



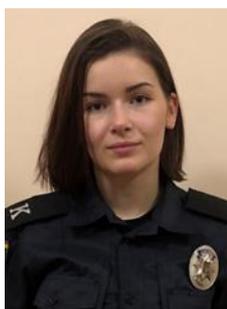
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### **GENDER EQUALITY AS A VALUE OF LAW**

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**ГЕНДЕРНА РІВНІСТЬ ЯК ЦІННІСТЬ ПРАВА.** З'ясовано суть антропологічного підходу до розуміння гендерної рівності; проаналізовано право на різницю в дискурсі гендерного підходу в правовій сфері; описано структурні компоненти гендерної рівності; досліджено гендерну рівність як цінність права.

Надано характеристику гендерної рівності як цінності права в дискурсі антропологічних тенденцій. Охарактеризовано основні компоненти гендерної рівності. Розглянуто право на відмінності в аспекті гендерної підходу в праві. Розглядається нормативно-правова база впровадження та забезпечення гендерної рівності в Україні. На основі аналізу відповідних нормативно-правових актів визначено ефективність правових механізмів, спрямованостей на її врегулювання. На основі порівняння відповідних державних програм виявлено недоліки і прорахунки у цій сфері, окреслено напрями подальшого вдосконалення правового регулювання забезпечення гендерної рівності в Україні. Усвідомлення логічного ланцюжка «людський капітал – права людини – гендерна рівність – сталий розвиток – прогрес – якість життя» диктує важливість недопущення прояву гендерної нерівності в процесі розвитку. Гендерна рівність – це і мета розвитку, і розумний підхід до економічної політики, оскільки розвиток розглядається як процес розширення свобод у рівній мірі для кожної людини – жінок і чоловіків.

Автори вважають, що актуальність постановки питання обумовлена насамперед тим, що гендерна рівність важлива саме по собі, а також розумінням того, що розкриття жіночого людського потенціалу здійснює значний вплив на продуктивність праці. Продуктивність веде до підвищення економічної ефективності, що є умовою досягнення й інших провідних цілей в галузі розвитку.

**Ключові слова:** *стать, гендер, гендерна рівність, право на різницю, гендерний паритет, гендерна інтеграція, гендерна симетрія.*

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**Relevance of the study.** A new paradigm of development of anthropological approach to man and his subjective rights is introduced in modern philosophical and legal thought, as human life, dignity, freedom, justice, equality are widely discussed values in modern scientific philosophical and legal literature. The man of the future is a man of modern education, with high psychophysical, moral and intellectual qualities, has developed needs and interests, who recognizes universal values, including gender equality. The trends of the time show that the quality use of human potential, regardless of gender, leads the country to progress, because both women and men are comparable members of building a developed society in which everyone can be realized.

Therefore, in modern conditions of anthropological tendencies, the introduction of the priority of the individual requires a systematic analysis of such a value as gender equality.

**The article's objective** is to find out the anthropological approach to understanding gender equality; to analyze the right to differences in the discourse of the gender approach in the legal sphere; describe the structural components of gender equality; explore gender equality as a value of law.

Gender parities of the current stage of legal development in Ukraine as a legal concept, as an integral element of the legal system «There are also many other publications that address various aspects of gender equality, but none of them addresses the legal mechanisms for gender equality provided by current legislation of Ukraine.

**Discussion.** Law (both natural and positive) in its content and ideas is directed to the highest value – the man. The discussion of the nature of law is related to human nature. Along with the concept «man» there are such concepts as «personality» and «individuality», which primarily characterize something special that distinguishes a particular person as an individual and as a person in the whole, including natural, physical and mental, and social properties, as inherited, acquired and produced in the process of human development.

Gender is an integral fundamental characteristic of man, inextricably linked to his nature. Gender is a characteristic of a person that cannot be ignored. It is in sexuality that a person first feels his biological nature, its immutability. But not only biological. Gender governs and determines, emphasizes and persuades. It preserves, protects, becomes a source of energy, inspiration.

To determine the socio-gender characteristics of sex, in contrast to the actual biological (genetic-morphological, anatomical, physiological), characterizing the way of life, behavior, intentions and aspirations, etc., use the concept of «gender». Gender refers not only to men and women as individuals, but also characterizes the relationship between them as socio-demographic groups and gender relations in general – how gender socialization and identification of individuals, taking into account gender roles and stereotypes [1].

Every time we talk about the concept of gender in modern conditions, we have to constantly overcome the existing stereotype of the «women's issue», thus emphasizing that gender issues are primarily social problems, problems not only women but also men, the problems of all societies that are not limited to physiological relationships and the distribution of roles in population reproduction.

Today, anthropological value orientations require the filling of public consciousness with new content, in particular the gender-minded mentality of society, i.e. conscious recognition, respect and promotion of the principle of equality of people regardless of gender. It is clear that the issue of gender equality has acquired special relevance today and is of great value to the law.

The relationship between the concepts of legal and de facto equality, equality of starting opportunities and equality of results plays an essential role in determining gender equality. Legal equality presupposes equality of subjects of law before the law, enshrines equal legal means of realization of their subjective rights, equal protection and equal legal responsibility for their violation. It is formal in nature, because it does not create de facto equality between the subjects of law, which differ significantly in their abilities, natural, physical and social capabilities, marital status, intellectual development. Under such conditions, an equal right for unequal people becomes de facto unequal, and to overcome this shortcoming, the right «should be unequal instead of being equal». The term «gender equality» in the context of social and economic transformations is interpreted as a condition of equality before the law, equal opportunities (including equality in receiving remuneration for equivalent work, as well as access to human resources) in terms of their interests regardless of gender. That is, in this context, equality implies that men and women have the freedom to choose different (or similar) roles

and different (or similar) end results – according to their intentions, goals, desires and preferences. Gender equality is a component of the general principle of equality as a principle of democratic society. Law is understood today as an equal measure of freedom for everyone – women and men. The construction of gender equality is revealed through the category of human rights as a universal standard that is the same for both sexes.

According to feminists, it is appropriate to include the principle of bodily differences in legal theory. Only in the perception and representation of people by physically personified beings can we understand how the processes of their thinking and decision-making and, accordingly, the motives of a particular behavior. Theorists of feminist jurisprudence emphasize the relationship between corporeality and related differences, and therefore, try to include in law the specifics of differences in bodily experience of people of different genders, races and ages. Thus, gender equality implies differences, because the equality of the sexes in the philosophical and legal plane does not mean their biological identification.

Gender equality implies the right to distinction between women and men. Differences should not negatively affect the living conditions of a person, both male and female, should not be a cause of discrimination, lead to inequality. Differences in the reproductive sphere of women and men do not lead to inequality, which may arise under the influence of certain social factors, situations, actions (legal guarantees to protect the health of pregnant women). Physiological differences cannot be accepted or abolished by law, so a woman's ability to have a child is a difference that does not change over time, and the fact of protection does not lead to inequality [2].

However, the law should not be the basis for abuse and discrimination, because, as noted by N. Isayev, «stereotypical thinking about women's rights as a set of benefits due to physiological characteristics of sex and reproductive function, ignoring the principle of gender equality leads to equal opportunities for men, who found themselves in the same conditions in labor, family and other relations». Thus, in contrast to discrimination, there is a fine line between the right that a gender approach allows. The gender approach in the legal sphere is impossible without reflecting the right to differences between men and women at the legislative level.

Gender equality is linked to the current order of things, but it is also about human behavior and relationships. In the axiological dimension, gender equality has both individual and social components, encompassing many implications, namely:

- equality of rights – the legislative endowment of equal rights for men and women in all spheres of life;
- equality of opportunity – providing (guarantees) in practice equal conditions for equal distribution, use of political, economic, social and cultural values that exclude discrimination and restrictions of any sex, which negatively affect life and self-expression;
- ensuring equal conditions for the realization of rights and opportunities;
- gender symmetry – a state in which the principle of equal rights and opportunities for women and men is implemented in practice [3].

The category of «gender symmetry» is inextricably linked with «gender parity», which is to ensure gender-balanced relations between the sexes, taking into account gender differences, promotes the development of partnerships between men and women, their joint responsibility to eliminate imbalances in private and public areas, the assertion of parity principles leading to convergence rather than gender segregation.

The two most important circumstances determine the urgency of the question of why it is important to prevent the manifestation of gender inequality in the development process. First, gender equality is important in itself. Second, a high degree of gender equality means the emancipation of women's human potential, which has a strong impact on productivity, which in turn helps to increase economic efficiency and achieve other key development goals. Gender inequality also affects men's human potential, which results in gender stereotypes and prejudices. Gender equality inevitably has a civilized positive effect on men. The link between development and gender equality is becoming clear. Gender equality is a goal of development aimed at improving the quality of people's lives and a tool of the development process, as it provides a sensible approach to economic policy. A. Einstein noted: «All the value of human society is determined by what opportunities it provides for the development of personality».

There is a chain: productivity – increasing economic efficiency – achieving other key development goals. This is nothing but a logical circle of civilizational existence: human capital – human rights – gender equality – sustainable development – progress – quality of life –

human capital. This construction deserves to be marked as a humanitarian formula of civilizational development. It is necessary to realize that the manifestation of gender inequality in the development process is unacceptable. That is why a sensible gender policy is needed.

Of course, the position of women in the world over the past quarter of a century has undergone significant changes for the better in areas such as education, health care, employment in the labor market, sources of income. Today, 136 countries directly guarantee in their constitutions the equality of all citizens and the prevention of discrimination against men and women. One hundred years ago (1911), only two countries allowed women to vote, and today, in 2020, the right to vote has become universal. There are gender equality committees in 60 parliaments around the world.

It is important to note that the Political Declaration contains a commitment to take further steps to ensure the full, effective and accelerated implementation of the Beijing Platform for Action. These measures are planned for implementation in the following areas:

- improving the application of laws, policies, strategies;
- strengthening and expanding support for institutional mechanisms to ensure gender equality;
- transformation of discriminatory norms and gender stereotypes;
- a significant increase in investment to ensure gender equality;
- strengthening accountability to meet existing obligations;
- capacity building, data collection, monitoring and evaluation.

The head of the UN-Women says that women want their leaders to renew their promises, for leaders to reaffirm their commitment to the Beijing Declaration, the Beijing Platform for Action, and to speed up and boldly implement them. They want to see more women among the leaders. And they want these women, along with men, to dare to change economic and political paradigms. Gender equality must be achieved by 2030 so that we can intensify the sluggish progress [4].

If we start from the premise that politics is a relationship about power, and power is access to control and disposal of resources, it is quite obvious that without access to power half of humanity is deprived of a fair share of its influence. Women's power is not an end in itself. It is an objectively necessary tool for achieving gender equality and justice, key prerequisites for the progress and sustainable development of humankind. «When we unleash the potential of women, we will be able to secure a future for all,» said UN Secretary-General Ban Ki-moon on the occasion of International Women's Day 2015. It is difficult to doubt the validity of these words. It remains a matter of practice.

World experience shows that in the absence of equal opportunities for women and men to take an active part in public and political life and to influence laws, policies and their development, institutions and policies risk becoming socially inadequate and systematically focused on the interests of narrow more influential forces. The fact is that policies and decisions developed and made only by men reflect only part of human experience and potential, they are in a sense ineffective. In practice, such policies and decisions do not tend to take into account gender and economic and social factors that affect women's lives. As a result, politics is socially insufficient.

At the same time, partnership in politics is a source of full and representative democracy, which creates real opportunities to take into account multipolar interests in society. Women make a special contribution to public life. Not only do they represent and can better represent their interests than men, but they will also be able to influence the political system by holding leadership positions. From the point of view of a healthy society, the equal representation of women in elected and appointed positions of power is a matter of justice and equality. Gender and geographically balanced institutions, government (community) is a source of efficiency, comprehensive and sustainable results.

The question was: «Do you approve women's participation in politics?» The result may have been surprising for some: 60% of respondents said yes; 40% – a relative majority of students – answered in the affirmative to the question of the desirability of seeing a woman as President of Ukraine in the next 5 years. Of course, we can cite the results of other polls, which will sound less optimistic. However, one way or another, there is a tendency to increase attention to the position of the female population of Ukraine and to strengthen the role of women and their voices in making vital decisions for the whole country.

Gender blindness – the refusal to recognize the importance of the gender factor – is a dead end for the evolution of human civilization. According to the classical theory of minority behav-

ior, women who are successful in the world of men absorb the dominant culture to such an extent that they tend to distance themselves from other women, underestimate their own success (or, conversely, overestimate it) and accept any discrimination they face as a result of their own shortcomings. Often such women say: «There is no discrimination on the basis of sex, I could!» At the same time, they do not want to analyze honestly their own path into politics.

Women's political participation, including in decision-making, has always been the focus of the world community, the United Nations and, in particular, the concerns of the Council of Europe. Equal participation of women and men in all aspects of political and public life is a principle supported by all OSCE participating States. The OSCE Office for Democratic Institutions and Human Rights works to increase women's participation in political and public life, identifying discriminatory laws and regulations, and supporting the dissemination of examples of good practice in ensuring women's participation in democratic processes.

Thus, if we assume that the developed countries include mainly the countries of the European region, it turns out that the representation of women in parliaments in this region is almost the same as in the countries of the African continent. Meanwhile, the latter usually belong to the group of developing countries. If we add to them the countries of Central and South America, which will be almost 60%, it is clear that the factor of industrialized countries in the trend of increasing representation of women in parliament does not play a single and predominant role. The conclusion seems paradoxical, because it has been historically proven that the coming to power of women in a modern political way (through the electoral process) is associated with the degree of development of countries (economic and political) [5].

It is clear that the quantitative indicator requires a very careful and sensitive attitude and the above characteristics of women's representation in countries of different levels of development suggest the need for careful study of other factors (complex culturological characteristics of gender political culture) affecting gender, including women's representation in parliaments.

Women ministers, mayors, women in local government, over the past two decades, women have been heads of governments and states in a number of OSCE participating States. Yes, they have been prime ministers in Canada, Croatia, Denmark, Finland, Germany, Iceland, Poland, Slovakia, Ukraine and the United Kingdom, and have acted or continue to act as speakers of parliaments in a number of other countries.

It is obvious that the representation of women in elected positions is slowly advancing in the OSCE region, although the figures are quite high.

As for the spheres of activity and jurisdiction of the ministries headed by women, there is a former trend: in their hands, as a rule, social issues, education, family and women's issues. Number of women in ministerial positions in departments such as defense, finance, budget, and foreign affairs that are considered more prestigious and therefore more influential (access to, control, and disposition of resources by a particular agency)

Thus, over the past two decades, the following trends have been identified:

– the improvement of women's representation in national parliaments around the world has been steady but slow;

– all regions have shown progress in improving the gender balance in national parliaments since 1995;

– Western Europe had the highest rate of female representation;

– gender and geographically balanced institutions, government (community)

– a source of efficiency, comprehensive and sustainable results.

Factors for increasing women's representation at the decision-making level:

– the presence in the country of a national mechanism for gender equality;

– women'-friendly electoral system (election laws, party laws, campaign finance law);

– gender quotas;

– gender-sensitive procedures and rules in parties, in elected bodies;

– political will, focus on «breeders» (party machines, gray cardinals for the selection of political personnel);

– pressure from below and inside, an active independent women's movement, without which it is difficult to hope for political will to pursue a sensible gender policy.

In many countries, electoral gender quotas are considered an effective measure to improve the gender balance in parliament, although controversy over them has not abated. Currently, quota systems aim to ensure that women make up at least 30, 40 or even 50%. Many countries around the world use gender quotas to compensate for the obstacles that women face.

Gender quotas – compensation for obstacles and accumulated historical injustice in

government. The electoral quota for women may be prescribed in the constitution provided for in the national legislation of the country or formulated in the statute of a political party. One country can have several types of quotas.

Governments can support good practice by demonstrating a commitment to sound policy, as it is in line with their commitment to the Beijing Declaration, which states: decision-making and access to power are fundamental to achieving equality, development and peace».

*Sweden.* Combating male dominance in politics. The aim of the project is to stimulate public debate on power. The project was implemented by the National Federation of Women – Social Democrats (S-WOMEN). Among other, the project means conducting research in the field of theory of male power, training, preparation of publications, including «Power Handbook». The guide provides tips for women on how to gain access to power. The publication has been translated into many languages and distributed across countries. The positive is that it has been adapted for certain groups and the media, which has been of great importance in spreading across the country and holding discussions, including schools.

*Portugal.* Project «From woman to woman». The target group is young women. The Portuguese Youth Network for Gender Equality (supported by the European Social Fund), using the Swedish experience, has implemented a project targeting ethnic minority groups (girls and boys). Manuals and publications were prepared, and good media coverage was provided under the slogan «Women can do it!».

*Croatia.* CESI is a feminist organization that fights for gender equality. Street performances «pillar of shame» were used; political parties were identified that did not comply with 40% of the gender quota for the electoral list, violators were posted on the web portal; sexist statements by politicians were tracked and made public. It is difficult to assess the exact effect of this campaign, but women's political representation has increased in local and national elections.

*Ireland.* Campaigns to increase the number of women in grassroots politics. The initiator is the National Women's Council of Ireland, the national umbrella organization of the country's network of women's local groups. Six ways to build a women-friendly parliament have been worked out, and the campaign has supported a gender quota that currently requires at least 30% of candidates.

*Germany.* Women's power policy. The initiative aims to support women's political representation at the local level. It makes up for the lack of attention of political parties on this issue. The project includes: development of joint activities horizontally, implementation of visibility strategy, development and support of local initiatives and exchange of international experience, creation of information websites. The project is supported by the federal government [6].

The world community, represented by the United Nations, is deeply concerned about the condition of half of humanity, women. The report proposes six mandatory elements of success in achieving sustainable development goals. Among them are:

- the dignity needed to eradicate poverty and combat inequality;
- people who need to ensure a healthy lifestyle, education and involvement in the active social life of women and children;
- prosperity, which means creating a strong, comprehensive, transformation-oriented economy;
- a planet that provides for the protection of ecosystems in the interests of all societies;
- justice, which is necessary to ensure a secure and peaceful society and the creation of strong state institutions;
- a partnership that strengthens global solidarity for sustainable development.

There is no doubt that one should not hope for a single panacea. Any successful strategy must be implemented taking into account the country's democratic experience, its current political problems, international obligations, socio-cultural and historical heritage. It is also true that progress in achieving gender equality is tidal, but the changes that have taken place tend to be a progressive historical movement in which the energy of progressive democratic forces, including the world women's movement, accumulates.

**Conclusions.** Today, one of the basic values of law is equality between men and women. The introduction of gender equality is not only a requirement of basic social justice and a necessary component of democracy, but also the realization of the possibility of approaching the goal of sustainable human development, organization of public relations on the principles of justice, integrity and tolerance. Gender equality requires a radically new way of thinking, in which development is seen as a process of expanding freedom of choice for members of both

sexes. Gender equality as a value of law is a decisive step forward in building a democratic, gender-oriented society. The analysis of the above-mentioned government programs gives grounds to assert that the current legislation of Ukraine not only does not have a clearly developed mechanism for ensuring gender equality, but also lacks a holistic understanding of the essence of gender equality, its legal content.

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*Submitted 08.12.2020*

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#### Abstract

The description of gender equality as the value of law in discourse of anthropological tendency is given in the article. The right to differences in the aspect of gender mainstreaming in law has been considered. The main components of gender equality are characterized. The article studies the regulatory foundation of the implementation and promotion of gender equality in Ukraine. Determination of the effectiveness of legal mechanisms aimed at its regulation is based on the analysis of relevant legal acts. Based on the comparison of state programs, deficiencies and failures in this area, the direction of further improvement of legal regulation of gender equality in Ukraine, is determined. Awareness of the logical chain «human capital – human rights – gender equality – sustainable development – the progress and quality of life» dictates the importance of avoiding gender inequalities in the process of development. Gender equality is both the development objective and reasonable approach to economic politics, because development is seen as a process of expanding freedoms equally for every individual – for all women and men. The topicality of the question is primarily due to the fact that gender equality is important in itself, and also due to understanding that the emancipation of womens human development has a strong impact on work performance. That in its turn leads to increased economic efficiency, which is a condition for achieving other key development goals.

**Keywords:** *sex, gender, gender equality, right to differences, genders parity, gender mainstreaming, gender's symmetry.*