

# *Social security and gender equality in Kazakhstan: Legislative gaps and opportunities*

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## *Abstract*

This article examines some of the implications of gender equality and gender policy at the national level from the perspective of social security guarantees. The changes that have taken place in family relations, economy, and politics challenge the gender regime in Kazakhstan. The article argues that social, political, and economic changes were not accompanied by the development of new gender models at the national level. New gender problems arise, including the trajectory of the distribution of the status of women in the family from the perspective of Islam. The article discusses the existing public and political demand for women's empowerment, which determines the relevance of improving the quality of a number of laws in relation to gender equality in accessing social security measures and facilitating unpaid care work. The first step was to study the construction and guarantees of the implementation of the principle of gender equality in the Constitution of Kazakhstan. At the second stage, international standards for the equality of men and women were summarized from the point of view of implementation in national legislation. At the last stage, recommendations and suggestions aimed at eliminating the discriminatory standards of social protection from the legislation are summarized and formulated.

*Key words:* gender, equality, social protection, social rights, Kazakhstan.

## **1. Introduction**

Gender-specific vulnerabilities should be reflected in social security measures. Gender inequality tends to manifest itself in the following vulnerabilities: women are more likely than men to be left without a livelihood and

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become poor; women make up a growing share of the working-age population, but on average receive lower wages than men; women have the greatest personal care responsibilities and are burdened with a disproportionate share of household responsibilities compared to men. If the gender aspect of the social security system is ignored, the social roles of the sexes and traditional gender inequality will not change (Plagerson et al., 2019). Conversely, gender-sensitive social security can address inequality and play a role in redistributing care responsibilities, as well as in recognizing and evaluating unpaid work (ILO, 2017). The UN sustainable development goals, set in 2015, clearly promote social protection as a means to achieve not only human development but also to improve gender equality outcomes (UN, 2015).

The lack of paid parental leave for children under 3 years of age, a sufficient number of child care institutions, and family-friendly policies, combined with gender gaps in pay and domestic work, create obstacles to women's full participation in economic life (Ryskaliyev et al.). the national economy cannot operate at full capacity, as limiting and discriminatory factors constrain half of the population of Kazakhstan.

Gender-sensitive social protection policies provide an opportunity to accelerate the path to gender equality: applying a gender approach to social protection will better meet the specific needs of women (Newton, 2016). A gender-sensitive pension scheme will reduce poverty among older women, given their higher life expectancy, gender inequality in participation in work (wage gap and access to pension schemes with payment of contributions), specifics of women in relation to savings behaviors, and their care responsibilities (OECD, 2019).

When choosing the direction of analysis for this article, we did not set ourselves the goal of combating the prejudices in hiring and promotion, as well as sexist preferences. We do not struggle with the spread of stereotypes in our society, but we set ourselves the goal of "cleaning out" the legislation of Kazakhstan from legal norms that not only allow discrimination in society but also elevate it to the format of compulsory lawful behavior.

As elsewhere in the world, Kazakhstani women fulfill most of the responsibilities for caring for children, perform household duties, and also get paid work. Family-oriented government policies are aimed at helping workers achieve a balance between employment and family responsibilities. However, this balance between the work and the personal life of the woman was not found. We offer legislative opportunities to neutralize manifestations of discrimination in employment, in the performance of family responsibilities, with access to the social security system. Based on an analysis of the totality of all elements of legal influence (international, national law, the possibility

of applying state coercion measures, etc.), we offer specific recommendations for achieving gender equality in the social and labor sphere, which will not only improve parity but also support policies aimed at the elimination of norms that promote bias and discrimination.

We are fully aware that only legislative changes cannot eliminate gender inequality, but these steps are an important basis for change. High-quality legal regulation is the foundation on which relationships are built in society, the state, including in the field of guarantees of the prohibition of discrimination and gender parity.

For this review, we are limited to one area of legislation: social security. If, for example, discrimination in employment, in the workplace on the basis of gender is an obvious fact, then inequality in social protection is not clearly expressed. Moreover, this area of scientific analysis is beyond the attention of Kazakhstani researchers. However, it should be noted that in Kazakhstan, the development and implementation of basic models of social security did not take into account gender issues, which in practice leads to unequal social results for men and women. Social security legislation contains a number of provisions that, on the contrary, “normalize” gender discrimination. This article is aimed at forming two types of proposals to promote gender equality. The first recommendations are aimed at eliminating existing discriminatory norms in the legislation. The second is the formation of proposals for the implementation of international equality standards.

## **2. Method**

We proceed from the fact that the level of economic, social, political development of Kazakhstan after almost thirty years of development as an independent state involves the formation of special advanced requests of society and the government for reforming guarantees of equality in all areas, including in the field of access to social protection measures. We conducted a study in terms of gender, discriminatory social attitudes and differences, as categories of scientific analysis that should be critically assessed in relation to actual conditions in order to transform the position of women and men in society in the name of real equality proclaimed in our Constitution and based on transformative the role of law, legislation. The existing public, political request for the empowerment of women determines the relevance of improving the quality of several laws regarding gender equality in accessing social security measures and facilitating unpaid care work.

While forming this article, we have based our analysis on the results of special research and projects on gender equality in Kazakhstan; on the synthesis of provisions of laws, regulations, and official statistics, as well as special country reviews prepared by the OECD. In addition, we used data from judicial statistics, information about criminal and administrative liability. The results of special project studies covering such areas as the process of norm-setting, assessment of gender representation, and the situation of the modern Kazakh family were studied.

The following sources of information were analyzed: national statistics on demography, socio-economic development and human development in the country as a whole, and on the promotion of gender parity; international and regional comparative statistics and indicators on gender equality and the empowerment of women; legislation, policies, strategies, and programs related to gender equality; research, reviews, best practices, case studies and lessons learned on gender equality issues; reports on the work of Kazakhstani courts of the first instance in the consideration of criminal, administrative and civil cases.

Methodologically, the present study was built in the following sequence:

- the designs and guarantees of the implementation of the principle of gender equality in the Constitution of Kazakhstan were investigated;
- generalized international standards for equality of men and women from the point of view of implementation in national legislation;
- the problems of gender asymmetry of social security human rights in Kazakhstan were investigated;
- discriminatory norms have been identified when assigning pensions and benefits;
- generalized and formulated recommendations, proposals aimed at eliminating from the law discriminatory standards of social protection.

A study of open official judicial statistics (Kazakhstan, 2020) was conducted in the period 2015-2019, which shows that: there is no judicial practice in cases of restoring equality in access to social protection measures, bringing to justice for discriminatory actions. A robust justice system must support the rule of law, good governance, and efforts to address inequality and development. However, this mechanism is not actually used in Kazakhstan. Unmet needs for justice in cases of inequality in the social protection system can lead to social, economic, physical and mental problems. Unresolved legal problems do not allow people and society as a whole to reach their full potential.

### **3. The construction of the principle of gender equality in the Constitution of Kazakhstan**

The Constitution has the highest legal force and direct effect on the entire territory of Kazakhstan. Laws, other normative legal acts, international treaties, and other obligations of the state, as well as normative decisions of the Constitutional Council and the Supreme Court must comply with the Constitution and cannot contradict it. In Kazakhstan, human rights and freedoms are recognized and guaranteed in accordance with the Constitution.

The above constitutional principles of legal regulation determine the importance of securing guarantees of the principle of gender equality in the Basic Law. This principle literally sounds like “Everyone is equal before the law and the court” (paragraph 1 of article 14).

A generalization of the positions of the Constitutional Council in the interpretation of Article 14 of the Constitution allows us to formulate the following content of this constitutional norm:

- article 14, paragraph 1, of the Constitution establishes the equality of all before the law and the courts. This implies equality of rights and obligations, unity of requirements and legal responsibility for all subjects of the relevant legal relations engaged in similar activities (Constitutional Council, 2005);
- Clause 1 of Article 14 of the Constitution “Everyone is equal before the law and the court” establishes the equality of the rights and obligations of the individual, the equal protection by the state of these rights, and the equal responsibility of everyone before the law. Equality before the law means that it is in the laws that specific conditions and circumstances are defined that allow the realization of the rights and freedoms of man and citizen (Constitutional Council, 1999a);
- the norm under consideration means the equality of the rights and duties of the individual, equal protection by the state of these rights, and the equal responsibility of the individual before the law (Constitutional Council, 1999b).

Human rights to equality, to the prohibition of discrimination, according to Art. 39 of the Constitution, are not subject to restriction in any case. These rights are included in a special list of constitutional personal rights that cannot be limited by laws.

However, our analysis of social security legislation shows the existence of norms that provide benefits only to women or men in accessing social support measures. In particular, it is the regulation of earlier registration of pension rights, access to the pension annuity system, paid childcare, etc.

The Constitution does not give the state the right to apply measures of so-called positive discrimination (Noon, 2010; Norris, 2001) in favor of women or men in order to neutralize the set of specific socio-economic problems faced by the sexes. However, the legislation allows such positive discrimination (Stephens, 2010) and makes it a legal principle. Thus, Law No. 223-IV of 8 December 2009 “On State Guarantees of Equal Rights and Equal Opportunities for Men and Women” stipulates that measures aimed at:

- 1) protection of motherhood, childhood, and fatherhood;
- 2) protection of women in connection with pregnancy and childbirth;
- 3) increasing men’s life expectancy;
- 4) protection of women in criminal, criminal procedure, and criminal enforcement legislation.

Differences, exceptions, preferences, and limitations that are determined by the requirements specific to a given type of labor or caused by the special care of the state for persons in need of increased social and legal protection are not discrimination (Art. 4).

Thus, the current legislation “corrects” the constitutional guidelines, defining those areas of public relations where, first, positive discrimination is allowed, and secondly, the goals of restrictions on rights based on gender. Attention is drawn to the broad scope of the law of possible restrictions or preferences in rights, these are the areas of social security, labor, family, criminal, criminal procedure, and other relations. Such a broad approach opens up great opportunities for the legislator to define various privileges and special conditions for subjects based on gender, which will not qualify as discrimination under the law, but, we believe, can be qualified as such under the provisions of the Constitution.

The legislation in this aspect is not specific: it is proposed to use some formal assessments of when the norms on the special rights of men and women are reasonable when differentiation in the legal status of individuals in identical conditions on the basis of sex is justified. In addition, positive discrimination brought into law in Kazakhstan does not take into account that this type of difference in legal regulation should: firstly, be temporary, should be abolished when the goals of equality of opportunity and equal treatment are achieved; secondly, this approach is most often implemented in certain sectors or within individual organizations, enterprises, government bodies.

The norms under consideration bring into the law a differentiation in the status of women, based on physiological and other differences between the sexes, and also proceeding from the special social role of women in a society related to motherhood, which is protected by the state. Such differentiation, according to the law, cannot be regarded as a discriminatory restriction of

the constitutional rights of men. According to the Constitution, it ensures the achievement of genuine, not formal, equality.

Such differentiation implies that legal research in this area must necessarily take into account the data of many Sciences, information about socially significant features of the sexes that affect their position in society, including legal. Further, usually supporters of differentiation appeal to the fact that men and women have significant differences, both biological, and psychological, and social. Women, as a social group, are obviously less likely to take the jobs that men apply for, they have on average lower wages and pensions, and higher unemployment. Fulfillment of the same labor standards with men in combination with increased household loads has a greater negative impact on the female body, which in turn leads to their higher incidence compared to men. In other words, biological differences require special measures to equalize the rights and opportunities of people of different sexes, including in the field of labor and social security. Throughout history, men and women have been necessary to each other, but each sex has its own main task, its own special functions. For nature, the main thing is that a woman ensures the continuation of life. A man, first of all, has to look for something new to improve the quality of life, to ensure the development of production. Women, as a rule, consider themselves successful if they have a prosperous family, good children. For men, career and professional success are of particular importance. Psychological differences also determine the choice of employment. Moreover, it is known that wages in the field of female labor are lower, which means that the level of social security, including pension, is lower.

The above arguments are repeated in several variations, justifying the differentiation in employment and, consequently, in the social protection of men and women. However, these arguments have not been able to solve the problem of gender inequality in the workplace and social security for centuries. In recent decades, this issue has been in a static situation in Kazakhstan.

The basic philosophy and fundamental values - political, moral, and social, on which the Constitution is based, are personified in the section of the Constitution devoted to human and civil rights. The Basic Law does not distinguish between the rights of the sexes; the differentiation of constitutional rights and obligations is determined only on the basis of citizenship: an individual and a citizen of Kazakhstan.

From the text of the Constitution itself, very little can be learned about the specific content of the principle of equality. The general principle of equality and non-discrimination is not defined. Twice, in Art. 14 and 24 of the Basic Law prohibits discrimination; the second time, a special ban has been extended to employment and remuneration.

The Constitution established the following grounds for determining discrimination: motives of origin, social, official, and property status, sex, race, nationality, language, attitude to religion, beliefs, place of residence. The list of grounds for discrimination is open, the law uses the expression “any other circumstances” that may qualify discriminatory acts.

It is important to understand what is included in the content of “discrimination” in order to determine the content of human rights raised to the category of those that cannot be restricted by law. The Constitution does not contain such a definition. The Kazakhstan Basic Law in this direction almost literally implemented the right to equality and the prohibition of discrimination, which are enshrined in the Universal Declaration of Human Rights (1948). The Declaration proclaims that all people are equal before the law and have the right, without any distinction, to equal protection of the law. All people have the right to equal protection against any discrimination that violates the Declaration and against any incitement to such discrimination. Everyone, without any discrimination, has the right to equal pay for equal work. With minor amendments, this text is reproduced in Art. 14 and 24 of the Constitution of the Republic of Kazakhstan. International Covenants on Human Rights impose an obligation on states to ensure equal rights for men and women to enjoy all economic, social, cultural, civil, and political rights. In the content of the Convention on the Elimination of All Forms of Discrimination against Women (1979), the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

According to article 1 of Law No. 223-IV of 8 December 2009 “On State Guarantees of Equal Rights and Equal Opportunities for Men and Women”, discrimination on the basis of gender is any restriction or infringement of human rights and freedoms, as well as any degradation of human dignity on the basis of gender. Let us say that, accordingly, the general definition of discrimination is any restriction or infringement of human rights and freedoms, as well as belittling of their dignity. Given the content of international acts, let us assume that the category of “discrimination” includes a sign that a person either does not recognize any right or a restriction has been introduced on its implementation. Discrimination includes a regulatory difference in the scope of rights, lack of rights, or restriction in them. From this position, we turn to the content of international standards of guarantees of the principle of equality and non-discrimination.



#### **4. International standards for equality of men and women and the possibility of their implementation in national legislation**

The goals of the state gender policy (Kazakhstan, 2016) are the achievement of parity rights, benefits, duties, and opportunities of men and women in all spheres of society, overcoming all forms and manifestations of gender discrimination. To achieve this goal, it is necessary to provide a solution, along with other provisions, defined as the first, the task of improving legislation in the field of gender policy, as well as bringing it into line with international standards, recommendations of the UN, SDGs, and OECD (Kazakhstan, 2016).

The objectives of achieving gender equality in access to social protection measures, improving the social and labor legislation of Kazakhstan, implementing not only guarantees of gender neutrality, but also guarantees of equality for women, workers with family responsibilities are related to SDGs 5, 8, 10, which are aimed at achieving equality in employment, access to decent work and social protection. The ambitiousness of these tasks is due to the fact that none of the developed countries can claim to achieve full gender parity in the workplace, in the measures taken for social protection (Rashkova, 2017; Grybaitė, 2006).

Kazakhstan ratified the International Covenants on Human Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on Discrimination in Labor and Occupation, 1958 (No. 111), the Convention on Workers with Family Responsibilities, 1981 (No. 156), the Convention on Maternity Protection, 2000 (No. 183).

As required by the Convention on the Elimination of All Forms of Discrimination against Women (Convention), adoption by States Parties of special measures, including those measures contained in the Convention, aimed at protecting maternity shall not be considered discriminatory. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular, the right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and another incapacity to work, as well as the right to paid leave. Kazakhstan joined the Convention in 1998, and twenty years later, in 2018, a phased process began to equalize the retirement age of men and women (63 years). The discriminatory conditions for early registration of pension rights, taking into account seniority at the appointment of a pension, as well as access to the pension annuity system remain.

According to the Convention, states are obliged to prohibit, under the threat of sanctions, discrimination in dismissals on the basis of pregnancy, maternity leave, or marital status. The last basis of “marital status” is not implemented in the national labor legislation as a factor of discrimination in the termination of an employment contract.

The Kazakhstan Report on the Implementation of the UN Convention on the Elimination of All Forms of Discrimination against Women (Report, 2011) notes the concern of the UN CEDAW regarding “a limited understanding in Kazakhstan of the concept of formal and real equality and the prohibition of direct and indirect discrimination against women, formulated in Convention “. In our opinion, after 10 years, this concern is still relevant. Valid in the legislation and special Law of December 8, 2009, No. 223-IV “On State Guarantees of Equal Rights and Equal Opportunities for Men and Women” the definition of discrimination is limited with respect to the content of the Convention, there is no implementation of the categories of “direct and indirect discrimination”. This area needs the attention of the government and the legislator.

The Report of Kazakhstan on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women in 2018 (Report, 2018) once again summarized that the issues of determining direct and indirect discrimination are just promising areas of legislative work.

ILO Convention on Discrimination in Labor and Occupation (Convention 111) stipulates that discrimination is any distinction, exclusion or preference made on the basis of race, color, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. This definition of discrimination includes the restriction or exclusion of “equal opportunities for men and women” in the field of employment and working conditions, which was not taken into account in Kazakhstani legislation.

Ratified by Kazakhstan<sup>1</sup>, the Convention on the Rights of the Child (1989) states that the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth. States Parties recognize that every child has the inherent right to life and shall ensure to the maximum extent possible the survival and development of the child. (cr. 6). States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal

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<sup>1</sup> Ratified by the resolution of the Supreme Council of the Republic of Kazakhstan dated June 8, 1994 No. 77.

guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures. With regard to economic, social and cultural rights, such measures are taken to the maximum extent of the resources available to them and, if necessary, within the framework of international cooperation (Articles 3, 4). States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children (Art. 18). The right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral, and social development is recognized. The parent (s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programs, particularly with regard to nutrition, clothing, and housing (Article 27 of the Convention on the Rights of the Child).

Thus, in accordance with international obligations, Kazakhstan acts as a guarantor of physical, mental, spiritual, moral, and social development for each child, regardless of the financial situation and social status of his parents. The state should provide him with care before birth, which also means taking care of women and men as parents (including potential). In this aspect, even the protection of motherhood acts primarily as the right of the unborn child and therefore should be equally sufficient for all children. By guaranteeing the child, as a person and a citizen, the right to life and healthy development, the state is obliged to provide as much as possible the necessary assistance to the family as a whole, as well as to the mother and father, taking into account their roles in his birth, upbringing, and maintenance.

ILO Convention on Workers with Family Responsibilities (Convention 156) applies to men and women workers with responsibilities in relation to their dependent children, where such responsibilities restrict their possibilities of preparing for, entering, participating in, or advancing in economic activity.

In Kazakhstan, there is no normative consolidation of the national policy objective, which is to ensure that persons with family responsibilities who are employed or want to find a job, realize their right to work without discrimination and, if possible, without conflict between their work and family responsibilities.

According to Convention 156, with a view to creating effective equality of opportunity and treatment for men and women workers, all measures compatible with national conditions and possibilities shall be taken:

- to enable workers with family responsibilities to exercise their right to free choice of employment; and
- to take account of their needs in terms and conditions of employment and in social security.

It should be noted that in Kazakhstan there is still a lot of work to be done to really take into account the interests of workers with family responsibilities in determining their working conditions and developing social protection measures. Existing norms do not ensure equality of workers with and without family responsibilities in the workplace, while an effective social protection system is an important measure to ensure equality.

## **5. Differentiation of legal status by gender or the fact of having children**

The Constitution of the Republic of Kazakhstan is silent as if ignoring the fact that both women and men have children. The equality of such persons is not said. Caring for children and raising them is a natural right and obligation of parents (Article 27 of the Constitution of the Republic of Kazakhstan). According to the law, parents or persons replacing them ensure that their children receive basic general education (Article 27 of the Constitution). By providing men and women with equal rights to care for their own children, the legislator does not make the concept of their equality more comprehensive. Citizens with children are charged with additional constitutional duties in comparison with those without children. For example, this is the responsibility of parents for the upbringing and development of children. They are obliged to support minor children and take care of their health, physical, mental, spiritual, and moral development. Parents who do not provide children with a child are legally required to pay child support. Parents are responsible for their children getting a general education. They are charged for maintaining a child in organizations that implement the basic program of preschool education.

The obligations of parents to take care of children and their upbringing correspond to the provisions of the Constitution of the Republic of Kazakhstan that Kazakhstan provides state support for the family, motherhood, fatherhood, and childhood, establishes benefits and other guarantees of social

protection (Articles 27, 28). However, neither the Constitution of the Republic of Kazakhstan nor laws guarantee the receipt by the family, citizens with children, of such social assistance that, taking into account their own income, would be sufficient for normal upbringing and maintenance of children. The legislator has not even defined the concept of motherhood as a woman's condition in which she is guaranteed state protection.

A woman's childlessness may be caused by the desire to enjoy the same rights as a man, especially the right to work. However, the rejection of motherhood not only damages its legal and social status but also leads to a reduction in the country's population and a decrease in its quality of life. Fulfilling the responsibilities of maintaining and raising children requires not only considerable time and effort from those burdened with them, not only special knowledge that parents acquire independently but also a sufficient source of income, first of all, a full-fledged salary. Special difficulties arise if children are in the care of only one parent. Material and other real difficulties of families with children lead to a reduction in the birth rate. The birth rate is negatively affected by the low monetary income of many families, the lack of normal housing conditions, the modern family structure (focusing on small children, an increase in the number of single-parent families), heavy physical labor of a significant part of working women, working conditions that do not meet sanitary and hygienic standards, low reproductive health, and a high number of abortions.

We believe that these negative phenomena indicate a violation of constitutional provisions and international requirements, as well as the norms of current legislation on social human rights. They must be overcome regardless of whether Kazakhstan needs or does not need to increase its population. Wages in our country are significantly lower than in developed countries. Accordingly, the average per capita income of Kazakh families with two or more children does not reach the subsistence minimum.

Thus, it is feasible to raise the question of decent social security provided that the parents are paid enough to satisfy the needs of an ordinary family with children; without a revision of the wage policy, it is impossible to talk not only about the equal rights of women and men but also about the equal rights of people with and without children. When a family with two working people cannot feed and provide for two children, demographic problems arise.

The labor code of Kazakhstan, among the main principles of legal regulation of labor relations, does not provide for the right of every employee to pay a fair wage that ensures a decent human existence for himself and his family. It is not stipulated that the minimum wage may not be lower than the minimum subsistence level of the employable population. The legislation

does not stipulate that the salary should be at least at the level of the subsistence minimum of the employee and one dependent. However, the obligation of parents to ensure an adequate standard of living and development of the child is established.

In Kazakhstan, social development, including through the benefits of social security, is perceived as a burden for the economy, which has received the derogatory legal expression “expenditure obligations of the state”. Meanwhile, ensuring the well-being and development of every person, including women and children, is a prerequisite for modernizing the economy and improving the quality of human capital.

According to the survey results, women give unpaid work related only to caring for needy family members, on average, twice as much time as men. According to some other estimates, women’s domestic work is more than three times longer than men’s, and women have half as much free time as men. The work is not taken into account in the gross national product, although, according to estimates, it can amount to at least half of the country’s GDP in monetary terms. The foregoing allows us to conclude that the underestimation of family employment, in particular the upbringing of children as a factor in the development of the country’s economy. In this regard, there is a reason to talk about the need for partial compensation for unpaid domestic work with social benefits.

In modern conditions, there is a convergence of the needs and rights of people of different sexes, and a significant division of all men and women into two categories, not by gender, but by a different criterion - with and without family burden. Other things being equal, the welfare of both women and men decreases with the birth of children and an increase in their number. Meanwhile, one cannot fail to note the changing role of children in the family. At one time, their birth and large families were the economic necessity of the existence of the family, since it was the economic unit of society. The conditions in which the last two or three generations live are completely different from those in which hundreds of generations lived before them. Today, biologically, for procreation, to continue the family, the family is still needed, but to maintain the technological structure of society, it is no longer there. The literature notes that this antagonism should be resolved during the life of the next two or three generations, including ours. Obviously, these circumstances cannot be ignored in determining the prospects for the development of social security. If procreation is the social function of the family, which it performs voluntarily and, above all, in the interests of society, then it is the society that must play a leading role in its proper implementation.

Two children already reduce the mobility of the mother, primarily in economic and professional terms. Women of all social groups, without exception, feel uncomfortable due to the deterioration in the opportunities for raising children. They are forced to work not only to satisfy their needs for professional activities but primarily in order to obtain livelihoods for themselves and their children.

In theory and practice in Kazakhstan, social security for families with children, material support for motherhood and fatherhood are considered as addressed directly to women and men. Meanwhile, the material situation of citizens with children, the possibility of satisfying their necessities of life, including through social security, should be evaluated, first of all, from the point of view of the rights of the child as a person and citizen. By guaranteeing precisely to the child as a person and citizen the right to life and healthy development, the state is obliged to provide, as far as possible, the necessary assistance to the family as a whole, as well as to the mother and father, taking into account their roles in his birth, upbringing, and maintenance. It is obvious that in modern conditions it is difficult to count on a radical change in the current legislation and a sharp increase in social security spending. However, this does not exclude the importance of the theoretical development of issues of the development of social legislation for the future.

To summarize, we can draw the following conclusions and suggestions: social security legislation should be developed taking into account real differences in social status and social needs of people of different sexes, as well as people with and without children, and the maximum possible satisfaction of socially significant needs of families with children ; decent decent social security is possible provided that wages (even at a minimum level) are sufficient to meet the needs of a working married couple and two children, or one employee and one of his dependents; in conditions of small children and the special value of the life and health of each child, women should be able to stop working for the period from the beginning of pregnancy until the child reaches the age of three with the receipt of benefits from social insurance funds in the amount of lost earnings (with possible limitation within reasonable limits); unemployed and other unemployed women (including minors) must be provided during the same period with allowances from the state budget or the Social Insurance Fund, sufficient to meet the needs of the mother and child (children); social security for raising children should be sufficient to meet the needs of one of the non-working large parents and minor children brought up by them.

## **6. Discriminatory norms in social security legislation and recommendations for their neutralization**

In studies of the legal orientation, three different approaches to the issue of gender differences were developed: protectionism, equality, and compensation, and a legal regulation strategy is chosen according to the approach. In the first approach, women are understood as individuals other than men – weaker, subordinate, and in need of protection. With this approach, any legislation or practice that relates to women differently than men can be justified by the fact that women and men are different, women should be protected. Any differential treatment of women is actually considered to be designed to protect them. This approach accepts the existence of gender differences as natural and inevitable. By protecting women, this approach often serves to strengthen their subordinate status.

The second approach is the equal treatment approach. With this approach, any legislation or practice that treats women differently than men violates the guarantee of equality. This approach has been used to eliminate provisions that apply differently to women and men. According to this approach, it is enough that women and men are treated formally the same way.

In the third approach, women are considered as a group that is at a historical disadvantage; therefore, the need for compensatory or corrective regulation of their situation is in demand. Under this approach, gender differences are often seen as justifiable as well as requiring legal recognition. With this approach, it is allowed to adhere to the rules or practices that distinguish women from men, if such rules or practices are designed to improve the status of women. However, if legislation or practice is based on a stereotype or the assumption that women are different, weaker, or in need of protection, this is not supported. In this model, women will claim equality only to the extent that they can meet the values and standards developed for men. A compensatory approach argues that gender differences should be taken into account to predominantly ensure material equality for women (Kapur, 2016; Kaufman, 2005).

In general, Kazakhstani legislation adheres to the second approach: formal equality is proclaimed, but the legislation contains rules that are intended to compensate for a shorter period of work experience, time for caring for children, periods of pregnancy and childbirth, prohibitions on certain work with special conditions, etc. The OECD review noted that in Kazakhstan, in the course of conversations with government officials, it turned out that a position is widespread in Kazakhstani society, according to which, in order to achieve gender equality, it is enough to fix the provisions on equality in



the legislation. This position is especially prevalent at the local level. The belief that formal legislative requirements can directly ensure gender equality in society determines the extremely important and advantageous position of state institutions at the central and local levels for the adoption and implementation of gender mainstreaming strategies (OECD, 2017).

The current legislation formally establishes a set of norms that guarantee the principle of the prohibition of discrimination: in criminal, administrative-procedural, labor law. At the same time, the actual state of affairs shows the insufficiency of the taken measures of legal regulation. An important indicator is the lack of judicial practice on the protection or restoration of the rights to equal treatment, the prohibition of discrimination. The very definition of discrimination and the factors that can lead to discrimination needs to be improved. There is no differentiation of restrictions on direct and indirect, there is no consolidation of the sign of discrimination as a violation of equal opportunities, access to social benefits, and the exercise of rights. Only the labor legislation of Kazakhstan pays special attention to the consolidation and implementation of the principle of the prohibition of discrimination, which led to a limited understanding of the scope of discrimination – labor relations and employment, other areas of public relations do not actually consider the violation of equality as an urgent problem.

The following national approach is enshrined in the Concept of Family and Gender Policy in the Republic of Kazakhstan until 2030 (Kazakhstan, 2016): “the Kazakhstani approach implies the creation by the state of conditions for expanding opportunities for independent development of the family and overcoming difficult family situations by achieving gender equality in family relations. A necessary condition is the building of truly equal relations between a man and a woman, not only at the public level in the field of labor relations but also in the private sphere within a single family. Today, women in society in the performance of labor functions establish the same requirements as men. However, in family-domestic relations, the gender stereotype of male privilege is preserved. Along with this, in modern conditions, both parents should bear the same responsibility for raising children and housekeeping. Moreover, it is important to maintain positive family traditions and moral and spiritual values that characterize, among other things, ethnocultural identity”.

That is, the conceptual document of the study area establishes in fact that gender equality in the upbringing, care of children, family members, homework should be “settled” within the family, privately, which is correct, but not enough. The Concept indicates the existence in our society of deep gender stereotypes that cannot be overcome only by family. We believe that it is necessary to introduce into social security legislation the requirements and

conditions for sharing the burden of care and education as an imperative for access to social protection measures.

Kazakhstani women bear the main burden of domestic work and caring for children, as well as elderly relatives. This gender division of labor is deep in the public mind and in practice rests with women. This reason is the basis of discrimination against women in the workplace, in hiring and dismissal, promotion. In addition, the reproductive age of women is a strong risk factor for discrimination. No effective measures to correct this situation at the state level are taken. The Convention on the Elimination of All Forms of Discrimination against Women enshrines the obligation of States parties to adopt and implement temporary special measures aimed at accelerating the achievement of de facto equality between women and men. Despite the continuing inequality of women in Kazakhstani society regarding the gender gap in fulfilling family responsibilities, homework, participation in the care and upbringing of children, the state does not take any steps as temporary special measures. Such measures may include special quotas and other actions ensuring the mandatory participation of men in caring for children under the age of three years, registration of temporary disability in case of illness of a child or relative in need of constant care, etc. The implementation of such measures will contribute to the elimination of role stereotypes and promote the shared responsibility of women and men for raising children.

An exception to the Law of June 21, 2013, No. 105-V “On Pension Provision in the Republic of Kazakhstan” is required:

- gender differences in the age of the right to pension provision when living in zones of extreme and maximum radiation risk in the period from August 29, 1949, to July 5, 1963, for at least 5 years, in accordance with the Law of the Republic of Kazakhstan “on social protection of citizens affected by nuclear tests at the Semipalatinsk nuclear test site” (paragraph 2 of article 11);
- the rights of exclusively mothers, including those who have adopted or adopted 5 or more children and raised them to the age of eight, to reduce the retirement age (paragraph 3 of article 11);
- taking into account in the work experience only the time of care of a non-working mother for young children, but not more than until each child reaches the age of 3 years within 12 years in total;
- securing fundamentally different amounts of sufficient pension savings for men and women to formalize the right to a pension annuity.

Despite the steady increase in women’s employment, Kazakhstan faces the problem of discriminatory retirement benefits for women compared to men. As a rule, this is due to the partial (part-time) employment of women,

interruptions in work related to the birth and upbringing of a child, which entail gaps in the seniority and affect the level of future pension payments. In this regard, various mechanisms should be envisaged to take into account the family circumstances of pension recipients. These forms include: accounting for the time of caring for a child up to six years in seniority; provide for the possibility of increasing a woman's pension up to 60% of the base at the expense of her husband's pension contributions; providing an opportunity for the surviving spouse to have access to the system of insurance payments for life if he/she has an insurance experience of at least 20-25 years.

On the other hand, it is necessary to accept the fact that social security programs, based on the model for recording insurance or pension contributions, infringe on the rights of women, who often cannot have the same length of service as men. In this regard, it is necessary to work towards updating the regulatory framework in order to find more flexible approaches to the general conditions for the emergence of rights to social security.

## **7. Conclusion**

The absence of the concept of discrimination enshrined in legislation makes it impossible to recognize the facts of discrimination and the subjective right of a person not to be discriminated against. We have proposed the following definition: "discrimination – any distinction, exclusion or preference based on direct or indirect restriction of human rights based on race, color, political, religious or other beliefs, gender, gender identity, sexual orientation, ethnic, social or foreign origin, age, health status, disability, suspicion or presence of HIV/AIDS, marital and property status, family responsibilities, place of residence, membership in a public Association or non-profit organization, appeals or intentions to apply to the court or other authorities for the protection of their rights or to provide support to other persons in the protection of their rights, as well as on language or other grounds."

The legislation of Kazakhstan requires the consolidation of the concepts of direct and indirect discrimination, which will strengthen the mechanism to prevent inequality. Indirect discrimination, in our opinion, is a measure or practice that is identically applied to all, but without a legitimate aim, disproportionately affecting the interests of individual social groups.

Sed on the study of judicial practice, the authors concluded that there are significant difficulties in proving discrimination. In this connection, in our opinion, the following approach to the distribution of the burden of proof makes sense: when considering cases of discrimination, the burden of proof

should be largely borne by the defendant, depending on the resources available to the plaintiff to provide relevant evidence to the court. We believe that the consideration of disputes on gender discrimination in the courts is by far the most transparent procedure that is understandable to the parties to the dispute. The resolution of disputes by alternative means - through mediation or in specialized quasi-judicial bodies - has a number of disadvantages, in particular, a significant cost and the inability to be sure of the impartiality of the arbitrators.

Back in the 20-30s of the twentieth century, the ILO adopted a number of fundamental conventions and recommendations in the field of social security. The ILO conventions and recommendations in the field of social security are aimed at implementing the principle of equality. The ILO Conventions and Recommendations in the field of social security aim to implement the principle of equality. This principle is declared as fundamental in ILO Convention No. 19 "On Equality in Compensation in Accidents" (1925). It also underlies ILO Convention No. 102 on Minimum Standards of Social Security (1952). The ILO subsequently adopted a number of new conventions, which supplemented and specified the above Convention and set higher international standards for social insurance and security. These include conventions No. 121 on benefits in the event of work-related injuries (1964), No. 128 on benefits for disability, old age and survivors (1967), No. 130 on medical care, and sickness benefits (1969 .). Kazakhstan, unfortunately, for thirty years of development, as an independent state from the Soviet empire, has not ratified a single convention related to the field of social security. This is for our country an urgent direction for the prospect of implementing international standards of gender equality.

We conclude that the differentiation of legal regulation in the field of social protection should be based on the division of the sexes only when it comes to the physiological characteristics of the female body, in other cases (in particular, in relation to persons with family responsibilities), legislative regulation should be gender-neutral.

We pay attention to the global trends in the legal regulation of social security for persons with family responsibilities, which consist of giving equal rights to people regardless of gender. In the field of social protection, the legal regulation of the conditions for assigning various pensions contains the largest number of gender-discriminatory norms. These are the rules governing: conditions for early registration of pension rights in the presence of five or more children in the family, as well as when living in areas affected by the impact of nuclear tests at the Semipalatinsk nuclear test site; the procedure for the emergence of the right to a pension annuity through mandatory

contributions to the pension fund; periods included in the general length of service; as well as the procedure for granting benefits to people working in underground and opencast mining, at work with particularly harmful and especially difficult working conditions or at work with harmful and difficult working conditions, where gender equality in access to the specified type of allowance is not ensured: for women and men differ in the age of applying for benefits and the length of special work.

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