
**THE CONCEPT FOR EQUAL OPPORTUNITIES FOR EMPLOYMENT,
AFFIRMATIVE MEASURES AND "POSITIVE DISCRIMINATION" IN THE PUBLIC
ADMINISTRATION**

Dejan Vitanski

Faculty of Law –Kicevo University „St. Kliment Ohridski" - Bitola, Republic of N. Macedonia,

dvitanski@yahoo.com

Abstract: The selection of people, their deployment of appropriate jobs and the determination of their duties and powers in the work process constitute a human resources policy, which essence is summarized in the gesture: „The right man in the right place". Human resources policy involves a set of activities that should ensure that the right people are in the right place at the right time, in order to carry out the planned activities and projects, through which the body will achieve its strategic goals.

Individualism and equality make up the heart of decisions about who will be employed and what kind of process will effect this employment. The valuable premises of individualism encourage the establishment of a competitive recruitment process, which is thought out in order to recruit the person that is most qualified for the given position. The concept of equality, on the other hand, requires human resources policies to provide equal opportunities and access to employment in institutions for all relevant groups in society. The concept of equal opportunities in employment has a political, cultural and emotional substrate and an acronym. It is a set of procedures and practices that effectively protect a person from being excluded from employment because of its race, color, gender, religion, age, national origin or other factors that should not legally be considered in the selection of candidates.

At the heart of discrimination, there is intolerance in the workplace towards those who are different. In employment, it manifests itself in failure, equals to be treated equally. Discrimination is an unequal treatment of the equal and equal treatment of the unequal. Whether it is deliberate or unintentional, any action that has the effect of restricting employment opportunities and advancing on account of one's gender, race, color, age, national origin, religion, physical disability, etc., constitutes discrimination and is illegitimate.

In labor, the attributes and immanent features of the principle of equality in employment in the public administration are diligently and extensively processed, as a universally established and well-established principle in the national legislation and in the administrative architecture of almost all countries. However, the focus of the scientific research interests of the author includes the so-called affirmative measures and „positive discrimination" in employment. The intent of the affirmative measures is to encourage employers to engage a particular target group of people based on their race, gender, or their national origin, in order to reverse or neutralize the consequences of discrimination in the past. Comparatively, affirmative measures encourage dysonant explications, and they are subject to many litigation and constant political and social debate.

For years, inequality in the treatment of individuals of different backgrounds is a crucial problem. And today, the concept of equal employment opportunities is in the focus of the theoreticians and the human resources departments. However, it should be emphasized that there is no universal recipe or „panacea" as to reach the best practice for equal employment opportunities.

Keywords: selection, equality, affirmative measures, positive discrimination.

1. POST OF THE HUMAN RESOURCES POLICY

The selection of people, their deployment of appropriate jobs and the determination of their duties and powers in the work process constitute a human resources policy, the essence of which is summarized in the gesture: „The true man in the right place" (Dimitriević, P, Organization and methods work of public administration, Belgrade 1959, p.83-84, cited according to Vitanski, D, Public and state administration, second edition, 2014, p. 110). Personnel policy involves a set of activities that should ensure that the right people are in the right place at the right time, in order to carry out the planned activities and projects, through which the body will achieve its strategic goals.

Human resources policy in a functional sense implies planning and systematic action in the direction of filling in the offices, creating working conditions, so that the public administration bodies will function effectively and efficiently, creating conditions for professional development and career development of the officials so they can have a sense of work satisfaction, as well as raising the social importance and respectability of work in the public administration.

Universalism encompasses the objective criteria for assessing and evaluating the competence, ability and other values of an individual, which exclude any personal inclination and favoritism of any character. Particularism, on

the other hand, is the opposite orientation where the one who makes the selection gives priority to the persons to whom it feels sympathy and greater personal attachment. Nepotism, or favors of one's relatives in terms of employment and careers, is the most famous and most typical example of such orientation. However, in modern systems people should not be given titles and positions because they are someone's relatives or friends, but, above all, because of their skills and professional competencies. Therefore, when recruiting professional administrative apparatus as the most relevant criteria, the educational qualifications and professional abilities should prevail, while abandoning political patronage and nepotism, because they create an unproductive and corrupt administrative system.

2. PRINCIPLES OF EMPLOYMENT IN ADMINISTRATION

When appointing someone as a clerk, care should be taken to ensure that the person is fit for the place and possess the necessary skills. Not every duty can be entrusted to each person. Work should be given to the one who knows how to do it, thus avoiding inconvenience. Thus wrote, as far back as 1082, the Persian deacon Kai Kaus ibn Iskandar (Stahl, Glenn O: Public Personnel Administration, New York, 1956, p.83, also Pusić, E, Nauka o upravi, Zagrab, 1987, p.218).

Recruitment involves gaining, attracting potential candidates for employment in the administrative apparatus. Considering the fact that human resources are the driving force of the functioning of the administrative system, the main task of the recruitment policy should be mobilizing highly qualified personnel by offering solid earnings, the opportunity to build a prestigious career and good working conditions.

The selection is a choos from the candidates of that candidate who, according to their own personal performances, mostly meets the prescribed criteria for filling in the appropriate position. The criterion for selection is a characteristic that an individual must possess to successfully perform his/her tasks. Ability, motivation, intelligence, conscientiousness, resourcefulness and fulfillment, appropriate risk and consistency can be established as good selection criteria for many jobs. The moment of receiving a certain person in the administrative service is the first phase of the personnel process, which appears as „part of all other processes in the organization", which by chess jargon means, withdrawing a good or bad move. A good move is made by selecting quality staff, and badly by selecting incompetent, unworthy and poor quality staff. Hence, selection is the most important part of managing an organization. In this context, if managers do not find the right people for the right jobs, the administrative organization may not be able to fulfill its mission, vision and long-term goals.

Parsons and Shills use the terms „attainment" and „attribution" to describe how individual social systems implement the employment process. According to them, in societies that incline towards achievement, the place occupied by the individual depends on his abilities. The advancement also depends on what he is capable of doing, and not on the conditions at his birth.

In other societies, employment in public administration is carried out on the basis of the criterion of attribution: class, status, race, language, caste, gender, so that the position of the individual depends on the „destiny determinant", ie he is in one „fatalistic" position and can not avoid the influence of the conditions at his birth and preferences (Peters, Guy, B, Policy of Bureaucracy, Comparative Introduction to Public Administration (translation), Academic Press, Skopje, 2009, p. 62) .

2.1. Principle of equality in employment in the public administration

All citizens, on the basis of legally prescribed conditions, are equally accessible to all public services, which means all official places. This expresses the fundamental constitutional principle of equality and equality of citizens in front of the law. The two constitutional related rules mean: 1. no citizen can a priori be restricted to a certain place of employment for certain extraordinary moments, such as nationality, race or creed, and 2. the acquisition of those services can not be the basis of any privileges after birth, property, etc. - the succession of the services is excluded.

The principle of equal access does not mean that personal qualifications would not have any relevance in recruiting in public services, and that in doing so, they should be equitable and equitable persons who have and those who do not have such qualifications. On the other hand, the principle of equal access is degraded, if the vacant places are filled in secret, so that only privileged candidates can find it. Therefore, the vacant posts should be filled out on the basis of a competition, which will, to a certain extent, come to life with the principle of equal accessibility, and will enable the body that appoints the staff a wide selection, ie among the more candidates to choose the best. The principle of equality in selection is the most important in the physiognomy of administrative systems. This principle, as a substantive element, is embedded in both national legislation of individual countries and in relevant international legal acts that treat this issue.

In France, the principle of equal access to public services by all citizens is formulated in the Declaration of the rights of man and the citizen of 1789 (art. 6): „Since all citizens are equal before the law, they are equally acceptable

for all dignities, positions and public duties, according to their ability and without taking into account any other property other than their virtues and talents." The law on civil servants clearly states that „there must be no objections in the file on the candidate's political, philosophical and religious beliefs" (Michel Verso and Latin Jeanico, *Public Law, Public Power and Administrative Action*, first edition, 2009, (translation from French), Skopje, 2011, p. 477). Equality is noted in Article 6 of Law No.83-634 of 13 July 1983, which sets out the rights and obligations of public servants (applies to all three public services) and specifies that no distinction should be made between public servants based on their political, philosophical or religious views, or because of their gender, nationality, health, disability, etc. The principle of equality in employment in public administration is also accepted in the Universal declaration of human rights. In Art. 21 of that document states: „Every person has the right, in conditions of equality, to participate in the public functions of his country" (quoted by Vitanski, D, *Public and State Administration*, second edition, 2014, pp. 112-113).

In the United States, the foundation of legislation for the protection against discrimination in employment is set out in Article VII of the Civil Rights Act of 1964, which provides: „Employers who hire or dismiss people from work or make other decisions regarding employment conditions should not do so on the basis of race, color, religion, gender, or national origin" (Allred, Stephen, 1999, *Employment Law: A Guide for North Carolina Public Employers*, 3rd ed., Institute of Government: The University of North Carolina at Chapel Hill, p.13).

Experts do not agree on how to get the best practice for equal employment opportunities. It runs a slight disagreement on whether the goal is to achieve equal opportunities or employment that is not affected by unlawful discrimination. In doing so, one of the ways is the use of the „blind to differences" approach according to which the differences between people and everyone should be treated equally. The second approach, in turn, presents the so-called affirmative measures, through which employers are encouraged to employ persons based on race, age, sex or national origin (Matis L.R., Jackson H.J., *Human Resource Management* (translation from English in Macedonian language at the twelfth edition) MAGOR, Skopje, 2010, p. 105).

3. POSITIVE DISCRIMINATION AND AFFIRMATIVE MEASURES

In executive order of President Kennedy 10925 of 6 March 1961, for the first time, „positive discrimination" was required in order to operationalize the policy of non-discrimination in employment by the federal government and its subcontractors.

The intrigue of positive discrimination in its offspring was the removal of "artificial barriers" in the employment of women and members of minority groups. In particular, the emphasis was on engaging more members of minority groups in the federal service.

However, in addition to establishing the contours of positive discrimination, effective practical implementation of this concept required time, sincere political will and uncompromising fight against prejudices and stereotypes that were deeply rooted in the social milieu. In this context, we will note the sequence of the speech of US President Lyndon Johnson at Harvard University in 1965: „You can not take a person who has been locked in chains for years and bring him to the starting line of a race and tell him you're now free to compete with the rest and still believe that you are quite fair"(Shafrich, JM, Russell, E.V., Borik, K.P., *Introduction to Public Administration* (translation), Academic Press, Skopje, 2009, p. 606).

The next step in the evolution of this concept occurred in 1969, when President Nixon issued an executive order requiring the agency leaders to „establish and maintain positive programs for equal employment opportunities". During his administration, federal courts linked positive discrimination to certain employment targets and schedules in order to include compensatory opportunities for recruiting previously disadvantaged groups. Through the process of evolution, the idea of positive discrimination gets a lot of zealous supporters. For example, according to one of the US civil rights activists, Roger Wilkins: „The racist whites and sex workers who are unable to accept other people are hurting themselves, they are morally backward people." They, too, are victims of racism and sexism, even if it is their own life. Positive discrimination programs that allow contact with a diverse group of collaborators will help them get rid of their own ignorance. They can become „morally upright" from the „morally backward" (ibid, p. 607-608).

Organizations that manage to overcome discrimination and promote equity, that have developed a policy of accepting and managing human „diversity" as a complementary strategy of the concept of equal opportunities in employment, will be able to use the grace of the „diverse" human potential (Greene, Anne-Marie, and Kirton, Gill, 2000, Oxford, MA: Butterworth Heinemann, p. 187).

Through affirmative measures, employers are encouraged to engage a particular target group of people based on their race, gender, or national origin, in order to reverse or offset the consequences of discrimination in the past

(Matisse L. R., Jackson H. J., Management human resources (translation from English to Macedonian in the twelfth edition) MAGOR, Skopje, 2010, p.146).

The primordial goal of the affirmative measures is to create the so-called representative bureaucracy. This term denotes the right to integrate into the institutions of the system of all social groups. As the synonym of the representative bureaucracy, the term parity principle is used, which means employment in the administration of various social groups proportionally to their number in the total population. In addition, depending on the country, it can be about groups of national, religious, racial, regional, social or other basis (Labovic, M, 1999, Depolitization or depatriation of the state administration in the Republic of Macedonia, „De Gamma" - Skopje, p. 45).

Affirmative action is a „consistent set of measures of temporary character, explicitly aimed at correcting the position of the members of certain target groups in one or more types of their social life, in order to achieve effective equality" (Krivokapic, B, Manjina Protection: Historical development, basic nutrition and protection at the UN, 2004, p. 834). The preferential treatment, in turn, is a form of affirmative action with which special importance is given to race and/or gender (as well as national, religious or other group affiliation) as the basis for giving priority, most often in the process of selection when establishing a working relationship. The degree of giving priority to preferential treatment may be poorly expressed, if given equally to all qualified candidates as members of the beneficiary group or strongly expressed, provided that preference is given to less qualified candidates only because they come from a minority or other social group (Bowie, N, Simon, R, The Individual and the Political Order, 1986, p.203). Of course, preferential treatment, even in the most serious cases, does not necessarily mean the selection of unqualified candidates, nor the selection of candidates by pre-determined quotas. Quotas may indicate the minimum or maximum participation of members of some social groups.

In doing so, the quota system may be flexible when requiring a certain percentage of received or elected persons to be representatives of a particular minority or other social group for which benefits are established, but which meet the conditions of the competition or are not inflexible when receiving candidates from representatives of a minority or other social group, is guaranteed in a certain percentage, regardless of the fulfillment of the conditions.

The affirmative action may encompass a whole range of measures in favor of certain benevolent groups that, visually represented, in the broadest concentric circle do not necessarily involve preferential treatment in the selection of candidates, but can be reduced to advertising in affirmative action contests, guaranteeing the procedure in the context of the fact that members of the minority will not be abused and rejected without a basis or for unreasonable reason, calling and encouraging minority members to apply certain competitions and so on. The next, narrower concentric circle, includes preferential treatment for equally qualified candidates.

The basic premises in the context of affirmative measures and positive discrimination are that they would contribute to the institutional integration of the members of the „marginalized groups", improving their economic and social status, emancipation, loyalty to the state system, etc.

Supporters of affirmative measures in the United States are committed to implementing programs that will allow women, minorities and other protected groups to compete with men and with the white people. According to them:

- affirmative measures are needed to overcome past injustices or to eliminate the consequences of those injustices;
- affirmative measures create greater equality for all persons, even if they result in temporary wrong for others;
- increasing the employment rate of representatives of protected groups in the long run will be advantageous for society;
- affirmative measures, if used correctly, do not discriminate against men or whites; and
- progress needs to be made in relation to these measures, and no quotas are needed (Ibid, p.147).

The essential argument against positive discrimination is that it is unjust. She breaks the dream of Martin Luther King: „The dream that my four little children will one day live in a country that will not be judged by the color of the skin, but by their character."

Positive discrimination programs can also generate stigmatization of members of minority communities in situations where they have obtained their jobs not because of their competencies and merits, but primarily because of the pressure to fill in the formal or informal quota. They create resentment among those who oppose such employment opportunities.

Opponents of the affirmative measures consider that they are formed with two groups: 1) women, racial minorities and other protected communities, and 2) all others. Critics of these measures in the United States say that regardless of which language is used, subsequent proceedings lead to the use of preferential selection for representatives of protected groups before equally qualified men of the white race and others who are not covered by the regulations of the Law on Equal Opportunities. The result is reverse discrimination, which occurs when one person is denied an opportunity because of the advantage given to persons of the protected groups, who may be less qualified. Other points of opponents of the affirmative measures are the following:

-
- affirmative measures punish persons (men and whites), although not guilty of discrimination;
 - creating preferences for certain groups, resulting in discrimination for others;
 - affirmative measures result in greater polarization and separatism, in addition to sex and racial lines;
 - with these measures, the targets become quotas, forcing employers to "play by numbers" (Ibid, p. 148).

4. THE PRINCIPLE OF PARITY IN THE REPUBLIC OF NORTHERN MACEDONIA

The principle of parity on a big door is established in the Republic of Northern Macedonia. Thus, in the selection of civil servants, in addition to respecting the criteria of expertise and competence, account must be taken of the application of the principle of adequate and equitable representation of citizens belonging to all communities, which by the Framework Agreement and the amendments to the Constitution from November 2001 was promoted as one of the fundamental values of the constitutional order of the Republic of Macedonia (Amendment 6 of the Constitution of the Republic of Macedonia, Official Gazette of the Republic of Macedonia, No. 91/2001). The issue of non-discrimination and equitable representation is regulated in point 4 of the basic principles of the Framework Agreement, which gives a general direction for the operationalization of equitable representation. Namely, point 4.1 of the agreement stipulates that „the principle of non-discrimination and equal treatment of all persons before the law will be fully respected. This principle will apply in particular to employment in public administration and public enterprises, as well as access to public financing for the development of business activities" (Framework Agreement, point 4.1, Constitution of the Republic of Macedonia, (2002), PE" Official Gazette of the Republic of Macedonia "). The Framework Agreement can be qualified as an „unusual attempt to combine the civil approach and equal rights for all citizens with elements of consensual democracy" (Farimah Daftary, „Conflict Resolution in FYR Macedonia: Power-Sharing or the Civil Approach" Helsinki Monitor, Vol.12, No. 4 (2001), p. 291-312). According to Bieber, this agreement is conceived as a „mechanism for institutionalizing ethnicity" (Florian Bieber, ECMI Working Paper, 2004).

However, the implementation of the principle of adequate representation of minorities in the Macedonian administrative system is an initial capsule for the birth of a large number of frustrations. Frustration with the Albanian ethnicity, because a good part of the civil servants are sitting at home and taking a salary, waiting to be allocated to specific jobs. Resuscitation occurs in Turkish, Roma, Vlach, Bosnian and other minorities, who feel negatively discriminated against. Finally, anger and frustration also occurs in the majority Macedonian community, due to the double standards in the employment of minority groups.

The basic intention of the concept of equitable representation was to employ professional and competent staff from non-majority communities, in order not to be an ethnic monolithic apparatus, but to reflect the multiethnic landscape of the state. The principle of adequate and equitable representation should be elaborated and implemented in a manner that would prevent discrimination of citizens along ethnic lines, ie to prevent favor of employment of members of the Albanian community at the expense of citizens of other ethnicities, which is contrary to both universal constitutional principles: equal access to jobs in the state system and selection based on abilities. No one should cultivate delusions that the administration should be ethnically monolithic.

On the contrary, as in other spheres of social life, the management should also reflect the heterogeneous national structure, but only and exclusively on the basis of consistently prescribed criteria, such as educational qualifications, personal abilities, professional competences, etc., and not just on the basis that candidates have some ethnic origin or are members and activists of the ruling party on the Albanian political campus. This coincides with the belief in European countries that a pluralistic and democratic society should not only respect the ethnic, linguistic, cultural and religious identity of members of minority communities, but also create conditions for their participation in public life. So, the administrative apparatus should have the representation of the members of all the groups that make up the multiethnic mosaic, but this must be exclusively based on their expertise and competence. Adequate and equitable representation should not be synonymous with „proportional representation" in an arithmetical sense, ie it should not be understood as filigree representation of communities in the public sector according to their share in the total population and on the basis of some rigid quota system, but the term implies the intention to achieve a gradual movement towards a general proportional representation, based on personal abilities and professional competences.

Through appropriate and equitable representation, a multiethnic professional substance should be built into the state-administrative architecture. It should not be a source of amateur dilettantism and bureaucratic insufficiency, but a tool for institutional integration of professionals from all ethnicities who will need to be a true service customers.

5. CONCLUSION

Individualism and equality should make up the core of decisions about who will be employed and what kind of process will effect this employment. The valuable premises of individualism encourage the establishment of a competitive recruitment process, which is thought out in order to recruit the person that is most qualified for the given position. The concept of equity, on the other hand, requires personnel policies to provide equal opportunities and access to employment in institutions for all relevant groups in society.

The concept of equal opportunities in employment has a political, cultural and emotional substrate and an acronym. It is a set of procedures and practices that effectively protect a person from being excluded from employment because of her race, color, gender, religion, age, national origin or other factors that should not legally be considered in the selection of candidates.

Discrimination is an unequal treatment of equal and equal treatment of the unequal. Whether it is deliberate or unintentional, any action that has the effect of restricting employment opportunities and advancing on account of one's gender, race, color, age, national origin, religion, physical handicap, etc., constitutes discrimination and is unlawful.

LITERATURE

- Allred, S., (1999), *Employment Law: A Guide for North Carolina Public Employers*, 3th ed. Institute of Government: The University of North Carolina at Chapel Hill, p.13;
- Bowie, N, Simon, R, (1986)*The Individual and the Political Order*, p.203;
- Dimitriević, P, (1959)*Organizacija i metodi rada javne uprave*, Beograd, стр.83-84;
- Farimah D., (2001), „*Conflict Resolution in FYR Macedonia: Power-sharing or the civic approach*“, Helsinki Monitor, Vol.12, No. 4 стр.291-312;
- Florian B., (2004), „*Institucionalizing Ethnicity in the Western Balkans: Managing Change in Deeply Divided Societies*“, ECMI Working Paper,;
- Greene, Anne-Marie., and Kirton, Gill, 2000, *The Dynamics of Managing Diversity: A Critical Approach*. Oxford, MA:Butterworth Heinemann, стр. 187;
- Stahl, Glenn O: (1956) *Public Personnel Administration*, New York, стр.83;
- Витански, Д, (2014) *Јавна и државна администрација*, второ издание, стр. 110, 112-113.
- Кривокапиќ, Б, (2004) *Заштита маѓина: историски развој, основни питања и заштита у оквиру УН*, стр.834
- Лабовиќ, М, (1999), *Деполитизација или департизација на државната управа во РМ, „ Де Гама“*- Скопје, стр. 45;
- Матис Л.Р, Џексон Х.Ц, (2010) *Управување со човечки ресурси (превод од англиски на македонски јазик на дванаесеттото издание) МАГОР*, Скопје, стр.105,146-148;
- Мишел Верпо и Латиција Жанико, (2011) *Јавно право, јавна власт и административно дејство*, прво издание, 2009,(превод од француски јазик), Скопје, стр.447;
- Питерс, Гај, Б, (2009)*Политика на бирократијата, Компаративен вовед во јавната администрација (превод)*, Академски печат, Скопје, стр. 62;
- Шафриц,Ц.М, Расел, Е.В, Борик, К.П, (2009)*Вовед во јавната администрација(превод)*, Академски печат Скопје, стр. 606-608;