

GENDER EQUALITY IN LABOUR RELATIONS: EUROPEAN APPROACH

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INTRODUCTION

Gender equality and non-discrimination have been core principles underpinning the ILO's work since its foundation in 1919. Over the years, the ILO has accumulated rich experience in technical cooperation related to translating international labour standards into national law and practice.

Ukraine has made considerable legislative progress with regard to gender equality. Since becoming independent in 1991, Ukraine has established the core elements of a legal and institutional framework for promoting gender equality and addressing gender-based discrimination. Internationally, Ukraine is party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its Optional Protocol. Ukraine has also ratified all core ILO Conventions, including Convention No. 100 on Equal Remuneration and Convention No. 111 on Discrimination, as well as Convention No. 156 on Workers with Family Responsibilities.

At the national level, in addition to the equality commitment enshrined in the Constitution, there is a law "On ensuring equal rights and opportunities for men and women" and a State Programme for Ensuring Gender Equality in Ukrainian Society up to 2010. Subsequently, regional programmes have been developed and are in the process of being implemented.

Fifty per cent of Ukrainians believe that gender inequality exists in their society, and 62 per cent say that women's rights are being infringed. The gravest infringements of women's rights take place in the home and in the labour market. As many as 75 per cent of Ukrainian women experience physical, economic, sexual or psychological violence in their families. In the labour market, women suffer from lower wages and a lack of representation in higher positions in the public and private sector. Women's average wages in 2007 were only 73 per cent of those of men, according to the State Statistics Committee. Thirteen per cent of the members of the Verkhovna Rada (Parliament) were women in 2008 (up from 8 per cent in 2001) and women made up 10 per cent of the Cabinet of Ministers (up from none in 2001). There is also a lack of high-level representation of women in

business. Women in Ukraine lead 12 per cent of large enterprises and account for 38 per cent of entrepreneurs¹.

The results of the 2023 gender survey in the public sector “Ensuring equal rights and opportunities for women and men in the public service of Ukraine”, in which more than 21,000 public employees took part, showed that 82.5 % of respondents agree and strongly agree with the fact that men and women have equal chances and opportunities for career growth in central executive bodies².

1. National basis of gender equality in labour relations in Ukraine

The Law on Securing Equal Rights and Opportunities for Women and Men, which took effect on 1 January 2006, contains the relevant legal provisions for addressing gender discrimination in Ukraine. Articles 10 and 11 of the Law normalize a mechanism for the formation and approval of the National Action Plan for the Implementation of Gender Equality (*hereinafter*: the National Action Plan). They also outline the procedures for the drafting and implementation of state targets for equal rights and opportunities for women and men.

The state promotes equal treatment of women and men by taking measures to prevent direct and indirect forms of discrimination. Discrimination on the grounds of sex is prohibited by Article 6 of the Law. However, the Law does not draw attention to indirect discrimination, which is widespread in Ukraine. For the first time in Ukrainian legislation, taking positive action – special provisional measures aimed at eliminating clear imbalances between women’s and men’s opportunities to exercise the equal rights granted them by the Constitution and laws of Ukraine – has been identified as a separate area of state activities on gender equality. This is in line with the recommendations of international organizations and the experience of other countries. In this respect, positive action on the part of the state is not regarded as sex discrimination.

Under the Law, positive action may be general or special, and it may be applied to the regulatory, legal or political spheres. However, it does not specify the conditions for its application; instead, the expansion of positive action is left to the discretion of the executive authorities. The Law does not

¹ Chepurko, Gulbarshyn, Gender Equality in the Labour Market in Ukraine / Gulbarshyn Chepurko; International Labour Office, ILO Decent Work Technical Support Team and Country Office for Central and Eastern Europe. Kyiv : ILO, 2010. P. 1.

² В Україні провели гендерне опитування апаратів міністерств та відомств. URL: <https://www.ukrinform.ua/rubric-society/3697913-v-ukraini-proveli-genderne-opituvannya-aporativ-ministerstv-ta-vidomstv.html>

define a mechanism for making decisions on the use, supervision, or termination of positive action. This restricts what legal action can be taken, rendering the Law somewhat less effective. The Law also does not prescribe quotas for participation in decision-making to secure equal participation by women and men. A mandatory 40 per cent representation of women in the Parliament, as recommended by the international agreements signed by Ukraine.

It should be noted that the Millennium Development Goals for Ukraine require women's representation in the Parliament to reach 30 per cent by 2015. However, the provision in Article 15 of the Law which requires that "political parties and election blocs provide for the representation of women and men in election lists during the nomination of people's deputies in multi-seat, state-wide electoral districts" remains ill-defined. In general, few women occupy high-ranking positions in the public sector. Out of 450 people's deputies to date, only 3.9 per cent have been women, and the percentages of women among the heads of oblast and district administrations are equally small. At the oblast council level, women make up a mere 11 per cent of total council members. Women also make up only 14 per cent of I–II category managers in Ukraine, despite the fact that the share of female public employees in Ukraine is 75.4 per cent. Among category I managers, only 13.8 per cent of posts are occupied by women, with the remaining 86.2 per cent filled by men. These numbers follow the trend of women occupying low-paid positions in almost every economic sector, with women being excluded from more promising, well-paid positions³.

Individual labour disputes may be settled by the Committee for Labour Disputes (hereinafter: the Committee) within enterprises, institutions and organizations employing at least 15 persons. If, after the Committee has considered a dispute, a worker does not feel satisfied with the decision, the worker has the right to take legal action. Settlement of individual labour disputes comes under the purview of local courts of general jurisdiction. Article 232 of the Labour Code contains a list of types of labour disputes which may be dealt with directly in local courts. This includes disputes concerning a refusal to hire, and disputes involving "pregnant women,

³ Chepurko, Gulbarshyn, Gender Equality in the Labour Market in Ukraine / Gulbarshyn Chepurko; International Labour Office, ILO Decent Work Technical Support Team and Country Office for Central and Eastern Europe. Kyiv : ILO, 2010. P. 10.

women with children under 3 years of age or a disabled child, and single mothers – if there is a child under 14 years of age”⁴.

Working-age women in Ukraine have lower rates of employment and lower levels of economic activity than men in the corresponding age group. The level of economic activity of working age women (15–54 years) in 2004–08 was 68.7 per cent. It should be noted that the indicator’s negative dynamics turned positive in 2007–08. At the same time, working age (15–59 years) men’s economic activity grew by 2.3 per cent over five years, reaching 75.8 per cent in 2008. Working age women’s employment rate has more positive dynamics but is also less than that of men, and has lower growth rates than the corresponding indicator for men (2.4 per cent as compared to 5.8 per cent). Gender parity exists among employees and self-employed persons, but men prevail among employers. The “gender equality point” in the “unpaid working family member” category was met in 2005, as women’s share in the category continued to fall.

Equal representation of men and women in employment by occupational group exists only among workers in the most basic occupations. Men are predominant in blue-collar occupations, as well as among legislators, top-level civil servants and managers. The disparity is deepening in most occupations, although not for professionals or workers engaged in services and trade. The distribution of civil servants by sex exhibits the existence of gender disparities in all managerial and specialist positions. The proportion of women is greater for lower-level positions, but falls swiftly as the positions become higher. The distribution of local government officials is even more uneven; in some categories, the percentage of either women or men in the occupation is 100 per cent. In some sectors where women are proportionally overrepresented (in services and the public sector), they were more likely than workers in other sectors to lose their jobs. While there is gender parity with regard to the general unemployment rate (deviations between working-age men and women did not exceed 0.3 per cent from 2004 to 2008), registered unemployed persons are mostly female. A considerable decrease in the proportion of women among the registered unemployed in 2008 was the result of falls in production as a result of the global financial and economic crisis in key sectors employing mainly men, such as construction, chemicals, metallurgy and machine building. Laying off workers in those branches in the second half of 2008 resulted in a notable increase in the percentage of unemployed men. Job placement by the Public

⁴ Chepurko, Gulbarshyn, *Gender Equality in the Labour Market in Ukraine* / Gulbarshyn Chepurko; International Labour Office, ILO Decent Work Technical Support Team and Country Office for Central and Eastern Europe. Kyiv : ILO, 2010. P. 6–7.

Employment Service secured the equal access to work of men and women from 2002 to 2005, but the proportion of women given job placements in the subsequent three years decreased. Statistical data for 2002 and for 2004–05 confirm the achievement of gender parity in terms of the proportion of women placed in jobs, but the figure reverted to its 2001 level from 2005 to 2008 (48.6 per cent).

Cutting the income gap between women and men in half by 2015 has been laid down as a specific target for securing gender equality within the framework of Ukraine's Millennium Development Goals. The relevant indicator is women's average wage as a percentage of the average wage of men. Analysis confirms that the target is not being achieved: the proportion was 75.2 per cent in 2008, falling short of the target of 76.0 per cent for 2007.

The ratio between men and women working under conditions which do not comply with sanitary and hygienic standards, and receiving various benefits for that reason, is 3:1, a number that did not change from 2003 to 2007. In other words, only one out of every four persons receiving benefits for working in substandard conditions is a woman. Among workers entitled to preferential pensions, the male percentage is significantly higher, at between 81.2 and 83.2 per cent. The percentage of women employed under unacceptable working conditions and receiving various benefits, including preferential pensions, is falling.

However, this drop does not necessarily indicate a general improvement of working conditions, as data related to working conditions and preferential pensions and benefits are drawn from possibly unreliable workplace assessments. According to the Federation of Trade Unions, the manner in which workplace assessments are currently implemented does not take account of numerous infringements of workers' rights⁵.

2. European approach to establishing equal opportunities for women and men in labour relations Gender equality in labor relations:

European experience

Women workers, everywhere across the world, continue to be under-represented in decision-making bodies and processes that shape workplaces and employment outcomes – including in contexts where women make up the majority of the workforce. This is not only unfair to women, it is also counterproductive for businesses, economies and societies at large. The

⁵ Chepurko, Gulbarshyn, *Gender Equality in the Labour Market in Ukraine* / Gulbarshyn Chepurko; International Labour Office, ILO Decent Work Technical Support Team and Country Office for Central and Eastern Europe. Kyiv : ILO, 2010. P. 12.

current COVID-19 pandemic, according to available evidence, seems to be affecting women more severely than men as they are more likely to bear the brunt of the social and economic consequences of the pandemic. This carries the risk of undoing women’s advances in recent decades, widening further gender inequalities in the world of work, thereby jeopardizing the prospect of building back better⁶.

Gender-inclusive and gender-responsive workplace cooperation helps enterprises to attract the best employees; enhance organizational performance; reduce costs associated with staff turnover; improve access to target markets; and minimize legal risks – all while enhancing their reputation⁷. Indeed, companies with the highest levels of gender diversity on their executive teams are 21 per cent more likely than others to experience above-average profitability⁸.

Women’s full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life”, it is essential that women are adequately represented in social dialogue bodies and in collective bargaining teams. More women in these bodies and teams would not only make social dialogue more relevant and responsive to women’s working lives, it could also trigger transformational changes in other social spheres, provided that women and men are encouraged and trained to advance gender equality in social dialogue, and also in the labour market and the workplace at large.

A study of 195 countries, including 187 ILO member States, shows that in 2008 female membership of NSDIs was on average less than 20 per cent; available data for 2018 show average female membership in NSDIs still only between 20 and 35 per cent, in particular in Africa, the Americas and Europe. There are, nevertheless, some inspiring examples of parity or near-parity (female membership in NSDIs of 45 per cent or over), namely France, Norway, Saint Kitts and Nevis, Samoa and Switzerland⁹.

Although today women in many parts of the world are better educated, and are more likely to join trade unions¹⁵ and employers’ organizations, their representation in decision-making positions in social dialogue remains lower than men’s¹⁰. Moreover, even in places around the world where there

⁶ The contribution of social dialogue to gender equality. URL: https://www.theglobaldeal.com/resources/Gender%20Brief_EN_Final_Web.pdf

⁷ Australian Government: The business case for gender equality (Canberra, Australian Government Workplace Gender Equality Agency, March 2013).

⁸ McKinsey Global Institute: Delivering through diversity (2017).

⁹ A. Muller: For a better governance through national social dialogue institutions: A global overview (regions, G20 and BRICS) (Geneva, ILO, forthcoming).

¹⁰ Briskin and Muller: Promoting gender equality through social dialogue.

is an increase in women trade union members, this does not always result in a proportional increase in women's representation in leadership structures¹¹.

Globally, women continue to be paid, on average, 20 per cent less than men; in some regions, their income can be 40 per cent lower than that of their male peers. In addition, working arrangements and non-standard forms of employment, as well as occupations and sectors in which women are predominantly employed, often “fall outside the scope of labour legislation, social security regulations and relevant collective agreements”¹². It is also alarming that progress towards gender parity, including in the area of economic participation, is reported to be shifting into “reverse” mode¹³.

Women's care roles are a major structural barrier to women's equal participation in work at all levels¹⁴, and balancing work and family life is one of the biggest challenges for women across the world¹⁵. Prior to COVID-19, women did, on average, three times more unpaid care work than men¹⁶.

The issue of equal pay for men and women for equal work, (national and international) labour legislation, as a rule, did not take into account experiences typical for female workers. Nor did it identify the specific consequences that the seemingly neutral labour law rules or practices had on them. Also, the tension between the professional and family duties of female workers has traditionally been considered a natural and inevitable consequence of women's participation in the labour market, which is why the legislation lacked instruments aimed at facilitating the reconciliation of these duties¹⁷.

¹¹ A. O. Britwum, K. Douglas and S. Ledwith: “Women, gender and power in trade unions”, in S. Mosoetsa and M. Williams (eds): *Labour in the global South: Challenges and alternatives for workers* (Geneva, ILO, 2012). P. 41–64.

¹² ILO: *World Employment and Social Outlook: Trends for women 2018 – Global snapshot* (Geneva, 2018), p. 10. The report notes that “the difference in access to decent work opportunities between men and women is a major obstacle in global efforts to achieve a more equitable and inclusive labour market, and is expected to remain so in the coming years, unless additional efforts are made to address the persistent gender gaps” and that “reducing gender gaps in the labour market therefore requires comprehensive measures, tailored specifically to women” (p. 12).

¹³ World Economic Forum: *The Global Gender Gap Report 2017* (Geneva, 2017).

¹⁴ ILO: *Addressing care for inclusive labour markets and gender equality*, Global Commission on the Future of Work Issue Brief, Cluster 2, “Bringing an end to pervasive global women's inequality in the workplace” (Geneva, 2018).

¹⁵ ILO and Gallup: *Towards a better future for women and work: Voices of women and men* (Geneva, 2017), p. 45.

¹⁶ ILO: *Care work and care jobs for the future of decent work* (ILO, Geneva, 2018).

¹⁷ Conaghan J (2017) Labour law and feminist method. *Int J Comp Labour Law*. № 33. P. 93–114. P. 94.

An important issue is ensuring that there is no bias or discrimination in pay setting and in the relative value given to women's and men's jobs on the basis of job evaluation taking into account objective criteria such as qualifications, efforts, responsibilities and conditions of work.

One of the reasons for dismissal is often maternity. "The risk of dismissal on grounds of sex related to maternity may have harmful effects on the physical and mental state of pregnant workers, workers who have recently given birth or workers who are breastfeeding, including the particularly serious risk of inciting a pregnant worker to voluntarily terminate her pregnancy"¹⁸. This justifies specific protection against dismissal. Article 10 of Directive 92/85¹⁹ encourages Member States to take the necessary measures to prohibit the dismissal of pregnant workers, workers who have recently given birth and workers who are breastfeeding. This should be during the period from the beginning of pregnancy to the end of maternity leave, "save in exceptional cases not connected with their condition"²⁰. Regarding the latter expression, the case law has underlined that the "reasons not relating to the individual workers concerned" may be those specific to collective redundancies, i.e. economic, technical or organisational reasons, or reasons connected with the organisation or production of the undertaking. Those circumstances do not preclude the employer from providing a higher level of protection for pregnant workers, workers who have recently given birth or workers who are breastfeeding²¹. This protection against dismissal also covers the period before maternity leave, when the dismissal is due to reasons related to a pregnancy-related illness. The employer must give written notice of the reasons justifying his decision to dismiss. In addition, workers must be protected from the consequences of unlawful dismissal. The prohibition of dismissal of workers during pregnancy and until the end of maternity leave is not limited to the notification of dismissal but concerns other preparatory acts of dismissal. A contrary interpretation would deprive

¹⁸ Case C-394/96, *Mary Brown v Rentokil Ltd* (ECJ 30 June 1998), para. 18.

¹⁹ 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 (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC). URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31992L0085>

²⁰ Directive 92/85 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. OJ L 348, (1992). P. 1–7.

²¹ Case C-103/16, *Jessica Porrás Guisado v Bankia SA and Others* (ECJ 22 February 2018), para. 49.

Art. 10 of Directive 92/85²² of its effectiveness. The prohibition of dismissal covers, for example, the pregnancy phase of the worker. This can be seen if the employer advertises a job in a newspaper in order to start looking for a permanent replacement for her, with the clear intention of dismissing her because of her pregnancy or the birth of a child²³. The prohibition of dismissal provided for in Art. 10 of Directive 92/85²⁴ applies to both fixed-term and open-ended contracts. The non-renewal of a fixed-term contract when it has reached its expiry date cannot be regarded as a dismissal prohibited by that provision. Unless it is motivated by the pregnancy of the worker, in which case it would constitute direct discrimination on grounds of sex (as such unjustifiable). The protection of women workers against discriminatory treatment, on the grounds of pregnancy, includes legal action under national law to enforce their rights in the event of dismissal. On the basis of Art. 12 of Directive 92/85²⁵, Member States must provide for measures to ensure effective and efficient judicial protection, with a real deterrent effect against the employer and, in any case, adequate in relation to the damage suffered. Thus, the ECJ has considered less favourable treatment of a woman, in relation to her pregnancy, the procedural rules that provide for an action for annulment and reinstatement as the only means of appeal against her dismissal excluding an action for damages. Whereas such an action is available to any other employee who has been dismissed²⁶. Similar protection applies in Art. 16 of Directive 2006/54²⁷, in relation to workers (men and women) exercising paternity and/or adoption leave rights, where the dismissal is due to the exercise of these rights. In particular, protection against dismissal when the worker has applied for or taken parental leave

²² 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 (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC). URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31992L0085>

²³ Case C-460/06, Nadine Paquay v Société d'architectes Hoet + Minne SPRL. (ECJ 11 October 2007), para. 35.

²⁴ 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 (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC). URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31992L0085>

²⁵ Ibid.

²⁶ Case C-63/08, Virginie Pontin v T-Comalux SA (ECJ 29 October 2009), para. 76.

²⁷ 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 (recast). URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32006L0054>

extends to the calculation of dismissal compensation. As the case law points out, a redundancy payment paid to a worker employed for an indefinite period and on a full-time basis, calculated on the basis of the reduced salary they received while on temporary part-time parental leave, is not admissible²⁸.

Besides the maintenance of rights linked to the employment contract, including maintenance of payment and/or entitlement to an adequate allowance and protection against dismissal for reasons associated with their condition, Directive 92/85²⁹ lays down several obligations for the employer. These range from the assessment of risks according to the particular circumstances of the worker due to her pregnancy or breastfeeding, to the adoption of a series of measures to protect her from those risks that cannot be eliminated or avoided. A relevant aspect is that the worker must inform the employer of her particular maternity condition, whatever stage she is in (Art. 2). It is supposed to make it possible for the employer to take the necessary measures to protect her from the point of view of occupational risk prevention. The measures are as follows³⁰:

1. A Risks Assessment “For all activities liable to involve a specific risk of exposure to the agents, processes or working conditions, the employer shall assess the nature, degree and duration of exposure, in the undertaking and/or establishment concerned, of pregnant workers, workers who have recently given birth or workers who are breastfeeding, either directly or by way of the protective and preventive services. It will allow to assess any risks to the safety or health and any possible effect on the pregnancy or breastfeeding of them, and decide what measures should be taken. The related workers or their representatives should be informed of the results of such assessment and of all measures to be taken concerning health and safety at work”. (Art. 4 of Directive 92/85³¹). The case-law has noted that “a risk

²⁸ Case C-116/08, cited, para. 56.

²⁹ 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 (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC). URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31992L0085>

³⁰ Padrón, T. G., Kovačević, L., Moreno, M. I.R. (2023). *Labour Law and Gender*. In: Vujadinović, D., Fröhlich, M., Giegerich, T. (eds) *Gender-Competent Legal Education*. Springer Textbooks in Law. Springer, Cham. https://doi.org/10.1007/978-3-031-14360-1_17

³¹ 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 (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC). URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31992L0085>

assessment is a systematic examination of all aspects of work which comprises at least three phases: the first phase consists of identification of hazards (physical, chemical and biological agents; industrial processes; movements and postures; mental and physical fatigue; other physical and mental burdens). The second phase provides for identification of worker categories (pregnant workers, workers who have recently given birth or workers who are breastfeeding) which are exposed to one or several of those risks. The third phase, namely, the qualitative and quantitative risk assessment, represents the most delicate phase in the process, in that the person carrying out the assessment must be competent and take due account of relevant information ... in applying appropriate methods in order to be able to conclude whether or not the hazard identified entails a risk situation for workers”³².

2. Adaptation of working conditions or working time. If the results of the assessment referred to in Art. 4 (1) reveal a risk to the safety or health or an effect on the pregnancy or breastfeeding of the worker concerned, the employer shall take the necessary measures to ensure that, by temporarily adjusting her working conditions and/or her working hours, the exposure of that worker to such risks is avoided. (Art. 5 (1) of Directive 92/85³³).

3. Functional mobility. If the adjustment of her working conditions and/or working hours is not technically and/or objectively feasible, or cannot reasonably be required on duly substantiated grounds, the employer shall take the necessary measures to move the worker concerned to another job. (Art. 5 (2) of Directive 92/85³⁴).

4. A leave from work. If moving her to another job is not technically and/or objectively feasible or cannot reasonably be required on duly substantiated grounds, the worker concerned shall be granted leave in accordance with national legislation and/or national practice for the whole of the period necessary to protect her safety or health. (Art. 5 (3) of Directive 92/85³⁵). In the cases referred to in Articles 5, 6 and 7, the employment rights relating to the employment contract, including the maintenance of

³² ICase C-531/15, *Elda Otero Ramos v Servicio Galego de Saúde and Instituto Nacional de la Seguridad Social* (ECJ 19 October 2017), para. 48.

³³ 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 (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC). URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31992L0085>

³⁴ *Ibid.*

³⁵ *Ibid.*

payment to, and/or entitlement to an adequate allowance for the workers concerned must be ensured (Art. 11 (1) of Directive 92/85³⁶).

It should be noted that the Directive (EU) 2019/1158³⁷ provides a significant contribution to a real work-life balance, by improving the right to flexible working arrangements. In this respect, the wording of the rules on flexitime has modernised and improved the content of Directive 2010/18³⁸ (No longer in force). The current Directive³⁹ includes the definition of flexible working arrangements in Article 3.1 (f) and devotes a single provision (Article 9) to regulate it—clarifying some questions on the exercise of the right in recitals 34–36. The measures are outlined as follows: Firstly, it is shaped as a genuine right that is ensured to workers with children up to a certain age, which shall be at least 8 years. The same entitlement is also given to carers. Therefore, the Directive⁴⁰ represents an important step forward for equality, not only for the extension of the entitlement, but also in the transposition methods that must be adopted in relation to the previous Directive. Indeed, the wording stipulates that the Member States shall take the necessary measures to ensure that workers have the right to flexible working time. The obligation now does not rely on transposition methods, such as collective agreements, but imposes compliance on the State. Consequently, the current Directive⁴¹ corrects the nature of the previous Directive as an open standard. Thus, it avoids the possibility that the right becomes an empty shell by limiting the provisions to a reduction in working hours. Secondly, it is an obligation of result, where employers are required to consider and comply with requests for flexible working time, which is different from taking into consideration what was previously provided for. If the request cannot be accommodated, the employer must provide adequate

³⁶ 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 (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC). URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31992L0085>

³⁷ Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019L1158>

³⁸ 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 (Text with EEA relevance). URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010L0018>

³⁹ Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019L1158>

⁴⁰ Ibid.

⁴¹ Ibid.

justification for the refusal or postponement of the request. Thirdly, this right is independent, unrelated to other forms of leave, such as parental or maternity leave. The right to request is set up independently and can be exercised at any time within the period established by national law. Therefore, the entitlement is enhanced and differs to the regulation under the Clause 6 (1) of the revised Framework Agreement, “which relates to situations in which a worker returns to work following ‘parental leave’, cannot be interpreted as also covering a situation in which a worker returns from ‘maternity leave’ within the meaning of Directive 92/85.”

Lastly, the Directive⁴² provides for flexibility, meaning different possibilities to adjust the working patterns. Furthermore, the Directive suggests a range of possibilities such as “the use of remote working arrangements, flexible working schedules, or reduced working hours.” On the one hand, the exercise of the right may be subject to reasonable limitations and to certain requirements, such as a period of length qualification or a length of service (not exceeding 6 months). And explicitly targeting that “in successive fixed-term contracts with the same employer, the sum of those contracts shall be taken into account for the purpose of calculating the qualifying period.” On the other hand, the worker has the right to adapt the duration of the leave to his or her needs, even returning to the original working pattern before the end of the agreed period justifying a change of circumstances. In short, it is the development of a new approach to the right to a work-life balance, which contributes to keeping carers and family members, usually women, in the workplace. Thereby strengthening their position in the labour market.

Indeed, the right to equal opportunities and equal treatment is a fundamental principle of EU law, of particular relevance in the field of employment and occupation. Article 157 (3) of the Treaty on the Functioning of the EU⁴³ provides a specific legal basis for the adoption of measures to ensure the application of this principle— including the principle of equal pay for equal work or work of equal value. In addition, Articles 21 and 23 of the Charter of Fundamental Rights of the European Union also prohibits “any discrimination on grounds of sex” and enshrines the right to “equal treatment between men and women in all areas, including

⁴² Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019L1158>

⁴³ Consolidated version of the Treaty on the Functioning of the European Union. URL: https://eur-lex.europa.eu/eli/treaty/tfeu_2012/oj

employment, work and pay”. In fact, Directive 2006/54⁴⁴ and its interpretation by the ECJ, is the reference in this area, without prejudice to other international and national legal instruments. It contains specific provisions to implement the principle of equal opportunities and equal treatment of men and women regarding access to employment, promotion and vocational training, working conditions, in particular pay, and occupational social security schemes (Article 1). The Directive includes mechanisms to ensure the effective application of the principle of equal treatment to all persons who consider themselves wronged by failure to apply that to them. It comprises measures “to ensure real and effective compensation or reparation for the loss and damage sustained by a person injured as a result of discrimination on grounds of sex, in any case dissuasive and proportionate measures to the damage suffered”. A relevant instrument of defence is the reversal of the burden of proof which allows potential victims of discrimination, on grounds of sex, to present “before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination”. In this case, the respondent has the burden “to prove that there has been no breach of the principle of equal treatment” (Articles 18 and 19).

CONCLUSION

European regulations establish a high level of guarantees regarding equal opportunities for women and men in labour relations, and Ukrainian legislation has also significantly improved in this aspect over the past 10 years. Ukraine has made considerable legislative progress with regard to gender equality. The state promotes equal treatment of women and men by taking measures to prevent direct and indirect forms of discrimination.

Women workers, everywhere across the world, continue to be under-represented in decision-making bodies and processes that shape workplaces and employment outcomes – including in contexts where women make up the majority of the workforce.

Women in many parts of the world are better educated,¹⁴ and are more likely to join trade unions¹⁵ and employers’ organizations,¹⁶ their representation in decision-making positions in social dialogue remains lower than men’s. Women continue to be paid, on average, 20 per cent less than men; in some regions, their income can be 40 per cent lower than that of their male peers

⁴⁴ 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 (recast). URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32006L0054>

Women's care roles are a major structural barrier to women's equal participation in work at all levels, and balancing work and family life is one of the biggest challenges for women across the world

An important issue is ensuring that there is no bias or discrimination in pay setting and in the relative value given to women's and men's jobs on the basis of job evaluation taking into account objective criteria such as qualifications, efforts, responsibilities and conditions of work.

We should take note of the trend of increased hiring of female workers in jobs that pay less and are less secure, since many women work part-time or on the basis of other non-standard employment contracts or in new forms of work. In that context, gender-competent labour law should be designed to create a framework for understanding gender perspectives on key labour law institutions and their reevaluation on the basis of gender equality principles. This is followed by the review of the capacity of legal instruments to ensure gender equality in the labour market. Finally, we should look at the recent changes in the world of work, which can be summed up in these three words: job quality erosion. This feature of the modern world of work, implies the widespread practice of outsourcing, the emergence of new forms of work, some of which are extremely precarious. This series is continued by the widespread informal economy, as well as the underdevelopment and degradation of social dialogue. Taken together, these changes shed new light on the problem of gender inequality in the world of work, which has a devastating effect on social cohesion and deepens the poverty pit, while increasing social stratification.

SUMMARY

The article discusses issues of gender equality in labour relations. The authors focused on European standards for establishing equal conditions for women and men during employment. The authors studied the issue of legal regulation of equal conditions in terms of pay, and flexible work regime, in particular, they focused on the combination of the performance of maternity functions and the realization of women in the professional sphere. In addition, the article reveals the aspects of labour protection, safety techniques and occupational hygiene for women and men, in the aspect of guaranteeing comfortable and safe working conditions for women along with men. The article outlines European guarantees regarding equal career opportunities for women and men. An important issue that the authors drew attention to is the specifics of the procedure for the women's dismissal, in particular, the European guarantees established for women as protection against illegal or unjustified release.

The authors concluded that European regulations establish a high level of guarantees regarding equal opportunities for women and men in labour relations, and Ukrainian legislation has also significantly improved in this aspect over the past 10 years.

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