

COMMENTS

Women's Rights, Paritary Rights and the Rule of Law in Ukraine

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International law guarantees women the right to participate in the formulation of governmental policy, the right to hold public office, and the right to represent their country at the international level. In an effort to promote these competencies of women to participate in government, Articles 7 and 8 of the Convention on the Elimination of All Forms of Discrimination Against Women require states to take affirmative measures to eliminate discrimination against women in the political and public sectors of society. Although a majority of states in the world have ratified this Convention, very few have implemented all the norms it requires. Having adopted the June 6th 2000 act dealing with "equal access by women and men to elective offices and positions", France serves as a possible model for doing so. Obviously, only states with established democratic traditions, the rule of law, well-developed party systems and proportional representation can afford paritary rights for women. Thus they compen-

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sate for the historic injustices that women have experienced for hundreds of years.

Ukraine has democratic traditions and a history of highly respected and educated women that goes back as far as the Kyivan Rus in the IXth - XIIIth centuries. Unlike women under the Roman and Old-Germanic legal systems, women in Kyivan Rus were considered legally competent and needed no trustee. During the period of the Lithuanian-Ruthenian state (XIV-XVI c.), women's legal status was defined by the "Lithuanian Statute" which incorporated the principle of gender equality into its criminal and civil articles. Like men, women were subject to laws and regulations, and were granted legal rights without gender restrictions¹. The Constitution of the Ukrainian People's Republic in 1918 proclaimed the equality of men and women regarding legal rights and duties².

Whenever Ukraine lost independence and became part of another state, the position of Ukrainian women became more difficult. For example, when Ukraine was part of the Austrian Empire, under Austrian civil law women were on the same legal footing as the mentally incompetent, the blind, and the deaf - unable to attest to the making of wills.

In the former Soviet Union there existed some unwritten rules concerning the number of women in leg-

¹ Danylo Husar Struk, ed. *Encyclopedia of Ukraine* 705 (1993).

² *Constitution of Ukrainian People's Republic*, Chapter 2.11, April 28, 1918 // *History of Ukrainian Constitutionalism* (in documents) 10 (1996).

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islative bodies. This was done for statistical purposes - at each Party Congress it was reported that there were many women in all branches of state power just as there were milkmaids, tractor drivers and representatives of various other professions in the Parliament. On the level of legislature principle of universality and non-discrimination was formulated, mandating equality before the law which had nothing to do with equality of condition. The electoral system was based on the first-past-the-post principle, and one candidate usually gained 99.9% of votes in a single member district.

Presently, the status of women in Ukraine reflects the circumstances of a country straining to change its political system from that of a totalitarian super state to liberal democracy. Women's issues in Ukraine are of extreme importance, as women constitute fifty-four percent of the population. According to the 1996 Constitution, the equality of men and women is guaranteed in regards to political and cultural activities, in employment and wages, and in education and vocational training. The equality is further guaranteed by special measures for women, including retirement benefits, maternity accommodations in the workplace, and maternity leave with pay for pregnant women and mothers. There are also some norms, which provide positive discrimination in their favor. Thus, in April 1996 the Ukrainian Cabinet of Ministers implemented a program, which requires the removal of women from jobs that involve heavy manual labor and harmful work conditions. The program also places limitations on women working nightshifts and promises the removal of women from positions in iron-processing, foundries, galvanic and etching works, nickel- and chromium-plating, ferrous metallurgy, some types of

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furniture manufacturing, and driving trucks with a carrying capacity of above one ton. Subsequently, training women for these positions has ceased.

This positive discrimination in the economic sphere is unfortunately not accompanied by any affirmative action in the political sphere. Thus far access by women and men to elective offices and positions in Ukraine has been far from being equal. Ukraine cannot boast of implementing the international norms on taking affirmative measures to eliminate discrimination against women in the political and public sectors of society. In fact, women constitute fewer than 5% in the 450 member Verkhovna Rada, and the situation is the same if not worse in local bodies. Some politicians and scholars have proposed establishing a quota for women among the people's deputies, following the example of many European states.

On the legislative level, after gaining independence in 1991 the Law of the Ukrainian SSR "On the Election of People's Deputies" adopted in 1989 with some amendments continued to be valid. Under this Law, women and men had equal elective rights (art. 3, Para 2) and there was direct right to vote in single member districts. The 1993 Law "On the Election of People's Deputies of Ukraine" contained the same norms of non-discrimination on the basis of gender (art. 2.3) and the direct election of deputies in single member districts (art.1, 4). The 1997 Law "On the Election of People's Deputies of Ukraine" introduced essential changes. Of 450 deputies 225 were to be elected by the list method on the basis of proportional representation in a multi-member all-state electoral district and 225 were elected in single member districts on the basis of

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relative majority (art. 1.2). The Law also includes a clause banning discrimination on the basis of gender. The new 2001 Law "On the Election of People's Deputies of Ukraine", passed by the Parliament but vetoed by the President, calls for 75 % of the deputies to be elected by party tickets and the remaining 25% in first-past-the-post elections.

The 1998 Law of Ukraine on the Election of Deputies of Local Councils and Town, Settlement and City Mayors with its 1999 amendments foresees elections of deputies of village, settlement, city, and district in city councils according to the first-past-the-post principle in single member districts. Elections of deputies of district and regional councils are run on the first-past-the-post basis in multi-member districts. However the 2001 draft Law on changes to the 1998 Law calls for mixed elections of deputies of city, district and regional deputies on both proportional and the first-past-the-post principles.

Thus, Ukraine as a transitional state has many contradictions in the sphere of gender legislation. On the one hand, there is a clear tendency toward establishing universalism in the Constitution and other laws. On the other hand, there are norms designed to "protect" women in dangerous jobs. Before raising the issue of paritary rights for women, Ukraine must first introduce a system of proportional representation - the introduction of paritary rights will be possible only when elections are conducted by list method.