



GENDER-SENSITIVE LEGISLATION IN UZBEKISTAN

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Article history:	Abstract:
Received: May 6 th 2022 Accepted: June 6 th 2022 Published: July 17 th 2022	This article discusses the constitutional and legislative foundations of the equality of women and men in Uzbekistan. In particular, it analyzes the consolidation of gender equality in the constitutions of foreign countries, provides information on the introduction of a new institution of "Gender and Legal Expertise" into the national rule-making process, considers the relationship of this institution with others tools such as public consultations, regulatory impact assessment, systematization of legislation.
Keywords: Gender legal expertise, discrimination, gender equality, motherhood, fatherhood, special measures, constitutional law, legal acts, public consultations, regulatory impact assessment, systematization of legislation.	

According to the State Committee on Statistics, as of January 1, 2022, the population of Uzbekistan is more than 35 million people and 51,3 percent of which are men, 49,7 percent are women respectively¹. If this figure is rounded off, then half of the country's population is made up of women and these data have not changed over the past 30 years. Thus, in 1991, women accounted for 50,6 percent of the permanent population of the country. Therefore, one of the priorities of the state policy is to ensure equal rights and opportunities for women and men.

In particular, according to Article 46 of the **Constitution of Uzbekistan**, women and men have equal rights. This constitutional norm has evolved with the formation of the national legal framework.

To date, **18 codes** are in force in Uzbekistan, **9** of which contain a direct rule on the inadmissibility of discrimination on the basis of sex. It includes itself criminal, criminal procedure, labor, family, civil procedure, economic procedure, electoral codes, as well as codes on administrative responsibility and administrative proceedings. In addition, the Criminal Code provides for liability for violating the equality of citizens.

Based on the Constitution of Uzbekistan, special laws have been adopted, in particular, the **Law on Additional Benefits for Women**². In accordance with this law, women with children under the age of three working in institutions and organizations financed from the budget are given reduced working hours, not

exceeding 35 hours per week, without reduction in wages. Also, women who have reached the age of fifty-four are granted the right to retire if they have at least twenty years of work experience.

At first glance, these benefits may look like norms that do not correspond to gender equality. Nevertheless, they are due to physiological changes in the female body during pregnancy, the birth of a child and caring for him in the first years of life.

In this regard, **the analysis of the Constitutions of foreign countries indicates the existence of special norms containing additional guarantees for women in connection with their pregnancy and childbearing.**

Thus, according to the Constitution of **Bulgaria**³, the family, motherhood and children are under the protection of the state and society. Mothers are under special state protection and are guaranteed prenatal and postnatal leave, free obstetric care, working conditions and other types of social assistance.

The **Polish** Constitution⁴ contains a provision that public authorities provide special medical care for children, pregnant women, the disabled and the elderly. And according to the **Croatian** Constitution⁵, young people, mothers and persons with disabilities are entitled to protection at work

¹Official channel of Press Service of the State Statistics Committee. https://t.me/statistika_rasmiy/1888

² Law of the Republic of Uzbekistan, dated 14 April, 1999 No. 760-I. <https://lex.uz/ru/docs/10557>

³Bulgaria's Constitution of 1991 with Amendments through 2015 (PDF generated 27 April, 2022). https://www.constituteproject.org/constitution/Bulgaria_2015.pdf?lang=en

⁴The Constitution of the Republic of Poland, 1997. <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>

⁵The Constitution of the Republic of Croatia as of 15 January, 2014. <https://www.usud.hr/sites/default/files/dokumenti/The consolidated text of the Constitution of the Republic of Croatia as of 15 January 2014.pdf>



Through selected measures, **Hungary**⁶ protects families, children, women, the elderly and people with disabilities. The law may lay down the conditions for eligibility for a state pension also with regard to the requirement for stronger protection for women. According to the **Estonian** Constitution⁷, the family, which is fundamental to the preservation and growth of the nation and forms the basis of society, enjoys the protection of the state.

Under the **German** Basic Law⁸, every mother has the right to the protection and care of the community. The Constitution of **Ireland**⁹ establishes that the State recognizes that, through her domestic life, a woman provides support to the State, without which the common good cannot be achieved.

The **Italian** Constitution¹⁰ protects mothers, children and young people by laying down the necessary provisions. Working conditions must enable women to fulfill their important role in the family and provide adequate protection for mother and child. According to the **Portuguese** Constitution¹¹, motherhood and fatherhood are outstanding social values. Women are entitled to special protection during pregnancy and after childbirth, and working women are also entitled to a sufficient period of leave without loss of wages or any benefits. The law regulates that mothers and fathers be granted an appropriate period of leave from work, in accordance with the interests of the child and the needs of the family.

Thus, the consolidation of certain norms providing for the protection of motherhood is a fairly common practice in the field of constitutional law of foreign countries.

However, from the point of view of gender equality, the protection of paternity, along with motherhood, is also important. Separate norms providing for the protection of paternity along with motherhood are contained in the Constitutions of

Poland, Portugal, as well as Belarus, Russia, Ukraine, and Turkmenistan.

It should be noted that it is also planned to introduce into the Constitution of Uzbekistan a rule on the protection of paternity along with motherhood and childhood¹².

The introduction of such amendments to the **Constitution of Uzbekistan** became possible, among other things, due to the introduction of the concept of "**Gender Legal Expertise**" into the national legislation.

If we turn to the background of this innovation, in the **Strategy of Actions for the Further Development of the Republic of Uzbekistan**¹³, increasing the socio-political activity of women was a priority in the development of the social sphere.

In accordance with the Action Strategy for the five priority areas of development of the Republic of Uzbekistan in 2017-2021, the Laws "**On the Protection of Women from Harassment and Violence**", "**On Guarantees of Equal Rights and Opportunities for Women and Men**" were adopted.

According to the Law "**On Guarantees of Equal Rights and Opportunities for Women and Men**", **gender legal expertise** is an analysis of legal acts and their drafts for compliance with the principles of guaranteeing equal rights and opportunities for women and men¹⁴.

At the same time, both the current legislative acts and the developed draft regulatory legal acts fall under the subject of gender legal expertise. This is very important from the point of view of a retrospective analysis of the current legal acts that were formed over the past 30 years before the introduction of the institution of "gender legal expertise".

Thus, gender-legal expertise of normative legal acts and their drafts is carried out by state bodies and other organizations in the relevant areas of activity.

⁶Global Gender Equality Constitutional Database (accessed 20 June, 2022)

<https://constitutions.unwomen.org/en/countries/europe/hungary?provisioncategory=35a3f684146b4c5c878a6a2db96a7d9a>

⁷Constitution of the Republic of Estonia (Consolidated text of August 13, 2015).

<https://wipolex.wipo.int/en/text/423630>

⁸Basic Law for the Federal Republic of Germany, 23 May 1949 (Last amended on 29 September 2020).

<https://www.btg-bestellservice.de/pdf/80201000.pdf>

⁹Constitution of Ireland, January 2020. Enacted by the People 1st July, 1937.

<https://www.irishstatutebook.ie/eli/cons/en/html>

¹⁰Constitution of the Italian Republic. https://www.senato.it/documenti/repository/istituto/costituzione_inglese.pdf

¹¹Portugal's Constitution of 1976 with Amendments through 2005 (PDF generated 27 April, 2022).

https://www.constituteproject.org/constitution/Portugal_2005.pdf

¹²Amendments to the Constitution visually - table of comparison (Rus. "Поправки в Конституцию наглядно — сравнительная таблица"), accessed 15 June, 2022. <https://www.gazeta.uz/ru/2022/06/30/construction/>

¹³Decree of the President of the Republic of Uzbekistan, dated February 7, 2017 No. DP-4947.

<https://lex.uz/ru/docs/3107042>

¹⁴Law of the Republic of Uzbekistan, dated 02.09.2019 No. LRU-562. <https://lex.uz/ru/docs/4494873>



If a normative legal act or its draft is found to be inconsistent with the principles of guaranteeing equal rights and opportunities for women and men, the conclusion of a gender legal expertise is sent for consideration to the body that developed or adopted this normative legal act.

Gender-legal expertise of normative legal acts and their drafts is aimed at:

- identification of non-compliance of a normative legal act or its draft with the principles of guaranteeing equal rights and opportunities for women and men, creating the possibility of direct and indirect discrimination based on sex;
- a general assessment of the consequences of the adoption of a draft legal act that creates the possibility of direct and indirect discrimination on the basis of sex;
- identification of possible risks of a discriminatory nature in the process of applying regulatory legal acts;
- development of recommendations aimed at eliminating the identified norms that allow direct or indirect discrimination on the basis of sex.

At the time of the introduction of the institution of "gender-legal expertise", the national legal framework consisted of more than **10** thousand legal acts adopted after Uzbekistan gained state independence.

In particular, for the period from August 31, 1991 (the date of the adoption of the Law "On the Fundamentals of State Independence of the Republic of Uzbekistan") to September 2, 2019 (the date of the adoption of the Law "On Guarantees of Equal Rights and Opportunities for Women and Men"), more than **600** laws and about **9,5** thousand by-laws were adopted¹⁵.

Undoubtedly, the interests of women and men were taken into account in the development and adoption of legal acts. But the lack of "gender-legal expertise" did not guarantee systematic work and the mandatory consideration of the gender factor in the formation of the national legal framework. Therefore, a retrospective (ex-post) study of national legislation from the point of view of gender legal expertise is very important.

Currently, there are unique opportunities in this field. This year, a new program document of strategic reforms for the medium term was adopted - **the Development Strategy of New Uzbekistan for 2022-2026**. This policy document contains **7** priority areas and **100** goals for the upcoming reforms.

¹⁵National Database of The Legislation of the Republic of Uzbekistan.
<https://lex.uz/ru/search/nat?lang=3&status=Y&nature=1&from=01.09.1991&to=02.09.2019>

Thus, Goal No. **8** is devoted to the modernization of rule-making processes, ensuring the unconditional execution of legislative acts. This goal is planned to be achieved through the implementation of the following tasks¹⁶:

- improving the practice of holding consultations with civil society institutions in the legislative process;
- development and expansion of the assessment of the regulatory impact of legislative acts;
- reduction of legislative acts by the method of "regulatory guillotine", as well as the systematization of segmented legal acts;
- development of the concept of development of the legislation of the Republic of Uzbekistan;
- reduction of the circle of state bodies with the authority to adopt departmental regulatory legal acts, as well as the continuation of work to optimize the number of these acts.

All tasks are important to achieve the goal. Nevertheless, it is necessary to focus on **three tasks** - **public consultations** in rule-making activities, **assessment of regulatory impact** and **systematization of legislation**. These tasks open up wide opportunities for filling existing gaps in legislation from the point of view of "gender-legal expertise".

In accordance with the Law "On Regulatory Legal Acts"¹⁷, public discussion of draft regulatory legal acts is an obligatory element of normative activity.

Public discussion is held in electronic form on a special portal for discussing draft regulatory legal acts "regulation.gov.uz", where access is open to everyone free of charge.

This portal has a rather simple questionnaire in the "Gender Expertise" section, consisting of two questions. **The first** open question reads: "What impact does this project have on ensuring equal rights and opportunities for women and men?" and the answer options "Positive", "Rather positive", "No effect", "Rather negative", "Negative", "Difficult to answer".

The second closed question "Are there any norms in the draft that adversely affect the provision of equal rights and opportunities for women and men?" does not provide ready-made answers, but encourages participants in the public discussion to leave a short message about their opinion or attach a file with written comments, suggestions and recommendations.

This questionnaire was specially made in the simplest possible form in order to accustom the participants of the public discussion to openly express

¹⁶Decree of the President of the Republic of Uzbekistan, dated January 28, 2022 No. DP-60.

<https://lex.uz/ru/docs/5841077>

¹⁷Law of the Republic of Uzbekistan, dated April 20, 2021 No. LRU-682. <https://lex.uz/ru/docs/5378968>



their opinion at the first stage of the "gender-legal expertise". The results of the questionnaire are a signal to the developer of the relevant draft legal act that the public supports his actions or, conversely, calls for a more thorough study of the issue from the point of view of gender equality.

But even this simple mechanism for expressing one's opinion in the process of rule-making is not developing actively enough.

For the period from January 1 to July 1, 2022, a public discussion of a total of **574** drafts was held, including **65** draft Laws, **107** draft decisions of the President, **224** draft decisions of the Government, **178** draft departmental acts.

From the **65** draft Laws, only 40 were left with opinions in the framework of public discussion. At the same time, when we say opinions, we mean several forms - this is the Checklist for identifying corruption factors, the questionnaire "Gender Expertise", the General Questionnaire, as well as proposals left in the form of comments by participants in the public discussion

During the above-mentioned period, the largest number of opinions was left in relation to the draft Entrepreneurial Code. Thus, during the public discussion, various stakeholders left a total of **1,317** opinions, of which **1,160** (88 percent) fall on the Checklist for identifying corruption factors, **105** - proposals left in the form of comments, **37** - the General Questionnaire and only **15** - the Questionnaire "Gender expertise" (*in almost all cases, a positive or neutral assessment was given, and only in one case did they find it difficult to answer*).

More than **10** answers to the Gender Expertise questionnaire were submitted by anonymous users. While on the portal it is possible to indicate the type of one's activity, in particular "Entrepreneur", "Civil Servant", "Scientific Applicant", "Journalist", "Representative of a non-governmental organization".

None of the participants in the public discussion within the framework of filling out the Gender Expertise questionnaire expressed their opinion in the form of a short message or file attachment with their comments, suggestions and recommendations on such an important project as the **Entrepreneurial Code**.

In our opinion, this may indicate a formal approach, which may be due to several reasons. First, the novelty of "gender-legal expertise". Secondly, distrust that the developer of the draft normative legal act will carefully study the results of the Gender Expertise questionnaire.

Therefore, at the initial stage of development of the institution of "gender legal expertise", it is necessary

to carry out active explanatory work so that various stakeholders understand its significance and begin to use this tool. In this regard, it is advisable for the developers of the most gender-sensitive draft legal acts to conduct focus groups, including with the participation of representatives of non-governmental non-profit organizations and other civil society institutions, the media and bloggers specializing in gender equality issues and having a significant number of subscribers.

In addition, the participants in the public discussion should see the attention of the developer of the relevant draft regulatory legal act to their opinion. In this regard, based on the results of the public discussion, the developers on the "regulation.gov.uz" portal or on their websites should post a summary of the results of consideration of the results of the public discussion, including the results of the Gender Expertise questionnaire.

It should be noted that **public discussion is one of the types (methods) of regulatory impact assessment**. This institution is also a relatively new phenomenon for the rule-making process in Uzbekistan.

Thus, the Decree of the President of the Republic of Uzbekistan dated March 15, 2021 No. PP-5025 approved the **Regulations on the procedure for assessing the regulatory impact of draft regulatory legal acts and adopted regulatory legal acts**.

In accordance with this Regulation, the assessment of the regulatory impact is mandatory carried out according to the draft regulatory legal act and the adopted regulatory legal act, which provides for the impact on business activities, the rights, freedoms and legitimate interests of citizens, as well as the environment¹⁸.

Unlike business activities and the environment, the impact on the rights, freedoms and legitimate interests of citizens is a broad concept, including, among other things, ensuring equal rights and opportunities for women and men.

With this in mind, it seems appropriate to determine an exhaustive list of fundamental rights, freedoms and legitimate interests of citizens that fall under the subject of regulatory impact assessment.

This step is due to limited institutional and human resources in the area of regulatory impact assessment. For example, in the Ministry of Justice, the main state body responsible for pursuing a unified state policy in the field of lawmaking, this issue is dealt with by only one Department for Systematization of Legislation and Regulatory Impact Assessment, consisting of 15 employees. In addition to assessing the regulatory impact, this Department is also involved in

¹⁸Resolution of the President of the Republic of Uzbekistan, of 15.03.2021 г. № RP-5025. <https://lex.uz/ru/docs/5331933>



anti-corruption expertise, as well as the systematization of legislation.

The Government also has a Regulatory Impact Assessment Unit within the Department of Legal Support¹⁹.

By analogy with anti-corruption expertise, it is advisable to fix in the legislation a mechanism for conducting scientific and independent gender legal expertise, including within the framework of regulatory influence by research and educational institutions, non-governmental non-profit organizations and other civil society institutions.

Attracting additional resources is very important in the light of the implementation of the Decree of the President of the Republic of Uzbekistan dated April 30, 2021 No. UP-6218 "On measures to comprehensively systematize the national legislative framework"²⁰.

In accordance with this document, a comprehensive systematization of the current legal framework is provided for in two main areas:

1. Systematization of legislative acts regulating the activities of state bodies.

2. Systematization of normative legal acts by branches of legislation.

As part of the systematization in the next 4-5 years, it is planned to revise more than 10 thousand existing regulatory legal acts. In turn, the participation of various stakeholders in this process will greatly facilitate the work of state bodies, and will also allow the creation of a truly popular legal base, taking into account the interests of the people.

In general, the public and the legal community of Uzbekistan is faced with the question of practical testing of all the possibilities and advantages of the institution of "gender legal expertise" new to the national legal system. For the effective application of this institution, first of all, it is necessary to take into account international practice and foreign experience, as well as rely on the scientific community and civil society institutions.

¹⁹Resolution of the Cabinet of Ministers of the Republic of Uzbekistan, dated March 12, 2019 No. 212.
<https://lex.uz/ru/docs/4236564>

²⁰Decree of the President of the Republic of Uzbekistan, dated April 30, 2021 No. DP-6218.
<https://lex.uz/ru/docs/5400411>



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