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The Functionality of the Principle of Non-Discrimination on Grounds of Gender, Race, Religion and Sexual Orientation in the Postmodern Society

Oleg SPÎNU[1]

[1] PhD student, Doctoral School of the University of European Studies in Moldova, Chisinau, Republic of Moldova, e-mail relatiiexterne@yahoo.com

Abstract: Discrimination in the postmodern society can be caused by numerous factors and can cause effects on a multitude of categories of people, whether they are different because of their racial origins, their ethnical background, their nationality or their social status, such as those that are part of communities of Asian or African descent, Roma people, indigenous peoples, Aboriginal people and people of different castes. Discrimination can also refer to people who are perceived as being different because they have cultural, religious or traits that separate them from the majority, or they are people who face disabilities or are elderly. Sexual orientation, on the one side, or sexual preferences, on the other side, can also be causes for discrimination. Gender-based discrimination is also common, despite progress in many countries. Women are more predisposed to violent and abusive practices, and therefore often suffer from a double discrimination, that not only targets their race or origin, but also their gender, which is why feminist literature in recent years points to new acts or forms of discrimination against women. A major problem in the postmodern world is the discrimination targeted at extreme poor people, who most of the times are women and children. These particular circumstances may determine parties to seek judicial reparations and further contribute to a conceptual or social contamination, that may aggravate discriminatory tendencies in the societies where they migrate. The article aims to theoretically analyse the degree of functionality that the principle of non-discrimination based on gender, race, religion and sexual orientation has in the contemporary, postmodern, individualistic society.

Keywords: *principle of non-discrimination, discrimination on grounds of gender, racial discrimination, religious discrimination, discrimination on grounds of sexual orientation.*

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1. Introduction

The 21st century will certainly bring, until the transition to the 22nd century, major changes in mindsets, which will bring about changes in the perception of the content that the concept of discrimination bares, of the forms of discrimination and of the ways to combat it. For example, dysfunctions on diversity and gender equality have long been attributed to a patriarchal mentality, a mentality transposed into a complexity of stereotypes and prejudices. The breath of change in contemporary postmodern society was brought along by international conventions on human rights, under the general patronage of the UN and other supranational structures, which were subsequently adopted by the vast majority of states in the world. These international provisions have shaped another level of society, where each individual, regardless of gender, race or ethnicity can manifest their individuality without restrictions and can actively contribute to shaping the economic, social and political landscape of the society they belong to. Certainly in the 21st century the dynamics of change will be stronger, and the "patriarchal and traditional" mentality of societies that have not yet felt the major changes brought about by human rights movements will rally to the universal values promoted by the militants of these movements.

As for racism, it should be redefined in the contemporary postmodern society, where there is no objective reality, only facets of truth, depending on the perceptual positions of those who make statements on what is true. In postmodernity, there is no absolute, scientific, historical truth, but only ways of presenting the truth starting from the existing values in one society or another. Science and technology eliminate the temporal and territorial limits of propagating ideas and values from a group to another, while reason and logic are subjected to a globalized, technological communication, in an information society where the choice between arguments, points of view and perspectives becomes more and more difficult. Thus, the definition of racism must be extended to include racist ideologies, prejudicial attitudes, discriminatory behavior, structural arrangements and institutionalized practices that lead to racial inequality, as well as the fatalistic notion that discriminatory relationships between groups are morally and scientifically justified.

Globalization is a challenge between the perception of religion and freedom of religion, a confrontation that enabled the Church to revive the motivation for a universal understanding of ecclesiology (Zaccaroni, 2018). The entry into the twentieth century brought about a world dominated by widespread skepticism about religion, its role in the modern society and the

question of whether religion had any future in such a society. From the perspective of the modern world, the society of the future, in which class differences will be eliminated and which will give birth to the new Man, will be one in which religion will be a matter of history. Going in the same direction, Nietzsche announced in 1885 through his character, the madman in "So-Spoken Zarathustra", the death of God and the birth of the "Übermensh", and he did that in close proximity of the period when Freud's theories seemed to have given the decisive blow to what religion represented and to the beliefs of religious people. "The Future of an Illusion" (1927), the work where Freud largely presented his theory on the future and the role of religion, was ended by the author in a cynical manner, as he made programmatic claims of action, which sought to irrevocably resolve this "disease" of the modern society (Freud, 1927, pp. 226-227).

In the postmodern society, however, the issue of discrimination on grounds of religion and freedom of conscience is reinterpreted in the sense of teaching individual morality and promoting family values (Murdoch, 2007). Public life has its rules, and religion must be involved in it only through the morality of religious individuals. Hence the hostility towards the attempts of religious movements (Christian or Islamic, often labeled as fundamentalists) to bring religion into the public sphere. Also, hence the hostility of Eastern religions to the privatization of Western religiosity.

"Discrimination on the grounds of sexual orientation or gender identity includes any distinction, exclusion, restriction or preference based on sexual orientation or gender identity that, as a purpose or as an effect, leads to the annulment or impairment of equality before the law, the equal protection of the law or the recognition of certain rights, the enjoyment of or the equal exercise of all human rights and fundamental freedoms" (The Labor and Employment Law Committee et al., 2011). However, new forms of gender freedom (transsexualis, homosexualx, bi-genders, gender-fluids, gender expansives etc.), as a manifestation of different lifestyles, bring challenges to the contemporary society not only to define these new forms of expression and representations of gender identity, but also to apply the old definitions of gender discrimination (or the old mechanisms for combating it) to the new realities.

The article aims to analyze the most important trends in the postmodern society regarding discrimination based on gender, race, religion and sexual orientation. In our approach, we will combine legal theories (emphasizing the judicial practice of supranational courts in this area) with a series of social perspectives related to the relevant specialized literature and judicial practice, that will be the basis of our analysis, in order to see how the

concept of discrimination has evolved in the postmodern society and to analyze how already established and known anti-discrimination mechanisms still fit (or not) in the contemporary world.

2. Discrimination based on gender criteria

We start in our analysis from the premises that social balance can be ensured only through a gender balance in all areas of the social life. It is surprising that we are re-discussing the same problems at the beginning of the 21st century as was done at the beginning of the 20th century. More than a hundred years after the first social movements towards the emancipation of women, the issue of gender equality has not yet been resolved. The analysis of studies, reports and relevant articles in the field shows that women have demonstrated the ability to be equal to men in various domains, and yet statistics show the persistence of inequality. Sometimes equality is recognized in stages or is denied because of reasons of "discrimination and prejudice" that are expressed discreetly and veiled.

The legislative initiative on gender diversity and equality in the EU is a turning point in the key change of paradigm regarding the discrimination against women, while combating such discrimination is intended to no longer be only formal (i.e., only a declarative change). Gender equality works in two ways, in fact, there are situations when traditional conceptions that put men at a disadvantage compared to women, now left without justification, had to be changed by the practice of the courts.

In the case of Petrovic v. Austria (ECHR, 1998), the European Court of Human Rights concluded that a human rights breach had to be amended by the court rearding a decision made by the Austrian competent authorities regarding a father who requested that payment of parental leave allowance was made to him, instead of the mother. His request had been denied, though, but not because he did not comply to the conditions provided by the law of such an allowance, but only because he was a man and the Austrian legislation only allowed for women to collect that type of payment. The court accepted that the two parents took care of the child in an equal manner during the time taken into consideration for the payment of the rights that were requested. Moreover, considering that "the advancement of gender equality today is a major goal in the member states of the Council of Europe ... very important reasons would be needed for this difference in treatment to be considered compatible with the Convention" (ECHR, 1998). However, the Court noted that "the High Contracting Parties enjoy a certain margin of appreciation in assessing whether or not and to what extent differences in similar situations justify different treatment

in law. The scope of the margin of appreciation will vary depending on circumstances, its object and substance" (ECHR, 1998).

The European Convention on Human Rights provided a wide definition for the concept of "discrimination against women", which in the Court's view means any act that distincts, excludes or restricts the exercise of a human right by a person because of their gender, an act that that leads to or is made with the purpose of affecting or revoking the recognition or exercise, by women, regardless of their marital status, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or other fields, based on equality between men and women.

Gender imbalance has also generated numerous discussions over time in terms of gender discrimination (Bell, 2005). Statistics show that the number of women who have positions with great decision-making impact in large companies is lower than that of men. The interpretation of this phenomenon, at first sight, may be due to gender discrimination and stereotypes related to prioritizing the allocation of positions with a major decision-making impact to men. The stereotype we are referring to is that men would be perceived as more effective in positions with decision-making impact than women. At the same time, we deduct that this can be interpreted as a stereotype. Social stereotypes must be approached as forms of cultural expression, which use social codes, values and models to define a certain social status, as symbols used in the thinking of collective entities. Thus, it cannot be excluded that the problem of the ratio of men / women in key positions, which appeared in statistics, is not really a problem of discrimination. Thus, first of all we refer to the concept of representation in functions with decision-making impact in large institutions.

For example, in 2012, in the case of "Konstantin Markin v. Russia" (ECHR, 2012), the "Grand Chamber of the European Court of Human Rights" established that gender stereotypes cannot be used to justify different treatments for the two genders. In the 2017 case of Khamtokhu and Aksenchik v. Russia, the Court reiterated that stereotypes cannot be invoked to justify different treatment. Even if both sides disagreed on the concept of female vulnerability, the Court appears to have consciously avoided references to vulnerability in its reasoning. However, it noted that differentiation instruments sometimes only target "specific categories of women, who are particularly vulnerable (pregnant women, nursing women and mothers with young children)" or special temporary measures aimed at achieving equality.

Although gender segregation usually refers to women, there are, however, cases that treat men differently. For example, in the case of

preferential pension rights. In the case of Pauger v. Austria (Human Rights Committee, 1992), the applicant was denied a pension after his wife passed away. The plaintiff argued that, contrary to Article 26 of the "International Covenant on Civil and Political Rights", the Austrian Pension Law of 1965 "granted preferential treatment to widows, as they would receive a pension, regardless of their income, while widowers could receive pensions only if they had no other form of income ".

The Human Rights Committee concluded that, unlike article 26 of the Covenant, the applicant, "as a widower, had been denied full pension benefits on an equal footing with widows". In order to determine whether the application of the Pensions Act in this case 'involved differentiation on the basis of unreasonable or un-objective criteria', the Committee noted that the legislation of the Austrian state respected the equality between spouses when recognizing that they had the same rights and the same obligations, including in what regards their mutual obligation to provide help and financial assistance to one another, , but the Pensions Act, as amended in 1985, recognized the right to benefit from a full pension only for women, while men had to prove that they had no other source of income in order to be awarded the same right.

In the Committee's view, this meant that "men and women with similar social circumstances are treated differently, only on the basis of sex." Such a differentiation was not reasonable, as was implicitly acknowledged by the State party when it stressed that "the ultimate goal of the legislation was to achieve full equality between men and women in 1995" (Human Rights Committee, 1992).

However, discrimination and gender stereotypes are delicate topics, which require a more detailed analysis, in order to avoid labeling actions or statistical data in this regard. The ruling in the case of "Carvalho Pinto de Sousa Morais v. Portugal" in 2017 also shows how the Court avoided a decision based on the issue of vulnerability outside the context of gender-based violence (Gurol, 2017). In this case (ECHR, 2017), the Court found that Article 14 had been infringed in conjunction with Article 8. This took place at the moment when the national court issued its decision and reduced the sum of money that was to be paid to the plaintiff in a case where he invoked that he was subjected to medical negligence. The Court's decision relied on a motivation that made it clear that gender stereotypes were the basis for such a decision, stereotypes that involved women's sexuality. The judgment established that stereotyping diminishes the possibility for a fair and indivualized assessement of the person who is subjected to such a treatment and their capacity or needs. Again, then, the Court preferred

stereotyped motivation to address the issue of vulnerable groups in the broader context of gender discrimination.

As we see, the term discrimination is defined as the illegal practice of treating some individuals less favorably compared to others because they are different in sex, age, religion, etc. But in most cases, discrimination is not direct. Thus, discrimination takes direct and indirect forms, especially in the labor market. Direct discrimination occurs when the employer or human resources manager treats a certain person less favorably than another person, on grounds related to the gender or the marital status of the person concerned. For example, the employer does not allow women to compete for positions that exceed a certain hierarchical level or permanently gives priority to single people, over married people, when it comes to filling a vacancy.

Indirect discrimination occurs when there is a requirement or condition of employment that applies to both sexes, but has the effect of disfavoring one of them, usually women. For example, if for a certain profession or specialization the age limit of maximum 25 or 30 years is set, it could be considered that it is discriminatory against women, because that age is the main period of fertility for women, therefore they have less chances of applying for those positions.

The European Union promotes a broad strategy aimed at resolving inclusion issues for disadvantaged groups. Some regulations are part of this strategy, namely: the Racial Equality Directive, the Employment Equality Directive and the Community action program for combatting discrimination (Schwab, 1999). The contribution of other EU policies and funding instruments are seen as key challenges for future action that will help fight against discrimination. After the European Employment Strategy was adopted by the European Union, it provided an incentive for some Member States, have started to put their National Action Plans for Employment into practice in order to develop a more comprehensive strategy regarding anti-discrimination measures, in a more complex framework, that combined measures which promoted the integration of disadvantaged groups with measures aimed at changing attitudes, combating behavior and removing other discriminatory practices.

Another issue we will discuss is gender segregation. Gender segregation is a social process that results in the separation of males and females in various economic or institutional social contexts (Gersen & Gersen, 2016). Thus, some fields of activity or occupations are considered masculine and others feminine.

Career stereotypes in women are not just about gender. Stereotypes also include the interpretation of events, which are often classified as issues of gender discrimination in employment. Currently, the greatest influence on the differences in the perception of women's and men's careers comes from the way society perceives sexual differences, with general meanings resulted in the social construction of the concept of gender in a professional relationship. The concept of gender determines the type of activities considered appropriate for individuals to perform. Men possess certain attributes, may be superior in certain areas, may be better suited to function in certain social situations and organizations better than women, and vice versa (Adejugbe & Adejugbe, 2018).

The postmodern civilization has preserved the segregation of roles and even deepened it in some societies, giving new status to each gender. The roles assumed by men and women are evolving with a fluctuating prediction, due to structural changes related to the information society (Castronova, 2003). Therefore, we are talking about a certain inequality, although difficult to perceive, related to stereotypes. Thus, the information society has defined new roles for the two genders and, related to them, the stereotype that men are "objective" and women "subjective" - a stereotype that has no origin in biological reality. Biological differences are to be acknowledged, but this does not explain the inequality between men and women (Bond, 2012).

For example, in the case of "Van Raalte v. The Netherlands" (ECHR, 1992), the applicant complained that the refusal to pay social security contributions under the Dutch Law on General Child Care Benefits was a violation of Article 14 of the "European Convention on Human Rights", in conjunction with Article 1 of Protocol no. 1 to the Convention. The Government based the state's defense on the argument that there is a biological fact that cannot be excluded when addressing the issue of gender differentiation, namely the fact that biological imperatives make it so that only women can give birth, but this argument did not convince the Court to reach the conclusion to reject the plaintiff's application, because gender distinction was particularly the essence of the question of whether gender difference justified the difference in treatment (" Robert P. Swierenga ", 2007). The Court concluded that there had been a violation of Article 14 in conjunction with Article 1 of Protocol No. 1. to the Convention.

It is equally important to define the term gender discrimination in the labor market and also regarding women's leadership positions. Almost a century after women's emancipation became more and more a social movement, especially in economically advanced countries, some aspects of

inequality remain unresolved. Problems related to discrimination, segregation, marital condition are beginning to gain less weight, but in terms of career development and access to decision-making positions, the presence of women is still low (Lambrecht & Tucker, 2018).

Carefully analyzing the specialized literature, we found that the method of addressing the issue of gender equality in key positions in corporations and public institutions focused on demonstrating inequality and exemplifying the women that could become role models. Inequality results mainly from statistical data. Women should not be exposed as "demonstrators of competitive values in relation to men" (Gafni et al., 2019). In other words, it is not good to fuel a gender competition (Shetty & Hans, 2015). The philosophy and policy of corporate development include the principles of social responsibility, human rights law and gender equality (Kinley et al., 2007).

In the specialized literature, it is argued that gender equality is achieved through the combined efforts of government commissions, public opinion, social networks and other institutions that may be involved (Mikkola, 2005). Human resources - through skills, creativity and a spirit of commitment - have become the essential element of competitiveness, both in public and private organizations. One issue we identify would be competitiveness. Women can be competitive if the employer provides conditions for increasing gender diversity in decision-making positions within companies (Henson & Dorasil, 2011).

For example, in 2010, former Trade Minister, Lord Davies of Abersoch, identified the barriers faced by women in the UK to advance in leadership positions ("Women on Boards", 2011). He also proposed solutions to the strategy of changing mindsets in large corporations regarding their gender diversity policy. The initial report included 10 recommendations related to this issue. The recommendations were considered an important priority for the business world, and for ensuring a representative balance between men and women in board positions. In October 2012, many of Davies' recommendations were adopted in the UK, while companies amended their Corporate Governance Codes to create the model and context for enforcing gender diversity policy. In just 5 years, the representation of women on boards of large corporations part of FTSE 100 has doubled. In 2011 the figure was 12.5%, and in 2015 the figure rose to 26.1%.

All this proves once again that the issue of applying gender diversity in the FTSE 100 corporations has become a topic of public interest in the UK, being included on the public agenda in this country, and is not just a

purely legislative issue, but a topic with deeper connotations, which arouses old disputes related to gender stereotypes, discrimination, and gender segregation in the management positions of large companies.

The end of the problem would be the definitive elimination of misconceptions that women would not be able to act responsibly and professionally in leadership positions (Directorate-General for Justice and Consumers of the European Commission, & European Network of Legal Experts in Gender Equality and Non- Discrimination, 2016). Gender discrimination in business is an extremely serious, real and harmful problem for both women and every other employee in the company (Tushevska, 2015). Problems that may arise due to gender discrimination include: the organizational climate is weakened, there is injustice in performance appraisals, there is inequality in positions and salaries, and highly qualified people are not kept in companies. Moreover, gender discrimination breaches the limits of the right that every human being has to be treated equally, regardless of race, color, faith, sex, sexuality, etc. (Esteve-Volart, 2004).

The first step to ending prejudice is to openly admit that women still face more problems than men and that this has an impact on all individuals. This makes it difficult to understand how burdensome it is to build an effective system that can guarantee women's rights and address the historical issues of discrimination and violence.

3. Discrimination on the grounds of race, nationality and ethnicity

Discrimination on the grounds of race, nationality and ethnicity is reflected in the discriminatory provisions of laws or regulations, as well as in anti-social beliefs and acts. It prevents the development of those who are victims of this discrimination, perverts those who practice it, divides nations from within, hinders international cooperation "and gives rise to political tensions between peoples, it is contrary to the fundamental principles of international law and, consequently, seriously disrupts international peace and security" (Loper, 2004).

The term "racial discrimination" means any distinction, exclusion, restriction or preference based on race, color, descent or national or ethnic origin which, as an objective or as an effect, leads to the annulment or impairment of the equal recognition or exercise of political, economic, social, cultural or other human rights and fundamental freedoms (Dougal et al., 2018).

For example, in the case of Ahmad v. Denmark, it was found that Denmark had violated Article 6 of the "International Convention on the Elimination of all Forms of Racial Discrimination" (United Nations Human

Rights Office of the High Commissioner, 2012). The plaintiff was the citizen of Denmark, but his ethnical origins were Pakistani. In his complained, the plaintiff stated that him, together with his brother, were called "a bunch of monkeys", with reference to their ethnical origins, by the principal of the school they they studied, and that the same phrase was used with regard of their personas also by another teacher from the same school. The discirimination was alleged to have taken place at a moment when the two students were considered to be noisy by the teachers in question, in a particular moment when they had gone to school in order to wait fo a colleague who was taking an exam, and while they waited they used a video camera, which was the cause of the conflict.

The "Committee on the Elimination of Racial Discrimination" concluded that "because of the failure of the police to continue the investigation and the prosecutor's final decision, against which there was no right of appeal, the plaintiff was denied any possibility of determining whether his rights under the Convention had been violated" (The Committee on the Elimination of Racial Discrimination, 2012).

Special measures taken for the sole purpose of ensuring the proper promotion of certain ethnic or racial groups or persons in need of special protection, in order to ensure that such groups or individuals may enjoy the "exercise of human rights and fundamental freedoms equally, shall not be considered racial discrimination, however, provided that such measures do not lead to separate rights for different racial groups and that they do not continue after achieving the objectives for which they were taken" (Committee on the Elimination of Racial Discrimination, 2009).

Partial segregation may also appear to be unintended and might just be the consequence of the actions of private individuals. Therefore, we can conclude that racial segregation might occur as a result of the direct actions carried out by public athorities, but also irrespective of such actions or any initiative of these authorities. There is a positive obligation for the states to insure the monitoring of segregation trends as a result of racial discrimination, and work to eradicate any negative consequences. An example is the right to freedom of movement and residence. In the case of "Koptova v. Slovak Republic" (Human Rights Committee, 1998), the plaintiff complained against Slovakia and invoked the dispositions of the International Convention on the Elimination of Racial Discrimination. He stated that his rights, as provided by the Convention, were breached because two Slovak municipalities were set on banning Roma people to settle on their territories. The plaintiff was also banned from these municipalities, and specific resolutions were adopted against him in order for the measure to

become effective. The Committee recommended that the state "take the necessary measures to ensure that practices restricting the freedom of movement and residence of Roma under its jurisdiction are completely and promptly eliminated".

International laws or customs must be taken into account when applying national laws and regulations for indigenous and tribal peoples. "These peoples should have the right to maintain their own customs and institutions, when they are not incompatible with the fundamental rights defined by the national legal system and with internationally recognized human rights. Procedures should be established, whenever necessary, to resolve conflicts that may arise in the application of this principle. However, the members of these peoples must not be prevented from exercising the rights granted to all citizens and assuming their respective responsibilities" (Anaya, 2009).

The Human Rights Committee has established that Article 27 of the International Covenant on Civil and Political Rights "provides that a member of a minority shall not be denied the right to enjoy his or her culture". Thus, "measures that lead to a denial of the right are incompatible with the obligations set out in Article 27" (Ziegler, 2007). However, "measures that have a limited impact on the livelihoods of persons belonging to a minority shall not necessarily mean a denial of their rights under Article 27". For example, in the case of Länsman et al. v. Finland (Human Rights Committee, 1992), the Committee recalled in this regard that states must ensure that minorities or indigenous groups are treated equally by comparison to the majority of citizens, and that this equality is also insured if their traditional activities are protected, irrespective if such activities mean hunting, husbandry of animals or fishing. Also, it was stated in the same decision, any measure that might limit such a right must be taken only after the effective participation in taking the decision was ensured for all the stakeholders, including the members of minorities, if they are affected by that decision. There is an almost universal tendency in Western democracies to make a distinction between the rights granted to already recognized minorities, as compared to the rights granted to new immigrant minorities. As Perry Keller remarks, this distinction is "found in the laws and policies of almost every European state" (Keller, 1998). In the activity of inforcing the law, cases of discrimination on racial and ethnic grounds may also occur. In its concluding observations on an initial reports regarding the United States, the "Committee on the Elimination of Racial Discrimination" noted, with concern, that "incidents of police violence and brutality,

including deaths, as a result of excessive use of force by law enforcement officers, particularly affects minority groups and foreigners".

Also, in the USA, young black Indian-Americans are overrepresented in juvenile courts, while young white people are underrepresented. These racial disparities are particularly pronounced for both male and female offenders. Reports also show that in California, prosecutors send Hispanic youth to the adult court 3.4 times more often than white youth and that American-Indian youth are trialed as adults 1.8 times more than white youth (Sawyer , 2019).

Finally, the |Committee on the Elimination of Racial Discrimination" noted with concern that, "according to the Special Rapporteur of the UN Commission on Human Rights on extrajudicial, summary or arbitrary executions, there is a disturbing correlation between race, both of the victim and of the defendant, and the death penalty, especially in states such as Alabama, Florida, Georgia, Louisiana, Mississippi and Texas" (Cao, 2004). The United States of America were urged to consider imposing a moratorium on the death penalty, that would avoid such decision being taken as a result of racial prejudice manifested by prosecutors, judges, juries and lawyers or as a result of any economic, social and educational activity that might place the convicted person in a disadvantaged position (Cao, 2004).

In many countries, one way of dealing with minorities is to consider them part of the majority and not to acknowledge their differences, hence treating them in a manner that is intent to assimilate them within the majority or to exclude them all together. The situation is not much different even in countries where the special rights that new minorities are entitled to are recognized , while promoting the respect for "multiculturalism", because they are not based on the idea of autonomy, but rather on integration, and also do not imply territorial autonomy, te recognition of their native language as an official language or the right to legal pluralism (Banting & Kymlicka, 2010). Issues related to the language of minorities or ethnic groups are often grounds for discrimination.

In the case of Diergaardt et al. v. Namibia (Human Rights Committee, 1997), Article 26 of the International Covenant on Civil and Political Rights was analyzed in regard to the use of one's native language in public institutions. The plaintiffs were members of the Rehoboth Baster Community and complained of the fact that they could not use the African language, which was native to them, in various administrative context, or when they appealed to the state's judicial system, or in education and other fields of their public life. The Committee noted that the authors state had

"instructed civil servants not to respond to written or oral communications made to the authorities in the language of African ethnic groups, even when they are perfectly capable of doing so. These instructions prevented the use of ethnic language not only for issuing public documents, but also for telephone conversations" (Human Rights Committee, 1997).

However, the Human Rights Committee made it clear that the plaintiffs did not manage to demonstrate that they, themselves, or the whitnesses who were called to testify on their behalf could not address the court in French. In the Committee's view, article 14, paragraph 1 of the Covenant, regarding the right to a fair trial to, as can be interpreted in conjunction with article 14, paragraph 3, point (f), "does not imply the possibility for the accused to express himself in the language he normally speaks or is most fluent in". However, the Committee established that if the court is impartial, as were the two courts in this case, and the accused has sufficient knowledge to understand the language in which the court proceedings are conducted, "it is not necessary to determine if it were preferable for the accused to speak in a language other than the official language of the court" (Morawa, 2010).

In the case of "Ballantyne et al. v. Canada" (Supreme Court of Canada, 1983), the plaintiffs were native English speakers, but they lived in a French speaking municipality, namely Quebec, where the authorities had banned the use of English, which was considered to be a foreign language, in commercial advertising, a decisions that, in the plaintiffs' view, was a breach of article 26 of the Covenant. "The Human Rights Committee" has concluded that the plaintiffs have not been discriminated against on the grounds of their language, as the ban applies to English speakers, but it is the same for French speakers as well.

In the current framework against discrimination created under the auspicies f the United Nations, no distinction is being made between the category og national minorities and that of new minorities, although the two types of minorities have different needs and aspirations, and also differnet apoproaches to historical settlements and to territorial concentration. What entirely seems to be missing from the doctrines and practices specific to the liberal democratic countries in the West is a clear distinction between indigenous peoples and other types of minorities, although this disctinction became very significant in the larger international community. Miriam Aukerman (Kymlicka, 2011) notes that the claims of indigenous peoples are very similar to those proffered by national minorities activating within post-communist countries, and the reason for this similarity is the fact that they have the same basic objectives and justifications.

Difficulties in developing a universal concept of "national minorities" are associated with the existence of a large number of different groups in relation to which this concept is used, with the variety of situations when such people find themselves, and with the different attitudes of states, politicians, scientists and representatives of minorities regarding this problem (Capotorti, 1977).

There is a wide range of classifications regarding what a minority represents, made for different reasons: ethnic, denominational, linguistic etc. However, not all ethnic characteristics contribute to the formation of a national minority. From a legal point of view, nationality will be the basic element in the legal definition of minorities, however, it is worth remembering that other positions on this issue have been expressed.

There is a tendency in international law to classify the distinction that is being made between indigenous peoples and other types of national minorities as a categorical distinction. Such a classification can have a major impact when trying to assert the types of rights involved in the claims of each group. However, the postmodern world is a postcolonial world, where vulnerability or exclusion are common to many categories of people, not only national/indigenous minorities, therefore to distinguish between those two types of minorities means to only pursue differences in form, not differences in substance that would involve international law.

The concept of "ethnic minorities" has similar characteristics to the term "national minorities", but there are also differences. If we consider the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, it can be seen that the difference between the concepts of “national” and “ethnic” minority is already highlighted in the title of the document (United Nations General Assembly, 1992). .

Worldwide, one of the most pressing constitutional issues is the concern over the status and treatment of ethno-cultural minorities. In a recent study, McGarry et al. (2007) suggested that countries have two broad options in this regard - "integration" or "autonomy." The first model seeks to integrate all citizens with the help of national institutions, in a non-discriminatory way, and to adapt to diversity by creating specific specific institutions for minorities. The authors of the study provide a useful overview of the pros and cons regarding this approach and the circumstances that are the reason why various nations make various choiches in this respect.

Thus, delimiting the concepts of "ethnic" and "nation", we can say that ethnicity includes cultural and historical components (including

territorial-linguistic and cultural-psychological components), while in the concept of "nation", in addition to the ethnic component, social processes or actions that play a major role in the life of such a minority group are also involved.

In conclusion, the term "national minority" is a broader concept than "ethnic minority". The main institution through which integration is achieved is the law. The importance of law in social systems is emphasized by the fact that, due to legal norms, the relations between individuals and institutions are simplified, which significantly reduces the potential of a conflictual situation. In the event of a conflict, due to legal standards, it is usually possible to resolve the conflict through the legal system, avoiding the disintegration of other subsystems and society as a whole.

Another position on understanding the integration processes is the point of view of Z. Bauman (as cited by Tabet, 2013). In his opinion, integration in society occurs through the consumerism of individuals. "With society's growing focus on consumption rather than production, social integration is increasingly achieved through the seductive effect of the market, while the involvement of the government and of the citizens in political activity is reduced" (Bauman, as cited by Tabet, 2013). Z. Bauman argues that the postmodern society is influenced by the power of a large number of different types of goods and services.

Z. Bauman considers that the integration of individuals in the postmodern society is possible precisely by satisfying those particular needs that are directly related to the economic sphere (Penninx, R., & Garcés-Mascareñas, 2016). Any comprehensive examination of the debate on the idea of integration versus the idea of autonomy must carefully take into consideration the attitudes manifested by the international community. McGarry et al. (2007) state that integration "is the dominant strategy for regulating diversity", "favored by Western states and the officials belonging to intergovernmental organizations, such as the United Nations" (Kymlicka, 2008). We tend to concur with this generalization, even if we believe that the road towards this generalization rather has its own complicated and interesting history.

A problem of discrimination can also arise in the process of obtaining citizenship. The Inter-American Court of Human Rights was called upon to provide an advisory opinion on the legislation regarding the naturalization of people in Costa Rica, when an amendment to that law was proposed. The Court issued its opinion and stated that the equal rights of spouses during marriage, as provided by article 17(4) of the Convention, and also the need for the equal protection of both spouses, as set in article 24,

were not respected by the proposed amendments, because they favored only one spouse. In the Court's view, a solution that would have been more in tone with the the provisions set forth by the Convention if the text referred to "any" non-citizen "who marries a Costa Rican national" (Inter-American Court of Human Rights, 1984).

As for the opinion of the international community in the dispute between integration and autonomy, reaching a consensus is difficult as the "international community" is formed by multiple actors that don't always act as one, driven by common beliefs or attitudes. Even if we focus only on those intergovernmental organizations that were established by the signing of treaties, , such as the United Nations and its agencies, or the World Bank and the Council of Europe, we will see that there is no consensus on the position to be taken. Each of these institutions received its own mandate from its creators, and the general guidelines of these mandates also draw the general line of particular interests that such organizations promote when it comes to issues of ethnic diversity and their own perspectives on it. Profound differences can be found between these organizations, as well as in their own internal functioning, in to the way they approach the governing of ethnic and national diversity (Council of Europe's Committee of Ministers, 2008).

A first example is the United Nations, an organization that is probably the biggest key player in this debate, on the one side because it is comprised of all the states in the world, and on the other side because, along the years, UN representatives have made various claims, also in their capacity of representatives for their own countries, explicitly addressing the issue of integration and accommodation. Moreover, the message of this official position can be understood by most people, because it is surprisingly simple, stating that the right to authonomy is particular to "indigenous peoples", while the right to integration is specific for "minorities".

Regardless of the issue at hand, whether it was about human rights, economic development or environmental protection, the UN has reiterated this opinion during the many years as a supranational entity. This view was stamped within two key texts adopted by the UN: the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Ruiz Vieytez, 2007) and the draft Declaration on the Rights of Indigenous Peoples, the latter remaining only a draft even if two decades of intensive debate have marked its drafting. The former lays down what we call an integrationist approach to deal with the discrimination of minorities, with a focus on non-discrimination and the respect of civil rights, while the latter approaches autonomy as a key solution for indigenous

peoples, placing a strong emphasis on self-government and institutional pluralism.

In 2000, Asbjorn Eide and Erica-Irene Daes (as cited by Dunbar-Ortiz et al., 2015) explained the understanding of the different reasons underlying the two documents. Their statements indicate three basic differences between minorities and indigenous peoples: "(a) minorities seek institutional integration, while indigenous peoples seek to maintain some degree of institutional separation; (b) minorities seek to exercise their individual rights, while indigenous peoples seek to exercise their collective rights; (c) minorities seek non-discrimination, while indigenous peoples seek self-government" (Dunbar-Ortiz et al., 2015).

For a group to be recognized as a minority, it must be smaller in terms of population size as a whole compared to the majority. Such an opinion seems quite reasonable, because it directly results from the etymology of the word "minority" (Bengoa, 2000). National minorities are also characterized by non-dominance. The protection of minorities is justified only if the minority does not occupy a dominant position within the state. It should be noted that the collective rights of national minorities cannot be considered as the totality of the individual rights of persons belonging to these minorities. This is due to the fact that in the process of uniting people on the basis of national and cultural unity, a new category of community appears, which, according to Parsons (Kymlicka, 2001), is not equal to the sum of people that form this category, but is greater than this.

The case of "Gueye et al v. France" was initiated by a large number of Senegalese nationals (743 in total), who had served in the French army and later retired, expecting to receive the same amount of pensions money as the soldiers who were French nationals. When this did not happen, they claimed that France had violated Article 26 of the "International Covenant on Civil and Political Rights" because its law provided "different treatment in determining the pensions of retired Senegalese soldiers who served in the French army before Senegal's independence in 1960" (Human Rights Committee, 1985). The committee noted that "it was not the issue of nationality that led to the establishment of the plaintiffs' pensions, but the services they provided in the past. A subsequent change of nationality could not in itself be considered a sufficient justification for a different treatment, as the basis for granting the pension was the same, namely the service provided by both them and French soldiers, given that there are no other legitimate grounds for a differential treatment" (Human Rights Committee, 1985).

In a case of the expulsion of West Africans from Angola (International Federation for Human Rights, 2016), the "African Commission on Human and Peoples' Rights" stressed that Article 2 of the "African Charter on Human Rights" requires that states ensure that all the people who are residents enjoy the same rights – as guaranteed by the Charter – as nationals, as long as both categories live on the same territory. It is therefore necessary to distinguish between the rights of persons belonging to national minorities and the rights of thie community as a whole. At the same time, if collective rights violate the rights of an individual, the objectives that justify the protection of such a community right become inhuman and illegal (Medda-Windischer, 2014).

That being said, we can conclude that the national minority is "a smaller, non-dominant group, whose members - citizens of this state - have an ethnic, religious and linguistic group, with characteristics that differ from those of the main part of the population and manifest , even indirectly, a sense of solidarity in order to preserve their own culture, traditions, religion or language "(Capotorti, 1977).

4. Discrimination on religious grounds

In the case of minority groups concerned exclusively with faith, religious passion manifests itself as fanaticism, fundamentalism. Fundamentalism rejects not only other religions, but also the attempts to modernize one's faith through cultural, technical, economic and scientific values. Fanaticism can also include large groups of believers whose actions can evolve into collective delirium, acts of vandalism and destruction of property, genocide, rejection of certain professions and social categories, refusal of good coexistence, of values, of public health.

Religious bigotry and intolerance can be passive, but often take aggressive forms, circumstances in which society and political systems use means of protection, therefore groups of believers who practice crime or religious terrorism are prohibited. In the conditions of a democratic state and a tolerant society, religious faith and practices are factors of cohesion and social integration. When political leaders or the leaders of religious communities use faith as a method of consolidating a community from a social-political point of view, it is natural to intervene, in order to avoid religious fanaticism as a state doctrine.

A vision relevant to the Orthodox conception of globalization and freedom of religion is set forth by the Greek theologian Anastasios Yannoulatos, Archbishop of Tirana and all of Albania, in a recent paper (Yannoulatos, 2003). The first requirement that the author introduces

regarding globalization is that it must not mean relativism, but must be understood as dialogue. Regarding Orthodoxy, religion must overcome "the prejudices and tensions contracted in the confrontation with modernity, in order to move beyond the logic of an old symphony and to step into the logic of dialogue" (Corodeanu, 2004, p. 184).

Religious freedom means that a religious follower can sincerely adhere to the set of beliefs set out by a religious institution, an that the state recognizes that adherence. This understanding of religion implies that some accepted collective and external traits makes the difference between religion and conscience, as well as promote the protection of religious beliefs more in terms of a necessity rather than a matter of conscience. This argument is supported by a significant number of scientists. As Haigh remarked: "by re-thinking religion and religious freedom as elements of the social sacrament, which are important in themselves, we can see the two aspects as distinct: consciousness and religion, without bringing any harm to any of them. Otherwise, religious beliefs (...) could be protected by a strong form of institutional religious freedom. However, the individual practices of individual adherents may be better placed, in some cases, in the sphere of the freedom of conscience" (Haigh & Bowal, 2012, p. 13). Because discrimination, in its nature, is based on stereotypes and prejudices against discriminated groups, cultural and institutional symbols and forms of identity are also subjects of discrimination (Haigh & Bowal, 2012, p. 13).

However, there are a number of problematic aspects of this topic. First, there is the implication that religious discrimination cannot be made on the basis of non-religious beliefs. This presupposes that at the level of non-religious beliefs there are no external signs or symbols through which this option can be recognized and discrimination can't be achieved. However, an individual could become discriminated for all types of reason, even for being an atheist, or fo adhering to veganism, or for their political beliefs. Secondly, this does not happen unless a clear distinction is made between the collective aspects of a religion and individual beliefs. Putting this aside, though, to accept such a distinction , we should assume that only the official religious interpretation is the correct one and consider all disagreements with this metanarrative to be a deviation from what is acceptable. However, as this is near to possible, the distinctions between the individual faith and the institutional faits are difficult to differentiate. This is why, although this interpretation is elegant in principle, it is extremely difficile to apply practrically.

Webber, in his article "The Irreducible Content of Religious Freedom" (2006), finds that "lately there has been a tendency to define

religious freedom in terms that do not place much value on religious belief - they are neutral, in other words, between religion and non-religion "(Webber, 2005).

"This flattening of religion is largely due to the loss of religious justification as a valid position to defend the value of religious freedom" (Smith, 1991). While the religious perspective puts spiritual obligations above all others, the secular perspective favours the idea that religion is nothing more than a particular view of the world, which makes religious freedom somewhat anachronistic. As Smith remarked, "apart from its historical importance, religious justification is also the most satisfactory and perhaps the only adequate justification for a special constitutional commitment to religious freedom" (Smith, 1991, p. 149).

To say it differently, the lack of distrust and the acceptance of religious arguments bring about satisfactory conclusions regarding importance of religious freedom and the reason why religious faith is worthy of protection as a different concept than the freedom of conscience. But to accept religious arguments poses difficulties for the government and the courts, who need to be impartial because of the numerous types of beliefs and believers that seek their help, therefore they need secular arguments to rely on. As Smith (1991) remarked, "our constitutional commitment to religious freedom undermines its own basis; it nullifies itself by preventing the government from recognizing and acting on a principled religious justification to support that commitment"(Smith, 1991, p. 149).

As Webber (2001) points out: "religious freedom cannot be secularized so as to be entirely neutral between faith and unbelief. The interpretation and application of this right necessarily involves the recognition, contemplation and attempt to protect distinct religious commitments ... the state cannot be indifferent to the value of religious commitment without substantially departing from the very idea of protecting religious freedom "(Webber, 2005).

5. Discrimination on the grounds of different sexual orientation or gender identity

In the Kiyutin case, the European Court of Human Rights stated that groups that are labelled with regard to their "sexual orientation are potentially in a vulnerable position, and in cases of direct discrimination, which arose both before and after this judgment, the Court did indeed refer to sexual orientation as an intimate and vulnerable sphere of an individual's private life" (Arnardóttir, 2017). In the 2015 Identoba and Others v Georgia judgment (Falcetta & Johnson, 2018), the Court also found a violation of the

State's positive due diligence obligations under Articles 3 and 11, both by reference to Article 14, because the members of the LGBT community were not provided protection against verbal and physical aggression. The court made references to the historical context in Georgia, that noted several acts of public hostility when LGBT members were victims and said they were a "vulnerable community".

In the case of "M.C. and A.C. v. Romania" from 2016 (Fălcuță, 2011), which focusing on the positive obligation to protect people belonging to the LGBT community, the Grand Chamber adopted the approach according to which "children and other vulnerable people, in particular, have the right to effective protection" and acknowledged that |the LGBT community from Romania is in a precarious situation, because it is subjected to negative attitudes by the general public. As a conclusion stemming from these judgments, we could say that the members of the LGBT community (which, of course, is not defined only by reference to sexual orientation) could be subjects that portray the concept of vulnerability within the meaning of Article 14" (Fălcuță, 2011).

Discrimination based on sexual orientation or gender identity can be and is usually accompanied by discrimination on other grounds, including gender, race, age, religion, disability, health and economic status. Problems due to sexual orientation are quite complicated, mainly because of religious mentalities. The right not to be discriminated against on the basis of sexual orientation is not always expressly regulated by legal provisions. The grounds listed, for example, in Article 26 of the International Covenant on Civil and Political Rights, Article 2 of the African Charter on Human and Peoples' Rights and Article 14 of the European Convention on Human Rights are also not exhaustive.

The word "like" in all these articles shows only examples of what it means to be part of the LGBT community, which was emphasized by the European Court of Human Rights in the case of Salgueiro da Silva Mouta v. Portugal (ECHR, 1996) with regard to infringements brought against Article 14 of the European Convention, when the court ruled that a person's "sexual orientation" is a concept which is undoubtedly covered by the provisions of that article.

In this case, the applicant stated that the decision to grant custody of his daughter to his ex-wife, the minor's mother, was based on reasons regarding his sexual orientation. In examining the alleged infringement of Article 8, in conjunction with Article 14, the European Court has shown that the Lisbon Court of Appeal took the child's interests into account when examining a number of matters of fact and law in the case, which led to the

court's decision, but when the court decided to annul the judgment pronounced on the merits, a new factor was introduced, namely that the applicant was homosexual and lived with a man.

The European Court was therefore obliged to conclude that "there was a difference in treatment between the plaintiff and his ex-wife, which was based on the plaintiff's sexual orientation. It was therefore necessary to consider whether that difference in treatment had an objective and reasonable justification, namely (1) whether it pursued a 'legitimate aim' and, if so, (2) whether there was a 'reasonable relationship of proportionality between the means used and the pursued objective, conditions which the court found not to have been fulfilled" (ECHR, 1996).

6. Conclusions

In the postmodern society, old concepts are being deconstructed with lightning speed, due to excessive computerization and the possibility of instant communication, without geographical limits. For this reason, the concepts of "discrimination", "minority", "victim" are to be reconstructed to include new forms of discrimination, whose innovative element is brought precisely by technological development and globalization. In this context, the old mechanisms for combating various forms of discrimination must in turn be adapted, given that the postmodern human is an individualist whose empathy and tolerance must also be supported by coherent rational arguments, as well as by transparent public policies, consistent with the arguments leading to the need for protection of certain social groups, considered to be a minority and subject to the risk of discrimination.

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