

newsletter

San Juan, August 13, 2020

Puerto Rico Supreme Court holds that discrimination on the basis of prior convictions does not fall under protected category of social origin and condition

On July 27, 2020 the Supreme Court of Puerto Rico issued an opinion in *Garib v. Hospital Español Auxilio Mutuo*, 2020 TSPR 69. The mentioned court ruled that discrimination based on prior convictions does not give rise to a cause of action for discrimination on the basis of social condition, which is protected under the Constitution of Puerto Rico and the Anti-discrimination in the Employment Act, Act No. 100 of June 30, 1959. Please find below a brief summary of the case.

This decision comes 15 years later from the case of *Rosario v. Toyota*, 166 DPR 1 (2005), in which the Supreme Court dealt with the issue for the first time but was unable to reach a decision. This time, the issue before the Court was, in synthesis, if the denial of medical privileges by a hospital based on the status of being an ex-convict constituted discrimination based on social condition as proscribed by Act No. 100. In short, the Court held that it did not.

More specifically, the Court held that a person's ex-convict status is not included under the category of origin or social condition protected by the Constitution or the legislation that prohibits discrimination in employment, Act No. 100. Further, the Court emphasized that the situation of having committed a crime and having been convicted is not determined by the origin and social status of the person. Rather, expressed the Court, the status of being an ex-convict responds only to a voluntary and conscious act of a human being, that is not a product of his or her nature, nor it is attributable to an incident.

On practical terms, denying privileges on the basis or prior convictions, as held by this case, does not constitute discrimination based on social status and, hence, it is not protected by Act No. 100.

Furthermore, the Court conveyed that it is not up to itself to establish by judicial decree a protected category that has been expressly discarded in different instances by the Legislative Assembly on its own. On that note, as recent as this year, the Legislative Assembly had approved Senate Bill 992, known as the *Act Against Discrimination in Employment Due to Ex-convict Status*, which aimed to amend Act. 100 to include a prohibition to discriminate based on prior convictions. Although the Bill was passed on both the Senate and the House of Representatives, it was ultimately returned, by the Legislative Assembly's request, prior to the consideration of the Governor and hence, was not approved as Law.

In summary, this topic remains in the public discussion, both in the Legislative Branch and in the Judicial Branch. However, at the moment, and given the Supreme Court's decision and the Legislative Assembly's actions, there is no current legal provision that expressly prohibits discrimination for reason of prior convictions. In this regard, it will be crucial to monitor both the Legislative Assembly and the Courts to see how this issue develops in the future.



We will be monitoring additional developments regarding this matter and will provide with updates, if necessary.

Should you have any questions or require additional information, please do not hesitate to reach out to us at your earliest convenience.

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