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European Values in Education (Pluralism, Equality, and Non-Discrimination)

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Abstract

Successful economic and political integration into the Europe is impossible without intellectual and cultural integration, without the perception of European values by the majority of the population. Mostly the perception of values is related to the processes of knowledge acquisition and ideology formation, which are usually part of the educational process. That is why teaching in school and universities should be closely linked to the perception of values.

The basic European values in education are pluralism, equality and non-discrimination. These values are enshrined in both the law of the Council of Europe and the law of the European Union. However, law enforcement practices within both organizations show that these values are also the most frequently attacked.

In particular, in the cases of Janowski v. Poland, İzzettin Doğan and others v. Turkey ECHR has stressed the importance of pluralism as a marker of a democratic society. The applicants in cases of Folgerø and Others v. Norway, Hasan and Eylem Zengin v. Turkey, Leyla Şahin v. Turkey, Lautsi and others v. Italy complained of encroachment on pluralism in educational institutions.

To the importance of equality and non-discrimination in education ECHR was addressed in the cases of Kjeldsen, Busk Madsen and Pedersen v. Denmark, D.H. and others v. the Czech Republic, Oršuš and others v. Croatia, Ponomaryovi v. Bulgaria, Altinay v. Turkey and others.

In Ukraine, both pluralism and equality and non-discrimination are formally determined as the principles of the educational process. However, the analysis of the law enforcement practice shows that in reality the situation is not so comforting. Improvement of the situation is possible because of amendments to the legislation and adjustment of the behavior of educational process participants.

Keywords: human rights, anti-discrimination, pluralism, European values, European Union, Council of Europe, European Court of Human Rights.

1. Introduction

For a long time, pluralism has remained one of the main markers of a democratic political regime and a market economy. The idea of competition between political parties, ideologies, goods and services and so on is based on the principle of pluralism. That is why it is felt that pluralism should also exist in the education system, which largely shapes future citizens, employees and consumers. However, government regulation and standardization remain less room for pluralism in educational institutions.

Equality and non-discrimination are also integral parts of the system of European law principles and important values of European civilization. Equality and non-discrimination underlie

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legal equality. Non-discrimination and pluralism are interdependent and can only exist in a complex. In particular, pluralism is the reason why "others" arise. It is "otherness" that is the cause of discrimination, which ultimately causes irreparable damage to pluralism. Therefore, the inextricable link between these values necessitates their comprehensive study, including in matters of education.

2. Materials and methods

Issues related to the basic principles of education cannot be called new to legal science and practice. However, given the constant expansion of teaching methods and instruments (for example, using of online courses) and the continuous coverage of at least school education of the entire population of European countries, they do not lose their relevance both for legislators and scholars. The study of normative documents of Ukraine and some European states, acts of Community law of the European Union, as well as the case law of the European Court of Human Rights became the basis for drawing conclusions within this work. The theoretical basis of the study are publications that analyze the main aspects of the policies of different countries on values, their content and protection (Prisjazhnij, 2013; Gonjukova, 2009; Lippert-Rasmussen, 2013; Heinrichs, 2012; Bell, 2009; Chopin, Germaine, 2020).

3. Discussion

It should be noted that pluralism is defined as an idealistic philosophical doctrine, an outlook on which numerous independent spiritual entities are at the heart of the world (Slovnyk ukrainskoi movy); as philosophical ideas, doctrines, theories in which the concept of "multiplicity" as a quantitative dimension of reality is understood on different conceptual bases, the peculiarity of which is the moment of substantial difference (including opposition) of "multiplicity" ("plurality") from oneness (one as one) (Philosophical Encyclopedic..., 2002: 487); as diversity and one of the fundamental principles of the structure of a legal society, affirming the legitimacy of the diversity of subjects of economic, political and cultural life of society (Prisjazhnij, 2013); as a constitutional recognition of the free existence of various ideological movements (Gonjukova, 2009), etc.

Pluralism is also understood as a state of society in which members of diverse ethnic, racial, religious, or social groups maintain and develop their traditional culture or special interest within the confines of a common civilization (Merriam-Webster) or as the view that in liberal democracies power is (or should be) dispersed among a variety of economic and ideological pressure groups and is not (or should not be) held by a single elite or group of elites (Britannica).

All these positions agree that pluralism implies diversity, alternatives and choices in the fields of ideology, politics, religion, philosophy and law. The importance of the role of pluralism in society is emphasized, in particular, by Article 2 of the Treaty on European Union, which mentions it as one of the values of the European Union and the activity of the Committee of Ministers of the Council of Europe, which periodically updates the recommendations on pluralism in the media. However, legislation and international treaties contain virtually no definitions of "pluralism".

In turn, discrimination is a form of unequal treatment of people based on their gender, ethnic origin, religious beliefs, social status, health status, and so on. Researchers underlined that an individual can be discriminated *in favor* of as well as *against*. Ignoring cases where initially the discriminatee is much better off than others, if the discriminator treats the discriminatee worse (or better) than others, we have a case of discrimination against (or in favor of).In cases where an agent treats people differently but treats no one worse than others, she/he discriminates between them (Lippert-Rasmussen, 2013).Thinking about moral and ethical side of discrimination, researchers say that two principles are central to the concept of discrimination: the Aristotelian principle, according to which like cases should be treated alike, and the principle of relevance, according to which a certain trait is amorally valid reason to treat persons differently if and only if the trait in question is relevant to the given circumstances (Heinrichs, 2012).

Ukrainian legislation defines discrimination as a situation in which a person and/or group of persons on the grounds of race, color, political, religious and other beliefs, sex, age, disability, ethnic and social origin, citizenship, marital and property status, place of residence, linguistic or other features that were, are and may be valid or presumed, is restricted in the recognition, exercise or use of rights and freedoms in any form, except where such restriction has a legitimate, objectively justified purpose, methods achievements of which are appropriate and necessary

(Article 1 of the Law of Ukraine "On Principles of Prevention and Counteraction of Discrimination in Ukraine") (Pro zasady..., 2012). The definition formulated by the Ukrainian legislator is quite cumbersome. For example, in Finland a more concise term is used: Discrimination is direct if a person, on the grounds of personal characteristics, is treated less favourably than another person was treated, is treated or would be treated in a comparable situation (Section 10 of Non-discrimination Act of Finland) (Non-discrimination Act).

Article 4 of the abovementioned Law of Ukraine underlines that education is one of the areas of anti-discriminations rules enforcement. Prevention and counteraction of discrimination are enshrined as one of the tasks of the National Strategy of Ukraine in the field of human rights (Pro zatverdzhennia..., 2015). Anti-discrimination is also identified as an objective of the political dialogue between Ukraine and the EU under the Association Agreement (Article 4).

Anti-discrimination is also one of the basic tasks of the European Union. In particular, Article 2 of the Treaty on European Union, already mentioned above, enshrines equality and non-discrimination as the values on which the Union is founded. Equality and non-discrimination are also reflected in Articles 20, 21 and 23 of the EU Charter of Fundamental Rights. According to these articles, everyone is equal before the law and any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited (Charter of Fundamental Rights...). The European Union reached a turning point with its anti-discrimination legislation in 2000, when were adopted two Directives which altered the character of EU anti-discrimination law –the Racial Equality Directive and the Employment Equality Directive. Initially, its legislation had predominantly focused on discrimination against EU migrant workers, as well as gender discrimination connected to participation in the labour market (Bell, 2009). EU anti-discrimination legislation now includes the Treaty of EU, the Treaty on the Functioning of the EU, the Charter of Fundamental Rights, Employment Equality Directive (2000/78/EC), Racial Equality Directive (2000/43/EC), Gender Goods and Services Directive (2004/113/EC) and Gender Equality Directive (recast) (2006/54/EC) (Handbook...). On 17 November 2017, the European Parliament, the Council and the European Commission proclaimed the European Pillar of Social Rights. It is a soft-law document built upon 20 key principles. By proclaiming the European Pillar of Social Rights, the European Union took a strong stance towards non-discrimination (Chopin, Germaine, 2020).

In the legal doctrine and judicial practice conceptions of direct and indirect discrimination can be found. Based on the provisions of Article 2 of Council Directive 2000/43/EU of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, it should be noted that direct discrimination is when one person is treated less favorably than to another in a similar situation due to the presence of a certain trait (social or ethnic origin, race, language, religion, health or property status, gender, sexual orientation, etc.). Indirect discrimination, in turn, is a case where a clearly neutral provision, criterion or practice would place persons endowed with a protected feature in a particularly unfavorable situation compared to other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means that are appropriate and necessary to achieve this goal (Council Directiv..., 2010).

It is also worth noting the non-discrimination in the law of the Council of Europe. In particular, the prohibition of discrimination is mentioned in such acts of the Council of Europe as:

- Framework Convention for the Protection of National Minorities;
- Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention);
- Convention on Action against Trafficking in Human Beings;
- Convention on Access to Official Documents;
- Protocol to the Convention on Cybercrime;
- Convention on Human Rights and Biomedicine and others.

The Council of Europe has adopted a number of acts to create an atmosphere of equality and respect for everyone and non-discrimination in educational institutions. The examples of these acts are the Recommendations of the Parliamentary Assembly of the Council of Europe "Education against School Violence" of 2011, "Cultural Education: Promoting Cultural Knowledge, Creativity

and Intercultural Understanding through Education" of 2009, "The Place of the Mother Tongue in School Education" from 2006, “Education and Religion” of 2005, “Access of Minorities to Higher Education” of 1998 and Recommendations of the Committee of Ministers of the Council of Europe “On Education and Social Inclusion of Children and Youth with Autism Spectrum Disorders” of October 2009, “On Education of Roma and Travelers in Europe” of June 2009,“ Gender Integration in Education” of October 2007, “Access to Higher Education” of March 1998, etc.

4. Results

However, it seems that the greatest contribution to the development of pluralism and anti-discrimination principles was made by the European Court of Human Rights. In its decisions, it filled the rules of international treaties and conventions with real content. Given that one of the principles of the ECtHR's activity is the principle of non-illusory rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Court has consistently defended pluralism and equality in its practice.

The ECtHR has repeatedly pointed to the central role that pluralism plays in a democratic society. In particular, in the case of *Janowski v. Poland* Court emphasized that without "pluralism, tolerance and broad-mindedness" there is no "democratic society" (§ 30) (Case of Janowski..., 1999). In the case of *İzzettin Doğan and others v. Turkey* ECtHR highlighted that pluralism is inseparable from a democratic society. The Court therefore stated that religious pluralism includes, inter alia, the freedom to hold or not to hold religious beliefs and to profess or not to practice religion (§ 103) (Case of İzzettin Doğan..., 2016). In doing so, pluralism and democracy must be based on dialogue and a spirit of compromise (*Karácsony and others v. Hungary*, § 141) (Case of Karácsony..., 2016).

The Court also emphasized the leading role of the State in making every effort to create political (eg, *Yumak and Sadak v. Turkey*, § 106), media (*Centro Europa 7 SRL and Di Stefano v. Italy*, § 130) and religious pluralism.

The right to education, as was already mentioned earlier, is at the forefront of the catalog of human rights guaranteed by the Convention and its Protocols. In doing so, Article 2 of Protocol No. 1 obliges the State to perform any functions which it has assumed in the field of education and training, to respect the right of parents to provide such education and training in accordance with their religion and worldviews. It is in the context of religious and ideological pluralism that, most often, difficulties have arisen in the exercise of the right to education that the ECtHR has considered.

In particular, in the case of *Folgerø and Others v. Norway* the Court stated that the right to education should be exercised in the light of respect for the religious and philosophical convictions of the parents, whether public or private. The second sentence of Article 2 of Protocol No. 1 is aimed at protecting pluralism in education, which is important for preserving a "democratic society" within the meaning of the Convention. The state's duty of respect for beliefs is broad, as it concerns not only the content of education and the way it is delivered, but also the fulfillment of all "functions" assumed by the state. The word "respect" means more than "acknowledge" or "take into account". In addition to the negative obligation, it implies a certain positive obligation on the part of the state (§ 84). It should be recalled that in this case the court stated that a mandatory KRL discipline, which predominantly taught the basics of Christianity, violated religious pluralism and constituted an unjustified interference with the right guaranteed by Article 2 of Protocol No. 1 (Case of Folgerø..., 2007). Similar findings were also reiterated by the Court in the case of *Hasan and Eylem Zengin v. Turkey*, which also referred to the compulsory study of the basics of religion at school: "The Court holds that in a democratic society, only pluralism in education can enable students to develop a critical mind about religious issues in the context of freedom of thought, conscience and religion" (§ 69) (Zengin, 2006).

However, in the case of *Leyla Şahin v. Turkey*, where the applicant complained about her ban on wearing traditional Islamic clothing to the university, the Court saw no violation of either freedom of religion (religious pluralism) or the right to education (Şahin, 2005). Similarly, the Court did not find encroachment on religious pluralism in *Lautsi and others v. Italy*, where the applicants complained about the placement of crucifixion in every classroom in the public school. The ECtHR emphasized that the organization of the school environment is undoubtedly one of the positive obligations of the state in the context of the right to education. It is clear, however, that the

applicant could see in practice the use of crucifixion at school by the State's lack of respect for its right to provide for their studying and teaching in accordance with its own philosophical convictions. However, the subjective perception of the applicant is not in itself sufficient to establish a violation of Article 2 of Protocol No. 1 (Case of Lautsi..., 2011).

As was mentioned above, it seems that the European Court of Human Rights has played a central role in shaping approaches to combating discrimination in education too – its decisions have long been seen as an indicative precedent for Council of Europe member states to amend legislation and law enforcement practices accordingly. In particular, in accordance with Article 13 of the Law "On Enforcement of Judgments and Application of the Case Law of the European Court of Human Rights", the so-called "general measures" may be taken to enforce judgments of the ECtHR to administrative practice, for example providing legal expertise of draft laws, providing professional training on the study of the ECHR and the practice of the ECtHR of practitioners in the field of law (Pro vykonannia..., 2006).

As we can see, discrimination is related to the fact that a discriminated person has a certain characteristic that belongs to the "protected". The analysis of the Court's practice allows us to identify the following groups of discrimination cases in the educational process:

Discrimination on the grounds of language

The case "*Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium*" or the *Belgian language case* became one of the first cases in which the applicant complained of discrimination in the educational process. In it, the French-speaking applicants complained that Belgium did not give their children a proper opportunity to study in French in the municipalities where they lived.

Analyzing the provisions of Belgian education legislation in the light of Council of Europe law, the ECtHR noted that the right to education guaranteed by Article 2 of Protocol No. 1 to the ECHR includes at least two elements: the right of access to existing educational establishments and the possibility for individuals, who is a beneficiary of educational services, to receive a certain formalized recognition of her achievements (for example, a certificate or diploma of education) (§4). The Court emphasized that the ECHR required the State to respect only the "religious" and "philosophical" beliefs of the parents, but not their linguistic characteristics. Article 2 of Protocol No. 1, even in conjunction with Article 14 of the Convention, does not guarantee the child or his or her parents the right to receive instruction in the language of their choice (Belgian language case, 1968).

In its proceedings, the Court found that there were monolingual regions in Belgium where the majority of the population spoke either French or Dutch (Flemish). At the same time, Flemish-speaking children living in the French-speaking region had access to Flemish schools in six communes, while French-speaking children living in the Flemish-speaking Flemish region were denied access to French-speaking schools in the same communes. In addition, Flemish classes in six communes were open to children who spoke it in the Flemish monolingual region, while French classes in these communes were not available to French-speaking children in the region. This situation was considered discriminatory, as Belgium did not provide a reasonable explanation for the difference in attitudes towards Flemish and French-speaking children.

Discrimination on the grounds of religion

In the case of *Kjeldsen, Busk Madsen and Pedersen v. Denmark* the applicants complained about mandatory sex education lessons in public schools. The Danish Government argued that this discipline was necessary in view of the large number of early and unplanned pregnancies, but the applicants insisted that, for religious reasons, they did not want their children to be told about sexual intercourse. The court noted that Denmark has provided an alternative in its legislation for parents who want to separate their children from integrated sex education – they can either send their children to private schools for which sex education is not compulsory, or teach their children at home. The applicants alleged that they had been discriminated against on the basis of religion, but the ECtHR disagreed. According to the Court, there is a difference between religious instruction and sex education – the former disseminates principles, not knowledge (§56) (Case of Kjeldsen..., 1978). Therefore, the need to take a sex education course while it relates to scientific knowledge of sexual relations is not discrimination.

Racial and ethnic discrimination

In case *D.H. and others v. The Czech Republic* ECtHR made a detailed analysis of the mechanism of indirect discrimination (D.H., 2017). The applicants in the case, members of the

Roma community, complained that their children were mostly admitted to specialized schools with facilitated curricula as a result of the tests. The analysis of these tests showed that they were designed for Czech children and did not take into account possible cultural differences, as a result of which Roma children with average or above-average intelligence found themselves in specialized schools. The test results could be challenged, but the Court did not agree that the parents of Roma children, who themselves belonged to a discriminated minority and were predominantly ill-educated, were indeed fully aware of this possibility. It also seems undeniable that parents are faced with a dilemma: choosing between regular schools, which were poorly equipped to meet their children's social and cultural differences, and where their children were at risk of isolation and ostracism, and special schools, where most students were Roma (§ 203). Consequently, in the present case the Court found that there was indirect discrimination. A similar situation has developed in the case of *Sampanis and others v. Greece*, in which the applicants, members of the Roma community, complained about the segregation of their children and the possible refusal to enroll them in a local primary school (Sampanis, 2008). The court concluded that the conditions of entering school of Roma children and special preparatory classes for them, which were located in a room separate from the main building of the school, were ultimately discrimination against them. In the case of *Oršuš and others v. Croatia* the applicants also complained about their segregation into separate Roma classes with a facilitated program (Case of Oršuš..., 2010). The Government justified such measures by the applicants' alleged poor knowledge of the Croatian language, but the unsystematic transfer of the applicants from Roma to non-Roma classes did not support these arguments. As a result, according to the applicants, only 16 % of Roma children were able to complete secondary education, compared to 91 % of the total number of secondary school students. In the Court's view, the applicants had been discriminated against on ethnic grounds. The applicants in *Lavida and others v. Greece* complained that the Government had set up a separate school for Roma children, in which they were forced to attend, despite more territorially convenient alternatives (Case of Lavida..., 2013). Pointing to certain successes of the government in the socialization of Roma in the field of education, the ECtHR nevertheless emphasized the existence of discrimination.

Discrimination on the grounds of citizenship

In the case of *Ponomaryovi v. Bulgaria* the applicants complained about the need to pay for schooling (Case of Ponomaryovi..., 2011). In Bulgaria, school education is free for citizens and foreigners who have the right to reside in the country. The applicants were Russian nationals, so they had to pay 800 and 2,600 euros for tuition, which they considered to be discrimination on grounds of nationality. The Court emphasized that States enjoy the right to restrict the provision of valuable services to illegal migrants or foreigners with short stays, but the right to education, as directly protected by the Convention, should not belong to such services. The Court noted that more and more countries are now moving towards a so-called "knowledge-based society", so that secondary education is playing an increasingly important role in successful personal development and in the social and professional integration of stakeholders. In modern society, the availability of no more than basic knowledge and skills is an obstacle to successful personal and professional development. This prevents stakeholders from adapting to their environment and has far-reaching consequences for their social and economic well-being (§57) (Case of Ponomaryovi..., 2011). Moreover, the applicants, who spoke Bulgarian fluently and grew up in Bulgaria, were unlikely to need special training conditions. Therefore, restricting their access to secondary education through high pay is discriminatory.

Discrimination on the grounds of disability and/or health

Blind applicant in the case of *Çam v. Turkey* tried to study in a conservatory (Case of Çam..., 2016). Despite passing the creative examination, the administration of the conservatory refused to allow the applicant on the grounds of disability. They tried to justify the refusal both by non-fulfillment of formalities (failure to submit all necessary documents) and by the unsuitability of the conservatory for training blind people. The Court stated that Article 14 of the Convention should be read in the light of the reasonable accommodation requirements of these texts, which should be understood as "necessary and appropriate changes and adjustments that do not impose a disproportionate or undue burden, depending on the needs of the situation" and that people with disabilities have the right to expect them in order to "satisfy or realize, on the basis of equality with others, all human rights and all fundamental freedoms". Such a reasonable accommodation makes

it possible to correct factual inequalities which cannot be justified and constitute discrimination (§64) (Case of Çam..., 2016). Consequently, the applicant's refusal on the grounds of her disability and the lack of attempts to adapt the conditions of her studies at the conservatory to be suitable for blind persons were found by the Court to be discriminatory.

The applicant in the case of *Enver Şahin v. Turkey* suffered serious injuries while studying at the university, which led to paralysis of his legs. The applicant applied to the university with an official letter requesting that the premises be adapted so that he could attend classes freely. The university administration replied that the adaptation of the premises required time and money, and therefore the applicant should not expect a speedy resolution of the situation. The applicant lodged a complaint with the national court against the university and sought compensation for the damage, but the court did not grant his claim. After examining the circumstances of the case, the Court concludes that the domestic authorities, including, in particular, the university and judicial authorities did not act with the necessary diligence to ensure that the applicant could continue to exercise his right to education on an equal ground with other students and did not made a fair balance between competing interests (§68) (Case of Enver Şahin..., 2018).

Note that the list of protected features that may give rise to discrimination in Article 14 of the ECHR, Article 1 of Protocol № 12 to the ECHR and Article 21 of the EU Charter of Fundamental Rights is not exhaustive. For example, in the case of *Altinay v. Turkey* the applicant complained of discriminatory treatment of graduates of vocational schools compared to graduates of regular schools. In the last year of the applicant's schooling, the government changed the rules for entering universities by establishing a scoring system which provided significant benefits to school graduates. The applicant requested to be transferred to a regular school, but his request was not granted. As a result, the applicant was unable to enter the university, although if his diploma had been credited as a school diploma, he would have had sufficient points to enter the desired faculty. The court pointed out that higher education issues usually fall within the scope of state discretion and university autonomy. However, in this case it was not only about the difference in behavior, but also about the inconsistent behavior of the government, which violated the principle of legal certainty. In view of the lack of foreseeability for the applicant of changes to the rules on access to higher education and the absence of corrective measures, the Court held that the non-equal treatment restricted the applicant's right to access higher education and was therefore violation of Article 14 of the Convention in conjunction with Article 2 of Protocol № 1 (§60) (Altinay, 2013).

5. Conclusion

Combating discrimination in educational institutions, as far as protecting pluralism in them, is one of the most important tasks of the state. Despite a number of achievements on the way to bringing the domestic educational space closer to standards of ECtHR, a number of problems remain unresolved, including:

1) Cases of imposing on pupils and / or students compulsory classes on the basics of Christian ethics or Christian religion, the basics of Christian morality. In our opinion, the study of these disciplines in the secular state, which Ukraine declares itself to be, should be exclusively optional;

2) Low involvement of Roma representatives in school study. It is seen that the state should promote the maximum socialization of Roma, primarily through preschool, school and higher education;

3) Low level of educational institutions adaptation to the education of persons with disabilities. Increasing the inclusiveness of the Ukrainian school is impossible without adequate funding for the development of new curricula and re-equipment of premises;

4) Low level of predictability of changes in educational legislation. It seems obvious that changes to the educational legislation, in particular those concerning the rules of entering university, the content of programs of entrance/final examinations and tests, requirements for future entrants, etc. should not be retrospective in nature and apply to those who pass the relevant exams in the current academic year. This will allow pupils and students to choose their learning trajectory with more confidence.

It is seen that the search for optimal ways to solve these problems opens wide prospects for further research in this area.

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