

Legal Principles and Guarantees of Realisation of Gender Equality in the Labour and Social Sphere

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ABSTRACT: An employment of women-seafarers and related gender aspects are important in future development of modern shipping. At the same time, specification of maritime shipping imposes traditionally low proportion of women in relation to the total number of qualified seafarers on ships. Equality issues in maritime shipping are not only limited to equality between women and men, but also encompasses situations with vessel's operation issues and related working relationship.

The purpose of this article is to define the tasks and trends of international legal provision of gender equality's improvement in practice plane on the basis of international law and current Ukraine's legislation, scientific developments, domestic and foreign experience.

The UN Convention on the Elimination of All Forms of Discrimination against Women (1979) and the basic international legal instruments and agreements containing standards of equality between women and men offer member states a policy of eliminating discrimination and requiring the introduction of a range of antidiscrimination measures. International organizations such as the IMO and the ILO pay great attention to the importance of gender equality issues on merchant ships. One of the ILO's fundamental international standard is gender equality, which must be ensured by both of the state and the social partners, such as workers' and employers' organizations. Hence, ILO approaches in ensuring gender equality are very important in maritime shipping.

Conducted research on gender equality, including equality between men and women in the merchant shipping industry, demonstrates a positive correlation in rights and achievements for women, in social, economic and political areas.

1 INTRODUCTION

In today's society two large social groups of men and women are engaged in the sphere of social and labour relations. They have their own economic interests, work at the enterprises and receive appropriate remuneration for their service. Traditionally, there is a low proportion of women with respect to the general number of qualified seafarers onboard. Therefore, taking into account a number of critical issues and current events related to seafarers' recruitment, the

question of women seafarers' employment and gender aspects referring to this are essential. Despite the Ukrainian recognition of basic international documents in the sphere of gender equality as compulsory, establishment of the non-discrimination based on gender principle at constitutional level, adoption of a special law on enforcement of equal rights and opportunities of men and women as well as creation of corresponding institutional guarantees in this sphere in Ukraine, the issue of women's recruitment and employment on vessels under the

flag of Ukraine or other countries as well as observation of gender equality while work allocation and performance of duties onboard remains relevant both for Ukraine and world maritime community in whole.

2 METHODOLOGY

This article is aimed to identify the state and determine the tasks and trends of international legal support for gender equality improvement in practical terms on the basis of international law and current legislation of Ukraine, scientific developments as well as domestic and foreign experience. To reach this goal, the system of general scientific and special methods of legal phenomena and processes research was applied. Methodological basis of the article consists of analysis and synthesis, historical and system-structural analysis methods. Theoretical basis of the article consists of scientific research and international law dedicated to the improvement of gender equality in the field of merchant shipping which are performed in three main areas: development of research methodology to define the concept of gender equality; creation of theoretical grounds for establishment of clear tasks in the sphere of gender equality which are subject to the assessment; as well as practical implementation of effective ways and means of application of international standards, developed by the United Nations Educational, Scientific and Cultural Organisation and European Institute for Gender Equality. The works of the theoreticians such as Hapon M., Glopen S., Levchenko K., Lvova O. etc. were referred to.

2.1 *Establishment of gender equality principle in the sphere of social and labour relations*

In modern democratic societies the issue of reconciling professional and family life of men and women as well as providing them with the opportunity to exercise their equal rights both in the labour and any other spheres of social development is proclaimed as one of the basic components in solving social problems.

It has long been thought that there are no socio-economic restrictions on the inclusion of men and women in the sphere of social and labour relations, but there are only biological differences between the genders, which cannot but are reflected in the functions they perform in social production. However, in the second half of the XX century, under the influence of democratic transformations, which were carried out in most developed countries at that time, it was discovered that there were numerous forms gender-based discrimination in social and labour relations. Moreover, there was an opinion that women are the most vulnerable social group, which is more likely to face various forms of discrimination, especially in the social and labour sphere, than men. This conclusion became the stepping stone for the development of certain mechanisms of establishing and ensuring gender equality by international

organizations and governments of the developed countries.

The equality "in most of cases is considered to be an equality before the law, and at the same time it is believed that the laws which do not provide for differences between people are based on the ideas of equality" (Levchenko, 2019, p. 71). Gender equality stands for an equal legal status of men and women as well as equal opportunities for its realisation which allows people of both genders to participate equally in all spheres of society. In general, "gender" is a multifaceted concept which expresses the essence of the problem of ensuring gender-based equality in labour relations pretty accurately. This concept is not only legal, but also a social one which indicates a social status as well as social and psychological characteristics of a person.

A number of modern Ukrainian scientists define the term "gender" as a holistic system (more accurately – a complex interconnection) of interactions and relations which form the basis of social connections. This system can be characterized as a stable but changeable at the same time. It is a basis for stratification (social differentiation) of modern society based on gender and hierarchy of its representatives. It is precisely this modern model of relations and social connections system which is deeply rooted in the culture and allows to form an idea about "male" and "female" as categories of social order, to empower some people (men, as a rule) and apply the principle of subordination to others (women).

In the western world, the issues of "masculinity" has been addressed to not only by the scientists-theoreticians but also practitioners of difference scientific schools and directions (Pleck, Sonenstrin, 1993, p. 85-110). Some researches define the idea of male behaviour in the social culture as an ideology of courage. This idea is nothing more than a set of social norms also known as the male gender role "...Manhood does not bubble up to consciousness from a biological makeup, it is created in culture" (Kimmel, 1994, p. 120).

At another point, Maria Hapon in her scientific work "Gender in the humanitarian discourse: philosophical and psychological analysis" states that "the history of gender reflects the history of social culture" (Hapon M., 2002, p. 273), and mentions "a traditional way of description of male-female issues where the female is passive, natural, private, but the male is active, spiritual. Thus, the cultural and the universal cannot explain specific features of female subjectiveness of historical female images" (Hapon N., 2002, p. 273).

Therefore, a traditional way of description of a society based on gender and hierarchy of its representatives increases the risk of gender perception exceptionally from the perspective of stereotypes and loss of individuality.

In addition, the use of stereotypes for description of men and women is very common in the media, newscast etc. In the frameworks of the European Council project on strengthening of media freedom and creation of Public broadcasting system in Ukraine, it has been noted that "In all the media, there is a tendency towards male predominance and female

invisibility, the assignment of certain predefined roles to each gender,... The effects of such messages on public perceptions of the roles assigned to women and men in society are dramatic and act as a check on the emancipation of women." (Gender equality commission, 2013, p.7).

Defining the principle of gender equality, we should agree with Kateryna Levchenko who defines the concept of gender equality in all spheres of the social development as "an ideal of social and political development which implies: formal equality (legal equality which is recognized by law); equality of opportunities (providing a certain socio-demographic group with a certain legal advantage to create equal conditions with other groups at the start); equality of the result (targeted elimination of obstacles for competing parties which can be caused by discrimination which took place before)" (Levchenko, 2019, p. 91).

2.2 *International legal grounds of gender equality*

The tendency of international community to improve worldwide and systematic regulation in the sphere of socio-economic development in different countries as well as measurement of gender differences in access to the range of opportunities and resources in a particular country, have led to creation and establishment of international standards in this sphere by international legal means at the international level. Among basic international legal acts and agreements containing the standards of equality between men and women the following ones can be distinguished: The Universal Declaration of Human Rights (1948), the International Covenant on Economic, Civic and Cultural rights (1966), the International Covenant on Civil and Political Rights (1966 p), which form the Charter of Human Rights and Freedoms; Declaration on the Elimination of Discrimination against Women (Resolution № 2263 (XXII) the UNGA, 1967), Convention on the Elimination of all forms of Discrimination against Women (the UN Resolution № 34/180, 1979), Declaration on the Elimination of Violence against Women (Resolution № 48/104, 1993).

The UN Convention on the Elimination of all forms of Discrimination against Women offers The States Parties to pursue a policy of eliminating discrimination against women and women and enforces the following requirements for the implementation of number of events aimed at combating discrimination against women: "to embody the principle of the equality of men and women in their national constitutions or other appropriate legislation to ensure, through law and other appropriate means, the practical realization of this principle" (art.2, p.a); to eliminate gender prejudices, i.e. "to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the genders or on stereotyped roles for men and women" (art.5, p.a); "to eliminate any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will

help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching method" (art.10, p.c).

Convention for the Protection of Human Rights and Fundamental Freedoms (1953) prohibits any discrimination and ensures that rights and freedoms shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status (art. 14).

European Social Charter (1996) implements a non-discrimination principle (part V, art. E) and ensures the effective exercise of the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of gender (Part II, art. 20). European Social Charter also ensures the effective exercise of the right of all workers to protection of their dignity at work, promotes awareness, information and prevention of sexual harassment in the workplace (part II, art. 26, p.1).

Council of Europe Convention on preventing and combating violence against women and domestic violence, 2011 (Istanbul Convention) requires that States Parties shall develop "teaching material on issues such as equality between women and men, non-stereotyped gender roles, mutual respect, non-violent conflict resolution in interpersonal relationships, gender-based violence against women and the right to personal integrity" (art.14, p.1), and take the necessary steps to promote these principles "in the media".(art. 14, p.2). All the above-mentioned international standards create an international legal and moral groundwork of modern world community and a basis for the formation of unitary global gender policy. Researchers in the field of international law consider that the main contribution of the above-mentioned international standards to the regulation of society is proclamation of fundamental human rights as widely recognized principles and regulations of international law which shall be enshrined in the legislation of every civilized country.

Gender issues in the sphere of maritime shipping are not only limited by the problem of ensuring the gender equality between men and women but cover the situations aimed at regulation of labour relations arising in the sphere of merchant shipping and connected to discrimination. Despite the achievements of the world community in the field of gender equality, women's participation in merchant shipping is still low. All seafarers, especially women seafarers, need a special status and protection in the following matters: work conditions, safety of work, social protection, remuneration, repatriation and health care. These issues are addressed by a number of international organizations, among which the key role belongs to the International Labour Organization (ILO).

In 2019 the ILO celebrated its centenary taking into account the changes when "the world is transformed under the influence of technical and technological innovations, democratic changes, global climate change. All of the above-mentioned factors affect the nature and future of labour as well as the nature and

place of men and women in the global labour markets" (Levchenko, 2019, p. 252). The ILO was founded in 1919 as the specialized institution of the League of Nations and as the UN structure after the World War. It was aimed at the reduction of social injustice in the world by improving the working conditions of all workers.

Nowadays, 185 countries having different forms of government and levels of socio-economic development are members of the ILO. Ukraine has been a member of the ILO since 12 May 1954. The ILO's strategic objectives are promotion of the implementation of fundamental principles and rights at work, creation of greater opportunities for women and men to decent employment and income, enhancement of the effectiveness of social protection for all population segments as well as strengthening the principle of tripartite within governments, trade unions and employers (the tripartite principle) which have the same right to vote while forming the policy and programme of this Organization as well as social dialogue.

Through the adoption of conventions and recommendations the ILO establishes international standards in the sphere of labour regarding employment, professional training, working conditions, social security, safety of work and healthcare. These standards are specified in the following ILO Conventions: Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), Right to Organise and Collective Bargaining Convention, 1949 (No. 98), Abolition of Forced Labour Convention, 1957 (No. 105) etc.

Furthermore, one of the ILO fundamental international standards is gender equality which shall be ensured by the government as well as social partners i.e. workers' organisations and employers. This ILO approach in ensuring gender equality is essential.

The following ILO Conventions aimed at regulation of labour relations in any sphere enshrine the basic principles of ensuring the gender equality standard: Equal Remuneration Convention, 1951 (No. 100), Workers with Family Responsibilities Convention, 1981 (No. 156), Maternity Protection Convention, 2000 (No. 183), Night Work Convention, 1990 (No. 171), Domestic Workers Convention, 2011 (No. 189).

In general, the ILO's attitude to the issue of women's rights has changed over the past century together with its approaches evolving in line with social demands and global progress. The ILO Convention on Maritime Labour, 2006 is one of the fundamental modern international standards which enshrines the gender equality principle in merchant shipping. It was adopted at the 94th (Maritime) Session of the International Labour Convention in 2006 covers almost all issues related to the settlement of labour relations arising in the field of merchant shipping and provides both anti-discrimination policy and promotion of gender equality in the sphere of maritime labour.

The role of international conventions, declarations and resolutions in ensuring adherence to the gender equality principle in the field of maritime shipping is

indisputable. However, it is necessary to note that the role of the judicial system in ensuring social justice in the sphere of labor, and especially seafarers' labour, is also significant. Judicial system acts as a guardian of the law and has an essential role in the elimination of injustices caused by socio-economic, political, cultural or other factors.

The uniqueness of the judicial authorities "in ensuring the implementation of gender equality is due to the fact that, unlike the legislative body, they are meant to be the tools for ensuring human rights, creation of a space where ideas and diverse interests of social groups can be expressed" (Gargarella, Domingo, Theunis, 2006, p. 35). Law and justice can help people to accumulate their talents and to open the opportunities for its realization, to make certain resources available and to use their guaranteed rights. They provide people with an opportunity to act as free, autonomous participants in public relations in the modern world.

As an example of the implementation of gender equality in the field of merchant shipping, we can refer to the decision of the UN Committee on the Elimination of Discrimination against Women in the case of Svetlana Medvedeva v. Russian Federation as of February 25, 2016. The decision of the UN Committee on the Elimination of Discrimination against Women in the case of Svetlana Medvedeva v. Russian Federation of February 25, 2016 is an example of the implementation of gender equality in the field of merchant shipping. Svetlana Medvedeva was hired as a motor driver at the Samara River Passenger Enterprise, and after a while was dismissed from her position with the explanation that the conclusion of an employment contract with her contradicted Art. 253 of the Labor Code of the Russian Federation and Government Resolution No. 162, which lists professions prohibited for women (among the prohibited professions is the work of a motor driver), however, the said Resolution states that the employer may decide to use the labor of a woman in a prohibited position if safe working conditions are created for this purpose. In the court hearing, she referred to the provisions of the Constitution of the Russian Federation and the Labor Code of the Russian Federation, which guarantee gender equality, equal treatment of men and women and prohibit gender discrimination in labor relations. But her claim was rejected. In turn, the decision of the UN Committee on the Elimination of Discrimination against Women ruled that a general prohibition that applies to all women, regardless of their age, marital status, ability or desire to have children, constitutes a violation of rights ... women have the same employment opportunities and freedom to choose their profession and place of work as men.

In recent years, consolidation of the gender equality principle in the maritime sphere has become a topical issue at the IMO conferences. The IMO initiated its gender programme as far back as 1988. In 2019 the IMO and World Maritime University worked together to raise awareness of the importance of gender equality through the Empowering Women in the Maritime Community Campaign which launched a series of events on women's contribution to the maritime sector.

2.3 *Promotion, contradictions and consequences of gender equality in Ukraine*

Practical implementation of the gender equality principle in each country shall be ensured by the norms of national legislation. It should be mentioned that Ukraine has ratified the main international and European instruments which ensure gender equality, such as the Universal Declaration of Human Rights of 1948, the International Covenant on Economic, Social and Cultural Rights of 1966, and the International Covenant on Civil and Political Rights of 1966, The Convention for the Protection of Human Rights and Fundamental Freedoms, the Convention on the Elimination of All Forms of Discrimination against Women and others. Ukraine has signed the Convention on the Prevention and Combating of Violence against Women and Domestic Violence (Istanbul Convention).

The legislative process of ensuring equal rights and opportunities for women and men in Ukraine is still relevant today, even 15 years after the adoption of the Law of Ukraine "On Ensuring Equal Rights and Opportunities for Women and Men". The Article 1 of this Law states that gender equality foresees equal conditions for the realization of equal rights of women and men and absence of any gender-based restrictions or privileges. The legal basis for the process of ensuring equal rights and opportunities for women and men is the provisions that women's rights are an integral part of universal human rights, as enshrined in the above-mentioned international standards. Lvova O.L. mentions that to ensure a real equality "... the body of legislation has clear unambiguous laws as well as evidence-based unambiguous terminology for ensuring the rights of men and women which does not pose a threat to national security, and the provisions of which are sufficient for legal regulation of these spheres of public relations" (Lviv, 2018, p. 66). Moreover, the world experience proves that "...if we do not mention women as subjects - holders of rights, it can lead to non-recognition of equality between women and men and actually consolidates inequality, especially at the stage of law enforcement and realization of rights" (Levchenko, 2019, p. 85).

In the legislation of Ukraine, the basic rights of women and men are formulated in Section II of the Constitution of Ukraine "Rights, freedoms and responsibilities of man and citizen". National legislation of Ukraine also establishes and provides for the following: every citizen - both men and women - has the full range of socio-economic, political and personal rights and freedoms, as proclaimed in Article 24 of the Constitution of Ukraine. The peculiarity of this Article of the Constitution of Ukraine, which ensures gender equality, is that the right of women and men to equality before the law is emphasized among the rights and freedoms. This right is an independent fundamental right of a person, which shall be guaranteed to every person; the Constitution of Ukraine enshrines the equal right of men and women to protect his or her life and health (Article 27), to health protection and medical care (Article 49), to labour and free choice of labour activity (Article 43), to rest and social protection (Article 45, Article 46).

The legislation of Ukraine clearly defines such concepts as gender equality, discrimination, direct discrimination, indirect discrimination, etc. The Law of Ukraine "On Ensuring Equal Rights and Opportunities for Women and Men" establishes the definition of such concepts as gender-based discrimination and gender equality. Gender-based discrimination is defined as a situation when a person is restricted in recognition, realization or use of rights and freedoms or privileges in any form on the grounds of gender, which existed, exist and can be valid or presumed; gender equality is defined as an equal legal status of women and men and equal opportunities for its implementation, which allows individuals of both genders to take an equal part in all spheres of public life" (Article 1).

The Law of Ukraine "On the Principles of Prevention and Combating Discrimination of Ukraine" defines the concept of discrimination as "situation in which an individual/group of individuals is/are restricted in recognition, implementation or use of rights and freedoms in any form on the grounds of race, colour, skin colour, political, religious and other beliefs, gender, age, disability, ethnic and social origin, citizenship, marital and property status, place of residence, language or other grounds which existed, exist and can be valid or presumed; except for cases when such a restriction has a legitimate, objectively justified purpose which can be achieved in appropriate and necessary ways" (p.2, Art. 1).

Ukraine is taking all possible measures for the elimination of discrimination against women in the sphere of employment. The Labour Code of Ukraine extends the guarantees of the right to non-discriminatory employment (Article 22), which prohibits unreasonable refusal to hire, as well as any direct or indirect restriction of rights or the establishment of direct or indirect benefits in employment.

The Law of Ukraine "On Employment" defines special guarantees of our State in the realisation of the right of citizens to work, as well as the legal, economic and organizational grounds of employment and its protection against unemployment.

According to the provisions of the Constitution of Ukraine and current legislation of Ukraine on health care the access to medical care for citizens of Ukraine is provided on the basis of the equality of rights for men and women. The Article 49 of the Constitution of Ukraine proclaims the provision of free medical care in public and municipal health care facilities as well as state funding of relevant socio-economic, medical and sanitary, health improvement and prevention programmes.

Current legislation of Ukraine in the field of economics approves and develops the constitutional right of citizens (men and women) to conduct business activity, as well as other economic activity not prohibited by the law. The Law of Ukraine "On Entrepreneurship" defines general legal, economic and social principles of doing business (entrepreneurship) by citizens and legal entities on the territory of Ukraine, establishes guarantees of

freedom of entrepreneurship and its government support.

Thus, the Constitution of Ukraine and other current laws of Ukraine offer a wide range of opportunities to ensure the gender equality in Ukraine.

In the frameworks of this research it should be noted that the Article 161 of the Criminal Code of Ukraine "Violation of equality of citizens on the ground of their race, nationality, religious beliefs, disability and other grounds" is a very important supplement to the provisions of the Constitution of Ukraine on equal rights of citizens regardless of gender. According to this Article "direct or indirect restriction of rights or establishment of direct or indirect privileges of citizens on the grounds of race, colour, political, religious and other beliefs, gender, disability, ethnic and social origin, property status, place of residence, language or other grounds" (Article 161 of the Criminal Code of Ukraine) is punishable by the law.

3 CONCLUSIONS

Nowadays the gender equality plays an important role in ensuring social development. Thus, improving the legal status of women, establishing gender equality and forming an actual gender balance are important aspects of social development. Positive achievements of women in legal, social, economic status contribute to the development of society in general. Our research in this area demonstrates a positive correlation between ensuring gender equality in women's rights and women's achievements in social, economic and political areas.

Achievement of gender equality and its implementation in the system of social relations is a fundamental value which determines real changes in the economic, humanitarian, social dimensions, and is a powerful reserve for the progress of any country.

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