

Social partnership for the equality

NGO "Bureau of Social and Political Developments"





Launched in 2009 as a joint policy initiative, the Eastern Partnership (EaP) aims to deepen and strengthen relations between the European Union (EU), its Member States and its six Eastern neighbours: Armenia, Azerbaijan, Belarus, Georgia, the Republic of Moldova and Ukraine. In 2019, the Eastern Partnership celebrates its 10-year anniversary. Over the past decade, the collective efforts of the EU and the partner countries have brought considerable benefits to the citizens including more trade, mobility, increased economic development and better quality of life.

Analysis of equality and non- discrimination at the workplace

and regulations in the sphere of access to employment, social services and social security in Ukraine, Moldova, Georgia and Armenia.

Project «Social Partnership for the Equality» Lead Organisation: NGO “Bureau of Social and Political Developments” (BS&PD, Ukraine) Partners: Federation of Trade Unions of Ukraine (FTU); Confederation of Free Trade Unions of Ukraine (CFTU); National Confederation of Trade Unions of Moldova (CNSM,Moldova); Research Intellectual Club “Dialogue of Generation” (RICDOG, Georgia); Armavir Development Center (ADC, Armenia)

"Analysis of equality and non-discrimination at the workplace and regulations in the sphere of access to employment, social services and social security in Ukraine, Moldova, Georgia and Armenia. The summarized results of the study on the Project «Social Partnership for the Equality»: to ensure equality in labour relations, including in the context of gender — strengthening expert support for the implementation of gender plans, establishment of an effective anti-discrimination monitoring and harmonisation of legislation prepared with the support of the Eastern Partnership Civil Society Forum.

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The project Social partnership for the equality from support through the [EaP Civil Society Forum](#) Re-granting Scheme and is funded by the European Union as part of its support to civil society in the region. Within its Re-granting Scheme, the Eastern Partnership Civil Society Forum (EaP CSF) supports projects its members that contribute to achieving the mission and objectives of the Forum. The overall amount for the 2018 call for proposals is 250.000 EUR. Grants are available for CSOs from the Eastern Partnership and EU countries. Key areas of support are democracy and human rights, economic integration, environment and energy, contacts between people, social and labour policies.



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The main areas covered in the anti-discriminatory EU Directives

Directive 2000/43/EC against discrimination on grounds of race and ethnic origin (Race and ethnic origin Directive):

- Protection against discrimination on grounds of racial or ethnic origin in employment and training, education, social protection, membership of organisations and access to goods and services;
- Definitions of direct and indirect discrimination and of harassment;
- Positive action to ensure full equality in practice;
- The right to complain through a judicial or administrative procedure, with appropriate penalties for those who discriminate;
- Shared burden of proof in civil and administrative cases: victims must provide evidence of alleged discrimination; defendants must provide prove that there has been no breach of the equal treatment principle;
- Limited exceptions to the principle of equal treatment (where a difference in treatment on the grounds of race or ethnic origin is a genuine occupational requirement);

Directive 2000/78/EC against discrimination at work on grounds of religion or belief, disability, age or sexual orientation (Framework employment Directive):

- Principle of equal treatment in employment and training irrespective of religion or belief, disability, age or sexual orientation;
- Employers must make reasonable efforts to accommodate disabled people who are qualified to participate in training or paid employment;
- Same rules as the Race and ethnic origin Directive regarding definitions of discrimination and harassment, positive action, rights of redress and sharing the burden of proof;
- Limited exceptions to the principle of equal treatment where the ethos of a religious organisation needs to be preserved, or where an employer legitimately needs an employee to be from a certain age group.

Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services (Gender Goods and services Directive):

- Equal treatment of men and women in the access to and supply of goods and services: applicable to all persons and organisations that make goods and services accessible to the public; only outside the area of private and family life; not applicable to the content of media and advertisement or to education;
- Prohibition of any discrimination – direct or indirect – on the grounds of sex in the fields covered by the directive, including: less favourable treatment of women for reasons of pregnancy or maternity; harassment, whether of a sexual nature or not; instructions to discriminate;
- Exceptions: in general permitted if justified by a legitimate aim, proportionate and necessary; no prohibition of more favourable provisions concerning the protection of women as regards pregnancy and maternity; specific exception for insurance and related financial services, declared invalid by the CJEU in 2011 in the Test-Achats case;
- Same rules as the Framework employment directive regarding positive action, rights of redress and sharing the burden of proof;

Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (Gender recast Directive):

- Equal treatment of men and women in access to: work (including selection criteria); self-employment; occupations; vocational training; career advancement; working conditions (including dismissals);
- Prohibition of any discrimination – direct or indirect – on grounds of gender, including: reference to marital or family status; less favourable treatment of women related to pregnancy or maternity leave; harassment, whether of a sexual nature or not; instructions to discriminate;
- Same rules as the Framework employment directive regarding positive action, rights of redress and sharing the burden of proof;
- Protection from dismissal or any other form of retaliation by the employer of employees who complain or take legal action to enforce their right to equal treatment;

Directive 92/85/EEC 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) Objective

Under the Directive, a set of guidelines detail the assessment of the chemical, physical and biological agents and industrial processes considered dangerous for the health and safety of pregnant women or women who have just given birth and are breast feeding.

The Directive also includes provisions for physical movements and postures, mental and physical fatigue and other types of physical and mental stress. Pregnant and breastfeeding workers may under no circumstances be obliged to perform duties for which the assessment has revealed a risk of exposure to agents, which would jeopardize their safety or health. Those agents and working conditions are defined in Annex II of the Directive. Member States shall ensure that pregnant workers are not obliged to work in night shifts when medically indicated (subject to submission of a medical certificate).

Employers or the health and safety service will use these guidelines as a basis for a risk evaluation for all activities that pregnant or breast feeding workers may undergo and must decide what measures should be taken to avoid these risks. Workers should be notified of the results and of measures to be taken which can be adjustment of working conditions, transfer to another job or granting of leave.

EU Directive 96/34/EC this directive puts into effect a general cross-industry agreement on parental leave and leave on the ground of force majeure that was concluded by industry organizations (UNICE, CEEP and the ETUC) on 14 December 1995. The organizations requested the European Union to make the minimum requirements of the agreement binding on the Member States. The agreement provides that subject to some conditions, workers are entitled to parental leave and to take time off from work in on grounds of force majeure for pressing family reasons due to sickness or accident necessitating the immediate presence of the worker.



Project «Social Partnership for the Equality»

Lead Organisation: NGO Bureau of Social and Political Developments (BS&PD), Ukraine
Partners: Federation of Trade Unions of Ukraine (FTU); Confederation of Free Trade Unions of Ukraine (CFTU); National Confederation of Trade Unions of Moldova (CNSM, Moldova); Research Intellectual Club "Dialogue of Generation" (RICDOG, Georgia); Armavir Development Center (AMDC, Armenia).

Aim: to ensure equality in labour relations, including in the context of gender — strengthening expert support for the implementation of gender plans, establishment of an effective anti-discrimination monitoring and harmonisation of legislation

Project milestones

Meeting with the Human Rights Commissioner

On 28 June 2019, the Verkhovna Rada of Ukraine Human Rights Commissioner met with representatives of civil society organisations and trade unions

to discuss gender equality and anti-discrimination measures in Ukraine, at the Kyiv Ombudsman Office. The meeting coincided with the launch of "Social Partnership for Equality" Working Group 5 Eastern Partnership Civil Society Forum (EaP CSF) Re-granting 2018 project — lead by NGO "Bureau of Social and Political Developments". "We are ready to create a platform to discuss gender discrimination issues — for civil society and the government," said Lyudmila Denisova, Ukrainian Parliament Commissioner for Human Rights. Commissioner Denisova confirmed that the government is planning to appoint a separate Representative of the Commissioner for Equal Opportunities, responsible for discrimination and gender-related issues. According to the Commissioner, this is because gender discrimination, especially women's rights violations, are not isolated cases in Ukraine. "I hope that with your help, we will be able to organise training on non-discrimination and gender at the Office of the Commissioner. Local public organisations, media and government officials can also be involved in this process — conveying the message to the public.

What is more, I am ready to offer such trainings for civil servants at government meetings," said Commissioner Denisova.

The Commissioner stressed that gender discrimination should be monitored on an ongoing basis, with advice on non-discrimination issued by all branches of the government. When presenting "Social Partnership for Equality", the Bureau's Rostyslav Dzundza pointed out its commitment to 2020 Deliverables Put To Work. The document stipulates that gender equality and non-discrimination should be the basis of EaP's activities. In future, meetings of this kind will involve representatives from civil society organisations — particularly those coming from gender equality and women's rights organisations, as well as the Expert Council on Non-Discrimination and Gender Equality under the Representative of the Commissioner for

Children's Rights, Non-Discrimination and Gender Equality. The meeting closed with discussions on the implementation of anti-discriminatory Directives of the Council of the European Union and International Labour Organization (ILO) Conventions, particularly in the context of EaP and best practices exchange.

Round table in Kyiv

On 23 August, the Ukrainian organisations involved in "Social Partnership for Equality" Working Group 5 Re-granting Project (NGO "Bureau of Social and Political Developments", Federation of Trade Unions of Ukraine — FTU and Confederation of Free Trade Unions of Ukraine — CFTU) met in Kyiv. Aside from being an official coordinating meeting, event was used to introduce the project to prospective partners from academic and government institutions. Among them were representatives of local





NGOs, as well as the project partners from Georgia (Nugzar Kokhraidze, Research Intellectual Club "Dialogue of Generation" — RICDOG) and Armenia (Ani Haratuyunyan, Armavir Development Center — AMDC). The meeting opened with an welcome word from Eastern Partnership Civil Society Forum (EaP CSF)'s representative Hennadyi Maksak (Ukraine-Country Coordinator), who spoke about the project in the context of the 2020 Deliverables. Rostyslav Dzundza (Project Lead Organisation, NGO "Bureau of Social and Political Developments") expanded on this further, talked about cross-cutting deliverables and implementation of anti-discriminatory directives in the local context of Armenia, Georgia and Moldova.

Oleksandra Churkina (Deputy Minister of Social Policy on European In-tegration) assured the audience that "cooperation between government and civil society remains a priority" for the current administration in Ukraine. As an example, Churkina cited the draft law "On Amendments to Certain Legislative Acts of Ukraine (Concerning the Granting of Additional Guarantees Concerning the Combination of Family and Labour Obligations)", designed to ensure social guarantees for all employees without discrimination on the basis of gender. This would allow the father to take up part-time work, at his

own discretion — pending further changes to the current legislation, particularly the Labour Code. This would bring Ukraine closer to the legal interpretation found in EU member states.

Olesya Bryazgunova (Confederation of Free Trade Unions of Ukraine — CFTU) highlighted trade unions' support for European integration. Bryazgunova suggested that NGOs and trade unions should work more closely and floated the idea of creating a platform for dialogue exchange under Eastern Partnership.

Natalia Dmytruk (Bureau of Gender Strategies and Budgeting) cited gender policy as an area of successful cooperation. Dmytruk, who has overseen extensive research in this field across all six Eastern Partnership countries, pointed to the existing capabilities, potential and strategies, done in National Platforms. These ideas will be presented at the "Gender Policies and Practices of the EU and Eastern Partnership Countries" Conference, which will be held on 11-13 October 2018 in Kyiv. The meeting continued with input from Olena Holovata (Head Expert on European Integration, Ministry of Social Policy), who talked about employment, social policy and equal opportunities in the framework of EU-Ukraine Association Agreement. Verkhovna Rada must show more urgent consideration – in-



terjected Dzundza, bringing the examples of draft laws on employment, disability and harmonisation. Closing on the Georgian experience, Kokhraidze, – summed up: "theme of gender equality is new and important". "We are going to share the experience and take the experiments of other countries of the project to improve existing indicators", within the framework of this project. "My organisation, [Dialogue of Generation]", he continued, "is a member of the Gender Council under the local legislature and we are actively working on the promotion of gender issues".

Visit of the Georgian Delegation

Within the framework of the project "Social Partnership for Equity", NGO "Bureau of Social and Political Developments" hosted a visit of representatives of the Eastern Partnership Civil Society Forum. The delegation included: Raisa Liparteliani, Coordinator of Working Group # 5 of the Eastern Partnership Civil Society Forum "Social and Labor Policy, Social Dialogue" and Nugzar Kokhraidze, co-founder of the Research-Intellectual Club Dialogue of Generations, Coordinator of the Employment and counteracting the discrimination subgroup of the WG5 National Platform of the Civil Society Forum of the Eastern Partnership.

On the first day of their visit, on October 10, delegates took part in parliamentary hearings on "Countering Discrimination Against Women from Vulnerable Social Groups." Parliamentary hearings took place in the Verkhovna Rada's premises, in the plenary session hall, at the parliamentary hearings,

the Georgian delegates got acquainted with the Ukrainian daily diary on anti-discrimination. On the second day, on October 11 in the first day of the day, representatives of the Georgian delegation and the Bureau of Social and Political Developments met with the top-management of the Ministry of Social Policy of Ukraine. The event was attended by specialists of the Ministry of Social Policy of Ukraine, representatives of trade union organizations and NGOs from Georgia, Moldova and Ukraine.

During the meeting, they discussed plans for implementing the project and studied the experience of implementing such projects in European countries. Issues related to the integrated social services system and the gender perspective in the area of employment, social policy and labor as a whole were discussed, as well as the dissemination of Ukraine's experience in this area to the Eastern Partnership countries, in particular, Georgia, Moldova and Armenia. Leonid Ilchuk, deputy director of the Institute of Labor and Employment of Ministry of Social Police and the National Academy of Sciences of Ukraine on Scientific Work, informed Georgian colleagues about the Institute's scientific activity, disclosed the directions and principles of the Coordination and Expert Council on Social Policy of the Institute. There was also a working meeting with the Head of the State Service of Ukraine for Labor, Roman Chernega.

In the second half, a coordination meeting was held with the leadership of the International Trade Union Organization «Solidarity Center", in particular



with Executive officer of Programs in Europe and Central Asia, Rudi Porter, and Director of the AFP-KPP Solidarity Center in Ukraine, Belarus and Moldova, Tristán Masat. Agreements on coordination of activities on the implementation of the priorities of the Association Agreement, the Eastern Partnership Initiative have been reached to enhance the participation of civil society and use of the instrument of social dialogue and joint monitoring of the implementation of the Conventions of the International Labor Organization (ILO) ratified by the countries of the Eastern Partnership. The meeting was an important milestone in the implementation of the "Social Partnership for Equality" project, as well as options for cooperation between the Ukrainian and Georgian sides.

On October 12, on the third day of the visit, delegates and representatives of the Bureau of Social and Political Developments took part in the conference "Practices in the Formation and Implementation of Gender Policy: EU and Eastern Partnership" on the project implemented by the NGO "Bureau of Gender Strategies and Budgeting". Within the framework of the conference, recommendation were made to strengthen the role of the National Platforms of the CsF in shaping and implementing the gender equality and non-discrimination policies in the Eastern Partnership countries. In her speech, Raisa Liperteliani described the activities of the trade

unions, such as trainings, advocacy and information campaigns aimed at strengthening of the national and international mechanisms for the protection of women's rights, the problem of inequality of pay between women and men, the problem of combining family with work. In her speech, Raisa also noted that the association agreement is a pledge and an effective tool for achieving gender equality.

Rostislav Dzundza, Chairman of the Board of NGOs "Bureau of Social and Political Developments", noted that "Gender equality should become the zation is working on a toolkit for the implementation of the EU Anti-Discrimination Directives, which is a reliable and effective method of achieving gender equality. " Representatives of the Federation of Trade Unions of Ukraine, the Confederation of Free Trade Unions of Ukraine, NGO "Labor Initiatives", the Public Council under the Ministry of Social Policy and the State Service of Ukraine on labor issues, the Labor and Employment Research Laboratory of SMEs and the National Academy of Sciences of Ukraine participated in the events. Kateryna Levchenko Government Commissioner for Gender Equality, told that "Policy Ensuring equal rights and opportunities for women and men is one of the priorities of the Ukrainian government nowadays.

The approximation of Ukrainian legislation and the practice of its application to European norms and standards is an important part of the European

integration, which is enshrined in the Constitution of Ukraine. Conducted by representatives of public organizations, trade unions and research institutions analysis of the compliance of Ukrainian legislation with European Union standards on equality and non-discrimination in access to labor, services and social security, improvement of the pregnant workers, workers who have recently given birth or are breastfeeding babies gave opportunity to evaluate the positive content of the standards and to propose a "road map" for eliminating gaps in the legislation".

Participation at EaP CSF Annual Assembly

The 10th Annual Assembly of the Eastern Partnership Civil Society Forum was held. The peculiarity of this year's conference is the symbolic celebration of the 100th anniversary of the national independence of the five Eastern Partnership countries - Azerbaijan, Belarus, Armenia, Georgia and Ukraine, which in turn is a good reason for self-reflection and revaluation not only in matters relating to the Eastern partnership, but also the European Union, and in a wider context. This historic date is litmusing paper about systemic changes in the countries of Eastern Europe, which balance between

democracy and authoritarian regimes. At the same time, one year before the 10th anniversary of the Eastern Partnership Initiative, as well as mid-to-final (2020) implementation of the 20 expected achievements of the Eastern Partnership, this is an important opportunity for the European Union to seriously evaluate its own policies in the region.

The principles on which the Eastern Partnership is based remain relevant, with today's geopolitical challenges requiring more ambitious approaches and more active engagement of citizens in the pro-main topic on the day of the Eastern Partnership Summit, as achieving gender equality is one of the goals for implementing the Association Agreement between Ukraine, Georgia and Moldova. Our organization of democratic rights and freedoms that the European Union supports and develops. Together with civil society partners from the entire region, the Annual Assembly will seek answers to questions on how to ensure sustainable, democratic development and maintain EU support and vigilance in the region. Moreover, recent events have shown that there is a need for attracting citizens and confronting the revenge of authoritarianism - present



Objective

The project "Social partnership for the equality" is aimed at increasing the EaP countries' potential in improving equality in the social sphere and labour market. International anti discrimination legislation and in particular the EU legislation serves as a basis for the project's activities.

In the framework of the project we organised a meeting, which further initiated a dialogue between the project partners, stakeholders and responsible state authorities (e.g. Ombudsman Office and Ministry of Social Policy), as well as a visit of the Georgian Delegation for exchanging experience with the Ukrainian colleagues working on this issue. As a result of the project we will prepare an analytical document which will provide a fresh look at the situation with equality in the social sphere and labour market in the EaP countries, and we will also create a platform to further work on this problem.

Read more about the project via QR code:



Funded by the European Union



Target group

Main beneficiaries are trade union organisations. The project involves two largest trade unions from Ukraine, as well as trade unions from three other EaP countries (Georgia, Armenia and Moldova). Among beneficiaries are also NGOs, which work in the respective field.



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2 round tables

★★★★★

3 working visits



Output

"Bureau of social and political development" was invited to join the advisory group. The Advisory Group on Trade and Sustainable Development was established in accordance with the Article 299 of the Association Agreement between Ukraine and the European Union.



in certain parts of the region. Participants in the Annual Assembly will learn more about advocacy strategies and the advocacy process, in order not only to maximize the pressure but also to get more involved in the process of policy formation and reform in their countries and abroad. In the context of the 100th anniversary of the independence of Azerbaijan, Belarus, Armenia, Georgia and Ukraine, the Annual Assembly will analyze how the historical experience of the countries of the initiative affects their political trajectories. As part of Assembly, the interim results of the Social Partnership for Equality Lead Organization: NGO "Bureau of Social and Political Developments", Ukraine Partners: Federation of Trade Unions of Ukraine (FTU) took place; Confederation of Free Trade Unions of Ukraine (CFTU); National Confederation of Trade Unions of Moldova (CNSM);

Research Intellectual Club "Dialogue of Generation" (RICDOG, Georgia); Armavir Development Center (AMDC, Armenia) The main project purposes is to ensure equality in labor relations, including in the context of gender, enhancing expert support for the implementation of gender plans, effective anti-discrimination monitoring and harmonization of the national legislation according to the international and European standards.

One of the objectives of the project was also to strengthen the dialogue between all actors in the field of equality and non-discrimination in the labor relations of the Eastern Partnership countries covered by the project (Georgia, Armenia, Moldova and Ukraine). Representatives of government institutions, non-governmental organizations, scientific institutions and workers representatives were involved in the project activities. Within the framework of the project activities, a lot of attention was paid to finding a common vector for harmonization of legislation and the implementation of anti-discrimination norms.

In Ukraine, in order to strengthen the project's impact and expand its activities, "Bureau of Social and Political Developments" was invited to join the advisory group on Sustainable Development and Trade, which is both a promising advocacy tool and a dialogue tool with European counterparts from parallel group. Approved recommendations and a proposal for an advocacy campaign from the International Confederation of Trade Unions and the

European Trade Union Confederation were received. In accordance with the Association Agreement, Ukraine has committed itself to adapting national legislation to EU standards and practices in the area of employment, social policy and equal opportunities. It is civil society that seeks to ensure full synchronization of obsolete and conservative Ukrainian legislation to the European one, and thus to intensify European integration processes Equality and Non-Discrimination in Access to Labor, Provision of Services and Social Security" was held. During the event an analytical report "Analysis of regulation of compliance with the principles of equality and non-discrimination in access to employment, provision of services and social security" an assessment of the state of implementation of Ukraine by EU anti-discrimination Directives was presented.

Joining the Advisory Group Sustainable Development

The Advisory Group on Sustainable Development has established, in accordance with Article 299 of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand (hereafter UAA) and consists of independent representative non-governmental organizations, the Advisory Group includes organizations of employers and trade unions, non-governmental organizations and other interested parties.

The selection of participants of the Advisory Group was carried out by the Council on Trade and Sustainable Development, established in accordance with the Resolution of the Cabinet of Ministers of Ukraine dated June 13, 2018 No. 478, in accordance with the Basic Criteria and Procedure for the Selection of Independent Representative Non-Governmental Organizations approved at the meeting of the Trade and Sustainable Development September 10, 2018. The general list of independent non-governmental organizations that form the Advisory.



Analysis of equality and non-discrimination

regulation in the sphere of access to employment, services and social security in Ukraine

Rostyslav Dzundza, NGO "Bureau of Social and Political Developments", Ukraine
Olesia Briazgunova, Ukrainian Confederation of Free Trade Unions, Ukraine
Lydmila Salo, Ukrainian Trade Unions Federation, Ukraine

Review of the antidiscrimination legislation in Ukraine

Currently, in accordance with the Association Agreement between Ukraine and the EU, an active process of the legislation reform in the social sphere is taking place in Ukraine. The work in the direction of European integration is focused on implementation of the EU directives in the social sphere as well as the provisions of Chapter 21 "Employment, social policy and equal opportunities cooperation" of Section V of the Association Agreement.

Recently regulatory acts which should facilitate the effective implementation of the Association Agreement have been adopted by the Ukrainian government. Thus, in March 2016, Ukraine ratified the International Labor Organization Convention on Minimum Welfare Provisions № 102, and in November 2016 the European Social Welfare Code was signed. The Government has approved the State Social Program for Ensuring Equal Rights and Opportunities for Women and Men for the Period up to 2021. This program is focused on increasing the level of observance of the principle of equal rights and opportunities for women and men in all life spheres of Ukrainian society.

According to the State Statistics Service of Ukraine, there is a significant gender gap in remuneration between men and women in Ukraine. Among women it is observed a higher level of unemployment and marginal employment, moreover, they are dependent on social support, often have difficulties in obtaining bank loans, etc. However, one of the possible ways to change this situation is an introduction of anti-discrimination Directives of the EU in accordance with the Association Agreements between Ukraine and the European Union.

Within the project "Practice of the Ministry of Social Policy in terms of ensuring equality for women and men in the labor market in the context of the relevant EU directives implementation", accomplished by the NGO "Bureau of Social and Political Developments" in 2017, the Ukrainian situation in the sphere of non-discrimination on gender in the areas that cover the Directives and the process of their implementation was analyzed. This work resulted in the scientific study "Gender discrimination in access to employment and services: assessment of the implementation in Ukraine of the Anti-Discrimi-

ination Directives established by the EU Council".

Recommendations of the study were presented at the international conference "Government and business: prospects of introducing non-discriminatory norms in the Ukrainian labor market". The event was held with the participation of representatives of the Ministry of Social Policy, State Employment Service of Ukraine, scientists of the Labour and Employment research institute, international experts of the European and Eastern Partnership Council (Moldova, Georgia, Armenia), specialists of the Center for Implementation of European Social Rights, the Coalition Against Discrimination in Ukraine, as well as representatives of trade unions and businesses.

Members of the conference ratified a resolution, in which the parties provided proposals for strengthening non-discriminatory policy in the Ukrainian employment market. Participants appreciated the results of the implementation in Ukraine of the six "non-discriminatory" EU Council Directives which focus on equal opportunities for Ukrainian citizens: to combine family and career regardless of gender, to build a social security system taking into account the principle of gender equality, to introduce the principle of gender-equal treatment in access to goods and services, the field of media, advertising and education.

The dialogue was increased on the implementation of the non-discriminatory Directives of the EU Council and the International Labor Organization conventions between experts and managers of Ukraine, the countries of the Eastern Partnership and the EU. Valuable experience, related to the implementation of the non-discriminatory EU Directives (2000/43/ the EU, 2000/78 /, the EU, 2004/113/ the EU, № 96/34/ the EU, № 92/85/ EEC, № 79/7) was taken into account /EEC) and the ILO Conventions (№102, №103, №111, №156, №171, №183, №187, №189) in the format the EU + 3 (Ukraine, Georgia, Moldova) and the possibility of their full introduction in Ukraine.

Among the events which took place it should be outlined the creation of a coalition "Employment Equality" and the signing of a Memorandum of Understanding for a joint and consolidated activity to protect freedom, justice and equality in the access of women and men to the labor market and the protection of their employment and social rights. The memorandum was initiated by five organizations:

the NGO "Bureau of Social and Political Developments", the NGO "Labor Initiatives", Kyiv Institute of Gender Studies, the Confederation of Free Trade Unions of Ukraine and the Labor and Employment Research Institute of the Ministry of Social Policy and the National Academy of Sciences of Ukraine, "Center for European Social Law Implementation Problems" of the Taras Shevchenko National University in Kyiv.

During the event, representatives of civil society called for united efforts to ensure equal rights and opportunities in the employment sphere. In particular, the initiators of the Memorandum are convinced of the need to ensure equal access for women and men to obtain professional skills, fairly paid work, social infrastructure and support. In Ukraine, it is necessary to eliminate all forms of direct and covert discrimination, as well as to ensure civilized working conditions. This will improve the lives of citizens of both genders and will facilitate the economical and social development in the country.

In the 2018 activities of the "Bureau of social and political developments" were supported by the Eastern Partnership Civil Society Forum with the purpose to enhance its practises, developed in the framework of the previous projects to the Eastern Partnership region, with the participation of trade unions as main representatives of the workers.

Simultaneously, the NGO "Bureau of Social and Political Developments"; in cooperation with its partners, initiated and implemented the following project: "Practices of MSP to enhance expert work on the implementation of the "anti-discrimination"; directives of the EU Council; Its realization became possible with the assistance of the European Union and the International Renaissance Foundation within the framework of the grant component of the project "Civic Synergy". The project appears to be a logical continuation of the previous work of the Bureau and is aimed at strengthening the expert capacity of the Government and authorities to implement anti-discrimination directives, to coordinate expert support for their implementation by the executive authorities. A number of expert assessments (i.e. socio-legal and gender) have been developed within the framework of the project. Also, recommendations have been drawn up on the urgently needed sub-normative acts and the normative base for the drafts submitted for the

implementation of the Councils anti-discrimination Directives. The comparative tables of compliance of the national legislation with the EU Directives have been developed as well.

During the project implementation on May 22, October 4, and December 20, 2018, the Bureau experts participated in the meetings of the Expert Advisory Group (formed by the Order of the Ministry of Social Policy of Ukraine dated February 3, 2015) on the implementation of the directions of Section III "Justice, Freedom and Security" and Subsection 21" Employment, Social Policy and Equal Opportunities Cooperation", the Association Agreement between Ukraine and the European Union, the European Atomic Energy Community and their Member States.

To increase partnership and participation of the partners-countries and to achieve the goals of the project, "Bureau of social and political developments" conducted a round-tables with all actors in the sphere of non-discrimination and equality in labour, which include representatives state authorities, NGOs activists and scientific institutions. First round table were conducted in the office of the ombudsman, for the increasing of the dialogue between the civil society and the government. The event was attended by the representatives of the civil society, in particular trade unions.

The next event was attended at the business center "Parus" at 23rd of August. The event was attended by representatives of the government, scientific institutions and civil society. Also, foreign partners of the project gave their feedback through the online communication tools. In the framework of meeting "Bureau of social and political developments" increased cross-sectoral cooperation of the project "Social partnership for the equality", and got feedback from the all stakeholders of the project.

To increase the cross border cooperation of the project, and share the Ukrainian experience with the georgian partners, NGO "Bureau of social and developments" conducted a visit of the Georgian delegation, which includes co-chair of the project partner organization "RICDOG" Nugzar Kokhleidze and co-chair of the Georgian Trade Unions Confederation, coordinator of the Eastern Partnership Civil Society Forum WG5 Raisa Liparteliani. During the visit, Georgian delegation attended the Verkhovna Rada hearings on the agenda of the antidiscrimina-

tion, met with the all key stakeholders, which include Ministry of Social Policy of Ukraine, Ukrainian trade unions, scientific institutions. At the end Georgian delegation attend the conference of the partners "Bureau of gender strategies and budgeting" project, cooperation with which was recommended by the EaP Secretariat.

Invited of the International Labor Organization in November 2018, Bureau experts participated in the training for trainers "Maternity Support and Gender Aspects of Social Security", where they shared their experience in bringing Ukrainian legislation closer to the EU directives and ILO Conventions (in particular, on parental leave, maternity support, harmonization of professional and family responsibilities of workers in Ukraine, taking into account the need to implement EU labor standards in this sphere).

Developed during the implementation of the project, the expertise was also presented to the Working Group on Social Dialogue and Social Work Policy of the Eastern Partnership Civil Society Forum within the framework of the project "Social Partnership for Equality". The partners of the project are the two largest trade union organizations in Ukraine: the Confederation of Free Trade Unions of Ukraine and the Federation of Trade Unions of Ukraine, as well as trade unions and non-governmental organizations of Georgia, Moldova and Armenia. Approval recommendations and a proposal for an advocacy campaign from the International Confederation of Trade Unions and the European Trade Union Confederation were received.

In accordance with the Association Agreement, Ukraine has committed itself to adapting national legislation to EU standards in the area of employment, social policy and equal opportunities. Civil society is a rightful partner in the movement to intensify European integration processes in Ukraine in order to ensure the synchronization of conservative Ukrainian legislation with the European one.

Purpose of the project "Social partnership for the equality"

The purpose of the project was to analyze the state of implementation of the three Directives of the EU Council (if available) and anti discrimination legislation of the countries involved in the project (Georgia, Moldova, Armenia, Ukraine), in Ukraine these directives include:

1. Directive №92/85/EEC on the taking of measures to improve the safety and health care at work of pregnant workers, workers who have recently given birth or are breastfeeding (tenth individual Directive within the Article 16 (1) of Directive 89/391/EEC);

2. Council Directive № 79/7/EEC of December 19, 1978, on the gradual implementation of the principle of equal opportunities for men and women in matters of social security;

3. Council Directive №2004/113/EU of December 13, 2004, on the implementation of the principles of equality between men and women in their access to goods and services.

Apparently, the assessment of these Directives is rather complicated and demanding one and requires considerable time and appropriate qualifications. It is necessary to work out a significant part of the legislative base of Ukraine, both at the central and local levels. That is why three Directives have been processed, which at the moment are partially implemented in Ukrainian legislation.

During the expert assessment it was taken into account that no document can be implemented in the same way as international documents. This is due to features, traditions, mentality; the primacy of national legislation when developing / updating international laws and norms; the recommendatory nature of accountability in national legislation, but not the requirements of the exact copying of the Recommendations and Directives.

In 2015, the Ministry of Social Policy carried out a thorough analysis of the compliance of Ukraine's legal acts with the requirements of **COUNCIL DIRECTIVE 79/7/EEC of December 19, 1978 on the GRADUAL IMPLEMENTATION of the PRINCIPLE of EQUAL OPPORTUNITIES for MEN and WOMEN in the FIELD of SOCIAL SECURITY.**

A directive №79/7/EEC is one of the six anti-discrimination directives that are of primary importance for implementation in Ukraine, in accordance with the Association Agreement between Ukraine and the European Union.

The provisions of the directive are mainly introduced in national legislation. The Ministry of Justice of Ukraine reported that there was no comment on the review of the Ukrainian legislation provided by the Ministry of Social Policy regarding compliance with the principles defined in the Directive (a letter of the Ministry of Justice of 02.02.2016 № 3127/29956-0-26-15/12). During the second meeting of the 6th cluster (Employment, Health Care, Social Policy and Equal Opportunities) of the Subcommittee on Economics and Other Sector Cooperation of the Association Committee between Ukraine and the EU, held on June 08, 2017 in Brussels, the Ukrainian delegation informed the European party that the directive had been implemented in national legislation.

The purpose of the Directive adoption was the gradual introduction of the principle of equal treatment of men and women in the field of social security. The directive covers the compulsory social security systems that provide protection in case of illness, disability, old age, unemployment, industrial accidents and occupational diseases. The provisions of the Directive also apply to social assistance provided they are aimed at supplementing or replacing the above social security systems.

The scope of Directive 79/7/EEC is an expanded one and not limited to workers only, its provisions apply to both employed population (including self-employed persons) and workers or self-employed persons whose activity is interrupted due to illness, accident or involuntary unemployment, job seekers, as well as workers and self-employed persons who are retired or have a disability.

In general, the provisions of Directive 79/7/EEC, which determine its objectives, tasks and scope, are taken into account in state legislation. There

are general rules governing the equality of men and women in the field of social security. At the same time, in the special legislative acts regulating certain types and forms of social security, the principle of equality in general, and gender equality, in particular, is not enshrined. This is one of the main shortcomings of the current state of Directive 79/7/EEC implementation.

The legal analysis, carried out on the basis of a detailed comparison of the provisions of Directive 79/7/EEC and the national social security legislation, highlighted the main issues of the state of its implementation in Ukraine:

- a) the lack of a consolidation of the principle of gender equality in the special legislation on social security;
- b) discrepancies in the application of terms for determining social risks;
- c) the existence of gender-related discriminatory norms in the social-security legislation;
- d) the absence of a mechanism for counteracting indirect discrimination in social- security legislation;
- e) the imperfection of the mechanism of anti-discrimination and gender legal examination of normative legal acts;

The legislation of Ukraine determines the necessity of anti-discrimination and gender legal expertise of both draft normative legal acts and already existing legal acts. These provisions contribute to the implementation of article 5 Directive 79/7/EEC, which states: *"Member States shall take the necessary measures to ensure that any laws, regulations or administrative provisions that are inconsistent with the principle of equality of treatment are repealed."*

Accordingly, it will help to identify and eliminate the rules that violate the principle of equality in the field of social protection.

During the gender expertise of Directive 79/7/EEC, a database of normative legal acts relevant to the scope of the Directive was analyzed, and the part that regulates (provides legal guaranties) for the protection of women and men in the case of illness, disability, old age, accidents at work and occupational diseases or unemployment.

On the basis of available materials, a list of 22 laws governing the Directive 79/7/EEC was drawn up. Based on the analysis of this base of normative legal acts, it was clarified that in Ukraine issues of equality and non-discrimination (in particular, by gender) are legally irregular.

For the most part, direct discrimination in revised regulations is absent. Instead, the issues of equality and non-discrimination in a number of areas are simply not regulated by law, being supported by moral guidelines, customs, norms of etiquette, as well as the preferences of people with an appropriate position, determined by their functional duties or powers to dispose of or take current decisions in various spheres.

The issue of identifying the norms of indirect discrimination in the field of services and labor is becoming a key methodical challenge for the implementation of all "anti-discrimination" directives of the Agreement which are the norms that impose direct discrimination. They do not include the normative legal acts. However, while the study of indirect discrimination cannot be limited to legislative texts and requires more profound analysis taking into account the practice of their implementation.

Another problematic issue in implementing this and other "anti-discrimination" directives of the Agreement is the actual way of defining indirect discrimination is a methodological one.

The requirement of Directive 79/7/EEC is to establish equal protection guarantees (in particular, by gender) where they are not present, as well as the identification and termination of the norms that lead to discrimination. Ideally, the full implementation of Directive 79/7/EEC and other "anti-discrimination" directives would require a complete gender analysis of the laws and regulations that are present in the

scope of each of the aforementioned directives.

To do the gender analysis¹ of the by-laws of the Directive 79/7/EEC, the expertise of the selected three basic laws was conducted. Namely: "On Ensuring Equal Rights and Opportunities for Women and Men", "On Collective Agreements and Treaties" and "On Population Employment" (the corresponding tables are attached). As a result of the analysis of the base of normative legal acts that is in the scope of Directive 79/7/EEC there was created the list of selected normative legal documents regulating the sphere of relations, corresponding to the Directive².

It should be noted in general that there is a positive trend towards the implementation of the provisions of the Directive in national legislation. However, for better efficiency of these normative requirements, it is expedient to ensure that the monitoring of the implementation of legislative norms on equality in the field of social security is an appropriate one. This will reveal not only the shortcomings of legal regulation, but also will contribute to further improvement of the legal framework for regulating the specified sphere. It is important to take measures to advocate among the judiciary in the application of the provisions of the Directive, which are implemented in national legislation, in order to ensure equality in the field of social security more effectively.

However, with further work towards legal support (in terms of regulatory determination measures and forensic practical application) should sustain a reasonable balance in an effort to ensure women's rights, progress towards gender equality and does not go to the other extreme where gender equality is replaced with a paternalistic approach to women.

Thus, conducting such monitoring will help identify problems that affect men or women and take appropriate measures to address these issues at the legislative level and prevent them from continuing in future.

One of the positive approaches to eliminating the problems of the equality principle implementing is a quantitative study on fixing its violations. The results of such a study would form the basis for identifying the main factors that violate the principle of equality,

would serve as a benchmark for further actions of the state and society.

Priority measures necessary for the implementation of Directive № 2004/113/EC should include:

- 1) The consolidation of the principle of gender equality in the corresponding legislation on the provision of certain types of social security (the Fundamentals of the Ukrainian legislation on compulsory state social insurance, the Laws of Ukraine: "On Mandatory State Social Insurance", "On Mandatory State Pension Insurance", "On compulsory state social insurance in a case of unemployment", "On social services", etc.);
- 2) Settlement of differences in the application of terms for defining social risks defined in Article 3 Directives (in relation to old age, illness);
- 3) Eliminating discriminatory norms based on gender from the Law of Ukraine "On Mandatory State Pension Provision" (Articles 28, 33, 115) that do not comply with the requirements of Directive 79/7/EEC and the provisions of national legislation guaranteeing equality, including gender-based one and need to be changed through the establishment of identical insurance and seniority requirements for men and women;
- 4) Improvement of the mechanism of anti-discrimination and gender-legal expertise of legal acts in the field of social security;

Council Directive 92/85/EEC on taking measures to improve the safety and healthy working conditions for pregnant workers, workers who have recently given birth or are breastfeeding (tenth individual directive in the article 16 (1) of directive 89/391/EEC) adopted in connection with the need for legal regulation of additional guarantees for workers in the field of safety and health, based on their reproductive function and the need to create conditions for the birth of healthy children.

In general, the provisions of the Directive defining its objectives are taken into account in national legislation. Both general rules regulating the equality of men and women in the workplace and special norms that determine the possibility of implement-

ing positive actions as special legislative measures aimed at increasing the guarantees for ensuring the equality of opportunities of certain social groups, including women are provided.

The labor legislation of Ukraine establishes the need for special legal regulation of the work of pregnant women (partially, also of women who are breastfeeding).

During the legal analysis of the implementation of Directive № 92/85/EEC in Ukraine, the following issues were outlined:

- a) the absence of statutory rules for assessing agents, working conditions and production processes that are hazardous to pregnant workers, workers who have recently given birth or are breastfeeding;
- b) Employer's assessment of working process risks for pregnant workers, workers who have recently given birth or are breastfeeding;
- c) temporary adaptation of working conditions for pregnant workers, workers who have recently given birth or are breastfeeding;
- d) limiting the involvement of pregnant workers, workers who have recently given birth or are breastfeeding;
- e) dismissal from work for the period of medical examination during the pregnancy monitoring;
- f) Prohibition on dismissal and protection of the right to work;

During the gender expertise of Directive 92/85/EEC, sub-normative acts regulating legal relations were analyzed. The main focus is on the compliance of the national regulatory framework with the needs and interests of those population groups which are targeted by the regulatory action of the Directive (working mothers, future mothers (pregnant women), women who have recently given birth or are breastfeeding).

From the point of view of gender analysis, the main legislative and normative acts regulating the legal relationship in the area of the Directive are 4 laws and 4 subordinate legal acts³.

The analysis was carried out by distinguishing normative legal acts related to eight documents mentioned above with their subsequent review and evaluation on

¹ The analysis was carried out with the help of the recommendations of the Ministry of Justice of Ukraine "Methodological recommendations for conducting a gender legal examination of legislation", which provides for an assessment of each normative act on the compliance with the principle of equality of women and men

² A total of 492 normative legal acts were revised and analyzed. It has been established that there are 278 normative legal acts that are gender specific for Directive 79/7/EEC, which need to be further analyzed more deeply

³ In total about 1446 normative documents were analyzed. As a result of the selection, 316 of the number of gender-relevant and relevant target groups in the Directive 92/85 / EEC were included, 91 additional NPAs and 83 conditionally related ones were detected.

- a) gender/inconsistency (relevancy);
- b) compliance/non-compliance with the needs of target groups (working women, future and current mothers).

Consequently, Directive № 92/85/EEC on the taking of measures to improve safety and health working conditions of pregnant workers, workers who have recently given birth or are breastfeeding, has been **adopted and implemented in Ukraine only partially**.

Thus, fully taken into account in the national legislation is only an Article 8 "Maternity leave".

Partly taken into account in the national legislation can be considered Article 5 "Actions following the results of the inspection", Article 9 "Dismissal from work for the time of medical examination during the period of observation of pregnancy", Article 10 "Prohibition on dismissal", Article 11 "Employment rights", Article 12 "Rights protection".

The following provisions of the Directive: Article 2 "Definitions", Article 3 "Guidelines", Article 4 "Evaluation and Information", Article 6, are not fully or more closely taken into account in national legislation (or Ukrainian legislation is contrary to the provisions of the Directive). "Cases in which influence is prohibited", Article 7 "Working during night hours", Appendix I "An incomplete list of agents, processes and working conditions, Appendix II" An incomplete list of agents and working conditions".

One of the ways to ensure the protection of target groups of the Directive № 92/85 / EEC may be the recommendation (especially for companies in the field where women's work was previously prohibited) to introduce a gender representative, who also performs the functions of the adviser of the head of the enterprise.

Additional attention should be paid to the legal acts relating to military service in the Armed Forces of Ukraine, the State Border Service of Ukraine, Management of State Defense in Ukraine, other military and paramilitary services/ structures. In particular, it is necessary to supplement the risk assessment of the impact on the health adjustment of working conditions and the list of hazardous agents, processes, conditions.

An additional tool to ensure the improvement of safety and security at work target groups Directive №92/85/EEC is possibility of application of nor-

mative legal acts on the statistical observations, instructions and clarifying about the state statistical reporting on working conditions, benefits and compensations for work in harmful working conditions.

The priority measures necessary for the implementation of Directive № 92/85/ EEC are:

1. Determination in the labor legislation of the concepts of "pregnant worker", "worker who has recently given birth", "breastfeeding worker" in national labor legislation.

2. Establishing legal safeguards at the workplace for workers who have recently given birth or nursing workers, distinguishing them from legal guarantees for those with family responsibilities, namely, men and women who have children under the age of three.

3. Developing and approval of valid rules for assessing the impact of physical, chemical and biological agents and production processes on the health of the workers concerned. Determination of the list of agents, working conditions and production processes, the availability of which should limit the possibility of applying the labor of pregnant workers, workers who have recently given birth or are breastfeeding.

4. Changing the labor law approach, namely, prohibiting the engagement of pregnant workers, workers who have recently given birth or who are breastfeeding to certain types of work, the impossibility of forcing them to perform certain types of work by the employer, as defined by the Directive.

5. Guaranteeing the preservation of the work place and the average salary of a pregnant worker during a medical examination in connection with pregnancy (if such an examination is to be carried out during working hours).

6. Normative regulation of exceptional cases not related to their condition (pregnancy), because of which a pregnant worker is not present at work. Such exceptions should be envisaged in the Labor Code of Ukraine in order to protect the interests of the employer and eliminate discriminatory results for employees, pregnant women or women who have children under the age of three.

7. Determination (at the level of sublegislative legal acts) of the list of factors (physical, biological, chemical), processes and working conditions and other agents that pose a threat to the health of

workers, pregnancy or breastfeeding (in accordance with Annexes 1, 2 of the Directive).

Council Directive № 2004/113/eu of 13th december 2004 on the implementation of the principle of equal treatment for men and women as regards access to goods and services is one of the six directives concerning non-discrimination and equality, the provisions of which are to be implemented in the current Ukrainian legislation in accordance with the EU-Ukraine Association Agreement, Annex XI to Section 21 "Employment, Social Policy and Equal Opportunities Cooperation".

The directive aims to build a structural framework for combating gender-based discrimination in access to goods and services. At the same time, it should be noted that the Directive does not apply to the issue of employment and occupation, as well as to entrepreneurship. The directive applies only to insurance and pension payments, which apply to each individual, are voluntary and not related to employment relationships.

In general, the provisions of the Directive defining its objectives are taken into account in national legislation. There are provided both general rules (regulating the equality of men and women in access to goods and services) and special rules (governing the relationship in specific areas of human life, which guarantees the equal treatment of men and women in access to goods and services).

However, there are shortcomings in the current legislation that need to be improved. In addition, current absence of valid mechanisms for protecting a person against discrimination in access to goods and services is a significant disadvantage.

Also, the mechanism for implementing the provisions of the Directive into the current legislation seems to be imperfect itself. Thus, in order to implement the Directive 09.17.2014 there was approved the Action Plan for the implementation of the Association Agreement (including the implementation of the Directive). In particular, according to the plan, the following list of measures was envisaged:

- the resumption of the Gender Advisers Institute;
- generalization of international and public organizations` experience in the field of combating gender discrimination;
- organizing and conducting trainings and training events aimed at raising awareness of staff in the field of gender equality and gender-based discrimination;
- drafting a bill on amendments to the Law of Ukraine "On the Principles of Discrimination Prevention and Counteraction in Ukraine" which will include the introduction of appropriate sanctions for discrimination on the basis of sex;
- ensuring the effective functioning of the Expert Council on the consideration of applications for discrimination on the basis of sex;
- a study on the access to justice for women and men who were discriminated or experienced gender-related violence;
- establishing a system for information disseminating on equal rights and opportunities for women and men and issues related to discrimination.

The Ministry of Social Policy has reported on the meeting of the requirements for the implementation of the Directive mentioned above and, accordingly, on the implementation of the above measures. The Resolution of the Cabinet of Ministers of Ukraine "On Implementation of the Association Agreement between Ukraine and the European Union, the European Atomic Energy Community and their Member States" (October 25, 2017) was adopted.

However, the Action Plan for the implementation of the relevant agreement⁴, which is approved but not fully implemented, shows that the provisions of the Directive are only partially implemented in the current Ukrainian legislation.

It should be noted that a thorough scientific analysis of the implementation of the above mentioned Directive hasn't been conducted yet, which, in turn, increases the relevance of this study.

⁴ The plan provided for the support of consideration by the Verkhovna Rada of Ukraine of the draft law on amendments to certain legislative acts of Ukraine on harmonization of legislation in the field of prevention and counteraction of discrimination with the EU law (until March 20, 2018); the functioning of the Expert Council on the consideration of applications for discrimination on the basis of gender; drafting of the State Program for the Guarantee of Equal Rights and Opportunities for Women and Men by 2021; elaboration of the project program with EU experts; submission of a draft act to the Cabinet of Ministers of Ukraine on approval of the Program for consideration by the Cabinet of Ministers of Ukraine.

During the gender analysis, it was discovered that Ukrainian legislation paid more attention to regulating business issues and guaranteeing economic freedoms, fair competition, equal access to markets, etc., than consumer rights in these areas.

There were outlined certain regulatory acts concerning the deregulation of the goods and services market as well as the narrowing of the functions of the state related to the regulation of prices and tariffs. These documents declare that the policy of de-bureaucratization/deregulation in the area of pricing is carried out in order to reduce administrative pressure on business, eliminate excessive state interference in economic processes and the development of competition. Such deregulation might create risks of manifestation of both direct and indirect discrimination of certain groups of consumers.

In general, legislative regulation of access to goods and services should not restrict the freedom of economic activity, but at the same time provide for effective mechanisms of protection against discrimination of certain groups of consumers of women and men. In this context, it is necessary to carry out a more detailed gender legal analysis of the content of provisions of the 57 regulatory acts.

Priority measures necessary for the implementation of Directive 2004/113/ EU should include:

Eliminating terminological incompliance between the current Ukrainian legislation and the provisions of the Directive through the definition of the term "harassment" in the Law of Ukraine "On the Guarantee of Equal Rights and Opportunities for Women and Men". Also the definition of "sexual harassment" should be given in the new edition, which would comply with the provisions of the Directive;

- Increasing the application of the provisions of the Directive on the inadmissibility of discrimination on the basis of gender or on other grounds, in normative legal acts, so that it wouldn't be limited to only so-called "profile" laws;
- The application of the principle of equal treatment in the field of education. The norm, according to which women are not admitted to

educational institutions for training the professions listed in the list of heavy work and work with harmful working conditions, which prohibits the use of women's work, should be abolished. The current legislation (including the Law of Ukraine "On Occupation Health and Safety Act") is brought into compliance with the requirements of the Directive;

- Adoption of the draft Law of Ukraine № 3501, which provides for the Verkhovna Rada of Ukraine commissioner's powers extension. There is currently no valid effective mechanism for protecting the legitimate rights and interests of citizens who have been discriminated against;
- Reanimation of the Expert Council work on addressing cases of discrimination based on gender, created under the Ministry of Social Policy of Ukraine, as well as the Expert Council on Non-Discrimination and Gender Equality under the Commissioner of the Verkhovna Rada of Ukraine on Human Rights;
- Strengthening the guarantees of effective judicial protection for the person who was discriminated against. In particular, this concerns the division of the burden of proof in cases of discrimination⁵. The norm of similar content should also be envisaged in the Code of Administrative Procedure and the Commercial Procedural Code;
- Analysis of the provision to state bodies of opportunities to ensure equal access to goods and services for certain categories of the population, as well as to prevent discrimination in this area;
- Extension the list of collaborators. Currently, in the implementation plan of Council Directive 2004/113/EU it is stated that the main responsible for the organization of work and implementation of this plan is the Ministry of Social Policy. However, it is recommended to consider the possibility of involving the Ministry of Economic Development and Trade of Ukraine, Ministry of Information Policy of Ukraine, Ministry of Finance of Ukraine, Ministry of Infrastructure of Ukraine, Ministry of Education and Science of Ukraine, Ministry of Health of Ukraine, The Antimonopoly Committee, and State Statistics Service;

⁵ Currently, only an applicable norm has been implemented in the current Civil Procedure Code, which implies the duty of the respondent to prove the absence of discrimination. Instead, the plaintiff should only provide factual evidence to show that discrimination took place

- Carry out activities to raise awareness of the rules of the Directive among politicians, service providers and citizens. Accordingly, the recommended cooperation with organizations which protect the interests of consumers of goods and services for various categories of women is recommended.

With further work to study the social and legal gender issues and recommendations to legislative, executive authorities and NGOs on finalizing regulations, should take into account the following:

1. To recommend to legislators at all levels when developing, refining, improving the regulatory framework, use a comprehensive gender approach (CGA)⁶.

2. To investigate the compliance of the current legislative norms of Ukraine with the provisions of Council Directive 2000/43/EU of June 29, 2000 on the implementation of the principle of equal treatment of persons irrespective of racial or ethnic origin; compliance of the current legislative norms of Ukraine with the provisions of Council Directive 2000/78/EU of November 27, 2000 establishing a general framework for the equal treatment of persons with disabilities in the field of employment and occupation; compliance with the current legislation of Ukraine by the provisions of Council Directive 2010/18/EU of March 8, 2010 on the implementation of the revised Framework Agreement on childcare leave repealing Directive 96/34/EU.

3. Promote the adoption of anti-discrimination rules of the Labor Code of Ukraine (the Labor Code / the second reading/ July 24, 2017) with the provisions on gender equality and the prohibition of discrimination in terms of any discrimination in the sphere of labour and occupation, in particular the violation of the principle of equality of rights and

opportunities, direct or indirect limitation of workers' rights depending on the following: race, color of skin, political, religious and other beliefs, sex, sexual orientation and gender identity, ethnic, social and foreign background and origin, age, health, pregnancy, disability, suspected or confirmed HIV/AIDS diagnosis, family and property status, family responsibilities, place of residence, membership in a trade union or other association of citizens, participation in a strike, appeal or intent to apply to a court or other bodies for the protection of their rights or to provide support to other employees in the protection of their rights, linguistic or other grounds, not related to the type of work or working conditions. It is the commitment of Ukraine in terms of the implementation of the Action Plan on Visa Liberalization, as well as in accordance with the Association Agreement with the EU and the implementation of Council Directive 2000/78/ EC (November 27, 2000) on the general principle of equality in employment and occupation.

⁶ In accordance with the Resolution of the Cabinet of Ministers of Ukraine dated April 12, 2006, № 584 "On conducting a gender expertise", all normative acts, which are developed and submitted to the Ministry of Justice of Ukraine, undergo such an examination. The methodical recommendations for this procedure are developed. It states that the gender legal examination of draft legal acts, the mandatory implementation of which is established by part three of Article 4 of the Law of Ukraine "On ensuring equal rights and opportunities for women and men", provides, in accordance with Article 1 of this Law, the analysis of draft normative and legal acts, legal acts, the result of which is to provide an opinion on their compliance with the principle of equal rights and opportunities for women and men, the purpose of gender expertise is to prevent the possible adoption of legislation teaching and executive authorities, and the President of Ukraine of normative legal acts containing prohibited discriminatory norms on the basis of gender, that is, promoting the establishment and protection of human rights and freedoms



Anti Discrimination Legislation in Georgia

Countering discrimination at the workplace

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General Problem Statement

There are multiple forms of women discrimination in labour relations, however these facts are relatively less explored due to the following reasons: lack of statistics, lack of court-cases and lack of reporting on behalf of the victim. Often, the woman victim cannot realize that she has been discriminated and regards unfavorable conditions of overt and covert discrimination as normal. Covert discrimination is very much related with cultural stereotypes and prejudices which are internalized by many victims. However, it is also frequent that the woman victim of discrimination is simply afraid to report: in case of ineffective reaction, she will be further discriminated and isolated. Even those illegally dismissed, are afraid to file the case — report says. In the cases when the victim applies to the court other significant barriers include the difficulty of gathering relevant evidence and the burden of proof.

Women's promotion barriers "the glass ceiling" also represent a common form of discrimination, however one of the most difficult to prove. As the report states, women and women's rights organizations doesn't have much practice to gather relevant data and evidence to qualify an action as the result or the process of discrimination due to "glass ceiling".

Discrimination in the pre-contact relations is common and starts from the job-announcement phase. It includes the format and the content of the job-interview and the conditions of the contract. As the report states, there are still numerous cases when women report about the pre-contract discrimination but don't fill a case at the court.

One of the most covered and unreported discrimination forms is the sexual harassment. It has been declared illegal by the Gender Equality Law of Georgia, however this law doesn't really give flexible enough definition to enable women to name certain behaviors as manifestation of sexual harassment. It also doesn't include any sanctions to be assigned. The reports of the sexual harassment are not explored by any qualified unit/mechanism. Regular mechanisms of administrative complaints don't guarantee any privacy requested by the character of the violation. The victim cannot independently investigate the case, since the community at the workplace as well as in general doesn't show solidarity and mainly blame her.

Concept of Discrimination According to the Georgian Legislation

According to the Article(2.3 Employment Relations) of the Labor Code:3. Any form of discrimination is prohibited in the employment and pre-contractual relationship based on race, color, language, ethnic or social belonging, nationality, origin, economic condition or status, place of residence, age, gender, sexual orientation, disability, membership of religious, public, political or any union, including professional unions, marital status, political or other views.

Problem Statement at National level

Despite the fact that Organic Law, labor Code of Georgia recognizes non-exhaustive lists of prohibited grounds of discrimination, there is still some lack of classic signs of discrimination such as: health conditions, pregnancy or childcare, whereas the most unequal treatment and gender discrimination is linked to abovementioned grounds of discrimination.

Thus, adding the pregnancy or childcare, and health conditions, as classic grounds of prohibition of discrimination in Labor Code will prevent or mitigate gender based discrimination at labor relations.

According to the Labor Code of Georgia, article 2, paragraph 3, discrimination is:

1. Harassment — direct or indirect harassment with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.

And/or

2. Unequal treatment — creating conditions where one person, directly or indirectly, is treated less favorably than another is, has been or would be treated in a comparable situation.

Unlike the International standards, concepts of "direct discrimination" and "indirect discrimination" are not defined in the Labor Code of Georgia.

Though, the "Law on the Elimination of all Forms of Discrimination", adopted in 2014, includes labor relations and defines these concepts.

According to the abovementioned Law, Article 2, paragraphs 2 and 3:

Direct discrimination shall be any treatment or creation of any conditions putting a person in a disadvantaged position in the enjoyment of the rights determined by the legislation of Georgia based on any of the grounds listed in Article 1 of the present law, as compared to other persons in similar conditions, or putting in equal condition those persons, who are in essentially unequal conditions, unless such treatment serves a legitimate purpose, including protection of public order and morale, has objective and reasonable justification and is necessary in a democratic society and where the measures applied are proportional for the achievement of such purpose.

Indirect discrimination shall be a condition, where a provision, criterion or practice of a conditionally neutral and essentially discriminatory content exists, putting in a disadvantaged position persons under one of the grounds listed in Article 1 of the present law, as compared to other persons in similar conditions, or putting in equal condition those persons, who are in essentially unequal conditions, unless such a condition serves a legitimate purpose, including protection of public order and morale, has an objective and reasonable justification and is necessary in a democratic society and where the measures applied are proportional for the achievement of such purpose.

Conclusion

The abovementioned norms of the "Law on the Elimination of all Forms of Discrimination" are in compliance with the contents of the terms in the Directives.

Recommendation

It is desirable that the Labor Code of Georgia, the normative act regulating labor activities, defined

the concepts of direct and indirect discrimination. The Code, as well as the "Law on the Elimination of all Forms of Discrimination" does not involve sexual harassment as a form of discrimination.

The Labor Code defines harassment with general terms. As for the "Law on the Elimination of all Forms of Discrimination", article 6, "sexual harassment takes place when any form of unwanted physical, verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment."

This problem is discussed in the Report 2018 of the experts committee of the International Labor Organizations⁷.

It is worth noting, that on April 4, 2017, the Georgian Government received an ordinance on the "Definition of General Rules of Ethics and Behavior in the Public Institution", that somehow regulates aspects⁸ of sexual harassment. This is a positive step forward, though it does not comply with the standards set by the Directives. Apart from that, private legal relationships are not regulated, as these rules are related only to the public sector.

Recommendation

Sexual harassment should be defined as a form discrimination in compliance with the international standards. Prohibition of sexual harassment should be written in the relevant part of the Code on Administrative Offences and a system of adequate sanctions should be launched. Role of an employer should be outlined with regard to fighting against sexual harassment. This involves creating relevant policy documents, campaigns for raising awareness, etc.

Article 2, paragraph 3, the Labor Code of Georgia, prohibits discrimination in labor relations. Namely, it says: any type of discrimination due to race, color, language, ethnic and social category, nationality, origin, property and position, residence, age, gender, sexual orientation, limited capability, membership of religious or any other union, family conditions, political or other opinions are prohibited in employment and pre-contractual relations.

⁷ http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3342182:NO

⁸ 200 Ordinance April 4, 2017, Georgian Government, on the "Definition of General Rules of Ethics and Behavior in the Public Institution", article 15.

Though, this definition involves all the prohibited grounds of discrimination, in practice it may create a problem in the employment and pre-contractual relations in case of discrimination on a ground that is not written in the article 2, paragraph 3, of the Labor Code of Georgia.

Recommendation

Accordingly, the definition should be formulated in such a way as to set prohibition of discrimination on any other grounds and should not list all the grounds.

Denial in employment

According to the article 5.8 (Pre-Contractual Relations and Exchange of Information Prior to Conclusion of Employment Contract) of the Labor Code: 8. an employer shall not be liable to substantiate his/her decision not to hire an applicant.

The right granted to the employer by the labor Code — not to justify the reasons for denying the employment during the pre-contract labor relations — remains as an encouraging factor for discrimination. This provision creates a problem of accessibility to the justice, as it does not oblige the employer to develop the document describing the reasons for denial that could be used by the party for appealing. The practices of the GTUC show that this provision mostly affects women, who were denied in employment because of their family responsibilities (married women, child care or women career of persons with disabilities, mothers of large families) and pregnancy.

Recommendation

Article 5 para 8 Should be amended as follow: If candidate indicates circumstances that creates a reasonable doubt to believe that the employer acted against article 2 paragraph 3 of the labor Code, (prohibition of discrimination), employer shall be obliged to justify the refusal in employment⁹.

Equal pay for Equal work

There is no existing regulation providing equal pay for equal work in Georgian labor legislation.

Women's economic activity is directly linked to the index of their employment. Despite the number

of positive steps made to improve labor regulations in 2014, the issues of women's promotion, women's economic empowerment and equal participation in economic development, as well as proper pay remain problematic. The feminization of poverty and a high rate of violence against women is mainly caused by a low economic activity of women. According to an official statistical data, more women are employed than men. However, women's average pay is much lower than men's one. Income inequality is mostly caused by employment of women in low paid sectors and position and by deeply entrenched so called "glass ceiling" impeding women's career promotion and advancement.

The violation of women's labor rights is a multi-factorial issue and it has to be explored within several cross-cut areas. It deals with the traditional cultures and stereotypes that usually hinder women's participation, the lack of positive actions and excessive gender neutral legislation, the lack of employment opportunities, the lack of legal aid and consulting etc.

The woman's role has always been considered as to take care of domestic tasks. Stereotypes about women's ineffectiveness in the managerial and decision-making positions are still deep-rooted. Regrettably, The Government of Georgia has not taken any substantial steps or implemented relevant policies to wage awareness increasing campaigns to promote women's equality in labor relations and to gradually eradicate persisting gender stereotypes in the society.

Legal frameworks, though undergoing significant changes, are still lacking gender sensitive provisions. Unfortunately, the need for affirmative action is not adequately supported. The Parliament of Georgia has failed recently to adopt the law of Georgia on Gender Quota, which could enable equal presentation and participation of women in the Parliament and the local municipalities. Due to a big disbalance between family and work responsibilities, women are affected to combine pregnancy, delivery, breastfeeding and childcare with a full-time job and workload. Women often sacrifice their professional career to their family responsibilities. Many employers treat women as "problem causing" workers, who would often be absent and

demand additional privileges, like maternity leave. Such situation leads to gender discriminations, when employers are reluctant to employ women; women are low-paid, not promoted etc. There are no concrete policies in place in Georgia, to provide meaningful assistance to women to combine their family responsibility with their work duties. According to the 2017 Parliamentary report of the Public Defender of Georgia, women's activity and participation in the country's economic life is very low. The Ombudsman reports that, according to the data from the "Global Gender Gap Index¹⁰" Georgia ranks 75th out of 136 countries.

The Georgian legislation does not give full expression to the principle of equal remuneration for men and women for work of equal value. Neither does it give any definition of remuneration. The principle of the Convention #100 is not reflected explicitly in the Labor Code and law on gender equality, even if Georgia had ratified it in 1993. Article 2(3) of the Code contains a general prohibition of discrimination in labor relations. Georgia has no methodology to measure/evaluate value of job.

The CEACR recalls that even though general non-discrimination and equality provisions are important, they are not sufficient to give effect to Convention #100 if they do not capture the key concept of "work of equal value". This concept lies at the heart of the fundamental right of equal remuneration for men and women for work of equal value, and the promotion of equality.

Due to historical attitudes and stereotypes regarding women's aspirations, preferences and capabilities, certain jobs are held predominantly or exclusively by women (caring professions) and others by men (construction). Often, "female jobs" are undervalued in comparison with work of equal value performed by men when determining wage rates. The concept of "work of equal value" is fundamental to tackling occupational sex segregation because it permits a broad scope of comparison, including, but going beyond equal remuneration for "equal", "the same" or "similar" work, and also

encompasses work that is of an entirely different nature which is nevertheless of equal value.

The Committee, once again, urges the government to take concrete steps to give full legislative expression to the principle of equal remuneration for men and women for work of equal value, with a view to ensuring the full and effective implementation of the Convention. After the abolition of the Labor Inspection Service in 2006, no labor supervisory body was put in place which means that there is no adequate and effective enforcement mechanism to ensure that the principle of equal remuneration between men and women for work of equal value is applied into practice and to allow workers to avail themselves of their rights. Without the creation of a labor supervisory body, the existing and future provisions ensuring workers' labor rights, the prevention of discrimination will stay unattended and unreported.

According to the assessments by the independent experts the wages paid to female employees generally constitute only 2/3 of wages paid to male employees in the country (GenderPayGap-GPG).

The Georgian Bureau of Statistics provides annual gender-disaggregated data on market participation, average salaries and average education. According to official statistics, the average salary of women is falling behind that of men. According to the last statistical data, the average monthly nominal salary of men constituted GEL 1116,6, while GEL 731.2 for women. Respectively, women earned on average 65% of men's salary in 2016 (Georgian Bureau of Statistics).

The survey conducted by the Center for Social Sciences (CSS) in 2014¹¹ also depicted the inequality among the average salary distribution among men and women, regardless of similar education. Women's average salary ranges between GEL 251-400 whereas for men the average salary is between GEL 401-700. The educational level does not affect men's salary (except in the case of a PhD degree), while women need an undergraduate or graduate degree to earn as much as a man with a secondary

¹⁰ <http://www.weforum.org/reports/global-gender-gap-report-2013>

¹¹ Study the gender discrimination in workplace, the representative survey has been conducted in entire Georgia [excluding the separated territories of the South Ossetia and Abkhazia]. The survey has included the individuals who reported themselves as employed formally or informally in urban areas of Georgia. It has not included the self-employed individuals or employed individuals residing in the rural 23 areas. Totally, 1364 full interviews were collected, reflecting the specified target group with the 95% confidence interval. (<https://article42.ge/media/1001447/2017/09/11/6c0cb0d69764bea21f32052f5abce8ce.pdf>).

⁹ Para 6 of Article 2 of European Social Charter, CEACR: Individual Observation concerning Right to Organize and Collective Bargaining Convention, 1949 (No. 98) Georgia (ratification: 1993) Published: 2010

education degree. The unequal average salaries can be influenced by the fact that more men (65%) work in the private sector, whereas women are working in private and public sectors in equal shares (47% respectively).

Horizontal and vertical segregation also contributes to wage inequality and the study found evidence of both horizontal and vertical segregation in Georgia. Vertical segregation is manifested by the fact that 65% of respondents reported having a male manager, whereas 31% reported having female direct managers. Horizontal segregation is reflected in findings that 79% of employees working in health and social sectors and 78% of employees in education sector are women, compared to 96% of employees in construction sector, 91% of employees in transportation and storage sectors and 47% of employees in public administration and defense, compulsory social security sectors are men.

Gender disparity exists in benefits and other wage components: 66% of men (who have been eligible for bonuses/compensations) got bonuses, compared to 34% of women. 60% of men got premiums, compared to 41% of women (who responded that they were rewarded compensations/benefits by their employer). There is also a wide gender gap regarding health insurance: 67% of men and only 33% of women claimed having health insurance provided by their employer.

Despite the fact that national health insurance does exist in Georgia, private health insurance often provides better or extra coverage of health-related expenses. Many gender differences regarding bonuses, benefits and compensations may be also explained by the gender segregation in the Georgian labor market. However the gender gap concerning bonuses, premiums and compensations was significantly large which may also point to gender discrimination.

Recommendations

- Changes and amendments in the Labor Code to ensure implementation of ILO Convention #100.
- Specifically express the principle of equal remuneration for men and women for work of equal value in the law in respect of fully and effectively implementation of ILO Convention #100. Paragraph 7 should be added to the article 2 of the Georgian Labor Code as follow: Men

and women workers are entitled to equal pay for equal work, which itself means, the actual salary and any other remuneration that employer pays to employee in direct, or indirect way, by money or in kind contribution.

- Georgian government should develop the methodology, based on the objective criteria which will measure any work done by employees.
- Implement effective enforcement mechanisms (labor regulatory body) to guarantee the principle of equal remuneration between women and men for work of equal value is put into practice.

The right of employed women to protection of maternity

The labor code does not provide enough protection of maternity.

Women in private sector get only 1000 GEL benefit from state budget during maternity leave and employer does not have an obligation to reimburse her compensation, the gap between her salary for 183 days and state benefit 1000 GEL. In practice, this regulation obliges an employee to return to job as soon as possible to get salary and therefore her right to maternity is violated.

Also, Georgian labor code does not provide any guarantees of maintaining jobs for women after expiration of maternity leave. It should be mentioned that female public servants get full amount of salary during maternity and additionally they are protected from dismissal during 3 years after childbirth. This attitude can be considered as discrimination depending on place/sector of employment. Because of the above mentioned situations, women in Georgia often are in front of the dilemma to make an option between job and child birth. Constitutional lawsuit on this matter has already been prepared for submission to the Constitutional Court of Georgia by the project lawyers.

In addition, pregnant women cannot get free time for medical examination. In case she is absent even for this reason it can be considered as the violation of labor contract or even ground of dismissal.

ILO Convention 183 on Maternity Protection¹², European Social Charter, article 8, 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) define that the state should take measures for protection of women during pregnancy, maternity leave and child care and take the appropriate measures.

Article 6 of the convention 183 states that cash benefits for maternity leave shall be at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living and that medical benefits shall be provided for the woman and her child in accordance with national laws and regulations

Recommendation

Article 262 shall be added to the Georgian labor Code with the following paragraphs:

1. Absence shall be considered valid and payable due to employee's medical examination if he/she presents to employer appropriate statement on medical treatment. The same provisions apply to pregnant women;

2. On the bases of medical examination employee has rights to ask for temporary lightening the job, or removing to the place suitable of his/her health condition. Employee will be given salary according to his/her new position if it is more than he/she gets in previous positions. If salary for previous position was more than the new one, he /she is entitled for maintaining previous amount of salary.

3. If it is not possible to transfer pregnant women to the lighter position, according to the time-limit considered on medical conclusion, pregnant employee shall be free from her work duties, at the same time she maintains not less than three month salary, which itself shall not be considered as a temporary disability according to para "I" of Article 36 of Georgian labor Code.

4. In case of request, women should be granted to annual paid leave by enterprise, institution, organization during the pregnancy or right after giving the birth regardless of her work experience.

Para 2 shall be added to Article 29 of Georgian labor Code:

1. In line with cash allowances that employees get from state budget on maternity or child care leaves, she also gets compensation in the full amount of the

salary as she was entitled to have during maternity leave or child care absence.

2. Compensation for pregnancy, maternity or child care leave shall be paid by state budget or by employer.

3. Employee who has already used maternity and newborn adoption leaves is guaranteed to have the same job or equivalent of her job, with the same amount of salary. In case salary has been risen for her position during her absence she is entitled to get already risen salary.

4. Employer shall take any measures (trainings, awareness raising activities) to enhance knowledge of newly returned employee from maternity or child care leave, in order to have an opportunity to be fully engaged in her work and to be competitive on labor market after a temporary absence, which was caused by performance of family responsibilities¹².

Termination of labor contracts

Article 37, para 3, (Grounds for Termination of Employment Relations) of the Labor Code: c) Pregnancy leave for the period specified in Paragraph g) of Article 36 from the moment the employee notifies the employer about her pregnancy, with the exception of cases when the employment contract is terminated on the grounds set in Subparagraphs b), c), d), e), g), h), j) and l) of Paragraph 1 of this Article;

One of the problematic issues is termination of labor relations during the period of pregnancy. Although the Labor Code protects pregnant women from unlawful dismissal, but not with regard to all possible grounds for termination of labor relations envisaged by the law. For example, the law allows dismissal of a pregnant woman because of expiry of the contract term. Very often the pregnant women are denied from conducting new contracts because of expiry of the previous contract term, while the contracts are easily renewed for new term with other employees.

The current law does not secure the employee possessing an infant from dismissal. Very often, after the maternity leave the employees are asked to pass different examinations (attestation, tests, etc.) thus creating the objective problem because, after the long leave the employee needs reasonable time to adapt to the changed environment.

Employee during the pregnancy, on maternity

¹² ILO convention 156 Workers with family responsibilities convention, ILO Convention 183 on Maternity Protection and ILO recommendation 191

leave, newborn adoption leave or under child care leave, and mother of child up to age three shall not be dismissed from work on the bases of termination of contract.

Recommendation

Provisions of Georgian Labor Code stating that expiration of labor contract might cause dismissal from work, shall be removed from the Code without additional notice, highlighting the fact that this provision does not apply to pregnant women on those on maternity leave.

Sexual harassment

One of the most covered and unreported discrimination forms is the sexual harassment. It has been declared illegal by the Gender Equality Law of Georgia, however this law doesn't really give flexible enough definition to enable women to name certain behaviors as manifestation of sexual harassment. It also doesn't include any sanctions to be assigned. The reports of the sexual harassment are not explored by any qualified unit/mechanism. Regular mechanisms of administrative complaints don't guarantee any privacy requested by the character of the violation. The victim cannot independently investigate the case, since the community at the workplace as well as in general doesn't show solidarity and mainly blame her.

Burden of Proof in case of discrimination

According to the requirements of the international standards burden of proof on defendant/employer in any legal case that is based on discrimination.

The amendments and supplements to the Labor Code, made on June 12, 2013, somehow cover the international standard. The article 402 on prohibition of discrimination was added to the Code. Paragraph 3 says: The burden of proof for the claim submitted in the case on terminating labor relations with or otherwise persecuting employees for being members of an employees' association or for participating in the activities of a similar association, or on the grounds of discrimination under the article 2 of this

Code, shall lie on employers if employees allege the circumstances providing a reasonable cause to believe that employers acted in breach of the above-mentioned requirements.

Recommendation

In order to be considered all the standards of the Directives, burden of proof should lie on an employer not only in the above-mentioned cases or when terminating labor relations, but in any case where there is a dispute on discrimination related to pre-contractual and labor relations.

Compensation and Pay for Damage in case discrimination

International Standards set obligations to elaborate legislation and mechanisms that ensure victims of discrimination receive effective compensation and/or pay for damage.

The Labor Code does not include such mechanisms, though these issues are somehow regulated by the Law of Georgia On the Elimination of All Forms of Discrimination and the Civil Code. Issues of compensation and pay for damage should be

Anti Discrimination Mechanism

Member States to not only adopt legislation but also launch effective mechanisms that ensure equality. According to the statute of the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia, approved by the Government of Georgia, ordinance #473, on October 14, 2018, the main activities of the Ministry in the field of labor and employment is implementation of social security mechanisms in organizations and establishments and promotion¹³ of elimination of labor discrimination.

According to this statute, tasks and competence of the Department of Labor Conditions Inspection are: to elaborate relevant recommendations¹⁴ for preventing cases of discrimination at workplace or forced labor and, in case of request of employees

and/or employer, study and analyze cases of discrimination and its causes at workplace and elaborate relevant recommendations¹⁵.

Though, by the statute of the department, such functions are restricted at this stage¹⁶.

The department has opportunities to work on the issues of discrimination within the framework of the State Program 2018 of Labor Inspection approved by the #603 ordinance of the Government of Georgia. Though, it can not be effective, as it is based on voluntariness. In case of violation, the Department will restrict only with recommendations¹⁷.

Thus, at this stage the Department of Labor Conditions Inspection is not a mechanism for fighting against discrimination.

It is worth noting, that since 2014 the Public Defender of Georgia monitors the processes of elimination of discrimination and of ensuring equality (in the sphere of labor relations as well) according to the Law of Georgia On the Elimination of All Forms of Discrimination that The Public Defender of Georgia carries out the cases on discrimination on the basis of applications and complaints of physical and legal persons or group of persons. The Public Defender is authorized to end the case with conciliation. If conciliation is impossible and discrimination is proved, it refers relevant person to restore the rights of a victim. Within the framework of the mandate, the Public Defender is authorized to issue a general proposal and send it to the relevant establishment for preventing discrimination and fighting against it.

If an administrative body does not fulfil a recommendation and there are enough proofs to prove discriminatory treatment, the Public Defender is authorized to file an appeal to a court against the administrative body.

In spite of that, due to its limited mandate, the Public Defender can not be considered to be an effective mechanism against discrimination. Reason for that are the following circumstances:

1) In spite of the fact, that the Public Defender's mandate covers public as well as private sectors, legal persons of private law do not have obligation to submit the information that is necessary for studying

a case. In many cases this becomes an obstacle for the Public Defender to study a case, consequently, legal procedures are terminated;

2) The Public Defender's recommendation does not have an obligatory force and in relation to private persons it is limited to address to a court when a recommendation is not fulfilled.

3) Due to the existing legal regulations, a victim of discrimination prefers to address a court as there are limited terms for addressing to a court. Discussions on a case at a court or an administrative body¹⁸ may be a basis for the Public Defender to terminate legal procedures.

4) Apart from that, within the framework of the Public Defender, it does not have a right to enter a workplace and study a case with its own initiative.

Common courts are means for fighting against discrimination. They discuss cases on discrimination according to the special rule of court processes. As a result of a court dispute, a victim of discrimination can request termination of discriminatory actions and/or elimination of its results and compensation¹⁹ for moral and material damage.

Though, taking into consideration, that court disputes are connected to financial resources and take much time, mechanisms of labor inspection should be strengthened. It should have perfect mandate, elaborated according to the international labor organizations, to fight against discrimination in labor relations.

Online trainings conducted by Integrity Action, to disperse the information among the colleagues and to ensure the GESI strategy is maintained during the implementation of the project. Ignoring GESI issues brings not only direct, but also indirect results for the people who do not even realize that unless they are told about the problem, its roots and consequences.

¹³ Government of Georgia, ordinance #473, on approving the statute of the Ministry of Internally Displaced Persons from the Occupied Territories, Labor, Health and Social Affairs of Georgia, article 2, paragraph "f", "e, d" subparagraphs.

¹⁴ Article 19, paragraph "c"

¹⁵ Article 19, paragraph "d"

¹⁶ Ordinance of Georgia on Labor, Healthcare and Social Protection #01-1/N. Article 7

¹⁷ Ordinance of Government of Georgia, #603, on 2018 State Program of labor Inspection article 2, paragraph 1, article 3, paragraph

¹⁸ Law on "Elimination of all Forms of Discrimination" article 6



Anti Discrimination Legislation in Armenia

Countering discrimination at the workplace

Ani Harutyunyan, NGO "Armavir Development Center"

Part 1 : Description of the issues with which Armavir Development Center socio-economic non- governmental organization works in the field of gender equality and non-discrimination in Armenia

The Global Gender Gap Report 2017 | World Economic Forum²⁰.

The Global Gender Gap Index was first introduced by the World Economic Forum in 2006 as a framework for capturing the magnitude of gender-based disparities and tracking their progress over time. 2017 year's edition of the Report benchmarks 144 countries on their progress towards gender parity on a scale from 0 (imparity) to 1 (parity) across four thematic dimensions—Economic Participation and Opportunity, Educational Attainment, Health and Survival, and Political Empowerment — and provides country rankings that allow for effective comparisons across regions and income groups.

Armenia is ranked 97th among 144 countries in the World Economic Forum's Global Gender Gap Index 2017. The index is designed to measure inequality between men and women in different countries on 14 criteria in four key areas: economic participation and career opportunities, education, health and survival and political rights and opportunities. Armenia has passed only 67.7% of the road to complete equality, and this makes 68% of the median level.

Over one year, Armenia has gone five notches up in the ranking. Armenia is crippling especially in one of the four areas — gender equality in health and survival, where also male and female life expectancy is measured as well. The country is 143rd here.

Opportunities to be engaged in political activity got a low mark as well, and Armenia came 11th here. The country is ranked 71st in the male and female equality in economy category, and it is quite successful in maintaining equality in education area – the 42nd rank.

Part 2: Description of the activities and other activities of the organization of Armavir Development Center that were carried out in the field of gender equality and non-discrimination

Armavir Development Center (ADC) non-governmental organizations (NGO) was established in 2005. The mission of the NGO is "Collaboration for socio-economic progress". To implement its mission effectively, the organization has adopted the following strategic directions:

1. Improvement and consolidation of democratic system;
2. Support of civil society;
3. Sustain social and economic development.

The NGO has received a benchmark recognition in 2013 from the international community in the country, when the executive director of the NGO, Naira Arakelyan, received the "Woman of Courage" award. ADC has also received the Golden Key Award by the Freedom of Information Center Armenia and Certificate of Appreciation by the Ministry of Justice and the Chief Prosecutor of RA.

In addition to these, ADC is a member of Eastern Partnership Civil Society Forum (the leader of the national "Social dialogue and policy" working group and international "social policy" sub-group), Open Government Partnership Armenian platform, CSO board attached to the Ministry of Justice of Government of Armenia, as well as South Caucasus Women's Congress and Women in Business: Invest for the Future platforms.

Armavir Development Center NGO has been involved in the protection of women's rights and combating violations since its foundation. ADC has carried out a number of projects in the field of gender equality and non-discrimination for the benefit of social protection and human rights.

Activities carried out in the gender field

"Combating Gender-Biased Sex Selection in Armenia"

Project funded by European Union, during 2015-2017. The project aimed to contribute to a reduction of gender-biased sex selection in Armenia, resulting in at least 15% positive change in knowledge, attitude and perception of target population groups toward gender-biased sex selection and at least a 10% reduction in the number of sex-selective abortions.

The project envisaged achieving its objectives through the sequence of interlinked activities including policy analysis and advice, research, institutional capacity building, training, awareness raising and advocacy campaign.

"Promoting gender equality and combating domestic violence in 5 rural communities through training for community based institutions"

Project funded by Canada Fund for Local Initiatives. The project aimed at cooperation of community based institutions promoting gender equality and decreasing domestic violence in Armavir villages. The project was implemented in Armavir region of Armenia. ADC targeted the main community based structures: schools, healthcare facilities, local self government bodies and the Police. There has been organized a sequence of trainings and round table discussions for the members of mentioned institutions on women rights, women participation, domestic violence, cooperative work with these 4 structures in favor of decreasing the cases of domestic violence.

"Women Participation and Leadership"

Project funded by the US Embassy in 2016. The project aimed to promote women participation and leadership in decision making and governance, in order to reach gender equality and empowered democratic governance in 5 communities of Armavir

region. In the frames of the project, ADC organized town hall meetings with equal participation of women to collect community information/demand and raise issues for budget development and quarterly development plan. There were designed a first-ever hands-on curriculum for Democracy School for women, as well as training of observers with an aim to equip women with observation skills, thereby enhancing the transparency and credibility of observed elections.

"Promoting the right to education of Yazidi girls/women"

Project funded by the US Embassy in 2018. The project aimed to promote the realization of the right to education of Yazidi girls and women, strengthening the respect for human rights and fundamental freedoms. A target group was formed from the representatives of Yazidi minorities who were fostered to realize the importance of education and share this perception among other minorities. Also, the project formed a strong network of teachers who promote inclusive and further education for all.

Gender equality was also promoted through intercultural learning ERASMUS+ projects carried out with 2 phases, one in 2016 and one in 2017. The aim of these activities was not so much to make young people aware of existed gender inequalities, but analyze and discuss about them through the culture and history, to make youngsters understand why this unequal situation was not as acceptable as they might think. This youth exchange was especially productive by the confrontation with other cultures from Europe, which helped to reflect on and put things into perspectives from their own societal expectations.

Throughout its activities, ADC NGO has also carried out monitoring activities in the sphere of domestic violence²¹ and employment²² in Armavir region, as a result of which we have survey reports in the mentioned spheres. The research on domestic violence covers a comprehensive analysis about perception of domestic violence; its causes, people's attitude towards the issue, pressure incidents, as well as the mechanisms of reducing domestic

²⁰ http://www3.weforum.org/docs/WEF_GGGR_2017.pdf

²¹ <https://drive.google.com/file/d/1ldjdpQIJOCx2PwskQT1JWPbqbVVPo0/view?fbclid=IwAR00qMCfllpreAEoP725W50IFXg>

²² [GhcaKmC-ruEr4gT-cAgOtere3_LRSRs](https://drive.google.com/file/d/1ldjdpQIJOCx2PwskQT1JWPbqbVVPo0/view?fbclid=IwAR00qMCfllpreAEoP725W50IFXg)

violence in Armavir region. The second survey report on employment covers statistics and analysis on the discrimination that women face in the labor market in Armavir region, which makes them highly vulnerable to exploitation.

Besides conducted projects, ADC has been mainstreaming **"Gender Equality and Social Inclusion (GESI) strategy"**²³ in the organization since 2018 February. It has been provided by the partner Integrity Action, which is an organization and an active network of committed NGOs, universities and policy makers, working closely with governments, media organizations and businesses for a just and equitable world, where citizens are empowered and integrity is central to vibrant societies. With this Strategy ADC integrates gender equality and social inclusion into every aspect of its work, supporting to reduce inequalities and exclusion. To operationalize the strategy, ADC has a Focal Point who is ADC's responsible person on GESI strategy.

The GESI focal point's main function is to attend the online trainings conducted by Integrity Action, to disperse the information among the colleagues and to ensure the GESI strategy is maintained during the implementation of the project. Ignoring GESI issues brings not only direct, but also indirect results for the people who do not even realize that unless they are told about the problem, its roots and consequences.

Part 3: A description of the impact and results of Armavir Development Center NGO's activities that have been achieved through the organization's activities in the field of gender equality and non-discrimination

"Combating Gender-Biased Sex Selection in Armenia"

Achieved impact and results

With quite intensive involvement of project beneficiaries, Armavir Development Center, International Center for Human Development (the lead applicant),

Save the Children International, Martuni Women's Community Council, the Armenian government has developed Mid-term (2015-17) and Annual Action Plans (2015) to address issues of gender biased sex selection, specifically addressing selective abortions and greatly emphasising the support of this project to the implementation of relevant public policies.

The regular round tables and resulting policy briefs keep the multi-stakeholder results oriented dialogue on prevention of sex selective abortion ongoing, and thus the issue in the limelight on Armenia's policy agenda.

These outputs and the two comprehensive policy papers on social and health policies addressing sex selection, and four policy briefs by PAPAG significantly contribute to the relevant policy making in line ministries, each of which has a representative routinely liaising with the project coordinator on the progress of the project. Several of the policy recommendations outlined in policy papers and briefs have already been approved by the government.

For instance, the policy recommendation on offering state-sponsored assistance to working mothers that have opted to return to work after six months from childbirth aimed at extending and improving work-life balance for women has been officially circulated by the government and included in the 2016-18 Action Plan for the implementation of the Demographic Strategy of RA. This impact was consolidated through three major results:

- There has been created a Countrywide Community of Practice (CoP) network of practitioners, key local actors engaged in action against gender-biased sex selection. The CoP currently has over 400 members in all the regions and Yerevan.
- Positive change in public perception and attitude towards gender-biased sex selection is achieved. 30% of target population is aware of the causes and consequences of female infanticide and sex selective abortion in Armenia.
- Positive change in national policies and programs to combat gender-biased sex selection in Armenia, based on evidence and supported by civil society.

"Promoting gender equality and combating domestic violence in 5 rural communities through training for community based institutions"

Achieved impact and results

- 84 representatives from schools, healthcare facilities, local self government bodies and the Police developed their capacities and knowledge on gender equality and domestic violence.
- Cooperation network has been created among local self government bodies- Police-school-healthcare facility in struggling against domestic violence.
- There has been elaborated cooperative plan/ Policy of joint work for struggling against domestic violence, which provides the 4 structures an opportunity to struggle against domestic violence jointly.

"Women Participation and Leadership"

Achieved impact and results

Women participation in local governance and decision making processes was increased by organizing Town Hall meetings and ensuring balanced participation of women; Future women leaders were prepared by establishing democracy school for them; Transparent and accountable elections were ensured in selected communities by training observers from active members of target communities and implementing election awareness campaigns. Democratic processes was promoted by increasing respect for human rights. In the frames of this project, ADC also registered some success stories:

- A woman from Nor Kesaria was selected as a member of council. She participated in the trainings and run for the position of councilor's member and was elected. She is the first woman councilor's member. The women of the community are also encouraged. The details are available at: <http://infotun.armavirdc.org/508.html>
- Another woman from again Nor Kesaria village was assigned to work as a head of Staff of the Municipality of their village in the result of active participation and encouragement of the trainings. The details are at the following page: <http://infotun.armavirdc.org/509.html>
- Two women form Norapat village are also run

for the position of councilor's member. They participated on the trainings and were encouraged to be nominated in the positions in local self government bodies, so they are now run for the positions, the elections will be conducted in September 2016.

- Two women from Tandzut village who participated both in democracy school trainings and town hall meeting of the project were also nominated for the positions of councilor's members. A girl from again Tandzut village assigned to work in Armavir in the result of active participation on the trainings and low recognition level increase on women rights and participation.
- Two women from Metsamor town again assigned to work. They participated both on democracy school trainings and town hall meeting, were encouraged and became aware on women rights and participation in the result of which they found a job and began to earn themselves.

"Promoting the right to education of Yazidi girls/women"

Achieved impact and results:

Awareness level on the issues of Yazidi people, particularly, educational restrictions of Yazidi girls/women was raised and the importance of education was promoted in Armavir region (at least 500 people of directly engaged in community meetings, 22 teachers participated in the training and about 10.000 people of indirectly informed through TV programs, educational materials, posters and social media).

Teachers of target communities who work with Yazidi pupils of 11 communities in Armavir region developed their capacities on how to ensure inclusive and quality education for all.

Teachers were equipped with mechanisms of how to encourage the importance of education and inspire Yazidi pupils to continue secondary education from the 8th level and up. Yazidi pupils' parents were informed about the negative consequences of early removal of teenage girls from schools for marriage and inspired to promote their children's education. Yazidi girls/women were encouraged to apply for further education and self-development. The long-term impacts of the project is:

²³ <https://integrityaction.org/sites/default/files/publication/files/Integrity%20Action%20GESI%20%20Strategy%20-%20Version%202.pdf>

- Positive change in knowledge, attitude and perception of yazidi people towards the realization of the right to education of Yazidi women and girls;
- Reduction in the number of early removal of teenage girls from schools;
- Key attention and interest raised among key stakeholders, direct and indirect beneficiaries on the issue and improvement of the gap in the future.

Gender equality was also promoted through intercultural learning ERASMUS+

Achieved impact and results:

The project increased women's knowledge about gender concepts and gave tools upon struggling against the brunt of gender-based oppression. They became the bearers of gender equality defense and disseminators of women's rights protection.

As for men participants, sense of respect was strengthened towards women's rights and they started considering women as equal partners. Men realized that gender equality is socially and economically beneficial for men, which, in its turn, motivated them to become strugglers against brunt of gender-based oppression too. Both women and men participants improved their personal skills in negotiation, lobbying and action planning for a meaningful change in their organization/community/country.

Generally, the project had impact on creating and sharing a culture of gender equality and human rights by spreading positive influence on young people's mentality about gender roles and equality. Furthermore, inclusive involvement of the participants, regardless of their national identities, cultural/traditional diversities, social status, etc. created a proper foundation for tolerance, peace and respect for human rights, other cultures and ethnicity, as well as a feeling of equality was formed.

Beyond the direct group of participants, the project impacted on participating organizations by assisting them in identifying and implementing strategies to increase participation and representation of women and marginalized groups in their

organizations, and society at large. Moreover, they adopted tools for conducting gender analysis and gender mainstreaming in their programmes. It created new partnerships and strengthened the existed ones for future projects, by building trust and sharing success. By building international networks and partnership, it fostered developing advocacy goals to address failures to implement gender equality policies, the lack of popular demand for gender equality and the need for new tools to advance gender equality.

Besides, the staff improved their skills in project management, in every steps, from the preparation to the implementation and the follow-up. With the dissemination of the awareness campaign, it gave a positive reputation to the organizations and to the European Union's works. The campaign materials and exchange of experience improved the quality of work of the participating organizations by making them more ready to address the gender issue among their target groups.

Review of the legislation of the Republic of Armenia

Human dignity as a supreme value, faith for that value without discrimination and separation of people according to their racial, sexual, linguistic, religious affiliation and other features are based on the ideology of human rights and are fixed by the Charter of the United Nations²⁴. Universal Declaration of Human Rights which was adopted in 1948 also a number of other bases have been added to this list. According to the 2nd article of the declaration, discrimination is prohibited in the following 10 bases: race, color, sex, religion, political or other opinion, national or social origin, property, birth or other status.

The ban of discrimination is also enshrined in regional human rights instruments, in the European Convention of Human Rights²⁵ (Article 14) and the 12th Protocol to the Convention²⁶, Inter-American Convention of the Human Rights (Article 1)²⁷, the

African Charter of Human and Peoples' Rights (Article 2)²⁸, etc.

Discrimination in the Republic of Armenia is prohibited by Article 29 of the Constitution²⁹ of the Republic of Armenia discrimination on the basis of sex, race, color, ethnic or social origin, genetic traits, language, religion, outlook, political or other opinion, national minority affiliation, property status, birth, disability, age, or other personal or social circumstances are forbidden.

Armenia ratified 19 UN convention, including the prevention and punishment of the crime of genocide, on the elimination of all forms of racial discrimination, on the elimination of all forms of discrimination against women, torture or other cruel, inhuman or degrading treatment or punishment, and so on.

Discrimination in Armenia is also prohibited by a number of legislative acts for example, by the Labor Code (art.3), the Education Act (art. 6), the Criminal Code (art. - 6), the Code of Administrative Offenses (H. 248) and others. In these acts, the prohibition of discrimination is defined separately, with one or two identical provisions. In some laws, provisions on the prohibition of discrimination are generally absent, such as the Civil Code, the Law on Administration of Fundamentals and Administrative Proceedings. In this general light, there is only one law, the Law on Equal Rights for Women and Men (hereinafter referred to as the Gender Law), which is entirely dedicated to the exclusion of discrimination, but regulates only one gender area of the entire range of discrimination exclusion. And for a long time there has been a heated debate over the name of this law since it should be a law on gender equality, not equal rights for women and men. And the main reason for this is the non-tolerant attitude towards LGBT people both at the level of citizens and politicians in Armenia.

Domestic laws prohibiting discrimination are also the laws of the Republic of Armenia "On Freedom of Conscience and Religious Organizations" and "On Social Protection of Disabled Persons in the Republic of Armenia".

In 2017, a long-term struggle between civil society and international organizations "On the Prevention of Family Prevention, Protection of Domestic Violence and Relief in the Family" law³⁰ was adopted which not only fixes the means of fighting against discrimination but also the defense mechanisms.

A set of discrimination has been established in the International Legal Documents, those are: direct discrimination, indirect discrimination, association discrimination, prosecution (including sexual harassment), segregation, victimization, incitement to discrimination. Most of these concepts are not defined by laws in Armenia and generally both the general public and the law enforcement are not aware of it. This means that in certain types of discrimination, a person is deprived of the possibility of legal remedies as there is no appropriate legal basis. In this regard, there is a need to have a separate law on the prohibition of individual discrimination.

One of the first steps of state policy towards exclusion from discrimination can be considered the adoption of the Government Decree No. 303-N of 27 February 2014.

By that decision, the program of measures arising from the National Human Rights Protection Strategy has been approved. The 8th point of this program defines that the Ministry of Justice should examine the compliance of the RA legislation with the international legal norms on the prohibition of discrimination as well as the expediency of adopting a separate law "On countering discrimination".

Discussions on the need to have comprehensive anti-discriminative legislation in Armenia have begun since 2013. The steps taken to adopt the legislation were also mentioned in paragraph 77 of the Action Plan 2017-2019, proceeding from the National Strategy for Human Rights Protection adopted on 4 May 2017. The adoption of the law is also a mandatory component of the EU's Human Rights Budgeting Program. The draft law on Equality of Equality and the package of legislative amendments was submitted to the public hearing by the RA Ministry of Justice on 23.02.2018, but as a result of political events, the revised version of the project has not

²⁴ Charter of the United Nations, <https://treaties.un.org/doc/publication/ctc/uncharter.pdf>

²⁵ Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, ETS, No.5, http://www.echr.coe.int/Documents/Convention_ENG.pdf

²⁶ Council of Europe (CE), Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, ETS 177, <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/177>

²⁷ Organization of American States (OAS), American Convention on Human Rights "Pact of San Jose, Costa Rica" (B-32), <http://www.cidh.org/basicos/english/Basic3.American%20Convention.htm>

²⁸ Organization of African Unity (OAU), African Charter on Human and Peoples' Rights ("Banjul Charter"), CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), <http://www.achpr.org/instruments/achpr/#a2>

²⁹ Constitution of the Republic of Armenia, <https://www.arlis.am/DocumentView.aspx?docID=102510>

³⁰ On the Prevention of Family Prevention, Protection of Domestic Violence and Relief in the Family" law, <https://www.arlis.am/DocumentView.aspx?docID=118672>

been presented to the public any more. The absence of a separate, independent law on the prohibition of discrimination leads to the fact that in many cases citizens are deprived of effective remedies. The existing laws that are dispersed in various legislative acts, can not afford effective legal remedies. They, as a rule, generally define the most well-known and widely accepted material-legal bases (gender, age, race, views, etc.) in the discriminatory theory, whereas they do not provide mechanisms for their use. As a result, the application of these norms is declarative. Meanwhile, there are changes in public relations that require effective measures to protect citizens from discrimination. It is necessary to take advantage of international experience and develop new approaches, taking into account the peculiarities of discrimination. For example, laws mostly define the concept of direct discrimination, whereas discrimination such as indirect discrimination, association discrimination, discrimination, prosecution, victimization, etc., are not defined by the RA law.

Summing up the above, it can be stated that, in the conditions of imperfection of the legal framework, Armenian citizens are deprived of the opportunity to be protected from various forms of discrimination and to restore their violated rights. To ensure the right of RA citizens to be protected from various forms of discrimination, both experts and international human rights organizations³¹ consider it necessary to adopt a single law on "Fighting Discrimination" that the government complies with international standards. On November 24, 2017, the EU and Armenia signed a Comprehensive and Enhanced Partnership Agreement³², on the 3rd paragraph of article 12 states that "respect for human rights, non-discrimination and fundamental freedoms should direct all cooperation of freedom, security and justice." Under the agreement, Republic of Armenia is committed to strengthen respect for fundamental freedoms, human rights, including the rights of persons belonging to minorities, democratic principles, the rule of law and respect for effective management.



Anti Discrimination Legislation in Moldova

Countering discrimination at the workplace

Tatiana Marian, National Trade Union Confederation of Moldova (CNSM)

³¹ UN Committee on the Elimination of Discrimination Against Women (CEDAW), Concluding observations on the combined fifth and sixth periodic reports of Armenia, para 9 (a), (b); 18 November 2016, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?TreatyID=3&DocTypeID=5

³² EU-Armenia Comprehensive and Enhanced Partnership Agreement, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52017JC0037>



1.2 — Moldova national trade unions confederation promotes gender equality, respect for equal rights, opportunities. This principle, enshrined in all international human rights treaties, Moldova Constitution, government policies and programs, and recognised as an expression of commitment to promoting gender equality in society, conducted by trade unions.

Confederation favors:

- Integration of the gender into all policies and CNSM and membership organizations;
- Reducing the gap of representation of women and men in trade union bodies in all levels of it's collective consultation and bargaining committees (national, sectoral, territorial level of economic units);
- Participation in the process of approval of draft laws and regulations to bring them in line with international / European standards to ensure gender balance in employment, wages, social protection, combining work and personal life;
- Promoting decent work and promoting the elimination of barriers to women's access to the labor market and wage differentials;
- Inclusion in collective conventions and labor collective agreements of provisions ensuring health and safety in the workplace, taking into account the specific requirements of women's work;
- Cooperation with international trade union bodies, development partners and national non-governmental organizations to develop joint projects in the field, exchange of experience and dissemination of best practices;
- Raising awareness of union members about the principle of gender equality and non-violent communication.

In accordance with the Charter of the National Confederation of Trade Unions of Moldova, since April 2018, the Chairperson of the Women's Commission of the CNSM and the Chairperson of the Youth Commission of the CNSM are members of the Confederal Committee of the CNSM.

1.3 — The activities of the CNSM Women's Commission in 2018 were aimed at achieving the goals of the CNSM Strategy for 2017–2022 for gender equality in trade unions. The members of the Women's Commission of CNSM

proposed to strengthen women's health and socio-economic protection, strengthen measures to comply with the principle of decent work and fair wages for working women, including discrimination in the workplace, and further promotion of gender perspective in trade union structures.

The Work Plan for 2018 included the organization of several activities aimed at improving the working conditions and safety of women in the workplace, organizing meetings with representatives of social partners, decision makers from the Parliament and the Government of the Republic of Moldova on issues related to women's health, and interests of workers, trade union members, the fight's violence against women, including at work, organization and information and training activities.

February 15 members of the Women's Commission participated at the meeting to show their support for union activists around the world to promote the campaign, initiated by the Pan-European Regional Council of the International Trade Union Confederation, called "Stop gender based violence at work — promote Convention the International Labor Organization". Thus, the efforts of the International Trade Union Confederation and the International Labor Organization were supported, which organized informational and educational events at the international level for decision-makers to improve the situation in this context.

On the eve of the International Day of the Family, which is celebrated annually on May 15, the Women's Commission of the National Confederation of Trade Unions of Moldova (CNSM) organized a round table with decision-makers from the Parliament and the Government of the Republic of Moldova. The event discussed the alarming situation affecting the family institution in the Republic of Moldova: the number of divorces increases and attains its 40%; the number of newborns in 2017 decreased by 3.4% compared with 2016; increased numbers of children with disabilities; children are educated through the Internet, because many parents are working abroad; about 37,000 families have only one child; villages become deserted; by 2030, the population may be only 2 million 300 thousand people; significantly increase the differences between rural and urban life. To change these indicators, participants of the event noted the need to better inform of the population, especially in rural areas,

to create more opportunities for young people and their families so that young people have access to education and services, quality health care, worthy of the wageboards have, and who went citizens participated in the country's development programs.

The participants also mentioned the contribution a of trade unions in the implementation of social and health care reforms, which led to an increase in the social package for mothers, a gradual increase in one-time bene fits for the birth of a child, the establishment of benefits for children until they were 3 years old, the provision of paternity leave in the amount of 14 calendar days, the implementation of the National Program for the Control of Early Detection of Breast Cancer in the Rural Population. The private traders were also concerned about the negative impact on women of raising the retirement age and the length of service after the pension reform.

Women's Commission of the National Confederation of Trade Unions of Moldova, organized on 23 July, round table, in which was discussed in rural women's health areas, the phenomenon of migration and its impact on the family, to ensure decent working conditions for workers, gender issues, in accordance with the ILO standards and the Sustainable Development Goals. The event was attended by trade union activists, representatives of the structures of the central and local public administration, which talked about some achieve in the field of social protection of women, the elimination of all forms of violence at work and in the family, expanding the list of reimbursable medicines, sanatorium but-spa treatment, you must and reforms in the wage system.

On the occasion of World Women's Day The rural area, which is celebrated annually on October 15, the CNSM Women's Commission organized a video conference on October 12 with the participation of trade union activists from the Ungheni, Florești, Leova and Cahul regions. During the event, participative Tzu noted the main problems faced by women in rural areas — the lack of high-paying jobs, discrimination in the workplace and in the community, the prevalence of informal work, domestic violence, limited access to health services. To overcome these and other problems, participative tzu also presented some of the requirements for the negotiations at the national level — improving

the working conditions of rural workers to establish decent wage, improving the quality of health care in rural areas, the nutrition of children in kindergartens and schools. At the same time, in order to organize trade union activities in rural areas, maintaining and attracting new members and the union of the various sectors of the economy, participative emphasized the need for the introduction of CNSM representative areas.

On November 14, members of the CNSM Women's Commission took part in a seminar at which they were able to familiarize themselves with the-draft law on the unitary wage system in the public sector — the complexity of the existing wage system in the public sector and the solutions that the new law provides for. The seminar also discussed the intention of decision-makers, to amend the Law 289/2004 on benefits for temporary disability and other social insurance benefits, which are expected to appear as a result of these initiatives, incentive schemes to support e parents which will facilitate their return to work and ultimately, lead to balance family and professional life and will hit the NLRB e fate of parents in the upbringing and education of children. During the reporting period, several articles were prepared and published on the activities of the Women's Commission of the CNSM on the pages of the Voice of the People weekly, in the newsletter, on the CNSM web page, syndicalists actively participated in the Social Dialogue program. In addition, a number of educational and informational activities organized and conducted by the national branch trade union centers, in which trade union activists participated both as trainees and trainers on different subjects related to social and economic protection of workers, promotion of the principle principle of decent work and gender equality, The goal of sustainable development Agenda until 2030.

15.02 — <http://sindicat.md/sindicalistele-sustin-campania-ituc-perc-privind-stoparea-violentei-la-locul-de-munca-bazate-pe-gen/>

14.05 — <http://sindicat.md/sindicalistele-cer-sa-fie-implementate-un-sir-de-reforme-pentru-a-dezvolta-institutia-familiei/>

12.10 — <http://sindicat.md/sindicalistele-din-anenii-noi-au-marcet-ziua-mondiala-a-femeilor-din-mediul-rural-2/>

14.11 — [http://sindicat.md/comisia-de-fe-](http://sindicat.md/comisia-de-fe)

[mei-a-cnsm-isi-traseaza-obiectivele-strategice-pentru-anul-viitor/](#)

- Video: Transmission "Social Dialogue" dated July 31, 2018 — what the syndicalist discussed Women's to CNSM in Hincesti, where socio-economic problems faced by women in rural areas were addressed;
- Video: Social Dialogue dated October 16, 2018 — a new edition of the Social Dialogue is aimed at women from rural areas;
- The Voice of the People weekly — 05/18/2018, p. 3 -About half of young families get divorced;
- The Voice of the People weekly — 10/19/2018, p. 2 — Women in the village are more burdensome than in the city.

1.4.— As a result of the work to promote gender equality and non-discrimination at the national level, with the support of CNSM, the following were adopted:

- Law No. 5 of 09.02.2006 on ensuring equal opportunities for women and men,
- Law No. 45 of March 1, 2007 on the prevention and fight against domestic violence,
- Government Decree No. 259 of April 28, 2017 on the approval of the Strategy for Equality between Women and Men in the Republic of Moldova for 2017–2021 and the Action Plan for its implementation,
- Regulation Moldovan Government of April 3 2018 of the year No 281 "On approval National prevention and control strategies with by violence at respect of women and by violence at family on 2018–2023 years and actions plan on 2018 — 2020 years of its introduction",
- Law No. 64 of May 31, 1990 on the Government, amended by Law No. 71 of April 14, 2016 (ensuring a minimum quota of 40% for women in Government).

Every year, CNSM develops information on achievements in the field of promoting equality in order to implement the Strategy for Equality between men and women in the Republic of Moldova in the current year, in accordance with the Action Plan for the implementation of the strategy.

Also, as a result of collective bargaining with the social partners, made the corrections to Convention (at the national level) No. 2 of July 9, 2004 "Hours of work and rest", Art. 11, which provides for the right to paternity leave for childcare in the term of 3 calendar days to maintain it the average wage.

Parental leave is granted during the first 56 days after the birth of the child, based on the employee's written statement.

The legal framework of the Republic of Moldova regulating the fight against discrimination and ensuring gender equality.

The legal framework that underlies the policy of gender equality and non-discrimination in the Republic of Moldova has been developed in accordance with the international documents to which the state participates:

- Universal Declaration of Human Rights (1948);
- Convention on the Political Rights of Women (1952);
- International Covenant on Economic, Social and Cultural Rights (1966);
- Convention on the Elimination of All Forms of Discrimination against Women (1979);
- Beijing Declaration and Platform for Action (1995);
- relevant conventions of the International Labor Organization;
- Action Plan Republic of Moldova — European Union;
- Sustainable Development Agenda 2030;
- European Council Directive 2000/43, implementing the principle of equal treatment between people, regardless of racial or ethnic origin;
- Council Directive 2000/78 / EC of 27 November 2000, establishing a general system of equal treatment in employment and professional activities.
- In the context of the accession of the Republic of Moldova to these documents, strategic actions were taken at the level of the legislative and executive authorities to bring the regulatory framework in line with international, European and regional standards in the field of gender equality. At the national level, over the past decades, the area of equality
- Between women and men has been significantly improved thanks to the adoption of several laws and regulations:
- Law No. 5 of 9 February 2006 on ensuring equal opportunities for women and men;

- Law No. 121 of May 25, 2012 on ensuring equality;
- Law No. 298 of December 21, 2012 on the activities of the Council for the Prevention and Elimination of Discrimination and Ensuring Equality;
- Law No. 45 of March 1, 2007 on the prevention and suppression of domestic violence;
- Law on Prevention and Suppression of Trafficking in Persons No.241-XVI of October 20, 2005;
- Law No. 64 of May 31, 1990 on the Government (ensuring a minimum quota for women of 40% in the Government);
- Labor Code No. 154 of March 28, 2003
- Criminal Code of the Republic of Moldova, No. 985 of April 18, 2002
- Code of Offenses of the Republic of Moldova, no. 218 dated 10.24.2008
- Government Decision No. 259 of April 28, 2017 on approval of the Strategy for Ensuring Equality of Women and Men in the Republic of Moldova for 2017–2021 and the Action Plan for its implementation
- Institutional measures were also taken through: strengthening the institutional mechanism through the establishment of the Government Commission on Gender Equality;
- Strengthening the Office of Gender Equality Policies in the Ministry of Labor, Social Protection and Family, which develops and promotes relevant policies and ensures the work of the secretariat of the Government Commission on Gender Equality;
- The creation of gender units in ministries and other central administrative bodies that monitor compliance with the law;
- The creation of gender focal points with the status of a consultative and coordinating body consisting of gender units with the competence to develop, promote and control policies in the field of activity of the central specialized state body.

For the violation of rights related to discrimination, criminal and administrative penalties are established.

The Criminal Code of the Republic of Moldova establishes: Article 176. Violation of equality of citizens.

(1) Any difference, exclusion, restriction or preference in the rights and freedoms of an individual or group of persons, any support for discriminatory behavior in political, economic, social, cultural and other spheres of life based on race, nationality, ethnic origin, language, religion or belief, gender, age, disabilities, attitudes, political affiliation, as well as on the basis of any other grounds:

- a) committed by an official;
- b) causing large-scale damage;
- c) committed with placing discriminatory messages and symbols in public places;
- d) committed on two or more grounds;
- e) committed by two or more persons

is punished with a fine in the amount of 750 to 950 conventional units, or unpaid work in favor of the company for a period of 150 to 240 hours, or imprisonment for up to 2 years with or without deprivation in all cases of the right to occupy certain positions or engage in certain activities for term from 2 to 5 years.

(2) Encouraging or supporting the actions provided for in paragraph (1) through the media, is punished with a fine in the amount of 950 to 1200 conventional units or unpaid work in favor of the company for a period of 160 to 240 hours, and in the case of a legal entity, a fine in the amount of 2000 to 4000 conventional units with deprivation of the right to engage in certain activities for a period of 1 to 3 years.

(3) The actions provided for in paragraph (1) and (2), through negligence with the death of a person or his suicide, is punished by imprisonment for a term of 2 to 6 years, and in the case of a legal entity, by a fine in the amount of from 2,000 to 4,000 conventional units with deprivation of the right to engage in certain activities for a term of 1 to 5 years or its liquidation.

Code of Offenses of the Republic of Moldova

(1) Any distinction, exception, restriction or preference based on race, nationality, ethnic origin, language, religion or belief, gender, age, sexual

orientation, disabilities, attitudes, political affiliation, as well as on the basis of any other attribute, which are the restriction or undermining of equal opportunities or relationships in hiring or dismissing, in direct work and training, committed by:

- a) posting job advertisements specifying the conditions and criteria that prevent or favor certain individuals;
- b) unreasonable refusal to hire a person;
- c) unjustified refusal to admit persons to professional development courses;
- d) differentiated payment for the work of one type and / or volume;
- f) differentiated and unjustified distribution of work tasks arising from granting some people less favorable status, shall entail the imposition of a fine on individuals in the amount of from 60 to 84 conventional units, on officials in the amount of from 120 to 210 conventional units and on legal entities in the amount of from 210 to 270 conventional units.

(2) Harassment, that is, any actions by the employer on the basis of race, nationality, ethnic origin, language, religion or belief, sex, age, disabilities, attitudes, political affiliation, as well as on the basis of any other such attribute that leads to create a hostile, hostile, destructive, humiliating or offensive situation in the workplace, shall entail the imposition of a fine on individuals in the amount of from 78 to 90 conventional units and on officials in the amount of from 150 to 240 conventional units with or without deprivation in both cases of the right to hold certain positions or the right to carry out certain activities for a period of 3 months to 1 of the year.

Article 71 2. Intervention in the work of the Council on the prevention and elimination of discrimination and equality. Interference in the work of the Council on the prevention and elimination of discrimination and ensuring equality in order to influence its decisions, failure to submit, within the timeframe established by law, relevant information necessary to consider a complaint, deliberately ignoring and not implementing its recommendations, hindering in any other way the implementation of its activities shall entail the imposition of a fine on individuals in the amount of from 30 to 60 conventional units and on officials in the amount of from 45 to 90 conventional units.

In order to counteract discrimination in the workplace and promote equality between women and men, the Labor Code establishes:

Article 8. Prohibition of discrimination in the workplace

(1) In the framework of labor relations, the principle of equality of all employees. Any direct or indirect discrimination of an employee on the basis of gender, age, race, color, nationality, religion, political opinion, social origin, place of residence, restriction of opportunities, HIV / AIDS infection, membership in a trade union or participation in trade union activity is prohibited, as well as other criteria not related to the professional qualities of the employee.

(2) It is not discrimination to establish differences, exceptions, preferences or individual rights for workers, arising from requirements specific to this type of work or provided for by current legislation or special care of the state for persons in need of increased social and legal protection.

Article 124 1. Paternity leave

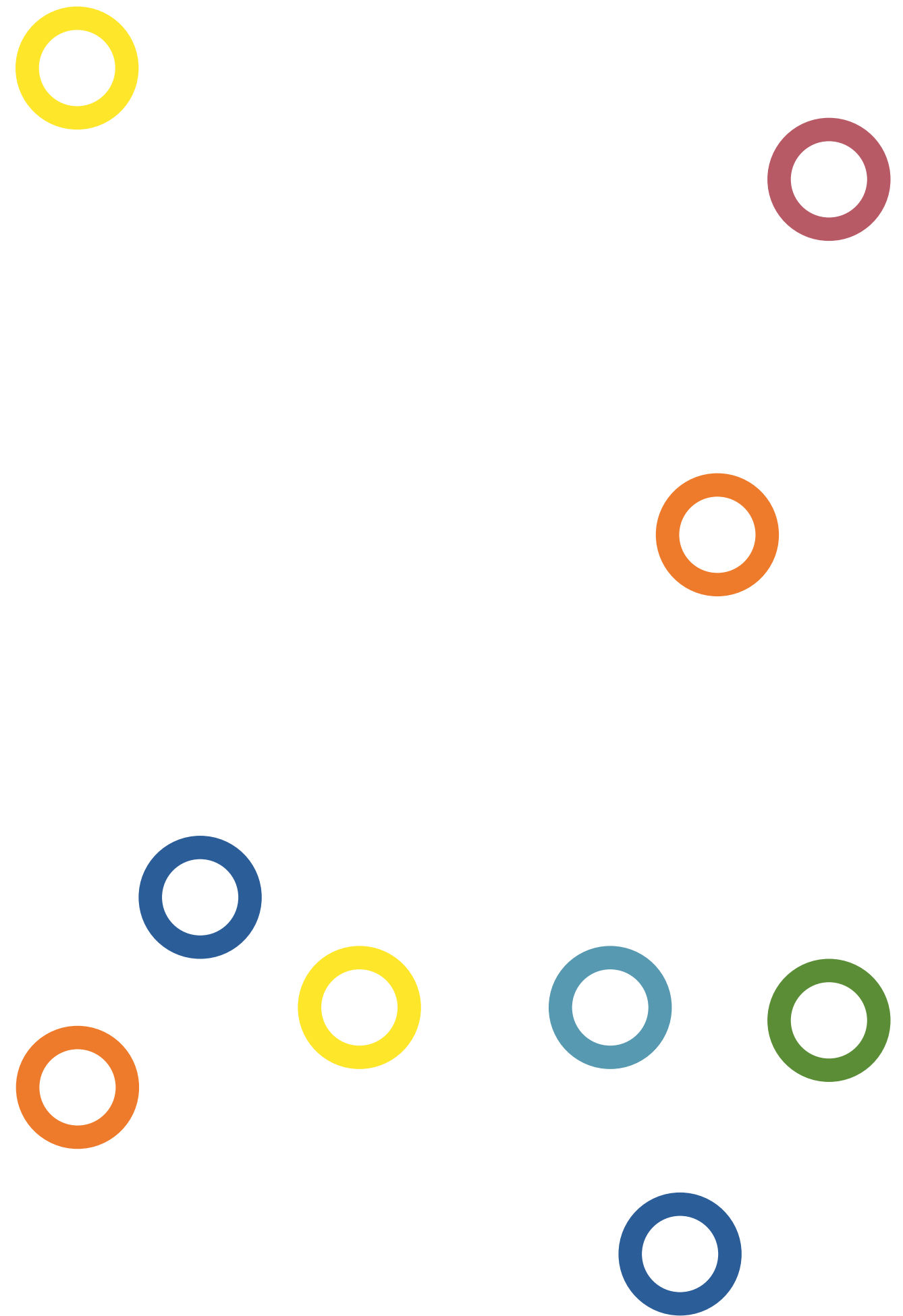
(1) Paternity leave shall be granted in accordance with the conditions provided for in this section in order to ensure the actual participation of the father in the care of the newborn child.

(2) The father of a newborn child has the right to paternity leave of 14 calendar days.

(3) Paternity leave is granted upon written request within the first 56 days after the birth of the child. A copy of the child's birth certificate shall be attached to the application.

(5) The employer is obliged to encourage employees to use paternity leave.

(6) The creation by an employer of situations that disadvantage an employee who takes paternity leave is recognized as discrimination by the employer and punished according to the law.



Social partnership for the Equality

1. Project Impact

"Social partnership for the equality" edited policy papers on the situation with the gender equality and non-discrimination in the Georgia, Ukraine, Moldova and Armenia. Generally, it raised awareness on the gender equality and established sustainable cross-border dialogue between governmental institutions and civil society. According to the outputs of the project "Bureau of social and political developments" were invited to the advisory group on the sustainable developments in Ukraine, which would be a platform for further spreading of the project ideas declared in the policy paper.

2. Project Activities and Outputs

During the project leading organization conducted planned activities, and gained planned outputs. Activities of the project were divided in two parts: increasing the dialogue between the main stakeholders groups (civil society actors, governmental bodies, scientific institutions) in the framework of the Eastern Partnership Countries in the framework of the project (Georgia, Moldova, Ukraine, Armenia) and creation of the in-depth research on the situation with legislation on the gender equality and antidiscrimination with the relevance to the EU standards. During the first phase, leading organization "Bureau of social and political developments" organized events, to increase awareness about problematic with anti-discrimination legislation and create joint vector of the work between all embodied actors.

3. Gender mainstreaming

The project is fully related to the gender equality, especially in the labour rights. Project prepared policy papers, with the overview of the problems with gender equality in the Georgia, Ukraine, Moldova and Armenia and contains ways to solve them.

4. Relevance for EaP CSF

The project fully responds to the EaP CSF agenda, and cross-group gender equality goal. All efforts during the project implementation were directed to establish equality in labour rights and social dialogue, which fully responds to the aim of working groups.

5. Project Sustainability Outlook

According to the project outputs, leading organization "Bureau of social and political developments" were included to the advisory groups on the sustainable development, which is an ambitious platform for further work on project problematic. Project partners from Armenia and Georgia took project outputs into their attention, and preparing new projects, connected with the gender equality in labour.

The Bureau of Social and Political Developments is a non-governmental organization that aims to provide an expert support during the implementation of social policy and social dialogue. The Bureau was founded in June 2013 as a result of an association between a group of experts in order to create a platform for the development of a shared approach to Ukraine's social sector reform.

Among the main areas of the Bureau's activity is collaboration with scientists in order to design a scientifically supported strategy for the reform and determine its result; research in the social sphere, specifically, the study of the reformation process for the social security system, social service system and social dialogue; raising the potential of the social sector organizations; mobilization of scientists and nongovernment experts in order to develop a common vision of necessary changes in the field of social policy; conduction of the advocacy campaigns for the promotion of draft legal documents related to the sustainable development of territories. Since 2014, the Bureau is a member of the Eastern Partnership Civil Society Forum (Ukrainian National Platform) and of the EU-Ukraine Civil Society Platform.

In 2016, the Bureau is working on the implementation of the Memorandum, signed jointly with the UNICEF Office, the Caritas Ukraine Foundation and a number of scientific and analytical centers, which foresees the cooperation of scientific institutions and non-governmental organizations for the purpose of professional support for the realization of the goals of sustainable development, effective social policy and promotion of human development in Ukraine, a social and scientific platform for human development has been created for this purpose. The platform is open to cooperation by the coordination and advocacy platform, operates with the support of the UNICEF Office in Ukraine, the Office administers the activities of the Social and Scientific Platform for Human Development.

The Bureau's representatives are members of the Public Council by the Ministry of Social Policy and the Ministry of Healthcare. In 2017, the Bureau initiated creation of the coalition "For the equality in labour" for the joint work of civil-society organizations on liberty, justice and equality access of women and men to the labor market and the protection of their labor and social rights. The Bureau is a member of the Ministry of Social Policy of Ukraine Expert Advisory Group on the implementation of the Association Agreement Ukraine EU of the and Coalition to secure Civil Society in Ukraine, which unifies Civil Society efforts for consolidated opposition to the separate threats as well, as attempts to offense on the Civil Society and freedom of association in Ukraine.

In 2018, a platform for the decentralization of the social services in Eastern Partnership countries was created, which involves joint work on social dialogue, the development of social services and the joint activities against discrimination. The Bureau is a member of the Advisory group of Ukraine on Sustainable Development, which was created according to the requirements of Article 299 of the Association Agreement between Ukraine on the one hand and the European Union.

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