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Towards Nondiscrimination and Gender Equality: The Role of International Labor Standards

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Abstract: Gender equality and the prohibition of discrimination are not only one of the fundamental human rights, but also a necessary basis for achieving sustainable development. Kazakhstan's global rankings for gender equality in recent years show a steady decline, despite the legislation formed during the period of independence, which guarantees the prohibition of any form of discrimination and the proclamation of gender equality as a priority of national policy. An important aspect of reforms, ensuring their effectiveness, is changes in legislation. International labor agreements are mechanisms for the transformation of national legislation and practice on the basis of universally accepted standards for more sustainable development of employment and the labor market. This study analyzes the effectiveness of the national legal framework of Kazakhstan from the standpoint of implementation, compliance with international standards of prohibition of discrimination and ensuring gender equality. An analysis is made of how universal norms can affect the development of national legislation. The article concludes that the laws aimed at the implementation of international standards for promoting the prohibition of discrimination and gender parity do not fully achieve their intended goals due to a weak law enforcement mechanism and the lack of full practical implementation of the country's obligations. Legal solutions are proposed to neutralize the inconsistency of the internal Kazakhstani labor legislation with international standards, as well as the necessary accompanying elements of changes in civil procedural, social, administrative, and criminal legislation. An overview is presented of how the ratification of ILO acts will further improve conditions in the labor market and what changes in laws will be required in the future.

Keywords: gender equality; impact; implementation; nondiscrimination law; sustainable development; workplace equality



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1. Introduction

This analysis aims to formulate recommendations for promoting gender equality and consists in formulating proposals for the implementation of international equality standards, as well as the best universal legal regulation practices.

The Acts ratified by Kazakhstan are: Equal Remuneration Convention, 1951 (No. 100), Law No. 115-II of 14 December 2000; Discrimination (Employment and Occupation) Convention, 1958 (Law No. 444-I of 20 July 1999, No. 111; Workers with Family Responsibilities Convention, 1981 (No. 156), Law No. 50-V of 16 November 2012; Maternity Protection Convention 2000 (No. 183), Law of 14 February 2012 No. 554-IV.

Kazakhstan has not ratified the ILO Violence and Harassment Convention, 2019 (190). As can be seen from the information provided, the overwhelming majority of ILO acts in the field of guarantees of equal opportunities and treatment were ratified by Kazakhstan

10–20 years ago; however, adherence to universal standards did not make it possible to fundamentally advance the issue of building an inclusive labor and employment market. In our study, we tested the hypothesis that Kazakhstan’s “superficial” compliance with the requirements of the ILO acts, the absence of real mechanisms for the implementation of their provisions, and insufficient implementation in legislation and practice are serious barriers to the promotion of minimum standards of nondiscrimination.

General remarks on the problem also include a clause on the position of international treaties in the system of national law of Kazakhstan. According to the Constitution (Article 4), international and other contractual obligations of Kazakhstan are included in the system of the current law of the republic. International treaties ratified by Kazakhstan have priority over its laws and are applied directly, except for cases when it follows from an international treaty that its application requires the issuance of a law. The Kazakhstani Constitution adheres to the legal tradition of most states, where national legal systems are more inclined to give treaties direct effect and hierarchical superiority over domestic legislation, while at the same time steadily expanding the categories of treaties whose ratification requires prior legislative approval [1,2].

The final but most important remark on the issue of this manuscript is that gender equality and the prohibition of discrimination are directly related to SDG5 (*Sustainable Development Goal*), SDG8 and SDG10. The creation of decent jobs, favorable conditions for the development of entrepreneurship, and creativity and innovation are especially important for increasing the participation of women in the labor market, improving working conditions, and getting rid of stereotypes and horizontal and vertical segregation of women in the labor market. Reducing the pay gap and increasing women’s employment while promoting gender equality can improve work/life balance, ease men’s family support burdens, and free up time for men to become more involved in unpaid domestic work. However, the absence of gender-oriented policies and legislation in this area can, on the contrary, exacerbate the problem of gender inequality in the field of wages.

Thus, the fight against discrimination on any grounds and the promotion of gender equality are extremely important conditions for accelerating the process of sustainable development. In this manuscript, we analyze the attempts of the world community represented by the ILO to solve this problem on a global scale. In particular, we examine the legal acts adopted and implemented by the ILO for improving the status of women and expanding their rights and combat discrimination in the workplace. Regarding the application of universal acts in Kazakhstan and implementation of international standards in the field of equality, we are fully aware that legislative changes alone cannot eliminate gender inequality, but these steps are an important foundation for change. High-quality legal regulation is the foundation on which relationships in society and the state are built, including in the field of guarantees of the prohibition of discrimination and gender parity.

The choice of research direction and scientific hypothesis was based on the findings of a number of authoritative studies. In the work of B. Simmons, conclusions are formed that international human rights law has made a positive contribution to the realization of human rights in much of the world. Although governments sometimes ratify human rights treaties, gambling that they will experience little pressure to comply with them, this is not typically the case. Focusing on rights stakeholders rather than the United Nations or state pressure, B. Simmons demonstrates through a combination of statistical analyses and case studies that the ratification of treaties leads to better rights practices on average. Several measures show improvement in civil and political rights, women’s rights, the right not to be tortured in government detention, and children’s rights, especially in the very large heterogeneous set of countries that are neither stable autocracies nor stable democracies. Simmons argues that international human rights law should get more practical and rhetorical support from the international community as a supplement to broader efforts to address conflict, development, and democratization [3]. The positive impact of international law on the formation of national legal systems is summarized in many scientific studies [4–8]. The influence of international law and international organizations on the domestic political

agenda and the development of national systems of legislation are considered in the studies of N. Kardam and V. Guiraudon [9,10].

Researches of S. Gardbaum, R.A. Falk, M.S. Alam [11–13] shows that international documents on human rights, starting with the Universal Declaration of Human Rights, have largely shaped the menu of rights in national constitutions. These agreements seem to coordinate the behavior of national drafters, regardless of whether the drafting countries are committed to the laws of the agreements (although adherence enhances the effect). Ratification of the International Covenant on Civil and Political Rights tempts countries to pursue rights that they apparently would not otherwise accept. This finding confirms the complementary relationship between treaty ratification and domestic constitutional norms and suggests that a national constitution may be an important channel for treaty effectiveness.

Scientific studies on the importance of international law for the development of national systems that ensure gender equality in employment [14,15] indicate that the principles of equality and nondiscrimination are the main principles and values of human rights law, acting as a pillar supporting modern human rights law. It is stated explicitly in the domestic laws of various countries that these law must protect equality, prohibit discrimination, and establish institutions and appropriate mechanisms to promote equality. However, social consensus on equality and anti-discrimination has not yet been formed in many countries, and discrimination in employment is still widespread.

The results of scientific research indicate that international human rights law has made a positive contribution to the realization of human rights in many countries around the world [16–20].

However, the thesis on the “influence” of international law on national human rights standards itself does not have significant practical meaning if we cannot clearly formulate the conditions under which the impact of international law on national law begins, identify barriers, and make recommendations for their elimination. In other words, the theoretical debate over whether international law matters is a stale one. What matters now is the study of the conditions under which international law is formed and has effects. International law is the product of specific forces and factors; it accomplishes its ends under particular conditions [21]. Based on the method of assessing the compliance of domestic law with international standards, we have developed a hypothesis about the possibilities of the advanced influence of the ILO conventions on the consolidation and ultimately implementation of wage labor standards in Kazakhstan.

The idea of this analysis is built on the experience of previous research that ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is linked to the improvement of conditions for women [22]. Post-ratification improvements of the CEDAW were particularly strong in democratic countries and countries with extensive linkages to women-focused international organizations [23]. Ratification of the CEDAW has had a positive impact on observance of women’s rights [24]. The CEDAW provides a way to think about women’s interests that is broad, inclusive, and sufficiently flexible to reflect changes over time [25]. International human rights law is one small, but not utterly insignificant, aspect of the success of the women’s movement, important more for its role in enabling the movement to grow and prosper than for what it does in and of itself. Nonetheless, it is worthwhile that documents like the CEDAW exist, and not merely for their direct legal value (which can be questioned). Documents help people to network across national boundaries and to develop a sense of common purpose, a common language, a common set of demands, and a sense that progress is being made; all of which are incredibly important for a movement, especially an international one, and especially for members who feel isolated or relatively powerless [26].

Ratifying core conventions adopted by the International Labor Organization (ILO) creates legal obligations to improve labor standards in the domestic economy, notably with regard to union rights, minimum age, and discrimination in employment, and forced labor [27].

The ILO promotes decent and productive work opportunities for women and men in conditions of freedom, equality, social security, and human dignity. The organization views gender equality as a key element in its vision of decent work and seeks to support its constituents—governments, trade unions, and employers’ organizations—in translating gender equality principles into practice by working in the following areas: promotion and implementation of ILO standards in the field of gender equality, in particular the Equal Remuneration Convention, 1951 (No. 100), the Non-Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Workers with Family Responsibilities Convention, 1981 (156), and Maternity Protection Convention, 2000 (183); promoting social dialogue that addresses the concerns and needs of both women and men and encourages governments, trade unions, and employers to integrate gender issues into their policies and practices; supporting women’s entrepreneurship; implementation of the ILO-developed participatory gender audit methodology as an effective means of monitoring and evaluating progress made in promoting gender mainstreaming; expanding strategic partnerships on gender equality with new actors such as the media, national youth organizations, and educational institutions [28].

In addition to the above standards, the ILO includes among the main agreements in the field of ensuring gender equality the Part-Time Work Convention (No. 175) and Decent Work for Domestic Workers Convention (No. 189). The listed acts have not been ratified by Kazakhstan.

2. Materials and Methods

At the initial stage, we differentiated the ILO conventions in the field of equality depending on the presence or absence of ratification by Kazakhstan. Subsequently, the analysis was divided into two blocks. The first was conducting a comparative analysis of the content of ratified acts and the actual content of Kazakhstani labor legislation. The second was modeling the possibilities for ratifying conventions for which Kazakhstan refrains from recognition. In this direction, we carried out a comparative analysis of the main provisions of the conventions requiring reproduction in domestic law, formulated conclusions about the advisability or undesirability of ratifications, and modeled forecasts of positive or negative consequences.

In relation to the first part of the study, the methodology of comparative analysis was chosen, although it has been criticized in some works over the past decade. Conceptual and, more recently, empirical research on compliance has become a central concern and perhaps the fastest growing area of international legal science. Studies [29–31] argue that examining the aspirations of international law through the prism of compliance with the rules leads to inadequate study and understanding of the various complex goals and projects that several participants impose and transfer to international legitimacy, and especially to a tendency to oversimplify, if not distort, the relationship of international law to politics. A fundamental flaw in conformity studies is that they abstract from the problem of interpretation: interpretation largely determines what happens to legal norms when they operate in the world, however, conformity studies begin with the idea that there is a stable and consistent meaning of the rule and we just need to observe whether it is being respected.

In the first part, we studied specific cases of inconsistency of domestic Kazakhstani labor legislation with international standards. We analyzed the five main gender equality conventions ratified by Kazakhstan. The focus was not only on the problems of prohibiting gender discrimination in labor and occupation but also on the issues of the burden of proof of discrimination, prohibition of indirect discrimination, prohibition of victimization, remedies against inequality, as well as discrimination against persons with family responsibilities. Primary information for this area of research included not only the direct content of international and national law, but also reports of the Government of Kazakhstan on the implementation of the requirements of the conventions, as well as the Comments of the Committee of Experts (CEACR) of the ILO.

In relation to the second part of the study, we examined whether the current state of Kazakhstan's labor legislation is in line with the ILO acts and whether their ratification will further improve the labor market conditions. We also focused on what changes to the laws will need to be made in the future.

In addition, for this study, the traditional methods inherent in legal science were used: the formal legal (dogmatic) method, the method of legal modeling, as well as the critical legal method of legal knowledge.

The formal legal method made it possible, exclusively within the framework of the sources of law, without distraction to other social objects, to analyze the current state of legal regulation of labor rights, to determine the quality of legal norms, and to formulate conclusions.

An important task of the study was to formulate proposals on improving the model of ensuring gender equality in Kazakhstan, taking into account, based on, and pursuant to international standards. The method of law modeling made it possible to evaluate the proposed measures to improve legislation, to forecast socioeconomic and legal effects, and also to simulate the achievement of actual goals.

The critical legal method was used to substantiate the demanded changes in substantive legislation and in Kazakhstani conditions with the instability of labor standards, in the presence of many gaps and contradictions in them, as well as in circumstances of a decrease in the role of normative regulation of hired labor. The liberalization of legal regulation of employment that took place five years ago (in connection with the entry into force of the new Labor Code of Kazakhstan in 2016) was not supported by an increase in the level of legal culture and strengthening of the principle of sustainability and legality of contractual regulation of labor relations.

3. Implementation of Gender Equality Standards in National Legislation

The CEACR's most important comments were caused by the implementation in Kazakhstan of the requirements of the 1951 Equal Remuneration Convention (100). The ILO supervisory body commented: in relation to the inadequate consolidation in the Labor Code of the Republic of Kazakhstan of the concept of "wages", which does not correspond to the convention; on the absence of a clear list of jobs (sectors of economic activity) for which it is allowed to establish a minimum wage; on the lack of government consolidation of objective assessment methods to ensure gender equality in determining remuneration; on the absence of concrete measures taken in cooperation with employers' and workers' organizations to implement the principle of equal remuneration for men and women for work of equal value; on the absence of statistics on the nature and number of violations of legislation related to the principle of equal remuneration of men and women for work of equal value, which were identified by labor inspectors or brought to their attention; on the remedies provided and penalties imposed; and any judicial or administrative decisions regarding the principles of the convention.

In addition, we note that our study showed the absence of judicial, administrative practice in assigning responsibility not only for violation of the principle of equal pay for work of equal value but for violation of the principle of discrimination in the sphere of labor on any grounds.

A study was conducted of open official judicial statistics [32] in the period 2015–2020, which shows that there is no judicial practice in cases of restoring equality in access to social protection measures or prosecution of discriminatory actions. A sustainable justice system must support the rule of law, good governance, and efforts to tackle inequality and development. However, this mechanism is not actually used in Kazakhstan. The guarantees of gender equality contained in the legislation remain unclaimed in practice; in fact, there are no appeals to the courts and other competent authorities for the restoration of rights. We believe that the fact of the absence of appeals indicates not the absence of gender or other discrimination, but the weakness of legal, public, public mechanisms for ensuring and restoring rights.

In accordance with the reports on the work of the courts of first instance, presented in the electronic resource of the Committee of Legal Statistics and Special Accounting of the General Prosecutor's Office of the Republic of Kazakhstan [33] in 2019–2020, there was not a single prosecution for violation of the equality of man and citizen (Article 145 of the Criminal Code of the Republic of Kazakhstan), or for unreasonable refusal to sign an employment contract with a woman or unjustified termination of an employment contract with her due to her pregnancy, or unjustified refusal to sign an employment contract, or unjustified termination of an employment contract with a woman with children under three years for these reasons, or unjustified refusal to sign an employment contract or unjustified termination of an employment contract with a disabled person due to disability or minors due to their minority (Part 2 of Article 152 of the Criminal Code of the Republic of Kazakhstan). In 2018, the courts received one criminal case under Part 2 of Article 152 of the Criminal Code of the Republic of Kazakhstan, which was terminated on one of the grounds excluding proceedings on the case and provided for in paragraphs (1), (2), (5), (6), (7), and (8) Part 1 of Article 35 of the Criminal Code of the Republic of Kazakhstan; under Article 145 of the Criminal Code of the Republic of Kazakhstan, there were no productions in 2017–2018. In 2017, the courts received two criminal cases of prosecution under Part 2 of Art. 152 of the Criminal Code of the Republic of Kazakhstan, which were subsequently terminated on the basis of the existence of circumstances precluding proceedings on the cases and on the basis of reconciliation of the parties. In the period 2015–2016, the courts of the Republic of Kazakhstan did not receive a single criminal case on charges under Article 145 and Part 2 of Article 152 of the Criminal Code of the Republic of Kazakhstan. The above statistics can be interpreted in the opposite way: on the one hand, there are no facts of discrimination in society, including when hiring, and on the other hand, the mechanisms to counteract inequality from the standpoint of real guarantees of prosecution for unlawful behavior do not work.

In Kazakhstan, a gender pay gap persists, despite the ratification of Convention No. 100 and the emergence of regulatory obligations on the part of the state to ensure equal pay for employment. The real practical work of the convention in the national context requires the implementation of interrelated reforms of regulations, institutions that set wages, and the constant mobilization of state authorities and social partners to stimulate change. We conclude that national labor and gender parity legislation is not effective in promoting fairness in pay for employment. Moreover, given the actual lack of practice of law enforcement of the Law of Kazakhstan “On State Guarantees of Equal Rights and Equal Opportunities for Men and Women” (dated 8 December 2009 No. 223-IV) and the difficulty in breaking away from the traditional distribution of gender roles in society, we assume that gender inequality in wages will remain a constant feature of Kazakhstani employment.

On the absence of information on judicial, administrative practice of bringing to account violation of the requirements for equality in the labor market of Kazakhstan, the CEACR describes as a significant omission in relation to the application of the Convention of 1958 “On Discrimination in the Field of Work and Occupation” (111): the failure of the Government to take the necessary measures to ensure the effective implementation of the convention; the lack of specific information on the implementation of the relevant legislation, as well as on all violations identified by the labor inspectorate and on the decisions of the administrative or judicial courts relating to the principle established by the convention, including the remedies provided and the penalties imposed; the lack of statistics, disaggregated by sex, on the impact of measures taken to promote and practice equality of opportunity and treatment for men and women in employment and occupation in a wide range of occupations, including high-level positions and those with career prospects, etc.

With regard to the Workers with Family Responsibilities Convention (156), the CEACR commented on the implementation of the following provisions: the lack of information on how the convention applies to working men and women who are responsible for other members of their immediate families who clearly need their care and support; the

ineffectiveness of legal and practical measures taken to enable men and women working with family responsibilities to engage in work without discrimination and without conflict between their employment and family responsibilities; the lack of measures taken to ensure that the rights to reconcile work with family responsibilities are accorded to men and women on an equal basis; the lack of information on the activities of regulatory authorities and law enforcement mechanisms, including the labor inspection service, in order to implement the provisions of the convention, indicating any administrative or judicial decisions regarding the application of the convention.

With regard to the application of the Maternity Protection Convention (No. 183), the following comments were made: the absence of legal provisions providing that the burden of proof that the reasons for dismissal are not related to pregnancy and childbirth and their consequences or nursing rests with the employer (Article 8 (1)); the absence of legal provisions guaranteeing the right of a working woman to return to an equivalent position paid at the same rate at the end of her maternity leave (Article 8 (2)). As can be seen from the above review, the violations of the requirements of the conventions recorded by the CEACR are substantial; our analysis shows the extent of the declared problems. In addition, we draw conclusions about the discrepancy between the content of national legislation and the provisions of international instruments on the obligation to implement legislation and encourage such educational programs that can ensure the adoption and observance of a policy of equal opportunity and treatment in relation to work and occupation in order to eradicate any discrimination. On the part of state bodies, there is no control and monitoring of numerous violations of the established policy of equality in the activities of vocational guidance, vocational training, and employment institutions (Convention No. 111).

Labor legislation of Kazakhstan lacks the concept of “workers with family responsibilities”. In violation of the requirements of Convention No. 156, the national labor law does not provide for the definition of “workers who have duties towards other immediate family members who really need care or assistance when such duties limit their ability to train, access, participate or advance in economic activity”, and legislation, collective agreements, internal labor regulations of enterprises, court decisions or a combination of these methods, or in any other way consistent with national practice, does not determine the procedure for allocating this category of workers. The Labor Code of Kazakhstan does not actually differentiate working conditions for workers with family responsibilities, as enshrined in Convention 156, in regard to “as far as possible, harmoniously combining professional and family responsibilities”.

In 2012, Kazakhstan ratified the Convention on the Revision of the 1952 Convention on Maternity Protection (Revised), adopted in Geneva by the 88th session of the General Conference of the International Labor Organization on 15 June 2000. Kazakhstan has not implemented the guarantees of the convention that the amount of cash benefits for pregnancy and childbirth should be set at the level of at least two-thirds of a woman’s previous earnings or those of her earnings that are taken into account when calculating benefits.

Under Convention No. 183, each member state ensures that the conditions for eligibility for cash benefits can be met by the large majority of women within the scope of Convention No. 183. If a woman does not meet the conditions entitling her to receive cash benefits established in accordance with national law or in any other way consistent with national practice, then she is entitled to adequate benefits from social assistance funds, subject to the income verification required for the allocation of such assistance. In Kazakhstan, there is no practice or state guarantee of assistance to women during pregnancy and childbirth who are not eligible for social benefits from any funds (or budget).

The convention stipulates that in order to ensure the protection of the position of women in the labor market, maternity leave benefits are paid from compulsory social insurance funds or from public funds, or in accordance with a procedure determined by national law and practice. An employer shall not be individually liable for direct costs of any such cash benefits to a woman employed by him or her, without express consent, unless: this is provided for by national laws or the practice of a member state, which were

in force before the date of adoption by the ILO of Convention No. 183; or it is the subject of a national consensus between government and representative organizations of employers and workers. In Kazakhstan, unfortunately, the practice of paying maternity benefits at the expense of the employer was introduced in 2013, that is, after the date of ratification of the convention, and this aspect of a woman's material support, in accordance with labor legislation, constitutes the employer's right to pay or not pay benefits up to the level of the average wage if this is not provided for by the terms of the labor and (or) collective agreement or the employer's act.

Thus, Convention No. 183 guarantees a woman a high level of social protection during pregnancy and childbirth; Kazakhstani legislation does not fully comply with international standards. In this connection, we propose: 1. To exclude from the labor legislation the employer's obligation to make additional payments to social payments from the State Social Insurance Fund (SSIF) for pregnancy and childbirth up to the level of average wages as a norm that is actually of a declarative nature; 2. To consolidate the guarantee of the provision of social benefits for pregnancy and childbirth from the State Social Insurance Fund of at least the average amount of previous earnings; 3. To develop measures to provide material support to women for pregnancy and childbirth who are not eligible for social benefits from the SSIF.

In addition, Convention No. 183 and the social legislation of Kazakhstan do not apply to women who did not work before pregnancy and childbirth and did not receive income from which contributions to the State Social Insurance Fund would be made, and therefore a significant number of women do not have the right to benefits for pregnancy and childbirth. That is, a significant proportion of women are left without social protection due to this social fact, and material conditions have not been created for the material provision of women for at least 14 weeks before and after childbirth in conditions that are decent from a sanitary and hygienic point of view, and for an adequate level of living.

Based on the above, we believe that it is relevant to call on the Government to comply with the ratified Convention No. 183, to recognize as illegal the imposition on the employer of the obligation to pay at its own discretion benefits to women for pregnancy and childbirth, and child care; to recognize as illegal the limitation of the amount of allowance to 10 times the minimum wage; to recognize as illegal and contrary to the international obligations of the republic the absence in the legal system of Kazakhstan of measures for material support of women during pregnancy and childbirth, who are not entitled to benefits from their funds from the State Social Insurance Fund.

Convention No. 183 provides that maternity benefits should be paid from compulsory social insurance funds or from public funds, or in accordance with a procedure determined by national law and practice. An employer is not individually liable for direct costs associated with the payment of any such cash benefits to a woman employed by him or her. Cash benefits are set at such a level that a woman can support herself and her child in conditions that are decent from a sanitary and hygienic point of view and have an adequate level of living. Each member state should ensure that the conditions for eligibility for cash benefits can be met by the large majority of women covered by the convention. However, the above requirements of the universal international act are not fulfilled in our country from the standpoint of providing a woman and her child with decent conditions from a sanitary and hygienic point of view and ensuring the right to have an adequate level of living.

4. Analysis of Kazakhstan Legislation's Compliance with the Conventions and the Possibility of Their Ratification

Taking into account that in Kazakhstan the main groups discriminated against in the labor market are women, as well as to a lesser extent aged workers, disabled people, and representatives of national minorities [34–36], we analyzed the possibilities of ratifying the Part-Time Work Convention No. 175, which provides broad guarantees of part-time

employment, which are attractive and which are used in national conditions to a greater extent by women with family responsibilities.

The convention provides for measures to ensure that part-time workers are provided with conditions equivalent to those of full-time workers in a comparable situation. In general, Kazakhstani labor legislation does not contain restrictions for persons employed part-time regarding labor rights provided for by an international agreement.

However, we have identified problems. The national legislation does not contain the guarantees of the convention that: the transition from full-time work to part-time work, or vice versa, is voluntary; measures to facilitate access to productive and freely chosen part-time work are regulated; the prohibition of discrimination on the basis of underemployment, discrimination in employment and occupation is enshrined in legislation.

Ratification of Convention No. 175 will require amendments and additions to the existing norms of national labor legislation.

We have selected Convention No. 189 “On Decent Work for Domestic Workers” for analysis for the possibility of ratification by Kazakhstan, since women from vulnerable groups of the population make up the largest number of domestic workers in local conditions. Extending the ILO’s values to domestic workers is a critical step both for these workers themselves and for all those who strive for decent work. In addition, the adoption of this convention will have a serious impact on the state of affairs in the field of migration and gender equality. In our opinion, Kazakhstan is not yet ready to ratify Convention No. 189, since almost all relations between workers and employers—individuals lie in the informal economy, and Kazakhstan has not developed effective mechanisms to control the emerging relations, which does not allow creating conditions for the implementation of these workers the right to association, the right to decent working conditions, and the effective protection of their labor rights. ILO Convention No. 189 can be ratified by Kazakhstan only after the creation of the necessary social, economic, and legal conditions that stimulate the proper formalization of relations between employers—individuals and employees who enter into labor contracts for the purpose of personal service of such persons and assistance in housekeeping. In addition, a sine qua non condition for ratification should be the creation by the state of the conditions for the effective protection of domestic workers recruited or employed by private employment agencies from unfair practices. The legislation of Kazakhstan has created the preconditions for ensuring the right of domestic workers to go to court and the state labor inspectorate; however, the relevant disputes in the courts are not considered due to the lack of appeals. The number of complaints to the state labor inspectorate is also negligible, since labor relations with domestic workers are currently drawn up by a minimum number of employers.

The ILO Convention on Violence and Harassment, 2019 (No. 190) entered into force on 25 June 2021, concurrently with ILO Recommendation No. 206. Convention No. 190 is the first international standard aimed at the elimination of violence and harassment at work, recognizing that everyone has the right to freedom from violence and harassment in their working life. The convention is a vital new instrument to fill gaps in national legislation and law enforcement practice. Along with domestic violence, gender-based violence and harassment in the workplace are important problems in modern Kazakhstan. Ratification of an international agreement will require the state to carry out a set of amendments and additions to the legislation in terms of: implementation of the terms “violence and harassment in the world of work”, “gender-based violence and harassment”; inclusion in the scope of the guarantees of Convention No. 190 relations of employment, apprenticeship, mentoring, internships, professional training, internal corporate relations for the management of the organization; fixing a list of situations of violence and harassment in the world of work, arising during the period of work, related to work or arising in connection with work; introduction by the state of an inclusive, comprehensive and gender-sensitive approach to the prevention and elimination of violence and harassment in the world of work, including systemic measures; adoption of legislative and regulatory legal acts defining and aimed at legislative prohibition of violence and harassment; adopting appropriate policies

to counter violence and harassment; adopting a comprehensive strategy to implement measures aimed at preventing and addressing violence and harassment; establishing or strengthening enforcement and monitoring mechanisms; providing victims with access to remedies and support; punishment of the guilty persons; development of tools and guidelines, as well as education and training and awareness-raising activities in accessible formats as appropriate; ensuring effective means of inspections and investigations of cases of violence and harassment, including with the involvement of labor inspection services and other competent authorities.

In this direction, Kazakhstan will need to do a lot of work, including with the involvement of social partners, to implement all the measures regulated by Convention No. 190. Of course, its ratification is in demand and relevant, as it will allow reaching a new level of protection against harassment and violence in the workplace, but no less important is preliminary preparation so that its norms become real labor standards in national conditions. It is noteworthy that at the end of 2021, only for two countries, Uruguay and Fiji, has Convention No. 190 entered into force. For a number of other countries, the convention will enter into force in 2022, but none of them are members of the G-20 or the OECD club (with the exception of Argentina and Greece); that is, the example of the implementation of advanced universal standards is not set by the state leaders of international politics or economy.

5. Compliance of National Legislation with International Agreements

The regulation of anti-discrimination issues in Kazakhstan, as well as the set of legal mechanisms for protection against discrimination that victims can use, are extremely insufficient, and the protection measures are disproportionate to violations. There is no understanding of the essence of the phenomenon of discrimination both in society as a whole and among law enforcement officers and experts. For example, one of the Kazakhstani scientific experts offered an opinion on our project aimed at promoting gender equality in labor relations: “The application provides information that the study aims to prove the need for the adoption of comprehensive anti-discrimination legislation aimed at combating direct and indirect discrimination, covering all prohibited grounds. At the same time, paragraph 2 of Article 14 of the Constitution of Kazakhstan already stipulates that no one can be subjected to any discrimination based on origin, social, official and property status, gender, race, nationality, language, attitude to religion, beliefs, place of residence or for any other reason. In support of this important provision, paragraph 2 of Article 24 of the Constitution enshrined the provision that everyone has the right to working conditions that meet the requirements of safety and hygiene, to remuneration for work without any discrimination, as well as to social protection against unemployment. Taking into account these two constitutional provisions, when preparing draft laws relating to all branches of law, an examination is carried out for existing discriminatory norms, including in the field of gender equality” [37]. That is, even in the Kazakh scientific legal environment, the fact of discrimination in labor and other relations is denied, and the guarantee of equality under law is not questioned.

Regulation of discrimination issues in local conditions is minimal and has been developing extremely slowly since the adoption in 2009 of the Law of Kazakhstan “On State Guarantees of Equal Rights and equal Opportunities for men and women”, which has not been amended in any significant way during the entire period of validity that could strengthen the guarantees or introduce real guarantees of gender equality.

Our analysis showed that, contrary to the requirements of international agreements, Kazakhstan lacks: mechanisms for restoring the rights of persons subjected to discrimination; the actual possibilities of prosecution for discrimination; mechanisms to promote prevention and nondiscrimination. On the contrary, discrimination in the public mind is rather an approved phenomenon, which is seen as inevitably inherent in our society. The only way to protect a person who has faced discrimination is to recognize the discrimina-

tion committed against them with the possible payment of compensation for the moral damage caused, the amount of which, as a rule, is extremely insignificant.

An important aspect of the prohibition of discrimination is related to the prohibition of not only direct, but also indirect discrimination. It is necessary to establish normatively the terms, signs, and characteristics of direct and indirect discrimination; Kazakhstani legislation lacks characteristics that separate these two types of discrimination.

Indirect discrimination can include discrimination against: employee participation in a trade union, as well as the sexual preference, age, physical or mental disability of the employee, marital status, family responsibilities, pregnancy, religion, political opinion, national or social origin. Prohibiting discrimination introduces new definitions of direct and indirect discrimination. Direct discrimination can be defined as a situation where a discriminatory action directly leads to the preference or exclusion of people, or to the denial or infringement of their equal opportunities and treatment in labor relations. Indirect discrimination means that a particular measure, practice, or criterion applied is largely neutral (that is, the actions taken by the employer, as such, are in accordance with the law). However, the consequences of such measures, practices, or actions lead to total or partial exclusion or preference given to certain groups of workers (women and men, young and old, the main population and ethnic minorities, etc.). Any action taken by an employer that results in indirect discrimination against certain groups of workers should be prohibited.

According to the requirements of international standards, if an employee believes that he or she has become a victim of unfair and unequal treatment, then he or she lodges a complaint with the competent authority or the court. The Law on Judicial Proceedings should provide that the employer bears the burden of proof in all cases of violation of equal treatment of the sexes.

However, in Kazakhstani conditions, a person who believes that he has been discriminated against in the field of work will be obliged to prove this fact in court. In practice, this is very difficult to do, and this factor, we believe, can affect the real absence of judicial practice in Kazakhstan on discrimination against workers on any grounds. Kazakhstan's rules on proof in civil proceedings do not differentiate between workers in discrimination cases. However, the standards developed by the international community are based on the fact that in cases of this kind, the standard rules of proof impose an unbearable burden on the applicant in order not to establish the existence of a person's discriminatory intentions or the discriminatory consequences of any measure. International agreements recommend the introduction of special rules governing the distribution of responsibilities for proving (facilitating the procedure of proof) in cases of discrimination.

Finally, in Kazakhstan, in principle, the tendency of resistance to sexual harassment in the workplace is "not felt". In modern European anti-discrimination legislation, harassment and sexual harassment are distinguished within the framework of gender discrimination. There are no legal norms regulating the inadmissibility of sexual harassment in the workplace in Kazakhstan. In this sense, the general measures of criminal responsibility provided for by the Criminal Code (Article 123) for forcing a person to have sexual intercourse, or to engage in sodomy, lesbianism or commit other sexual acts by blackmail, threats of destruction, damage or seizure of property or using material or other dependence of the victim, are insufficient. In our opinion, the establishment of only general criminal responsibility cannot solve the problems arising in this area, since this issue is very sensitive, difficult to prove, and the cases for which criminal responsibility is established do not cover the spectrum of cases that are considered as unacceptable sexual harassment.

6. Results and Conclusions

As a global principle, states are obliged to comply with national and international human rights laws, and comply with soft laws and universal standards, including in the field of gender equality in the labor market. Given the low effectiveness of the application of international agreements in Kazakhstan in this area, and the presence of serious systemic problems after 10–20 years since ratification, it is necessary to launch a comprehensive

national plan in the country in the field of prohibition of discrimination and equal access to working conditions. The burden of responsibility for non-implementation of the action plan, including for the real implementation of equality standards in national practice and legislation, should be placed on state bodies, both on the central Government and on authorities at all levels, including local ones. The latter are obliged to fulfill obligations in the field of prohibition of discrimination, ensuring human rights, including convincing employers that support for the principles of intolerance of discrimination and equality in the workplace leads to the promotion of sustainable economic development.

As a result of our research, we have formed proposals on the possibilities of adopting international standards in the national legislation of Kazakhstan. The conclusions were made on the basis of an assessment of Kazakhstan's fulfillment of international obligations in the field of ensuring guarantees of the principle of nondiscrimination in labor legislation. We have developed proposals on the accession of the Republic to universal generally recognized legal standards, and formed conclusions and proposals on modern topical directions for improving the quality and forms of legal regulation of guarantees of prohibition of discrimination in the social and labor sphere, which allow us to summarize the following conclusions.

In the national context, the following measures are required to promote gender equality in the workplace: it is necessary to create a state system for the promotion, analysis, and monitoring of issues of equal treatment and equal opportunity in access to work and employment, and their implementation in relation to all groups of workers. Defined in the legislation should be the signs and characteristics of direct and indirect discrimination. In addition to the prohibition of discrimination on the basis of sex, the introduction of such a provision is required that the law imposes on the employer legal responsibility for the environment, service contacts, and conditions in which employees work, excluding inequality, discrimination, and sexual harassment. There is a demand to shift the burden of proof to the employer in cases where the employee submits a statement of discrimination; the employer must prove that the differential regime is based on objective circumstances. It is necessary to introduce in the legislation a clear definition and prohibition of sexual harassment in the sphere of work and employment, both through the creation of a hostile atmosphere and within the framework of quid pro quo tactics, as well as to take measures aimed at raising the awareness of employers, workers, and their representatives about the problem sexual harassment. Consideration of the issue of including responsibility for sexual harassment in the workplace as a separate crime in the Criminal Code of Kazakhstan is in demand; the introduction of mechanisms of protection and ensuring equality in relation to workers with family responsibilities is in demand; the implementation of guarantees of international acts in the field of social protection of working women during pregnancy and childbirth and childcare is required.

In order to strengthen the quality of national legislation, implement the best modern standards in the field of combating inequality, and create legal prerequisites for meeting the conditions for nondiscrimination in labor relations, we suggest raising the issue in front of the national Parliament of Kazakhstan about the ratification of the ILO Conventions "On Part-Time Work" and "On Violence and Harassment" (No. 175 and 190). Kazakhstan's ratification of international agreements will allow launching a legislative process that will be aimed at meeting universal standards, ensuring guarantees of equality in underemployment, as well as preventing violence and harassment in the world of work, including gender-based.

The COVID-19 pandemic has identified and accelerated many manifestations of gender inequality in the labor market in Kazakhstan and around the world. It can be summarized that the traditional "painful areas" of discrimination in national conditions have only deepened due to the labor market crisis caused by the ongoing pandemic. The most important problems facing the Kazakhstani society, the solution of which requires the inclusion of international standards, are: expanding tools to ensure gender parity in wages, including by combating traditional sectoral segregation; addressing the issue of ensuring

a more equitable distribution of unpaid care from a gender perspective; and tackling gender-based violence in and outside the workplace.

The target consumers of the results of this study are concerned government agencies, the scientific community, students, undergraduates, doctoral students, and the wide range of people interested in gender equality issues. The scientific effect on a national scale lies in the fact that the foundations of an integrated approach to the fundamental problems of legal regulation of guarantees of gender equality in Kazakhstan are being laid; scientific prerequisites and a basis for further development of the scope of application of gender parity standards in all areas of legal regulation of public relations have been formed. The study, to a certain extent, satisfies social and scientific demands for the modernization of gender equality guarantees, for greater involvement of women in economic relations, and greater participation of men in family responsibilities. The systematization of international universal standards made it possible to formulate recommendations for improving the legal norms that make up the mechanism for guaranteeing the principle of prohibition of discrimination, from the standpoint of the implementation of generally recognized norms in the legislation of Kazakhstan.

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