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THE PRINCIPLE OF EQUALITY AND COUNTERACTION TO DISCRIMINATION IN THE LEGISLATION OF FOREIGN COUNTRIES

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Abstract

The article reveals the principle of non-discrimination, the concept of equality, the principle of equality in national legislation and in international Conventions on racial discrimination. In addition, the experience of countries to eliminate discrimination in the main law is analyzed. The experience of countries such as Germany, Poland, Japan, Croatia and Italy is considered.

Keywords International law, non-discrimination, constitution, freedom, implementation of international convention, equality.

INTRODUCTION

In modern international law, the concepts of “honor and dignity, human rights”, “equality before the law and equal rights”, as well as “non-discrimination” are interrelated, complementary and mutually demanding (inseparable from each other). International human rights law is generally considered the “mother of international treaties” in this area – the UDHR in particular are based on their supreme value to humanity, and, according to the International Court of Justice, is an “erga omnes” obligation [1].

For example, in European law the principles of equality, equity and non-discrimination are considered interrelated and mutually demanding. Chapter III of the EU Charter of Fundamental Rights establishes several principles, including equality before the law (Article 20), non-discrimination and the prohibition of discrimination on any grounds (Article 21), tolerance and respect for cultural, linguistic and

religious diversity (Article 22), and the protection of the rights of women, children, the elderly and the disabled (Articles 23-26) [2]. The basic postulates of the principle of equality are examined in the light of the guarantee of a universal equality of rights and the prohibition of discrimination.

Part II of the Treaty on the Functioning of the EU is dedicated to non-discrimination and citizenship and Article 19, paragraph 1, outlines for the powers of the Council of the EU following: “by deciding unanimously in accordance with a special legislative procedure and after the approval of the European Parliament, it may take measures necessary to combat any discrimination...” [3]. The Charter and Treaty define the obligations of EU Member States and the powers of the EU Council in these areas, according to official explanations [4].

The study shows that these rights and principles are enshrined first and foremost in States' constitutions and legislation, which form the basis

for the prohibition of discrimination on all grounds. In 2017, 85% of the world's constitutions contained norms and provisions prohibiting discrimination based on sex or gender, 78% on religion, 76% on ethnicity or race, 59% on socio-economic status, 27% on disability, 22% on citizenship, and 8% on gender identity and sexual orientation. Guarantees of equality are now enshrined in 83% of constitutions, compared to only 34% before 1970 [5].

Basic Laws adopted more recently interpret these concepts more broadly. However, there are significant differences in the understanding of terminology and the general approach to combating discrimination across Europe, Asia, and America [6], [7]. In relation to human rights, European countries' constitutional law more frequently uses the term 'equality' rather than 'equity'.

For instance, Poland's experience in constitutionally enshrining the principles of equality, equity, and non-discrimination is noteworthy. This is particularly relevant as the 1980-1990s marked a turning point in Poland's political history. Constitutional foundations of the state were established, and new institutions were developed to focus on the observance and protection of human rights. On May 25, 1997, a new Constitution of the Republic of Poland was adopted in a national referendum [8].

The Constitution of Poland comprises a preamble and 243 articles, divided into 13 sections. The most extensive sections are dedicated to defining legal status, human rights, responsibilities, and freedoms.

Thus, in the Preamble of the Constitution:

- a definition of the "Polish people" is given - "all citizens of the republic, ... those who believe in God ... who do not share such a faith, but respect these universal values ... equal in rights and

responsibilities ...";

- the principle of intergenerational equality is enshrined - "bound by responsibilities to pass on to future generations everything valuable that has been acquired over more than a thousand years" [9];

- affirms the principles of respect for dignity, human rights and freedoms, freedom and justice, social dialogue, solidarity with others, democracy and indicates the close connection and community of the people with "compatriots scattered around the world.

Article 32 (Chapter II. Freedoms, rights and duties of man and citizens) of the Constitution of Poland establishes the equality of all people before the law, their right to equal treatment by public authorities, as well as the prohibition of "discrimination in political, social or economic life on any basis." for whatever reason."

In Art. 33-37 discussed the challenges of achieving gender equality in various aspects of life, including family, politics, and education. It emphasizes the importance of treating all individuals equally, without discrimination, in areas such as healthcare, social security, and employment (including equal pay for equal work and equal opportunities for government positions and awards) [10], [7].

From a non-discrimination perspective, the Polish Constitution enshrines the following:

- Article 25 - "churches and other religious organizations have equal rights", and relations between the state and religious organizations "are built on the principle of respect for their autonomy and mutual independence of each in its own sphere, as well as on the principle of cooperation for the benefit of the individual and the common good";

- Article 64 - "everyone has the right of ownership, other property rights and the right of inheritance. Everyone enjoys equal rights of legal protection in relation to property, other property rights and

inheritance rights. Restriction of property rights is possible only on the basis of law and to the extent that this does not violate the essence of such rights."

It should be noted that, according to the interpretation of the Constitutional Tribunal of Poland (dated June 24, 1998), the constitutional principle of equality before the law is based on the fact that all subjects of law should be treated equally. Simultaneously, "differences in the legal status of citizens must not violate the Constitution if identical subjects or situations are interpreted differently, and such differences in interpretation do not have proper constitutional justification [11]".

The study demonstrates that in Polish constitutional law, the principle of equality encompasses several aspects, including equality before the law, equal treatment by public authorities, and non-discrimination in various spheres such as politics, society, humanitarianism, economics, and the environment. Additionally, it includes intergenerational equality, which involves each generation's responsibility to future generations for the rational use of resources and values. Finally, it guarantees the right to equal treatment for all subjects of rights.

A similar pattern is observed in the constitutions of many EU countries, in particular Croatia, Germany, Estonia, etc. In the Constitution of Croatia, the term "equality" is used when defining the characteristics of the Croatian state - "the national state of the Croatian nation and the state of representatives of its national minorities (Serbs, Czechs, Slovaks, Italians, Hungarians, Jews, Germans, Austrians, Ukrainians, Bosnians, Slovenians, Montenegrins, Macedonians, Russians, Bulgarians, Poles, Gypsies, Romanians, Turks, Wallachians, Albanians and other persons who are its citizens) equality with citizens of Croatian nationality and the exercise of their national rights

are guaranteed in accordance with the democratic norms of the UN and the countries of the free world" (Preamble of the Constitution) [12].

Article 3 states that "freedom, equality, national and gender equality, peace, social justice, respect for human rights, inviolability of property, protection of nature and the environment, the rule of law, democratic multi-party system" are the highest values of the constitutional system and the basis for interpretation of the country's Constitution. Those. Croatia's multinationality makes it necessary to take both an individual and a collective approach to defining and understanding the term "equality".

Issues of equality are addressed in the provisions of the Italian Constitution [13], which provide, in particular:

- the obligation of the Republic to recognize and guarantee the inviolable rights of man as an individual and a representative of social groups in which the human personality is manifested (Article 2);
- equal social (public) dignity of all citizens, their equality before the law without any distinction based on political beliefs, personal and social status, race, language, gender, religion. At the same time, it is defined as the duty of the Republic to eliminate obstacles of an economic or social nature that limit the freedom and equality of citizens and impede the full development of the human personality and the effective participation of all workers in the political, economic and social life of the country (Article 3);
- the right of all citizens to work and the obligations of the state to create the rights necessary for the implementation of this, as well as the duties of citizens make a contribution (in accordance with personal potential and capabilities, individual choice) to the material or spiritual progress of society (Article 4);
- the right of citizens to live and move freely in any part of the country, to leave the territory of the

Republic and return to it, despite any legal obligations (Article 16), as well as the right of citizens to assemble peacefully and without weapons, to hold meetings, incl. held in places open to the public (Article 17).

According to Art. 29 recognizes "the rights of the family based on marriage" and states that "marriage is based on the moral and legal equality of the spouses within the limits established by law to ensure family unity."

In Art. 37 enshrines the right of working women to comparable jobs and equal pay to men. At the same time, working conditions must allow women to fulfill their important role in the family and provide adequate protection for mother and child. Those. The principle of legal equality of women and consideration of their biological characteristics is constitutionally enshrined.

It is important to note that certain constitutional rights, specifically those outlined in Articles 4, 16, and 17, are exclusively applicable to Italian citizens.

Similarly, in the German Basic Law the principle of equality is revealed through the prism of: equality of all before the law; equality and equal rights of men and women; prohibition of causing harm or violating of human rights on any grounds.

At the same time, the constitutions of the German states contain provisions that abolish and prohibit privileges that contradict the principle of equality. For example, pp. 3 and 4. Art. 118 (equality before the law, equal rights, titles and orders) of the Bavarian Constitution abolishes "all public law privileges and infringements of rights depending on origin and class. Titles now remain only an integral part of the surname. They are no longer assigned or acquired as a result of adoption, appointment to a certain position or acquisition of a profession "[14].

A similar rule on the prohibition of privileges is

also contained in the Turkish Constitution . So, in Art. 10 establishes provisions prohibiting the granting of privileges to "any person, family, group or class", and Article 82 states that "members of the Grand National Assembly of Turkey may not hold positions in ... the executive and supervisory boards of public benefit associations whose private sources of income and privilege are provided for by law..." [15].

Compared to other European countries:

- a narrower approach to ensuring equality is noted in the Swedish Constitution , which enshrines the principle of protection from discrimination only with respect to ethnic minorities and non-discrimination on the basis of gender (Articles 12 and 13) - "no law or other regulation may imply unfavorable treatment of anyone or": on the grounds that he belongs to a minority group due to...; based on gender..."; [16]
- the Swiss Constitution emphasizes the principle of "equality before the law" (Article 8), not only on the basis of origin, race, gender, age, language, social status, way of life..., but also "due to physical, mental or psychological disabilities";[17]
- The Constitution of Estonia (Article 12) not only declares the equality of all before the law and non-discrimination on various grounds, but also prohibits and punishes by law incitement to "national, racial, religious or political hatred, violence or discrimination" [18].

A relatively narrow implementation of the principle of equality in the Constitution can also be seen in the United States. The relevant provisions are contained mainly in amendments to the US Constitution [19], providing that:

- in the United States or places subject to its jurisdiction, neither slavery nor involuntary servitude shall exist... (XIIIth Amendment, Art. 1);
- All persons born or naturalized in the United States are citizens of the country. Provided that no

State shall make or enforce any law abridging the privileges or benefits of its citizens, nor shall deprive any person of life, liberty, or property, without due process of law, or deny to any person within its jurisdiction the equal protection of the laws. (XIVth amendment, art. 1);

- the right to vote of citizens should not be denied or limited on the basis of race, skin color, or because of previous forced service (XVth Amendment, Art. 1), etc.

At the same time, the United States has developed legislation (constitutional, statutory and case law) that ensures the implementation of the principles of equality and non-discrimination: if the first principle was originally laid down in US legislation, the second is a more modern concept.

However, the US Supreme Court notes the practical impossibility of absolutizing the principle of ensuring equality of rights of citizens: "... state legislatures act within the limits of constitutional requirements, although the laws they adopt result in certain inequalities. An inequity permitted by law is not unconstitutional if the totality of any facts reasonably demonstrate its justification" (from the decision in the case of *McGowan v. Maryland*, 1961) [20].

However, the Constitution's equal protection provision has never ensured full equality for all citizens, since the right to equal protection must always be balanced against other legal rights, goals and interests.

Progress in US case law regarding equal protection can be seen in *Brown v. Board of Education of Topeka* (1954) [21] In his lawsuit, Brown argued that there was inequality between "schools for black children" and "schools for white children" and that such segregation violated Article 1. The 14th Amendment of the US Constitution prohibits the States from "denying to any person... the equal protection of the laws."

At the same time, before this, back in 1896, the Supreme Court made a decision regarding the case "*Plessy v. Ferguson*" [22] that racially segregated public facilities were legal as long as conditions were equal for blacks and whites.

In doing so, the U.S. Supreme Court upheld the doctrine of "separate but equal," known as the Jim Crow Laws, passed by State Assemblies dominated by white Southern Democrats. These laws, which remained in effect until almost 1965, prohibited African Americans from using the same buses, schools, and other public facilities as whites, and mandated racial segregation in all public facilities in the Confederate States of America and several others beginning in the 1870s. gg. [23].

Note that the justices of the US Supreme Court supported Brown's lawsuit and unanimously ruled that racial segregation of children in public schools is unconstitutional. This issue was one of the cornerstones of the civil rights movement and helped set the precedent and recognition that "separate but equal" education and other services were in fact not equal at all. [24].

In 1964, the Civil Rights Act was passed, along with several other federal laws that prohibit discrimination based on specific characteristics and traits in government, public, and private sectors [25].

Unlike the US and EU countries, the Japanese Constitution enshrines provisions providing for "positive discrimination". So, in Art. 14 enshrines the principles of equality of all people before the law and non-discrimination, non-recognition of peerage and other aristocratic institutions, and also establishes that "no privileges are granted in the conferment of honorary titles, awards or insignia, and any such award is valid only during the lifetime of the person who has it now or may receive it in the future"[26].

The Constitution of India (Article 15) also enshrines

the “right to equality”, which includes: equality before the law; equality of status and opportunity, including when hiring in government agencies and enterprises; abolition of untouchability and titles, prohibition of discrimination on various grounds (religion, race, caste, gender, place of birth, etc.) [27]. Wherein:

- it is established that “no citizen can be deprived of legal capacity and should not bear special responsibilities, cannot be subjected to restrictions or placed in special conditions...”.
- at the same time making reservations about the possibility of exceptions from the principle of equality concerning certain categories of the population (women, children, socially and educationally backward classes, castes and tribes) in order to improve their situation. Moreover, these exemptions (preferential status) must be established by law.

Focusing on the 'gender approach' to ensure equality in the constitutions and legislation of countries worldwide is crucial. This is particularly important given the World Bank's report that 2022 saw the slowest progress towards women's equality in 20 years, which poses a potential risk to global economic growth [28].

In 2022, the global average for the World Bank's Women, Business and the Law Index increased by only half a point to 77.1 points, while the global average for the Women, Business and the Law Index has increased over the past 50 years since 1970 by about 2/3 – from 45.8 points. This means that today, on average, women have only 77% of the legal rights that men have.

At the same time, Uzbekistan “gained in 2023” overall 70.6 points, including in terms of wages - 50, marriage - 25, parental responsibilities - 80, entrepreneurship - 60 and pensions - 50 points. At the same time, CERD experts note that “in Uzbekistan there are constitutional and legislative

provisions prohibiting discrimination.” However, “the presence of laws prohibiting discrimination is only a tool in the fight against this phenomenon, and does not mean the absence of discrimination itself.”

According to the UN, forced evictions have contributed to inequality, discrimination, segregation, social conflict and tension, and have widened the poverty gap among the most socially and economically vulnerable and marginalized groups, especially women, children, minorities and persons with disabilities [29].

According to World Bank experts, who analysed the laws and regulations of 190 countries in areas such as freedom of movement, employment, wages, marriage, birth of children, doing business, disposal of property and pensions, full equality between women and men is currently only secured by legislation in 14 high-income countries. This means that almost 2.4 billion working-age women worldwide still do not have equal rights to men.

In 2022, only 34 gender-related legal reforms have been implemented in 18 countries, most of which are aimed at increasing paid parental leave, eliminating restrictions on women for certain types of work, ensuring equal pay for work of equal value.

However, despite the fact that in 2000-2009 more than 600 regulatory and legal changes were adopted in the world (the maximum annual number is 73), in order to universally establish legal recognition of gender equality, the adoption of more than 1,5 thousand regulatory and legal changes will be required in all areas assessed in the report [30].

According to the World Bank, in 2021-2022, no changes were made to the constitutions of countries to ensure equal rights for women and men. However, changes were made to the legislation providing: [31]

- improving the conditions for providing paid leave

to parents on the occasion of the birth of a child (Greece, Spain and Switzerland);

- introduction of a pension system providing for equal age for men and women to receive the right to a full old-age pension, as well as the elimination of all work restrictions established for women (Vietnam, Cambodia);
- introduction of paid leave for both parents on the occasion of the birth of a child, equation of retirement age for men and women, considering periods of absence from work due to childcare when calculating pension payments (Argentina, Armenia, Ukraine, Georgia, Colombia);
- ensuring equal pay for work of equal value, removing restrictions on the possibility of night work for women (Bahrain, Burundi, Pakistan);
- protecting women from domestic violence, simplifying women's access to loans, banning gender discrimination in employment, combating sexual harassment in the workplace and its criminalization (Angola, Egypt, Kuwait, Lebanon, Oman, Sierra Leone), etc. .

In general, the study shows that, according to international human rights law, inherent signs of discrimination are:

- infringement of rights – deprivation or restriction of persons or groups of persons in the exercise of a particular right. This provides: distinction; exception (travelers are not issued identity documents, children of refugees are deprived of the right to education, etc.); limitation (freedom of assembly, construction of places of worship, etc.); preference (public housing and social protection are provided only to selected citizens); segregation (children with disabilities or Roma children are sent to separate specialized schools, without considering their needs and principles of integration), etc.
- unacceptable grounds on which discrimination is carried out. Thus, not any infringement of rights is

discrimination. It turns into discrimination when it is carried out on such grounds as nationality, religion, citizenship, tribal and social origin, language, gender, age, disability, etc.;

- lack of reasonable and objective grounds for such treatment to individuals or groups of individuals. International law recognizes that not all infringements of rights on unacceptable grounds constitute discrimination.

Therefore, if an infringement of rights pursues a legitimate goal, such as protecting the health or safety of society, and is proportionate to this goal, then it is not considered discrimination. However, if there are alternative means of achieving a legitimate aim without negatively impacting certain groups, then even if the infringement of rights pursues that aim, it will be considered disproportionate and discriminatory.

At the same time, as noted above, international law considers protection from discrimination inextricably linked with compliance with the principle of equality, so that: people are equal both before the law and in practice; in identical situations, the same decisions were made, without differences in any respect; differences in treatment had objective goals, grounds and were proportionate to the goal pursued.

In these conditions, many countries (over 80 today) are adopting separate laws on equality and non-discrimination, or making appropriate changes to their constitution and laws.

For example, Great Britain adopted The Equality Act 2010 is a comprehensive Equality Act designed to ensure equality for all, eliminate unlawful discrimination, persecution and persecution, promote equal opportunities for different groups and improve relations between them [32]. This law sets out nine grounds (age, disability, sex, gender, pregnancy and maternity, race, religion, belief and sexual orientation) on which unfair treatment is not

permitted and on which the principle of equality must be ensured. Government bodies, such as local authorities, health and education authorities, transport departments, police, armed forces, and central ministries, are responsible for implementing the provisions of the law.

Of particular interest are also the laws "On non-discrimination" and "On equality" adopted in Finland [33], which complement each other, are applied together in public and private activities, without affecting the sphere of private or family life, religious practice, and are aimed at "promoting equality and preventing discrimination, as well as strengthening legal protection for victims of discrimination ." These laws, in particular, establish:

Firstly, responsibilities public authorities ensure the implementation of the principle of equality in their activities, develop and implement appropriate comprehensive plans in this area, training organizers - promote equality in the education system, employers - promote equality in the workplace, when recruiting and making decisions regarding personnel, their promotion service, etc.;

Secondly, prohibition of direct and indirect discrimination on the basis of age, origin, nationality, language, religion, belief, political or trade union activity, marital status, health, disability, sexual orientation or any other ground relating to the person, as well as harassment and denial of reasonable devices. At the same time, it is established that "different treatment is not discrimination if the treatment is based on the law, has an acceptable goal and the means of achieving this goal are proportionate";

thirdly, the creation of control/supervisory bodies such as the Equality Commissioner, the Equity and Equity Council, and labor protection authorities . In this case, the duties and powers:

- The Commissioner for Equality includes investigating cases of discrimination and providing assistance to its victims, developing general recommendations for preventing discrimination and ensuring equality, taking measures to resolve disputes regarding the implementation of the Law, etc.;

- Equity and Equity Council - facilitating a settlement between the parties regarding discrimination or countermeasures; making public, at the request of a court, the Equality Commissioner or another authority or organization, statements regarding the interpretation of the law; prohibiting the responsible person from continuing or resuming discrimination or countermeasures or obliging him to take measures within a reasonable period of time to fulfill the obligations provided for by the Law; imposing a fine as a result of one's ban or order, etc.;

fourthly, mechanisms and amounts of compensation for damages (compensation) to the person subjected to discrimination or countermeasures, from the authority, employer or training provider or supplier of goods or services that discriminated against him or subjected him to countermeasures in violation of the law;

fifth, placing on the initiator of the consideration of the issue of discrimination or countermeasures in a court or other body the burden of explaining the facts on which such a claim is based. If, based on the explanations provided at the hearing, it appears that the prohibition against discrimination or countermeasures was violated, the opposing party must demonstrate that the prohibition was not violated to rebut the presumption.

Let us note that in the CIS countries similar laws have been adopted in: Ukraine "On the principles of preventing and combating discrimination in Ukraine", Georgia "On the elimination of all forms of discrimination" and Moldova "On ensuring equality" [35]. Other countries are considering

adopting similar laws.

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