

DISCRIMINATION IN EMPLOYMENT BASED ON POLITICAL AFFILIATION

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Abstract

Employee equity becomes one of the main concerns of human resource managers, given the fact that employees are increasingly protected by various laws and regulations for equal opportunities in the recruitment and selection process, as well as at the workplace itself. Therefore, the larger companies are developing a new trend that shows that they cherish equal employment opportunities, saying that it is about employment in a company that offers equal opportunities and fair treatment when employing all people regardless of race, sex, religion, nationality, type of disability or political affiliation in the final part of job vacancies and in the description of the job itself. The paper is an action research in the Republic of Macedonia, which examines persons employed in the last five years in the private sector. The survey included managers who carried out the recruitment and selection and employees in the process. In the work through a survey of respondents from the public sector, employed in the last five years, the existence of discrimination on a political basis is proven.

Keywords: discrimination, political affiliation, selection, employment.

1 Introduction

The concept of equal opportunities for employment in the process of personnel selection is becoming more and more relevant. The importance of diversity management is an essential part of human resource management, and is determined by a number of legal acts, provisions and decisions that determine the legal framework for equal employment opportunities.

In fact, the equality of all citizens in freedom and their rights, regardless of sex, race, skin colour, national and social origin, political and religious beliefs, property and social status, is a fundamental value guaranteed by the Constitution of the Republic of Macedonia. In addition to the Constitution, political equality is envisaged and regulated in other legal regulations and international agreements that form an integral part of a country's legal order.

Hence, it is clear that legal regulations regarding equal employment opportunities exist, but the question is the subject of this paper is whether this is respected in practice. When it comes to the Republic of Macedonia, we ourselves are witnesses that we live in a society where laws on paper exist, but, unfortunately, they are not sufficiently implemented in practice. Therefore, the question arises as to whether there are really equal opportunities for employment in the country, taking into account the fact that in many job vacancies in the territory of the Republic of Macedonia are stated sex, age, etc. Even the very legal provision for employing a certain percentage of Macedonian minority staff is subject to discussion when it comes to equal opportunities for employment in the selection and recruitment process. In fact, it is a conflict between two legal provisions. On the one hand, the law protects discrimination according to nationality in the employment process, while, on the other hand, legal regulations prevent candidates from a certain nationality from participating in the further recruitment process due to the already established percentage of jobs for persons belonging to minorities.

It can be concluded that the entire burden falls on the human resources department and the managers themselves who need to implement the selection and recruitment process. In other words, human resource managers need to be cautious and not allow any of the candidates to feel discriminated on any ground, especially on a political basis, while respecting all lawful and legal frameworks for equal employment opportunities.

The Human Resources has drawn all its existential powers by placing itself at the center of administrative activities within the business organization they supported by building a fine bridge between the organization and its employee community. Subsequently, elevating the HR's role is for it to become the change agent to build an Equal Opportunity culture in the organization (Raghavi and Gopinathan 2013).

The establishment of employment equity legislation is a government intervention directed at achieving employment equity. Its enforcement has enjoyed a home in many countries globally. (Thomas, 2002).

2 Basics of discrimination

There are different definitions of "grounds for discrimination". One of the most frequently cited definitions is that of the European Court of Human Rights (ECHR), according to which it is "a personal characteristic (status)¹ under which persons or groups of persons differ from one another".² According to another definition, the basis for discrimination is a characteristic of an individual that should not be considered relevant in terms of different treatment or enjoyment of certain benefits.³

Different states have different models of determining the grounds for discrimination. Unified principles can be sought to determine how a country decides on a specific model of determining the grounds for discrimination, but analyses show that most often their determination in national laws is a political decision that reflects public opinion at a certain time.⁴

Depending on how the foundations in the legal framework of a state are established, there are three models⁵ of determining the grounds for discrimination:

- Model with general prohibition: The main feature of this model is the existence of a general provision for the protection of equality before all laws. In these countries, the determination of what grounds will be protected is left entirely to the courts. Such a model exists in the United States and Canada.

- Closed model: Discrimination is prohibited only on a precise basis. Expanding of protection against discrimination on other grounds can only be done through legal changes, and not through the practice of courts and bodies. Such a model exists in the EU (based on the directives), as well as in the United Kingdom and Sweden.

- Open Model: Discrimination is forbidden by listing several grounds, and the list is left open by adding "another basis or status", "basics such as", etc. Here courts and bodies have some freedom in determining which personal characteristics or statuses can be considered protected in that open part. Such a model is in the ECHR (European Commission of Human Rights), in the EU Charter, and in Macedonia.

It is important to consider these three models to determine the importance of the definitions of basics in a particular system of protection against discrimination, depending on the model, but also to determine the degree of freedom of interpretation that, depending on the model, have courts, tribunals or bodies.

3 Political Discrimination

The equality before law is one of the greatest achievements in the human rights arena and the most universal and absolute legal principle. The notion that all people are entitled to equal rights before the law has been protected by many international treaties and national constitutions. In this light, worth underlining is the article 2 of the International Covenant on Civil and Political Rights (ICCPR)⁶, prescribing that states must respect and ensure the rights recognized in the covenant "without distinction of any kind, such as race, colour, sex, language, religion, *political or other opinion*, national or social origin, property, birth, or other status.". When talking about political discrimination specifically, the International Labour Organization (ILO) Convention 111 prohibits discrimination on the basis of political opinion in access to jobs and in terms and conditions of employment.⁷ ILO defines the political discrimination as discrimination based on political opinion including membership in a political party; expressed political, socio-political, or moral attitudes; or civic commitment. Workers should be protected against discrimination in employment based on activities expressing their political views; but this protection does not extend to politically motivated acts of violence.⁸ Interestingly, beside the fact that this kind of discrimination is

¹ Unlike the English term used in this occasion, and it is "status", the French version uses the term "toute autre situation", which in a literal translation would mean "every other situation".

² Kjeldsen, Busk Madsen and Pedersen against Denmark (App, 5095/71, 5920/71, 5929/72), 7 December 1976, Series A no.23 (1979-90), 1 EHRR 711 §56. In Wagner and J.M.W.L. against Luxembourg, the ECHR has clarified that unequal treatment does not have to be tied to a basis that incites prejudice and stereotypes and enjoys a high level of protection, but also for any arbitrary treatment resulting in unequal treatment. Source: Wagner and J.M.W.L. v Luxembourg, App.No.76240/01, 28.06.2007. as well as: O'Connell R, Cinderella comes to the Ball: Art 14 and the right to non-discrimination in the ECHR, 29 Legal Studies 2 (2009) 211, 223

³ 'Handbook on European Non-discrimination Law'. EU FRA and CoE, 2010. 97

⁴ Sandra Fredman, Discrimination Law (2nd edn, OUP 2011),111

⁵ Sandra Fredman, Discrimination Law (2nd edn, OUP 2011),110-130

⁶ International Covenant on Civil and Political Rights (ICCPR), G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316, 999 U.N.T.S. 171, December 16, 1966, art. 22(1)

⁷ ILO Convention No. 111 concerning Discrimination in Respect of Employment and Occupation, 1958, 362 U.N.T.S. 31, June 15, 1960

⁸ http://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS_DOC_ENT_HLP_BDE_FAQ_EN/lang--en/index.htm

explicitly prohibited in many universal and regional human rights documents, notably it is not prohibited under the laws of the European Union.⁹

In the attempts to define the political discrimination, the authors agree that it should be interpreted so as to cover the connection with a particular political option or party, both as a formal affiliation (i.e. membership), but also with another types of connections through which connection with a political party or option can be shown. The same applies to the political and other opinion that involves having or not having an opinion on a particular political option or party (including their specific policy, system or their way of governing the state) as well as expressing the same (individually or in an organized manner).

As a result, individuals who are politically discriminated against may be deprived of rights granted to fellow employees for prejudicial reasons.¹⁰

In the case of *Redfearn v The United Kingdom* (2012)¹¹ the European Court of Human Rights found that political views held by individuals should be treated as ‘philosophical beliefs’ and therefore should be granted protection from discrimination under the UK Equality Act 2010.

Discrimination based on political affiliation¹² is world-wide practice. Using evidence from Great Britain, the United States, Belgium and Spain, it is demonstrated in this article that in integrated and divided nations alike, citizens are more strongly attached to political parties than to the social groups that the parties represent.¹³

One of the discriminatory grounds, which is currently the most practiced in the Republic of Macedonia is the political affiliation, with its subspecies, party affiliation. Political discrimination has deep roots in the Macedonian society, which burdens the functional democracy. Discrimination in the country is a process that not only lasts but also develops into new forms that require successful handling of all forms of discrimination.

Analysing the Annual reports on the work of this Commission (2011-2013), which are publicly available, we can see a subsequent increase in the number of complaints.

Table 1: Discrimination complaints¹⁴ per years based on the grounds for discrimination

Category/Year		2011	2012	2013
Total number of received complaints		60	75	84
BASIS FOR DISCRIMINATION				
complaints based on discrimination	sex	4	5	9
	race	0	0	3
	skin color	0	0	2
	genus	5	2	0
	belonging to a marginalized group	3	11	9
	ethnicity	13	16	21
	language	0	0	1

⁹<https://books.google.mk/books?id=gmsEgMvOD8gC&pg=PA57&lpg=PA57&dq=political+views+discrimination&source=bl&ots=K4Lg1lNEq1&sig=ekdit0yqsNZUe0iO00VxEHQHuE&hl=en&sa=X&ved=0ahUKEwji7Y2Qpa7ZAhUGbFAKHQ8mB1o4HhDoAQ6MAM#v=onepage&q=political%20views%20discrimination&f=false> str.57

¹⁰ <https://files.eric.ed.gov/fulltext/EJ1112438.pdf> page 57

¹¹ <https://hudoc.echr.coe.int/eng?i=001-114240> “The applicant complained, among other things, that he had been dismissed on account of his political views and membership of a political party”.

¹² Political affiliation can be considered a translation of the English term politicalaffiliation, although affiliation would literally be translated as "connection" rather than "affiliation" (belonging).

¹³ <http://onlinelibrary.wiley.com/doi/10.1111/1475-6765.12228/abstract?systemMessage=Wiley+Online+Library+is+migrating+to+a+new+platform+powered+by+Atypon%2C+the+leading+provider+of+scholarly+publishing+platforms.+The+new+Wiley+Online+Library+will+be+migrated+over+the+weekend+of+February+24+and+25+and+will+be+live+on+February+26%2C+2018.+For+more+information%2C+please+visit+our+migration+page%3Ahttp%3A%2F%2Fwww.wileyactual.com%2FWOLMigration%2F>

¹⁴ Note: the sum of complaints on bases for each year may not correspond to the total number of complaints received in that year because in most cases complainants claim discrimination on two or more grounds, so the table reflects all the bases.

citizenship	1	0	1
social origin	6	7	6
religion or religious belief	0	3	5
other types of beliefs	1	2	1
education	1	7	7
political affiliation	15	3	12
personal or social status	9	10	12
mental and physical disability	5	9	6
age	4	3	4
family or marital status	3	3	2
property status	4	1	2
health state	1	12	8
any other basis provided for by law or by ratified international agreement	5	6	12
complaints without a specified basis	/	11	12

Source: Annual Reports of the CPD (Commission for Protection against Discrimination) for 2011, 2012 and 2013

4 Selection of Human Resources

The selection is a significant function of the human resources manager. Based on consistent selection, the organization provides quality staff that will advance the work of the organization. The selection aims to measure the potentials of employees and to produce those candidates that have the best competencies for the respective workplace. If this is not achieved, the organization will find it much more difficult to achieve its goals. So, the selection is "the process of selecting qualified people in order to fill vacancies in the organization"¹⁵ (Gatewood, 2011).

The aim of recruitment and selection within the organization is to obtain the number and quality of employees that are required to satisfy the strategic objectives of the organization, at minimal cost (Ofori & Aryeetey, 2011). If in the process of selection of candidates the best personnel are not selected, there is a high probability that the efficiency of the operation will be reduced. The Equal Opportunity Plan has its own objectives, but the most important is to set up a qualified and diverse applicant pool and after its recognition, equal opportunity for employment for each applicant must be ensured. (Raghavi and Gopinathan 2013). Transparency and consistency in receiving the best selected candidates leads to the formation of quality teams as a prerequisite for success. It is important that the selection is performed transparently because it is considered that "*the best training of candidates cannot replace poor selection*".¹⁶ This means that if the right candidate is not selected, it will be negatively felt in the productivity and quality of the organization's functioning. In this context, the attention of HR managers in the process of selection of the right candidates for vacancies is directed towards the candidate's knowledge, skills and abilities, and for successful selection it is necessary to match the knowledge, skills and abilities of the candidate with those who requires the organization and the workplace. That is why every selection

¹⁵ Gatewood, Robert. Hubert Feild, and Murray Barrick. 2011. Human Resource Selection. Cengage Learning. Mason

¹⁶ Sazdovska, Sunchica. 2008. Human Resource Management: Manual. Macedonian Center for International Cooperation. Skopje

process must begin by establishing the **selection criteria**.¹⁷ The selection criterion is "*a characteristic that a candidate must possess in order to be able to perform the tasks successfully*". A systematic selection process involves the recruiting process, gathering information about qualified applicants, evaluating the qualification of each applicant and making decisions about employment (Gamage, 2014)

Observing and writing about the challenges facing recruitment and selection criteria in organizations, István (2010) concluded that there are a plenty of techniques used in recruitment and hiring today among which are some methods not accepted by experts universally, or not recommended for the hiring process. As argued by István (2010), selection methods can be evaluated in several ways. One possible approach is to compare hiring techniques on the basis of their validity, impartiality, scope of usage, and cost.

Accordingly, in order for human resources managers to determine whether candidates meet a given criterion, they determine measurable and visible indicators of the given characteristics. Also, in order to select the best candidates, it is common practice to use several types of indicators, so that candidates have to obtain a positive number of points in the area of each indicator.

5 Legal framework of the concept of equal opportunities for employment in the Republic of Macedonia

The right to work is one of the fundamental human rights that is embedded in the Constitution which along with the numerous ratified international documents form part of the legislation of one country.

Discrimination based on political belief and belonging is prohibited by the Constitution of the Republic of Macedonia. Article 9 of the Constitution stipulates that: Citizens of the Republic of Macedonia are equal in their freedoms and rights, regardless of sex, race, colour of skin, national and social origin, political and religious beliefs, property and social status. All citizens are equal before the Constitution and law. Further, the article 32 guarantees the right to work without discrimination, namely: „ Everyone has the right to work, to free choice of employment, protection at work and material assistance during temporary unemployment. Every job is open to all under equal conditions. Every employee has a right to appropriate remuneration. Every employee has the right to paid daily, weekly and annual leave. Employees cannot waive this right. The exercise of the rights of employees and their position are regulated by law and collective agreements “.

The 2005 Law on Labour Relations is the first legal text that regulates discrimination. Article 6 of the Law provides that the employer is prohibited from putting the applicant for a job or a worker in an unequal position because of racial or ethnic origin, colour, sex, age, health condition or disability, religious, political or other beliefs, union membership, national or social origin, family status, economic status, sexual orientation or other personal circumstances. Also, the Law regulates the principle of equal treatment which prescribe a ban on direct and/or indirect discrimination.

In reaching a comprehensive solution to regulate discrimination, 2010 a Law on Prevention and Protection against Discrimination was adopted. Importantly, the Commission for Protection against Discrimination is foreseen for the first time within as an out-of-court body that should decide on complaints submitted by citizens who are victims of discrimination, regardless of the discriminatory attitude. Analysing the Annual reports on the work of this Commission (2011-2013), which are publicly available, we can see a subsequent increase in the number of complaints.

The provisions relating to the prohibition of discrimination and equal treatment have been undertaken as an obligation of several conventions and treaties. Besides the aforementioned among the most important are the ones of the International Labour Organization, as well as from the EU directives in this area.

6 Research

The survey was conducted on a representative number of 156 respondents from the public administration of the Republic of Macedonia. A survey was conducted on using two questionnaires: one questionnaire for human resource managers in public administration and one questionnaire for persons in regular employment, also in public administration. The questionnaire contains 29 questions related to the recruitment process and issues related to the selection process.

The aim is to see the opinion of both human resource managers and people in regular employment with regard to the concept of equal opportunities for employment when it comes to political affiliation. This included 54 human resources managers and 102 respondents employed in public administration in the last five years. Respondents were surveyed in June 2017.

The survey sets out a general hypothesis: *If there is no discrimination on the basis of political affiliation in the selection process then there will be equal opportunities for employment for all citizens.*

¹⁷ Matisse, L. Robert. John Jackson. 2010. Human Resources Management. Magor, Skopje

The paper presents the representative questions on the conclusions drawn. On the claim "*In the process of recruitment, I do not state whether I am politically affiliated*" out of a total of 102 respondents: with 1 (I completely disagree) answered 75 respondents, with 2 (I partially disagree) answered 14 respondents, with 3 (I agree) answered 5 respondents, 4 (partially agree) answered 1 respondent and with 5 (I completely agree) 7 answered respondents.

The answers received are visually presented in graph no. 1.

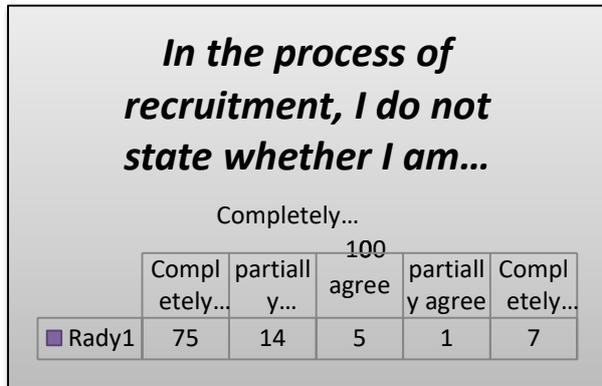


Chart 1 - Answers to question no. 1

The claim "*After the completion of the recruitment process, the candidates are selected regardless of their affiliation*" of a total of 102 respondents: with 1 (I completely disagree) answered 56 respondents, with 2 (I partially disagree) answered 20 respondents, with 3 (I agree) answered 17 respondents, 4 (partially agree) answered 3 respondent and with 5 (I completely agree) 6 answered respondents. The answers received are visually presented in graph no. 2.



Chart 2 - Answers to question no. 2

On the claim "*In the process of interviewing I am asked if I am politically affiliated*" out of a total of 102 respondents: with 1 (I completely disagree) answered 39 respondents, with 2 (I partially disagree) answered 18 respondents, with 3 (I agree) answered 9 respondents, 4 (partially agree) answered 3 respondent and with 5 (I completely agree) 33 answered respondents. The answers received are visually presented in graph no. 3.

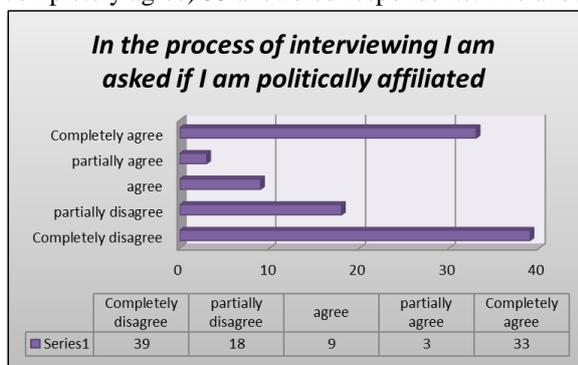


Chart 3 - Answers to question no. 3

On the claim "Upon completion of the selection process, the best quality candidates are selected regardless of their political affiliation" out of a total of 102 respondents: with 1 (I completely disagree) answered 42 respondents, with 2 (I partially disagree) answered 38 respondents, with 3 (I agree) answered 7 respondents, 4 (partially agree) answered 3 respondent and with 5 (I completely agree) 12 answered respondents. The answers received are visually presented in graph no. 4.

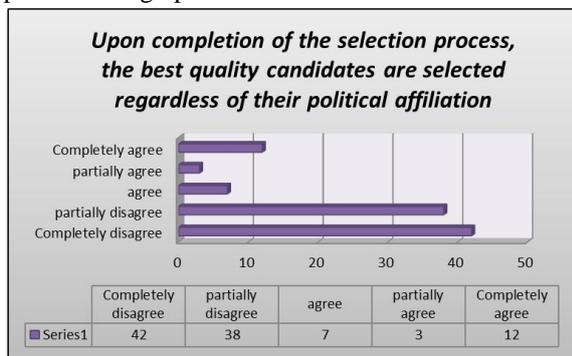


Chart 4 - Answers to question no. 4

A set of questions regarding the independent variable: *Non-political discrimination in employment* is aggregated collectively from the two surveyed populations, human resource managers, and employees in the last five years in the public administration. The mean of the obtained data is 1.33 indicating the existence of political discrimination in employment in the public administration, i.e. in the process of selection of candidates. The means is presented visually in graph no. 5.



Chart no. 5 - Independent variable Non-political discrimination in employment

Indicators of the dependent variable Equal employment opportunities for all citizens are calculated on the basis of all questions set for its determination, with answers from the two surveyed populations (managers of human resources and public administration employees in the last five years. The obtained mean is 1, 86 which speaks about the lack of equal opportunities for employment in the public administration in the Republic of Macedonia when political discrimination is involved.

The obtained arithmetic mean is visually presented in graph no. 6.

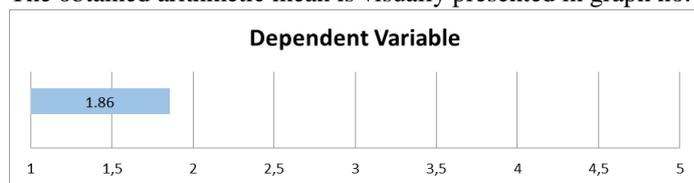


Chart no. 6 - Dependent variable Non-political discrimination in employment

Confirming the variables proves the hypothesis:

If there is no discrimination on the basis of political affiliation in the selection process then there will be equal employment opportunities for all citizens.

Conclusion

The research that has been set up and conducted in this paper has set clear goals and expected results. Based on the hypotheses, variables have been developed which fully responded to the expected results and some conclusions were reached with their calculation.

The general opinion regarding the existence of the concept of equal opportunities in the employment process is different with the both concerned parties: human resources managers are in regular employment and have experienced the recruitment and selection process in the last five years. According to the results, human resource managers partly consider that they work professionally and that they ultimately employ the most qualified

personnel without any influence on prejudice and discrimination on any ground, including political, during the recruitment and selection process, while the opinion is different for those who have experienced these processes, and many consider this concept to be insufficiently respected in terms of political determination.

Regarding the *political affiliation*, exactly 50% of the surveyed human resource managers responded that they fully agree with the assertion that at the end of the recruitment and selection process the best quality personnel are employed, regardless of their political affiliation, which leaves space that it is not always the case. On the other hand, 41% of the people in regular employment do not agree at all that the best quality personnel are employed, regardless of their political determination, which is an indicator of their opinion that this happens frequently.

The thing that is especially "eye-catching" from the results obtained is the difference in the answers that relate to the recruitment process in relation to the selection process. Namely, in the process of recruitment, discrimination on a political basis is not observed. It occurs in the selection process or in most cases at the end of the selection process, in the last filter. Most often in the last selection done by an interview by the top management team, there is discretion for the manager to select the candidate who, according to his conviction, is the best. Discrimination at that moment is difficult to prove in case of possible objection to the damaged party.

The conclusion drawn from this paper is identical to the conclusion of the European Policy Institute, which is:¹⁸ *If it was previously discussed about the competences of the employees in the public administration, today the party affiliation is being problematized. If there was an ethnic discrimination before, today, regarding the application of the principle of equitable representation in the state administration, discrimination is primarily political.*

In practice, there is a tacit understanding that party affiliation has an advantage over the merit system and is not taken into account for it.

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