

Streszczenie rozprawy doktorskiej mgr. Macieja Kułaka /j. angielski/

“The prohibition of discrimination in access to goods and services in the context of customers’ and service providers’ fundamental rights in the European Union law”

This doctoral dissertation is devoted to the prohibition of discrimination in access to goods and services in the context of customers’ and service providers’ fundamental rights in the European Union law, as well as the relation between these rights. The main aim of this dissertation was to thoroughly analyse the mutual relationship between the abovementioned concepts and to determine possible methods of solving potential conflicts among them.

There are three main hypotheses identified in the dissertation. In the first one, it is assumed that discrimination in access to goods and services leads to conflict between the fundamental rights of customers and those of service providers. This, in turn, leads to the lack of possibility to fulfil the rights of both parties. The second hypothesis is based on the assumption that in case of conflict, the fundamental rights of each party serve different purposes – a discriminated person may rely on their fundamental rights in order to strengthen legal protection against unequal treatment (e.g. the right to personal data protection in case of profiling), and the discriminating person to justify their act of unequal treatment (e.g. freedom of thought, conscience and religion in the event of refusal to provide a service). The third hypothesis is based on the assumption that the European Union law does not provide any unequivocal methodology allowing conflict resolution relating to the fundamental rights in the context of the prohibition of discrimination in access to goods and services.

There are four research objectives established prior to having started the dissertation. The first one was to analyse basic concepts relating to discrimination in the European Union law with emphasis on the specificity of access to goods and services and to determine which of these concepts, and to what extent, apply to the indicated area of social life. The second research objective was to analyse the personal and material scope of discrimination in question, which made it possible to determine to which categories of persons and to what extent such discrimination applies (e.g. the problem of legal persons), and which categories of goods and services it includes (e.g. services of general interest). The third objective was to examine whether the EU system for the protection of fundamental rights contains a methodology for the resolution of conflict between fundamental rights, and if not, whether it contains any elements enabling the creation of such a methodology. The fourth research objective was to analyse the fundamental rights of customers and service providers which are relevant to access of goods and

services, and to determine the relationship between these rights and the prohibition of discrimination and what the potential conflicts between them may be. 228

The first chapter defines the legal framework for the prohibition of discrimination in access to goods and services in European Union law, as well as the basic concepts related to this prohibition such as unequal treatment, direct discrimination and indirect discrimination. The second chapter is devoted to describing the system of protection of fundamental rights in the European Union, as well as nature of these rights. It also presents a typology of conflicts between fundamental rights and a methodology to solve them. This methodology is based on, among others, on the case law of the Court of Justice of the European Union. The third chapter analyses the personal and material scope of the prohibition of discrimination in access to goods and services in European Union law. The analysis of issues such as unequal treatment of legal persons and the definition of goods and services was done. The fourth chapter is devoted to the analysis of the fundamental rights of service providers from the perspective of the relationship to the prohibition of discrimination in access to goods and services as well as the fundamental rights of consumers. The fifth chapter, similarly, discusses these fundamental rights of consumers, which come into some relation with the prohibition of discrimination and fundamental rights of service providers.