

## JURIDICAL SCIENCES

### SOME QUESTIONS OF JUDGE'S VACATION: GENDER ASPECT

**Bobrova Yulia<sup>1</sup>**

DOI: [https://doi.org/10.30525/978-9934-571-89-3\\_54](https://doi.org/10.30525/978-9934-571-89-3_54)

According to the Law of Ukraine “On the Judiciary and Status of Judges” judges are given annual paid leave of 30 working days with the judge’s payment, except of the judge’s remuneration and help for health improvement in the amount of the official salary. Judges with a work record of more than 10 years are granted an additional paid vacation of 15 calendar days [1]. To the duration of the judge’s main annual paid leave for a period of 30 working days, only working days are deducted and paid as leave’s days, but weekends, festive and non-working days are not included. At the request of the judge, annual additional leave may be given together with the annual main leave. Herewith there are no differences in the leave granting on a gender basis.

The judges' leave giving order is determined by the schedule that is made for each calendar year not later than 5th January of the current year, approved by the chairman of the court and brought to the attention of all judges. Changes in the schedule are allowed only with the consent of the court leadership. Therefore the question is what if the chairman of the court, in virtue of these or other subjective circumstances, does not agree with the judges' leave?

System analysis of normative prescriptions of the Regulations on the procedure for planning, providing leave, material assistance and determining the needs for the judges' sanatorium treatment of appellate and local courts of general jurisdiction, agreed by the decision of the Council of Judges of Ukraine [2], allows to assert that annual leave is given to judges according to leave schedules, which each year until 5th of December are developed by the head of the relevant court with regard to judges with an even distribution of terms of leave for the year and approved by the such a court. The head of the court should issue an order, the reason for which is a judges' written report.

Point 2.1 of the Regulations indicates for ensuring financial discipline the heads of the courts issue orders on annual leave giving in accordance with the approved leave schedule. The head of the court is obliged to indicate the starting and ending date of the leave in the order. Therefore, in our opinion, the above mentioned settlement of the mechanism of given judges' leave is not entirely legal on the account of the following. If the leave order is not issued, the judge does not have the right to indicate the starting day of the leave. However, despite the employer's agreed leave

---

<sup>1</sup> Military Institute of Taras Shevchenko National University of Kyiv, Ukraine

schedule and judges' writing report on giving vacation according to the schedule, the judge may find himself in a situation when the head of the court does not issue a leave order that actually blocks the possibility of using the right to rest under the Constitution of Ukraine.

During the communication with fellow judges, we managed to find out that the cases mentioned above are inconspicuous; chairmen of courts often abuse the rights that give them an administrative position and use them to pressure the judges. Thus, we consider it is necessary to supplement the provisions of Article 136 of the Law of Ukraine "On the Judiciary and Status of Judges", part two of the following sentence: "In case if the head of the court does not issue an order on the judges' leave, the judge independently indicates the starting day of leave according to the previously approved leave schedule". This will be in line with the Conclusions "Appointment and role of the head of the court" (The First Expert Commission of the International Association of Judges, Madrid, 23-27 September 2001). According to the paragraph 3, heads of the courts must exercise their administrative functions in such a way as not to impair the independence of other judges, and should also not unlawfully influence judges in the performance of their judicial functions. The practice and procedural rules should ensure that the head of the court will not exercise unlawful influence on other judges [3].

According to the judges' wish the annual leaves are provided at a convenient time for:

- Women before or after the maternity leave;
- Women who have two or more children under the age of 15 or a disabled child;
- A single mother (father) who carries a child without a parent (mother); guardians, trustees or other single persons who actually bring up one or more children under the age of 15 in the absence of parents;
- Wives (husbands) of military personnel;
- In other cases stipulated by law, collective or employment contract.

Besides of this, judges' personal interests and their opportunities for rest, in particular, for women with children – periodic study process in the school year (holidays) must be taken into account.

Women judges, as well as all other women, are granted maternity leave due to pregnancy and childbirth of 70 calendar days before childbirth and 56 calendar days after childbirth. The indicated days are calculated in total and are given irrespective of the number of days actually used before childbirth, and, if they so wish, are given with partly paid parental leave for child care until the child reaches the age of 3 with payment for these periods of state social insurance assistance (Article 179 of the Labor Code of Ukraine) [4]. If a child needs home care the unpaid leave for duration due to a medical opinion is given, but no more than before reaching a child of 6 years of age.

The experts in the sphere of gender equality noticed special measures on the protection of maternity are neither temporary nor those that have to eliminate the imbalance between the rights and opportunities of women and men – these are measures of a permanent nature, the application of which is due to the existence of biological differences between women and men. They are aimed at providing women

with additional guarantees in the exercise of equal rights with men, as well as the protection of the future life and health of the unborn person [5].

In the gender legal examination Conclusion of the Law “On State Assistance to Families with Children”, adopted by the Verkhovna Rada of Ukraine on November 21, 1992 [6], the provision of Article 7 of the said Law, which provides for the right to assistance in connection with pregnancy and childbirth, and Article 8 of the same Law, which defines the conditions for granting and duration of payment of benefits in connection with pregnancy and childbirth, are not considered to be discrimination on the basis of sex in accordance with the paragraph 2 of these part 2 of Article 6 of the Law “On Ensuring Equal Rights and Opportunities of women and men”, according to which the special protection of women during pregnancy, childbirth and breastfeeding is not considered as discrimination on the basis of sex. Also, according to the mentioned article mandatory conscript military service for men, provided by law and special requirements for worker safety and health related to the protection of their reproductive health are not considered to be discrimination on the basis of sex [7].

Flexible employment options (work part-time working day or week) could be given for 1) women who have children under the age of six and 2) single mothers who have children under the age of 14 or disabled children.

The mentioned rule on women judges is declarative and ineffective in practice. The reason of this is impossibility to plan the length of trial beforehand. Moreover the catastrophic human resource hunger in the judicial system and the extremely large time sheet, including the consideration of a case requiring a collegial hearing, cause impossibility for mother of a child of tender years to regulate the end of the working day according to working hours.

Undoubtedly, family and maternal responsibilities are an obstacle to the successful career of many women. Besides of this as an obstacle to successful career men usually call a lack of a woman's desire for career growth. Therefore, the asymmetry of perception between men and women as an obstacle to a successful career is in the “we do not trust” / “they are aspiring to self”. Unfortunately, at a socio-stereotype level the parenthood is mainly motherhood. The employer often refuse to hiring women since in patriarchal society the main role of women is a motherhood. Women always evaluated as “potential mothers”, those who at any moment can get pregnant and go to the maternity leave. The gendered settings and real behavior of both women and men, in particular regarding tolerance to discrimination, are explained by the current low gender culture in society. Although official discrimination between men and women has almost disappeared, many stereotypes have not yet been overcome. Thus, a permanent conflict between professional and family (maternal) responsibilities injures and exhausts a female judge, generates a complex of guilt. Only during last years the myth of the mother's commitment to be inseparable with the child in the first years is breaking down.

The balance between work and family responsibilities must be realized in three main areas. They are the creation of a sufficient infrastructure for educational services for children, paid parental leave, family-friendly workplace (that include flexible work schedules, the possibility of remote employment, etc.).

### References:

1. The Law of Ukraine “On the Judiciary and Status of Judges” [Source]. –Access mode: <http://zakon.rada.gov.ua/laws/show/1402-19>.
2. Provisions on the procedure for planning, leave granting, financial assistance and determination of the needs of the sanatorium treatment of judges of appellate and local courts of general jurisdiction, approved by the Decision of the Council of Judges of Ukraine, March 17, 2005 No. 8 [Source]. – Access mode: <http://zakon.rada.gov.ua/rada/show/en/vr008414-05/sp:max10>
3. Conclusions “Appointment and role of court presidents” (First Expert Commission of the International Association of Judges, Madrid, 23-27 September, 2001 [Source] – Access mode: <https://vkksu.gov.ua/ua/mijnarodne-spivrobitnitstvo/perelik-dokumentiv-radi-evropi-u-sferi-sudochinstva/>
4. Code of Labor Laws of Ukraine [Source]. – Access mode: <http://zakon.rada.gov.ua/laws/show/322-08>
5. Commentary on the Law of Ukraine “On Equal Rights and Opportunities for women and men”. – Zaporozhye: Printing, 2011. – 168 p.
6. Conclusion of the gender legal examination of the Law of Ukraine “On State Assistance to Families with Children” [Source]. – Access mode: [https://minjust.gov.ua/m/str\\_15482](https://minjust.gov.ua/m/str_15482)
7. The Law of Ukraine “On Ensuring Equal Rights and Opportunities for Women and Men” [Source]. – Access mode: <http://zakon.rada.gov.ua/laws/show/2866-15>

---

<sup>1</sup> Law College of National University “Odessa Law Academy”, Ukraine