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Legal support of gender policy and the correlation with the concept of “equality of rights”

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Abstract

Ambiguous interpretation of the concept of gender equality has caused problems in understanding and legal support of the concept of gender. This and the global democratic process contribute to the relevance of the issue and generate the need for its thorough study. The article aims to define the essence of the concept “gender,” analyze the legal support of gender policy, and develop proposals for its improvement in Ukraine. In the study, we applied theoretical (analysis, synthesis, generalization, systematization) and empirical (observation) methods. The article also uses methods of statistical and comparative analysis, extrapolation, dialectical method, etc. We analyzed the content of gender policy and its consequences and identified the features of its legal support and impact on society. To replace the concepts of gender, gender equality, and its derivatives with “equality of rights of men and women” proved expedient. Proposals for improving the legal support of gender policy in Ukraine were developed. The article has a multidisciplinary nature and will appeal to a broad readership from lawyers to psychologists to raise awareness and competence in this area.

Keywords: gender; gender policy; equality; legal support; human rights

1. Introduction

Achieving equality is one of the priorities of democratic countries. The principle of equa-lity is reflected in leading international documents that condemn all forms of discrimination. Dated November 16, 1988, the Declaration on Equality of Women and Men of the Committee of Ministers of the Council of Europe (1988) in particular criticizes any mani-festation of the superiority of one sex over another and calls for special measures to establish real equality between women and men in various fields as soon as possible. First of all, it concerns access to public positions at all levels, access to all professions, occupations, and salaries.

The Universal Declaration of Human Rights (1997), Article 2 reads as follows: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” The International Covenant on Civil and Political Rights (1973) proclaims a broad list of fundamental rights and freedoms that must be granted by each state to all individuals within its territory and under its jurisdiction, without distinction of any kind, such as race, colour, sex, langu-age, religion, political or other opinions, national or social origin, property, birth or another status.

The principle of equality of human and civil rights and freedoms (principle of equality) is enshrined in the Constitution of Ukraine (1996). Thus, according to Art 21 of the Con-stitution of Ukraine: “All people are free and equal in their dignity and rights.” And Article 24 of the Constitution declares that “citizens have equal constitutional rights and freedoms.”

Similar wording is contained in the legislation of most states, which demonstrates the protection of their citizens from discrimination and equal rights for women and men. However, in recent years, more and more often, instead of the concept of “equality of rights between men and women,” we hear the concept of “gender equality.” Before tal-king about gender equality, it is necessary to define the term “gender.” It should be noted that there is only one official document that provides a definition of this concept. This is the Istanbul Convention, full name is the Council of Europe Convention on preventing and combating violence against women and domestic violence (2011), where the concept of "gender" is interpreted absolutely not as equality between men and women. In particular, the third article of the document states that gender means “socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for men and women.” This has caused a wave of discussions and rejection of the concept of "gender" and its derivatives by the majority of society.

Based on the analysis of international legislation in Ukraine, international experience, opinion poll data, analytical materials, the features of gender policy, as well as what consequences it will have and how it will influence the interests of society are identified. The comparative law method has provided alternative ways to achieve equality. The article also uses methods of statistical, comparative analysis, dialectical, extrapolation, etc. The historical method allowed us to monitor the position women held in the past and understand the level of their rights. The method of comparative analysis has become a conti-nuation of the historical method, because it helped us to trace how the situation in Ukraine and the countries of the European Union has changed in the context of equality of rights. We were able to see what changes have been made and what it has led to today.

The statistical method made it possible to take a comprehensive approach to the study of the question concerning quantitative measures. Using a dialectical method, we clarified different approaches to the concept of gender, which allowed us to analyze several points of view of reputable scholars and draw conclusions for ourselves which position to maintain. Finally, the method of extrapolation allowed us to make certain predictions of the development of gender policy, considering the current situation and the historical development of this issue.

The purpose of the article is to interpret the concept of gender equality and policy, examine and compare their legal support in Ukraine and other countries to develop proposals for their improvement in Ukraine.

2. The concept of "gender" and "gender policy"

The study revealed an ambiguous attitude and understanding of the concepts of "gender" and "gender policy." We analyzed the essence of gender as a sex and gender as a social role, and proved the expediency of using the concept of "equal rights of men and women." The term "gender" comes from the English grammar, which distinguishes three genders (grammatical genders). Until the 1970s, the terms "gender" and "sex" were used interchangeably (Gerry & Gerry, 1999).

After the wave of the sexual revolution, the two terms split, and sex denoted a biological category, while the notion of gender became the socially constructed roles, beha-viours, activities, and attributes that are appropriate for women and men according to a given society. As noted above, this is exactly the definition enshrined in the Istanbul Convention.

Let us analyze some examples of the definition of "gender" provided by credible organizations. For example, the esteemed American Psychological Association (2015) in its 2015 documents defined gender as "a nonbinary construct that allows for a range of gender identities and that a person's gender identity may

not align with sex assigned at birth." The WHO International Classification of Diseases, Tenth Revision (ICD-10) uses the term "genetic identity disorder" in the English version, which includes transsexua-lism and dual-role transvestism (International Statistical Classification..., 2016), but in the description of the said diseases, they use the term "sex." The new version of the International Classification of Diseases 11th revision clearly distinguishes between the concepts of gender and sex (International Statistical Classification..., 2016), which puts everything in the right place: gender is how a person feels inside - either male or female, regardless of biological sex assigned at birth. Nevertheless, the report prepared by the Committee on Women's Rights and Gender Equality and submitted to the European Parliament in December 2016, is entitled "Report on promoting gender equality in mental health and clinical research" (2016) and, in fact, pays great attention to the issue of LGBT communities (lesbians, homosexuals, bisexuals and transsexuals), which confirms the fact of their direct relationship with the concept of gender.

Back in September 1995, at the Fourth World Conference on Women (4WCW), held in Beijing, the conference leadership announced the following wording of the term "gender": relationship between a man and woman, based on the roles that society defines and assigns to both sexes (Lvova, 2014). Biologist Faust Sterling, for example, argued that there are 5 sexes:

– male;

– female;

– homosexual;

– bisexual;

– transsexual.

According to this theory, they are all equal (Cuba, 2016). Based on the above, it can be stated that gender is the so-called social sex, which differs not in biological characteristics, as it was during the existence of humankind, but in the principle of social necessity. In other words, gender can be chosen. Proponents of gender argue that biological sex does not matter and may not necessarily be decisive, and the most important thing is who you want to be and who you feel like, a male or female. This means, even if a person is biologically a woman, it will not be a hindrance to socially consider themselves a man, behave like a man, play the role of a man in sexual relations, dress like a man without necessarily changing sex.

L.V. Males (2004) also distinguishes between the concepts of "sex" and "gender." The term "sex" is used to denote biological, anatomical, physiological differences between female and male organisms, expressed by different participation of men and women in the reproductive process, different genitals, a set of chromosomes. Thus, biologically, a person can be identified as a man or a

woman, whereas gender is a social role that can be chosen over time. Gender forms behavioral, cultural, psychological, visual and other socio-cultural differences between men and women. In the scientific literature, the concept of gender is used in several senses:

– gender as a social role and cultural interpretation of personality and patterns of beha-vior of men and women, in contrast to biological role;

– gender as the acquisition of sociality by individuals born in the biological categories of female or male;

– gender as a policy of equal rights and opportunities for men and women, as well as activities to create mechanisms for its implementation (Males, 2004).

The Law of Ukraine "On Ensuring Equal Rights and Opportunities for Women and Men" (2005) stipulates that gender equality is an equal legal status for women and men and equal opportunities for its implementation, which allows persons of both sexes to participate equally in all aspects of social life. When it comes to gender equality as an ideal of sociopolitical development, this concept can be understood as the following pheno-mena: a) formal equality (legal equality enshrined in law); b) equality of opportunity (granting a certain statutory advantage to a certain socio-demographic group to guarantee equal conditions for all people); c) equality of outcome (targeted elimination of obstacles for competing parties that may be due to previous discrimination). In the legal field, proponents of gender and feminist theories try to explore the issues of "equality" and "difference." The extent to which equality of different people is possible (primarily on the basis of sex), the extent to which "inequality" can be introduced to achieve equality, etc. (Ageeva et al., 2014).

Speaking on this matter, it should be emphasized that the concept of gender and its derivatives began to be used at the legislative level and the level of international law even before the concept was legally defined, which was a priori the wrong decision. It was only later that the concept was embodied in the Istanbul Convention. Today, regulations worldwide are actively implementing gender theory. The decision-making and the implementation of new provisions in these matters are influenced by many social factors, including morals, customs, traditions. Religious norms also have a significant impact. The implementation of gender policy in modern times and the current legislation of different countries and fields of law is different. However, despite all the differences and features, we can notice the trend towards the process of forming a gender component in the legal system (Supek et al., 2011).

German scholars are studying the importance of gender issues in all cultural and social spheres. Gender studies indicate that a distinction needs to be made between biological and social sex. As noted earlier, every democracy proclaims the principle of equality in its legislation, which stipulates that all citizens must

be equal as representatives of socie-ty as a whole and as holders of fundamental rights and freedoms. Although, we cannot ignore the fact of inequality in the abilities, skills and moral beliefs of people. Considering all the factors, first of all, it is necessary to provide equal rights for the development of the individual in accordance with their natural capabilities and acquired qualities, and that will be fair.

Since gender is not a real biological sex, but a social construct, there can technically be as much types of gender as you want. Analyzing the relevant literature, we can state that today, there are more than 50 genders. In this article, we consider gender as equal rights between men and women, as it is stated by Ukrainian law. Let us focus on how the poli-tical situation in Europe has changed and analyze what steps Ukraine needs to take to achieve the effective results. For the 14th year in a row, the World Economic Forum publishes a study - the Global Gender Gap Report. This study includes 4 factors: economic participation; political empowerment; educational attainment; health and survival.

We see that the top ten rankings are led by the following countries: Iceland (it remains the leader for the 11th year in a row), Norway, Finland, Sweden, Nicaragua, New Zealand, Ireland, Spain, which has made a huge step compared to last year, jumping from 29th to 8th position, Rwanda and Germany. 78.7-88% of the gender gap is closed in these states (Global Gender Gap Report, 2020).

Analyzing experience of other countries, in general, 101 countries improved their performance compared to last year. Including Ukraine, which improved its result by 6 positions, taking 59th place with an index of 72%. If we take a closer look at Spain, we can recall a well-known fact from history, when women had basically no rights, including the right to vote, work without a husband's permission, and so on. Today, however, Spain ranks eighth in the Global Gender Gap Report 2020. This is, in part, the result of women gaining access to active participation in politics. More than 60% of ministries are headed by women, and in parliament their number exceeds the male part.

It is worth noting that the eighth place in the world ranking is a good indicator in the field of gender equality. Here we can stress the work of the Ministry that deals with the implementation of gender policy in the country. Much work is being done by the relevant structures, which includes the development of bills, various programs, consultations, etc. In the example of Spain, we see how important it is to give women access to politics, to enable them to make managerial decisions in the economy and other areas. Until women have the opportunity to influence the situation in the country, progress in other areas will be delayed.

If we take Lithuania as an example, we will also see positive changes. After all, over the past 15 years, it has been able to significantly improve its performance

in all four areas. Sweden is also an example of achieving equality. So, in principle, by analyzing the Scandinavian countries, we see that they do not have a division of roles and responsibilities in the family. Thus, each can be interchangeable when the other spouse will not be able to perform their functions. This applies to both making provision for family, i.e., work, and family relationships. Social support in this regard is provided both for Swedish citizens and for those who temporarily or permanently reside there. The Swedish government's programs are aimed at achieving results in the following areas:

– women and men have equal rights and opportunities to influence the situation in the country, i.e. to be active citizens;

– women and men have equal access to education, equal salary in the same positions, in order to achieve economic independence;

– women and men have equal responsibilities for household chores;

In the countries of the European Union, the effectiveness of municipal gender policy is determined by three main factors: parity at the local level in decision-making; mechanisms and methods of implementing equality; equality in all spheres of municipal activi-ty. Each European municipality has a specially trained gender equality officer, as well as a municipal committee for gender review of all urban projects. Gender specialists are trained on an ongoing basis (Gaspar, 2005).

3. Legal regulation of gender policy

Considering the experience of European countries, today, it is important to provide an official who will conduct supervision, maintain statistics, conduct certain research and make appropriate decisions directly at the local level. Positive in this regard is the experience of Finland, which organizes thematic meetings 1-2 times a year. It brings together the heads of such municipal bodies, in order to hold forums, exchange experiences, disseminate information to promote the development of other regions. Today, Ukraine is moving forward on issues of equality between men and women, using appropriate quotas in politics, conducting gender audits and special budgeting - the process of budgeting, considering its impact on men and women.

It should be noted that in Europe, attention is paid to gender budgeting because it helps:

– to determine what benefits different categories of the population will receive from the specifically allocated budget;

– establish that the appropriate allocation of funds will meet the needs of women and men;

– direct the gender budget to the maximum number of areas of public life, etc.

Focusing on the legislation of Ukraine in terms of equality of rights, we note that the Basic Law is the Constitution of Ukraine, which states that "…there can be no privileges or restrictions based on race, colour of skin, political, religious and other beliefs, sex, ethnic and social origin, property status, place of residence, linguistic or other characteristics. Equality of the rights of women and men is ensured by providing women with opportunities equal to those of men, in public and political, and cultural activity, in obtaining education and in professional training, in work and its remuneration…" (The Constitution of Ukraine, 1996). In 2005, the special Law of Ukraine "On Ensuring Equal Rights and Opportunities for Women and Men" was adopted. It defines the subjects and implementation of policies in the field of equality of rights, main directions of development, elements of construction to ensure equal status of women and men, professional, and other fields. This law was the beginning of the systematic development of the mechanism for the implementation of equality policy (Law of Ukraine No. 52, 2005).

Equally important in this area are the law of Ukraine "On Principles of Preventing and Combating Discrimination in Ukraine", which prohibits discrimination, specifically on the basis of sex (Law of Ukraine No. 32, 2012), and the law "On Prevention and Comba-ting Domestic Discrimination Violence", which introduces a comprehensive approach and defines a system of measures to prevent and combat physical, psychological and sexual violence in family (Law of Ukraine No. 5, 2017). In general, until 2016, normative legal acts on gender issues were hardly adopted.

The main tasks aimed at reducing gender inequality in economic and political spheres, overcoming gender stereotypes are included in the State Social Program on ensuring Equal Rights and Opportunities for Women and Men and 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. The State Social Program on ensuring Equal Rights and Opportunities for Women and Men was consi-dered to have been developed to implement European standards and strengthen institutional mechanisms for gender equality with a comprehensive approach to overcoming institutional constraints in the field of gender equality for the period up to the year 2021. The program included, in particular, the improvement of the legal and regulatory framework; considering the gender component in economic and social development programs, considering the statistical data that have been developed in a given region; overcoming gender stereotypes; increasing the number of women in political representation; closing the gender pay gap; organization of various courses and seminars on professional deve-lopment in these areas, etc. (Resolution of the Cabinet of Ministers No. 273, 2018).

At the legislative level, national, regional and sectoral action plans are being adopted, particularly the National Action Plan on the Implementation of the UN Security Council Resolution 1325 "Women, Peace, Security" for the period up to

the year 2025 (Order of the Cabinet of Ministers No. 1544-r, 2020). This document is aimed at ensuring women's participation in decision-making, combating gender-based violence and sexual violence, as well as ensuring equal rights and opportunities for women and men in accordance with the provisions of the National Action Plan. In the future, all these points should be reflected in departmental, regional and local plans.

The first National Action Plan of Ukraine was approved in 2016, which provided impetus to the development of the equal rights policy. In order to implement this plan, relevant documents and provisions were developed and included in the normative legal acts that used to limit women's rights. Thus, the ban on women being employed in 450 professions have been abolished, as well as a strategy for combating domestic and sexual violence have been developed. Despite the fact that the issue of discrimination has existed for a long time, it was not considered as the one that requires a detailed solution. In other words, there was no relevant legislation, no specialized body to deal with this issue, and no statistics were maintained.

On September 5th, 2018, the *Cabinet of Ministers of Ukraine endorsed a decree "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 main goal of the National Action Plan is to overcome all forms of discrimination against women and girls, reduce the level of gender-based violence, ensure its prevention and timely assistance to victims, conduct broad information campaigns to raise legal awareness, improve girls' and women's access to educational, medical, legal and social services, etc. (Kaminska et al., 2020). It should be noted that in recent years, a number of legal acts have been repealed, which has allowed women to move forward in their professional activities. Among them, in particular, are the following:

1) Order of the Ministry of Health of Ukraine No. 256 of 1993 that defined a list of 450 professions prohibited for women. This order was repealed in 2017, which allowed women to work underground, drive some types of freight transport and passenger cars, work in construction, in the engine room of the ship, etc. Also, women could not be a subway driver, bus driver, firefighter.

2) adoption of the Law of Ukraine "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" No. 2523- VIII No. 2523-VIII of September 2018 by the Verkhovna Rada of Ukraine provides equal opportunities for men and women to conclude a contract on military service, equal access to positions, military ranks, as well as equal responsibility.

The law allows women to have 24-hour duty, but in compliance with the legislation on maternity and child protection. The new law removes restrictions on the service of women in the military reserve. Nevertheless, not all female soldiers can be exempted from military service, but only pregnant women. An important aspect for improving gender equality policy is to monitor its implementation and maintain statistics, especially in those regions and fields that have previously been amended. It will help to reflect an objective image of the situation of different categories of people in society. The compilation of statistics ensures a rapid response of the state and relevant organizations to problematic issues that will arise in the process of implementing the rules. Moreover, having certain figures enables you to make them available to the public if needed.

Given the above, we can conclude that understanding of the term "gender" is ambiguous. The concepts of "equality of rights," "equality between men and women," etc. appear more often in society. This prompts us to reconsider the use of the term "gender." We believe that a more appropriate definition of gender will be social sex, which is a characteristic of personal and group behavior and determines the legal, social, and economic position of the individual in society. It should be noted that all international organizations, referring to the definition contained in the Yogyakarta Principles (2006), consider gender identity as each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body and other expressions of gender (i.e. "gender expression"), including dress, speech and mannerisms.

Given the definition of gender in the Istanbul Convention, it is primarily an individual characteristic of a person that coincides or does not coincide with socially constructed roles. Socially constructed roles, unlike sex, can be changed even every day, depending on who a person feels today. Although sex reassignment is not too problematic at present. Today, we are witnessing the fact that in recent years, there have been active attempts to ratify the Istanbul Convention. By adopting the relevant document, Ukraine will be obliged to bring all national legislation in line with the international document, and so to change the understanding of the concept of "gender" and its derivatives, such as gender equality, gender discrimination, gender legal expertise, gender policy, gender quotas, gender identity. Ukraine will be also obliged to acknowledge the authority of a special body – GREVIO, which will monitor the implementation of their obligations by states, in particular in terms of eradicating stereotypes about gender roles.

If we talk about breaking down of gender stereotypes, we cannot ignore the fact that each state, region and individual has its own understanding of stereotypes. For example, the desire to get married, to provide the comfort of your home, to raise children, etc. can be a dream of a certain category of women, while others may see is as stereotypes. Not to mention that men and women are different in

nature and physical abilities, which is confirmed by various scientific and medical studies (Podbregar & von Mann, 2020), so it is a priori impossible to achieve absolute equality. It is important to note that some states almost directly acknowledge the so-called third sex. Australian passports, for example, have three sex options to choose from under the new guidelines aimed to remove discrimination against transgender people: "male", "female," and "indeterminate".

4. Conclusion

Summing up the above, we can stress the following components that are necessary for gender mainstreaming:

– enshrining the relevant provisions in laws and regulations;

– participation and representation of women in political life;

– organization of relevant trainings to raise public awareness on issues of equality of rights;

– special programs and experts who will deal with the implementation of policy in the state.

Considering the forecasts of local scholars and analysts, the content of Ukrainian gender policy will change, which means the transition from protecting women by the state to the conscious implementation of gender policy. Thus, gender policy or gender demo-cracy in Ukraine seeks to guarantee the equal rights and freedoms of women and men in accordance with international law on gender equality.

Analyzing risks and the already existing negative consequences of the introduction of gender theory, we aim to attract attention and encourage a deeper study of this problem. It is therefore necessary to combat domestic violence at the legislative level, to achieve greater representation of women in parliament and government, to eliminate discrimination between men and women in the workplace and close the gender pay gap. However, before implementing any law, it is necessary to consider universal morals and values and remember that every decision will lead to certain consequences, and respectively, responsibility.

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