

NGO CENTER “WOMEN’S PERSPECTIVES”

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The Committee on the Elimination of Discrimination against Women (CEDAW Committee)

Re: Supplementary information on Ukraine scheduled for review by CEDAW during its 66th Session

Dear Committee Members:

This letter is intended to supplement the 8th periodic report of the government of Ukraine, scheduled for review by this Committee during its 66th session.

The Center “Women’s Perspectives” is a women’s NGO that during its seventeen years of existence has become one of the leading third sector organizations in Ukraine. As a non – governmental organization the Center was registered at the Lviv Department of Justice 6th of April 1998.

The organization’s aims: women’s rights protection and ensuring equal rights and opportunities for women and men in all spheres of public life.

Organization provide direct services for women-victims of violence and discrimination; work with law enforcement, judiciary, governmental bodies to improve the state response to issues of violence against women and gender discrimination; conduct researches and monitoring; work on prevention violence against women and gender discrimination; conduct active work on legislation and policy concerning combating violence against women and ensuring gender equality development and implementation.

In 2015-2016 organization completed a complex research to identify the obstacles faced by women in access to justice; to identify problems with application provisions of CEDAW, ECHR, and the anti-discrimination legislation of Ukraine; to determine the problematic aspects of the collection statistical court information concerning gender discrimination cases; to raise awareness about the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol among the judiciary, lawyers and the general public.

During the research monitoring of 1485 court judgments at Unified State Register of court decisions completed, 3 focus-groups with judges and lawyers conducted (34 respondents), survey among judges (62 respondents) conducted, survey among women-victims of domestic violence (89 respondents) conducted.

Having examined the 8th periodic report of Ukraine consider it necessary to provide additional information on the situation in Ukraine with discrimination of women and implementation of state obligations under the CEDAW.

ARTICLE 2 CEDAW

1. Lack of application of the Law of Ukraine "On ensuring equal rights and opportunities for women and men" (effective from 2006)

As of September 1, 2015 - almost 10 years of the law - in the Unified State Register of court decisions were only 31 court decision with application of the Law¹.

Among them:

- 29% of cases initiated by women (majority related to labor disputes)
- 71% of cases initiated by men (majority related to labor and pension disputes)

Sexual harassment in the work place – protection from sexual harassment in the work place ensured by Law of Ukraine "On ensuring equal rights and opportunities for women and men" (effective from 2006).

As of September 1, 2015 - almost 10 years of the law - in the Unified State Register of court decisions were only 17 court decision related to sexual harassment in the work place².

Among them:

- Almost half of the cases related to the sexual harassment that took place in the government and local authorities - 47%, 35% - in private firms, 18% - in educational institutions.
- 76% of cases the claimant was a man against whom women exposed allegations of sexual harassment. Claims were on protection of honor, dignity and business reputation violated by dissemination of unreliable information, and moral damage compensation.
- In 41% of the decisions (victim told about the sexual harassment to co-workers) court obliges the woman to deny the information and compensate the moral damage
- None of court decisions applies the provision of art.60 of Civil procedural Code of Ukraine on shift of burden of proof in discrimination cases
- None of court decisions applies the provision of art.60 of Civil procedural Code of Ukraine on shift of burden of proof in discrimination cases

¹ Court judgments monitoring, Center "Women's Perspectives" 2015-2016. Analyzed 132 court judgments from Unified State Register of court decisions nationwide that have mentioned "equal rights and opportunities for women and men". 31 judgments in which law was applied were chosen for analysis.

² Court judgments monitoring, Center "Women's Perspectives" 2015-2016. Analyzed 91 court judgments (except criminal cases) from Unified State Register of court decisions nationwide that have mentioned "sexual harassment". 17 judgments related to sexual harassment on the work place were chosen for analysis.

Conclusions:

- The courts do not know that the Law of Ukraine "On ensuring equal rights and opportunities for women and men" adopted in Ukraine, and does not know how to use it
- The courts did not correctly interpret the provisions of the Law
- The courts do not know what is discrimination and what are its types, including direct and indirect discrimination
- The courts do not apply the rules of the European Convention, the Convention on the Elimination of All Forms of Discrimination against Women and the European Court of Human Rights.

So, responsibility for identification of discrimination is laid on women, and state did not take any measures to ensure identification of discrimination by courts and correct application of law provisions, including shift of burden of proof in discrimination cases, CEDAW and ECHR.

2. Discriminative law provisions is not modified and abolished

Labor Code and Draft of new Labor Code.

Gender expertise conducted by Ministry of Justice³ did not identify direct and indirect discrimination of women in rules of the Labor Code of Ukraine (art. 55, 63, 174,175,176) that prohibits women to work nighttime, perform overtime work, work in jobs with harmful and dangerous working conditions. The same provisions remain in Draft of new Labor Code (art.139, 151, 288, 291).

These jobs are paid much higher; women often agree to work in such occupations informally, thus losing social benefits, which are guaranteed by law.

So, these provisions violate the principles of gender equality and non-discrimination, as well as support discrimination against women in the labor market and existing stereotypes, that is a violation of art. 5 and 11 CEDAW.

Family Code

Gender expertise of Family Code of Ukraine conducted by Ministry of Justice⁴ did not identify direct and indirect discrimination of women in provisions that:

- consider woman as an object, support a social model of subordinate position of women, for whom only men can decide – art.124, 129 of Family Code actually removes woman from making decision on her baby origin, that is a violation of art.16 CEDAW.
- violate provisions on voluntary marriage and right for divorce, violates the rights of women victims of domestic violence for divorce as a means of protection from violence, especially in

³ <http://old.minjust.gov.ua/33455>

⁴ <http://old.minjust.gov.ua/24251>

cases of psychological violence and in cases where the victim did not apply to the police – art.110 of Family Code that prohibit divorce when woman is pregnant or have a child under 1 year old. This provision also violate Article 5 of the CEDAW as support the idea of the inferiority of pregnant women and women who have a baby up to 1 year, and is not able to live separately from the child's father, needs his care and protection.

- contradictory to Article 51 of the Constitution of Ukraine, art.141 of Family Code, Beijing Platform for Action, art.16 CEDAW, art.5 Protocol 7 to the ECHR that ensure equal responsibilities of men and women in marriage, including child support – art.182, 185, 197 of Family Code of Ukraine that define minimum for alimony for children as 30% of minimum cost of living for children of certain age. According to judges and court practice women constitute more than 95% of claimants for the child support alimony cases. Accordingly, the effects and consequences of the law application affect mostly women. Thus, if the effects of the application of the law is negative for the claimant in alimony case, it is possible to conclude that the provision contain elements of indirect discrimination of women, that are placed into position when they have to ensure 70% of living costs for children, but father of the children can pay only 30%.

ARTICLES 2, 3, 5

3. State report is based on the belief that the main reason of existing discrimination of women is that women are unaware of their rights and legal protection mechanisms. This paradigm of actual accusation of women in being discriminated and being a reason for violence against women. This is a direct violation of art.5 CEDAW.
4. Such stereotype beliefs and approaches are wide spread among general public, and in particular governmental officials, law enforcement, judges and lawyers. According to focus-groups survey with judges and lawyers of State Centers of Free Legal Aid 68% of respondents said they agree with the statement *“Women sometimes provoke violence in the family and this must be taken into account during considering case in the court.”* 88% of respondents believe that there are no problems with access to justice for women in Ukraine.⁵
5. According to the survey among women-victims of domestic violence⁶ 47% of respondents reported that they felt prejudice to themselves and / or a favorable attitude of judge to another party (husband or former husband respondents), that prove the influence of stereotypes about women-victims of violence and tolerating domestic violence by judges. 39% of respondents reported problems related to a long trial and delay the proceedings. 15% of respondents reported the judge attempts to reconcile with the violent husband. , 12% of respondents reported on judge accusation of provoking violence. The main problems of prejudice from judges and / or favorable attitude to another party (husband or former husband respondents) reported by

⁵ Focus groups with judges and lawyers (34 respondents) conducted Center “Women’s Perspectives” in 2016.

⁶ Survey among women-victims of domestic violence clients of Center “Women’s Perspectives” (89 respondents) conducted 2016.

respondents were: Providing benefits of explanation / evidence of husband and ignoring explanation / evidence of women, especially in cases relating to alimony and property disputes, Ignoring the interests of children in favor of man-defendant interests in cases relating to alimony.

6. Analysis of 347 court judgments concerning light bodily injuries under art. 125 Criminal Code of Ukraine⁷ shows clear gender specifics of such type of crime that are not taking into account during pre-court investigation and trial. In 62% cases victims of a are women and the majority of these women (58%) are or were in the family / intimate relationship with the perpetrator, in most cases (68%) crimes against women were committed in the housing. Only 10,2% of women-victims appealed to the court for compensation for material and / or moral damage. So, there is reason to assume that a significant number of these cases are related to domestic violence. But during the investigation and court trial that is not taken into consideration, that lead to indirect discrimination of women-victims of domestic violence in access to justice. So, court do not consider facts that crime committed in women's housing in a presence of minor children during the decision on punishment and moral damages, as well as do not consider previous history of domestic violence.
7. There is no legal position of the Supreme Court of Ukraine and Supreme Specialized Court of Ukraine for Civil and Criminal Cases on proceedings and application the legislation on discrimination against women and violence against women. Under the condition when application of anti-discrimination legislation is not included in Universities curricula for lawyers and judges that lead to the discrimination of women in access to justice.

The Center "Women's Perspectives", further respectfully submit the following recommendations for the Committee to consider incorporating into the concluding observations for Ukraine.

1. To Supreme Specialized Court of Ukraine for Civil and Criminal Cases:

Develop analysis and recommendations for court practice on:

- The application of Article 60 of the Civil Procedure Code of Ukraine, laying the burden of proof in cases of discrimination based on sex (labor disputes, sexual harassment, etc.). on the respondent.
- On application of the Law of Ukraine "On ensuring equal rights and opportunities for women and men" and the Law of Ukraine "On Principles of Prevention and Combating Discrimination in Ukraine"

2. To Ministry of Justice of Ukraine:

⁷ Court judgments monitoring, Center "Women's Perspectives" 2015-2016. Analyzed 347 court judgments from Unified State Register of court decisions from local courts in Lviv region issued in 2014.

To include issues concerning the application of the Law of Ukraine "On Principles of Prevention and Combating Discrimination in Ukraine", "On Equal Rights and Opportunities for Women and Men" into the training curricula for judges, tests for candidates for judge position and judges in the recertification program.

3. To Ministry of Justice of Ukraine:

To ensure the improvement of judicial statistics and gender mainstreaming:

- Section 5 Forms №1 provide additional lines such as "grievous bodily injuries"; "Intentional moderate bodily injury"; "minor bodily injury";
- The types of crimes provided for in section 5 of Form №1 provide following indicators:
 - Victims by gender: women, men
 - The relationship between the victim and the accused - wife / husband; ex-wife / ex-husband; girlfriend / cohabitant; ex-girlfriend / former cohabitant; acquaintances, not acquainted , other relatives
 - The place of the crime: housing; public place.

Sincerely,

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