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## THE PRINCIPLE OF GENDER EQUALITY UNDER FAMILY LAW: EXPERIENCE OF FOREIGN COUNTRIES AND UKRAINE

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***The purpose** of the article is to study the principle of gender equality in family law, specifically the experience of foreign countries and its impact on the development of family legal relations in Ukraine. The focus is on the importance of ensuring the equal rights and opportunities for women and men in the context of family legislation, as well as the challenges that arise when implementing the gender equality. **Research methods:** the article uses a comparative-legal method to analyse international experience in family law and the principles of gender equality. It also applies methods of analysing legislative acts and international agreements related to gender equality to examine how different countries implement this principle in their legal environment. **Results:** the article points on the importance of implementing the principle of gender equality in family law to achieve social justice and sustainable development of society. An analysis of foreign legislations (France, Sweden, Norway, Iceland, Canada, etc.) demonstrates various approaches to ensuring the equal rights for women and men in family relations, including the equality in marriage, the equal parental rights and rights to alimony. In Ukraine, there is also a gradual integration of European standards, although there are certain problems, including the cultural and social stereotypes that may complicate this process. **Discussion:** the article highlights that, although Ukraine has a legal framework guaranteeing gender equality, its implementation in practice faces barriers such as stereotypes and limited access to legal information. Furthermore, it emphasizes a need to adapt national legislation to modern requirements regarding gender equality and a necessity to consider cultural and social features that may influence the formation of gender roles in the family. The article also suggests developing the concept for the development of Ukraine's family legislation based on the analysis of international experience and internal trends.*

***Key words:** a gender; gender equality; family law; the equal rights; a third gender.*

**Problem statement and its relevance.** Gender equality is a fundamental condition for a true democracy, ensuring the equal participation for all individuals, regardless of gender, in various aspects of life. It lies at the heart of the United Nations' core values [1]. This is equally relevant for Ukraine, where guaranteeing the gender equality is a key task for both society and the state, as it is in any other democratically evolving nation.

The challenge of implementing the gender equality and establishing the necessary national framework is driven by global political trends, Ukraine's international commitments, its European

orientation, and other factors. Furthermore, it holds considerable theoretical and practical significance for legal theory as well as for the nation's social and state development [2].

### **Analysis of recent research and publications.**

In Ukraine several scholars have researched the issue of gender equality in family law, including: I. Kotyhorenko, who considers gender equality in the context of family law and the women's rights; O. Sushko, who researches gender equality within Ukraine's legal framework, particularly in family law; M. Kozlovska, who actively engages in family law and gender studies, analysing the impact of le-

gal norms on gender inequality in the family and advocating for family law reforms to enhance the status of both women and men; and T. Shamrai, who focuses on the gender aspects of family law and gender equality within legal norms, especially regarding the distribution of the rights and obligations in marriage and family. These scholars, alongside other legal experts, contribute to the advancement of scientific understanding the gender equality in family law, emphasizing the importance of incorporating the gender-sensitive approaches into Ukraine's legal system.

**Presentation of the main material of the research.** The English word “gender” refers to gender as a grammatical category or type in the sense of belonging to a certain class, and its use aims to distinguish “social gender” from biological sex. The Ukrainian language does not have a clear equivalent for this word, leading to different interpretations.

A term “gender” is widely used in scientific and journalistic literature, but the process of developing the gender approach in national jurisprudence is complicated by various theoretical, methodological, informational and organisational features.

N. Anishchuk defines a gender as a complex socio-cultural process within society that reveals an individual's social and role status, determining the social opportunities in education, professional activity, access to power, sexuality, as well as family roles and reproductive behaviour.

V. Ochkur, for instance, defines a gender as the structured model of social relations between women and men, which not only characterizes communication within the family but also shapes their social interactions within key state institutions.

O. Sayenko describes gender equality as the multifaceted legal concept that encompasses: equality of the rights, obligations and opportunities for individuals of different gender identities; equality of their statuses and the creation of equal conditions for the realization of all human rights and the development of their potential; ensuring the equal participation in public life and politics, and providing the equal access to certain material or non-material goods and values, grounded in the principles of justice, tolerance, and inclusiveness.

N. Onishchenko and N. Parkhomenko also emphasize the importance of considering the gender-specific characteristics, noting that while women and men are equal, they are also different, and their equality lies within these differences. These differences reflect the unique traits of each sex, which should be acknowledged by providing both women and men with specific sets of the rights and appropriate mechanisms to exercise them. Gender differences do not hinder equality; rather, their existence necessitates differentiated legislation and special regulations. Granting the special rights to women, as compared to men, or to men, as compared to women, should be based on clear and sound foundations rooted in objective social and natural distinctions.

N. Hrytsiak has another interesting point of view, according to which gender equality is considered in four dimensions, in particular:

- the first one – the human rights as a standard of the political, civil, economic, social and cultural rights and freedoms for women and men;
  - the second one – the human rights as the women's rights;
  - the third one – equality of the freedoms, rights and obligations; and
  - the fourth one – the equal opportunities as a key element of gender equality.
- M. Krochuk believes that a concept of gender equality should be considered through a set of implications, which include:
- equality of the rights, which corresponds to the legislative recognition of the equal rights of persons of different sexes in all spheres of life;
  - equality of the opportunities, i.e. providing the man and women with the equal conditions for using and distributing the social, economic, cultural and political values, which ensures the absence of discrimination and restrictions on representatives of a particular gender;
  - ensuring the equal conditions for realisation of the rights and opportunities;
  - “gender symmetry” that means a state of realisation in practice of the abovementioned rights and opportunities for representatives of different sexes [3].

The legal and normative framework of any state reflects traditional societal views and shapes of

their development. However, to ensure gender equality, it should not only include society's stereotypical notions of men's and women's roles, but also embrace modern progressive principles and guarantees of their equality as legal subjects.

While gender equality is the most commonly understood as the equal rights of women and men, some countries have officially recognized a third gender or non-binary gender in their legislation [1]. The terminology surrounding the non-binary gender is quite expansive, encompassing:

- androgynous individuals who do not identify as either male or female;
- agender individuals who reject gender identity entirely;
- bigender individuals who simultaneously (or alternately) identify with both male and female identities;
- transgender individuals whose gender identity does not correspond with the gender assigned to them at birth.

Australia was likely the first country to officially recognize a third gender, when in 2003 its citizen Alex McFarlane received the first passport with an "X" in the gender field. However, at that time, this was only available to intersex individuals whose gender had not been assigned and was not listed on their birth certificate. Since 2011, people of "undetermined gender" have been able to obtain passports with the "X" designation.

Today, approximately 15 countries around the world recognize a non-binary gender, and these countries could be grouped into three categories:

- countries where recognition is granted only upon presentation of a medical certificate (for instance, certain states in Australia and Germany);
- countries where the acknowledgment of a third gender is tied to local cultural traditions, with recognition primarily given to individuals who are part of the relevant community (such as hijras in India, Bangladesh, and Pakistan);
- countries where non-binary gender recognition is based on self-determination include Argentina, Canada, Denmark, Malta, Nepal, New Zealand, Uruguay, and certain states in Australia and the United States. While Australia at least officially states that non-binary recognition applies across all aspects of life, and Malta's laws are generally gen-

der-neutral, countries like Argentina and Uruguay lack clear regulations on these matters. In some other countries, the non-binary marker is only considered in specific contexts (such as voting or statistical data collection), while outside these contexts, individuals are typically viewed as either "female" or "male". In contrast, Denmark and Canada have special mechanisms for recognizing the non-binary genders, and Malta even allows individuals to hold two passports simultaneously – one with a binary gender marker and one with the "X" marker [4].

According to the WHO's data, there are about 25 million transgender people in the world or people who identify as other gender minorities [5].

A system of family law principles in Ukraine includes various elements, one of which is the principle of gender equality or gender balance in family relations. Ensuring the gender equality in family legal relations is a crucial aspect of any society striving for justice, equality and sustainable development. It strengthens family bonds, promotes the emancipation of both women and men, and creates equal conditions for all family members. Gender equality in family law also contributes to enhancing the women's economic independence, their participation in the workforce, and their equal involvement in decision-making within the family.

Foreign legislation on gender equality in family legal relations serves as an important source of insight and inspiration for other countries, including Ukraine. For example, Articles 212–213 of the French Civil Code (1804) declare that spouses should support their children's education and ensure their future.

In England and the United States spouses are required to create a marital community of life – a consortium, which includes sharing the common table, hearth, and bed.

Sweden is known for its progressive stance on gender equality, where marriage is based on equal partnership, with both partners having the equal rights and opportunities. Additionally, Sweden recognizes a same-sex marriage and provides the same rights to both same-sex and different-sex couples. In 1960, civil marriage was introduced as an alternative form of family relationship, allowing partners to "test" living together before officially regis-

tering their relationship. This model later was spread to Denmark and, shortly thereafter, Norway.

Norwegian law grants spouses the equal rights and obligations within marriage, recognizing the same-sex marriage as well. Norway also has a decree that guarantees the equal parental rights and opportunities for both parents, regardless of gender.

Iceland has similarly progressive laws ensuring the gender equality in family relations, providing the both parents with the equal rights and obligations in raising their children and making family decisions. Iceland also actively combats gender-based discrimination, with legislative measures designed to promote gender equality in various life domains.

In Canada family law guarantees the equal rights and opportunities for both partners in marriage and divorce. The country recognizes same-sex marriages and provides them with the same rights and protections as opposite-sex couples. The Netherlands has also adopted laws allowing the same-sex couples to marry and adopt children, and it recognizes the equal parental rights for both partners, promoting the joint parenting regardless of gender.

Poland has made notable changes in family law, particularly with the 1998 ratification of the Concordat with the Vatican, which introduced two equal ways of entering into marriage: through civil registry offices and religious ceremonies, effectively recognizing the religious norms as a source of family law. In 2004, Poland's Family and Care Code was amended to allow individual contractual regulation of family proprietary relations between spouses, and it was established that one spouse is not liable for the debts of the other one.

Around the world, many countries are actively working to ensure the equal rights and opportunities for all parties in family legal relations, regardless of gender or gender identity [6].

A system of national legislation in Ukraine on gender equality, including in the context of family relations, could be categorized as follows:

- the first group consists of international legal treaties ratified by Ukraine, which are incorporated into national legislation;

- the second group includes legal acts that establish general principles and address strategic issues related to the formation and implementation of

gender policy in Ukraine. This group encompasses key laws in this field, as well as concepts (national plans, strategies, programs) approved by the President and the Cabinet of Ministers of Ukraine;

- the third group consists of legislative acts that contain general provisions on social relations in specific areas of activity;

- the fourth group includes acts directly related to the creation and implementation of gender policy in particular fields, containing the specialized provisions [7].

Global practice shows us that the transformation of family relations is not only linked to economic processes, but is also measured by many other parameters, including gender, which require study and state regulation. International standards for observance of the equal rights and opportunities for women and men in society are formulated in the Universal Declaration of Human Rights [8], the Convention on the Political Rights of Women [9], the UN Convention on the Elimination of All Forms of Discrimination against Women [10], etc. Ukraine, as one of the founding members of the UN, adheres to the principles of this international organisation and understands gender equality as a condition for the development of the state and the creation of appropriate conditions for the comprehensive development of human potential. In particular, in accordance with Article 18 of the UN Convention on the Elimination of All Forms of Discrimination against Women, Ukraine periodically submits state reports to the UN Secretary-General every four years on the implementation of this Convention in Ukraine.

International agreements (treaties) and international legal acts ratified by the Verkhovna Rada of Ukraine, which, in accordance with Article 9 of the Constitution of Ukraine, form part of the national legislation, should also be mentioned here.

The guarantees of gender equality in Ukraine are consolidated in the Constitution of Ukraine, which affirms and legally establishes the political and legal principle that all human beings – both men and women – are the highest value [11].

O. Frytskyi points on the following provisions of the Constitution of Ukraine: Article 21 – which provides that all individuals are free and equal in their dignity and rights; Article 22 – which declares

that the human rights and freedoms are inalienable and inviolable; and Article 23 – which guarantees the right of every individual to freely develop his/her personality, as long as the rights and freedoms of others are not infringed upon [3].

Also, Article 24 of the Constitution of Ukraine explicitly obliges to adhere to the principle of gender equality, stating that there could be no privileges or restrictions based on race, skin colour, political, religious or other beliefs, gender, ethnic or social origin, property status, place of residence, language or other characteristics [11].

As mentioned earlier, issues of gender equality are also addressed through the concepts (national plans, strategies, and programs) approved by the President of Ukraine and the Cabinet of Ministers of Ukraine. The adoption of these acts reflects Ukraine's commitment to establish a rule-of-law and democratic state where the human rights and freedoms are protected and guaranteed, as well as the country's intent to implement the principle of gender equality across all levels of public life [7].

In addition to the Constitution of Ukraine, the Family Code of Ukraine (hereinafter – FC of Ukraine) [12], the Civil Code of Ukraine [13] and the Criminal Code of Ukraine [14] form the basis of gender legislation in the field of family relations.

Modern trends in the development of marriage and family relations are set in the FC of Ukraine which aims to establish the principles of parity democracy within the family and to ensure the equal opportunities for spouses in exercising their constitutional rights, freedoms, obligations and responsibilities as individuals and citizens. Thus, Article 1 of the FC of Ukraine states that it regulates family relations to build them on a parity basis, founded on mutual love, respect, assistance, and support. Additionally, Article 7 of the FC of Ukraine provides that women and men have the equal rights and obligations in family relations, marriage and family life. Article 3 of the FC of Ukraine defines a family as one based on a marriage, the blood relations, an adoption or other grounds not forbidden by the law or contrary to society's moral standards.

Interestingly, that previous provisions of Article 22 of the FC of Ukraine set the marriageable age at 17 for women and 18 for men. However, amend-

ments to this article have equalized the marriageable age for both men and women at 18 years.

Articles 23 and 56 of the FC of Ukraine are particularly important in terms of individual freedom and the human rights. Thus, paragraph 1 of Article 23 of the FC of Ukraine defines that the forced marriage is prohibited. Here the term “forced” should be understood as using the physical violence, threats to harm the victim or their loved ones, blackmail or any action that restricts the victim's rights, freedoms or legitimate interests. Furthermore, paragraph 4 of Article 56 of the FC of Ukraine set that any form of coercion to terminate or maintain marital relations, including forcing the sexual intercourse through physical or mental violence, is a violation of the spouse's right to personal freedom and integrity. Such acts are unlawful, even if they are committed within the context of a marriage [15].

Article 60 of the FC of Ukraine stipulates that property acquired by spouses during marriage belongs to them both as joint property, regardless of whether one of them has not had independent income due to valid reasons such as education, running the household, caring for children, illness, etc.

Fair and humane, from the perspective of marital relations, is Article 75 of the FC of Ukraine, which establishes the right to maintenance (alimony) for the spouse who is incapable of working and in need of financial assistance, provided that the other spouse is able to provide such support. This provision applies not only during marriage but also for one year after termination of the marital relations.

The FC of Ukraine also separately regulates the right of a woman to receive maintenance (alimony) during pregnancy and when living with the child (Article 84 of the FC of Ukraine), as well as the right of a man to receive such maintenance when the child lives with him (Article 86 of the FC of Ukraine). In this way, the FC of Ukraine guarantees the rights of both women and men in cases where they are the sole parent raising a child. This support could continue for up to three years.

The FC of Ukraine also protects the men's rights in situations where they are the biological fathers of a child, even if the mother was married to another man at the time of conception or birth (Article 129

of the FC of Ukraine). In such cases, a man has the right to initiate legal proceedings to establish his paternity.

In addition to the equal rights outlined in the FC of Ukraine, both men and women bear the equal obligations as parents. Thus, they have the same rights and obligations toward their child, regardless of whether they were married to each other (paragraph 1 of Article 141 of the FC of Ukraine). In practice, after a divorce, children are more often placed with their mother, but this does not relieve the father of his obligations to raise the child. At the same time, Article 153 of the FC of Ukraine guarantees men the right to spend time with their children after a divorce, except in cases where this right is legally restricted [15].

Apart from the Family Code of Ukraine, Ukraine has a comprehensive system of legal acts that govern family relations; however, issues related to gender inequality or partnership dynamics within the family are seldom addressed in these documents.

Ukraine's foreign policy, which focuses on the gradual and effective integration into the European Union, plays a significant role in shaping the gender aspect of family legal relations. Since 1996, the promotion of the equal opportunities has been a core goal of the European Union in its efforts to build a fairer society, embedding this principle in all policy areas and extending it to the political level of its member states. With the signing and ratification of the EU-Ukraine Association Agreement in 2014, Ukraine not only gained the chance to eventually become an EU member but also received reform recommendations to align with the Copenhagen criteria.

As the European experience increasingly serves as a foundation for Ukraine's development, analysing this experience is crucial at this stage. At present, the European family policy encompasses three main areas, two of which are directly related to ensuring the equal rights and opportunities for women and men in family relations: 1) child welfare, 2) gender equality, and 3) the reconciliation of family life and work. Additionally, promoting the equal opportunities for women and men, fostering the partnerships within families and creating the condi-

tions for parents to balance family life and work positively impacts children's well-being [16].

**Conclusions.** Achieving the gender equality requires a multifaceted approach, which goes beyond legislative changes and includes efforts to shift cultural attitudes and perceptions of gender roles within the family. Raising public awareness about the gender rights, fostering the gender-sensitive discussions and promoting the positive stereotypes are crucial steps toward achieving the gender equality in family legal relations. However, challenges such as limited access to legal information, entrenched stereotypes about gender roles and socio-cultural beliefs could hinder progress, even in the countries with progressive legislation.

Therefore, Ukraine requires a concept for family development that draws on an analysis of both current national trends and international experiences. This concept should take into account the ongoing moral shifts, the rise of individualism, increasing the selfishness, detachment from public and community life and other evolving factors.

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## ПРИНЦИП ГЕНДЕРНОЇ РІВНОСТІ У СІМЕЙНОМУ ПРАВІ: ДОСВІД ІНОЗЕМНИХ КРАЇН ТА УКРАЇНИ

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**Метою** статті є дослідження принципу гендерної рівності у сімейному праві, зокрема досвід іноземних країн та його вплив на розвиток сімейних правовідносин в Україні. Акцентується увага на важливості забезпечення рівних прав і можливостей для жінок і чоловіків у контексті сімейного законодавства, а також на викликах, які виникають при впровадженні гендерної рівності. **Методологічна основа дослідження:** у статті використано порівняльно-правовий метод для аналізу міжнародного досвіду в галузі сімейного права та принципів гендерної рівності. Також застосовано методи аналізу законодавчих актів та міжнародних угод, що стосуються гендерної рівності, для вивчення того, як різні країни реалізують цей принцип у своєму правовому середовищі. **Результати:** стаття підкреслює важливість впровадження принципу гендерної рівності в сімейне право для досягнення соціальної справедливості та сталого розвитку суспільства. Аналіз іноземних законодавств (Франція, Швеція, Норвегія, Ісландія, Канада тощо) демонструє різноманітні підходи до забезпечення рівних прав для жінок і чоловіків у сімейних відносинах, включаючи рівність у шлюбі, рівні батьківські права та права на аліменти. В Україні також спостерігається поступове інтегрування європейських стандартів, хоча існують певні проблеми, зокрема культурні та соціальні стереотипи, що можуть ускладнити цей процес. **Обговорення:** стаття акцентує на тому, що хоча в Україні і є нормативна база, що гарантує гендерну рівність, на практиці її реалізація зіштовхується з бар'єрами, такими як стереотипи та обмежений доступ до правової інформації. Крім того, підкреслюється необхідність адаптації національного законодавства до сучасних вимог, що стосуються гендерної рівності, і необхідність врахування культурних та соціальних особливостей, що можуть впливати на формування гендерних ролей в родині. Стаття також пропонує розробку концепції розвитку сімейного законодавства України на основі аналізу міжнародного досвіду та внутрішніх тенденцій.

**Ключові слова:** гендер; гендерна рівність; сімейне право; рівність прав; третя стат'я.

Стаття надійшла до редакції 06.03.2025