



TRANSCRIPT

Source: [Louv2.01x] Profiling and Stereotyping

Welcome to section six of this course on international human rights. Now, this section will be dedicated to the norm of non-discrimination, one of the most important, central provisions of international human rights law.

And indeed it is one of the very few human rights that is explicitly recognized in the United Nations Charter, which repeatedly states that the human rights and fundamental freedoms that the UN should respect and continue to promoting includes a requirement that these human rights and fundamental freedoms should be recognized without discrimination, to all individuals.

And this is, of course, a norm that was implemented by various human rights treaties, all of which contain various provisions guaranteeing equal treatment and nondiscrimination. And so this section will examine this. Now, it's important to first emphasize that not any distinction, not any difference in treatment may be treated as discrimination. The two notions should not be treated as equivalent.

All the time, laws, policies make distinctions between individuals. And in the vast majority of cases, these distinctions would not be suspect and would not amount to discrimination. There is discrimination once choices are made, decisions are made that are based on a prohibited ground, particularly very highly suspect grounds such as race, ethnic origin, sex, sexual orientation, disability, age, for example, that are generally seen as not allowing differences of treatment on the basis cited.

Or, some distinctions, some difference in treatment may be just arbitrary. They are based on differences that are actually unrelated to the area concerned that have no legitimate justification, that do not pursue a legitimate objective, or distinctions that are disproportionate. They go too far in the differences that they make than the legitimate objective would justify.

So in those cases, the difference in treatment shall be treated as discrimination, and the prohibition of international human rights law shall have to be applied.

Now this section of the course will look at this non-discrimination requirement and essentially discuss three issues. First, there's a difference to be made between nondiscrimination provisions that apply in the implementation or in the enjoyment of human rights and fundamental freedoms that are guaranteed in the instruments in which these clauses appear.

In those cases, the equality clause, the non-discrimination clause, has no independent status. It is always combined with the substantive rights or freedom which it serves to complement. In other cases, however, the non-discrimination clause will have an independent existence. It will be considered to impose a prohibition to discriminate also outside the rights and freedoms that are recognized in the instrument in question.

So there's a difference between non-discrimination clauses that are complementary to other substantive rights and freedoms and non-discrimination clauses that operate independently and that can be invoked apart from these other rights and freedoms being at stake.

Secondly, we will examine, of course, the norms that are imposed on states under the general chapeau of non-discrimination. One good example of how complex the norm can be is Article 26 of the International Covenant on Civil and Political Rights. Article 26 of the ICCPR says the following.

It says, "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect," it continues, "the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status."

Now this Article 26, the two sentences that it contains, in fact imposes four distinct requirements on states. First, they should ensure that all persons are equal before the law. This means that they should ensure that law enforcement authorities, the government, the judges should apply the law without discrimination to all people. And this is a prohibition imposed on public authorities that should not act arbitrarily and impose arbitrary differences in treatment.

Secondly, there is a requirement of equal protection of the law. This means that the law itself must not be discriminatory, must not operate on the basis of distinctions that have no rational foundation. Thirdly, Article 26 refers to the duty of the law to prohibit any discrimination.

This means that the law should impose on private actors, on non-state actors that they do not discriminate, for example, employers in recruitment procedures, landowners in renting the houses which they own, or other private agents whose behavior may lead to discrimination against other persons. And fourthly, Article 26 of the ICCPR refers to equal and effective protection against discrimination.

And this means that the law sometimes must tackle structural discrimination by positive action schemes by remedies that go beyond case-by-case condemnation of individual instances of discrimination, and that any situation where a group is permanently excluded from social life, from employment, from housing, from medication should be protected by the law. So four distinct norms that impose on various authorities of the state that they address discrimination effectively.

Third and finally in this section, we will look at the different meanings that discrimination has taken. And we will examine notions such as direct or indirect discrimination. And we will see that indirect discrimination in fact has various definitions to which different advantages may be attached and to which different consequences are attached.

We will examine the notion of reasonable accommodation, which is a duty to find individualized solutions to meet the specific needs of individuals in specific situations in order to ensure that no one shall be excluded without the authorities or indeed private agents having looked for solutions to accommodate their specific situation.

We will also look at the notion of positive action, or what in international human rights law we usually call temporary special measures, which are measures that take into account the fact that certain groups have been disadvantaged or suffer from existing inequalities that should be compensated by special treatment being guaranteed to these groups. And so we have different components, if you wish, of the normative requirement of non-discrimination that we will examine and that we will try to illustrate by various examples from the case law.

So this again is a very important section. The norm of non-discrimination is invoked very frequently before human rights courts and expert bodies. And let me welcome you to this section and propose that you turn now to the various components of this chapter of our course.