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INTERNATIONAL STANDARDS ON PROTECTED GROUNDS AND ANTI-DISCRIMINATION LEGISLATION OF UKRAINE

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Pozharova O.V., Pozharov Y.V. International standards on protected features and anti-discrimination legislation of Ukraine.

The article analyzes international acts adopted by the United Nations, the Council of Europe, and European Unions in the field of combating discrimination and anti-discrimination legislation of Ukraine.

The article considers the law of Ukraine «On the principles of preventing and countering discrimination in Ukraine», which contains a generalizing concept of «discrimination», defines forms of discrimination and lists protected features.

It is proposed to fix in Article 1 of this law the definition of the term «protected features».

Scientific works of V. Iskovich and V. Galan in the field of studying new types of discrimination and protected features are studied.

It is established that the protected characteristics that are enshrined in international acts include: race, skin color; gender; religious views; ethnic origin; language; marital status; political and other views; environmental and other status; place of birth; age; health status; birth of a child; status; availability of property; any form of social segregation; genetic inheritance; economic activity and profession.

The UN Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of Persons with Disabilities and its Optional Protocol are studied in more detail. Definitions of the following concepts are considered: «discrimination on the basis of race», «discrimination on the basis of gender», «discrimination on the basis of age», «discrimination on the basis of disability».

Special attention is paid to the implementation of the principle of equal rights of women and men in Ukraine. In order to implement UN Security Council Resolution 1325 «Women, peace, security» in 2020, the Cabinet of Ministers of Ukraine approved the National Action Plan for the period up to 2025. In 2022, the Ministry of social policy prepared a draft state strategy for ensuring equal rights and opportunities for women and men until 2030 and an action plan for 2022–2024 of Ukraine.

It is established that the European Court of Human Rights is of great importance for the interpretation of the concept of «protected attribute». The court practice of the ECHR actually expands the list of protected features, which should be taken into account when improving the national anti-discrimination legislation.

Key words: international standards, anti-discrimination legislation of Ukraine, United Nations declarations, conventions of the International Labour Organization, labor relations, discrimination, protected attribute, race, gender, disability, age, discrimination by association, ECHR.

Пожарова О.В., Пожаров Ю.В. Міжнародні стандарти щодо захищених ознак та антидискримінаційне законодавство України.

У статті здійснено аналіз міжнародних актів, які прийняті Організацією Об'єднаних Націй, Радою Європи, Європейським Союзом у сфері протидії дискримінації та антидискримінаційного законодавства України.

Розглянуто Закон України «Про засади запобігання та протидії дискримінації в Україні», який містить узагальнююче поняття «дискримінація», надає визначення форм дискримінації та перераховує захищені ознаки.

Запропоновано закріпити у статті 1 даного закону визначення терміну «захищені ознаки».

Досліджено наукові праці В. Іськович та В. Галана у сфері вивчення нових типів дискримінації та захищених ознак.

Встановлено, що до захищених ознак, які закріплені у міжнародних актах відносять: расу, колір шкіри; стать; релігійні погляди; етнічне походження; мову; сімейний стан; політичні та інші погляди; екологічне та інше становище; місце народження; вік; стан здоров'я; народження дитини; статус; наявність власності; будь-яку форму соціальної сегрегації; генетичну спадковість; економічну діяльність та професію.

Більш детально досліджено Конвенцію ООН про ліквідацію всіх форм дискримінації щодо жінок, Міжнародну конвенцію про ліквідацію всіх форм расової дискримінації, Конвенцію про права осіб з інвалідністю і Факультативний протокол до неї. Розглянуто визначення понять: «дискримінацію за ознакою раси», «дискримінацію за ознакою статі», «дискримінацію за віком», «дискримінацію за ознакою інвалідності».

Окремо звернуто увагу на реалізацію принципу рівності прав жінок і чоловіків в Україні. З метою виконання резолюції Ради Безпеки ООН 1325 «Жінки, мир, безпека» у 2020 році Кабінет Міністрів України затвердив Національний план дій на період до 2025 року. У 2022 році Міністерство соціальної політики підготувало проект Державної стратегії забезпечення рівних прав та можливостей жінок і чоловіків до 2030 року та План заходів на 2022–2024 роки України.

Встановлено, що Європейського суду з прав людини має велике значення для тлумачення поняття «захищена ознака». Судова практика ЄСПЛ фактично розширює перелік захищених ознак, що необхідно враховувати при вдосконаленні національного антидискримінаційного законодавства.

Ключові слова: міжнародні стандарти, антидискримінаційне законодавство України, декларації Організації Об'єднаних Націй, конвенції Міжнародної організації праці, трудові правовідносини, дискримінація, захищена ознака, раса, стать, інвалідність, вік, дискримінація за асоціацією, ЄСПЛ.

Problem statement. Today, the issue of preventing and countering discrimination, which is a complex and multicomponent phenomenon in society, is relevant. All over the world, people still face discrimination on various grounds in many areas of life, in particular in the labor sphere. The main principle of a democratic society is equality and non-discrimination, which ensures social justice and respect for Human Rights. In Ukraine, countering discrimination is still an urgent task in the labor sphere, especially after the spread of coronavirus disease (COVID-19) and the introduction of martial law in our country.

The refore, it is worth noting international standards in the field of countering discrimination and highlighting the protected features that are enshrined in international acts. Improving the national anti-discrimination legislation, taking into account international standards in this area, will certainly be useful for our state.

Status of working out this issue. O.-M.I. Bachinskaya, A.Ya. Lavriv, N.M. Mitina, O.O. Uvarova, G.I. Chanisheva, I.V. Yankovets and others paid attention to the research of issues related to overcoming the existing discriminatory attitude towards women, youth, and persons with disabilities in labor relations. Defining the list of protected features in international acts on which discrimination is possible is important and requires further study.

The purpose of the article is to carry out a comprehensive analysis of protected features that are enshrined in international acts, and to provide proposals for improving the national anti-discrimination legislation.

Presentation of the main research material. The principle of legal equality is important for the normal development and life of people, as well as for the rights and opportunities of employees. Article

2 of the Universal Declaration of human rights lists the main protected features, namely: «Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status» [1].

Thus, the Universal Declaration of human rights established the principle of legal equality and the list of protected features. These are anti-discrimination norms at the international level, which appeared in 1948.

The principle of equality and non – discrimination was embodied in many international acts in the second half of the twentieth century, namely, in the declarations and conventions of the United Nations (hereinafter – the UN), the conventions of the International Labour Organization (hereinafter – the ILO) and the conventions of the United Nations Educational, Scientific and Cultural Organization (hereinafter-UNESCO).

For example: the UN adopted the following declarations: Declaration on the Elimination of Discrimination against Women, Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief;

and conventions: International Convention on the Elimination of All Forms of Racial Discrimination, International Convention on the Cessation and Punishment of the Crime of Apartheid, Convention on the Elimination of all Forms of Discrimination Against Women;

ILO has adopted conventions in this area: Equal Remuneration Convention, Discrimination (Employment and Occupation) Convention, Employment Policy Convention;

UNESCO adopted the Convention on Combating Discrimination in Education, etc.

The International Covenant on Civil and Political Rights and The International Covenant on Economic, Social and Cultural Rights also contain anti-discrimination legislation.

The anti-discrimination legislation of the European Union includes the Charter of Fundamental Rights of the European Union and directives (on the creation of common standards in support of equality in employment and work; on the principle of equal treatment of persons regardless of their race or ethnicity).

The Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) occupies a special place, as it establishes a mechanism for the protection of rights and freedoms in the European Court of Human Rights.

The international acts adopted by the United Nations, the Council of Europe, and the European Unions that establish the principle of non-discrimination and mechanisms for countering discrimination can be considered as the basis for the formation of anti-discrimination national legislation.

The Constitution of Ukraine establishes the general principles of equality and non-discrimination. According to Article 24 of the Constitution of Ukraine: «Citizens shall have equal constitutional rights and freedoms and shall be equal before the law.

There shall be no privileges or restrictions based on race, skin colour, political, religious, and other beliefs, sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics» [2]. This article lists protected attributes that can also be considered as a key element of discrimination.

V. Iskovich proposed the following definition: «a feature should be understood as an individual characteristic of a person, which should not be taken into account for the purposes of excellent attitude or use of a specific good. In other words, we can say that this is a certain characteristic of a person that causes different attitudes or treatment of him» [3].

The law of Ukraine «On the Principles of Preventing and Countering Discrimination in Ukraine» is the main normative legal act that contains a generalizing «concept of discrimination», defines forms of discrimination and lists protected features. According to Article 1 of this law, «discrimination is the situation in which an individual and/or a group of individuals suffers from the restriction on the recognition, exercise or enjoyment of rights and freedoms in any form established in this Law on the grounds of their race, skin colour, political, religious and other beliefs, sex, age, disability, ethnic or social origin, nationality, marital and property status, place of residence, linguistic or on other grounds that have been, are or may be actual or alleged (hereinafter – particular grounds) except for cases when such restriction has a legitimate, reasonably justified aim, which is achievable in an appropriate and necessary way» [4].

This definition has a list of potential grounds for discrimination, but it remains open. We believe that in Article 1 of this law it is desirable to fix the definition of the concept of «protected attribute».

Based on the analysis of international acts and national regulations, it is necessary to conclude that the grounds for discrimination can be: race, skin color;

gender; religious views; ethnic origin; language; marital status; political and other views; environmental and other status; place of birth; age; health status; birth of a child; status; availability of property; any form of social segregation; genetic inheritance; economic activity and profession.

Race is one of the protected traits. Oxford Languages defines race as a historically formed group of humanity, which is united by a common origin and a common hereditary physical characteristics (skin and hair color, head shape, etc.). The concept of discrimination on the grounds of race is enshrined in Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination. «Definition of racial discrimination: any distinction, exclusion, restriction, or preference based on race, colour, descent or national or ethnic origin with the purpose or effect of impairing the enjoyment on equal footing of human rights. Affirmative action policies or measures are not to be deemed racial discrimination» [5]. For example: case Budinova i Chaprazov V. Bulgaria (No. 12567/13).

International instruments prohibit discrimination on the basis of gender. The term «gender» itself refers to the biological differences between women and men.

Article 1 of the UN Convention on the Elimination of All Forms of Discrimination Against Women provides that the concept of «discrimination against women». means any distinction, exclusion or restriction on the basis of gender aimed at weakening or nullifying the recognition, enjoyment or enjoyment by women, regardless of their marital status, on the basis of gender equality, human rights and fundamental freedoms in the political, economic, social, cultural, social or any other field. For example: case Munteanu V. The Republic of Moldova (No. 34168/11).

The law of Ukraine «On ensuring equal rights and opportunities for women and men» establishes the following terms: «gender discrimination», «sexual harassment», «gender-based violence», «gender equality», etc.

Ukraine shares gender principles, carries out activities for the realization of equal rights and opportunities for women and men, which were proclaimed in international documents. For example: the Cabinet of Ministers of Ukraine in 2020 approved the National Action Plan for the period up to 2025 to implement UN Security Council Resolution 1325 «Women, Peace, Security». The result of this document will be the creation of conditions for countering gender-based violence and security challenges, ensuring equal participation of women and men in overcoming conflicts. On August 12, 2022, the government approved the draft state strategy for ensuring equal rights and opportunities for women and men until 2030 and the action plan for 2022-2024, which were developed by the Ministry of social policy of Ukraine.

On January 8, 2022, the law of Ukraine No. 1750-IX of 10.09.2021 came into force, which amends the law of Ukraine «on advertising» on countering discrimination on the basis of gender. The law introduces such concepts as «discriminatory advertising» and «discriminatory advertising on the basis of gender».

Special attention should be paid to discrimination in social and Labor Relations. Discrimination on the basis of gender in social and Labor Relations is manifested through unequal access, for example: to professional training, to advanced training, to retraining; to paid work and to various professions (occupations); to receiving compensation and assistance, or unequal conditions: in the selection and hiring, in career growth, in the organization of working hours, etc.

In the field of work, there is also Age Discrimination, which is called ageism. This type of discrimination is manifested through the willingness to interact on an equal basis and cooperate only with those people who meet a certain pre-established criterion-age. Employers are biased against older employees when applying for employment, not paying attention to their work experience and professional qualities. In order to strengthen the protection of employees' rights in 2022, amendments were made to the laws of Ukraine «On collective agreements and agreements», «On advertising» and Article 2-1 «equality of labor rights of citizens of Ukraine, non-discrimination in the field of labor» of the Labor Code of Ukraine was set out in a new version.

Unlike national legislation, age discrimination is the only case under European Union law where it can be objectively justified. These are cases where an excellent attitude towards access to employment or the establishment of a minimum age, professional experience and length of service may be considered legitimate (article 6 of the Equality in employment directive).

In 2009, Ukraine ratified the Convention on the Rights of Persons with Disabilities and its Optional Protocol. This convention establishes the definition of discrimination on the basis of disability, which

means any distinction, exclusion or restriction on the basis of disability, the purpose or result of which is to diminish or deny the recognition, realization or enjoyment, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other sphere [6].

Discrimination on the basis of disability has also been widely interpreted at the national level in the law of Ukraine «On the basics of social protection of persons with disabilities in Ukraine». Despite the legislative prohibition of discrimination, it is still present in many areas of life and has many reasons: ranging from ignorance of rights to stereotypes and prejudices towards people with disabilities.

People with disabilities face discriminatory actions that are also manifested in the employment process, when the employer refuses without valid reasons, based on the state of health, disorders of body functions or unfavorable external signs that have arisen in a person due to disability.

To resolve such situations, Article 19 of the law of Ukraine «On the basics of social protection of persons with disabilities in Ukraine» establishes a quota for employment of persons with disabilities in enterprises, institutions and organizations, including individuals who hire employees.

In 2022, the mechanism for accounting for jobs for persons with disabilities was simplified and control over entrepreneurs' compliance with quotas was improved. On November 6, 2022, the law of Ukraine No. 2682-IX came into force, which is aimed at ensuring timely accounting of an employee's work in electronic form.

V. Galan studied the formation of a new type of discrimination for Ukraine, namely: discrimination by association.

Association discrimination is considered a less favorable attitude because the person is related to or correlated with the protected characteristic [7, p. 169].

A person may face discriminatory actions, although he himself does not have a protected trait, thus, we are talking about discrimination through kinship (discrimination by association), when a specific trait is interpreted abstractly. The scientist believes that the concept of discrimination due to kinship in the anti-discrimination law of the European Union is well-established, since the standards of protection against it are confirmed and developed by judicial practice [8, p. 220-221].

The European Court of Human Rights is of great importance for the interpretation of the concept of «protected attribute».

For example: the ECHR drew attention to the fact that «sexual orientation» is not explicitly mentioned among the protected features in Article 14 of the convention for the protection of human rights and fundamental freedoms, but it is included in the list of «other» features protected by this article. At the same time, discrimination on the basis of sexual orientation is considered as a situation where a person experiences a difference in attitude towards him because of his homosexual or bisexual orientation (case S. L. V. Austria, case E. B. V. France).

Thus, the list of protected grounds on which discrimination is possible is clarified and actually expanded by the judicial practice of the ECHR.

Conclusions. International standards on combating discrimination are contained in declarations and the UN Convention, ILO Conventions, UNESCO conventions, and so on. The anti-discrimination legislation of the European Union includes the Charter of Fundamental Rights of the European Union and anti-discrimination directives. On the basis of the Convention for the Protection of Human Rights and Fundamental Freedoms, the European Court of Human Rights was established. It is of great importance in the field of protection against discrimination and the interpretation of the concept of «protected attribute».

The law of Ukraine «On the basics of preventing and countering discrimination in Ukraine» establishes the general definition of the concept of «discrimination», lists protected features. Their list is not exhaustive and needs to be finalized, taking into account the judicial practice of the European Court of Human Rights. It is advisable to continue scientific development on the definition of the concept of «protected attribute», in order to prepare proposals for its legislative consolidation.

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