
Editorial: Non-discrimination as a legal principle and fundamental right

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The right to non-discrimination is an extremely 'rich' in content and normative value fundamental right which lies in the epicenter of a democratic polity's social and welfare state. The right to non-discrimination reflects the need for substantial equality for all the members of a political and democratic society. Non-discrimination can be seen as a normative principle and guiding value for a legal order and also as fundamental rights. As a principle, non-discrimination is an essential prerequisite of every fundamental right. Thus, in order to realise the true and practical enjoyment of any fundamental right, the respect of the principle of non-discrimination is crucial. In this context, for example, the enjoyment of the rights to personality and privacy per se is futile if their barrier is discriminated on the basis of his/her disabilities (personality) or sexual identity (privacy).

Moreover, as a fundamental right, the right to non-discrimination guarantees the equal freedom, equal dignity and participation of all the members of a democratic polity. As a fundamental right, the right to non-discrimination provides the individual with the ability to act freely and autonomy and to form his/her own choices as far the enjoyment of his/her rights are concerned regardless of specific identity characteristics, such as sex, age, ethnic origin, religion, sexual identity and disabilities. As far as its nature is concerned, the right to non-discrimination can be considered as a human right of mixed, both negative and positive dimension. Thus, the right to non-discrimination is a human right since it is inherently connected to human dignity and freedom. Moreover, the right to non-discrimination has a negative dimension, therefore protecting the individual of any violations of his/her fundamental rights that affect their equal – as far as the other members of a given society are concerned – enjoyment. Additionally, the right to non-discrimination also has a positive dimension, meaning that in order to be practically realised, the adoption of certain positive measures or specific public policies is needed, e.g., in order to guarantee the equal access of all to certain public goods or services.

In this context, it could be argued that the practical enjoyment of the right to non-discrimination cannot be achieved without that adoption of policies that can realise in the greatest extent possible minorities' rights. Thus, as a principle and right, non-discrimination should be employed as the necessary framework for the adoption of the necessary measures and policies to combat non-discrimination and social exclusion. Such measures can facilitate:

- a the access of vulnerable groups to public services or goods, such as social security, welfare services, health or housing services and public goods (e.g., water, electricity)
- b the access to public education, public offices and public participation (e.g., by adopting positive measures favourable to minorities)
- c the practical protection of religious freedom
- d the access to justice as well as to the necessary means for the effective judicial protection of minority rights and vulnerable groups interests.

From this point of view, extremely crucial is the promotion of a strong civil society that can enforce non-discrimination public policies and enhance their effectiveness.

A very characteristic example of policy making in the field of substantial equality and discrimination is the German Equal Treatment Act of 2006, known as *Allgemeines Gleichbehandlungsgesetz (AGG)* του 2006. This major in its scope legislative reformation incorporates the four anti-discrimination EU Directives and its goal is to prevent discrimination on the grounds of race, ethnic origin, gender, religion or belief, disabilities, age or sexual orientation. The AGG regulates all kinds of discrimination applying to the fields of labour and civil law in general. Accordingly of extreme importance are the relevant European Union Directives on equal treatment. Firstly, of great significance is the Directive 2000/43 (known as the 'Race' Directive) which implements the principle of equal treatment between persons irrespective of racial or ethnic origin. Secondly, of major importance is the Directive 2000/78 establishing a general framework for equal treatment in employment and occupation. Lastly, the non-discrimination EU framework is completed by Directives 2004/113 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, and 2006/54, on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. Accordingly, extremely useful is the general international framework set forward by the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984) the UN Convention on the Elimination of all forms of Discrimination against Women (1979) and the Convention on the Rights of Persons with Disabilities (2006).

Closing, one should underline the value of enforcing substantial equality and non-discrimination policies. The actual realisation of substantial equality is the main path to guarantee a practical protection against all forms of discriminations. Realising substantial equality leads to the equal access of all members of society in the enjoyment of public goods and services, thus guaranteeing that these are not considered to be the 'privileges' or 'benefits' of a society's majority or of a favoured elite. In this context, the enjoyment by all of equal dignity and equal access to rights, public goods and services is illustrated as the necessary tool for accomplishing social justice and achieving social inclusion and solidarity.