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PRINCIPLE OF GENDER EQUALITY IN THE SYSTEM OF PRINCIPLES OF LAW

Building a democratic state governed by the rule of law is based on guaranteeing equality of human rights. The peculiarity of the constitutional principle of equality of human rights and freedoms is to ensure their legal balance, balancing the needs and interests of individuals, social groups and society as a whole, developing mechanisms to prevent possible conflicts of interest and resolve them in case of occurrence. Ensuring equal rights and opportunities for women and men is one of the priority issues in the development of Ukrainian society. After all, the lack of gender equality causes the emergence of destructive processes in society, creates obstacles and restrictions on the path to social unity and slows down sustainable human development.

The formation of knowledge and development of skills to ensure gender balance requires a thorough understanding and improvement of basic concepts in this area, filling them with modern content, taking into account practical experience and international standards.

Studies of the conceptual and categorical apparatus in the field of gender theory have been carried out by S. Aivazova, O. Anikieieva, N. Anishchuk, S. Bobrovnyk, F. Gardiner, T. Hanzyska, G. Herasymenko, I. Hrabovska, N. Hrytsiak, G. Daudova, O. Dashkovska, T. Demetradze, J. Ecker, L. Yerokhina, Y. Ivchenko, O. Katan, L. Kobelianska, L. Kormych, T. Krasnopolska, I. Kresina, K. Levchenko, D. Lomber, O. Lukasheva, E. Maccoby, K. March, T. Melnyk, N. Onishchenko, O. Petryshyn, O. Pyschulina, O. Rudnieva, B. Friedman, M. Walt, D. Harris, G. Hristova, M. Schuler, O. Yarosh and many others.

The primary concepts in the studied issues are “equality” and “gender”. According to O. Rudnieva, human equality is a de facto, real equality of their social opportunities not only in the exercise of their rights, but also in the performance of duties. Given the objective inequality of individual traits, capabilities of each person and the uniqueness of individual living conditions, social inequality, as an inevitable result of such inequality, can be partially reduced by special measures of the state and society [1, p. 56-57]. O. Dashkovska, adhering to a similar opinion regarding equality, emphasizes that people are not equal in their physical and mental abilities, etc. Rights may be different for different groups of people, but they must be equal within the group for all its members. The researcher interprets equality of rights as belonging to each person the same legal opportunities necessary for their existence and development in specific historical conditions, which are objectively determined by the level of development achieved by mankind [2, p. 118-119]. Thus, scientists determine only legal possibilities as the basis of equality of rights.

The categories “human equality” and “equality of rights” are not identical, according to I. Polkhovska. Human equality is a multifaceted phenomenon that can be considered in philosophical, political, legal and other aspects, equality of rights is inherent only in the legal sphere; people are not equal as humans, but equal in their rights [3, p. 61, 63]. Thus, the author understands human equality as a broader phenomenon that includes, in particular, equality of rights.

T. Demetradze believes that the categories of “human equality” and “equality of rights” are single-order, but not identical. Human equality is an equal legal status of women and men before the law; equality of rights is presence of the scope of rights only [4, p. 123]. In this case, the author defines a narrow framework for understanding the concepts under consideration. Probably, this approach can be explained by the author’s desire to disclose the content of these categories only within the framework of jurisprudence.

Given the above, it should be noted that human equality is the creation of equal opportunities for all. Human equality is a broader category than equality of rights. Human equality

is being established consistently, and equality of rights is one of its components, which operates within the legal field and is formalized in current legislation. In legal terminology, it is more appropriate to use the term “gender equality”, which has a deep interdisciplinary content and cannot be part of one science.

The concept of gender became a universally recognized achievement of the Western feminist movement of the 1960s and 1970s [5, p. 9]. Domestic researchers began to use this term in various scientific fields in the early 1990s, and today this concept is widely used, but does not always have a single meaning.

The concept of “gender” has a wide range of applications both in science and in various social spheres. Sex is a biological aspect of human life, gender has a social character, which involves a particular behaviour for women and men, inherent in a particular society. These phenomena are inseparable and in a complex reproduce the specifics of a society, taking into account the interrelated levels of expression of each individual.

The study of the concept of “gender equality” requires first of all to refer to the Law of Ukraine “On Ensuring Equal Rights and Opportunities for Women and Men” of September 8, 2005, which formulates this phenomenon as equal legal status of women and men and equal opportunities for its implementation, which allows persons of both sexes to participate equally in all spheres of public life [6]. This definition can be described as concise and covers the basic principles of gender equality. Also, if it is conditionally divided into components: equal legal status; equal opportunities; equal participation in all spheres of public life, it is the last element that raises some doubts, namely the expediency of “equal participation” and the possibility of its broad interpretation. Since from the very beginning of life each person has individual physical and intellectual abilities and, accordingly, makes different contributions to the development of society, it is therefore correct to speak of equal participation of women and men in all spheres.

N. Romanov interprets gender equality as a basic legal principle that should be considered in two interrelated and complementary areas: normative, which provides an analysis of legislative activity and mechanisms for its implementation in practice, as well as the results of such activities of legislators in achieving gender equality, expansion the rights and opportunities of women and men; in the plane of public awareness and perception of the state policy in the field of gender equality [7, p. 74]. Gender equality, according to O. Nechaieva, is an equal legal status of women and men and equal opportunities for its implementation which allow persons of both sexes to freely develop their potential, develop skills and abilities to participate in political, economic, social and cultural development and master their achievements [8, p. 12-13]. There are a number of other definitions of gender equality, based on equal rights and opportunities for men and women in every sphere of life. It should be noted that domestic and foreign scholars specify the concept of “gender equality” somewhat more broadly in relation to the legislative definition of this term and some other author’s interpretations.

We emphasize that in some definitions of gender equality researchers highlight equality in achieving results as its additional element: gender equality as a civilizational value (not in the legal, but in a broader sense) includes equality before the law, opportunities and results [9, p. 20]; when it comes to gender equality as an ideal of socio-political development, this concept can be understood as: formal equality (enshrined in law); equality of opportunity (giving a legally established advantage to a certain social group to create the same conditions as other groups); equality of results (purposeful provision of elimination of obstacles for competing parties, which may be due to previous discrimination) [10, p. 5].

Gender equality is a process of fair treatment of women and men. To ensure fairness, criteria often have to compensate for historical and social barriers that prevent women and men from living on equal terms [11, p. 3]. They should enjoy the same social status, have the same conditions for the realization of all human rights, the opportunity to contribute to the development of the state, as well as equally enjoy the results of development [12, p. 142-143]. In this case, it is a question of justice, for example, a certain contribution of women and men to social development and the receipt of certain dividends or anything else in return.

Thus, gender equality can be considered as a legal category, as an idea, as a principle of law. The term “gender equality” should be understood as the equal legal status of women and men (rights, freedoms and responsibilities) and the creation of conditions for the realization of the abilities and capabilities of everyone in all spheres of life.

Despite the fact that after several decades of research in the field of gender equality by various domestic and foreign scholars, most of them do not single out the principle of gender

equality as one of the basic principles of law, gender equality is one of the fundamental principles of civil society and the rule of law.

Each principle of law is an independent social phenomenon, but its highest effectiveness is manifested only in interaction with other principles of law, when they begin to act as a holistic entity and in harmony.

Today, various terms are used in science, including the principle of gender equality, the principle of gender equality, the principle of equality between women and men, and others. However, we can note in fact the only content of these phenomena. According to the analysis of the terms “human equality” and “equality of rights” conducted at the beginning, the application of the category “principle of gender equality” is the most correct.

The principle of gender equality requires accepting and assessing the inherent differences between women and men and the different roles they play in society, which is related to the belonging of men and women to a particular class, their political views, religion, ethnic group, etc. [13, p. 64, 67]. The principle of gender equality should serve as a basis for ensuring equal rights and opportunities for women and men, and on the other hand – should not in any way violate the moral principles of society [14, p. 192]. Therefore, the principle of gender equality should be recognized as one of the basic principles of law. Now it is filled with new theoretical and legal content; is the foundation of human rights and freedoms and is intended to implement primarily the methodological function – to provide tools and methods for effective implementation of human rights. An important function of the principle of gender equality is information and orientation, which provides acquaintance of all subjects of legal relations with the basic principles of gender equality and legal regulation in this area.

The analysis of the conceptual and categorical apparatus of the theory of gender equality provides grounds to draw the following conclusions. The concept of “human equality” is a constantly changing, dynamic phenomenon that takes into account the peculiarities of social development, the needs and interests of its members. Gender as a legal phenomenon is mediated by moral, ethical, social, political content. The concept of “gender equality” has a deep interdisciplinary content and cannot be part of one science. Gender equality is a kind of social equality. The peculiarity of gender equality is that it is an element of legal, economic, political, cultural, informational and other types of equality that exist in society and the state. That is, gender equality is an integrative phenomenon. Gender equality should be considered as a legal category, as an idea, as a principle of law. The principle of gender equality should be understood as a set of basic ideas and provisions conditioned by specific historical social development, which objectify the legal values of establishing gender justice in all spheres of private, public and state life and ensure the development of the rule of law and civil society. The principle of gender equality serves as a goal that must be taken into account in lawmaking and law enforcement. The principle of gender equality is intended to implement primarily the methodological function – to provide tools and methods for effective implementation of human rights. The analysis of the content of the principle of gender equality provides an opportunity to state its interaction and interdependence with other fundamental principles of law – the rule of law, the principle of legality and others, which only together can properly eradicate the imbalance in rights, opportunities and responsibilities of women and men and establish gender parity. The principle of gender equality is a complex systemic social phenomenon based on legal, political, social, economic, ethnic, cultural and other factors. Revealing the legal nature of the phenomenon of gender, it should be emphasized on the axiological, ontological and epistemological basis of the principle of gender equality. The semantic components of the principle of gender equality are freedom, justice, rule of law and legality.

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СУЧАСНІ ПРОБЛЕМИ ГЕНДЕРНОЇ РІВНОСТІ В ТРУДОВОМУ ПРАВІ УКРАЇНИ

Стаття 24 Конституції України передбачає, що рівність прав жінки і чоловіка забезпечується: наданням жінкам рівних з чоловіками можливостей у громадсько-політичній і культурній діяльності, у здобутті освіти і професійній підготовці, у праці та винагороді за неї, спеціальними заходами щодо охорони праці і здоров'я жінок, встановленням пенсійних пільг; створенням умов, які дають жінкам можливість поєднувати працю з материнством; правовим захистом, матеріальною і моральною підтримкою материнства, включаючи надання оплачуваних відпусток та інших пільг вагітним жінкам і матерям [1].

Чинність Основного закону, як нормативного акта найвищої юридичної сили вимагає фактичного удосконалення правового забезпечення реалізації жінкам права на працю. Забезпечення юридичної рівності жінок і чоловіків стосовно вільної реалізації права на працю не означає рівності їх фактичного становища. Нерівність останнього обумовлена об'єктивними особливостями жіночого організму, умовами життєдіяльності жінок та, як наслідок, ширшими порівняно з чоловіками соціальними функціями. Тому рівність прав чоловіка і жінки за таких умов повинна забезпечуватися відповідною компенсацією жінці обмеження її можливостей. Під гендерною рівністю необхідно розуміти однаковий правовий статус жінок та чоловіків та урівноваження за допомогою системи спеціальних засобів їх можливостей реалізувати свої права, свободи та інтереси при реалізації свого конституційного права на працю.

Треба зазначити, що реальне рівноправ'я чоловіків і жінок є невід'ємною частиною прогресу людства, елементом демократії і важливою умовою розбудови демократичної правової держави. Розвиток суспільних відносин не дозволяє зараз нехтувати знанням, навичками та творчими здібностями жінок, а потребує негайного і повного їх використання. Сьогодні держава перебуває в стані нового формування гендерної демократії і створення нової правової системи, у якій жінки і чоловіки розглядаються як рівноправні суб'єкти розбудови