# ISCRIMINATION AND LABOR FREEDOM IN THE FIELD OF EMPLOYMENT RELATIONS

## DISCRIMINAREA ŞI LIBERTATEA MUNCII ÎN DOMENIUL RAPORTURILOR DE MUNCĂ

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***Summary***

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

***Keywords:*** *Freedom is one of the few human values, which during the development of human societies, have been subjected to fundamental challenges.*

The freedom of choice of profession and the freedom of choice of workplace fall within the scope of the right to labour. These are the fundamental freedoms, they being, on a more general level, the expressions of the freedom of person, as the natural right. The Constitution, consecrating these freedoms, gives everyone the opportunity to choose their profession and of course to choose their workplace [1, art. 4]. Such choices are generally determined by the skills, desires, certain economic coordinates and of course by the will of those interested. The problem is obviously much more complex and complicated, both in theory and in practice, in the medical system.

Human fundamental rights and freedoms are not only a reality of a progressive and democratic society, but also a finality of entire human activity. That is why it is true the statement according to which the human rights are neither a new morality nor a secular religion, they are more than a language common to all people.

Guarantee and respect of human rights become essential conditions of the building of the constitutional state, of the recognition of the Republic of Moldova as a democratic state at the international level. These fundamental ideas allow us to state that person needs a system of legal guarantees of provision and observance by the state of his/her rights, which is achieved through the institution of human rights.

The general obligation of the protection of human rights includes the obligation of the states of the prevention of the infringement of human rights and of their repression and repair. The nature of the obligation of the prevention of the infringement of human rights is treated in the legal doctrine and practice with great caution, because a broader meaning of this obligation would lead to the responsibility of the state for the “risk” of the infringement of the guaranteed right. This fact can

be stated even from the first article of the Constitution of the Republic of Moldova [2, art. 1, par. 3] that states that the Republic of Moldova is a constitutional, democratic state, in which human dignity, rights and freedoms, free development of human personality, justice and political pluralism are supreme values and are guaranteed. Democracy in the Republic of Moldova is exercised in the conditions of political pluralism, which is incompatible with dictatorship and totalitarianism, and no ideology can be established as an official ideology of the state. In accordance with new principles on economic relations in society, the Constitution ensures the right to property and provides that property may not be used to the detriment of human rights, freedoms and dignity.

The right to labour and the right to labour protection [3, art. 43, par. 1] can be considered as the fundamental economic rights of the individual by the fact that namely these rights make it possible for the person, entering into legal relations with the employer on the basis of the provision of certain services for which he/she is remunerated with a salary, in order to increase his/her economic and social wellbeing. Also here, the right to labour can be seen as a constituent element of human dignity, as it contributes to the possibility of the obtainment of compensation that leads to the establishment of an adequate standard of living. In this context, it should be mentioned the fact that this right does not imply a guarantee of employment.

Therefore, the sector of constitutional law relations in the field of labour is quite vast and multilateral, the fact explained by the historical premises of the emergence and development of labour legislation and the formation of the autonomous branch of labour law; through the aims and objectives proposed by the state achieving the legal regulation of labour relations, ensuring the balance between the interests of employees and employers in the field of labour, establishment of the state guarantees of the right to labour and human freedoms, creation of favourable labour conditions, protection of rights and interests of employees and employers; by the necessity to ensure the social equity through the equal participation of employees and employers in the distribution of the social product (the result of their labour) and to ensure by legal means the public peace and social harmony that can be achieved realizing the principles of social partnership, stipulated in the norms of the labour legislation.

In the Republic of Moldova, it is considered that no laws can be adopted that would suppress or diminish the fundamental rights and freedoms of person and citizen [4, art. 54, par. 1] and that every person has the right to effective satisfaction from the competent courts against the actions that violate his/her legitimate rights, freedoms and interests, we can also not state the constitutional provision that in the Republic of Moldova no laws can be adopted that would suppress or diminish the fundamental rights and freedoms of person and citizen, and to list the situations when the exercise of rights and freedoms could be subject to certain restrictions especially in the medical

system where professional freedom includes the freedom of prescriptions and medical acts where the specialist considers them necessary within the limits of the approved standards. The right to independent professional judgement offers the healthcare professionals the opportunity to make decisions independently, without any unjustified influence, for the benefit of the patient. This right is not directly stipulated in the international legislation, but is found in connection with other rights, such as: the right to integrity, the right to non-discrimination and equality, the right to a fair trial, the right to protection of reputation, the right to freedom of expression and information. And within the national framework the profession of doctor can be exercised independently *(free practice)* or within a state medical institution. To the doctor it is guaranteed the moral and professional independence [5, art.11, art. 15, p. 2, let. (e)], but Doctor does not always enjoy the professional independence, the freedom of prescriptions and medical acts that he/she considers necessary within the approved standards, and is not always responsible for the taken decisions. However, the clinical recommendations and prescriptions must be based on the scientific evidence. In case of the application of new methods, the interest of the patient must prevail, and these can be used only after the evaluation of the risk-benefit ratio.

It is important to mention that medical professionals must not accept that the obligations stipulated in their employment contracts affect their professional independence in making medical decisions, when compliance with those obligations does not benefit the patient [6, p.67], so they have the right to defence against the intervention of some persons or authorities of the public administration, in the exercise of the profession, except for the cases of professional fault and such cases do not find reflection.

In this context, we highlight discrimination as the form of marginalization of sex, age, sexual orientation, race, ethnicity, membership of a national minority, religion and disability, social status.

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

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

The complaints from practice highlight the following issues: professional discreditation, psycho-emotional intimidation and undermining of equal treatment of employees who have an active civic position and a well-defined opinion; refusal of reasonable accommodation of the work schedule of employees with the family

responsibilities in the context of the effects of the pandemic crisis; undermining of equal treatment in the application of the guarantees and rights of employees; undermining of equal treatment on dismissal.

The aim was to highlight and discuss the real issues in the domain of discrimination in the labour relations, and to formulate theoretical and practical conclusions on the provision of equality and the right of every person to work, which are the basis of a constitutional state. We state that in many situations, the preconceived stereotypes and notions of employers lead to the multiplication of discrimination or to dismissals. The state is obliged to guarantee to all citizens the freedom to choose the type of activity, free help in the choice of the appropriate labour activity and employment by the specialized service.

From those mentioned we deduce that: under no circumstances should a distinction be made between persons of different sex/gender, different religion, etc., who have a professional training, experience and age appropriate to labour they require. The Council for the Prevention and Control of Discrimination of the Republic of Moldova [7, art. 12] is responsible for execution of these judicial practices on discrimination.

**Bibliographical references:**


1. Constitution of the Republic of Moldova, no.1 of 29.07.1994. In: *Official Gazette of the Republic of Moldova*, 29.03.2016, no.78
2. Constitution of the Republic of Moldova, no.1 of 29.07.1994. In: *Official Gazette of the Republic of Moldova*, 29.03.2016, no.78
3. Constitution of the Republic of Moldova, no.1 of 29.07.1994. In: *Official Gazette of the Republic of Moldova*, 29.03.2016, no.78
4. Constitution of the Republic of Moldova, no.1 of 29.07.1994. In: *Official Gazette of the Republic of Moldova*, 29.03.2016, no.78
5. Law on exercise of profession of doctor, no. 264-XVI of 27.10.2005. In: *Official Gazette of the Republic of Moldova*, 23.12.2005, no.172-175
6. Framework Code of Ethics (Deontological) of medical and pharmaceutical professional
7. Law on quality assurance, no. 121 of 25.05.2012. In: *Official Gazette of the Republic of Moldova*, 29.05.2012, no.103