

GENDER EXPERTISE OF LEGAL ACTS IN THE LAW-MAKING PROCESS

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The article aims to describe the place of gender expertise in the legislative process, and its importance for protecting the constitutional rights of citizens. The article provides some examples of gender methodology for assessing legal acts for compliance with the principle of gender equality. The prospects of introducing the institution of gender expertise into the legislative process of the Republic of Belarus and the creation of special act on gender equality based on a general anti-discrimination law are considered.

Gender expertise of legal acts is a type of one of the possible expert examinations of both current legislation and draft regulatory legal acts.

Gender expertise of legal acts can be defined as the activity of a specially authorized state body or other legal entity entrusted with the implementation of such activity, evaluating a legal act or its project for compliance with the principle of gender equality, the principle of ensuring equal rights and opportunities for men and women.

1. Linguistic component of gender expertise of legal acts.

Ensuring gender equality should be achieved using gender-neutral categories in the texts of legal acts. The categories "woman", "man", "mother", "father", etc. should be used only for consideration in the legal regulation of the biological characteristics of the sexes, but not social roles. For example, in Article 184 of the Labor Code of the Republic of Belarus [1] devoted to maternity leave, the use of the category "woman" is justified, since only a woman is able to bear and give birth to a child, and therefore needs such special social leave.

In turn, for example, articles 166 and 168 of the Labor Code of the Republic of Belarus also use the category "woman". Article 168 regulates the conditions for granting labor vacations for the first working year. According to the general rule of this article, work leave for the first working year is granted not earlier than six months of work for the employer, but for women with two or more children under the age of fourteen or a disabled child under the age of eighteen, this rule is made an exception. The specified category of women-mothers can receive labor leave at their request before the expiration of six months of work with the employer in the first working year.

Article 168 regulates the sequence of labor leave and according to the general rule of this article - the sequence of labor leave is determined by the employer (the employer can take into account the opinion of the employee about the desired time of his leave, but is not obliged to do so). However, for women with two or more children under the age of fourteen or a disabled child under the age of eighteen, an exception is also made in this rule. The specified category of women-mothers is entitled to receive leave at the desired time (for example, in the summer or other convenient time).

Probably, such norms are caused by the state's concern for the interests of children and are designed to create favorable conditions for their upbringing, for example, in the summer, when children do not attend school and there is a need to take care of them throughout the day. However, these norms are a clear example of violation of gender equality and are caused by a gender stereotype, according to which the main role of a woman in a family is childcare and education. These articles of the Labor Code of the Republic of Belarus discriminate the interests of fathers, who, for example, may also have a need for summer leave to organize the rest of two or more children under the age of fourteen or a disabled child under the age of eighteen.

Of course, the norms analyzed by us should equally contribute to the fulfillment of their family function by both women mothers and men fathers, by using gender-neutral structures, for example, "an employee who has two or more children under the age of fourteen ...".

It should be noted that the use in the legal act of concepts with gender load ("woman", "man", "mother", "father", etc.) is justified not only to be taken into account in the legal regulation of biological characteristics of the sexes, but also to fix temporary measures of positive discrimination aimed at eliminating the imbalance between the opportunities of women and men (for example, by establishing the quota of women in the collegial body of government).

2. Assessment of the regulatory impact of the draft legal act on the situation of various gender groups - men, women, boys, girls.

In this case, we are talking about the assessment of a legal act from the standpoint of possible indirect discrimination of a particular gender group, about the indirect impact of the act on the rights and possibilities of a particular gender group. This direction of gender-legal expertise involves the assessment of standards that do not have a direct gender content on the ability to influence the position of certain gender groups.

This can be illustrated by the example of the constitutional right to pension and the legislative changes related to it. Article 47 of the Constitution of the Republic of Belarus guarantees the right to social security in old age, in the case of illness, disability, loss of a breadwinner and in other cases provided by law. The right to pension benefits guaranteed by the Constitution is realized through the Law of the Republic of Belarus of April 17, 1992 No. 1596-XII "About pension benefits" [2] and other legislative acts.

Such legislation also includes the Decree of the President of the Republic of Belarus of September 3, 2013 No. 389 "About some issues of pensions and social insurance" [3], which since January 1, 2014 is the insurance experience (work experience with the payment of compulsory insurance contributions to the budget of the state extra-budgetary fund of social protection of the population of the Republic of Belarus) for receiving a labor pension (by age and long service) increased from 5 to 10 years. As of January 1, 2015, the length of service that gives the right to retirement and long-service pensions has been increased to 15 years by Decree of the President of the Republic of Belarus of December 8, 2014 No. 570 "About pension benefits" [4].

Subsequently, from January 1, 2016, by the Decree of the President of the Republic of Belarus of December 31, 2015 No. 534 "About social security issues" [5], such insurance period was increased to 15 years 6 months, and it was determined that from January 1, 2017 The specified work experience annually from January 1 is increased by 6 months until reaching 20 years, which will occur on January 1, 2025.

In fact, for a two-year period, the amount of insurance experience required for the appointment of a labor retirement pension for age and long service has been increased from 5 to 15 years. There was a situation in which a citizen could plan to receive a labor pension and carried out activities that do not constitute insurance experience, for example, training in educational institutions, leave to care for a child until they reach the age of three years, care for a disabled person of group I or a disabled child in under the age of 18, as well as a person who has reached the age of 80, etc., however, due to legislative changes, can no longer apply for a labor pension.

These periods are not included in the insurance period, since the payment of compulsory insurance contributions to the budget of the state extra-budgetary fund for social protection of the population of the Republic of Belarus is not made. They are still included in the seniority, however, for the appointment of an old-age pension, you must have a certain length of employment and insurance experience.

Such changes in the pension legislation deprived a whole category of citizens of the right to decent pension provision, and a significant part of this category of citizens is women, since in Belarusian society leave for child care until they reach the age of three years, care for a disabled person of group I or a disabled child up to 18 years old, as well as a person who has reached the age of 80, is traditionally a female obligation. From the point of view of gender-legal expertise, the changes in the pension legislation discussed above can be assessed as violations of the principle of gender equality and entail a worsening of the status of women.

As part of the assessment of the regulatory impact of a draft regulatory act on the situation of various gender groups, it is assumed not only to evaluate a regulatory legal act from the standpoint of possible indirect discrimination of a particular gender group, but to develop measures aimed at overcoming such indirect discrimination when excluding such a norm from the normative text. Legal act is impossible.

3. The inclusion of special measures to ensure gender equality.

Here we are talking about gender expertise of legal acts that are directly related to the problem of achieving the equal status of women and men and the formation of a society of gender equality. When examining such acts, special measures to ensure gender equality should be checked. For example, when assessing a legal act in the field of education, such a special measure to be assessed during gender-legal expertise may include the introduction of a norm prohibiting inclusion in curricula, textbooks, etc. stereotypical ideas about the role of women and men. In turn, when evaluating legislation on mass media, advertising can check the presence in the text of a regulatory legal act of a mechanism to prevent the use in the media and advertising materials that reproduce or strengthen discriminatory ideas about the social roles and responsibilities of women and men, approve or provoke discrimination gender or gender-based violence, including sexual abuse.

Thus gender expertise of legal acts is the activity of a specially authorized state body or other legal entity entrusted with carrying out such activities to evaluate a legal act or its project for compliance with the principle of gender equality, the principle of ensuring equal rights and opportunities for men and women.

Gender expertise of legal acts is a basic element of legal support for gender equality, which is both the fundamental value of human rights and an important condition for the political, social and economic development of the state.

In the Republic of Belarus, it is necessary to create a general anti-discrimination law with the inclusion of a special chapter on gender equality and on ensuring equal rights and opportunities for men and women. The General Anti-Discrimination Act will ensure the consistency and complexity of the regulatory framework and ensure that intersection is taken into account in the area of combating discrimination. In turn, the norms on gender equality in the general anti-discrimination law should introduce the institute of gender expertise of legal acts. The optimal solution for the implementation of gender expertise will be to include it in the institute of mandatory legal expertise.

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