

SAŽETAK DOKTORSKOG RADA

SUDSKA ZAŠTITA OD DISKRIMINACIJE U BOSANSKOHERCEGOVAČKOM I EVROPSKOM PRAVU U GRAĐANSKIM PREDMETIMA

Predmet doktorskog rada je sudska zaštitu od diskriminacije u bosanskohercegovačkom i evropskom pravu u građanskim predmetima i njegovo rješenje sadržano u domaćim i međunarodnim dokumentima kroz sveobuhvatnu analizu domaćih propisa, evropskih propisa, literature, sudske prakse, statističkih podataka od institucija. Razmatrajući historijski nastanak i razvoj zaštite od diskriminacije, nastojalo se prikazati na koji način se izvršilo mijenjanje ovog prava kroz historiju i njegova zaštita. U radu su analizirane zakonske odredbe koje regulišu oblast sudske zaštite od diskriminacije u građanskim predmetima u nacionalnom pravu, komparativnom pravu i evropskom pravu, te su s ciljem unapređenja domaćih zakonskih rješenja istaknuti određeni prijedlozi *de lege ferenda*. Cilj ispitivanja teme rada je upoznavanje domaćih rješenja o sudskoj zaštiti od diskriminacije, sudskoj zaštiti u zemljama u okruženju: Hrvatska, Srbija, Crna Gora i Slovenija, kao i zaštita od diskriminacije u evropskom pravu kroz nadležnost Evropskog suda za ljudska prava i Suda pravde Evropske unije. Analizom uočenih nedostataka u domaćem zakonodavstvu u postupku zaštite od diskriminacije, a upoređujući nacionalno pravo sa evropskim pravom i komparativnim pravom, ukazano je na probleme i potrebu mijenjanja odredbi Zakona o zabrani diskriminacije Bosne i Hercegovine. Značajan dio rada posvećen je analizi presuda u antidiskriminacijskim parnicama domaćih sudova, sudske prakse Evropskog suda za ljudska prava i Evropskog suda pravde. Predmet, ciljevi i sadržaj doktorskog rada usmjereni su na dokazivanje temeljne hipoteze rada, a to je unapređenje postojećih zakonskih rješenja u Bosni i Hercegovini kao i usklađenosti domaćeg zakonodavstva sa evropskim i međunarodnim standardima zaštite prava na nediskriminaciju. Kroz doktorski rad razmatrani su pojmovi diskriminacije i razvoja zaštite od diskriminacije kao jednog od osnovnih ljudskih prava, a koje proizlazi iz više međunarodnih dokumenata. Cilj istraživanja rada je analizirati navedene zakonske odredbe, uključujući i one o sudskoj zaštiti od diskriminacije, kao i njihovu usklađenost sa članom 14. Konvencije, zakonima o parničnom postupku u Bosni i Hercegovini i drugim zakonima koje regulišu ovu oblast, kao i

međunarodnim dokumentima. Pravo na zaštitu od diskriminacije u Bosni i Hercegovini ugrađeno je u Ustav Bosne i Hercegovine i međunarodne akte koji su ratifikovani od strane Bosne i Hercegovine, kao i Zakon o zabrani diskriminacije koji je donesen u Bosni i Hercegovini 2009. godine. Ustav Bosne i Hercegovine u članu II stav 4. definiše nediskriminaciju: „Uživanje prava i sloboda, predviđenih u ovom članu ili u međunarodnim sporazumima navedenim u Aneksu I ovog Ustava, osigurano je svim licima u Bosni i Hercegovini bez diskriminacije po bilo kojem osnovu kao što je pol, rasa, boja, jezik, vjera, političko i drugo mišljenje, nacionalno ili socijalno porijeklo, povezanost sa nacionalnom manjinom, imovina, rođenje ili drugi status“. Bosna i Hercegovina je 24. 4. 2002. godine postala 44. članica Vijeća Evrope, a 12. 7. 2002. godine potpisala i ratifikovala Evropsku konvenciju za zaštitu osnovnih ljudskih prava i sloboda. Odredbe o zabrani diskriminacije sadrže i Ustav Republike Srpske i Ustav Federacije Bosne i Hercegovine. Bosna i Hercegovina je 29. 7. 2003. godine ratifikovala Protokol br. 12. uz Konvenciju i time stvorila uslove za pravno regulisanje diskriminacije i zaštite od iste u domaćem pravnom sistemu. U doktorskom radu analizirana je uloga institucija Evropske unije koje su donijele više direktiva, koje su prethodile donošenju antidiskriminacijskih zakona u zemljama Evropske unije kao i državama koje teže biti članicama i to:

- Direktiva Vijeća 2000/43/EZ o provođenju načela jednakog postupanja prema osobama, bez obzira na njihovo rasno ili etničko porijeklo,
- Direktiva Vijeća 2000/78/EZ o uspostavljanju općeg okvira za jednako postupanje pri zapošljavanju i obavljanju zanimanja,
- Direktiva 2004/113/EZ o provođenju načela jednakog postupanja prema muškarcima i ženama u pristupu i nabavci robe, odnosno pružanja usluga
- Direktiva 2006/54/EZ o provođenju načela jednakih mogućnosti i jednakog postupanja prema muškarcima i ženama u pitanjima zapošljavanja i rada

S obzirom na to da se trenutno nalazi u fazi pridruživanja Evropskoj uniji, Bosna i Hercegovina je obavezana uskladiti domaće zakonodavstvo u oblasti diskriminacije sa zakonodavstvom Evropske unije. Pored odredaba koje predstavljaju prednosti i novine predviđene Zakonom o zabrani diskriminacije BiH, novo procesno zakonodavstvo Bosne i Hercegovine sadrži i nejasne i nepotpune zakonske odredbe koje dovode do dilema u primjeni na koje je ukazano u radu.

Sudovi u Bosni i Hercegovini, preuzimajući pravnu stečevinu Evropske unije, imaju ključnu ulogu u zaštiti od diskriminacije. Ta uloga će postati još veća kada Bosna i Hercegovina postane članica Evropske unije.

Ključne riječi: diskriminacija, sudska zaštita od diskriminacije, Evropski sud za ljudska prava, Evropski sud pravde, Evropska konvencija za zaštitu ljudskih prava i sloboda, direktive.

SUMMARY OF DOCTOR' S THESIS
COURT PROTECTION AGAINST DISCRIMINATION IN BIH AND EUROPEAN
LAW IN REGARD TO CIVIL SUBJECTS

Subject of doctor`s thesis is „Court protection against discrimination in Bosnian and Herzegovina and European law in regard to civil subjects“ and its solution contained in the local and international documents through general analysis of local regulations, European regulations, literature, court practice, statistic data by the institutions. Reconsidering the historical beginning and development of the protection against discrimination one has tried to present in which way the change of this law through history has been made same as its protection. The legal regulations that regulate the field of court protection against discrimination in civil subjects in national law, comparative law and European law have been analysed in this work and having as aim advancement of local legal solutions certain proposals *de lege ferenda* have been emphasized. Examining of topic of work has as aim to get acquainted with local solutions about court protection against discrimination, court protection in the countries of the surrounding Croatia, Serbia, Montenegro and Slovenia, as well as protection against discrimination in the European law through jurisdiction of the European Court for humman rights and EU court of justice. By analysis of the noticed shortcomings in local legislature in the procedure of protection against discrimination and by comparing the national law with European law and comparative law it has been pointed at problems and need of change of regulations of Bosnian and Herzegovina law about prohibition of discrimination. An important part of work has been dedicated to analysis of verdicts in anti discrimination law cases in local courts, court practice of the European court for humman rights and European court of justice. Subject, aims and context of doctor`s work are directed on proving of the basic

hypothesis of work and that is the advancement of the existing legal solutions in Bosnia and Herzegovina as well as coordinations of local legislature with European and international standards of protection of right on non-discrimination. The term of discrimination and development of protection against discrimination as one of the basic human rights that come out from more international documents, have been reconsidered through doctor`s work. Aim of research of work is to analyse front legal regulations, including those about court protection against discrimination, as well as its coordination with article 14 th of the convention, laws about litigation procedure in Bosnia and Herzegovina, and other laws that regulate this field and international documents. The right on protection against discrimination in Bosnia and Herzegovina was built into Bosnia and Herzegovina constitution, and international acts which were ratified by Bosnia and Herzegovina, same as the law about prohibition of discrimination that was enacted in Bosnia and Herzegovina in 2009. In the article ii attitude 4., constitution of Bosnia and Herzegovina defines non-discrimination: “enjoyment of rights and freedoms stipulated in this article or in international agreements listed in annex i of this constittion, is enabled to all persons in bih without discrimination on any ground such as gender, race, colour, language, religion, political and other opinion, national or social origin, coherence with national minority, property, birth or other status”. On 24th of April 2002 Bosnia and Herzegovina become 44th member of the Council of Europe and on 12th of July 2002 it signed and ratified the European convention for protection of basic human rights and freedoms. Both constitution of Republic of Srpska and constitution of Bosnia and Herzegovina Federation contain regulations about prohibition of discrimination. On 29th of July 2003 Bosnia and Herzegovina ratified protocol no.12 with the convention and by it created conditions for legal regulating of discrimination and protection from the same one in local legal system. In doctor`s work one analysed the role of the EU institution which enacted several directives that preceded to enacting of anti-discrimination laws in the countries of EU as well as in the states which aspire to be members and these are:

- Directive of the Council 2000/43 of the European Community about implementation of principle of equal acting towards the persons regardless to their race or ethnic origin;
- Directive of the Council 2000/78 of the European Community about establishment of general framework for equal acting while employment and performing of professions;

- Directive 2004/113 of the European Community about implementation of equal acting towards men and women in the access and supply of goods, respectively offering of services;
- Directive 2006/54 of the European Community about implementation of principle of equal possibilities and equal acting towards men and women as far as employment and work are concerned.

Having in mind that it is currently in the phase of accessing to EU, in that direction Bosnia and Herzegovina is obliged to coordinate local legislature in the field of discrimination with the legislature of EU. Besides regulations that present advantages and new things stipulated by the Bosnia and Herzegovina law about prohibition against discrimination, new procedural legislation of Bosnia and Herzegovina contains also both unclear and uncomplete legal regulations that result by dilemmas regarding application, on which it has been pointed in the work. By taking over the legal legacy of the EU, courts in Bosnia and Herzegovina have crucial role in the protection against discrimination. That role will become even bigger when Bosnia and Herzegovina becomes member of EU.

Key words: discrimination, court protection against discrimination, European Court for Human Rights, European Court of justice, European Convention for protection of human rights and freedoms, Directives.