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DOES INTERNATIONAL LAW PROHIBIT ISLAMOPHOBIA?

Today, we see a very dangerous Islamophobic approaches in some countries. Intolerance against Muslim migrants, as well as false media campaigns against Islam especially in Europe threatens not only European but also the world's security. In this regard, it is important for Europe's common sense to prevent and avoid escalation of anti-muslim sentiment in Europe. The article focuses on the relationship of international law and Islamophobia. The author reviewed Islamophobia in the context of the existing international law norms that prohibit religious-based discrimination and intolerance.

Key words: *Islamophobia, International law, Human Rights, religion, discrimination.*

ЧИ ЗАБОРОНЯЄ МІЖНАРОДНЕ ПРАВО ІСЛАМОФОБІЮ?

Сьогодні ми спостерігаємо дуже небезпечні ісламофобські підходи в деяких країнах. Нетолерантність щодо мігрантів-мусульман, а також помилкові медіа-кампанії проти ісламу, особливо в Європі, загрожують не лише європейській безпеці, але і безпеці в світі загалом. У зв'язку з цим важливо, щоб в Європі запанував здоровий глузд задля запобігання та уникнення ескалації антимусульманських настроїв. У статті розглядаються взаємозв'язки міжнародного права та ісламофобії. Автор зосереджує увагу досліджень ісламофобії в контексті існуючих норм міжнародного права, які забороняють дискримінацію і нетолерантність на релігійній основі.

Ключові слова: *ісламофобія, міжнародне право, права людини, релігія, дискримінація.*

ЗАПРЕЩАЕТ ЛИ МЕЖДУНАРОДНОЕ ПРАВО ИСЛАМОФОБИЮ?

Сегодня мы наблюдаем очень опасные исламофобские подходы в некоторых странах. Отсутствие толерантности в отношении мигрантов-мусульман, а также ложные медиа-кампании против ислама, особенно в

Европе, не только угрожают европейской безопасности, но и безопасности в мире в целом. В связи с этим важно, чтобы восторжествовал здравый смысл в Европе для предотвращения и избежания эскалации антимусульманских настроений. В статье рассматриваются взаимосвязи международного права и исламофобии. Автор проанализировал исламофобию в контексте существующих норм международного права, которые запрещают дискриминацию и не толерантность на религиозной основе.

***Ключевые слова:** исламофобия, международное право, права человека, религия, дискриминация.*

The neologism that refers to «unfounded hostility towards Islam» as well as to «the practical consequences of such hostility in unfair discrimination against Muslim individuals and communities, and to the exclusion of Muslims from mainstream political and social affairs» was coined by the British non-governmental organization Runnymede Trust in 1997 (Runnymede Trust 1997). In the report entitled «Islamophobia: Challenge for Us All» the organisation justifies the usage of the neologism on the grounds that anti-Muslim prejudice has grown so considerably and so rapidly in recent years that a new item in the vocabulary is needed so that it can be identified and acted against. Although the Runnymede Trust's report was essentially about the anti-Muslims sentiment in the United Kingdom, the term «Islamophobia» became quickly popular also in other European countries inhabited by significant Muslim populations.

The emergence of Islamophobia as a specific form of discrimination and intolerance against Muslims has exposed the importance of legal combating with Islamophobia, especially in international level. Nevertheless, there are no international norm that directly prohibits Islamophobia and this fact raises a question that – Does international law prohibit Islamophobia? If, the answer is no, then it would be meant that religious based discrimination is not illegal and everyone can make restrictions by this way freely, for example a person can be not permitted to work in public administration because of his or her religious trust. Such a situation could lead to public panic and confrontation. The religious-based discrimination may also have a negative impact on international relations.

The aim of the article is to describe islamophobia in the context of the existing international law norms that prohibit religious-based discrimination and intolerance.

Religious intolerance can manifest itself at different levels: within the same religion level, interreligious level, between religious supporters and atheists, etc. As the result of religious intolerance, discrimination and religious-based discrimination, both individual and inter-state relations are worsening. In this respect, religious intolerance pose a threat to international peace and security, paves the way for the transformation of the conflict to the conflicts that can occur between the states. As you see since it is contrary to the spirit of preventing discrimination against person or persons the answer to our popular question cannot be no. The fact is that there is a great demand for broad understanding of the concept of Islamophobia in the context of international law relating to religious-based discrimination. Lack of direct international law that prohibits Islamophobia does not reduce the importance of other international law norms that indirectly prohibit Islamophobia.

Since the first Declaration of Human Rights in 1948 The United Nations have evolved a number of instruments (Treaties, Conventions, Protocols and so on) pertaining to human rights and aimed at preventing discrimination against person or persons. In order bigotry, Islamophobia related events coming forward religious-based discrimination. We think that Islamophobia should be reviewed in the context of the existing international law norms that prohibit religious-based discrimination and intolerance. However, in the texts of such international documents the term Islamophobia has not used, international norms prohibiting religious-based discrimination and intolerance covering the events of Islamophobia too.

One of the main international rule that prohibit religious discrimination defined by the Charter of United Nations (UN) that adopted in 1945. According to 55 «s» clause of the Charter of United Nations with a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote universal respect for, and observance of human rights and fundamental freedoms for all without distinction as

to race, sex, language or religion [1]. The Charter indicating the position of the international communities declare the inadmissibility of religious discrimination and Islamophobia also takes its legal assessment within the framework of religious discrimination in addition to other cases of discriminations.

The cornerstone of the concept of human rights is that just as a human being everyone is entitled to all the rights and freedoms. Such simple and concrete approach reflected in the Universal Declaration of Human Rights adopted in 1948. For example, we could read in the Article 1, that all human beings are born free and equal in dignity and rights. They endowed with reason and conscience and should act towards one another in a spirit of goodwill. Universal Declaration of Human Rights, that well known as the world constitution and a milestone document in the history of human rights, affirms the equality of all human being. The Article 2 claimed that everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty) [2]. However, as a United Nations declaration, the Universal Declaration of Human Rights does not create binding legal obligations on the member states of the United Nations but it has great moral force for human rights. The spirit of the Declaration reveals the unacceptability of Islamophobia as a form of discrimination.

One of the fundamental norms of international law, which prohibits religious, based discrimination and puts legal obligation on states to apply its provisions, is International Covenant on Civil and Political Rights adopted by the UN General Assembly in 1966. The Articles 26 and 27 of the Covenant states that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national

or social origin, property, birth or other status. In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities are not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language [3].

The other universal international document that member states are obliged to apply is the International Covenant on Economic, Social and Cultural Rights adopted by the UN General Assembly in 1966. According to the paragraph 2 of Article 2 of the Covenant the States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status [4]. Both of the above mentioned International Covenants are distinguished by their legal characteristics and set out the obligations for member states. Based on these commitments, we can say that Islamophobia is not only prohibited by international law even member States have the positive obligations to fight against Islamophobia as a religious based discrimination.

Specific form of discrimination is racial discrimination. In addition, religious based discrimination Islamophobia is also covered racial discrimination. Target a Muslim person in Europe who is not practicing the religion still as a Muslim because of that person's alleged connection to the community. This leads to the issue of the racialization of religion. Some people, even the non-Muslims, faced Islamophobia because they are exposed to the Arab race that the bearer of Islamic identity. In such cases are unacceptable by international law. The Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination adopted by UN General Assembly in 1965 enshrined: states parties undertake to prohibit and to eliminate racial discrimination in all its forms and guarantee the right of everyone without distinction as to race, color, national or ethnic origin, to equality before the law, notably in the enjoyment of the fundamental and specific rights. According to the Convention states parties undertake to adopt immediate and effective measures,

particularly in the fields of teaching, education, culture and information, with a view of combating prejudices, which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention [5].

The concept of Islamophobia is very similar to anti-Semitism in the sense that both stand for prejudice and discrimination against an outside group defined in a combination of religious and ethnic terms. The much-cited report of the Commission on British Muslims and Islamophobia (1997) provides evidence of prejudice, discrimination, exclusion, and violence that Muslims have been facing across European societies. There is more than enough evidence indicating that anti-Muslim sentiments do represent more than a legitimate anxiety against the intrusion of an alien culture. In short, qualifies Islamophobia as racism with all the characteristics of prejudice, discrimination, segregation, and violence contained in older racism, and with the structural and institutional mechanisms, which reproduce that hostility.

Taking into account that Islamophobia is observed in many areas of daily life, for example in the field of labor and education. It would be interesting to know the position of international law about religious based discrimination in the above-mentioned areas. The Conference of the International Labor Organization adopted Discrimination (Employment and Occupation) Convention in 1958 that concerning discrimination in respect of employment and occupation. For the purpose of this Convention, the term discrimination includes any distinction, exclusion or preference made based on race, color, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation [6]. In contrast to the international rules Muslims, especially Muslim woman, sometimes have to face Islamophobia in employment and occupation areas arising out of religious beliefs. As an example of Islamophobia, religious based employment discrimination a following real event can be mention. Muslim woman Mona Alfadli, 25, was hoping to apply for a sales

assistant job at Steward Dawsons in Auckland. However, the manager immediately asked her if she would remove her hijab. When Mona said no, she heard: «Don't waste your time and don't waste my time». «I felt embarrassed as it took a lot of courage to walk into the shop and speak to the manager regarding a job, especially since I was afraid of the rejection», – said Mona. Mona's family settled in New Zealand as refugees from Kuwait in 2008. She finished her diploma in applied computer system engineering and trying to find a job since then [7].

When it comes to education it should be noted that characteristic international document, which prohibits discrimination is the Convention against Discrimination in Education adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in 1960. According to this document the educational discrimination includes any distinction, exclusion, limitation or preference, which based on race, color, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education and in particular: depriving any person or group of persons of access to education of any type or at any level; limiting any person or group of persons to education of an inferior standard; subject to the provisions of Article 2 of this Convention, of establishing or maintaining separate educational systems or institutions for persons or groups of persons; inflicting on any person or group of persons conditions which are incompatible with the dignity of man [8]. Thus, within the meaning of the text of the Convention against Discrimination in Education Islamophobia causes discrimination in education. However, level of Islamophobia in education increasing contrary to international law. Muslim students in public schools or non-Muslim private schools across California have been bullied at a rate more than twice the national average, according to the Council on American Islamic Relations (CAIR) civil rights organization. At least 55 percent of the 621 Muslim students interviewed had endured at least one form of religion-based bullying in 2014, according to CAIR's report, titled «Mislabelled: The impact of school bullying and discrimination on California Muslim students». The interviewees answered to a series of questions about how

comfortable they were openly identifying as a Muslim, as well as their treatment by school authorities and fellow students. The results found a rise in anti-Muslim discrimination from a similar CAIR report published in 2012. At least 52 percent of Muslim students had been verbally harassed about their religion at school, while 19 percent had endured online bullying by classmates. Among girls who wear the hijab, or Islamic headscarf, 29 percent told CAIR that they had been exposed to «offensive touching» or had their hijab pulled by a classmate, and 27 percent said that they had been discriminated against by teachers [9].

The UN Declaration the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief adopted in 1981 is one of the international document notable for its progressive provisions relating to multiculturalism and combating religious discrimination. The Article 2, paragraph 2 of the document mentioned under that: for the purposes of the present Declaration, the expression «intolerance and discrimination based on religion or belief» means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis [10]. In declaration acts resulting to intolerance, which can be a barrier to development of multiculturalism is criticized.

In the preamble of the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities adopted 1992 emphasized that the national or ethnic, religious and linguistic rights of persons belonging to minorities as an integral part of the development of the society based on the rule of law under the rules of the promotion and implementation of democratic nations constantly and could facilitate strengthening of friendship and cooperation between the states [11]. State parties to the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities are called to protect the existence and identity of the national or ethnic, religious and linguistic minorities and its creates the next international legal basis for prohibiting Islamophobia .

The Convention for the Protection of Human Rights and Fundamental Freedoms, better known as the «European Convention on Human Rights», was opened for signature in Rome on November 4, 1950; it entered into force on September 3, 1953 is one of the regional international law document on human rights. European Court of Human Rights was established under the Convention expressed the position relating to religious hate in court is some case law. Such decisions of European Court of Human Rights indirectly criticized Islamophobia too. In *Norwood v. the United Kingdom* case November 16, 2004, (decision on the admissibility) court's position confirmed that Islamophobia is contrary to international law. In that case, the applicant had displayed in his window a poster supplied by the British National Party, of which he was a member, representing the Twin Towers in flame. The picture was accompanied by the words «Islam out of Britain – Protect the British People». As a result, he was convicted of aggravated hostility towards a religious group. The applicant argued, among other things, that his right to freedom of expression had been breached. The Court declared the application inadmissible (incompatible rationed material). It found that such a general, vehement attack against a religious group, linking the group as a whole with a grave act of terrorism, was incompatible with the values proclaimed and guaranteed by the Convention, notably tolerance, social peace and nondiscrimination. The Court therefore held that the applicant's display of the poster in his window had constituted an act within the meaning of Article 17 (prohibition of abuse of rights) of the Convention, and that the applicant could thus not claim the protection of Article 10 (freedom of expression) of the Convention [12].

The Council of Europe Parliamentary Assembly Recommendations and Resolutions is one of the legal sources in Europe. It should be also mentioned in this respect. In Recommendation 1927 (2010) 1 on Islam, Islamism and Islamophobia in Europe Parliamentary Assembly of the Council of Europe called on Switzerland to enact a moratorium on, and to repeal as soon as possible, its general prohibition on the construction of minarets for mosques, which discriminates against Muslim communities under Articles 9 and 14 of the European Convention on Human Rights

(ETS No. 5). The construction of minarets must be possible in the same way as the construction of church towers, subject to the requirements of public security and town planning (paragraph 3.12) and member states called on not to establish a general ban of full veiling or other religious or special clothing, but to protect women from all physical and psychological duress as well as to protect their free choice to wear religious or special clothing and ensure equal opportunities for Muslim women to participate in public life and pursue education and professional activities. Legal restrictions on this freedom may be justified where necessary in a democratic society, in particular for security purposes or where public or professional functions of individuals require their religious neutrality or that their face can be seen; (paragraph 3.13) [13]. In Resolution 1743 (2010) 1 on Islam, Islamism and Islamophobia in Europe Parliamentary Assembly of the Council of Europe noted that Islamic radicalism and manipulation of religious beliefs for political reasons oppose human rights and democratic values. At the same time, in many Council of Europe member states, Muslims feel socially excluded, stigmatized and discriminated against; they become victims of stereotypes, social marginalization and political extremism. The Assembly is deeply concerned about Islamic extremism as well as about extremism against Muslim communities in Europe. Both phenomena reinforce each other. The Assembly recalled that Islamism is the view that Islam is not only a religion but also a social, legal and political code of conduct. Islamism can be violent or mainstream and peaceful, but in both cases, it does not accept the separation between religion and state, which is a fundamental principle of democratic and pluralistic societies. The Assembly also recalls that discrimination against Muslims is unacceptable and must be combated. Great majorities of European Muslims share the principles at the basis of our societies and it is essential to fight against Islamophobia, which stems mainly from lack of awareness and from negative perceptions associating Islam with violence. Failing to address these issues, many European governments pave the way to the rise of extremism (paragraphs 1 and 2) [14].

The former United Nations Human Rights Committee that acting today as the United Nations Human Rights Council (UNHRC) is a United Nations System inter-

governmental body responsible for promoting and protecting human rights around the world. Council (former name Committee) can also view this UN body based to International Covenant on Civil and Political Rights (ICCPR) and according to the Optional Protocol to the International Covenant individual petitions. In Raihon Hudoyberganova v. Uzbekistan case Ms. Hudoyberganova was a student at the Farsi Department at the Faculty of languages of the Tashkent State Institute for Eastern Languages since 1995 and in 1996, she joined the newly created Islamic Affairs Department of the Institute. She explains that as a practicing Muslim, she dressed appropriately, in accordance with the tenets of her religion, and in her second year of studies started to wear a headscarf («hijab»). According to her, since September 1997, the Institute administration began seriously limit the right to freedom of belief of practicing Muslims. They closed the existing prayer room. When the students complained to the Institute's direction, the administration began to harass them. The Human Rights Committee found that in the absence of a justification from the State – the expulsion of a student for refusing to remove her hijab violated the applicant's right to be free from «coercion which would impair [her] freedom to have or to adopt a religion or belief of his choice» as protected by Article 18 (2) of the ICCPR. (Human Rights Committee, Raihon Hudoyberganova v. Uzbekistan, Communication No. 931/2000, Views of November 5, 2004) [15].

The decision of the United Nations Human Rights Committee on Raihon Hudoyberganova v. Uzbekistan case is one of the best examples of relations between international law and Islamophobia. This case once again proves that international law prohibits Islamophobia.

Finally, we can conclude that, all the wings of international law against to Islamophobia. Even The Convention on the Rights of the Child Adopted by UN General Assembly in November 20, 1989 demands States Parties to respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status

[16]. The above-mentioned declarations, conventions, resolutions, court decision and other international law sources give us strong ground in order we can full confidently answer our title question: «Yes, international law prohibits Islamophobia».

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Received 04/05/2017