GENDER EXPERTISE OF FAMILY AND LABOUR CODES OF THE REPUBLIC OF UZBEKISTAN
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It is hoped that the report will also be useful to government, public and nongovernmental organizations, mass-media and to individuals working in the field of gender and development.
INTRODUCTION

Among the numerous social problems which are taking place in the centre of attention of our society and the state, special value is got with a problem of improvement of women position, wide involving them in process of active participation in sociopolitical life of the country.

Women who make a half of population, render huge influence on a society. Development of women is a sensitive parameter of progress of mankind as a whole. And it is not casual, that since 1996 of the United Nations has entered one more index of human measurement which is connected to maintenance of real equality between women and men and to expansion of rights and opportunities of women, elimination of gender inequalities.

In the modern world the statement of original equality of the woman and the man is considered as a basis of social progress, steady development of a society. That’s why principles of equality and non discrimination of women consecutive developing and fastening in all international legal acts on human rights. These international documents testify priorities, which international community gives to the statement in real life of a principle of non discrimination of women.

The international documents admits, that development of the rules of law, guaranteeing to women granting of fundamental human rights and freedoms – is a necessary, but an insufficient step for overcoming discrimination against women. It means that state-parties have to create additional means and effective mechanisms of women rights protection.

After finding the state independence the Republic of Uzbekistan has received a historical opportunity regularly to engage in the decision gender issues and creation of conditions for wide participation of women in affairs of a society that is one of the major preconditions for achievement of the social, economic, political and cultural purposes.

In Uzbekistan, at legislative and executive levels it makes the policy directed on achievement of full equality between men and women, improvement legal and economic status of women, granting of equal opportunities in conditions of their life and work, protection of reproductive health, and also change of a traditional role both women and men in a society and family.

The Republic of Uzbekistan, having joined to UN Convention on the Elimination of All Forms of Discriminations against Women and a number of other international documents, has undertaken obligations on realization of a policy of non discrimination against women and for this purpose has accepted the appropriate legislation establishing women rights legal protection, increase of their status in the state and public life.

The analysis of the legislation of Uzbekistan testifies to its conformity to the international standards in the area of human rights. So, the Constitution of the Republic of Uzbekistan (Art. 46) proclaims equality between men and women, protection of motherhood and the childhood, a principle of the free and equal marriage, the equal responsibility of parents for the maintenance and education of their children (Art. 64).
Laws of Republic of Uzbekistan provide to women on equal terms with men the right: on work, as an inalienable law of all people, to identical opportunities at employment, to a free choice of a trade, to education, the right to social security in case of a care on pension, unemployment, illness, physical inability, on health protection and safety of working conditions.

Besides the legislation of the Republic of Uzbekistan women provide to equal access to public service, participation in management of the state and public affairs at all levels of management.

Thus, as the main achievements of gender policy, which spent in the republic it is possible to note a high level of erudition of women, a high share of participation in public life.

Fixing legal equality between man and woman in all areas of political, economic and social sphere, our state through system of privileges, advantages and guarantees creates additional conditions for protection of their work and health.

However the problems of gender sensitivity of our legislation are still remain actual. Among scientists the most often discussions cause labour, family, constitutional and administrative law.

Distinctive feature of problems of women rights insuring in our country is low legal literacy both women, and a society as a whole. And in spite of the fact that women make it not only the most part of the population, but they are socially active, flexibly adapt for modern conditions of life, actively participate in development of bases of a civil society.

This publication is devoted to research of positions of Family and Labour codes of the Republic of Uzbekistan through a prism gender analysis. By results of examination, amendments on improvement the national legislation through the principle of gender equality are submitted.

It’s hoped this publication will serve as a practical material in issues of reduction of the current legislation according to principles and norms of international norms and will be useful to all interested in protection and observance of equal rights and equal opportunities among women and men of the Republic of Uzbekistan.

Dilovar Kabulova,
Director of
Civic Initiatives Support Centre
Chapter I. Gender aspects and family legislation of Uzbekistan

A marriage and a family are integral elements of social structure of any society during many centuries. They are considered as the fundamental social institutes providing reproduction and stability of a human society.

A family represents to be one of the key institutional settings through which the gender roles are become aware and realized. Models of a family depend on not only the specific circumstances and solutions, but they are formed under the influence of public policy and support of communities at lower level as well as traditions, public values and economical environment.

In particular a family continues to remain the native place for each of us, where we can behave freely and easily. Family is an indicator of the society which state in many aspects depends on well-being and healthy psychological climate of a family.

Family is the complex social institution and many things in forming of intrafamily relations and relations between the spouses, first of all, are determined by national culture, historic traditions, social and economical conditions and personal factors.

Family represents the basic abode of a child and concentration of all types of human relations. It’s emerged a question, whether the modern family promotes to upbringing of educated, intellectually developed people, men and women who establish their own relations on the basis of mutual respect and understanding. Whether a family provides the right on choice of own way of development both for girls and boys; does it respect the rights of women, and does it consider a woman as a personality?

Practice shows that women do not consider themselves as equal in many countries of the world, and it is occurred because they were treated as second-rate citizens during many centuries.

It is paid a great attention to family matters and status of women in family and a society in Uzbekistan. The programs directed on strengthening of role and social potential of family, strengthening of the status of women in the state and public construction are accepted by the state. The Uzbek society is very rich with traditions and customs which play a positive role in moral, ethical and cultural development of its members and in rallying the nation as a whole. However, some customs and ceremonies are still take place in separate families and determine norms of behavior of their members. Customs and requirements of their observance put woman in unequal position with men. Education of girls in family in spirit of humility the grown-up still now was kept; it is especially strong expressed on village. For example, creation of marriages is not always based on a
mutual consent and the voluntary, realized decision of marrying pairs, frequently, for them it is solved by parents or other members of family that is direct infringement marrying persons’ rights and freedom.

Legal basis of a right on own choice is Constitution and laws of the state, which fix and guarantee equal rights to everybody, i.e. for men and women, harmonious physical and intellectual and moral development.

Grounds of gender disparity are laid in modern society: preparation of the girls from childhood for performance of women’s roles, alighted by the centuries; upbringing of their passivity, mildness and humility; conservative attitude toward to equality of men and women in family and social life; exclusion of women from social life to sphere of family and private life; preponderant position of men in family in connection with high share of their participation in formation of family’s budget; inequality at distribution of household duties; entrance into second marriage (religious) without dissolving of the first one etc.

Women perform the many roles in family and it’s extremely difficult to combine these roles. Women are the partners in family union, either paid or unpaid workers in household, mothers, and quite often essential burden for children care is laid upon them. Performance of the duties by women is one of the main factors, determining the health, level of education and material well-being of the members of a family, especially children and also serves as role model for children when they become adult.

Serious evidence of gender disbalance available in society is the acts of violence in respect of women and girls, assumed in family both by parents and husbands. Most frequently violence in respect of women is expressed in the form of sexual and family violence, murder and hurt of bodily damages on the basis of alcoholism, drug addiction, sadism and other physical and psychological violence.

Growth of violence in family has the longstanding historical background, economical, moral, criminogenic and other reasons. This phenomenon is typical for all countries of the world, irrespectively of their political, social and economical and cultural development. Family violence has a wide distribution even in the most developed countries. Thus, in Europe on the average each fifth woman, and in the world everyone the third became a victim of violence in the family, caused by the husband or the partner. Everywhere in the world a level of violence on the part of partners became in Norway - 6 %, in New Zealand - 20 %, in Holland and Switzerland of 21 %, in USA of 22 %, in Canada - 29 %, in the Great Britain - 30 %, in Egypt - 34 %, in Pakistan - 42 %, to Bangladesh - 47 %, in Hong Kong and Ecuador - 50 %, in Turkey - 58 % of women.

In spite of absence of the state or other monitoring system of dynamics of violence manifestation against women in Uzbekistan, there are selected evidences on
spreading of violence in family life; thus, 2540 bad families were registered in 1995 in accordance with data of Ministry of Internal Affairs and 3128 families in 1998. 520 cases of sexual violence against women were registered in 2000.

Society suffers the large economic losses as a result of violence; output of women is reduced at job places due to disability and above all it harms to intellectual and moral of health of a family and its normal development.

Family represents the specific area, where problems of gender equality or more precisely, gender inequality become apparent especially sharply, often painfully and where it’s very difficult to solve them, at least, with the help of law. Practice testifies that principle of equality between men and women fixed on legislative level is not always implemented if implemented in general. Therefore here, in a family, it is very important to fix ideas of gender equality and to provide the mechanism of their real implementation.

It’s clearly revealed the necessity to conduct the gender analysis of family legislation aimed at examination of a matter how existing family and legal norms provide each of the spouses with possibility to realize the provided equal rights in practice, and as far as family legislation guarantees the freedom against discrimination.

**Objective of gender expertise** is to reveal how existing family and legal norms permit each of the spouses to realize the provided equal rights in practice; how gender and neutral legislation is a guarantee of discrimination absence in real life, and, finally, whether there are the norms, infringing the gender symmetry, and as far as such violation is well-founded.

**Tasks of gender expertise** of legislation are, first of all, revelation and analysis of norms, clearly acknowledged the privilege for man or woman in solution of any matters or openly limited the rights of one of them. Secondly, revelation of the norms, which being formally gender and neutral, lead or may lead to limitation, or, vice versa, widening of the rights of one of the spouses by mediated manner.

Examination was based on principles of equal rights and equal opportunities for two genders. This principal is especially important for analysis, since it permits to reveal the negative and positive states in industrial legislation in the part of securing men and women with equal rights. Conduction of gender expertise of legislation is also aimed at elaboration of recommendations for its perfection.

Existing international standards for human rights in the part of equality of genders, family legislation and its practice were examined in the course of expertise.
1. **CONTRIBUTION OF INTERNATIONAL STANDARDS ON HUMAN RIGHTS IN PROVISION WITH GENDER EQUALITY IN FAMILY RELATIONS**

Right to marry and to found a family men and women have only after gaining the marriageable age. The international documents in the area of human rights recognize this right without any limitation due to race, nationality or religion. According to the general rules the right to marry is realized according to the national law.

One of the first documents, acknowledged the equality of the rights and liberties, is **Universal Declaration on human rights** of 1948, where it’s pointed out that all UN nations confirmed their faith in basic human rights, dignity and value of personality and equality of men and women.

It follows from Declaration that men and women have the equal rights in the following spheres: equal rights before the law, equal protection against discrimination, equal marriage rights, and equal access to public service and right on equal remuneration.

Universal Declaration on Human Rights, developing centuries-old traditions and practice of nations, states in Article 16, men and women of full age without any limitation due to race, nationality or religion, have the right to marry and found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. Marriage shall be entered into only with the free and full consent of the intending spouses. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

UN documents and International agreements endow a woman with rights equal to man’s in marriage, including the rights of reproductive nature with regard to determination the number of children in a family and regulation of the intervals between their births. Women shall use the rights related to maternity both at work and outside and also the right to have the deserving habitation and dispose of it. Available agreements call upon to joint responsibility of women and men for upbringing and development of children. At the same time, though the basic duty on securing with deserving living standard of children is imposed on the parents, the state shall help them in performance of such duty.

In December 1954, UN General Assembly have accepted the Resolution, where recommended to establish the marriageable age and other positions necessary for found a family. This is made in **Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962)**. It reiterates the principle of full and free consent of the spouses, and adds that such consent should “be expressed by them in person after due publicity and in the presence of the
authority competent to solemnize the marriage and of witnesses, as prescribed by
the law” (Article 1). The Convention also states the principle of minimum age foe
marriage: “No marriage shall be legally entered into by any person under this age,
except where a competent authority has granted a dispensation as to age, for
serious reasons, in the interest of the intending spouses” (Article 2).

The right to found a family is formulated in International Covenant on Economic,
Social and Cultural Rights (CESCR), 1966. According to Article 10 of Covenant,
the State Parties have to guarantee the widest possible protection and assistance
should be accorded to the family, which is the natural and fundamental group unit
to society, particularly for its establishment and while it is responsible for the care
and education of dependent children. Marriage must be entered into with the free
consent of the intending spouses. Special protection should be accorded to mothers
during a reasonable period before and after childbirth. During such period working
mothers should be accorded paid leave and leave with adequate social security
benefits.

Regional conventions concretize these general provisions in view of traditions of
continents and the countries. For example, the European Convention on Human
Rights in Article 12 proclaims the right to marry: “Men and women of
marriageable age have the right to marry and to found a family, according to
national laws governing the exercise of this right.

The Cairo Declaration on Human Rights in Islam states: “… family is the
foundation of society, and marriage is the basis of its formation. Men and women
have the right to marriage, and no restrictions stemming from race colour or
nationality shall prevent them from enjoying this right” (Article 5.a).

Convention on Human Rights and Fundamental Freedoms of the Commonwealth
of Independent States besides mentioned above establishes that “no marriage shall
be entered into without the free and full consent of the intending spouses. For the
purpose of creating the necessary conditions for the full development of the family,
which is the fundamental unit of society, the Contracting Parties shall contribute to
the economic, legal and social protection of family life by such means as social and
family allowances, tax relief, the provision of accommodation for families, grants
for newly-married couples and other appropriate measures” (Article 13).

Universal Declaration on Human Rights proclaiming that men and women are
entitled to equal rights as to marriage, during marriage and at its dissolution,
recognizes thus the right to divorce. But no any international instruments on
human right protection proclaim such right. First of all, it speaks, that at the
moment of signing the international documents on human rights there wasn’t law
on divorce in any country. Later such laws have appeared, but attempts to include
the right to divorce, in particular in Protocol VII of the European Convention, have
not crowned success.
In 1979 UN adopted the comprehensive document on the women’s rights aimed at liquidation of conditions, promoting to discrimination of women in society, violation of their rights in family and family life. Uzbekistan ratified the UN Convention on Elimination of All Forms of Discrimination Against Women in 1995.

Adoption of Convention on elimination of all forms of discrimination against women by UN General Assembly on December 18, 1979 had became the culmination of decade of international efforts for advancement and protection of the rights of women of the World. It became the results of initiatives, taken by the UN Commission on the Status of Women – the body established by UN in 1947 for consideration and eLabouration of political recommendations on improvement of the condition of women.

Sixty four countries have already signed the Convention and two courtiers handed over their instruments of ratification at special ceremony of Copenhagen conference. Convention came into effect on September 3, 1981 on the third day following ratification by the twentieth country – member of UN, leading, thus, to culmination the efforts of UN for systematization of wide international standards for women. Historical significance of the Convention is because it has determined the concept of women discrimination.

In accordance with the Convention the term “discrimination against women” means any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Convention determined the conditions in which basis it may be implemented in practice.

Basic requirement of the Convention is that the principals of equality of men and women shall be included into constitution and other relevant legislation of the countries. Obligations, imposed by the Article 2, go beyond the scope of legislative reforms and require securing the practical implementation of principals of equality of women from the countries with the help of legislative and other relevant measures.

In accordance with the Convention the countries shall not only ratify it but also assume the measures in order realize it as soon as practicable; eradicate the prejudices and abolish the customs and other practices based on idea on inferiority of women (Articles 2 and 5).
Special attention in Convention is paid to the rights of women in the area of civil law: they have the equal rights with men for acquisition and inheritance of property, its management, use and disposition, including the property acquired in period of marriage; right to travel etc.

States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

(a) The same right to enter into marriage;

(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

(c) The same rights and responsibilities during marriage and at its dissolution;

(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

(f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

Important provision contains in the Convention that the betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory (Article 16).

The above-mentioned provisions of the Convention are aimed at eradication of discrimination against women in private sphere, in sphere of family relations since this area, where unequal status of woman in respect of man is most obvious.
Circle of obligations of the state is explained in details in Common Recommendation 21 on equality in marriage and family relations. Committee acknowledges that the forms and conceptions of a family may vary, in spite of whatever forms that family could be formed, attitude to a woman, by law and in practice, in family shall correspond to principals of equality and justice for all people, stated in Article 2 of Convention.

It’s necessary to assume the measures for securing the equality of rights of men and women in the family, namely: the states – parties are obliged to prohibit or take reasonable steps on abolition of polygamy and secure that women should have the right to choice either family status or spouse, having abolished the forced and repeated marriages. Marriages and betrothals at infancy age are to become the focus of special actions, which the states-parties are obliged to undertake in order to make such marriages and betrothals to become illegal. Minimal marriage age is to be equal both for women and men. This provision shall be inserted into law and become embedded in practice. Also registration of a marriage is obligatory.

The State–parties shall secure that women should have the equal rights and obligations with men during whole period of a marriage or its termination, irrespective of reason, whether in connection with divorce or death. Parents of children, born in wedlock or out of it, are to be granted with equal rights: women shall receive the equal rights with men with respect to their children at assistance of such institutions as tutorship, trusteeship and adoption; and men shall divide on equal basis with women the obligations for care and financial support of children.

Equal condition of the men and women during marriage, fixed by Convention, covers the equal reproductive choice and right to have an access to means in order to implement of such choice. Forced actions, such as involuntary pregnancy, abortions and sterilization, are prohibited. At the same time, the states-members are obliged to create the atmosphere within which it’s possible to provide the conscious and informed choice. Equal state in marriage also foresees the equal rights to choice of occupation or Labour as well as surname. Any legislation or customs, obliging a woman to change her surname at marriage or divorce, deprive their equal rights in marriage and family life.

Equal state in marriage covers also equal access to possession of property. As it’s explained in Common Recommendation 21 by the Committee, equal access and opportunities in these matters require elimination of any discrimination in respect of property at divorce or death and recognition of the rights of wives and partners in case of liaison, for half of the community property, irrespective of financial contributions of the sides.

It’s necessary to emphasize that necessity to grant the rights of women for education, citizenship, employment, health protection, leisure and sports etc is indicated in Convention. It’s clear that implementation of these rights by women is
impossible without corresponding support of family and the state. Women need in additional social services that they would combine their family obligations with study, Labour activity and participation in social life. The states – members shall take necessary measures for protection of the woman and family.

Problems of domestic violence were not object for regulation of the Convention; however, matters of violence in respect of women have been examined by the Committee for rights of women in its Common Regulation 19. The Committee has determined the domestic violence as the most insidious form of violence in respect of women and marked that it might shape the multitude forms, including the beating, rape, creation of protective and supporting services for women and gender oriented training for law-enforcement and judicial bodies. The Committee summons the state-members to act in accordance with Common Recommendation 19 in such manner that women could be free from violence by gender principle.

2. FAMILY CODE OF THE REPUBLIC OF UZBEKISTAN IN THE LIGHT OF GENDER EQUALITY

Uzbekistan pursues the public policy completely supporting and approving all UN initiatives, aimed at securing the women’s rights and liberties. Creation of all necessary conditions for the development and promotion of women is the important task of the state and society.

The Republic of Uzbekistan was the one of the first in the CIS, which has ratified the CEDAW and undertaken the commitment in front of world community to observe all provisions of the Convention. Furthermore, Uzbekistan has affiliated with more than 60 international documents on human rights.

Harmonization of the national legislation with the international standards is carrying out in Uzbekistan, both within the limits of the Constitution and laws of the Republic of Uzbekistan.

According to the Constitution of the Republic of Uzbekistan women have the equal rights with men. Government of the Republic of Uzbekistan takes all measures on exercise of women’s rights in the political life of society, creates the conditions for securing of more significant role of women in making of political and economic decisions at the highest level.

Along with the constitutional guarantees to protect of individual rights, irrespective of age, gender, national and race belonging, religion, there is the extensive normative and legal basis aimed at the protection of the rights and legitimate interests of women in Uzbekistan. The women’s rights are fixed in Civil, Family and Criminal Codes.
Basic legislative act in the sphere of matrimonial relations in the Republic of Uzbekistan is Family Code of the Republic of Uzbekistan, which has entered into force on September 1, 1998.

Main objective of family legislation is the definition of the legal conditions aimed at the consolidation of a family with consideration of social and economic situation, establishment of such relations, which would promote the satisfaction of interests of the members of family to the greatest degree, creation of the conditions securing the deserving life and free development of each of them. The required condition for implementation of this objective is not only the securing the principle of spouses’ equality in family relations, but also the provision of equal opportunities for exercise of the rights and liberties belonging to each of them.

One of the main principles of family legislation of the Republic of Uzbekistan is the equal rights of man and woman in family relations. This principle is fixed in Article 2 of Family Code that says: “Regulation of family relations is carried out on the basis of the principle of voluntaries of the matrimonial union of man and woman, equality of personal and property rights of spouses, the solution of interfamily problems by mutual consent...” The principle of citizens’ equal rights in family relations is declared also in Article 3 of Family Code. All citizens have the equal rights in family relations. Any direct or indirect restriction of the rights, the establishment of direct or indirect advantages at marriage as well as interference in the family relations subject to gender, race, nationality, language, religion, social origin, views, personal or social status and other circumstances is not admitted.

Since the equality of spouses in family is expressed, first of all, that husband and wife have the equal rights at solution of all issues of a joint life (Article 19), this principle is concretized in other articles of the Code at the regulation of the specific rights and duties of spouses. So, for example, Article 22 of the Code provides that each of the spouses is free in the choice of occupation, profession, place of stay and residence.

All the questions, concerning the motherhood and paternity are to be solved on the basis of the principle of equality, as well as parenting and other matters of life of a family (Article 21).

So, the Family Code’s standards in their majority have so-called gender-neutral nature and consider the spouses as partners having the equal rights.

At the same time, the legislator admits the opportunity of restriction of the citizens’ rights in family relations only on the basis of law and only to such extent that it is necessary for the purpose of the protection of morality, honor, merit, health, the rights and interests of other members of family and other citizens protected by the law.
2.1. Freedom of marriage and problems of gender equality

Marriage is based on the free consent and equality of the parties. Article 14 of Family Code proclaims that the marriage is a voluntary act. The free and full consent of the prospective spouses means that this consent should not be formed under illegal influence on him/her on the part of other persons, and the spouse should be able to give the report in his actions.

For conclusion of a marriage it is necessary that future spouses would possess the ability to express their consent freely. In that case if the person does not realize value of his actions (being, for example, in a condition of alcoholic or narcotic intoxication), such marry can be nullified with all consequences following from here.

One of guarantees of observance the principle of free and full consent to marriage is also the personal signature on joint applications for registration of marriage, and also personal presence of both spouses at the moment of registration and inadmissibility of the marriage procedures through the representatives.

This norm is constructed subject to the principle of the marriage union’s freedom both for man and woman.

Practice testifies that reduction of dynamics is observed during the last few years. 184.0 thousand marriages were registered in 2005, that is less in comparison with 1991 by 86.3 thousand marriages; thus dynamics rate has decreased from 12.9 in 1991 up to 7.0 in 2005 accordingly. It has been registered also less divorces than in 1991 as 16.4 thousand in 2005 against 33.3 thousand in 1991, thus, divorce rate has decreased from 1.6 in 1991 up to 0.6 in 2005 accordingly.¹

The greatest amount of the registered marriages is observed in rural area while the greatest number of divorces falls to urban area.

Number of the registered marriages and divorces (thousands)

<table>
<thead>
<tr>
<th>Years</th>
<th>Total</th>
<th>Number of marriages</th>
<th>Total</th>
<th>Number of divorces</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>urban area</td>
<td>rural areas</td>
<td></td>
</tr>
<tr>
<td>1991</td>
<td>270.3</td>
<td>102,4</td>
<td>167,9</td>
<td>33,3</td>
</tr>
<tr>
<td>1992</td>
<td>235,9</td>
<td>87,4</td>
<td>148,5</td>
<td>32,8</td>
</tr>
<tr>
<td>2000</td>
<td>168,9</td>
<td>65,1</td>
<td>103,8</td>
<td>19,9</td>
</tr>
<tr>
<td>2001</td>
<td>170,1</td>
<td>64,3</td>
<td>105,8</td>
<td>15,7</td>
</tr>
<tr>
<td>2002</td>
<td>165,6</td>
<td>65,7</td>
<td>99,9</td>
<td>18,3</td>
</tr>
<tr>
<td>2003</td>
<td>161,7</td>
<td>65,6</td>
<td>96,1</td>
<td>17,6</td>
</tr>
<tr>
<td>2004</td>
<td>155,8</td>
<td>61,6</td>
<td>94,2</td>
<td>17,4</td>
</tr>
</tbody>
</table>

Family Code prohibits the compulsion in respect of a marriage (Part 2 of Article 14 of FC). This prohibition applies to both men and women by sense of the law. At the same time, Criminal Code establishes the prohibition on compulsion of a woman to get married or continuation of marriage cohabitation or hindrance to marriage by Article 136. At writing of this standard a legislator, undoubtedly, proceeded from the situation that the most weak and defenseless in family are, for all that, the young
girls whom the spouse is chosen by the parents or relatives, and the right to free choice of a spouse frequently is not given to girls in general. At the same time, proceeding from the provisions of article 136 of Criminal Code, the matter of protection of man’s freedom from the compulsion to the marriage is still unsolved. Hence, a man is in vulnerable position, his right to free marriage remains only as declarative one.

The spouses at their own discretion choose the surname of one of the spouses as the common at marriage, or each of the spouses keeps his/her premarital surname (Article 20).

Upon the consent of the persons who have married, medical examinations are to be performed as well as the consultations on medical and genetic matters and family planning.

**2.2. Marriage age and matters of gender equality**

Legislation establishes the age for marriage as 18 years old for men and 17 years old for women. If individual wishes to get married at earlier age, the local authorities (district or city khokimiyat) can lower the marriage age for one year at most in exclusion cases.

Statistic data testify that the age of maximal fertility both for women and men is equal to age interval from 20 up to 24 years old.

<table>
<thead>
<tr>
<th>Age of bride</th>
<th>Total marriages</th>
<th>Age of groom</th>
<th>Including at the age of, years</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>18-19</td>
<td>20-24</td>
</tr>
<tr>
<td>Under 18</td>
<td>3649</td>
<td>22</td>
<td>411</td>
</tr>
<tr>
<td>18-19</td>
<td>36996</td>
<td>34</td>
<td>2629</td>
</tr>
<tr>
<td>20-24</td>
<td>117547</td>
<td>53</td>
<td>910</td>
</tr>
<tr>
<td>25-29</td>
<td>18104</td>
<td>3</td>
<td>24</td>
</tr>
<tr>
<td>30-34</td>
<td>4096</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>35-39</td>
<td>1611</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>40-44</td>
<td>802</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>45-49</td>
<td>512</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>50 and over</td>
<td>674</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>


The same picture is observed and in regions of republic. Average marriageable age of the women as a whole on republic is 22.2 years and of the men - 25 years old. In
a section of regions the parameter of average marriageable age of women which is below then republican parameter is observed in Andijan, Namangan, Samarkand, Fergana areas. Women in the Republic of Karakalpakstan, Syrdarya, Bukhara, Tashkent, Khorezm, Kashkadarya, Surkhandarya, Navoi, Djizak areas and city of Tashkent get first married at the age of, exceeding republican.

Young men found a family at the age of under 25 years (republican parameter) in Khorezm, Bukhara, Namangan, Fergana, Samarkand, Andijan, Navoi areas. At the age of above 25 years men found a family in the Republic of Karakalpakstan, Djizak, Syrdarya, Tashkent, Kashkadarya, Surkhandarya areas and city of Tashkent.

**Average age at first marriage**

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
<th>Including</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Urban area</td>
<td>Rural area</td>
</tr>
<tr>
<td>Republic of Uzbekistan</td>
<td>22,2</td>
<td>25,0</td>
</tr>
<tr>
<td>Republic of Karakalpakstan</td>
<td>23,5</td>
<td>26,0</td>
</tr>
<tr>
<td>Regions:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Andijan</td>
<td>22,0</td>
<td>24,9</td>
</tr>
<tr>
<td>Bukhara</td>
<td>22,3</td>
<td>24,1</td>
</tr>
<tr>
<td>Djizak</td>
<td>23,5</td>
<td>25,2</td>
</tr>
<tr>
<td>Kashkadarya</td>
<td>22,4</td>
<td>25,5</td>
</tr>
<tr>
<td>Navoi</td>
<td>22,9</td>
<td>24,9</td>
</tr>
<tr>
<td>Namangan</td>
<td>21,2</td>
<td>24,5</td>
</tr>
<tr>
<td>Samarkand</td>
<td>21,7</td>
<td>24,8</td>
</tr>
<tr>
<td>Surkhandarya</td>
<td>22,7</td>
<td>25,7</td>
</tr>
<tr>
<td>Syrdarya</td>
<td>22,2</td>
<td>25,2</td>
</tr>
<tr>
<td>Tashkent</td>
<td>22,3</td>
<td>25,2</td>
</tr>
<tr>
<td>Fergana</td>
<td>21,4</td>
<td>24,5</td>
</tr>
<tr>
<td>Khorezm</td>
<td>22,3</td>
<td>24,1</td>
</tr>
<tr>
<td>City of Tashkent</td>
<td>22,6</td>
<td>26,1</td>
</tr>
</tbody>
</table>


**Number of married by sex, age and previous marital status in 2005**

<table>
<thead>
<tr>
<th>Age, years</th>
<th>Married women</th>
<th>Married men</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>for the first time</td>
<td>widows</td>
</tr>
<tr>
<td>Total</td>
<td>179247</td>
<td>1001</td>
</tr>
<tr>
<td>Including</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Under 20</td>
<td>40599</td>
<td>14</td>
</tr>
<tr>
<td>20-24</td>
<td>116911</td>
<td>132</td>
</tr>
<tr>
<td>25-29</td>
<td>16947</td>
<td>210</td>
</tr>
<tr>
<td>30-34</td>
<td>3054</td>
<td>162</td>
</tr>
</tbody>
</table>
According to presented data, 65.2% of women get married for the first time at the age of 20-24 years old. 54.9% of men create their family at the same age interval.

22.6% of women and 2.3% of men got married at the age under 20 years old. 9.4% of women and 36.5% of men create their family for the first time at the age from 25 till 29 years old.

The largest number of women at the age of 20-39 years old falls on city of Tashkent, Navoi, Tashkent and Syrdarya Regions. The greatest number of men of the same age reside in the Kashkadarya, Samarkand, Bukhara and Khorezm Regions.

The least quantity of women of maximal fertility age is located in Kashkadarya, Bukhara and Samarkand Regions, while the least quantity of men falls on the city of Tashkent, Navoi, Tashkent and Syrdarya Regions.
The analysis of provision of Article 15 of Family Code of the Republic of Uzbekistan, testifies that standards of this Article contradict the UN Convention on the rights of the child, acknowledging the children of such people who have not reached the age of 18 years old; as well as the CEDAW establishing that the marriage of a child has no validity. As the Republic of Uzbekistan is the secular state, separated from religion, it is seems advisable to adhere not to the religious norms and customs in legislation, but to the standards of international law, which priority is fixed in Constitution of the Republic of Uzbekistan.

Average age of the first marriage is a characteristic parameter of women’s status, both in positive and in negative aspect. The age of the women’s first marriage has increased for the last decades in the Northern America and Western Europe. It is connected with growth of the economic opportunities for women and the greater tolerance of society to the cohabitation and extramarital unions.

Thus, taking into consideration of the presented statistic data, it seems necessary to establish the unified married age for man and woman as 18 years old when they attain the full majority.

2.3. Spouses’ privities and problems of equality

Family Code of the Republic of Uzbekistan regulates the spouses’ privity. The property acquired by spouses during the marriage, and also acquired before the marriage registration on the common assets of the future spouses is their common joint property unless otherwise is stipulated by the law and marriage contract. To such property concern: incomes of each of spouses of labour activity, enterprise activity and results of the intellectual activity, the pensions received by them, benefits, and also other payments which are not having a special purpose designation (the sum of material aid, the sums paid in compensation of damage in connection with disability owing to a mutilation or other damage of health and others). The common property of spouses are also movable and immovable things acquired due to aggregate profits of the spouses, securities, contributions, shares in the capital brought in credit establishments or in other commercial organizations, and any another common property which have been brought during a marriage irrespective of to whom from spouses it is acquired or addressed, or to whom or who from spouses brings money resources.

Spouses have the equal rights of possession, use and disposal of their joint property. The Family code specially stipulates, that the spouse have equal rights on property and in the event that one of spouses was occupied with housekeeping, care of children or for other reasons had no independent earnings and other incomes.

The bargain accomplished by one of the spouses on the order by the common property of spouses, can be recognized by the court on motives of absence of the
consent of other spouse only under his requirement and only in cases if it is proved, that other party in the bargain knew or obviously should know about disagreement of other spouse on fulfillment of the given bargain.
For fulfillment by one of spouses of the bargain under the order the real estate and the bargain demanding the notarial certificate and (or) registration in the order established by the law, it is necessary to receive notarially certified consent of other spouse.

Besides the joint property, spouses possess the property that makes the property of each of them. Such property includes everything that belonged to them before the marriage, and also acquired during the marriage by way of inheritance, under the contract of donation and under other gratuitous transactions and the gratuitous bases.

The property of each of the spouses can be acknowledged as their joint property if it will be determined, that during the marriage at the expense of the common property of the spouses or property of each of the spouses or Labour of one of the spouses have been made the investments considerably increasing the cost of this property (major overhaul, reconstruction, re-equipment and others).

Thus, the studying of norms of the family legislation regarding assurance and protection of the spouses’ privity testifies that though they strictly meet the principle of equality, but by virtue of social and economic conditions the spouses do not realize their opportunities equally. At the same time, the most serious discrepancies between the legislative securing of the equal rights and the real opportunity of their realization are observed in the field of property rights of married women. In this case, the principle of the equal rights and equal opportunities of the spouses is included into the most serious contradiction with realities existing in the society, and acts as a key problem in gender expertise of the family legislation.

Taking into consideration of the presented statistic data, it seems necessary to establish the unified married age for man and woman as 18 years old when they attain the full majority.

### 2.4. Determination of an origin of children and problems of equality

The Family Code provides an opportunity of juridical affiliation only for paternity, but not for motherhood. Article 62 of the FC regulates, that in case of a birth of the child at the parents who are not married, and at absence of the joint statement of parents or statement of the father of the child to the civil registration bodies, the paternity can be acknowledged legally. Thus, the family legislation does not provide the similar norm, allowing the determination of an origin of the child from mother juridically. This provision is objectively conditional, and here the problem of gender equality securing is impossible.
Otherwise, we shall appear in the situation when concerning the woman who have refused the child in a maternity hospital or tried to get rid of undesired child by any other way, it will be possible to institute legal proceedings on “the motherhood affiliation”, having allowed at the same time the opportunity of search of mothers, carrying out of expertise, etc.

Under the common rule, an origin of the child from the certain woman obviously, and the motherhood affiliation does not make a problem. Now childbirth usually occurs either in medical institution, or outside of it, but at the presence of the doctor or other persons, which are able to confirm the fact of a birth of the child by this woman, or the woman herself addresses to the doctor soon after the childbirth.

According to the first part of the Article 60 of Family Code of the Republic of Uzbekistan, the origin of the child from a mother (motherhood) is acknowledged by the civil registration body on the basis of the documents of medical institution, and in case of a birth of the child outside of medical institution - on the basis of other proofs.

### Distribution of families by type in 2005
(data of household sampling surveys)

<table>
<thead>
<tr>
<th>Family Type</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Married couple with children</td>
<td>25.6</td>
</tr>
<tr>
<td>Married couple without children</td>
<td>3.4</td>
</tr>
<tr>
<td>Married couple with or without children and other relatives</td>
<td>36.6</td>
</tr>
<tr>
<td>Two or more married couples with or without children and other relatives</td>
<td>18.3</td>
</tr>
<tr>
<td>One parent families headed by mother</td>
<td>2.3</td>
</tr>
<tr>
<td>One parent families headed by father</td>
<td>0.2</td>
</tr>
<tr>
<td>One parent families headed by mother (fathers) with parents of mother (father) and other relatives</td>
<td>3.6</td>
</tr>
<tr>
<td>Other families</td>
<td>10.0</td>
</tr>
<tr>
<td>Total</td>
<td>100</td>
</tr>
</tbody>
</table>


### 2.5. Paternity proof and gender equality

Article 61 of the Family Code provides, that paternity of the person who are not married mother of the child, shall be acknowledged under the joint statement of mother and the person recognized to be the father of the child, submitted to the civil registration bodies.
In the case of mother’s death, her adjudgment as legally incapable, the impossibility of determining the location of mother or in case of her annulment, the paternity shall be acknowledged under the statement of the person recognizing to be the father of the child in coordination with the authority of trusteeship and guardianship.

Thus, the legislator approaches differently to the regulation of paternity and motherhood acknowledgement: for the registration of a woman as mother of the child its her statement to registry office is required, but for the registration of a man as the father - besides his statement the consent of mother of the child, as the law speaks about the joint statement of the father and mother of the child, as well as the consent of the authorities of trusteeship and guardianship is necessary.

Such approach to the order of determination of an origin of child from mother and father also is caused by the physiological reasons and aimed at protection of the child against possible mistakes and abusive acts.

It is possible to submit the statement for acknowledgement of paternity at the registration of a birth of the child and also after the birth of the child is registered. At the presence of the circumstances, giving the bases to believe, that submission of the joint statement on affiliation can appear impossible or inconvenient after a birth of the child, the parents of the future child who are not married have the right to submit such statement to the civil registration body during pregnancy of the mother.

In the case of a birth of the child in marriage the problem of affiliation does not rise, as each of spouses expresses the consent to their registration as parents of the child born from them. Besides by virtue of action of a presumption of paternity the husband of mother of the child born in marriage, is supposed as the father of the child. Therefore, for the registration of the child in such situation it is enough to present by his father or mother only the certificate of the birth from a medical institution and the marriage certificate.

| Share of extramarital births by mothers at the age under 20 (percent of the total number of viviparities by mothers at the age under 20) |
|---|---|---|---|---|
| **1990** | **1995** | **2000** | **2002** |
| Poland | 20.4 | 33.2 | 41.9 | 50.1 |
| Slovenia | 52.8 | 71.2 | 80.1 | 81.1 |
| Estonia | 39.7 | 62.9 | 79.8 | 82.5 |
| Bulgaria | 32.5 | 57.8 | 74.3 | 80.4 |
| Belarus | 14.2 | 17.7 | 30.5 | 35.5 |
| Russia | 20.2 | 27.0 | 41.0 | 44.7 |
| Ukraine | 13.6 | 15.9 | 22.5 | 26.6 |
| Armenia | 21.9 | 25.1 | 53.9 | 50.3 |
| Kazakhstan | 29.0 | 28.9 | 45.9 | 49.2 |
| Kyrgyzstan | 26.6 | 39.9 | 57.9 | 55.5 |
| Turkmenistan | 18.9 | 16.5 | 29.2 | 24.3 |
| Uzbekistan | 9.0 | 8.8 | 22.4 | 20.9 |

2.6. The spouse obligation on payment of the alimony to the wife

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during her pregnancy and within three years from the date of a birth of the common child

The next example of the gender asymmetry fixed at the level of the legislation, are the Articles 117-118 of Family Code.

The Article 117 assigns to spouses the obligation to assist each other, including assigns to the husband the obligation duty of payment of the alimony to the wife during her pregnancy and within three years from the date of a birth of their common child. The similar obligation is assigned to the man and in relation to his former wife in case of divorce during her pregnancy and within three years from the date of a birth of their common child. The presence of these norms in the family legislation is caused by necessity of the increased care of the woman who is being in condition of pregnancy or engaged in child care up to child’ achievement of age when he can be transferred without serious consequences for his mentality to preschool institution; thus interests of the child before achievement of age of 3 years are also protected.

At the same time, it is obviously necessary to study a problem concerning the payment of the alimony during the three-year period from the moment of birth of the child. In our opinion, here the matter shall be on the right of any of the spouses, engaged in child care, to demand the payment of the alimony on the maintenance from another spouse. Certainly, there can be situations when in the role of the parent who is looking after the small child, can appear the father equally if, for example, mother is better employed or her work is better paid, or when mother has left the family, and the father is forced to take care of the child completely on himself. In the latter case, the father not only cannot divorce with his wife without her consent before attainment by the child the age of 1 year old, but still should pay to her the alimony before achievement by the child the age of 3 years old, as the law does not provide in this respect any exceptions and does not suppose any clauses. In this connection it is obviously necessary instead of term "mother" use "the person who is actually carrying out care by the child" that would meet to the principle of the gender equality of man and woman, and would provide to each of the parents, irrespective of the gender, the equal opportunities on realization of their parental rights.

2.7. The obligations of the spouses (former spouses) on the mutual support

The Article 117 of Family Code fixes, that spouses are obliged to render the material aid to each other. This obligation is assigned both to the husband and to the wife pari passu, and the law, by the general rule, does not differentiate them in this occasion (except for the provisions, which was spoken about above).

However, the specified norm is declarative in its essence as it fixes a moral duty of the spouses to support each other financially. In order to execute this duty, the
legislator demands the presence of the certain additional circumstances stipulated in the said article. So, in the case of renunciation of such aid the right to reception of the maintenance (alimony) in the judicial order from other spouse possesses:

1) the spouse, demanding the alimony, is needy and incapable;
2) the needy spouse carrying out the care of the common child-invalid before achievement by the child the age of 18 years old or for the common child, disability from the childhood, of 1 group of invalidity;
3) the right to demand the alimony has also the wife during her pregnancy and within three years from the date of a birth of the common child.

In the case of divorce the right to demand the alimony in the judicial order from the former spouse possessing the funds necessary for this, have:

1) the former wife during her pregnancy and within three years from the date of a birth of the common child;
2) the needy former spouse carrying out the care of the common child-invalid before achievement by the child the age of 18 years old or for the common child, disability from the childhood, of 1 group of invalidity;
3) the incapable needy former spouse who has become incapable before the divorce or within year from the moment of divorce;
4) the needy spouse who has reached a pension age, not later than in five years from the moment of divorce if spouses were married for a long time (the first part of the Article 118 of Family Code).

So, by the general rule the basis for the alimony’s demand is the condition of needs and incapability, or, in relation to the woman, - a condition of pregnancy or care of the juvenile child, or presence of the child-invalid in the family. Moreover, the person from whom the payment of the alimony is required should possess the funds necessary for this. It means that if spouses are young and capable, the collecting of the alimony under the law is impossible. The woman who is carrying out actually care of the child and married, also has no the right on the reception of the maintenance from the spouse.

Thus, Family Code of 1998 that has been developed subject to the changed political, social and economic conditions nevertheless has not given to the spouses the freedom in a choice of the form of the organization of their home life and has not protected the interests of the spouse, decided to be engaged in family duties.

The real situation is those, that in overwhelming majority of cases, the woman refuses of the professional career and entirely devotes itself to the family and it is result of the developed stereotypes and national features of our region. Theoretically it’s possible to assume the reversed situation, but the stereotype of traditional cast between the man and the woman is, nevertheless, rather steady. Women incur duties on performance of family duties more often, while men in the majority of families or are not engaged in homework at all, or carry out its considerably smaller part.
The woman, decided to devote herself to the house and children at her own will, or because of the impossibility to find the corresponding work, not having her own earnings, and sometimes and high-grade education and consequently financially dependent on the husband, in case of divorce or simply disputed situation in the family appears in the heaviest, and sometimes in desperate situation. She needs a time to find a work, probably - to train for a new profession, acquire a new profession, to finish the interrupted training or in general to receive any education.

In consideration of the above stated circumstances, as well as social and economic conditions, it is represented as optimum in realities existing in our society the assignment of obligation to render the material aid of other spouse on the economically stronger spouse during the certain period of time, necessary for the social adaptation. Only by such way it is possible to provide to each of the spouses and, first of all, certainly, to women the equal opportunities for the realization of the equal rights fixed to them.\textsuperscript{337}

In this connection, there is a question on the spouses’ obligation to give each other the maintenance in marriage or after its cancellation irrespective of needs or invalidity.

Women are forced to remain at home for any reasons, limit itself by the performance only the role of the housewife. In consideration of these circumstances in a number of the western countries the mechanism of the social compromise which essence consists of that if one of former spouses after divorce is really need for the financial support in order to have the opportunity to adapt for the new social conditions, he shall be entitled by the right to demand it from the economically stronger partner. This purpose is served with so-called "compensatory payments" or "rehabilitating alimony", appointed on the average for the three-year period.\textsuperscript{4}

\textbf{2.8. Marriage contract and alimony agreements in the light of gender equality}

One of the innovations of the family legislation is granting the right to the spouses to conclude the marriage agreement in which they by the mutual consent can determine the mode of property holding as common, separate, or shared property. In accordance with the Article 29 of the Family Code the marriage contract is the agreement of the marrying persons, or the agreement of the spouses determining

the property rights and obligations of the spouses in marriage and (or) in the case of its cancellation.

Thus, the family legislation of the Republic of Uzbekistan has given to the spouses the wide opportunities on the settlement at their own discretion the privity arising between them, having provided an opportunity of the conclusion of the marriage contract and the agreement on the alimony payment. The marriage contract and the alimony agreement correspond the versions of civil transactions hereupon the provisions of the civil legislation shall apply to them. An obligatory condition of the conclusion of the marriage contract and the alimony agreements is the will of both spouses. It means that if the spouse who has been not obliged under the law to give maintenance to another spouse does not wish to give this maintenance at his own will then other spouse does not have any legal instruments to demand the payment of the alimony for the maintenance. Therefore, though the marriage contract and the alimony agreement are methods of settlement of the spouses’ privity, but do not provide a high-grade guarantee of protection of the interests of the spouses.

2.9. Divorcement and a problem of gender equality

By the general rule fixed in the second part of the Article 37 of the Family Code, marriage can be stopped by its divorcement on the statement of one or both spouses, and also on the statement of the guardian of the spouse recognized by a court as incapable. Thus, the legislator does not make any differentiation between the spouses concerning their right to initiate the divorce. It’s regulated in the Article 39, providing the restriction of this general rule, that husband has no right to file a suit on divorce during the wife’s pregnancy and within the year after a birth of the child without the consent of the wife. Hence, this article restricts only the right of the husband; while the wife completely keeps the right to divorce in such situation. This norm contradicts the principle of gender equality, and at the same time, its provisions do not protect the woman from family conflicts and even more do not stimulate the bridging of the relations between the spouses. Inadmissibility of divorcement by the spouse in the unilateral order can be only formal obstacle to divorcement and hardly protects the woman from the emotional experiences connected with disintegration of marriage, and, possibly, even aggravates them.

Divorce proceedings can have the strong effect on psychological condition of the woman, and furthermore the woman expecting the child, or on young mum and it is represented as doubly painful if take into consideration the instability of the mentality connected with pregnancy and childbirth. It is thought, that introduction of a similar type of restrictions is caused by the necessity of enhanced attention to the health of the woman and the child during this period and is reasonable in our opinion.
It should be also mentioned, that this norm has been existed as well in Marriage and Family Code of the Republic of Uzbekistan of 1969.

The Plenary Session of the Supreme Court of the Republics of Uzbekistan in its Resolution dated on September 11, 1998 with ref. # 22, has pointed out at the cases when husband has no the right to bring a suit on divorcement also in the cases when the child was born dead or has not reached the age of one year. At the absence of the consent of the wife on the legal divorce investigation the judge refuses in the acceptance of the statement of claim and if it is accepted, the court stops the proceedings. The lawsuit is a subject to the termination and in the case when the wife has agreed on initiation of proceedings in court on the statement of the husband, and during the proceedings in the judicial session, began to object to divorce. The said circumstance does not impede the wife to set the matter on divorcement by herself.

The proceedings are a subject to the termination in the court of appellate, cassation and supervisory jurisdiction if information of the pregnancy of the wife and on the absence of her consent to divorce became known during the proceedings in this jurisdiction.

Thus, after the circumstances specified in the Article 39 will disappear, the husband has the right to present a claim for divorce again, as the basic purpose of the restriction set in the Article 39, is the protection of mother’s health.

### Number of divorces by age and duration in 2005

<table>
<thead>
<tr>
<th>Age, years</th>
<th>Total number of divorces</th>
<th>Including duration of marriage, years</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Under 1</td>
<td>1-4</td>
</tr>
<tr>
<td>Women</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Under 20</td>
<td>207</td>
<td></td>
</tr>
<tr>
<td>20-24</td>
<td>3324</td>
<td>313</td>
</tr>
<tr>
<td>25-29</td>
<td>4833</td>
<td>181</td>
</tr>
<tr>
<td>30-34</td>
<td>3181</td>
<td>73</td>
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</table>

CONCLUSIONS AND RECOMMENDATIONS

Gender expertise of family legislation of the Republic of Uzbekistan shows that as a whole the norms of national legislation in the area of family relations as a whole correspond to international standards on human rights, including women rights.

Alongside with it during the gender expertise it was revealed a number of positions to which it is necessary to pay special attention:

1) Some provisions of the national legislation contradict the provisions of the international documents to which Uzbekistan has joined. In particularly The analysis of provision of Article 15 of Family Code of the Republic of Uzbekistan, testifies that standards of this Article contradict the UN Convention on the rights of the child, acknowledging the children of such people who have not reached the age of 18 years old; as well as the CEDAW establishing that the marriage of a child has no validity.

2) In the legislation of Uzbekistan the concept of terms “discrimination against women”, “violence against women”, “economic, sexual, physical and psychological violence against women”, “subjects of violence against women”, “family violence” is not determined, the special norms for the responsibility of the persons, making violence against women are not determined.

<table>
<thead>
<tr>
<th></th>
<th>Men</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Under 20</td>
<td>9</td>
<td>4</td>
<td>4</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>20-24</td>
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<td>207</td>
<td>919</td>
<td>37</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>25-29</td>
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<td>289</td>
<td>2549</td>
<td>1651</td>
<td>75</td>
<td>-</td>
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<tr>
<td>30-34</td>
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<td>114</td>
<td>778</td>
<td>1963</td>
<td>1253</td>
<td>-</td>
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<td>35-39</td>
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<td>52</td>
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<td>519</td>
<td>1790</td>
<td>13</td>
</tr>
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<td>205</td>
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</tr>
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<td>25</td>
<td>89</td>
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<tr>
<td>55-59</td>
<td>318</td>
<td>13</td>
<td>28</td>
<td>30</td>
<td>42</td>
<td>205</td>
</tr>
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<td>60 and over</td>
<td>349</td>
<td>13</td>
<td>48</td>
<td>43</td>
<td>66</td>
<td>179</td>
</tr>
</tbody>
</table>
3) Existing family legislation of the Republic of Uzbekistan is based on strict observance of the principle of equality between the spouses, being the development of the constitutional principle of equality between man and woman (the Article 46 of the Constitution of the Republic of Uzbekistan). Provisions of norms of the family legislation are, basically, of gender-neutral character, presuming that the spouses are equal rights partners. At the same time, the Code includes the norms supposing any deviations from the general principle of equality, caused by physiological distinctions between genders (for example, the Article 49 of Family Code, providing the juridical affiliation).

4) There is the number of norms in Family Code having disputable character concerning the securing of the principle of gender equality. For example, the Article 39 of Family Code determines the cases of restriction of the right of the husband on divorcement during the pregnancy of his wife and within one year from the moment of a birth of the child, and also the Articles 117 and 118 provide husband’s obligation to support his wife (the former wife) during her pregnancy and three years from the moment of a birth of the child to the extend it concerns the period from 1 year till 3 years from the moment of a birth of the child.

5) The greatest anxiety is caused with norms which being formulated in the strict conformity with the principle of gender equality, nevertheless by virtue of social and economic conditions do not allow each of the spouses to realize the opportunities equally. At the same time the most serious problems arise at the realization in practice the property rights of married women. Here the principle of the equal rights and equal opportunities of the spouses is included into the most serious contradiction with realities existing in the society. As the examples may be presented the cases when the woman, engaged in housekeeping, having no own earnings or other source of the income, cannot demand the payment of alimony from her spouse. New social and economic realities demand the revision of corresponding provisions of the family legislation.

Analysis of the norms of Family Code of the Republic of Uzbekistan have allowed developing a number of suggestions aimed at the perfection of the legislation and the mechanism of its execution:

1) It is necessary to reconsider positions of Article 15 of the Family code of the Republic of Uzbekistan about the marriageable age for women and to establish uniform minimal marriageable age, both for men and for women equal to 18 years when they reach full age. Establishing f uniform age criterion will correspond not only to a principle of gender equality, but also to positions of the Convention on elimination of all form of discrimination against women, the Convention on rights of the child.
2) The Article 117 of the Family Code formulate the assigns to the husband the obligation duty of payment of the alimony to the wife during her pregnancy and within three years from the date of a birth of their common child. Taking into consideration that there can be situations when in the role of the parent who is looking after the small child, can appear the father, grandfather, grandmother equally if, in this connection it is obviously necessary to give the right to alimony to the person who really looking after the child. That’s why it should to bring an amendment to Article 117 of Family Code in the case of assign one of spouses the obligation duty of payment of the alimony to the person who looking after the child during three years from the day of common child birth. This novel would correspond to the principle of gender equality man and woman, and would provide to each of parents, irrespective of a sex, equal opportunities on realization of parental rights by them.

3) By the general rule, which assign in Art. 117 of Family Code the basis for the alimony’s demand is the condition of needs and incapability, or, in relation to the woman, - a condition of pregnancy or care of the juvenile child, or presence of the child-invalid in the family. However, the woman, who devote herself to the house and children at her own will, or because of the impossibility to find the corresponding work, not having her own earnings, and sometimes and high-grade education is consequently financially dependent on the husband, and in case of divorce or simply disputed situation in the family she appears in the heaviest, and sometimes in desperate situation. In this case in order to create the conditions for finding a work, probably - for training for a new profession, it seems to necessary to entitle women by the right to demand payments from partner for the three-year period. Legal norms of a number of European countries regulates such "compensatory payments" or "rehabilitating alimony".

4) Taking into account the provisions of article 136 of Criminal Code it is necessary to protect also the freedom of man’s freedom from the compulsion to the marriage, because the man is in vulnerable position, his right to free marriage remains only as declarative one.

5) The analysis of practice of family-marriage relations shows, that because of the gender stereotypes which have developed in the society on the dominating position of men and inferiority of women, many norms of the Family Code, and also the CEDAW in practice are not observed and roughly broken. In mane families parents continue to influence on the process of a choice of the future spouse or spouses, and by this way the right to freedom to marriage are broken. Women do not address for judicial protection of the rights as they are afraid to be undergo to public condemnation. Despite of the presence of the right of women on property and habitation, the conclusion of the marriage contract, it is frequent that her property rights are
roughly broken at divorces, etc. It’s seems to be necessary to develop and introduce the system of monitoring of observance of the family legislation of the Republic of Uzbekistan in practice, to strengthen informational educational work among women by use of mass media means, the organization and realization of seminars, trainings as among women and men, and workers of the state bodies, self-government bodies of citizens (it is especial in rural area), to strengthen a role of non-governmental organizations in increase of legal education of women, support of the women-victims of domestic violence.

CHAPTER II. LABOUR CODE OF THE REPUBLIC OF UZBEKISTAN AND ITS GENDER MEASUREMENT
Legislative regulation of female Labour is based on the principle of equal rights of women and men. At the same time, in consideration of actual inequality of genders in a real life when woman carries out simultaneously two social functions: professional and maternal, the society has absolutely equitably established the special rights of women connected with motherhood.

In connection with the biological features connected with motherhood, equal rights of women take place when a woman, possessing the same rights as the man simultaneously possessing the additional labour, family, pension and other rights connected with performance of a role of mother.

According to the latest data of the International Labour Organization, there are about 45% of women in the world, who are considered as "economically active", that is are the Labour force, and in the most developed countries of the Central and East Europe, Northern America and Caribbean basin, Southeast Asia, Western Europe those are approximately the half. More than 30% of families in the world live at the expense of woman’s earnings that are the main source of income; in the Europe, the incomes of women in 59% of families make the half or more of family budget.

Gender discrimination at employment and dismissal, the right of women on a fair and equal payment with men for equivalent work, creation of favorable working conditions in view of reproductive function of women, and also economic and social guarantees for a successful combination of professional and family duties - these problems remain invariable actual all over the world.

The recognition of the right to work by the states in first half of XX century has resulted later in recognition and securing the human rights system in respect of Labour by means of the international and interstate legal regulation. This process becomes the integral and basic part of a state policy in the sphere of Labour.

The modern policy in the sphere of Labour is the activity of the states, social partners and civil society’s institutes on the development and implementation of the purposes, objectives, principles, the basic activities, priorities, forms and methods of development of Labour and other relations directly connected with them. At the international and interstate level the human rights in respect of Labour are included in the fundamental human rights that define their recognition, observance and protection as the basic constitutional and international legal obligations of the states and social partners on Labour regulation.

In the international acts shall be established the most desirable and expedient rules, for which the objectives, principles and standards in social and Labour relations shall be specified. Their specific system was formed, the hierarchy was established, fundamental rights, basic principles and priority approaches in the Labour policy were proclaimed.
In the international Labour relations law, the principle of discrimination exclusion was recognized as one of basic principles, having imperative character for all levels of Labour legal regulation. The system of the standards, expressed in various international legal sources forms its contents. It represents as a reference point for carrying out of antidiscrimination policy and simultaneously as a standard at carrying out of expertise of the national legislation and the practice of its application in respect of the discrimination exclusion in the sphere of Labour. In its totality, these norms form the international legal standard, which the states and social partners in Labour management and control shall follow, including the gender basis in the Labour policy.

Assistance in implementation of the generally recognized basic principles and fundamental human rights in the sphere of Labour is the necessary condition of deserving Labour. In such statement of the priority of human rights, the further humanization of the Labour legislation and carrying out of its gender expertise shall be proceeding.

Rights of women and girls are the integral and indivisible part of general human rights. Full and equal participation of women in political, civil, economic, public and cultural life at the national, regional and international levels, as well as elimination of all forms of discrimination on the basis of gender are the first priority objectives of the international community. For the extension of the rights and opportunities of women the significance has the full exercise of all human rights and fundamental liberties of all women. The implementation of the Beijing Platform of actions of 1995, including through the national legislation and by means of formulation of strategy, policy, programs and priorities in the sphere of development, is the sovereign obligation of each state.

The International Labour Organization has adopted a package of conventions establishing standards and conditions of labour utilization of women, implementing the family duties simultaneously. Matters on the labour female rights are also touched on in the Universal Declaration of Human Rights (Article 23), the International Covenant on economic, social and cultural rights (Article 6), the CEDAW Convention, in final documents of the World Conference on human rights (Vienna, 1993), the World Summits in interests of social development (Copenhagen, 1995) and the IV World Conference on state of women (Peking, 1995). In 1996 the General Assembly of the United Nations Organization had adopted the Resolution # 51/65 “Violence against women who are migrating in search of work” which obliges the governments of the states-members of UN to secure the protection of the women, who are migrating in search of work.

International standards determine, that the government measures on the protection of motherhood are not discriminatory ones (Article 4.2 of UN Declaration on elimination of all forms of discrimination), and, hence, labour legislation of the
Republic of Uzbekistan in the sphere of the social rights connected with the protection of motherhood and childhood, now meets with the requirement of international law.

For years of independence in the Republic of Uzbekistan the great and Labourious work was carried out on the consolidation the legal status of women, securing the equality of rights of women and men in all spheres of society life, including social and economic area. Now the whole set of the legal acts determining the opportunities of women in social and economic sphere and, in particular, in the sphere of Labour relations has been developed and adopted. These acts contain both the general rules and standards of the securing the Labour rights of all citizens, and the special rules and the procedures, relating to the Labour rights of women.

The necessity of the analysis of the legislative activity of the state on the securing the equal rights and opportunities of men and women is stipulated, that the rights of women are the integral part of general human rights. Equality of the human and citizen rights and liberties, irrespective of gender is acknowledged and guaranteed by Constitution of the Republic of Uzbekistan, whose Article 18 says: “All citizens of the Republic of Uzbekistan have the equal rights and liberties and are equal in front of the law without distinction of gender, race, nationality, language, religion, social origin, convictions, personal and social status”.

At present, the Constitution of the Republic of Uzbekistan, and more than 80 laws and other normative and legal acts make the legal basis for securing and protection of the rights, liberties and lawful interests of women.

The labour legislation of Republic of Uzbekistan contains the guarantees of maintenance of performance by women of reproductive function. The complex of the measures directed on protection of motherhood and paternity is established. It is protection of pregnant women against unemployment and their obligatory employment at occurrence of situations when it is impossible to keep a workplace, a labour safety of pregnant women and mothers having children of chest age, granting of breaks in connection with feeding the baby. Any member of family can take advantage paid holiday on a leaving of the ill child.

However, in practice the cases of infringement of the Labour rights of women are frequent. The information, presented in the report of the Authorized Person of the Oliy Majlis of the Republic of Uzbekistan for human rights (ombudsman) for 2006, testifies it. So, the monitoring of observance of Labour rights of women at the enterprises of the textile industry, carried out in the regions of Fergana Valley, allowed to reveal a number of the shortcomings and omissions: gross infringements of the existing legislation’s provisions in the sphere of securing the Labour rights of women; non-observance of legislation on granting of additional benefits to the women and persons engaged in family obligations; delays in wage and salary payment; infringements of standards of the existing legislation, aimed at
accident prevention, preservation of health and working capacity of the human during the working process; absence of modern Labour protection facilities and sanitary and hygiene working conditions; excess of maximum permissible concentration of harmful substances, dustiness, humidity, absence of ventilation, poor illumination, untimely carrying out of cleaning of shops and subsidiary premises; insufficient financing of Labour safety; untimely carrying out of workplaces certification; non-fulfillment of the prescribed norms of allocation of working clothes, footwear and other personal protection equipment, milk or other equivalent foodstuffs, treatment-and-prophylactic nutrition; infringements of the legislation provisions on granting the breaks in working hours and the absence of appropriate conditions for the rest; infringements of sanitary and hygiene norms for the maintenance of communal premises, canteens, insufficient assortment and quality of prepared food; low legal competence of women in the sphere of the Labour legislation. 6

Certainly, these cases of infringement of women labour rights, vulnerability of woman on a labour market cause of revision of norms of the labour legislation through a prism gender equality.

In our opinion preservation in the labour legislation of the public importance of the factor of motherhood (parenthood) is not discrimination as it is directed on alignment of opportunities of working men and women with family duties in reception of the social help from the state. The position of the UN Declaration about elimination of all forms of the discrimination, the appropriate conventions of the International Labour Organization is those also.

Examining the labour legislation of the Republic of Uzbekistan in gender measurement, it is necessary to define in what degree of norm of the Labour code correspond to a principle gender equality and as far as the restrictions entered by the legislator are proportional to interests and protection of rights of women.

1. INTERNATIONAL LEGAL BASES OF GENDER EQUALITY

Matters on equal rights of women and men are reflected in a number of the basic UN documents. The principle of gender equality is fixed in Universal Declaration on Human Rights of 1948, the International Covenant on economic, social and cultural rights of 1966, Conventions on elimination of all forms of discrimination against women of 1979. All these documents have been signed and ratified by the Republic of Uzbekistan. Let us analyze the main of them, having emphasized those moments on which it’s possible to be guided by at establishing of full equal rights of women in the Labour sphere.

1.1 CEDAW AND EQUAL RIGHTS OF GENDERS

6 Отчет о деятельности Уполномоченного Олий Мажлиса Республики Узбекистан по правам человека (омбудсмана) в 2006 году. Т., 2007. С. 15
IN THE SPHERE OF LABOUR AND EMPLOYMENT

Problems of female equality are reflected in a number of the UN basic documents. The principle of equality of men and women was reflected already in Universal Declaration of Human Rights accepted in 1948, in International Covenants on political and social and economic rights, 1966.

Convention of 1979 on elimination of all forms of discrimination against women pays significant attention to the problem of equal rights of genders in the sphere of employment. Non-observance of these requirements is construed by the Convention as the discrimination on the basis of gender.

CEDAW in the Article 1 fixes the “discrimination against women” term, which means any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2 of the Convention contains the provisions about censure of discrimination against women in all its forms as well as the obligations of the state, aimed at its admissibility. For the prevention of discrimination against women, it is necessary:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
(g) To repeal all national penal provisions which constitute discrimination against women.

The "negative discrimination” term against women, which is expressed in infringement of her rights, is added in Convention by the concept of "positive
discrimination”, securing the certain privileges and the advantages connected with securing of their reproductive function to the women. Their non-distribution upon men, in view of the absence of similar anatomic and physiological ability of them, can not be considered as discrimination.

Article 4, item 2 of Convention indicates that the states -members can take the special provisional measures, aimed at the maternity protection, including the measures containing in Convention, and it is not considered as discrimination.

In international standards, the concept of discrimination extends and concretized. Thus, "discrimination" with reference to the sphere of Labour is determined by the legal standard as any distinction, exception or the preference, based on attributes of race, skin color, gender, religion, political convictions, nationality or social origin, and having by the result the liquidation or infringement of equality of opportunities or application in respect of an access to occupational training, work and various occupations, as well as in respect of working conditions.

The state has the right to determine as "discrimination" any other distinction, exception or the preference, having by the result the liquidation or infringement of equality of opportunities or application in the sphere of Labour and occupations, on the consultation of the representative organizations of the employers and employees.

According to Convention on elimination of all forms of discrimination against women the states-members are obliged to provide women with the right to participate in the formation and implementation of the governmental policy and to hold the state posts on the equal terms with men, as well as to carry out all the state functions at the all levels of the public administration (Article 7).

In the Article 11 of this Convention is specified, that the states-members shall take all corresponding measures for liquidation of discrimination against women in the sphere of employment in order to secure the equal rights on the basis of equality of men and women, in particular:

a) The right to work as an inalienable right of all human beings;

b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

All collect of rights guaranteed by the international community to women, as well as men, in sphere of Labour is not limited by this list. However, this list is the most capacious reflection of legal gains of women in assertion of equal legal opportunities and application in the sphere of Labour.

Admissibility of discrimination is recognized in the international law of employment as the necessary condition for the statement of equality of opportunities and application in the sphere of Labour and occupations.

Either legal requirements, which contain in the basic norms and tendencies of their development, which expressed at the adoption of new acts intending for the subsequent extension of their validity shall be considered in Labour policy.

For the prevention of discrimination against women by reason of the marriage or maternity and securing the effective right to work to them the special measures are determined, which have been reflected in CEDAW.

The states-members shall take corresponding measures in order to:

(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

The Convention pays attention to the special problems with which face the women living in rural areas.

According to the Article 14 of the Convention, the states-members are obliged to take all measures on liquidation of discrimination against woman in rural areas, namely:

- to secure their right to obtain all kinds of training and formal and informal education;
- to secure the equal access to economic opportunities by means of hired Labour or independent Labour activity, as well as the participation in all kinds of collective activity etc.

According to the Convention the legislation, concerning the protection of the rights of women, shall be periodically examined in the light of scientific and technical knowledge, and also be reviewed, cancelled or extend, as far as it is necessary. Norms and recommendations of the CEDAW is international legal basis for carrying out of gender expertise of the legislation as the system of regularly spent measures.

1.2. CONVENTIONS OF THE INTERNATIONAL LABOUR ORGANIZATION

While the majority of the international norms proclaim the principle of nondiscrimination, there is quite a number of conventions and recommendations of the International Labour Organization (ILO), devoted separately to women. The ILO long before the UN began to develop the specific problems of female Labour. At the same time during the development of norms of working conditions the ILO activity is based on two principles:

1) to guarantee the equality of opportunities in training, employment, promotion on work, participation in the organizations and during the decision-making process, and also the equal payment, grants, social protection and support in connection with Labour activity;

2) to protect the working women in connection with the working conditions representing the threat, first of all, for motherhood.

Three basic conventions the ILO are devoted to these problems:

- **The Convention on the equal compensation, of 1951 (#100)** and the accompanying Recommendation for equal compensation, of 1951 (#90), provide the equal compensation of men and women for work of equal value;

- **The Convention concerning discrimination in respect of employment and occupation, of 1958 (#111)** and the Recommendation #111 provide the equal rights of men and women in this area, as well as discrimination on other attributes;

- **The Convention on workers with family duties of 1981 (#156)** and the Recommendation # 165 of 1981 provide the equal opportunities and the equal obligations for working men and women with family duties.

Quite a number of conventions the ILO is aimed at the creation of special working conditions and special protection for women on the works with harmful working conditions. Other conventions provide the social security on pregnancy and childbirth. For example, the Convention on maternity protection (#3) of 1919, the Convention on maternity protection (reviewed) (#103) (reviewed) of 1952, the
Recommendation #95 on maternity protection of 1952, the Recommendation #12 on maternity protection in agriculture, of 1921.

The ILO pays the basic attention to the most obvious appearances of discrimination that are characterized by three aspects:

firstly, it is discrimination in the field of the occupations, appearing in the fact that some professions are considered as the most "suitable" for certain gender;

secondly, it is a difference in a payment of men and women, being substantially the result of segregation in the field of occupations, but also including the unequal compensation of men and women for work of equal value;

thirdly, it is so-called "double working day” of women; engaged in professional activity, as well as carrying practically alone all family and house duties. It leads to the inequality in distribution of volumes of work between genders, and also restricts women’s opportunity to compete on equal with men at the Labour market.

Within two last decades, the UNO holds the conferences devoted to the problems of women. And though the general matters of state of women in a society are discussed on them, the great attention is given also to the problems of working women.

For example, the Fundamental document (the Declaration and the Program of actions) of the World Top Level Meeting of the UN on social development in Copenhagen in 1980, signed by heads of the states or the governments of almost all countries of the world, contains "the obligation #5" which says: "Respect the human dignity, equal rights of men and women, encourage the process of strengthening of woman’s role in society and family". All the states were called to ratify the Convention of the United Nations Organization on liquidation of all forms of women inequality by 2000.

In 1995 the Conference took place in Peking with the participation of heads of the states and the governments of the countries, members of the UNO on which two major documents on improvement of state of women were adopted - the Declaration and the Program of actions where the principles of female equality in securing of the full employment, promotion, assistance of economic independence of women, including their full access to economic resources - to the ground, credits, a science and techniques, occupational training, information and communications, etc. For implementation of resolutions of the Peking Conference the ILO has created the world program under the name "More workplaces and better quality for women".

The international meeting held in 1997 on the initiative of ILO has been devoted to matters of overcoming of stereotypes in relation to working woman. The representatives of the governments, trade unions, and employers took part at the meeting that promoted to arrange the tripartite dialogue in discussion of the problems of promotion of women to leading posts, and also overcoming by woman
of complex of the prejudices, preventing her from becoming the rightful head on-site. The resolution adopted at the meeting contained appeal to carrying out the consultations on the tripartite basis on this range of problems in each country and to ratification of relevant documents of ILO. ILO was recommended "to carry out research on the positions of men and women on the leading posts in the state and private sectors", to cooperate with the organizations of businessmen and working people in the field of development of equality of men and women, to establish "observation point" which would trace and evaluate the progress in this matter, and "to patronize the award of the premiums at the national level marking the most adequate practice of the organizations, distinguish in implementation of the system really favorable for the equality of opportunities".

In continuation of this subject matter, the ILO in January, 1998, has developed "the Basic directions of the organization of gender (i.e. subject to the difference in approaches to various enders) grounding".

Thus, it is possible to draw a conclusion that taken measures and documents of the international character, especially in last decades, promote the appearance of interest to the problems of equal rights of women in labour, industrial sphere and to the certain progress in this matter.

2. LABOUR CODE OF THE REPUBLIC OF UZBEKISTAN

Labour Code of the Republic of Uzbekistan is a basic principle of legal control of Labour relations, it establishes the free Labour, right to work, including the right to dispose of own abilities for Labour, chose the profession and occupation, equality of rights and opportunities of the workers, prohibition of discrimination in Labour relations and prohibition of forced Labour.

Tasks of Labour Code of the Republic of Uzbekistan are establishment of the state guarantees of labour rights and liberties of the citizens, creation of favorable conditions and interests of workers and employers. Labour law, taking into consideration of the workers, employers, state, secures efficient functioning of Labour market, equitable and safe Labour conditions, protection of Labour rights and health of workers, promotes to growth of Labour productivity, improvement of work conditions, rising of material and cultural standard of living of all population.

Goal of Labour Code of the Republic of Uzbekistan is to establish the state guarantees of labour rights and liberties of the citizens, creation of favorable conditions and interests of workers and employers.

At the same time, existing situation in the country as a result of transition to market economy has formed the following negative tendencies: women unclaimed at making the state decisions, infringement of women’s rights in social and Labour sphere, retrogression of medical care.
Undoubtedly, these circumstances and also cardinally and rapidly modifying social relations demand the considerable changes practically in all branches of law.

Study of Labour Code standards witnesses that it guarantees the provision with equal rights and opportunities for women and men in the sphere of labour relations, as a whole. At the same time, there are some provisions which infringe the principals of gender equality in accordance with opinion of some experts.

On conduction of gender analysis of Labour Code of the Republic of Uzbekistan it’s necessary to take into consideration two types of standards: 1) considering the sex of the subject of Labour legal relations; 2) so called “gender neutral” standards, addressed to undifferentiated person.

2.1. Equal rights and opportunities in the sphere of Labour

Constitutional principle of equality of rights and liberties of women and men and equal opportunities for their implementation is realized in the varied spheres of social life in national legislation and logically allocated in the Codes of the Republic of Uzbekistan.

Important index of recognition of gender equality in the sphere of labour is Article 6 of Labour Code of the Republic of Uzbekistan which says: “All citizens have the equal opportunities in possession and use of labour rights. Establishment of any restrictions or provision of any privileges in the sphere of labour relations subject to sex, age, race, ethnic nationality, language, social origin, property status and official capacity, attitude to religion, convictions, affiliation to social associations as well as other circumstances not related to professional qualities and results of their Labour are inadmissible and being the discrimination.

Differences in the sphere of Labour, stipulated by the requirements peculiar to given type of Labour or particular care of the state for persons need in increased social protection (women…) are not the discrimination”.

It’s determined a mechanism of protection of citizens against discrimination at the same Article. Thus, a person, who considers that he(she) is undergone of discrimination in the sphere of Labour, may apply to court with statement on elimination of discrimination and indemnification of material and moral damage.

Basic law of the Republic of Uzbekistan allocates the rights and liberties of the human being and citizen, excluding the discrimination by criteria of race, national, language, religious, social belonging, convictions and personal and social status. Having allocated the principle of inadmissibility of restrictions of anyone in Labour rights and liberties, provision of the privileges by anyone, the legislator in Labour Code added the above-mentioned list with such circumstances as “age”, “property status and official capacity”, “affiliation to social associations”.

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Positively appraising the completeness and richness of content of standards of legal regulation allocated in the Article 6 of Labour Code, it’s necessary to point out some gaps, reducing the efficiency of implementation of constitutional principle of equality of women and men in sphere of Labour relations. It seems to be considerable gap the absence of mention of family status in the list of the circumstances, not related to professional qualities of a worker and results of their work, when anybody cannot be limited in Labour rights or provided with any privileges. It’s known that the workers with family duties, especially, women, implementing or wish to implement the remunerative work, are undergone the discrimination often, suffer the large difficulties in exercise of their right to freely choice of job and career development.

In this connection it’s necessary to precise the interpretation of “sex” criterion, mentioned in the Article 6 of Labour Code. In the sphere of Labour relations the segregation, hidden and evident discrimination are performed not by sex criterion at all, but essentially by maternity criterion. Availability of these circumstances, such as “pregnant woman”, “woman with child”, “single mother”, guarantees the highest level of hidden and evident discrimination in the sphere of Labour relations. It is obvious that this circumstance cannot be got round by the legislator at specifying the list of those basic circumstances, related to actual restrictions of Labour rights and liberties of citizens.

Principle of equality is also allocated in the Article 58 of Labour Code, which guarantees to exercise the right to work, secures the equality of opportunities in obtaining of profession and job for everyone, conditions of Labour and employment, remuneration and career development.

Alongside with the principle of sex equality the Labour Code foresees the guarantee system and privileges, provided only for women, such as:

- prohibition to refuse the pregnant women to accept for employment as well as the women having the children at the age till 3 years old by corresponding reasons as pregnancy and availability of children;
- inadmissibility of termination of Labour contract with pregnant women and women having the children at the age till 3 years old, except the cases of complete dissolution of a company, when termination of Labour contract is admitted with compulsory job placement;
- inadmissibility of probation period at acceptance for employment of pregnant women and women having the children at the age till 3 years old;
- transfer of more easy job of pregnant women and women having the children at the age till 2 years old with preservation of average salary of previous job;
- inadmissibility of use of women’s Labour at works with unfavorable working conditions and also at mining works, get involved in the work during
nighttime, overtime work and works during weekends, and also it’s prohibited to dispatch the pregnant women and women having the children till 3 years old to business trips without their consent;

- right of the pregnant women and women having the children till 14 years old (and till 16 years old in case of a child – invalid), including those who are in charge of them for half-time per day or half-time per week;
- privileges for women at scheduling of annual vacations;
- additional vacations for women having two or more children at the age till 12 years old or till 16 years old in case of a child – invalid;
- maternity leave, parental leave of child at the age from 2 to 3 years old;
- interruptions for child feeding.

Availability of the said standards aimed at special protection of maternity serves as the bases for discrimination of women in the sphere of Labour.

During the last decades the process of gradual abolition of legal acts proceeds in many countries which allocated the special Labour protection of women. Basic argument in favor of such abolition is the negative influence of Labour legislation of women on their employment and principal inadmissibility in recent conditions of gender Labour protection, developing the sense of inferiority of women. Acts on special protection of women Labour either are weakened by exceptions and reservations or directly cancelled, or announced by courts as contradictory to law on prohibition of discrimination by sex criterion and deprived of legal effect.7

It’s considered that task of improvement of Labour legislation in gender aspect is in gradual, taking into consideration the objective conditions, transfer from mechanisms of positive discrimination to mechanisms of equal competitiveness, meanwhile providing the women with the access to job, career, raise of skill and new forms of economical activity and other resources.

2.2. Provision of the right to work

Constitution of the Republic of Uzbekistan in the Article 37 declares that “Everyone has the right to work, on freely choice of job, on fair conditions of labour and for protection against unemployment in accordance with order set by law.” Thus, basic law of the country allocates the free nature of Labour, it means the right to work or not work for each person. Freedom of work means also free choice of profession and type of activity for each citizen.

Development of constitutional principle of freedom of work is allocated in the Article 7 of Labour Code of the Republic of Uzbekistan, prohibiting the forced work, i.e. enforcement to work under any punishment (including in capacity of a

7 L.N.Zavadskaya. Gender expertise of Russian legislation.
means for supporting of discipline), in also in the Article 57 of the said code, providing each person with exclusive right to dispose of own abilities to industrial and creative work and carry out any activity not prohibited by legislation.

Furthermore, free choice of job is provided for everyone by direct application to an employer or through free of charge mediation of Labour authorities. It’s also guaranteed that voluntary unemployment cannot be a reason for conviction.

Additional guarantees of employment for separate categories of workers are established also in the Law of the Republic of Uzbekistan “On employment of population” besides the Labour Code (Article 68). Existing version of the law is gender neutral. Thus, Article 7 of the Law foresees that the state should provide additional guarantees to: persons need in social protection and meet with difficulties in job search and not capable to compete on Labour market on equal conditions, including single parents and parents having many children at age till 14 years old and children-invalids; young people finished the educational institutions; retired from Armed Forces, forces of the Ministry of Internal Affairs, Service of National Security, Committee for protection of the State border and Ministry for Extraordinary Situations; invalids and persons of preretirement age; persons released from institutions, executing punishment or subjected to compulsory measures of medical nature by court decision.

It’s necessary to point out that provisions, obliging an employer to accept for employment of certain categories of workers within the set standards, are allocated at legislative level in some European countries. For example, widows of persons perished in war or as a result of industrial trauma are attributed to such category of persons alongside with invalids and orphans in Italia. In other countries, where legislation on compulsory job placement is absent, the matter is solved by trilateral agreements.

One of the mechanisms providing the right to work is a prohibition of discrimination at hiring. Legislation of some foreign countries foresees the definite list of grounds for prohibition of discrimination at acceptance for employment.

Article 224 is contained in Labour legislation of the Republic of Uzbekistan, which foresees the prohibition for an employer to refuse in acceptance for employment by reason of pregnancy or availability of children and also a mechanism of protection of hired person alongside with general standard on inadmissibility of unlawful refusal in acceptance for employment. Employer is obliged to inform the reason of refusal in writing. Refusal in acceptance for employment may be appealed at the court.

However, the courts consider the complaints on discrimination at acceptance for employment very rare in practice. The reason for this is the complexity in conclusion of evidences as a result the complaints are acknowledged as
unreasonable. In this connection it’s necessary to impose an obligation not only to compensate the material and moral damage but also to assume a decision, obliging to accept for employment a person who was unlawfully refused in acceptance for purposes of enhancement of an employer responsibility for unlawful refusal.

Also provisions on state guarantees for exercise the right to work are contained in Labour Code of the Republic of Uzbekistan, including the following:
- Freedom of choice of type of activity, including the works with varied operating modes;
- Protection against unlawful refusal in acceptance for employment and termination of Labour contract;
- Free of charge assistance in selection of suitable job and job placement;
- Provision of everyone with equality of opportunities in obtaining of profession and job, Labour conditions and employment, remuneration and career development;
- Free of charge training of new profession (specialty), raise of skill at local Labour authorities or other educational institutions upon their direction with payment of scholarship;
- Compensation of material costs incurred at acceptance for employment in other locality in accordance with legislation;
- Possibility to conclude the urgent Labour contracts for participation in payable public works.

Special assistance of definite strata of population is provided by legislative acts of some foreign countries, such as Belgium, Italy, Sweden and the USA. For example, the Law of Sweden on Equal opportunities of men and women in sphere of Labour dated on 1991 foresees the obligation of the employers to secure the equal distribution of work places among the men and women. It means that at the enterprise, where ratio of working men and women is not equal, an employer is obliged additionally to hire the persons who are presented insufficiently at such enterprise. Anglo-American system of law prohibits not only direct but also indirect discrimination, when an employer establishes the definite criteria, which objectively may have the negative influence on perspectives of job placement of women, such as the criteria for professional selection of the workers if they can eliminate the women with family obligations and having the little children.

It’s necessary to point out that the same countries concentrate the attention on inadmissibility of discrimination by sex criterion but not the women. Legislation is formulated in such manner that it protects equally the persons of both sexes. In this connection it’s considered to be advisable to set the quotas not for women but for the persons of both sexes at conducting of personnel policy.

2.3. Probation period
Labour Code of the Republic of Uzbekistan provides the probation period as tradition approach for determination of the worker’s appropriateness. Thus, Article 84 regulates that Labour contract may be concluded with probation period for the following purposes:

- conformance inspection of a worker with the charged work;
- making the decision by a worker on advisability to continue the work stipulated by Labour contract.

Law of the Republic of Uzbekistan, “On introduction of alterations and addenda into some acts of legislation”, ref. # 681-I dated on 29.08.1998, had introduced an innovation into Labour Code which provided that probation period did not spread over the pregnant women, women having the children till 3 years old and persons directed to work due to minimal number of work places set for an enterprise and also the workers having the concluded Labour contract for the period up to six months.

Development of Labour legislation on international level witnesses that conception of probation period has been changed, its purpose is not only the determination of professional appropriateness of a person but also affording the opportunity to a worker to appraise the job, working conditions, psychological situation and “achievement of harmony in work with chief”. Besides, the special guarantees are foreseen on legislation level for persons passing the probation period: warning on dismissal, compensation for unused vacation and special rules for invalids and women.

2.4. Form of Labour contract

Labour legislation of the Republic of Uzbekistan provides two forms of Labour contracts, namely: not limited in time and for a fixed period. Thus, Article 75 regulates that Labour contracts may be concluded for indefinite period of time, definite term not exceeding 5 years, and for time need to implement some work.

At the same time, the fact of commencement of work warrants as acknowledgment of conclusion of Labour contract in accordance with International Labour Organization’s standards. It’s considered to be very important to introduce such provision into national legislation of our country taking into consideration the situation at existing Labour market.

2.5. Alteration and termination of Labour contracts

Some guarantees of employment are foreseen in existing Labour legislation (Article 237 of Labour Code) in the form of prohibition to dismiss the pregnant women and women having the children at the age till 3 years old by initiative of an employer. Dismissal of above-mentioned categories is permitted only at liquidation of the enterprises with compulsory job placement. Job placement of the mentioned women is performed by local Labour authority with provision of relevant benefits.
in accordance with legislation. Compulsory job placement of women of the said category is performed by a employer also in case of termination of Labour contract due to expiration of its term. Salary is preserved for them for a period of job placement, but not more than three months of the date of completion of Labour contract with fixed period. However, it is necessary to admit that such guarantee of employment requires still elaboration of efficient mechanism of its implementation.

Analysis of Labour legislation and Labour relations in practice witnesses the necessity to establish the responsibility of an employer for “provoked dismissal of a worker” as it exists in some foreign countries. “Provoked dismissal of a worker” means that termination of Labour contract is implemented by initiative of a worker “voluntarily” but actually by fault of an employer, who forced a worker by his unlawful actions for nominal voluntarily dismissal. It’s possible to refer the cases forcing a worker to terminate the Labour contract as follows:

- Non-payment of salary by the target time if it’s not caused by force majeur or unforeseeable circumstances, which availability shall be proved by an employer;
- Unfounded reduction of salary or demotion; transfer to other work, not corresponding to his professional skill and interpreted as humiliation by a worker, leading to degradation of professional skill etc;
- Acts of discrimination with respect of a worker in connection with sex, race, religion and convictions;
- Arbitrary changing of duration of operating mode of working day;
- Immoral actions with respect of a worker and members of his family, acts of violence, insults or demonstration of disrespect for a worker or members of his family, not provision of healthy and safe conditions of work etc.

2.6. Working time

Labour Code contains the traditional standards of maximum duration of working time (Article 115) which shall not exceed forty hours per week. Duration of daily work shall not exceed seven hours at six day working week and eight hours at five day working week.

At the same time, limited duration of working time is set for separate categories of workers, taking into consideration of their age, state of health, working conditions, specific character of Labour duties and other circumstances in accordance with legislative and other statutory acts on Labour and conditions of Labour contract without reduction of salary. Following are attributed to separate categories of workers:

- Workers who do not attain the age of 18 years old;
- Workers being the invalids of 1st and 2nd groups;
- Workers engaged in the works with unfavorable working conditions;
- Workers having specific nature of work.
This list of workers was widened after introduction of alterations and addenda into Labour Code in accordance with Law of the Republic of Uzbekistan, with ref.# 760-I dated on 14.04.1999 “On additional privileges for women” which also sets the reduced duration of working time for the women, having the children at the age till 3 years old and working at the enterprises and organizations financed from the budget. Therefore, the duration of working time not exceeding 35 hours per week is set for the women, having the children at the age till 3 years old and working at the enterprises and organizations financed from the budget, in accordance with Article 228. Remuneration of Labour of this category of women at reduced duration is made at the same rate as for the workers with corresponding category at complete duration of daily work.

The reduced duration of working time is set also for the workers, engaged in the work with unfavorable working conditions and for the workers having the specific nature of work is set by Labour legislation.

**Half-time working day and half-time working week** may be set upon agreement between the employer and worker in accordance with Labour Code at acceptance for employment or subsequently.

At the same time, it is obligatory for an employer to set half-time working day upon request of pregnant woman or woman, having a child till 14 years old (and till 16 years old in case of a child-invalid) including child who is in charge of her or person who carries out nursing care for sick member of family in accordance with medical certificate. At the same time, it’s guaranteed that work, subject to conditions of half-time working time does not entail any restrictions for a worker with respect of reduction of duration of annual vacation, calculation of seniority and other Labour rights, and shall be paid in proportion of worked time or against output.

Inadmissibility of use of Labour of pregnant women and women, having a child till 14 years old (and till 16 years old in case of a child-invalid) during nighttime, overtime work and works during weekends, and dispatch these women to business trips without their consent is another guarantee of the rights of women. At the same time, recruiting of pregnant women and women, having the children till 3 years old to nighttime work is admitted only at availability of medical certificate, confirming that such work does not threaten the health of mother and child.

In our opinion, it would be advisable to set the restrictions of Labour for unmarried men, bringing up the children at the age till 14 years old (child-invalid till 16 years old) for nighttime, overtime work and work during weekends and dispatch them to business-trip without their consent.

**2.7. Rest time and breaks**
Additional breaks for nursing shall be set for the women, having the children till 2 years old, besides the break for rest and feeding. Such breaks shall be granted not rare than after 3 hours with duration not less than thirty minutes each. Duration of a break shall be not less than one hour at availability of two or more children at the age till 2 years old.

Breaks for nursing are to be included into working time and paid upon average monthly salary.

Breaks for nursing may be added to break for rest and feeding or transferred either at the beginning or end of working day (shift) in summarized form with corresponding reduction at will of woman, having a child.

Specific duration of these breaks and order of their granting are to be set in collective agreement, in case of his absence, upon agreement between the employer and trade union or other representative body of the workers.

2.8. Leaves

Annual basic vacation for the first working year is granted on the expiry of six months of work in accordance with general rule.

Alongside with it, Labour legislation foresees the cases of use of a vacation before expiry of the said term by definite category of persons, including the women before maternity leave or after it.

Analysis of legislation of foreign countries, regulating the matters on social protection of women during child-bearing, shows that maternity leave is granted with duration of 14-16 weeks at average and paid a benefit at the expense of the assets of social insurance in majority of the countries.

**Characteristic of paid maternity leave in some countries**

<table>
<thead>
<tr>
<th>Country</th>
<th>Duration of leave</th>
<th>Rate of benefit (in %)</th>
<th>Source of payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>16 weeks</td>
<td>100</td>
<td>Social insurance</td>
</tr>
<tr>
<td>Australia</td>
<td>1 year</td>
<td>0</td>
<td>-</td>
</tr>
<tr>
<td>Belgium</td>
<td>15 weeks</td>
<td>75-82</td>
<td>Social insurance</td>
</tr>
<tr>
<td>Great Britain</td>
<td>13-14 weeks</td>
<td>90</td>
<td>Social insurance</td>
</tr>
<tr>
<td>Germany</td>
<td>14 weeks</td>
<td>100</td>
<td>Social insurance</td>
</tr>
<tr>
<td>Greece</td>
<td>16 weeks</td>
<td>75</td>
<td>Social insurance</td>
</tr>
<tr>
<td>Denmark</td>
<td>18 weeks</td>
<td>100</td>
<td>Social insurance</td>
</tr>
<tr>
<td>Ireland</td>
<td>14 weeks</td>
<td>70</td>
<td>Social insurance</td>
</tr>
<tr>
<td>Iceland</td>
<td>2 months</td>
<td>Specific scheme</td>
<td>Social insurance</td>
</tr>
<tr>
<td>Spain</td>
<td>16 weeks</td>
<td>100</td>
<td>Social insurance</td>
</tr>
</tbody>
</table>

8 Можаев В.Е. Проблемы женского равноправия //http://www.a-z.ru/women/texts/mogaevr.htm
<table>
<thead>
<tr>
<th>Country</th>
<th>Duration</th>
<th>Benefit</th>
<th>Funding Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Italia</td>
<td>5 months</td>
<td>80</td>
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</tr>
<tr>
<td>Israel</td>
<td>12 weeks</td>
<td>75</td>
<td>Social insurance</td>
</tr>
<tr>
<td>Canada</td>
<td>17-18 weeks</td>
<td>55</td>
<td>Unemployment insurance</td>
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<tr>
<td>New Zealand</td>
<td>14 weeks</td>
<td>0</td>
<td>-</td>
</tr>
<tr>
<td>Netherlands</td>
<td>16 weeks</td>
<td>100</td>
<td>Social insurance</td>
</tr>
<tr>
<td>Norway</td>
<td>13 weeks</td>
<td>100</td>
<td>Social insurance</td>
</tr>
<tr>
<td>Portugal</td>
<td>98 days</td>
<td>100</td>
<td>Social insurance</td>
</tr>
<tr>
<td>USA</td>
<td>12 weeks</td>
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<td>-</td>
</tr>
<tr>
<td>Finland</td>
<td>105 days</td>
<td>80</td>
<td>Social insurance</td>
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<tr>
<td>France</td>
<td>15-16 weeks</td>
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<tr>
<td>Switzerland</td>
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<td>100</td>
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<tr>
<td>Sweden</td>
<td>14 weeks</td>
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<td>Japan</td>
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<tr>
<td>Bulgaria</td>
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<tr>
<td>Hungary</td>
<td>24 weeks</td>
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<tr>
<td>Vietnam</td>
<td>4-6 months</td>
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</tr>
<tr>
<td>China</td>
<td>90 days</td>
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<td>Employer</td>
</tr>
<tr>
<td>Cuba</td>
<td>13 weeks</td>
<td>100</td>
<td>Social insurance</td>
</tr>
<tr>
<td>Mongolia</td>
<td>101 days</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Poland</td>
<td>16-18 weeks</td>
<td>100</td>
<td>Social insurance</td>
</tr>
<tr>
<td>Russia</td>
<td>140 days</td>
<td>100</td>
<td>Social insurance</td>
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<tr>
<td>Romania</td>
<td>112 days</td>
<td>50-94</td>
<td>Social insurance</td>
</tr>
<tr>
<td>Ukraine</td>
<td>126 days</td>
<td>100</td>
<td>Social insurance</td>
</tr>
</tbody>
</table>

In the Republic of Uzbekistan *maternity leave* with duration of seventy calendar days is granted to women before the childbirth and fifty six (70 days in case of complicated childbirth or at birth of two or more children) calendar days after birth with payment of benefit under state social insurance. Maternity leave is calculated as total and granted to a woman completely, irrespective of number of days actually used before the birth.

On finishing of maternity leave the *parental leave till attainment the age of 2 years old by child* at will of a woman with payment of benefit in accordance with order set by legislation.

Additional parental leave till attainment the age of 3 years old by child without preservation of salary is granted to a woman, at her will.

Parental leave may be used completely or partially also by father, grandmother, grandfather or other relative who actually performs the child care.

At will of a woman or the mentioned persons during stay in parental leave they can work on conditions of half-time working time or homework under the agreement with an employer. At the same time, they preserve the right to receive the benefit.
Place of employment (post) is preserved for a woman during parental leave. These leaves are included into seniority, including into record of service as well.

Time of parental leaves is not included into record of service, which entitles to subsequent annual payable vacation unless otherwise agreed in collective agreement or other local act of the enterprise or in Labour contract.

Privileges of women are specially foreseen by the legislation at establishment of a rotation of annual vacations according to it the annual vacations are granted to the pregnant women and women, have birthed a child, at their will, correspondingly before or after maternity leave or after parental leave.

Especially, it’s necessary to point out the consideration of gender factor in provisions of the Articles 144 and 231 of Labour Code of the Republic of Uzbekistan, regulating the rotation of annual vacations granting. Thus, vacation at will of a worker is to be granted in summer or another time suitable to him;

Unmarried parents (the widow, widower, divorced and single mother) and wives of servicemen for a fixed period, bringing up one or more children at the age till 14 years old (and till 16 years old in case of a child-invalid) etc.

Moreover, the right to use the annual vacation during maternity leave of his wife is granted to working man at his will.

Vacation without preservation of salary with duration up to 14 calendar days annually at will of a worker is to be granted compulsory to women performing the childcare at the age till 2 or 3 years old; women bringing up two or more children at the age till twelve years old in accordance with legislation. It’s considered to be advisable to grant the same privileges to men, actually performing the childcare at the age till 2 or 3 years old; women bringing up two or more children at the age till twelve years that would be the definite guarantee both for men and women.

Women, having two or more children at the age till twelve years old or child-invalid at the age of sixteen years old, have the right for annual additional payable vacation with duration not less than three working days.

2.9. Conditions of work

Labour Code formulates the regulation of Labour by conditions in several directions, including both as gender neutral standards and gender active:

1) The following shall be referred to gender neutral:

- privileges and advantages for all persons engaged in hard and dangerous works, irrespective of sex of a worker (reduced working day, additional vacation, special nutrition and increased remuneration).
Article 117 of Labour Code foresees establishment of reduced duration of working time not more than 36 hours per week for the workers, who are subjected to influence of harmful physical, chemical, biological and other industrial factors in process of Labour. Maximum duration of working time is established for the workers, engaged in works with especially harmful and hard works by the Government of the Republic of Uzbekistan.

Besides, duration of working time not exceeding 36 hours per week is established for separate categories of workers (medical staff, educational specialists and others), whose work is related to increased emotional, intellectual and nervous efforts, i.e. having the specific nature.

Annual additional vacation is granted to the workers for the work in unfavorable working conditions, who are subjected to influence of harmful physical, chemical, biological and other industrial factors in process of Labour. List of works, professions and occupations at the enterprises, enabling the additional vacation, and also order and conditions of granting are determined by inter-branch agreements and collective agreement on the basis of estimation procedure of working conditions to be approved by the Ministry of Labour and Social Protection of population if the Republic of Uzbekistan and the Ministry of Public Health.

Labour Code foresees the annual additional vocation for the work in hard and unfavorable nature and climatic conditions.

Legislation of the Republic of Uzbekistan guarantees provision the workers with milk, clinical nutrition, aerated salt water, security equipment and hygiene means. List of these works, standards of delivery, order and conditions of provision are established by collective agreement and an employer upon agreement with representative body of the workers (in case of absence of collective agreement).

2) **Gender active standards** include the following:

- restriction of female Labour at nighttime, during nighttime, overtime work and works during weekends excluding industrial necessity;
- prohibition of female Labour at works with unfavorable working conditions and mining works, lifting and displacement of heavy things by women, exceeding the maximum set standards and also at any hard, harmful, dangerous and nighttime works for pregnant women and women, having the children at age till 2 years old.

Labour Code fixes the provision that it’s prohibited to recruit the pregnant women and women, having the children at the age till 14 years old (and till 16 years old in case of a child – invalid) to nighttime and overtime works and works during weekends, and also dispatch them to business trips without their consent. At the
same time, recruitment pf pregnant women and women, having the children at the age till 3 years old is admitted at availability of medical certificate confirming that such work does not threaten the health of mother and child.

Prohibition of woman’s employment in unfavorable Labour conditions based on the interests of her reproductive health and care of future generation is traditional in Uzbekistan and allocated by series of statutory acts. Thus, Article 255 of Labour Code of the Republic of Uzbekistan prohibits using female Labour at the works with unfavorable working conditions and also at mining works, except some of mining works (unphysical activity or works for sanitary and consumer servicing). It’s prohibited to lift and displace the heavy things by women, exceeding the maximum permissible standards for them. List of works with unfavorable working conditions, where female Labour is prohibited and maximum permissible loading standards for women at lifting and displacement of weights by them are established by the Ministry of Labour and Social Protection of the Republic of Uzbekistan upon consultation with Council of Federation of the trade unions of the Republic of Uzbekistan and the representatives of the employers.

Nevertheless, necessity of society and state in improvement of situation with reproduction of population and concern for observance of the rights of child for life and health in any event leads to restriction of woman’s right for professional employment. Besides, it’s necessary to point out that prohibition for women to work at harmful and dangerous productions at simultaneous permission for men discriminates the latter ones. Prohibition to work in harmful conditions places a woman in dependence on the state, which decides for women on what productions, at what time and in what conditions she shall work. Injunction measures of the state become the dangerous instrument of manipulation and strengthening of exploitation on Labour market in conditions of market economy and competitiveness for workplaces.

It’s believed that contradiction between freedom in choosing of profession and interest to support of reproduction health may be solved at solution of the matters on modernization of production, securing the Labour safety of all workers by introduction of new technologies, aimed at improvement of working conditions.

At the same time, preservation of list of prohibited works for women is also indisputable from the point of view of modern approaches to the problems of gender equality. Thus, any prohibitions, restricting the opportunities of women in the sphere of Labour, are at variance with Article 37 of the Constitution of the Republic of Uzbekistan, where the right for freely choice of profession is allocated for everyone.

Preservation of gender differentiated policy in existing Labour legislation of the Republic of Uzbekistan, in contrast to some foreign countries, where special protection of female Labour is abolished, is stipulated by the fact that anti-
discrimination mechanisms have not been created yet in the country and low level of technique and technologies which have the negative influence on human health, non-observance of legislation on protection of Labour, and finally, low level of economic development.

2.10. State social insurance

The major part labour relations is the state social insurance, obligatory for all workers which is directed on social protection working persons in case of loss of earnings by them in the objective circumstances determined by the law.

The most important part of Labour legal relationship is the state social insurance compulsory for all workers. Costs for these aims are included into the price of manpower (price of Labour) and represented a part of production expenses, directed to social protection of workers in case of loss of wages by them at definite circumstances determined by law, such as: old age, sickness, job-related accident and occupational disease, death of bread-winner, maternity (parenthood), treatment need and unemployment.

Regulations of the state social insurance provided by Labour legislation also bear the gender oriented nature. In particular, gender loads bear the standards determining the insured accidents and programs for their payment.

Insurance fees for state social insurance are paid by the employers and also insured workers.

Insured workers and their families in relevant cases are provided at the expense of the assets of the state social insurance:

- temporary disability allowances and women are provided with maternity benefits in addition;
- benefits payable on birth of a child;
- state old-age pension, disability pension and pension payable on loss of breadwinner;
- other payments provided by existing legislation.

One of the most fundamental types of social insurance is the retirement insurance. Periods of child birth and child care at the age till 3 years old are entered into composition of total length of service, conferring the rights to them on receipt of pension. Limiting age for retirement is 55 years for women at total length of service not less than 20 years and 60 years for men at total length of service not less than 25 years. Thus, there is a gender differentiation, which, in spite of available privileges for women, leads that size of pension of women falls smaller than pension of men.
It becomes compulsory both for the employer and persons carrying out the Labour activity to participate in accumulative pension system at put of Law of the Republic of Uzbekistan “On accumulation of retirement income” into force.

Difference in women’s size of pension is deepening at introduction of accumulative system, because lag of women in remuneration due to implementation of the maternity duties is not compensated by anything.

Benefits on state social insurance are distributed basically in favor of women – mothers who more often lose their earnings in connection with birth of a child and child care at the age till 3 years old and care for a child – invalid and other members of the family. However, health insurance and insurance of earnings against industrial risks concern more men, whose share of engaged persons at hard and harmful works is higher.

Thus, limitation of benefits under social insurance has impact on both men and women, but frequently on women especially in one-parent families. Accumulative principles of social and Labour protection currently at existing gender differences in Labour system and earnings are more oriented to men and their privileges and ipso facto the gender discrimination.

2.11. Homework

Special attention pays in the Republic of Uzbekistan to the problem of homework because institution of housewives is traditional for our society.

Domestic Labour for parenting and care for the members of a family is not payable; it does not fall into national accounts and take into consideration at settlement with GNP. It causes the serious economic problem, related to underestimation of Labour contribution into social and economic development of the country. Underestimation of women in Labour sphere, which is still understood as the sphere of payable Labour, causes the social and economic problem, related to perception of a woman as inferior and minor worker on Labour market. Though, current rhetoric in respect of non-occupied women is different than earlier; they are lauded in very possible way that they finally acquired their own “true predestination” and became “true women”, but actually it leads to neglectful attitude towards housewives and it is often related to domestic violence. However, the problems of women, their actual needs and requests are not considered and entered into Programs of social and Labour nature.

President of the Republic of Uzbekistan has adopted the Decree “On measures for stimulation of widening cooperation between the large enterprises and production of services on the basis of homework” with ref. # UP-3706 dated on January 5, 2006 for the purposes of solution of the tasks on securing the employment and stable growth of income of population of the
Republic as well as wide development of varied forms of homework, including its cooperation with large industrial enterprises.

Basic tasks of homework development are determined as follows:

- creation of favorable conditions for widely recruitment of population to homework Labour activity, taking into consideration of perfection of Labour legislation, securing the social protection and Labour protection of persons who work at home;
- development of cooperation between industrial enterprises and citizens, carrying out the output of products and services by their orders at home, in the first place, in clothing, small wares, silk, processing, furniture and electronic industry and also in telecommunications and varied branches of services, allowing to increase the efficiency of industrial production;
- creation of stable conditions for the citizens who work at home for orders of the enterprises by the employers for supply of raw materials, materials and semi-prepared products and also guaranteed sale of products manufactured in accordance with orders.

Establishment of relations between the large industrial enterprises with out-workers is aimed at, first of all, solution of urgent problem – increase of income of family budgets and reduction of number of unemployed population. It’s necessary to point out especially that registration of time record of the out-workers shall be carried out by this Decree that would give them the right on obtaining of the pensions and social insurance benefits.

**CONCLUSIONS AND RECOMMENDATIONS**

Policy, pursuing in the Republic of Uzbekistan, aimed at securing the social protective role of the state on Labour market, permits to expend the liberty of choice of life and self-actualization of a woman, and promotes the strengthening of opportunities equality by gender as all civilized world community is striving for.

Matter on observance of gender equality, i.e. equality of opportunities, is considered from two positions in the world. Legal equality of both genders exists in some countries as well as efficient administrative and judicial mechanisms of its support; the government has eLabourated the forms and methods of economical policy, aimed at securing the rights of women on Labour market.

Analysis of Labour Code of the Republic of Uzbekistan in the light of gender confirms that there is no any deficit in the articles, banning the discrimination at hiring and dismissal in the range of general standards of Labour law. The definite guarantees on securing the reproductive function by women are contained in Labour legislation of the Republic of Uzbekistan. It is set the package of measures, aimed at protection of parenthood rights, protection of maternity and paternity.
This is a protection of pregnant women against unemployment and their compulsory job placement at situation, when it’s impossible to preserve the working place, Labour protection of pregnant women and women, having the infants with provision of breaks in connection to breast-breeding and right of any family member on paid leave for care of such child.

At the same time, formation of market mechanism on Labour regulations emphasizes the problems in social production, strengthening the discrimination tendencies. Exactly this category of population is most vulnerable at present time in sphere of employment and Labour, and it is less competitive on Labour market and has some privileges established legislatively, putting the women in unequal position with men and creating precedent of unequal opportunities origination.

Labour Code establishes the prohibitions on dispatch of women to business trip, draw them to the work during nighttime, overtime work and works during weekends, who started to work till attainment the age of 3 years old by a child, and also it’s prohibited to dispatch the pregnant women and women having the children till 3 years old to business trips without their consent; therefore make them uncomfortable and unprofitable of working Labour for a employer. That’s why; legislative support of the state of working women in responsible period of child-bearing is objective factor of their natural vital right to have the Labour and income. Preservation of gender approach to Labour right is necessary factor and it requires the consideration of peculiarities and behavior of workers on Labour market and sphere of employment, even from the practical considerations of effective production and preservation of social consent.

Gender expertise of Labour Code of the Republic of Uzbekistan allows making the following conclusions:

1. It’s considered to be advisable to preserve the regulating role of the state in social and Labour sphere as a guarantor of human right – the women.

2. For the purpose of securing the protection of female rights is considered to be advisable to introduce to Labour Code of the Republic of Uzbekistan the standards determining the notion of “discrimination in respect of women”, the definition, stated in the Article 1 of UNO Convention of 1979 “On liquidation of all forms of discrimination in respect of the women”, may serve as a basis.

3. Article 6 of the Labour code of the Republic of Uzbekistan proclaims equality of rights and freedoms of women and men, and establishes the list of circumstances on which nobody can be restricted in labour rights and freedoms, or received any advantages. It is obviously necessary to add the given list to such criterion, as the marital status which is not connected with business qualities of the worker and results of their work. In labour sphere the latent and obvious discrimination is carried out not on the basis of sex in general, and, mainly, on the basis of
motherhood. Presence of such circumstances as "the pregnant woman", "the woman with the child", "mother the single" guarantee most a high level of the latent and obvious discrimination in sphere of labour relations.

4. Female Labour is less attractive for an employer on the strength of combination of two functions as occupational and maternal. In this connection for the purposes of eradication of discrimination nature of the standards of Labour Code, it’s considered to be advisable to secure the women the right to determine by themselves whether to use these rights or not. Besides, it’s necessary to change the exiting approaches the system of social rights and guarantees, secured the women. In particularly, it’s necessary to proceed from “maternity” to notion of “parenthood” or “working men and women with family obligations”. According to requirements of the International Labour Organization’s Convention 156 concerning equal opportunities and equal treatment for men and women workers: workers with family responsibilities” (1981) on modes working hours and to the order of dismissal it is necessary as the object of regulation alongside with the woman to define(determine) and men: having children under 3 years (on night works); under 14 years (on overtime works, business trips, an incomplete working day); lonely fathers (at dismissal, on holidays without preservation of the maintenance at presence of two children); men during pregnancy and sorts of the wife etc. Such innovations allow as the object of labour relations to define men not only motherhood, but also parenthood and to enhance the responsibility both parents for education of children.

4. It’s considered to be advisable to secure the organizational and legislative support in creation of now patterns of employment, which would provide the men and women with an opportunity to combine the occupational and family obligations. Establishment of right on reduced working day and introduction of flexible of working time without changing of working place, enhancement of social protectability of such groups of workers; profit tax cuts for the enterprises and organizations for each percent of organized “cottage industry” and other privilege working places for persons, bringing up the children of preschool age will give the women and men an opportunity to stay in sphere of employment and climb up the service ladder and execute the family obligations.

5. For the purposes of enhancing of social and protective function of Labour code in gender aspect it’s necessary to introduce the relevant alterations into Labour Code of the Republic of Uzbekistan by means of abolition invalid standards or standards leading to situation worsening (for example, a prohibition on use of female Labour in nighttime, hard and harmful works), and use the Labour female guarantees exclusively during active maternity, i.e. during a pregnancy, nursing, use of vacation for care of child at the age till 2 years old, that is stipulated by the problems of population reproduction, health of future generation, child rights’ protection. It’s rationally to carry our the transition from prohibition into
conciliation in respect of other regulations of women-mother position in production.

6. Taking into consideration that women, spending their child rearing leave with the age till 3 years old after return to the work, may become the object for reduction due to lag in professional skill, it’s necessary to arrange the compulsory system of raising the level of their skill at the enterprises and organizations at the expense of an employer. This measure will become the instrument of insufficient female Labour competitiveness and play the key role in solution of the problem of men and women inequality. In this connection, it’s necessary to study this matter legislatively on organization of continuous training of staff who returns from child rearing leaves for the purpose of maximum possible securing at working place.

7. It’s considered to be necessary to develop the system of regulation of female career development by means of introduction of effective mechanism for ranging of managerial staff; widening of preparation of female leaders for business activity and superior posts; use of system of open periodical contents for a post with obligatory participation of women and first priority of their hiring at equal chances etc.

8. Improvement of Labour code shall include the principally new moment, appeared on foreign jurisprudence. This is a right of worker on respect of dignity, confidentiality, non-interference in private life and protection against violence at work.

9. Labour Code of the Republic of Uzbekistan, prohibiting the discrimination by different reasons in Labour sphere and granting the aggrieved persons the right to appeal to court on restoration of violated rights and compensation for moral damage, does not determine who is responsible to prove the availability or absence the fact of discrimination and intent of its fulfillment. In this connection, it’s considered to be necessary to introduce the duty for an employer to prove the absence of intent for discrimination of a worker into Labour Code, including by gender reason.

It’s necessary to adopt the Law “On equal rights and opportunities of women and men” in Uzbekistan for the purposes of enhancing of women position on Labour market and other spheres and securing the observance of the constitutional provision on equality of the rights and opportunities of women and men and liquidation of economical, social and other discrimination on the basis of study of practice of foreign countries (Sweden and Great Britain). It’s necessary to fix the measures on implementation of the state policy for securing the equal rights and liberties, equal opportunities of men and women, preventing the discrimination by gender reason, determine the control and supervision system for observance of the provisions on equality by officials of the state authorities, enterprises, organizations and institutions as well as businessmen. Exactly this law shall fix
the concept of gender equality as equal legal status of women and men and equal opportunities for its implementation in political, social and economical and cultural processes. It’s necessary to fix the provisions on admissibility of discrimination and consideration of this principle in all spheres vital activity of the state, including the formation of management structures of the state authorities of the central and local levels and solution of the matters of social and economical and social and Labour nature.

The law “On equal rights and equal opportunities of men and women” shall determine the state guarantees for implementation of equal opportunities for persons of both genders at their admittance to state service and its origin and at execution of active and passive right to vote, participation in activity of political parties and self-governing bodies and also fix the responsibilities of the legislative, executive and juridical authorities on securing the equality of rights and opportunities of women and men. It’s necessary to introduce the provisions on appeal of discrimination facts by gender reason and responsibility of the state authorities for formation of statistics and monitoring in the sphere of securing the equal rights and opportunities of women and men.