The main purpose of this work was to discuss the horizontal dimension of the right to equal treatment in the Constitution of the Republic of Poland. The starting point in the research on the horizontal dimension of the constitutional right to equal treatment was the determination that constitutions in Poland and in the world have undergone an evolution consisting in the continuous expansion and development of their matter, which translated directly into the perception of the function of the state, the increase in the importance of the status of the individual, and above all values and meanings of basic laws. As a consequence, the „constitution" as a normative act became a source not only of legal regulation of constitutional bases, but also an act guaranteeing fundamental rights and freedoms. The doctrine of constitutional law held that the constitutionalization of rights and freedoms was aimed at protecting individuals in relations with the state, and thus against abuse of power. This view, together with social, economic and political development, has become partially outdated.

Already in the second half of the 20th century in the Federal Republic of Germany, the need to change the paradigm of the constitution as an act protecting the citizen against the omnipotence of state power was recognized. The science of law emphasized the need to extend this protection to horizontal relations, i.e. obligatory legal relations between two private entities, which are in an equal relationship with each other, which can autonomously shape its content, however within the limits set by law.

Based on the jurisprudence of the highest judicial authorities, two types of horizontal application of the constitution can be distinguished, i.e. direct (unmittelbare Drittwirkung) and indirect (mittelbare Drittwirkung). The direct horizontal effect (unmittelbare Drittwirkung) means that constitutional rights and freedoms limit the activities of private entities on their own. It is justified in two ways. First, fundamental rights affect the content of private law relations (e.g. Article 1 (3), Article 19 (3), Article 117 (1) GG). Secondly, it is emphasized that some constitutional rights and freedoms are - by their nature - absolute, which is why everyone is obliged to respect them. This group includes an order to respect the dignity of the individual (art. 1 par. 1 sentence 1 GG), as well as a prohibition of discrimination (art. 3 par. 3 GG). Indirect horizontal effect (mittelbare Drittwirkung) is characterized by the fact that constitutional rights and freedoms have an influence on the interpretation of general clauses and notions in private law. It is assumed that constitutional rights and freedoms constitute an ordered objective system of values „radiating" on the regulations of private law. Already in the precedent case of Erich Lüth, the FSK emphasized that all rules of private law must be interpreted in accordance with the spirit of the constitution. As a consequence, its provisions have an impact on shaping the content of private law relations. The above FSK decision paved

the way for the view according to which the state-specific relationship of subordination to a power unit shifted to private relations. Nowadays, international corporations and private institutions are the main source of threats and violations of fundamental rights. This state of affairs forces a new approach to the constitution as a basic law, the essence of which is to universally protect human dignity and the human rights and freedoms arising therefrom. The scope of this protection must cover all legal relations in the state, if the constitution is to be an effective tool and be the act of the highest legal force (principle of supremacy of the constitution).

The principle of the supremacy of the Constitution of April 2, 1997 was formulated in art. 8 par. 1 of the Constitution. Generally speaking, it orders the implementation of constitutional norms (positive aspect) and prohibits behavior inconsistent with constitutional norms (negative aspect). The supremacy of the constitution requires its observance and application. The obligation to comply is understood as an order to behave in accordance with the applicable law of the Republic of Poland (art. 83 of the Constitution). It also has a positive dimension, because it involves the possibility of free exercise for everyone of the rights and freedoms guaranteed by the Constitution (art. 37 of the Constitution). In other words - the order to comply with the Basic Law is universal - it is addressed to all legal entities.

The principle of the supremacy of the Constitution also includes an order for its direct application, the normative source of which is art. 8 par. 2 of the Constitution. In the doctrine of constitutional law, it is generally indicated that the direct application of the Constitution means making use of the competence conferred by the constitutional norm of competence on a particular subject. The effectiveness of this process is, however, conditioned by the adopted form of application of constitutional provisions. The provisions of the Constitution may in fact constitute an independent normative basis for legal acts. They may also be co-applied with other provisions contained in lower order normative acts on the basis of ornamental, interpretative and collision co-application. The universal obligation to comply with the Constitution and order its direct application makes it an act capable of shaping the content of horizontal relations. Transferring the above findings to the theory of the constitution, it should be noted that constitutional norms can affect and affect the content of horizontal relations, and also define their boundaries.

Art. 30 of the Constitution has a horizontal effect, which is a normative source of the obligation to respect the dignity of each individual. The doctrine of constitutional law indicates that the horizontal effect also has: a prohibition of corporal punishment and torture (art. 40 of the Constitution), the right to respect for privacy and the obligation to protect personal data (art.

47 and article 51 of the Constitution), the right to bring up children in harmony with their own beliefs (art. 48 par. 1 of the Constitution), freedom of conscience, religion, beliefs of the child (art. 53 par. 3 of the Constitution), the prohibition of employing children under 16 (art. 65 of the Constitution) and the obligation to ensure the employee has the right to safe and hygienic working conditions and to holidays specified in the statute and paid annual holidays (art. 66 of the Constitution). On the basis of family relationships, the one expressed in art. 72 section 3 of the Constitution, the obligation to hear and, if possible, take account of the child's opinion.

The horizontal dimension of constitutional rights and freedoms is not only a theoretical concept, but it is a practice of judicial application of the Constitution, which is approved by the Constitutional Tribunal. Although the constitutional court in Poland did not address this issue broadly, he does not negate this effect and does not preclude the direct application of constitutional rights and freedoms in horizontal relations. According to the Constitutional Tribunal, such an effect has, for example, the right to property, the right to privacy or freedom of information. In addition, the jurisprudence of the constitutional court clearly shows that constitutional norms are a direct source of protection of the individual against interference by third parties (private entities) (see, among others, judgments of: Constitutional Tribunal of 19 February 2002, sign. U 3/01 and October 16, 2014, sign. SK 20/12).

The Supreme Court also directly applies the Constitution, and its provisions form the basis for judicial decisions. The Supreme Court approves the view that constitutional norms shape the content of private law relations, and certain provisions of Chapter II of the Constitution have a horizontal effect. Supreme Court mainly refers to the concept of indirect horizontal effect. He also recognizes the possibility of spontaneous direct application of the Constitution in private law relations. However, it is of a subsidiary nature, because it is only possible if the court finds that there is no applicable statutory regulation, and a specific constitutional provision expresses specific subject law.

Common courts also express their readiness to apply the Constitution directly. They face the necessity of examining claims for actions in which the parties seek legal protection on the basis of constitutional norms or demand a pro-constitutional interpretation of statutory provisions shaping the legal relationship. Common courts most often refer to constitutional norms as part of the concept of indirect horizontal effect, making it an important and effective tool in the process of applying the law.

The above findings prove that the application of the constitution in horizontal relations is an undeniable fact approved both in case law and legal doctrine. The adopted conclusion allowed for further analysis of the right to equal treatment in horizontal conditions. The starting

point in this proces was the European Convention on Human Rights. The conventional order for equal treatment and the prohibition of discrimination is universal and guarantees full protection of the individual. Analysis of the regulations of art. 14 of the ECHR and the provisions of Protocol No. 12 to the Convention allow to recognize that these regulations are independent. In other words, they can be an autonomous pattern of control in the application of the law. This increases the efficiency of the analyzed regulations and indirectly extends the scope of their application to a horizontal level. However, the direct horizontal effect of the Convention's norms is impossible because ultimately it is the State Party that is responsible for violating the rights guaranteed by the Convention as part of those positive obligations. However, their indirect effect cannot be excluded, e.g. as part of the process of interpreting national law.

In EU law, the right to equal treatment and non-discrimination is unconditional. Hence, the right to equal treatment is expressed in the individual's subjective right and is included in the general principles of EU law. In the jurisprudence of the CJEU and in the doctrine, it is widely accepted that the right to equality has a horizontal dimension, which was confirmed for the first time in 1976 in the case of *Gabrielle Defrenne v. Société anonyme*. In the case law of the CJEU, the canvas for applying the horizontal effect is mainly employee relations as well as the flow of capital, goods and services. An important step in strengthening equality in horizontal relations and combating discrimination was the adoption of the Charter of Fundamental Rights, which was given legal force on an equal footing with EU treaties. The CJEU speaks in the latest jurisprudence with far-reaching approval for the horizontal effect of specific provisions of the Charter. The Tribunal clearly emphasizes that the prohibition of discrimination is absolutely and universally binding. That prohibition spontaneously confers on individuals the subjective right which they may also directly rely on in horizontal relations if the subject matter relates to a field covered by Union law. Consequently, it should be recognized that the prohibition of discrimination expressed in the Charter is a source of subjective right and that its hypothesis also covers private law relations.

In Poland, the normative construction of equality has evolved over the years. The concept of equality was formally and legally regulated for the first time in the March Constitution. Equality before the law was an important element in the discussion of KKZN members. During the discussion, the necessity of its normative explication was widely accepted. However, the matter related to the horizontal effect of the right to equal treatment was not addressed. However, this possibility was not rejected at any stage of the work. The

statements of KKZN members also expressed the need to consider equality as a subjective right, and not only as a rule of law.

Ultimately, the issue of equality was primarily devoted to art. 32 of the Constitution. It is a framework provision for the operationalization of equality both under the Constitution and in lower-order normative acts. It expresses the general principle of equality before the law and orders that entities with a common significant characteristic (similar entities) should be treated equally. It is also the source of subjective right, i.e. the right to equal treatment and the prohibition of discrimination, which is confirmed by legal doctrine and judicial decisions. The constitutional formula of equality refers mainly to the sphere of lawmaking and application of law. Equality in lawmaking is understood as an order directed to the legislator to shape the normative situation of entities similary which are considered similar according to criteria relevant from the point of view of the purpose of regulation. In turn, equality in the application of law means an order for public authorities to treat legal individuals equally, recognized by the legislator as similar entities, i.e. classified in a given relevant class (category). Equal application of the law means that under the same factual and legal conditions, authorities issue the same decisions.

The constitutional formula of equality also includes the prohibition of discrimination expressed in art. 32 par. 2 of the Constitution. It is universal and includes a prohibition on objectively unjustified different treatment of similar entities and constitutes a qualified form of unequal treatment. The supplement to the normative content of art. 32 of the Constitution is expressed in art. 33 of the Constitution, ordering equal and non-discriminatory treatment of men and women. The constitutional legislator emphasizes gender equality in family, political, social and economic life. This means that the obligations arising from the analyzed regulations standard are binding both within vertical and horizontal relations. This is also confirmed by the pointed in paragraph 2 art. 33 of the Constitution, areas requiring special respect for equality between women and men. The vast majority of them also apply to private law relations.

Analysis of the content of art. 32 par. 1 of the Constitution leads to the following conclusions. First, the legislator, by using the phrase „everyone", emphasizes that the subjective and objective scope of the constitutional right to equal treatment is universal. Secondly, the legislative technique used by the legislator requires that both sentences of art. 32 section 1 should be analyzed separately. In the first sentence of the art. 32 par. 1 of the Constitution, the legislator states that „everyone is equal before the law". In turn, in the second sentence, legislator emphasizes that „everyone has the right to equal treatment by public authorities". In other words, the legislator as the primary obliged entity indicates „public authorities" only in

second sentence of art. 32 par. 1. This phrase was not used, however, in the sentence 1 of art. 32 par. 1 of the Constitution. Thirdly, if the constitutional legislator emphasizes that „everyone" is equal before the law, it cannot be considered that the implementation of this norm could take place only in vertical relations, it would be in conflict with the protective function which this provision carries out both in horizontal relations as well as vertical.

Par. 2 art. 32 of the Constitution states that: „no one may be discriminated against in political, social or economic life for any reason". The prohibition of discrimination expressed in the cited provision has a universal dimension. It is a specific axiological minimum, consisting in the obligation to treat legal entities in any sphere of legal relations. The legislator does not indicate the addressees of the constitutional prohibition of discrimination, hence it should be concluded that its effect extends directly to the sphere of private relations. Similar conclusions should be made in relation to art. 33 of the Constitution, which was structured in the same way.

From sight, one should not lose that art. 32 of the Constitution is the source of subjective right - in the form of the right to equal treatment. The above thesis is confirmed in the jurisprudence of the Supreme Court, which takes the position that „the provision of art. 32 par. 1 first sentence of the Constitution (...), is a directly binding provision and as granting citizens the subjective right to equal treatment can be directly applied by courts (Article 8 par. 1 of the Polish Constitution)" (sign.. II UKN 270/99). In turn, the Constitutional Tribunal emphasizes that: „this provision expresses (...) both the principle of equality as a norm (principle) of subject law, and - being a derivative of this principle - a special type of subjective right, the right to equal treatment" (reference number SK 10/01). The analyzed entitlement falls within the broadly understood framework of the private law system. It protects the interests of the individual related to respect for their rights under the equality formula and is effective *erga omnes*.

The thesis about the horizontal effect of the right to equal treatment and non-discrimination is confirmed by the case law of the most important judicial authorities. In the judgment of October 16, 2014 (sign. SK 20/12), the Constitutional Tribunal expressed the view that "[in] the legal system in which substantive constitutional norms have the highest binding force (art. 8 of the Constitution), they are not addressed only to public authorities, but also to private law entities (art. 32 and art. 33 of the Constitution)." Each entity is obliged to respect the most important constitutional rights and freedoms of other participants in private law relations. In other judicates, the Constitutional Tribunal draws attention to the possibility of the indirect effect of the title right on horizontal relations (judgment of the Constitutional Tribunal of 13 April 2000, sign. K 15/99). Thus, the constitutional court includes the right to equal

treatment and the prohibition of discrimination as the most important constitutional rights of the individual and other legal entities, confirming the thesis that they have a universal dimension and they create the content of private law relations, mainly in the process of their interpretation.

In turn, the analysis of the jurisprudence of the Supreme Court and common courts indicates that they are ready for direct application of Art. 32 of the Constitution in horizontal relations. In the justification of the judgment of 24 October 2013 (sign. IV CSK 39/13), the Supreme Court expressed the view according to which art. 32 of the Constitution expresses not only the legal principle, but also the right to equal treatment, thanks to which this provision may theoretically apply in relation to horizontal relations. However, it is rare that the right to equal treatment is the sole basis for a judicial decision, such a situation is an exception, not a rule, because of the relatively broad regulation of equality on the grounds of statutory law. Art. 32 of the Constitution is more often used under the concept of indirect horizontal effect. First of all, the courts interpret the law in accordance with the right to equality. In addition, the case-law analysis confirms that the principles of law and general clauses commonly found in private law constitute a „gate" through which the constitutional right to equal treatment and the prohibition of non-discrimination „radiate" into private law relations.

Accepting the thesis that the constitutional right to equal treatment shapes the content of private law relations, implies a question about the legal effects of its violation. In other words, what legal means are at the disposal of the person whose title entitlement has been violated by a private entity. Analysis of the current legal status has allowed me to distinguish three legal measures that are directly aimed at protecting against unlawful unequal treatment in private law relations. They are: an action against discrimination, an action for infringement of personal rights, as well as an action against discrimination in employee relations. According to the Constitutional Tribunal, civil law measures are the main and, above all, the most effective legal instrument of anti-discrimination policy in the national system of individual protection, because they lead to compensation for damage to the personal rights of the legal entity (judgment of the Constitutional Tribunal of 26 June 2019, sign. K 16 / 17).

Such an instrument is the act of 3 December 2010 on the implementation of certain European Union provisions in the field of equal treatment. It pursues three basic objectives. The first consists of a statutory specification of the constitutional formula of the right to equal treatment and a prohibition of discrimination in the identified areas. The second concerns the obligation to implement the so-called equality directives. The third is related to protection against discrimination in the form of an action against discrimination.

Analysis of provisions of this Act leads to the conclusion that the scope of this protection is incompatible with social needs and it is too narrow, because: first of all, the legislator has enumerated so-called legally protected personal characteristics, which include gender, race, ethnicity, nationality, religion, religion, belief, disability, age or sexual orientation. As it is a closed catalog, it does not harmonize with the constitutional formula: „no one may be discriminated against in political, social or economic life for any reason". Secondly, the legislator in a given subject area specifies (narrows) these features, narrowing the scope of protection, e.g. in the area of health care, education, and higher education (art. 7). The importance of the problem raised is illustrated by the so-called case of a „Printer from Lodz." The Supreme Court gave the constitutional prohibition of discrimination supremacy, recognizing that it is closely connected with the obligation to respect the dignity of the individual. No individual personality trait may, as a consequence, constitute grounds for refusing a publicly offered service, even if its provision would be in conflict with other constitutional rights or freedoms. In the opinion of the Supreme Court, the constitutional prohibition of discrimination knows no exceptions, which makes it universally binding.

As a result, it should be stated that this Act only creates a fragmentary system of protection of the right to equal treatment - and above all - it limits the effectiveness of an action against discrimination (art. 13). It allows individuals to claim damages in the event of a breach of the right to equal rights under the rules set out in the Act. The basis for the claim can be both tortious and contractual liability. Particular attention should be paid to the structure of the claim, which is directed at seeking compensation. In turn, „compensation" is an existing concept of civil law and covers only material damages and does not cover the so-called harm. Purposeful considerations, however, order to deviate from the civilian understanding of the concept of „compensation" and grant it on the basis of Act broader meaning, including compensation for moral harm. This position is widely approved in the jurisprudence of judicial authorities.

The structure of the action against discrimination is based on the so-called inverted burden of proof. The rule is that the plaintiff has the burden of proof in the course of the claim process. This issue is regulated differently by the Equality Act, which provides that the plaintiff justifies the fact of violating the right to equal treatment and indicates the personal trait which caused the unequal treatment. The defendants, on the other hand, have the obligation to show appropriate evidence to demonstrate the unfounded claims. Thus, the benefit of the reversed burden of proof improves the procedural situation of the injured party. It should be emphasized with all certainty that the benefit of the reverse burden of proof concerns only the determination

of the justification of the action. It does not concern the extent of harm and damage suffered. In this respect, it is for the plaintiff to prove their existence and their amount.

Judicial practice shows that an action against discrimination is not an effective measure of protection. Very few actions are brought before the courts based on the regime of the provisions of this Act. The reasons for this should be sought in the absence of knowledge about the action. This remark applies not only to people affected by discrimination, but also to lawyers. Another reason seems to be the need to prove the damage and its amount. The legislator did not set a minimum amount of compensation awarded by the court in connection with a finding of discrimination. Consequently, if the claim sought is upheld, the resulting compensation often fails to fulfill its basic functions, i.e. compensation, repressive and preventive.

The limited scope of application of the Equality Act often makes it necessary to refer to the provisions of the Civil Code, which should be considered *lex generalis* in the scope of pursuing claims for violation of the constitutional order for equal treatment and the prohibition of discrimination. Violation of the right to eqaulity should be classified as an interference with personal rights such as dignity, honor, good name, privacy or health. The legislator in art. 24 of the Civil Code has equipped legal entities with powers under which they can pursue pecuniary and non-pecuniary claims, while maintaining procedural mechanisms analogous to those outlined in the action against discrimination. However, the plaintiff is additionally required to indicate a specific personal right which has been infringed as a result of discrimination.

The outlined concept has a practical dimension. The Poznań Court of Appeal, in its judgment of 29 February 2012 (sign. I ACa 1162/11), emphasized that „inalienable human dignity (art. 30 of the Constitution) includes, inter alia, the right to high self-esteem due to its national or ethnic origin. All discriminatory activities in this respect should be considered a violation of such personal rights. Therefore, every legal entity bears civil liability for violation of the personal rights of a discriminated person and is obliged to remove the effects of this violation. (...) the prohibition of discrimination, inter alia, on grounds of national and ethnic origin results not only from constitutional norms (art. 32 of the Constitution) and specific provisions. It even belongs to the basic principles of functioning of modern socjety”

The last measure of protection, is an action based on the provisions of the Labor Code. It is a *lex specialis* in relation to the protection measures provided for in the Civil Code. and the Equality Act. The legislator regulates employees' rights in the field of protection against violation of the right to equal treatment and non-discrimination very widely. However, it must be emphasized that despite the literal interpretation of art. 18^{3d} of the Labor Code, according to

which „a person against whom the employer has violated the principle of equal treatment in employment, has the right to compensation in an amount not lower than the minimum salary for work, determined on the basis of separate provisions”, employee is only entitled to the compensation in the event of discrimination . Within the Labor Code, the legislator adopted a separate scope of application with regard to the right to equal treatment and the right to non-discrimination. Leaving the first right outside the system of statutory sanctions.

Purposeful considerations also require a departure from the civilian understanding of the concept of "compensation", because, as is commonly accepted in case-law, a worker affected by discrimination has the opportunity to seek compensation for both material damage and moral harm. In addition, the employee in the course of the proceedings benefits from the reverse burden of proof on principles similar to those presented at the level of the Equality Act and the Civil Code. Approval should be given to the minimum level of compensation introduced in the analyzed regulation in the event that the action is justified. Despite the relatively smallest application, protection against discrimination under the labor law regime is currently the most effective and effective in judicial practice.

In conclusion, the judicial application of the Constitution in horizontal relations and the introduction of actions against discrimination into the Polish legal system should be assessed as an important step towards the full implementation of the constitutional right to equal treatment and the prohibition of discrimination.