

Nándor Makkos

Instruction in a holistic approach to discrimination

Abstract

Administrative activity is present in all walks of life and it has a universal character nowadays. This article has been tabled to draw attention to the discriminatory erosions that sometimes appear as a hiding place in public administration, which may appear as minor deviations in childhood, but may lead to disintegration of organizational unit in adulthood. On the other hand, however, the quality of life of workers is impaired because workers exposed to psychosocial risks show significantly higher levels of health risk than those who are not. The most common symptoms are stress, sleep problems, fatigue and depression (URL1). I have tried to approach the relationship between instruction and discrimination holistically, from the slightest socialization error of man to the most serious crime. I believe that a person's discriminatory behavior is characterized by the inclusion of the milder deviations of a person to the more serious ones. Genocide certainly involves its four milder stages, the physical assault transmission, discrimination, verbal expression, and discriminatory thought. We have drawn attention to the harmful effects of 'invisible' in its form, but abnormal in its content. Perhaps avoidance is one of the most insidious behaviors of our time, which, by distorting personality in childhood, can put its mark on the daily life and public service of an adult. In the case of discrimination, sanctions of a non-legal nature which undermine the offender's social authority may also be significant, e.g. mocking, exasperation, appearance, speaking, which are more common than legal sanctions and can cause a great deal of torment to the perpetrator and his environment, we need anti-instructional discrimination in the public sector to ensure good public services and well-being of public service employees. In the bureaucratic system, it is precise regulation that can be used to combat discrimination by instruction, because it not only serves to coordinate and fix the best method, but also ensures standardized, equal treatment of individual cases (Gajduschek, 2000, 44.). It

is also worth noting that enforcing the prohibition of discrimination, its principles, its loyalty, impartiality, responsibility or professionalism, and the confidence of users of public services in the public service is in the interests of professional administration.

Keywords: instruction, discrimination, law, public sector

Instruction in a holistic approach to discrimination

Issuing and following the instruction is a mandatory instruction for action, procedure, conduct and task performance, which is characteristic of the organizational system of public administration, the non-observance of them may have serious consequences. An instruction to apply discrimination is a provision that must not be appealed to unless explicitly permitted by law. The phantom of instruction to discriminate, today no longer demands human lives, but deteriorates people's quality of life, causing material and moral damage, making people unhappy and excluded from society. The instruction may affect the organization of the public sector and the relationship between the public sector and other service providers and users, e.g. the application of *'unwritten professional rules'*.¹ The prohibition of instruction to discriminate in the public sphere is a multiple relevant principle, since *'it must maintain the requirement of equal treatment in the establishment of legal relationships of the Hungarian state, and 'the requirement of equal treatment (all public and non-budgetary bodies) (...) the employer is the employment relationship, the person authorized to give instructions in relation to other employment relationships and the legal relationships directly related thereto'*² (Ebkty) There are only a few exceptions to the scope of the Act in the case of discrimination, family, parties, or churches, which, however, are justified by a higher interest.³ The existence of discriminatory instruction, if not in written form, is often not, or only difficult to justify, although there are legal and non-legal methods and tools for identifying and verifying its existence, since combating this form of discrimination is fundamental to society. The thousand-face appearance of the discriminatory instruction is characterized by its appearance in many areas of law, inducing criminal, civil, and public administration through legal proceedings. In this

1 Hungarian Equal Treatment Authority (EBH) EBH/641/2007.

2 Hungarian Equal Treatment Act. (Ebkty) S. 4.

3 There are exceptions to the exception to the general rule and are thus subject to the general rule. Ebkty. S.7. (2). a) b).

work, we look at the different areas of discriminatory instruction, attempt to understand the driving forces behind these measures, and outline possible ways of imposing sanctions.

The nature of the instruction

The issuing of an instruction shall be conditional on its being formulated and brought to the notice of the person concerned. However, the formulation of all discriminatory ideas and disclosure to the person concerned does not justify a violation of personality, as under the law the lawyer does so at the client's direction; however, this wording *'does not attack the victim's person.'*⁴ Instruction to commit a discriminatory act appears to require a negative intention. However, discrimination can be justified not only by hostile thought, but also by its absence, since another group of major motives for discrimination is the enforcement of unintentional self-interest. The third major group of motivation is the lack of interest, which is not derived from hostile behavior or interest, ignorance, omission, or indifference. However, the act at issue must be examined both in its content and in the circumstances in which it was adopted and in the way in which it is formulated and communicated to the person concerned.⁵ To determine the actual exercise of the instruction (influence, guidance, rules of conduct), it is not only necessary that the natural or legal person issues the instruction, but also that it will be followed by the trustee since the Court bases it does not violate the principles of personal responsibility, the presumption of innocence and liability based on fault.⁶

The giving of instructions can be considered as a probable circumstance which may be taken into account in the analysis of the actual exercise of decisive influence. It is important that the exercise of a decisive influence must be actual and on the other hand, executes instructions. As a general rule, therefore, *'the execution of instructions is what determines the actual exercise of decisive influence over the act.'*⁷ Advocate General Mengozzi's Opinion does not contain but focuses on the behavior of the executor of the order, but only on its objective consequences. Whether the person who committed the act fully understood

4 Metropolitan General Court. P./2012/203.

5 S. Case T 713/14.

6 Opinion of Advocate General Paolo MENGOZZI. Date of presentation: 3 September 2015 (I) C 155/14. P. Evonik Degussa GmbH AlzChem AG, formerly AlzChem Trostberg GmbH, formerly AlzChem Hart GmbH v European Commission, 19.

7 Opinion of Mengozzi, 52.

the instruction - eg. the language of the communication used or any other skill, aptitude, skill or skill of the executor who has an influence on the action will not be assessed. In Argyle's view, *'the treatment should be a series of interactions between individuals, whether equal or unequal, and therefore it is not only the legal rights of those involved that are significant (...)by the outcome of the case.'* (Argyle, 1992, 170-171.)

The nature of instruction to apply discrimination

Instruction to discriminate can be made today only by a natural person, which, in view of the gravity of the act, may include in particular the influence of a natural person on another natural person or persons

- I. a hostile thought
- II. verbal expression
- III. evasive behavior
- VI. instruction for discrimination
- V. physical assault, and
- VI. destructive behavior (Allport, 1954, 324.)

Hostile thought

It is hard to imagine that the humanity of the world is united. Its members belong to different groups, from the closest bond to the least close bond: family, neighborhood, settlement, state, nation, race and humanity (URL2). The child feels part of the community in which he or she is raised, is able to perceive his or her ethnic identity at the age of five, but even at the age of nine to ten, he or she does not understand that eg. the Jew is different from the Gentile or the Methodist, or the Methodist from the Quaker, and does not expect to be understood, he is fiercely loyal to the parent's identity.⁸ For a group member, intra-group membership is vital to the survival of the individual, where the familiar is better than the unknown. However, a partial attitude within a group or a reference group does not necessarily require that one's attitude towards the other groups be antagonistic, whereas hostility often contributes to enhancing intra-group cohesion.

8 Opinion of Mengozzi, 29.

Verbal expression

Verbal expression can violate the human dignity of a natural person and the right to good repute of a natural or legal person. However, a negative verbal expression also has a more significant content, which undermines the morale of the community, and, where appropriate, the public administration, and demonstrates the traceability of the misconduct.

Verbal expression can also affect the intellectual and emotional spheres of the audience, which also serves to delimit acts of hate speech and arousal. *'The Constitutionally Denounced Outer Limit of Freedom of Expression Incitement to Hate.'* (URL2) Both and incitement work against the safety of society. *'Community security means preventing, reducing or suppressing social, environmental and intimidating factors that influence people's right to survive in crime and affect their quality of life. It includes preventive measures that contribute to reducing crime and tackling antisocial behavior.'* (Vincent, et.al., 2009, 69-70.) If community members fail to apply social sanctions against the perpetrator of a verbally discriminatory act, they may easily become involved in an offense, or a crime. The Ebktv. Also prohibits the creation of a degrading, intimidating atmosphere, as *'it constitutes a violation of the principle of equal treatment - in particular (...) - direct discrimination, indirect discrimination, harassment, unlawful segregation, retaliation and instruction.'* Thus, verbal expressions can carry a number of and offenses and serve as a starting point for other punishable acts, eg. slander, libel, hate speech, incitement.

Instruction to avoid circumvention, omission

Avoiding behaviors include active and passive behaviors that one engages in to get rid of thoughts and feelings that he or she does not control. This anxious behavior can have a negative impact on a person's social relationships, job opportunities, social events, friendships (Hopwood et al. 2009, 264.). The parent may also instruct the child to avoid this behavior in order to protect it physically, psychically, for example defining those children with whom you can make friends, however, this early innocent socialization may be a hallmark of later passive aggressive behavior, segregation, and discrimination. People who are used to avoiding behavior are more difficult to deal with problems e.g. in the world of work or, in more serious cases, it can become a disintegration factor in work organizations or miss e.g. assistance in critical cases. From a legal point of view, avoidance is also closely linked to omission because discrimination can

be committed by avoiding obligations, both individually and as a public body.⁹ For example, under section 4 (a) of the Swedish Discrimination Act, a person with a disability may be disadvantaged if the state does not establish accessibility measures to enable a person with a disability to enjoy the same status as a person without a disability. Be placed in a position where such measures are required by law and regulations based on accessibility requirements and by-laws, they shall reasonably consider:

- financial and operational conditions;
- the relationship between the operator and the individual or the duration and nature of the relationship and other relevant circumstances (URL3).

Instruction for discrimination

Instruction in the case of multiple discrimination and its implementation suggests that the offense is organized. The instruction to apply discrimination can be seen as a sign of discrimination, whereas becoming a victim means the occurrence of discrimination. In both situations, there is a legal remedy. The instruction to commit discrimination is prohibited by several international laws ratified by Hungary, e.g. ICCPR, CERD, CPRD and CDE.¹⁰ Pursuant to Article 20 (2) of the ICCPR: The promotion of any form of national, racial or religious hatred which promotes discrimination, hostility or violence is prohibited by law. The prohibition is fully compatible with UDHR 2 and 19. Freedom of expression, because if it is violent it goes against the interests of the community. According to Article 4 of the CERD: *'States Parties shall condemn all propaganda and any organization based on ideas or theories that promote the superiority of a particular race or group of persons of a particular color or ethnic origin, or in any way justify racial hatred and discrimination, or Member States undertake to take immediate positive action to eradicate any incitement or practice of such discrimination, and to that end, with due regard for the principles set out in the Universal Declaration of Human Rights (UDHR) and the rights explicitly enshrined in Article 5 of this Convention. (...) Which promotes or incites to racial discrimination, and participation in such organizations or activities is considered as offense punishable by law. Pursuant to Article 5 (c), No nation-*

9 Failing to desegregate s. Kaposvár General Court 11.P.21.553/2013/70.

10 Convention on the Rights of Persons with Disabilities. Covenants on Economic, Social and Cultural Rights. Convention Against Discrimination in Education. International Covenant on Civil and Political Rights.

al or local authorities or public bodies shall be allowed to promote or arouse racial discrimination.'

Article 6 of the CPRD specifically addresses women with multiple disabilities:

'1. States Parties recognize that women and girls with disabilities are subject to multiple discrimination,' and (...) guarantee them the enjoyment and of the human rights and freedoms set out in this Convention.' Pursuant to Article 3 (a) of the Convention on Combating Discrimination in Education (CDE), *'the States Parties to the Convention have agreed to abolish their statutory provisions and any administrative instructions, and to abolish administrative practices involving discrimination in education.'*¹¹ An instruction to commit discrimination, based on the outcome of the act, was established in the ECtHR procedure, where the existence of the instruction was confirmed by the implementation of the act. In the case *Timishev v. Russia*,¹² the applicant drove a car from Nazran, Ingushetia, to the Kabardino-fortified Republic of Nalchik (Russia) and complained that the Uruk checkpoint had been refused entry. Officials from the Kabardino-Balkar Road Safety Inspectorate (Гибдд МВД КБР) refused to enter, citing verbal orders from the Ministry of Interior of the Kabardino-Balkaria that prohibit the admission of Chechen ethnic origin. He therefore had to turn back and make a 300-kilometer detour to reach another checkpoint at Nalchik. The ECtHR referred to Article 2 of Protocol 4 to the UDHR, the relevant parts of which read as follows: '1. Everyone has the right to freedom of movement and freedom to choose his or her place of residence.' According to paragraph 3, 'the exercise of these rights shall not be restricted unless they are compatible with the law and necessary in a democratic society for national security or public security. For the maintenance of law and order, prevention, crime, health or morals, or the rights and freedoms of others. According to paragraph 4, *'the rights set out in paragraph 1 may be subject, in certain areas, to statutory restrictions and may be justified in a democratic society, in the public interest.'* The applicant may seek compensation for non-material damage caused by violation of his right. She claimed EUR 300 000 and EUR 500 000 for violation of her children's right to education. The Government alleged that the applicant's claim for non-pecuniary damage was excessive and unreasonable and that a fair amount would be justified in the circumstances of the case. The Court held that the applicant had suffered non-pecuniary dam-

11 The Convention on the Fight against Discrimination in Education (CDE).

12 Case of *Timishev v. Russia* (Applications nos. 55762/00 and 55974/00) JUDGMENT STRASBOURG 13. December 2005 FINAL 13/03/2006.

age, such as distress and frustration, as a result of the actions and decisions they were found to be incompatible with the Convention and its protocols. However, it considered that the specific amounts claimed by the applicant were excessive. On a fair basis, the Court finally awarded damages of EUR 5,000.¹³ An instruction to discriminate against persons on the basis of religion or belief, disability, age or sexual orientation within the meaning of Article 2 (4) of Directive 2000/78 / EC shall be deemed to be direct or indirect discrimination. An instruction to discriminate against a person on grounds of racial or ethnic origin under Article 2 (4) of Directive 2000/43 / EC shall be deemed to be discrimination. Pursuant to Article 2 (2) (b) of Directive 2006/54 / EC, discrimination includes a provision which *'calls for the discrimination of certain persons on grounds of sex'*. According to the Directives, the instruction appears to be a direct and indirect discrimination form. According to the Mt.¹⁴, the instruction to commit discrimination is also deemed to be discrimination. However, we know from legal practice that, in addition to direct (Numhauser-Henning 2001, 146-148.)¹⁵ and indirect discrimination, (Tobler 2006, 61.) an instruction to commit discrimination can also provide grounds for harassment,¹⁶ unlawful separation,¹⁷ retaliation, (Opinion of Kokott C476/11 63.)¹⁸ abuse of rights, and permutations of these behaviors. The Ebktv.: Some of the discriminatory behaviors listed on the basis of this article are rare in themselves, when they are plural, we speak of multiple discrimination. The exemplary nature of the list of offenses suggests that discrimination can also take the form of unlisted offenses, which, however, are also punishable by the legislature, e.g. arbitrary discrimination, abuse of rights, *'in particular, conduct that results in or results in the disruption, harassment, repression of the legitimate interests of others, the harassment of others.'* (URL4)

Tobler notes that multiple discrimination can be traced back to three basic forms,

1. the nationality associated with free movement,
2. discrimination on a variety of grounds related to competition law,
3. sex-based discrimination. (Tobler, 2006, 67-68).

13 Case of Timishev v. Russia, 69-71.

14 Hungarian Act I of 2012 on the Labor Code (Mt.) S. 54. (2).

15 Direct (direct or formal) discrimination. Read more Ebktv. Section 8. Paragraph 2 (a) of Council Directive 2004/113 / EC. Case C-69/80 Susan Jane Worringham and Margaret Humphreys v Lloyds Bank Limited 11. March 1981.

16 Equal Treatment Act. 10. (1) §. Paragraph 1 of Council Directive 2000/78/EC; Article 2 (c) of Council Directive 2004/113/EC.

17 Ebktv. 10. (2) §.

18 Equal Treatment Act. 10. (3) §. ILO Convention 158 of 22 June 1982. Article 11 of Council Directive 2000/78 / EC; Recital 32 of Directive 2006/54 / EC of the Council and of the Parliament.

In the opinion of Baer, Bittner and Götttsche, *'the categories of multiple discrimination are not simply juxtaposed, but interdependent.'* The concept of intersection and its studies show that discrimination does not occur in one-dimensional way, that is, not only the cause exists, but that discrimination takes a complex form. Therefore, *'the understanding of discrimination, which refers only to categorization, is absent; even more problematic: stereotyping, distorting one-dimensional views, and shortening the issues that are actually at risk.'* (URL5) Nieminen mentions that *'the theory of intersectionality recognizes that subjectivity is made up of mutually reinforcing vectors of race, gender, class, and sexuality, which shape the experiences of individuals and cannot be understood on the basis of a single prohibited discrimination.'* (Nieminen, 2019, 80.) This means increased stigma from different sources, for example when certain members of society express their beliefs that members of the young colored population are violent or drug traffickers, etc. For example, increased exclusion of marginalized young people in society means poorer work and life chances and contributes to the growth of people with deviant behavior. Multiple discrimination is also referred to as cumulative or cross-discrimination, such as the case of Roma women, because Article 3 (2) of the Treaty prohibits discrimination between men and women, which is also referred to in the Racism Directive. The European Parliament *'Emphasizes that while EU law and policy-makers have adopted extensive legislation to combat multiple discrimination suffered by women from minority backgrounds, particularly Roma women, no significant progress can be reported; therefore calls on the Member States to review the implementation of all policies related to the phenomenon of multiple discrimination.'*¹⁹ There are exceptions to sanctions in the case of injunctive injunctions, where there is a reasonable justification, based on an objective consideration, that is directly related to the legal relationship. The court accepted the injunction when its injunction excluded those who were more absent from work due to illness. The employer's injunction, which adversely affects parents with young children, was considered reasonable by the court, because the employer may be subject to a large amount of penalty for its delay.²⁰

19 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin Preamble (14).

20 Judgments (BH) BH 2008/253.

Instructions for a Physical Attack

The instruction to commit an ethical attack is included in the holistic interpretation of discrimination because, on the one hand, it denotes an intermediate state between genocide and its less-offensive conduct and, on the other hand, the act occurs in view of the protected nature of the victim. The instruction to carry out a physical attack of two forms of complicity (incitement, aiding and abetting), according to the rules in force, constitutes incitement, which is punishable by our criminal law. The Btk. According to his justification: *'It is the instigator who deliberately induces another person to commit a (deliberate) crime.'* Inducement is defined as an activity whereby the instigator decides to commit a crime and, as a result, at least attempts to commit the crime. Instigation therefore has the effect of causing intent, so instigation can only be linked to intentional crimes. According to Belovics et al., *'The characteristic of the instruction is that it is ancillary, that is, in the absence of the basic act of the offender, there can be no complicity. However, it is not necessary for a party to be held criminally liable for the identity of the offender to be known or actually prosecuted. Thus, if the perpetrator dies or receives procedural pardon, the offender will not be punished because of the existence of a ground for extinguishing the criminal offense, but the accomplice will.'* (Belovics et al. 2014, 3.)

On the one hand, it is noted that the motivation for a physical assault may be motivated by racial or ethnic origin, and therefore behavior that incites it clearly fits into the concept of direct discrimination.²¹ Physical assault instructions may not be based solely on the racial or ethnic origin of a person, but may be based on, vulnerable groups of people with disabilities (Roulstone – Mason-Bish, 2013, 68-69.). On the other hand, however, the instruction to physical assault can be distinguished from other forms of discrimination on the basis of the above, because cases of physical assault in the Criminal Code are not only a violation of personality, but also a crime. We note that the facts of discrimination are more extensive than those of criminal law, because in criminal law the condition of a criminal offense is the intent or negligence of the perpetrator, but discrimination can also be found in the absence of intent and negligence. Physical assault in the public sector is no longer typical of instruction, but memory is preventive.

21 S. Armed attacks on Roma in Galgagyörk, Piricse, Nyíradony, Tarnabod, Nagycsécse, Alsószolca, Tatarszentgyörgy, Tiszalök and Kisléta.

Genocide, the most serious discriminatory act

The Genocide Convention established by ECOSOC entered into force on 12 January 1951.²² In the 2001 Krstic case,²³ the former Yugoslav International Tribunal²⁴ ruled that the mass murder of Muslims in Srebrenica extends the concept of genocide. Pursuant to Article 2 of the Genocide Convention, it is a genocide which

- (a) *is intended to eliminate, in whole or in part, a national, ethnic, racial or religious group*
- (b) *kill members of the team,*
- (c) *causes serious physical or psychological harm to the members of the group as a result of belonging to the group,*
- (d) *forces the group into living conditions which threaten its or individual members' death;*
- (e) *take measures to prevent births within the group,*
- (f) *take children of the group into another group.'*

Article 3 of the Convention states that conspiracy to commit genocide, direct and public incitement, attempted or complicit acts of genocide, even in the absence of a genocide, warrant prosecution. Genocide is the most serious form of discrimination. Raphael Lemkin coined the term genocide in 1944, (Lemkin, 1944, 79-95.) derived from the Greek words *genos* (tribe, family) and Latin *cide* (to kill). Lemkin extensively uses the term genocide to denote political disintegration, social institutions, culture, language, national sentiment, religion, and the economic existence of national groups, and the personal safety, freedom, health, dignity, and even life of individuals belonging to such groups. destruction as well. Genocide is directed against the national group as a unit, and the acts concerned are directed against individuals, not in their individual capacity but as members of the national group. Lemkin lists the political, social, cultural, economic, biological, physical, religious, and moral means of applying genocide, which are prohibited by the Hague Law, but notes that there are forms of genocide in the above categories that are not prohibited by law. Lemkin further notes that *'The Hague Regulations as amended define the genocide as having*

22 The Convention on the Prevention and Punishment of the Crime of Genocide first codified the crime of genocide adopted by the United Nations General Assembly on 9. December 1948.

23 Case No. IT-98-33. The Prosecutor v. Radislav Krstic. International Criminal Tribunal for the former Yugoslavia.

24 The International Court of Justice was dissolved in December 2017.

*two fundamental elements, the first of which must include any activity which is detrimental to the life, liberty, health, physical integrity, economic existence and respect for human rights when committed because they belong to a national, religious or racial group; the second includes the prohibition of any prejudice or policy aimed at exacerbating or damaging the situation of a group.*²⁵

Lemkin also points out that Genocide is not only a problem of war but also of peace. It is particularly important in Europe, where the distinction between nationalities is so marked that, despite the principle of political and territorial self-determination, some national groups may be required to live as minorities within the borders of other states. If these groups are not properly protected, such a lack of protection will lead to international disturbances, the persecuted migrants will seek refuge elsewhere, especially in a disorganized form. The protection of minorities should not prevent the gradual process of assimilation and integration.

Enforceability of sanctions for instruction to discriminate

According to these categories, the instruction to discriminate can be classified into the categories of non-sanctioned,²⁶ *lex imperfecta*, *lex minus quam perfecta*, *lex perfecta*, *lex plus quam perfecta*, in the order of the gravity of the consequences of the act. Based on the perpetrator's state of mind, we can distinguish between subjective sanctions, whether in civil or criminal proceedings, objective sanctions in the administrative procedure. In civil proceedings, for example: the person instructing the discrimination can be fined for a violation of his/her personality, imprisonment in the case of a criminal offense; out of the trial. Offenses and crimes can be committed intentionally or negligently and can be punishable by law, but instruction to use discrimination can only be deliberately enforced, and therefore excludes groups that do not require intentionality or negligence.²⁷ However, there is a difference between the liability of natural and legal persons, and of the perpetrator of the discrimination. According to Szajbély, Legal persons can be held criminally liable if their representative or body commits a discriminatory act in the interest of the legal person.²⁸ It is important that not only the legal person is held liable, but also the natural person

25 Ibid. Lemkin, 93.

26 Note that negative actions (thoughts) of a negative nature can also be sanctioned by unlawful means.

27 Case C-69/80 Susan Jane Worringham and Margaret Humphreys v Lloyds Bank Limited 11. March 1981.

28 Code pénal Version consolidée au 20 Septembre 2019. 225.

who is involved in the commission of the offense is held liable. In practice, it is problematic in law that state or local governments cannot be held criminally liable, only the individual employed by them (Szajbély, 2009, 87.). Employees of state organs may also be subject to disciplinary, damages and criminal liability. The former can be exercised by an administrative body, the latter by a court. Political accountability to the head of an administrative body can also be established when the liability is out-of-court, e.g. replacement may be applied. The civil servant's liability for damages and the extent of his involvement are determined today in Hungary (intentionality, negligence).

The Ebktv. states that *'The Authority may conduct tests to verify compliance with the requirement of equal treatment, whereby the person subject to the proceedings is placed in the same position with regard to the conduct, measure, condition, omission, instruction or practice of the person subject to and the practices of the person subjected to the proceedings for compliance with the requirement of equal treatment.'*²⁹ The result of the test may be used as evidence in proceedings for breach of the principle of equal treatment.³⁰

Conclusion

The discriminatory attitudes mentioned by Allport focus primarily on interactions between natural persons but can also be interpreted in terms of social agglomerations with and without legal personality. According to Polt, if the violation is a criminal offense, it should be tried by a criminal court. If there is an infringement, it is referred to the jurisdiction of the infringement authority or court by law. If the act is a violation of privacy, it falls within the jurisdiction of the civil courts. If the violation is found to fall within the scope of, for example, a criminal offense under international law (genocide, apartheid, and war crimes), and an international tribunal or, in the case of others, therefore fall within the jurisdiction of the courts of the Member States. (Polt, 1987). According to the authors of the Anti-Discrimination Handbook, Just as criminal law (more broadly: law enforcement law) is not capable of significantly reducing crime, nor can an increase in legal prohibitions and sanctions alone be expected to reduce exclusionary, discriminatory attitudes and practices. However, the system of sanctions is essential in order to make it clear that the state does not tolerate the mere fact of belonging to a particular social group making it difficult or funda-

29 Ebktv. 15/A §. (3).

30 Ebktv. 15/A §. (4).

mentally questioning the participation of individuals and their communities in social life (Kaltenbach, et.al., 2007). We must also bear in mind that the conduct mentioned by Allport is intentional, but the Court has ruled in the Worringham case that intentionality is not a necessary element of direct discrimination, it is sufficient that the effect of the measures discriminates.

References

- Allport, G. W. (1954): *The Nature of Prejudice*. Addison-Wesley
- Argyle, M. (1992): *The Social Psychology of Everyday Life*. New York: Routledge
- Belovics E. – Gellér B. – Nagy F. – Tóth M. (2014): *Büntetőjog I.; Általános rész. [Criminal Law I.; General part]*. Budapest: HVG-ORAC Lap- és Könyvkiadó Kft
- Hopwood, C. J. – Morey, L. C. – Markowitz, J. C. (et.al.) (2009): *The Construct Validity of Passive-Aggressive Personality Disorder*. *Psychiatry: Interpersonal and Biological Processes*, 3, 256–267.
- Kaltenbach J. – Muhi E. – Márton U. – Geskó S. – Iványi K. (2007): *Anti-Discrimination Handbook Prepared within the framework of the program of the Ministry of Social Affairs and Labor entitled Civil Organizations and the Implementation of the Anti-Discrimination Act*. Budapest: Clone Design Kft., 26.
- Kis, B. – Gellért, B. (2005): *The Hungarian codification of international crimes de lege ferenda*. In: Imre A. (2005): *Wiener Festive Volume*. Budapest: KJK-Kerszöv Kft., 365.
- Kussbach E. (2005): *International and European Criminal Law*. Budapest: Stephen's Company, 40–41.
- Lemkin's, R. (1944): *Axis Rule in Occupied Europe: Laws of Occupation - Analysis of Government - Proposals for Redress*. Washington, D.C.: Carnegie Endowment for International Peace
- Nieminen, K. (2019): *Eroding the protection against discrimination: The procedural and de-contextualized approach to S.A.S. v France*. *International Journal of Discrimination and the Law*, 2, 69–88. DOI: 10.1177/1358229119838457
- Numhauser-Henning, A. (2001): *Legal Perspectives on Equal Treatment and Non-Discrimination Kluwer*. Law International
- Polt, P. (1987): *Some issues of the development of international criminal law*. *Journal of Law*, 4, 172-178.
- Roulstone, A. – Mason-Bish. H. (eds.) (2013): *Disability. Hate Crime and Violence* Routledge. DOI: 10.4324/9780203104460
- Szajbély, K. (2009): *Action against Racial Discrimination in the European Union, Transposition of Standards in France, Great Britain and Hungary*. Doctoral Dissertation

- Tobler, C. (2006): *Indirect Discrimination a Case Study Deveelopment of the Legal Concept of Indirect Discrimination under EC*. Antwerpen: Law Intersentia
- Vincent, F. – Radford, K. – Jarman, N. – Martinowitz, A. – Mary-Rallings, M-K. (2009): *Hate Crime against People with Disabilities A baseline study of experiences in Northern Ireland*. Institute for Conflict Research, 6. 69-70.

Online links in this article

- URL1: *Physical and Psychological Violence at the Workplace Eurofound 2013*. <https://digital-commons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1346&context=intl> 6.
- URL2: *IV. sz. melléklet: A közösség elleni izgatás (uszítás) intézménytörténete [Supplement IV. Institutional History of agitation (instigation) to the community]*. https://kuria-birosag.hu/sites/default/files/joggyak/iv_sz_melleklet_-_a_kozosseg_elleni_izagatas_uszitas_intezmenytortenete.pdf
- URL3: *Discrimination Act (2008:567) Amendments incorporated up to and including SFS 2014:958. Transitional provisions omitted*. https://www.government.se/contentasset-s/6732121a2cb54ee3b21da9c628b6bdc7/oversattning-diskrimineringslagen_eng.pdf
- URL4: *Az egyenlő bánásmód követelményének megsértésével kapcsolatos munkaügyi bírósági gyakorlat [The practice of labour courts concerning infringement of the principle of equal treatment]*. https://kuria-birosag.hu/sites/default/files/joggyak/osszefoglalo_velemenyn_-_egyenlo_banasmod.pdf
- URL5: *Mehrdimensionale Diskriminierung –Begriffe, Theorien und juristische Analyse*. http://www.antidiskriminierungsstelle.de/SharedDocs/Downloads/DE/publikationen/Expertisen/Expertise_Mehrdimensionale_Diskriminierung_jur_Analyse.pdf?__blob=publicationFile