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LEGAL REGULATION OF GENDER PARITY IN THE PUBLIC SERVICE SYSTEM OF THE EUROPEAN UNION MEMBER STATES

The article is devoted to the study of the legal regulation of gender parity in the public service system of the European Union Member States. The relevance of the topic under study lies in the fact that the ideas of parity of rights of men and women are fundamental in the doctrine of any democratic and human-centered state. Equal rights for both sexes is another step towards building a modern civil society. The involvement of leading international experience can be useful in the context of Ukraine's European integration vector.

The article analyzes the key legal acts of the European Union and individual member states that regulate the issue of ensuring equal rights and opportunities for representatives of both sexes in the public service system. Particular attention is paid to the issue of access of women and men to the national parliaments of the analyzed countries. The author conducts a comparative analysis of the legislation of certain EU member states, whose experience may be useful in developing high-quality gender policies. The author identifies common trends in the national gender policies of the respective EU member states.

Based on the analysis, it is concluded that gender parity in the European Union is regulated at the level of common legislation for all member states and at the level of legislation of individual member states. The study also shows that not all EU Member States have enshrined in their legislation the rules on the application of gender quotas. In general, European countries are characterized by the enshrining of the gender quota system in national legislation. Different countries set different indicators of the respective quota. Some countries use voluntary party quotas.

Key words: *legislation, gender parity, European Union, public service.*

Махно В. А. Нормативно-правове регулювання сфери гендерного паритету у системі публічної служби держав-членів Європейського Союзу

Стаття присвячена дослідженню нормативно-правового регулювання сфери гендерного паритету в системі публічної служби держав-членів Європейського Союзу. Актуальність дослідженої теми полягає в тому, що ідеї паритетності прав чоловіків та жінок є фундаментальними в доктрині будь-якої демократичної та людиноцентричної держави. Рівність прав представників обох статей є ще одним кроком до побудови сучасного громадянського суспільства. Залучення провідного міжнародного досвіду може бути корисним в контексті євроінтеграційного вектору розвитку України.

У статті проаналізовані ключові нормативно-правові акти Європейського Союзу та окремих країн-членів, які регулюють питання забезпечення рівних прав та можливостей для представників обох статей у системі публічної служби. Особлива увага приділена питанню доступу жінок та чоловіків до



національних парламентів проаналізованих країн. Автором проведено порівняльний аналіз законодавства окремих країн-членів Європейського Союзу, досвід яких може бути корисним при розробці якісних гендерних політик. Автором виявлено спільні тенденції у національних гендерних політиках відповідних країн-членів Європейського.

На основі проведеного аналізу було зроблено висновок про те, що регулювання гендерного паритету в Європейському Союзі здійснюється на рівні спільного законодавства для всіх країн-членів та на рівні законодавства окремих країн-членів. Також на основі проведеного дослідження можна констатувати факт того, що не всі країни-члени Європейського Союзу закріпили у своєму законодавстві норми щодо застосування гендерних квот. Для європейських країн загалом є характерним закріплення в національному законодавстві системи гендерного квотування. Різні країни закріплюють різні показники відповідної квоти. Частині держав притаманне застосування добровільних партійних квот.

Ключові слова: законодавство, гендерний паритет, Європейський Союз, публічна служба.

Introduction. The issue of national gender policy constitutes a fundamental and pivotal aspect of proper legal regulation in any country. Special attention is paid to uniform and consistent norms regulating the gender sphere in several countries, as this minimises potential differences and increases the stability of legal regulation. It is therefore advisable to study the experience of the European Union.

Objective. To summarize the content of legal regulation of gender parity in the public service system in the European Union and its individual member states.

Research results. Although the European Union in its modern form was established only in 1993, the association dates back to 1957, when the European Coal and Steel Community and the European Economic Community were established. Since then, in addition to regulating issues of economic cooperation, the activities of the European institutions have also addressed legal issues, including gender parity.

In the 1970s, the European Union began to develop and implement its own policies to achieve equality between women and men. The European Commission has emphasised that the initial foundations for establishing gender parity were established in the provisions on equal pay in the Treaty of Rome of 1957 [1, p. 12].

The first European equality directive, which dealt with equal pay, was adopted in 1975, and this was soon followed by the 1976 directive on equal treatment in access to employment, training, promotion and working conditions. In 2002, this legislative framework was further refined and expanded to encompass an official prohibition on sexual harassment, and subsequently complemented by additional laws delineating specific aspects of gender policy [1, p. 12]. These measures enabled the mitigation of challenges confronting women, thereby facilitating the effective exercise of their rights in the labor sphere, particularly within the public sector.

The authors of the guide "EQUAL: Guide on Gender Mainstreaming" posit that all acts pertaining to equality and non-discriminatory treatment have proven efficacious in combating overt discrimination. However, they contend that these measures have been inadequate in ensuring the parity that was the very task set by the European legal community. The fundamental premise underlying this assertion is that the treatment of women and men should be equal and equivalent. However, a subsequent paradigm shift emerged, proposing that women and men are not equivalent and possess distinct opportunities, thereby rendering equal treatment ineffective in achieving complete parity. This new concept posited that equal treatment of men and women should invariably yield equivalent outcomes. Consequently, the European Commission arrived at the interim conclusion that "neutral policies have produced different results" [1, p. 13].



In the 1980s, specific and positive measures were taken to address those shortcomings and problems that, for one reason or another, had not been properly addressed earlier. Lawmakers focused on what women lacked not only in the legal space but also in social life. The European legal community came to the surprising conclusion that the problem lies in women themselves, and therefore they must change. Consequently, the EU acknowledged the inadequacies of legislative frameworks in promoting gender parity, which impeded the eradication of disparities between women and men. It has thus identified specific actions and developmental pathways for women, encompassing areas such as enhancing women's access to leadership roles and their representation in government. However, reports on the implementation of gender parity have demonstrated that these actions have also not been effective enough, and all previous innovations "... prepared women to work in a male-dominated culture, but did not challenge it" [1, p. 13].

The sequence of events and their consequences gave rise to a new period, known as gender mainstreaming. This new period was characterised by a shift in focus from individuals to systems and structures, and from relations between men and women to relations between different genders. This approach was recognised on a global scale at the Fourth UN World Conference on Women in Beijing in 1995. The gender approach, which began to be practised in the 1990s, recognises that existing structures are not gender-neutral, but favour one or the other gender. It is evident that gender-neutral policies are not achieving their desired objectives. Furthermore, members of the European Commission are of the opinion that such policies could potentially exacerbate existing disparities, thereby placing both men and women in an even more unfavourable position. The introduction of gender mainstreaming has necessitated the development of a strategy that takes into account the diversity of circumstances, including but not limited to age, ethnicity, physical condition, and sexual orientation.

The concept of introducing gender parity into the legislation of the European Union was further developed in 1992 with the adoption of the Maastricht Treaty, which enshrined the fundamental principles of pluralism, non-discrimination, tolerance, justice, solidarity and the equality of women and men [2]. Five years later, in 1997, EU gender legislation was supplemented. The Amsterdam Treaty, adopted in 1997, introduced separate provisions regulating the issue of equal rights for men and women. Article 118 of this act declared the need to introduce and develop the general idea of parity between men and women in their opportunities in the labor market, regulating the issue of equal opportunities for employment and equal treatment of representatives of both sexes in the performance of their labor duties. The subsequent Article 119 stipulates the requisites for "equal treatment of men and women in relation to employment and occupation, including the principle of equal remuneration for equal labour" and ensures complete parity between the sexes in the realm of employment [3, p. 45].

In the context of the European Union's regulatory framework on gender parity, the Consolidated Version of the Treaty on European Union and the Treaty on the Functioning of the European Union of 2010 occupies a prominent position. According to Article 2 of the aforementioned treaties, the European Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights. These values are common to all Member States in a society based on pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men" [4]. The general ideas, goals and vectors of action are also described in the third article of the Treaty. Given the importance of gender policy, the regulation of gender parity was included in a separate article (23), which states that equality between both sexes should be in all spheres of life. This particular article places particular emphasis on the domain of labour relations, encompassing equal opportunities for employment, the performance of functions, and remuneration. The article further expounds on the notion of "total" parity, positing that "the principle of equality does not preclude the implementation or adoption of measures that provide certain advantages to the underrepresented sex" [3, p. 44]. Consequently, it can be deduced that this provision establishes the principle of implementing positive measures to address and redress gender-related issues. Articles 157 and 158 of the aforementioned act stipulate the principle of parity between men and women in the public sphere, with a primary focus on labour relations. Article 157



stipulates the necessity of "equality of women and men in terms of their opportunities in the labour market and treatment at work" [4]. The European Parliament and the Council adopted a number of measures aimed at ensuring the application in practice of the principles of equal opportunities and equal treatment of men and women in matters of employment and labor. In turn, the principles of equal opportunities and equal treatment include the principle of equal pay for equal work or for the amount of work that should be assessed as equal.

In order to achieve a comprehensive and profound understanding of the EU's regulatory framework for ensuring equal rights and opportunities for men and women, it is necessary to examine the content of the most significant EU Directives in the field of gender parity. Of particular significance is the Directive of December 19, 1978, on the progressive implementation of the principle of equality between men and women in the field of social security (No. 79/7/EEC), widely regarded as a foundational act in the regulation of gender issues. The initial article of the act states that "The purpose of this Directive is to progressively implement the principle of equality between men and women in the field of social security, hereinafter referred to as the 'principle of equality of treatment', and other components of social security." Article 5 stipulates that all Member States are obliged to undertake certain proactive measures to ensure the realisation of the aforementioned objectives for the gradual implementation of the principle of gender parity, particularly with regard to the regulation of national legislation. Consequently, all laws, regulations and other acts that are contrary to or inconsistent with this objective should be repealed or, if not already adopted, should not enter into force, and vice versa, as outlined in Article 6. Member States are further obliged to implement into national law the rules establishing and regulating equality between men and women. Furthermore, Articles 8 and 9 explicitly establish the obligation of these states to adopt the necessary legal acts that would be at the forefront of the promotion of gender equality and equity within six years of ratification of this Directive, and to report on this to the European Commission. Additionally, Member States must provide the Commission with all necessary information on the implementation of the provisions of the Directive in national legislation to enable further analysis and reporting on the achievement of the goals [5].

In light of the fact that women are frequently regarded as a vulnerable category of people, the European Union's legislation also aims to address these issues. For instance, the Directive of 19 October 1992 on measures to improve the safety and health at work of pregnant workers, workers who have recently given birth or are nursing (No. 92/85/EEC) contains numerous provisions designed to properly regulate the employment and labour relations of vulnerable categories of women. The Directive's primary objectives are twofold. Firstly, it seeks to enshrine in legislation the obligation of employers to modify and enhance working conditions for vulnerable women in instances where risks to their life and health, or the potential impact on their offspring, have been identified. Secondly, it prohibits forced night work for women who are pregnant or within a specified postpartum period. The Directive also regulates the issue of maternity leave, and proscribes the dismissal of women who are pregnant and on maternity leave. Furthermore, it establishes a number of other guarantees to protect the rights of women who need additional legal protection due to their increased vulnerability in the labor market [6].

Another act that regulates issues related to women's reproductive health is the Directive of June 3, 1996 on a framework agreement on maternity leave (No. 96/34/EC). The aim of this act is to create conditions that would encourage men to take on an equal share of family responsibilities in a recommendatory manner, and it also regulates flexibility, convenience of working hours and other issues in the field of labor relations [7].

The Directive on the Implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Employment and Occupation (as amended) can be considered an ideological continuation of Directive 79/7/EEC of the European Parliament and of the Council of July 5, 2006 (No. 2006/54/EC). The purpose of the act, as outlined in Article 1, is to "ensure the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation". Among the notable novelties of this act are the improvement of conditions for access to employment, the establishment of an objective opportunity for



career advancement, and the capacity of women to undergo vocational training, amongst others. The term "mechanisms of professional and social security" is employed in the Directive to denote those mechanisms heretofore unaddressed by the provisions of Directive 79/7/EEC of December 19, 1978 [8, p. 23-36]. The overarching objective of these directives is to effectively regulate issues pertaining to the vulnerable aspects of women's labour activity and to ensure their protection. It is our contention that these legislative instruments have facilitated the effective exercise of labour rights by women and ensured the protection of those rights, thereby exerting a direct and positive influence on the representation of women in the public service and ensuring equal opportunities for both sexes. In addition to the legislative regulation of gender parity issues at the level of the European Union as a single body, there are other practices that can improve gender policy in a particular country. The EU's gender parity policy is chiefly associated with resolving issues in the field of labor relations between employers/employees and women employees, and this has gradually evolved into another issue: the problem of gender parity in the field of decision-making important for the state or the issue of women's representation in public service bodies [9, p. 62-66].

One of the classic indicators that demonstrates the achievements of national gender policy is the percentage of women in public service. Most often, the share of women in parliament is taken into account, and an evaluation and analysis of such trends reveals that the share of women parliamentarians in the European Union member states is growing every year. Thus, as of 2014-2015, the average figure was about 28% [10]. This figure has increased to 30% in 2018 [11]. It is important to emphasise that the rates of women's representation in the public service vary across EU member states, with different legal methods employed. Some countries have legislative gender quotas, while others have voluntary party quotas. There are also states that combine both types of quotas, and some that do not have any system of affirmative action at all.

A more detailed and comprehensive demonstration of the legal regulation of gender policy in the public service system of EU member states necessitates an examination of those countries whose experience is leading, indicative and illustrative. According to the reporting information on the percentage of women in government provided by countries over the past decades, Belgium can be categorically considered one of the leading countries. This country is one of the three EU member states with the highest percentage of women MPs in the national parliament. In 2014, the percentage of women in parliament was 39%, and the political component of the gender equality index was 66. As of 2019, the representation of women in the House of Representatives (Chambre des Representatives) increased to 42%. As of 2025, this figure decreased by 1%, which cannot be considered a significant deterioration in the situation. In the Belgian Senate, the proportion of women is approximately 45% [12].

The high position of Belgium in terms of the achievements of its gender policy can be explained by its legislative activity. In 2007, three anti-discrimination laws were adopted at the federal level: the General Anti-Discrimination Federal Act, the Federal Act on Racial Equality and the Gender Act. The latter, which covers the issues of sex and gender, is particularly pertinent in the context of the country's efforts to combat discrimination between women and men. Belgian legislation mandates the implementation of a "gender test" for all laws and regulations, whereby the responsible minister is obliged to conduct a preliminary gender impact assessment. The nation has instituted a system of legislative gender quotas, which are enshrined in the electoral law. Consequently, Article 117. 1 of the Electoral Code stipulates that each list must be formulated on the basis of equal representation of both women and men. Article 119. 5 stipulates that "the central electoral commission of the district shall reject lists that do not comply with the provisions of Article 117. 1" [13]. The Belgian electoral legislation also establishes a quota at the subnational level, requiring a gender quota of 50% for representatives of each gender on the candidate lists (Article 23(9) of the Community Elections Act). Failure to comply with this legislation can result in the rejection of the list of candidates, as outlined in Article 26(2) of the Community Elections Act [12].

In order to facilitate a comprehensive study and understanding of the state of implementation of gender policy in the EU member states, it is recommended that analysis be conducted not only of those countries that are leading in this area, but also of others that can provide important



information for analysis. For example, the experience of Germany, which ranks second in the EU according to the Human Development Index, is worthy of attention [14]. German legislation emphasises equality between men and women. It formally commits to an active and effective equality policy at the federal level, as articulated in Article 3(2) of the Basic Law (Grundgesetz) [15]. Beyond the Grundgesetz, the principle of gender parity is further entrenched in numerous other federal laws, addressing various sectors of the economy. The most recent legislative acts pertaining to gender parity in the labor market and public administration include the Federal Law on Transparency of Remuneration (Entgelttransparenzgesetz) and the law on increasing the share of women in managerial positions. In a cabinet resolution of June 23, 1999, the federal government recognized the importance of gender parity as a guiding principle for its activities and adopted gender mainstreaming as a common goal for all federal ministries. This objective was formally codified in the 2000 Gemeinsame Geschäftsordnung der Bundesministerien (Common Rules of Procedure of the Federal Ministries), which stipulates that "equality between men and women is a consistent guiding principle and must be promoted in all political, legislative and administrative actions of the federal ministries, legislative and administrative actions of the federal ministries in their respective fields" and requires all federal ministries to "promote equality between women and men as an overarching guiding principle in all their normative actions" [16].

In order to continue the analysis, it is also important to emphasise the experience of Poland. The legislation of the Republic of Poland directly regulates the issue of gender parity. For instance, the Constitution, adopted in 1997, stipulates in Article 33(2) that "women and men have equal rights, in particular with regard to education, employment and promotion, and are entitled to equal remuneration for work of similar value, to social security, to hold office and to be publicly honored and awarded" [17]. Admittedly, the accession of Poland to the European Union, coupled with the subsequent adherence to the principles of the European Union, has contributed to the enhancement of the legal framework for parity. This enhancement has been evidenced by significant amendments to the Labor Code Act of 26 June 1974 [18]. The primary legislation dedicated to the promotion of gender parity in Poland is the Act on the Implementation of Certain European Union Regulations on Equal Treatment of 3 December 2010. This legislative instrument establishes the general framework conditions for the policy of equal treatment in Poland. In Poland, both voluntary party quotas and statutory quotas are utilised. Legally established candidate quotas are enshrined in the Polish Constitution and the Electoral Code, which stipulates that "the number of female candidates cannot be less than 35% of all candidates on the list. The number of male candidates cannot be less than 35% of all candidates on the list." In the event that a list fails to meet the requisite quota, the commission is obliged to issue a directive to the individual who submitted the list, instructing them to rectify the identified defect within a period of three days. Should this directive not be adhered to, the commission is empowered to refuse to register the list in its entirety [19].

Conclusions. Following a comprehensive analysis of the legislation of the European Union and its individual member states, the following conclusions can be drawn. Firstly, gender parity in the EU is regulated at two levels: the first is legislation common to all EU member states, and the second is legislation of individual countries. This system allows, on the one hand, the unification of legislation on its fundamental basis, and, on the other hand, it grants individual states the autonomy to implement their own national gender policy. Secondly, it is important to emphasise that not all EU member states have enshrined the rules on the application of gender quotas in their legislation, but it is evident that this trend is typical for Europe. The combination of legislative means and methods of ensuring gender parity in each country is at their direct discretion, as could be seen in the examples of the above-mentioned countries.

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