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ДИСКРИМІНАЦІЯ У СФЕРІ ПРАЦІ: ПИТАННЯ ЕФЕКТИВНОСТІ НАЦІОНАЛЬНИХ І МІЖНАРОДНИХ СТАНДАРТІВ

Анотація. Дискримінація суперечить одвічним прагненням людини до свободи, рівності, справедливості. Особливою проблемою вона стає в сфері трудових відносин, оскільки стосується найважливіших, з точки зору задоволення фізичних і духовних потреб, прав, в тому числі: права на рівний доступ до праці, на рівну винагороду за працю, на рівні шанси в кар'єрному зростанні, на захист від безробіття та інші. Тому основною метою даного дослідження є аналіз правового регулювання забезпечення рівності прав працівників і недопущення дискримінації у сфері праці, як на міжнародному, так і на національному рівні, визначення поняття дискримінації в трудових відносинах, аналіз найбільш поширених різновидів дискримінації, їх проявів і внесення пропозицій щодо їх подолання і посилення ефективності національних і міжнародних стандартів. Для виконання завдань дослідження та досягнення поставленої мети використані: діалектичний метод наукового пізнання, системний і логічний підходи, абстрактно-логічний метод, метод системного аналізу, історико-правовий метод, порівняльно-правовий метод та інші. Автором, в результаті проведеного дослідження, вирішені нижчевикладені завдання і сформовані такі концептуальні положення: проаналізовано гендерний розрив у сфері праці на території Республіки Казахстан і акцентовано увагу на необхідності боротьби з такою дискримінацією; розкрито недосконалість судової системи та механізмів захисту прав громадян у зазначеній сфері, підкреслено їх низьку ефективність; досліджено понятійно-категоріальний апарат досліджуваних правовідносин і виявлена варіативність підходів до дефініції терміна «дискримінація», як на доктринальному, так і на законодавчому рівні; розглянуті випадки дискримінації за різними підставами; обґрунтовано необхідність внесення змін в чинне правове регулювання досліджуваних правовідносин, особливо в сфері посилення юридичної відповідальності за порушення; акцентовано увагу на послідовності і необхідності інтенсифікації імплементації міжнародних стандартів у сфері недопущення дискримінації в національне законодавство Республіки Казахстан.

Ключові слова: дискримінація, найману працю, зайнятість, імплементація, нерівність, гендер.

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EMPLOYMENT DISCRIMINATION: ISSUES OF EFFICIENCY OF NATIONAL AND INTERNATIONAL STANDARDS

Abstract. *Discrimination is contrary to the eternal aspirations of human to freedom, equality, justice. It becomes a particular problem in the field of labour relations, as it concerns the most important rights from the point of view of satisfying physical and spiritual needs, including: the right to equal access to work, to equal remuneration for work, to equal chances in career growth, to protection from unemployment and others. Therefore, the main goal of this study is to analyse the legal regulation of ensuring equality of rights for workers and non-discrimination in the labour, both internationally and nationally, to define the concept of discrimination in labour relations, to analyse the most common types of discrimination, their manifestations and to make proposals for their overcoming and enhancing the effectiveness of national and international standards. To complete the research tasks and achieve the goal, the following were used: the dialectical method of scientific knowledge, systemic and logical approaches, the abstract-logical method, the system analysis method, the historical and legal method, the comparative legal method and others. The author, as a result of the study, solved the following tasks and formed the following conceptual provisions: he has analysed the gender gap in the world of work in the Republic of Kazakhstan and focused on the need to combat such discrimination; the imperfection of the judicial system and mechanisms for protecting the rights of citizens in this area has been revealed, their low efficiency has been emphasised; the conceptual and categorical apparatus of the investigated legal relations has been researched, and the variability of approaches to the definition of the term “discrimination” has been revealed, both at the doctrinal and legislative levels; cases of discrimination on various grounds have been examined; the necessity of making changes to the current legal regulation of the investigated legal relations, especially in the field of strengthening legal liability for violations, has been justified; the attention is focused on the sequence and the need to intensify the implementation of international standards in the field of non-discrimination in the national legislation of the Republic of Kazakhstan.*

Keywords: discrimination, wage labour, employment, implementation, inequality, gender.

INTRODUCTION

The Concept of Social Development of the Republic of Kazakhstan until 2030 (approved by Decree of the Government of the Republic of Kazakhstan dated April 24, 2014, No. 396)¹ states that the labour and employment policy will include measures for the coming period to switch to the standards of the Organisation for Economic Cooperation and Development on measuring labour market indicators, the develop-

¹ Decree of the Government of the Republic of Kazakhstan “On approval of the concept of social development of the Republic of Kazakhstan until 2030 and a plan for social modernization for the period until 2016”. (2014, April). Retrieved from https://online.zakon.kz/document/?doc_id=31546675#pos=2;-55

ment of new additional measures to promote employment, the introduction of new mechanisms of social support. According to the tasks set in the Strategic Plan for the Development of the Republic of Kazakhstan until 2025 (approved by Decree of the President of the Republic of Kazakhstan dated February 15, 2018, No. 636), the main goal until 2025 is to achieve a qualitative and sustainable recovery of the economy, leading to an increase in the well-being of people to the level of the Organisation's countries Economic Cooperation and Development (OECD).

In accordance with the Concept of Family and Gender Policy in the Republic of Kazakhstan until 2030¹, in order to achieve the goal of state gender policy, it is necessary to solve the problem of improving legislation in the field of gender policy, as well as bringing it into the line with international standards, UN recommendations, Sustainable Development Goals (SDGs), and OECD. It is fixed that for the coming period, legislative acts in the field of inadmissibility and suppression of all forms of discrimination and gender-based violence will be improved in accordance with international requirements of the UN, SDGs and OECD.

In the process of implementing the strategy of joining the Organisation for Economic Cooperation and Development in Kazakhstan for the first time in many years, the issue of reforming the system of labour relations and creating its rational model, which allows satisfying the interests of the individual and the state, has become acute [1]. Developed OECD countries, especially European ones, have centuries of experience in the formation and reform of the employment system, the practice of using it as a regulator of macro- and microeconomic and social processes. In Kazakhstan, it is advisable to use the experience of the global civilisation process in legal transformations, which reduces the period of searches for a rational system of legislation that fully meets the interests of citizens, legal entities, and society as a whole [2–5].

These proposals take into account the standards of the OECD universal acts: Recommendations on Gender Equality in Education, Employment and Entrepreneurship 2013, Recommendations on Gender Equality in Public Life 2015, Recommendations of the Council on Aging and Employment Policy 2015, Recommendations of the Council on Comprehensive Mental Health, Skills and Work Policy 2015.

On January 22, 2015, a Memorandum of Understanding was signed between the Government of the Republic of Kazakhstan and the OECD in relation to the Country Program aimed at assisting Kazakhstan in the implementation of national reforms. The recommendations presented are aimed at the implementation of individual conclusions, findings and proposals set out in: reports, reviews prepared as part of the Country Program (2015-2017) “Reforms in Kazakhstan: progress, challenges and prospects”, “Implementation of gender policy in Kazakhstan”, “Overview of the implementation of gender policy in Kazakhstan”, “Overview of policies targeted at three groups: youth,

¹ Concept of family and gender policy in the Republic of Kazakhstan until 2030. Retrieved from <https://egov.kz/cms/ru/law/list/U1600000384>

older workers and the protection of vulnerable groups” [6], as well as the findings and conclusions presented in the OECD Gender Policy Delivery in Kazakhstan [7].

It should be borne in mind that, in general, OECD estimates of women's involvement in the labour market are satisfactory. It is noted that an older woman in Kazakhstan more often belongs to the category of economically inactive population and is much less likely to be employed compared to the population in other OECD countries. Women often do not participate in the labour market, which is a reflection of the fact that childcare in most cases remains the responsibility of mothers. The employment rate of women is lower than the employment rate of men by more than 10 percentage points, and the employment rate of the economically inactive population is 10 percentage points higher. However, it should be noted that these gender differences are a matter of concern and should be reduced; they are still below the average in OECD countries, where the gender differences in employment and economically inactive people are on average 15.6 and 16.7 percentage points respectively [6].

In addition, this review is based on the study of the implementation in the legislation of Kazakhstan of the requirements of the Republic of the Convention of the International Labour Organisation (ILO) No. 100 “On Equal Remuneration for Men and Women Workers for Work of Equal Value” (Geneva, June 6, 1951)¹, as well as ILO Convention No. 111 “On Discrimination in respect of Employment and Occupation” (Geneva, June 25, 1958)².

1. MATERIALS AND METHODS

The methodological basis of the article is the general provisions of existing national and international legislation in the field of preventing discrimination in the world of work, as well as the work of domestic and foreign legal scholars.

To accomplish the tasks of research and to achieve the goal, we used the dialectical method of scientific knowledge, systemic and logical approaches. In the research process, general scientific methods were applied: abstract-logical – to generalise scientific and methodological approaches to the study of the process of regulating the prevention of discrimination in the world of work in the Republic of Kazakhstan, and to draw conclusions. Methods of theoretical generalisation, comparison, analysis and synthesis were used to clarify the conceptual-categorical apparatus and the multivariance of the definition of “discrimination”. The statistical method was used to characterise changes, assess the status and development trends of discrimination in the world of work; system analysis – to develop a model for updating legal regulation in the field of research and

¹ The Convention was ratified by the Republic of Kazakhstan in accordance with the Law of the Republic of Kazakhstan. (2000, December). Retrieved from https://online.zakon.kz/m/document/?doc_id=1018240

² The Convention was ratified by the Republic of Kazakhstan in accordance with the Law of the Republic of Kazakhstan. (1999, July). Retrieved from https://online.zakon.kz/document/?doc_id=1011035#pos=0;0

the implementation of international standards and requirements. The historical and legal method was reflected in the process of studying the genesis of discriminatory currents in the world of work on the territory of the Republic of Kazakhstan.

The comparative legal method made it possible to conduct a comparative analysis of legal regulation and leading trends in the further development of the phenomenon of labour discrimination in the Republic of Kazakhstan and the countries of the Organisation for Economic Cooperation and Development. The method of legal regulation provided an opportunity to propose copyright developments aimed at: implementing OECD, ILO standards in the field of discrimination of employment in the legal system of Kazakhstan; development of labour legislation in accordance with recommendations based on a synthesis of best practices of advanced states; use of indicators proposed by the OECD to assess the level of guarantees of social and employment human rights; implementation of recommendations related to the creation of an inclusive labour market.

The theoretical basis of the study was the work of such scientists as: H. Cheng [8], N. Lyutov [9], A.B. Long [10], N. Kucharczyk [11], D.K. Bekyashev [12], J. Lain [13], S.Yu. Golovin [14], A.L. Jones [15], J. Roberts [16], E.A. Ershova [17], G. Pierné [18], A.F. Nurtdinova [19], P. Combes [20], R. Gómez Gordillo [21], M. Brussig [22], M. Mercat-Bruns [23] and others.

Undoubtedly, a significant role for this study was played by the work of the following scientists in the field of general theory of law: A.V. Malko [24], V.S. Nersesyants [25], P. Siegelman [26], as well as the work of representatives of international law schools: L.P. Anufrieva [27], J.H. Jung [28], R.Sh. Davletgildeev [29] and others. The works of foreign scientists in the studied field of labour law were also analysed.

The research information base is the Constitution of the Republic of Kazakhstan, labour and social legislation, international norms and standards, data from ministries and sociological services, monographic and periodical literature, and the results of the author's own research.

2. RESULTS AND DISCUSSION

In most OECD countries, the vision and strategy for establishing gender equality are typically characterised by the following factors: empowerment of women in the economy; combating gender-based violence; assistance in achieving a balance of professional activity and personal life; prevention of gender discrimination; enhancing diversity and compliance with laws and policies regarding gender equality.

According to the 2015 Gender Gap Report compiled by the World Economic Forum in Kazakhstan, there is a fairly slight gender imbalance in labour force (36th out of 145 countries). However, labour market indicators show a difference in the representation of women and men. The Kazakhstan labour market is characterised by high female employment, the availability of skilled workers and low unemployment. Women make

up 61% of the total employed population, which is slightly lower than the OECD average of 62%. However, women, as a rule, are self-employed, which means that they have fewer opportunities to have formal employment, decent working conditions and adequate social security, including a pension. Women also represent more than 70% of employees in sectors considered traditionally female, such as health and education. These two sectors, as well as nutrition, finance and insurance, represent a large proportion of female employees. However, all these are low-wage sectors, which account for only 2% of Kazakhstan's GDP.

The share of women in innovation, infrastructure and high technology is very small. For example, only 1998 women are involved in the implementation of the Nurdy Zhol State Infrastructure Development Program (11% of the total number of employees under the Program). Despite the persisting gender wage gap, from 2006 to 2016, it has decreased slightly from 38% to 33%. The average salary of women is only 67% of the salary of men. One in three women in rural areas is self-employed, including those living on income from agriculture. The bulk of this income is non-monetary self-consumption. Consequently, women are not able to invest. These figures indicate lost opportunities for using vast human potential, regardless of gender [30].

OECD authorities note that the urgent issue for Kazakhstan is strengthening the fight against gender discrimination, as well as discrimination against older workers, with any inequalities in labour relations. According to OECD recommendations, Kazakhstan should consider more specific measures to apply the provisions of the law and prevent unjustified discrimination against older workers in the search and employment of workers, as well as age discrimination in relation to working conditions. While anti-discrimination provisions are already an integral part of Kazakhstani legislation, as in most OECD countries, ensuring proper enforcement remains problematic [6].

This conclusion was made, despite the seemingly relative prosperity with the legislative provision of equality, non-discrimination in Kazakhstan. The Law of December 8, 2009, No. 223-IV "On State Guarantees of Equal Rights and Equal Opportunities for Men and Women"¹ was adopted, and the fundamental ILO Conventions No. 100² and No. 111³ were ratified in the last century. In the authors' view, the obvious problem for Kazakhstani legislation is the neglect of two important issues: legislation on issues of equality and non-discrimination does not cover a significant group of signs of dis-

¹ Law of the Republic of Kazakhstan "On State Guarantees of Equal Rights and Equal Opportunities for Men and Women". (2009, December). Retrieved from https://online.zakon.kz/document/?doc_id=30526983

² The Convention was ratified by the Republic of Kazakhstan in accordance with the Law of the Republic of Kazakhstan. (2000, December). Retrieved from https://online.zakon.kz/m/document/?doc_id=1018240

³ The Convention was ratified by the Republic of Kazakhstan in accordance with the Law of the Republic of Kazakhstan. (1999, July). Retrieved from https://online.zakon.kz/document/?doc_id=1011035#pos=0;0

crimination; and they provide better protection in the field of employment and occupation. These two trends imply widespread national recognition of the importance of a more effective response through legislative measures.

It should be noted that in Kazakhstan, there is virtually no judicial practice for considering claims for recognition of discrimination in labour relations. In general, court cases of discrimination are very difficult or even impossible due to inadequate complaint procedures. The continued existence of unrealistic claims for reliable evidence is particularly detrimental to successful discrimination lawsuit. In our opinion, in such claims, the burden of proof should be shifted to an employer.

Victims of discrimination can be dissuaded of the need to exercise their rights out of fear of persecution, due to undeveloped legislation, disbelief in court proceedings, or complexity of procedures. However, there is no substitute for the role of the courts in the enforcement process. Initiation of lawsuits in courts on grounds of discrimination seems futile in Kazakhstan, when procedures are expensive, time consuming and remedies are vague. Provisions with a traditional approach, shifting the burden of proof to the plaintiff when considering cases of discrimination, limit the effectiveness of the defence during the trial, as well as the ability to seek remedies for the damage caused. Shifting the burden of proof to an employer is one of the requirements of European Council Directive 2000/78 / EC, which most member states are now transposing into national laws and practice.

The proof of discrimination in labour relations is an undeveloped procedure; there is no direct method for establishing inequality. Determining that two jobs that differ in content are equivalent, requires the use of a matching method. Job appraisal methods are instrumental in determining the relative value of a job and thus determine whether the payment is fair. The process of developing methods for evaluating work and methods for their application are as important as the technical content of these methods. Inadvertent gender discrimination can occur at any stage of their development and use. In 2008, the ILO published a step-by-step guide for conducting gender-neutral assessment of work, describing the stages of an objective and fair assessment of work that is not subject to gender discrimination, including the following sequence of operations: development of a measuring grid that is not subject to gender discrimination; assignment of elements in the work based on the levels of sub-factors and the definition of work of equal value; counting the total number of elements assigned in each work; grouping of works into intervals of elements [31]. However, Kazakhstan lacks awareness and enforcement of such methods. Moreover, the studies justifiably determine the need for theoretical development of a specific methodological test for non-discrimination. "A reference to the objective validity of the differences as a basis for concluding that they are non-discriminatory can be considered a sufficient argument only provided that the concept of objective conditioning of differences would also cover social justice and proportionality. Without the application of the proportionality test, material constitutional control over the compliance with the principles of equality and non-discrim-

ination seems impossible” [32]. For the sake of objectivity, it should be noted that the lack of sufficient and complete anti-discrimination legislation is an urgent problem for many OECD countries, studies show the existence of problems of ensuring equality in employment [33–37].

However, the inadequacy of the definition of “discrimination” in labour relations is of paramount importance. In legislation, the corresponding definition of inequality is extremely limited and does not cover all possible forms of discrimination.

Certainly, female discrimination remains the most common form of inequality. Women continue to suffer because of discrimination in almost all aspects of employment, including the work they can get, their pay, benefits and working conditions, and access to leadership positions. The data of official documents¹ show that gender differentiated differences in wages, occupational and vertical segregation, difficulties associated with the combination of production and family responsibilities, the disproportionate prevalence of women in part-time, informal temporary employment and discrimination due to maternity or marital status continue to persist despite legislative and programmatic initiatives [38].

In many cases, women's access to certain types of work is limited due to their reproductive role or the fact that women still have the main responsibility for caring for children and other dependents [39–42]. This does not mean that no progress has been made in this area, but only indicates that women still have a long way to go to achieve gender equality in the labour market.

The authors are fully aware that discrimination between men and women in Kazakhstan has deep social roots that cannot be removed simply by adopting legislation or any specific measure. More effective is gender mainstreaming and non-discrimination in the implementation of a range of national measures and programs. This is a strategy for taking into account the problems and experiences of women and men, as an integral part of the process of developing, implementing, monitoring and evaluating measures and programs in all areas of political, economic and public life.

At the same time, in our opinion, cases of discrimination on the grounds of nationality and position of labour migrants, political opinion, HIV status, age, sexual orientation, and image remain beyond the scope of legislative discretion and without enforcement of law. The listed forms of discrimination are not reflected in national legislation, or the rule of law contains direct discriminatory rules on the listed grounds. So out of sight are manifestations of discrimination in employment due to smoking and obesity. A study in Sweden based on fictitious job applications with photographs showed that overweight candidates receive 20% less job invitations than candidates with normal weight, which corresponds to the level experienced by a minority of Middle Eastern descent in Sweden [43]. If obesity is considered to be dangerous for one's own health,

¹ Concept of family and gender policy in the Republic of Kazakhstan until 2030. Retrieved from <https://egov.kz/cms/ru/law/list/U1600000384>

the potential smoking hazard for colleagues is clearly documented, and therefore, smoking in the workplace is prohibited in many countries. Some researchers, however, highlight the so-called shift from “smoke-free jobs” to “smoke-free jobs,” noting the risk of discrimination against smokers.

Age discrimination in the Labour Code is paradoxically elevated to the standard of labour relations. In addition to the stereotype of older workers existing in society, the possibility of realising the reluctance of employers to retain and hire older workers are legislatively enshrined. The Labour Code contains rules on the termination of an employment contract with employees who have reached retirement age, as well as the conclusion, extension of contracts with discriminatory clauses regarding special qualifications, as well as the possibility of causeless and long-term temporary employment.

In our opinion, the strengthening of legislation on non-discrimination on any grounds in hiring, promotion, training, and advanced training is in demand. In order to ensure strong implementation mechanisms for the application of legal provisions, administrative responsibility should be increased and civil liability compensation options should be established.

It is proposed to adopt a new definition of discrimination in the field of employment, including taking into account the recent positive experience of Ukraine in the field of updating labour anti-discrimination legislation, setting out paragraphs 2, 4 of Article 6 of the Labour Code as follows:

“2. Any discrimination in the employment is prohibited, in particular a violation of the principle of equal rights and opportunities, direct or indirect restriction of the rights of workers depending on race, colour, political, religious and other beliefs, gender, gender identity, sexual orientation, ethnic, social and foreign origin, age, state of health, disability, suspicion or presence of HIV/AIDS, marital and property status, family responsibilities, place of residence, professional membership in union or other association of citizens, participating in a strike, applying or intending to appeal to a court or other bodies for the protection of their rights or providing support to other employees in protecting their rights, on linguistic or other grounds not related to the nature of the job or the conditions for its implementation.”;

“4. Persons who believe that they have been discriminated against at work have the right to apply to the court for the restoration of violated rights, compensation for pecuniary damage, and compensation for non-pecuniary damage”.

To assist in the development of effective legislation, authors consider it necessary to introduce, as one of the parameters for the examination of draft regulatory legal acts submitted to Parliament, a study of the project for discriminatory norms and gender inequality. Such expert opinions, technical comments on the proposed draft labour legislation will contribute not only to the main goal – to achieve genuine equality in employment, but also to promote the dissemination of best practices of the ILO and OECD countries.

The development of training materials for labour inspection, on ensuring gender equality and non-discrimination in the workplace is in demand. The following problems can be identified as typical for Kazakhstan: low level of law enforcement; insufficient sanctions; and lack of resources for labour inspection bodies; limited awareness of rights among workers; low potential of social partners in ensuring equality, prohibition of discrimination; limited legislative set of grounds for discrimination; limited private-sector employer awareness of anti-discrimination obligations.

As measures to neutralise these factors, the following set of tools is proposed: strengthening the legal framework; capacity building among labour inspectors, social partners, judges; creation of a coordination framework for all activities related to equality issues in the public and private sectors. Revision of national legislation, including the Labour Code; advocacy; increased sanctions and liability.

A problem that significantly affects the stability of labour relations and ensuring productive employment is a low level of practical implementation of labour law requirements. In practice, the phenomena of not concluding labour contracts, illegal substitution of permanent fixed-term contracts, concealment of actual wages, and evasion by employers of social obligations are still common.

In this aspect, a review of existing legal liability for non-compliance with labour laws is required. In the Labour Code, a system of guarantees has been enshrined for female workers, persons with family responsibilities, which are backed up by real mechanisms for their legal support, namely responsibility for their violations. In a number of cases, the LC proclaims the existence of liability for violation of the norms of the code, but in fact there is no corresponding legal liability. So, paragraph 4 of Article 6 of the Labour Code secured the right of persons who consider that they have been discriminated against in the workplace to apply to a court or other instances in the manner established by laws. However, the legislation does not determine the procedure for applying for judicial protection on the basis of discrimination in the workplace, the procedure for limiting from discriminatory actions (inaction) is not legally defined, moreover, acts of a discriminatory nature, as a rule, cause both material and moral damage to a person. The above indicates a defect in the procedures for judicial protection of violated rights, which is in the nature of a factor of corruption, as a defect in administrative procedures.

In addition, since 2020, the employer's expenses have significantly increased due to the introduction of compulsory health insurance (maintaining additional pension contributions from the employer's funds has been postponed until 2023). An increase in employers' expenses will inevitably lead not only to a slowdown in wage growth, a reduction in workers, but also to a concealment of both the actual number of workers and their real wages. In this direction, increased responsibility of employers is in demand. It is necessary to introduce the general composition of an administrative offence, which defines liability for any violation of labour law requirements.

Article 90 of the Code of July 5, 2014, No. 235-V of the ZRK “On Administrative Offences”¹, establishes a limited concept of employment discrimination, which has signs of an administrative offence. Two types of misconduct include: employer discrimination in employment, expressed in violation of an employee’s right to equal pay for equal work. Placement by the employment centre, a private employment agency providing labour mediation, and also an employer of information on job vacancies containing discriminatory requirements in the field of labour. All other possible manifestations of discrimination are not covered by legal liability measures.

It is necessary to eliminate low-quality consolidation of legal liability for misconduct in the sphere of wage labour. To make additions to the Code of Administrative Offences, establishing new compositions and supplementing the existing ones in order to implement the fulfilment by the parties of the labour contract of labour standards, guarantees of social and labour rights.

The authors offer the Code of the Republic of Kazakhstan on Administrative Offences of July 5, 2014, No. 235-V² to supplement with articles, to amend, providing for liability for:

violation of labour legislation and other regulatory legal acts containing labour law, unless otherwise provided by other articles of the code:

the admission by an employer a person to work without concluding an employment contract; or the actual admission to work by a person not authorised by an employer, if an employer or his representative authorised to this refuses to recognise the relationship that arose between a person actually admitted to work and a given employer, the labour relationship (does not conclude with a person admitted to work, employment contract); or evasion of registration or improper execution of an employment contract or the conclusion of a civil law contract that actually regulates labour relations between the employee and the employer;

non-payment or incomplete payment of wages and other payments made within the framework of the employment relationship if the actions do not contain a criminal offence, as well as non-payment and non-payment of a penalty for the period of delay in payment due to the fault of the employer, or the establishment of a salary of less than the size stipulated by labour legislation;

non-fulfilment by an employer of a obligation to create or allocate jobs for the employment of persons with disabilities in accordance with the established quota for hiring disabled people, as well as an employer's refusal to hire a disabled person within the established quota.

Despite Kazakhstan’s ratification of the two main ILO conventions on equality, namely Conventions 100 and 111, problems remain even with their full application. So, means for measuring and comparing different types of work on the basis of objec-

¹ Code of the Republic of Kazakhstan on Administrative Offences. (2014, July 5). Retrieved from https://online.zakon.kz/document/?doc_id=31577399

² *Ibidem*

tive criteria, such as qualifications, working conditions, remain undeveloped. If, as a result of labour assessment based on objective criteria, free from stereotypical ideas about the value of labour that women or men usually perform, the value of some types of labour differs from others, these differences should be reflected in the level of wages.

According to Article 1 of ILO Convention No. 111¹, discrimination is any distinction, exclusion or preference based on race, skin colour, sex, religion, political opinion, foreign origin or social origin, leading to the destruction or violation of equality of opportunity or treatment in the employment and occupation. However, article 6 of the Labour Code uses a different definition of discrimination – it is defined as “a restriction on the exercise of labour rights based on origin, social, official and property status, gender, race, nationality, language, religion, beliefs, place of residence, age or physical shortcomings, as well as belonging to public associations”.

Legislative prohibition of employment discrimination and the provision of legal remedies is insufficient; ensuring their effective functioning is a problem, especially during periods of economic downturn. It should be noted that the most difficult problem associated with the effective implementation of equal rights in labour relations and employment is undoubtedly caused by economic and social conditions. The prospects for future activities in the field of ensuring the prohibition of discrimination include: the formation, development and sharing of a knowledge base on the measurement, fixing and elimination of discrimination in the field of work and occupation; development of the institutional capacity of constituents of social partnership with regard to more effective implementation of the fundamental right to non-discrimination in the world of work; Strengthening research and international partnerships with key stakeholders for equality.

In our opinion, an important aspect in this direction is the beginning of transformations from legal reforms and the transformation of gender policy. In this direction, the OECD recommends:

Governments must translate international conventions into their national legal framework and repeal discriminatory laws. In fact, this refers to discriminatory legal provisions regarding the rights of women in the workplace and reproductive autonomy. This also includes addressing legal loopholes that allow for continued negative practices, such as early marriage or unequal sharing of household responsibilities. A more comprehensive legal framework should cover all forms of violence against women, without exception.

Public policy should address the root causes of gender inequality and include advocacy campaigns and/or educational programs to address negative gender stereotypes. This is especially true when the focus is on empowering women and the unequal dis-

¹ The Convention was ratified by the Republic of Kazakhstan in accordance with the Law of the Republic of Kazakhstan. (1999, July). Retrieved from https://online.zakon.kz/document/?doc_id=1011035#pos=0;0

tribution of family care responsibilities. Quotas and parental leave schemes are clearly not enough to challenge the widespread stigmatisation of women in politics and as working mothers.

Protection of women's rights requires improving both the gender sensitivity of the judiciary and women's legal literacy. An inclusive and comprehensive legal framework should include legal training, legal services for more vulnerable women and/or awareness-raising and legal literacy programs.

The elimination of discriminatory laws, social norms and practices should be a common concern and obligation. Every citizen and all institutions have a role to play, including governments, stakeholders in development cooperation, local civil society, community and religious leaders, teachers, health workers, justice and police, media, foundations, private sector and others. Legal reforms can promote social transformations, but it also requires local changes. Decisions developed at the local level, combined with adequate legislation, are necessary for social change [44].

CONCLUSIONS

Thus, it follows from a literal interpretation of legal norms that a different attitude towards a person in the formal observance of his rights is not a violation, and discrimination can be established only in case of a direct violation of any other legal norm. At the same time, it is extremely difficult to establish the fact of discrimination and restore their rights to the discriminated employee, since in a situation where no other violation (apart from discrimination) is committed, discrimination is not established by the prescription of the law, and when another violation is committed, the punishment follows it not for discriminatory actions. The lack of a clear legislative definition of the term “discrimination” and a detailed regulation of the procedural specifics of considering cases of discrimination disputes create additional difficulties both for the emergence of anti-discrimination judicial practice and for the process of creating a public understanding of what discrimination is.

As a conclusion, it is needed to note that the adoption of the recommendations and proposals set forth will ensure the following legal and socio-economic consequences:

- the progressive development of Kazakhstani national labour law in the direction of its compliance with the best examples of the system of labour relations inherent in leading states;

- creation of legal conditions for active employment, participation in labour relations for persons of retirement age, the removal of existing legal and organisational obstacles to hiring and retaining older workers in the workplace;

- strengthening mechanisms to combat gender and other types of discrimination; toughening legislation on non-discrimination on any grounds in hiring, promotion and training;

- solving the problem of the low level of practical implementation of the requirements of labour legislation, eliminating low-quality consolidation of legal liability for misconduct in the field of employment.

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