Ilona
KHMELEVA

Principle of Equality as Basic European Value: How the Association Agreement is Teaching Us Zero Tolerance for Discrimination

The essay examines the implementation in Ukraine of the international legal principle of equality, as well as the positive impact of the Association Agreement on this process. It is determined that modern international law is based on common values, one of which is equality in rights and dignity. Protecting these values is an important task for Ukraine on the path to European integration. State institutions and civil society must jointly affirm the principle of zero tolerance for discrimination and inequality.

Keywords: international law, values, equality, non-discrimination, dignity, Association Agreement, European integration.

У статті досліджується реалізація в Україні міжнародно-правового принципу рівності, а також позитивний вплив Угоди про Асоціацію на цей процес. Визначається, що основою сучасного міжнародного права є спільні цінності, одна з яких – рівність у правах та гідності. Захист цих цінностей – важливе завдання для України на шляху до євроінтеграції. Державні інституції та громадянське суспільство мають разом утверджувати принцип нульової толерантності до дискримінації та нерівності.

Ключові слова: міжнародне право, цінності, рівність, недискримінація, гідність, Угода про Асоціацію, євроінтеграція.

We should not be held back from pursuing our full talents, from contributing what we could contribute to the society, because we fit into a certain mold... because we belong to a group that historically has been the object of discrimination.

Ruth Bader Ginsburg

Introduction

Today, the respect for human rights is an important goal of the international community. It is indisputable that in the modern world the universality of the problem of human rights protection is recognized by the states at the international level. *International law is based upon common values*, and this fact has an extremely positive impact on human development. Values have become the foundations of the international legal order, providing an opportunity for the implementation of high standards of human rights protection and for friendly and mutually beneficial cooperation of states for the prosperity of the entire international community. It is no exaggeration to say that it is the European Union that has shaped many such values and has become a *symbol of the rule of law and high standards of respect for human rights*.

One of such values is equality. The principle of equality is indisputable and serves as a kind of basis for building legal relations at the international (universal and regional) level. At the same time, in many countries this principle often remains declarative, in practice not receiving sufficient mechanisms for full implementation. That is why *the European Union can serve as an example* of full implementation of this principle for Ukraine, wherein the problem of discrimination is crucial.

The purpose of the essay is to determine the peculiarities of the implementation of the principle of equality in Ukraine, as well as the positive impact of the Association Agreement on the effective realization of this value.

Equality in Dignity

The Ukrainian protests of 2013-2014 against human rights violations were called *the Revolution of Dignity* for good reason. Ukrainians fought for dignity and for European integration as symbol of human rights protection. Article 1 of the Universal Declaration of Human Rights states that “all human beings are born free

and equal in dignity and rights" [1]. That is, it is not only about equality in rights, but also about equality in dignity, which is a much broader and more fundamental guarantee. However, inequality in Ukraine remains significant. In order to fully realize the principles of Revolution of Dignity we must work hard to put an end to discrimination. Because nobody can deny that *all Ukrainians are equal in their dignity*... The dignity for which the Heroes of the Heavenly Hundred laid down their lives...

The Sustainable Development Goals, which were approved in 2015 at the UN Summit on Sustainable Development, include Goal 5 "Gender equality" and Goal 10 "Reduced inequalities" [2]. The problem of inequality and discrimination is also mentioned in the anniversary report of the Club of Rome ("Come On! Capitalism, Short-termism, Population and the Destruction of the Planet") [3]. These global documents show the importance of Ukraine's steps to realize the principle of equality. And the *Association Agreement between the European Union and Ukraine* [4] is a road map to achieve this goal.

Association Agreement as a Road Map

Article 4 of the Agreement states that the aims of political dialogue shall be to strengthen respect for democratic principles, the rule of law and good governance, human rights and fundamental freedoms, including the rights of persons belonging to national minorities, non-discrimination of persons belonging to minorities and respect for diversity, and to contribute to consolidating domestic political reform. Article 419 stipulates that the Parties shall strengthen their dialogue and cooperation on promoting the decent work agenda, employment policy, health and safety at work, social dialogue, social protection, social inclusion, gender equality and nondiscrimination. Three of the goals, specified by the Article 420, are 1) aiming at gender equality; 2) ensuring equal opportunities for women and men in employment, education, training, economy and society, and decision-making; 3) combating discrimination on all grounds. Article 424 states that Ukraine shall ensure gradual approximation to EU law, standards and practices in the area of employment, social policy and equal opportunities, as set out in Annex XL to this Agreement [4]. The abovementioned principles are detailed in Annex XL to Charter 21. Anti-discrimination and gender equality policy standards include [4]:

- Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (the Directive's provisions shall be implemented within 4 years of the entry into force of this Agreement);
- Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (the Directive's provisions shall be implemented within 4 years of the entry into force of this Agreement);
- Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (the Directive's provisions shall be implemented within 3 years of the entry into force of this Agreement);
- Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC (the Directive's provisions shall be implemented within 3 years of the entry into force of this Agreement);
- Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (the Directive's provisions shall be implemented within 3 years of the entry into force of this Agreement);
- Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (the Directive's provisions shall be implemented within 3 years of the entry into force of this Agreement).

All failures and achievements can be easily monitored thanks to information and analytical system "Pulse of the Agreement" [5], developed and implemented by the Ukrainian government. In total, the system provides for the implementation of almost eight thousand measures, distributed within about two thousand tasks in the realization of the action plan for the implementation of the Association Agreement.

In the system all measures are given four statuses: done, in the risk area, not realized on time, not evaluated.

Existing Problems

So, did Ukraine implement all the above-mentioned standards in the sphere of equality and non-discrimination? Unfortunately, no. And some negative results can be seen *both in legal (theoretical) and in practical sphere*.

A good example of drawbacks in *legal sphere* is inability of Ukrainian parliament to ratify *Council of Europe Convention on preventing and combating violence against women and domestic violence* [6]. System of monitoring the implementation of the Association Agreement shows that this obligation was not realized on time (before 20.03.2020). The purposes of this Convention are to:

- protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence;
- contribute to the elimination of all forms of discrimination against women and promote substantive equality between women and men, including by empowering women;
- design a comprehensive framework, policies and measures for the protection of and assistance to all victims of violence against women and domestic violence;
- promote international co-operation with a view to eliminating violence against women and domestic violence;
- provide support and assistance to organizations and law enforcement agencies to effectively co-operate in order to adopt an integrated approach to eliminating violence against women and domestic violence [6].

At the same time, Ukrainian ministry of social policy admits that every 5th woman in Ukraine has experienced some form of violence. It is outrageous that in such a situation the Ukrainian authorities refuse to ratify the Istanbul Convention, justifying themselves by traditions, outdated prejudices or ridiculous arguments such as fear of the word “gender”. Moreover, it’s an obligation of Ukraine within the process of implementation of the Association Agreement – and *pacta sunt servanda*.

An example of *drawbacks in practical sphere* is the fact that the gap between the wages of men and women still exists. For example, at the beginning of 2020 in Ukraine, the average monthly salary of men was 22% higher than the average monthly salary of women. This situation violates the approaches of the Association Agreement to equality [7].

At the same time, thanks to the implementation of European standards, *Ukraine has realized many measures against discrimination*. One recent example is the new electoral legislation with gender quotas, which was implemented in the 2020 local elections.

Recommendations for a Better Future

So, what can be the practical steps to achieve more equality?

The answer is: **zero tolerance for inequality and discrimination**. Desmond Mpilo Tutu once said: “If you are neutral in situations of injustice, you have chosen the side of the oppressor. If an elephant has its foot on the tail of a mouse and you say that you are neutral, the mouse will not appreciate your neutrality” [8].

Both public authorities and Ukrainian citizens *mustn’t remain neutral* when they deal with any form of discrimination. “Zero tolerance for inequality and discrimination policy” may include such actions:

1. *Ukrainian high-ranking officials* should more actively implement the norms and standards stipulated in the Association Agreement. Decisions of the *Ukrainian government* aimed at implementing the above-mentioned Articles of the Agreement should contain specific proposals and actions, and not be limited to general phrases (“promote”, “support”, “discuss”, etc.). The *Ukrainian parliament* needs to strengthen its own steps against discrimination and inequality (for example, ratify the Istanbul Convention). *All Ukrainian public figures* must defend the idea of equality, regardless of their own political views. Ukraine must meet its own obligations under the Agreement within the time, specified by the Agreement.

2. *Civil society* needs to be more active in promoting equality and establishing public oversight over government actions. Civil society should also work to educate citizens on equality issues.

3. *The spiritual leaders* of the Ukrainian people need to find a balance between religious values and the need to guarantee the rights of everyone. They must refrain from actions that promote discrimination and inequality (for example, from opposing the Istanbul Convention). As His Holiness the Dalai Lama says, the new generation should develop scientifically based conviction in the basic human compassion and values and develop a sense of concern for others wellbeing on that strong basis. His Holiness proposed that an approach to ethics which makes no recourse to religion and can be equally acceptable to those with faith and those without would benefit everyone: “Such an ethical system would incorporate the diverse set of values that people of various beliefs held in common” [9]. There is no doubt, that one of such values is the principle of equality. We live in times when Pope Francis is meeting with parents of LGBT children in order to make church more open [10] and Nobel Peace Prize winner, Archbishop Desmond Tutu teaches us: “We are made for goodness. We are made for love. We are made for friendliness. We are made for togetherness. We are made for all of the beautiful things that you and I know. We are made to tell the world that there are no outsiders. All are welcome: black, white, red, yellow, rich, poor, educated, not educated, male, female, gay, straight, all, all, all. We all belong to this family, this human family, God’s family” [11].

4. *Each Ukrainian* must realize “zero tolerance for inequality and discrimination” principle in her or his everyday life.

Conclusions: European Values as Guidelines for Humankind

Ukraine has a simple alternative: European integration and the implementation of the principle of equality, or Russia with a new Putin constitution that promotes Russia’s traditional values of intolerance and

discrimination. *In the winter of 2013-2014, Ukrainians made their choice.* Since then, thousands of Ukrainians have paid with their lives to defend European values – being killed during the Revolution of Dignity and the war with Russia. But Ukrainians have proved that sometimes dignity is more precious than life.

Of course, we have not succeeded fully yet. All in all, it can be stated that the principle of equality currently remains partially declarative. Unfortunately, individuals in Ukraine often suffer from inequality and discrimination on various grounds. It is important to emphasize that inequality is partly responsible for the feeling of injustice and for erroneous conclusions about the ineffectiveness of international cooperation or European integration. That is why fighting inequality is one of the main tasks for the 21st century. But nobody can deny the fact that the principle of equality, enshrined in modern international law and the law of the European Union, has already *caused enormous positive changes*, which at the beginning of the last century seemed almost impossible. Thus, the principle of equality is one of the foundations of the European legal order, and the task of every state and every individual is its further implementation. Ignoring violations of this principle can lead to destabilization of international relations and a significant deterioration in the level of human rights protection. At the same time, the progressive fight against any inequality will effectively overcome global problems and build a fairer world. The values embodied on the European continent can be called, without exaggeration, *the guidelines for the development of humankind*.

The Association Agreement between the European Union and Ukraine is transforming the principle of equality from misleading declaration into basic value of our state. And this transformation is one of the greatest achievements of the Revolution of Dignity.

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Summary

The international legal order is based on common values. One of these universal values is equality in dignity and rights. The European Union is an indisputable symbol of guaranteeing high standards of human rights. That is why the path of European integration for Ukraine is also a process of achieving zero tolerance for discrimination. And the Association Agreement between the European Union and Ukraine is a road map to achieve this goal.

The Agreement includes many important provisions. Article 4 states that the aims of political dialogue shall be to strengthen respect for democratic principles, the rule of law and good governance, human rights and

fundamental freedoms, including the rights of persons belonging to national minorities, non-discrimination of persons belonging to minorities and respect for diversity, and to contribute to consolidating domestic political reform. Article 419 stipulates that the Parties shall strengthen their dialogue and cooperation on promoting the decent work agenda, employment policy, health and safety at work, social dialogue, social protection, social inclusion, gender equality and nondiscrimination. Three of the goals, specified by the Article 420, are 1) aiming at gender equality; 2) ensuring equal opportunities for women and men in employment, education, training, economy and society, and decision-making; 3) combating discrimination on all grounds. Article 424 states that Ukraine shall ensure gradual approximation to EU law, standards and practices in the area of employment, social policy and equal opportunities, as set out in Annex XL to this Agreement. All in all, the Agreement can gradually transform the principle of equality into basic value of our state. And this transformation is one of the greatest achievements of the Revolution of Dignity.

It should be noted that Ukraine still has many problems in the field of non-discrimination and equality. For example, we have high rates of domestic violence, as well as a significant pay gap between men and women. Part of Ukrainian society still has outdated stereotypes and unfounded prejudices. Of course, the most effective way to combat discrimination is through education. Each of us is responsible for the full realization of respect for human rights. But no less important is the creation of an effective and progressive legal framework. That is why, for example, the ratification of the Istanbul Convention is important, and Ukraine is constantly reminded of this issue by the representatives of the European Union.

Positive changes in society often require not only consistent daily work, but also great courage. It is therefore important that the Association Agreement can be an instrument that encourages Ukraine to undertake profound reforms. The Agreement always reminds us that Europe has common principles which we must adhere to. Modern international law is value-based and human-centered. And this common ground is the greatest achievement of humanity, which every state must preserve and multiply. Today, one can often hear debates about whether international law is effective. The positive answer to this question is guaranteed by the universal values, engraved on the page of international legal documents. After all, these values guide states to progress and respect for human rights, including equality and non-discrimination. So, international law has embodied the universal moral compass of humankind.