MYKOLAS ROMERIS UNIVERSITY
FACULTY OF LAW
INSTITUTE OF INTERNATIONAL AND EUROPEAN UNION LAW

ANASTASIIA VOROZHBIANOVA
INTERNATIONAL LAW PROGRAMME

GENDER EQUALITY IN THE SPHERE OF EMPLOYMENT

Master Thesis

Supervisor:
Assoc. prof.
Dr. Dovilė Gailiūtė – Janušonė

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ABBREVIATIONS

1. CEDAW Committee – the Committee on the Elimination of Discrimination against Women
2. CEDAW - The Convention on the Elimination of All Forms of Discrimination against Women
3. CEDAW - Women's Convention
4. China or PRC - People's Republic of China
5. CJEU - Court of Justice of the European Union
6. CSW - the Commission on the Status of Women
7. ECHR - the European Convention on Human Rights
8. ECOSOC - the Economic and Social Council
9. ECtHR - the European Court of Human Rights
10. Equality Act - Equal Employment Opportunity Act
11. EU - European Union
12. ICCPR - The International Covenant on Civil and Political Rights
13. ICESCR - International Covenant on Economic, Social and Cultural Rights
14. ICESCR - The International Covenant on Economic, Social and Cultural Rights
15. ILO - International Labour Organization
16. Labour Law - Labour Law of the Peoples Republic of China
17. LPRIW - Law on the Protection of Rights and Interests of Women
18. LSA - Labour Standards Act
19. NTCU - National Confederation of Trade Union
20. TEC - The Treaty establishing the European Community
21. TFEU - the Treaty on the Functioning of the European Union
22. UN - United Nations
23. UN Charter - United Nations Charter
24. UN-Women - the United Nations Structure of Gender Equality and Women's Empowerment
25. Universal Declaration - Universal Declaration of Human Rights

INTRODUCTION

Problem of research

The Master Thesis is highlighting issues of gender inequality in the labour market. The main problem that the author wants to draw attention to is the remaining challenge of women's discrimination in the workplace. Generally speaking, gender discrimination at work exhibits in the following aspects: discrimination against women in recruitment (for example, employers only recruit male candidates for some positions, or there are obviously different criteria for male and female candidates for the same jobs); discrimination in the treatment and salary (i.e. men and women receive different pay for the same work of the same value); discrimination in the promotion and discrimination of maternity rights in the sphere of employment. The examples of gender-based discrimination in employment in each particular country will be shown below.

Relevance of the final thesis

The modern labour market plays one of the significant roles in the economy of any country. And it is its condition that influences many parameters which are the key indicators of economic and social development. First of all, it is employment, unemployment, and wages, which reflect both the current situation in the economy and the prospects for economic growth. As the labour market is a source of income for the majority of people, its condition directly affects the level and distribution of income, the savings and investment activity of the population, the degree of social welfare and the social climate in the country.

In almost all societies and spheres of activity, there is discrimination against women in the family, in society and in the workplace. Although the causes and consequences of this may vary from one country to another, the discrimination against women remains a widespread phenomenon. The persistence of this phenomenon is caused by traditional stereotypes as well as traditional cultural and religious practices and diminish the role of women.

Gender equality in the labour market provides for both equal access of men and women to all opportunities offered by this market (to the areas of paid work in general, to all types of activities, places of work with different characteristics, etc.), and the equality of results which is reflected, in particular, in the absence of obvious gender-based pay disparities. Gender inequality limits women's ability of human capital accumulation, reduces their access to resources needed for life and development, and creates the potential of domestic violence. As a result it causes a considerable loss to the whole society, as it decreases the labour productivity, and their scope reduces.

On these grounds, it is necessary to examine not only the theoretical aspect of the chosen topic, such as international acts and scientific publications but also a practical aspect. This

category includes the practices from other countries that have experienced similar process and practice of international organizations that monitor the implementation of human rights. According to the data, collected from "The Economist" in 2016 - Japan, China, and Ukraine are almost at the end of the glass-ceiling and wage gap indexes. These countries are quite traditional, according to their background. Therefore, it was decided to compare Japan, China, and Ukraine in order to show whether they struggle with gender inequality cases or not.

Thus, gender equality should be a central objective of the development of every modern country. Equality between men and women is the most important basis of any democratic society that seeks social justice and respect for human rights.

It follows from the foregoing there is enough evidence to show that this topic remains relevant nowadays and quite problematic. Since, despite a wide range of policy instruments on gender equality at the international level as well as nationally, this problem currently remains an open question.

Scientific novelty and overview of the research on the selected topic

Scientific novelty consists in the following results obtained during the study:

- By using a broad base of sources, it became possible to expand the validity of the studies. The main conceptual directions in the development of regional scientific thought on the gender problem are defined and their theoretical link with the world scientific tradition is revealed.
- It has consolidated the legal framework of the gender equality regulation: international legal instruments are emphasized; the most significant cases are analyzed as well as the state of national regulation on the issue of observance of women's rights.
- The role of stereotypes of social psychology about the role and place of a woman in the system of social connections is established.

This work included a comparative legal analysis in such countries as Japan, China and Ukraine. Based on the analysis of the problematic aspects of gender equality in employment in the light of the positive experience of European Union, the work sets out the possible directions to address this issue.

Among researchers who carried out the study on gender equality in employment were: Ann Oakley, Erving Goffman, Kate Millett, Joan W. Scott, Johannes Morsink, Michalle E. Mor Barak. Their researchers were fundamental during writing this final thesis. In addition, there are national scientists. Gender equality issues in Japan were studied by Masami Kokubu, Emma Dalton, Michalle E. Mor Barak, Yoko Hayashi; in China – by Xun Zeng,

Jamie Burnett and Tania Branigan. In Ukraine, the problem of gender equality in the sphere of employment was conducted in publications of Olena Uvarova, Olena Dashkovskaya, Igor Shulzhenko and Ludmila Kormich. It was very important to indicate EU ("European Union") scientists in the mentioned sphere. They are: Eva Mark, Gómez Isa, Felipe, Koen De Feyter, Christian Tomuschat, Jamie Burnett, Dalila Ghailani, Petra Foubert, Sotirios Zartaloudis, Agnes Hubert, Maria Stratigaki and Colm O'Cinneide.

Significance of the Final Thesis

This study is of such theoretical and practical significance for deepening knowledge and overcoming the negative phenomenon of gender discrimination in employment. The author finds important the relevance of the topic of final thesis in the light of the scientific discourse of Japan, China, Ukraine, and EU and the practice of protecting women's rights. The value of the study results from the comparative approach to the analysis of the issue (research of many countries from different regions of the world). Combining theoretical studies based on the use of a broad source base for scientific research, the analysis of international standards, the practice of national legal regulation and the status of judicial protection of the respect of women's rights and the fight against gender discrimination provided a comprehensive study.

The study justifiably defends the position that the proper legal establishment of the principle of gender equality doesn't guarantee its implementation in practice. The important issues of practical implementation of gender equality are highlighted: low level of legal awareness and conservative perceptions of judges (Japan), limited access to justice (China), and low awareness of women about their rights and how to protect them (Ukraine). A number of recommendations for the practical implementation of gender equality in employment have been identified, which this thesis became being valuable for.

The aim of the research is to study the current situation of international legal instruments on gender equality in employment, to compare the experience of Japan, China and Ukraine on this issue, as well as to highlight the main aspects of positive measures, conducted by the EU.

The objectives of research

1. To identify the main international and national legal instruments in gender equality.
2. To assess the role of international organizations in the field of gender equality.
3. To analyze gender discrimination in employment in Japan, China and Ukraine.

4. To study the positive measures which were conducted by EU legislation.

Research methodology

The following methods were used in order to reach the objectives of the Master thesis:

1. **The linguistic method** was used to identify the definition of "gender".
2. **The sociological method.** It was used in order to determine the community sensitivity to that issue.
3. **The statistical method.** It was applied to summarize the figures for the gender pay gap.
4. **Methods of comparative historical analysis**. It was used in order to assess a historical context of the appearance of gender inequality in employment in different countries.
5. **Systematic analysis method**. It was applied to make a study under way to examine the CEDAW Committee, CJEU, ECtHR case law and internal law.
6. **Method of technical and legal analysis**. This method was applied for the study and legal evaluation of the countries mentioned in this work.
7. **Comparative legal method**. It was applied to make the comparative analysis of the employment discrimination reforms in Japan, China, Ukraine and European Union. It was aimed to determine similarities and differences between the reforms, strong and weak points, progress and failures. Also it was used to determine whether national law fulfills the international law requirements.
8. **The logical method**. This method is used together with the other methods to fully assess the nature of the problem and the theories presented and estimate whether it can be allowed to prevail or not.

Structure of research

The work consists of an introduction, three chapters, divided into sections and subdivisions, conclusions, recommendations, and bibliographies.

The first chapter of the final thesis deals with what is gender equality itself and its legal recognition. The first section provides the research of the definition and the main characteristics of the concept of "gender", "gender equality", "employment opportunities" and "discrimination". International law instruments on gender equality and international organizations have been explored as well. The studies also highlighted the practice of the United Nations, the International Labour Organization, the Commission on the Status of Women, the CEDAW Committee and the Council of Europe. In addition, the most famous cases of gender-based discrimination in the workplace carried out by CEDAW Committee and ECtHR were represented as well.

The second chapter deals with the analyzing of gender equality in employment in Japan, China, and Ukraine. The first section about Japan underlined that discrimination still exists in the equal treatment and salary; concerning pregnant women ("maternity harassment") and regarding unpossibility to be promoted due to "skill-based grade system". In addition, it was outlined, whether Japanese courts apply the international human rights treaties in practice or not. The second section about China analyzed the legal background and the main gender-based inequality in the workplace. For example, there was discrimination against women in recruitment, maternity rights at the workplace and wage gap. The same issues were analyzed with regard to Ukraine.

The third chapter reveals the significance of positive measures in the regulation of gender equality in leading European countries. The first section highlighted the evolution of the EU standards. The second section deals with the main EU instruments in the sphere of positive measures, describing its meaning and reasonableness. The third section analyzes case law of CJEU in such examples as training and empowerment, preferential treatment, labour relations and social security (including wage gap issue).

Defense statements

1. Despite international and national protection, gender discrimination in employment around the world still exists. For example, low level of legal awareness and conservative perceptions of judges in Japan; limited access to justice in China, and low awareness of women about their rights and how to protect them in Ukraine.
2. Positive measures with the help of well-developed legislation play important role in overcoming gender discrimination in employment of European Union.

LEGAL ASPECTS of GENDER EQUALITY IN EMPLOYMENT

1.1 Approaches for Understanding the Phenomenon of Gender Equality in Employment

1.1.1 Definition of the Concept of "Gender Equality"

The issue of men and women in relation to equal rights in modern society is quite important and is being researched in the context of scientific works in philosophy, history, culture, plus economics and sociology as a question of gender (sociocultural) equality. The gender concept in social sciences at a present stage of their development is formed on the typical role distribution between genders in society having and has all the consequences of such allocation as political, economic, legal, social, cultural, psychological which is bound to follow. If we classify the existing ideas in the history of philosophy and culture which concern the understanding of social aspects of gender, we can form the following groups:

• The thinkers who determined the primacy of male and identified a man with a human, whereas the woman was determined as a physical counterpart to him. This view gave the grounds to the idea of patriarchal domination of men in absolutely all spheres of public life. These philosophers were Augustine the Blessed and Aristotle. And nowadays Z. Freud is considered to be the representative of this approach[1].

• The thinkers who acknowledged that differences existed, but did not consider them to be a barrier on the way to equality claim of both genders. The differences were recognized at a biological level, but the equality principals took hold on society. This approach was laid by a well-known ancient Greek philosopher Plato[2].

• Thinkers who considered a gender disaggregation as a disadvantage of the human race and saw the overcoming of sex differences in the future as one of the signs of human positive development[3].

Approximately at the same time, three scientists began a research of matriarchy and maternal right. They included: the Scottish researcher of right George McLennan (1827-1881), American ethnologist Lewis Morgan (1818-1881) and Swiss historian Johann Bachoven (1815–1887)[4].

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[1] Marshall Cavendish Corporation, *Sex and Society*, Vol. 2 (Singapore, 2010), 545.
[2] UK Essays. Plato Gender [Internet]. November 2013. https://www.ukessays.com/essays/philosophy/plato-gender.php?cref=1.
[3] Ibid.
[4] *Revolutionary Feminism Communist Interventions*, Volume III. (New York: Communist Research Cluster, 2015),3. https://libcom.org/files/crc_ci_vol_three_2_01_0.pdf

A concept of "gender" was introduced into social sciences by Ann Oakley in 70th of XX century. First, the researchers' interest was only concentrated basically on proving of gender existence itself[5].

Therefore, the aim was to determine the extra-biological dependence of male and female differences in a cultural and social environment. But in the late 80s the researchers began to look for a dependence of gender roles and gender relations on cultural type[6].

There are few concepts of gender in the scientific literature. It is determined by a relatively "young" gender approach (first scientific researchers appeared about 15 years ago), as well as the complexity of this phenomenon itself. The basic condition for all of them is the definition of sex (s) and gender (gender)[7].

Sex is a term which defines the anatomical and biological features of humans (basically in a reproductive system) and these features define humans as males and females. But it can be used only to describe the characteristics and the behavior that follows directly from the biological rift between men and women.

Gender is a difficult sociocultural construct that represents differences in roles, behavior, mental and emotional characteristics of males and females. Based on this approach about gender it is understood as the organized model of social relations between women and men, that not only characterizes their communication and co-operation in a family but also determines their social relations in the basic institutes of society[8].

The gender is designed through a certain system of socializing, the division of labour and cultural norms, roles, and stereotypes that exist in society. To a certain extent, they determine the psychological qualities, abilities, activities, professions of people depending on their biological sex. However, gender roles and norms do not have universal meaning and vary considerably in different societies. In this sense of being a man or a woman means not having a certain natural qualities, but exercise a certain function. In modern social and human studies, gender is not used as a permanent and universal design. The concept of gender means not a thing or a subject matters, not many things or objects, but a complex intertwining of relationships and processes[9].

In a point of fact, gender is one of the most important partials of human life that affects all its sides. So gender equality in its turn protects rights and opportunities of both genders and creates fundamental principles for men and women rights and freedoms. The principle of

[5] Mary Holmes, *What is Gender? Sociological Approaches* (London, England: SAGE, 2007), 4.
[6] Michael Hughes, Carolyn J. Kroehler, and Zanden J. W. Vander, *Sociology: The Core* (Boston: McGraw-Hill College, 1999).
[7] Romanova Natalia, "Society and gender stereotypes in modern conditions: new landmarks"/Gender: Realities and Prospects in Ukrainian Society: Materials of the All-Ukrainian Scientific and Practical Conference", "Folio" (Kyiv, 2003), 132-133.
[8] Ibid.
[9] Jesse Adams Stein, *Hot Metal: Material Culture and Tangible Labour* (Oxford, United Kingdom: Oxford University Press, 2017). Chapter IV.

genders equality provides that economic, political and social resources should be apportioned fairly between men and women, without substantial disparities, or unequal conditions for access to any social resources[10].

In the meantime, there are three main concepts within a gender perspective that provide an opportunity for deeper exploring the nature and the concept of "gender" itself.

One was the theory of gender as a social construct. In terms of this concept, gender is being studied as a well-organized model of social relations between men and women that is formed by basic social institutions. It consists of the following guidelines such as[11]:

• Gender is formed by a work-sharing in the family, socializing and a wide influence of mass media;

• Gender is created by individuals direct in their minds, in a process of gender identity by recognizing social standards and following them which reflects peoples look, clothes and their behavior.

Therefore, the affiliation of each individual, from the gender point of view, depends on her/his relations with those around her/him.

Apart from that, scientists do identify a few methodological sources of the social constructive theory of gender. They include:

• The concept of Peter L. Berger and Thomas Luckmann. They consider social reality at the same time as subjective and objective ones. The following concept satisfies the requirements of objectivity because regardless the individual, it can be considered as subjective because it is formed by the individual himself. In this manner, gender is seen as a common world of interaction between men and women embodied in different practices, presentations, and natures. Therefore it can be called a characteristic of a social order that cannot be denied[12].

• The concept of Erving Goffman. He introduces a new term in a science such as "gender display" that became one of the most leading in a gender concept. Gender display is a mechanism for creating a gender, the study of a sex-related grounds while interaction process. The important postulate of this theory of social creating a gender we can consider the allegation that gender display is not biologically universal, but is determined by the culture[13].

The second theory determines gender as a network, a structure or the process. Joan W. Scott was the first to introduce gender term as stratification category, namely as a way of the

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[10] Kate Millett*, Sexual Politics* (New York, USA: Columbia University Press, 2016*), 126.*

[11] Ibid.

[12] Peter L. Berger and Thomas Luckmann, *The social construction of reality: a treatise in the sociology of knowledge"* (Garden City, N.Y.: Doubleday, 1967), 195. http://perflensburg.se/Berger%20social-construction-of-reality.pdf

[13] Erving Goffman, *Gender Advertisements* (New York, USA: Harper and Row Publishers, Inc, 1976), 1-5. http://www.publiccollectors.org/Goffman_Gender.pdf

hierarchical structure of social relations between men and women[14]. Such a definition of gender can be seen in Teresa de Lauretis study, where gender is determined as a technology to form sex identity according to the public expectations[15]. As experts approve, the process of gender identity formation can occur only when there is an interaction with other socially important features such as race and class. Therefore, gender is a process of building individuals according to the socio-cultural norms, which are gender and age, racial, sexual and other norms. The third theory determines gender as a cultural metaphor. Under its provisions, gender is studied according to symbolic and cultural aspects of the social existence. Those aspects do function next to biological and social and make the difference between "male" and "female" as the elements of related cultural and symbolic series: "male" - is something rational, spiritual, divine … and cultural; "female" - is something sensitive, physical, sinful … and natural. The last just reflects but do not equate the postulates of biological determining that makes everything social to define as biologically formed and so it means natural and indisputable[16].

Gender equality must be established as a target which means the equality of women and men that follows from a faith to major unfair forms of gender disparities. United Nations established the gender equality as a target that concerns human rights, particularly women rights, not men and economic growth. This means men and women being treated equally. For example, equal wages, equal quantity (amount) of men and women among the beneficiaries, equal budget allocation or any other resources to men and women for men and women activities[17].

Opportunities of gender equality mean[18]:

1) to be treated equally at your workplace;

2) to focus on merit;

3) ensuring equal conditions and equal pay for equivalent work performed;

4) necessity of overcoming the "glass ceiling"[19];

5) overcoming the negative practices of gender bias against women because of her possibility of marriage, pregnancy, and family;

6) prohibition of the introduction of gender-based segregation in the workplace.

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[14] Joan W. Scott, "Gender: A Useful Category of Historical Analysis". *The American Historical Review, Vol. 91, Issue 5* (1986): 1056. http://xroads.virginia.edu/~DRBR2/jscott.pdf

[15] Teresa De Lauretis, *Technologies of Gender: Essays on Theory, Film, and Fiction*. (USA: Indiana University Press, 1987).

[16] Nelly P. Stromquist, *Women in the Third World: An Encyclopedia of Contemporary Issues* (Abingdon-on-Thames, England: Routledge, 2014), 4.

[17] Ginararu Agnieszka, *A comprehensive gender approach in collective bargaining. A guide for trainers*. International Labour Organization (Kyiv, Ukraine: IBE, 2010), 33.

[18] Eva Mark, *Equal Opportunities Work. Theories about Practice* (Gotenborg, Sweden: Gotenborg University, 2002), 6.

[19] The term refers to a form of discrimination when it is not obvious but still creates a sort of ceiling, which limits women to progress in their career. When seeking employment women have less chance to get a vacant position. And it is not uncommon that the employer specifies that the competition is running only for men.

The gender perspective is discussed from the different methodological guidance and the conclusions are opposite to each other. Thus, neoclassical direction pays much attention to the processes that occur within households (gender-specific division of labour within a family, marriage and reproductive behavior), studies on the status of women in the labour market (the analysis of the causes, and patterns of discrimination, professional segregation by gender). Marxist direction studies gender perspective through sources and mechanisms of gender inequality, causes and forms of women exploitation in and outside the family. And new institutional economics focuses on the study of marriage that considered being contractual. The internal family structure is being analyzed, such as family participation in getting "family benefits", and the role of the State in regulations of gender relations and etc[20].

1.1.2 The Concept of Discrimination in Employment

According to the Resolution of the International Labour Organization ("ILO"), employees include all persons those have a job or other profitable occupation, regardless of the type, size and regularity of receiving remuneration; persons temporarily not at work due to training, injury, holiday or vacation, strike or lockout, educational or training leave, maternity or parental leave, other similar reasons[21]; persons performing work without payment at the family enterprise[22]. In its turn, unemployed persons are recognized as those who are simultaneously satisfied with three conditions: absence of work or other profitable occupation; active searching for a job; currently available for work[23].

It is important to notice, there are two main types of discrimination based on the sex: direct and indirect. According to the case-law of Court of Justice of the European Union ("CJEU"), discrimination involves the application of different rules to a comparable situation or the application of the same rule to different situations[24]. No minimum length of continuous employment is necessary for a discrimination claim to be made to an employment tribunal. Protection starts from when a role is advertised through to the last day of employment and beyond to include references[25].

The Committee on Economic, Social and Cultural Rights of the United Nations notes that direct discrimination occurs when the difference in treatment is based directly and explicitly on

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[20] Cheris Kramarae and Dale Spender, *"Routledge International Encyclopedia of Women: Global Women's Issues and Knowledge"* (Abingdon, England: Routledge, 2004), 444.

[21] ILO Guidelines. *Resolution concerning statistics of the economically active population, employment, unemployment and underemployment* (Thirteenth International Conference of Labour Statisticians, 1982). Supra note 3, Art. 9.

[22] Ibid., ILO Guidelines, supra note 5, Art. 9.

[23] Ibid., ILO Guidelines, Art. 10

[24] Case of Brown v Rentokil. 394/96. European Court of Justice. June 30, 1998.

[25] "Equality and Discrimination: Understand the Basics" (Acas, 2015), 14. https://www.thefourcorners.org.uk/uploads/sidebar/downloads/equality-and-discrimination-understand-the-basics.pdf

the difference solely related to the gender and characteristics of men and women that can not be objectively justified[26].

Indirect discrimination occurs when an explicitly neutral norm/provision, criterion or practice places one gender at a disadvantage compared to persons of another gender, except when this norm/provision, criteria or practice is objectively justified by a legitimate aim, and means of achieving these goals are worthy and necessary[27].

Consequently, direct discrimination occurs when it is solely based on the difference of the employee's sex. The immediate factors for indirect discrimination could be different but they are closely related to the gender identity of the workers.

The most widespread example of indirect discrimination is the difference in payment for full-time and part-time workers since part-time workers receive less pay for one hour of equal work. Therefore, women complained of violating their rights in such situations, since virtually all part-time (or overwhelming majority) workers are actually women, while men are more likely to be in full-time workers.

In general, 1980-1990 years are determined by rethinking on ways to solve the problem of gender discrimination. In particular, there are two components: anti-discrimination legislation and gender equality policy. Both elements are important, complement each other and should be included in the law. The incomplete understanding of the differences and the relationship between these two concepts sometimes suggests that gender equality policies are limited to adopting anti-discrimination acts and that women's "positive rights" are contrary to the principles of non-discrimination. As a result, international and European instruments have reflected in practice a new understanding of "the right to equal opportunities and equal treatment"[28].

The main international legal instruments in terms of protection against workplace discrimination are the Convention of ILO No. 100 concerning equal remuneration for work of equal value for men and women (1951) and the Convention of ILO No. 111 on discrimination in employment and occupation (1958)[29]. By the terms of the Convention No. 111 the discrimination is "any distinctions, limitations or preferences on race, skin color, gender, religion, political views, foreign or social origins that can lead to a destruction or violation of equal opportunities or treatment in labour and employment sector; any other distinctions, limitations or preferences

[26] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights, 11 August 2005, E/C.12/2005/4. http://www.refworld.org/docid/43f3067ae.html

[27] Ibid., *"Equality and Discrimination"*, 15.

[28] Olena Uvarova, "*Gender equality in the economic sphere: Ukraine's commitment to the EU (key EU Directives on ensuring gender balance in the labour market and professional activities, their development in the practice of the Justice Court)*" (Kharkiv, Ukraine: NTMT Publishing, 2015), 9.

[29] Equal Remuneration Convention, C100, Geneva, 34th ILC session, 1951. http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C100

that can lead to a destruction or violation of equal opportunities or treatment in labour and employment sector and is determined by the relevant member of Organization after being consulted with representative employers' and worker', if there are any of them and other relevant bodies" (para. 1, Art. 1)[30].

Discrimination is prohibited in the commission of any law-enforcement or management activity at work. There should also be the prohibition against any discrimination concerning promotion. The employees should advance in their job position (advance in their ranks, get higher level posts, categories etc.) based on objective profiles, such as labour productivity, qualification, and length of service. Based on the conditions and organizations of work in specific sectors (spheres of activity) these criteria can be specified in other legal regulatory documents. The attitude of employees to their duties, and following the labour discipline must also be considered while promotion.

Convention No. 111 grants exception from the concept of discrimination for the differentiations which are determined not only by the requirements to the specific of that particular activity or arise out of the Government's special concern for persons in need of enhanced social and legal protection, but also taking actions against the person reasonably suspected or proved to engage in activities that undermine the State security. Those actions are not considered discrimination if any interested person is entitled to ask the competent authority created under the National Policy (Art. 4)[31]. This provision is interpreted in a way that first, there must be some serious suspicions about the actual activity of the person, but not the fact that this person's belongs to a certain race, nationality, party, or any other group, and second, a competent authority that was created in order to deal with this persons complaints, has to be independent of administrative authorities, and to be in the institutional hierarchy above that authority. Significant problems of the state and the law, whose decision is challenged, to provide guarantees of independence and impartiality, justify its decision with serious arguments and provide the opportunity to the opponent to state his/her position.

The principle of non-discrimination in employment relations also results from the European Social Charter[32]. The main aim of the Parties' policies, which they will provide in every appropriate way, both national and international, is to achieve conditions that can be effectively implemented, particularly the principle: *"All workers have the right to equal*

[30] Discrimination (Employment and Occupation) Convention, C111, Geneva, 42nd ILC session, 1958. http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C100

[31] Ibid., Convention No. 111., Art. 4.

[32] European Social Charter (Revised), Council of Europe, 3 May 1996, ETS 163. http://www.refworld.org/docid/3ae6b3678.html

opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex"[33].

Finally, it is worth to draw particular attention to Directive 2006/54/EC[34], which provides for equality of opportunities and treatment for men and women within the context of labour and employment. The Directive repeals the previous Directives, which regulated this issue. That was due to the fact that the European Union law has characteristic of emphasizing the principle of equality of men and women from the general principle of equality and non-discrimination. And even in fact the gender equality is only a particular application of the general principle, the EU law regards them as equivalent. The structure of Directive 2006/54/EC is linked to it. As was mentioned, this act codifies many other existed earlier directives, which regulated different aspects of gender equality. The Directive establishes the prohibition of discrimination in equal pay, equal treatment in occupational social security schemes, equal treatment as regards access to employment, vocational training and promotion and working conditions and even regulates remedies and enforcement. In particular,*"Member States should provide for effective, proportionate and dissuasive penalties for breaches of the obligations under this Directive"*[35].

We can name the following gender issues in employment:

1. It is a big gender imbalance in labour through the professional segregation by gender.
2. Steady correlation between the proportion of women employed in one or another professional group and the level of average wage, which means the problem of lower assessment of female labor in general.
3. Limitation even prohibition on marriage, pregnancy or giving birth.
4. Women combine their professional and family duties.
5. The employment discrimination by gender is mostly indirect.

1.2 Instruments of International Law Concerning Gender Equality

1.2.1 General United Nations Regulative Instruments of non – Discrimination

Aiming to achieve global peace and security after the World War II and particularly through the principal of equality and non-discrimination the United Nations Organization was established. Its Charter enshrines the basic principles and goals[36]. The Preamble of the Charter expresses the determination of the peoples of the United Nation "*to reaffirm faith in… the equal*

[33] Ibid., Part I, Supra note 20 and Article "E".

[34] Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast). OJ L 204, 26.7.2006.

[35] Ibid., Preamble, Para 35.

[36] Charter of the United Nations, 24 October 1945, 1 UNTS XVI, United Nations. http://www.refworld.org/docid/3ae6b39301\.htm

rights of men and women"[37], as well as Article 1 of the Charter sets the goal of further *"promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion"*[38]. The Article 8 of the Charter aims at applying the principle of non-discrimination to the Organization's work by stating *"the United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs"*[39]. So it seems absolutely obvious that one of the core ideas that motivate the actions of the United Nations is a recognition of the principle of non-discrimination[40].

The United Nations Charter ("UN Charter") has not clearly defined the provisions of human rights. So in a while, it became obvious they needed more comprehensive presentation[41]. Thus interested States Parties have developed the Universal Declaration of Human Rights ("Universal Declaration") and adopted it on 10 December 1948[42]. And we can't overlook the role of the Commission on the Status of Women which was very substantial indeed while creating the Universal Declaration.

Both the Preamble to the Universal Declaration of Human Rights and the Preamble to the UN Charter overlap on the issue of "equal rights of men and women". Article 1 of the Universal Declaration is particularly important from the point of view of women's rights. It states, *"All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood"*[43].

Article 2 in its first paragraph emphasizes that the principle of non-discrimination can only be possible by providing the condition when "*everyone is entitled to all the rights and freedoms set forth in this Declaration, without any distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or another status"*[44]. In this manner, it expands the ban on discrimination which referred to earlier in Article 1.3 of the UN Charter. And in terms of clarifying the understanding that the principle of non-discrimination is relevant to all of the human rights acknowledged in the Universal Declaration, there was adopted a specific language such as "everyone", "all" and "no one" under the impact of women's movement[45].

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[37] lbid., UN Charter, Preamble
[38] lbid., UN Charter , supra note 3, Art. 1.
[39] lbid., UN Charter, Art. 8.
[40] Gómez Isa, Felipe, and Koen De Feyter, *International Human Rights Law in a Global Context* (Bilbao, Spain: University of Deusto, 2009), 377.
[41] Ibid., International Human Rights Law in a Global Context, 377.
[42]Universal Declaration of Human Rights, 10 December 1948, 217 A (III), UN General Assembly. http://www.refworld.org/docid/3ae6b3712c.html
[43] Ibid., Universal Declaration of Human Rights, supra note 22, Art. 23.3.
[44] Ibid., Universal Declaration of Human Rights, supra note 22, Art. 2.
[45] Ibid., International Human Rights Law in a Global Context, 378.

And nevertheless, there are passages that look quite controversial and even negative from the angle of women's rights. The great example is Article 23.3 which states "*everyone who works has the right to just and favorable remuneration ensuring for himself and family an existence worthy of human dignity…"*[46]. This provision assumes that the only wage earner and therefore the only source of material security for the family is the man.

But despite the fact of controversial points there are those in favor of the Universal Declaration is a very progressive document in respect to women`s rights[47]. And Johannes Morsink is one of them. According to Morsink, it wasn't very easy to reach the final product which was clearly seen from the inside history of the writing process. But other writers aren't that optimistic on this matter[48].

The adoption of the Universal Declaration has given the United Nations a boost for adopting two International Covenants on human rights in 1966: the International Covenant on Civil and Political Rights ("ICCPR") and the International Covenant on Economic, Social, and Cultural Rights ("ICESCR"). Both International Covenants with the other human rights treaties are of an obligatory character for the States which ratified or joined them. Those States are committed to periodically report to bodies of experts, and they, in turn, help the States in the implementation of the obligations of the treaties by issuing their recommendations on the further steps. They also provide their competent help in the interpretation of the treaties and by preliminary agreement may deal with individual complaints of alleged violations [4950].

These Covenants are also aimed at advancing human rights so some provisions specifically refer to the principle of non-discrimination. For example, in both documents Article 2 and Article 3 promote the prohibition of the discrimination based on sex as well as equal rights for men and women, and the guarantee for equal opportunities and rights in employment which stipulates the International Covenant on Economic, Social and Cultural Rights: *"Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence maternity and child protection, the right to health and the right to education"*[51].

[46] Ibid., Universal Declaration of Human Rights, supra note 22, Art. 23.3.
[47] Johannes Morsink, "Women`s Rights in the Universal Declaration", *Human Rights Quarterly, Vol. 13, No. 2* (1991), supra note 25, 255.
[48] Ibid., 233.
[49] International Covenant on Economic, Social and Cultural Rights, 16 December 1966. Treaty Series, vol. 993, p. 3, UN General Assembly. http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx
[50] International Covenant on Civil and Political Rights, Treaty Series, vol. 999, p. 171. 16 December 1966, UN General Assembly. http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx
[51] Ibid., Art. 2 and Art. 3 of ICESCR and ICCPR.

1.2.2 The Development of Human Rights Instruments Specific to Women

Nowadays democratic societies should fully secure people rights and guarantee their gender equality. Therefore within last 50-60 years, the international communities' activity is directed towards drawing attention to gender equality. The following issues were passed on the UN level:

1. Convention on the Political Rights of Women (1952) – this document is the first to be presented as the first universal international instrument which recognizes the equal political rights of women to man. The preamble emphasizes the intention of the parties to the treaty of the principle of equality of men and women which is enshrined in the UN Charter and, by all means, ensures the right of every person to participate in the management of his/her state directly or through freely chosen persons, as proclaimed in the Universal Declaration of Human (Article 21) representatives and the right of equal access to the Public service, as well as the desire to equalize men and women in their political rights[52].

The main content of the Convention is set out in its first three articles. It provides for the right of women to vote in all elections on equal terms with men without any discrimination (Article I); can be elected on equal terms with men without any discrimination to all institutions established by national law which require public elections (Article II); women are entitled on equal terms with men, without any discrimination, to access positions on civil and public service and to execute all the State duties and public functions set by national law (Article III).

2. Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962) – is aimed at achieving the free and total agreement of both sides to marry, to overcome the outdated laws, customs and practices that allow early marriages (child marriages) and marriages without the consent of a woman. The preamble stated the participating States, based on Art. 16 of Universal Declarations (it provides that *"men and women, on attaining the age of majority, have the right, without any restrictions on the basis of race, nationality or religion, to marry, establish a family and enjoy equal rights in the course of marriage, during marriage and in termination of marriage; the marriage can be concluded only with the free and full consent of both sides"*)[53], have confirmed their determination to repeal outdated laws and practices on "*matters of marriage and family by ensuring full freedom of choice of spouses, the complete repeal of child marriages, and the practice of conclusion in advance of marriage contracts for the girls under the age of puberty"*[54].

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[52] Convention on the Political Rights of Women, 20 December 1952, A/RES/640 (VII). UN General Assembly. http://www.refworld.org/docid/3ae6b3b08.html

[53] Ibid., Universal Declaration of Human Rights.

[54] Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 7 November 1962, UN General Assembly. http://www.refworld.org/docid/456d89064.html

3. The Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW") (1979)[55] - the document aims to protect the rights of women in all spheres of society. It imposes specific obligations on the member states on the adoption of legislative, socio-economic and other measures to ensure equality and equity between men and women. In the preamble, States Parties emphasized that discrimination against women violates the principles of equality and respect for human dignity, prevents women from participating on a par with man in their social, political, economic and cultural life of the country, affects the growth of the welfare of society and family, and makes it increasingly difficult for women's full potential, and expressed their determination to implement the principles proclaimed in the Declaration on the Elimination of Discrimination against Women (1967).

In 1993, the UN General Assembly resolution proclaimed the Declaration on the Elimination of Violence against Women, which was the first special international instrument, aimed at dealing with this phenomenon. However, everything that the United Nations could do in this case is to *"urge States to make every effort for the Declaration and its adherence to be widespread*", as there is no binding force for States[56].

The Fourth World Conference on Women in Beijing in 1995 also adopted the Beijing Declaration and Platform for Action. Gender equality is recognized by the international community as a value to be achieved for equity and social development[57].

1.2.3 The Council of Europe and Principle of Non-discrimination

The Council of Europe is an intergovernmental organization established after the Second World War in order to contribute, among other things, the promotion of the rule of law, democracy, human rights and social development[58].

The principle of non-discrimination is generally accepted by the law of the Council of Europe and it is fundamental for it. Article 14 of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms ("ECHR") prohibits discrimination on any grounds applying the rights and freedoms recognized in it[59]. The ECHR also puts a legal obligation on States to guarantee certain rights not only to their own citizens but also to everyone within their

[55] Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, Treaty Series, vol. 1249, p. 13, UN General Assembly, http://www.refworld.org/docid/3ae6b3970.html

[56] Declaration on the Elimination of Violence against Women, 20 December 1993, A/RES/48/104, UN General Assembly, http://www.refworld.org/docid/3b00f25d2c.html6

[57] United Nations Headquarters, *High-level Event on the Millennium Development Goals* (New York, 2008), 1. http://www.un.org/millenniumgoals/2008highlevel/pdf/newsroom/Goal%203%20FINAL.pdf

[58] Statute of the Council of Europe. European Treaty Series - No. 1 (London, 5.V.1949), https://rm.coe.int/1680306052

[59] European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, Council of Europe. http://www.refworld.org/docid/3ae6b3b04.html

jurisdiction. The ECHR is supervised by the European Court of Human Rights (ECtHR), which deals with complaints against the States Parties to the Convention[60].

In 2000, the Convention was complemented by Protocol No. 12. It expands the prohibition of discrimination and creates guarantees of equality in the enjoyment of all rights, including those provided for by national the law of the Member States[61].

Obviously, protection against discrimination plays an important role in the development of Council of Europe legal documents and is considered as the fundamental freedom that needs protection.

The most resent case of the ECtHR concerning gender discrimination in the sphere of employment is the case of Emel Boyraz v. Turkey[62]. It was a Turkish woman, who fought for her rights against a state-run electricity company. But the company rejected her application on the basis that she hasn't satisfied the requirement for this job. As the requirement explained that this job was designed originally for men who have completed the military service. In ten years time, it was satisfied.

The case was brought to the European Court of Human Rights which ruled that the woman had to be paid 10 000 euros by the State for her unlawful dismissal in 2004. The European Court said that Ms. Boyraz dismissal was unreasonable and there was no obvious evidence to prove that she failed to fulfill her duty as a security officer within nearly 3 years that she did work for the company.

To deal with this case it took nearly more than 10 years until it was finally examined by the ECtHR, as both the Ankara Administrative Court and the higher level of Ankara's Court jurisdiction, saw no reason to rule in favor of the applicant. Finally, in December of 2014 the Chamber admitted the violation of Article 14 (prohibition of discrimination) in conjunction with Article 8 (right for respect to private and family life) of the European Convention on Human Rights; as well as violation of article 6 § 1 (right to a fair hearing within a reasonable time) of the Convention.

We can observe that international instruments, the Council of Europe activities are primarily aimed at protecting human rights, including protection against employment discrimination, as this problem is totally unacceptable for the XXI century. The harassment of women's rights and their subordination to men must end.

[60] Ibid., Section II.

[61] Council of Europe, Protocol 12 to the European Convention on Human Rights and Fundamental Freedoms on the Prohibition of Discrimination, 4 November 2000, ETS 177. http://www.refworld.org/docid/3ddd0cb44.html

[62] Case of Emel Boyraz v. Turkey. Application no. 61960/08. EctHR. March 2, 2015.

1.3 Role of International Organizations in Gender Equality

1.3.1. United Nations for Protection and Promotion of Gender Equality

Widespread global inequality still remains in the way that denies women and girls their basic rights and opportunities. Increased efforts are required to achieve gender equality and women's empowerment, which will strengthen the legislative framework against deeply rooted sex-based discrimination, often resulting from patriarchal attitudes and related social norms.

Nowadays, the United Nations has led the way in the advocacy and promotion of gender equality. Its work is aimed at achieving equality in society, particular between men and women in employment[63].

The UN Charter has obliged a wide range of bodies and organizations, starting with the UN General Assembly, to provide the realization and protection of human rights and citizens, including women's collective rights[64]. Subsequently, there was established a special Commission on Human Rights, which included subcommittees and one of which was the Commission on the Status of Women. These Commissions had a considerable activity over the second half of the XX century on preparing the relevant international documents and to review the periodic reports of States on the progress of the implementation of the UN Conventions[65]. In 1979, the United Nations Special Committee on the Elimination of Discrimination against Women joined the work, which further worked quite autonomously[66]. The numerous forms of women's rights protection have led to the fact that women's collective rights have allegedly dropped out of the general list of human rights. The situation was changed after the Vienna Declaration and Program of Actions was adopted in June 1993, which for the first time in human history proclaimed that "…*human rights of women and girls were an integral and indivisible part of universal human rights*...", as was mentioned before[67].

On July 2, 2010, the UN General Assembly unanimously adopted Resolution 64/289, in which it was decided, in particular, to establish the UN-Women structure by combining and transferring this structure to the existing mandates and functions of the Office of the Special

[63] "UNDP gender equality strategy 2014 – 2017", United Nations Development Programme, New York, NY: 2014/1. www.am.undp.org/content/dam/armenia/docs/GenderEqualityStrategy2014-17.pdf

[64] Art. 13 (1b) of Charter of the United Nations, 24 October 1945, 1 UNTS XVI, United Nations. http://www.refworld.org/docid/3ae6b39301\.htm

[65] Commission on the Status of Women. United Nations Women, accessed July 18, 2017. http://www.unwomen.org/en/csw

[66] Gómez Isa, Felipe and Koen De Feyter, *International Human Rights Law in a Global Context* (Spain, Bilbao: University of Deusto, 2009), 386.

[67] Vienna Declaration and Programme of Action, 12 July 1993, A/CONF.157/23, Part II, A (37), UN General Assembly. http://www.refworld.org/docid/3ae6b39ec.html

Adviser of the Secretary-General to Gender Issues and Advancement of Women's (created in 1997, Office of the Special Adviser on Gender Issues for the Advancement of Women)[68].

The United Nations Structure of Gender Equality and Women's Empowerment ("UN-Women") advocates for gender equality as a fundamental principle of social, economic and cultural development, but not only as an inalienable human right. This structure provides a strong and resounding voice for women and girls at the local, regional and global levels, and promotes the equal participation of women in all spheres of life, focusing on five priority areas: strengthening the leadership role and increasing the participation of women in society; eliminating violence against women; involving women in peace processes; women's economic empowerment; including of gender equality as a central component in the planning and budgeting process of national development. The United Nations coordinates efforts to advance gender equality within the entire UN system, combining the resources and responsibilities of the United Nations, which intensifies the focus in its work and its results[69].

1.3.2 International Labour Organization

The International Labour Organization, which is one of the oldest international intergovernmental organization, was established in 1919 in accordance with the Treaty of Versailles. The ILO's Charter is based on two basic principles - universality and tripartite representation. Universality means, above all, the possibility of joining the Organization for any State that agrees to honor the obligations under the Charter[70].

Tripartite social dialogue and gender equality form the core values and key principles in the work of the ILO. Tripartism is a recognized instrument for managing and promoting equality between men and women in employment[71]. Equality is not a luxury[72].

In 1944, the International Labour Conference adopted the Philadelphia Declaration, which incorporated the goals and objectives of the ILO, as well as the following fundamental principles in employment[73]:

- labour is not a commodity;
- freedom of expression and of association are essential to sustained progress;

[68] Resolution adopted by the General Assembly [without reference to a Main Committee (A/64/L.56)] 64/289. Distr.: General 21 July 2010. http://rconline.undg.org/wp-content/uploads/2011/11/GA-Resolution-on-System-wide-Coherence-64-289.pdf

[69] Phumzile Mlambo-Ngcuka, *"UN Woman. United Nations Entity for gender equality and the empowerment of women"*, 2015. http://www.unaids.org/sites/default/files/media_asset/20150501_UNWomen_en.pdf

[70] Guy Ryder. The International Labour Organization: The next 100 years. Journal of Industrial Relations Vol 57, Issue 5 (First Published August 25, 2015): 749 https://doi-org.skaitykla.mruni.eu/10.1177/0022185615595732

[71] S. Kring and M. Kawar*, Guidelines on Gender in Employment Policies,* [Guidelines on Gender in Employment Policies], (Geneva:International Labour Office, 2009), 23.

[72] Michelle Bachelet, head of UN Women, the Summit of Least Developed Countries (LDCs). May 22, 2011.

[73] Ibid., Guidelines on Gender in Employment Policies, 5.

- poverty anywhere constitutes a danger to prosperity everywhere;
- all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.

Despite the obviousness, simplicity, and ease to implement these principles in practice, in the meantime, most of them continue to be the declarative purpose only in the activity of many states, rather than real experience.

Despite some positive results in some parts of the world, millions of women are continuing to lose in the fight for equality in employment, as it's mentioned in a new report prepared by the International Labour Organization within the framework of the Initiative to commemorate the centennial of the ILO on women at work. *"The report highlights the challenges that women face in the world when it comes to finding and maintaining decent work*", - said ILO Director-General Guy Rider[74].

The authors of the report, "Women at Work: Trends 2016", studied data for 178 countries and came to the conclusion that disparities between men and women remain in many areas of the global labour market. Moreover, the report shows that over the past two decades, women's significant achievements in education have not been realized in a comparable way to improving their economic situation on the labour market[75].

In 2015, the world's unemployment rate of 6.2%f for women, which is 0.7 percentage points higher than for men (5.5%). According to forecasts, in 2018, both indicators will remain at the same level. Today, women employment ratio in the world does not exceed 50%, while among the employed men it is 76.1% (over the past twenty years the gap has shrunk by about 3 percentage points). In developing countries, the involving women as participants are slightly higher (70.3%) than in developed countries (51.9%). The minimum ratio of working women is in the Arab States (21.2%), the highest - in Sub-Saharan Africa (64.6%)[76].

"Half of the women in the world are detached from participation in the labour force, although, 58% of women would prefer to have paid job", said Deborah Greenfield, Deputy Director General of the ILO. But at the same time, according to the ILO, 20% of men and 14% of women still believe that a woman should not work outside her home[77].

[74] Statement by Mr Guy Ryder, Director-General International Labour Organization Development Committee Washington D.C., October 14, 2017. http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/statement/wcms_582867.pdf, 3.
[75] Report Women at Work: Trends 2016. International Labour Office, (Geneva: ILO, 2016), 14. http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_457317.pdf
[76] Ibid., Report Women at Work: Trends 2016, xii-xiii.
[77] International Labour Office, *World Employment and Social Outlook: Trends for women 2017* (Geneva: ILO, 2017).

1.3.3 The Comission on the Status of Women

The Commission on the Status of Women is a functional part of the Economic and Social Council ("ECOSOC"). It was formed in 1946, and remains a major global legislative body devoted exclusively to gender equality and women's empowerment. The purpose of the Commission on the Status of Women is to prepare recommendations and reports to the Council on ensuring women's rights in the political, economic, civil, social and educational spheres. Each year, representatives of member states gather at UN headquarters in New York in order to measure the progress on gender equality, set the targets, and the global standards, formulate a specific strategy for gender equality and women's empowerment around the world. They discuss progress and gaps in the implementation of the Beijing Declaration and Platform for Action, the main document of the global gender equality policy, and the 23rd Special Session of the General Assembly in 2000, as well as issues related to gender equality and women empowerment. Member States agree on further actions aimed to accelerate the progress and promote women to exercise their rights in terms of politics, economy, employment and social activities. The results and recommendations of each meeting are being sent to ECOSOC for further work[78].

The main task of the CSW is to agree on priority themes conclusions for each year. Agreed conclusions include an assessment of progress, as well as gaps and challenges. They contain, in particular, a number of specific recommendations on the activity of Governments, intergovernmental bodies and other institutions, civil society and other stakeholders that are realized at the international, national, regional and local levels. With agreed conclusions, the Commission also adopts a number of resolutions on a wide range of human rights issues. The annual report of the Commission is submitted to the UN Economic and Social Council for adoption[79].

The Commission is aimed to implement the Platform of Action as soon as possible. In which concern they adopt multi-year development programs analyzing the progress and making further recommendations on a priority theme. So it comes out in a form of negotiated and agreed solutions[80].

ECOSOC Resolution 2017/9 set out a number of current methods of work. Under which each session the Commission[81]: introduces the idea of gender equality implementation and the

[78] Commission on the Status of Women. United Nations Women, accessed July 18, 2017. http://www.unwomen.org/en/csw

[79] Lakshmi Puri, Report on CSW61 and Analysis of the Agreed Conclusions (March 13-24, 2017). https://www.sigmanursing.org/docs/default-source/default-document-library/report-on-commission-on-the-status-of-women-2017-and-analysis-of-the-agreed-conclusions.pdf?sfvrsn=0

[80] Ibid.

[81] Resolution adopted by the Economic and Social Council on 7 June 2017 [on a proposal considered in plenary meeting (E/2017/L.22)]. Distr.: General 4 August 2017. http://undocs.org/E/RES/2017/9

empowerment of women; raises the important questions in general discussion concerning the status of gender equality; assesses the progress made on implementation of agreed solutions; deals with problems, trends, focus areas and new solutions on the question concerning the situation of women and support gender mainstreaming.

1.3.4 CEDAW Committee

In order to monitor the implementation of the Convention, the Committee on the Elimination of Discrimination against Women ("CEDAW Committee")[82] is made up of twenty-three experts with high moral integrity and competence in the area covered by this document. These experts are selected by States Parties from among their nationals[83].

The CEDAW Committee of the Convention by the Member States: the State reporting procedure that was included in the Convention from the beginig, as well as two procedures established by the Optional Protocol CEDAW, adopted in 1999: the individual complaints procedure ("notification") and the investigation procedure. It is important to note that the last two procedures can only be initiated against the State that has ratified both the CEDAW and the Optional Protocol[84].

We should pay attention to such function as the filing of an individual complaint. Because it is very important to be able to defend women's rights independently in case of its violation. It also shows the seriousness, responsibility, and willingness of the CEDAW Committee to resolve the issue of discrimination, which in modern civilized society, has no right to be.

One of the most famous cases of CEDAW Committee concerning gender equality in the sphere of employment are: 028/2010 R.K.B. v Turkey (2012), 60/2013 Svetlana Medvedev v the Russian Federation (2016).

In Turkish case of R.K.B. against her employer a hairdressing salon, the woman was dismissed based on her employer accusation of having an affair with her male colleague. However, the employer hasn't dismissed the male colleague. The woman was threatened with further disclosure of her relationship with other men in order to force her to sign the papers that she had no claims against her employer about her benefits and that she had to attest that she had been paid up upon her termination. The Committee received a claim from R.K.B. who alleged that her contract termination was unfair, as her employer has done it based on gender

[82] Ibid., CEDAW, Article 17.

[83] Information on membership of the CEDAW Committee from 1982 to present. http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Membership.aspx

[84] Gómez Isa, Felipe, and Koen De Feyter, *International Human Rights Law in a Global Context* (Spain, Bilbao: University of Deusto, 2009), 397.

stereotypes. Both Labour Court and further the Court of Cassation hadn't admitted any gender discrimination grounds. The first one only ruled that the woman's termination was unjustified.[85].

But unlike courts decisions, the Committee made its conclusion admitting that Turkish courts build their decisions based on gender stereotypes, showing their tolerance to cases of extramarital relationships for male and not for female employees. It was also admitted that Articles 5(a), 11(1a) and 11(1d) of CEDAW were violated. In turn, the Committee mentioned that even though the existing since 1990s legislation on women's rights meets the due diligence standard, the State is still obliged for it to be fully implemented which means a genuine improvement of women's position in society and changing wrong stereotypical attitude. The Committee enabled the adequate compensation to be paid in favor of the female employee. It also emphasized that the State is in charge of taking measures in implementation of appropriate legislation on gender equality in the workplace as well as training the judiciary, lawyers and law enforcement officials on women's rights and gender-based stereotypes.

Another case was Svetlana Medvedeva vs. Russian Federation private marine company[86] in the Samara region. The woman had completed her education as a navigation officer and was selected to work at the helm boat. But lately, she was rejected based on the provision of Article 253 of the Labour Code and Government Regulation No.162 which contains a list of occupations which are banned for women or restricted to do.

Svetlana Medvedeva applied to the court in order to oblige the company to provide her working conditions which are safe and comply with her employment requirement. But it wasn't successful as the court ruled that the existing regulation was aiming to provide protection of women reproductive health. So the woman took a further action and applied to CEDAW Committee on the basis that she suffered gender-based discrimination under the Convention.

The Committee has found that the prohibition makes it difficult to women regardless of their age, marital status, ability or desire to have children to use their rights and opportunities in employment equally with men. In this way, the Committee has admitted that Ms. Medvedeva's rights to freely choose her profession and employment (for which she was educated) have indeed been violated.

CEDAW Committee made the decision on giving an appropriate reparation and compensation to Ms. Medvedeva and for the authorities to provide her with easy access to jobs she was qualified. With regard to this issue, Russia was called on to work on Article 253 of the Labour Code and to amend the list of restricted or prohibited occupations and sectors established

[85] R.K.B. v. Turkey. Communication No. 28/2010. CEDAW Committee. February 24, 2012.
[86] Svetlana Medvedeva vs Russian Federation. Communication No. 60/2013. CEDAW Committee. February 25, 2016.

by Regulation No. 162 so that it only applies to protect maternity (pregnant and breastfeeding women).

To summarize both cases, we can make the conclusion that there is a common situation that the legislative regulation acts not in women's favor whether it is intentionally or not. And in both cases, women's rights were admitted being violated under the CEDAW. And as we can see, the CEDAW Committee made a common decision that the national legislation must be amended and implemented at the state level in alliance with international legal instruments on gender equality in the workplace.

In conclusion, it is important to say that gender is one of the most significant parts of human life and affects all its sides. Gender equality protects the rights and opportunities of both sexes, is the foundation of rights and freedoms for both women and men. The principle of gender equality provides that economic, political and social resources must be allocated equally between men and women, without significant differences or any unequal access to social resources as well as restrictions and discrimination.

Among the basic concepts that have been researched in the work are such as gender, gender equality, employee, direct and indirect discrimination.

Thus, gender equality should be established as a target which means the equality of women and men that follows from a faith to major unfair forms of gender disparities. For example, equal wages, equal quantity (amount) of men and women among the beneficiaries, equal budget allocation or any other resources to men and women for men and women activities.

Discrimination involves the application of different rules to a comparable situation or the application of the same rule to different situations.

International legal regulation of the establishment of the principle of gender equality at the international legal level was carried out by such institutions as International Labour Organization, UN-Women, The Commission on the Status of Women, CEDAW Committee and the Council of Europe.

The regulatory framework for it is: the Universal Declaration of Human Rights; the United Nations Charter; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social, and Cultural Rights; CEDAW and Convention for the Protection of Human Rights and Fundamental Freedoms.

In addition, important legal instruments in terms of protection against workplace discrimination are the Convention of ILO No. 100 concerning equal remuneration for work, the Convention of ILO No. 111 on discrimination in employment and occupation and 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.

The most recent cases of the ECtHR and CEDAW Committee concerning gender discrimination in the sphere of employment show – mentioned problems exist in our society. Generally speaking, women suffer from gender stereotypes and as a result cannot enjoy their equal rights with men. Furthermore, national legislation should be amended and implemented at the state level in alliance with international legal instruments on gender equality in the workplace.

LEGAL ANALYZING OF GENDER EQUALITY IN JAPAN, CHINA AND UKRAINE

2.1 Gender Discrimination in the Workplace in Japan

2.1.1 Legal background

It is quite well known that Japanese apply strict policy at the workplace, where there is always an exceptional productivity of labour, a full employees' loyalty, and a fantastic corporative spirit. But Japanese women traditionally have still low participation in the economy of Japan, and it is unclear whether this situation can change or not.

The role of women in the samurai community is a complex issue: which can be briefly described as: *"A woman has no proper lord, therefore, she must look at her husband as he is her master and serve him with all due respect"* - says Onna Daigaku. It reflected the perfect image of a Japanese woman that has been formed for centuries. Samurai's wife was supposed to be submissive[87].

The demands of society towards women have changed in the Meiji era with the introduction of a basic compulsory education. The education system under Meiji emphasized girls' being educated equally with boys, as it was believed that they should become mothers and significantly affect the teaching of children. In addition, they could become good teachers. As a result, women played a prominent role among well-educated and classy Japanese people, and today it is widely believed that women's education has become one of the most important factors for such rapid industrialization of Japan[88].

By the beginning of the twentieth century, most Japanese women spent all their time at home. Occasionally they could visit relatives and friends, now these restrictions are removed. Women not only make visits, they entertain acquaintances. But they are actively implemented in the public life of the country, working in all spheres.

Such women in Japan are called "carrier woman" - a woman who makes her career. However, despite the formal equality between women and men, the social inequality of women in Japan continues to exist at all levels of the social hierarchy. So, discrimination against Japanese women in both political and public life still occurs, despite the equality of genders[89].

The period after World War II has encouraged Japanese government to develop the employment discrimination law. It was based on Japanese Constitution (promulgated in 1946) which provided fundamental human and social rights. These rights guaranteed *"..the equality in*

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[87] Ekken Kaibara, *Onna Daigaku: A Treasure Box of Women's Learning* (Nezu Press, 2010).

[88] Miki Y. Ishikida, J*apanese Education in the 21st Century* (Indiana, United States: iUniverse, 2005). http://www.usjp.org/jpeducation_en/jpEdSystem_en.html

[89] Emma Dalton, *Women and Politics in Contemporary Japan* (ASAA Women in Asia Series) (London, England: Routledge, 1 edition), 2015.

accordance to the law and non-discrimination on the grounds of race, creed, sex, social status or family origin" (Art.14 Para.1) and proclaimed that *"everybody is entitled to work and therefore the state is obliged to provide workers with suitable employment opportunities"*[90].

In 1947, according to the requirement of Article 27 Para 2, they adopted the Labour Standards Act ("LSA") to regulate terms and conditions of employment[91]. It was followed by other labour-protective legal acts. Among them was the Equal Employment Opportunity Act of 1986 ("Equality Act"). It was significant as this act set up the regulation of discrimination against women[92].

Moreover, in 1967 Japan ratified Equal Remuneration Convention No. 100 and Convention on the Elimination of All Forms of Discrimination against Women in 1985[93].

The equal treatment concerning labour contracts is stated in Articles 3 and 4 of the LSA. It says the following (Equal Treatment):

> *"Article 3. An employer shall not engage in discriminatory treatment with respect to wages, working hours or other working conditions by reason of the nationality, creed or social status of any worker."*
>
> *"Article 4. An employer shall not engage in discriminatory treatment of a woman as compared with a man with respect to wages by reason of the worker being a woman."*

To meet the demands of international standards it was necessary to include these articles in[94]. It also supposed to cover the issue of combatting not only major types of discrimination but the discrimination against persons from other Asian countries too. Below we will refer to the problems of the wage gap between women and men at the workplace, maternity harassment and the cooperation of Japanese Courts and International Human Rights Treaties.

2.1.2 Wage Gap Issue

Despite everything, the traditional society of Japan remained quite discriminative towards women. And until 1999 the restrictions in law were not tight enough to compare with other developed countries. But on the 1st of July 1972 was a historical moment for Japan when they have enacted first time ever the law on gender discrimination in the workplace. It was the *"Law respecting the improvement of the welfare of women workers, including the guarantee of*

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[90] *Constitution of Japan, 3 November 1946.* http://www.refworld.org/docid/3ae6b4ee38.html

[91] Labour Standards Act, Act No. 49 of April 7, 1947. http://www.japaneselawtranslation.go.jp/law/detail_main?id=5&vm=2&re=

[92] Ryoko Akamatsu, "Introduction to the Equal Employment Opportunity Law of 1985," Legislative Series 1985 (1985): 1-6.

[93] Ratification of 18 International Human Rights Treaties. http://indicators.ohchr.org/

[94] The Declaration of Philadelphia (1944) had provided that "all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity".

equal opportunity and treatment between man and women in employment" (Law No. 13)[95]. The full implementation required some ordinances to be made. So they were enacted in 1986 (as stated above). And the actual law amendments were enacted through Law No. 107 of June 1995[96].

It was seen as a progressive shift in legislation. Though it was still not sufficiently clear which gave employers a chance to carry on their discriminatory practices. The law, however, has not provided any legal consequences, but just stipulated that employers have to "do their best" to eliminate and restrict any gender discrimination. Newspapers posted male orientated jobs. And women, who were seeking a job after graduation, faced a problem to get positions with salary and benefits of equal level with their male counterparts[97].

The ruling of 1996 was very significant as it encouraged the latest changes of Japans gender-related legislation. And one of the examples was the case of Shiba Shinyo Kinko Bank. It lost the court case and had to pay 340 million yen (approximately $3 million) to 13 plaintiffs[98]. It was a group of women employees who went to court to demand their rights on equal wages and proportions. This has resulted the adoption of a new law – the Basic Law for a Gender – Equal Society. The new law resolves the weaknesses of the other one by giving specific guiding principles, such as:

- *prohibiting any kind of discrimination while advertising jobs and hiring candidates;*
- *interviewing with questions which are directed to candidates of one gender only is ban (for example if a woman is asked about changing her carrier plans due to her marriage or childbirth);*
- *making it easier to start a mediation process (it can be initiated unilaterally, rather than bilaterally)*[99].

Still, in 2015 among all the first world countries, Japan and Korea have the world's largest gender wage gap. Japan ranks at 25.9% while Korea clocks in at 36.7%[100]. Women commonly were discriminated in their wages. The basis of age/seniority for wage and the payment of housing and family allowances were applied to men only[101]. There was a case in a district court where it was pretty obvious that employer intentionally applied certain principles so

[95] Michalle E. Mor Barak, *Managing Diversity: Toward a Globally Inclusive Workplace* (California, USA: SAGE, 2013), 29.

[96] Labour Standards Law (Law No. 49 of 7 April 1947 as amended through Law No. 107 of 9 June 1995). https://www.ilo.org/dyn/natlex/docs/WEBTEXT/27776/64846/E95JPN01.htm

[97] Ibid., *Managing Diversity: Toward a Globally Inclusive Workplace*, 29.

[98] Shiba Shinyo Kinko case. Tokyo District Court, 27 Nov. 1996 (704 Rodo Hanrei 21).

[99] Ibid., *Managing Diversity: Toward a Globally Inclusive Workplace.*

[100] The Economist "The best and worst places to be a working woman". March 8th, 2017. https://www.economist.com/blogs/graphicdetail/2017/03/daily-chart-0

[101] Roger Blanpain, Hiroya Nakakubo, Takashi Araki, *Employment Discrimination Law in Japan: Human Rights or Employment Policy?* (Kobe, Japan: Kobe University, 2008), 237. http://eforum.jil.go.jp/english/event3s/documents/clls08_sakuraba.pdf

that women couldn't get the appropriate wage anyway. The limitation was set for employees over the age of 26 who were not "heads of households", and for those with limited work areas[102]. The employer admitted that these actions negatively affected women which could be qualified as intentional discrimination and breach of Article 4 of the LSA[103].

However, the question of discrimination remains legitimately very sensitive as employers are free to apply "skill-based grade system" so it needs a detailed examination. And it was really hard to prove for employees that they are seriously affected by wage disparities between men and women or in some cases between leftist workers and the workers who haven't sided them. So the court inclined towards the decision of qualification it as a case of discrimination on the grounds of sex (or creed) until the contrary is proved by the employer on the evidence of differences in the contents of the jobs or the individual employees' poor performances[104][105].

Thus, the direct and indirect discriminatory wage policies were eliminated by courts. In contrast, if we go back to the family allowance issue, it was reasonably designed for a head of household who was the main source of providing for the family. So it really depended on an individual case whether he or she was the one "in fact" and therefore couldn't be considered as a direct discriminatory treatment against women[106]. But at the same time, it can't be considered as a genuine indirect discrimination which is illegal as this type of wage system uses sex-neutral criteria despite the fact that most heads of households are men.

In addtion the world tendency on prevention of indirect discrimination has forced a change of the Equality Act by adding a new vision of "indirect sex discrimination" (Art.7). It was a very significant point but was quite criticized indeed. In 2003 Japan got the recommendations from the CEDAW on making alterations to the domestic legislation by adding to the content a general term of discrimination against women which will include direct and indirect discrimination. Later in 2004, the Ministry involved a committee of experts to report on the situation of discrimination. According to the report, it was essential to prevent such discrimination in terms of providing the equal treatment in employment to both men and women. At the same time, employers were concerned that it wasn't legally clear. It had to be compromised so it was agreed to limit the scope of the legal provision to the cases mentioned above as those which cause negative effects for female workers[107].

[102] The decision of the Tokyo District Court in Sanyo Bussan Co. case (June 16, 1994, Rodo-hanrei 651-15).
[103] Ibid., *Employment Discrimination Law in Japan: Human Rights or Employment Policy?*
[104] The decision of the Tokyo High Court, in Shiba Shinyo Kinko case (December 12, 2000, Rohan 796-5).
[105] Ibid., *Employment Discrimination Law in Japan: Human Rights or Employment Policy?*
[106] The decision of the Tokyo District Court, The Nissan Jidosha case, (January 26, 1989, 40 -1 Rominshu 1).
[107] Ibid., *Employment Discrimination Law in Japan: Human Rights or Employment Policy?*, 190.

But the fact is that the responsibility for a fair decision-making lays with courts whether they can interpret a "legitimate reason" so that it can make a significant impact on employment practices. Large wage disparity between men and women is caused by a career track which companies use in their employment management; a track for workers holding prospective positions which may require a transfer to remote workplaces and mainly oriented towards male workers; and another track for workers holding a kind of supporting jobs with location within commutable area was orientated on female workers. The Ordinance or Article doesn't set out the clear vision of whether this separate employment management can be adjusted through the new perspective of indirect sex discrimination or not. So the decision of how to interpret Article 7 rests with courts[108].

So for many progressive observers and analysts, the question of economic reformation was pretty obvious regarding the fact that liquidation of gender gap will revive the economy after years of slow growth. This idea belonged to Kathy Matsui, a strategist with Goldman Sachs in Japan who was perhaps the first to propose it in 1999. And she was the one who came up with the term "womenomics" which she tried to affirm by having researched the theory of women's role in a workforce of Japan over the past 18 years. She was sure that Japan's economy would only benefit if they make changes towards greater equality in the workforce using the policy recommendations she made[109].

2.1.3 Maternity Harassment

In April 2007 a bill which reinforced the Equality Act was enacted and had been approved the year before ("2006 Equality Act"). It covers in details all the stages of an employment relationship beginning from *"placement", "various intermediate stages and finishing with retirement and dismissal"* (Art. 6)[110]. New supplements were made to guarantee employment rights for one the most vulnerable group of employees such as pregnant women and to ban any kind of related discrimination towards them (Art. 9)[111]. Pregnant women still face the problem of not being treated equally at their workplace as other employees which are termed "maternity harassment". After becoming pregnant they are often forced to leave the job or accept the demotion[112]. This kind of discrimination was admitted by the Supreme Court and in 2014 the

[108] Ibid., *Employment Discrimination Law in Japan: Human Rights or Employment Policy?*, 190.
[109] Emma Chanlett-Avery, Rebecca M. Nelson, *"Womenomics" in Japan: In Brief"*, Congressional Research Service. August 1, 2014. https://fas.org/sgp/crs/row/R43668.pdf
[110] Equal Opportunity and Treatment Between Men and Women in Employment of 1972, Act No. 113, Arts. 1-7, amended by Act No. 82 of 2006, Arts. 1-7 (Japan). http://www.mhlw.go.jp/file/06-Seisakujouhou-11900000-Koyoukintoujidoukateikyoku/0000133458.pdf
[111] Ibid., Art. 9.
[112] Nevin Thompson, "*Japan wants more women to work—but what do women get in return?"* Womenomics, 2016. https://qz.com/78915/womenomics-and-womens-rights-japan-wants-more-women-to-work-but-what-do-women-get-in-return/

discrimination against pregnant women was prohibited. However, in practice, it shows the opposite[113][114].

The 2006 Equality Act regulates the non-discrimination of women in their workplace providing them being treated fairly in the companies particularly when they supposed to take days off for childbirth. Nevertheless, this right is commonly abused[115]. The figures from the report of the National Confederation of Trade Union show the increasing number of women who are willing to work after childbirth. But still, 70% of women leave their job after their first child. Actually, there is a practice with some companies where they are trying to encourage men to help them in taking equal responsibilities for childcare. But it doesn't work well with men as they aren't that keen on taking days off. And the fact that traditionally Japanese working day is 12 hours or so, it doesn't help men on taking actions so they only can spend about 59 minutes for help around the house[116].

In other words, the discrimination on the grounds of sex must be prevented at all the stages of employment. The only time when employers can apply the differential treatment is when they can reason it legitimately.

The Ministry of Labour issued a guidance merely contained some narrow justifications. It was a brief list of acts which are considered to be positive actions and are accepted as an occupational requirement. Here are few of them[117]:

a. Favorable treatment for women in employment categories where women are substantially underrepresented (positive action).

b. Unfavorable treatment of men or women if:

b-2 Statutes prohibit employers from assigning a man or woman to particular work.

Workers are entitled to take the procedure of the act and seek the professional assistance of the Prefectural Labour Bureau, if necessary, asking their second opinion in case of controversial unfavorable treatment through the mediation of the Dispute Adjustment Commission (Chapter XI of LSA). In the case where the suit is satisfied they are also entitled to claim for damages and to nullify the unfavorable treatment against them.

Finally, in the fight for gender equality, on 1 April 2016, the "Law on the Promotion of Women in the Workplace" came into force in Japan. All Japanese enterprises with more than 300

[113] That landmark ruling came in a case brought by a hospital physiotherapist who had been demoted after asking for a lighter workload during her pregnancy. Later a court in Hiroshima ordered the hospital to pay the woman, who requested anonymity, 1.75m yen (£9,300) in damages.

[114] Justin McCurry, "*Japanese women suffer widespread 'maternity harassment' at work",* Guardian News, 2015. https://www.theguardian.com/world/2015/nov/18/japanese-women-suffer-widespread-maternity-harassment-at-work

[115] Ibid., Equal Opportunity and Treatment Between Men and Women in Employment of 1972, Act No. 113, amended by Act No. 82 of 2006, Art. 9.

[116] Masami Kokubu*, "Women in Japan: They are not equal to men",* The Middlebury Institute site network, 2016. http://sites.miis.edu/eappicc/2016/05/03/women-in-japan-they-are-not-equal-to-men

[117] Ibid.,, *Employment Discrimination Law in Japan: Human Rights or Employment Policy?,* 188.

employees (including part-time workers, hourly wage employees and temporary contract workers) are forcibly required to report on the employment of women. And for those with less than 300, it was actively recommended to do the same[118].

2.1.4 Japanese Courts and International Human Rights Treaties

The major UN human rights instruments set up a requirement to State parties to make a periodic self-assessment in order to present what was currently achieved and report the challenges to the treaty bodies[119].

The report is also forwarded to the CEDAW Committee under the Women's Convention ("CEDAW") to review the situation with State parties in public. This kind of meeting is held in a form of "constructive dialogue"[120]. After the State report is reviewed then the CEDAW Committee can make "concluding observations" which serve as an opportunity to the Committee to give specific recommendations in each particular case.

However, the Government didn't respond quickly enough. And issues of equality between the sexes were not completely solved. So it encouraged Japanese women to take responsibility for their own protection by filing suits referring to the CEDAW before courts. By June 2013, the information on nearly 40 cases was available in law magazines where either the parties referred to the Women's Convention or the judicial authorities. The cases were related to many types of discrimination concerning equal pay, promotion, and wrongful termination because of pregnancy, maternity/childcare leave and others[121].

In the Sekiguchi v. Konami Entertainment case, the Tokyo High Court judgment was to award the compensation to a plaintiff (the female employee). The actions of the defendant (an employer) were deemed illegal on the basis that it degraded the plaintiff after she returned from maternity and childcare leave and violated her employment contract. However, the judgment ignores the Women's Convention and moreover gives no reason to explain the statement that it was not necessary for the defendant to respond to the claim for breach of Women's Convention[122]. The truth is that there was no case where the plaintiffs could successfully protect their rights on the grounds of the CEDAW. It is really hard to enforce the implementation of the international law on human rights in Japan because Japanese judiciary defends its actions with

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[118] Herbert Smith Freehills, "*Japan: act to promote women in the workplace in force",* Employment notes, 2016. https://hsfnotes.com/employment/2016/06/24/japan-act-to-promote-women-in-the-workplace-in-force/

[119] CEDAW, Article 18.

[120] Committee on the Elimination of Discrimination against Women, UN Office of the High Commissioner for Human Rights. http://www2.ohchr.org/English/bodies/cedaw

[121] Yoko Hayashi, *Implementation of the Convention on the Elimination of All Forms of Discrimination against Women in Japan*, (6 J. E. Asia & Int'l L., 2013), 346.

[122] Heather Mclellan, "Konami Mom Wins Discrimination Lawsuit", *The Escapist Mazagine,* December 28, 2011. http://www.escapistmagazine.com/news/view/114965-Konami-Mom-Wins-Discrimination-Lawsuit

the specific nature of the country and the excuse that this particular legislation could not be self-executed or directly applied.

The last great example of it is the following case which shows exactly the Japanese version of the Women's Convention has been interpreted in court[123]. The case was filed by a plaintiff who held the position of a part-time counselor in a Women's Center on a fixed-term contract. It was a non-profit organization founded by the city of Kyoto. The plaintiff claimed about her receiving unfair wages unlike the other full-time permanent employees, and in so doing, the Center breached the non-discrimination clause in the Labour Standards Law, the International Covenants on Economic, Social and Cultural Rights[124], ILO Convention No. 100, and Article 11 of the Women's Convention. Her argument was that the way she was treated by the Center could be qualified as a gender-based discrimination considering the fact that women are in the majority in occupations on fixed-term contracts than men. The argument was dismissed. The court defended its judgment by interpreting Article 11 of the Women's Convention as a kind of an arbitrary requirement for the international community from the perspective of sex-based discrimination with no concrete norms given. In this regard, the court considers that the Women's Convention had no self-executing power concerning the principle of equal pay for equal-valued work[125].

In the light of the text of the Convention, the core idea was that State Parties have reached general agreement on ensuring this right through amending their domestic laws and policies. In addition, the interpretation of the Convention in line with Articles 2(f) and 16(1)(b) and (g) cannot be read as "*the rights under these articles are evident and decisive, and enforceable in the domestic sphere without enacting any domestic statute or regulation to realize its content*". The decision on Japan says that Article 16(1) (b) and (g) of the Women's Convention do not apply directly to individual plaintiffs and so provide no rights for them[126].

There is a strong feeling among scholars that Japan has no progress on interpreting and applying international human right convention because of their ignorance of this kind of legislation and a lack of training for them in this field as the main cause of concern. Practice shows that judges base their decisions within the framework of the Japanese Constitution and the provision of human rights in it. So there is no obvious reason for them why they have to persevere in studying international law. So unless the judiciary takes seriously international

[123] Kyoto Women's Centre Case (Judgment dated July 16, 2009, Osaka High Court, X v Y).

[124] Japan ratified the International Covenants on Economic, Social and Cultural Rights in 1979. http://indicators.ohchr.org/

[125] Labour Standards Law, Art. 4. It guarantees equal pay for equal work between men and women. The plaintiff argued, by applying the CEDAW, that this article further covered equal pay for equal valued work and guaranteed the principle of non-discrimination not only based on sex but also other grounds, including discrimination against employees on fixed-term contracts vis-a-vis employees on non-fixed term contracts.

[126] Ibid., *Implementation of the Convention on the Elimination of All Forms of Discrimination against Women in Japan*, 349.

human rights convention, then there is a hope they will take into account any kind of soft law which treaty bodies address to them. Otherwise, all concluding observations, general recommendations, and case law under the individual complaint mechanisms remains will stay only a concept on paper. Of course, according to the general international law people cannot enforce on the legal bases. But the whole purpose of it was to help the application of the treaty and to control its progress[127]. With this concern, treaty bodies produced quite a lot of them in a short period of time. But as Japan's judiciary slows down the progress on global trend it becomes really doubtful that Japanese people will enjoy the benefits from the results of international law development, or ever be involved in a process of creating a new crucial law at the international level[128].

As we can see, the shortage of women participating in the labour market outside their households remains quite a problem for Japanese society. This example shows that there is an obvious conflict between traditional social and economic frameworks, one of them is the male-centered working environment, and new trends where more and more women are reluctant to sacrifice their career to their family life. This sort of problem nature makes it a very topical issue for discussions in academic circles as well as mass media of Japan and outside the country.

Extending the rights of women in the workplace and eliminating gender discrimination within individual companies can be the first step towards eliminating discrimination against other groups of people who are experiencing all the burdens of unequal treatment.

However, the fact that the measures proposed by the government are strictly voluntary, creates a situation in which the scale of their application in each particular enterprise depends solely upon its leaders wish. Hence, in order to increase the attractiveness of women in employment outside the household, the government needs to conduct a variety of training activities and educational work in business circles in order to explain all the benefits and potential effects of the proposed measures.

Based on the above, it can be concluded, that Japan is a country with very strong traditions and culture created for centuries which are quite difficult to overcome from the society.

2.2 Situations of Employment Discrimination Against Women in China

Another country with strong traditions which put pressure on the social status of women is China. Although there has been a considerable improvement for the last years, women are poorly represented in comparison to men. And this situation seems even worse in contrast to European

[127] Christian Tomuschat, *Human rights: between idealism and realism (*Oxford, England: Oxford University Press, 2008), 188.
[128] Ibid., *Implementation of the Convention on the Elimination of All Forms of Discrimination against Women in Japan*, 350.

countries. Unfortunately, women are subject to multiple discriminations, particularly in the employment. Although the last ten years show the increase of female employees, it doesn't make any effect on quite an intense segregation and gender disparity.

This subchapter will talk about two types of discrimination in employment: discrimination against women in recruitment (where some positions are only male orientated, or using special criteria for women which are unlike those for men for the same jobs) and discrimination in the promotion. This is a widespread and frequent practice nowadays. Women suffer from this discriminative practice in employment due to many factors such as historical, cultural relativism, economic calculations, and weak legislation. But the fact that Chinese society sees no serious problem in this connection, it is a real challenge to bring the topic up.

2.2.1 Legal Background

The legal regulation of gender equality protection was initiated almost 60 years ago. Women rights were secured by Article 91 of the 1954 Constitution of the People's Republic of China (China or PRC) as the following *"equal rights with men in all areas of political, economic, cultural, social, and domestic life"*. And lately, the implementation of women rights and protection of their interests in the legal system has been extended to the 1982 Constitution[129] which strengthened it even more and carried on with other laws and regulations The development of marketing relations and the new reformation has led to a breakthrough for women in their social and professional life. So for many of them, it was a great chance to progress in their personal development as entrepreneurs and professionals rather than only taking the jobs of their mothers or fathers[130]. But to the great surprise, this progress hasn't advance women in employment and only led to their job losses putting them at a big disadvantage to compare with men. So the substantial change in equality promised by the Constitution hasn't happened and even moved women further away. There was a clear belief that women are in disadvantage to men in terms of their physical and mental abilities. Also, only men were considered to be the primary providers for the family and therefore they were supposed to have the priority over women in getting income[131]. Observing the current situation with gender discrimination in China gives a great opportunity for women from other countries to clearly

[129] Constitution of the People's Republic of China [China], 4 December 1982, Art. 48. http://www.refworld.org/docid/4c31ea082.htm

[130] Gail Hershatter, *Women in China's Long Twentieth Century* (Berkeley, USA: University of California Press, 2007), 64-78. http://www.jstor.org/stable/10.1525/j.ctt1pnb9j

[131] Jill Steans, *The Gender Dimension in the global transformations reader: An introduction to the globalization debate* (David Held & Anthony McGrew eds., 2003), 455-458.

assess the impact of international law on the global level of employment discrimination and its widespread resistance[132].

Gender discrimination in China occurs almost at each stage of employment management beginning from the 1990s and till now. It concerns hiring, dismissal, earlier retirement, fines for violation of family planning regulations, wage differences, denial of certain social welfare benefits, and sexual harassment[133]. But legislation which was intended to protect women by better benefits on maternity, child care, and basic gender differences made the situation mixed for employers as male labour force became less expensive[134].

It has to be mentioned that the majority of western countries legislation seems to have the more developed legal system so it does secure women in their equal working rights. So it would be very helpful for China not to overlook the experience of these countries in protecting women and enhancing their social status.

The ratification of both the CEDAW in 1980 and ICESCR in 2001 was carried out unconditionally. Also, China is required to report regularly under the terms of the CEDAW. So the latest report was submitted in 2012, in which it is stated that "*China has earnestly implemented the Beijing Declaration and Program of Action adopted at the United Nations Fourth World Conference on Women and the United Nations Millennium Development Goals*"[135].

The situation in China is quite ambivalent. So in 1990, China signed ILO Convention for Equal Remuneration for Equal Work which was considered as a positive shift and interest of China in the improving of the status of working women[136]. But at the same time, China had suddenly suspended the ratification of the ILO Convention on Employment and Occupational Discrimination[137]. The only explanation China has given was that the problem of employment discrimination against women is already acknowledged by the government problem[138], but it wasn't considered as a clear reason. And to support this in 1994 there was issued a White Paper

[132] Jamie Burnett, *Women's Employment Rights in China: Creating Harmony for Women in the Workplace*. Article 8 in Indiana Journal of Global Legal Studies, Volume 17, Issue 2 (July, 2010), 290.
[133] Ibid., Women's Employment Rights in China: Creating Harmony for Women in the Workplace, 298.
[134] Ibid., Women in China's Long Twentieth Century, supra note 2, at 66.
[135] CEDAW Committee, Combined Seventh and Eighth Periodic Report of China,20 January 2012,CEDAW/C/CHN/7-8.Para 19.
[136] Ratifications of C100 - Equal Remuneration Convention, 1951 (No. 100). Date of entry into force: 23 May 1953 Retrieved from: http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312245
[137] Ratifications of C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111) Date of entry into force: 15 Jun 1966.
[138] On December 1, 2006, China finally ratified the ILO Convention on Employment and Occupational Discrimination, agreeing "by methods appropriate to national condition and practice to enact such legislation and to promote such educational programmes as may be calculated to secure the acceptance and observance of the policy.

report with statistics figures on gender discrimination called "The Situation of Chinese Women"[139].

There is a mixed opinion about these international conventions having a significant impact on women's labour equality in China. The practice shows that despite the enforceable nature of these international conventions against nation States through the International Court of Justice, in reality, it is not that easy to achieve it so may be still replaced by local law[140]. And the enforcement provisions of the ILO generally end up with the soft power which is only applied in a form of a public shaming or provision of motivations for compliance such as funding or technology. In a perfect world, CEDAW and the ILO are very likely to make an impact and be implemented throughout a world, but at the moment it doesn't work for China much. As it's not valued so much in a threat of any consequences if not complied, but at least it works out as a standard for domestic law adjustments[141].

In 1992, the government has adopted the Law on the Protection of Rights and Interests of Women ("LPRIW")[142] drawn on the Labour Protection Regulations of 1988[143] and Article 48 of the Constitution. After it had been marginally changed, the law remains applicable till now. The law is based on the ILO Convention for Equal Remuneration for Equal Work. As such, LPRIW insofar sets out *"the right for equal pay for women as well as protects women from different kind of oppression based on the natural changes in women's lives such as marriage, pregnancy, maternity leave, lactation"*. Also, it demands equal treatment while hiring for men and women. Talking about the connection between CEDAW and the new law, it included a few important provisions of the Convention. One of them contained positive action in certain organizations: *In "[s]tate organs, public organizations, enterprises, and institutions . . . there shall be an appropriate number of women leading members.*" On the top of that law refers to the All-China Women's Federation and gives the approval for it to take an active part in a process of making decisions.

Despite all the good intentions, it seems that LPRIW makes it worse for women to get the job in China. At one hand it protects women from being employed on positions with tasks that are "unsuitable for women"[144] but at the other hand, it doesn't stop the employers to discriminate perhaps by breaching the Constitutional norms. The law's protectionist provisions had led to the

[139] White Paper, The Situation of Chinese Women (Information Office of the State Council of the People's Republic of China, June 1994). http://www.china.org.cn/e-white/chinesewoman/index.htm

[140] M. Ulric Killion, *Post-Wto China and Independent Judicial Review*, Houston Journal of International Law (Vol. 26, No. 3, Spring 2004), 230-231.

[141] Ibid., *Women's Employment Rights in China: Creating Harmony for Women in the Workplace*, 302.

[142] Law on the Protection of Women's Rights and Interests of the People's Republic of China (revised 2005) [China], 3 April 1992. http://www.unhcr.org/refworld/docid/4a38f8b72.html

[143] Special Rules on the Labour Protection of Female Employees (Order of the State Council (No. 619)). 1988-07-21 (CHN-1988-R-6634). http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=95280

[144] Ibid., *The Law on the Protection of Rights and Interests of Women*, Art. 23.

stage where women are considered to be more expensive employees which has resulted in a further discrimination against women. Rather than follow anti-discrimination provisions, the employers are gladly searching for candidates with no further childcare or maternity leave pay.

Lately, in 1994, the adoption of the Labour Law made it possible to add new necessary provisions in regard to women's labour protection. The Law covered substantive issues, particularly providing women equal right to employment (apart from work "unsuitable for women"). It also stipulates equal standards of employment for men and women and makes it clear that women cannot be refused to be employed on the basis of gender[145].

In speaking of "unsuitable job for women", reference must be made to its meaning. Due to the Labour Law Act[146] women' work has to be specially protected under specific working conditions. This means a ban on certain categories of jobs for women as well as providing them the protection of their interests concerning maternity and career advancement[147].

The above-mentioned legal acts resulted from the further enacting of other significant documents. Some of them are Regulations on Labour Protection for Female Workers issued by the State Council and Regulations on the Scope of Employment Prohibited for Female Workers issued by the Ministry of Labour. These documents provide details measures of protection to complete the other legal instruments described above. This legislation is still into the force to date which sets up the standards of special labour protection for female workers in China, as well as the latest Special Regulations on Labour Protection for Female Workers 2012[148].

Despite everything the attempt of China to specially protect women had a mixed reception[149]. Thus the CEDAW Committee gave its opinion on this matter saying that *"[The Chinese] Government's approach to the implementation of the Convention has an apparent focus on the protection of women rather than on their empowerment… Likewise, labour laws and regulations overemphasize the protection of women*"[150].

It has to be mentioned that China, however, is aiming to follow the principles of Equal Remuneration Convention and the proof of it is the legislation of 2007. It was the Employment

[145] Labour Law of the Peoples Republic of China (Adopted at the Eighth Meeting of the Standing Committee of the Eighth National People's Congress on July 5, 1994 and promulgated by Order No. 28 of the President of the People's Republic of China).
[146] Ibid., Labour Law Act (1994), Art. 59, 60, 61, 63.
[147] Beth Goldblatt and Lucie Lamarche*, Women's Rights to Social Security and Social Protection* (England, London: Bloomsbury Publishing, 2014).
[148] Ibid.
[149] International human rights insrtuments, for example, CEDAW, allow for special measures aimed at protecting maternity and temporary special measures intended to accelerate de facto equality between men and women, which are not concidered to be discriminatory. But Chinese model of "special protection" for women might be problematic; some of its elements are characterised by several anomalies and anachronisms.
[150] Concluding comments of the CEDAW Committee: China Committee on the Elimination of Discrimination against Women Twentieth session 19 January-5 February 1999 Excerpted from: Supplement No. 38 (A/54/38/Rev.1).

Promotion Law and the Labour Contract Law[151]. The law was meant to set up a healthy work environment with no unfair employment conditions, no discrimination, advance employment and build up a social harmony in[152]. The Employment Promotion Law is "considered more comprehensive than the 1994 Labour Law". It stipulates the non-discrimination including gender discrimination, requires the employer to avoid any discriminative[153]. And one of the very important points was the prohibition of including a clause about limitations on marriage or bearing a child for female employees while signing the employment[154].

2007 was also memorable for further adoption of the Law on Labour Dispute Mediation and Arbitration[155]. It was very important for women's labour rights protection. The first article of this law points out the main goals such as: "*to resolve employment disputes in a fair and timely manner, protect the lawful rights and interests of the concerned parties[,] and promote harmonious and stable employment relationships*."[156] The law entered into force in 2008. It gives a better explanation and softens requirements for the mediation and arbitration of employment disputes which is helping to resolve many problems that did limit effective dispute resolution in accordance with the Labour Law and the LPRIW.

However, legislative trends haven't substantially changed women's lives as they still don't use their legal rights to defend their interests. And this is caused by numerous reasons. One big reason why women don't go to court is that they are not aware that the legislation which can protect their rights exists at all, what are the rights they are entitled to, and where to seek protection under that laws[157]. Also, it may be not an easy matter to find a lawyer to represent their interests in labour disputes as legal assistance centers are not easily accessible for women or their cases can be checked by attorneys. It's always doubtful for lawyers whether to take the labour case or not as they don't get well paid on these cases,[158] so they select cases where women are involved as parties to the proceedings who were considered to be "difficult" clients.[159] The situation is also reinforced by "*strong social forces cause women to be too frightened or distrustful to come forward to vindicate [their] rights*," and women are frightened

[151] Employment Promotion Law of the People's Republic of China (Adopted at the 29th session of the Standing Committee of the Tenth National People's Congress on August 30, 2007).
[152] Ibid., Art. 1.
[153] Ibid., Art. 3.
[154] Ibid., Art. 27.
[155] Law of the People's Republic of China on Labour-dispute Mediation and Arbitration. Order of the President of the People's Republic of China. No.80 (29 December 2007).
[156] Ibid., Art.1.
[157] Ibid., *Women's Employment Rights in China: Creating Harmony for Women in the Workplace*, 309.
[158] Ethan Michelson, The Practice of Law as an Obstacle to Justice: Chinese Lawyers at Work, (Academic Journal Article Law & Society Review, Vol. 40, No. 1, March 2006).
[159] Ibid., *Women's Employment Rights in China: Creating Harmony for Women in the Workplace, 309.*

to get involved in litigations to avoid things get even worse not better[160]. And their fears have its grounds. As even in a case when an individual is a courage to take legal action on employment discrimination case in a People's Court, it is another challenge for her to fight judicial obstacles. The fact is that Chinese judiciary is very much state-dominated, and it puts a pressure on judges' independent opinion against the government as they get paid their salaries from the State[161]. Also, it is very common that because of lack of appropriate training judges can't effectively implement the law[162]. The lack of judges training is also compounded by the Chinese legal system as China applies a civil law system, which does not take into account prior case precedents while interpreting the law. Eventually, because of non-recognition of previous case precedents which is required for later decision, Chinese courts really struggle to create a uniform definition of gender discrimination in employment[163].

Thus, last twenty-five years were quite successful for China in a context of the promotion of women's rights and equality in employment. But it doesn't just happen, as many of these actions were initiated by other international players and treaties. But despite this obvious legislative progress there has been no major change in the advancement of women's labour rights or preventing gender-based employment discrimination as it always meets some restrictions. It concerns for example such restrictions as traditional attitudes which only strengthen gender inequality in society, include the following: applying stereotypes that reinforce traditional notions of gender inequality, a lack of sufficient support mechanisms, creating unfavorable conditions for employers to hire female workers, creating obstructions to a normal litigation and providing no effective enforcement actions against violators.

2.2.2 Cases of Gender Discrimination in Employment

According to the figures of the National Bureau of Statistics of China in 2016, women make up about 48.8% of the country's workforce[164], but on average the salary among Chinese women is 35% lower compared to that of men[165].

Gender discrimination in employment is even observed among young people and college graduates. An indication of it is the results of a survey conducted by All-China Women's

[160] John C. Balzano, *Toward a Gay-Friendly China? Legal Implications of Transition for Gays and Lesbians*, 16 Tul. J. L. & Sexuality 1 (2007), 133.
[161] Stanley Lubman, "Looking for Law in China", *20 J. Chinese L. Berkeley Law Scholarship Repository* (January, 2006), 29-30.
[162] Ibid., Looking for Law in China, 29-30.
[163] Charles J. Ogletree, *When Gender Differences Become a Trap: The Impact of China 's Labour Law on Women*, (Yale Journal of Law & Feminism Volume 14, Issue 1, Yale Journal of Law & Feminism Article 3, 2002), 85.
[164] Statistical Communiqué of the People's Republic of China on the 2016. National Economic and Social Development. National Bureau of Statistics of China 2017-02-28. http://www.stats.gov.cn/english/pressrelease/201702/t20170228_1467503.html
[165] The World Economic Forum, The Global Gender Gap Report 2016 (2016): p. 142. http://www.catalyst.org/knowledge/women-workforce-china

Federation of Jiangsu Province[166]. This poll was conducted among 1,100 college graduates, with 18% of female graduates reporting that they were subject to gender discrimination during their job search. Comparing college graduates with the same qualifications, the employment rate of men was 8% higher than that of women[167].

Certain Chinese legislation which was meant to protect women actually has an opposite effect of institutionalizing gender discrimination. The Labour Law[168] and the Regulations on the Scope of Prohibited Labour for Female Workers give a clear list of physically demanding jobs which are prohibited for women: logging, underground mining, setting up power lines or scaffolding. The Regulations[169] also give the explicit instructions which prohibit women from jobs in case they are menstruating, pregnant or lactating. It only shows that particular emphasis has been placed on physical abilities of women which only enforce the maintained perception about women being weak and their potential is very limited for certain jobs.

But also there are many cases now when women are determined to go further in protecting their rights for non-discrimination and they use the Court. In 2013, a new graduated Cao Ju brought to justice the Juren Academy in Beijing on the basis of gender discrimination. Supposedly it is first China's lawsuit in this matter. The plaintiff claimed that she was refused to get a position of an administrative assistant because the vacancy announcement was placed as for men-only. The litigation had lasted for over a year. And the court awarded the plaintiff 30,000 yuan and a formal apology from the Academy. This turned very much attention of the public in 2013 and was marked a significant turning for women in their protest against discriminatory recruitment practices[170].

Another case had happened four years ago in a Hangzhou court, whether a well-known educational institute was found guilty of violating a job applicant's right to equal employment. And it had thus committed employment discrimination by restricting job applications to men only[171]. The West Lake District Court decided that according to Article 3, 12, 13 of the Labour Law and Article 3, 27, 62 of the Employment Promotion Law, the plaintiff's rights for equal employment had been violated and constituted employment discrimination against women. The

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[166] Xun Zeng, "Enforcing Equal Employment Opportunities in China", *U. PA. Journal of labour and employment law* (Vol. 9:4), 2007. http://www.uwcentre.ac.cn/haut/wp-content/uploads/2015/03/Enforcing_equal_opportunities-China.pdf

[167] Tania Branigan, *China: woman settles in first gender discrimination lawsuit.* The Guardian, January 28, 2014. https://www.theguardian.com/world/2014/jan/28/china-woman-settles-first-gender-discrimination-lawsuit

[168] Labour Law of the Peoples Republic of China, Art. 59, 61.

[169] The Special Provisions on Labour Protection of Female Workers adopted at the 200th executive meeting of the State Council on April 18, 2012 are hereby promulgated and shall come into force on the date of promulgation. Premier Wen Jiabao April 28, 2012. Appendix, Art. 3

[170] *"Plaintiff obtains 30,000 yuan in China's first gender discrimination lawsuit"*. Supporting the Workers' Movement in China. 09/01/2014. http://www.clb.org.hk/en/content/plaintiff-obtains-30000-yuan-china%C3%A2%E2%82%AC%E2%84%A2s-first-gender-discrimination-lawsuit

[171] Case Study - Guo Jing V. Hangzhou Xihu District Dongfang Cooking Training School.

defendant is obliged to pay the plaintiff (the New Oriental Cooking School) 2000 CNY (approximately 265 EUR) compensation for her mental damage[172].

In November 2015, a Beijing Court found in favor of the plaintiff and recognized the discrimination against a job applicant simply because she was a woman. The plaintiff, 25-year-old Ma Hu, claimed for 57,570 CNY (7,627 EUR) for moral damage and a formal apology from the Beijing Postal Service. During the proceedings, the court denied her claim for an apology and only had granted her 2,000 CNY, the same compensation as in the Hangzhou case[173]. Another case that was concerned to be a gender-based discrimination happened in Beijing. A Beijing appeals court ordered that a Beijing shopping mall pays the amount of 62,237 CNY to a plaintiff, a counter manager Yin Jing on 5 November 2015 after her illegal dismissal because of her pregnancy[174].

The success of these cases showed that it was possible to fight the employment discrimination and seek compensation. But in practice, the majority of women can't get the job because of their gender, and they aren't brave enough to take any legal actions. The fact is that women aren't willing to spend a lot of time and efforts which litigation requires and "*women are often unable to afford the costs of a lawyer or a court fees*", but also there is no guarantee that the judgement could not provide effective assistance. Just like the ruling on the case of Guo Jing v Cooking Training School. The court made the decision on the compensation amount of only 2000 CNY, which was much less than the amount spent on the litigation. Also, there is now appropriate strict punishment that would prevent employers committing employment discrimination[175].

Moreover, the recent decisions of the courts at one hand encourage but at the other hand they don't provide major disincentives to employers by giving them minor, and even without obvious discriminatory provisions in their vacancy announcements, employers can still attempt to force discriminatory conditions on female employees. Often female candidates are asked about their plans to found a family, as employers are worried that marrying, maternity leave or raising a family often causes women to leave the job. Employers often force women to take pregnancy tests to avoid supporting maternity leave or apply strict conditions with regard to the future plans for marriage and pregnancy. Many employers can create conditions that will force pregnant women to quit their jobs to avoid the cost of temporary replacements or benefits. In many cases

[172] "*Plaintiff awarded 2,000 yuan by court in Hangzhou gender discrimination case"*. Supporting the Workers' Movement in China. 13/11/2014. http://www.clb.org.hk/en/content/plaintiff-awarded-2000-yuan-court-hangzhou-gender-discrimination-case

[173] "*Woman successfully sues Beijing postal service in gender discrimination case"*. Supporting the Workers' Movement in China. 03/11/2015. http://www.clb.org.hk/en/content/woman-successfully-sues-beijing-postal-service-gender-discrimination-case

[174] Pregnant women workers struggle to defend their rights in China's factories. Supporting the Workers' Movement in China. 01/12/2015.http://www.clb.org.hk/en/content/pregnant-women-workers-struggle-defend-their-rights-china%E2%80%99s-factories

[175] *"Workplace discrimination"*. Supporting the Workers' Movement in China. November 2012. It was last updated in April 2018. http://www.clb.org.hk/content/workplace-discrimination

with pregnant women, they were misused by being enforced to work outside normal hours or by being overloaded with work, and by their applications for maternity leave being denied[176].

Finally, the Chinese government has all the chances to make significant progress in the legislative reform on gender discrimination. To begin with, the government should eliminate the problem of using stereotypes under current legislation, including state-sanctioned discriminatory practices, such as unequal average wages of women and men, as well as the list of jobs that are considered to be unsuitable for women[177]. If the government continues to require individual employers to pay excessive amounts for maternity leave, healthcare and childcare for female workers, it is doubtful any discrimination will be eliminated at all. Countries around the world have solved this problem using different suitable for them solutions. The solutions were the support of several years of paid maternity leave for the care of newborns, the payment of salaries to mothers who remain at home for childcare, subsidizing pre-school education, or providing incentives for companies to hire part-time mothers at workplaces[178]. Finally, the government should focus on more specific, effective legislation. An example of such legislation can be seen in Hebei where the local government provides incentives for employers to re-educate female employees by providing a bonus to employers who sign at least one year of a contract with a female employee who was previously resigned[179].

The factors that stop China in its progress are the existing deep stereotypes and perceptions on women's capabilities and their role in society, which must be removed from the legislation and programs under CEDAW, are the most difficult to fight. The worst scenario is that like in other countries these perceptions will remain completely or partially in China. However, the government may consider removing the most blatant stereotypes from Chinese legislative acts. The law is a great instrument for the government to influence the common social perception and to make it reconsidering over its various members, or giving the members a prospect to change this stereotypes themselves. The government can only progress by reforming the law based on the principles of women's equal capability in the workplace and men's equal responsibilities for domestic obligations. Thus female leaders in collaboration with the Government, have the potential to make changes in China's traditional perception of women which will definitely lead to greater equality and empowerment of women in the workplace.

[176] Ibid.
[177] See Labour Law, LPRIW.
[178] Matt Turner, "*Here's how much paid leave new mothers and fathers get in 11 different countries" Business Insider Nordic* September 07, 2017. http://www.businessinsider.com/maternity-leave-worldwide-2017-8
[179] Ibid., *Women's Employment Rights in China: Creating Harmony for Women in the Workplace*, 308.

2.3 Gender Equality in Employment in Ukraine

2.3.1 Legal Background

While reviewing gender equality issues in Ukraine, it is impossible to avoid the normative aspect of this problem. It is exactly the regulations that are one of the most important means of combating gender discrimination. In Ukraine, there is a clear line between legal norms of two "levels" - national and international.

Ukraine has ratified a large number of international legal acts aimed at combating discrimination, supplemented by the norms of national legislation[180].

Based on Article 9 of the Constitution of Ukraine, applicable international agreements, that the Verkhovna Rada of Ukraine agrees are binding and they are part of Ukrainian domestic legislation[181]; therefore the abovementioned acts are legally binding on the territory of Ukraine.

Considering the "level" of national legislation, it is worth starting with the Constitution of Ukraine, Article 21 of which provides that all people are equal in their rights, Article 24 - there can be no privileges or restrictions on certain grounds, particularly on the basis of sex. Part 2 of Article 43 of the Constitution guarantees equal opportunities for citizens in the choice of an occupation and type of labour activity[182]. The abovementioned constitutional norms are the basis for the non-discrimination, and particularly, its gender-based manifestation in employment[183].

However, Part 3 of Art. 24 of the Constitution refers, specifically, to special measures for the protection of health and safety of women, the establishment of retirement benefits; creating conditions that enable women to combine work with motherhood; legal protection, material and moral support for motherhood and childhood, including the provision of paid leave and other benefits to pregnant women and mothers.

The Code of Labour Laws of Ukraine in Article 2-1 provides the prohibition of any discrimination in employment, in particular violation of the principle of equality in rights and opportunities, direct or indirect limits on workers' rights, based on race, color, political, religious and other beliefs, sex, gender identity, etc[184]. The comprehensive Anti-Discrimination Act is the Law "On Principles of Prevention and Counteraction of Discrimination in Ukraine"[185], adopted

[180] The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Social, Economic and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the European Social Charter (revised).

[181] The Constitution of Ukraine, adopted at the fifth session of the Verkhovna Rada on June 28, 1996//Vidomosti of the Verkhovna Rada of Ukraine. - 1996. - No. 30. - Art. 141.

[182] Ibid.

[183] Ibid.

[184] Code of Labour Laws of Ukraine. Verkhovna Rada of the Ukrainian SSR; Code of Ukraine, Law, Code of 10.12.1971 № 322-VIII. http://zakon5.rada.gov.ua/laws/show/322-08

[185] The Law of Ukraine "On the Principles of Prevention and Counteraction of Discrimination in Ukraine". Verkhovna Rada of Ukraine; Law from 5/6/2012 № 5207-VI. Art. 412. http://zakon5.rada.gov.ua/laws/show/5207-17

on September 6, 2012, it is mostly general in nature and does not contain specific norms regarding gender equality in employment. Also, the Law of Ukraine "On employment of the population" is of a fairly general nature too, so Article 5 of which stipulates that the state guarantees among other things protection against discrimination in employment[186].

There are also special rules for gender non-discrimination. Special rules for the legal regulation of women's work can be divided into two groups. The first group of norms which represents the differentiation itself and is associated with the physiological characteristics of the female body, their reproductive function; the second group - is taken as an affirmative action policy and is aimed at creating additional conditions for reducing gender inequality.

With regard to special rules related to women special physical characteristics, they are provided, in particular, by the Labour Code (Chapter XII), the Labour Protection Act of Ukraine[187]. These include restrictions on the employment of women in harmful and hazardous conditions, in underground work, at night; the prohibition on moving the objects, the mass of which exceeds the established limits, and so on. In practice, the availability of a significant number of additional benefits and guarantees for women does not always ensure equal opportunities for them, but on the contrary, sometimes they lead to discrimination.

The human rights organizations report on "Human Rights in Ukraine-2011" emphasized that the number of restrictions on the employment of women is more than it was accepted by international norms, and that Ukrainian legislation defines women's protection instruments which are based on non-objective criteria and are contrary to the principles of gender equality, producing discriminating effect on women[188]. Similar position is also expressed by scientists. So, according to Olena Dashkovskaya, the possibilities of employment of women are limited with some privileges established for them[189], and Igor Shulzhenko points out that the female labour force considering all privileges, restrictions, and prohibitions becomes disadvantageous for the employer, and protective legislation sometimes becomes disadvantageous for women themselves[190]. Ludmila Kormich had referred to this kind of negative “effect” of such norms [191].

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[186] The Law of Ukraine “On employment of the population» Verkhovna Rada of Ukraine; Law from 05.07.2012 № 5067-VI (as amended on January 20, 2018). http://zakon3.rada.gov.ua/laws/show/5067-17

[187] The Law of Ukraine “Labour Protection Act» Verkhovna Rada of Ukraine; Law of 14.10.1992 № 2694-XII (as amended on January 20, 2018). http://zakon3.rada.gov.ua/laws/show/2694-12

[188] Human Rights in Ukraine – 2011. “Report of Human Rights Organizations”/ed. Yevgenia Zakharova [Ukrainian Helsinki Human Rights Union]. Kharkiv, Ukraine: Human rights, 2012, 261.

[189] Olena Dashkovskaya, “Problems of implementation of the principle of gender equality in Ukrainian legislation: general theoretical aspects”, *Problems of legality* (No. 52. 2002), 12-13.

[190] Igor Shulzhenko, “Legal regulation of women's labour (national and international legal aspects)”, *Problems of jurisprudence and law-enforcement activity*, No. 4 (Kyiv, 2002), 183.

[191] Ludmila Kormich, “Gender component of the effectiveness of public policy”, *Current problems of politics*, Vol. 39 (Kyiv, 2010), 12-13.

It would be very handy to take into account the position of Olena Dashkovskaya who is sure that the use of the corresponding benefits should be considered as the right of women, but not the obligation, and that it is necessary to move away from the prohibitive to the authorizing legislative regulation of their work, which will give women the opportunity to choose for themselves whether to use additional guarantees and benefits or not[192]. Indeed, the above-mentioned norms should be formulated as recommendations which restrict the work of women in the night, overtime, business trips for mothers, whether allowance to use their labour is a subject to the written consent. For instance, Iryna Sakharuk stated concerning the need to maintain imperative control in a case when working conditions are harmful to the reproductive function of a woman[193].

In view of the above, we support the idea that the principle of equality in many acts is replaced by the principle of positive discrimination against women and the formation of protective concepts of women's rights. Many ILO concepts are aimed at protecting the rights of women by providing them with certain privileges in comparison with men[194]. But it is also clear that positive discrimination, without a strong social security system, leads to the usual discrimination in employment against women since employers prefer to deal with men who do not need any benefits.

Also from existing regulations, it can be seen a gender-discriminating attitude that a woman-worker is a potential mother, and a male employee is an "employee without problems". If we analyze the actual situation in Ukraine, then it becomes clear that with existing economic and social problems of the state, the laws on the protection of women's labour not only do not improve the position of women, but they can be a real threat to them.

2.3.2 Maternity Rights at the Workplace

Of course, a number of special guarantees related to family responsibilities can only be granted to women. These include those benefits that are associated with the state of active motherhood of a working-woman (her pregnancy and childbirth). These norms are covered in the Labour Code: a prohibition of refusal to hire, no reduction in wages from the motives of pregnancy, and the dismissal of pregnant women (Article 184); providing the maternity leave (Art. 179). However, other special rights provided by the Labour Code, which are provided to women who have children, in our opinion, can and should be extended to parents with children:

[192] Ibid., Dashkovskaya Olena, 12.

[193] Iryna Sakharuk, "Prevention of discrimination in the workplace as a principle of labour law", abstract of candidate's thesis of legal sciences (Kyiv, 2012), 127.

[194] Kateryna Levchenko "Problems of Gender Equality in Employment: International Legal Documents and Ukrainian Legislation" *Equality of Women and Men in Ukraine: Materials of the International Scientific and Practical Conference*, November 20-21, 2000 (Kyiv, 2010), 95-96.

the establishment of a part-time job (Article 56), the prohibition of night and overtime work, work on weekends, to send on a business trip without their consent (Art. Art. 176, 177), providing the adoptive leave in the case of the adoption of a newborn babies (Article 182), the prohibition of refusing to hire and reduce wages, for motives that relate to the presence of children under the age of 3, the dismissal of such workers (Article 184); providing free trips or on preferential terms for those who have children under age of 14 as well as material assistance (Article 185)[195].

Another possible way to ensure equality of opportunities for workers with family responsibilities is to use flexible work schedules, part-time work, work at home, etc. Although, national law provides for the possibility of their use, in practice they have not become widespread in relation to persons with family responsibilities. It seems reasonable that the new codified act of the labour legislation of Ukraine will provide for the possibility of employees while on childcare leave to work part-time or at home by choice (without losing the right to receive childcare allocation).

2.3.3 Wage Gap Issue

Furthermore, one of the most important issues in Ukraine is the right of men and women to equal pay for equal work. As stated in the Concept of the State Social Program for Ensuring Equal Rights and Opportunities for Women and Men for the period up to 2021, in 2015, Ukraine ranked 67th among 145 countries in accordance with the Global Report on Gender Equality in the World on indicators of "Gender Equality among Verkhovna Rada of Ukraine Deputies and the deputies of local authorities", "the ratio of the average wage of women to the average wage of men".

According to the State Statistics Service, in 2017, the average monthly wage of women was 26,6 percents lower than that of men. A significant gap between the average monthly salary of women and men leads to unequal access to economic resources, as well as differences in the quality characteristics of employment and the social status of women and men, and as a consequence, to an increase in the poverty rate of the population[196].

At the same time, it looks like the situation in 2017 hasn't substantially changed in the last almost twenty years. Thus, in 1999, detailed statistical studies were conducted, according to which the average monthly wage for women was more than a quarter lower than men's earnings. According to the same data, the average wage of women in industry in percentage terms against

[195] Code of Labour Laws of Ukraine. Verkhovna Rada of the Ukrainian SSR; Code of Ukraine, Law, Code of 10.12.1971 № 322-VIII. http://zakon5.rada.gov.ua/laws/show/322-08

[196] On Approval of the Concept of the State Social Program for Equal Rights and Opportunities for Women and Men for the period up to 2021: Order of the Cabinet of Ministers of Ukraine dated April 5, 2017 No. 229-p. http://zakon1.rada.gov.ua.

men's wages by industry was 61.5% in the energy sector, 74.9% in metalworking, 76.1% in machinery, and 80 in chemical industry %, in woodworking and paper industry - 87.5%, in the production of building materials - 82.3%, in light industry - 90.0% and in food industry - 82.4%. The large gap is seen in the industry, communication, science and scientific services. Even in the "traditionally women's" sectors, the following indicators were recorded: 63.3% in healthcare establishments, 53.6% - in non-productive types of consumer services[197].

As we can see, that there is still a significant wage gap between women and men compared with earlier years. Of course, wage differentiation is usually the result of the same widespread involuntary part-time employment among women, as well as the widespread secondary job employment and temporary work, which is generally paid lower than that of men, the significant use of women's labour on non-prestigious and consequently less paid jobs, increased incidence within not only working women, but also their children.

It should be noted that it isn't just about the difference in wages, but about the difference in the payment for equal work. The difference in wages itself does not indicate the existence of discrimination, since the level of wages may be a logical result of performing additional work responsibilities, lower professional training, lack of work experience, shorter working hours. Instead, discrimination occurs when employees with the same productivity, qualifications, and length of service receive different wages for performing the same kind of job in one area of the economy, industry or even one employer. That's why it is necessary to gradually introduce the concept of equal pay for work of equal value in Ukraine.

There is an opinion in the doctrine of labour law in Ukraine that discrimination in wages is often indirect because it involves the professional segregation of jobs and occupations by gender. In this regard, even the introduction of the principle of equal pay for equal work will not significantly affect the reduction of discrimination, unless women will be able for various reasons to have an easy access to jobs where men dominate and which tended to be highly paid. Therefore, there is a need for special measures to reduce the level of occupational segregation in the labour market, and first of all by overcoming gender stereotypes, reducing segregation in professional education and training, and encouraging employers to employ women in jobs traditionally considered as "males''[198]. Such an opinion seems to be appropriate.

[197] Vasily Andriyiv, "*Women and Labour Market: Some Gender Aspects*", *Equality of women and men in Ukraine: materials of the International Scientific and Practical Conference,* November 20-21, 2000 (Kyiv, 2001), 176-177.
[198] Ibid., Iryna Sakharuk, 111-112.

2.3.4 Discrimination Against Women in Recruitment

The study of gender equality problem in employment in Ukraine reveals another important problem, as it occurs literary before laborr legal relations. As Iryna Sakharuk points out in her dissertation study, employers often make unreasonable demands to candidates that are not provided for in the law, including demands related to gender. The analysis of the requirements for candidates on the Internet portal in finding employment and workers Work.ua[199] shows that among 49.075 vacancies 82% of them contain requirements regarding the age of the applicants and 86% - regarding gender. The situation regarding this kind of demands to candidates is very similar to other employment sites too (Rabota.ua, HeadHunter.ua, job.ukr.net, jobs.ua, Rabotaplus etc). In most cases, the requirements are categorically made, although sometimes they are expressed in the way that the advantage is given to a certain person.

Thus, employers allow discrimination at the stage of making demands to candidates, despite the prohibition by the Law "On Ensuring Equal Rights and Opportunities for Women and Men" (Article 17) in advertisements (vacancies) to offer job to women or men only (except for some specific work that can be performed only by persons of a certain sex), to make different requirements, preferring one gender over another[200]. A similar provision is contained in the Law of Ukraine "On Employment of the Population" (Article 24-1)[201].

Responsibility for the information is given in vacancy announcements is set by the Law of Ukraine "On Advertising", where Article 24-1 of it provides for a penalty in the amount of tenfold of the minimum salary for advertisers for violation of the Law on advertising of employment services[202].

The prohibition on determining requirements for candidates in advertising for employment, which are not provided for by law, while determining responsibility for advertisers, is aimed at combating discrimination in employment. However, these rules should not be overestimated because even if the employer does not provide such requirements in advertisements, there is still a possibility of doing that while a direct selection of candidates.

The Parliamentary Commissioner of Ukraine in his Annual Report for 2016 said that Ukraine has recently seen raising awareness of the problem of discrimination in society as a

[199] Internet site for finding work - Work.ua. http://www.work.ua.

[200] The Law of Ukraine "On Ensuring Equal Rights and Opportunities for Women and Men", the Verkhovna Rada of Ukraine; Law of 08.09.2005 № 2866-IV (as amended on January 7, 2018). http://zakon3.rada.gov.ua/laws/show/2866-15

[201] Law of Ukraine "On employment of the population". Verkhovna Rada of Ukraine; Law from 05.07.2012 № 5067-VI. (as amended on January 20, 2018). http://zakon2.rada.gov.ua/laws/show/5067-17

[202] Law of Ukraine "On Advertising". Verkhovna Rada of Ukraine; Law No. 270/96-BP of 03.07.1996. (as amended on January 6, 2018). http://zakon3.rada.gov.ua/laws/show/270/96-%D0%B2%D1%80

whole, as well as increased attention from the media and civil society to this issue (compared to 2015-2014 and 2013)[203].

According to the Parliamentary Commissioner of Ukraine on Human Rights, during the period from January 1 to December 31, 2016, the Commissioner received 303 reports on cases of discrimination and violations of the equality principle, while gender-based discrimination is 5%. Unfortunately, the issue of gender discrimination in employment was not even been considered[204]. A few more of such appeals were received during 2015[205] (34 appeals relating to discrimination on the basis of gender equality).

The analysis of the Unified State Record of Court Decisions[206] by March 2018 does not contain any decision related to the violation of gender equality in employment. Several decisions are made regarding the discrimination of disability (related to loan) and the state of health. Two consequences appear to follow from the abovementioned:

1) Either there is no problem in Ukraine (which is very much doubtful).

2) Or this problem in Ukraine is mostly having a latent nature (hidden).

There is no need to conduct special studies to understand that it is the second consequence is more likely to correspond to the real situation in Ukraine. Above, it was given the indicator 5% of appeals to the Commissioner in relation to discrimination on the basis of sex, and these percentages show the discriminatory acts as such in general, and not only in employment. In our opinion, the real picture is much worse, but Ukrainians have serious reasons not to make such statements. First of all, it is because of fear, as the information about the employee-complainant is spreading rapidly amongst employers, which can cause serious problems in further employment. Another important reason seems to be that workers, despite a fairly fully functioning system of labour standards, still remain the least protected side of labour relations, and therefore they see no point in such appeals. Also, it's not that easy to prove in court the violation of gender equality which could be one of the reasons too as well as the complexity and significant length of time in the court process, etc. However, another important factor is the distinctive features of the Ukrainian mentality, inclined to tolerance, loyalty, and peaceful conflict resolution.

However, it is important to notice that Ukrainian Government revoked the Order on the prohibition of 458 occupations for women. Some of these prohibited branches for women are mountain branch, metallurgy, and chemical industries. The restrictions were placed on military

[203] Annual report of the Commissioner for Human Rights 2016 // [Electronic resource] / Official website of the Human Rights Ombudsman. File: /// C: / Users / admin / Downloads / Dopovid_2017.pdf

[204] Ibid.

[205] Annual report of the Commissioner for Human Rights 2015 // [Electronic resource] / Official website of the Verkhovna Rada Human Rights Ombudsperson. File: /// C: / Users / admin / Downloads / Dopovid_2016_final.pdf

[206] The Unified State Record of Court Decisions. http://www.reyestr.court.gov.ua/

service and law enforcement, food production, transport, communications industry, and agriculture[207]. It was a big positive step forward in order to enact the principle of gender equality in the sphere of employment at the legislative level.

To sum up, the current Japanese, Chinese and Ukrainian legislation contains a large number of norms, which is a good illustration of the replacement of the principle of equality with the principle of positive discrimination against women and the formation of protective concepts of women's rights. Many rules are aimed at protecting the rights of women by giving them certain privileges compared to men, but certainly, this positive discrimination leads to the usual discrimination against women in employment. One of the important issues is gender equality in the field of employment for workers with family responsibilities, discrimination against women in recruitment and promotion.

The issue of equal pay for equal work among men and women is also important. On average, women receive less than one-quarter of their wages for work of equal value compared to men. It seems that the concept of equal pay for equal work should be gradually implemented in Japan, China, and Ukraine.

Violation of gender equality in employment in mentioned countries exists not only in the process of labour relations but also before they occur. Domestic employment sites often allow indicating candidate's gender, despite the existing formal prohibitions. Establishing responsibility for such violations doesn't make any effect to solve this problem.

And the reality shows that violations of gender equality in employment are predominantly latent in nature, and that's because of the certain social and economic reasons, as well as the mental characteristics of Japanese, Chinese, and Ukrainian society.

[207] Order No. 256 "On approval of the List of heavy work and work on harmful and hazardous working conditions, which prohibits the use of labour by women", Ministry of Health of Ukraine, dated December 29, 1993. Kyiv. http://zakon3.rada.gov.ua/laws/show/z0051-94

POSITIVE MEASURES as METHOD of REGULATION of GENDER EQUALITY in the WORKPLACE in EU COUNTRIES

3.1 Highlights in the Evolution of the EU Standards

Promotion of gender mainstreaming[208] and the initiation of specific measures has become an integral part of the policy of democratic European states since the early 1990's, and the standards of equal treatment between women and men have been incorporated into both primary and secondary legislation of the EU[209]. The standards of gender equality are set out in the articles of the Amsterdam Treaty of 1997 and contained in the EU Directives. In addition, the Community Action Program on Equal Opportunities for Women and Men is regularly adopted and an Advisory Committee on Equal Opportunities has been established[210]. The main objectives of these activities and institutions are to support the effective implementation of the current EU legislation in order to fully integrate women into the labour market and improve their social status.

The Treaty establishing the European Community ("TEC")[211] obliges the Member States to promote gender equality, so for the first time, the problem of equal treatment of women and men was recorded in the Treaty Establishing a united European Community.

Historically, EU equality legislation focuses mainly on employment and social security, since the Union, which was established in 1957 as an Economic Community, was initially interested in the direct economic impact of the principle of equal pay[212].

Article 119 (Article 141 of TEC) of the 1957 Rome Treaty, which obliges Member States to follow the principle of equal pay for men and women, and has the following initial view: *"Each Member State shall, during the first phase, implement and then continue to support the application of the principle that men and women should receive equal pay for the work of equal value ..."*[213]. These provisions were not observed until 1971 when the Court of Justice stated that individuals who opposed discriminative payment might directly refer to Art. 119.

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[208] Gender-based prioritization involves (re)organization, improvement, development and assessment of the political processes in such a way that participants including women in the political decision-making process could use a gender perspective in all politics areas and at all stages. The existing differences between men and women are taken into account to determine the negative effects, rather than the maintenance of inequalities or hierarchies that prevail in society.

[209] Agnes Hubert and Maria Stratigaki, "Twenty Years of EU Gender Mainstreaming: Rebirth out of the Ashes?" (*Femina Politica*, Vol. 2, 2016), 22.

[210] Decision 2008/590/EC: Commission Decision of 16 June 2008 relating to the setting up of an Advisory Committee on Equal Opportunities for Women and Men.

[211] Treaty establishing the European Community (Nice consolidated version) - Part Three: Community policies - Title XI: Social policy, education, vocational training and youth - Chapter 1: Social Provisions - Article 141 - Article 119 - EC Treaty (Maastricht consolidated version) - Article 119 - EEC Treaty. *Official Journal C 325, 24/12/2002 P. 0096 – 0096.*

[212] Dalila Ghailani, "Gender equality, from the Treaty of Rome to the quota debate: between myth and reality", *Social developments in the European Union*, 2013, 162.

[213] Ibid., 161.

Consequently, the principle of equality in labour relations, regardless of gender, was interpreted in the context of equal pay for the work of equal value, but later the judicial practice recognized that the right to equal treatment is one of the fundamental human rights, while at the same time emphasizing the social significance of this principle. The general understanding of the principle of equality is covered today by the thesis: workers who are in the same position should have the same amount of rights and responsibilities, not only in labour law but also in social welfare[214].

The guarantees of non-discrimination in employment consist, on the one hand, of the prohibition of discrimination (both direct and indirect), particularly on the basis of gender, on the other hand – the development and legal regulation of measures aimed at achieving actual equality in labour relations[215].

As it was mentioned already, measures to combat sexual abuse had been without systemic nature for a extended period of time; there was no comprehensive policy that would combine these efforts[216], and the practical implementation of the provisions on the establishment of gender equality for a long time took place mainly in the judicial plane. In the mid-1980s, the European Commission began to focus on the need and urgent need for positive action, emphasizing the importance of the social role of women in the family, the role of men in the upbringing of children, and the provision of women with appropriate preferences in remuneration, pensions, etc.

In 1997, the terms of the founding treaties were changed by the Amsterdam Treaty, recording the application of positive actions, emphasizing the status of women in the family, and so on. In addition, the Treaty of Amsterdam mentions the idea of "*equality between men and women in terms of labour market opportunities and treatment at work"* (Article 118), *"equal treatment of men and women in terms of employment and labour, including the principle of equal pay for equal work", "ensuring complete equality between men and women in working life"* (Article 119)[217]. Since then, the drafting of normative instruments of the Commission and the Council of the European Parliament has begun, and positive actions, as well as gender policy in general, have started to be implemented at the State level, based on careful studies and clear statistics[218].

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[214] Petra Foubert, "The Gender Pay Gap in Europe from a Legal Perspective". *Luxembourg: Publications Office of the European Union*, (2010): 5.

[215] Ibid., *The Gender Pay Gap in Europe from a Legal Perspective, Foreword.*

[216] Kachka, Speech at the roundtable table "Gender aspects of European law. Experience of approximation of legislation of the countries of Central and Eastern Europe" (Kyiv, 2005).

[217] European Union: Council of the European Union, Treaty of Amsterdam Amending the Treaty on European Union, The Treaties Establishing the European Communities and Related Acts, 10 November 1997. http://www.refworld.org/docid/51c009ec4.html

[218] Jane Pillinger, *Feminising the Market: Women's Pay and Employment in the European Community* (New York, USA: Springer, 2016), 97.

Furthermore, as it was mentioned in the previous chapter, one of the most common forms of gender discrimination is the wage gap. For example, even in the equal European countries, the overall gender gap in earnings stood at 20%, and in some countries, it reached 45%. In order to deal with this problem, it requires developing an integrated, coherent policy to combat this form of discrimination[219].

Thus, the modern system of gender equality implies the introduction of temporary special measures ("temporary special measures", "positive action", "affirmative measures"), which go beyond simple prohibition of discrimination and seek to protect against discrimination and ensure the establishment of actual equality, in particular women and men[220]. So, they are aimed at compensating for the "minor", "limited" status of a person and generally are temporary, limited in time and in scope (till achieving its objectives).

3.2 The Main Examples of Positive Measures in EU

3.2.1 Legal instruments of positive measures in EU

As it was defined, an essential feature of the European law on equal opportunities is a consistent policy of supporting positive actions. The regional European policy of legislative support for positive actions is consistent with the spirit and principles of the CEDAW, as set out in Articles 2 and 4; Art. 23 of Charter of Fundamental Rights of the European Union[221]; Article 157 para 4 (ex Article 141(4) of TEC) of the the Treaty on the Functioning of the European Union ("TFEU"); Article 2 para 4 of the former Directive 76/207/EEC The Equal Treatment Directive[222] ("Directive 76/207/EEC"); Art. 3 of Directive 2006/54/EC The Recast Directive[223][224] etc. Special legislation on equal rights of men and women was adopted in many countries, which include Norway, Ireland, Sweden, Netherlands, Malta, and Slovakia[225]. Positive actions or positive discrimination is the theoretical basis for the interpretation of "non-

[219] "2017 report on equality between women and men in the European Union», Justice and Consumers (Belgium, European Union, 2017), 25. https://eeas.europa.eu/sites/eeas/files/2017_report_equality_women_men_in_the_eu_en.pdf

[220] Olena Uvarova, "*Gender equality in the economic sphere: Ukraine's commitment to the EU (key EU Directives on ensuring gender balance in the labour market and professional activities, their development in the practice of the Justice Court)*" (Kharkiv, Ukraine: NTMT Publishing, 2015), 12.

[221] According to Art. 23 of the Charter, gender equality should be ensured in all spheres, including in employment and labour, in promotion. However, the legality of the introduction of positive discrimination in exceptional cases is not prohibited.

[222] This Directive shall be without prejudice to measures to promote equal opportunity for men and women, in particular by removing existing inequalities which affect women's opportunities in the areas referred to in Article 1 (1).

[223] Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast). *Official Journal of the European Union*, 204, 26.7.2006, p. 23–36. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32006L0054

[224] Article 3 "Positive action Member States may maintain or adopt measures within the meaning of Article 141(4) of the Treaty with a view to ensuring full equality in practice between men and women in working life".

[225] Report of "Positive Action Measures. The Experience of Equality Bodies". Equinet. Equinet's Equality Law in Practice Working Group, 2014. http://www.equineteurope.org/IMG/pdf/positive_action_measures_final_with_cover.pdf

discrimination". This concept, which is widely used by Western politicians and lawyers, arose to explain a number of legal regulations that can be categorized by formal qualifications as discriminating or restricting men or women (for example, in some European countries there is a rule of preferential treatment of a man in matters of employment when he has the same qualifications as a woman and applying for the same position as she is). Consequently, under the positive action measures with regard to protecting vulnerable social group, it was considered to eradicate the social component of discrimination by adopting of promotional activities which are different from the sanctioning of discriminatory actions itself[226]. The Declaration on equality of Women and Men of the Council of Europe Committee of Ministers on November 16, 1988, in particular, emphasizes the need for special measures which are designed in establishing as soon as possible the real equality of women and men in various areas, particularly in access to public office at all levels , access to all occupations, employment and wages[227].

The Committee on Economic, Social and Cultural Rights of the United Nations had recognized the need for special positive measures, indicating that they shall sometimes be necessary in order to bring a person (group of persons) that are in disadvantage or a marginal person (group of persons) to the same actual level as the others[228]. For example, if the general conditions of a certain part of the population do not allow or weaken the use of their rights, the State should take special measures to correct this situation. Such measures may involve granting for a time to the part of the population concerned certain preferential treatment in specific matters as compared with the rest of the population. However, it only means for the time that takes to correct discrimination in practice.

Article 157 TFEU reflects the recognition of the legitimacy of ensuring substantial equality by subsidiary legislation. So it says:

> *"With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers".*[229]

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[226] Nuria Elena Ramos Martín. "Positive Action in EU Gender Equality Law: Promoting Women in Corporate Decision-Making Positions". *Spanish Labour Law and Employment Relations Journal* (November, 2014), Vol. 3, No. 1-2, (September 8, 2014): 23. http://www.uc3m.es/sllerj

[227] Declaration on equality of women and men (adopted by the Committee of Ministers on 16 November 1988 at its 83rd Session), Art. 6 (VI (h)).

[228] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art. 3 of the Covenant), 11 August 2005, E/C.12/2005/4. http://www.refworld.org/docid/43f3067ae.htm

[229] Consolidated version of the Treaty on the Functioning of the European Union. Official Journal C 326 , 26/10/2012 P. 0001 – 0390, Art. 157.

Article 157 TFEU is reflected with some variance in Article 23 of the Charter of Fundamental Rights of the EU and supports the idea of taking positive steps in favor of less represented gender in the labour market.

And lastly, the provision of positive steps which was declared in Article 157 para 4 (ex Article 141(4) of TEC) is reflected with some easing in Article 3 of the Recast Directive 2006/54/EC. And then with the same Directive, Member States are obliged to report the texts of their regulatory instruments and administrative provisions of any measures taken in accordance with Article 157.4 TFEU[230].

In this way, Member States are encouraged to take temporary special measures to speed up the implementation of equality between men and women. Such measures should not be considered discriminatory if they are based on the obligation of the state to eliminate any conditions causing disadvantages due to former or existing discriminatory laws, traditions, and practices. As was mentioned, the nature, duration, and application of such measures should be consistent with the specific problem and context and should be adapted to the circumstances. The results of such measures should be monitored so that these measures were suspended when their purpose is achieved[231].

The Council of the EU, in Recommendation 84/635/EEC[232] on the promotion of positive measures for women, states that equality of opportunity between men and women requires more than just an anti-discrimination law and focuses on the negative harmful effects that form the basis of discrimination and which are typically the product of widespread conviction in society about the traditional division of roles in society between men and women. The most common types of special positive measures used in national and international jurisdictions are training and further advancement; preferential treatment; special measures in the labour field and social security.

3.2.2 Training and Empowerment as a Form of Positive Actions

Some national human rights instruments define training and support as one of the ways to overcome inequality[233]. Training creates conditions for equality of opportunity but does not solve the problem of discrimination that occurs in the final stage of selection of candidates or

[230] Ibid., *Positive Action in EU Gender Equality Law: Promoting Women in Corporate Decision-Making Positions,* 25-26.
[231] Ibid., General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights.
[232] Council Recommendation 84/635/EEC of 13 December 1984 on the promotion of positive action for women. Official Journal L 331, 19/12/1984 P. 0034 – 0035. http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31984H0635:EN:HTML
[233] Sotirios Zartaloudis, "*Gender equality in Greek Employment policy: A story of Europeanization?"* Paper presented at the Research Student Conference "Emerging Research in Political Economy and Public Policy" (LSE, 11 March 2009), 6. http://www.lse.ac.uk/europeanInstitute/Events/2008-09/Zartaloudis.pdf

promotion. Members of different groups, such as men and women, can have the same qualifications and skills, but existing prejudices or stereotypes will prevent the achievement of equality of opportunity in holding a particular position. For example, the United Kingdom ("Equality Act 2010") provides that under certain circumstances, including the very low representation of one group, employers can provide training for workers in this group to encourage them to perform a new job or nominate themselves for other positions. However, employers are not allowed to discriminate in favor of representatives of one sex while recruiting to a post, except when this is determined by the certain peculiarities of work[234].

3.2.3 Preferential Treatment

The practice of giving preferences to disadvantaged or discriminated groups is a form of positive action, which is sometimes prohibited by international standards. The automatic preferential consideration or special attention based on certain personal characteristics through which individuals or groups are selected for work, training or advanced training is prohibited in some countries due to the discriminatory effect on others[235].

This is possible even in cases where personal characteristics, for example, gender are used only as a so-called "plus factor" for choosing one of two equally qualified candidates. An alternative form of preferential treatment involves taking into account the person's belonging to a group of disadvantaged or discriminated persons, along with other factors that influence the decision to hire[236].

The European Court of Justice has dealt with the issue of automatically giving the priority to gender discrimination in the workplace. The European Union legislation allows such a priority, but only if candidates held the same qualities and qualifications. So for the same qualifications of the two job applicants, the candidate from the minority or discriminated group would be given a preference. For a long time, the CJEU has avoided the direct answer to the question concerning the legitimacy of positive discrimination measures in favor of women in national law (for example, a low age compared with men for a certain benefit, for example, social assistance)[237]. In the Kalanke judgment, the Court recognized that national legislation which guarantees women an "absolute and unconditional" advantage in hiring and promotion is in breach of Community law. Despite the negative result, the decision contained no indication of

[234] Equality Act 2010 (c. 15). Part 5 — Work. Chapter 1 — Employment, etc. Section 55, 56. https://www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpga_20100015_en.pdf

[235] Colm O'Cinneide, "*Positive Action",* (London, England: University College London, 2014), 1. http://www.era-comm.eu/oldoku/SNLLaw/04_Positive_action/2014_April_Cinneide_Paper_EN.pdf

[236] Barbara J. Fick, The Case for Maintaining and Encouraging the Use of Voluntary Affirmative Action in Private Sector Employment. *Notre Dame Journal of Law, Ethics & Public Policy*, Vol. 11, 1 (2014), 161-162.

[237] Ibid., "*Gender equality in the economic sphere: Ukraine's commitment to the EU", 19.*

positive discrimination being considered illegal in general, but only about its illegality under specific conditions. This gave grounds for believing that the Court as a whole would allow the introduction of national legislation which is more advantageous for women[238]. In order to avoid creating uncertainty as to the legality of the positive actions, the Advocate General, Mr. Tesauro wrote to the ECJ on the Kalanke case, which expressed its intention to amend Community legislation in such a way that Directive 76/207/EEC will clearly make it possible to apply positive action in the absence of specific quotas for women[239].

However, the Court itself proposed a similar judgment in the Marschall case, which was settled in November 1997. It addressed the issue of whether the legislation of one of the Länder of the Federal Republic of Germany was inconsistency with Community law, according to which when in a certain sector women are less than men, women candidates are given priority in hiring in the case of equal suitability, competence or professional skills, unless the candidate man for this job has no specific qualities that will give him an advantage. The Court admitted that, in general, this provision does not contradict Community legislation[240].

The Court considers that when there is a question of promotion, there is a tendency to favor men, rather than women if they have the same qualifications. This situation was the result of a deeply rooted prejudice and stereotypes about the role and opportunities of women. That is why the equal qualifications of candidates alone women and men do not mean that they have the same chances. Therefore, such provisions indicated norm of German law help avoiding any case of inequality by introducing an additional criterion (the status of a woman), unless no automatic advantage is granted to a woman[241].

In Badeck case, the European Court of Justice argue was that women prioritization in promotion which is set up by national legislation as well as the possibility of obtaining temporary positions and appropriate training in the fields of activity where women are less represented if they held equal qualifications and if this rule is necessary to apply for enforcing the objectives of the women's advancement plan, are in line with Community law. German regional law which was evaluated in Badeck presented an extensive list of the positive steps benefiting women which are considered being in line with the principle of equal treatment and equal opportunities for women and men[242].

The Court also took into consideration the fact that the legislation had a provisional draft on an obligation to offer preferential treatment over women to certain groups. These are former

[238] Case of Kalanke v Freie Hansestadt Bremen. C-450/93. ECJ. October 17, 1995.
[239] Ann Donahue, "*Kalanke Ruling: Gender Equality in the European Labour Market"* (Northwestern Journal of International Law & Business Volume 18 Issue 3: Spring, 1998), 737-739.
[240] Case of Hellmut Marschall v Land Nordrhein-Westfalen. C-409/95. ECJ. November 11, 1997.
[241] Ibid.
[242] Case of Georg Badeck and Others. C-158/97. ECJ. March 28, 2000.

staff members who gave up work due to family work, or due to family obligations work just part-time, temporary voluntary soldiers, persons who have serious disabilities, and the long-term unemployed[243].

Later, in Abrahamsson, the ECJ had issued a decision that the equal treatment right which is set up in the Directive 76/207/EEC excludes national legislative acts whereby a candidate for the position belonging to the under-represented sex, held sufficient qualifications for that position and must be given a preference to an opposite-sex candidate who would have otherwise been assigned, even when differences between the relevant advantages of the candidates are not so great as to result in a violation of the requirement of objectivity. The Court considered it to be forbidden according to the Community legislation. As this way among all the qualified applicants, they select the candidate based on the fact of his/her belonging to the less represented group rather than his/her professional merits even if they are inferior to those of the opposite sex[244].

Opposite case judgment was issued recently by the Court of Justice of the European Union concerning Ypourgos Esoterikon v Maria-Eleni Kalliri[245]. The plaintiff a female who applied to join the police academy claimed that she was rejected on grounds of height. The CJEU decided that the law provision of a minimum height as a requirement to join a police school, independently of sex, could be qualified as unlawful discrimination against women. But, the Court of Justice of the European Union mentioned that to prove the opposite it is possible to submit the evidence of this requirement to be necessary to the proper functioning of the police force[246].

3.2.4 Positive Actions in Labour Relations and Social Security: An Anti-Discriminatory Approach or Achievement of Equality

3.2.4.1 Wage Gap Issue

Professional activity for women is not an episode of their life, but essential need. Today, a significant proportion of women of working age work in various spheres of industrial and social life of society. A sociological survey conducted in the countries of the European Union showed that men overestimate the positive attitude of women towards domestic work and underestimate their desire to engage in paid work.

Substantive provisions on the need to ensure equal pay for equal work of women and men

[243] Ibid., Case of Georg Badeck and Others.
[244] Case of Abrahamsson and Leif Anderson v Elisabet Fogelqvist. C-407/98. ECJ. July 6, 2000.
[245] Case of Ypourgos Esoterikon and Ypourgos Ethnikis paideias kai Thriskevmaton v Maria-Eleni Kalliri. C-409/16. CJEU. 18 October 2017.
[246] This case interprets Council Directive 76/207/EEC, amended by Directive 2002/73/EC.

are contained in Art. 141 of TEC, which now has the following wording: *"equal pay for male workers and female workers for equal work or work of the same value"*. For the purposes of this article, "payment" means the ordinary basic or minimum wage or salary and any other consideration in cash or in kind received by the worker, directly or indirectly, for his/her work from his/her employer[247].

Equal pay without discrimination based on sex means that[248]:

a) the payment for the equal part-time labor is calculated on the basis of the same unit of measurement;

b) the same remuneration for equivalent work is established for hourly wages.

The article also states that measures should be taken to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value[249].

In addition, it was mentioned "*in order to ensure, in practice, full equality between men and women in working life, the principle of equal treatment should not prevent any Member State from maintaining or further promoting measures that involve certain advantages in order to facilitate the under-representation of the sexes, to carry out their professional activities or to prevent inconveniences in professional careers or to compensate for them"*[250].

However, this article did not become an additional means for protecting women's rights against discrimination. Firstly, not all cases of violation of women's employment rights fall within the jurisdiction of the article, but only rights relating to one aspect of payment. Secondly, Member States used the standards of the relevant Conventions of the ILO[251], and therefore, had the relevant legislation which was used by national courts. For a long time this article was untouched, in other words, it was not used by women in order to protect their rights. The first lawsuit was filed in 1970, and the ECJ identified violations of Art. 119 the Treaty of Rome only in 1976[252]. The interesting fact is that the application of Art. 119 was initiated by the woman - Gabriel DeFren, who worked as a flight attendant at the Belgian Airline SABENA. The applicant complained that she was getting lower wages than her male colleagues, although their work duties were identical. The Court of Justice has decided that such behavior is clearly stated as gender-based discrimination. The ECJ drew the attention to the social and economic dimension

[247] Ibid., Art. 141 (1) TEC.
[248] Ibid., Art. 141 (2) TEC.
[249] ibid., Art. 141 (3) TEC.
[250] Ibid., Art. 141 (4) TEC.
[251] For example, C100 - Equal Remuneration Convention, C111 - Discrimination (Employment and Occupation) Convention.
[252] Case of Gabrielle Defrenne v Belgian State. 80-70. ECJ. May 25, 1971; Case of Gabrielle Defrenne v Société anonyme belge de navigation aérienne Sabena (No.2). 43-75. ECJ. April 8, 1976.

of the European Community while making that decision, and pointed out that anti-discrimination measures do help the Community to move forward these goals[253]. She filed three lawsuits for violating this article during the 1970s, although only one of them was settled with the ECJ.

However, despite all the weaknesses of the abovementioned Article 119, it has become a popular means of combating Western European women against discrimination. The key role in this process played the interpretation of the article by the Court of Justice. The Court took a fairly balanced position. On the one hand, it did not extend the effect of the article on spheres of life beyond the scope of economic relations. In addition, it tried to provide the complete protection against discrimination in employment relations, often trying to ensure real equality for women, ignoring formal arguments[254].

With regard to the interpretation of the term "wage", the Court applies the principle of any material wealth that is taken into account in determining the final salary of a worker, or directly determines the calculation of other remuneration related to pay, is considered a wage[255]. Therefore, wages were recognized, for example, by cash bonuses and fees due to temporary disability[256], payments resulting from the dismissal, unemployment benefits, and assistance to large families, obtaining loans at the enterprise, etc. Moreover, the possibility for a worker to obtain the certain benefit from the employer is considered as payment as well. In the case of Vroege v NCIV[257] it was decided that giving employees the opportunity to start a professional retirement plan at that enterprise is a kind of remuneration. In this case, it does not matter the legal reasoning for the connection between payment and employment, what is more important is the actual connection: wages arise when certain benefits are provided in connection with employment. It also does not matter whether the employer makes these payments by legislation, an employment contract or voluntarily[258]. Thus, in the case of Garland v British Rail Engineering Ltd the Court held, there is a discrimination within the meaning of Art. 119 against female former employees. It recognized the payment as benefits given only to former male railway workers after retirement in a form of railway travel privileges while the former female workers did not receive the same kind of facilities[259].

Even on the question of recognizing the payment of various types of social assistance to the worker (particularly pensions), the Court took, in our opinion, a favorable position for women workers, by clearly recognizing pension payments of a private origin to be a wage (that

[253] Ibid., Defrenne v. Sabena (No.2). 43-75.
[254] Ibid., *Gender equality in the economic sphere: Ukraine's commitment to the EU.*
[255] Ibid., Defrenne v. Sabena (No.2), supra note 17, 47; Case of Oumar Dabo Abdoulaye and Others v Régie Nationale des Usines Renault SA. C-218/98. ECJ. September 16,1999, supra note 12, 13.
[256] Case of Ingrid Rinner-Kühn v FWW Spezial-Gebäudereinigung GmbH & Co. KG. 171/88. ECJ. July 13, 1989.
[257] Case of Vroege v NCIV. C-57/93. ECJ. June 7, 1994.
[258] Case of Arbeiterwohlfahrt der Stadt Berlin e. v Monika Bötel. C-360/90. ECJ. June 4, 1992. Summary, supra note 1.
[259] Case of Eileen Garland v British Rail Engineering Limited. 12/81. ECJ. February 9, 1982.

is paid by the employer and not by state). Even when the state participates in the organization of pension programs or pension payments (which is common in the majority of cases), and so social assistance isn't, generally, considered to be a wage in the meaning of Art. 141 of the TEC, only when it is: a) directly established by law; b) established without consulting with the enterprise; c) applies to all employees in general[260].

Thus, in the case of Bilka-Kaufhaus GmbH v Weber von Hartz[261] the female employee at the mall complained that her access to a professional pension scheme financed exclusively by the employer was complicated by additional requirements compared with male workers. The court ruled that, since the pension scheme was financed by private funds, it was regulated by the provisions of the collective agreement and the employment contract, mentioned pension payments were an actual payment. In the case of Rinner-Kühn v FWW Spezial-Gebäudereinigung GmbH German legislation required that an employer pays six-weeks assistance in case of employee's illness. The Court also acknowledged that in this case, payments arise on the basis of the employment relationship[262]. Finally, in the case of Barber v Guardian Royal Exchange Assurance Group a situation was reviewed where the worker, Mr. Barber, believed his rights were lower compared with female employees. At the enterprise where he used to work, on the basis of an employment contract, it was decided to use the right, granted by the pension law, to replace the state pension with a more favorable pension for the worker, paid by the employer. The Court recognized that pensions paid to employees by employers were payment for work, and therefore, they considered the claims of the plaintiff on the basis of Art.119[263].

This position of the Court was extremely resisted by the Member States of the European Community, as it required significant additional financial costs. Therefore, the Court of Justice was forced to abandon the retroactive application of Art. 119 to social benefits. But it was done very ambiguous and did require an additional interpretation. That's why, the Member States added Protocol No. 2 to Article 119 of the Maastricht Treaty concerning Article 119 of TEC, which established the specific date from which the principle proclaimed by the Court in the Barber's case was applied[264].

In 2010, the CJEU has made one more decision on the case of Rijksdienst voor Pensioenen v. Elisabeth Brouwer regarding the unequal size of the conditional fixed rate for men

[260] Case of Gabrielle Defrenne v Belgian State. 80-70. European Court of Justice. May 25, 1971.
[261] Case of Bilka - Kaufhaus GmbH v Karin Weber von Hartz. C-170/84. ECJ. May 13, 1986.
[262] Ibid., Case of Ingrid Rinner-Kühn v FWW Spezial-Gebäudereinigung GmbH & Co. KG. 171/88.
[263] Case of Douglas Harvey Barber v Guardian Royal Exchange Assurance Group. 262/88. ECJ. May 17, 1990.
[264] European Union, Treaty on European Union (Consolidated Version), Treaty of Maastricht , 7 February 1992, Official Journal of the European Communities C 325/5; 24 December 2002. P. 147. https://europa.eu/european-union/sites/europaeu/files/docs/body/treaty_on_european_union_en.pdf

and women when retiring. Belgium argued that there was no discrimination in this case because the difference in treatment has an objective justification: the actual payroll is different, and therefore the size of the pension should reflect this difference. But the Court decision was to rule out national laws which during the decade from 1984 till 1994 influenced the way the old-age and retirement pensions were calculated for cross-border workers. As for female workers regarding equal work or work of equal value it has been done on the basis of notional and/or flat rate daily wages lower than the ones for male cross-border workers[265].

Thus, the Court of Justice in interpreting the term "equal work" established the principle that the main way to identify the similar or equivalent work is the comparison: it requires drawing parallels in the assessment for the actual work performed by male and female employees (the case of Macarthys Ltd v Smith)[266]. In this context, it doesn't have to be a work within one institution or enterprise: if there is only one employer, the fact that the salary of employees is determined by various collective agreements doesn't stop it from bringing up the issue of sex discrimination[267]. In addition, it is not necessarily to compare the work of women and men performed simultaneously (a woman - the manager of the wholesale store required to compare her salary with the salary of her predecessor, who performed a similar job), or for the work to be carried out in the same country. However, it must be noted that there has never been an issue regarding the definition of the term "similar work": there is no need for that, as in any case it is covered by the term "equivalent work"[268].

But not only the Court has taken an active part in promoting women in the fight against sex discrimination. Due to the reluctance of the Member States in order to fully implement Article 119 into the national law, the Commission of the European Communities since 1975 initiated the adoption of a number of directives aimed at the harmonization of the domestic law of the Member States. Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women introduced a number of new rules that allowed the principle of equal pay to be more effectively applied. In particular, the Member States of the European Community have been obliged to develop national job classifications based on the same criteria for both men and women. It is important to mention that the Commission did not stop on building the rule of equal pay, but proposed to extend the principle of non-discrimination on the basis of gender to other

[265] Case of Rijksdienst voor Pensioenen v Elisabeth Brouwer. C−577/08. ECJ. July 29, 2010.
[266] Case of Macarthys Ltd v Wendy Smith. 129/79. ECJ. March 27, 1980.
[267] Case of Enderby v Frenchay Health Authority and Secretary of State for Health. 127/92. ECJ. October 27, 1993.
[268] Ibid., Case of Macarthys Ltd v Wendy Smith.

areas of labour relations[269]. So in the 70-80s, the following legal instruments were approved:

1) Directive 75/117/EEC[270], which implements the provisions of Article 141;

2) Directive 76/207/EEC[271] on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions;

3) Directive 86/378/EEC[272] on the implementation of the principle of equal treatment for men and women in occupational social security schemes;

4) Directive 92/85/EEC[273] 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;

5) Directive 96/34/EC[274] on the framework agreement on parental leave. The Directive is approved to promote the greater balance in women's and men's professional and family responsibilities.

All of the above-mentioned directives contained rules that required the Member States[275]:

1) to make appropriate changes to national legislation and bylaws, as well as their implementation;

2) to provide the necessary legal channels for the possibility of recognizing the invalidity of some provisions of collective and individual labour contracts, internal rules of enterprises, which contradict the introduced changes;

3) to entitle the persons who were harmed by non-compliance with the principle of non-discrimination on the basis of gender, the right to refer relevant lawsuits to the national courts;

4) to provide the employee protection against dismissal by the employer as a response to a complaint within the company or to a trial that was intended to force an employer to comply with that principle.

It is important that the provisions of these directives had direct effect after the expiry of

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[269] Report from the Commission on the European Parliament and the Council. Report on the application of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) /* COM/2013/0861 final */.

[270] Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women. *Official Journal L 045, 19/02/1975 P. 0019 – 0020.*

[271] Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

[272] Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes. *Official Journal L 225, 12/08/1986 P. 0040 – 0042.*

[273] 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).

[274] Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC.

[275] Ibid.

the deadline set by the Member States for their implementation, that is, the workers were entitled to sue national courts based on them. The CJEU has confirmed this many times have taken into account when determining cases.

It is clear that Article 119 could not be a legal ground for the approval of these directives, as new measures regarding the equality of women clearly went beyond the principle of non-discrimination in remuneration. Therefore, Article 235 (according to the new numbering - Article 308) of the TEC became a new ground for a new legislation. It provides that in cases where the Community has to achieve one of the objectives of the Community in order to ensure the functioning of the common market, but the TEC does not confer on it the necessary powers, the Council of the European Community is entitled to take appropriate measures. It means the Community is entitled to operate under the "implied powers"[276][277].

As was mentioned before, in 2006 a new Directive 2006/54/EC[278] had been issued by the European Parliament and the Council. The reviewed Directive was an outcome of combining of five previous documents on basic principles of equal pay, equal treatment in employment, and equal treatment in occupational social security, the burden of proof, includes the principles which arise from CJEU case law and contribute to eliminating the gender pay gap. In addition, European Commission communication approved Recommendation 2014/124/EU that provides for national governments for more effective implementation of the equal pay principle. It provides the right of employees to get information on their salary, periodic reports of companies (with over 50 employees) on average pay levels, national payroll audits for companies and organizations with over 250 employees, recent data on the gender pay gap[279].

The approved directives led to a significant number of workers' claims to the national courts that in turn required the correct interpretation of these regulations from the CJEU. The latter expressed its support for the Commission's proposals and took an active role in promoting a practical use of the principle of equality by women. The Court's attempt to provide real protection against discrimination is very much illustrative in this respect, which at first sight, may not seem obvious. These include the protection of female workers from indirect discrimination and the permission to apply positive discrimination for the benefit of women[280].

So, it is thus clear that almost all EU law on social protection is the result of the creation

[276] Ibid. *"Gender equality in the economic sphere: Ukraine's commitment to the EU", 25.*

[277] Treaty establishing the European Community (Nice consolidated version) - Part Six: General and Final Provisions - Article 308 - Article 235 - EC Treaty (Maastricht consolidated version) - Article 235 - EEC Treaty.

[278] Directive 2006/54/EC of of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).

[279] Summary of: European Commission communication (COM(2007) 424 final) – ways to deal with gender-based pay differences. Summaries of EU legislation. Tackling the pay gap between men and women. Publications Office. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:c10161

[280] Ibid.

of a common market, and therefore is employment related. This makes a major difference between the EU's social policy and the extensive social policy of any State. This is due to the limited authorities of the EU and the principle of subsidiarity.

One of the most important steps towards equal pay for men and women in the European Union was made in Iceland. In January 2018 the world's first "Law on Equal Pay for Equal Work of Men and Women" came into force. This law places greater responsibility on medium and large enterprises on regulations of equal pay for men and women on similar positions through a special certification. In case of non-compliance with the obligation in case non-following the rules - it provides penalties. Among other things, the law establishes stricter requirements to prevent harassment and discrimination in the workplace[281].

Iceland is intended to completely get rid of the gender pay gap by 2022. For several years Iceland stands at the top of the global gender equality index, which is published every year since 2006 by the World Economic Institute. In 2017, it included 144 countries. All of them are organized in descending order of equality. It is determined from zero to one, where zero means the disempowerment of one of the sexes, and one means a complete equality. The top five most equal and socially secure countries are Iceland, Norway, Finland, Rwanda, Sweden[282].

"Objectively Justified" Discrimination

Consideration should also be given to the fact that the principle of equality is not absolute. Under the condition of the "objective grounds", it is possible to treat men and women in a different way. Thus, in the case of Rummler v Dato-Druck the Court set up the requirements to be met by a classification system which determines the equality of work performed by a man and woman [283]:

(a) the system as a whole should not discriminate workers on the basis of their gender,

(b) they should use the criteria which are objectively justified, it means:

(i) they should be consistent with the tasks carried out while performing the certain job,

(ii) they should match the real needs of an enterprise.

The Court has further reviewed the issue in Handelsog Kontorfunktionazrernes Forbund i Danmark v Dansk Arbejdsgiverforening, acting on behalf of Danfos, in which women complained that, despite the equal pay for each class of work in the classification system of works, the average salary in each class was lower for women in comparison with men (indirect

[281] Carah Gray, "It's Now Illegal to Pay Men More Than Women in Iceland". January 2, 2018. *Fortune*. http://fortune.com/2018/01/02/illegal-to-pay-men-more-than-women-iceland/

[282] Ibid.

[283] Case of Gisela Rummler v Dato-Druck GmbH. 237/85. ECJ. July 1, 1986.

discrimination). The Court ruled that applying a neutral criterion for the quality of work (or if it is impossible to precisely define the criteria), which results in the systematic discrimination against women - is a violation of Directive 75/117/EEC[284].

Article 1 of Directive 75/117/EEC, in particular, covers the situation where equivalent work is determined on the basis of a classification system of jobs. In this case, this system should be based on the same criteria for workers of both sexes. EU's law requires that the legitimacy of these criteria would have been assessed by a special competent authority. Direct discrimination takes place if it occurs solely on the grounds of the gender difference of employees. While indirect discrimination direct causes of discrimination are other factors, but they are closely related to the workers' gender. The definition of the type of discrimination influences on whether "objectively justified" exceptions to the principle of equal pay for equal work are possible or not.

The most common case of indirect discrimination is a wage gap for full time and part-time workers. Part-time employees are paid less for one hour of their work. The ECJ has considered a number of cases in which women have been complaining about such situations, as almost all part-time workers (or the majority of them) are women, whereas, among full-time workers, the majority is men.

The Court adheres to the principle (cases of Jenkins v Kingsgate, Bilka-Kaufhaus GmbH v Weber von Hartz), that, according to the general rule, the wage gap between workers of the different sex is possible, if it is "objectively justified" and not caused by the gender difference of employees. Discrimination will only take place if the employer makes it difficult for women to receive full-time jobs or set different wage rates, and this situation can only be explained by discriminatory motives. Therefore, confirming the indirect discrimination depends on specific facts. Thus, it is clear from the Jenkins and Bilka-Kaufhaus judgments that, even if a group of discriminated employees covers both genders, the claim of discrimination is still possible, if one of gender dominates in this group[285][286].

"Objectively justified" discrimination was first established in a mentioned above case of Bilka-Kaufhaus GmbH v Weber von Hartz. The Court ruled that in order for sex discrimination to be lawful, the employer should prove that the measures he had taken and result in discrimination[287]:

(a) match the "real needs of the enterprise";

(b) can be used to help achieve the objectives of the enterprise, and

[284] Case of Handelsog Kontorfunktionaerernes Forbund i Danmark v Dansk Arbejdsgiverforening. C-179/88. ECJ. October 17, 1989.
[285] Case of J.P. Jenkins v Kingsgate (Clothing Productions) Ltd. 96/80. ECJ. March 31, 1981.
[286] Ibid., Bilka-Kaufhaus GmbH v Weber von Hartz.
[287] Ibid.

(c) are essential to achieving these goals (proportionality principle).

3.2.4.2 Maternity Rights

Coming back to the Directive 2006/54/EC, as was mentioned, it establishes the principle of equal treatment for men and women. Equal treatment is a broad concept, one of them is defined in para. 25 of Directive's Preamble as a situation where *"...it is also appropriate to make express provision for the protection of the employment rights of women on maternity leave and in particular their right to return to the same or an equivalent post, to suffer no detriment in their terms and conditions as a result of taking such leave and to benefit from any improvement in working conditions to which they would have been entitled during their absence"*[288]. This principle requires equality, in particular, regarding recruitment, promotion or dismissal conditions. Violation of this principle will also be indirect discrimination (for example, primarily of part-time employees, where the majority of which are women this category of workers is mainly women).

Exceptions to the principle of equal treatment stipulated in Preamble (para. 19) of the Directive 2006/54/EC, where "… *any exception should therefore be limited to those occupational activities which necessitate the employment of a person of a particular sex by reason of their nature or the context in which they are carried out, provided that the objective sought is legitimate and complies with the principle of proportionality*"[289]. In addition, mentioned Directive should be without prejudice, in particular, to pregnancy, maternity and breastfeeding (Council Directive 92/85/EEC[290]).

In 2009, the Supreme Court of Latvia referred to the CJEU for the preliminary ruling on the matter of Latvian legislation compliance with the requirements of Council Directive 92/85/EEC for the occupational health and safety of pregnant women[291]. The directive obliges the EU Member States to prohibit the termination with women during the period from the start of pregnancy to the end of maternity leave. The CJEU should have clarified whether this prohibition also applied to cases in which that person is a member of the board of a public corporation and whether she can be considered an employee within the meaning of this Directive. Consequently, the Court had to evaluate the role of board members and the level of autonomy they are authorized to act, considering that the company is controlled by the general meeting of shareholders and the supervisory board. In addition, the Court should consider

[288] Directive 2006/54/EC, para. 25 of Preamble.
[289] Ibid., para. 19 of Preamble.
[290] Council Directive 92/85/EEC concerning the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding.
[291] Case of Dita Danosa v. LKB Līzings SIA. C−232/09. ECJ. November 11, 2010.

Directive 76/207/EEC on equal treatment for men and women in employment, vocational training, promotion and working conditions. The CJEU decided that a member of the board should be considered an employee if he or she provides the services to the company and is an integral part of it, during a certain period of time, performs its duties under the supervision of another body of the company and is remunerated for its work. Council Directive 92/85/EEC as such should be understood as the one that doesn't allow the national legislation provisions which permit without any restriction the dismissal of a board member, a "pregnant worker". In addition, CJEU decided that even if an employee cannot be considered a "pregnant worker" within the meaning of Council Directive 92/85/EEC, direct or indirect removal of a board member from work on a pregnancy may relate exclusively to women and therefore, constitutes direct gender discrimination, which is contrary to Council Directive 76/207/EEC[292].

In conclusion, a steady trend of establishing gender equality is being observed as one of the basic principles from the very beginning of the formation of the European Community law. The adoption of this principle has come a long way from the simple banning of gender discrimination to the requirement for substantive gender equality through the adoption of positive discrimination measures by the Member States and non-state actors. The principle of equal treatment means access to employment, including promotion, and to vocational training; working conditions, including pay and occupational social security schemes. Consequently, the most common types of special positive measures used in national and international jurisdictions are training and further advancement; preferential treatment and special measures in the labour field and social security.

The provisions of positive measures can often be seen as too much complicated and not clear. And in order to prevent confusion and to help the implementation, it would be appropriate to clarify these provisions and give clear instructions. It is necessary for positive actions to provide a basis for good employment policies and practical implementation. It is not meant as a replacing but a complementary step to the integrated equality policies.

In addition, the identification of meaningful patterns of EU standards regarding non-discrimination and gender equality indicates that the focus in this context is on employment and occupation, particularly in light of the need for special protection of the right of women to motherhood and the possibility for women and men to balance their family and professional responsibilities. Even due to well - at the same time, there is a recent strong trend to broaden the range of relations where gender equality standards are developed - entrepreneurship, access to goods and services, pensions, etc.

[292] Ibid.

CONCLUSIONS

The definition of gender equality is a difficult sociocultural construct that represents differences in roles, behavior, mental and emotional characteristics of males and females. Also, gender equality is a fundamental principle of international law. This provision is contained in Art. 2 of the Universal Declaration of Human Rights. It is supplemented by other important legal instruments in terms of protection against workplace discrimination such as the CEDAW, the Convention of ILO No. 100 concerning equal remuneration for work, the Convention of ILO No. 111 on discrimination in employment and occupation and 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. Although the international law and usually the national legal instruments of the state establish equality of rights for men and women, in practice women often experience the violation of their rights in employment.

There are the following international organizations which are aimed at achieving equality in the society particular between men and women in employment. Every other organization has its own goals and objectives. The ILO is aimed to ensure the decent working conditions for everyone and encourage the effective social dialogue. The Commision on Status of Women is a global legislative body the purpose of which is to regulate annually and assist the current situation with the gender equality and empowerment of women. The CEDAW Committee is a kind of monitoring body on the implementation of the CEDAW provisions. It also deals with the reports from every other Member States as well as the individuals' complaints procedure and the investigation procedure. Finally, the Council of Europe was established in order to contribute, among other things, the promotion of the rule of law, democracy, human rights and social development. It adopted the ECHR. And as a result, it established the ECtHR with deals with complaints against the State Parties to the Convention.

The author finds out that the research on Japan shows a clear picture of the inconsistency of the national legislation to life. As despite the adoption of necessary legal instruments and the CEDAW recommendations on how to improve the domestic legislation by including the terms of direct and indirect discrimination, the law is still not clear enough for employers to apply it in their practice and it has more negative effect on female workers (such as so-called “maternity harassment” and the wage gap for men and women) rather than actually protects women rights. Even such a positive step as ratification of “The 2006 Equality Act” hasn’t changed the situation on combating this kind of discrimination and pregnant women still are not treated equally at their workplace as the other employees. So this situation resulted in women taking actions and going to court to protect their rights in equal pay for equal work. The implementation of the CEDAW

is also impeded by the fact that Japanese judiciary makes its decisions based on Japanese specific nature and the excuse that this type of the international law on human rights could not be self-executed or directly applied. And the truth is that there was no successful case held on the grounds of the CEDAW. The very common practice for Japanese judges is to act within the Japanese Constitution only and the provisions of human rights which it provides. Clearly, they are not very much interested in going beyond and practice the progressive international law which makes all the concluding observations and general recommendations to stay only on paper and in theory. So unless they seriously take the human rights convention then there is a hope that the progressive law will actually work in practice.

Another example of the country where traditions play a great role and so create the specific climate in a society towards the status of woman is China. The country had a good attempt on adopting important legal instruments, where one of them was the "Law on the Protection of Rights and Interests of Women drawn on the Labour Protection Regulation". But despite all the intentions to improve the situation with women's discrimination it only makes it worse for female candidates to get the job in China as women are regarded as more expensive employees with all the protective rights and benefits that are provided in the law. In addition, according to mentioned Law - China still has "unsuitable jobs for women". This means a ban on certain categories of jobs for women as well as providing them the protection of their interests concerning maternity and career advancement. Workers are given a clear list of physically demanding jobs which are prohibited for women: logging, underground mining, setting up power lines or scaffolding. The research shows that China as a very traditional society and its legislative institutions have got the specific attitude on the enforcement provisions of the ILO which are generally transformed and applied in a form of a public shaming or provision of motivations for compliance such as funding or technology. So women are pushed to go to court protecting their rights in recruitment as the law doesn't prevent the problem of placing the vacancies announcements as for men-only.

The situation in Ukraine might look different as it is a pro-European country which shall mean more progressive politics and views in the society, but there are still some hidden pitfalls of the legislation. At first sight, the country has ratified quite a few international legal acts as well as the domestic norms aimed to regulate non-discrimination principles. But surprisingly it only has a declarative nature and the problem of gender equality in employment and particularly wage gaps is not still solved. For example, the Law "On Ensuring Equal Rights and Opportunities for Women and Men" genuinely provides for non-discrimination in recruitment by putting the responsibility on employer while advertising the vacancy to not to determine the specific requirements which discriminate and stop women from applying for this position. But in

reality, nothing stops the employer even following the law while advertising a vacancy to use the specific and discriminative requirements preferring one gender to another. So making a conclusion on Ukraine, it is quite clear that the problem is not obvious but having a latent nature. And practice shows that employees are reluctant to protect their rights for the reason of unspoken employer's solidarity who tend to spread the information about the employee-complainant quite rapidly which can cause later the problem of getting the job easily and the actual court process on such cases is quite complex and takes a lot of time.

The mainstreaming of gender perspectives and the initiation of specific positive measures have established the broad lines of the policy and integration of democratic European states for the last 30 years. The 1997 was marked by the Amsterdam Treaty which set out the standards of gender equality, so did the EU Directives too. So positive measures with regard to protecting vulnerable social group is a complex activity which doesn't mean any kind of sanctioning of discriminatory actions but the improvement of the general conditions of a certain part of the population. The practice shows the following types of these measures: training and further advancement; preferential treatment; special measures in the labour field and social security. The European court took into account the peculiarity of this issue and amended the legislation so it allows giving the preference to a candidate from the vulnerable social group only in case of his equal quality and qualification to compare with other candidates.

The next step in balancing the equality issue was the provision of equal pay for equal work of women and men, which was designed to apply the principle of equal opportunities and equal treatment. So the Article 119 of the Treaty of Rome became very popular within women with regard to the protection of their rights in employment since 1970's. To improve the implementation of this article, the Commission of the European Communities had further adopted the number of Directives which could help to harmonize the domestic law of the Member States. And so the Member States were obliged to create the national job classifications with the same criteria for men and women. And later with the adoption of other five directives the principle of non-discrimination in employment was extended to other areas of labour relations.

RECOMMENDATIONS

Following the review of this topic and based on the analysis of the activities of countries on gender equality. We can encourage the countries, where there is the problem of ensuring the principle of gender equality in employment, to introduce the following directions for positive development of gender-based discrimination at the legislative level:

1. The equalization of remuneration for labour between industries and the reduction of differences in the content and wages by gender.
2. To encourage the growth of employment based on the principle of gender equality.
3. Constant monitoring of employers' compliance with labour legislation to prevent gender discrimination.
4. In order to ensure equality of opportunities for workers with family responsibilities it is necessary to use flexible work schedules, part-time work, work at home, etc.
5. The creation and introduction of development assistance programs for women's small and medium-sized businesses.
6. Promotion of the system of values regarding the equal sharing of family and occupational roles between men and women.
7. Creates the conditions for lifelong learning, which meets the challenge of adaptation to the demands of the knowledge-based economy.
8. The states could further develop the usefulness of positive jurisprudence in the content of gender equality principle.
9. The countries should cancel lists of types of jobs and professions forbidden for women.
10. The states should establish training and empowerment as a form of positive actions.
11. The law adopted by the state should establish stricter requirements to prevent discrimination in the workplace, In case of non-compliance with the obligation, it should provide penalties.

It is also necessary to organize joint events with the participation of representatives of state institutions and civil society in order to develop a common vision of further actions on the effective implementation of the principle of gender equality in both public and private spheres.

One of the areas is the initiation of a broader information campaign aimed at overcoming strong stereotypes about the social roles of women and men, raising awareness among women, especially in rural communities, the legal community and the general public on their rights and mechanisms for their implementation.

A separate area refers to the skills of members of the legal profession, first of all judges, to identify cases where the violation of the rights and legitimate interests of women are the result of the application of discriminatory provisions of the law or gender-neutral laws that in practice

result in discriminatory effects or gender stereotypes, which exist in society. In addition, relevant information campaigns should overcome the predominant public perception, including lawyers, authorized state bodies, texts of international documents on gender equality as certain abstract structures which do not propose specific models for solving real-life disputes.

Talking about the positive measures, the state and its authorities should play a leading role in implementing positive action measures. Obligations imposed by the state to take action can be effective, including placing duties on public authorities to promote equality and including the use of anti-discrimination and positive action clauses in gender equality in the sphere of employment.

Further the procedure for conducting a gender-based analysis of legislation should be reformed, as today it is a purely formal mechanism. There is a need to develop an appropriate methodology for its implementation and public access to the identification of priority acts that are subject to such assessment and the results of the relevant analysis.

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ABSTRACT

The work reviews aspects of gender equality in employment. The work is aimed at studying and analyzing the theory and practice of gender equality, the studying of international standards, international organizations in order to identify the potential ways for improvement of gender equality in employment reform in Japan, China, Ukraine, and EU.

The research subjects were: theoretical framework and implementation features of gender discrimination, practical details of implementing the principle of gender equality, the analysis of gender equality in employment in the above-mentioned countries, practice researching of CEDAW Committee, CJEU, ECtHR and national courts.

The author in this work explores the theoretical features of gender equality, direct and indirect discrimination in employment, legal instrument and international organizations in the mentioned sphere. In addition, the author examines the current situation with gender equality in Japan and China, as well as the practice of national courts on this issue. It was considered also the current situation of gender equality in employment in Ukraine. The author analyzes the main legislation instruments and problematic aspects. One part of the work analyses the positive measures as a method of regulation of gender equality in the workplace in EU. In addition, the author explores the practice of CJEU on this issue.

In conclusion, the author reveals the principle established in progressive legal instruments on gender equality in employment and the principles that can be derived from the practice of the CEDAW Committee, CJEU, ECtHR and national courts.

Keywords: gender equality, employment, discrimination, equal opportunities for men and women, positive measures.

SUMMARY

Gender equality in the sphere of employment

Background. This topic was chosen because, in almost all societies and spheres of activity, there is discrimination against women in the family, in society and in the workplace. Although the causes and consequences of this may vary from one country to another, the discrimination against women remains a widespread phenomenon. This thesis is aiming at a comprehensive study of the current state of international legal regulation of gender equality in employment, comparative analysis of the experience of national states in this area, to highlight the problematic aspects of promotion of gender non-discrimination and the further solutions. The objectives of research were: to identify the main international and national legal instrument in gender equality; to make a research whether there is discrimination against women in recruitment; to analyze inequality in the treatment and salary; to study the discrimination in the promotion; to find out the problem of discrimination of maternity rights in the sphere of employment and to analyze the positive measures which were conducted by EU legislation. The following methods were used for the research: linguistic, sociological, statistical, the method of comparative historical analysis, system analysis method, the method of technical and legal analysis, comparative legal method, and logical method.

Results. During the research, the author reveals the concept of gender, gender equality, employment opportunities, direct and indirect discrimination and the concept of positive measures. The most important international law instruments on gender equality and international organizations have been explored as well. The studies also highlighted the practice of the UN, the ILO, the Commission on the Status of Women, the CEDAW Committee, the Council of Europe and the European Union. A comparative analysis of positive measures in European countries was undertaken, and separately the most widespread cases of gender inequality in employment in Japan were researched, as well as the ones in China and Ukraine. In addition, by means of mentioned cases, it was given the compliance of national legislation to the international law and the practice of CEDAW Committee, ECtHR, CJEU and national courts were analyzed too.

Conclusions. After making the research, the author can make the following conclusions. The discrimination still exists in such spheres as discrimination against women in recruitment; discrimination in the treatment and salary; discrimination in the promotion and discrimination of maternity rights in the sphere of employment. The case law studies of Japan, China, and Ukraine, proved that. Also, it was emphasized the importance of positive measures as methods of regulation of gender inequality in employment.

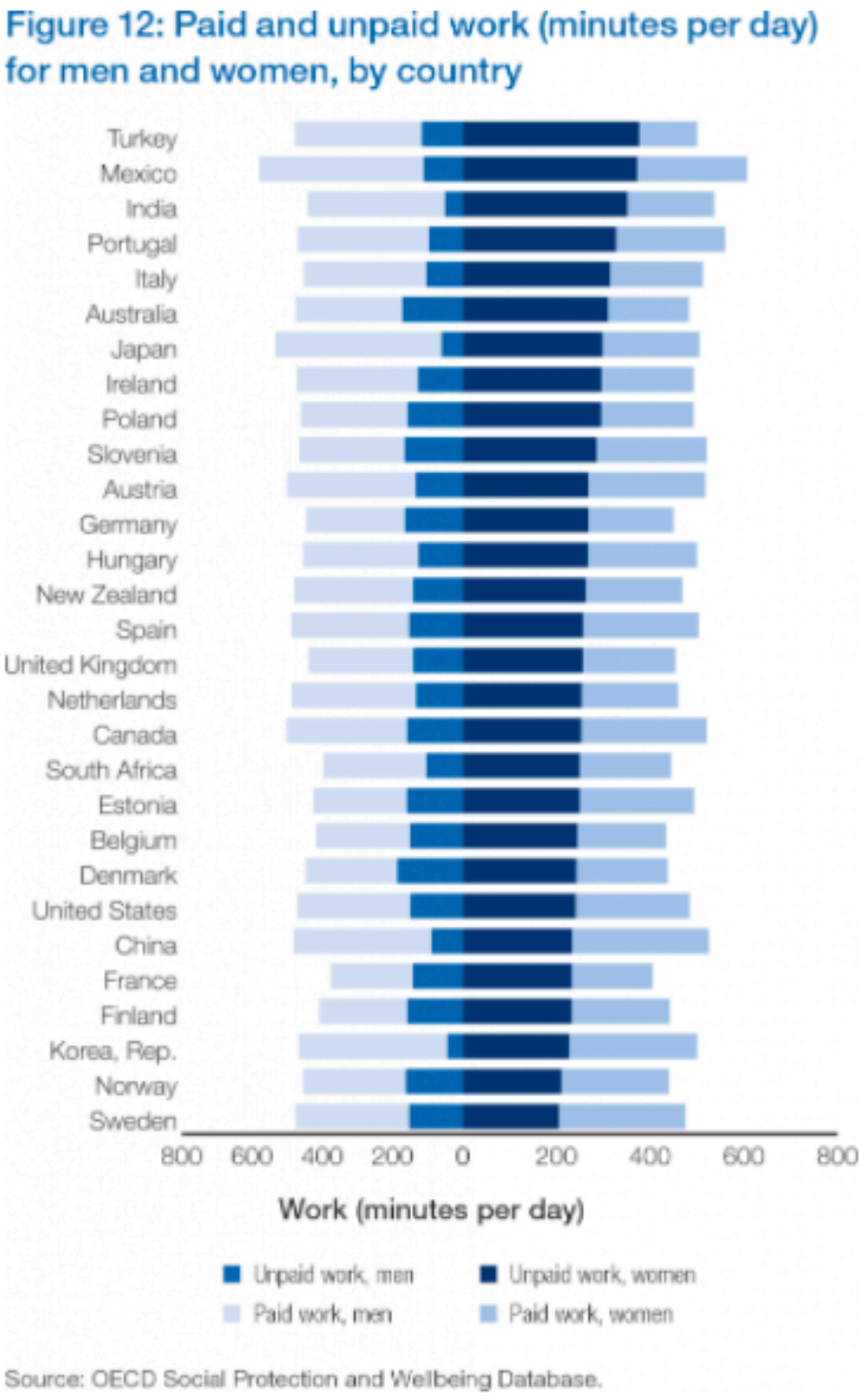
ANEXES

Annex 1

Where The Gender Pay Gap Is Widest?

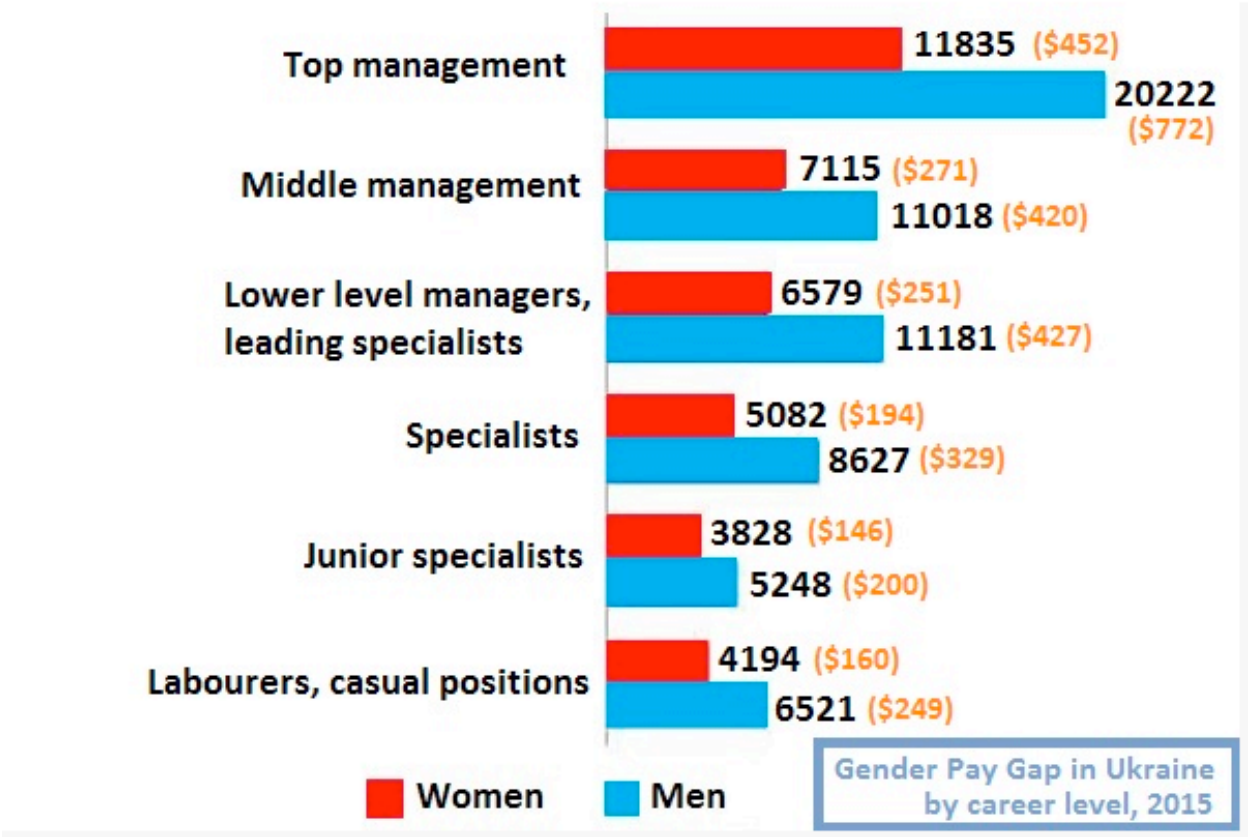


Made by Niall McCarthy, on the base of data covering technological, societal and media topics. Retrieved from: https://www.forbes.com/sites/niallmccarthy/2018/03/08/where-the-gender-pay-gap-is-widest-infographic/#6068ad801693



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Gender Pay Gap in Ukraine — Women Earn 41% Less Than Men for Top Jobs



Made by Elena's Models. Retrieved from: http://blogs.elenasmodels.com/en/gender-pay-gap-ukraine/

HONESTY DECLARATION

22/05/2018
Vilnius

I,_____Anastasiia Vorozhbianova_____, student of
(name, surname)

Mykolas Romeris University (hereinafter referred to University),
Law Faculty, Institute of International and European Union Law, International Law programme
(Faculty /Institute, Programme title)

confirm that the Bachelor / Master thesis titled

"Gender equality in the sphere of employment":

1. Is carried out independently and honestly;
2. Was not presented and defended in another educational institution in Lithuania or abroad;
3. Was written in respect of the academic integrity and after becoming acquainted with methodological guidelines for thesis preparation.

I am informed of the fact that student can be expelled from the University for the breach of the fair competition principle, plagiarism, corresponding to the breach of the academic ethics.

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(signature) *(name, surname)*