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**GENDER EQUALITY IN LABOR RELATIONS IN THE CONTEXT
OF SUSTAINABLE DEVELOPMENT GOALS**

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Abstract

Gender-based discrimination is one of the most negative and destructive features of today's society. This negative phenomenon occurs quite often in political and religious spheres, regarding issues of acquisition of title in civil law, various aspects of social policy, women experience physical and sexual violence, etc. The need of antidiscrimination is recognized internationally, countries in their international treaties consider and settle rules that contribute to the eradication of this phenomenon and guarantee the equality of persons of the opposite sex. Liquidation of gender inequality is included in the United Nations resolution as one of the sustainable development goals. The Russian Federation has also recognized this international document and accepted certain commitments regarding gender equality and empowerment of all women and girls. Female inequality compared with men is especially often manifested in labor relations in Russia. According to the Russian Federal State Statistics Service, the female part of the population occupies more than half of the jobs in the economy, the fair sex works in originally female segments, and they begin to master the professions considered to be male. At the same time, female inequality occurs in such areas of legal regulation as employment and dismissal, career growth and wages. The authors consider forms of women's labor discrimination in Russia, reveal the reasons for its existence, identify the problems of legal writing in this aspect.

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Keywords: Gender-based discrimination, labor relations, equal human and civil rights and freedoms.



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1. Introduction

One of the most important components of a person's legal status is equal human and civil rights and freedoms, regardless of gender, race, nationality, or other circumstances. The preamble of the United Nations Charter says that we need "to reaffirm faith in fundamental human rights, in the dignity and worth of a human person, in equal rights of men and women and in equal rights of large and small nations". The principle of gender equality has also been adopted under other international documents – International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights, International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child, the International Labour Organisation (ILO) Convention concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities, etc. The implementation of the fundamental rule of men and women equality is defined in the 2015 United Nations Resolution as the goal number five – ensuring gender equality and empowering women and girls in all spheres of life.

2. Problem Statement

The authors consider gender inequality in labor relationship, since this topic is problematic for the legal field of Russia. Despite the implementation of international standards in Russian national legislation, gender-based discrimination is universally occurring.

3. Research Questions

The main research question is about recommendations that should be developed to eradicate worker gender discrimination.

4. Purpose of the Study

The main purpose of the study is to consider the areas of women antidiscrimination in labor relations within Russia, based on the analysis of legal rules and judicial practice. In accordance with the purpose the authors pose the following objectives: to consider approaches to the concept of discrimination in the legal field, to develop proposals for improving legal rules; to analyze the concept of "business and professional competencies of an employee" in terms of gender discrimination and to consider the imperfection of this wording; to investigate the procedural problems of protecting women's rights from discrimination related to the semantics nebulosity and to develop proposals for legislation changes; to explore the main factors contributing to the gender inequality in labor relationships; to analyze forms of discrimination in labor relations.

5. Research Methods

The methodological basis of the study was the dialectical method of cognition of social and legal phenomena. When studying the material, the authors used methods of comparative law, technical and legal analysis, concretization and interpretation.

6. Findings

In September 2015 United Nations adopted Resolution 70/1 “Transforming our world: the 2030 Agenda for Sustainable Development”. This document defined 17 goals and 169 targets of sustainable development of the countries in the world community in the socio-economic and environmental segments of public relations for the period from 2015 to 2030 and it was the strategic basis for concluding international treaties and adopting programs of the corresponding orientation by many states. All 17 Sustainable Development Goals (hereinafter the SDGs) are a set of interconnected guidelines, that achievement will contribute to the solution of global social, economic and environmental problems at the international and national levels, to elimination of poverty, growth of population well-being, and resource conservation of our planet.

Russia has signed international antidiscrimination treaties, it participates in the United Nations SDG program and is on the way to achieving its goals, however, not all present realities point to the perfect problems' solution, and there is still gender inequality in Russian reality. Most often, this negative phenomenon can be encountered in the field of labor relations, despite the fact that our state has reproduced the main provisions of international treaties on equality in the Basic Law and the leading regulatory legal acts of labor law.

According to paragraph 2 in the Article 19 of the Russian Federation Constitution, the state guarantees equal human and civil rights and freedoms without discrimination, paragraph 3 of this article allocates equal rights of men and women and equal opportunities for their implementation. The Constitution entrenches the rights “to freely use of one's ability to work, to choose one's occupation and profession for remuneration for work without any discrimination and not lower than subsistence minimum wage under the federal law...” (Article 37). These provisions are deepened and specified in the Russian Federation Labor Code that “... prohibit discrimination in the world of work ...” (Article 2 of Labor Code of the Russian Federation) at the level of the principle of labor regulation. The Article 3 of Labor Code of the Russian Federation establishes equal opportunities for the exercise of labor rights and prohibition of their restriction irrespective of gender and others than business and professional qualities.

Gender discrimination exists and flourishes in Russia, this is primarily due to whiteness of legal rules in the field of women labor regulation and discrimination in general, ambiguity of prescribed rules, that makes it possible for the employer to refuse a woman the right to work seemingly for legitimate reasons, but actually the reasons of such refusal are discriminatory.

We draw attention to the fact that there is no legal definition of the term “discrimination” in the Russian labor legislation, although the term is used in national legal rules. The word comes from the Latin “discrimi-payo” which means “discrimination” (Evgenevoi, 1981). The analysis of legal doctrine and jurisprudence allows us to conclude that discrimination should be considered as restriction of human rights on certain grounds, which are non-exhaustively listed in legal rules. A number of authors indicate that the term is defined as a negative attitude, infringement and restriction of rights, as well as violence and every manifestation of hostility to a subject because of his belonging to a particular group (social)(Council Directive 2000/78/EC).

The definition of discrimination in the world of work can be found in international treaties, for example in ILO Convention No. 111 “On Discrimination in the Field of Labor and Occupation”, where this

term refers to every discriminatory distinction, inadmissibility or preference including gender, leading to the destruction or violation of equal opportunities in the field of work and occupation (Makhmudova & Krivoruchko, 2019). According to the Decree of the Plenum of the Russian Federation Supreme Court dated January 28, 2014 No. 1 “On the application of legislation governing women workers, workers with family responsibilities and minors” “Discrimination in the world of work ... is understood as a distinction, exclusion or preference, resulting in the elimination or violation of equal opportunities in the exercise of labor rights and freedoms or gaining any advantages depending on any circumstances not related to the business qualities of an employee ... ”. National legal rules define discrimination through a non-exhaustive list of discriminatory signs, indicates “violation of the rights, freedoms and legitimate interests of a person and a citizen” depending on gender, race and other grounds (Gerasimova et al., 2015).

Interpretation of the considered definitions of the term “discrimination” through violation of rights reduces the significance of the social danger, allows us to argue that the national construction of the term gives freedom of discretion in the matter of discriminatory actions and makes this definition superficial. As the Deputy Chairman of the Public Council in the Ministry of Labor of Russia, director of the Center for Social and Labor Rights E. Gerasimova draws attention, “the lack of a clear definition of discrimination in the field of labor relations makes it impossible to adequately protect an employee from this offense ... Judges do not understand what the composition of discrimination is, what signs can be detected when there is discrimination and when it is not” (as cited in Redkov, 2018, p. 334). The international organizations and the highest judicial body of the Russian Federation define discrimination as an independent offense – an encroachment on the principle of equality of human rights and freedoms, which is dominant in all areas of public relations, extremely important both for individuals and for state that applies the rules of true democracy.

Taking the foregoing into consideration, we can offer the following definition of the term “discrimination”, relevant to the introduction of Art. 3 of the Russian Federation Labor Code: this is the employer’s action in relation to an employee, expressed as distinction, exclusion or preference on the basis of race, color, sex, religion and other similar circumstances that are not related to the business and professional qualities of an employee, leading to the destruction or violation of equal opportunities in the field of labor and employment, with the exception of cases under the federal law.

We should also pay attention to the established by the law guideline for the behavior of the employer who may refuse the employee to satisfy their labor rights on the basis of business and professional qualities. This means that it is extremely important both for employer and employee to establish the content of these epithets. The Supreme Court gives an explanation in its decree, it connects these categories with the individual characteristics of a person – ability to work, professional qualifications and personal qualities.

Interpretation of the terminology “business and professional qualities of an employee” is not perfect. It is hardly worth correlating education level and one’s experience to their personal qualities, as it was done in a court decree. And not always employee’s education in this direction indicates that they will successfully carry out the labor function, taking into account its specificity by the given employer. The entire combination of these characteristics indicates their evaluative nature (Sapfirova, 2019). Some authors believe that, using this interpretation of an employee’s “business qualities”, the judge can interpret this concept very widely and protect the rights of the person who has been discriminated not adequately

(Suntsova & Yurchuk, 2016). To facilitate understanding whether an employee has the needed characteristics, it is proposed to use testing, a gamification system (Kalabina & Berestovoi, 2019), accounting systems for applicant's differentiated abilities (Makhmudova & Krivoruchko, 2019), etc., that should be also related to the considered concept. Today, this definition is a subject for further study and clarification.

It should be noted that gender-based discrimination is very poorly defined in the Labor Code of the Russian Federation; there are only references to the equal human rights irrespective of gender (Article 3 and 64 of the Labor Code of the Russian Federation, etc.). The term "gender" has long been used by legal theorists in scientific research, this concept means "social gender", or socially determined roles that society requires people to fulfil depending on their biological gender (Makhmudova & Krivoruchko, 2019), and it is mostly often mentioned in connection with the participation in legal women relations and their discrimination. Its use would be more preferable in the regulatory legal texts of the Russian Federation Labor Code, but there is no legal definition of "gender" in Russian legislation. The introduction of a clear definition in labor legislation would allow the courts to identify this phenomenon in Russian reality and would contribute to the proper protection of woman's right for free work and equal opportunities in the labor sphere (Vasileva & Shuraleva, 2018).

Uncertainty of the wording in labor law results in particularities of judicial practice in discriminatory cases. The majority of judgments in such claims are made in favor of the employer because the employee was unable to prove the discriminatory behavior of the latter. The Civil Procedural Code of the Russian Federation provides the obligation of each party to prove the circumstances to which it refers as the basis of the claims and objections (Art. 56), however, for the employee the option to prove this fact is practically impossible, primarily due to the indicated gaps in the concept of "business qualities of the employee", "discrimination", which are interpreted by the court and the employer in their sole discretion. We note that other states also have difficulties while proving discrimination and they are taking measures. To facilitate the employee's position in the procedural respect, the legislation of some countries (mainly common law countries) and international documents introduced a rule that the plaintiff in the discrimination case should not prove the employer's improper behavior, but only indicate their less favorable position than others in the same situation, and the defendant has the burden of proving the opposite. The same rules are contained in European Union directives (Council Directive 2000/43/EC). Representatives of domestic science support the necessity to make such changes to procedural law and either believe that changes in the principle "the one who argues" proves that discrimination is subject to diametrical processing, or indicate a partial distribution of the burden of proof between the plaintiff and the defendant, since a complete change in Russian rules "may lead to conflicting consequences and in certain situations may be fraught with law abuse by the plaintiffs" (Lyutov & Gerasimova, 2016, p. 102). It appears that the establishment of the employer's obligation to prove their complete innocence is preferable in this case, since they are the strength of employment relationship and have every opportunity to do so.

The women's rights violation by the employer is determined by various circumstances.

First, discrimination of the weaker sex is explained by their position in the family and prevailing behavior stereotypes (Kon, 2019). Traditionally, the Russian woman is the guardian of the family hearth, she worries about raising children, supporting life, as it was in pre-revolutionary Russia. In the days of the

USSR, the female population worked without exception, after “perestroika” time in Russia the number of working women slightly decreased. But the stereotype of a woman, a housewife has been preserved for the employer, who initially represents her as an unreliable worker, ready to take paid leave after childbirth or childcare sick leave. Strange to say, some women still share such views, considering it absolutely fair to receive a lower salary than a man or to be dismissed to reduce the staff number with equal opportunities with a worker of the opposite sex.

Second, stereotypes are formed in relation to “female” and “male” jobs. It is believed, for example, that a secretary or a stewardess must be female, and a driver or a pilot are men’s professions. It should be taken into account that in order to protect women’s health, as an exception to discrimination rules, the Government of the Russian Federation issued in February 25, 2000 the Decree No. 162 “On approval of the list of heavy work and work with harmful or dangerous working conditions, under which the use of women’s labor is prohibited”, that includes professions such as carpenter, plumber, electrician for repair and maintenance of electrical equipment, etc. In the legal environment, the authors have different opinions on such gender-based professional division. Some people believe that setting prohibitions is appropriate in women’s interest as well. And since there is an approved list of professions forbidden to women, employers refer to it as a refusal to accept employment on a legal basis. But increasingly in legal circles the existence of this list of professions prohibited to women is considered as a discrimination manifestation. The example of a resident of Samara, Svetlana Medvedeva, became widely known, having received her degree in Navigation on Inland Waterways and in Coastal Navigation she applied for the position of “engine mechanic-steering” in the above list. The woman considered the refusal to hire her with reference to this list discriminatory, she appealed it to the court, and having not received her claim in all Russian instances, she appealed to the United Nations Committee on the Elimination of Discrimination against Women. The international body declared the refusal to conclude an employment contract unlawful and made relevant recommendations. The case was reviewed in the court that ruled on the first instance, the result was unexpected. Claims for declaring the refusal to hire her as illegal and violating the discrimination prohibition in the world of work and for the obligation of the employer to conclude an employment contract with the woman were satisfied in the first part and denied in the second, that is, gender-based discrimination has not been overcome.

According to lawyers, the case of Svetlana Medvedeva is of great importance, as it set a precedent for Russia and other states to recognize the discriminatory nature of the list of prohibited professions at the international level. It should be noted that there are other prerequisites for discrimination against women in Russian legislation. It is forbidden for the employer to send pregnant women on business trips, to engage them in overtime work, in work at night, on weekends and public holidays (Art. 259 of the Labor Code of the Russian Federation), women who have children under age of one and a half years are given additional breaks for feeding the child (Art. 258 of the Labor Code of the Russian Federation), a woman with a child may ask the company’s administration to establish for her part-time work, and if the child is not yet 14 years old (and the disabled child – 18 years old), the administration must satisfy her request (Art. 93 of the Labor Code), etc. On the one hand, these provisions are achieving the rule of law, eliminate risks to women’s health, promote the strengthening of family ties. On the other hand, they significantly reduce the competitiveness of women in the employment market; employers, foreseeing the possible workplace

exposure and their own losses, enter labor contracts with women understandably reluctant. The state, fighting offenses, provokes them at the same time (Lipinskii & Musatkina, 2019). Thereby, statistics show that nowadays a large number of women work in jobs with difficult, harmful and dangerous working conditions and realize in such way their right for free work. It is time to review existing labor standards, overcome the established prohibitions, convert them into recommendations, and work out the benefits established for women without restricting the right and functions of the mother, and taking into account her family interests, she will be free to decide where, how and in what mode it is more comfortable to work (Prokopenko, 2016). The state should take necessary measures to develop social programs of antidiscrimination, that would include an extensive network of preschool institutions, decent childcare benefits, women's professional retraining, their flexible work schedule, and other similar events and rules.

Legal experts identify several forms of discrimination against women in labor relations.

"It is illegal to refuse an employment contract in case of direct or indirect rights restriction on the basis of sex ... for women on grounds of pregnancy or having children" – the provisions in the Art. 64 of the Labor Code of the Russian Federation. At the same time, the employer usually explains to the woman their decision with references to her insufficient qualifications or professionalism. Some countries have a rule for jobs quotas as a measure of antidiscrimination according to the directive of the European Parliament, where the councils of large firms are required to include at least 40% of women. However, the consequences of such quotas may be questionable. On the one hand, both women and men will be able to realize themselves in rather non-stereotypical jobs, on the other hand, this may lead to discrimination against men [8]. In addition, this measure may punish the employer with the loss of a competent and qualified male employee, since he will be forced to hire a woman with a lower qualification in order to fill the quota.

Contrary to the provisions in the Art. 135 of the Russian Federation Labor Code, which prohibits any kind of discrimination in establishing and changing the conditions of labor remuneration, according to experts, female worker is estimated lower than male. For dealing with this phenomenon in Sweden, for example, there is a rule for an employer with more than ten employees – the necessity of submitting to a government agency annually compiled table with wages difference of men and women. Such a measure would be effective for the private labor sector in Russia, but today, at a time when entrepreneurs are hiding their workers' wages, it is unlikely to be successful. And there is no wage discrimination in the public sector of labor.

One of the forms of gender inequality in labor relations is obstructing women to move up the career ladder and ultimately achieve leading positions. A notable example is the State Duma of the Russian Federation, that contains 70 female deputies out of 450 people, that is about 15 percent of all representatives of the state legislative body (data from the official website of the State Duma). The heads of the Russian Federation executive bodies are mostly male. Issues of gender-based discrimination in this area are also solved in Sweden very successfully by quotas – in the late 1960s the rule on using quotas in the state bodies formation was introduced in Sweden, today women make up slightly less than 50% of the total number of deputies, in addition, 12 out of 24 ministerial posts in the current government are also occupied by women. It makes sense for Russian legislator to implement the rules for quoting women's places in state and municipal bodies in labor law.

To address gender-based issues in 2003 they prepared a draft law “On State Guarantees of Equal Rights and Freedoms of Men and Women, and Equal Opportunities for their implementation” but it was rejected by the State Duma due to insufficient elaboration. Its authors propose adopting rules that are designed to equalize gender imbalance in the most problematic areas of society. The draft defines the concepts of “discrimination”, “equal opportunities”, “gender”, “gender equality”. It is proposed to establish women’s quotas for positions in state bodies and bodies of local government, on executive boards in state corporations, to introduce provisions on the period of parental leave for men in the Labor Code of the Russian Federation, to prohibit attachment of photographs to the employment applications, and to remove the gender question from them, the law proposes to replace the words “protection of the function of motherhood” with “protection of the function of parenthood” and similar measures. Despite the timeliness of such law adopting, it is still under consideration. It seems necessary to continue discussion of this document in the very near future, the systematization of legal antidiscrimination rules would help to solve problems of legal regulation in this area.

The United Nations Resolution “Sustainable Development Goals” supposes target achievement for the period 2015 – 2030, each state-party of the international treaty must submit a voluntary report on these goals’ achievement and certain tasks in accordance with their programs, appealing by numbers and using indicators and statistics reports. The President of the Russian Federation formulated the tasks set for Russia in accordance with the United Nations document in his address to the Federal Assembly 2018 and the May Decree 2018. The head of the country touched on the subject of SDG 5, having included provisions relating to maternal health and creating working conditions for women with children in the development priorities for 2024. It is very sad that in the above national documents gender-based discrimination in the world of work is covered in such a limited and non-systematic way. This topic was hardly touched upon in the discussion “Russian Voluntary National Review – 2020: Challenges for Sustainable Development – 2030” at the XI Gaidar Forum on 01/15/2020 during the discussion on “Voluntary National Review of Achieving Sustainable Development Goals (SDGs) in Russia.

7. Conclusion

To eradicate gender inequality – a negative phenomenon of Russian reality – it is necessary to specify the concept of “discrimination” in the rules of labor law. It is proposed to introduce a definition of discrimination in the provisions of the Article 3 in the Russian Federation Labor Code – this is the employer’s action in relation to an employee, expressed as distinction, exclusion or preference on the basis of race, color, sex, religion and other similar circumstances that are not related to the business and professional qualities of an employee, leading to the destruction or violation of equal opportunities in the field of labor and employment, with the exception of cases under the federal law. It is necessary to continue the study of “business and professional qualities of an employee” in order to specify them in the aspect of antidiscrimination.

In order to make it easier for the employee to prove the discrimination fact, it is needed to include in Chapter 60 of the Labor Code of the Russian Federation the provisions on the burden of evidence of discriminatory behavior absence on the respondent employer, relieving the claimant employee of this obligation.

It is necessary to continue working with the prerequisites of gender inequality existing in the rules of labor law in order to achieve a balance between creating the possibility for women to determine their professional affiliation and working mode taking into account their family interests and state of health. It is also possible to introduce quota rules for women in the state bodies and local government formation to ensure women's participation in public administration. In general, it is necessary to codify the existing state guarantees of equal rights and freedoms of men and women and finally establish an organized statutory instrument.

Ensuring gender equality and empowering all women and girls is not accidentally reproduced as one of the United Nations SDGs. The creation of equal social opportunities for a person in the world of work irrespective of gender is the goal of any democratic rule of law, their implementation guarantees personal growth and free development of women, choice of work according to their preferences and opportunities, growth of their well-being and worthy place in the hierarchical structure of society.

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