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Positive Discrimination. Integrated Community Center

Dragoş Lucian RĂDULESCU

Petroleum Gas University of Ploieşti, Romania
dragosradulescu@hotmail.com

Abstract: *The needs identified at the community level, in terms of the need for medical-socio-educational services, may determine the establishment at the local public administration level of integrated community centers, under the coordination of the executive authorities. Integrated community centers will or will not obtain legal personality and will be financed from the local budget of the administrative-territorial units under the coordination of which they operate, including in terms of the salaries of community nurses and health mediators. The article starts from the analysis of the concept of positive discrimination in labor law, providing a detailed description of the way in which this notion is regulated in the main international and European legal acts, while also exposing the way in which it is reflected in practical regulations, in order to protect categories of vulnerable people. As part of the research, we detailed the application of positive discrimination in the case of integrated community centers, with reference to community healthcare as a way of providing services to people or groups considered vulnerable. The main objective is related to the exposition of the ways of protecting vulnerable groups, with an emphasis on integrated community centers, on the national legislation that regulates them, and the purpose of the research is related to the identification of positive discrimination measures in national practice, as well as the importance of protecting vulnerable groups.*

Keywords: *community; discrimination; positive services; medical;*

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Introduction

Regarding non-discrimination rules, they do not implicitly relate to the employee's subordination to the employer existing within legal employment relationships, as all of the rights and freedoms of citizens are analyzed (Cernat,2014,p.51).

Practically, non-discrimination refers to the fact that the employee does not only mean a set of duties, in principle it is necessary to protect his dignity, an aspect that allows the finding of a relationship between the protection of dignity and discrimination, or an inequality of treatment directly affects the rights and opportunities of employees.

Thus, the existence of equality determines the exclusion of any differentiation between employees, of course through the recognition of prohibited criteria, regardless of the field analyzed. In this sense, the principle of equality introduced the paradigm shift in the case of natural inequalities of persons, introducing norms for balancing potential differences.

In conclusion, we can say that the regulation of inequality was necessary as a way of limiting arbitrary conduct, because employers had subjective conduct and based on criteria that were not related to an objective manner. Practically, although at the beginning criteria belonging to the hard core of discrimination were imposed, necessary to cancel the privileges found in the organization of societies in classes, such as ethnic origin, beliefs or nationality, these were later supplemented with those relating to sex, disabilities, language or sexual orientation.

In these conditions, we can appreciate that a paradigm shift took place by recognizing the principle of equality in discrimination, as a universal natural right, which did not mean immobility, later the concept of differential treatment being enriched by readapting the respective legislation.

Thus, recognizing the principle of equality, but also the need to apply it, meant explaining the role of universal institutions such as the United Nations, for example by issuing the International Labor Organization's Convention on Discrimination and the International Convention on the Elimination of All Forms of Discrimination of 1965.

Regarding the provisions of Convention No. 100 of 6 June 1951 on equal remuneration, the principle of remuneration for work of equal value was imposed by the fundamental principle of equality, which led to the issuance of the European Convention on Human Rights at the European level which through Protocol No. 12 imposed the extension of the matter to any rights susceptible to being exposed to discrimination.

Later, through the European Social Charter was transferred to issues regarding free access to job offers, vocational training, promotion, as well as protection in the event of illegal dismissals.

Subsequently, there was an expansion of the subject of discrimination from the criterion of gender equality on ethnic and racial origin, religious beliefs, sex, age or disability (Dima, 2012, p.129), especially through the Treaty of Amsterdam, initially the Treaty on European Union, these documents containing references to human dignity, freedom and democracy.

Thus, at the level of the European Union, the rights contained in the Charter of Fundamental Rights of the European Union have been recognized of December 7, 2000, which prohibited discrimination based on sex, race, color, ethnic origin, genetic characteristics, language, religion, political or other beliefs, minority, wealth, age, disability or sexual orientation, in employment, the Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms, provided that fundamental rights are considered to be general principles of Union law.

On the other hand, we can say that secondary European law has been responsible for the expansion of regulations on non-discrimination in employment relationships, especially through directives in the matter, namely Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin on the implementation of the principle of equal treatment (Popescu,2014,p.96) regardless of racial or ethnic origin, the Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation and Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

Thus, the European directives on non-discrimination were based on the prohibition of acts of discrimination, both direct and indirect, in the sense of making full use of the qualities of employees in employment relationships (Barret , 2003, p.120).

In another form, the right to work is also contained in Article 23 of the Universal Declaration of Human Rights, with reference to the free choice of work, but also in

Article 15 of the Charter of Fundamental Rights of the European Union, including equality of workers in working conditions for equivalent professional qualities, without this determining the limitation of other individual freedoms, for example that of conscience, thus achieving a balance between those interests.

Thus analyzing the principle of non-differentiated treatment, non-discrimination acquires a complementary attribution of a regime of protection of fundamental natural rights, and at the European level it determined the evolution of the principle of non-discrimination within legal employment relationships, with the aim of ensuring professional protection and recognizing equal opportunities. Thus, the right of employees at the workplace to benefit from (Pelissier, Auzero, Dockes, 2010, p. 174) of all their fundamental rights and freedoms, resulting from the effects of democratic systems that required equality and freedom of employees with respect to the conditions of the job offer, with contrary conventions being prohibited.

In the same sense, the principle of non-discrimination is also found within the provisions of certain programmatic acts, for example the 1998 Declaration of the International Labor Organization, the Universal Declaration of Human Rights, the International Covenants on Civil Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the UNESCO Declaration on Race and Racial Prejudice, the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, as well as the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities.

At European level, we consider the European Declaration of Human Rights of 1968, the Treaty establishing the European Community, the Treaty of Rome, the Treaties of Maastricht and Amsterdam, the European Convention on Human Rights or the Charter of Fundamental Rights of the European Union. In the same sense, we refer to the provisions of Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation and of Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

In conclusion, the affirmation of the principle of non-discrimination was related to the recognized protection of the right to work, the exclusion of prejudices against disadvantaged persons, as well as to the standards of conduct of employers.

The concept of positive discrimination

Regarding positive discrimination measures, affirmative measures, these impose state or regional strategies, which aim to compensate for the traditional disadvantages of members of minorities considered vulnerable, subject to the constant discriminatory conduct of employers.

Practically, the long-standing manner of discrimination did not allow minorities a regime of social affirmation, and if discrimination ceased, these people continued to feel the effects, or the restoration of real equality of opportunity meant the adoption by the state of measures of favor and compensation for these shortcomings.

Thus, the concept of positive discrimination was initially issued in India, which operated according to the caste system, and later promoted in the United States of America, being found within the movements for racial equality as a mechanism of preferential treatment granted to disadvantaged groups and exposed to arbitrary conduct.

Historically, these mechanisms aimed at obtaining compensation for acts of discrimination, seen as traditional in the past, and although positive discrimination was not imposed in primary European law, the form was subsequently identified in secondary law through European directives. Thus, the provisions of Article 7 of Directive 2000/78/EC required the guarantee of the principle of equal treatment (Popescu, 2014, p.96), allowing Member States to maintain national measures to prevent or compensate for possible disadvantages, in particular for minority groups.

Thus, the unlimited permission granted to Member States on positive discrimination as a distinct policy was assumed, provided that it was not based on stereotypes such as those targeting the natural incapacity of women. Thus, the prohibition of night work only in the case of female employees as a form of positive discrimination became questionable on the grounds that night work affected them more than other employees, because they could more easily become victims of criminal activities when leaving the shift, the measure actually implying another form of discrimination against women, perpetuating the discrimination itself.

It can thus be demonstrated that not every protective measure can be defined as falling within the scope of positive discrimination in legal employment relationships, but there are exceptions. Thus, maternity protection does not include the derogation from non-discrimination on the basis of gender, especially with regard to the status of women, because this does not represent a manifestation of stereotypes related to the experience of women mothers with children, compared to that of men.

In the same sense, positive discrimination is possible when considering the real underrepresentation of certain categories of personnel, if they could currently be discriminated against. In this regard, we have in mind permitted situations of accepting the regulation of specific norms on non-discrimination that aim to introduce advantages only for the employment of women or for their promotion, but only under the conditions of proving qualifications similar to those of men and only if they are underrepresented in certain fields of activity, compared to men.

On the other hand, the need to accept additional advantages granted to women must not be unlimited, especially with the affirmation and acceptance of the existence of a competition regime, otherwise becoming an illegal form of access to a legal employment relationship not conditioned by the employee's specialization. Under these conditions, it is necessary to maintain an objective form of assessment of the skills of candidates for promotion, which will also guarantee equality between female and male employees, thus limiting the priorities unjustifiably given to the female sex as underrepresented.

Although the concept of positive discrimination includes regulations of favor, obviously contrary to maintaining the principle of equal treatment of participants in legal employment relationships, it is nevertheless justified by the purpose of protecting certain categories of persons considered disadvantaged compared to the situation of the majority.

It can thus be stated that the purpose of maintaining legal norms of favor is related to allowing these disadvantaged categories to have a set of measures and advantages to those granted to other persons, even if these are additional, given the need to introduce an equal degree of access to fundamental rights and freedoms, in application of the recognition of the principle of non-discrimination (Roș, 2017, p.37).

Forms of discrimination

Positive discrimination measures, considered to be affirmative measures, involve actions found at state or regional level with the role of compensating for disadvantages, usually traditional, related to members of minorities considered vulnerable, related to impermissible conduct and inequality (Preduț, 2016, p.33) treatment, especially since through its implications, discrimination arising in court cases can lead to judicial errors (Marinescu. 2022, p. 116).

Basically, a long-standing discriminatory conduct through various forms (Dimitriu, 2016, p.342), such as harassment (Sâmboan, 2017, p.282), determined by the existence of historical disadvantages, made it difficult for these people to assert their social or other rights, with effects being felt even when discrimination ceased. The restoration of a regime of equal treatment meant the adoption at state level of measures to protect or even favor these people, of a compensatory nature.

Initially appearing in India to eliminate castes, the concept of positive discrimination was necessary for actions related to equal opportunities, as a policy to protect disadvantaged groups exposed to arbitrary conduct, as mechanisms to compensate for discriminatory treatments.

Subsequently, the definition of the concept of discrimination evolved (Dima, 2012, p. 130), positive discrimination being the subject of European directives on the subject, although the primary European law of the treaties did not provide for this form of protection, according to the provisions of Article 7 of Directive No. 2000/78/EC guaranteeing the principle of equal treatment (Popescu, 2014, p.96) allowing Member States to maintain or introduce special measures to prevent or compensate for disadvantages experienced by members of vulnerable groups, regardless of the protected criteria.

We can see at European level a right granted to Member States in terms of eliminating unequal treatment, in the form of an exception to positive discrimination, but not based on certain stereotypes. In this regard, an exceptional level of protection regime, such as the prohibition of employees of a certain gender from performing night work as a form of positive discrimination, must not indirectly mask a form of positive discrimination, based on the general historical consideration that that protected gender is inferior to the majority, there are voices that claim that positive discrimination becomes a potential mechanism for perpetuating discrimination itself.

As a result, not every protection regime will represent a mechanism in the field of positive discrimination, for example a gender-based protection regime not representing a derogation from non-discrimination in the status of women, provided that it does not refer to a stereotype regarding the indissoluble mother-child bond compared to the other gender. However, positive discrimination produces an effect in the case of under-representation of a gender in certain occupations, if it has a potential to be discriminated against, aspects usually encountered in the case of the introduction of specific rules that induce advantages in employment or promotion, in conditions of under-representation in certain fields of activity, without thereby granting unlimited and unconditional additional advantages, in application of the principle of non-discrimination (Roș, 2017, p.37) regardless of form (Muscalu, 2015, p.17).

Community healthcare

The establishment of integrated community centers refers to the provision of services to persons or groups considered vulnerable, according to their medical needs, through specialized personnel consisting of at least one community nurse and one social worker, employed with an individual employment contract for an indefinite period.

As for community healthcare, this involves analyzing the medical and social needs of vulnerable groups in the respective local public administration units, in the form of a set of health services needed especially in terms of prevention.

The purpose of community healthcare is related to improving the health status of the respective community, without discrimination based on socioeconomic criteria or level of education of individuals, given that local public administration authorities have obligations in this regard. Thus, the provision of healthcare services is primarily directed at persons from medically vulnerable groups, with the non-discriminatory application of economic or social criteria.

As for the community healthcare staff, they collaborate with the family doctors' offices, the public social welfare service and the social, educational and health service providers, in pursuit of specific objectives. In this regard, the need to provide medical services aims at the providers' objectives, while respecting the rules of ethics and confidentiality in the exercise of the profession, related to elements aimed at:

a. active identification of medico-social problems in the community, with reference to people from vulnerable groups;

b. achieving access to health and social services for people from groups considered vulnerable;

c. promoting health education, in order to adopt a healthy lifestyle;

d. implementing public health programs, with reference to people from groups considered vulnerable, within the limits of the professional skills of the staff in integrated community centers.

As a result, according to art. 6 of GEO no. 18/2017 regarding community healthcare, in order to achieve the above objectives, community healthcare determines the imposition of specific duties on medical personnel, respectively:

a. identification of people belonging to the category of vulnerable groups, based on medical, social or poverty criteria, with the application of health risk factors, for the purpose of assessing the need;

b. implementing actions necessary to promote and protect health, but also aiming at the access of people from vulnerable groups to health services and the approach to a healthy lifestyle;

c. providing primary and secondary prevention services to members belonging to groups considered medically or socially vulnerable;

d. participating in the implementation of national health programs, aimed at prophylactic medical actions and reporting cases of communicable diseases;

e. ensuring access to medical services for members belonging to groups considered vulnerable, by involving them in obtaining health insurance status;

g. actively monitoring health status, through home visits, but also monitoring the application of recommended therapeutic measures;

h. monitoring, respectively active surveillance of persons in the special registry, such as users of psychotropic substances or those registered in the special registry registers;

k. medical and social counseling activities, as well as ensuring and monitoring access of people belonging to groups considered vulnerable to the respective services;

o. carrying out joint actions with social services at the local or county level, with reference to possible social problems, but also collaborating with non-governmental organizations with responsibilities in the field of medically, economically or socially vulnerable persons or groups.

From the definition given by the legislator it follows that a medically vulnerable person is one who is at risk of health impairment, as a result of the presence of biological, social, economic or behavioral determinants, related to certain personal characteristics. In this regard, people belonging to socially vulnerable groups are those who are at risk of losing the ability to meet daily living needs, being in a situation of illness, poverty, disability, drug or alcohol consumption, according to the provisions of art. 6 letter p of the Social Assistance Law no. 292/2011, with subsequent amendments.

Approval of the integrated community center

The establishment of an integrated community center requires the submission of initial approval documentation, in compliance with certain requirements regarding location and functional circuits.

Thus, within the territorial administrative authorities, both individual medical offices, within buildings intended for communal dispensaries, based on concession contracts declared upon obtaining the sanitary operating authorization, and integrated community centers can operate.

Given that the approval requirements for such medical structures are subject to approval by the county public health departments, the decisions issued by local councils approving the change of destination of the buildings from the communal dispensary, where the individual medical offices operated, into an integrated community center are not legal without also having the approval of the Ministry of Health in this regard, thus violating the provisions of art.1 paragraph 2 of O.G. no. 70/2002 on the administration of public health units of county and local interest, namely "the change of destination or alienation of the material base of public health units can be done only with the approval of the Ministry of Health, and the acts of alienation or change of destination of the material base of public health units, without the approval of the Ministry of Health, are null and void.

In this sense, any address for obtaining the operating permit of an integrated community center will be related to the elimination of non-conformities, in the sense of the unclear information regarding the real area of the building in which the medical activity will be carried out, in terms of the number of rooms and the total area. Thus, if according to a local council decision issued by the local authority, the destination of the building was a communal dispensary, being subsequently changed by another local council decision to an integrated community center without complying with Law no. 50/1991 on the authorization of the execution of construction works (issuance of the urban planning certificate and based on the permits and agreements) nor with the provisions of art. 1 paragraph 2 of O.G. no. 70/2002 on the administration of public health units of county and local interest which required the approval of the Ministry of Health as

mandatory, the requirement regarding the functional and organizational circuits necessary for the permit is not met.

Thus, in the situation where there is excess space for the activity of the individual medical office at the level of a building, subject to the issuance of an urban planning certificate and with the approval of the Ministry of Health, a partial change of destination of the communal medical dispensary into an integrated community center can be achieved, provided that the medical offices provided for in GD no.324/2019 for the approval of the Methodological Norms regarding the organization, operation and financing of community healthcare activity, operates complementary to such a center, not replacing its activities and not having activities that overlap with its activity.

Thus, regarding the approval of the center, non-conformities are considered:

- the social counseling or school mediation office, with a health group and the dental office must respect distinct functional circuits in accordance with the GO 124/1998 regarding the organization and operation of medical offices, providing a waiting room, separate toilets for patients and staff, a changing room and space for storing the resulting waste;

- the treatment room, namely the medical office, personal office, social counseling office with storage space and medical counseling office or group meetings must comply with the functional circuit and organizational structure in accordance with WHO no.1338/2007 for the approval of the Norms regarding the functional structure of medical and dental offices and OG 124/1998, ensuring separate spaces for consultations and treatments, changing rooms and space for storing the resulting waste, the circuit affecting the activity of the family medicine office;

- the medical office for the family doctor must respect the functional circuit of a medical office and its organizational structure, in accordance with WHO no. 1338/2007 and OG no. 124/1998, ensuring a waiting room, treatment rooms, separate sanitary groups for patients, a personal locker room and no space for storing waste resulting from medical activities.

Consequently, proof of compliance with the provisions for the organizational and functional circuits of the community medical center and the individual medical practice must be provided.

Regarding obtaining the approval for the establishment of an integrated community center, we specify that, GEO no.18/2017 on community healthcare, HG nr. 324/2019 for the approval of the methodological norms regarding the organization, operation and financing of community healthcare activity and WHO 2931/2021 on the approval of the Integrated Community Centers Manual provide that prior to starting the establishment procedure, the administrative-territorial units will request the county public health department to analyze the conditions of establishment.

For approval, it becomes necessary to complete an evaluation form for the establishment of the center, as well as a request for the evaluation of this space, in order to analyze the functional and organizational circuits for the proposed functions.

As a result, in order to organize an integrated community center, according to art..23 of GD no. 324/2019, it must include an office for the center's staff, a room for individual medical counseling, one for social counseling, another for school counseling/mediation activities, a space with medical consultation equipment, a storage space, but also separate sanitary groups for staff and beneficiaries.

Conclusions

The objective guarantee of equal opportunities has determined the introduction of specific measures to protect persons found in the category of members of groups considered vulnerable.

In this regard, we can state that the notion of positive discrimination relates primarily to the imposition of actions generally necessary to promote the principle of non-differentiated treatment of persons, in a regime of protection of the interests of those in a position considered medically, socially or economically disadvantageous, compared to the situation of the majority.

As a result, in the scientific research carried out, we have proven that the introduction into national legislation of legal provisions for the specific protection of persons who are considered disadvantaged or members of groups considered vulnerable, guarantees full access to certain rights and freedoms.

On the other hand, we argued in the article that the beneficiaries of community healthcare services are mainly persons considered medically or socially vulnerable, including Roma, having an economic level below the poverty threshold, belonging to single-parent families, unemployed, pregnant or disabled, with a low level of education, chronic or terminal illnesses, with a high risk of social exclusion, being the expression of the application of measures to protect minorities.

References

Barret, G. (2003). *Re-examing the concept and principle of equality in EC law*, Yearbook of European Law, vol. 22, 120.

Cernat, C. (2014). *Dreptul muncii. Ediția a V-a revazută și adaugită*, Universul Juridic Publishing House, Bucharest.

Dimitriu, R. (2016). *Dreptul muncii. Anxietăți ale prezentului*, Rentrop Straton Publishing House, Bucharest.

Dima, L. (2012). *Relații de muncă și industriale în Uniunea Europeană* , C.H. Beck Publishing House, Bucharest.

Muscalu, L. M. (2015). *Discriminarea în relațiile de muncă*, Hamangiu Publishing House, Bucharest.

Marinescu, D.-M. (2022). *Good delivery of justice. Judicial error*, article published in published in the Annals of Titu Maiorescu University, Law Series, year 2022, 107-116.

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

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

Preduț, M. C. (2016). *Codul muncii - comentat*, Universul Juridic Publishing House, Bucharest.

Roș N. (2017). *Dreptul muncii. Curs universitar*, Pro Universitaria Publishing House, Bucharest.

Sâmboan, C. (2017). *Demnitatea în muncă*, C. H. Beck Publishing House, Bucharest, 2017.

Dima, L. (2012). *Relații de muncă și industriale în Uniunea Europeană* [*Labour and Industrial Relations in the European Union*]. C. H. Beck.

Dimitriu, R. (2016). *Dreptul muncii. Anxietăți ale prezentului* [*Labour Law. Anxieties of the Present*]. Rentrop & Straton.

Marinescu, D. M. (2019). The discrimination – a risk factor for social security in the European Union. In *Proceedings of the 15th International Scientific Conference Strategies XXI: Strategic Changes in Security and International Relations* (Vol. XV, Part 1, pp. 59–68). Bucharest.

Muscalu, L. M. (2015). *Discriminarea în relațiile de muncă* [*Discrimination in Labour Relations*]. Hamangiu.

Popescu, R. R. (2014). *Dreptul muncii* [*Labour Law*]. Universul Juridic.

Preduț, M. C. (2016). *Codul muncii – comentat* [*The Labour Code – Commented*]. Universul Juridic.

Roș, N. (2017). *Dreptul muncii. Curs universitar* [*Labour Law. University Course*]. Pro Universitaria.

Sâmboan, C. (2017). *Demnitatea în muncă* [*Dignity at Work*]. C. H. Beck.