

GENDER INEQUALITY AMONG EMPLOYEES IN KAZAKHSTAN

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Abstract: Gender discrimination remains an objective fact that accompanies the labor market in Kazakhstan. Employment, distribution of labor duties within the employees and imposition of new duties on the employee, above and beyond the stipulated labor contract, are accompanied by gender discrimination. Job advertisements include requirements for applicants' gender; at interviews, female applicants are directly asked discriminatory questions about fulfillment of family duties, plans to create a family or have children. At the same time, there are no questions about the possibilities of combining work and family duties when hiring a man with family responsibilities. There are no female representatives in senior positions of top state institutions, as well as among top managers of enterprises in quasi-public and private sectors, with some rare exceptions, and among the leaders of the regions, the capital, the cities of republican significance there has never been a woman. However, from the point of view of legislation, in Kazakhstan there are no problems with gender inequality in general and there is no discrimination in labor relations. The article argues for the need to take measures in Kazakhstan's society and the labor market towards achieving actual gender equality. Arguments in favor of enacting comprehensive anti-discrimination legislation aimed at combating direct and indirect discrimination, covering all prohibited grounds for discrimination, including gender identity, are presented. Recommendations have been developed to ensure full access of women to economic, social and cultural rights and their implementation in Kazakhstan.

Keywords: Kazakhstan, gender discrimination, labor relations, employment market, family responsibilities

INTRODUCTION

How can one explain the gap in the real state of affairs in labor relations and the “ideal” verified model of labor legislation formed in Kazakhstan? Why, despite the daily manifestations of both latent and open discrimination against women, has Article 90 of the Administrative Code of Kazakhstan, which provides for liability for discriminating at the workplace, have never been applied?¹ Why is there no relevant judicial practice that would allow studying the mechanism of bringing to legal responsibility?

In Kazakhstan society, it is a generally recognized fact that the division of professions into “male” and “female”. Such segregation starts in childhood. Parents predominantly

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¹ CODE OF THE REPUBLIC OF KAZAKHSTAN dated July 5, 2014 No. 235-V ZRK. On administrative offenses. Article 90. Employment Discrimination. In: *uchet.kz* [online]. 1. 8. 2019 [2019-11-25]. Available at: <<https://zakon.uchet.kz/rus/docs/K1400000235>>.

choose physical, mathematical and technical schools for boys, and humanitarian schools are considered more suitable for girls. This problem is inherent not only in Kazakhstan, but also in many countries, which ensured the emergence of a number of initiatives, supported by international companies, to involve girls in the technical sciences.²

The choice of vocational training at universities is determined by the attitudes of the family, society, and school teachers, and, as a result, girls choose mainly social and humanitarian education programs. As a consequence, Kazakhstan has a persistent gender division in the labor market, when in some occupations men predominate, in others women predominate. Within the framework of one enterprise, institution, company, discrimination of women in the performance of their job duties is expressed in their endowment with more job duties than men holding similar positions in the hierarchy of employees.³ With a great deal of confidence, we can say that a man and a woman working at the same department and at the similar positions will have different duties, while women will have a higher workload rate.

Active involvement of women in economic and public life can be defined in terms of factors influencing the dynamics of social policy. The Labor Code of the Republic of Kazakhstan defines people with family responsibilities (women) as subjects, provided with social and labor guarantees, compensations and allowances, whose legal status bears a differentiation of labor laws. Modern law contains rules that enable women to keep their employment during gestation, and to maintain their employment without consequence for a child and their upbringing during puerperium.

Alongside this, the issue of discrimination at the workplace is relevant to the reality of economic relations in Kazakhstan. The most widespread form of discrimination is gender discrimination, as women of any age, with and without children, have far less chances to receive a job offer if their competitor is a man, even if the latter is less qualified or has less experience. Employers tend to downsize their workforce or the number of employees by solely making women redundant.⁴ Further discriminatory prejudices are suffered by workers of pre-retirement and retirement age. In the first case, workers experience difficulties with career development, and in the second case, they experience pressure from the employers intending to terminate their employment.⁵ It should be noted that applying for pension, as well as termination of employment agreement upon reaching the retirement age, is a right, not an obligation of either an employee or an employer.

² KOLESNIK, E., PAVLOVA, L., RYBALOVA, T. Effectiveness evaluation of implementation of target programs for municipal education: Improvement of approaches. *Public Policy and Administration*. 2018, Vol. 17, No. 4, pp. 568–585.

³ AKHMETSHIN, E. M., BRAGER, D. K., POKRAMOVICH, O. V., ANDREYKO, M. N., ALEYNIKOVA, M. Y. Modern theoretical and methodological approaches to personnel management in manufacturing enterprises. *Espacios*. 2018, Vol. 39, No. 31, p. 11.

⁴ PUNTUS, D. To the Questionnaire of Legal Guarantees for Employees at Massive Development. *Journal of the National Academy of Legal Sciences of Ukraine*. 2017, Vol. 3, No. 90, pp. 203–210.

⁵ AKHMETSHIN, E., MOROZOV, I., PAVLYUK, A., YUMASHEV, A., YUMASHEVA, N., GUBARKOV, S. Motivation of personnel in an innovative business climate. *European Research Studies Journal*. 2018, Vol. 21, No. 1, pp. 352–361.

There exists pay discrimination for labor of equal qualification regarding women, minorities, local population and migrant workers, while the latter are not always discriminated against. A so-called “professional segregation” has emerged in society, and it manifests in a strong division of industries on “male” and “female”, “traditional labor of local population” and “migrant labor”. According to Blackburn et al., occupational gender segregation has generally been assumed to be a structure of gender inequality in the labor market; high levels of segregation are equated with high levels of gender inequality in a society.⁶

As a major step towards eradication of inequality between men and women at the workplace, “The concept of family and gender policies in the Republic of Kazakhstan by 2030” was enacted by the presidential decree of 6 December 2016 No. 384, where the following relevant issues are listed.⁷ Currently, among 411 active political government personnel, only 40 are women, which is just 9,7 % (11 % in 2005). In OECD countries in 2015 women, on average, held 29,3 % of ministerial positions. No further changes in the representation of women in senior positions of local (territorial) administrations were observed. Alongside this, an insufficient representation of women in senior positions of the corporate sector in Kazakhstan is still evident. According to the World Bank, women hold top leadership posts only in 9,8 % of big corporations.⁸ In major global companies, women comprise approximately 41 % of the total amount of employees, but only 19 % hold senior leadership positions and 12 % hold management positions.⁹

There has been virtually no shift in industrial gender segregation. Women still compose more than 70 % of wage workers in healthcare, education and social services, while the representation of women in financial and governmental sectors composes little more than a half. Historically, these sectors are less profitable in comparison to “male sectors”, such as construction, the oil and gas sector, extractive industries, transportation.

LITERATURE REVIEW

Issues of discrimination towards women, people with family responsibilities are relevant today, despite a huge progress in this sphere, positive development of national law systems and universal international standards. Conclusion, expressed in the work of E. Johnstone half a century ago and observed as valid for current times, asserts that while discrimination and built-in prejudice against women in employment have been lessening in most parts of the world, in law and in practice, many economic, social, and cultural factors and attitudes still place women at a disadvantage in the world of work and restrict

⁶ BLACKBURN, R. M., BROWNE, J., BROOKS, B., JARMAN, J. Explaining gender segregation. *The British Journal of Sociology*. 2002, Vol. 53, No. 4, pp. 513–536.

⁷ THE CONCEPT OF FAMILY AND GENDER POLICY OF THE REPUBLIC OF KAZAKHSTAN UNTIL 2030, approved by Decree of the President of the Republic of Kazakhstan dated December 6, 2016 No. 384. In: *egov.kz* [online]. 6. 12. 2016 [2019-11-25]. Available at: <<https://egov.kz/cms/ru/law/list/U1600000384>>.

⁸ MAKAN-LAKHA, P., CHENGADU, S. Macro-level perspective on women's leadership. In: *Women Leadership in Emerging Markets*. New York: Routledge, 2017, pp. 1–31.

⁹ AKHMETSHIN, E. M., VASILEV, V. L., MIRONOV, D. S., ZATSARINNAYA, I., ROMANOVA, M. V., YUMASHEV, A. V. Internal Control System in Enterprise Management: Analysis and Interaction Matrices. *European Research Studies Journal*. 2018, Vol. 21, No. 2, pp. 728–740.

their contribution unnecessarily and, in many cases, unfairly.¹⁰ The International Labor Organization (ILO) can help to promote equal rights and opportunities for women and to ensure them the social protection they need in relation to their special role of maternity and motherhood.

Analysis of separate issues of regulatory support of gender equality at workplace is reflected in special scientific studies that focus on employment of migrants,¹¹ balancing work and family responsibilities,¹² comparative research into ensuring social and labor rights of women, people with family responsibilities,¹³ application of atypical work.¹⁴

This article is based on the scientific studies dedicated to gender inequality in the workplace in European countries¹⁵ and OECD countries.¹⁶ A centralized system of production relations, high levels of employment in the public sector compared to the general level of employment and sustained expenditure on active programs in the labor market, are likely to generate relatively high incomes for women, although not all of these factors contribute to a high level of participation of women in labor markets. No clear evidence was found to support the efficacy of legislative measures in the pursuit of gender equality.¹⁷

¹⁰ JOHNSTONE, E. Women in economic life: Rights and opportunities. *The Annals of the American Academy of Political and Social Science*. 1968, Vol. 375, No. 1, pp. 102–114.

¹¹ PESSAR, P. *Women, gender, and international migration across and beyond the Americas: inequalities and limited empowerment*. Mexico City: UN Population Division, 2005; FARRIS, S. R. Femonationalism and the “Regular” Army of Labor Called Migrant Women. *History of the Present*. 2012, Vol. 2, No. 2, pp. 184–199; HONDAG-NEU-SOTELO, P. Introduction: Gender and contemporary US immigration. *American Behavioral Scientist*. 1999, Vol. 42, No. 4, pp. 565–576.

¹² BERG, P., KALLEBERG, A. L., APPELBAUM, E. Balancing work and family: The role of high commitment environments. *Industrial Relations: A Journal of Economy and Society*. 2003, Vol. 42, No. 2, pp. 168–188; GRZYWACZ, J. G., CARLSON, D. S. Conceptualizing work – family balance: Implications for practice and research. *Advances in developing human resources*. 2007, Vol. 9, No. 4, pp. 455–471.

¹³ NEYSMITH, S. M., REITSMA-STREET, M. “Provisioning”: Conceptualizing the work of women for 21st century social policy. *Women’s Studies International Forum*. 2005, Vol. 28, No. 5, pp. 381–391; HAKIM, C. *Key issues in women’s work: Female diversity and the polarisation of women’s employment*. London: Routledge-Cavendish, 2016.

¹⁴ PEERS, S. Equal treatment of atypical workers: a new frontier for EU Law? *Yearbook of European Law*. 2013, Vol. 32, No. 1, pp. 30–56; STONE, K. V. W. Legal protections for atypical employees: Employment law for workers without workplaces and employees without employers. *Berkeley Journal of Employment & Labor Law*. 2006, Vol. 27, No. 2, pp. 251–286.

¹⁵ RAY, R., GORNICK, J. C., SCHMITT, J. *Parental Leave Policies in 21 Countries: Assessing Generosity and Gender Equality*. Washington: Center for Economic and Policy Research, 2008; RUBERY, J., GRIMSHAW, D., FIGUEREDEDO, H. How to close the gender pay gap in Europe: towards the gender mainstreaming of pay policy. *Industrial Relations Journal*. 2005, Vol. 36, No. 3, pp. 184–213; HOBSON, B. The agency gap in work–life balance: Applying Sen’s capabilities framework within European contexts. *Social Politics*. 2011, Vol. 18, No. 2, pp. 147–167; HUNTER, L. Research developments in employment relations and diversity: A British perspective. *Asia Pacific Journal of Human Resources*. 2003, Vol. 41, No. 1, pp. 88–100; TANDZEGOLSKIENÉ, I., JURGILÉ, V. Work and family reconciliation: issues and policy. *Journal of International Scientific Publications: Educational Alternatives*. 2015, Vol. 13, pp. 240–252; SQUIRES, J., WICKHAM JONES, M. New Labor, gender mainstreaming and the Women and Equality Unit. *The British Journal of Politics & International Relations*. 2004, Vol. 6, No. 1, pp. 81–98; LUNDQVIST, A. *Family policy paradoxes: gender equality and labor market regulation in Sweden, 1930–2010*. Bristol: Policy Press at the University of Bristol, 2011.

¹⁶ WHITEHOUSE, G. Legislation and labor market gender inequality: an analysis of OECD countries. *Work, Employment and Society*. 1992, Vol. 6, No. 1, pp. 65–86; HEGEWISCH, A., GORNICK, J. C. The impact of work-family policies on women’s employment: a review of research from OECD countries. *Community, Work & Family*. 2011, Vol. 14, No. 2, pp. 119–138.

¹⁷ WHITEHOUSE, G. *Legislation and labor market gender inequality: an analysis of OECD countries*. pp. 65–86.

CHARACTERISTICS OF WOMEN'S LABOR IN KAZAKHSTAN

Despite the fact that the average wage of working women in comparison to men has increased from 62 % in 2006 to 67 % in 2015, the gap between average wage of men and women remains at 33 %. Involvement of women's work in innovative, infrastructural and high-technology projects and programs is at a very low level. A question of expanding economic opportunity for rural women, who are deprived of access to public, state resources and services, remains relevant. According to national statistics, every third rural woman in Kazakhstan is self-employed and has an income from subsistence farming, part of which goes into personal consumption. Incomes, which also include personal consumption, deprive women of the ability to invest resources into human capital assets in order to return to the real economy.¹⁸

The concept is supposed to create the conditions for ensuring equal employment of men and women, notably the following measures will be implemented. Estimates about population's economic activity will be compiled bearing in mind gender specifics of individual regions and production sectors, as well as the poverty monitoring data. Gender-sensitive indicators that measure unaccounted domestic labor, informal employment, home-based work, paid domestic labor, will be included in the system of national accounts. Expanding economic opportunity for women will be supported through the facilitation of employment and entrepreneurship, including those economic sectors, which are traditionally managed by men. Taking into account gender aspect, the labor regulation and protection legislation will be enhanced, working conditions will be improved, and the possibilities of implementing and expanding flexible forms of employment will be examined. The list of jobs, where utilization of women's labor is prohibited, will be revised and an access to jobs that do not pose danger to women's health by virtue of their automation, technologization and informatization will be ensured.

Factors that influence the existence of a sufficiently long period of withdrawal from economic, labor and public life are childbirth and their further support and upbringing, specified circumstances are in the majority of cases “a hindrance” on the way to the realization of their ability for labor, independent economic activity. Alongside the outlined, modern forms of family life allow changes in “traditional” division of responsibilities in the family, transfer of childcare responsibilities unto men or other family members.

On the other hand, the current demographic national policy is directed at stimulating an increase in the birthrate, including through the provision of social payments, benefits and guarantees. Along with that, integration into work during early puerperium is not a factor that has a positive influence on the development of a child. Outlined considerations lead to the conclusion about the necessity of finding the optimal way of adhering to everyone's interest in formation of a legislation and realization of national social policy, that takes into account all circumstances and consequences of approved decisions.

¹⁸ KUZNETSOVA, I. G., GOLOSHCHAPOVA, L. V., IVASHINA, N. S., SHICHIYAKH, R. A., PETROVA, L. I., TKACHEV, B. P. The paradigm of human capital development capable of adapting innovations in the transition to a digital economy. *International Journal of Civil Engineering and Technology*. 2019, Vol. 10, No.2 2, pp. 1408–1417.

ANALYSIS OF LABOR LAWS DIFFERENTIATION

Differentiation of labor laws is a traditional feature of this branch of law. The labor law that originated in the beginning of the 19th century in England and France already took into account gender inequality in the performance of hard physical work. Modern international labor law, which was formed in the middle of the last century, clearly differentiates labor standards according to signs such as minor age, disability, gender, types of work performed. At the same time, universal standards are designed, first of all, to exclude the possibility of employing child labor, to ensure working conditions for persons with disabilities, and to eliminate discrimination against persons with family responsibilities.

The current combination of labor legislation laws and guarantees, on one hand, expands its scope over all workers employed in Kazakhstan, on all its territory, applicable to the level of solidifying common social and labor rights, guarantees and responsibilities.¹⁹ On the other hand, through various factors like minor, specific working conditions, a special ecological status of a territory where the work is conducted, a specific sphere of economic relations or a functioning area of state apparatus, there definitely exist legal rules that establish unique, specific working conditions for affected employees. The design of this labor legislation is expressed by, in one respect, establishing common rights, employees' and employers' responsibilities, an order of contract conclusion, reasons for termination of a contract in labor legislation, and in another, emphasizing rules that consolidate labor regulation of isolated categories of workers.

The differentiation of labor legislation currently exists in labor legislation on the following grounds:

- depending on sex and age characteristics of employees, their health status, family responsibilities;
- depending on the nature of labor and work conditions;
- depending on the territory of labor.

The enhancement of the differentiation is one of the modern trends of labor law development arising from the variety of forms of organizing labor in the society and the need to adjust general rules to certain categories of employees.²⁰

The foundation of an actual research is provided by the differentiation of labor legislation depending on sex and age characteristics of employees, their health status, family responsibilities. Labor legislation, which consolidates special working conditions for women, people with family responsibilities, was sequentially analyzed. Prerequisites for reforming legal regulation of wage labor in Kazakhstan, consequences of implemented reforms were researched. Conclusions about deteriorating status of social and labor rights of people with family responsibilities, women were drafted.

¹⁹ KOT, O. O. Protection of Subjective Civil Rights in the Mechanism of Legal Regulation. *Journal of the National Academy of Legal Sciences of Ukraine*. 2018, Vol. 25, No. 2, pp. 83–98.

²⁰ WILTHAGEN, T., TROS, F. The concept of 'flexicurity': a new approach to regulating employment and labor markets. *Transfer: European Review of labor and research*. 2004, Vol. 10, No. 2, pp. 166–186; HAKIM, C. Lifestyle preferences as determinants of women's differentiated labor market careers. *Work and occupations*. 2002, Vol. 29, No. 4, pp. 428–459.

The analysis was not only based on the research of internal Kazakhstani law, but also on the universal international standards of wage labor, secured in The International Labor Organization (ILO) Conventions and Recommendations. The study of special labor legislation, which governs labor of women, people with family responsibilities, was conducted from the position of finding a balance between interests of employers, employees and the state in modernizing labor market, protection of social well-being and stability in society. An actual research should be perceived as an establishment and a consolidation of a specific scientific level of research into labor laws achieved in Kazakhstan. This article is a continuation of an authors' scientific work in the field of wage labor.²¹

EVALUATION OF LABOR RIGHTS DISCRIMINATION

Discrimination at the workplace can occur on the grounds of sex, age, afflictions, race, nationality, language, property, social and professional status, residence, religious or political beliefs, family or class affiliation, public organization. Despite the approval of numerous international documents ensuring the labor rights, women, people with family responsibilities still suffer from discrimination at the workplace. Only through achieving real, factual gender equality, spreading the awareness about the role and rights of women in society, signing international conventions, governmental and public control over realization of commitments it is possible to solve this problem. Awareness about the need to ensure gender equality, as well as a complex approach through the proper fulfillment of international conventions, agreements and decisions of international organizations using a sophisticated system of mechanisms allows highly-developed countries to ensure social and labor rights of women, people with family responsibilities.

Behind the principle of forbidding discrimination at the workplace is the provision of equal rights and opportunities to workers:

- opportunity to obtain employment and be an employee in the organization under any form of ownership;
- opportunity to obtain a suitable employment depending on the specialty, qualification without discrimination;
- opportunity to demand safe working conditions;
- opportunity to receive corresponding guarantees, compensations from the employer in case of dismissal; to receive information about employment without discrimination from an official state employment agency;

²¹ MUKHAMADIYEVA, G. N., KUSSAINOVA, A. K., BAISALOVA, G. T., APAKHAYEV, N., KHAMZINA, Z. A., BURIBAYEV, Y. A. Labor Law of the Modern Kazakhstan. *Journal of Legal, Ethical and Regulatory Issues*. 2017, Vol. 20, No. 1, pp. 1–7 [2019-09-29]. Available at: <<https://www.abacademies.org/articles/Labour-law-of-the-modern-kazakhstan-1544-0044-20-1-129.pdf>>; IBRAEV, Z. G., YERKEBAEVA, N. A., MIRZAKULOVA, B. A., NAZARKULOVA, L. T., BURIBAYEV, Y. A., KHAMZINA, Z. A. Social rights, family and child guarantees in the context of the implementation of a new social course in the Republic of Kazakhstan. *Journal of Legal, Ethical and Regulatory Issues*. 2017, Vol. 20, No. 1 [2019-09-29]. Available at: <<https://www.abacademies.org/articles/social-rights-family-and-child-guarantees-in-the-context-of-the-implementation-of-a-new-social-course-in-the-republic-of-kazakhstan-6780.html>>; KHAMZIN, A. S., KHAMZINA, Z. A., BURIBAYEV, Y. A. The Decent Work Programme of Kazakhstan: Social and Labor Rights Protection from an Institutional Aspect of International Law. *Journal of East Asia and International Law*. 2015, Vol. 8, No. 2, pp. 539–540.

- opportunity to demand the restoration of violated labor rights. The principle of prohibiting discrimination at the workplace covers all subjects of labor laws and is realized in all its institutes.

Based on this research, authors have outlined the following factors that lower the level of labor guarantees for women:

- high level of self-employed population among women;
- restricting employment for women over the age of 40;
- implicit wage discrimination for an equal labor;
- low level of social allowances and maternity benefits;
- increase in education among women, coupled with a low number of jobs occupied by women in high-paid spheres of work;
- absence of guarantees for dismissal due to age, marital status or other discriminatory reasons;
- higher level of poverty among women in comparison to men.

In our view, establishing additional legislative guarantees at the workplace for people with family responsibilities is aimed at creating equal opportunities for them alongside people, who are not burdened with such responsibilities, while exercising their right for labor, ensuring working conditions that allow them to combine professional and family responsibilities. With these goals in mind, Kazakhstan Labor Code must provide a law that obliges employer during recruitment to prioritize people with family responsibilities, if they have equal qualifications with other applicants, alongside applicants with quotas for jobs in accordance with established procedures.²² On the other hand, an employer does not have to suffer significant economic costs when providing social and labor guarantees to people with family responsibilities, for this purpose there should be established tax benefits for employers that utilize the labor of such workers. It is possible to apply similar conditions of tax benefits in the form of a reduction in tax rates for subjects that utilize the labor of handicapped, meaning there should be an incentive for the employer to utilize the labor of the most socially vulnerable categories of workers. Social responsibility of a business is an important component when dividing the burden of realizing social policy between a business-community and the state. But the characteristics of social and labor rights depend on them being secured and ensured by state mechanism, which compels the government to participate in the implementation of workers' social rights in reality through administrative mechanisms and normative legal regulation.

The main purpose of the legislation is to find an optimal option between additional guarantees that are established for those who need them and their competitive ability on the job market. It is assumed that factual exclusion of people with family responsibilities from the Labor Code as a category of workers having a special privileged social and labor status does not contribute to a productive employment of these individuals and does not guarantee their non-discrimination at the workplace.

²² FOMINA, T. H. Personal Obligation: Procedural Characteristics and Practice of Application. *Journal of the National Academy of Legal Sciences of Ukraine*. 2018, Vol. 25, No. 2, pp. 41–54.

CHARACTERISTICS OF THE NEW LABOR LEGISLATION OF THE REPUBLIC OF KAZAKHSTAN

Ensuring gender equality remains to be a sensitive topic in reality of labor relations in Kazakhstan. In 2015-2016 the reform about regulating the sphere of wage labor has been implemented, and the new Labor Code has been adopted. One of the goals of the legislative update was to change the characteristics of normative regulation, reasons for creation, modification, termination of labor relations with one of the most vulnerable categories of workers - people with family responsibilities, women.²³

When the new Labor Code was being adopted, one chapter was left out – “Labor of women, people with family responsibilities regulation specifics”. The removal of the whole chapter from the Labor Code, which regulated labor of people with the weakest competitive ability in the job market, reflects one possible understanding of labor relations liberalization from the legislator’s point of view. Meanwhile, the Labor Code has significantly decreased the level of social and labor rights of the listed categories of workers regarding the purpose of the guarantees in the previous Kazakhstan Labor Code.

Traditionally, in labor legislation, individuals with family responsibilities are recognized as subjects, whose legal status is differentiation in labor legislation that provides social and labor guarantees, compensations and allowances. Kazakhstan labor legislation began, for the first time since 2007, incorporating childcare leave upon reaching 3 years age mark at the choice of parents – mother, father, grandparents, or any other relative or guardian who actually raises a child in question. It is worth noting that the specified legal norms are factually inactive in Kazakhstan. Men rarely use this privilege, therefore there is hardly any legal case involving violations of men’s rights that are secured in the Labor Code.

One of legislators’ unresolved problem is the absence of a legal definition of workers with family responsibilities: who can be included in this category and regarding whose status working conditions should be differentiated – are still open questions. It is unclear which attributes designate an individual as a worker with family responsibilities. In our view, the following circumstance can designate a worker with family responsibilities: an employee that has a responsibility to educate and nurture a child in accordance with the family or any other legislation (parent, adoptive parent, individual with the rights and responsibilities of a guardian); any other child’s relative caregiver in cases directly prescribed by law; a worker with responsibilities regarding their immediate family members who clearly need care or support. The designation of individuals, who raise a child without a mother, can be granted to a father, an individual with the rights and responsibilities of a minor’s guardian, if a mother is dead, deprived of her parental rights, limited in her parental rights, declared missing, disabled (partially disabled), cannot raise and support

²³ THE NEW LABOR CODE OF THE REPUBLIC OF KAZAKHSTAN will determine the boundaries of state interference in labor relations. In: *Kazakhstan Today* [online]. 3. 9. 2015 [2019-09-29]. Available at: <https://www.kt.kz/rus/politics/novij_trudovoj_kodeks_rk_opredelit_granici_gosudarstvennogo_vmeshatelstva_v_trudovie_otnosheniya_1153609701.html>.

a child for medical reasons, serves a sentence in detention facilities, avoids raising a child or protecting their rights and interests, has refused to collect her child from an educational facility, medical facility, facility providing social services or a similar facility, in other situations. It is assumed that other individuals can be designated as having family responsibilities or raising a child without a mother, taking into consideration concrete circumstances that demonstrate them fulfilling responsibilities (raising a child, carrying for or helping a family member) of public importance.

According to labor legislation, discrimination at the workplace should be understood as a difference, exclusion or a preference aimed at elimination or violation of equal opportunity in realization of labor rights and freedoms or obtainment of any benefits on account of any circumstances that are not connected to professional qualities, besides differences, exclusions, preferences or limitations, established by the Republic of Kazakhstan laws for the corresponding types of employment or that stems from state's special concern about people in need of social and legal protection. In this regard, it is prohibited to enable disparity in hiring, wages, promotions, individual working conditions, training (professional education and professional instruction), towards women, people with family responsibilities, if it is not connected to employee's professional qualities, their working conditions.

CHARACTERISTICS OF WORKERS WITH A SPECIAL SOCIAL STATUS

The new labor legislation of Kazakhstan, which took effect in 2016, has significantly decreased the level of social and labor guarantees for women, children, people with family responsibilities, regarding forms and methods of workers' rights protection. It actually excludes women with children aged 3 to 7, other individuals who raise children of this age without a mother, and workers who provide care for sick family members that, according to a medical report, need long-term care, from the category of workers with a special social status.

Moreover, limitation of social and labor rights of workers with family responsibilities does not correspond with the content and level of international commitments, adopted when ratifying the ILO Convention No. 156 concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities. The Convention is ratified in accordance with the Law of November 16, 2012 No. 50-V.²⁴ Under universal norms, with which the Republic of Kazakhstan has agreed, the Convention No. 156 applies to men and women workers with family responsibilities in relation to their dependent children where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity; it also applies to men and women workers with responsibilities in relation to other members of their immediate family who clearly need their care or support, where such respon-

²⁴ ON THE RATIFICATION OF THE CONVENTION ON EQUAL TREATMENT AND EQUAL OPPORTUNITIES for male and female workers: workers with family responsibilities (Convention No. 156). The Law of the Republic of Kazakhstan. November 16, 2012 No. 50-V. In: *zakon.kz* [online]. 16. 11. 2012 [2019-09-29]. Available at: <https://online.zakon.kz/Document/?doc_id=31292466>.

sibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity.²⁵

Provision of actual equality of treatment and opportunities for men and women workers relies on one of the goals of the state policy where the Convention No. 156 has been ratified offers people with family responsibilities, working or desiring to work, the possibility to exercise their right for it without being subject to discrimination and to combine professional and family responsibilities to the extent possible.

With the purpose of establishing actual equality of treatment and opportunities for men and women workers, all measures, corresponding with national conditions and capacities, are taken to ensure that:

- 1) workers with family responsibilities could exercise their right to free choice of employment;
- 2) their needs concerning working conditions and social security would be taken into account.

According to international act, every state defines “dependent child” and “other member of the immediate family who clearly needs care or support” independently through legislation or any other method of legal regulation, with the goal of establishing special measures to ensure social and labor rights of workers with family responsibilities. Requirements of the Convention No. 156 may be applied by stages if necessary, account being taken of national conditions. Gradual implementation of measures securing the provisions of the Convention No. 156, a requirement to implement a respective dedicated state policy, in our view, suggests a progressive development of social and labor rights of workers with family responsibilities by means of pertinent changes in the legislation. However, the level of guarantees in the Labor Code of 2016 is the evidence of regression in relation to the status of the specified participants of labor relations.

Considering the foregoing conclusions, a question arises: how does the regression status of social and labor rights of women, people with family responsibilities, corresponds with the liberalization of the labor legislation as a major dedicated indicator of development and adoption of the Labor Code in 2016?

The new Labor Code was developed as part of a National plan – 100 concrete steps towards the realization of 5 institutional reforms of the Head of State Nursultan Nazarbayev, where step 83: the liberalization of labor relations. Development of the new Labor Code Based on the undertaken informational campaign about adopting and clarifying the Labor Code, its creator viewed liberalization of labor as an enhancement of the role of a collective contractual regulation of labor relations; expansion of the mechanism of a flexible regulation of wage labor; optimal combination of state and contractual regulation of labor relations. “It is suggested that the dominant theme of labor law policy has become the

²⁵ CONVENTION NO. 156. Convention concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities. ILO Gender Network Handbook (edition 2006), section 1, pp. 1–3, 1981. In: *International Labour Organization* [online]. 2006 [2019-09-29]. Available at: <http://www.ilo.org/wcmsp5/groups/public/@dgreports/@gender/documents/genericdocument/wcms_114192.pdf>.

enhancement of the competitiveness of business, which, at its core, requires the facilitation and stabilization of flexible employment relations”.²⁶

In the authors' opinion, liberalization of the labor legislation involves advancing the latter to the real situation and thereby forming prerequisites for its abidance. An emphasis must be placed on creating and expanding the mechanisms of self-regulation on the job market under an appropriate level of state regulation.

Deterioration of status of social and labor rights of people with family responsibilities, women, according to the creator of the new Labor Code, constitutes measures aimed at stimulating the job creation for the specified categories of workers. It is worth noting that the cancellation or limitation of social and labor guarantees for women, children, people with family responsibilities, are advocated for on the grounds that strict mechanisms of ensuring the specified guarantees damage the rights of workers with family responsibilities, women. Employer avoids hiring them. That is why it is currently proposed to significantly reduce social and labor rights of these categories of workers.

It is believed that juxtapositions of a presented and widespread position constitute the following. Individuals with family responsibilities, including women, constitute at least 60-70 percent of the total amount of contract workers, as well as of unemployed population. As a result, most workers (men and women) – are workers with family responsibilities that are accountable for their family and children to each other and to society. This large part of the population, which combines family responsibilities and work, must be provided with the ability to exercise their right for free choice of employment without being subject to discrimination. Elimination of the prevalent latent discrimination towards women, people with responsibilities must become the development goal of the labor legislation. The Labor Code has not in any way solved this issue: declaration of prohibiting discrimination, apparently, does not create equal opportunities in exercising rights and freedoms at the workplace.

EQUALITY BETWEEN MALE AND FEMALE EMPLOYEES

Despite Kazakhstan's efforts to promote equal rights for men and women and the obvious progress achieved, gender stereotypes still persist in society, which negatively affects the status of women in the family and social life, as well as their access to economic, social and cultural rights. Women are still underrepresented in high and decision-making positions in both the public and private sectors. The list of prohibited works for women in Kazakhstan has decreased in recent years from 287 to 191. However, there is virtually no expert scientific or medical assessment of the real impact of these professions on the reproductive health of women. In our opinion, it is necessary to revise the list of prohibited works for women and ensure that it covers only the restrictions necessary for the protection of motherhood and is based solely on medical considerations. In addition, it should be examined whether other forms of women's legal protection in the area of occupational

²⁶ COLLINS, H. Regulating the employment relation for competitiveness. *Industrial Law Journal*. 2001, Vol. 30, No. 1, pp.17–48.

health and safety cannot be more effective than preventing women from performing certain types of work.

The labor market still has a significant wage gap between men and women. We believe that it is necessary to further reduce the persistent gender wage gap, including by combating stereotypes regarding the roles of men and women and improving women's vocational skills and expanding their access to equal employment opportunities, including non-traditional areas.

Existing administrative liability for employment discrimination is not effective. It is limited to only two compositions of offenses:

- employment discrimination by the employer, expressed in violation of the employee's right to equal pay for equal work;
 - placement by the employment center, private employment agency, and also the employer of information about job vacancies containing discriminatory requirements.
- However, discrimination in employment can be expressed in multiple forms:
- unwillingness to hire women when an employer seeks to avoid additional costs for women who have or may have young children, which will require additional benefits for them;
 - in gender segregation;
 - in the current state of Kazakhstan legislation, which creates the risk that discrimination will remain unpunished and victims will be denied compensation for harm.

The content of the labor legislation of Kazakhstan in terms of the prohibition of discrimination on the basis of gender complies with the requirements of generally accepted standards established by the International Labor Organization. In the norms of national legislation there are no direct discriminatory norms, and the prohibition on infringement on the basis of gender is guaranteed by bringing to administrative responsibility (of a limited nature). There is a real gap between declaring equality and the actual situation on the labor market, this is recognized not only by human rights defenders, but also by state authorities that have adopted and implemented a number of special programs to promote gender equality over the past 20 years.²⁷

However, a number of implemented measures did not lead to the eradication of this phenomenon. It should be recognized that the problem of gender inequality begins with pre-school and school education and subsequently logically manifests itself in the choice of profession and employment. In the context of Kazakhstan, it is necessary to reconsider

²⁷ THE CONCEPT OF GENDER POLICY IN THE REPUBLIC OF KAZAKHSTAN, approved by the Government of the Republic of Kazakhstan dated November 27, 2003 No. 1190. In: *egov.kz* [online]. 27. 11. 2003 [2019-09-29]. Available at: <http://egov.kz/cms/ru/law/list/P030001190_>; THE STRATEGY OF GENDER EQUALITY IN THE REPUBLIC OF KAZAKHSTAN FOR 2006-2016, approved by Decree of the President of the Republic of Kazakhstan of November 29, 2005 No. 1677. In: *zakon.kz* [online]. 29. 11. 2005 [2019-09-29]. Available at: <https://online.zakon.kz/Document/?doc_id=30035525#sub_id=100>; THE CONCEPT OF FAMILY AND GENDER POLICY OF THE REPUBLIC OF KAZAKHSTAN UNTIL 2030, approved by Decree of the President of the Republic of Kazakhstan dated December 6, 2016 No. 384. In: *egov.kz* [online]. 6. 12. 2016 [2019-09-29]. Available at: <<http://egov.kz/cms/ru/law/list/U1600000384>>; ON STATE GUARANTEES OF EQUAL RIGHTS AND EQUAL OPPORTUNITIES FOR MEN AND WOMEN. Law of the Republic of Kazakhstan. December 8, 2009 No. 223-IV. In: *zakon.kz* [online]. 8. 12. 2009 [2019-09-29]. Available at: <https://online.zakon.kz/Document/?doc_id=30526983>.

the issue of gender stereotypes and their implications for family and social life, in particular with a view to promoting women's participation in the economy, the labor market and other spheres of social and cultural life. It is recommended that further efforts be made to increase the representation of women in high and decision-making positions in both the public and private sectors, including through the adoption of special temporary measures. It is proposed to intensify efforts to promote women's vocational training in non-traditional fields of employment and in areas that will provide them with equal career opportunities, as well as to take other necessary measures to ensure women's full access to economic, social and cultural rights and their enjoyment.

CONCLUSIONS

The system of guarantees for female employees, people with family responsibilities, supported by real mechanisms of their legal enforcement, meaning accountability for their violation, was installed into the Labor Code. However, such kind of accountability is absent in some cases. For example, article 6, paragraph 4 of the Labor Code secures the right to appeal to court or another authority in accordance with the law for individuals who believe they have suffered discrimination at the workplace. Nonetheless, the legislation does not determine the procedure of appeal for judicial protection on the basis of discrimination at the workplace, the procedure of shielding from discriminatory actions (inaction) is not legally established, and, moreover, actions of discriminatory nature usually inflict both material and emotional damage. The outlined illustrates the presence of defects in judicial protection of violated rights procedures exhibiting elements of corruption.

The article 90 of the Labor Code of 5 July 2014 No. 235-V of the Code of Administrative Offences of the Republic of Kazakhstan secures a limited definition of discrimination at the workplace that possesses the elements of an administrative offence. Such offences include: Allowance of discrimination at the workplace expressed as a violation of the right of workers for equal pay for equal labor. Publication of information about employment, which contains requirements of discriminatory nature, made by a job center, an employer or a private employment agency providing labor mediation. All other possible manifestations of discrimination that are not covered by the legal liability.

Flawed enforcement of legal liability for discriminatory offences at the workplace requires further correction, which may motivate the advancement of the institute of social and labor rights of women, people with family responsibilities.

The labor legislation of the Republic of Kazakhstan is defective and must be reformed in order to not only declare, but defend the rights of women in accordance with current reality and fluctuations in the job market.

The study contributes to the research of combating gender discrimination in the job market of Kazakhstan, especially during the employment stage. Discrimination against women on this stage is one of the most prevalent forms of gender inequality.

The study has identified several gaps in the labor legislation. It has been determined how current legislation, which regulates labor relations, complies with the policy of equal rights and opportunities for men and women. Recommendations were developed, directed at changing legal norms to prevent gender discriminations, which have the purpose to solve existing gender issues at the workplace.