

ICPS newsletter[®]

ICPS drafts legislation to promote gender parity

The International Centre for Policy Studies is playing an active role in gender issues. Over 12–23 May, a series of bills were presented and debated in 13 oblast capitals as part of the “Policy campaign for promoting gender equality in Ukraine” project. Specialists from ICPS and CURE, the Center for Ukrainian Reform Education, prepared drafts of two Bills called “On preventing gender-based discrimination” and “On changing and amending certain laws of Ukraine” regarding equal rights and opportunities for women and men

Gender-based discrimination

Gender-based discrimination exists in many areas in Ukraine today. In the workplace, it is a widespread phenomenon. On average, women earn 27.6% less than men for equal work. According to a study by Human Rights Watch, up to 60% of vacancies are aimed exclusively at men, while the rest are generally aimed at both genders.

Today, domestic violence is one of the most common and widespread forms of violence against women. Official statistics on this issue are unavailable, but unofficial figures suggest that 30–40% of all calls that come to police stations are related to domestic violence. According to UN recommendations, violence against women should be treated as a form of sexual discrimination.

Unbalanced representation of women and men in elected office

In practice, women and men do not have equal opportunities for equal participation in political activity. This is evident from the fact that the 6th Convocation of the Verkhovna Rada has only 34 women among its 450 deputies, or 7.6%.

There is a distinct tendency for councils to be more gender balanced the lower they are in the government hierarchy. Thus, at the oblast level, women tend to constitute 11% of elected deputies, while at the oblast center and town level, they are up to 15%. At the local council level, at least one third of elected officials tend to be women.

According to the Interparliamentary Union classifications, Ukraine belongs

to the group of countries where men clearly dominate. It is behind not only European levels of female representation in parliaments—23%— but even global levels —14%. In fact, Ukraine is almost as low as Arabic countries.

Gaps in the law

In 1979, the UN approved the Convention “On eliminating all forms of discrimination against women.” Ukraine ratified this document in 1980 and thus took on itself a number of commitments. For the main part, these are reflected in the 2005 passing of the Law of Ukraine “On ensuring equal rights and opportunities for women and men.”

Still, Ukraine’s legislation lacks any effective mechanisms that victims of discrimination or sexual harassment might use to protect their rights, because it does not determine:

- the nature and types of gender-based discrimination;
- procedures for protesting sexual discrimination;
- civil and administrative liability on the part of those discriminating; while criminal liability is established, it is not being applied.

Bill “On preventing gender-based discrimination”

The purpose of this Bill

The main purpose of the Bill “On preventing gender-based discrimination” prepared by ICPS specialists is to establish gender parity in Ukrainian society and provide the legal basis for state policy

on the prevention of gender-based discrimination. This Bill is intended to:

- establish the basic concepts and principles that will provide the foundation for an effective mechanism to prevent gender-based discrimination. Primarily, this means establishing clear definitions of terms and descriptions of typical forms of gender-based discrimination;
- build the capacity of government bodies to prevent gender-based discrimination. To this end, the Bill establishes which government bodies will deal with issues of gender-based discrimination, as well as their functions and powers;
- institute effective negative reinforcement to prevent the emergence of gender-based discrimination. Primarily means increasing liability for discriminatory actions and improving the mechanisms for its enforcement;
- simplify the process of defending the rights of victims of gender-based discrimination, firstly by instituting an extra-judiciary mechanism of protection against such discrimination and non-state assistance to victims of discrimination.

Typical forms of gender-based discrimination

The Bill provides a list of typical forms of gender-based discrimination that includes, among others:

- direct gender-based discrimination;
- indirect gender-based discrimination;
- inciting to gender-based discrimination;
- sexual harassment;
- advertising vacancies in which work is offered to only women or only men, other than specific types of work that can only be carried out by one or the other gender in accordance with the law; establishing requirements that

offer advantages to persons of a specific gender;

- offering unequal pay to women and men for work involving the same qualifications and conditions.

All of the forms of discrimination listed in the Bill would be treated as violations of the law against which financial and administrative penalties will apply to both physical and legal entities.

Authorized central executive body (CEB) to ensure equal rights and opportunities for women and men

In addition, the Bill contains a clearly-outlined procedure for complaints about gender-based discrimination to be reviewed and for those guilty of such discrimination to be held responsible. A key role will be played in this situation by the already-existing special central executive body responsible for ensuring equal rights and opportunities for women and men.

To encourage those who have suffered from gender-based discrimination to more actively defend their rights, the Bill introduces such instruments as compensatory payments. Such compensation will be paid by legal entities guilty of gender-based discrimination and will play a dual role: on one hand, this will function as a kind of penalty against persons who have discriminated on the basis of gender; on the other, it will at least partly compensate those who have suffered losses or reinstate their rights. This should spur people to more actively stand up for their rights.

Yet another instrument to prevent gender-based discrimination should be orders issued by the authorized CEB for ensuring equal rights and opportunities for women and men to eliminate discriminatory practices.

Bill “On changing and amending certain laws of Ukraine” regarding equal rights and opportunities for women and men

Purpose of this Bill

The purpose of this Bill is to enshrine equal rights and opportunities for women and men in community and political activity and to fulfill the requirements of Art. 24 of the Constitution of Ukraine

and the Law of Ukraine “On ensuring equal rights and opportunities for women and men.” Its objectives include:

- establishing the necessary conditions to ensure balanced representation of women and men in elected government bodies at all levels;
- raising the role of women and establishing the conditions to expand the participation of women in community and political life;
- developing political pluralism and increasing the transparency of the workings of Ukraine’s political parties.

Instituting affirmative action policies

This Bill anticipates that an affirmative action policy will be instituted in law to ensure the balanced representation of women and men in elected office. The implementation of affirmative action policies should be based on gender norms, that is, establishing quotas for the participation both genders in government office.

Ukrainian law allows affirmative action policy to be undertaken to change any imbalance in the opportunities given women and men to exercise equal rights. This is in accordance with international covenants to which Ukraine is a signatory as well as to current practice in many countries.

Affirmative action for the purpose of establishing balanced representation is applied in nearly 80 countries today. According to figures in the Global Database of Quotas at the University of Stockholm, 44 countries have set quotas for women and men in the national parliament in their Constitutions or in their electoral laws.

Ukraine has made four attempts to enshrine affirmative action in law in order to balance representation by instituting quotas at the level of candidate lists, both with prioritization and without it. But the 8 September 2005 Law “On ensuring equal rights and opportunities for women and men” calls for representation of women and men without quotas. This means that none of the attempts was successful.

A study by the Council of the European Union showed that the most effective means of raising the proportion of women

in a parliament is to institute voluntary gender quotas at the level of political parties. The best results in terms of balanced representatives are achieved precisely in those countries that have a proportional electoral system, such as Ukraine.

Parties set quotas on their own

The Bill proposes requiring political parties to decide for themselves specific quotas and to write these into their statutes. This will determine the level of representation of men and women in their party lists when they nominate candidates for the Verkhovna Rada or for local councils at all levels. Oversight of the meeting of these requirements will be left with electoral commissions.

The advantages of this approach are:

- flexibility and political acceptability: parties have the option to establish the quotas that they deem necessary;
- publicness and transparency: the quotas set by each party will demonstrate its commitment to the principles of equality of rights and opportunities. Parties will be able to set higher quotas to gain a competitive edge with voters, especially women. In turn, this will spur them to increase their quotas further and thus lead to the greater engagement of women in the political process. Similarly, low quotas for the representation of women could reflect how closed and conservative a political party is and, thus, lead to the loss of voters.

Voluntary party quotas are the most common in Europe, being applied in Belgium, France, Germany, Greece, Hungary, Italy, Lithuania, Latvia, Poland, Romania, and many other countries. Altogether, 160 parties in 69 countries use them. For instance, in Germany, the leading parties (Green Party, Social Democratic Party) voluntarily instituted 33–50% quotas for women, while most parties in Sweden have committed themselves to alternating men and women in their party lists. ■

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