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GENDER EQUALITY IN SOCIAL AND LABOR RELATIONS

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ABSTRACT: While reforming of the Ukrainian state, an important part of ensuring the social process is gender issues, providing equal opportunities for self-realization of a person regardless of gender, age, nationality or social origin. In accordance with the Millennium Development Goals adopted by the world community in 2000, one of the priorities of international development and indicators of social and economic development is ensuring gender equality. The implementation of gender equality ideas contributes to the effective use of human potential and, consequently, to the expansion of human development opportunities.

Studying the processes of creation and implementation of gender policy in public administration is one of the new areas of research at the current stage of state formation. Its relevance is due to the processes of democratization of the Ukrainian society and search for ways to increase the effectiveness of public policy concerning equal rights and opportunities for women and men.

Nowadays it is paid considerable attention to gender equality aspects by many international organizations. Thus, the United Nations (UN) has developed a number of global Sustainable Development Goals (SDGs) for 2015-2030, which were approved in 2015 at the UN Summit on Sustainable Development and which now all countries are committed to. The fifth of the seventeen SDGs is to achieve gender equality and empower all women and girls. In 2017, the Govern-

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ment of Ukraine presented the “Sustainable Development Goals: Ukraine” national report, which addresses gender equality as an essential task. It is emphasized that in Ukraine it is necessary to create conditions for elimination of all women discrimination forms. In this regard the relevant objectives and basic indicators for their achievement have been identified.

Despite the fact that the world pays more and more attention to research in the field of gender equality, in Ukraine this issue remains one of the marginal segments in the public administration science.

Therefore a systematic study of the formation of a gender-balanced staff at local executive bodies is becoming important. It is the management staff of local executive bodies that is sharply criticized; its mistakes and misjudgments significantly affect the standard of living, the welfare of citizens of a particular administrative-territorial unit, and the image and authority of government and the state as a whole.

In the article it is analyzed the principles and mechanisms of state gender policy in Ukraine in the social and labor area, in particular in the civil service, it is studied the latest changes in the legal framework on gender issues, and it is described the existing legal issues that slow the further development of gender integration in all spheres of public administration, it is developed proposals to improve gender policy legal framework at the current stage.

INTRODUCTION

At the current stage of society development, the issue of gender inequality is quite relevant, because gender discrimination appears in many spheres of public life, including social and labor relations. Although Ukraine has adopted a number of legal acts declaring equal rights and opportunities for men and women, no effective mechanism has been created at the state or local levels to ensure the effective implementation of gender equality policy. The study objective is to analyze the current conditions of national legislation in the field of state gender policy and identify ways to improve domestic legislation on this issue. The study is based on a set of scientific cognition methods of social and legal phenomena and social processes. In particular, the dialectical research method was used to conduct a theoretical analysis of current legislation and other special regulations that comprise the current system of legal coverage for gender equality in social and labor relations, which made it possible to identify emerging issues and analyze the possibility of systemic changes in this area. The application of the method of comparative law was used in the

analysis of existing regulations and drafts on the regulation of gender equality in the social and labor sphere.

GENDER EQUALITY IN THE SOCIAL AND LABOR SPHERE

Focus on international law is a necessary prerequisite for the development and improvement of any national legal system, so the legislation of Ukraine in the field of gender policy consists of international and national legislation. The main documents of international legislation on gender policy in the social and labor sphere are: Sustainable Development Goals - 2030 and Sustainable Development Goals, adapted for Ukraine (2015-2030), Beijing Declaration, adopted at the Fourth World Conference on Women on September 15, 1995, European Social Charter (revised), The European Charter for Equality of Women and Men in Local Life, Association Agreement between Ukraine, on the one part, and the European Union, the European Atomic Energy Community and their Member States, on the other part, etc.

An essential place among the sources of international labor law belongs to the conventions and recommendations of the International Labor Organization (ILO). It is a specialized institution which purpose is to promote the improvement of working and living conditions. As of February 19, 2020, 63 ILO conventions are in force for Ukraine, including 8 fundamental and 4 priority ILO conventions (International Labour Organization, 2021).

Ukraine has also ratified a number of directives to ensure gender equality and non-discrimination in services, social security, employment and labor. Five of the seven “equality directives” regulated equality and non-discrimination on the grounds of gender identity: Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between women and men in the access to and supply of goods and services; Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security, Council Directive 92/85/EEC of

19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC, as well as Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (Ministry of Justice of Ukraine, 2021).

The normative legal documents of the national level regulating the issues of gender equality in the social and labor sphere include, first of all, the Constitution of Ukraine, the Labor Code of Ukraine, the Law of Ukraine of July 1, 1993, No. 3356-XII “On Collective Bargaining Agreements”, Law of Ukraine of March 24, 1995, No. 108/95-BP “On remuneration of labor”, Law of Ukraine of September 15, 1999, No. 1045-XIV” On trade unions, their rights and activity guarantees”, Law of Ukraine of 8 September 2005 No. 2866-IV “On Ensuring Equal Rights and Opportunities for Women and Men”, Law of Ukraine of December 23, 2010, No. 2862-VI “On Social Dialogue in Ukraine”, Law of Ukraine of September 6, 2018, No. 2523 -VIII “On Amendments to Certain Laws of Ukraine on Ensuring Equal Rights and Opportunities for Women and Men During Military Service in the Armed Forces of Ukraine and Other Military Formations”, Poverty Reduction Strategy and Action Plan for 2020 on Implementation of Resolution of the Cabinet of Ministers of Ukraine of May 11, 2017, No. 373 “On approval of the Procedure for development and approval of professional standards”, September 19, 2018, No. 792 “On approval of the procedure of registration, re-registration of the unemployed and accounting of persons who are looking for work”, Decree of the Cabinet of Ministers of Ukraine of September 5, 2018, No. 634-p “On Approval of the National Action Plan for the Implementation of the Recommendations set out in the Concluding Observations of the UN Committee on the Elimination of Discrimination against Women in the eighth periodic report of Ukraine on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women until

2021”, the State Social Program on Providing Equal Rights and Opportunities for Women and Men up to 2021, the order of the Ministry of Defense of Ukraine of December 13, 2018, No. 627 “On approval of lists of military accounting specialties and regular positions, sergeant and non-commissioned officers and tariff lists of positions of the above servicemen”, Order of the Ministry of Social Policy of January 29, 2020, No. 56 “On approval of guidelines for the inclusion in collective agreements and agreements of provisions aimed at ensuring equal rights and opportunities for women and men in labor relations”, Order of the Ministry for Development of Economy, Trade and Agriculture of Ukraine of August 18, 2020, No. 1574 “On approval of Amendment No. 9 to the national classifier ДК 003: 2010” etc.

Thus, it can be noted that the principle of gender equality in various aspects of its demonstration is now enshrined both at the international legal level and at the level of the Ukrainian state. Nowadays in Ukraine there is no legislative document that would contain articles or provisions of discriminatory content against women. But, unfortunately, all the above legal achievements do not mean that the principle of gender equality is fully operational in the life of the Ukrainian society.

ENSURING GENDER EQUALITY OF CIVIL SERVANTS

The main normative legal acts that ensure gender equality of civil servants are the Constitution of Ukraine, the Law of Ukraine “On Civil Service”, the Labor Code of Ukraine, as well as other normative legal acts.

The highest-level normative legal acts regulating relations in the field of state gender policy include, first of all, the Constitution of Ukraine, which provisions are directly applicable and should be applied even in the absence of special laws.

It should be emphasized that Article 3 of the Constitution states that “An individual, his life and health, honour and dignity, inviolability and security shall be recognised in Ukraine as the highest social value. Human rights and freedoms, and guarantees thereof shall determine the essence and course of activities of the State”. The state is accountable to man for

its activities. The establishment and protection of human rights and freedoms is the main duty of the state.

Thus, the Basic Law of Ukraine defines all human and civil rights and freedoms and is aimed at equal treatment of both genders without any discrimination and restrictions and acts as a guarantor of social security and fair treatment of all citizens. The rights, freedoms and duties of man and citizen are inalienable and inviolable, which in turn indicates that all people are free and equal in their dignity and rights as stated in Art. 21 of the Constitution of Ukraine. It should be noted that these provisions of the Basic Law fully comply with the requirements of the UN Charter, which emphasizes that the member states have undertaken a commitment to respect fundamental human rights and freedoms. The most significant in terms of gender equality is Art. 24 of the Constitution, which states that citizens of Ukraine have equal constitutional rights and freedoms and are equal before the law: "There shall be no privileges or restrictions based on race, skin color, political, religious, and other beliefs, gender, ethnic and social origin, property status, place of residence, linguistic or other characteristics" (Verkhovna Rada of Ukraine, 1996).

That is, the Constitution of Ukraine enshrines the principle of equality and its parts: equality of citizens before the law; equality regardless of race, color, political or other beliefs; equality regardless of ethnic and social origin, property status, place of residence, language or other characteristics; equality of women's and men's rights. Having enshrined this principle, the Constitution of Ukraine has politically and legally defined the gender strategy for the development of the Ukrainian society.

The state guarantees and implements its duties to the society through its representatives – civil servants. Based on the fact that the civil service is an institution of the state and at the same time a tool of society, through which the democratic essence of the state must be reliably implemented, ensure human rights and freedoms, support free life of society, and the state apparatus must be an intellectual, organizing and moral leader of social changes and social development and civil service is a defining chain of effective communication between the state and the individual, society. Thus, the regulation of social and labor relations of civil servants should become a model for building a balanced and integrated system of gender

policy aimed at achieving equality between women and men in society, overcoming all forms of discrimination on the grounds of gender, creating necessary social and political preconditions for implementation and opportunities of women and men in all spheres of life.

The main special law for civil servants is the Law of Ukraine “On Civil Service”. This Law defines legal and organizational principles of ensuring public, professional, politically impartial, effective, citizen-oriented civil service, which functions in the interests of the state and society, as well as the procedure for exercising the right of equal access to civil service based on their personal qualities and achievements.

Paragraph 7 of Part 1 of Art. 4 of the Law of Ukraine “On Civil Service” stipulates that one of the principles of civil service is to ensure equal access to civil service, i.e. prohibition of all forms and demonstrations of discrimination, lack of unjustified restrictions or unjustified benefits to certain categories of citizens while entering civil service and further career (Verkhovna Rada of Ukraine, 2015).

The National Action Plan for the Implementation of the UN Security Council Resolution until 2025 (National Agency of Ukraine for Civil Service, 2020) provides amendments to the General Rules of Ethical Conduct for Civil Servants and Local Government Officials, approved by the decree of the National Agency of Ukraine for Civil Service (hereinafter - NACS) of August 5, 2016, No. 158 (to combat sexism, sexual harassment, psychological and sexual violence, discrimination in employment, performance of official duties and participation in decision-making).

In addition, recognizing the need for education of civil servants at various levels, the Cabinet of Ministers of Ukraine adopted Decree, No. 974-p of December 1, 2017 (Cabinet of Ministers of Ukraine, 2017) approving the Concept of reforming the system of professional training of civil servants, heads of local administrations, their first deputies and deputies, local government officials and deputies of local councils (hereinafter - the Concept), which provides establishment of a completed and effective system of professional training of civil servants, heads of local state administrations, their first deputies and deputies, local government officials, deputies of local councils, approval of accreditation of relevant educational programs in the field of professional training, ensuring sys-

tematic identification of professional training needs, full monitoring and evaluation of the quality of educational services in the field of professional training and the results of professional training, in particular on gender policy issues.

On May 10, 2018, the decree of the Cabinet of Ministers of Ukraine, No. 342-p (Cabinet of Ministers of Ukraine, 2018) approved the Action Plan for the implementation of the Concept, which provides development of special short-term training courses, seminars, trainings, modules for professional training programs for civil servants, heads of local administrations, their first deputies and deputies, local government officials and deputies of local councils, in particular on gender policy issues.

Until 2020, the procedure for collecting and processing information on the number of civil servants was “gender blind” and did not take into account the use of gender approaches. Taking into account the provisions of the Law of Ukraine “On Ensuring Equal Rights and Opportunities for Women and Men”, as well as the implementation of the State Social Program for Ensuring Equal Rights and Opportunities for Women and Men until 2021, NACS issued decree No. 80-20 of May 20, 2020 “On approval of the reporting form of quantitative composition of civil servants “Report on quantitative composition of civil servants” and Instruction for its completion” (National Agency of Ukraine for Civil Service, 2020). The decree provides improvement of the procedure for collecting and processing information on the number of civil servants by gender and age group, by category of civil service positions.

Despite the fact that there are positive changes in the national legislation on state gender policy, it is still often and rather stereotypically reduced to certain directions of social policy, such as providing assistance to families with children, social protection of women, protection of women at work and more. These policy directions are important, but by no means exhaustive, as gender issues are related to various spheres of public administration and life.

RECENT CHANGES IN NATIONAL LEGISLATION

Thus, there are still gaps in the legal framework of Ukraine on gender policy, in particular, it concerns social and labor relations in terms of combining professional activities with family responsibilities and raising children.

The limited social and labor law, in particular the right to parental leave until the child reaches the age of three, the reduction of working hours and an additional leave defined by the Labor Code of Ukraine and the Law of Ukraine “On Leaves”, exacerbates gender imbalances in Ukrainian society and form a negative law enforcement practice.

Legislators drew attention to the discriminatory provisions of the above regulations in mid-2020 and developed a draft Law of Ukraine “On Amendments to Certain Legislative Acts to Ensure Equal Opportunities for Mother and Father to Care for a Child”, registered from 19.06.2020, No. 3695. The draft aims to create equal opportunities for mother and father to care for a child and combine work with family responsibilities, eliminate legislative gaps that limit a man’s right to a childcare leave, creates conditions for strengthening the role of the father in the raising children process and development responsible parenthood in Ukraine. Currently, this document was adopted in the first reading on 01.12.2020 (Bardina et al., 2020). It should be noted that for Ukraine this is a significant step forward in the gender issue.

In order to avoid discriminatory provisions in national legislation, the following draft laws were developed, based on Recommendation CM / Rec (2019) 1 of the Committee of Ministers of the Council of Europe to member states on preventing and combating sexism, adopted on March 27, 2019.

In particular, to improve the regulation of legal relations in the field of ensuring equal rights and opportunities for women and men, combating sexism and implementation in national legislation, a draft was proposed from 02.02.2021 No. 4598-1. Recommendation CM/Rec (2019) 1 of the Committee of Ministers of the Council of Europe has for the first time established an internationally agreed definition of “sexism”, which will later become a legal tool for overcoming discrimination based on sex. Thus, the draft proposes to amend the Law of Ukraine “On Ensuring Equal Rights

and Opportunities for Women and Men” concerning the definition of the “sexism” concept (Yakovlieva et al., 2021).

In addition, gender-discriminatory advertising is widespread in Ukraine, perpetuating gender stereotypes and affecting negatively the minds of both adult and juvenile consumers. The people’s deputies have recently drowned attention to this issue and on March 4, 2021 the draft law on amendments to the Law of Ukraine “On Advertising” concerning combating gender discrimination, registered on May 4, 2020, No. 3427, was adopted in the first reading. The draft law was based on Recommendation CM/Rec (2019) 1 of the Committee of Ministers of the Council of Europe to member states on preventing and combating sexism, adopted on March 27, 2019, in particular on the adoption of national legislation banning sexism in the media and advertising and encouraging monitoring and implementation of such measures. The proposed changes define in the legislation such concepts as discriminatory advertising and discriminatory advertising on the grounds of gender. The changes also propose to introduce responsibility for violations of advertising legislation and strengthen the protection of the rights of advertising consumers. Also, the draft law stipulates that discriminatory advertising on the basis of gender is advertising that contains statements and / or images about the intellectual, physical, social or other type of the advantage of one gender over another (Bardina et al., 2020).

CONCLUSIONS

Undoubtedly, the development of gender policy in Ukraine has positive features. However, its implementation is very slow, because today there are a lot of problems and obstacles to be implemented successfully.

The main challenges for Ukraine in the process of implementing the state gender policy are the Russian-Ukrainian conflict in eastern Ukraine, which creates preconditions for discrimination; low representation of women at the decision-making level; the gap in economic capacity between women and men; outdated gender stereotypes; insufficient legal awareness; the problem of gender-based violence.

It can be noted that the provisions of domestic gender law, for the most part, are of a special nature, due to the presence of a paternalistic type of legal regulation of gender processes, typical for Soviet times. Regulations that establish the rights and responsibilities of individuals to ensure equal rights and opportunities for women and men are dominated in gender law. The existence of protective provisions in gender law is still ineffective and their number is insufficient to address the problem of gender discrimination.

RECOMMENDATIONS

Work to improve the legal framework of state gender policy should be aimed at addressing these issues, development and adoption of a National Strategy for Gender Equality, which would focus on the international legal framework, including the Sustainable Development Goals to 2030 and the Beijing Platform for Action - the final document Fourth UN World Conference on Women (1995), as well as the further development of the principle of gender mainstreaming in all spheres and areas of public administration. Of particular note is the National Parallel Report on the Implementation of the Beijing Declaration and Platform for Action, “Beijing + 25: Parallel Report. Ukraine 2014-2019”, developed by 40 respected women’s, feminist and research non-governmental organizations representing all regions and acting as experts on a wide range of gender policy issues. The report presents an independent view of the situation with ensuring and protecting the rights of women and girls in Ukraine, assessing the implementation of legislative changes and gaps in the legislative sphere (Porokhnyak et al., 2019).

We also believe that there is a need to update the Law “On Ensuring Equal Rights and Opportunities for Women and Men” in accordance with current needs and objectives of state gender policy and to develop mechanisms of responsibility for violating legislation on equal rights and opportunities for women and men.

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