

PROHIBITION OF DISCRIMINATION ON THE GROUNDS OF NATIONAL, ETHNIC, RACIAL AND RELIGIOUS AFFILIATION IN POLISH LAW – REAL ILLUSORY PROTECTION¹

[ESP] *Prohibición de la discriminación por motivos de nacionalidad, origen étnico, raza y
religión en la legislación polaca: una protección realmente ilusoria*

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Abstract: The principle of non-discrimination is guaranteed at the constitutional level in Polish law. Additionally, it results from international conventions to which Poland is a party as well as from EU law. Analyzing the legal provisions relating to the concept of prohibited discrimination on the grounds of, among others, sex, gender identity, skin color, language, national and/or ethnic origin, religion, denomination or lack of denomination, worldview, health condition and degree of ability, age, psychosexual orientation, social and economic status and others - one may get the impression that there are sufficient guarantees prohibiting worse or unequal treatment of persons. However, the practice differs from constitutional and international standards. The problem of discrimination affects many people or groups of people in various situations. The subject of this analysis will be legal protection against discrimination based on various aspects, including in labor law. The aim of this publication is to answer the question of whether the guarantees contained in the constitution and ordinary laws are sufficient to protect individual rights.

Keywords: non-discrimination; equality principle; constitutional law; international protect; labor law.

Resumen: El principio de no discriminación está garantizado a nivel constitucional en la legislación polaca. Además, se deriva de los convenios internacionales en los que Polonia es parte, así como del Derecho de la Unión Europea. Al analizar las disposiciones legales relativas al concepto de discriminación prohibida por motivos de, entre otros, sexo, identidad de género, color de piel, idioma, origen nacional y/o étnico, religión, confesión o falta de confesión, visión del mundo, estado de salud y grado de capacidad, edad, orientación psicosexual, situación social y económica y otros, se puede tener la impresión de que existen garantías suficientes que prohíben el trato peor o desigual de las personas. Sin embargo, la práctica difiere de las normas constitucionales e internacionales. El problema de la discriminación afecta a muchas personas o grupos de personas en diversas situaciones. El objeto de este análisis será la protección jurídica contra la discriminación basada en diversos aspectos, incluido el derecho laboral. El objetivo de esta publicación es responder a la pregunta de si las garantías contenidas en la Constitución y en las leyes ordinarias son suficientes para proteger los derechos individuales.

Palabras clave: no discriminación; principio de igualdad; derecho constitucional; protección internacional, derecho laboral.

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1. INTRODUCTION

The principle of non-discrimination is constitutionally guaranteed in Polish law. It also stems from international conventions to which Poland is a party, as well as EU law. Analyzing legal provisions relating to the concept of prohibited discrimination based on factors such as skin color, language, national and/or ethnic origin, religion, denomination or lack of denomination, worldview, health and disability, age, gender, gender identity, psychosexual orientation, social and economic status, and others, one might get the impression that there are sufficient guarantees prohibiting the inferior or unequal treatment of individuals. However, practice diverges from constitutional and international standards. Discrimination affects many individuals and groups in a variety of situations.

The analysis will focus on the provisions of Polish law prohibiting discrimination on any grounds. The principle of non-discrimination stems primarily from the Constitution of the Republic of Poland, which, in its Preamble, emphasizes the equality of all in rights and obligations. These constitutional guarantees are complemented by international standards stemming from both the Council of Europe and the European Union. Provisions relating to the principle of non-discrimination in the labor market will also be analyzed. The Labor Code clearly defines employers' obligations in the area of counteracting discrimination. This means that all instances of unequal treatment should be addressed by the employer through the implementation of appropriate procedures in the workplace. Anyone whose equal treatment principle has been violated and who has experienced unequal treatment based on gender, age, disability, race, religion, nationality, political beliefs, trade union membership, ethnic origin, denomination, or sexual orientation has the right to compensation. Hate speech is a particularly drastic manifestation of discrimination. Insulting or inciting hatred based on national, racial, ethnic, religious, or gender is prohibited and punishable in Poland.

Despite extensive legal protection, employees, especially women, still experience discrimination in the workplace based on nationality, ethnicity, race, and religion. This is evident from reports by the Human Rights Ombudsman and non-governmental organizations (NGO's) monitoring the situation of employees in the workplace. The research revealed the most common mechanisms of exclusion. These stemmed from prejudice, negative stereotypes about specific groups of employees, and a lack of appropriate sensitivity on the part of employers and co-workers.

Research results show that discrimination manifests itself at various stages of work, from job searching, through recruitment, and employment, to limiting opportunities for promotion and professional development. At the same time, discrimination manifests not only in the employer-employee relationship, but also horizontally, i.e., between employees. Therefore, it is particularly important to pursue inclusive, rather than exclusive, initiatives through mutual education, relationship building, familiarization, and awareness of differences. Research shows that anti-discrimination laws alone are not an effective tool for combating discrimination in employment.

The purpose of this publication is to present constitutional guarantees regarding non-discrimination on the basis of nationality, ethnicity, race, and religion, as well as equal access to employment. Furthermore, it aims to present guarantees arising from international law. The extensive case law of the Constitutional Tribunal, the European Court of Human Rights, and the Court of Justice of the European Union, which has shaped certain patterns of protection, will be analyzed. Drawing on legal provisions, legal doctrine, and other social sciences, the principles of equal access to employment and their impact on the practical application of the law will be discussed. This will allow us to answer the question of the nature of norms regarding the guarantees of choosing and pursuing a profession and choosing a place of work in the context of nationality, ethnicity, race, and religion, as well as the constitutional foundations for restrictions on individual rights and freedoms in this regard. Finally, the publication attempts to answer the question of whether the guarantees contained in the Constitution and ordinary laws are sufficient to protect individual rights, including in the workplace.

This publication adopts a legal-dogmatic and comparative legal approach.

2. CONSTITUTIONAL GUARANTEES OF NON-DISCRIMINATION

The principle of non-discrimination is guaranteed in Polish law at the constitutional level. Already in the Preamble to the Constitution of the Republic of Poland², the authors of the constitution emphasized that all persons are equal before the law. The Preamble constitutes an important element in defining constitutional identity by outlining the fundamental principles and values on which the Constitution is based. It is important in determining the normative

² Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, No. 78, item 483, as amended), hereinafter referred to as: "Constitution"



content of the Constitution's provisions and the pro-constitutional interpretation of ordinary laws. The provision guaranteeing equal treatment for all is Article 32 of the Constitution of the Republic of Poland. The requirement of equal treatment specified in this provision is addressed specifically to public authorities and specifies that no one may be discriminated against in political, social, or economic life for any reason. It constitutes a specific subjective right of everyone under the jurisdiction of Polish law. Of particular significance in the area of legal equality, from the perspective of the labor market, is Article 33 of the Constitution. It addresses the equal rights to education, employment, promotion, equal remuneration for work of equal value, and social security. The principle of equality also applies to holding positions, performing functions, and receiving public honors and decorations. The principle of equality is further elaborated on by the freedom of everyone to choose and pursue an occupation and to choose their place of work, as referred to in Article 65 of the Constitution.

The strengthening of constitutional guarantees of non-discrimination is provided by the norms of international law, particularly within the Council of Europe and the European Union. This is crucial because international law forms part of the national legal order, and under Article 9 of the Constitution of the Republic of Poland, Poland complies with international law binding upon it, as discussed below.

The requirement of equal treatment set forth in Article 32 of the Constitution obliges all public authorities to take steps to ensure its implementation. This means that the legislator is obligated to undertake legislative actions aimed at developing constitutional guarantees at the statutory level. At the executive level, it is responsible for developing statutory norms and implementing state policies guaranteeing equality under the law. In the case of the judiciary, it is responsible for implementing constitutional guarantees in its case law and applying the law in accordance with the principle of direct application of the Constitution in all cases where a statutory norm in this respect conflicts. Failure by a public authority to act in a manner that would result in harm to an individual may constitute grounds for pursuing claims for damages against the state (Article 77(1) of the Constitution).

Polish legal doctrine and case law emphasize that the principle of social justice, expressed in Article 2 of the Constitution, and the principle of liberty, defined in Article 31(1), are crucial for fully defining the content of the constitutional principle of equality³. In the case

³ TULEJA, P., «Commentary to Article 32 of the Constitution», in *The Constitution of the Republic of Poland. Commentary*, Warsaw 2023, pp. 126-130.

of the former, it determines the understanding of equality and justifies any possible exceptions to it. In the case of the principle of liberty, it jointly defines the limits of implementing the principle of equality. Understood in this way, it constitutes a systemic principle, relevant to the entire catalog of constitutional rights and the subjective right to equal treatment. The principle of social justice is particularly important for defining certain relevant characteristics based on which a group of persons in the same situation can be distinguished and who should be treated equally. As the Constitutional Court stated in judgment U 7/87, “*equality requires that persons in the same situation be treated equally, and persons in different situations be treated differently*”⁴. Therefore, it is crucial to determine the essential characteristics or feature that will determine whether the entities being compared are considered similar. However, if entities lack a given relevant characteristic, they may be treated differently. However, it is crucial to maintain the principle of proportionality when limiting the principle of equality⁵. It must therefore be demonstrated that the limitation was implemented through a necessary (indispensable) measure that does not excessively interfere with equality. It must be rationally justified and proportionate to the significance of the interests violated. Furthermore, it should be based on other constitutional norms or values.

As the Constitutional Tribunal has emphasized in its extensive case law: “*all legal entities (addressees of legal norms) characterized by a given essential feature to an equal degree should be treated equally, i.e. without any differentiation, whether favorable or discriminatory. At the same time, the principle of equality assumes different treatment of legal entities that do not share a common essential (relevant) feature*” (Constitutional Court judgment of April 15, 2003, SK 4/02)⁶.

Under the Constitution, discrimination consists in the unjustified differentiation of individuals based on objective characteristics. These characteristics may include nationality, ethnicity, race, religion or non-religion, age, or gender. It should be emphasized that Article 32(2) of the Constitution does not specify the characteristics on the basis of which

⁴ Judgment of the Constitutional Court of 9 March, 1988, U 7/87 (OTK 1988/1/1).

⁵ Judgment of the Constitutional Court of 5 December, 2000, K 35/99 (OTK 2000/8/295). Similarly, the Constitutional Court in its judgment of 22 February, 2005, K 10/04 (OTK-A 2005/2/17).

⁶ Judgment of the Constitutional Court of 15 April, 2003, SK 4/02 (OTK-A 2003/4/31)). The Constitutional Court expressed a similar opinion in other judgments, including: judgment of 20 October, 1998, K 7/98; judgment of 17 May, 1999, P 6/98; judgment of 13 May 2014, SK 61/13; judgment of 5 December, 2000, K 35/99; judgment of 22 February, 2005, K 10/04 etc.



discrimination is prohibited. The legislator used the broad phrase "*for any reason*". This means that there is no exhaustive list of characteristics, and their indication could only be illustrative. This is particularly significant given the changing social situation and evolving views in this area.

In terms of culture, respect for diverse faiths, and non-denominationalism, Poland's Constitution declares it to be a secular state and impartial in matters of religious beliefs and worldviews. The Preamble to the Constitution references Christian values, while simultaneously emphasizing that universal values—such as justice, goodness, and truth—may derive from other sources. The Constitutional Tribunal has emphasized in its case law that "*the principle of impartiality expressed in the Constitution aims to enable the exercise of rights stemming from religious freedom and prohibit interference with the religious structure of society*" (U 10/07)⁷. This means that the state should ensure the freedom of expression of beliefs by individuals in public life—in accordance with Article 25(2) of the Constitution.

This regulation is detailed in Article 53 of the Constitution, which guarantees freedom of conscience and religion to everyone, as well as in the 1989 Act on Guarantees of Conscience and Religion⁸. This Act contains guarantees of freedom of conscience and religion. In particular, it defines the rights of persons exercising freedom of conscience and religion, including: the freedom to choose one's religion or belief and to express it individually and collectively, privately and publicly; and equal rights in state, political, economic, and social life. At the same time, it emphasizes that the exercise of freedom of conscience and religion must not lead to evading the performance of public duties imposed by law, as discussed below.

Article 33(2) of the Constitution is particularly important for guaranteeing equal treatment in the workplace. It specifies the spheres of social life within which equal treatment of both sexes is mandated. Furthermore, if a woman's or a man's situation is worse in a given situation, it is necessary to take compensatory measures to guarantee equal rights. This mandate applies not only to all public authorities, i.e., vertically, but also horizontally, i.e., to private entities that employ people in the labor market⁹.

⁷ Judgment of the Constitutional Court of 2 December 2009, U 10/07 (OTK-A 2009/163/5-6).

⁸ Act of May 17, 1989, on Guarantees of Conscience and Religion (Journal of Laws of 1989, No. 29, item 155).

⁹ TULEJA, P., «Commentary to Article 33 of the Constitution», in *The Constitution of the Republic of Poland. Commentary*, Warsaw 2023, pp. 130-132.

The Constitutional Court has repeatedly addressed the principle of equality before the law and equality between women and men in employment, in its various aspects. This includes equal rights to education and professional development (e.g., training to enhance employee qualifications or career counseling), equal rights to employment and promotion, not only at the hiring stage, but also equal treatment of those already employed in creating opportunities for higher positions. Furthermore, it addresses the principles of protection for employees throughout their careers, as well as protection against dismissal (Constitutional Court judgment of 29 September 1991, Kw 5/91¹⁰). Another important aspect of equal opportunities is the right to equal pay for work of equal value, which is also supported by EU law (Article 157 TFEU¹¹ and EU directives, including Directive 2000/78, the so-called anti-discrimination directive¹²). Finally, the requirement of equal treatment in the sphere of social security, the right to appropriate benefits in the event of incapacity for work due to illness, disability, or after reaching retirement age. However, the Constitutional Court has drawn attention to the possible differentiation of the situation of women and men if it is justified by “biological reasons” (Constitutional Court judgment of 24 October 1989, K 6/89¹³) or the fact of women's motherhood (Constitutional Court judgment of 23 October 2007, P 10/07, Constitutional Court judgment of 7 May 2014, K 43/12¹⁴). These are therefore natural features (biological differences), for example, granting women the right to early retirement or prohibiting women from performing certain jobs in particularly arduous conditions (e.g., during pregnancy or immediately after its termination¹⁵). Such privileges, however, are based on other constitutional norms, such as Article 18 relating to the protection of motherhood or Article 71(2) relating to the protection of mothers before and after childbirth.

The constitutional principle of equality before the law, including equality between women and men, contains general guarantees of protection in the labor market. This stems from the fact that constitutional provisions are, by their nature, general and flexible, and their

¹⁰ Judgment of the Constitutional Court of 29 September, 1991, Kw 5/91 (OTK 1991/1/5).

¹¹ Treaty on the Functioning of the European Union (consolidated version, OJ C 326, 2012, p. 47), hereinafter referred to as the “TFEU”.

¹² Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, 02/12/2000 P. 0016 - 0022).

¹³ Judgment of the Constitutional Court of 24 October, 1989, 6/89 (OTK 1989/1/7).

¹⁴ Judgment of the Constitutional Court of 23 October, 2007, 10/07 (OTK-A 2007/9/107); Judgment of the Constitutional Court of 7 May, 2014, 43/12 (OTK-A 2014/5/50).

¹⁵ Judgment of the Constitutional Court of 29 September, 1997, K 15/97 (OTK 1997/3-4/37).



interpretation evolves in the relevant social context. This has been repeatedly emphasized by the Constitutional Court in its case law, as well as by representatives of constitutional law scholarship¹⁶.

An important aspect of non-discrimination is the principle of equal opportunities in the labor market. The provision that guarantees equal rights for women and men in this regard is Article 65(1) of the Constitution, which refers to the freedom to choose and pursue an occupation. Under this provision, *“Everyone shall be ensured the freedom to choose and pursue an occupation and to choose their place of work”*. Exceptions to this principle are specified by law. This means that this freedom is not absolute¹⁷. The Constitutional Court has also repeatedly emphasized this in its case law. In its judgment of January 24, 2001, SK 30/99, issued following a constitutional complaint, the Constitutional Court stated: *“This freedom means a general prohibition addressed to public authorities from imposing restrictions on an individual's free decision to undertake, continue, and terminate work of a specific type, in a specific occupation, in a specific location, and for a specific employer”*. Further on in the justification of the judgment, the Constitutional Court referred to the freedom to pursue a profession of public trust. He emphasized that:

*“[...] the constitutional freedom to practice a profession of public trust must be subject to legal regulation, particularly when it comes to obtaining the right to practice this profession, establishing the methods and framework for its practice, and defining obligations towards the state or professional self-government. Freedom to practice a profession not only does not conflict with the state's regulation of a number of issues related to both the practice of the profession itself and the status of the individuals practicing it, but it actually assumes the need for such regulations, especially when it comes to professions of public trust”*¹⁸.

He expressed a similar opinion in another judgment, dated 27 June 2013, K 12/10, in which he stressed, among other things, that *“the legislator is obliged to 'ensure the widest possible range of possibilities to choose a profession and place of work, as well as the possibility of practicing a profession free from external interference”*¹⁹.

¹⁶ Among others: SAFJAN, M., «On various methods of horizontal influence of fundamental rights on private law», in *Państwo i Prawo* 2 (2014), p. 3; JAKUSZEWICZ, A., «Interpretation of the constitution as a process of concretization», *Przegląd Prawa Konstytucyjnego* 1.17 (2014), p. 77.

¹⁷ FLORCZAK-WĄTOR, M., «Commentary to Article 65 of the Constitution», in *The Constitution of the Republic of Poland. Commentary*, Warsaw 2023, pp. 237-240. Similarly BARTOSZEWICZ, M., «Commentary to Article 65 of the Constitution», in *The Constitution of the Republic of Poland. Commentary*. ed. HACZKOWSKA, M., Warszawa 2014, pp. 117-123.

¹⁸ Judgment of the Constitutional Court of January 24, 2001, SK 30/99 (OTK 2001/1/3).

¹⁹ Judgment of the Constitutional Court of June 27, 2013, K 12/10 (OTK-A 2013/5/65).

In turn, in judgment SK 4/99, the Constitutional Court of 19 October 1999, stated that:
“*[with regard to] the so-called liberal professions, the content of the freedom to practice a profession is to create a legal situation in which: firstly, everyone will have free access to practicing a profession, conditioned only by talents and qualifications; secondly, he will then have a real opportunity to practice his profession and - thirdly, in performing the profession he will not be subject to the rigors of subordination that characterize the performance of work*”²⁰.

An important constitutional guarantee for equality between women and men in the labor market is Article 65(4) of the Constitution, in which the legislator guaranteed the right to a minimum wage. Although the details regarding the minimum wage are specified by statute, this provision stipulates that discrimination in remuneration for any reason is prohibited. The Constitutional Court has indicated in its case law that differentiation of the minimum wage is permissible, but based on length of service or required competencies. It emphasized that there are no constitutional criteria for determining the minimum wage, as there is no clear method for determining this amount (K 19/00²¹). This means that differentiation of the minimum wage based on gender is prohibited.

Given the subject of these considerations, the constitutional freedom of conscience and religion is of crucial importance in the area of non-discrimination. Article 53(1), guarantees everyone freedom of conscience and religion. Freedom of religion encompasses both the freedom to profess or adopt a religion of one's choice and the freedom to manifest it publicly or privately (Article 53(2)). In its negative aspect, this freedom means freedom from interference by the state and its authorities. In its positive aspect, it represents the state's obligation to provide appropriate protection to individuals. Related to freedom of conscience is the so-called “conscience clause”, which allows a person to lawfully refrain from performing their professional duties if a conflict between the performance of these duties and their beliefs becomes apparent²². In one ruling, the Constitutional Court addressed the constitutionality of a physician's refusal to perform a medical procedure and the invocation of the so-called “conscience clause”. According to the Constitutional Court: “*the right of a physician, like any other person, to refrain from acts contrary to his or her conscience stems directly from the*

²⁰ Judgment of the Constitutional Court of 19 October, 1999, SK 4/99 (OTK 1999/6/119).

²¹ Judgment of the Constitutional Court of 7 May, 2001, K 19/00 (OTK 2001/4/82).

²² FLORCZAK-WĄTOR, M., «Commentary to Article 53 of the Constitution», in *The Constitution of the Republic of Poland. Commentary*, Warsaw 2023, pp. 194-199.



freedom guaranteed by the Constitution. Therefore, even in the absence of statutory regulation, a physician may refuse to perform a service due to conscientious objection” (K 12/14²³).

It should be emphasized that freedom of conscience and religion is not absolute. This means that the manifestation of religion may be restricted, but only by statute, in accordance with the principle of proportionality, i.e., when necessary to protect state security, public order, health, morals, or the freedoms and rights of others (Article 53(5) of the Constitution). The authors of the Constitution clearly allowed for the possibility of limiting this freedom in certain respects. However, it is unacceptable to discriminate against anyone on the basis of their religion, both in the public sphere and in the labor market, as discussed below. The principle of equality and the prohibition of discrimination are therefore fundamental. These values must be respected by public authorities and employers. Violation of these principles will constitute grounds for pursuing claims in court.

The principle of equality before the law and the prohibition of discrimination on any grounds define the constitutional identity. They constitute fundamental values of a democratic state and determine the interpretation of the entire legal system.

3. INTERNATIONAL PROTECTION STANDARDS REGARDING NON-DISCRIMINATION ON THE BASIS OF ETHNICITY, NATIONALITY, RACE AND RELIGION

3.1. *Strasbourg Standards*

Under Article 91(1) of the Constitution, ratified international agreements constitute part of the national legal order and are directly applicable²⁴. They therefore significantly strengthen constitutional norms regarding the principle of non-discrimination. The 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms²⁵, along with its Additional Protocols, holds a special place in the protection of individual rights. Article 14 of the European Convention guarantees everyone the enjoyment of the rights and freedoms set forth in the Convention without discrimination on any grounds. Protocol 12 to the Convention, on the other hand, prohibits discrimination on grounds such as sex, race, religion, national or

²³ Judgment of the Constitutional Court of 7 October, 2015, K 12/14 (OTK-A 2015/9/143).

²⁴ HACZKOWSKA, M., «Commentary to Article 91 of the Constitution», in *The Constitution of the Republic of Poland. Commentary*. ed. HACZKOWSKA, M., Warszawa 2014, pp. 239-246.

²⁵ European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (Journal of Laws of 1993, No. 61, item 284), hereinafter referred to as the “European Convention” or the “Convention”.

social origin, membership in a national minority, or any other grounds. The standard of protection regarding non-discrimination is shaped by the extensive case law of the European Court of Human Rights.

The European Court of Human Rights has repeatedly referred to the principle of non-discrimination on various grounds in its case law. Regarding case law concerning violations of the prohibition of discrimination on grounds of religion, the following are particularly noteworthy²⁶:

- Judgment of the ECtHR of 15 May 2012 in the case of *Fernández Martínez v. Spain*, application no. 56030/07, in which it stated: “*The decision not to renew the employment contract of a married priest, father of five, to teach Catholic religion and morality following the publication of an article revealing his membership in the 'Movement for Optional Celibacy'*”. The judgment was upheld in the judgment of the Grand Chamber of 12 June 2024;

- ECtHR judgment of 24 January 2006 in the case of *Kurtulmus v. Turkey*, application no. 65500/01, in which it found a violation of the European Convention on Human Rights by the disciplinary dismissal of a university lecturer for wearing an Islamic headscarf;

- ECtHR judgment of 15 February 2001 in the case of *Dahlab v. Switzerland*, application no. 42393/98, concerning a violation of Article 9 of the European Convention on Freedom of Religion. A primary school teacher was prohibited from wearing an Islamic headscarf (hijab), which she felt violated her right to freedom of religion²⁷;

- ECtHR judgment of 15 January 2013 in the case of *Eweida and Others v. United Kingdom*, application no. 48420/10 – concerned restrictions on the freedom to manifest one's religion in the workplace. The ECtHR found a violation of Article 9 of the European Convention;

- ECtHR judgment of 21 February 2008 in the case of *Alexandridis v. Greece*, application no. 19516/06 – concerned the prohibition on forcing a lawyer to disclose his or her religious beliefs when taking an oath (violation of Article 9 regarding freedom of religion);

²⁶ See the discussion of some cases PANEK, J., «Wielokulturowość z punktu widzenia prawa», in *Perspektywy kultury*, 19.4 (2017), pp. 155-172.

²⁷ Importantly, in both of these cases, the ECtHR later found the complaints to be manifestly ill-founded. See also KAMIŃSKI, I., «Islamska chusta i zasłony twarzy u kobiet w orzecznictwie Europejskiego Trybunału Praw Człowieka w Strasburgu», in *Problemy Współczesnego Prawa Międzynarodowego, Europejskiego i Porównawczego* 11 (2013), pp. 10-11.



- ECtHR judgment of 23 September 2010 in the case of *Schiith v. Germany*, application no. 1620/03 – concerned the termination of an employment contract by the Catholic Church due to the employee's separation from his spouse. According to the ECtHR, this constituted a violation of Article 9 of the European Convention;

- ECtHR judgment of 20 October 2009 in the case of *Lombardi Vallauri v. Italy*, application no. 39128/05 – concerned the unjustified decision of the Catholic University of Milan to refuse to employ a professor not approved by the ecclesiastical authorities;

- ECtHR judgment of 3 February 2011 in the case of *Siebenhaar v. Germany*, application no. 18136/02 – concerned the dismissal of a teacher from a kindergarten run by the Protestant Church because of her active membership in another religious community;

- ECtHR judgment of 23 June 1996 in the case of *Hoffmann v. Austria*, application no. 12875/87 – concerned the deprivation of a parent of custody of a child based on his or her religion. The ECtHR found that a distinction based solely on religion and belief is inadmissible under Article 14 of the Convention;

- ECtHR judgment of 19 March 2009 in the case of *Lang v. Austria* – the Court ruled that refusing to exempt a person from military service or alternative civilian service solely because the applicant (a Jehovah's Witness) is not a member of a state-recognized religious community constitutes discrimination on grounds of religion and violates Article 14 of the Convention;

- ECtHR judgment in the case of *Darby v. Sweden* – found that the exemption from church tax in Sweden exclusively for Swedish citizens working in Sweden, excluding those working in Sweden but residing abroad, violates the Convention²⁸.

As regards the judgments of the ECtHR in which it found a violation by a State Party to the European Convention on grounds of race, the following should be mentioned in particular:

- ECtHR judgment of 6 July 2005 in the case of *Navhova and Others v. Bulgaria*, applications no. 43577/98 and 43579/98 – concerned the killing of two Roma men by military police officers while they were trying to escape. The ECtHR found that there had been a violation of Article 14 of the European Convention on the basis of racist conduct;

²⁸ All judgments of ECtHR are available on the website [https://hudoc.echr.coe.int/#{%22documentcollectionid2%22:\[%22GRANDCHAMBER%22,%22CHAMBER%22\]}](https://hudoc.echr.coe.int/#{%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22]}).

- ECtHR judgment of 13 December 2005 in the case of *Bekos and Koutropoulos v. Greece*, application no. 15250/02 – concerned the beating of two Roma men and the police officers' failure to investigate racist motives and initiate appropriate procedures. According to the ECtHR, when investigating violent incidents, the authorities have an additional obligation to take all reasonable steps to uncover any racist motives and to determine whether ethnic hostility or prejudice may have played a role in the incident. Therefore, it found a violation of Article 14 in conjunction with Article 3 of the European Convention.

Examples of the ECtHR's extensive case law regarding violations of the prohibition of discrimination on grounds of nationality or ethnicity include:

- ECtHR judgment of 11 July 2006 in the case of *Walter v. Italy* – concerning the impediment to the marriage and family life in Italy of an Italian citizen and an Indian citizen due to unreasonable formal requirements that would not have been required had both applicants been Italian citizens. The ECtHR found a violation of Article 14 of the European Convention;

- ECtHR judgment of 16 September 1996 in the case of *Gaygusuz v. Austria*, application no. 17371/90 – concerned the refusal to grant unemployment benefits to a Turkish citizen working in Austria because he did not hold Austrian citizenship. The ECtHR found that the applicant was in a comparable situation to Austrian citizens, as he resided permanently in Austria and contributed to the social security system by paying taxes. The Court found that the lack of a bilateral social security agreement between Austria and Turkey could not justify the differential treatment, as the applicant's situation was, in fact, too similar to that of Austrian citizens;

- ECtHR judgment of 27 November 2007 in the case of *Łuczak v. Poland*, application no. 77782/01, in which the applicant alleged that the refusal to include a French citizen residing in Poland in the Polish farmers' social security system constituted unequal treatment on grounds of nationality. The ECtHR found that the lack of regulations guaranteeing equal treatment in this respect constituted a violation of Article 14 of the European Convention in conjunction with Protocol 1.

The case law of the European Court of Human Rights has developed over 60 years. However, the problem of discrimination based on various factors persists, as evidenced by subsequent ECtHR rulings. Therefore, despite the high standard of protection provided by the Convention, individual rights guaranteed by the European Convention continue to be violated.



3.2. Luxembourg Standards

European Union law also plays an increasingly important role in protecting against discrimination. Guarantees are contained in both primary and secondary EU law. At the treaty level, Article 2 TEU lists non-discrimination, tolerance, justice, and equality between women and men among the values common to the member states of the European Union²⁹. Similar guarantees are contained in Article 21 of the Charter of Fundamental Rights³⁰. The prohibition of discrimination is a general principle of EU law, derived from the constitutional traditions common to the Member States. Importantly, Article 20 of the Charter of Fundamental Rights expresses the general principle of equality, while Article 21 establishes a non-exhaustive and non-exhaustive list of prohibited differentiating criteria. Among these examples, it specifically prohibits all discrimination based on sex, race, color, ethnic origin, or membership in a national minority. The extensive case law of the Court of Justice of the EU primarily addresses so-called direct and indirect discrimination.

Regarding discrimination based on access to the labor market, the judgment of the European Court of Justice of 10 July 2008, C-54/07³¹, *Centrum voor gelijkheid*, which concerned discrimination based on racial or ethnic origin, is noteworthy. The ECJ clearly stated that less favorable treatment includes hindering access to employment, career advancement, or generally less favorable treatment in the workplace. “*If an employer publicly declares that it will not employ employees of a particular ethnic or racial origin*”, this undoubtedly constitutes direct employment discrimination³².

A specific type of discrimination based on gender is harassment, sexual harassment, and instructions to discriminate. These forms are defined, among others, in Directive 2000/78/EC³³. A common feature of these forms is the motive for the unlawful action, which is gender, and the intention or effect of humiliating, intimidating, violating a person's dignity, and creating a hostile or degrading environment. Such conduct in the workplace involves making employment

²⁹ Treaty on European Union of 7 February 1992 (consolidated version, OJ C 326, 2012, p. 13), hereinafter referred to as “TEU”.

³⁰ Charter of Fundamental Rights of the European Union (OJ EU C 2016, p. 389), hereinafter referred to as the “Charter of Fundamental Rights” or “CFR”.

³¹ Judgment of the Court of Justice of July 10, 2008, C-54/07, *Centrum voor gelijkheid van kansen en voor racismebestrijding v. Firma Feryn NV* (ECLI:EU:C:2008:397).

³² ERIKSSON, A., «European Court of Justice Broadening the Scope of European Nondiscrimination Law», in *International Journal of Constitutional Law* 7 (2009), p. 749.

³³ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, 02/12/2000 P. 0016 - 0022).

benefits conditional on the employee submitting to unwanted but demanded sexual conduct. The second case involves an employee being subjected to comments, opinions and assessments of a sexual nature, behaviours that create a generally unfriendly working atmosphere for the employee.

European legal doctrine and the case law of the Court of Justice of the European Union also highlight the problem of so-called cumulative discrimination (multiple discrimination). This occurs when the applied criteria (apparently neutral) adversely affect different social groups. These criteria are differentiated and each is examined separately. An important CJEU ruling on the prohibition of discrimination is the judgment of 17 April 2018, C-414/16, *Vera Egenberger*³⁴, in which it stated that Article 21(1) of the Charter of Fundamental Rights of the European Union is a mandatory norm, which “*prohibits individuals independently of themselves, granting them a right that they may directly rely on in a dispute concerning one of the fields covered by EU law*”. This provision was the basis for rulings in other cases in which the Court of Justice found a case of cumulative discrimination due to the combined effect of sexual orientation and age³⁵ or skin color and ethnicity, which gave it a special character³⁶.

Examples of judgments relating to discrimination on grounds of religion include:

- CJEU judgment in case C-630/22, *Kirchliches Krankenhaus*, dismissal of an employee of a religious institution after an act of apostasy³⁷;
- CJEU judgment in case C-414/16, *Vera Egenberger*, unequal treatment based on religion or belief, which is a fundamental occupational requirement in some organizations;
- CJEU judgment in case C-68/17, *IR v. JQ*, concerned the dismissal of a Catholic employee who held a managerial position due to entering into a second civil marriage after divorce³⁸;

³⁴ Judgment of the Court of Justice of April 17, 2018, C-414/16, *Vera Egenberger v. Evangelisches Werk für Diakonie und Entwicklung eV* (ECLI:EU:C:2018:257).

³⁵ For example: judgment of the CJEU (First Chamber) of 24 November 2016, C-443/15, *Dr. David L. Parris v. Trinity College Dublin and Others* (ECLI:EU:C:2016:897).

³⁶ PUDŁO-JAREMEK, A., «Zakaz dyskryminacji ze względu na orientację seksualną w prawie UE po wyroku TSUE w sprawie Egenberger», in *Rocznik Administracji i Prawa* 2.20 (2020), p. 61.

³⁷ Order of the CJEU of 10 January 2024, C-630/22, *Kirchliches Krankenhaus* (ECLI:EU:C:2024:136).

³⁸ Judgment of the CJEU (Grand Chamber) of 11 September 2018, C-68/17, *IR v JQ* (ECLI:EU:C:2018:696).



- CJEU judgment in case C-188/15, *Bougnaoui and ADDH*, concerning a client's request that services not be performed by an employee wearing an Islamic headscarf³⁹;
- CJEU judgment in case C-157/15, *G4S Secure Solutions*, concerning a provision of the company's regulations prohibiting employees from wearing visible political, ideological, or religious symbols in the workplace⁴⁰;
- CJEU judgment in case C-54/07 regarding *Feryn* – the ruling concerned discriminatory criteria in employee selection.

Regarding the violation of the prohibition of discrimination on grounds of ethnic origin or membership of a national minority, the Court of Justice has ruled, among others, in:

- CJEU judgment in case C-155/09 *European Commission v. Hellenic Republic*, in which it stated that direct discrimination occurs when a difference in treatment is based exclusively and expressly on one of the prohibited criteria – in this case, nationality⁴¹;
- CJEU judgment of 17 July 2008, in case C-303/06, *S. Coleman v. Attridge Law and Steve Law*, concerning discrimination against an employee on the grounds of his child's disability⁴²;
- CJEU judgment of 16 July 2015, in case C-83/14, *CEZ Razpredelenie Bylgarija AD v. Komisija za zaszta ot diskriminacija*, the case concerned discrimination based on ethnic origin⁴³.

The case law of the Court of Justice, together with the case law of the ECtHR, sets a high standard for the principle of non-discrimination on grounds of, among others, ethnicity,

³⁹ Judgment of the CJEU (Grand Chamber) of 14 March 2017, C-188/15, *Asma Bougnaoui and Association de défense des droits de l'homme (ADDH) v Micropole SA* (ECLI:EU:C:2017:204).

⁴⁰ Judgment of the CJEU (Grand Chamber) of 14 March 2017, C-157/15, *Samira Achbita and Centrum voor gelijkheid van kansen en voor racismebestrijding v G4S Secure Solutions NV* (ECLI:EU:C:2017:203).

⁴¹ Judgment of the CJEU (First Chamber) of 20 January 2011, C-155/09, *European Commission v Hellenic Republic* (ECLI:EU:C:2011:22).

⁴² Judgment of the CJEU (Grand Chamber) of 17 July 2008, C-303/06, *Coleman v Attridge Law and Steve Law* (ECLI:EU:C:2008:415).

⁴³ The circumstances of the case related to the unequal treatment of the Roma community living in one of the city's districts. The issue concerned the placement of electricity meters on poles at a height of 6-7 meters. In other districts of the city, such meters were placed at a height of less than 2 meters. People living in the district with the Roma community were therefore subjected to less favorable treatment. The ECJ found that national regulations, which allowed the installation of the same meters at different heights for reasons other than technical requirements, were contrary to EU standards, in particular Council Directive 2000/43/EC of 29 June 2000 implementing equal treatment between persons irrespective of racial or ethnic origin. Judgment of the CJEU (Grand Chamber) of 16 July 2015, C-83/14, *CEZ Razpredelenie Bylgarija AD v. Komisija za zaszta ot diskriminacija* (ECLI:EU:C:2015:480).

nationality, race or religion. They constitute an important point of reference for national courts and, above all, for individuals seeking protection of their rights.

4. PROHIBITION OF DISCRIMINATION UNDER POLISH LABOR LAW AND PROTECTIVE MEASURES

Labor law regulations are particularly important in the area of non-discrimination in the labor market. These regulations apply only to individuals employed under employment contracts, thus ignoring various other forms of work performed under civil law contracts. Individuals experiencing discrimination in their work environment may seek legal protection under general principles. Regarding regulations specifically related to non-discrimination in the workplace, the provisions of the Labor Code are crucial. One of the fundamental principles governing legal relations between employers and employees is the principle of non-discrimination expressed in Article 11[3] of the Labor Code⁴⁴. This provision addresses non-discrimination on the basis of, among other things, sex, gender identity, skin color, language, national and/or ethnic origin, religion, denomination or lack of denomination, worldview, health condition and ability, age, psychosexual orientation, social or economic status. Importantly, this provision does not differentiate between the individuals it applies to; it merely expresses a general principle of fundamental importance. Additionally, Article 11[3] provides: Article 11[1] of the Labour Code refers to the employer's obligation to respect the employee's personal rights, while Article 11[2] of the Labour Code refers to the principle of equal treatment of employees.

Specific provisions relating to the implementation of the principle of equality in the workplace are contained in Chapter IIa, “Equal Treatment in Employment”, added to the Labor Code through an amendment in 2001⁴⁵. Pursuant to Article 18[3a] of the Labor Code, employees should be treated equally in terms of establishing an employment relationship, employment conditions, promotion, access to training to improve qualifications, and termination of employment. It is clearly stated that equal treatment means non-discrimination in any way, both directly and indirectly. At the same time, it is emphasized that discrimination also includes the act of inducing or ordering another person to violate the principle of equal

⁴⁴ Act of 26 June 1974 – Labour Code (Journal of Laws 1974, No. 24, item 191, as amended, i.e. Journal of Laws 2025, item 277), hereinafter referred to as: “Labour Code” or “LC”.

⁴⁵ Chapter IIa was added pursuant to Article 1 item 5 of the Act of 24 August 2001 amending the Labor Code and certain other acts (Journal of Laws of 2001, No. 128, item 1405).



treatment in employment, or undesirable conduct whose purpose or effect is to violate an employee's dignity and create an intimidating, hostile, degrading, humiliating, or offensive environment (harassment).

Additionally, Article 18a § 6 of the Labor Code specifically regulates discrimination based on gender. The legislature has defined it as any undesirable conduct of a sexual nature or relating to an employee's gender, the purpose or effect of which is to violate the employee's dignity, in particular by creating an intimidating, hostile, or degrading environment. Such conduct may include physical, verbal, and non-verbal elements and is defined as sexual harassment⁴⁶.

According to the Labor Code, a violation of the principle of equal treatment in employment is discrimination against an employee by an employer, which manifests itself in particular in the following ways:

- 1) refusal to enter into or terminate an employment relationship,
- 2) unfavorable remuneration or other working conditions, or failure to grant promotion or other work-related benefits,
- 3) failure to qualify participants for training to improve their professional qualifications, unless the employer demonstrates that it was guided by objective considerations.

One particularly dangerous form of discrimination – alongside harassment and mobbing – is hate speech. It encompasses all forms of expression (verbal, written, graphic, and other) that ridicule, degrade, insult, accuse, or threaten individuals or other entities based on a real or perceived identity characteristic.

Employers' obligations under Article 94, point 2b of the Labor Code include combating discrimination in employment, in particular on the basis of: gender, age, disability, religion, nationality, political beliefs, trade union membership, ethnic origin, denomination, sexual orientation, as well as employment for a fixed or indefinite period, full-time or part-time. Furthermore, employers are obligated to apply objective and fair criteria for assessing employees and their work performance (point 9) and to influence the development of principles of social coexistence in the workplace (point 10).

Failure to comply with or breach these rules by the employer will result in liability towards employees.

⁴⁶ SZEWCZYK, H., «Prawne pojęcie molestowania seksualnego w zatrudnieniu (w świetle art. 18(3a) § 6 k.p.)», in *Państwo i Prawo* 11 (2014), pp. 37-52.

5. LEGAL REMEDIES IN THE EVENT OF A BREACH OF THE PRINCIPLE OF NON-DISCRIMINATION

Protection against discrimination stems not only from the provisions of the Labor Code. Important guarantees in this regard also arise from other legal acts. In particular, the 1989 Act on Guarantees of Conscience and Religion. Article 42 of the Act regulates the rules for time off work during the celebration of religious holidays other than public holidays⁴⁷. Another important legal act guaranteeing the prohibition of discrimination on the basis of gender, race, ethnic origin, nationality, religion, denomination, worldview, disability, age, or sexual orientation is the Act of 3 December 2010 on the Implementation of Certain Provisions of the European Union on Equal Treatment. Article 8 of the Act prohibits unequal treatment of persons, including on the basis of ethnic origin, nationality, or religion, in the following areas:

- 1) undertaking vocational education, including higher education, professional development, retraining, and vocational training;
- 2) conditions for undertaking and pursuing business or professional activity, in particular under an employment relationship or civil law contract;
- 3) joining and participating in trade unions, employer organizations, and professional self-government bodies;
- 4) access to labor market tools and services and the conditions for using them⁴⁸.

Under Article 13(1) of the 2010 Act, anyone who has suffered a violation of the principle of equal treatment is entitled to compensation. The purpose is to compensate for both material and non-material damage, which will be discussed later.

The Labor Code provides various legal remedies in the event of an employer violating the prohibition of discrimination. However, these provisions apply only to employees employed under an employment contract. Primarily, this is the right to compensation for damage caused. Additionally, an employee always has the right to terminate their employment contract for reasons attributable to the employer. If these remedies are insufficient, the employee may

⁴⁷ Under Article 42(2) of the Act, members of churches and other religious associations whose religious holidays are not public holidays may, at their own request, be granted leave from work or study for the period necessary to celebrate these holidays, in accordance with the requirements of their religion. Article 42(3), on the other hand, states that leave from work may be granted provided the employee makes up the leave period, without entitlement to a holiday or overtime allowance.

⁴⁸ Act of 3 December 2010 on the Implementation of Certain Provisions of the European Union on Equal Treatment (Journal of Laws of 2010, No. 254, item 1700; consolidated text: Journal of Laws of 2025, item 1425).



additionally pursue claims under the general principles of the Civil Code⁴⁹. Article 415 of the Civil Code states that “*anyone who causes damage to another is obligated to redress it*”. The provisions of the Penal Code significantly strengthen the guarantee of protecting employee rights against violations. Article 218a § 1 of the Penal Code provides for criminal liability for individuals who persistently or maliciously violate an employee's rights arising from an employment relationship. If a mobber's actions are classified as harassment, the perpetrator is subject to imprisonment from three months to five years (Article 207 § 1 of the Penal Code⁵⁰).

5.1. Right to compensation - civil remedies

If the principle of non-discrimination in employment is violated, employees are entitled to compensation. Under Article 18[3d] of the Labor Code, the amount of compensation cannot be lower than the minimum wage. The minimum wage is determined based on separate provisions of the 2002 Act⁵¹. The prevailing Supreme Court case law holds that compensation for a violation of the principle of equal treatment compensates for loss of property, but also for non-property assets⁵². This means that it is intended to compensate for personal injury and, in this respect, serves as a form of compensation for harm⁵³. As stated by the Supreme Court in its decision of 27 October 2021, PSKP 63/21: “*Compensation for a breach of the principle of equal treatment in employment matters (Article 18 [3d] of the Labour Code) must be effective, proportionate and dissuasive and must compensate not only for pecuniary damage, but also for non-pecuniary damage in the form of a sense of injustice related to the discrimination suffered*”⁵⁴.

Compensation is one means of legal protection against violations of the principle of equal treatment in employment, but not the only one. In addition to the right to compensation, an employee has the right to terminate their employment contract due to a serious breach by the

⁴⁹ Act of 23 April 1964 – Civil Code (consolidated text: Journal of Laws of 2024, item 1061), hereinafter referred to as the “C.C.”.

⁵⁰ Act of 6 June 1997 - Penal Code (consolidated text: Journal of Laws of 2025, item 383), hereinafter referred to as the “P.C.”.

⁵¹ Act of 10 October 2002 – Minimum Wage Act (consolidated text: Journal of Laws of 2024, item 1773).

⁵² MANIEWSKA, E., «Sankcje z tytułu naruszenia zasady równego traktowania a sankcje z tytułu naruszenia zasady niedyskryminacji – relacje między art. 18 § 3 k.p., 11(2) k.p., art. 11(3) k.p. i art. 18(3d) k.p.», in *Prawo i Zabezpieczenie Społeczne* 4 (2024), pp. 56-58.

⁵³ PRUSINOWSKI, P., «Konsekwencje naruszenia zasad równego traktowania i niedyskryminowania w zatrudnieniu», in *Prawo i Zabezpieczenie Społeczne* 5 (2023), pp. 3-8.

⁵⁴ Supreme Court Decision of October 27, 2021, PSKP 63/21 (Lex no. 3362909). Similarly, in the judgment of the Supreme Court of 7 January 2009, III PK 43/08 (OSNP 2010/13-14/160).

employer of its fundamental obligations to the employee. This stems from the fundamental principle of labor law set forth in Article 55 § 1[1] of the Labor Code. An employer is obligated to refrain from discriminatory practices against employees⁵⁵.

An interesting example of judicial practice is the judgment of the Court of Appeal in Łomża of 22 March 2017, I Ca 75/15, concerning a violation by the diocese of the principle of equal treatment through indirect discrimination against an applicant based on his worldview. The cooperation agreement with the applicant was terminated due to his social media posts and support for civil partnerships. The District Court ruled in the first instance that the termination of the cooperation between the parties due to the applicant's support for civil partnerships did not constitute discrimination under the generally accepted teaching of the Catholic Church on this matter. However, the Court of Appeal agreed with the applicant⁵⁶.

Violation of the principle of discrimination violates the rights of individuals, but above all, it always interferes with the fundamental constitutional principle of human dignity, as repeatedly emphasized by the Supreme Court⁵⁷. In its resolution of February 6, 2024, III PSK 49/23, the Supreme Court stated:

*“A violation of an employee's personal rights through actions within the employer's scope of authority may only occur as a result of a violation of the employee's dignity in accordance with Article 11[1] of the Labor Code. An employee's dignity shapes self-esteem, based on the reputation of a good, professional, and conscientious employee, as well as on the recognition by superiors of the employee's abilities, skills, and work contribution”*⁵⁸.

Extensive court case law indicates that an employer's primary obligation is to provide appropriate working conditions for all employees. Paying compensation in the event of a violation of anti-discrimination laws is a last resort measure — if all other remedies prove insufficient. To prevent this, employers should create equal opportunity guarantees in their internal workplace regulations and implement appropriate procedures in cases where these regulations are violated. The Supreme Court also emphasized this in its judgment of November

⁵⁵ RĄCZKA, K., «Commentary to Article 18[3d] of the Labor Code», in *Labor Code. Commentary*, 4nd edition, ed. GERSDORF, M., OSTASZEWSKI, W., RĄCZKOWSKI, M., ZWOLIŃSKA, A., RĄCZKA, K., Warszawa 2024.

⁵⁶ Judgment of the Court of Appeal in Łomża of 22 March 2017, I Ca 75/15 (LEX nr 3128834).

⁵⁷ SOBCZYK, A., «Zakładowe stosowanie i stanowienie prawa w sprawach dotyczących przeciwdziałania naruszeniom godności w zatrudnieniu. Judykatura nauce – nauka judykaturze», in *Prawo i Zabezpieczenie Społeczne* 1 (2023), pp. 34-41.

⁵⁸ Resolution of the Supreme Court of 6 February 2024, III PSK 49/23 (LEX No. 3670272).



7, 2018, II PK 210/17: *“If an employer observes that the working atmosphere and the emotions of some employees may lead to a violation of the dignity of other employees and the creation of a climate of intimidation, hostility, degradation, or humiliation, they are obligated to counteract behavior that may constitute discriminatory conduct”*⁵⁹.

Compensation for unequal treatment under the Act of December 3, 2010, may only be awarded to individuals who have experienced unequal treatment based on race, religion, ethnic origin, nationality, or other listed characteristics. Victims of unequal treatment, understood as direct and indirect discrimination, harassment, sexual harassment, and less favorable treatment of individuals, may seek compensation. Compensation is available for negative consequences suffered by individuals who exercised their rights as a result of a violation of the principle of equal treatment. Individuals who have experienced discrimination may pursue their claims under civil law. It is important to file claims before the statute of limitations expires, which, in the case of a violation of the principle of equal treatment, is three years. This period runs from the date the injured party becomes aware of the violation of the principle of equal treatment, but no later than five years after the event constituting a violation of this principle.

Regardless of the legal remedies provided for in the 2010 Act and the Labour Code, a person who has suffered a violation of their rights, including a violation of personal rights or freedom of conscience, is entitled to compensation for damages under general principles, as referred to in Articles 23 and 24 of the Civil Code.

5.2. Criminal law protection measures

An important aspect of protecting the rights of individuals, including employees, are the guarantees contained in criminal law. Article 257 of the Penal Code prohibits insults or incitement to hatred based on nationality, race, ethnicity, religion, or lack of religious beliefs. This is similarly true of inciting hatred based on national, ethnic, racial, or religious differences, or lack of religious beliefs, as stipulated in Article 256 of the Penal Code. Finally, the use of violence or unlawful threats based on national, ethnic, racial, political, or religious affiliation, or lack of religious beliefs, is also punishable. These crimes are prosecuted *ex officio*, which means that the police and prosecutors are obligated to independently and impartially undertake legal proceedings.

⁵⁹ Judgment of the Supreme Court of 7 November 2018, II PK 210/17 (OSNP 2019/9/106).

An important guarantee specifically related to employee rights, contained in the Penal Code, is liability for malicious or persistent violations of an employee's rights arising from the employment relationship. Under Article 218 § 1a of the Penal Code, a person who engages in such behavior may be held criminally liable, i.e., a fine, restriction of liberty, or even imprisonment for up to two years. Importantly, the Penal Code does not designate only the employer as the perpetrator of a criminal act. This means that charges may be brought against anyone who violates employee rights — both vertically (employer-employee) and horizontally (between employees). Mobbing is also punishable under Polish law. If the mobber's actions are classified as harassment, the perpetrator may be imprisoned for between three months and five years, as provided for in Article 207 § 1 of the Penal Code. As emphasized by the Supreme Court in reference to Article 218 § 1 and Article 207 § 1 of the Penal Code: *“The scope of Article 218 § 1a of the Penal Code and Article 207 § 1 of the Penal Code covers only persons who are employees within the meaning of Article 2 of the Labour Code and Article 22 § 1 and § 11 of the Labour Code, i.e. persons employed under conditions typical of an employment relationship, regardless of the name of the contract concluded by the parties”*⁶⁰.

Court case law shows that incidents of racially or ethnically motivated assaults are not uncommon. For example, the Wrocław Court of Appeal, in its judgment of June 19, 2023, II AKa 443/22, found that a racially and ethnically motivated insult had been committed against a person of a different nationality⁶¹.

6. REAL OR ILLUSORY PROTECTION

The practical application of regulations guaranteeing protection against discrimination on various grounds is fraught with difficulties. Research indicates that despite increasing public awareness, openness to diversity, and educational efforts primarily from non-governmental organizations (NGOs), fundamental constitutional principles are still being violated.

⁶⁰ Resolution of the Supreme Court of 20 September 2018, I KZP 5/18 (OSNKW 2018/11/74).

⁶¹ As stated by the Court of Appeal in Wrocław, *“The accused, while beating the injured party, shouted ‘nigger’. Physical violence was used against the injured party in a club, i.e. in a public place, in front of other people in the club, and met the characteristics of an offense under Article 257 of the Penal Code”* (Lex no. 3625775). Similar factual circumstances were the subject of the judgment of the Court of Appeal in Katowice of July 8, 2021, AKa 119/21 (Lex no. 3322602); the judgment of the Court of Appeal in Warsaw of July 6, 2021, II AKa 330/20 (Lex no. 3213794); the judgment of the Court of Appeal in Wrocław of July 11, 2019, II AKa 223/19 (Lex no. 2704600) and many others.



A study on equal treatment in the workplace was commissioned by the Commissioner for Ombudsman and the Institute of Applied Social Sciences of the University of Warsaw. The report, “*The Labor Market and Equal Treatment Based on Religion*”⁶², demonstrates the existence of several aspects of unequal treatment. First, discrimination based on religion in the workplace can affect both members of religious minorities and the ruling majority. Second, violations of the principle of equal treatment in employment based on religion can stem from various causes and take the form of intentional or unintentional behavior. Third, there are various forms of discrimination based on religion in the workplace: the most common are exclusion mechanisms. They may result from prejudices or negative stereotypes towards a particular religious group, as well as from a lack of knowledge or appropriate sensitivity on the part of employers and colleagues.

Research shows that a factor that increases the risk of discrimination is an employee's strong identification with a given religion and revealing their commitment in the workplace, even if it is the dominant religion. It is also emphasized that members of religious minorities, who are more susceptible to entrenched social stereotypes, are also at greater risk of discrimination. Employment discrimination is also fueled by phenomena such as the growing polarization of opinion in society, hate speech, and harmful generalizations. Unfortunately, another significant factor is the continuing lack of awareness of employee rights and employer obligations.

Discriminatory practices appear as early as the job search stage, during the recruitment process – sometimes discrimination can be caused by a candidate's name suggesting affiliation with a specific religious group or by including other information on a CV that reveals a candidate's religious affiliation.

After establishing cooperation, the most common violations include: limitations on professional development opportunities (e.g. organizing training on religious holidays of a given denomination), difficulties in exercising the right to celebrate holidays in accordance with the religious calendar (treating the employee's request as non-binding, in extreme cases threatening with job loss if the employee takes a day off), inability to provide time off for religious prayer, work below qualifications and underestimating wages.

⁶² The report is available on the Ombudsman website, <https://bip.brpo.gov.pl/pl/content/rowne-traktowanie-w-pracy-ze-wzgledu-na-wyznanie-analiza-i-zalecenia-rpo> [10.10.2025].

Manifestations of discrimination are also visible in horizontal relationships, i.e., among employees themselves. Harassment, for example, refers to unwanted behavior by other employees that has the purpose or effect of violating the dignity of the discriminated individual or creating an intimidating, hostile, degrading, humiliating, or degrading environment for them (using religious insults, offensive remarks and comments, often inspired by stereotypes associated with a given religion, and brutalizing public discourse). Research shows that women who strongly identify with a given religion, as well as religious representatives who are easily recognizable by distinctive clothing or the visible wearing of religious symbols, are at greater risk of discrimination.

Taking the example of discrimination based on religious affiliation, statistics show that:

- Orthodox employees are excluded from the labor market as co-workers and 4% as supervisors.
- Muslim employees are excluded from the labor market as co-workers and as many as 17% as supervisors.
- Buddhist employees are excluded from the labor market as co-workers and 11% as supervisors.

In terms of acceptance, and therefore generally lack of discrimination, Jehovah's Witnesses are approved of in the labor market by 85%-87%, while those of Jewish and Protestant faiths are approved by 82%-87%.

A survey conducted by the Center for Premarital Studies showed that when asked: "Would you accept hiring a Muslim in your workplace?":

- "Definitely yes" – 39.3% of adult employees, and 35.3% of young employees answered yes.
- "Rather yes" – 38.8% of adult employees, 42.8% of young employees
- "I would rather oppose it" – 13.4% of adult employees, 14.8% of young employees
- "I would definitely oppose it" – 8.5% of adult employees, 7.2% of young employees.

The research also identified certain strategies for adapting to the cultural context, employed especially by women to avoid unequal treatment. These include:

- concealing one's identity, religion, and faith (not disclosing religious affiliation);
- isolation (seeking employment in organizations and companies run by adherents of the same religion);



- secularization (rejection of certain religious norms in the workplace);
- resistance to adaptation (attempts to negotiate space for religious expression).

The research findings leave no doubt that people of different skin color, faith, or religion, or of different national or ethnic origin, still struggle with discrimination in social life and the labor market⁶³. Even if it is indirect or covert, asserting one's constitutionally guaranteed rights requires a range of actions, which do not always produce the desired results.

7. FINAL CONCLUSIONS

The Constitution's provisions directly prohibit discrimination on any grounds. They ensure equality between women and men in all areas of life, especially in the labor market. This principle is reinforced by international law – the European Convention on Human Rights, the Charter of Fundamental Rights, EU treaties, EU directives, and ILO guidelines – which prohibit discrimination in all its forms. This is confirmed by extensive ECHR case law and CJEU rulings.

Constitutional guarantees are also confirmed by the extensive case law of the Constitutional Tribunal, particularly with regard to the principle of equality between women and men. The prohibition of discrimination in the workplace based on ethnicity, nationality, religion, or other grounds is also enshrined in the Labor Code. A violation of this prohibition by an employer or a lack of procedures in the case of horizontal discrimination against employees in the workplace gives rise to the right to compensation or redress for the damage suffered. Employees are also protected under criminal law. Violation of the prohibition of discrimination, intentional or persistent violation of employee rights, and insulting an employee constitute a crime under the Penal Code.

Prima facie, it appears that legal protection against discrimination on any ground in Polish law is sufficient. The globalization of the labor and services market means that it is subject to dynamic changes resulting from economic development, social policy, and the growing number of labor migrants. Based on the research conducted and the Ombudsman's reports, it should be stated that the pursuit of violated rights by persons affected by discrimination still encounters difficulties.

⁶³ The Ombudsman's report on discrimination based on nationality is available on the Ombudsman website. The report is available on the Ombudsman website, <https://bip.brpo.gov.pl/pl/content/dyskryminacja-ze-wzgl%C4%99du-na-narodowo%C5%9B%C4%87-na-rynku-pracy> [10.10.2025].