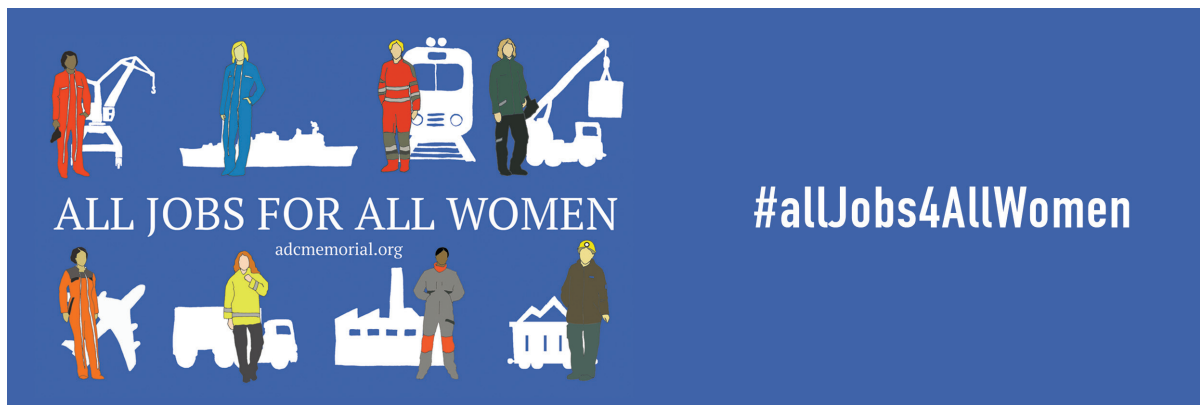




# GENDER DISCRIMINATION - JOBS BANNED FOR WOMEN

Human Rights report of ADC Memorial, March 2018



## **Gender Discrimination – Jobs Banned for Women.**

Human Rights report of ADC Memorial. March 2018.

The report analyses the «lists of jobs banned for women», discriminative bylaws inherited from the Soviet legislation and acting in many countries of former USSR.

Issued within the campaign of ADC Memorial #allJobs4allWomen

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## SUMMARY

As of 2018, a list of professions banned for women is in effect in nine countries of the former Soviet Union. Until recently, such lists existed in Latvia, Lithuania, and Estonia, which joined the EU (CHECK), in Georgia, which has an association with the EU, and in Armenia, which is in the Eastern Partnership. At the very end of 2017, this list was banned in Ukraine after vigorous efforts by human rights defenders, even though this revocation has not been reflected in Ukraine's Code of Labor Laws as of this writing.

A carryover from Soviet laws and practice, these lists of banned professions, which have been changed to various extents, have resurfaced in the labor laws of independent former Soviet states and were approved by their governments or other authorized bodies.

Professional bans have never been viewed as discriminatory against women – in a number of countries where the labor codes were amended in the recent past, lists of banned professions have been retained. These lists contravene anti-discriminatory norms of labor laws in the countries concerned and, in some cases, specific anti-discriminatory laws (such as the “Law on Ensuring Equality” of the Republic of Moldova (2013); Law of the Republic of Tajikistan “On State Guarantees of Equality and Equal Opportunity for Men and Women,” (2005);<sup>1</sup> Law of the Republic of Kazakhstan “On State Guarantees of Equal Rights and Equal Opportunities for Men and Women” (2009);<sup>2</sup> Law of Turkmenistan “On State Guarantees of Equal Rights and Equal Opportunities for Men and Women” (2015);<sup>3</sup> and others).

Lists of banned professions are subordinate acts that are referenced in Labor Codes. This is why we believe that it is not the lists themselves that need to be reformed to overcome discrimination against women, but the corresponding provisions of labor laws.

The direct source of the lists of professions banned for women that are currently in effect appears to be the “List of Industries, Professions, and Jobs with Arduous or Harmful Working Conditions that are Banned for Women” (1978, with amendments made in 1987 and 1990),<sup>4</sup> approved by Resolution of the USSR State Committee on Labor and Social Matters and the Presidium of the All-Union Central Soviet of Professional Unions and coordinated with the USSR Ministry of Health (No. 240/P10-3 of July 25, 1978). This list, which was new in relation to lists previously existing in the Soviet Union, was drafted in compliance with Resolution No. 320 of the USSR Council of Ministers and the All-Union Central Council of Trade Unions “On Additional Measures to Improve the Working Conditions of Women Employed in the National Economy” of April 25, 1978.<sup>5</sup> In this way, the stated goal was positive measures to protect women expressed, however, in the form of bans.

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<sup>1</sup> Law of the Republic of Tajikistan “On State Guarantees of Equality and Equal Opportunity for Men and Women,” approved by the Mejlis on February 11, 2005. [http://stat.tj/img/ru/zakon\\_\\_respubliki\\_tadzhikistan\\_o\\_ravnopraviya\\_muzhchin\\_i\\_zhenshin.pdf](http://stat.tj/img/ru/zakon__respubliki_tadzhikistan_o_ravnopraviya_muzhchin_i_zhenshin.pdf)

<sup>2</sup> Law of the Republic of Kazakhstan No. 223-IV “On State Guarantees of Equal Rights and Equal Opportunities for Men and Women” of December 8, 2009. [http://base.spinform.ru/show\\_doc.fwx?Rgn=29912](http://base.spinform.ru/show_doc.fwx?Rgn=29912)

<sup>3</sup> Law of the Republic of Turkmenistan No. 264-V “On State Guarantees of Equal Rights and Equal Opportunities for Men and Women.” Approved by the president of Turkmenistan on August 18, 2015. <http://www.turkmenistan.gov.tm/?id=9491>

<sup>4</sup> Resolution No. 240/P10-3 of the USSR State Committee for Labor and Social Matters and the Presidium of the All-Union Central Council of Trade Unions and coordinated with the USSR Ministry of Health of July 25, 1978, with amendments made by joint resolution nos. 184, P-4 of the USSR State Committee on Labor and the Presidium of the All-Union Central Council of Trade Unions of March 26, 1987 and by joint resolution nos. 417, P-12 of the USSR State Committee on Labor and the Presidium of the All-Union Central Council of Trade Unions of October 22, 1990. <http://docs.cntd.ru/document/9039453>

<sup>5</sup> Joint Resolution No. 20 of the USSR Council of Ministers and the All-Union Central Council of Trade Unions “On Additional Measures to Improve the Working Conditions of Women Employed in the National Economy” of April 25, 1978 (with amendments and additions made by Resolution No. 1174 of the USSR Council of Ministers of October 17, 1987) [http://www.libussr.ru/doc\\_ussr/usr\\_9627.htm](http://www.libussr.ru/doc_ussr/usr_9627.htm)



	Article of Labor Code	Date Current List Approved	Body Approving Current List	Number of Banned Professions for Women
<b>Moldova</b>	248	1993	government	331
<b>Ukraine</b>	174	1993, list cancelled in December 2017, Labor Code article not revoked	Ministry of Health	458
<b>Azerbaijan</b>	241	1999	Cabinet of Ministers	over 400
<b>Uzbekistan</b>	225	2000	Ministry of Labor, Ministry of Health, agreed with unions	477
<b>Russia</b>	253	2000	government	456
<b>Kyrgyzstan</b>	303	2000	government	446
<b>Belarus</b>	262	2014	Ministry of Health and Social Protection	181 professions + 42 spheres of work
<b>Kazakhstan</b>	16	2015	Ministry of Health and Social Development	287
<b>Tajikistan</b>	216	2017	government	326
<b>Turkmenistan</b>	242, 243	2016 (?)	Ministry of Health and the Medical Industry, Turkmenstandartlary State Inspectorate	?

The lists of different countries inherited from Soviet law have much in common, in spite of amendments made to these lists in the period of independence. For example, women are banned from driving heavy trucks (over 2.5 tons) on inter-city trips (i.e. the profession of long-haul trucker); driving inter-city buses with more than 14 seats; driving railway trains and metro train (in countries that have a metro); shunting trains; extinguishing fires; working at cranes and drilling rights in the ocean.

Women are banned across the board from working at a height of over 10 meters (assembly work on drilling rigs and towers, etc.) and, in the sphere of forestry, from collecting seeds from standing trees at a height of over 4 meters. In terms of bans on working at heights, the lawmakers of Belarus have taken it furthest of all. In that country, women cannot work “gathering fruits or crude drugs from bushes or standing trees (with an ascent to a height of over 1.3 meters).”

The ubiquitous ban on underground work, except in the case of “non-manual labor and health and household services” (this ban frequently figures in labor codes themselves) is due to these countries’ ratification of ILO Convention No. 45 (1935) “Convention Concerning the Underground Work of Women in Mines of All Kinds.”

Many professions banned to women are prestigious and high-paying, so, aside from other discriminatory consequences, these bans aggravate the sectoral difference in the employment of men and women, where women work en masse in low-paying industries.

In March 2017, ADC Memorial launched the #allJobs4allWomen campaign, whose goal was the revocation of discriminatory bans for all women in the sphere of labor. This campaign helped achieve successes in the judicial protection of women’s rights to equal access to labor (following the CEDAW decision, which found the list discriminatory; Russian courts also found a violation of the ban on discrimination) and made the list of banned jobs for women a topic of social discussion in former Soviet countries, which in Ukraine’s case resulted in the revocation of the list.

# THE CASE OF SVETLANA MEDVEDEVA: FINDINGS OF DISCRIMINATION BY CEDAW AND RUSSIAN COURTS

ADC Memorial began working on the problem of the list of banned professions in 2012 when it received an appeal from Svetlana Medvedeva, a resident of Samara, a large city on the banks of the famous Volga River. She was educated in the specialization of “Inland Waterway and Coastal Navigation” and applied for a position of helmsperson-motorist at the Samara River Passenger Enterprise. However, her application was rejected on the ground that this work is deemed harmful and is banned for women (it can be found on the List under number 404).

At the local level, courts of first, appeals (2012), and cassation (2013) instances in Samara refused to find discrimination or a violation of labor rights in Svetlana’s case, since the employer was technically following Russian law, which enshrines profession-specific bans for women that protect “women’s reproductive health” from harm.<sup>6</sup> The court’s also cited rulings issued by higher Russian courts in the similar case of Anna Klevets.

## **THE CASE OF ANNA KLEVETS (2009-2012): RUSSIAN HIGHER COURTS REFUSED TO FIND DISCRIMINATION**

Filing complaints about discrimination with Russian courts has been complicated by the fact that the list of banned professions in Russia was already contested in court prior to Medvedeva’s case: the case of Anna Klevets, who sought recognition of discrimination regarding a different banned profession – electric train engineer – reached the Supreme Court in 2009 and the Constitutional Court in 2012. The arguments in the ruling of these courts became part of the discrimination-related discourse on bans on professions for women. In particular, these arguments reflected the belief that bans are necessary not just because some jobs are “harmful for women’s reproductive health,” but also because women cannot do jobs that require significant mental strain and are connected with a high-level of responsibility.

The courts’ main arguments in the Klevets case, which courts later cited in Medvedeva’s case, are as follows:<sup>7</sup>

*The ban on the profession of metro engineer is not absolute, since Note 1 to the list of banned professions does not exclude the employment of women in these specializations, provided safe labor conditions are created for them.*

*The labor conditions for a metro engineer do not meet the requirements set for sanitary norms for women. The Supreme Court’s ruling in the Klevets case provides a detailed description of the work of metro engineer, which, in the opinion of the court, women cannot perform: this job is connected with a physical and emotional load, requires intense attention, and occurs “under acute time pressure combined with great responsibility for life and the integrity of material items.”*

<sup>6</sup> In her actions, Svetlana Medvedeva stressed that she already had two children and that her priorities were professional development and career growth. The courts did not give these arguments due consideration.

<sup>7</sup> Ruling No. KAS09-196 of the RF Supreme Court “On upholding Decision No. GKPI09-36 of the RF Supreme Court of March 2, 2009, which denied the petition to find Clause 374 of Section XXX of the List of Arduous, Harmful, and Dangerous Jobs Banned for Women invalid, approved by RF Government Resolution No. 162 of February 25, 2000” of May 21, 2009; Ruling No. 617-O-O of the RF Constitutional Court “On the denial to admit the appeal of citizen Klevets Anna Yurevna regarding violation of her constitutional rights by parts 1 and 3 of Article 253 of the RF Labor Code and Clause 374 of Section XXX of the List of Arduous, Harmful, and Dangerous Jobs Banned for Women.”

*Restrictions on female labor relate to arduous jobs, jobs underground, and jobs with harmful and/or dangerous labor conditions, “i.e. in conditions that have an adverse impact on the female organism and have the purpose of protecting women’s reproductive health from the effects of harmful workplace factors.” The list of banned profession in Article 253 of the RF Labor Code does not violate the claimant’s rights.*

*The claimant was not discriminated against on the basis of gender, since the ban on work as a metro engineer is due to “the government’s special concern for persons in need of enhanced social and legal protection,” as proscribed by Article 3.3 of the RF Labor Code; the adoption of special measures aimed at protecting motherhood are not deemed discriminatory (Article 4.2 of the Convention on the Elimination of All Forms of Discrimination Against Women); measures adopted to protect women holding certain types of jobs with due consideration for the special aspects of their organisms should not be considered discriminatory (Article 10.3 of the Declaration on the Elimination of Discrimination Against Women of November 7, 1967).*

The court also cited Article 1 of ILO Convention No. 11 “Concerning Discrimination in Respect of Employment and Occupation” (1958), pursuant to which “Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.” In Russian law, these provisions of the ILO Convention correspond to Article 3 of the Labor Code (prohibition of discrimination “depending on circumstances unrelated to the workers’ professional qualities;” “It is not discriminatory to establish distinctions, exceptions, preferences, and restrictions on workers’ rights, determined by requirements characteristic of a given type of work established by law”). In all likelihood, the ban on the female gender in this case should be interpreted as “a specific requirement connected with a particular job” (in the terminology of the ILO Convention), while Article 253 of the RF Labor Code and the attached list of jobs banned for women should be interpreted as “federal law.”

Klevets’ case ended in failure: the highest courts of Russia – the Supreme Court and the Constitutional Court – refused to recognize discrimination in profession-specific bans for women. This created a serious obstacle for Svetlana Medvedeva’s case, since the rulings of these two courts (the Cassation Division of the Supreme Court (2009) and the Constitutional Court (2012), respectively) proceeded this case chronologically and served as the grounds for the denials of the Russian first instance courts in her case. Klevets’ lack of success made it problematic to appeal the discrimination in Medvedeva’s case through the Constitutional Court because Klevets’ complaint in a similar case was not admitted for consideration, and this decision was final and not subject to appeal.

Since the path for appeal through Russia’s higher courts in Medvedeva’s case was hampered by the unsuccessful appeal in Klevets’ case, after exhausting all means of judicial protection at the national level, Svetlana Medvedeva, with assistance from her attorney Dmitry Bartenev and support from ADC Memorial, filed an individual communication with CEDAW in 2013.

On February 26, 2016, the Committee adopted a View<sup>8</sup> in Medvedeva’s case finding violations of Clauses (c), (d), (e), and (f) of Article 2 of the Convention (general state obligations to carry out policies to eliminate discrimination against women) and Clauses 1 (b), (c), and (f) of Article 11 of the Convention regarding discrimination against women in the sphere of labor.

#### **A number of important points made in the Committee’s Views follow:**

**Justification for profession-specific bans due to concern about “women’s reproductive health” are unsound:**

**“...no evidence has been provided to the Committee that the inclusion of the position of helmsperson-motorist in the list of prohibited jobs is based on any scientific evidence that it may be harmful to women’s reproductive health. (Paragraph 11. 3 of the Views).**

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<sup>8</sup> Views of the Committee on the Elimination of Discrimination against Women under article 7 (3) of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (sixty-third session) concerning Communication No. 60/2013. Adopted on February 25, 2016. CEDAW/C/63/D/60/2013.

“The Committee observes that article 11 (1) (f) of the Convention should be read together with articles 2 and 3. Under those provisions **the State party is required to provide equal protective measures to safeguard the reproductive functions of both men and women and to create safe working conditions in all industries, rather than preventing women from being employed in certain areas** and leaving the creation of safe working conditions to the discretion of employers. When a State party wishes to deviate from the above approach, it must have strong medical and social evidence of the need for protection of maternity/pregnancy or other gender-specific factors” (Paragraph 11.7 of the Views).

**The list of banned professions is part of an enforced patriarchal view of women assigning them the exclusive roles of wives and mothers:**

“The Committee is of the view that **the introduction of such legislation reflects persistent stereotypes** concerning the roles and responsibilities of women and men in the family and in society that have the effect of perpetuating **traditional roles for women as mothers and wives** and undermining women’s social status and their educational and career prospects” (Paragraph 11.3 of the Views).

**Restrictions on the labor of women must be applied only for the purposes of protecting motherhood in the strictest sense of this concept and should not to be extended to all women without exception:**

The Committee previously “expressed concern about the overprotective list of occupations and branches in which women were precluded from access to the labor market and **recommended that the State party should review the list to ensure that it covered only restrictions necessary for the protection of maternity in the strict sense** and should promote and facilitate women’s entry into previously listed jobs by improving working conditions and adopting appropriate temporary special measures” (Paragraph 11.3 of the Views).

**Russian courts have not ensured effective protection of Medvedeva from gender discrimination:**

“The Committee observes that in the present case the State party’s courts assessed the refusal to employ the author as a helmsperson-motorist as lawful, without assessing her claims that the refusal discriminated against her on the basis of her sex, and found no obligation under the law for the employer to create employment conditions that would be safe for women. The Committee therefore finds that **the State party’s courts accordingly condoned the discriminatory actions of the private company**” (Paragraph 11.4 of the Views).

**The ban on working as a helmsperson-motorist is absolute in nature because it is impossible to create conditions for this job that are deemed acceptable for women by the state”**

“...the refusal to employ her as a helmsperson-motorist and the confirmation of that decision by the courts demonstrated that she was de facto prohibited from exercising her right to employment in accordance with her education because **her qualification as a navigation officer would in any case automatically entail work in conditions deemed hazardous for women by the State party**” (Paragraph 11.5 of the Views).

**Russian law contravenes the Convention and other international legal norms:**

**“...existing legislation does not ensure, on a basis of equality for women and men, the right to the same employment opportunities, including the application of the same criteria for selection in matters of employment.** The Committee also observes that under the existing legislative framework the author will be unable to have the same employment opportunities for the positions for which she has educational qualifications unless employers decide to create safe working conditions; however, it is entirely within the discretion of the employers to take on the extra burden to create such safe working conditions for women and to obtain the necessary certification” (Paragraph 11.5 of the Views).



“The Committee observes **that the adoption of a list of 456 occupations and 38 branches of industry contradicts the State party’s obligations under the Convention because it treats men and women differently, it in no way promotes the employment of women and it is based on discriminatory stereotypes.** Furthermore, an employment procedure in which individual employers have the discretion to deviate from the list and employ women if safety can be guaranteed is not in compliance with the requirements of the Convention because there are no obligations for the employer either to create safe working conditions or to employ women even if they are the best-qualified applicants.” (Paragraph 11.7).

**After considering Svetlana Medvedeva’s complaint, the Committee issued recommendations for her specific case and for improving the overall situation:**

- “a) With regard to the author of the communication: grant the author appropriate reparation and adequate compensation commensurate with the seriousness of the infringement of her rights and facilitate her access to jobs for which she is qualified;
- (b) In general:
  - (i) Review and amend article 253 of the Labor Code and periodically revise and amend the list of restricted occupations and sectors established under Regulation No. 162 in order to ensure that restrictions applying to women are strictly limited to those aimed at protecting maternity in the strict sense and those providing special conditions for pregnant women and breastfeeding mothers and do not hinder the access of women to employment and their remuneration on the basis of gender stereotypes;
  - (ii) After the reduction of the list of restricted or prohibited occupations, promote and facilitate the entry of women into previously restricted or prohibited jobs by improving working conditions and adopting appropriate temporary special measures to encourage such recruitment.

Implementing CEDAW’s recommendations has turned out to be a complicated and still unrealized task. After appealing for a reconsideration of her case, Svetlana Medvedeva faced resistance from the Samara District Court (August 2016) and then the appeals bench of the Samara District Court (October 2016), which considered the CEDAW to be advisory and non-binding in nature. In the end, Medvedeva had to appeal to the Supreme Court, which deemed the CEDAW Views to be a new circumstance, overturned the unfavorable decisions of both courts, and sent the case back to the first instance court for reconsideration.

On September 15, 2017, the Samara District Court reconsidered Medvedeva’s case, in which it refused to find discrimination or violation of the claimant’s rights in 2012. Citing the CEDAW Views, Svetlana and her attorney Dmitry Bartenev filed two claims: to find the refusal to hire Svetlana for the position of helmsperson-motorist illegal and a violation of the ban on discrimination in the labor sphere and to obligate the employer to enter into a labor contract with her. The decision of the Samara District Court and, subsequently, the appeals ruling of the Samara Oblast Court, which virtually repeated the arguments of the district court, reflected a legal paradox – RF labor norms directly contradict international obligations regarding non-discrimination of women.

The stated claims were granted in part: on the one hand, the employer’s refusal to hire the claimant for a position from “the list of banned professions” was found “to violate the ban on discrimination against women in the labor sphere on the basis of gender and the principles of international law enshrined in the Convention on the Elimination of All Forms of Discrimination against Women.” On the other hand, the court refused to obligate the employer to hire Svetlana or, in other words, overcome the abovementioned discrimination in practice.

The court noted that, in the case of Medvedeva, who was illegally denied employment, RF laws stipulate only one means for restoring violated rights—monetary compensation for emotional harm (it was precisely this means that Medvedeva did not take advantage of). But, in the opinion of the court, the law could not obligate the employer to enter into a labor contract with her: the court accepted the

shipping company's argument regarding "lack of vacancies," citing that hiring is an employer's right, not obligation. But, most importantly, the court agreed that the inland shipping company "must comply with current RF laws, and, acting by virtue of these norms of law [Article 253 of the Labor Code and the list of banned professions], had grounds for not adopting an illegal decision to enter into a labor contract with Medvedeva," but it also found the actions of this shipping company to be discriminatory (decision of the Samara District Court of September 15, 2017).

Thus, the decisions of Russian courts contain honest descriptions of the current situation: Russian laws, in execution of which employers reject women for employment, contravene international law, while at the same time the party "guilty" of discrimination is the employer and the state does not prescribe amendments to discriminatory norms. In the ruling of the Samara Oblast Court, the necessity of granting Medvedeva's complaint in part is explained by this logic: "...since the illegality of the respondent's refusal to enter into a labor contract with the claimant on the basis of gender, **due to the non-conformity of RF labor laws to the norms of an international treaty**, conclusively established by the corresponding international legal act, which is binding on the Russian Federation."

Svetlana Medvedeva's case has enormous significance not just for Russia, but for other countries that have profession-specific bans for women. The result of this case has been the acknowledgement of the discriminatory essence of the list of banned professions by a high international institution—the UN Committee on the Elimination of All Forms of Discrimination against Women and, subsequently, by Russian courts. This took many years and became possible thanks to the perseverance of the claimant, her attorney's high level of professionalism, and the enduring efforts of human rights defenders. By successfully appealing to an international body, it became possible to overcome an adverse decision of the highest national court—the RF Constitutional Court, which had appeared to have "shut down the topic" of disputing the list of banned profession in 2012.

Implementation by the Russian Federation of CEDAW's decision has not yet occurred in terms of individual measures in respect of Svetlana Medvedeva or in terms of general measures: the list of banned professions has not been revoked or even reviewed, and local courts have refused to obligate the employer to hire Svetlana for a job in her qualification. Russian courts have, however, found that the actions of law-abiding employers that refuse to hire women for employment on the basis of "a list of banned professions" are violating the principle of a ban on discrimination, which signifies the de facto acknowledgement of contradictions between RF laws and international legal standards. The logical continuation of this conclusion must be the amendment of the RF Labor Code and the full revocation (or, at least, extensive review) of the list of professions banned for women.

The CEDAW decision in Medvedeva's case may inspire the governments of other states parties to the Convention to cancel profession-specific bans for women and the women who suffer from discrimination in the labor sphere, to protect their right to equal access to labor.

# THE HISTORY, COMPOSITION, AND STRUCTURE OF LISTS OF BANNED PROFESSIONS FOR WOMEN

The first mention we found of a list of professions banned for women in the former Soviet Union is contained in a Code of Labor Laws, which was adopted at the dawn of Soviet power in 1918.<sup>9</sup> This document of the epoch of war communism, which introduced labor conscription for the population, deprives women of the “right to use their labor” in certain industries:

## Section II The Right to Use Labor

**14.** Males under the age of 18 and no females have the right to work at night time or in industries that are arduous or dangerous to health.

Note. The list of arduous or dangerous jobs is maintained by the Labor Protection Department of the People’s Commissariat for Labor and is published every January in the Collection of Laws and Decrees of the Workers’ and Peasants’ Government.

The Code of Labor Laws of the Russian Soviet Federative Socialist Republic<sup>10</sup> has similar proscriptive norms:

## XIII. The Labor of Women and Minors

**129.** The use of the labor of women and persons under the age of 18 is prohibited in arduous or dangerous manufacturing or underground work.

The list of arduous and dangerous jobs, like the maximum norms for carrying heavy objects, is set separately for women and adolescents by the People’s Commissariat for Labor in agreement with the All-Russian Central Council of Trade Unions.

We know from sources that in 1932 the USSR People’s Commissariat of Labor established a “List of Arduous and Dangerous Jobs Banned for Women”<sup>11</sup>

The direct source of the lists of professions banned for women that are currently in effect appears to be the “List of Industries, Professions, and Jobs with Arduous or Harmful Working Conditions the are Banned for Women” (1978, with amendments made in 1987 and 1990),<sup>12</sup> approved by Resolution of the USSR State Committee on Labor and Social Matters and the Presidium of the All-Union Central Soviet of Professional Unions and coordinated with the USSR Ministry of Health (No. 240/P10-3 of July 25, 1978). This list, which was new in relation to lists previously existing in the Soviet Union, was drafted in compliance with Resolution No. 320 of the USSR Council of Ministers and the All-Union

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<sup>9</sup> Code of Labor Laws (1918). Adopted by the All-Russian Central Executive Committee of Soviet on December 10, 1918 [https://traditio.wiki/%D0%9A%D0%BE%D0%B4%D0%B5%D0%BA%D1%81\\_%D0%B7%D0%B0%D0%BA%D0%BE%D0%BD%D0%BE%D0%B2\\_%D0%BE\\_%D1%82%D1%80%D1%83%D0%B4%D0%B5\\_\(1918\)](https://traditio.wiki/%D0%9A%D0%BE%D0%B4%D0%B5%D0%BA%D1%81_%D0%B7%D0%B0%D0%BA%D0%BE%D0%BD%D0%BE%D0%B2_%D0%BE_%D1%82%D1%80%D1%83%D0%B4%D0%B5_(1918))

<sup>10</sup> Code of Labor Laws (1922). Approved by the IV session of the All-Russian Central Executive Committee of Soviets on October 30, 1922. <http://docs.cntd.ru/document/901857831>

<sup>11</sup> Protection of the Labor of Women in the USSR. Normative Acts on the Protection of the Labor of Adolescents in the USSR. Source: [http://meduniver.com/Medical/gigiena\\_truda/21.html](http://meduniver.com/Medical/gigiena_truda/21.html)

<sup>12</sup> Resolution No. 240/P10-3 of the USSR State Committee for Labor and Social Matters and the Presidium of the All-Union Central Council of Trade Unions and coordinated with the USSR Ministry of Health of July 25, 1978, with amendments made by joint resolution nos. 184, P-4 of the USSR State Committee on Labor and the Presidium of the All-Union Central Council of Trade Unions of March 26, 1987 and by joint resolution nos. 417, P-12 of the USSR State Committee on Labor and the Presidium of the All-Union Central Council of Trade Unions of October 22, 1990. <http://docs.cntd.ru/document/9039453>

Central Council of Trade Unions “On Additional Measures to Improve the Working Conditions of Women Employed in the National Economy” of April 25, 1978.<sup>13</sup> In this way, the stated goal was positive measures to protect women expressed, however, in the form of bans.

The lists of banned professions in the countries concerned have much in common. Differences in the number and size of professions is mainly due to the presence or absence of certain branches of industry in these countries. For example, Moldova’s list makes no mention of the mining or extraction industries, non-ferrous metallurgy, and ocean transport, and very little mention of the chemical industry, oil refining, and the pulp industry; Russia’s list does not contain jobs in the canning industry, which, conversely, is well-developed in Moldova and is reflected accordingly in that country’s list; Tajikistan’s list says nothing about inland or ocean transport, and so forth.

All countries ban women from driving heavy trucks (over 2.5 tons) on inter-city trips (i.e. the profession of long-haul trucker); driving inter-city buses with more than 14 seats; driving railway trains and metro train (in countries that have a metro); shunting trains; extinguishing fires; working at cranes and drilling rights in the ocean.

Women are banned across the board from working at a height of over 10 meters (assembly work on drilling rigs and towers, etc.) and, in the sphere of forestry, from collecting seeds from standing trees at a height of over 4 meters. In terms of bans on working at heights, the lawmakers of Belarus have taken it furthest of all. In that country, women cannot work “gathering fruits or crude drugs from bushes or standing trees (with an ascent to a height of over 1.3 meters).”

In terms of the structure of the lists, most countries group the banned profession by branch of production sector, agriculture, or other industry; professions and jobs common to all types of industries are listed separately. This format has been inherited without major structural changes from the Soviet list of banned professions. For example, the bans on agricultural jobs contained in Russia’s list (2000) and Tajikistan’s (2017): are exactly the same:

Russia (2000)	Tajikistan (2017)
<b>XXXVIII. Agriculture</b>	<b>27. AGRICULTURE</b>
419. Activities related to crop growing, animal and poultry husbandry, and fur farming using toxic chemicals, pesticides, and disinfectants (up to the age of 35)	Activities related to crop growing, animal and poultry husbandry, and fur farming using toxic chemicals, pesticides, and disinfectants (up to the age of 35)
420. Caring for stud bulls and horses, male pigs	Caring for stud bulls and horses, male pigs
421. Loading and unloading animal carcasses, condemned and pathologic materials	Loading and unloading animal carcasses, condemned and pathologic materials
422. Work in wells, slurry pits and cisterns, silos, and hay towers	Work in wells, slurry pits and cisterns, silos, and hay towers
423. Work as tractor drivers for the agricultural industry	Work as tractor drivers for the agricultural industry
424. Work as truck drivers	Work as truck drivers
425. Removing skins from cattle and horses, cutting up the carcass	Removing skins from cattle and horses, cutting up the carcass
426. Transporting, loading, and unloading toxic chemicals	Transporting, loading, and unloading toxic chemicals
427. Laying drain pipes by hand	Laying drain pipes by hand

<sup>13</sup> Joint Resolution No. 20 of the USSR Council of Ministers and the All-Union Central Council of Trade Unions “On Additional Measures to Improve the Working Conditions of Women Employed in the National Economy” of April 25, 1978 (with amendments and additions made by Resolution No. 1174 of the USSR Council of Ministers of October 17, 1987) [http://www.libussr.ru/doc\\_ussr/usr\\_9627.htm](http://www.libussr.ru/doc_ussr/usr_9627.htm)



**See also “jobs in various branches of the economy” that are banned for women in Russia’s list**

XXXIX. Work in various branches of the economy (excerpt)

...

429. Painting work using white lead, lead sulfate, or other dyes containing these compounds

430. The installation, repair, or servicing of overhead contact systems and power lines at a height of over 10 meters

431. Direct fire suppression

432. Maintenance of watercraft or dredgers involving rigging work

...

Work performed in the following professions:

437. Antenna and mast expert

438. Bitumen digester operator

439. Snowmobile operator

440. Diver

441. Member of a gas rescue team

442. Dispenser of mercury engaged in measuring open mercury by hand

443. Woodcutter engaged in manual labor

...

448. Offshore crane operator

449. Boiler machinist (fireman) engaged in servicing steam and hot water boilers when manually loading mineral and peat fuel per shift exceeding the established norms of allowable loads for women when lifting or moving heavy objects manually.

450. Parachutist (smokejumper)

451. Workers on the engine crew of a crane vessel

...

453. Repair technician of engineering structures

454. Technician for accident recovery operations engaged in work to clean sewage networks

455. Rigger engaged in assembling and disassembling equipment

456. Cleaner engaged in cleaning pipes, furnaces, and gas conduits

Generally, lists of banned professions in specific countries differ little from their Soviet source. The lists of Uzbekistan, Kyrgyzstan, and Belarus stand out, however, because they show that a great deal of work has gone into modifying them. In these lists, each profession is assigned a code in the classification system of employees and civil servants (and, since such classification systems in individual countries replaced the “All-Union Classification System of Profession of Employees and Civil Servants, and Salary Grades” (1986) that existed in the Soviet Union, the profession codes are the same in the lists of different countries).<sup>14</sup>

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<sup>14</sup> These include the “All-Russian Classification System of Professions of Employees and Civil Servants, and Salary Grades” (approved by Rosstandart, December 26, 1994) <http://base.garant.ru/1548770/>; the “Federal Classification System of the Republic of Belarus OKRB 006-2009 “Professions of Employees and Civil Servants,” approved by a resolution of the Ministry of Labor and Social Protection of the Republic of Belarus on October 22, 2009. Soviet classification standards were also taken into account in Ukraine’s classification system, which was structured somewhat differently (Classification System of Occupations of Ukraine DK 003:2010, approved and entered into effect by Order No. 327 of Gospotrebstandart of Ukraine of July 28, 2010); pursuant to ISCO 88: International Standard Classification of Occupations/ILO, Geneva), <https://www.rabota.kharkov.ua/professions>).

Uzbekistan's list (2000)<sup>15</sup> of professions is grouped by industry branch; certain types of banned occupations are specified within the framework of a profession, or it is noted that all types of work are banned for a given profession:

III. INLAND WATER TRANSPORT (00), OCCUPATIONS OF FLEET WORKERS (X)		
13156	Water vessel engineer	Work on water vessels operating on solid fuel
13482	Sailor	Work on passenger or cargo vessels (with the exception of hydrofoils and hydroplanes), dredgers, and dredger pumps
13484	Sailor/diver	"
13493	Sailor/Firefighter	"
13495	Sailor/Rescue Worker	"
13790	Crane operator	Work on a floating crane
14444	Machine operator (dock engineer) of a composite loading and unloading team (aside from machine operators working regularly as crane operators and operators of intra-port transport)	All types of jobs in this profession
18091	Helmsman (pilot)	Work on water vessels with manual steering

See the same section of an older version of Uzbekistan's list (approved in 1996 and became invalid in 2000):

#### XXVIII. INLAND WATER TRANSPORT

Water vessel engineer working on water vessels operating of solid fuel

Sailors on all types of passenger or cargo vessels (with the exception of hydrofoils and hydroplanes, boats operating on intracity and suburban lines), dredgers, dredger pumps, and river-sea navigation vessels

Helmsman on water vessels with manual steering

Cargo handlers, port workers (aside from workers working regularly as crane operators and operators of intra-port transport and workers servicing continuous machines to process any cargo except for harmful and hazardous cargo)

Instead of being broken down by industry, Kyrgyzstan's list is alphabetical (based on the Russian alphabet). Like Uzbekistan's list, types of banned occupations are specified under profession, and if the profession is banned completely, then no annotations are provided:

15341	Fish processor	<ul style="list-style-type: none"> <li>- manual stirring of fish in salting tubs</li> <li>- beheading of salmon</li> <li>- manual pouring and unloading of fish</li> </ul>
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It should be noted that the commentary on certain profession is quite arbitrary and sometimes meaningless. For example, the occupation of porter, which is banned in Kyrgyzstan, includes the specific annotation "movement of baggage and hand luggage," which places a complete ban on the occupation as such.

<sup>15</sup> List of Occupations with Harmful Labor Conditions where Use of the Labor of Women is Fully or Partially Banned (reg. No. 865 of January 5, 2000). (Bulletin of Normative Acts of Ministries, State Committees, and Agencies of the Republic of Kazakhstan No. 1, 2000) [http://www.lex.uz/pages/GetAct.aspx?lact\\_id=514958](http://www.lex.uz/pages/GetAct.aspx?lact_id=514958)

Belarus' list has undergone the most reworking. It currently contains 181 banned professions/jobs grouped into four tables. The first table separately lists **jobs that have been banned entirely**: moving objects that weigh more than norms established for women, steeplejacking, and underground work. It then provides an alphabetical list of jobs banned for women in different industries, for example jobs

4.17	breaking down and regenerating bone char and burning lime when obtaining sugar, starch, and molasses
4.18	harvesting fruits and medicinal raw materials from standing trees (from a height of no higher than 1.3 meters); logging operations
4.19	involving the mechanical treatment (processing) of metal and metal products with sand discs using the dry method
4.20	involving the installation, repair, or servicing of power lines and overhead contact systems
4.34	involving fire extinction and accident elimination
4.35	controlling and servicing road-building, railway-building, and construction-related vehicles
4.36	controlling and servicing railway vehicles designed to transport passengers, cargo, baggage and to conduct repair and emergency response work

The second table provides an alphabetical list of **completely banned** “harmful and (or) dangerous jobs in specific professions directly engaged in production,” for example:

No.	Product	Name of profession
1	anti-corrosion and inhibitor paper	Impregnation operator
2	fossil wax	Crusher operator
		Briquette press operator
3	leather and fur	Drying operator for raw materials, intermediate products, and items

The third table contains occupations with “harmful and (or) dangerous work conditions in specific professions regardless of type of production” that are **partially banned**, for example:

No.	Type of job	Name of profession	OKRB code
11	international passenger buses with more than 14 seats and trucks with a cargo capacity of over 5 tons (dump trucks of over 2.5 tons)	Vehicle operator	11442
12	tractors equipped to dust and spray pesticides	Tractor driver for the agricultural industry	19205
13	tobacco aromatization	Aromatization worker	11134

Finally, the fourth table lists “jobs with harmful or dangerous working conditions in specific professions regardless of type of production” **that are fully banned**, for example:

20	Shotfirer (master shotfirer)	11429
21	Operator/tester of military and specialized vehicles	11450
22	Diver	11465

The governments of former Soviet countries seem to feel that profession-specific bans for women are necessary — sometimes so much so that they did not begrudge putting major casuistical-intellectual, bureaucratic, and technical efforts into reworking and “updating” these lists.

## PROTECTION OR DISCRIMINATION? CEDAW AND LABOR CODES

The UN Convention on the Elimination of All Forms of Discrimination Against Women (1979) contains both anti-discriminatory provisions in the sphere of labor and requirements to guarantee a woman's right to health and maternity. The apparent contradiction of these provisions in the laws of the countries concerned is interpreted as the need to ban women from certain jobs deemed dangerous. Apparently, women's special value as the bearers of reproductive function carries great weight in this imagined conflict, even though labor codes do not directly indicate harm specifically for reproductive functions; instead, this harm is taken as a matter of course "by default." The approach is legitimized in the eyes of lawmakers by the Convention itself, which reads: "Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory" (Part 2 of Article 4). Ban supporters cite an even earlier UN document – the Declaration of the Elimination of Discrimination Against Women (1967), which proclaims that "measures taken to protect women in certain types of work, for reasons inherent in their physical nature, shall not be regarded as discriminatory" (Part 3 of Article 10).

Lawmakers justify profession-specific bans corresponding to a patriarchal view of women as "dovetailing" with the provisions of the Convention. For example, subclause d of Clause 2 of Article 11, which obligates states "to provide special protection to women during pregnancy in types of work proved to be harmful to them." At the same time, other provisions of the Convention fade into the background: subclause f of Article 2, which requires states parties "to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women"; and Clause 1 of Article 11, which requires a guarantee of "(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."

This kind of an approach to a UN Convention, where some provisions are taken into account and even used to justify discrimination, while others are ignored, is far from a legal approach and is reminiscent of interpretations of the Bible and other religious texts that disregard quotations from these texts that reinforce opposing arguments.

The concept that "profession-specific bans are a necessary component of special protection measures for women" is reflected in the labor laws of the countries concerned. Like the CEDAW Convention, the labor codes of these countries contain an article that bans labor-related discrimination. At the same time, these articles always contain a stipulation that some profession-specific restrictions are not deemed discrimination if they are applied in respect of vulnerable groups for the social protection of these groups – including in respect of women as a group separated out on the basis of gender. See, for example, the Labor Code of Moldova (2003, with amendments to this article in 2016):



## Article 8. PROHIBITION OF DISCRIMINATION IN THE SPHERE OF LABOR

(1) The principle of equality of all workers operates within the framework of labor relations. Any form of direct or indirect discrimination of the worker on the basis of gender, age, race, skin color, nationality, religious persuasion, political beliefs, social origin, place of residence, disability, HIV/AIDS status, union membership or participation in union activities, or on the basis of any other criteria unrelated to the workers' professional qualities is prohibited.

(2) **It is not discriminatory to establish distinctions, exceptions, preferences, or separate rights for workers due to requirements specific to a certain type of labor or envisaged by current law, or the government's special concern for persons in need of enhanced social and legal protection.**<sup>16</sup>

Or the Labor Code of the Republic of Tajikistan (2016):

## Article 7. PROHIBITION OF DISCRIMINATION IN LABOR RELATIONSHIPS

1. All citizens have equal rights to labor, discrimination in labor relationships is prohibited. Any distinctions, exclusions, preferences, or denial of employment are prohibited regardless of nationality, race, gender, native language, religious persuasion, political convictions, social situation, education, property status resulting in a violation of equal opportunities in the sphere of labor.

2. **It is not discriminatory to establish distinctions in the sphere of labor due to requirements characteristic of a certain type of labor or the government's special concern for persons in need of enhanced social protection (on the grounds of gender, age, physical disabilities, family obligations, social level, and culture).**

3. Persons who believe that they have been subjected to discrimination in labor relationships may appeal to a court.<sup>17</sup>

Or the Labor Code of the Republic of Kyrgyzstan (2004, most recent amendments made in 2017):

## Article 9. PROHIBITION OF DISCRIMINATION IN THE LABOR SPHERE

Each person shall have equal opportunities to exercise their labor rights and freedoms.

No one may be restricted in terms of labor rights and freedoms or receive any benefits when exercising them on the basis of gender, race, nationality, native language, origin, property status, official position, age, place of residence, attitude towards religion, political convictions, membership or non-membership in social organizations, or on the basis of other circumstances unrelated to a worker's professional qualities or the results of his or her labor.

Unequal pay for equal work is not permitted.

**It is not discriminatory to establish distinctions, exceptions, preferences, and restrictions, determined by requirements characteristic of a given type of work, established by law or due to the government's special concern for persons in need of enhanced social and legal protection.**

Persons who believe they have been subjected to discrimination in the sphere of labor may file a corresponding application regarding the restoration of their violated rights and compensation for material and emotional damages.<sup>18</sup>

The labor code clauses that introduce profession-specific bans for women are found in a number of articles dedicated to positive protection measures in the sphere of labor (regulating the labor of pregnant women, minors, disabled persons, and other groups).

<sup>16</sup> Labor Code of the Republic of Moldova. Approved by Parliament on March 28, 2003. <http://lex.justice.md/viewdoc.php?id=326757&lang=2>

<sup>17</sup> Labor Code of the Republic of Tajikistan. [http://base.mmk.tj/view\\_sanadhoview.php?showdetail=&sanadID=340#\\_Toc482871906](http://base.mmk.tj/view_sanadhoview.php?showdetail=&sanadID=340#_Toc482871906)

<sup>18</sup> Labor Code of the Republic of Kyrgyzstan (2004, most recent amendments made in 2017). [http://online.zakon.kz/Document/?doc\\_id=30296269#pos=0;0](http://online.zakon.kz/Document/?doc_id=30296269#pos=0;0)

For example, in Ukraine's Code of Labor Law (2015), Article 174, which establishes profession-specific bans (like Article 175 on bans on work during the night hours, article 176-177 on bans for pregnant women and the mothers of small children), is found in Chapter XII "Labor of Women" among articles offering positive protection:

#### **Article 174. Jobs Banned for Women**

**The use of labor by a woman is banned in arduous, harmful, or dangerous jobs, as well as in jobs underground, with the exception of some jobs underground (non-manual labor and health and household services).**

Women may also not be employed to lift or move objects whose weight exceeds the maximum norms established for them.

**A list of arduous, harmful, or dangerous jobs that are banned for women and the maximum norms for lifting or moving heavy objects shall be approved by the central executive agency that ensures the formation of state policy in the sphere of health protection with the agreement of the central executive agency that ensures the formation of state policy in the sphere of labor protection.**

Article 175. Restrictions on the Labor of Women During Night Hours

Article 176. Ban on Using Pregnant Women and Women with Children under the Age of Three for Nighttime, Overtime, or Weekend Work and for Business Trips

Article 177. Restrictions on Using Women with Children Aged Three to Fourteen of Disabled Children for Overtime Work and Business Trips

Article 178. Transfer of Pregnant Women and Women with Children Under the Age of Three to Lighter Work

Article 179. Leave Connected with Pregnancy, Birth, and Childcare

Article 180. Combining Annual Leave with Leave Connected with Pregnancy, Birth, and Childcare

Article 181. Procedure for Granting Leave to Care for a Child and Including this Leave in Length of Service

Article 182. Leave for Women Adopting Children

Article 182.1. Additional Leave for Workers with a Minor or Adult Child who has been a Disabled Person Since Childhood in Subgroup A of Group I.

Article 183. Breaks for Feeding a Child

Article 184. Guarantees During Hiring and Bans on Dismissing Pregnant Women and Women with Children

Article 185. Providing Pregnant Women and Women with Children Under the Age of 14 with Vouchers for Health Results and Vacation Centers and Providing them with Material Assistance

Article 186. Providing Services to Mothers at Companies and Organizations

Article 186.1. Guarantees to Persons Raising Young Children Without a Mother<sup>19</sup>

In Tajikistan's Labor Code, Article 216, which delegates approval of the prohibitive list to the government, is found in Chapter 16 "**Special aspects of regulating the labor of women and other persons with family obligations**" and is also surrounded by articles establishing various benefits for women:

Article 215. Restrictions on Terminating a Labor Agreement with Women and Other Persons.

#### **Article 216. Jobs Banned for Women**

- 1. Jobs with arduous or harmful work conditions and jobs underground are banned for women.**
- 2. The list of jobs banned for women and the maximum allowable weight norms for them when lifting and moving heavy objects by hand is approved by the Government of the Republic of Tajikistan**

<sup>19</sup> Labor Code of Ukraine (2015, most recent amendments made in 2017). In Russian: <https://prajca.com.ua/kzot/1211.html> Chapter XII. Labor of Women. [https://prajca.com.ua/kzot/glava\\_12\\_trud\\_zhenshhin/1224.html](https://prajca.com.ua/kzot/glava_12_trud_zhenshhin/1224.html)

Article 217. Special Aspects of the Regime of Labor and Rest for Women and Other Persons with Family Obligations

Article 218. Breaks for Feeding a Child.

Article 219. Establishing Part Time Work Hours for Women and Other Persons with Family Obligations.

Article 220. Restrictions on the Calculation of Total Working Hours for Pregnant Women.

Article 221. Temporary Transfer to Another Job for Pregnant Women and women with Children Under the Age of 18 Months.

Article 222. Guarantees for Women and Other Persons with Family Obligations When Establishing Priority for Granting Annual Paid Leave

Article 223. Leave for Pregnancy and Birth.

Article 224. Leave for Childcare.

Article 225. Guarantees When Hiring Pregnant Women and Women with Children.

Article 226. Leave for Workers Adopting Newborn Children or Acting as their Guardians.

Article 227. Guarantees and Benefits for Persons Raising Children without a Mother.

**Thus, the structure of labor codes imposes the interpretation that profession-specific bans are a positive measure. In this way, the discriminatory essence of these bans is glossed over and becomes less obvious.**

# THE ILLUSORY NON-ABSOLUTENESS OF BANS ON WOMEN'S LABOR

Sometimes the appeal of professional bans for women is complicated not just for the reason that opponents use the CEDAW Convention itself or general articles of labor codes speaking to the protective nature of the bans. In a number of countries, labor code articles that directly introduce bans on women's labor are worded more carefully. For example, in the labor codes of Russia (Article 253) and Turkmenistan (articles 242 and 243), a number of jobs are banned (jobs connected with lifting heavy objects, and, in Russia, jobs underground), while jobs "with harmful and dangerous work conditions" are only **restricted**.

This kind of "soft" wording allows that a ban on a profession may be lifted if the employer creates conditions that are acceptable to women at the workplace. For example, the Russian list has a number of explanatory notes, one of which reads:

*"1. An employer may decide to use the labor of a woman for jobs (professions, positions) included in this list if it creates safe conditions for labor confirmed by the results of an evaluation of workplaces, together with the favorable opinion of a state expert review panel and services of the State Committee for Health and Epidemiological Supervision of a constituent entity of the Russian Federation."*

In Belarus, an explanation of the possible lifting of profession-specific bans is contained in a special letter of the Ministry of Labor and Social Protection and the Ministry of Health:<sup>20</sup>

*To resolve questions of the possibility of using women's labor in the industries and jobs contained in the List, the employer must conduct work to introduce health precautions and eliminate factors preventing the use of women's labor, or bring their parameters into line with allowable norms. After this, the employer must apply to the agencies for state expert review of work conditions and state health inspection for their location. These agencies shall jointly prepare the corresponding opinion (form enclosed).*

*A favorable opinion may be issued if the evaluation of health and hygienic factors, psychophysiological factors, and conditions for the labor process at the workplace meet the requirements of health and hygiene standard 9-72 PB 98.*

*Upon receipt of a favorable opinion, an employer may decide to use the labor of women for the industries and jobs contained in the List.*

In its ruling in the case of A. Klevets, the Supreme Court of the Russian Federation gave an indication of the possibility of lifting a ban on the specific professions of "electric train engineer" and "assistant electric train engineer" in the metro: in the court's opinion, in light of Note 1, the corresponding ban on these profession **"does not place an absolute ban on the use of women's labor in these professions, but allows for this possibility if safe conditions for labor are created at a specific workplace,** which conforms to the provisions of Clause 3 of Article 253 of the RF Labor Code on restrictions on the labor of women in arduous, harmful, and (or) dangerous jobs."

To the criticism of profession-specific bans for women issued by international institutions (for example, CEDAW or CESC), the governments of the countries concerned respond not with a readiness to cancel these lists of banned professions or radically review them, but only with promises of palliative measures—promises to improve work conditions and document this improves through "the certification of workplaces." This position was voiced by the RF Deputy Minister of Labor, who headed the state delegation that submitted the Russian Federation's report to CEDAW in 2015.

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<sup>20</sup> Letter No. 11-16/6497/14-15-4/4068 of the Ministry of Health and Social Protection of the Republic of Belarus and the Ministry of Health of Belarus "On the Application of the List of Arduous, Harmful, and Dangerous Jobs Banned for Women."



However, even if employers have the good will and commitment to absorb the commercial and bureaucratic expenses to improve work conditions and to complete workplace certification, in many cases, by definition an employer cannot create “accessible work conditions for women” in the sense that they are understood by strict health and hygienic norms: the metropolitan cannot cancel “the specific conditions of underground areas,” inland navigation companies cannot disconnect the engines of water vessels, logistics companies handling long-distance shipping cannot get rid of the condition “inter-city,” which bars women from working as long-haul truckers.

**Thus, the potential ability to gain access to banned professions if labor conditions are improved is actually not feasible.**

# MEDICAL EXPLANATIONS FOR PROFESSION-SPECIFIC BANS: DANGER FOR REPRODUCTIVE FUNCTIONS

Russian-language medical literature on labor hygiene asserts that a number of harmful workplace factors have a greater impact on women than on men: given an equal professional load, the frequency of instances of vibration- and noise-induced pathologies is higher in women than in men; that under identical conditions occupational dermatitis is encountered more frequently among women than men; that in groups identical in terms of age and length of employment, women have symptoms of the adverse effects of chemicals earlier and more frequently than men.<sup>21</sup> This serves as the “scientific basis” for profession-specific bans for women. However, bans on female labor in certain spheres are primarily explained in terms of harm to a woman’s reproductive health:

“Laws of the Russian Federation have established several restrictions on female labor. **These restrictions are in no way discriminatory towards women, but are instead measures mean to protect women from various negative effects on her health, and, ultimately, from the important function of maternity.** It is in connection with this, then, that labor hygiene for women stipulates restrictions on hiring women for several types of work.”

(“Gigiena truda. Uchebnik dlia sanitarno-gigenicheskikh fakultetov meditsinskih institutov” [Labor Hygiene. A textbook for health and hygienic faculties at medical institutes]. 1988.)

The hygienic norms on which the lists of banned professions are based are strictly regulated. For example, Russia’s list of banned professions is based on special Sanitary Rules and Norms (SanPin) No. 2.2.0.555-96 “Hygienic Requirements for the Labor of Women” (1996), a normative document that employers must follow.<sup>22</sup> Among other things, this document establishes requirements to create “permissible labor conditions” for women. This means conditions “that do not exceed established hygienic norms for workplaces; any changes to the organism’s functional state must be recovered from during prescribed rest or by the start of the next shift and should not have an adverse effect in the near or distant future on the state of health of workers and their offspring.” “Hygienic Requirements...” establishes physical exertion standards for women during work (heart rate, expenditure of energy, respiratory minute volume, water loss, etc.) and standards for noise, radiation, micro-climate, and other working environment factors and lists chemicals that have a negative effect specifically on reproductive glands and embryos and industrial aerosols that have a risk of causing cancer. A special place in this list is held by a normative annex regulating the level of whole-body vibration, which “is a factor of professional risk for female workers as a result of its highly directional effect on their reproductive functions due to stress-related and biomechanical mechanisms.” This is specifically why SanPin bans women from “operating heavy self-propelled and transport off-road vehicles (heavy trucks, dump trucks, excavators, tractors, bulldozers, etc).”<sup>23</sup>

<sup>21</sup> S.V. Alekseyev, V.R. Usenko. “Gigiena truda. Uchebnik dlia sanitarno-gigenicheskikh fakultetov meditsinskih institutov” [Labor Hygiene. A textbook for health and hygienic faculties at medical institutes]. Moscow: Meditsina, 1998. <http://all-gigiena.ru/lit/gigiena-truda-alekseev>

<sup>22</sup> HYGIENIC REQUIREMENTS FOR THE LABOR OF WOMEN. Developed by the Scientific Research Institute of Occupation Medicine of the Russian Academy of Medical Sciences (Nizyaeva, I.V., Sivochalova, O.V., Volkova, Z.A., Suvorov, G.A., Denisov, E.I., Afanaseva, R.F., Elovskaya, L.T.); the Nizhegorodskiy Scientific Research Institute of Hygiene and Occupational Pathology (Blagodatin, V.M., Osipova, T.V., Tikhomirov, Yu.P., Fedotova, I.V.); Khabarovsk State Technical University (Yakimova, L.D.); Vladivostok State Medical Institute (Sheparev, A.A.); Goskomsanepinadzor of Russia (Kurchenko, A.I.). Approved and put into effect by Resolution No. 32 of Goskomsanepinadzor of Russia of October 28, 1996. Similar SanPins are in effect in other countries, for example SanPin 9-72 RB 98 (Belarus).

<sup>23</sup> Annex 4 (normative). HYGIENIC REQUIREMENTS FOR RESTRICTING THE ADVERSE IMPACTS OF WHOLE-BODY VIBRATION.

A comparison of changes in RF labor laws clearly shows how profession-specific bans that initially only applied to women of childbearing age (i.e. women who could potentially become pregnant and are therefore in need of “protection of their reproductive function”) were extrapolated to apply to all women without exception

For example, “The Fundamental Principles of RF Labor Protection Laws” (1993) set these kinds of bans **“for women of childbearing age, persons under the age of 21, and persons who have medical contraindications for certain jobs:**<sup>24</sup>

Article 6. RESTRICTIONS ON ARDUOUS, HARMFUL, OR DANGEROUS JOBS

Arduous, harmful, or dangerous jobs are banned for **women of childbearing age, persons under the age of 21, and persons who have medical contraindications for certain jobs.**

When a worker shows signs of a job-related illness or a worsening health condition caused by harmful or dangerous workplace factors, employers must, on the basis of a medical opinion, transfer that worker to another job following the established procedure.

The list of arduous, harmful, and dangerous jobs is approved by the Council of Ministers – Government of the Russian Federation with due consideration for consultations with employer associations and trade unions as represented by their corresponding bodies and other authorized workers of representative bodies. Constituent entities of the Russian Federation may add to the list of these jobs.

The law “On the Fundamental Principles of Labor Protection in the Russian Federation” (1999),<sup>25</sup> which replaced “The Fundamental Principles of RF Labor Protection Laws” quoted above, extends profession-specific bans **to all women:**

Article 10. RESTRICTIONS ON THE PERFORMANCE OF ARDUOUS, HARMFUL, AND DANGEROUS JOBS

**1. Arduous, harmful and dangerous jobs are banned for women, persons under the age of 18, and persons who have medical contraindications for these jobs.**

2. The list of arduous, harmful, and dangerous jobs banned for women and persons under the age of 18 is approved by the Government of the Russian Federation with due consideration for consultations with All-Russian employer associations and All-Russian trade unions organizations.

Restrictions and bans for **all** women entered into the current RF Labor Code (amended in 2006),<sup>26</sup> which absorbed the law “On the Fundamental Principles of Labor Protection” quoted above:

Article 253. JOBS RESTRICTED FOR WOMEN

Harmful and (or) dangerous jobs, as well as for jobs underground, with the exception of non-manual labor and health and household services, **are restricted for women.**

Jobs involving the lifting or moving by hand of object exceeding the maximum allowable norms for these objects **are banned for women.**

Lists of harmful and (or) dangerous industries, jobs, and positions restricted for women and the maximum allowable loads for women when lifting and moving heavy objects by hand are approved following the procedure established by the Government of the Russian Federation with due consideration for the opinion of the Russian Tri-lateral Commission on Regulating Social and Labor Relationships.

<sup>24</sup> “The Fundamental Principles of RF Labor Protection Laws.” Approved by the RF Supreme Soviet on August 6, 1993, No. 5600-1, became invalid in 1999.

<sup>25</sup> Federal Law No. 181-FZ “On the Fundamental Principles of Labor Protection in the RF” of July 17, 1999 became invalid in 2006 in connection with changes to the Labor Code (Federal Law No. 90-FZ “On Amendments to the RF Labor Code and the Repeal of Certain Normative Legal Acts of the USSR on the Territory of the Russian Federation and Certain RF Legal Acts (Provisions) that have Become Invalid” of June 30, 2006. Adopted by the State Duma on June 16, 2006. Approved by the Federation Council on June 23, 2006.).

<sup>26</sup> Labor Code of the Russian Federation No. 197-FZ of December 30, 2001 (as amended on July 1, 2017).

The absurdity of bans rationalized as concern about reproductive health becomes clear in the case of transgender women:

*Anna G., who worked in the engraving department of a printing company (Saint Petersburg, Russia), was fired in 2017 after she completed her transition and changed her male documents to female ones. The ground for her dismissal was that she had worked over 12 years in a profession on the list of jobs banned for women.*

Sometimes it is impossible to find a rational explanation for why certain professions are classified as arduous, harmful, and dangerous. For example, in Kyrgyzstan the specific job of salmon beheading is banned within the profession of fish processor. The danger of this specific operation (chopping off heads) in respect of one type of fish gives rise to doubts. Another example: the absurd ban on gathering fruits and seeds from trees higher than 1.3 meters (Belarus).

Naturally, it is impossible to deny the harmful impact of heavy physical loads, noise, vibrations, radiation, and work in low-temperature conditions on the female organism (or, for that matter, on the male organism, including on male reproductive functions). However, instead of developing preventative medicine aimed at treating work-related illness, laws and practice in the countries concerned prefer to simply ban women — all women, regardless of age, with children, desiring to have children in the future, not desiring to have children, or unable to have children — from accessing a large number of professions.

## EXPLAINING BANS BY COMPLEXITY OF WORK

The “Hygienic Requirements...” (SanPin) go far beyond the realm of concern for women’s reproductive functions: it sets norms for women in respect of not just physical load, but intellectual and emotional load as well, which leaves women with second-rate positions that do not carry too much responsibility (“the degree of risk for the safety of other persons is excluded”). The norms even indicate that the presence of women at the workplace requires additional efforts from senior managers. Women are assigned simple, derivative work tasks:

### Intensity of the Labor process<sup>27</sup>

8.	Intellectual Loads	
8.1.	Scope of work	Resolving simple, alternative tasks following instructions
8.2.	Understanding and evaluating signals (information)	Understanding signals and then adjusting actions and operations
8.3.	Degree of task difficulty	Processing and performing tasks and checking them
8.4.	Nature of work performed	Work following a set schedule with possible correction during the activity

10.	Emotional Loads	
10.1.	Degree of responsibility. Significance of error	Bears responsibility for the functional quality of back-office work. Entails additional efforts from senior managers (crew leader, foreman, etc.).
10.2.	Degree of risk for own life	Excluded
10.3.	Degree of risk for the safety of others	Excluded

The RF Supreme Court stated its opinion on the “inability” of women to withstand the “high tension of the labor process” and carry a great responsibility in its decision in the case of A. Klevets (2009),<sup>28</sup> who attempted without success to appeal the ban on the profession of metro engineer. In its decision, the Supreme Court quoted the SanPin norms with which work as an engineer does not correspond:

*“This type of work is characterized by special conditions for the organization of labor – the continuous and uninterrupted nature of the work process and a shift-based regime of work, including during business hours. The work of people in this specialization frequently occurs under acute time pressure combined with great responsibility for life and the integrity of material items. During work hours, a high level of attention and concentration must be maintained, along with the ability to react quickly to numerous sound and light signals and to remember a large amount of instructional material, pursuant to which information must be adapted, and work out correct decisions and perform certain operational actions quickly and in a timely manner. This work is carried out in conditions of monotony and physical inactivity, mainly in a sitting position in front of an instrument panel. An electrical train engineer works in the specific*

<sup>27</sup> Table 4. Indicators of Allowable Workload.

<sup>28</sup> Ruling No. KAS09-196 of the RF Supreme Court “On upholding Decision No. GKPI09-36 of the RF Supreme Court of March 2, 2009, which denied the petition to find Clause 374 of Section XXX of the List of Arduous, Harmful, and Dangerous Jobs Banned for Women invalid, approved by RF Government Resolution No. 162” of May 21, 2009.



*conditions of underground spaces. A train must be operated according to a strict schedule with a degree of accuracy ranging from 10 to 15 seconds. At the same time, engineers must control the operation of the train's mechanisms, the operability of all the electromechanical systems for control and the safety of passengers entering and exiting the train, the state of the tracks between stations, and the display of lights and signals. The number of important signals interpreted by an engineer within the course of a shift amounts to 1,233 to 2,398 signals."*

Clearly, sanitary norms supporting the "scientific-medical viewpoint" that women are not capable performing complicated and demanding tasks requiring concentration and quick decision-making are utterly unsound.

# LIST OF BANNED PROFESSIONS, THE ILO, AND UNIONS

In Soviet times, lists of banned professions were endorsed by unions (see the joint resolution of Resolution of the USSR State Committee on Labor and Social Matters and the Presidium of the All-Union Central Soviet of Professional Unions, which approved a list in 1978). The same system has been retained in a number of countries: requirements to harmonize lists of banned professions with unions are contained in the labors codes of Russia (Article 253 – “with due consideration for the opinion of the Russian Tri-lateral Commission on Regulating Social and Labor Relationships”), Moldova (Article 248 – “after consultations with employers and trade unions”), and Uzbekistan (Article 225 – “upon consultation with Federation Council of Unions of Uzbekistan and representatives of employers”).

Unions generally do not have any understanding of the discriminatory nature of profession-specific bans for women: they believe that this is a protective measure to improve labor conditions for women. For example, unions in Ukraine have come out against the revocation of these lists. ЦИТАТА There are, however, exceptions: The Russian Union of Sailors supported Svetlana Medvedeva in her fight for the revocation of a ban on working as a helmsperson on a river craft.<sup>29</sup>

Clearly, tripartism (the government, workers (represented by unions), and employers (represented by associations of employers) in harmonizing lists is dictated by the requirements of the International Organization of Labor (ILO), whose role in the creation of profession-specific bans for women is most likely to be negative.

For example, all the countries concerned have ratified ILO Convention No. 45 “Concerning the Employment of Women on Underground Work in Mines of all Kinds” (1935):

Article 2.

No female, whatever her age, shall be employed on underground work in any mine.

Article 3.

National laws or regulations may exempt from the above prohibition—

- (a) females holding positions of management who do not perform manual work;
- (b) females employed in health and household services;
- (c) females who, in the course of their studies, spend a period of training in the underground parts of a mine; and
- (d) any other females who may occasionally have to enter the underground parts of a mine for the purpose of a non-manual occupation.

In the Soviet Union, this ban entered into effect in 1957, but it was expanded: women were banned from working not just “on jobs underground in the mining industry,” but also “on the construction of underground structures, with the same exceptions stipulated in Article 3 of ILO Convention No. 45.”<sup>30</sup>

In the current RF Labor Code, this ban has been extended to **all jobs underground**, without specification of the mining industry (Article 253). As a result of this extrapolation, it is impossible to appeal bans on jobs underground of other types (for example, operating metro trains): in the case of A.

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<sup>29</sup> The resolution “On the Violation of the Right of Women to Work in Their Career or Profession of Choice in Respect of Opportunities to Work as Crew Members on River and Sea Vessels” was adopted at the VIII congress of the Russian Union of Sailors on November 11, 2016. Report on the union’s website on January 27, 2017: “Russian Union of Sailors Directs Ministry of Labor’s Attention to Gender Problems in the Maritime Industry.” [http://www.sur.ru/ru/news/lent/2017-01-26/rpsm\\_obratil\\_vnimanie\\_mintruda\\_na\\_gendernye\\_problemy\\_sudokhodnoj\\_otrasli/](http://www.sur.ru/ru/news/lent/2017-01-26/rpsm_obratil_vnimanie_mintruda_na_gendernye_problemy_sudokhodnoj_otrasli/)

<sup>30</sup> Resolution No. 839 of the USSR Council of Ministers “On Measures to Replace Female Labor on Underground Jobs in the Mining Industry and on the Construction of Underground Structures” of July 13, 1957.

Klevets, who appealed a ban on the job of metro engineer, the RF Supreme Court cited Article 253 of the RF Labor Code, which bans all jobs underground, and even pointed to the difficulty of working as an engineer due to the “specific conditions of work in underground spaces.”<sup>31</sup>

We see the extrapolation of “ban on jobs in mines” to “ban on all jobs underground” in the labor codes of Moldova, Ukraine, Kyrgyzstan, and Tajikistan. Azerbaijan’s Labor Code bans jobs “in underground tunnels, mines, and other jobs underground” (Article 241), while Turkmenistan’s Labor Code (Article 243) does not mention jobs underground but does contain wording identical to the wording in the ILO Convention and Soviet laws—“non-manual labor and health and household services.” It is clear what they mean by this.

The correspondence of Azerbaijan’s labor laws to ILO norms, including Convention No. 45 (1935) concerning the ban on women working in mines, which was ratified by Azerbaijan in 1992, is seen by the authorities of this country as an argument in favor of retaining the list of banned professions.<sup>32</sup>

Ukraine’s ratification of ILO Convention No. 45 became a barrier at the very final stage of the campaign to revoke the list in this country: after the revocation was agreed on by all agencies involved, the technical question of how to overcome the effect of Convention No. 45 concerning a ban on jobs for women in mines. It was clear that the effect of the field-specific Convention No. 45 should not be a barrier for revoking bans on professions in other spheres and branches (at the time of revocation, 458 professions were banned for women in Ukraine). It should be noted that ILO Convention No. 45 has been denounced by the majority of countries in the European Union.

The current ILO Convention No. 45 contradicts the ILO’s recommendations to Russia (2010)<sup>33</sup> to review the approach to “protective measures,” which appear to deprive women of equal access to labor. However, Russia has ignored these recommendations and done nothing to reform the list of professions banned for women.

**Thus, the outdated ILO Convention of 1935, which continues to be interpreted broadly by lawmakers and unions, has now become a barrier to overcoming discrimination against women in the sphere of labor. The ILO’s recommendations to Russia to revoke the list of banned professions (2010) were not implemented.**

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<sup>31</sup> See footnote 10.

<sup>32</sup> Comments of Elman Babayev, head of the Public Relations Department of the Ministry of Labor and Social Protection of the Population of Azerbaijan, in the media: In Azerbaijan, women are banned from dangerous work – COMMENTS of the Ministry. February 5, 2017. <http://baku.ws/86433-v-azerbaydzhane-zhenschinam-zapretyat-opasnuyu-rabotu-kommentariy-ministerstva.html>

<sup>33</sup> International Labor Conference, 99th Session, 2010. Report of the Committee of Experts on the Application of Conventions and Recommendations. Report III (Part 1A). General Report and observations concerning particular countries. See the Recommendations for Russia on pgs. 450-452. [http://www.ilo.org/public/libdoc/ilo/P/09661/09661\(2010-99-1A\).pdf](http://www.ilo.org/public/libdoc/ilo/P/09661/09661(2010-99-1A).pdf)

# LISTS OF BANNED PROFESSIONS FOR WOMEN IN THE FORMER SOVIET REGION

## UKRAINE: THE STORY OF A SUCCESSFUL FIGHT TO CANCEL THE LIST

Ukraine, which chose the path to European integration, completed an enormous amount of work to bring its laws into correspondence with international standards, but the problem of profession-specific bans for women was forgotten and left unresolved when amendments were made to labor laws. However, there was success making this problem a topic of social and parliamentary debate as a result of the combined efforts of human rights defenders, activists, experts, and interested deputies of the Verkhovna Rada.

The problem of the Ukrainian list of banned professions was first raised by ADC Memorial and the Center for Social and Gender Research in an alternative report submitted for the 66th session of CEDAW (2017). This list, which consists of 458 professions, was approved by the authorized agency (the Ministry of Health) and had been in effect in Ukraine since 1993.<sup>34</sup> Experts pointed out the contradiction between profession-specific bans and the adopted laws “On the Principles for Preventing and Combatting Discrimination in Ukraine” (No. 5207-VI of September 6, 2012) and “On Ensuring Equal Rights and Opportunities for Men and Women” (No. 2855-IV of September 8, 2005), the Code of Labor Laws, which was complemented with a ban on discrimination in the labor sphere on the basis of gender (Article 2-1 of the Code of Labor Laws),<sup>35</sup> sexual orientation, and gender identity.<sup>36</sup>

In the absence of any judicial practice appealing discriminatory laws in the labor sphere, proponents of the revocation selected the tactic of advocacy at the local and international levels within the framework of the All Jobs for All Women campaign.

CEDAW expressed concern with “36 b) The list of occupations that are prohibited for women, which covers a wide range of occupations and branches where there is no objective justification for the prohibition, thereby limiting women’s economic opportunities and access to responsibilities in a number of areas, in particular in the military, agriculture and industry” and recommended to “37 (c). **Review the list of prohibited occupations and sectors and promote and facilitate the access for women to previously prohibited occupations by improving working conditions and occupational health and safety.**”<sup>37</sup>

After the publication of CEDAW’s recommendations to Ukraine in March 2017, the authors of an alternative report were able to interest Svetlana Voytsekhovskaya, a deputy in the Verkhovna Rada, in the implementation of these recommendations, and she began to promote the revocation of the list at the parliamentary level.

The fight for the list’s revocation was not easy: unions and members of the academic community (medical professionals) came out against the revocation during public discussion with the state. The

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<sup>34</sup> Order of the Ministry of Health “On the Approval of a List of Arduous, Harmful, and Dangerous Jobs Banned for Women” of December 29, 1993, <http://zakon2.rada.gov.ua/laws/show/z0051-94>.

<sup>35</sup> Code of Labor Laws of Ukraine, <http://zakon5.rada.gov.ua/laws/show/322-08>.

<sup>36</sup> In accordance with the law “On Amendments to the Code of Labor Laws of Ukraine in Respect of Harmonizing Laws in the Sphere of Preventing and Combatting Discrimination with European Union Law” (No. 785-VIII of November 12, 2015).

<sup>37</sup> Concluding observations on the eighth periodic report of Ukraine. March 9, 2017. CEDAW/C/UKR/CO/8. [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fUKR%2fCO%2f8&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fUKR%2fCO%2f8&Lang=en)

last technical barrier along the path to revocation was Ukraine's ratification of ILO Convention No. 45 (1935) banning jobs in mines for women (see above), and a significant amount of time was needed to overcome it: the order of the Ministry of Health to revoke the list of banned professions for women was dated October 13, 2017, but only registered with the Ministry of Justice on December 14, 2017. It entered into effect on the day of its official publication, but the bans on underground work will only be revoked when Ukraine renounces ILO Convention No. 45.<sup>38</sup>

Even though the revocation of professional bans for women has entered into effect, references to the list of banned professions are still contained in the Code of Labor Laws (Article 154). The revocation of the outdated Ministry of Health order is an important victory, but Ukrainian lawmakers must now make amendments to the Code of Labor Laws—the foundational document of labor law.

## **MOLDOVA: A FORGOTTEN ANACHRONISM**

Even though Moldova has long been associated with the European Union, its residents can travel to the EU without a visa, and, to satisfy EU requirements, it has adopted a comprehensive anti-discrimination “Law on Ensuring Equality” (2013) and has an effective anti-discrimination body known as the Council for Prevention and Elimination of Discrimination and Ensuring Equality, the Labor Code of the Republic of Moldova (2003)<sup>39</sup> still contains Article 248, which bans the labor of women in a number of branches of industry and introduces a list of 331 banned professions.<sup>40</sup>

Revocation of the list was not even furthered by a decision of the Council on Equality (2015) the found the list of banned profession for women discriminatory.<sup>41</sup>

The list of banned professions in Moldova has been forgotten by national and international bodies alike: the topic of banned professions was not raised during the most recent review of Moldova's report at CEDAW (2013); the UN Committee on Social, Economic, and Cultural Rights has not issued recommendations to reform the list, even though the human rights organizations ADC Memorial and PromoLEX raised this problem in their alternative report for this Committee's most recent review of Moldova's report (2017).<sup>42</sup>

**It is clear that the Council on Equality must monitor the implementation of the above mentioned decision and that Moldova's lawmaking body must revoke the list of banned professions for women.**

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<sup>38</sup> Order No. 1254 of the Ministry of Health of Ukraine of October 13, 2017 “On the Revocation of Order No. 246 of the Ministry of Health of December 29, 1993.” <http://zakon2.rada.gov.ua/laws/show/z1508-17>

<sup>39</sup> Labor Code of the Republic of Moldova of March 28, 2003. <http://lex.justice.md/viewdoc.php?id=326757&lang=2>

<sup>40</sup> Resolution No. 264 of the Government of the Republic of Moldova of October 6, 1993: Privind aprobarea Nomenclatorului industriilor, profesiilor și lucrărilor cu condiții de muncă grele și nocive, proscrie femeilor și Normelor de solicitare maximă, admise pentru femei la ridicarea și transportarea manuală a greutăților. <http://lex.justice.md/viewdoc.php?id=300608&lang=1>

<sup>41</sup> Decision No. 273.15 of the Council on Equality of September 9, 2015. [http://egalitate.md/wp-content/uploads/2016/04/decizie\\_273\\_2015\\_depersionalizat\\_6154520-1.pdf](http://egalitate.md/wp-content/uploads/2016/04/decizie_273_2015_depersionalizat_6154520-1.pdf)

<sup>42</sup> Joint Submission of ADC Memorial and PromoLEX Association for the 62nd session of the UN CSECR (2017). [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolNo=INT%2fCESCR%2fCSS%2fMDA%2f28720&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=INT%2fCESCR%2fCSS%2fMDA%2f28720&Lang=en)



## KAZAKHSTAN: A WINDOW OF OPPORTUNITY DURING THE TRANSFER OF POWERS FROM THE MINISTRY OF HEALTH TO THE MINISTRY OF LABOR

In reviewing Kazakhstan's most recent report (2014), CEDAW expressed concern "about the persisting gender pay gap, the high level of unemployment among women and the long list of prohibited occupations for women, totaling 299 professions." The Committee recommended "29 (c) To review the list of prohibited areas of work for women and consider improving working conditions for such areas of work which are considered to be hazardous to the health of women, with a view to facilitating women's entry into such occupations."<sup>43</sup>

In spite of these recommendations, recent reforms to Kazakhstan's labor laws (2015) have not resulted in the revocation of the list of banned professions: the list's most recent version, which includes 287 professions, was approved by order of the minister of health and social development of the Republic of Kazakhstan on December 8, 2015.<sup>44</sup> This list was retained despite a 2014 discussion of its advisability: in particular, the Ministry of Labor and Social Protection and the National Commission on Women's Affairs and Family and Demographic Relations discussed reforming or even completely revoking this list to harmonize Kazakhstan's laws with international standards, including ILO standards.<sup>45</sup>

Kazakhstan's new labor code (2015) mentions the list of banned professions (without an extensive description of the nature of bans) in Article 16, which regulates the powers of the state agency responsible for labor matters, including for approving the list.<sup>46</sup> In the Code's previous version (2007), an extensive description of the list of banned professions for women was contained in Article 186.<sup>47</sup>

In 2017, authority over labor matters was transferred to the Ministry of Labor and Social Protection of the Population from the Ministry of Health and Social Development,<sup>48</sup> which presented the opportunity for again raising the question of revoking the list of banned professions. In the summer of 2017, Minister of Labor Tamara Duysenova promised to review the list.<sup>49</sup> Human rights defenders like Ayna Shormanbayeva, president of the International Legal Initiative Foundation, have spoken out in support of the full revocation of this list.<sup>50</sup>

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<sup>43</sup> Concluding observations on the combined third and fourth periodic reports of Kazakhstan. CEDAW/C/KAZ/CO/3-4. 10.03.2014. [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fKAZ%2fCO%2f3-4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fKAZ%2fCO%2f3-4&Lang=en)

<sup>44</sup> Order No. 944 of the Ministry of Health and Social Development of the Republic of Kazakhstan of December 8, 2015 "On the Approval of a List of Jobs Banned for Workers Under the Age of 18 and Maximum Norms for Carrying and Moving Heavy Objects by Workers Under the Age of 18, and A List of Jobs Banned for Women and Maximum Norms for Lifting and Moving Objects by Hand by Women." [http://online.zakon.kz/Document/?doc\\_id=35844164#pos=0;98](http://online.zakon.kz/Document/?doc_id=35844164#pos=0;98)

<sup>45</sup> Comments to media by Makhabbat Bekbosynova, Chair of National Commission of the Republic of Kazakhstan on Women's Affairs and Family and Demographic Relations: Kazakhstan intends to shorten the list of professions banned for women. June 22, 2014. [http://www.kursiv.kz/news/obshestvo/kazakhstan\\_nameren\\_sokratit\\_spisok\\_professiy\\_zapreshchennykh\\_dlya\\_zhenshchin/](http://www.kursiv.kz/news/obshestvo/kazakhstan_nameren_sokratit_spisok_professiy_zapreshchennykh_dlya_zhenshchin/)

<sup>46</sup> Labor Code of the Republic of Kazakhstan No. 414-V of November 23, 2015 (with amendments and additions as of June 13, 2017). [http://online.zakon.kz/Document/?doc\\_id=38910832#pos=0;0](http://online.zakon.kz/Document/?doc_id=38910832#pos=0;0)

<sup>47</sup> Labor Code of the Republic of Kazakhstan No. 252-III of May 15. Became invalid on January 1, 2016. [http://online.zakon.kz/Document/?doc\\_id=30103567#pos=0;0](http://online.zakon.kz/Document/?doc_id=30103567#pos=0;0)

<sup>48</sup> Resolution No. 81 of the Government of the Republic of Kazakhstan of February 18, 2017 "On Several Matters of the Ministry of Labor and Social Protection of the Population of the Republic of Kazakhstan."

<sup>49</sup> Press conference of Minister of Labor Tamara Duysenova. Media report "List of Banned Professions for Women to be Reviewed in Kazakhstan." June 13, 2017. <http://www.kazpravda.kz/en/news/society/list-of-banned-occupations-for-women-will-be-updated-in-kazakhstan/>

<sup>50</sup> Interview with Anna Shormanbayeva: Proposal to Revoke the List of Banned Professions for Women. October 26, 2017. <https://rus.azattyq.org/a/spisok-zapreshchennykh-professiy-zhenshchiny/28816445.html>

## **BELARUS: THE LIST OF BANNED PROFESSIONS IS NOT BEING REVIEWED DESPITE CEDAW RECOMMENDATIONS AND THE EFFORTS OF HUMAN RIGHTS DEFENDERS**

Belarus' list of banned professions has undergone the greatest number of structural changes in comparison with the lists of other countries (for more on this, see the section **The History, Content, and Structure of the List of Professions Banned for Women**) and includes 181 specific professions and 42 spheres of work. A tremendous amount of bureaucratic work was done to divide banned professions and jobs into four tables and assign a special code to each profession. All these efforts attest to the fact that the Belarusian government considers profession-specific bans for women to be a necessary part of national policy in the labor sphere.

The issue of the list of banned professions was raised in an alternative report by ADC Memorial and Her Rights Center submitted for CEDAW's 65<sup>th</sup> session in 2016.<sup>51</sup> The Committee agree with the arguments presented by the human rights defenders regarding the discriminatory nature of the list and expressed concern that "(a) The Labor Code, which includes a list of a significant number of professions prohibited to women, allegedly to protect their health, in particular their reproductive health; (b) The failure of employers to create sufficiently safe conditions, in line with exemptions to the above-mentioned list provided for by law."

CEDAW recommended that Belarus **"Review the restricted list of professions to ensure that it covers only restrictions that are absolutely necessary for the protection of maternity in the strict sense, and promote and facilitate the entry of women into previously prohibited jobs by adopting temporary special measures."**<sup>52</sup>

The Government of Belarus has not yet taken any measures to implement this recommendation and has ignored the opinion of defenders of women's right to labor.

## **TAJIKISTAN: CEDAW RECOMMENDATIONS IGNORED DURING RECENT REFORMS OF LABOR LAWS**

After reviewing Tajikistan's most recent report (2013), CEDAW expressed concern "about the potentially negative impact on women of sections 160 and 161 of the Labor Code, which appear to be overly protective of women as mothers and prohibit employers from hiring women for underground work, heavy work and work in harmful conditions, thereby limiting women's economic opportunities in a number of areas" (Paragraph 25 d)) and recommended **"To carefully review and analyze the impact of sections 160 and 161 of the Labor Code and make the amendments necessary to ensure the health and safety of all women workers and that they enjoy equal economic opportunities"** (Paragraph 26)).<sup>53</sup>

Nevertheless, during the 2015 revision of the Labor Code, which occurred after the above recommendations were received from CEDAW, the list of banned professions (the most recent version was approved in 2017 and consists of 326 professions) was retained, as was the Labor Code article introducing it: now this is Article 216, which has been slightly reworded in comparison with the former Article 160.

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<sup>51</sup> Discrimination against Women in Belarus in the Employment Sphere. Alternative Report on Compliance with the Convention on the Elimination of all Forms of Discrimination against Women. Prepared by the Anti-Discrimination Centre Memorial with the assistance of Her Rights Center for the 65th session of CEDAW, 2016. <https://adcmemorial.org/wp-content/uploads/BeENGwww.pdf>

<sup>52</sup> Concluding observations on the eighth periodic report of Belarus. Paragraphs 32 a) and b) and Paragraph 33 a). CEDAW/C/BLR/CO/8. 18.11.2016. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/402/62/PDF/N1640262.pdf?OpenElement>

<sup>53</sup> Concluding observations on the combined fourth and fifth periodic reports of Tajikistan. CEDAW/C/TJK/CO/4-5. 25.10.2013. [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fTJK%2fCO%2f4-5&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fTJK%2fCO%2f4-5&Lang=en)

There still has not been any noticeable public debate about lists of professions banned for women in Tajikistan.

## **TURKMENISTAN: THE LIST REMAINS IN SPITE OF RECOMMENDATIONS FROM INTERNATIONAL BODIES**

Article 7 of the Labor Code of Turkmenistan, which establishes a ban on gender discrimination in the labor sphere excludes discrimination on the grounds of “restrictions in the labor sphere determined by requirements characteristic of a given type of work or the state’s special concern for persons in need of social and legal protection (women, minor children, disabled persons, and so forth).” In exactly the same way, the law “On State Guarantees of Equality and Equal Opportunity for Men and Women” does not deem “distinctions, exceptions, preferences, and restrictions in the labor sphere determined by requirements characteristic of a given type of work or the state’s special concern for persons in need of social and legal protection, established by the laws of Turkmenistan” (Article 6).<sup>54</sup> Articles 242 and 243 of the Labor Code (most recently amended in 2013) set bans and restrictions for labor by women, even though there is no direct reference to the list of banned professions in Turkmenistan’s Labor Code.<sup>55</sup> Thus, Turkmenistan’s laws contain internal contradictions and introduce a number of restrictions that create obstacles for women’s economic development and impose gender stereotypes, including in the sphere of labor.

International institutions (a number of UN committees, the mechanism of the Universal Periodic Report) have criticized the discriminatory provisions that illegally restrict the right of women to choose a certain profession, as well as the approach itself, which envisages excessive protection for women’s health in the context of imposed motherhood reinforced by negative patriarchal stereotypes about women’s traditional role in society.<sup>56</sup>

The government of Turkmenistan has repeatedly asserted that “protecting motherhood, preserving family values and the role of women in raising the new generation are inherent parts of the national traditions of Turkmen society. Therefore, provisions restricting the employment of women in arduous work, work in harmful conditions and work underground...are not considered to perpetuate negative stereotypes regarding women’s role in society.”<sup>57</sup> Even though the Turkmen government has recognized the need for work to integrate women into socio-economic development, the topic of overcoming profession-specific bans has not been raised in adopted national programs for the socio-economic development of Turkmenistan or the National Action Plan for Gender Equality in Turkmenistan for 2015-2020.

It was not possible to locate information about the specific content of the list of banned professions that is currently in effect in Turkmenistan in open sources, but it is known that in late 2016, the list of

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<sup>54</sup> Law of the Republic of Turkmenistan “On State Guarantees of Equality and Equal Opportunity for Men and Women.” <http://www.turkmenistan.gov.tm/?id=9491>

<sup>55</sup> Labor Code of Turkmenistan (2009, amended in 2013). [http://mlsp.gov.tm/page\\_tdtum/doc/kodeks\\_trud\\_ru.pdf](http://mlsp.gov.tm/page_tdtum/doc/kodeks_trud_ru.pdf)

<sup>56</sup> Recommendations for Turkmenistan by the UN Human Rights Committee (International Covenant on Civil and Political Rights), April 2017.

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/TKM/CO/2&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/TKM/CO/2&Lang=En)

Concluding observations of the Committee on Economic, Social and Cultural Rights, Turkmenistan. December 2011. [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/TKM/CO/1&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E/C.12/TKM/CO/1&Lang=En)

Concluding observations of the Human Rights Committee, Turkmenistan. April 2012. [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FTKM%2FCO%2F1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FTKM%2FCO%2F1&Lang=en)

Recommendations for Turkmenistan during the Universal Periodic Review

[https://www.upr-info.org/sites/default/files/document/turkmenistan/session\\_16\\_-\\_april\\_2013/recommendations\\_and\\_pledges\\_turkmenistan\\_2013.pdf](https://www.upr-info.org/sites/default/files/document/turkmenistan/session_16_-_april_2013/recommendations_and_pledges_turkmenistan_2013.pdf)

<sup>57</sup> Turkmenistan’s report to the UN Human Rights Committee (International Covenant on Civil and Political Rights). October 2015. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/235/91/PDF/G1523591.pdf?OpenElement>

harmful and dangerous jobs, professions, and positions banned to women was in the process of being reviewed and harmonized with the Ministry of Health and the Medical Industry of Turkmenistan and the Turkmenstandartlary State Inspectorate.<sup>58</sup>

## **UZBEKISTAN: CEDAW RECOMMENDED REVIEWING THE LIST OF BANNED PROFESSIONS**

During its consideration of Uzbekistan's most recent report (2015), CEDAW expressed concern that "25 b) The list of occupations that are prohibited for women, which appears to be overly protective, overemphasizes women's role as mothers and places excessive restrictions on working time, overtime work and night work for women, thereby limiting their economic opportunities in several areas." The Committee recommend that Uzbekistan **"26 c) Review the list of occupations and sectors that are prohibited for women, so as to ensure that such a prohibition is strictly necessary for the protection of motherhood and proportionate to the legitimate aim pursued, and promote and facilitate women's access to previously prohibited occupations by improving working conditions and occupational health and safety."**<sup>59</sup>

The authors of this report do not have information about any efforts to review or revoke the list of banned professions in Uzbekistan. This country has the most extensive list, which consists of 477 professions banned for women.<sup>60</sup>

## **KYRGYZSTAN: THE START OF PUBLIC DEBATE**

CEDAW did not raise the topic of the list of jobs banned for women during its review of Kyrgyzstan's most recent report (2015). The Committee gave fairly general recommendations about improving the situation of women in the employment sphere.<sup>61</sup> Kyrgyzstan maintains a ban on 446 professions/jobs that has been in effect since 2000.<sup>62</sup>

Public debate regarding the list of banned professions in Kyrgyzstan started only recently: on January 20, 2018, a youth march in protection of women's rights was held in Bishkek as part of the international campaign International Women's March. Joining the campaign All Jobs for All Women, these young people appealed to the Kyrgyz government to revoke Resolution No. 158 because it violates women's rights to labor.

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<sup>58</sup> Turkmenistan's replies to the list of issues raised by the HRC. November 2016. [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2F%2FTKM%2FQ%2F2%2FAdd.1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2F%2FTKM%2FQ%2F2%2FAdd.1&Lang=en)

<sup>59</sup> Concluding observations on the fifth periodic report of Uzbekistan. CEDAW/C/TJK/CO/5. 24.11.2015. [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fUZB%2fCO%2f5&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fUZB%2fCO%2f5&Lang=en)

<sup>60</sup> List of Jobs with Unfavorable Working Conditions that Fully or Partially Ban the Use of Female Labor (reg. No. 865 of January 5, 2000). "Bulletin of Normative Acts of Ministries, State Committees, and Agencies of the Republic of Uzbekistan, 2000, No. 1. [http://www.lex.uz/pages/GetAct.aspx?lact\\_id=514958](http://www.lex.uz/pages/GetAct.aspx?lact_id=514958)

<sup>61</sup> Concluding observations on the fourth periodic report of Kyrgyzstan. CEDAW/C/KGZ/CO/4/ 11.03.2015. [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fKGZ%2fCO%2f4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fKGZ%2fCO%2f4&Lang=en)

<sup>62</sup> Resolution No. 158 of the Government of the Kyrgyz Republic "On the List of Industries, Jobs, Professions, and Occupations with Harmful and (or) Dangerous Work Conditions where Use of Female Labor is Banned" (as amended by resolutions of the Kyrgyz Republic No. 239 of June 17, 2005 and No. 656 of September 27, 2012).

## **AZERBAIJAN: VAGUE INFORMATION ON PLANNED REFORMS**

Azerbaijan's list of professions banned for women (1999) is reminiscent in structure and content to the Russian list and consists of over 400 professions. In 2016, after its review of Azerbaijan's state report, CEDAW expressed concern "continued horizontal and vertical segregation in the labor market, whereby women are concentrated in lowpaid and informal jobs; the wide gender wage gap; the lack of childcare facilities; and the lower pension benefits for women as compared with men."<sup>63</sup> The topic of banned jobs for women was not raised by CEDAW.

Reports in the media (2017) state that Azerbaijan is apparently considering amending labor laws with due consideration for contemporary international standards,<sup>64</sup> but there is no information to confirm this.

## **GEORGIA AND ARMENIA: LISTS CANCELLED, BUT REFORMS STILL NEEDED**

Without any efforts on the part of human rights defenders, the list of professions banned for women was revoked in Georgia and Armenia as part of the process of adapting these countries' laws to EU requirements. This reform, however, has been incomplete: profession-specific bans continue to exist in these countries for certain groups of women (pregnant women and mothers of children under the age of one year in Armenia and nursing or pregnant mothers in Georgia).

In Armenia, bans on the labor of pregnant women and women caring for children under the age of one (and minors) are regulated by Resolution No. 2308-N of the Government of the Republic of Armenia of December 29, 2005, adopted in the implementation of articles 257 "Work for Persons Under the Age of 18" and 258 "Protection of Motherhood" of the Labor Code.<sup>65</sup>

Armenia's now-revoked list of 330 banned professions was approved by Resolution No. 520 of the Government of Armenia "On Certain Priority Measures to Protect Motherhood and Childhood and Strengthen the Family" of November 9, 1994 and Annex 3 to this resolution. This resolution was adopted in the implementation of Decision No. 6-0348-I of the Supreme Court of the Republic of Armenia, issued in 1991, which became invalid on January 4, 2007. Accordingly, the list of banned professions also became invalid on this date.

It should be noted that, unlike the bans for all women declared in the lists of other countries, Armenia's list related only to pregnant women and women of child-bearing age (as well as to minors and persons with the limited ability to work).<sup>66</sup>

Armenia's unique situation is due to the fact that Armenia agencies responsible for labor issues had no idea that this list existed or had been cancelled: this document was absolutely not relevant in the country. The Ministry of Labor and Social Issues required a significant amount of time and effort to sort through legal acts approving or revoking the list and send a written response in the queries of human rights defenders (2017).<sup>67</sup> At the time of this response (April 2017), these legal acts were listed as current in the official reference source.

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<sup>63</sup> Concluding observations on the fifth periodic report of Azerbaijan. CEDAW/C/AZE/CO/5/ 12.03.2015. [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fAZE%2fCO%2f5&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fAZE%2fCO%2f5&Lang=en)

<sup>64</sup> Comments of Elman Babayev, head of the Public Relations Department of the Ministry of Labor and Social Protection of the Population of Azerbaijan, in the media: In Azerbaijan, women are banned from dangerous work – COMMENTS of the Ministry. February 5, 2017. <http://baku.ws/86433-v-azerbaydzhane-zhenschinam-zapretyat-opasnuyu-rabotu-kommentariy-ministerstva.html>

<sup>65</sup> Labor Code of Armenia (2004). <http://parliament.am/legislation.php?sel=show&ID=2131&lang=rus>

<sup>66</sup> Annex No. 3 to Government Resolution RAN 520 of November 9, 1994. A List of Industries, Professions, and Jobs with Arduous, Harmful, or Dangerous Working Conditions the are Banned for Pregnant Women, Women of Childbearing Age, Minors, and Persons with Limited Abilities to Work.

<sup>67</sup> Reply of the Ministry of Labor and Social Matters of the Republic of Armenia to the query from the Civil Society Institute. April 2017. ADC Memorial archives.



There was also an Annex 2 to the abovementioned revoked government resolutions No. 520: “A List of Jobs and Professions Mainly Employing Women, Minors, and Persons with the Limited Ability to Work.” The name of this list is unclear (insofar as it was of a normative-prescriptive nature), but it is symptomatic that women are viewed as persons with the limited ability to work and they are assigned positions in rare branches of industry (bread and candy production, narrow fabrics and felt production, food services, etc.), as well as in such dull professions as dishwasher, laundry women, and elevator operator.

It can be said that this view of women in the labor sphere still reigns today in Armenia: upon consideration of Armenia’s most recent report (2016), CEDAW rightly expressed concern about “persistent vertical and horizontal gender segregation in the labor market, the high unemployment rate among women and the concentration of women in part-time work and low-paid jobs in the informal sector.” The Committee was further concerned by “the low representation of women in management positions and the persistent gender wage gap” and “by the existence of a list of professions declared dangerous for women, which reinforces discriminatory stereotypes and occupational segregation.” The Committee recommended that Armenia reject profession-specific bans for women.<sup>68</sup>

Georgia’s current Labor Law bans “the entry into labor contracts with minors, pregnant women, and nursing mothers to perform arduous, harmful, or dangerous work” (Clause 5 of Article 4). Clause 8 of Article 35 reads “The list of arduous, harmful, and dangerous jobs, rules for occupational safety, including cases and rules for the periodic medical examination of workers at the expense of their employers, shall be determined by the laws of Georgia.” Article 54 of the Labor Code orders the Ministry of Labor, Health, and Social Protection of Georgia to develop and approve “a list of arduous, harmful, and dangerous jobs, as well as a list of cases and rules for a periodic mandatory medical examination of workers at the expense of employers until July 1, 2017” (Clause 1 6).<sup>69</sup> Resolution No. 147/n of the Ministry of Labor, Health, and Social Protection “On the Approval of a List of Arduous, Harmful, and Dangerous Jobs” of May 3, 2007.

The bans on the labor of pregnant women and (nursing) mothers of young children that have been left in effect leave both potential workers, whose access to labor is being restricted, and employers, whom women can choose not to inform that they are pregnant or nursing, in a tricky situation. The results of these bans are predictable: an employer may refuse to hire women because of costly socioeconomic obligations (payment of possible maternity leave, sick leave, etc.) and because they fear penalties for hiring people from the “banned” category.

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<sup>68</sup> Concluding observations of CEDAW on the combined fifth and sixth periodic reports of Armenia. 18.11.2016. CEDAW/C/ARM/CO/5-6.

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/402/30/PDF/N1640230.pdf?OpenElement>

<sup>69</sup> Labor Code of Georgia (2010). <https://matsne.gov.ge/ru/document/view/1155567>

## CONCLUSION

The restriction on women's employment in the form of existence of so-called "lists of banned professions" is a widespread practice in the countries of the region. As a matter of fact, these bans concern over 100 million women, living in countries with high unemployment rate, a significant gap in salaries of women and men and high percentage of persons living below the poverty line. All together, this results in socio-economic vulnerability of women, aggravated by discriminatory rejections of the jobs recognized as "harmful" or "dangerous."

The fact that this situation discriminates women has been clearly proven: the decision of the UN CEDAW on the case of Svetlana Medvedeva shows that the ban prohibiting a woman to work as an engineer on board a ship, contradicts the UN Convention on the Elimination of All Forms of Discrimination Against Women, one of the most important Human Rights conventions ratified by all countries of the region. The Committee has not only recognized violation of the rights of Ms Medvedeva, but also recommended the Russian government to abolish the list of banned professions and to end the discriminatory practice. A similar position is taken by the Committee of Experts on the Application of Conventions and the Recommendations of the International Labour Organisation (ILO); this Committee regards the existence of lists of professions banned for women as a violation of the fundamental ILO Convention № 111 concerning discrimination (this Convention has also been ratified by all countries of the region).

Attempts to justify the bans by the norm of the ILO Convention №45 that prohibits work of women in mines (exercised both by high courts, like the the Constitutional Court of Russia in the case of Anna Klevets in 2012 and by the governments, like the opinion of the Ministry of Labour of Azerbaijan) ignore the much more important norm of international law – the ILO Convention № 111 that directly prohibits refusing jobs to women because of their sex.

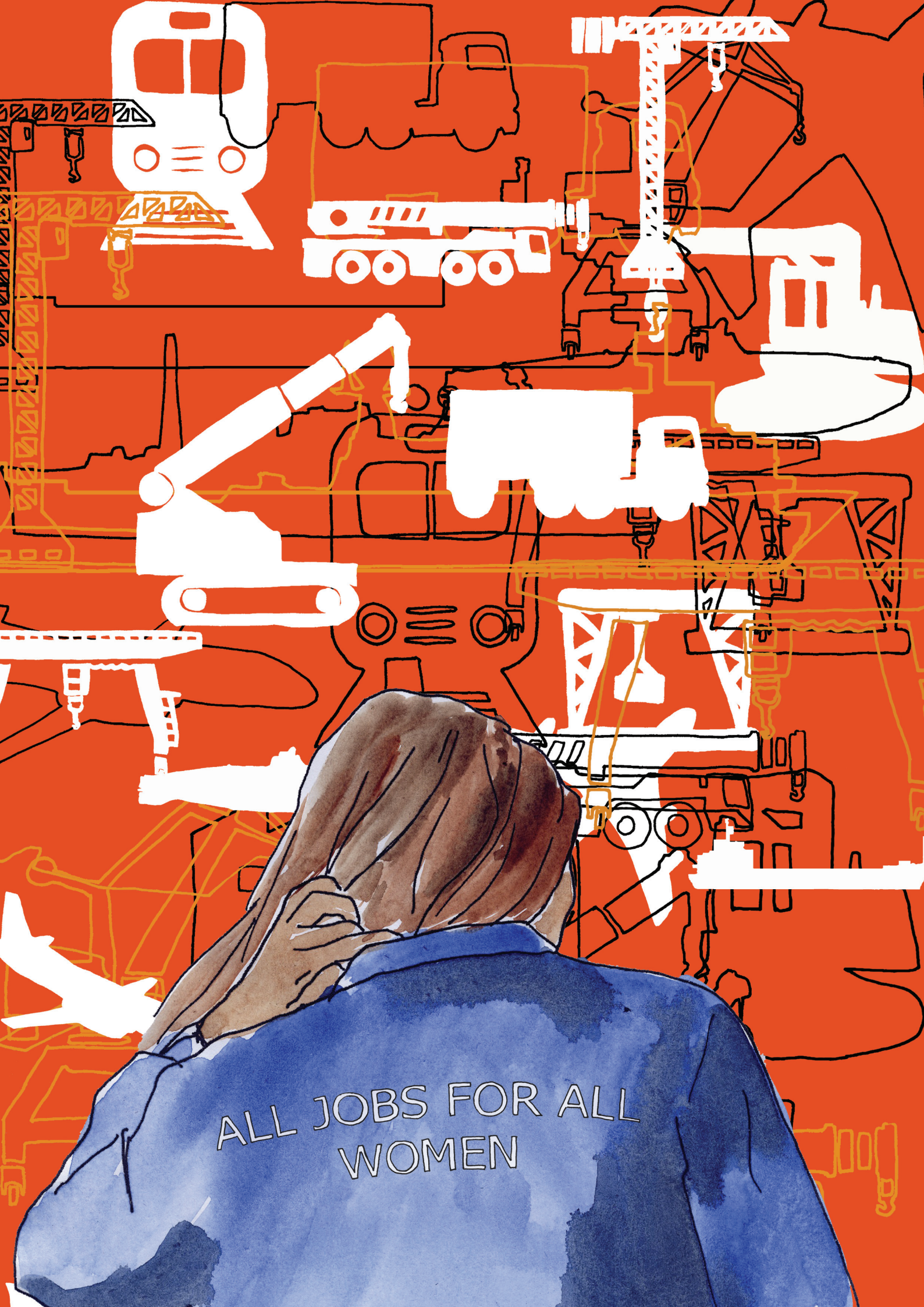
The argument of "protective function" of the ban is in fact discriminative itself: women don't need protection from deciding themselves on issues like to have children or not; what matters more to them: the reproductive function or career; the "traditional role of the procreator" or income. In case that some type of work is harmful for pregnancy – it is essential to warn women who want to take this job, but not to forbid something to all women. The discriminatory impression makes also the total ban on certain work for pregnant or breastfeeding women and mothers of children under three years old: it's sufficient to give women in such situations the right to refuse from carrying out certain tasks, but not to decide for them, whether they are allowed to work or not. It is unacceptable when an employer has to persuade women employees or candidate employees to reveal their pregnancy or motherhood. Women must have the right to receive benefits entitled to pregnant women and mothers, but no law should oblige a woman to refuse from her job on the pretext that she might get pregnant, is pregnant or have children. The protection of the motherhood is an important issue, but it should not be used as a reason for justification of discrimination.





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ALL JOBS FOR ALL  
WOMEN