

Models of Quasi-Judicial Bodies Providing Protection against Discrimination

Nataliia Gren¹, Olena Hutsuliak²
& Roman Shai³

Abstract

Ensuring the principle of equality, as a key opportunity for the functioning of the institution of human rights, is one of the most important principles for the functioning of the rule of law. The principle of equality implies the fight against discrimination, which manifests itself through the provision of an undue advantage or oppression of some categories of subjects of legislation. Overcoming the problem of discrimination is possible due to the existence of a comprehensive mechanism for international and national equality. Analysis of the work of bodies conducted during the study and designed to protect the principles of equality is an essential factor for analysing the legal policy of non-discrimination. However, the powers of bodies are both classically judicial and extra-judicial (quasi-judicial) in nature, so the analysis of the effectiveness of such institutions at the national level is of practical interest. This study allowed to conclude that quasi-judicial bodies deal with situations of the principle of equality violation on any grounds. Essential powers of quasi-judicial bodies are monitoring activities, analysing statistics, public sentiment, interviewing the population, conducting preventive and explanatory work.

Keywords: anti-discrimination bodies, prohibition of discrimination, equality, legal policy, protecting human rights.

Introduction

Discrimination is a substantial issue of modern society (Foran, 2019; Doroshenko, 2021). The “classical” understanding of the principle of equality before the law and the principle of non-discrimination in international law was formulated in a Dissenting opinion of judge Tanaka (1966). Correct, moderate understanding of the philosophical categories such as “equality”, “justice”, and “freedom” is extremely important both in the practice of the law enforcement agencies and in public consciousness. Too dogmatic and formalised approach is

¹The author is a Judge at the Lviv District Administrative Court, Lviv, Ukraine. She can be reached at canbereachedatgren@nuos.pro

²The author is an Associate Professor at the Department of Constitutional, International and Criminal Law, ‘Vasyl’ Stus, Donetsk National University, Vinnytsia, Ukraine.

³The author is an Associate Professor at the Department of Theory, History and Philosophy of Law, Lviv Polytechnic National University, Lviv, Ukraine.

extremely common among people, who do not belong to the legal professions, especially in the countries of continental law. Such perception constitutes a problem because it contributes to differences between expectations from the implementation of the law (in subjective interpretation) and the verdicts of the judiciary, decisions of administrative entities, etc. After all, such a situation does not strengthen confidence in the state, and threatens the existence of civil society, the establishment of the rule of law.

As noted by T. Kadar (2018), “equality bodies have considerable potential to promote more equal societies, and they have proven to be effective agents of change. They do so, among other things, by contributing to the relevant case law before the Court of Justice of the European Union (EU), which leads to further development and clarification of EU legislation and national equal treatment”. Article 20 on equality bodies, makes provision for the obligation for member states to establish special bodies at the national level to promote, analyse, monitor, and maintain equal treatment of people (Directive 2006/54/EC..., 2006).

Globalisation generates changes in modern social reality (Goosey, 2019; Slovská and Tsarenko, 2020; Holonič et al., 2020). In some places, the challenges are unique, since humanity has no experience in dealing with problems caused by globalisation factors. One of them is the global aging of the world's population. As of 2019, there are 703 million elderly people (over the age of 65) in the world. East and Southeast Asia is home to the largest number of older people in the world (260 million), as well as Europe and North America (more than 200 million). The aging of the population is caused by social and demographic issues, and oddly enough, the development of science, technology, medicine, and biology, as people's life expectancy increases. These challenges affect all aspects of life and create numerous unresolved issues in legal regulation. The Eurobarometer 2019 report on discrimination in the EU indicated that 40% of people in the EU believe that age discrimination is widespread in their country (Department of Economic & Social Affairs, 2019; Special Eurobarometer 493..., 2019).

Therefore, from the standpoint of science and practice, it is important to investigate the guarantees of the activities of quasi-judicial anti-discrimination bodies using the example of the age criterion. As indicated by R. Hryniewicz (2019), “it is necessary to take more effective measures within the framework of public policy, legislative decisions, implementation of educational programmes, campaigns, and information initiatives to reduce this phenomenon”. Thus, the purpose of this article was to determine the models of quasi-judicial and analyse their work on the example of age discrimination. The methods of analysis and synthesis allowed to find the existing quasi-judicial body models and single out

their main features. The analysis of legal acts was used to identify the powers of quasi-judicial bodies in different countries and using the comparative method, their differences were shown.

The Special Commissioner for the Protection of Equality/Combatting Discrimination – an example of the first quasi-judicial body model

The first model includes those countries where a separate institution of the Special Commissioner for the Protection of Equality/Combatting Discrimination operates. For example, the authors of this study used the statutory regulation of this institution in Serbia. The Commissioner in this country is elected by the National Assembly by a majority vote of all deputies on the recommendation of the committee responsible for constitutional issues (Mikuš, 2018; Gualco, 2019). A citizen of the Republic of Serbia who meets the following conditions may be elected: have a legal education; have at least ten years of experience in legal matters in the field of human rights protection; have high moral compass and professional qualities. In accordance with Article 33 of the Law of Serbia No. 22/2009-3 “On the Prohibition of Discrimination” (2009), the legislation specifies the powers of the Commissioner. They are the following:

- to accept and consider complaints due to violations of the legal provisions and give opinions and recommendations in particular cases;
- to provide the complainant with information about their right and the possibility of initiating judicial or other proceedings in the defence case, that is, to recommend reconciliation;
- to file claims on its own behalf and with the consent and on behalf of the discriminated person;
- to indict for misdemeanour resulting in violation of rights, etc.

A person who believes that they have been discriminated against shall submit a complaint to the Commissioner in writing or, in exceptional cases, orally in a protocol, without the obligation to pay a fee or other compensation. Evidence of the victim's act of discrimination is also provided along with the complaint. The Commissioner, within 90 days from the date of filing the complaint, gives an opinion on the violation of provision under the Law of Serbia No. 22/2009-3 “On the Prohibition of Discrimination” (2009). They inform the complainant and the person against whom the complaint is filed proceeding from the opinion that there has been a violation of the Law, the Commissioner recommends the person against whom the complaint is filed how to eliminate the violation of rights. The person to whom the recommendation is addressed shall be obliged to act on the recommendation and notify the Commissioner on the fact of such elimination. In 2020, the Special Commissioner in Serbia considered 1,188 cases and age

discrimination occupies a considerable place among other signs. Age as a basis for discrimination in recent years has been one of the most common grounds for discrimination according to the frequency of citations in complaints (CarapezzaFiglia, 2019; Jankovic, 2021; Onyshko and Topolevsky, 2021). Compared to 2019, the number of complaints filed on this basis has notably increased (115 complaints against 72 complaints in the previous year), which is expected given the epidemic caused by the coronavirus and its consequences for the population of different age categories. The largest number of complaints were filed due to discrimination against persons over the age of 65, followed by complaints due to discrimination against persons between the ages of 18 and 65, and finally complaints about discrimination against children.

The experience of the Commissioner in Albania in handling cases is valuable for understanding this first model. For the Commissioner for Protection against Discrimination, the procedure begins with the subject's complaint. A person or group of persons claiming to have been discriminated against, or an organisation with legitimate interests claiming discrimination. The complaint must contain information about the victim of discrimination, information about the identification of the subject who allegedly committed discrimination, as well as explanations and facts that the complainant has regarding the alleged discrimination and measures that the Commissioner must take.

For the purpose of extensive preventive activities, public awareness and the development of a legal culture, there is an obligation of the Albanian media to publish the decisions of the Commissioner who identified discrimination. This contributes to the development of regular dialogue on discrimination with corresponding groups, public organisations, including non-governmental organisations and particular individuals. In addition, the powers of the Commissioner are quite broad in the context of monitoring the situation and its legal expertise. Thus, this body submits a written opinion at the request of the court, which considers any issues concerning discrimination (Law No. 10 221..., 2010). The effectiveness of this first model is proven by statistical indicators, this time from the Office of the Equal Opportunities Ombudsman of the Republic of Lithuania for 2020. In total, it received 944 applications for potential discrimination, including 1,875 complaints and 644 requests. Almost 26% of all requests are age-related. Notably, a quarter (25%) of all investigations into potential age discrimination were also relating to other discrimination signs. The applicants noted two, and sometimes more, reasons on which they thought they were experiencing less favouring behaviour. Discrimination based on gender and social status accounted for 31% of all cases of multiple age-related discrimination;

belief or opinion – 25%; sexual orientation and ethnicity – 6% (2020 metų veiklos..., 2021). This suggests that this form of institutional guarantee is capable of overcoming the issues of multiple discrimination.

Features of functioning of the second and third quasi-judicial body models in the European Union countries

The analysis of international experience allows presenting a different model of institutional support for equal treatment. To represent the second model, the study considered the experience of Bulgaria. In this country operates the Commission for Protection against Discrimination. It was established in 2005 by a special law – Protection from Discrimination Act (2004), adopted by the National Assembly of the Republic of Bulgaria. The powers provided for are almost the same as those of the Commissioner for Equality. The Federal Anti-Discrimination Agency also operates in Germany (Meßerschmidt, 2016; Cismaş and Dănilă, 2020). Current legal statistics indicate the demand for such an institution. According to the 2019 report, 3,580 requests for discrimination counselling were received (Antidiskriminierungsstelle des Bundes, 2020). Of these, 12% relate to age (441 requests).

The third model of functioning is the existence of a group of public bodies whose powers are related to overcoming the problem of discrimination. Such a comprehensive security mechanism is also established in Finland (Era, 2021). The relevant Finnish authorities include the Ombudsman for Equality and the Council for Gender Equality. According to Law of Finland No. 1325 “On Equality” (2014), the Ombudsman has the powers. In particular, they are the following to assist victims of discrimination in investigating complaints of discrimination filed by them; to assist in planning advancement activities; to make general recommendations to prevent discrimination and promote equality; to take measures for reconciliation in the case.

The Law of Finland No. 1326 “On the Ombudsman for Quality” (2014) indicates that to promote equality and prevent discrimination, the Ministry of Justice appoints an Ombudsman for Equality. The Ombudsman for Equality is functionally independent. The Ombudsman for Equality is appointed by the National Council for a maximum of five years. The Ombudsman's objective regarding equality issues is to exercise control over compliance with the Law of Finland No. 1325 “On Equality” (2014). The Ombudsman for Equality has the right to receive from the authority and other public administration, the provider of educational institutions and educational institutions, the employer, the supplier of goods or services, information. The Ombudsman for Equality may conduct an inspection at the premises of the authority, the provider of educational institutions

and the educational institution, as well as at the supplier of goods or services. Such inspection has to be necessary to monitor compliance with the Law of Finland No. 1325 “On Equality” (2014) in matters falling within the competence of the Commissioner (Record number of..., 2021). The inspection cannot be performed in premises used for permanent residence. In 2020, the Ombudsman for Equality received 1,516 requests, which is a record number compared to other years.

In accordance with Article 20 of the Law of Finland No. 1325 “On Equality” (2014), the Gender Equality Council is also established. It settles disputes between the parties in a discrimination case, unless that settlement is unlawful or manifestly unreasonable or violates the rights of a third party. The settlement agreement, which was confirmed by the council, shall be implemented as a final decision. The parties to the settlement may, together with the Commissioner for Equality and with the consent of the parties, apply to the Gender Equality Council to confirm the settlement in a case concerning anti-discrimination proceedings. In Austria, the issue of ensuring anti-discrimination is also complex (Gamper, 2019; (Kuchko, 2021). The Commission for Equality comprises three senates. It can conduct an independent investigation of discrimination, publish independent reports and make recommendations on any discrimination-related issues (Federal Law No. 108/1979..., 1979). At the request of one of the interest groups represented in the relevant senate of the Commission, at the request of an advocate or ex officio, the relevant senate, in particular, provides expert opinions on issues of violation of the principle of equal treatment.

Conclusions

The analysis of international experience allowed stating the effectiveness of the functioning of quasi-judicial bodies in the field of combatting equality. The analysis of a number of monitoring reports and a comparative analysis of national legislation allowed indicating that the forms of quasi-judicial bodies in the countries of the European Union can be divided into three model groups according to the features of structure and operation: the Special Commissioner for the Protection of Equality/Combatting Discrimination (Albania, Serbia, Lithuania); the collective body – the Commission for the Protection Against Discrimination (Germany, Bulgaria); an integrated mechanism of functioning that combines the first two models (Austria, Finland).

In general, regardless of the model, quasi-judicial bodies extend their powers to a broad range and include both private and public legal relations. The main powers are to resolve situations of violation of the principle of equality for any reason, which became known both from the appeals of the applicants, the competent authorities, and from independent work. The efficiency of work is

ensured not only by the possibility of detecting violations, but also by the application of administrative responsibility to the offender. Such institutions are also engaged in activities to improve legislation and bring acts of public authorities in line with international and constitutional requirements. Monitoring activities, analysis of statistics, public sentiment, polling the population, carrying out preventive and explanatory work are also essential powers of quasi-judicial bodies.

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