

## SUMMARY OF THE ANALYTICAL RESEARCH "GENDER DISCRIMINATION IN ACCESS TO WORK AND SERVICES: ASSESSMENT OF UKRAINE'S COMPLIANCE WITH EU EQUALITY DIRECTIVES"

### RESEARCH SUMMARY AND CONCLUSIONS

During three years, from 2015 to October 31, 2017, the Government was implementing the norms of six "anti-discrimination" Directives of the EU-Ukraine Association Agreement (Annex XI to Chapter 21 " Cooperation in Employment, Social Policy and Equal Opportunities").

#### They are:

**Council Directive 2004/113/EC of 13 December 2004** implementing the principle of equal treatment between men and women in the access to and supply of goods and services

**Council Directive 2010/18/EC** implementing the Revised Framework Agreement between UNICE, CEEP i ETUC on parental leave, **and the repeal of Directive 96/34/EC**

**Council Directive 92/85/EEC of 19 October 1992** on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding

**Council Directive 79/7/EEC of 19 December 1978** on the progressive implementation of the principle of equal treatment for men and women in matters of social security

**Council Directive 2000/78/EC of 27 November 2000** establishing a general framework for equal treatment in employment and occupation

**Council Directive 2000/43/EC of 29 June 2000** implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

A public assessment of the Government's efforts to implement these norms of the "Anti-Discrimination" Directives of the EU Council has revealed both benefits and several drawbacks.

## **MINISTRY OF SOCIAL POLICY AND GOVERNMENT HAVE MET FORMAL REQUIREMENTS FOR IMPLEMENTATION OF THE "ANTI-DISCRIMINATION" DIRECTIVES**

Generally, all formal requirements for implementation of those six "anti-discrimination" Directives were met. The authorities for their implementation were provided to the Ministry of Social Policy of Ukraine. In the structure of the Ministry, an implementing group was established – the Expert Advisory Group of the Ministry of Social Policy, headed by the Deputy Minister.

The implementation plans (directive by directive) were prepared. The implementation group meetings were held on a fairly regular basis, the plans and protocols of those meetings, the Government's interim report on the cluster 6. Cooperation in fields of employment, social policy and equal opportunities, health protection of the Subcommittee on Economics and other sectoral cooperation, which namely included the aforementioned directives – were published on the website of the Ministry of Social Policy. The only exception was the second and the last report on cluster 6, conclusive for the implementation process of four out of six "gender" directives, declared in June in Brussels. The text of this report is not published and is unavailable for review.

With this exception, the communicative component of the implementation process of the directives by the Ministry of Social Policy, in this part, should be assessed as "excellent".

## **PUBLIC CONSULTATIONS WERE A BOTTLENECK**

Meanwhile, in part of the public consultations on these directives, we do not observe any notable activity of the Government. During three years of implementation, from 2015 to 2017, no public event related to "anti-discrimination" directives, no advisory meeting, etc. was neither foreseen, nor conducted. No consultations with social partners were carried out (although, in case of, e. g., Directive 34 (18),

conference or public event associated with those directives (4 of 6 out of which are aimed to ensure equality between women and men in the scope of those directives). In Ukraine, this part of the Agreement was a purely chamber action.

## **THE IMPLEMENTATION EFFICIENCY GIVES RISE TO DOUBT.**

**The executives, weakly aware of equality, not performed gender expertise and gender analysis of the regulatory documents, the absence of external evaluation and advice from gender experts from EU countries – proclaim themselves.**

The content of implementation measures itself is also not entirely blameless, and its efficiency, in case of separate directives, merely raises doubts. In particular, the questions arise about:

- composition and competences of the implementation group of the Ministry of Social Policy, which was working on implementation of those Directives. It did not include gender experts, nor women's organizations; representation of the profile Department for Gender Development and Combatting Trafficking in Persons was minimal; the main analytical load to develop the plans fell on the Office of International Affairs of the Ministry of Social Policy, which does not have gender competency.
- gender analysis of regulatory acts in the scope of those directives and general analytical procedures for preliminary evaluation of regulatory documents in the scope of six "anti-discrimination" directives (which should be reviewed, amended, or the new ones, more relevant, should be developed). In fact, only with one directive (Directive 79/7/EEC) we see the validated information on such analysis; as well as information about the positive conclusion of the Ministry of Justice. Overall, this should be a great precedent for implementation process of

the Framework Agreement on Parental Leave, the EU countries implemented that directive even through broad consultations with social partners, and not just by legislative means; and even recommend this path as one of two major paths for its implementation in the countries concerned). For example, no women's organization has been invited or involved in any meeting,

all six "anti-discrimination" directives, since namely The Ministry of Justice is authorized to carry out gender-based legal examination of current legislation and draft regulatory acts. And it has both the professionals and authorities

for “study, research of the draft regulatory act, carrying out its comparative analysis and providing an assessment with appropriate justification of the draft regulatory act in terms of its compliance with legislative acts, rules of which regulate the issues of gender equality in relevant area of life”; which the Ministry of Social Policy did not have.

- information on the procedures for external evaluation of the implementation process by the EU bodies. In particular, there is no information on the composition of missions, names and expertise of the experts; assessment procedures they applied; results of their assessment, etc. Moreover, the issues of gender equality were the only item in the Action Plan of the Ministry of Social Policy, for implementing which no foreign / international experts were involved.
- **THE GOVERNMENT CONSIDERS THAT "ANTIDISCRIMINATION" DIRECTIVES ARE IMPLEMENTED, AND THE AGREEMENT IN PART OF PROVIDING EQUALITY, WOMEN'S RIGHTS AND NON-DISCRIMINATION IS EXECUTED**

If we summarize the contents of the Government Office reports, it follows that:

- the Directives are implemented;
- the Agreement, in terms of equality, women's rights and non-discrimination, is fulfilled;
- 9 legislative drafts are prepared for their implementation, that are: draft law “On amendments to certain legislative acts of Ukraine (regarding harmonization of the legislation in the sphere of prevention and combating discrimination with the European Union law)”, draft law “On amendments to some legislative acts of Ukraine concerning the elimination of gender discrimination in parental leave”, draft law “On amendments to certain legislative acts of Ukraine regarding employment of disabled persons”, draft law “On amendments to certain legislative

During the implementation period (which for four out of the six directives has already finished in October 2017), the European Integration Government Bureau, the Ministry of Social Policy, were reporting on the implementation of six "anti-discrimination" directives as follows.

### **PREPARATION OF THE STATE SOCIAL EQUALITY PROGRAM, CONDUCTING THE MEETINGS OF ADVISORY BODIES AND THE TRAININGS**

#### **we report for the implementation of the Directives through the daily work of the Ministry of Social Policy**

Firstly, we were reporting through the current work of the Department for Gender Development and Combatting Trafficking in Persons of the Ministry of Social Policy, which is specialized on the issues of non-discrimination and gender equality. Such as: preparation of the state program on gender equality; conducting the meetings of consultative and advisory bodies (Expert Council) at the Ministry of Social Policy; routine preparation of the reports from the Government of Ukraine on international commitments, such as the report on implementation of the CEDAW (Convention on the Elimination of All Forms of Discrimination against Women); finally, as conducting the trainings on gender issues, on regular basis, every year, since 2005.

That is, through the work having no direct relation to the implementation of the directives, and would still be performed in the same way with no differences, even if there would not be neither the mentioned implementation plans, nor the obligations under the Agreement in place.

- **WE CREATE THE LAWS WITHOUT PRELIMINARY GENDER-BASED EXAMINATION AND ANTI-DISCRIMINATION ANALYSIS, AND, ACCORDINGLY, WITHOUT DEVELOPING A SUB-STATUTORY REGULATORY BASIS**

#### **we report for the implementation of the directives solely by the draft laws**

acts of Ukraine" (concerning labor rights), draft law "On introduction of penalties for violation of legislation on parental leave", draft law "On collective agreements and contracts", draft law "On ratification of the ILO Convention No. 181 on Private Employment Agencies", draft law "About social services" in new revision, and the draft Labor Code of Ukraine; – and they are submitted to the Parliament.

- **WE LEAVE IMPLEMENTATION WORK AS SUCH TO THE COMMITTEES OF THE VRU AND PARLIAMENTARY SESSIONAL HALL**

Thirdly, through the completed volume (very small) of work on reviewing the effective sub-statutory regulatory acts, and preparation of proposals to them. We want to caution that this is often a way to create ineffective legislation, since later, the provisions of the newly-adopted (aimed at gender equality) law come into conflict with gender-blind administrative provisions contained in the effective regulatory acts, which are within with scope of action of that draft law, and simply were not revised.

We believe that this will merely throw the not completed work on gender assessment and gender expertise into the Committees of the Verkhovna Rada and into the session hall, in the best case; in the worst case, if such work will not be done at all, we will receive several more "ineffective" laws, the provisions of which will regulate nothing.

Not performed in a timely manner, the implementation work will remain relevant.

- **WHAT ARE THE CRITERIA OF IMPLEMENTATION?**

**improvements in statistical and other indicators, towards greater equality and non-discrimination in the scope of six "anti-discrimination" directives – are not being observed**

Secondly, we were reporting through the law-making work, which, in fact, became the main direction of actual implementation work for that three-years period. We note that this is not bad. Considering all negative comments from European partners regarding the scope of lawmaking and the special passion to it in Ukraine, far exceeding the volumes of that in the parliaments of neighboring countries, however, in this case, taking into account an extremely undeveloped national anti-discrimination legislation, the chosen strategy should rather be welcomed than criticized.

 (AS A REFERENCE)

There are numerous and widespread violations of women's labor rights during hiring and employment termination. The most vulnerable category at labor market in Ukraine are young women and women over 45 years old. More than 40% of women faced violations of their rights in hiring or labor rights of their close ones.

Almost one-third of women were denied employment for the reasons of childbirth, pregnancy, presence of a small child; and 50% of them were forced to quit a job for those reasons.

Furthermore, 87% of young mothers set to work before the end of the three-year maternity leave; 60% of them start working because of the need to sustain a family.

According to the State Inspection for Labor, the most frequent violations are related to Article 184 of the Labor Code, the prohibition on employment termination of pregnant women and women who have children under three years old.

Employment websites continue to contain announcements of vacancies specifying gender and age. And not the websites alone – similar statements are often heard from the highest stands (Prime Minister of Ukraine V. Groisman: "...as early as in autumn, one thousand of young people will be involved into the government

During the implementation period from 2015 to the current year, in the scope of the directives, the relevant statistic indicators did not improve or showed decline.

The social assistance system is being reformed – and there, we also record clearly discriminatory phenomena. Thus, for the first time within the whole independence period, the Government of Ukraine, since 2016/1/1, initiated depriving more than 200 thousand single mothers of social assistance (reducing the number of recipients of that kind of assistance by one third).

Pension reform brings a major threat, because of the lack of a mechanisms for protecting women's reproductive rights and for including the time spent on care for children into the pension insurance record.

Due to increasing restrictions over the access to social services: care facilities, kindergartens,

work through open competitions").

The existing judicial and prejudicial systems for resolving the labor conflicts are not able to respond promptly and adequately to the problems of oppression of women's rights.

Despite the fact that equally favorable conditions for access to labor and services for women and men in Ukraine are vital, and those requirements are an integral part of implementation of the Agreement, experts record number of statistically visible inequalities, particularly in gender, specific for Ukraine.

Government programs do not include temporary special measures for vulnerable groups of women subject to multiple discrimination; there are only declarative statements about the special attention to women from rural areas.

The launched health care reform envisages closing medical facilities and job cut of healthcare workers for reasons of cost-efficiency. This subordinates the women's access to medical services to transport infrastructure, availability of additional funds for travel, their physical mobility in general, which is lower in women than in men.

inequitable situation, compared to other discriminated groups; and that during the war their number increases, which will require additional efforts to regulate their problems. At the same time, we must point out that other inequalities, on other discriminatory features such as sex (gender), age, presence of small children, settlement inequality, etc., are not less significant in Ukraine. As well as the fact that discrimination is typically multiple, and that namely a combination of discriminatory features often makes a group particularly discriminated ("aged women of rural areas with disabilities").

Regarding the range of discriminatory features, the Government has been working on. The prevailing work carried out related to

schools, health facilities, a few opportunities remain in Ukraine to combine work and family life.

### **CRITERIA OF IMPLEMENTATION**

**an indicator of whether Ukraine is implementing or not a specific norm should be a change in real state of affairs, statistically or sociologically documented. But not just the number of developed laws or regulations**

The main indicator of implementation of the norms of all six Directives will remain statistical: have the opportunities for women (and men) to combine family and professional life worsened or improved? Have gender-specific features of access to social, medical, educational services been considered? Has the percentage of women whose employment was terminated in connection with their motherhood, or with their performance of domestic (servicing) work, increased or decreased? Have the adopted legislative acts narrowed or reduced the opportunities for women, women from vulnerable groups?

During the implementation period, from 2015 to **the current year**, we are not observing increase in corresponding statistical indicators within the scope of the directives (as shown in the first three sections of this Research).

**tangible and relatively effective implementation steps taken by the Government concerned people with disabilities, and did not concern other discriminatory features stated in the directives**

Tangible implementation steps taken by the Government concerned mostly people with disabilities, while on other discriminatory features such work was not carried out. We understand and share the argument that people with disabilities are in an acutely

formulation of the appropriate administrative provisions, development of the sub-statutory acts.

people with disabilities: they were direct beneficiaries in about 80 percent of the Government's efforts and implementation work carried out by the Government. Representatives of their organizations participated in the advisory meetings, communicative actions.

The practical consequence of such an implementation policy may be the fact that in context of development of the policy on people with disabilities by the Government, we can obtain a modelling situation, of how it is necessary and how it is better to tackle other discriminatory features (that is, in fact, the thing "anti-discriminatory" directives demand from us).

**the challenge for implementation of the entire six directives became the fact that they were introduced in the years of intensive reforms. This resulted in the "one step forward – two steps back" effect**

A certain challenge for implementation of the norms of all six directives is that the implementation plans were drafted in 2014–2015, which are two years of the intense reforms. That greatly changed situation on a number of implementation plans – for example, some regulatory acts have been criticized, repealed, or another ones were developed instead, sometimes explicitly discriminating against women or other vulnerable groups (like the draft Labor Code, harshly criticized by the feminists). In fact, this was putting the implementer in the situation of reviewing the existing implementation plans. And the Government prepared and issued such a plan; however, in part of six "anti-discrimination" directives, the plan relies on the legislative steps, actually – on harmonizing national legislation with European, rather than on the actual implementation of the norms, which would require the

### **IMPLEMENTATION OF DIRECTIVE 2010/18/EC:**

**there is a significant conflict between the logic and the way in which the provisions of**

## **IMPLEMENTATION OF DIRECTIVE 2004/113/EC:**

**the scopes of requirements outlined in the directives, and represented in implementation plans, differ drastically**

Implementation measures on Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services provide a strong institutional mechanism for gender equality. That was hardly true yet at the time when the plan was created in 2015, and during the implementation period from 2015 to 2017, it was going through further changes. Thus, the established Office of the Government Commissioner for Gender Policy has the authorities duplicating those of the Ministry of Social Policy as a specially authorized body to ensure gender equality, which makes their interaction imbalanced; The Ministry of Justice of Ukraine has the authorities to combat discrimination, poorly coordinated with the authorities of the Ministry of Social Policy authorized to combat discrimination on the grounds of sex; the executive vertical on equality and non-discrimination issues is still absent, and this localizes combatting discrimination only to the national level.

Decentralization reform and civil service reform also do not take into account the needs in bodies that would manage the equality issue.

Thus, launched in October 2017, the reforming of the ministries, in our case, the Ministry of Social Policy – "Reform of Directorates" – in the two-year perspective, fully dissolves the existing Department of MSP on gender development and combatting trafficking in persons, – the core of the institutional mechanism of gender equality, leaving in substitution one professional / department in newly-created Directorate of Social Services. Those and similar things are casting more and more doubts on the effectiveness of that system of disparate organs, and their ability to act as a holistic mechanism. Obviously, such a situation would require more thorough and more formalized analysis – and development of

**this Directive are being drafted into the EU, through a broad dialogue between social partners, and government measures for its implementation in Ukraine, through the adoption of parliamentary laws**

(1) Council Directive 2010/18/EC implementing the Revised Framework Agreement between UNICE, CEEP i ETUC on parental leave, and the repeal of Directive 96/34/EC.

The main conclusion – there is a significant conflict between the logic and the way in which the provisions of this Directive are being drafted, and the government measures for its implementation in Ukraine, outlined in both government implementation plans – of 2015 and 2017.

This directive in Europe was shaped through negotiations – since it puts into force the Revised Framework Agreement on parental leave concluded by European interbranch organizations of social partners.

That is why, the Directive itself envisages the possibility of its implementation in similar way, through collective agreement among the social partners.

But, since communication with civil society has never been a strong point of the Ukrainian Government, in Ukraine it will be implemented "from above" – through three draft laws at one stroke (draft law "On amendments to some legislative acts regarding the duration of leave in case of adoption of a child over three years old", draft law "On Amendments to the Labor Code of Ukraine" (on bringing Article 182 of the Code in line with the changes, introduced into the Law of Ukraine "About leaves" (with Articles 17 and 181)), and draft law "On Amendments to the Labor Code of Ukraine" (on the right to reduced working hours and part-time work on an equal conditions for both men and women)).

Because of the high risks of non-performance due to not conducted preliminary consultations, strengthening the controlling mandates of State Inspection for Labor is



propositions, more relevant to the directive.

provided.

And finally – in the list of the draft laws in field of European integration of Ukraine, which, in the opinion of the Cabinet of Ministers, demand an urgent consideration by the Verkhovna Rada of Ukraine, there is none of those draft laws.

### **IMPLEMENTATION OF DIRECTIVE 92/85/EEC:**

**provides, and is based back on Soviet "protective" norms on the work of women, and they will soon be repealed as discriminating against women**

Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (the tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)

The main conclusion – implementation implies and relies back on Soviet "protective" norms on the work of women, and they will soon be repealed as discriminating against women. Those regulations are included into the implementation plan. However, in 2017, those regulations (first of all, orders of the Ministry of Health №№ 256 and № 246) will be abolished as discriminating women, remaining open the question of security of the latter.

Currently, the Ministry of Social Policy is planning to approve its own order, instead of two repealed orders of the Ministry of Health, however, its development will still require the work of gender experts and international advisors, not made at the beginning of the implementation process.

### **IMPLEMENTATION OF DIRECTIVE 79/7/EEC:**

**the measure in the plan of its introduction is provided by the current gender policy document. We consider it as an actual refusal of the implementer to implement it at all**

Council Directive 79/7/EEC on the progressive implementation of the principle of equal treatment for men and women in matters of social security. The main conclusion: regarding this directive – we document the actual refusal of the implementer to implement it at all.

The only measure in the plan (2017) for the implementation of this Directive, envisages to "Develop a draft State Program for Equal Rights and Opportunities for Women and Men by 2021".

### **IMPLEMENTATION OF DIRECTIVE 2000/43/EC:**

**the Government plans to implement this Directive through the draft Labor Code, which is extremely flawed in terms of ensuring equality and women's rights**

**it also does not involve any provision regarding the burden of proof, which this Directive imposes on an employer accused of discrimination**

Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

The main conclusion – the Government plans to implement this Directive through, particularly, the new draft Labor Code, which is extremely problematic document, conflicting with achieving equality and women's rights, and not providing the provision on the burden of proof imposed on a person accused of discrimination, as required by this Directive, anywhere.

This is particularly worth emphasizing, since paragraph 25 of this Directive deliberately warns, that its application should not justify any regression regarding the situation that had already developed in each of its implementing states.

### **IMPLEMENTATION OF DIRECTIVE 2000/78/EC:**

**although, here some questions about non-discrimination expertise and its procedures also remain, this is a positive example of implementation, containing well-detailed, thought-out and elaborated package proposals**

Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation.

The main conclusion – despite of non-compliance to some procedures, this is a positive example of implementation, containing well-detailed, thought-out and worked out package proposals on the draft

We believe this is less than nothing, since it is hard to view current policy documents as implementing. We consider such proposal as de facto refusal to implement the norms of the Directive 79/7/EEC. And that is very regrettable, since it is the only one from the package of anti-discrimination directives of the EU-Ukraine Association Agreement, for which the fixed procedures of preliminary gender analysis have been applied.

laws (Draft Law of Ukraine "On Social Services" in new revision), drafts of several regulatory acts aimed to ensure its provisions, advisory work within the country and with EU experts, expert support of a draft law in the Verkhovna Rada.

 (AS A REFERENCE)

Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services

Aimed at building a structural basis in combating discrimination on the grounds of sex in access to goods and services, their supply and provision – in fields of media (content), advertising and education (and will not be applicable to employment, professional and business fields).

Directive 2010/18/EC implementing the Revised Framework Agreement between UNICE, CEEP i ETUC on parental leave, and the repeal of Directive 96/34/EC

Focuses on a gender-balanced combination of professional and family responsibilities.

Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (the tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)

Aimed at balancing of women's reproductive work, and access to the paid labor market for women, involved in reproductive work.

Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security

Aimed at protecting against discrimination based on sex (and especially marital and family status) in the legal settling of the risks of disease; disability; old age; accidents and occupational diseases; unemployment; access to programs of career activity – for all working population, including self-employed people, working pensioners, working people with disabilities.

The objectives of other two directives, 2000/78/EC and 2000/43/EC, do not directly address gender equality, but regulate other types of discrimination; however, taking into account the multi-faceted nature of discrimination, and narrowing the scope of actual rights for a particular person depending on the number of characteristics that will be discriminatory, the state of their implementation was also considered.

The parameters mentioned in them – age, race / ethnicity, religious identity, sexual orientation, – are the characteristics which, combined with gender, are able to exacerbate an actual discrimination.

For comments, contact the team leader, Dr. Marta Skoryk, and/or the Coalition for Labor Equality experts: email: [kigs.inform@gmail.com](mailto:kigs.inform@gmail.com), tel.: +38096 011 03 38.

The full text of the analytical research “Gender discrimination in access to work and services: assessment of Ukraine's compliance with EU equality directives” (in Ukrainian) is available for download at the link.