

УДК 341.231.14

DOI 10.33244/2617-4154.2(23).2026.382-391

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THE CONTENT OF THE PRINCIPLE OF EQUALITY AND NON-DISCRIMINATION AND ITS IMPLEMENTATION INTO NATIONAL LEGISLATION OF AZERBAIJAN

ЗМІСТ ПРИНЦИПУ РІВНОСТІ Й ЗАБОРОНИ ДИСКРИМІНАЦІЇ ТА ЙОГО ІМПЛЕМЕНТАЦІЯ В НАЦІОНАЛЬНЕ ЗАКОНОДАВСТВО АЗЕРБАЙДЖАНУ

The article, consisting of four parts, provides a comprehensive analysis of the content of the principle of equality and non-discrimination, as well as issues of its implementation into national legislation, based on the diversity of views in legal scholarship and international practice.

In the first part of the article, the relevance and scientific novelty of the research are substantiated. It is noted that the principle of equality and non-discrimination constitutes the foundation of the modern human rights system. Overall, this principle ensures the recognition of human autonomy and its real and equal realization for all individuals. The principle of equality and non-discrimination also directly influences the content of other rights.

In the second part of the article, the content and main areas of application of the principle of equality and non-discrimination are analyzed. It is emphasized that equality and non-discrimination represent a fundamental principle governing relations between the individual and the state. The principle has evolved through historical development from a stage of inequality to the concept of formal equality, and subsequently to the notion of



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substantive (real) equality. Furthermore, since the principle of equality and non-discrimination is grounded in solid international legal foundations, any violations in this sphere may directly affect the international responsibility of states.

In the third part of the article, issues related to the implementation of the provisions of the principle of equality and non-discrimination into the national legislation of the Republic of Azerbaijan are examined. It is noted that, alongside international instruments, the incorporation of the provisions of this principle into national legislative acts is of particular importance, and that the national legislation of the Republic of Azerbaijan has established the relevant and necessary implementation measures in this field.

In the fourth part of the article, key conclusions related to the research are presented. These conclusions encompass the determination of the content and developmental elements of the principle of equality and non-discrimination, the analysis of issues of international responsibility in the relevant sphere, the expansion of international judicial practice, and, finally, national implementation measures.

Keywords: human rights, rights and freedoms, equal rights, non-discrimination, human dignity, national legislation, international law, implementation measures, limitations of human rights, international responsibility, judicial practice, modern legal systems.

Стаття, що складається з чотирьох частин, містить ґрунтовний аналіз змісту принципу рівності та заборони дискримінації, а також питань його імплементації в національне законодавство Азербайджану на основі різноманітних підходів у правовій доктрині та міжнародній практиці.

У першій частині статті обґрунтовуються актуальність і наукова новизна дослідження. Зазначається, що принцип рівності та заборони дискримінації є основою сучасної системи прав людини. Загалом цей принцип забезпечує визнання автономії особи та її ефективну і рівну реалізацію для всіх. Принцип рівності та недискримінації також безпосередньо впливає на зміст інших прав.

У другій частині статті аналізуються зміст і основні напрями застосування принципу рівності та заборони дискримінації. Підкреслюється, що рівність і недискримінація є фундаментальним принципом, який регулює відносини між особою та державою. Зазначений принцип у процесі історичного розвитку еволюціонував від етапу нерівності до концепції формальної рівності, а згодом до розуміння матеріальної (реальної) рівності. Крім того, оскільки принцип рівності та недискримінації має міцні міжнародно-правові засади, будь-які порушення в цій сфері можуть спричинити міжнародно-правову відповідальність держав.

У третій частині статті досліджуються питання імплементації положень принципу рівності та заборони дискримінації в національне законодавство Азербайджанської Республіки. Зазначається, що поряд із міжнародними документами особливо важливим є закріплення положень цього принципу в національних нормативно-правових актах і національне законодавство Азербайджанської Республіки передбачає відповідні та потрібні заходи імплементації в цій сфері.

У четвертій частині статті сформульовано основні висновки дослідження. Ці висновки охоплюють визначення змісту та елементів розвитку принципу рівності та заборони дискримінації, аналіз питань міжнародно-правової відповідальності у відповідній сфері, розширення міжнародної судової практики, а також заходи національної імплементації.

Ключові слова: *права людини, права і свободи, рівні права, недискримінація, людська гідність, національне законодавство, міжнародне право, заходи імплементації, обмеження прав людини, міжнародно-правова відповідальність, судова практика, сучасні правові системи.*

I. Relevance of the research and scientific novelty. Human rights and freedoms are natural rights connected with human existence and deriving from the right to liberty. Individuals acquire these rights precisely by virtue of being human, while the state and society create their legal guarantees. Human rights are not granted by states; they stem from the moral nature of the individual, directly from his or her existence as a free and equal being. In modern democratic societies, the development of human rights constitutes a comprehensive and fundamental framework for the elimination of all forms of discrimination.

The principle of equality and non-discrimination is one of the fundamental principles of human rights. The principles of human rights, in turn, serve as an essential foundation for their protection and are aimed at further developing the provisions of the principle of protection of human rights and fundamental freedoms, which is a key principle of international law. Since the specific principles of human rights protection are directly linked to a fundamental principle of international law, they establish stricter obligations than those found in other fields. As general principles of law, human rights principles reflect the most important and progressive aspects of the economic, political, ideological, and moral spheres of society, and by virtue of their legal nature, they acquire a real, effective, and guaranteed content. These principles provide important and legitimate grounds for the justification of human rights, guide the interpretation of legal norms, and form the basis of legal decisions. It is well-founded to assert that human rights principles constitute a core element of the legal system and form the moral foundation of law. They serve as justificatory arguments used by law-applying bodies when interpreting legal norms and contribute to presenting the law in the best possible manner.

Thus, the principle of equality and non-discrimination is considered the cornerstone of the modern human rights system. Overall, this principle ensures the recognition of human autonomy and its real and equal realization for all. Equality and non-discrimination directly influence the content of other rights as well. In this regard, equality, liberty, and dignity are closely interrelated [3, p. 417–418]. It is rightly noted in legal scholarship that the principle of equality and non-discrimination also functions as a fundamental premise in other fields and encompasses significant legal norms [2, p. 56–57].

II. The content and main areas of application of the principle of equality and non-discrimination. The application of the provisions of the principle of equality and non-discrimination requires clarification of the normative content of equality and non-discrimination. In general, equality and non-discrimination constitute a fundamental principle governing the

relationship between the individual and the state. This principle not only establishes a uniform level of rights and freedoms for all but also prohibits any form of discrimination. The concept of equality has historically been a central principle in legal systems for centuries; even in ancient Roman law, the concept of *ius aequum* (“just law” or “law based on equality”) was grounded in the principle of equality aimed at ensuring objective justice in legal relations. As a fundamental basis of law in human rights, the principle of equality affirms that all individuals possess equal rights and obligations and, subsequently, the right to equal treatment before the law without discrimination [11, p. 462]. Its legal content includes equality before the law and equal protection, reflecting that everyone is subject to the same legal standards.

The principle of non-discrimination, in turn, plays a crucial role in the protection of human rights and in ensuring equality, combining both the right to equal treatment and the prohibition of discrimination. Achieving effectiveness in this field requires the precise determination of implementation mechanisms.

The principle of equality and non-discrimination is a fundamental and foundational principle of the human rights system. It requires not only formal legal equality but also the achievement of real social justice. In this regard, the legal system must not only establish a normative framework to ensure equality but also support it through social and economic mechanisms. The principle of equality forms the basis of modern human rights theory, and its essence lies not merely in formal legal uniformity but in ensuring substantive social justice. Thus, equality and non-discrimination function as a complex principle that must be implemented both at the normative and practical levels.

The principle of equality and non-discrimination, which forms the foundation of human rights, derives from the very nature of the human being. The shared characteristics of individuals as rational and moral beings justify their fundamental equality. This equality produces not only formal but also legal and ethical consequences. Liberty is a fundamental value and must be equally guaranteed to all. However, an alternative view exists, according to which not liberty but equality should constitute the primary foundation of human rights.

Discrimination affects all spheres of human life—politics, education, employment, social and medical services, housing, the penitentiary system, law enforcement activities, and the administration of justice in general. The prohibition of discrimination entails the right to equal treatment before the law and in all areas of life. This principle requires that persons in similar situations be treated equally both in law and in practice. The foundation of the social state is also primarily based on the principle of equality and non-discrimination. This principle is aimed at ensuring equality of individuals within society, their equal standing within the legal system, and the equal participation of social groups.

The principle of equality and non-discrimination is deeply rooted in human morality. Therefore, it is not surprising that this principle was rapidly recognized and developed in legal terms as one of the fundamental foundations of modern democracy. Since the 1950s, the conventional guarantees of the principle of non-discrimination have expanded, and today it is one of the most protected norms of international human rights law [5, p. 434]. Equality and non-discrimination must also be considered in close connection with the principles of dignity and liberty [9, p. 118].

Discrimination does not encompass every instance of differential treatment. According to the practice of democratic states, differential treatment constitutes discrimination only when it lacks an objective and reasonable justification. At the same time, not all unequal treatment automatically qualifies as discrimination (for example, the adoption of positive measures aimed at achieving substantive equality) [6, p. 75]. Discussions on strengthening women's rights have also directly focused on the concept of discrimination, its forms of manifestation, and the mechanisms that sustain it; significant activities in this direction continue to be carried out at various levels [15, p. 46].

International and comparative legal practice demonstrates that the principle of equality and non-discrimination is recognized by the constitutional courts of many democratic states as an independent subjective right, and individuals may directly invoke this principle to seek the protection of their rights. The United Nations Human Rights Committee also recognizes the principle of equality and non-discrimination as a self-standing right, applicable even in cases where it is not directly linked to other rights [9, p. 129].

Scholars who argue that the prohibition of discrimination has not yet been fully achieved point out the emergence of new forms in this field (such as discrimination based on age, lifestyle, genetic testing, and indirect discrimination) [6, p. 79–80]. Moreover, it is noted that discrimination is a dynamic and evolving phenomenon that manifests itself in various forms today, including hate speech, xenophobia, and systemic or institutional discrimination [7, p. 786–787]. However, this view is open to challenge, as the prohibition of all forms of discrimination has already attained the status of a peremptory norm of customary international law.

In legal scholarship, a distinction is made between equality of welfare and equality of resources. Equality is closely linked to the principle of “equal concern and respect.” According to this principle, states must assign equal value to all individuals and take everyone's rights into account at the same level [13, p. 23–27]. The concept of “equality of resources” is regarded as one of the most developed forms of the equality principle in modern legal philosophy. This approach explains equality not as the equalization of outcomes, but as ensuring that individuals have equal starting opportunities to shape their lives [14, p. 163].

The principle of equality and non-discrimination has evolved historically from a stage of inequality to the concept of formal equality and subsequently to the notion of substantive (real) equality. In modern legal systems, equality requires not only uniformity before the law but also consideration of differing circumstances and the achievement of fair outcomes. As a result, the principle of equality and non-discrimination functions as a fundamental legal principle both at the constitutional level and within the broader framework of rights. It encompasses not only formal equality but also the attainment of real equality. Positive discrimination may be applied solely with the aim of eliminating existing inequalities and within objectively justified grounds. At the same time, such measures must not create new injustices and must be implemented in accordance with the principle of proportionality [12, p. 381–383]. When analyzing this principle in the context of labor relations, legal scholarship emphasizes that the principle of equality must be applied at all stages of employment – from recruitment to the continuation and termination of employment – and must be supported by mechanisms of legal responsibility [8, p. 40–41].

The principle of equality and non-discrimination recognizes that differential treatment is permissible only on the basis of objective and reasonable grounds and identifies human dignity as the primary source of rights. It should be noted that, in certain exceptional circumstances, the state may impose limitations on human rights, as established in key international instruments; however, such measures must not be discriminatory in nature. Legal scholarship rightly emphasizes that the prohibition of discrimination remains one of the essential guiding principles in such cases [4, p. 38–82]. At the same time, the restriction of certain rights – referred to in legal doctrine as rights possessing an “inviolable core” or absolute rights – is prohibited [1, p. 133–134]. Relevant fundamental norms in this area are also established by Article 3 of the Constitutional Law of the Republic of Azerbaijan “On the Regulation of the Exercise of Human Rights and Freedoms in the Republic of Azerbaijan” dated 24 December 2002. For example, human rights and freedoms may be restricted only by law; limitations must not alter the essence of those rights and freedoms; and so forth.

In general, not every distinction constitutes discrimination, and international law provides criteria for determining when a distinction amounts to discrimination. If a difference has an objective and reasonable justification, pursues a legitimate aim, and maintains a proportional relationship between the aim and the means, it is consistent with the principle of equality. In this context, given that the principle of equality and non-discrimination is grounded in solid international legal foundations, any violations in this field may directly engage the responsibility of states.

III. Implementation of the provisions of the principle of equality and non-discrimination into the national legislation of the Republic of Azerbaijan. Alongside international instruments, the incorporation of the provisions of the principle of equality and non-discrimination into national legislation is of particular importance. The Republic of Azerbaijan has structured its implementation measures in this field along three key directions.

First of all, general implementation measures related to human rights should be noted. Thus, Article 12 of the Constitution of the Republic of Azerbaijan establishes that the protection of human rights and freedoms constitutes the supreme objective of the state [10]. The second and most significant section of the Constitution is specifically devoted to human rights, freedoms, and duties.

Secondly, the approach to international law is also included among general implementation measures. In this regard, particular attention should be given to Article 148(II) of the Constitution of the Republic of Azerbaijan (which provides that international treaties are an integral part of the legislative system), Article 151 (which establishes the supremacy of international treaty provisions over domestic legislation, except for the Constitution and acts adopted by referendum), and finally, the second paragraph of Article 12 (which emphasizes the necessity of direct reference to international conventions in the application of human rights and freedoms) [10].

Finally, the third direction of implementation measures directly determines the necessity of applying the core provisions of the principle of equality and non-discrimination.

In this context, constitutional provisions must first be examined. Article 25(1) of the Constitution of the Republic of Azerbaijan stipulates that everyone is equal before the law and the courts. Paragraph 2 of the same Article provides that men and women have equal rights

and freedoms. According to paragraph 3, the state guarantees equality of rights and freedoms to everyone irrespective of race, ethnicity, religion, language, sex, origin, property status, official position, beliefs, or affiliation with political parties, trade unions, and other public associations. It is prohibited to restrict human and civil rights and freedoms on the grounds of race, ethnicity, religion, language, sex, origin, beliefs, or political and social affiliation [10].

Moreover, other provisions of this Article also, in one way or another, reflect aspects of the principle of equality and non-discrimination: no one may be harmed, granted privileges or advantages, or denied such privileges or advantages on the grounds specified in paragraph 3 (paragraph 4); equal rights are guaranteed to everyone in relations with state authorities and officials who make decisions concerning rights and obligations (paragraph 5) [10].

Furthermore, Article 34(IV) of the Constitution of the Republic of Azerbaijan, entitled “Right to Marriage,” provides that spouses have equal rights [10].

Article 127 of the Constitution of the Republic of Azerbaijan, entitled “Independence of Judges, Basic Principles and Conditions for the Administration of Justice,” provides in paragraph II that judges shall consider cases impartially, fairly, on the basis of equality of the parties’ rights, the facts, and in accordance with the law. Furthermore, paragraph IV of the same Article stipulates that the administration of justice shall be carried out on the basis of equality of citizens before the law and the courts [10].

Article 12 (“Principle of Equality”) of the Law of the Republic of Azerbaijan “On Administrative Proceedings” dated 21 October 2005 states in paragraph 1 that everyone is equal before the law and administrative authorities [10].

Article 2 of the Migration Code of the Republic of Azerbaijan, entitled “Principles of Migration Legislation of the Republic of Azerbaijan,” provides that migration legislation is based on the principles of respect for human and civil rights and freedoms, legality, equality before the law, fairness, ensuring compliance of migration legislation with generally recognized norms of international law, the application of innovative methods in regulating migration processes, and the обеспечение transparency [10].

Article 7 of the Law of the Republic of Azerbaijan “On Courts and Judges” dated 10 June 1997, entitled “Equality of Rights of Everyone before the Law and the Court,” provides that, in accordance with Article 25 of the Constitution, the administration of justice in the Republic of Azerbaijan is carried out on the basis of equality of rights of every person before the law and the courts, regardless of race, nationality, religion, language, sex, origin, property status, official position, beliefs, or affiliation with political parties, trade unions, or other public associations [10].

Article 35 of the Law of the Republic of Azerbaijan “On Arbitration” dated 26 December 2023 stipulates that, during arbitral proceedings, the parties are equal and each party must be given a full opportunity to present its position [10].

Article 6 of the Civil Code of the Republic of Azerbaijan establishes the equality of subjects of civil law as one of the fundamental principles of civil legislation [10].

Furthermore, Article 8(1) of the Civil Procedure Code of the Republic of Azerbaijan, entitled “Equality before the Law and the Court,” provides that the administration of justice in civil cases and commercial disputes shall be carried out on the basis of the principle of equality of all before the law and the courts. According to paragraph 2 of the same Article, the

court shall treat all persons participating in the proceedings equally, regardless of race, nationality, religion, language, sex, origin, property status, official position, beliefs, affiliation with political parties, trade unions and other public associations, the location of a legal entity, its subordination, form of ownership, or other distinctions not provided for by law. Article 9 of the same Code further stipulates that justice shall be administered on the basis of adversarial proceedings, equality of the parties, and facts [10].

Article 4 of the Code of Administrative Offenses of the Republic of Azerbaijan, entitled “Principles of the Legislation on Administrative Offenses of the Republic of Azerbaijan,” states that this Code is based on the principles of respect for human and civil rights and freedoms, legality, equality before the law, the presumption of innocence, fairness, and the prevention of administrative offenses. According to Article 7(1) of the same Code, entitled “Principle of Equality before the Law,” persons who have committed administrative offenses are equal before the law regardless of race, nationality, religion, language, sex, origin, property status, official position, beliefs, and other circumstances. No one may be subjected to or exempted from administrative liability on the grounds specified in this Article [10].

Article 11(1) of the Administrative Procedure Code of the Republic of Azerbaijan, entitled “Principle of Equality before the Law and the Court,” provides that administrative judicial proceedings shall be conducted on the basis of the principle of equality of all before the law and the courts [10].

Article 2 of the Labor Code of the Republic of Azerbaijan establishes that the Code is based, inter alia, on the principle of ensuring equality of rights of the parties in labor relations [10] (alongside other principles).

Article 6(1) of the Criminal Code of the Republic of Azerbaijan, entitled “Principle of Equality before the Law,” provides that persons who have committed crimes are equal before the law and shall be held criminally liable regardless of race, nationality, religion, language, sex, origin, property status, official position, beliefs, affiliation with political parties, trade unions, and other public associations, as well as other circumstances [10].

Article 11(1) of the Criminal Procedure Code of the Republic of Azerbaijan, entitled “Equality of Everyone before the Law and the Court,” provides that criminal proceedings in the Republic of Azerbaijan shall be conducted on the basis of equality of rights of all persons before the law and the courts. Furthermore, paragraph 2 of the same Article stipulates that bodies conducting criminal proceedings shall not grant any privilege to any participant in the process on the grounds of citizenship, social status, sex, race, nationality, political or religious affiliation, language, origin, property status, official position, beliefs, place of residence or location, or on any other considerations not justified by law [10].

Article 29(1) of the Family Code of the Republic of Azerbaijan, entitled “Equality of Rights of Spouses in Family Relations,” provides that, in accordance with the equality of rights of women and men enshrined in the Constitution of the Republic of Azerbaijan, spouses have equal personal and property rights in family relations. Paragraph 2 of the same Article further stipulates that issues of motherhood, fatherhood, upbringing and education of children, as well as other family matters, shall be resolved jointly by the spouses in accordance with the principle of equality. According to Article 56, parents have equal rights and obligations with respect to their children [10].

Thus, the Republic of Azerbaijan has undertaken significant efforts to ensure the realization of the principle of equality and non-discrimination through the implementation of its provisions by means of various domestic measures. In this regard, national judicial practice should also be particularly emphasized. For instance, paragraph 9 of the Resolution of the Plenum of the Supreme Court of the Republic of Azerbaijan dated 30 March 2006 “On the Application of the Provisions of the European Convention on Human Rights and Fundamental Freedoms and the Case-law of the European Court of Human Rights in the Administration of Justice” states that the adversarial principle of criminal proceedings предусматривает ensuring equality between the prosecution and the defense. Paragraph 10 further provides that, in judicial proceedings involving conflicting interests, courts must ensure equality of the parties. Moreover, paragraph 2 of the same Resolution establishes that the observance and protection of human and civil rights and freedoms, including the execution of judgments of the European Court of Human Rights aimed at ensuring these rights, constitute obligations of the legislative, executive, and judicial authorities. In cases involving violations of human and civil rights and freedoms, courts must be guided not only by national legislation but also by the provisions of the Convention and must refer to the case-law of the European Court of Human Rights [10].

IV. Conclusion. The application of the principle of equality and non-discrimination is significant in several respects:

- First of all, by determining the true content of this principle, the effective realization of other human rights can be ensured. Its legal content includes equality before the law – reflecting that everyone is subject to the same legal standards – and equal protection guarantees, while also establishing a comprehensive system of protection against all forms of discrimination.

- The broad application of the principle fully affirms, across all spheres, both the right to equality and the right not to be subjected to discrimination as fundamental rights. The principle of equality and non-discrimination is extensive in scope, rich in content, and continuously evolving; it has important historical dimensions and continues to develop by incorporating new elements.

- The further development of the principle through international legal norms and its reinforcement on the basis of international judicial practice should be regarded as an important outcome. The mutual study and exchange of international judicial practice across different regions also remains one of the key objectives.

- Violations of the core provisions of the principle necessitate the engagement of state responsibility and the adoption of appropriate international measures. It should be emphasized that the principle of equality and non-discrimination has evolved historically from a stage of inequality to the concept of formal equality and subsequently to substantive (real) equality.

- The implementation of the provisions of the principle into national legislation should be regarded as one of the key obligations of states. In this regard, the practice of the Republic of Azerbaijan – particularly the implementation of national measures in three main directions – can be considered a positive development. At the same time, it is necessary to further develop national judicial practice in this field within the Republic of Azerbaijan.

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Дата надходження 25.02.2026

Дата прийняття 10.03.2026

Дата рекомендації 28.05.2026

Дата публікації 30.06.2026