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## Gender Inequality in Social Security on the Basis of the ECtHR Case-Law

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Article	Abstract
<p><b>Keywords:</b> <b>Compulsory Labour; Discrimination; Forced Labour; Interference with Privacy; Labour Rights.</b></p> <p><b>Article History:</b> Received: Apr 25, 2022; Reviewed: Jun 30, 2022; Accepted: Jul 9, 2022; Published: Jul 31, 2022.</p> <p><b>DOI:</b> 10.28946/slrev.Vol6.Iss2.1878.pp224-238</p>	<p>As the European case-law shows, nowadays, there are numerous problems in the social sphere. Accordingly, there appears to be a need to study international regulation of equality and current social security problems to find possible solutions to the existing shortcomings and to strengthen human rights protection. The article aims to analyse the universal international regulation of equality and gender equality, in particular, and to study the problems of gender inequality in social security based on the European Court of Human Rights (ECtHR) case law to eliminate this discrimination. The leading research method is a legalistic one. It allowed us to analyse the international legislation on gender equality and to look into the ECtHR case law in gender discrimination in social security. It was found that gender inequality in social security is often a result of prior gender-based discrimination in labour relations. Despite the fact that legal acts protect women in cases of inequality, the analysis of the ECtHR case-law permitted us to conclude that men suffer from gender discrimination as much as women. Therefore, it is suggested to adopt legal acts on the equality of men and women in social security to overcome such discriminative practices at the legislative level. It is also recommended to implement the governmental policy on counteracting gender stereotypes in society. The research results can improve national legislation and international legal acts, further research into equality issues, and develop a methodological base for teaching human rights and social security.</p>

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## INTRODUCTION

Current global trends of humanisation, democratisation, and enhancement of human rights involve establishing unified principles and standards for all participants in world relations<sup>1</sup>. The equality principle is one of the essential human principles of a democratic society. This principle declares all people to be equal regardless of any specific characteristics. It is recognised by humanity as one of the necessary conditions for its normal development and living. So, it attracts the attention of labour and social law scholars. This principle covers all sources and norms of law, and thus, it demands that legislation and other legal acts establish equal rights for all people in equal legal status.<sup>2</sup>

From a legal perspective, the equality category embraces equal rights and responsibilities of all citizens and equal social freedom. The notion of legal equality also includes an equal level of legal responsibility, which diminish peoples' differences in their social status and material circumstances. The principle of legal equality excludes any benefits, perks, or privileges which are not provided for by the law for the parties of legal disputes and court proceedings. Gender equality abuses can broadly impact other aspects of human rights.<sup>3</sup> Thus, gender equality should be construed by the category of human rights as the universal equality standard. Human rights reflect general and undoubted standards for both sexes. This achievement of civilisation is enshrined in international, constitutional legal norms fixing the equality of political, civil, social, economic, and cultural rights and freedoms for women and men.

Moreover, gender equality is an indispensable component of the general concept of equality. There are many directions of gender relations, with women having fewer possibilities to fulfil their rights than men do. Consequently, gender equality as one of the equality types should be constructed, considering all possible changes to compensate for the shortcomings of a formal character of legal equality. As contrasted to legal equality, actual equality does not only consist in the equal status of men and women but also in creating equal conditions for legal relations participants, using equally specific material and intangible values as objects of these legal relations. The equality between men and women is not to be considered the identity of their legal status. Being different subjects of law, they are entitled to equal authority. If a particular area is not connected with the physical difference between men and women, their legal and actual equality coincide<sup>4</sup>. As O. Dashkovskaya<sup>5</sup> asserts, now gender is seen as a complex of ambiguous notions.

However, currently, gender asymmetry still exists in all countries throughout the world. It makes it impossible for public institutions and private companies to function correctly. The

<sup>1</sup> M.V. Buromensky, "International Law," in *Gender Expertise*, Kyiv (Logos, 2001), 24.

<sup>2</sup> Z.A. Dorosh, "Gender Equality and Gender Discrimination in the Field of Labor Relations," *Legal Scientific Electronic Journal* 7 (2020): 190–93.

<sup>3</sup> Khansadhia Afifah Wardana, Rahayu, dan Sukirno, "Freedom of Religion and Gender Equality in Sustainable Development Agenda," *Sriwijaya Law Review* 6, no. 1 (2022): 163–73, <https://doi.org/10.28946/slrev.Vol6.Iss1.1567.pp163-173>.

<sup>4</sup> Torben Iversen, Frances McCall Rosenbluth, and Øyvind Skorge, "The Dilemma of Gender Equality: How Labor Market Regulation Divides Women by Class," *Daedalus* 149, no. 1 (January 2020): 86–99, [https://doi.org/10.1162/daed\\_a\\_01775](https://doi.org/10.1162/daed_a_01775).

<sup>5</sup> O. Dashkovskaya, "The Importance of the Principle of Gender Equality in the Mechanism of Ensuring Human and Civil Rights and Freedoms (International Legal Aspect)," *Scientific Life* 1, no. 56 (2009): 79.

lack of an effective mechanism for ensuring the gender equality principle aggravates the problem of social injustice in society and represses stable human development<sup>6</sup>. This problem is especially topical now that the global economic crisis and the COVID-19 pandemic are aggravating. The pandemic worsens the inequality in all spheres and can render null all the progress in ensuring gender equality that had been reached in the last decades<sup>7</sup>. Gender equality in labour and social spheres is significant as they virtually ensure human rights. Therefore, no discrimination is admissible in legal relations, particularly on the grounds of gender identity.

## RESEARCH METHODS

Philosophical, general scientific, and unique methods used in the research are aimed to study the issue under consideration and to provide the veracity of the obtained results. The leading method is a legalistic one. It was used to analyse a legal base for equality and non-discrimination on the grounds of gender. Apart from that, the legalistic method was applied to study the ECtHR case law. Therefore, in our study, such cases were analysed: Case No. 14518/89 "Schuler-Zgraggen v. Switzerland" (Jun 24 1993), Case No. 13580/88 "Karlheinz Schmidt v. Germany" (Jul 18 1994), Case No. 156/1996/775/976 "Petrovic v. Austria" (Mar 27 1998), "Case No. 30078/06 "Konstantin Markin v. Russia" (Mar 12 2012). It allowed for analysing the legislation of the Members States of the Council of Europe on gender inequality in a social sphere, for example, "Declaration on the Protection of Women and Children in Emergency and Armed Conflict" (Dec 14 1974), "Convention on the Elimination of all Forms of Discrimination Against Women". (Dec 18 1979), "Declaration on the Elimination of Violence against Women" (Dec 20 1993), "Resolution 1325 adopted by the Security Council at its 4213th meeting", "Global Gender Gap Report". The methods of analysis and synthesis permitted the study of theoretical framework, that is, international legal acts, case-law of the European Court of Human Rights (ECtHR), and statistical data to single out the problems existing in social security. These methods were used to analyse the universal international law in the context of equality. In addition, analysis and synthesis helped develop proposals to solve the problems of gender inequality and draw conclusions.

Moreover, in the course of the study, the authors applied methods of scientific knowledge to study and identify five factors that place women in a more vulnerable segment of the population, which requires additional legal protection for their right to equality. The results clarified how the legislation should be improved, regarding relevant areas of gender equality, taking into account the need for social protection for all, the rule of law, and respect for human rights. The comparative method was applied to analyse the ECtHR case law to understand the circumstances in which the applicants are victims of gender inequality in the social sphere and to define the ways to avoid such discrimination in the future. This method was also used to distinguish the types of discrimination that people face in labour relations and the impact of this inequality on social security in the future.

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<sup>6</sup> I.O. Hrytsay, *The Mechanism of Ensuring the Principle of Gender Equality: Theory and Practice* (Kyiv: Khay-Tek Pres, 2018).

<sup>7</sup> O Hyliaka et al., "The Right to Euthanasia How the Fourth Generation Human Right," *Georgian Medical News* 308 (2020): 177.

The systematic method allowed to compile and systematise scattered information on inequality in social security. Furthermore, this method helped identify five main types of gender discrimination in the labour market as follows: discrimination in employment, which manifests itself when persons are the last to be employed or are the first to be dismissed under other equal conditions; discrimination in access to certain professions or positions; discrimination in remuneration, where there is significantly lower pay for some employees for the same work; discrimination in career advancement; discrimination in vocational training and certain types of education. Finally, the systematic method was used to determine the differences in inequality in labour relations and social security.

## ANALYSIS AND DISCUSSION

### Legal Provision for Equality in Universal Acts of International Law

International law pays particular attention to the issue of equality, including gender equality. The international community adopted several normative and legal acts containing international standards for ensuring and protecting women's rights, which are obligatory for the Member States. In addition, the international cooperation led to the establishment and functioning of an international legal mechanism for the protection of women's rights, which consists of international norms, principles and particular international institutions with monitoring functions as an essential component of the international protection of human rights. Establishing a reliable mechanism for the equality and protection of women's rights at the international level and its practical implementation requires a focused international policy of all parties. At the international level, relevant decisions were taken for the first time at the World Conference on Human Rights, held in Vienna (Austria) in 1993. Since then, all UN human rights documents have included women's rights issues, while the gender perspective has been integrated into all international activities under the auspices of the UN and its bodies<sup>8</sup>. However, the regulation of the equality principle appeared much earlier. The importance of gender equality is confirmed by the fact that the Charter of the United Nations of 1945<sup>9</sup> already stated the need to "reaffirm faith... in the equality between men and women". Logically, other United Nations human rights documents have reflected the equality principle. It is also worth mentioning the Universal Declaration of Human Rights (hereinafter – UDHR) of 1948, which already referred to equality and non-discrimination. In addition, the UDHR mentions equality in many articles.

Thus, for example, the Preamble declares "...the recognition of the inherent dignity of all members of the human family and equal and inalienable rights..." as well as "...equal rights of men and women...". The provisions of the Art. 22 stipulate that everyone has the right to social security, while the norms of the Art. 23 indicate that everyone, without any discrimination, has the right to equal pay for equal work and equal social security<sup>10</sup>. These norms were aimed to guide the further development of humankind. The emphasis is placed on the fact that despite all differences, people are equal in dignity and rights, regardless of gender. The institutionalisation

<sup>8</sup> N. Kaminska and M. Sviesnikova, "Activities of International Organizations in the Field of Gender Equality," *Legal Journal of the National Academy of Internal Affairs* 19, no. 1 (2020): 102–9, <https://doi.org/10.33270/04201901.102>.

<sup>9</sup> "Charter of the United Nations," United Nations, 1945, <https://www.un.org/en/about-us/un-charter>.

<sup>10</sup> "Universal Declaration of Human Rights," UN General Assembly, 1948, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

of the idea of gender equality was accompanied by establishing the institutional mechanism for translating it into international case law. In 1946, the Sub-commission on the Status of Women was established in the United Nations Economic and Social Council (ECOSOC) as part of the Commission on Human Rights. Subsequently, it was given the status of a commission.

The following international legal acts, among others, contributed to gender equality: Convention on the Political Rights of Women<sup>11</sup>; Convention on the Nationality of Married Women<sup>12</sup>; Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages<sup>13</sup>; Declaration on the Protection of Women and Children in Emergency and Armed Conflict<sup>14</sup>; Declaration on the Elimination of Violence against Women<sup>15</sup>; United Nations Millennium Declaration<sup>16</sup>; Sustainable Development Goals 2016-2030<sup>17</sup>.

It is worth emphasising that the UN Convention on the Elimination of All Forms of Discrimination against Women<sup>18</sup> plays a unique role in the international regulation of gender equality. Its specificity is the broad scope of gender issues. The Art. 1 of this Convention states that “discrimination against women” means any distinction, exclusion or restriction made based on sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women of their human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field, irrespective of their civil status, based on equality of men and women. Nevertheless, despite the existence of such a severe legal Act as the 1979 Convention, it is worth noting that its provisions are not always strictly observed by states, although this document is recognised as a “benchmark of gender equality”<sup>19</sup>. It is connected with two facts. First, upon ratification of the 1979 Convention (now ratified by 189 UN Member States)<sup>20</sup>, many states made quite a large number of reservations and declarations.

Second, the international law mechanism of submitting and considering individual complaints concerning gender-based offences under this Convention is not functioning effectively. It is important to stress that the United States of America is the country that signed but has not ratified the 1979 Convention. The fact that such a large and authoritative country like the US with high democratic standards and ideals did not ratify one of the leading international docu-

<sup>11</sup> “Convention on the Political Rights of Women,” UN General Assembly, 1953, [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVI-1&chapter=16&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVI-1&chapter=16&clang=_en).

<sup>12</sup> “Convention on the Nationality of Married Women,” UN General Assembly, 2022, [https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg\\_no=XVI-2&chapter=16&Temp=mtdsg3&clang=\\_en](https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XVI-2&chapter=16&Temp=mtdsg3&clang=_en).

<sup>13</sup> “Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages,” UN General Assembly, 1962, <https://www.ohchr.org/en/professionalinterest/pages/minimumageformarriage.aspx>.

<sup>14</sup> “Declaration on the Protection of Women and Children in Emergency and Armed Conflict,” UN General Assembly, 1974, [https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.19\\_declaration\\_protection\\_women\\_armed\\_conflict.pdf](https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.19_declaration_protection_women_armed_conflict.pdf).

<sup>15</sup> “Declaration on the Elimination of Violence against Women,” UN General Assembly, 1993.

<sup>16</sup> “United Nations Millennium Declaration,” UN General Assembly, 2000, <https://digitallibrary.un.org/record/422015?ln=ru>.

<sup>17</sup> “Sustainable Development Goals 2016-2030,” UN General Assembly, 2015, <https://research.un.org/docs/dev/2016-2030>.

<sup>18</sup> “Convention on the Elimination of All Forms of Discrimination Against Women,” UN General Assembly, 1979, <https://www.ohchr.org/documents/professionalinterest/cedaw.pdf>.

<sup>19</sup> Dashkovskaya, “The Importance of the Principle of Gender Equality in the Mechanism of Ensuring Human and Civil Rights and Freedoms (International Legal Aspect).”

<sup>20</sup> “Status of Ratification Interactive Dashboard,” United Nations Human Rights, 2021, <https://indicators.ohchr.org/>.

ments on gender equality is a worrying indicator in the issues of protection against gender discrimination. Thus, it can be observed that despite the legal framework for equality protection having been established over the decades, some problems in this sector still exist that states have not overcome. This confirms once again the need to examine the issue of gender inequality and ways to overcome it.

The UN Security Council Resolution 1325 “Women, Peace, Security” of 2000<sup>21</sup> is another document worth drawing attention to. This international legal act, adopted unanimously by the United Nations Security Council, requires the Member States to involve women in all aspects of peace-building, including the participation of women in decision-making on peace and security at all levels<sup>22</sup>. This Resolution marked the full attention of the United Nations to gender aspects of peace and armed conflicts. It affirms that women must be at the centre of peace processes, not only as vulnerable groups but also as peace-builders. The Resolution called for the women's full participation in all preventive, Resolution, peace-making, and post-conflict reconstruction efforts. The Resolution is considered a critical international document for advocating gender equality in all peace-building processes, both in conflict and post-conflict periods<sup>23</sup>.

Resolution 1325 encourages all actors involved in the conflict transformation to consider a gender perspective when negotiating and implementing peace agreements. It emphasises that the inclusive conflict transformation can be achieved by addressing the special needs of women during repatriation and rehabilitation, reintegration and reconstruction; developing policies and implementing measures to support women's peace initiatives; ensuring the protection of and respect for the women's human rights; and most importantly, involving women in peace-making processes. Therefore, it can be summed up that at all stages of the development of the modern system of international law, the issue of equality in general and gender equality, in particular, has become essential, while the legal norms relating to this issue have been established throughout the development of contemporary international law and will be developed further. The increased interest in gender equality and the need for protection mechanisms against gender-based discrimination are caused by a low level of women's protection<sup>24</sup>.

### **Problems of Gender Equality in Social Security and Their Solutions**

Despite the legal and institutional mechanisms established for decades to protect gender equality, there are still practical problems in this sector. Therefore, the issue of non-discrimination based on gender needs to be addressed<sup>25</sup>. Before analysing the issue of gender inequality in the social sphere, it is worth starting with discrimination in the labour sector, as it often leads to

<sup>21</sup> “Resolution 1325 Adopted by the Security Council at Its 4213th Meeting,” UN Security Council, 2000, [https://peacemaker.un.org/sites/peacemaker.un.org/files/SC\\_ResolutionWomenPeaceSecurity\\_SRES1325%282000%29%28english\\_0.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/SC_ResolutionWomenPeaceSecurity_SRES1325%282000%29%28english_0.pdf).

<sup>22</sup> N. Scherbak, “International Standards On Gender Equality Issues And Their Implementation In Ukraine (In the Context of the Public Administration Reform),” *Law and Public Administration* 4 (2020): 156, <https://doi.org/doi:10.32840/pdu.2020.4.22>.

<sup>23</sup> S. Shekhawat, “Patriarchy Is the Constraint: Resolution 1325 Two Decades Later,” *Accord*, 2021, <https://www.accord.org.za/conflict-trends/patriarchy-is-the-constraint-resolution-1325-two-decades-later/>.

<sup>24</sup> Oleg Yaroshenko et al., “Features of Remote Work in Ukraine and the European Union: Comparative Legal Aspect,” *Hasanuddin Law Review* 7, no. 3 (2021): 136, doi:10.20956/halrev.v7i3.3218.

<sup>25</sup> T.I. Fuley, *Gender Equality in the Administration of Justice* (Kyiv: VAITE, 2016).

further inequalities in social security. For example, initial gender discrimination in employment will undoubtedly provoke social discrimination in pension coverage in the future.

For example, there is a real gender problem in the world of employment; that is, men are paid more than women for the same work. As the Global Gender Gap Report<sup>26</sup>, which measures the difference in payment for the same work. In Ukraine, the pay gap is closed at 69%, and Ukraine occupies 55th place in the world. However, the problem is not unique to Ukraine. For example, Sweden, which is supposed to be a leader in equality issues, has closed the pay gap for equal work by 69.4% and occupies a slightly higher 50th position. Iceland, the top ranker, closed the gap by 84.6%. Overall, Iceland has consecutively become the world's most gender-equal country for the 11th time.

This wage disparity will impact the future, as lower payments will lead to lower pension coverage for women than for men. In order to overcome this discrimination in the future, it is already necessary to remove the barriers of unequal labour remuneration for equal work between men and women. In addition to the direct and severe discrimination that emerges from unequal payments for equal work, it is worth highlighting the phenomenon of gender segregation in the labour market. This means that men and women continue to work in different jobs, with "feminisation" of some professions and "masculinisation" of others. Simply put, professions are roughly divided into "masculine" and "feminine". On the one hand, men and women often predominate in different sectors of the economy. On the other hand, within one sector of the economy, women predominate in low-paid and less prestigious jobs.

According to the Ukrainian researcher O. Rudik<sup>27</sup>, women often work in industries where their work is valued and paid less than those dominated by men. In the European Union, about 40% of women work in health, education, and public administration, where they are almost twice as numerous as men. In such areas as social work, the amount of women reaches 80%. In general, there are five main types of gender discrimination in the labour market as follows: discrimination in employment, which manifests itself when persons are the last to be employed or are the first to be dismissed provided other equal conditions; discrimination in access to certain professions or positions; discrimination in remuneration, where there is significantly lower pay for some employees for the same work; discrimination in career advancement; discrimination in vocational training and certain types of education<sup>28</sup>.

However, there is also discrimination against men in the social sphere. It is generally related to parental leave or related parental benefits. Although many states in the world have now given both parents equal rights to raise a child and a parental leave, it is still stereotyped that women should take this leave. Moreover, men are often denied parental leave based on their job responsibilities. Therefore, in order to overcome such discriminatory restrictions, it is necessary to adopt an act regulating the equality of men and women in the social sphere at the international level. It is also recommended that all states implement the rights of men to parental

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<sup>26</sup> "Global Gender Gap Report," World Economic Forum, 2022, [https://www3.weforum.org/docs/WEF\\_GGGR\\_2020.pdf](https://www3.weforum.org/docs/WEF_GGGR_2020.pdf).

<sup>27</sup> O. Rudik, "Addressing the Gender Pay Gap: The EU Experience," *Public Administration: Theory and Practice* 2 (2013): 6.

<sup>28</sup> Olha Ivashenko and Oksana Lobodynska, "Gender Segregation or Gender Asymmetry on the Labor Market: Theoretical Principles and Empirical Manifestations of Employment in Ukraine," *Ukrainian Society* 1 (2013): 46, <https://doi.org/doi:10.15407/socium2013.01.043>.

leave equal to women (in a social context) into their legislation. States should also adopt active public policies aimed at overcoming gender stereotypes in public opinion concerning children's upbringing.

### **Case Law of the ECtHR in Gender Equality in Social Security**

The activity of authorities similar to the ECtHR is one of the best forms of international protection of human rights. Moreover, ECtHR is known as the world's most influential and well-equipped human rights mechanism.<sup>29</sup> International legal procedures should be part of a broader gender policy strategy. They include complete access to individual complaints to international institutions, improving the information mechanisms, regular communications at international forums by special official rapporteurs, etc. The ECtHR also issued crucial decisions on gender discrimination in the labour and social sectors. First of all, it is essential to stress that the cases where the ECtHR identifies gender equality as one of the objectives of the Council of Europe are not isolated and have at least a quarter of a century's history. Case No. 14518/89 "Schuler-Zgraggen v. Switzerland" is the first exciting case on social security. According to the circumstances of the case, the claimant had been receiving a disability pension for some time due to the illness. However, after giving birth to her child, the state cancelled the payments, arguing that her health improved significantly because the applicant could take care of the house and her child.

The complainant appealed the decision to the national courts without success in any case. In particular, the National Tribunal for Pension Claims stated: "It should be taken into account... that many working married women leave work after giving birth to their first child for as long as the child needs care and education. This observation, which is based on experience in life, should serve as a starting point in this case and be duly taken into account when it comes to disability assessment criteria... Given the probability, it can be assumed that the complainant, even if her health were not impaired, would have only cared about the household and maternity duties without having to work"<sup>30</sup>. Based on the circumstances of the case and the evidence presented, the ECtHR ruled that it was not necessary to establish whether Mrs Schuler-Zgraggen was able to work at her previous job. In the context of the present case, the question was rather to determine whether and to what extent the complainant was limited in her ability to perform the duties of a mother and a housewife.

The complainant claimed that in exercising her right to a fair trial, she had been discriminated against based on her sex, which contradicts Article 14 of the European Convention on Human Rights (hereinafter – ECHR). The ECtHR noted that the National Court had given full credence to the assumption that women quit their jobs after giving birth and made no attempt to test this assumption without considering the counter-arguments. The ECtHR stressed that further promoting gender equality in the Member States of the Council of Europe is one of the significant challenges; for such a difference in treatment to be considered compatible with the Convention, excellent reasons are needed. The Court does not see them in this case. The EC-

<sup>29</sup> Nurhidayatuloh & Febrian, "ASEAN and European Human Rights Mechanisms, What Should be Improved?," *Padjadjaran Journal of Law* 6, no. 1 (2019): 151–67, <https://doi.org/10.22304/pjih.v6n1.a8>.

<sup>30</sup> ECtHR, "Case No. 14518/89 'Schuler-Zgraggen v. Switzerland,'" 1993, [https://hudoc.echr.coe.int/eng#%7B%22itemid%22:\[%22001-57840%22\]%7D](https://hudoc.echr.coe.int/eng#%7B%22itemid%22:[%22001-57840%22]%7D).



tHR further underlined that the assumption of the state, represented by its authorities, appeared to be the only basis on which the Court's motivation was based and, therefore, decisive. Thus, it introduces the distinction only between sexes, recognising the existence of discrimination against the applicant<sup>31</sup>.

Case No. 13580/88 “Karlheinz Schmidt v. Germany” is another interesting case in the context of gender equality. In this case, the decision concerned the obligation to pay contributions for the fire brigade under the German Fire Service Act of the Land of Baden-Württemberg. These contributions were made to reimburse the cost of a mandatory firefight service. The complainant argues that this obligation is discriminatory, as it is applied exclusively to men. Given the constant availability of a sufficient number of volunteers, virtually no man is required to serve as a firefighter, the difference being only the failure of women to pay the relevant firefight fee. Since the financial contribution is not a legal requirement, practically lost its compensatory character and became a formal obligation, it is difficult to justify a difference in treatment based on sex when the financial burden is imposed. Consequently, Article 14 of the ECHR (prohibition of discrimination) was violated. Furthermore, the complainant considered that the obligation to perform firefight duties was contrary to Article 4 concerning the prohibition of forced labour.

The Court noted that the provisions of Article 14 of the ECHR indicate the equality of the enjoyment of the rights. The Court held that the compulsory firefight service is one of the “ordinary civil duties” and constitutes one of the limitations to the right not to be subjected to forced or compulsory labour. That is, there was a violation of Article 4 of the ECHR. Concerning gender equality, the ECtHR noted that in Baden-Württemberg, women could volunteer for fire brigades. Since volunteers supported by contributions did the service, the difference in treatment on the basis of gender cannot be justified. Consequently, there was discrimination in Article 14 of the ECHR<sup>32</sup>. Thus, although gender discrimination is generally considered a violation of women’s rights, this decision of the ECtHR confirms that gender inequality is directed against men. It should be recognised that such discrimination is often based on physiological grounds and must not be diminished as the Court emphasised in this case.

Another similar case in gender inequality in social security is No/156/1996/775/976 “Petrovic v. Austria”. According to the circumstances of the case, the complainant took paternity leave as a student working part-time. His wife, who had already graduated from university and worked as a civil servant in the Federal Ministry, returned to work after giving birth. The complainant applied for child-care benefits. However, he was denied because the Austrian Unemployment Benefits Act of 1977 enshrines that only mothers can receive such benefits. The complainant appealed the refusal in an administrative procedure, claiming that the provision of the law was discriminatory and, therefore, unconstitutional, and applied to the Constitutional Court, but the application was rejected. Referring to previous decisions, the Constitutional Court held that the article appealed did not violate the complainant’s constitutional rights.

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<sup>31</sup> ECtHR.

<sup>32</sup> ECtHR, “Case No. 13580/88 ‘Karlheinz Schmidt v. Germany,’” 1994, <http://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-5633&filename=001-5633.pdf&TID=thkbhnlzk>.

In his complaint to the ECtHR, the complainant argued that the difference between the treatment of a mother and a father with regard to the child allowance was totally unfounded. The assistance is not intended to protect mothers because it is not paid until eight weeks after the child's birth. Still, it should support parents - mothers or fathers - wishing to take parental leave to care for their young children. In addition, the Court found that no common standards for specific social assistance payments reflected the diversity of social insurance schemes in the Member States of the Convention. However, it could not justify those states which established payment schemes without guaranteeing non-discrimination. The maternity leave and benefits are intended to help the mother recover from fatigue after the delivery and encourage breastfeeding. On the other hand, parental assistance and benefits correspond to the next period and are intended to facilitate staying home and caring for a child. Despite the differences between the mother and the father in their relationship with the child exist, the Court recognised that both parents were to be treated equally during this period of child care.

Highlighting that gender equality is one of the main objectives of the Member States of the Council of Europe and compelling reasons are needed to justify the difference in conduct, the Court confirmed that the idea of providing financial assistance to a mother or father, at the choice of the spouses, is relatively new. The original purpose of these payments was to protect mothers so that they could care for young children. Only with the development of equal rights and responsibilities for men and women concerning their children did states adopt such measures as the right of parents to parental leave. At the same time, there is still a diversity of legal systems in this area in different states. However, while the father's right to parental leave is recognised in most states, the same cannot be said of payments guaranteed only in a few states. The ECtHR confirmed that states were not obliged to pay parental leave benefits. However, if they did, traditional practices and roles in family life did not justify differences in treatment between men and women. The reference to the situation in other European countries and the lack of uniform case law was not convincing. In its report, the Court correctly stated that there were different social security systems in European countries and that the state had no right to grant benefits on a discriminatory basis when choosing one of those systems<sup>33</sup>.

Among the cases considered, attention should also be drawn to Case No. 30078/06 "Konstantin Markin v. Russia". In this case, the complainant declared gender-based discrimination in denying parental leave. Under the provisions of Russian legislation, both men and women are entitled to a three-year parental leave and a monthly allowance during that period. This right applies exclusively to men and women in civilian occupations. However, in this case, the complainant is a member of the armed forces. Therefore, he was denied this right. Hearing this case, the ECtHR found the violation of Article 14 of the ECHR<sup>34</sup>. The Court stressed the fact that at this stage of development, society moved towards equality and equity in the upbringing of children. The European Court did not consider convincing the state's argument that there was a difference between male and female members of the armed forces, which was justified by the unique social role of mothers in a child's upbringing. Furthermore, the ECtHR did not

<sup>33</sup> ECtHR, "Case No. 156/1996/775/976 'Petrovic v. Austria,'" 1998, <https://www.womenslinkworldwide.org/en/files/2968/gjo-echr-petrovic-en-pdf.pdf>.

<sup>34</sup> A.S. Nemchenko et al., "Legal and Organisational Economic Aspects of the Functioning of the Main Models of Health-Care Systems," *Asian Journal of Pharmaceutics* 12 (2018): 940.

accept the argument that the applicant's parental leave would significantly affect the defence capability and operational effectiveness of the Armed Forces.<sup>35</sup>

### **International Standards on Gender Equality**

The general issues of international legal standards on gender equality have been studied by the domestic scholar N.V. Scherbak<sup>36</sup>. He analysed current issues in the formation and development of international standards on gender equality and noted that these issues are significant in the context of national public administration reform. He also emphasised that the issue of equality between women and men was guaranteed by several influential international legal documents, which highlighted the high importance of equality in all areas. N.V. Scherbak also states that a significant challenge is to ensure the integration of a gender approach into all international policies.

Concerning the protection of women's rights at the international level, the studies of the European researcher S. Shekhawat<sup>37</sup> are interesting. He considers the role and importance of women's rights in peace-building, the prevention of armed conflicts, the post-conflict reconstruction as well as the women's protection in such conflicts. This researcher's perspective is vital for gender inequality in international relations within international law. A team of Norwegian and American researchers T. Iversen, F. Rosenbluth, and O. Skorge<sup>38</sup>, carried out the research on the most relevant issues related to gender equality in the social and labour spheres. In particular, they addressed gender stereotypes, often preventing men and women from enjoying equal status. In addition, the researchers provided country-specific statistics that point to the existence of inequalities and suggested ways to overcome them.

Particular attention should be paid to the work of the Ukrainian researcher T. Fuley<sup>39</sup>, who studied gender-based discrimination and mechanisms for combating such inequalities by analysing the case-law of the ECtHR. Based on the analysis of the ECtHR's decisions, the researcher notes that the concept of gender equality as a goal of the Council of Europe has been applied in the ECtHR since the early 1990s. She describes the following approaches of the ECtHR to the cases related to gender equality: first, through the prism of the prohibition of discrimination, that is, the application of Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms in combination with other "substantive" articles; and, secondly, by examining complaints of alleged violations of rights guaranteed by other articles of the Convention, without applying Article 14 of the Convention. Apart from that, T. Fuley dwells upon the issue of gender equality in various legal relations, highlighting the most problematic ones.

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<sup>35</sup> ECtHR, "Case No. 30078/06 'Konstantin Markin v. Russia,'" 2012, [https://hudoc.echr.coe.int/ukr#%7B%22itemid%22:\[%22001-109868%22\]%7D](https://hudoc.echr.coe.int/ukr#%7B%22itemid%22:[%22001-109868%22]%7D).

<sup>36</sup> Scherbak, "International Standards On Gender Equality Issues And Their Implementation In Ukraine (In the Context of the Public Administration Reform)."

<sup>37</sup> Shekhawat, "Patriarchy Is the Constraint: Resolution 1325 Two Decades Later."

<sup>38</sup> Iversen, Rosenbluth, and Skorge, "The Dilemma of Gender Equality: How Labor Market Regulation Divides Women by Class."

<sup>39</sup> T. Fuley, "Application of the Principle of Gender Equality in the Case Law of the European Court of Human Rights," *Entrepreneurship, Economy and Law* 8 (2019): 178.

Such researchers have raised some aspects of equality and gender non-discrimination as M. Buromenskyy<sup>40</sup>, I.O. Hrytsay<sup>41</sup>, O. Dashkovskaya<sup>42</sup>, Z.A. Dorosh<sup>43</sup>, O.V. Ivashenko and O.M. Lobodynska<sup>44</sup>, N.V. Kaminska and M.M. Svyeshnikova<sup>45</sup>, O. Rudik<sup>46</sup>, etc. Despite such a large number of scholarly papers on the subject, it remains insufficiently studied and debated in legal science. In particular, insufficient attention has been paid to the practical implementation of adopted international legal norms to ensure gender equality in the social sphere.

## CONCLUSION

Therefore, the increased attention given to gender equality issues in international law reflects its high importance to the international community. Since the adoption of the first act of the current universal international law, the legal acts on gender-based non-discrimination have been adopted and improved. The analysis of international legal norms shows that more attention is being paid to protecting women in matters of non-discrimination based on sex. Three factors can explain it. First, women are among the weaker and more vulnerable groups of society, which requires increased attention to their rights by the world community. Secondly, women's rights had long been denied, which led to a long struggle for their rights and the need to enshrine such rights in legislation. Thirdly, despite the international and national norms on equality, there are still situations in the world where women are discriminated against in various spheres. Therefore, the equality of women and men is addressed by basic legal norms. At the same time, it does not change the fact that men may also be subject to discriminatory social security practices, as the ECtHR case-law analysis demonstrated.

In general, having analysed the ECtHR case law, it is worth noting that gender equality in social security and labour relations has been most frequently considered by the Court from the perspective of the prohibition of discrimination, i.e. applying Article 14 of the Convention in conjunction with many other articles. The analysis made it possible to identify the established case law of the ECtHR in cases where legal relations are covered by at least two priority areas of the Council of Europe's Gender Equality Strategy, that is, to combat violence against women and to prevent and combat gender stereotypes and sexism. It is also important to underline that discrimination in the social sphere is not limited to women, being more vulnerable, but also affects men. This fact asserts that gender-based inequalities in enjoying the right to social protection equally apply to men and women. The need to ensure gender equality is considered a legitimate objective by the ECtHR. It could serve as an appropriate basis for interference in exercising certain rights and freedoms enshrined in the Convention.

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<sup>40</sup> Buromenskyy, "International Law."

<sup>41</sup> Hrytsay, *The Mechanism of Ensuring the Principle of Gender Equality: Theory and Practice*.

<sup>42</sup> Dashkovskaya, "The Importance of the Principle of Gender Equality in the Mechanism of Ensuring Human and Civil Rights and Freedoms (International Legal Aspect)."

<sup>43</sup> Dorosh, "Gender Equality and Gender Discrimination in the Field of Labor Relations."

<sup>44</sup> Ivashenko and Lobodynska, "Gender Segregation or Gender Asymmetry on the Labor Market: Theoretical Principles and Empirical Manifestations of Employment in Ukraine."

<sup>45</sup> Kaminska and Svyeshnikova, "Activities of International Organizations in the Field of Gender Equality."

<sup>46</sup> Rudik, "Addressing the Gender Pay Gap: The EU Experience."

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