

## Studying the Judicial Protection of Human Rights Against Discrimination by the Russian Courts

**Ekaterina A. Khuzina**\*

Kazan Federal University, Russia

**Gabdrakhman Kh. Valiev**

Kazan Federal University, Russia

**Rezeda G. Khairullina**

Kazan Federal University, Russia

### Abstract

In modern society, within the context of an active emergence and development of all kinds of legal relations both within the state and at the international level, the problem of citizen right, duty and responsibility equality principle implementation in respect of society, state, law and court becomes more important. One of such problems of our society is discrimination. Discrimination implies the infringement or restriction of human rights and freedoms on a certain basis. The most common are racial, gender, national and political sign. It generates complex legal, practical and moral issues relating to the manifestation of social inequality. The rights of all citizens in Russian Federation are guaranteed by the Constitution of Russia, the protection of rights is regulated by the norms of civil, civil procedural, criminal, criminal procedural, administrative, administrative procedural and labor legislation. Russian Federation is a legal and social state in which all forms and manifestations of discrimination are prohibited. In this regard, the rights and the freedoms of a man and a citizen must be fixed and implemented regardless of race, gender, nationality, or religion. One way or another, there are differences, restrictions and preferences on some basis in the conditions of civil society development, the renewal of free, market, competitive Russian economy, the reforming of public and international relation system. The systems of national legislation, under which effective measures of protection against discrimination and international treaties on discrimination take place, consider the issue of discrimination proving as one of the most important.

**Keywords:** Human rights; Freedoms; Judicial protection; Discrimination.



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### 1. Introduction

This article aims to study judicial protection which is the one of the main ways of violated right protection. The courts of general jurisdiction consider the applications for the violations of human rights and freedoms. Also there is the Constitutional Court in Russian Federation to which one can appeal federal laws and other normative acts that contradict the RF Constitution. The following types of jurisdiction are distinguished in the judicial system of our country:

- 1) generic (court cases are distributed according to case type or nature);
- 2) territorial (judicial cases are distributed depending on a crime commission place, on the place where the preliminary investigation is completed, the place the plaintiff or the defendant residence).

The cases relating to the discrimination of freedoms and human rights can be distributed either by generic type or by territorial type of jurisdiction. Similarly, the cases of this type are subject to all orders of proceedings. The provision of judicial protection of human rights and freedoms is expressed in the following aspects: First, a certain system of courts is established in Russia. Secondly, a clear determination of the court competence takes place to protect the rights and freedoms of citizens and other persons. Thirdly, in order to provide everyone the opportunity to appeal to court for the protection of their rights and freedoms, to appeal against judicial decisions, etc. Every citizen of our country has the right to file a claim for the infringement of his rights and freedoms. Recently, certain measures have been taken to establish the judiciary power as an independent and strong branch of state power, implementing its powers in the interests of human and citizen right and freedom protection, a constitutional order and a common economic and legal space of Russian Federation. The adoption of laws should, however, strengthen the competence of the judicial protection during the protection of constitutional human rights, and also they are called upon to expand the boundaries of justice accessibility for the citizens of our country (Karnaukh, 2016). Often, discrimination is manifested in the judicial system itself. The problem of order violation concerning the consideration of criminal and civil cases by courts remains an acute one. According to the estimates of RF Supreme Court, every fifth criminal case and every sixth civil case is considered with the violation the judicial process terms. Thus, the severe violation violating of person and citizen right takes place, which are clearly defined in RF Constitution, and also they are designated in the universally recognized principles and norms of international law. Despite this statistics of discrimination in courts, many citizens rarely turn to courts. Many Russians are afraid of red tape and bureaucracy,

\*Corresponding Author

but they believe that it is not possible to achieve the truth and prove they are right. This paradox of judicial protection pushes citizens to refuse from the defense of their rights and freedoms. Let's give the examples of the most widespread violations of lawfulness concerning the execution in the judicial system: the judges deny the acceptance of lawsuits wrongfully; they violate the terms of judicial decision making; the system of judicial officers works unsatisfactorily; there are the violations concerning the compensation of damage caused to citizen (Kartashkin, 2011).

## 2. Methods

By taking a closer look at the civil process as the part of the judicial system in the context of our topic is achieved that each party of a proceeding undertakes to provide the evidence of its own correctness. This is due to the Article 56 of RF CPC, and it is envisaged as a direct duty. This duty, however, implies, by itself, that another person who believes, but that it has still been discriminated in some sphere, will have to prove this fact in another court. And since it is very difficult to implement in practice, the cases of discrimination are won by citizens in courts very rarely. That is why the citizens who decided to file a lawsuit on discrimination of their rights and freedoms must thoroughly prepare for it, and to present to the court the evidence of their right and freedom infringement on a certain basis. A vivid example of this are labor relations. The method is used in this study to investigate the ways of violation to human rights against discrimination is comparative methods using existed data. Even in the obvious cases of discrimination, it is difficult and time-consuming task for workers to achieve justice. There is some statistics about it, which concerns the discrimination in the labor sphere. This statistics was published by the site Lenta.ru. It contains the following data: about half of all the advertisements about vacancies in our country are not only true but also discriminatory ones. Speaking specifically, they contain unlawful demands for an employee age (44%), sex (29%), and his work experience (19%). They also met such vacancies, in which employers have the requirements for appearance and a certain sign of zodiac. Is this not the discrimination in its pure form, blatant and unconcealed? Is this possible in modern legal society? These and a huge number of issues that have not been resolved yet, are still an acute problem for the society (Vorobyev, 2014).

There are other violations, which can be used during the application to the court. For example, during the conduct of interviews, testing, the employer uses questions that are not relevant to the applicant's professional competence (one can attribute here personal life, family relationships, the desire to acquire children, and many others). The employer has the right to demand the documents listed in art. 65 of RF LC during hiring and has no right to force an employee to submit any other documents (references, characteristics, letters of recommendation, receipts, obligations, etc. (part 3, Article 65 of RF LC). There are many such examples, and they are not uncommon in law enforcement practice. Every citizen, whose rights of employment or in some other sphere were violated, is obliged to apply to the court for the protection of his violated right. Unfortunately, people will rather stay inactive and complain to neighbors, than will go to a court with a statement on the discrimination of their rights and freedoms. Considering the problem of discrimination, it is necessary to pay attention to the international judicial protection of human rights. If you consider the issue of judicial protection of human rights from discrimination, then one should not forget about international protection, namely, about the application to the European Court of Human Rights (Muntean, 2011), (Antúnez, 2016).

## 3. Results and Discussions

The European Court of Human Rights is a body established within the framework of the Council of Europe and it deals with the citizen complaints of the Council of Europe member states on the violation of human rights and freedoms which are included in the list of the European Convention and the annexed protocols thereto. To file a complaint to the European Court is possible only if the violated right is enshrined by the Convention or the protocol and the state has ratified the Convention and the protocol. These rights and freedoms are ratified in our country. On this basis, any citizen of Russian Federation can apply to the European Court under two basic conditions:

1. An infringed right is enshrined in the Convention or in the protocol attached to it.
2. The fact of discrimination has been examined in the judicial system of our country.

Often the European Court makes decisions on violation of the discrimination prohibition based on the norm of Art. 8 of the Convention the right to respect private life (in the case "Konstantin Markin v. Russia"). For example, in the case "Markin v. Russia", the European Court found that the purpose of national security protection declared by the Government of Russia as the basis for not provision of vacation to care for a child is legitimate per se. But the rule on the proportionality of the restrictions concerning the pursued goal was violated, since there are other means of national security provision, except for the exclusion of male soldiers from the number of persons entitled to parental leave. Concerning the burden of proof in the European Court, the approach of the European Court to the distribution of the burden of proof can be singled out. It is close to the approach of the European Union, which is recorded in the Art. 8 of the Directive 2000/43/EC and the Art. 10 of the Directive 2000/78/EC and which explicitly states that if persons who believe that they have been harmed by the non-application of equality principle to them establish the facts for the court or other competent authority on the basis of which it can be assumed that there was a direct or an indirect discrimination, the defendant must prove that there was no violation of equality principle. According to the ECHR case-law, if the applicant has proved the difference in his appeal, the respondent state must prove that this difference was justified and does not constitute discrimination. Thus, in order to transfer the burden of proof to the respondent, the applicant must prove the so-called discrimination. As a rule, this means the possibility of proving the most contested action and the existence of a discriminatory ground (sex, citizenship, age, etc.) (Sychenko, 2017).

## 4. Conclusions

Thus, summarizing the abovementioned, it should be noted that the European Court has developed a clear mechanism for discrimination case distribution, which not only can, but should be adopted by Russian judges, as well as practicing lawyers. The jurisdiction of the European Court of Human Rights has been formally recognized as binding in the interpretation and the application of the Convention and its protocols (Ross and Yinger, 2006); (Alvariafee *et al.*, 2018); (Abikhanova *et al.*, 2018).

## 5. Summary

Summing up the overall results and concluding, it can be said that discrimination or the restriction of human rights and freedoms on a certain basis is one of the problematic aspects in the work of judicial protection. The problem lies in the fact that it is very difficult to prove the fact of discrimination, a large amount of evidence is needed. And also the problem is that the human rights system often violates the rights and freedoms of the judicial system, which is paradoxical and makes it difficult to achieve justice. This is proved by statistics, the cases on discrimination are won extremely rare, despite the fact how many laws exist and how the rights and freedoms of a person are taken out in the first place by society. The problem of violations of the consideration order by the courts of criminal and civil cases remains to be acute one, judges illegally refuse to accept claims; time limits for the execution of judgments are violated; the system of bailiffs is unsatisfactory; the violations in terms of damage compensation caused to citizens. And yet, one of the main ways of the violated right protection is judicial protection. The courts of general jurisdiction consider the applications on the violations of human rights and freedoms. Thus, judicial protection of human rights in Russia should not be idealized, but it also should not be neglected. Despite all the shortcomings, the judicial system of human right and freedom protection through legal means is the most effective mechanism for violated right restoration.

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