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**THE PRINCIPLE OF NON-DISCRIMINATION  
AS ONE OF THE FUNDAMENTAL BASIS  
OF THE EUROPEAN INTEGRATION**

Upon the elapse of the decade from the biggest enlargement of the European Union<sup>1</sup>, which took place by the Accession Treaty signed in Athens on the 16 of April 2003, for the 10 new UE Member States who joined in May 2004, including Poland, and after accession in 2007 of Bulgaria, Romania and Croatia in 2013 – process of integration of the UE tends to grow into sizes which, before the fall of the “Iron Curtain”, were possible to imagine only for the dreamers and brave visionaries. The scenario written by the History brings closer the current European Integration more to the federal state than to confederation of the countries, which somehow allude to Churchill’s “United States of Europe”<sup>2</sup> not being neither of these forms at the same time. Nowadays, after the Treaty of Lisbon reforms entered into force, EU becomes an international organization with transnational character and grants a legal personality. European integration has taken place on many different levels like political, financial (in a result of the internal market), legal, social and cultural.

The doctrine deservedly underline that the unification of the Nations within the EU was supported by similar characteristic features that is political coherence, economical structures complementarity, similar economic policy – which all these

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<sup>1</sup> Next can be used abbreviation of the EU.

<sup>2</sup> For the record, at this point it should be noted that the concept of the „United States of Europe” in Europe has both its supporters and opponents, and among the latter, is the home of Churchill – see statement of Prime Minister UK David Cameron for „Sunday Telegraph”, in which he criticized this concept; by the PAP (Polish Press Agency). 16.03.2014.

features developed through the years, especially during political transformation at the end of the 1989 in Central and Eastern Europe, and as well close geographical location<sup>3</sup>.

The high level of the present European Integration would not be achieved without fundamental principles that determine its success. Among these principles – apart from the principle of primacy of EU law, the principle of conferred powers, the principle of loyal cooperation, the principle of subsidiarity, the principle of equality and respect for the national identity of Member States, or principle of respect for fundamental rights – a major role has also taken the principle of non-discrimination, which this article is dedicated to.

Before discussing the substantial issues it is good to pertain to terminology. Doctrine views in a matter of problematic aspects – two concepts are used, that is: principle of non-discrimination and principle of equality; principle of equal treatment. Some of the authors use both concepts interchangeably the others, on the other hand, show that according to EU law those concepts should be divided and used separately since principle of equality and non-discrimination are different, although functionally connected.

According to Anna Śledzińska-Simon view “equality of non-discrimination distinguishes the nature of the obligations on public authorities. In the first case, they are positive in nature and rely on taking certain actions in favour of equality (e.g. preference of a certain social group). In the second – obligations are negative and are to refrain from certain actions that violate the principle of equal treatment. What characteristic, the principle of non-discrimination also involves private entities (e.g., employers, service providers), though the extent of their obligations set out special provisions”<sup>4</sup>.

In the mentioned context it is appropriate to quote Prof Władysław Czapliński, who brings out that non-discrimination principle has negative (interdictory) character and principle of equality positive (prescriptive) and says that “of course, prima facie, you can wonder if this approach itself does not follow, however, some further-reaching diversification, whether the principle of equal treatment does not result in an obligation to positive action on the side of the Member States and institutions. However, it seems that they are so far-reaching considerations would be purely academic and in addition does not have to lead to a satisfactory result”. In

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<sup>3</sup> See more on the conditions of economic integration: A. Kus, *Podstawowe założenia rynku wewnętrznego Unii Europejskiej*, [in:] *Prawo materialne Unii Europejskiej w zarysie*, ed. A. Kus, Lublin 2011, p. 26 et seq.

<sup>4</sup> A. Śledzińska-Simon, *Zasada równości i zasada niedyskryminacji w prawie Unii Europejskiej*, [in:] *Zasada równości i zasada niedyskryminacji*, eds. B. Kłós, J. Szymańczak, “The Bureau of Research Chancellery of the Sejm, BAS Studies” 2011, No. 2 (26), pp. 42 et seq. The author also states that „equality is not synonymous with equal treatment, because may indeed require different treatment in order to ensure equal opportunities and equal outcomes”, while the author in this publication also assumes that the principle of non-discrimination is mainly the prohibition of unequal treatment and an expression of formal equality.

this aspect Prof Czapliński expose the principle of non-discrimination and equality perceived combined<sup>5</sup>.

Prof Justyna Maliszewska-Nienartowicz – relying on the judgment of the Court of Justice, including case from the 27 of January 2005, *Europe Chemi-Con v EU Council and Commission*<sup>6</sup>, in which the Court of Justice use the both concepts interchangeably depend on the positive context (concept of equality) or negative context (concept of non-discrimination) – takes the view that the EU law principle of equality generally corresponds to the principle of equal treatment and non-discrimination<sup>7</sup>.

According to Gina Livioara Goga “Even if the two principles are regulated in the content of distinct articles within primary or derivate acts, the principle of equality and non discrimination „are in general perceived as being the non dissociable faces of the same principle. Still, the principle of equality has more of an economic content rather than an ideological content and its character is instrumental (...)”<sup>8</sup>.

To conclude this part of consideration it is agreeable with Prof Andrzej Wróbel, that “the prohibition of discrimination is a specific manifestation of or an excerpt of the principle of equality. The legal concepts of discrimination are substantively and functionally linked with legal concepts of equality, and the concept of equality and non-discrimination are sometimes used interchangeably (...) There are therefore grounds for general consideration of the concept of discrimination in relation to the concept of equality”<sup>9</sup>.

Concept of “discrimination” is a starting point to further consideration. In the jurisprudence the Court of Justice emphasizes that “discrimination involves the application of different rules to comparable situations or the application of the same rule to different situations”<sup>10</sup>.

Afterwards, on the EU law basis, two fundamental concepts of non-discrimination (equality) are distinguished as a legal matter, that is non-discrimination in a formal meaning and non-discrimination in a substantial meaning. What Prof Andrzej Wróbel brings out “non-discrimination (equality) in the formal sense requires

<sup>5</sup> W. Czapliński, *Zasada niedyskryminacji/równego traktowania w prawie wspólnotowym*, [www.korporacje.com/index.php/Władysław-Czapliński-Zasada-niedyskryminacji/równego-traktowania-w-prawie-wspólnotowym.html](http://www.korporacje.com/index.php/Władysław-Czapliński-Zasada-niedyskryminacji/równego-traktowania-w-prawie-wspólnotowym.html).

<sup>6</sup> C-422/02 P, ECR 2005, p. I-791.

<sup>7</sup> J. Maliszewska-Nienartowicz, *Rola zasady równości w prawie Wspólnoty/Unii Europejskiej (w ujęciu ewolucyjnym)*, „European Studies” 2011, No. 4, pp. 73–75 and cited views of doctrine there.

<sup>8</sup> G.L. Goga, *The General Principle of Non Discrimination and Equal Treatment in the Legislation and Jurisprudence of the Court of Justice of the European Union*, “Acta Universitatis Danubius” 2013, Vol. 5, No. 1, p. 138–139.

<sup>9</sup> A. Wróbel, *Komentarz do art. 18 Traktatu o funkcjonowaniu Unii Europejskiej*, LEX 2012, thesis 18.6.3.4. and cited views of doctrine there.

<sup>10</sup> Judgment of the Court of Justice of UE of 27 October 1998 *Margaret Boyle and Others v Equal Opportunities Commission*, Judgement C-411/96 ECR. 1998, p. I-06401. See also: the judgment of the Court of Justice in the cases C-279/93 *Schumacker* ECR 1995, p. I-225 and *Sermide SpA v Cassa Conguaglio Zucchero and others* 106/83 ECR 1984, p. 4209.

equal treatment for people who are in a similar situation or, in other terms—that similar (same) situations will be treated similarly (equally), and dissimilar (differing) situations will be treated differently, unless there are objectively reasonable basis for the different treatment (...) The concept of non-discrimination (equality) within the meaning of the material grew out of criticism of the concept of equality in the formal sense, which – like the legal values, traditions and legal provisions—shall be deemed to be, at least in some facets (feminist doctrine, critical race theory, etc.), as an instrument of domination and oppression or the perpetuation of discrimination of minorities (a radical critique of equality in the formal sense, based on the premise that „all legal rules mask domination”, however, prevents any rational discourse). Unless, therefore, the principle of non-discrimination in the sense of formal is neutral, the principle of non-discrimination within the meaning of the material shall have clear colouring of the ideological, political and social”<sup>11</sup>.

Under the EU law, so called, direct discrimination and indirect discrimination are distinguished. Broadly speaking – direct discrimination (overt) takes place when the national law provisions *expressis verbis* include unjustified criteria diversify subjects being in similar conditions. Indirect discrimination (hidden) however, does not occur directly from the literal meaning of the national law provision (that is, national law provision does not contain diversify criteria) but the practical applying the rules, taking certain activities, may cause discrimination of individual subjects.

The principle of Equal Treatment, as the one of the main principle of the EU, is based on the both, direct and indirect discrimination.

In this context the phenomenon of the multiple discrimination is also worth to be mentioned. It may occur from many different reasons, on different basis, e.g. may occur on more than one ground, like f. ex.: age, a gender, a sexual orientation, religion or a disability<sup>12</sup>.

Except mentioned examples of discrimination also, so called, inverted discrimination may be distinguished, which happen when national law provisions treats the other Member States citizens in the better way, than the citizens of their own country. These circumstances are not under any EU law regulations (which regulate discrimination interdict), since the element of cross-border does not occur and applies to internal affairs only<sup>13</sup>. At this point it is worth to emphasize, that most of Member States adjust its national law to EU law (by the implementation of the directives), try to found standards to be used not only within cross-border dealings but also regulate legal status of its citizens according to EU legal acts<sup>14</sup>. What is important, Member states should strive toward by means of appropriate national regulations to eliminate phenomenon of inverted discrimination.

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<sup>11</sup> A. Wróbel, *op. cit.*

<sup>12</sup> See more S. Fredman, *Double trouble: multiple discrimination and EU law*, „European Anti-Discrimination Law Review” 2005, No. 2, p. 13 et seq.

<sup>13</sup> See judgment of the Court of Justice in Case C-332/90 Volker Steen, ECR 1992, p. I-341.

<sup>14</sup> See more: W. Czapliński, *Zasada niedyskryminacji/równego...*

Moving forward to the problem with placement the principle of non-discrimination in the law order of the EU it must be pointed out that this particular principle is constituted both in primary legislation and secondary legislation.

According to the primary legislation it must be pointed out that general discrimination interdict which has been expressed in the article 18 of the Treaty of the functioning of the European Union (TFEU)<sup>15</sup>, which provides that „within the scope of application of the treaties and without prejudice to the specific provisions that they provide is prohibited any discrimination on grounds of nationality. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt any rules to prohibit such discrimination.” Grasping mentioned problematic aspects historically, it is appropriate to point out that at the very begging non-discrimination right had only an economical aspect, because discrimination interdict had been regulated by the than Article 7 of the Treaty establishing the European Economic Community (EEC Treaty), which referred to establishing internal market, especially to eliminate barriers in free movement of workers, companies, goods, services and soon became the general right, independent of attributes connected with economic position<sup>16</sup>.

As a matter of historical context regulation from the article 119 EEC should be mentioned, which ensured implementation and application by the Member States the principle of equality of wage between women and men in the range of employment. Treaty of Maastrich implementation of the European Union citizenship has caused, so called, socialization of the EU politics direction and departure from the purely economic aspect of the principle of the equality. Foregoing has caused that the Article 12 of the Treaty Establishing the European Community (TEC) forbade any kind of discrimination due to national status, which has been used not only by economically active people but also by those economically non active but having the EU citizenship<sup>17</sup>. The ground breaking point in the non-discrimination rule evolution has been an entrance in to force the Treaty of Amsterdam, which whereby rules that determines the non-discrimination principle has been established<sup>18</sup>, where an important role has been taken by the Article 13 paragraph 1 TEC (the current article 19 TFEU) who has established a special standard to terminate, which extended the scope of potential legislation policing. From that point on, it became acceptable to adopt the anti-discrimination law not only on grounds of sex but also race, ethnic origin, religion or belief, disability, age or sexual orientation<sup>19</sup>.

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<sup>15</sup> Official Journal of the European Union 2010; C 83/47.

<sup>16</sup> See more: G. More, *The Principle of Equal Treatment: From Market Unifier to Fundamental Right?*, [in:] *The Evolution of UE Law*, eds. P. Craig, G. de Burca, Oxford 1999, p. 518 et seq.

<sup>17</sup> Since that time, we can talk about the „socialization” of freedom of movement in the EU and the departure from the original concept of „market citizens” in the „European citizens”.

<sup>18</sup> See also: art. 2 and art. 3 paragraph 2 TEC, or art. 141 paragraph 4 TEC.

<sup>19</sup> K. Ślebzak, *Scope of EU antidiscrimination law and definitions of key concepts (direct discrimination, indirect discrimination, harassment)*, [http://www.eracom.eu/oldoku/Adiskri/02\\_Key\\_concepts/2011\\_11SLEBZAK\\_EN.pdf](http://www.eracom.eu/oldoku/Adiskri/02_Key_concepts/2011_11SLEBZAK_EN.pdf), p. 2–3, and references cited views of doctrine.

Legal regulations accepted whereby Article 13 TEC are called an antidiscrimination law of the EU<sup>20</sup>.

According to currently in force regulations in primary legislation EU, that determine the non-discrimination principle, at the very beginning it has to be highlighted that EU in accordance with Article 9 Treaty of the EU within the area of its operation „adheres to the principle of equality of its citizens, who are treated with the same attention by its institutions, bodies, offices and agencies”.

Equality of the citizens of the EU has acquired a range of the fundamental right as the Charter of Fundamental Rights of the European Union (CFR)<sup>21</sup> in the Article 20 Title II CFR entitled „Equality” provides that „all are equal before the law”. In addition, in this Title, the Article 21 paragraph 1 and 2 CFR lays down, as a fundamental right, the prohibition of discrimination, according to which “any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited” (paragraph 1 of Article 21) and “within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited (paragraph 2 of Article 21). What is more, Article 23 CFR regulate the equality of men and women, what is important, in all the aspects, like employment, work and wage.

The equality is one of the five main values of the EU basis, which is proved by the regulations of the Article 2 and 3 EU Treaty<sup>22</sup>.

At the same time it has to be indicated that equality of men and women has been also included in the Article 8 TFUE where stands that “in all its activities, the Union shall aim to eliminate inequalities, and to promote equality, between men and women”

On the other hand in art. 10 TFEU has been demonstrated that: “in defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.”

In the regulation of the art. 19 TFEU authorization to establishing antidiscrimination right has been included, in order to overcome any kind of discrimination due to sex, race or ethnicity, religion or worldview, disability, age or sexual orientation<sup>23</sup>.

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<sup>20</sup> A. Śledzińska-Simon, *op. cit.*, p. 47 et seq; also see more about the evolution of the principle of equality: J. Maliszewska-Nienartowicz, *op. cit.*, p. 73–75 and cited there the judgments of the ECJ.

<sup>21</sup> OJ C 83/389.

<sup>22</sup> OJ C 326/01.

<sup>23</sup> According to the Article 19 (ex Article 13 TEC) paragraph 1. “Without prejudice to the other provisions of the Treaties and within the limits of the powers conferred by them upon the Union, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based



What has been mentioned foregoing, the general discrimination interdict on grounds of national status, has been expressed in the Article 18 TFEU. What is important, however, the Treaty on the Functioning of the European Union includes a wide range of specific regulations concerned to the discrimination interdict on the basis of national status. In this context Article 45 paragraph 2 TFEU should be mentioned, which sets discrimination interdict on the basis of national status between employees of the Member States as regards of employment, salary and any other working conditions; Article 49 paragraph 1 TFEU establishing ban on entrepreneurship liberty limitation of the citizens of one Member State on the territory of the other EU Member State; whether such Article 57 paragraph 3 TFEU expressing prohibition of discrimination against providers of one Member State in the territory of another Member State. These provisions constitute a *lex specialis* to the general prohibition of dispersing discrimination on grounds of nationality.

Thus, foregoing means if, for instance, one has an employee status, the Article 45 TFEU shall be used to determine ones rights on basis of the EU law; if one has not possess an employee status (also entrepreneur, service provider, customer status) general rule applied EU citizenship, shall be used. What is more, mentioned provisions are directly effective<sup>24</sup>, it means that it may constitute self-sufficient base to pursue claims by beneficiaries through the national courts (these entities may rely directly before the national courts of law arising therefrom)<sup>25</sup>.

Afterwards, should be noted, that antidiscrimination law is composed of many acts of the secondary law. This matter deliberation should be primarily concentrated on the directives accepted on the basis of contemporary Article 13 TEC (nowadays art. 19 TFEU) where the Directive of the Council 2000/43/EC of 29 June 2000 on the respect of the principle of the equality between individuals irrespective of race or ethnical origin (so called the racial equality directive)<sup>26</sup>, should be included, as well as Directive of the Council 2000/78/CE of 27 November 2000 establishes the general frame on the equal treatment on employment and labor force (so called the framework directive)<sup>27</sup>. Except the historical trait as regards legal acts of the EU secondary law in order to fulfill the principle of non-discrimina-

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on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation". Paragraph 2 "By way of derogation from paragraph 1, in order to contribute to the achievement of the objectives referred to in paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt the basic principles of Union incentive measures, excluding any harmonisation of the laws and regulations of the Member States, to support action taken by the Member States".

<sup>24</sup> So-called self-executing provisions.

<sup>25</sup> See the judgments of the ECJ in cases such as: 167/73 Commission v. France ECR. 1974, p. 359; Case 41/74 Van Duyn v Home Office, ECR. 1974, p. 1337; Antonissen C-292/89 ECR. 1991, p. 745; C-350/96 Clean Car Autoservice GesmbH v Landeshauptmann von Wien., ECR. 1998, p. 2521.

<sup>26</sup> OJ L 180/22.

<sup>27</sup> OJ L 303/16.

tion<sup>28</sup>, it must be pointed out, that except two mentioned directives, the particular significance regarding discrimination counteracting have had: – Directive of the Council 2004/113/CE on of 13 December 2004 implements principle of equal treatment of the men and women regarding access to goods and services and supply of goods and services<sup>29</sup>; – Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions<sup>30</sup>; Council Directive 96/97/EC of 20 December 1996 amending Directive 86/378/EEC on the implementation of the principle of equal treatment for men and women in occupational social security schemes<sup>31</sup>; – Directive of the Council 96/34/CE of 3 June 1996 related to master netting arrangement related to parental leave concluded by UNICE, CEEP and ETUC and pregnant employees and employees recently in labour and breast feeding employees<sup>32</sup>; – Directive of the European Parliament and the Council 2010/41/EU of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC<sup>33</sup>; – Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)<sup>34</sup>; – Council framework decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law<sup>35</sup>; – Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community<sup>36</sup>; – Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC<sup>37</sup>; – or finally Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA<sup>38</sup>.

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<sup>28</sup> As well as stipulating that the author has not exhausted the subject in terms of even identify all secondary legislation in the field of anti-discrimination law, and only mentions some of them.

<sup>29</sup> OJ L 373/37.

<sup>30</sup> OJ L 269/15.

<sup>31</sup> OJ L 046, 17.02.1997, p. 0020–0024.

<sup>32</sup> OJ L 145, 19.06.1996, p. 4–9.

<sup>33</sup> OJ L 180/1.

<sup>34</sup> OJ L 204/23.

<sup>35</sup> OJ L 328/55.

<sup>36</sup> OJ L 257, 19.10.1968, p. 2–12.

<sup>37</sup> OJ L 158/77.

<sup>38</sup> OJ L 315/57.



As regards mentioned problematic aspects, rich jurisprudence Court of Justice of the EU<sup>39</sup> remains important, where the Court has repeatedly related to discrimination interdict. For instance: about the matters related to indirect discrimination the Court of Justice has concluded, that provisions of the internal law are discriminative when, e.g. disabled the ability to organize migrant workers in trade unions established in an organizational units of the host State (see judgment in case ASTI)<sup>40</sup>, or the regulations which determine that the certain percentage of employees must be citizens of the host State (see judgment in case Commission v. France)<sup>41</sup>. Whereas, the Court of Justice has acknowledged that regulations indirectly discriminative are provisions of the national legislations, that, for instance, include in to the working life the period of military service in the host State only (see judgment on Ugliola)<sup>42</sup>, also regulations of the national legislation, that have made dependent receiving of benefits in the respect of separation from a family from the fact of family members living in the same state as the migrant worker (see judgment in case Sotgiu)<sup>43</sup>. The Court of Justice has concluded in its sentences that, in some circumstances, restrictions on the nature of the indirect discrimination appeared in the national legislation may be justified (see judgment in case Commission v s Germany)<sup>44</sup>, also has permitted certain restrictions, that is: in the matter of movement of workers acknowledge that some restrictive criteria may be justified on the basis of performed work (see judgment in case Groener)<sup>45</sup>. The Court of Justice has developed extensive case law in a matter of, practically, every discriminative criterion<sup>46</sup>, and the latest jurisprudence of the Court goes with the times and relates to extremely important social issues, that is: the protection of women who are in advanced in-vitro procedure against dismissal (see judgment in case Mayr)<sup>47</sup>; noting that the supplementary pension benefits of differentiation depending on the situation the person remains in the partnership or is married, to the detriment of this first – may constitute discrimination on grounds of sexual orientation (see judgment in case Jurgen Romer)<sup>48</sup>; or recognizing that the principle of non-discrimination on the basis of age is general principle of the EU law (see judgment in case Kucukdeveci)<sup>49</sup>.

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<sup>39</sup> CJUE.

<sup>40</sup> Judgment in Case C-213/90 ASTI v. Chambre des employees privées, ECR. 1991 ECR I-3507.

<sup>41</sup> Judgment in Case 167/73 Commission v France, ECR. 1974, p. 359.

<sup>42</sup> Judgment in Case 15/69 Südmilch v Ugliola ECR. 1969, p. 363.

<sup>43</sup> Judgment in Case 152/73 Giovanni Maria Sotgiu v Deutsche Bundespost, ECR. 1974, p. 153.

<sup>44</sup> Judgment in Case C-269/07 Commission v. Germany, ECR I-7811.

<sup>45</sup> Judgment in Case 379/87 Groener v. Minister for Education, ECR. 1989, p. 3967.

<sup>46</sup> More on the CJUE judgments in the field of anti-discrimination law see: A. Śledzińska-Simon, *op. cit.*, p. 65 et seq.

<sup>47</sup> Judgment in Case C-506/06 Sabine Mayr against bakery und Konditorei Gerhard Flöckner OHG, ECR 2008; I-01017.

<sup>48</sup> Judgment in Case C-147/08 Jurgen Romer v Freie und Hansestadt Hamburg, ECR 2011; I-03591.

<sup>49</sup> Judgment in Case C-555/07 Küçükdeveci v Swedex GmbH & Co. KG, ECR 2010; I-00365.

The other activities undertaken by the institutions of the European Union, aimed at discrimination counteracting cannot be omitted. Undoubtedly, a huge role is taken by any recommendations, resolutions and opinions, which, although not binding, however, may have strong political impact and often constitute further legislative action. Mentioned acts may to encourage, call to take specific actions within the EU in a matter of discrimination counteract in a view of different criteria for discriminating. In this context, it is worth mentioning: the Resolution of the Council and the representatives of the Governments of the Member States, meeting within the Council, of 17 March 2008 concerned the situation of the disabled within the EU<sup>50</sup>; – Resolution of the European Union Parliament of 13 March 2008 in a matter of gender equality and women’s empowerment in the context of development cooperation (2007/2182(INI)<sup>51</sup>; – Resolution of the EU Parliament on the situation of Roma women within the EU(2005/2164(INI)<sup>52</sup>; or the Resolution of the EU Parliament on current situation and further activities in the field of combating violence against women(2004/2220(INI)<sup>53</sup>.

In order to combat discrimination within the EU various measures are also run from a variety of funds particularly, from the European Social Fund, which is one of the structural funds of the European Union. Part of the projects of the European Social Fond concern combating with discrimination, on which employment seekers and workers are exposed. Actions may to create paths to return to work and the integration of disadvantaged groups into the labour market, for instance, within the projects carried out in partnership with employers to identify employment opportunities for mothers with children<sup>54</sup>.

The importance of the anti-discrimination law within the whole EU is also exposed in various programmes and campaigns undertaken against discrimination. In this context the Community Initiative EQUAL should be mentioned, that is program implemented since 2001 in 25 countries of the European Union, funded by the European Social Fund and directly from the budgets of the Member States participating in the initiative. The Community Initiative EQUAL has been a part of the EU strategy to create more and better jobs and ensure broad access to them, and main goal was “testing and promoting new ways of combating all forms of discrimination and inequality on the labour market, because of the gender, racial, ethnic origin, religion, belief, disability, age, sexual orientation, to the employees and job seekers as well”<sup>55</sup>. The European Commission has made the closure of the Community Initiative Programme EQUAL (PIW EQUAL), and has established the July 11<sup>th</sup> 2011, the day of the beginning of the three-year period in which one is ob-

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<sup>50</sup> OJ C 75/1.

<sup>51</sup> OJ C 66 E/57.

<sup>52</sup> OJ C 298 E/283.

<sup>53</sup> OJ C 288 E/66.

<sup>54</sup> [www.ec.europa.eu/esf/main.jsp?catId=35&langId=pl](http://www.ec.europa.eu/esf/main.jsp?catId=35&langId=pl).

<sup>55</sup> [www.equal.org.pl/equal.php?CID=2&lang=pl](http://www.equal.org.pl/equal.php?CID=2&lang=pl).

liged to keep all documents related to the implementation of the projects under this initiative. What is important, within the framework of the Community Initiative has been carried out 287 projects for a total amount of 138,8 million Euros, which represents 103,6 per cent of the total allocation for the program<sup>56</sup>. Another interesting was the program “Progress” established for the period 2007–2013<sup>57</sup>. The “Progress” program was the financial instrument for supporting development and EU politics coordination upon five following aspects: employment, social exclusion and social protection, working conditions, anti-discrimination and equality between women and men. “Progress” program was directed to: countries of the European Union, candidate countries and potential candidate countries and EFTA/EOG countries<sup>58</sup>. Nowadays, the “Progress”<sup>59</sup> is a part of the Program for Employment and Social Innovation (EaSI)<sup>60</sup> with a proposed budget of 815 million Euro for the 2014–2020 period. EaSI integrates and extends the coverage, apart from Progress, also two another one – Eures an European Progress Microfinance Facility. It will be the basis for the implementation of the “Europe 2020” strategy in the field of employment, social issues, complementing action of the European Social Fund at the same time. EaSI will support Member States efforts in the design and implementation of employment and social reforms at European, national as well as regional and local levels by means of policy coordination, the identification, analysis and sharing of best practices. The main objectives of this program are to: strengthen ownership of EU objectives and coordination of action at EU and national level in the areas of employment, social affairs and inclusion, support the development of adequate social protection systems and labour market policies, modernise EU legislation and ensure its effective application, promote geographical mobility and boost employment opportunities by developing an open labour market, and to increase the availability and accessibility of microfinance for vulnerable groups and micro-enterprises, and increase access to finance for social enterprises. In pursuing these objectives, EaSI will pay particular attention to vulnerable groups, such as young people, promote equality between women and men, combat discriminations, promote a high level of quality and sustainable employment, guarantee adequate and decent social protection, combat long-term unemployment and fight against poverty and social exclusion<sup>61</sup>.

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<sup>56</sup> *Ibidem*.

<sup>57</sup> Decision No 1672/2006/EC of the European Parliament and of the Council of 24 October 2006 establishing a Community Programme for Employment and Social Solidarity – Progress; OJ L 315/1.

<sup>58</sup> Norway, Iceland and Liechtenstein.

<sup>59</sup> See also: Decision No. 284/2010/EU of the European Parliament and of the Council of 25 March 2010 amending Decision No. 1672/2006/EC establishing a Community Programme for Employment and Social Solidarity – Progress; OJ L 87/6.

<sup>60</sup> Regulation (EU) No. 1296/2013 of the European Parliament and of the Council of 11 December 2013 on a European Union Programme for Employment and Social Innovation („EaSI”) and amending Decision No. 283/2010/EU establishing a European Progress Microfinance Facility for employment and social inclusion, OJ L 347/238.

<sup>61</sup> [www.ec.europa.eu/social/easi](http://www.ec.europa.eu/social/easi).

Discussing EU programs on non-discrimination following programs cannot be omitted, that is:

- Strategy on the women and men equality 2010–2015<sup>62</sup>, what is a continuation of the 2006–2010 action plan for equality between women and men, whose current objective is to improve the workplace for women in the labour market, in society and decision-making, both within the European Union and around the world. Main actions cumulate in the areas associated with the provision of equal economic independence, equal pay for the same work, equality in decision-making, dignity, integrity, and the elimination of gender-based violence and gender equality in external policy<sup>63</sup>;
- European strategy in a matter of disability 2010–2020<sup>64</sup>. General goal of the strategy is to increase the opportunities for disabled so they could fully benefit their rights and participate the social life and European economy, especially from the unified market, strategy concentrates on the eight basic fields of activity between EU and Member States on supporting social inclusion of the disabled, that is: Accessibility, Participation, Equality, Employment, Education and training, Social protection, Health, and External actions, which are areas selected due to their potential for achieving the general objectives of the strategy and of the UN Convention, policy related documents of the EU institutions and the Council of Europe as well as the results of the EU action plan for persons with disabilities for the period 2003–2010 and consultation with Member States, stakeholders and citizens; and
- Union framework of national strategies on Roma inclusion strategy to 2020<sup>65</sup>, which emphasises that improvement of the situation of the Roma is not only an urgent priority of society but can also help to increase economic growth in the long term, effective social inclusion policies complement Member States' efforts to achieve the objectives of the "Europe 2020 strategy" and particularly the main objectives in the fields of employment, education and social inclusion<sup>66</sup>.

What should be emphasized, that for the anti-discrimination policy in the European Union, apart from the UE authorities, responsible are the relevant institutions, in particular the EU Fundamental Rights Agency (FRA), based in Vienna,

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<sup>62</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 21 September 2010 – Strategy for equality between women and men 2010–2015 [COM (2010) 491].

<sup>63</sup> [www.europa.eu/legislation\\_summaries/employment\\_and\\_social\\_policy/equality\\_between\\_men\\_and\\_women/em0037\\_pl.htm](http://www.europa.eu/legislation_summaries/employment_and_social_policy/equality_between_men_and_women/em0037_pl.htm).

<sup>64</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 15 November 2010 – The European Disability Strategy 2010–2020: A Renewed Commitment to a Barrier-Free Europe [COM (2010) 636].

<sup>65</sup> EU framework for national integration strategies (1) Roma (2) 2020 Council Conclusions, CJ C 258/6.

<sup>66</sup> Due to the framework of this study, it isn't impossible even to mention about all the activities of the EU in this field, in e.g. about social agendas. It can be added that currently EU works on the plan counteractions of the homophobia and the discrimination on account of the sexual orientation and the sexual identity.

and the European Institute for Gender Equality with head office in Vilnius. The European Union Agency for Fundamental Rights (FRA)<sup>67</sup> is set up to provide expert advice to the institutions of the EU and the Member States on a range of issues. FRA helps to ensure that the fundamental rights of people living in the EU are protected. Fundamental Rights Agency in order to achieve its goals, including tackling discrimination, uses various methods. Inter alia, collect, record, analyze and disseminate relevant, objective, reliable and comparable information on fundamental rights; develop methods and standards to improve the comparability, objectivity and reliability of data at European level, carry out scientific research and surveys; performs preparatory studies and research on compliance with fundamental rights; formulate and publish conclusions and opinions on specific topics for the EU institutions and the Member States implementing the EU law; publishes an annual report on fundamental rights issues, which are covered by the scope of the activities of the Agency, and it indicates the reference samples; publish thematic reports based on its ongoing analysis, research and surveys<sup>68</sup>. The Agency coordinates its activities and creates a cooperation network with civil society (the so-called. „Fundamental rights platform“). What important fundamental rights agency is working closely with the Council of Europe<sup>69</sup>, and the aim of this cooperation is, on the one hand, to avoid duplication of activities, and, on the other hand, to ensure complementarity and added value of their activities. The result of this cooperation is f. ex. „The Handbook on European non-discrimination law“<sup>70</sup>.

In turn, to the activities of the European Institute for gender equality between women and men in particular<sup>71</sup> belongs: the provision of technical assistance to the European institutions and EU Member States to contribute to the promotion and strengthening of gender equality, gender mainstreaming in all activities of the EU and the resulting national policies, combating discrimination on grounds of sex, or raising awareness of European citizens, in particular through the organization of conferences and information campaigns<sup>72</sup>. The Institute collects, analyzes and disseminates information on gender equality, develop methods to enhance the objectivity, comparability and reliability of data at European level by establishing criteria

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<sup>67</sup> The Agency began operations on 1 March 2007, is the successor to the European Monitoring Centre on Racism and Xenophobia.

<sup>68</sup> Council Regulation (EC) No. 168/2007 of 15 February 2007 establishing an Agency for Fundamental Rights of the European Union, OJ. EU L 53 of 22 February 2007.

<sup>69</sup> The agreement between the European Community and the Council of Europe on cooperation between the Agency for Fundamental Rights of the European Union and the Council of Europe, OJ EU L 186.

<sup>70</sup> [www.fra.europa.eu/sites/default/files/fra\\_uploads/1510-FRA\\_CASE\\_LAW\\_HANDBOOK\\_PL.pdf](http://www.fra.europa.eu/sites/default/files/fra_uploads/1510-FRA_CASE_LAW_HANDBOOK_PL.pdf).

<sup>71</sup> Regulation (EC) No. 1922/2006 of the European Parliament and of the Council of 20 December 2006 establishing a European Institute for Gender Equality vegetables.

<sup>72</sup> [www.europa.eu/legislation\\_summaries/employment\\_and\\_social\\_policy/equality\\_between\\_men\\_and\\_women/c10938\\_pl.htm](http://www.europa.eu/legislation_summaries/employment_and_social_policy/equality_between_men_and_women/c10938_pl.htm).

that will improve the consistency of information and shall take into account the gender with the data collection; conducts research situation in Europe as regards gender equality; assumes and coordinate a European network on gender equality, including the centers, bodies, organizations and experts dealing with issues related to gender equality and the integration of gender mainstreaming in order to promote and develop research, optimize the use of available resources and promote the exchange and dissemination of information; or even organizes ad hoc meetings of experts to support the Institute's research work, in conjunction with stakeholders, conferences, campaigns and meetings at European level, in order to raise EU citizens' awareness on gender equality, and findings and conclusions shall transmit to the Commission. The Institute shall publish an annual report on its activities.

The European Union has committed Member States to appoint national equality bodies of equal treatment, which are equipped with a range of competences in order to deal with discrimination, including permissions<sup>73</sup>.

In spite of numerous EU action at various levels in the fight against discrimination, unfortunately, the fight against this phenomenon is not completed. Manifestations of discriminatory behavior go on deaf ears especially in times of crisis<sup>74</sup>.

Special Eurobarometer 393 on discrimination says that close to a fifth of the EU population (17 %) report that they have personally experienced discrimination or harassment: of these, 27% for Europeans who say that they belong to an ethnic minority group. Similarly, discrimination on the grounds of sexual orientation has been experienced by 28% of Europeans who say that they belong to a minority sexual group and 28% of Europeans with a disability say they have experienced discrimination on the grounds of disability. The reported rate for discrimination on the grounds of religion for Europeans who say they belong to a religious minority is 13%, which again is much higher than the average level of discrimination experienced on these grounds (2%). Socio-demographic information also suggests that 8% of Europeans aged 55 and over have experienced discrimination on the grounds of their "old" age, 5% of Europeans aged 15–24 have experienced discrimination because of their relative youth, and women are more likely to report gender discrimination than men (5% vs. 2%)<sup>75</sup>. In total, just above a third (34%) of Europeans have witnessed discrimination or harassment, or have heard of this happening to

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<sup>73</sup> In Poland, the Act of 3 December 2010 on the implementation of certain provisions of the European Union on equal treatment entrusts the task concerning the implementation of the principle of equal treatment – next to the Government Plenipotentiary for Equal Treatment – to the Polish Ombudsman.

<sup>74</sup> In recent times, can be observed for example in the Netherlands, and Great Britain signs of reluctance to workers from other Member States, which was criticized by the European Parliament, which on 16 January 2014, adopted a resolution calling on Member States to respect the principle of the free movement of people.

<sup>75</sup> European Commission (2012), *Discrimination in the EU in 2012*, Special Eurobarometer 393, Brussels, November 2012, p. 65.



someone, in the preceding 12 months<sup>76</sup>. The three most widely spread forms of discrimination are considered to be those based on ‘ethnic origin’ (56 %), ‘disability’ (46 %) and ‘sexual orientation’ (46 %)<sup>77</sup>.

As can be seen from the report presented by the European Commission of 17 January 2014 „Joint Report on the application of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (‘Racial Equality Directive’) and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (‘Employment Equality Directive’)<sup>78</sup>, both the Directive on equal treatment in employment and occupation and the racial equality Directive shall apply in all EU Member States. Although this is positive, however, in the Commission’s view, the EU still faces challenges in combating discrimination. The main challenge now, in the opinion of the Commission, is to increase awareness of the already existing protection and to ensure better practical implementation and application of the Directives. The Commission has noted that together with the Member States and their equality bodies, make a concerted effort to realise the full potential of the Directives in terms of protection of the fundamental right to equal treatment in the EU. The aim of the three annexes to this report is to provide. However, legislation alone is not enough to ensure full equality, so it needs to be combined with appropriate policy action<sup>79</sup>.

The Commission shall in the report indicated that there are areas that require action and improvement. These include: – awareness of right<sup>80</sup> – all Europeans, not only minority populations, tend to lack awareness of their rights; – lack of equality data – the Directives do not require Member States to collect equality data. And it should be noted that lack of equality data makes it more difficult to assess situations and prove the existence of discrimination<sup>81</sup>; – underreporting – all available information confirms low levels of reporting incidents of discrimination. There is a need to make further efforts on awareness – raising and reporting and improve access to complaints mechanisms and to justice. In the opinion of Commission, national equality bodies could play an important role in helping to make complaints processes more ‘customer-friendly’ and to facilitate the reporting of discrimination for

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<sup>76</sup> *Ibidem*, p. 66.

<sup>77</sup> *Ibidem*, p. 7.

<sup>78</sup> Joint Report on the application of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (Racial Equality Directive) and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (Employment Equality Directive), [http://ec.europa.eu/justice/discrimination/files/com\\_2014\\_2\\_en.pdf](http://ec.europa.eu/justice/discrimination/files/com_2014_2_en.pdf).

<sup>79</sup> Joint Report on the application of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (‘Racial Equality Directive’) and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (Employment Equality Directive’, p. 16.

<sup>80</sup> See more: *ibidem*, p. 4–5.

<sup>81</sup> See more: *ibidem*, p. 5–6.

victims<sup>82</sup>; – access to justice – access to effective and swift justice is of fundamental importance to victims of discrimination, but there are still the barriers to access to justice include short time limits for initiating a discrimination claim, the length and cost of proceedings, including the potentially discouraging effect on victims of the “loser pays” principle, and limited availability of legal aid<sup>83</sup>.

The Commission drew attention to the – “strengthening the role of the national equality bodies as watchdogs for equality can make a crucial contribution to more effective implementation and application of the Directives. Enhancing the effectiveness of equality bodies and allowing them to reach their full potential could go a long way towards promoting equal treatment in a way that is easily accessible to everyone in the EU and faster as well as less costly than enforcement through courts for all the parties concerned (including Member States)”<sup>84</sup>.

To sum up, to ensure “that EU rights to equal treatment are properly applied on the ground, the Commission recommends Member States endeavour to:

- continue to raise public awareness of anti-discrimination rights and focus efforts on those most at risk, involving employers and trade unions. The Commission provides funding to support such activities and has published a practical guide for victims of discrimination;

- facilitate reporting of discrimination for victims by improving access to complaints mechanisms. National equality bodies have a crucial role to play and the Commission will continue to support the networking of equality bodies and ensure that they can effectively perform their tasks, as required by EU law,

- ensure access to justice for those affected by discrimination. The Commission’s guide for victims includes specific guidance on how to present and pursue a discrimination claim, while the Commission funds training for legal practitioners and NGOs representing victims of discrimination in how to apply EU equality law,

- address the specific discrimination faced by Roma as part of their national strategies for Roma integration, including by implementing the Commission’s guidance as contained in the recently adopted Council Recommendation on Roma inclusion (IP/13/1226)”<sup>85</sup>.

Ending with a reflection on the selected in this elaboration issues<sup>86</sup>, it should be noted that the role of EU anti-discrimination law is fundamental in the development of European integration. It is a truism to say that without harmonisation of national law of the Member States, the achievement of the European freedoms-determining the internal market, it would be impossible to meet. Important in this

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<sup>82</sup> See more: *ibidem*, p. 6.

<sup>83</sup> *Ibidem*, p. 7.

<sup>84</sup> *Ibidem*, p. 16.

<sup>85</sup> European Commission, press release, Brussels, 17 January 2014, [www.europa.eu/rapid/press-release\\_IP-14-27\\_en.htm](http://www.europa.eu/rapid/press-release_IP-14-27_en.htm).

<sup>86</sup> Be aware that many of the issues have been omitted in it, because of the framework of this study.

context is therefore a correct implementation of the individual directives „anti-discrimination” by all the EU Member States, as well as compliance with laws (including the original) by the EU institutions, the Member States, and even if the national courts. As rightly stressed in the doctrine, the principle of non-discrimination is one of the cornerstones of EU law, because it meets the relevant functions: protective and corrective. It allows to eliminate adverse for nationals of other Member States the laws of the Member States, allowing such persons to carry out their powers, stemming from EU law<sup>87</sup>. Importantly, the principle of non-discrimination applies not only in vertical relations (between the institutions of the Union or national bodies and the body), but also in horizontal relations (between private parties)<sup>88</sup>. It is also an important social dimension, which involves the principle of non-discrimination, because it contributes to building a European civil society, where rapid changes are manifestations of exclusion due to various discriminatory grounds, such as gender, age, sexual orientation, national origin, or religion.

To ensure equality in the European Union represents the status quo maintain its integration. Indeed, any manifestations of discrimination, which is a violation of the basic rights of EU citizens clearly can lead to erosion of the „community” in all its dimensions.

#### **Zasada niedyskryminacji jako jedna z podstaw europejskiej integracji**

Artykuł opisuje zasadę niedyskryminacji jako jednej z podstaw integracji europejskiej. Autorka odwołuje się zarówno do aktów prawa pierwotnego, wtórnego, jak i orzeczeń Trybunału Sprawiedliwości Unii Europejskiej. Przewiduje również konkretne działania Unii Europejskiej w zakresie przestrzegania zakazu dyskryminacji. Generalnie w UE zasada niedyskryminacji jest przestrzegana, jednak wciąż widoczne są przejawy dyskryminacji w społeczeństwach europejskich.

**słowa kluczowe:** zasada niedyskryminacji, równego traktowania, integracja europejska, europejskie wolności

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<sup>87</sup> W. Czaplinski, *Zasada niedyskryminacji/równego...*

<sup>88</sup> See more: A. Śledzińska-Simon, *op. cit.*, p. 43 et seq. and the CJEU case-law cited.