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EUROPEAN CONVENTION ON FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS

- DISCRIMINATION WITH SPECIAL EMPHASIS ON DISCRIMINATION AGAINST WOMEN-

ABSTRACT

This paper intends to present the discrimination, types of discrimination and in particular the discrimination against women. Despite the fact that we live in the XXI century and the fact that human society has made great progress and has advanced immensely (walking in great steps ahead), unfortunately we cannot say that discrimination in these modern times it's a past thing. Unfortunately, discrimination, especially discrimination against women (female) is present, in some places more and others less, somewhere in some forms and other vital aspects depending on the region or country where they live or operate. Through a particular case, we tried to touch the subject in its essence, to reflect the sufferings of a female gender person, who has experienced all of the sufferings and discrimination for the only fact of being a female. In addition, we have touched upon local aspects of discrimination, the legal basis, in which there is positivism and good movements. Discrimination is the current theme at any given time, in every society, state, or even community. The main criterion of this progress is the position and the role of women in a society as its advancement is largely dependent on her role, education, and the reconciliation of her role in it. Thus, we analyzed this issue in terms of the European Convention on Human Rights and the European Court of Human Rights.

Keywords: discrimination, equality, gender, gender equality, etc.

INTRODUCTION

1. Discrimination in general

It is often easier to become outraged by injustice half a world away than by oppression and discrimination half a block from home. Try to think of a person whom you know and who

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throughout his/her life has not been subject to any form of discrimination. You will see that you will not be able to find any.

In the broadest sense, human rights are considered as rights that pertain to every individual. As a consequence of being a human, regardless of legal acts, affirming the existence of human rights, we say that every human being by the fact that he or she is such then is entitled to something. Appreciating the unique value of every human being from the international community leads not only towards those efforts to eliminate destructive elements from the individual but also to create conditions which will enable to him or her to develop and prosper. The fundamental rights and freedoms are immanent rights that exist irrespective of the will of an individual or group of people. They neither earned nor donated through any action. They may be unrecognized or even not respected but nevertheless they pertain to an individual. The fundamental rights and freedoms are not bound to duly adopt legal norms, but the adoption of appropriate norms aims to protect human rights and define the ways of their realization.

The legal norms of human rights do not define the rights and fundamental freedoms, they only guarantee them. Designated actions or their waiver pertain to a human and it is primarily based on the particularity of being a human being. This particularity is also the base in determination of the dignity of every human being. Every human being itself is regarded as a purpose, thus no one should be regarded merely as means even if such means would tend to be very useful to the society or the person her/himself.

Equality is another important element of the human rights concept, all human beings are born free and equal in dignity and rights.

The principle that all human beings have equal rights and should be treated equally is the base of the human rights understanding that stems from every humans equal dignity. However, this natural right of equality, either in the past or at present, was never offered to human beings fully.

Discrimination, since the beginning of the humankind in one form or another it has been a problem. Discrimination occurred everywhere, towards authoritative persons and minorities, against Blacks, Jews, against the Aborigines of Australia, Roma and various African tribes, migrant workers, refugees and asylum seekers. Discrimination occurs against children, women who treated as less valuable human beings, people infected with HIV-AIDS, against those with mental and psychical disabilities, discrimination against workers, gender discrimination in employment, discrimination against women in cases of unemployment assistance, and many more cases of discrimination.

Discrimination appears in multiple forms that it can be assumed that everyone in certain form and quantity has been affected by discrimination. Discrimination is an inhuman, humiliating and degrading act that is present since the creation of humanity. In overall, discrimination is considered any form of distinction, exclusion, restriction or certain reference for the purpose of denial or refusal of equal rights and protection, hence it constitutes an impact in the principle of equality

and corruption of human dignity. Depending on the matter in question there exists discrimination based on race, belief, nation, color, gender, religion, sexual orientation and so forth.

2. Discrimination of women

Gender based discrimination is common, despite of the progress made in this regard, in many countries there are systems which among others deny women the right to representation of matrimonial property - spouses, the right of inheritance on equal terms with men and the right to work and travel without the husband's permission. Women are also subjected to violence and abuse practices which continue with the same momentum in many countries and with this they usually suffer twofold discrimination as to race or their origin and because they are women. In Asia (as well as in many other countries of the world) most parents prefer to have boys rather than girls. According to the 2011 UN report, the population in this part of the world had about 134 million fewer women because of abortion, infanticide and negligence.

Education. Worldwide, women and girls make up two-thirds of people with less than four grades of school.

Sexual harassment. Over 2.6 billion women live in countries where rape by the husband still not considered a crime.

Health. In the countries in development, about every second minute a woman dies from complications during pregnancy or childbirth because they do not receive proper medical care.

Property rights. Although women cultivate more than half of the products around the world, in many countries they have no legal rights to own a property or inherit land.

The woman is born free and enjoys equal rights with men in every aspect. Therefore, discrimination against women shall mean any distinction, exclusion or restriction based on sex which has the effect or purpose to compromise or destroy the recognition of women's position, regardless of her position in marriage based on equality of men and women, fundamental human rights and freedoms in the political, economic, social, cultural, civil or any other field.

Large portions of the world's population are routinely subject to torture, starvation, terrorism, humiliation, mutilation and even murder, merely because they are females.

Miriam's case

Miriam is 36 years old and the mother of six children. She grew up in a village away from urban centers. She stopped schooling after her second grade. Her parents were poor, and the school was four (4) kilometers away from the village. Her father believed that educating a girl was waste of time and efforts as women's destiny is marriage and not working for survival.

When she was 12, Miriam was circumcised according to local custom. At 16, she was married to a man who was around 50 years of age. Her father received a substantial amount of money as dowry. The very next year, she gave birth to a baby boy. The baby was stillborn. The health center was 10 kilometers away, and anyway, did not attend deliveries. Miriam believed that the baby was born dead because of the repeated beatings she had received from her husband all through her pregnancy. Nevertheless, her family and many others from the village blamed her for the miscarriage. Miriam's husband considered it his right to have sex with her, and regularly forced himself on her. Miriam did not want to get pregnant again and again, but had little choice in the matter. She visited healers and received various potions of herbs and kept these charms that were unsuccessful. She had no time to go to the health clinic, and when she went sometimes because her children were sick, she was hesitant to broach the subject of contraception with the nurses. The nurse, although she appeared to understand Miriam's local language she still preferred to talk in the predominantly language in use in the capital among the educated class of persons. She intimidated Miriam. Her life with her husband was a long saga of violence, poverty and famine. Miriam struggled to keep body and soul together through her several pregnancies and raising her children. She had to farm her small plot of land to feed the children, because her husband never gave her enough money. She approached to her parents and to a missionary for several times for help. Everyone told her to her to listen to her husband and reminding her obligations for the husband and family.

One day her husband accused Miriam of 'carrying on' with a man in the village. He had seen Miriam laughing and chatting with the man, he claimed. When she answered back, he hit her repeatedly calling her a whore and promising that he is going to avenge on her this humiliation. Miriam was badly injured; she thought she had a rib fracture. For weeks she could not move out of the house. But she did not have any money to hire transport to go to the health center. No one at the village helped her although there were some that thought her husband had overreacted. The woman is her husband's business. Unable to go to the market to trade or cultivate her garden, she and her children starved almost.

Miriam knew there would be violence in the future, she was terrified for her and her children's life. She dreamt of death and knew she had to leave. As soon as she started walking she took her two youngest children and left the village. She now lives in a strange village, a refugee in her own country, living in fear of being found by her husband and brought back home...

Wonder how many more women on the word share the same or a similar destiny such as Miriam.

Women mostly suffer from poverty; they receive less health care, education and food than men. Gender based discrimination flourished despite of the trends of equality of human rights and human rights instrument. Discrimination against women is defined as any distinction, exclusion or limitation based on gender that aims to amend or annul the recognition, enjoyment by women regardless of marital status, based on equality between husband and wife, fundamental human rights and freedom in political, economic, social, cultural, civil or any other field.

Despite the changes that have followed the development of women today, not only in Kosovo, but also in the world, yet there is a gap between capacity, needs and the resources available to them for education, employment, involvement in decision making. The low level of representation of women in decision making is a matter affected by many factors, sociocultural, economic, structural, social, etc.

The first country in the world which he has allowed women the right to vote was New Zealand in 1893. Today, after nearly 100 years after gaining the right to vote and the right to choose, women in Kosovo have a level of low representation in decision-making level.

Gender equality is not a women's issue as it is characterized, but is a matter of equality between groups of men and women and equal opportunities between them in all walks of life ranging from the directing the family to the government of a state. It is an integration process aimed at the development of society, the level of fundamental human rights and freedoms in social level, at the level of civil and political rights given equal opportunity to exercise the right to elect and be elected.

3. Inclusion of discrimination in domestic legislation and beyond as well as some insights in this regard

All persons are equal before the law and entitled to equal protection without discrimination. In this respect, the law shall prohibit any discrimination and guarantee effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, or any other condition.

The Constitution of the Republic of Kosovo as the first constitutional act of Kosovo as an independent and sovereign state, it contains the principles and general rules that guarantee all fundamental rights and freedoms- Chapter II of the CRK. The purpose of the constitutional guarantee of fundamental rights and freedoms is the protection of human dignity, freedom and equality. In addition to these rights guaranteed by the constitution, there is also the law in force and application, the Law on Gender Equality (No. 2004/3).

However, despite the fact that these rights are guaranteed by the constitution, gender differences in the workplace can be used as an indicator of gender equality, because women are not treated fairly in the labor market and face indirect barriers such as stereotypes and gender based discrimination. Women still face discrimination in both forms of horizontal and vertical segregation as majority of them continue to be employed in the sectors where women traditionally work, such as health and education. An important measure to improve the situation of women is the existence of good quality jobs for women in managerial or senior management levels. A study done in Harvard, has shown that women's professional yields are better than those of male colleagues, because the only banks that were not in credit crisis were those that had women in leadership, explained the financial specialist Heather McGregor in the bank / City / London,

namely that women are more rational with money, less emotional and are more inclined to savings. In the terminology of the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Article 11 of the Convention specifies that states shall take all appropriate measures to eliminate discrimination against women in the field of employment.

While in our country, despite of specifications and regulations in regard to legal equality in the field of employment, yet again the women's right employed in the private sector are not respected although that is regulated by the Law on Labor No. 03/L-2112 – Maternity Leave from Article 49. Women employed in the private sector do not enjoy this entitlement as this legal provision does not apply to private employers as mothers instantly after giving birth must report to their workplace or otherwise be dismissed. Private sector employees reported a high percentage of gender based discrimination at the workplace in 30.7% compared to 16.7 % in the public sector. From numerous surveys it is perceived that maternity leave conditions the carrier development and also during pregnancy the quality of work lowers.

The percentage of women employed across the years, from 2009 up to date did not show any increase, thus carrier advancement for women after maternity leave are slim, considering that only 27% of all employees in Kosovo are women, the gender proportion in employment is in danger to expand. Therefore, maternity leave in a modest duration will increase the possibility of women to take part in the labor market significantly where there is paid leave. For instance, the German maternity leave reform, called ELTERNGEL, which replaced 67% of incomes up fourteen (14) months after childbirth has revealed a significant increase in the probability of employed mothers at the end of this period. Thus, maternity leave is the essence of a process that impacts and determines women's will to return and carry out the work successfully.

4. European Convention on Human Rights

The European Convention on Human Rights (ECHR) it is an international treaty based on which the member states of the Council of Europe pledge to ensure fundamental rights not only to their citizens but to any other individual under their jurisdiction.

Guarantees and prohibitions- The convention protects in particular the following:

1. Right to life
2. Right to a fair trial
3. Right to respect for private and family life
4. Freedom of thought, conscience and religion, and
5. Property right.

The convention prohibits:

1. Torture and inhumane or humiliation treatment,

2. Slavery and forced labor,
3. Unlawful and arbitrary detention, and
4. Discrimination in enjoyment of the rights and freedoms stipulated in the Convention.

The convention was signed in Rome on 4 November 1950 and became effective in 1953.

5. Few words about the European Court of Human Rights

The European Court of Human Rights is an international court established in 1959. This court takes decisions on individual or interstate application that allege violations of civil and political rights set out in the European Convention on Human Rights.

The court is seated in Strasbourg - France from where it monitors the respecting of human rights of 800 million Europeans in the 47 member states of the Council of Europe that have ratified the convention.

The number of judges is equal to the number of member states. At the beginning of the establishment of this court there were only 7 countries, and today it is comprised in total of 47 countries, and it serves as the key instrument for the protection of human rights. Judges are elected for a term of 6 years, they may be reelected, but the mandates of half of the judges elected at the first election shall expire at the end of three years. In every case there participates also a local judge to facilitate the understanding of domestic legislation. Every appointed judge serves in his/her personal capacity.

The requirements that must be met to address an issue to the Strasbourg Court are:

- Violation of a right protected by the ECHR and its protocols.
- Applicant (s) is (are) the victim of the violation.
- Complaint to be made within the time limit of less than six months after exhaustion of domestic remedies.

If the case is considered admissible, the chamber of 7 judges decides on the merits of the case. Their judgment, if the case is considered particularly important or present any innovation to existing jurisdiction, is final, where the grand chamber of 17 (seventeen) judge considers the application.

The judgments are binding and may also provide compensation for damages. Enforcement of judgments is the task of the Committee of Ministers, which supervises the enforcement of court judgments. But the main problem of this court is the large number of complaints, which has grown more recent years resulting in overloading of the system.

6. Conclusion

Discrimination is one of most important areas and the most dynamic in jurisprudence because unlike many other treaties on Human Rights, the Convention does not prohibit discrimination in the exercise - the enjoyment of other rights guaranteed by the treaty in question but it renders the freedom from discrimination as a human right in itself. This is one reason why the procedure under the Optional Protocol has remained attractive to persons within the jurisdiction of the European Convention of Human Rights, according to which the infringement for non-discrimination can be ascertained only when the discrimination is carried out in connection with the enjoyment of any of right protected by this Convention.

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