

РОЗДІЛ 1. ТЕОРІЯ ТА ІСТОРІЯ ДЕРЖАВИ І ПРАВА; ІСТОРІЯ ПОЛІТИЧНИХ І ПРАВОВИХ УЧЕНЬ

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IMPLEMENTATION OF FOREIGN GENDER COMPETENCIES IN THE ORGANIZATION OF JUDICIAL PROCEEDINGS IN TERMS OF REFORMING THE JUDICIAL SYSTEM OF UKRAINE

Nowadays, the world's states differ significantly in the mechanisms for implementing the principle of gender equality, which depends on the extent to which gender parity issues are considered to be a priority in their own politics and public life. The analysis of successful foreign experience of the studied aspect creates the foundation for a positive solution of the "gender" issue in Ukraine, taking into account the transformation processes and numerous reforms taking place now. Achieving gender parity in Ukraine is impossible without using positive trends, concepts, models of its consolidation, legal regulation in other states, and a comprehensive analysis of them. In this paper, we set a goal of studying international mechanisms for implementing the principle of gender equality in different countries and analyzing the real effective steps that could be implemented in our country as well.

Introduction

Gender equality has recently been seen as a structural element of the comprehensive principle of equality of citizens and cannot be excluded from the overall development of society. The study of the Ukrainian “gender legislation” suggests that the effective implementation of the principle of gender equality requires not only reforms by the state, but also an effective system for monitoring compliance with anti-discrimination norms. In order to tackle the problem, social transformations, changes in people's minds and, accordingly, an objective view of the problem should be taken into account. Effective implementation of the principle of gender equality in justice should begin with increasing the level of democracy of gender-legal relations themselves and building them on the basis of the gender parity principles. The solution of the problem should be approached comprehensively, combining the achievements of science in solving gender issues, introducing a gender approach in all fields of public policy and management and judicial proceedings through improving and evaluating decision-making processes, creating legislation, developing strategic policies and programs in all areas and at all levels. Determining through a survey the level of gender discrimination in the courts using the method of “determining gender discrimination”, adapted by us to judicial activity, it was found that: women are not equally valued as men, although stereotypical attitudes towards them are changing for the better; there are no equal opportunities programs for men and women, there is not always an adequate attitude to maternity leave, etc., and therefore a number of changes and reforms are required to achieve gender parity. Gender issues must necessarily be integrated into sustainable development strategies and programs, in particular those relating to the judiciary. Gender issues should be reflected in the strategy for the development of the judicial system of Ukraine in the third millennium, as a cross-cutting problem that permeates all spheres of society and is directly related to the implementation of fair proceedings.

1. Review of international experience in implementing gender parity

It is in Europe that great attention is paid to gender equality, because EU members have made a significant step forward in developing a unified, gender-based legal policy. In addition, the European Constitution is imbued with the spirit of gender equality.

The Parliamentary Assembly of the Council of Europe (PACE) considers it its long-term task to achieve gender-balanced representation in the parliamentary delegations of the member states and increase the representation of women in national parliaments.

Today, European international acts reflect the new understanding of the “right to equal opportunities and equal treatment” that has been developed in practice. It is characterized primarily by a departure from the principle of labor protection on the basis of gender in favor of the principle of labor protection of mothers and fathers and employees with family responsibilities. Establishing judicial and legislative practice in the context of an integrated approach to the introduction of gender equality, the European and International community have developed a list of terms and definitions necessary to ensure de facto, valid equality of men and women both at the state level and at the level of horizontal public relations. The principle of equal treatment is one of the most important in international law and follows primarily from the general legal principle of equality of opportunities and the prohibition of discrimination [1].

According to the study of the influence of women on EU policy “Women in decision making roles in the European Union”, the representation of women is below 30 % in the parliaments of 17 EU member states. In others, the best estimator does not exceed 42 % (Sweden also has gender parity at the level of government leaders). Two other countries – France and Slovenia have a 50:50 gender ratio in the government. This study also shows that most often women head ministries related to social policy and work (50 %), family, youth and sports (43 %), education and culture (40 %). However, 14% of European justice ministers and 7% of foreign ministers are women. Among the EU institutions, a third of women are present at the European Parliament and the European Commission (33% and 37% respectively). However, women make up 10% in the Foreign Policy Council, and 8 % in the Economic and Financial Affairs Council [2].

This year's Global Gender Gap Index shows that it will take 135 years to bridge the global gender gap, when last year's report stated that it would take 100 years. Among other countries in the world from the top 10 on the Gender Gap Index: Finland (86.1%), Norway (84.9%), New Zealand (84%), Sweden (82.3%), Namibia (80.9%), Rwanda (80.5%), Ireland (80%), Switzerland (79.8%). For the first time, Lithuania broke into the top ten countries (80.4%), rising by 25 positions. Ukraine ranked the 74th place in the world,

losing 15 positions. In addition to Lithuania, Serbia, Timor-Leste, Togo and the United Arab Emirates have made the greatest progress reducing the gender gap by at least 4.4 points or more. The United States rose by 23 positions (the 30th place). Among European countries, Serbia has a good result (the 19th place in the world, +20 positions), Belgium rose by 14 positions (the 13th place), Austria and Portugal rose by 13 positions and ranked the 20th and the 21^d places respectively. The worst indicators among European countries are in Romania, which lost 33 positions and ranked the 88th place, Poland, which dropped to the 75th place, losing 35 positions, and Hungary, despite rising by 6 positions, ranks the 99th place, the last one in the top hundred [3].

The experience of many successful states has shown that the elimination of gender inequality requires so-called “positive discrimination measures”, which include programs that encourage women to study the law, participate in the struggle for judicial office, career advancement and administrative positions in the judicial system. Such events can be organized by educational institutions that educate lawyers and bodies responsible for the staffing of courts, their education and advanced training.

Among the foreign initiatives used to ensure equal representation of both men and women in the judicial system are the following:

1) The Parliamentary Assembly of the Council of Europe, in its Resolution No. 1366 “Candidates for the European Court of Human Rights” decided that it would no longer consider lists of candidates for judges of the ECHR if they did not have at least one candidate of each sex. A year later, this rule was amended, according to which lists consisting of candidates of the same sex are allowed for consideration only if persons of this sex are insufficiently represented in the Court [4];

2) in Afghanistan, the Afghan Women Judges Association cooperates with the International Association of Women Judges to ensure access to justice for Afghan women, as well as to assist in appointing them to judicial positions [5], in the wake of recent events the existence of the organization remains to be seen;

3) Tunisia has taken steps to increase women's participation in the judiciary, as judges, and in appointing women to senior judicial positions[6].

Among the international mechanisms for organizing the involvement of women in socially important decisions, it is worth

noting compensatory or so-called positive measures against discrimination on the grounds of gender.

Positive action is such adequate measures that women must resort to in order to remedy the situation in view of the unequal starting conditions that have developed in a patriarchal society. In its extreme form, it is a positive discrimination, when the increase in the women representation is achieved by providing certain benefits or the introduction of quotas [7].

A separate priority is to ensure the inclusion of gender aspects, special needs of women and men in the planning and implementation of all projects, programs and in general in the activities of international organizations and donor institutions; taking into account and analyzing the potential impact of such measures on their situation; involvement of the latter in the specified process; allocation of separate budgets for gender equality in those areas in which they are implemented.

Another vector is the support of women's leadership in all spheres and at all levels of public life. The women influence on socially important decisions is both a sign of de facto equality and a guarantee of greater attention of state to the goals and objectives of gender policy. In particular, it is necessary to strengthen measures for international exchange of experience in all areas of gender equality and women's empowerment. At the same time, attention should be paid to initiatives aimed at greater involvement of men in promoting the principles of gender symmetry and countering discrimination against women through the creation of networks of male leaders, information campaigns aimed at gender needs accounting in planning and implementing the gender vector.

Thus, Tetiana Havlin emphasizes that “the experience based on the monitoring and analysis of gender policy both at the EU level and in Ukraine shows the shortcomings that were observed during the implementation of programs aimed at improving the position of only women in society. The shadow situation of men's problems, the existence of which is convincingly evidenced by statistical data, their silence in public discourse slowed down the processes of expected social transformations, effective modification of the situation of women and men” [8, p. 121].

Alissa Tolstokorova emphasizes that at the present stage the development of an effective policy of gender equality in all spheres of public life, including public administration, aimed at finding a new

model that could meet the realities of the time [9, p. 100]. Thus, the experience of different EU countries was summarized to determine the basic principles of this model. As a result, the Equa pol project was developed and implemented in eight EU countries. In the process of its implementation, four main models of gender equality policy were identified:

a) the “gender integration” model or the “Swedish model”, which covers all aspects of socio-economic life, political (public) and private spheres of civil society;

b) the “cross-model” inherent in European countries (in particular Belgium, to some extent France and Andalusia), which builds its policy on the traditions of so-called positive action towards women;

c) the “equality outside gender” model, which is used in the UK and is built around the understanding that the problems of inequality are related not only to gender but also to age, capacity (people with disabilities), race, ethnicity, etc. and so need to restore gender balance;

d) the “union incentive” model is a new model that has emerged at the request of both the “bottom” – from women’s and feminist organizations, and the “top” – in the context of EU financial support from the European Social Fund and the EU Structural Funds. According to Alissa Tolstokorova, it is important as an incentive for the realization of gender equality at the national level [9, p. 100].

As for the gender organization of the judiciary, according to the Conclusion of the European Commission on the Efficiency of Justice “European Judicial Systems: Efficiency and Quality of the Justice System” in all jurisdictions of European courts, despite large differences between countries, the number of female judges and male judges are nearly the same. However, the instance comparison showed that the majority are women (56%) in the courts of first instance, the number of female judges and male judges is approximately the same in the courts of second instance and men prevail (65%) in the courts of cassation. Thus, as the judicial hierarchy moves up, the percentage of female judges decreases. In some countries, the difference is due to the relatively recent feminization of the judiciary, which is now more visible in the courts of first instance. In Montenegro, female judges make up the majority at all levels (56%, 59% and 56% respectively), as well as in Bosnia and Herzegovina (64%, 65% and 58%). In Romania, the percentage of female judges in each instance is even higher (73%, 74% and 84%) [10].

However, in some countries, such as Armenia, Azerbaijan, Ireland, Turkey and part of the United Kingdom, the majority are male judges in all instances, while in others, such as Croatia, Greece, Hungary, Latvia, Luxembourg, Romania and Slovenia, the situation is reversed, especially with regard to the courts of first and second instance. The European Commission for the Efficiency of Justice notes that trends in the feminization of the judiciary have been highlighted in previous reports; the number of female judges increased by 2% in 2012–2014, and for a longer period from 2010 to 2014 this figure increased by 5% [10].

The gender promotion of judges is as follows: males hold the position of the head of the court in 67% of courts in all jurisdictions, including 64% of courts of first instance, 75% of courts of second instance and 82% of courts of cassation. 90% and 100% of head of court positions are held by men, it is typical for Andorra, Armenia, Azerbaijan, Georgia, Malta, Great Britain, Scotland, and 50% by 50% of women / men: Croatia, Greece, Hungary, Latvia, Lithuania, Luxembourg, Romania and Slovenia [11]. Analysis of the data allows us to state that although female judges make up 56% of the courts of first instance, they preside only in 36% of cases. The same trend is observed in the courts of second instance, where women judges make up 47%, and manage the court in 25% of cases [11]. This proves the existence of a “glass ceiling” and the great difficulties that female judges face and that prevent them from moving up the career ladder, despite their professional abilities and experience [10].

It should be noted that Armenia, Austria, Bosnia and Herzegovina, Denmark, Georgia, Germany, Iceland, Montenegro, Norway, Serbia, Spain, Great Britain, Wales, Scotland and Israel report that gender issues are taken into account in these countries in the selection process and the appointment of judges. For example, Armenia in the framework of the implementation of parity between men and women in compiling lists of candidates for the position of judge is trying to implement the principle – at least 25% of members of the same sex. In Bosnia and Herzegovina, legislation takes into account the gender dimension in the selection of personnel for the judiciary. Similarly, the Council of Judges of Montenegro is obliged by law to ensure parity between men and women in the procedure of appointment to the position of a judge [12].

At the same time, these data should be evaluated critically, because in many cases the bodies responsible for the selection of judges

provide the principle of non-discrimination on the grounds of sex only nominally. Some countries have only just begun to develop policies that effectively address gender issues, either in the form of mandatory quotas or incentives to recruit people from underrepresented gender with equal skills.

Attention should be paid to the fact that major international partners of Council of Europe, including Ukraine, have approved Gender Equality Strategy for 2018–2023 years, where it is stated that despite noticeable progress and improving during the course of last several decades legal status of women in Europe, the actual equality between women and men is not achieved yet. Gender inequality and structural barriers exist in many areas, assigning women and men their traditional roles, limiting possibility of women to use their important rights. Regular monitoring and research show that progress, regarding participation of women in politics, access to justice and eradication of harmful gender stereotypes and sexism occurs very slow. Historically unequal relations in politics between men and women have lead to male domination over women and women discrimination by men, preventing full-fledged improvement of situation of female population. However, both men and women have fallen as victims to the stereotypes that limit capabilities of both sides.

Within the guidelines of this Strategy the main attention during 2018-2023 years will be focused on six strategic directives:

- 1) Prevention of gender stereotypes and sexism and combating such phenomena;
- 2) Prevention and fighting domestic violence and violence against women;
- 3) Providing equal access to justice for women;
- 4) Achievement of balanced participation of women and men in process of political and social decision-making (the percentage of female judges in Ukraine is an evidence of the implementation of gender equality in the field of important decision-making at the state level);
- 5) Protection of female immigrants, female refugees and female shelter seekers rights;
- 6) Realization of strategy of achievement of gender equality in all politics and events.

In the guidelines of implementing this program CEPEJ has filled the questionnaire among European states regarding goal of gender equality in judiciary and for defining means that are necessary to use

for improving professional gender equality. Analysis of results has shown that percentage distribution of professional judges hasn't shown major change in comparison to previous years, which has become the result of active policy of implementing equality between men and women. Regarding overall amount of professional judges, the average indicator is 49% of men and 51% of women with tendency for the increase of numbers of female judges.

Countries that have the highest percentage of females in judiciary are Belgium, Croatia, Czech Republic, Estonia, France, Greece, Hungary, Latvia, Lithuania, Netherlands, Romania, Serbia, Slovakia, Slovenia. Feminization can't be felt yet in Armenia, Azerbaijan, Ireland, Malta, Norway, Great Britain, Wales and Scotland. High percentage of males can be found in eastern countries (For example, Armenia).

However, despite efforts of Council of Europe and some states, global phenomenon of feminization of judiciary has a limit, a "glass ceiling" that is highlighted in CEPEJ report. The higher hierarchical level, the more number of women (and their percentage as well) is decreasing. For professional judges of first instance in average there are 43% of males and 57% of females, percentage rises up to 50-55% for professional judges of second instance, and that is an improvement in comparison to data from 2014 (it was 53-47% in male favor). At the level of cassation courts, distribution was 63% of males and 37% of females (65-35% in 2014). Gender aspect lies in the fact that fewer women are assigned to the important positions. That is why CEPEJ "measures glass ceiling" in judiciary according to percentage correlation regarding each gender of judges in various European countries.

In general average percentage of male judges in all judiciaries is 66%, in comparison to 34% of females (in 2014 it was 67-33%). For head of court of first instance this indicator was 61-39% in favor of males (64-36% in 2014). In Latvia judiciary reform has lead to decrease in amount of courts and, accordingly, heads of court. This consider Lithuania as well from 1st of January of 2018. Exists a difference in amount of heads of court in Netherlands due to integration of courts. And it goes vice versa, Serbia has increased a number of heads of courts of first instance, and due to that reason, from 1st of January 2014 the amount of heads of courts has increased. In Spain there are no heads of court of first instance because courts consist of one judge; for heads of courts of second instance this

percentage is 71% males and 29% females (75-25% in 2014). In Finland the decrease of male heads of court of second instance happens as a consequence of merge of two courts of appeal in 2014 and appointing a female as it is head in 2014 (82-18% in 2014).

In other words, the evolution of the feminization of heads of court is barely noticeable, but in almost all countries it is logical to assume that the career advancement of women judges will still be inevitable. 11 states indicate that 100% of the heads of appeal courts are men; women hold 50% of the positions of professional judges of the second instance, but only 29% of the positions are the heads of courts, and therefore additional measures need to be taken to promote their careers. It should be noted that in some countries there has been a change in the number of heads of court compared to previous years: this applies to Belgium, which has reformed the court map mainly for courts of first instance.

Thus, the feminization of the functions of a professional judge is a confirmed European trend, but the “glass ceiling” is still a reality when it comes to the position of head of the court, and the percentage of female judges decreases when moving up the judicial hierarchy. Some States have recognized this inconsistency and have begun to introduce mechanisms to encourage the recruitment of women to senior positions in the courts; the selection of candidates for the position of judge began to be aligned with gender sensitivity in an attempt to promote the underrepresented sex. And the strengthening of continuous training aimed at improving management functions should become a tool for women's judges to access management positions. All of the above refutes the male stereotype that a woman's career is a matter of self-choice and efficient use of her time, or a hypothesis that women give up because of a lack of competition or ambition.

In 2015, the judge of the Supreme Court of Great Britain, baroness Hale, criticized the mass appointment of men to the position of judges. She noted that raising the gender balance in the higher courts helps to preserve the legitimacy of the courts as representatives of the societies they serve and allows courts to understand the implications of their decisions in the real world. Strengthening gender diversity in the justice system helps maintain public confidence and reduces barriers to women's access to justice. The barriers faced by women in the judiciary are similar to those in other areas of public life. In addition to the challenges of work-life balance, perpetuating gender stereotypes, lack of development opportunities and gender bias; strict

requirements for judicial appointments and selection methods usually prevent women from becoming top judges.

As already mentioned, the Scandinavian countries, in particular Sweden, Finland and Norway, as well as Canada, have the greatest positive experience in implementing a comprehensive gender approach at the state level. Their bodies ensure the adoption of relevant legislation, special programs, allocation of funds and administrative resources to address this problem, as well as the development of a national mechanism for ensuring and protecting gender equality. Also, in a number of states, in order to implement gender parity, the position of the Commissioner for Equal Rights and Opportunities or the so-called ombudsman, elected by the representative body, has been introduced.

The position of ombudsman was first introduced in Sweden in 1809, and since then it has proved its necessity and has not lost its significance or relevance for more than two centuries. The country currently has the Anti-Discrimination Act, which aims to promote equality in society and reduce all cases of discrimination. Simultaneously, the Law on the Equality Ombudsman was adopted, as a result of which, as of January 1st, 2009, the positions of four former anti-discrimination ombudsmen (the Ombudsman for Equal Opportunities, the Ombudsman for Combating Ethnic Discrimination, the Ombudsman for the Protection of Disabilities and the Ombudsman) anti-discrimination on the grounds of sexual orientation) were consolidated into a single new institution – the ombudsman for equality.

The practice of introducing an ombudsman is spreading. In 1978, such service was introduced in Norway, 1980 – in Sweden, 1987 – in Finland, 1999 – in Lithuania, 2001 – in Germany, 2002 – in Slovenia, Bosnia and Herzegovina, 2003 – in Croatia, Kyrgyzstan, etc. [17].

For example, the German law on establishing equality between women and men, passed by the Bundestag in November 2001, introduced equality commissioner and their deputies from the highest authority to all organizations and collectives. The law, with typical German care, regulates in great detail the process of electing commissioner, the distribution of responsibilities and coordination between them at all levels and their relations with the authorities of organizations and companies, and determines the sanctions to which commissioner have to apply in case of violations of gender equality [15].

Based on the Law on Equal Opportunities of Women and Men in Lithuania, the Equal Opportunities Service Controller of Women and Men was established in 1999. This service conducts its activities on the principles of legality, impartiality and fairness generally accepted for all ombudsmen, using the methods of influence inherent in the institution of specialized ombudsmen in general [16, p. 180].

The practice of introducing the post of ombudsman showed the need for legal protection of equality between men and women, guarantees of the mechanism of legal regulation of gender relations, especially in countries with well-established traditional relations and roles of women and men. Following the example of the EU, Ukraine has adopted gender mainstreaming as the main mechanism for achieving and ensuring gender equality [16, p. 180] in fulfillment of its international obligations. Thus, the creation in Ukraine of the institution of the Government Commissioner for Gender Equality Policy [18], in 2017, and in the regional centers the assignment of deputy chairmen of regional state administrations responsible for gender issues is designed to solve the problem of ensuring equal rights and opportunities for women and men in all spheres of society [19].

It is true that “in countries where there are equal proportions of women and men in their governments, economies are more efficient and sustainable, and societies are more likely to seek peace and stability,” said Ban Ki-moon, the UN Secretary-General, in a commentary [20].

Looking at the specifics of the gender issue, let us start with the Federal Republic of Germany, whose Constitution, in Article 3, proclaims the equality of men and women [21], thus declaring gender parity in society as an important value. An example of the implementation of the principle of gender symmetry is Angela Merkel, who has made a brilliant career in the “male” world of politics. She has been recognized as the most influential woman in the world according to Forbes magazine in 2012, and in 2006-2007 the Federal Chancellor of Germany was included in Time magazine's list of the most influential people in the world.

In accordance with the requirements of Article 33 of the Constitution of the Federal Republic of Germany, every German, depending on his aptitude, abilities and business qualities, has equal opportunities to enter the civil service. The main principle of career development of civil servants in Germany is years of service and a term of excellent service [21]. Therefore, the Constitution provides

legal guarantees of gender equality, state-legal protection of the status of an official, his duty of loyalty to the state, fairness in work, the right to adequate pay and social security [22]. For Germany's gender policy, positive indicators are that the country is headed by a woman as Chancellor, the Minister of Defense is also a woman; there are gender quotas in the Parliament, now there are up to 30% of women. At the same time, the Ministers of Economy, Internal Policy, and Health are men, while the Ministry of Education is headed by a woman. Thus, gender stereotypes do not lose their relevance when occupying certain positions of strategic importance for the state.

Since 1970, Germany has been implementing the so-called equality policy (Gleichstellungspolitik), which is based on women's equality laws (Frauenfordergesetze) that use quotas to guarantee increased representation of women in leadership positions. In 1994, a provision went into effect that a certain number of positions in companies should be held by women, but it did not establish a clear quota, and therefore the economy within the last decade had only 4 women for every 685 men in the management of the 100 largest companies [23]. On January 1, 2016, a new law came into force, which prescribes a quota for public private companies with more than 2,000 employees, according to which women must occupy at least 30% of the total number of executives on the board of directors or other responsible body.

Further, in accordance with the agreement concluded between all EU members (1997) on the introduction of Gender-Mainstreaming (German "Vertrag Gender Mainstreaming"), the German government added a male factor to the main tasks of gender equality policy. A law was passed that men and women should be treated equally (German "Das Allgemeine Gleichbehandlungsgesetz") [24]. The result of such changes was an increase in the number of parents who went on maternity leave, but now the increase in their share is hindered by the still negative attitude towards them on the part of executives and colleagues [25, p. 37].

"German women consider themselves very free, for example, compared to their Eastern European neighbors. At an early age, they sincerely believe that they can combine family and career, and that they have the freedom to choose. In reality the situation is different," notes the expert Cornelia Koppetsch, author of the book "Wenn der Mann kein Ernährer mehr ist" [26]. After marriage, it becomes

apparent to many Germans that her family expects much more from her than her professional activities.

By the way, about 70 percent of women in Germany work, but wives still do more housework and spend more time caring for children than men; for the latter, “this function is completely blocked”. If a woman who works gives up housework, her partner is unlikely to do more at home. An equal distribution of roles, responsibilities, and burdens between a man and a woman in a couple means that each partner does an equal share of paid and unpaid work. Men may pretend not to know how the washing machine works, do the cleaning carelessly, hoping that the woman will take over, and if they do go on maternity leave, they plan to finish their dissertation or finish any project for which they had enough time before [26]. This is despite the fact that in every tenth family in Germany the woman earns more than her partners, most often only because the man is out of work. In a quarter of the couples, earnings are about the same. The man is still the main earner in 65 percent of families [27].

According to a sociological study by the Friedrich Ebert Foundation, only 10 percent of German women under the age of 40 think that there is equality between men and women in Germany and only 15 percent of men think so as well. For approximately the same level of education (specialty, duration, form of training), employers prefer men, according to the statistics. Additionally, in practice, women are paid less than men for the same professional work [27].

Thus, despite the fact that at the current stage of the “gender issue” is relevant in Germany, the phenomenon of the “glass mountain” has not lost its significance, gender stereotypes continue to influence the provision and realization of professional and career opportunities for women.

In addition, Germany has recently introduced the concept of childcare leave – the so-called “mother's pension” (“Mutterrente”). Thus, from July 1, 2014, mothers or fathers of children born before 1992 are entitled to a one-year length of service devoted to the upbringing of children [28]. By the way, Germany supports single parents, such families receive additional funds and some tax relief.

In Germany, on January 6, 2018, a law obliging companies to bridge the gender pay gap and pay men and women equally came into force, as German women earn on average 22% less than men. This is the largest difference in the EU after Estonia and the Czech Republic. The average wage gap in the 28 EU member states is 16%. The

German Ministry of the Family argues that the gap between men and women is due to a number of factors: women often work in low-paid sectors and are underrepresented in management positions. Their careers are also often interrupted by maternity leave. The Ministry insists that discrimination and lack of transparency in pay also play a critical role, which the new law seeks to address [29].

Labor justice is most closely linked to gender discrimination in Germany. The first law on labor courts was passed in Germany in 1926, and the law of 1958 is still in force (as amended on July 2, 1979). These courts hear disputes between trade unions and employers' unions, including disputes over strikes, including compensation. They receive a large number of lawsuits between employers, on the one hand, and workers and employees – on the other, regarding the size of wages, vacations and dismissals; material compensation for damages caused by the employee; disputes between participants in joint work, in particular, in connection with the application of the Law on participation in the management of the enterprise, which regulates the relations of workers with the owners of the enterprise, and especially the limits of their interference in the organization of production.

The system of courts for labor disputes is three-tiered: district courts for labor disputes, the land court for labor disputes, the Supreme Court for labor disputes (Federal Labor Court). Decisions concerning its organization, management and official supervision of its activities are made by the Federal Minister of Labor and Social Order in coordination with the Minister of Justice of Germany [30, p. 13].

It should be noted that the issue of “women in management positions” has not been resolved in Germany even after the establishment of statutory quotas of supervisory boards introduced in 2015. The so-called “labor quotas for women” are designed to prevent possible discrimination against women seeking leadership positions. Unfortunately, enterprises and organizations do not adhere to the principle of quota distribution of positions between women and men, as they do not bear any responsibility in the form of punishment for this [31]. A similar situation is observed in the courts of Germany. Thus, in 2010, the German judicial system was as follows: 20,400 judges (3/4 of them in courts of “general jurisdiction”, of which 39% – women). By 2017, the staffing of courts amounted to 20,300 judges (42.15% – women) [32, p. 10].

Finally, gender issues are taken into account in this country in the selection and appointment of judges. The procedure for training, selection and appointment of judges in Germany is regulated by Sec. 2 “The right to hold judicial office” of the German Law “On Judges” [33, p. 17]. The equal opportunities rules for female applicants (gender balance optimization rules) require that a person be involved at certain stages of the procedure, who must monitor and control the application of these rules (Gleichstellungsbeauftragte – such departments exist in all administrations) [34].

In modern Germany, several women have managed to rise to the top of the judiciary. For example, in 1994, lawyer Jutta Limbach became the first woman to head Germany's highest legal body, the Federal Constitutional Court (retired since 2002). In 2011, Suzanne Behr came to the Constitutional Court and became the only woman in one of the two chambers of the Constitutional Court, consisting of eight people each [35].

In the context of our study, we should note that the “gender experience” of Germany is interesting for modern Ukraine, given that this country still managed to achieve some gender parity in important areas of society and involve women in socially important decisions, as evidenced by is their occupation of the highest government positions.

The National gender equality mechanism in Austria includes the adoption in 1993 of the Equal Treatment Act (updated in 2004) and the establishment in 2007 of the Ministry of Women's Affairs. One of the chambers of parliament also has a specialized committee on equal treatment for men and women and improvement of legislation on gender equality. Moreover, within each ministry, one person is appointed as an equal commissioner who provides “gender counseling” and monitors all forms of discrimination. Commissioners are the ones who file complaints about sexual harassment and gender discrimination with the relevant institutions [36].

In the Austrian judiciary today, about 2,000 professional judges perform their functions, including about 50% women [37]. According to other data, 51.2% are men and 48.8% are women. Moreover, 61.3% of men and 38.7% of women hold administrative positions in courts. In the courts of first instance, 60.3% of men and 39.7% of women are chairmen; the appellate instance is represented by 62.1% of men and 37.9% of women, the cassation – 100% of men [38]. These figures speak for themselves – gender equality has been achieved in the representation of women as judges. This positive

result is determined by the transparency of the selection procedure and the simplified requirements for candidates: legal education, Austrian citizenship, good health, professional suitability and a minimum of five months in court.

The selection procedure for a judge also takes into account the gender component. Thus, after consideration of the applicant's application, the chairman of the higher regional court applies to the Minister of Justice, who has already appointed a person to the position of candidate for judge. This is followed by a four-year period during which candidates for judges are admitted to the preparatory service in order to become professional judges. The preparatory service of a candidate for a judge takes place in district and regional courts, the prosecutor's office, prisons as a notary or lawyer, as well as prisoner rehabilitation facilities or rehabilitation facilities for victims of crime. At the end of this period, written and oral examinations of the candidate take place before the higher regional court. You can retake the exam only once. After successful tests, the candidate can apply and fill a vacancy in a court as a professional judge for an indefinite period. Personnel commissions at higher, regional and Supreme Courts submit lists of candidates for appointment. The power to appoint a professional judge is formally vested in the Federal President, but he delegates this power primarily to the Minister of Justice. The choice in favor of a candidate should be based on the qualifications of the candidates, in case of equality, the law gives preference to women, and in other cases to older candidates [37].

In France, the Gender Equality Act was passed in 2018, which increased the period of parental leave for parents (both mother and father) from 6 months to 1 year and tightened sanctions for evading child support. This legal act also provides for new measures to ensure gender equality in the professional sphere and politics, and enterprises and companies that violate the norms of equality between men and women provided by the law will be denied public contracts, in which case political parties face serious fines [39].

Disputes related to gender discrimination in the country under study are considered by the following courts: the Prudhomme Council (impeccably honest people), the French Court of Appeal (Social Chamber), the French Court of Cassation (Social Chamber).

A special role in this mechanism is given to the Industrial Tribunal Council, which is aimed to establish peace between parties or to resolve conflicts, involving individual labor contract entrance,

execution and termination. General justice Court of Appeals includes a Social Chamber, which, in particular, considers gender disputes under the appeal procedures. Court of Cassation rules the system of general courts and includes the Social Chamber, which considers labor confrontations along with gender disputes, in the exercise of supervisory functions.

France has adopted a long perspective severe quota framework considering companies management, which demands both private and national enterprises to ensure at least 20% of women on the Executive Councils over a period of 3 years as from the day the corresponding law comes into effect and 40% over a period of 6 years. Moreover, companies, which are staffed with more than 500 employees and have an income of over 50 millions of euros must provide 40% of women in a term of 6 years. If the demand is not executed a court may supersede the results of a management elections.

French judicial system has 40,2% of judges represented by men and 59,8% - by women. Administrative positions have been divided due to a gender feature as follows: 71,4% - men and 28,6% - women. Heads of Court of the First Instance are: 70,9% - men and 29,1% - women; Heads' positions are taken by men - 72,3% and women - 27,7% within the appeal instance, and within the cassation instance - 100% Heads are men.

Analyzing the above data, it is worth to note that France has achieved significant results in implementing the principle of gender equality in the judiciary system within a clear government policy in this area, proper regulation and the introduction of a number of positive innovations. Judicial positions have become more "female", but the institution of leadership for female judges is still almost unattainable.

Spain once became a testing ground for "gender reorientation of society" and the creation of gender courts. Today, its judicial system consists of courts and tribunals, where judges and magistrates are perform on behalf of the King, dealing with various categories of cases (civil, criminal, administrative, labor, social and military). Courts are divided due to territorial (operating at the national level, in autonomous communities, provinces, judicial districts), and by subject matter (courts of civil, criminal, administrative, social, labor, and military jurisdiction). Depending on the court composition the Spanish judiciary system bodies are divided into individual

(Magistrates' courts, courts of first instance and judicial investigation, commercial courts; criminal courts; courts for protection against gender-based violence; administrative courts; social courts; courts for the supervision of correctional facilities; juvenile courts) and collegial (Supreme Court, National Court, High Courts of Justice, High Provincial Courts). In addition to the above mentioned courts, which are of general (ordinary) jurisdiction, there are also courts of special jurisdiction (eg. customary courts, military courts (tribunals)).

Considering judiciary system, we managed to find that 50.2% of women and 49.8% of men are judges in Spain. Administrative positions in courts are 47.5% taken by women and 52.5% by men. 76.9% of men and 23.1% of women are head of courts of first instance; in the Courts of Appeal 85.4% of men and 14.6% of women; in the Court of Cassation 100% are men [38].

Such a total “genderization” that has covered Spain, we believe, is too radical way to introduce gender parity in the country by distorting it towards women and shifting the democratic vector from the standpoint of equality towards them. This shows that the measures taken by the state do not always ultimately lead to the expected positive consequences.

2. Key trends considering the international experience of ensuring gender equality in Ukraine

In Ukraine, issues of gender equality remain cross-cutting in our country's cooperation with international organizations. For example, the main areas of cooperation between Ukraine and the Council of Europe today are:

- reforming existing, developing and implementing new legislation along with Council of Europe standards based on the principles of the rule of law and human rights;
- building a tolerant, democratic society based on European standards, in particular with regard to equal rights for women and men.

Of course, a review of existing social processes that support gender inequality requires the political will of gender equality and its consolidation at an appropriate state level. The review includes:

- 1) equal opportunities legislation and non-discriminatory laws;
- 2) the existence of a mechanism for reviewing complaints regarding inequality (the institution of ombudsmen for equal rights and opportunities for women and men) or the establishment of a

commission for equality or a council for protection against discrimination;

3) a strong apparatus of national equality with adequate tools and resources;

4) special equality policy and actions aimed at the special interests of women and men;

5) the existence of equality departments in each apparatus;

6) research and training on gender equality issues;

7) increasing public understanding of gender issues.

To achieve all these points, it is important to ensure the application of the following strategies:

a) develop relevant gender criteria and objectives;

b) involve all partners in the “gender dialogue”;

c) develop gender competence of local staff;

d) explore opportunities for cooperation identified through gender assessment, including gender networks and gender resources;

e) integrate gender approaches into work with staff;

f) provide resources for gender mainstreaming, including gender budgets;

g) establish a gender-aware monitoring system.

In addition, the government has approved a National Action Plan to implement the recommendations set out in the final observations of the UN Committee on the Elimination of Discrimination against Women. The document identifies specific measures aimed at eliminating all forms of discrimination against women for the period up to 2021. Among the specific recommendations of the Committee are the following:

- to provide justice with a gender-sensitive approach; fulfill commitments to prevent, investigate and punish crimes against women and girls;

- not to apply amnesty for crimes related to sexual violence during the conflict;

- involve women in the negotiation process for reconciliation, especially at the decision-making level;

- conduct mandatory systematic training of law enforcement and military on women's rights;

- bring the definition of rape in line with international standards, including not only physical violence but also abuse of power, fear of psychological violence, blackmail and detention;

- ensure adequate medical care and access to justice for victims of sexual violence, internally displaced women and other vulnerable groups of women;
- accord the terminology of antidiscrimination legislation;
- to conduct gender equality policies and programs of the state apparatus [43].

At the same time, the UN Global Comprehensive Study – Strengthening National Mechanisms for Gender Equality and Women's Empowerment [44] identified a number of factors that determine the success of gender equality mechanisms (at the national level, but they are also fully applicable and relevant at the regional and local levels):

- Commitment of all ministries to review their policies and programs taking into account gender aspects; assigning responsibility for the fulfillment of this obligation to the senior leadership;
- inter-ministerial coordination structure for monitoring progress and stakeholder relations;
- involvement of relevant external stakeholders, such as: gender / women studies and research centers; scientific and educational institutions; private sector; Mass media; public associations, especially women organizations; other representatives of civil society;
- capacity-building opportunities to raise awareness of gender equality issue among government officials and employees;
- ensuring that gender aspect is taken into account in reformation of legislation on family, employment, social security, taxation (personal income tax), education, and taking positive measures to improve the status of women and promote a culture of gender equality;
- sufficiency of budget resources and professional capacity;
- availability of tools for the development of gender mainstreaming strategies and appropriate methodologies.

In addition, the implementation of the State Social Program for Ensuring Equal Rights and Opportunities for Women and Men until 2021 will allow to achieve the following objectives:

- 1) to improve the legal framework for ensuring equal rights and opportunities for women and men, to coordinate it in accordance with international standards and EU legislation;
- 2) to create conditions and opportunities for equal participation of women and men in political, economic and social decision-making;

3) to increase the level of employers awareness on the implementation of international standards of workers equality in the world of work;

4) to create appropriate conditions to provide women and men with the opportunity to combine work with family responsibilities;

5) to increase the level of public awareness on the issues of equal distribution of family responsibilities and responsibilities between women and men regarding the upbringing of a child;

6) to increase the level of competence of specialists on ensuring equal rights and opportunities for women and men;

7) to ensure the addition of gender education standards to curricula;

8) to ensure the conduct of information campaigns with the participation of the media, cultural institutions and educational institutions in order to overcome stereotypes about the role of women and men;

9) to improve the mechanism for responding to the facts of discrimination on the grounds of sex [45].

For the sake of completeness, let us note that back in 2006 a Protocol of Understanding was signed between the Supreme Court of Ukraine, the Council of Judges of Ukraine and the State judiciary administration of Ukraine and the Office of the Commissioner for Federal Judicial Affairs of Canada, which stated that the project aims to involve a gender policy specialist who will develop recommendations for gender mainstreaming in the implementation of judicial reform to achieve gender equality. The prepared recommendations will be further used at all stages of project development and implementation: information collection, analysis, monitoring, reporting on the results of work and study of the experience gained. Direct attention will be paid to the issues of gender equality during the project implementation and the reflection of gender issues in recommendations on judicial reform and conducting training seminars. The partners will promote the involvement of more women in the Project activities as seminar participants, experts, consultants and event leaders. It will also encourage the creation of fair and equal conditions for admission to any positions to be created in the courts, especially managerial positions, as well as provide equal career opportunities for women working in the courts as judges or administrative positions [46].

This confirms the relevance of the gender aspect problem in the judiciary more than a decade ago and the search for ways to solve it, including international experience [47, p. 3–8].

In our opinion, the set of measures declared by the state to ensure equal rights and opportunities for women and men is a theoretical mechanism for implementing the principle of gender equality, including in the judicial system, but we consider that it is almost ineffective in reality, in practice.

As the experience of studying the research shows, the root of the problem should be found in the fact that currently in the curricula of future lawyers there are no subjects that would form students' gender vision, understanding of gender parity and participation of each of us in gender equality to build a democratic state and exercise the rule of law.

The practical set of measures aimed at overcoming the gender imbalance in the judiciary (“glass ceiling”, disregard for gender in the distribution of court workload, judges' determination of specialization in cases, election and activity as an investigating judge) for female judges is to adapt to modern Ukrainian realities of the “family-friendly place of work policy”, which allows to realize a certain flexibility in balancing work and family life.

Among the means of implementing the “family-friendly place of work policy” is the mechanism of gender mainstreaming in the election and promotion; elimination of “paths for mothers” (discrimination against women who take leave due to pregnancy, childbirth and their upbringing); flexible work schedule; remote work, organization of child care programs, other special “maternal” activities.

From our point of view, providing equal opportunities for men and women to pursue professional activities, build their own careers, increase their professional level should be realized through the creation of favorable conditions for combining work and all other aspects of life.

The literature distinguishes models of interaction “work – life”, among which: causal and redundancy models. Causal models suggest that the interaction between work and life can be both conflictual (from work to life and from life to work) and enriching (from work to life and from life to work). Conflictual interaction leads to the fact that the conflict “life – work” harms the performance of professional duties and impairs the professional well-being of the individual, and the

conflict “work – life” harms the family and personal well-being. Redundancy models describe how experiences, skills, or emotions gained in one area (eg, personal life, family relationships) are transferred, “flow” into another area (work). A distinction is made between direct redundancies, when problems at work cause problems in the family, personal life, and indirect redundancies, when problems at work indirectly cause problems in family or personal interaction, for example, due to financial problems. It is not only about conflicts and negative patterns of such interaction, but also about positive ones: personal flexibility, physical, psychological, social, material resources of the working environment and professional activity enrich personal and family life, improving its quality. Similarly, the family and personal life can be a resource for effective professional activity [48, p. 267–289].

Thus, it should be noted that the destruction of traditional professional-stereotypical views on the feminine and masculine is possible through public attention to unconscious, often biased and erroneous typical ideas and their impact on attitudes to a particular state of affairs. Of course, the media should play the most important role in this issue, but at the moment they are the ones who spread gender-role disparities in society.

The next logical step in the abolishment of traditional gender profession stereotypes should be the demonstration and promotion of successful examples that show the implementations of nontraditional gender roles. This will definitely take some effort by governmental bodies, political parties and leaders of public organization, yet none of the countries managed to build up democracy without its gender component. It is believed that a by step implementation of the set propositions can in some way have an effect on solving the gender asymmetry.

In order to understand the full picture, let take a look at the new national building norms regarding the design of courts which the Ministry of Regional Development, Building and Housing has updated. One of the changes, that is being studied at the moment is the adaptation of court buildings and its premises for visitors with children. This not only means the design of a baby room in the public area of the court but also the design of a “little witness” room for underage participants of the judicial process, which sometimes have to give testimonies while the judicial process is happening.

In the context of our research, we think, that the point of the conclusion is that the judicial analysis of the set problem shows the need to develop informational and educational programs, which are targeted at changing the formed male and female sociocultural behavior models as well as negative superstitions and customs, which were created on the principles of one sex being above the other. Today, there are no special governmental programs regarding the maintenance of gender equality with the judicial system. Educational programs for judges regarding the implementation of legislations in the sphere of gender neutrality needs separate attention.

The conducted comparative analysis of domestic and foreign legal reforms regarding the fight against gender asymmetry gives grounds to affirm that no matter the importance growth of the problem, most countries in the world, including Ukraine, have not yet constructively dealt with this problem. The government tried to solve separate aspects of this problem “on paper”, therefor we support N. V. Anischyk [50, p. 74] regarding the creation of a special Gender codex, which would encompass all sides of gender discrimination as well as the gender aspect problems within the activities of the court. After all the building process of a democratic society needs a new design of conceptual understanding of the essence as well as objective need of judicial reforms on the path to eradication of gender inequality in accordance with the positive world experience regarding gender transformations.

Its impossible to disagree with the opinion of O. R. Dashkovska that experience of highly developed and modern countries shows us that the development of democratic institutions and the formation of public society are interconnected processes that establish decent condition of a person within a society regardless of their sex. The progressive policy of the nation on effectively solving the “female question” must be based not on patriarchal strategies of one sex being dependent on the other but on the principles of a new strategy of equal opportunities of a man and a woman, which provides autonomy a sovereignty of the individual [51, p. 78–86].

Therefore, solving the problem of the judicial power within every country needs a personal approach, which incorporates the national culture, traditions and the character of the people. The structure of the judicial system of the other countries cannot be “copied”. It is good to borrow separate elements, but not systematically because when the mechanisms of a foreign judicial systems are implemented into

another national culture conditions, they do not work or work with gross distortions [52, p. 4].

Thus, the regulation of the gender judicial organization by implementing foreign experience is expedient.

- Incorporate experts on gender to the judicial reform commission under the President of Ukraine and to the judicial policy and justice committee of the VR of Ukraine.

- Incorporate experts on gender to the High qualification commission of judges of Ukraine and take into account their experience in dealing with gender related questions.

- Create quotas in order to maintain an equal representation of female judges within the Council of Judges of Ukraine.

- Incorporate a gender component within each step of the organization and learning process of the judge candidates and active judges.

- Integrate such values as equality and the absence of discrimination while the judicial reform is in progress in order to gradually transform the thought process of the judges, court personnel and people to the new European values and gender culture.

- Take into account the needs of the judges that have children or elderly relatives which need to be taken care of when dividing court loads, choosing specializations for the judges regarding different legal cases, appointing to the examining magistrate post and giving regular, additional or other type of vacation.

- Integrate such values as equality and the absence of discrimination while heading or conducting administrative work in a court.

- Integrate gender components in the process of updating the judicial education and judge personnel training systems.

- Take into account the need to increase the amount of female judges when conducting the selection for the post.

- Organize an open acquisition of statistical data regarding gender-sensitive judicial data.

- Take into account the need to increase the amount of women (on management positions as well) as well as increasing the access to career opportunities for female judges to manage courts.

- Provide the creation of mechanisms of control by the ombudsman of Ukraine, the use of legislations regarding the management of equal rights and opportunities for men and women.

– Organization of scientific and expert research on gender problems within the court activities.

If we can get rid of stereotypes, prejudice, expectations, double standards and doubts which are present within our society, only then will the gender balanced world with equal opportunity be opened. The change in the thought process will help, in the future, to change our actions if we are striving to make the world better and improve our view on how we treat others and their choices.

Conclusions

Some differences within the implementation of gender equality principles in different countries are useful and interesting to use for the formation of key and priority questions on the implementation and maintenance of a gender parity in Ukraine. Their analysis gives us the capability to look at the national mechanism of dealing with “gender questions” in a new way by taking the positive results from some countries while also not making unplanned and early steps regarding legislative regulations.

Today, a legislative answer of gender problematics within Ukraine has progressed but while comparing it to some of the other countries progressive in this sphere, the transformations within our country is happening at a slow rate. On the background of modern transformations, the gender aspect of societal interactions, as well as within the judicial sphere does not receive the necessary attention. In order to get positive results, there is a need to implement advance experiences of foreign national transformations in the sphere of neutralization of sex discrimination and maintenance of gender equality into the Ukrainian society. The experience of many successful democratic countries in the maintenance of an objective, true equality between man and woman in court activities shows that wanted result can be achieved only if the state takes the court “feminization” course, not only regarding the acquisition of the post of judge (in which Ukraine has gained positive results) but also regarding the access to administrative posts and “judicial management, creating good working conditions, which could help combine the professional sphere with other spheres. Taking into account the relevance, today's court “gender challenges” are still in “wait mode” regarding their solution even with the incorporation of international experience and propositions by the author regarding this question.

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