DISCRIMINATION AND LABOUR FREEDOM IN THE FIELD OF EMPLOYMENT RELATIONS

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Abstract

The concept of social freedom at work, although frequently used in the labour sphere, is not exempted from different interpretations. The concept includes some measures that are established by law to maintain and ensure a stable environment as emphasized by contemporary requirements.

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The freedom to choose one's profession and the freedom to choose one's job are part of the content of the right to work. These are fundamental freedoms, and they are, on a more general level, expressions of the freedom of the person, as a natural right. The Constitution, by enshrining these freedoms, gives every individual the opportunity to choose his profession and, of course, his job**.** Such choices are generally determined by skills, desires, certain economic coordinates and, of course, by the will of those concerned. The problem is much more complex and complicated, both in theory and in practice, more distinctly in the medical system.

Fundamental human rights and freedoms are not only a reality of a progressive and democratic society, but also a goal of all human activity. That is why it is true that human rights are neither a new morality nor a secular religion, they are more than a language common to all people.

The guarantee and respect of human rights become essential conditions for the construction of the rule of law, for the recognition of the Republic of Moldova as a democratic state at international level (Constitution of the Republic of Moldova, 1994, Art. 4). These fundamental ideas allow us to state that individuals need a system of legal guarantees for the state to ensure and respect his rights, which is achieved through the institution of human rights.

It is compulsory for states to prevent human rights violations and to repress and repair them. The nature of the obligation to prevent human rights violations is treated in doctrine and judicial practice with great caution, because a broader understanding of this obligation would lead to the responsibility of the state for the "risk" of violating the guaranteed right. This fact can be seen from the very first article of the Constitution of the Republic of Moldova (Constitution of the Republic of Moldova, 1994, Art. 1, para. 3) which states that the Republic of Moldova is a democratic state based on the rule of law, in which human dignity, rights and freedoms, the free development of the human personality, justice and political pluralism represent supreme values and are guaranteed. Democracy in the Republic of Moldova is exercised under the conditions of political pluralism, which is incompatible with dictatorship and totalitarianism, and no ideology can be established as the official ideology of the state. In accordance with the new principles regarding economic relations in society, the Constitution ensures the right to property and provides that property cannot be used to the detriment of human rights, freedoms and dignity.

The right to work and the right to labour protection (Constitution of the Republic of Moldova, 1994, Art. 43, para. 1) can be regarded as fundamental economic rights because it is precisely these rights that make it possible for the individual, entering into legal relations with the employer on the basis of the provision of certain services for which he is remunerated, in order to increase his economic and social well-being. Here, too, the right to work can be seen as a constituent element of human dignity, as contributing to the possibility of obtaining

compensation, which leads to the establishment of an adequate standard of living. In this context, it should be noted that this right does not imply a guarantee of employment.

Therefore, the sector of constitutional law relations in the field of labor is quite vast and multilateral, which is explained by the historical premises of the emergence and development of labor legislation and the formation of the autonomous branch of labor law; by the purposes and tasks that the state proposes by achieving the legal regulation of labor relations, ensuring the balance between the interests of employees and employers in the field of labor, establishing state guarantees of the right to work and human freedoms, creating favorable working conditions, protecting the rights and interests of employees and employers; by the need to ensure social equity through the participation in conditions of equal rights of employees and employers in the distribution of the social product (result of their work) and to ensure by legal means the public peace and social harmony, which can be achieved by implementing the principles of social partnership, stipulated in the norms of the labour legislation.

In the Republic of Moldova, it is considered that laws that would suppress or diminish the fundamental rights and freedoms of man and citizen cannot be adopted (Constitution of the Republic of Moldova, 1994, Art. 54, para. 1) and that every person has the right to effective satisfaction from the competent courts against acts that violate his rights, freedoms and legitimate interests. We cannot fail to list the situations when the exercise of rights and freedoms could be subject to certain restrictions, especially within the medical system in which professional freedom includes the freedom of prescriptions and medical acts where the specialist considers them necessary within the limits of the approved standards. The right to independent professional judgment offers health professionals the opportunity to make decisions independently, without any undue influence, for the benefit of the patient. This right is not directly stipulated in international law, but is found in connection with other rights, such as: the right to integrity, the right to non-discrimination and equality, the right to a fair trial, the right to reputation protection, the right to freedom of expression and information. And within the national framework, the medical profession can be exercised independently *(free practice*) or in a state medical institution. The doctor shall be guaranteed moral and professional independence (Law on the Exercise of the Medical Profession, 2005), but the doctor does not always enjoy professional independence, the freedom of prescriptions and medical acts that he considers necessary within the limits of the approved standards, and is not always responsible for the decisions taken. However, clinical recommendations and prescriptions must be based on scientific evidence. In the case of the application of new methods, the patient's interest must prevail and they can only be used after the risk-benefit balance has been assessed.

It is important to mention that medical workers must not accept that the obligations stipulated in their employment contracts affect their professional independence in making medical decisions, when the fulfillment of those obligations does not lead to the benefit of the patient (Framework Code of Ethics (Deontological) of the Medical and Pharmaceutical Worker, n.d.). Therefore, they have the right to defend themselves against the intervention of people or authorities of the public administration, in the exercise of their profession, except for cases of professional negligence and such cases do not find reflection.

In this context, we highlight discrimination, as a form of marginalization or gender, age, sexual orientation, race, ethnicity, belonging to a national minority, religion and disability, social status.

Through the specific issues addressed, the general idea that reflects is of any kind and any situation which, unfortunately, is a phenomenon present on all continents.

In the Republic of Moldova we also encounter cases of discrimination based on the reality of stereotypes, gender inequality in labor relations and unjustified vertical discrimination of employees by the employer, or horizontal discrimination by employees among themselves. Gender stereotypes and norms directly influence professional orientation and limit the range of occupations available for women and men.

The complaints encountered in practice highlight the following problems: professional discrediting, psycho-emotional intimidation and undermining of the equal treatment of employees who have an active civic position and a well-defined opinion; the refusal to reasonably accommodate the work schedule of employees with family responsibilities in the context of the effects generated by the pandemic crisis; the undermining of equal treatment in the application of employees' guarantees and rights; the undermining of equal treatment in dismissal.

The objective of this paper was to highlight and discuss the genuine problems in the field of discrimination in employment relations, and to formulate theoretical and practical conclusions on ensuring equality and the right of every person to work, which are the basis of a rule of law. We note that in many situations, stereotypes and preconceived images of employers lead to the multiplication of cases of discrimination or dismissals. The state is obliged to guarantee all citizens the freedom to choose any type of activity, free help in choosing the appropriate work activity and placement in the field of work by the specialized service.

From the above, we understand the following: under no circumstances should a distinction be made between people of different sex/gender, of different religion, etc., who have a professional training, experience and age corresponding to the work they require. The responsibility for carrying out these judicial practices on discrimination belongs to the Council for the Prevention and Elimination of Discrimination of the Republic of Moldova (Law on Ensuring Equality, 2012).

References:

Constitution of the Republic of Moldova (1994) [in Romanian].

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Law on Ensuring Equality No. 121 of 25 May 2012, Art. 12 [in Romanian].

Law on the Exercise of the Medical Profession No. 264-XVI of 27 October 2005, Art. 11; Art. 15, para. 2, lit. (e) [in Romanian].