distinction between discrimination and discernible distinction which does not go through discrimination.

The other provision that deserves a comment is that of Article 10 which provides for the right to compensation for the discrimination against persons who have been victims of discrimination. This provision is important because there was no such provision until the adoption of the LMP. This does not mean that persons who have been discriminated against did not have the right to compensation, but it was very difficult for the courts, especially to determine the amount of compensation because the general provisions of the Law on Obligational Relations regulating the causation and compensation bull.

In Macedonia, there is no separate and independent body which will promote the principle of equality between individuals, will provide legal aid to victims who are discriminated against in court proceedings, and will conduct inquiries and prepare reports on discrimination-related aspects, as in EU members. Thus, certain authorizations have been given to the Ombudsman who, in addition to the main competencies, takes measures and actions in respect of the protection of the principle of non-discrimination and the principle of fair and adequate representation of the ethnic communities in the organs of state power, the bodies of the units local self-government, public institutions and services. It is recommended that such a separate and independent body is established in the RNM.

The problem of affirmative measures in the legal system of the Republic of Macedonia is that they are not foreseen in the Constitution or in any systemic law (except LMP, now). We are of the opinion that there should be some general provision that will allow the implementation of such measures in order to achieve real equality in society and will make their legalization. Without such a provision, such positive measures do not have a legal basis and therefore there is often a problem in the way that the members of the other group to whom they do not apply are perceived as discriminatory measures. On the other hand, such a provision would enable and pave the way for the courts to start addressing the topic of discrimination, including the affirmative measures.

In summarizing, we would like to repeat some of the recommendations aimed at strengthening the principle of equality and non-discrimination in the Republic of Macedonia:

(i) Make the list of characteristics on which discrimination is prohibited open to the possibility of applying the provision in cases of discrimination;

(ii) Adopt a more comprehensive legislation to prevent discrimination in all spheres of social life;

(iii) Develop a concept to distinguish between discrimination and differences that are not discrimination, but which are legitimate and reasonable.

(iv) Foresee the possibility of implementing affirmative measures in those areas where the state estimates that such steps should be taken;

(v) Create special body that will have powers only in the protection of the principle of equality and non-discrimination;

(vi) Finally, to further develop the compensation (damages) procedure and release from the heavy discrimination.

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