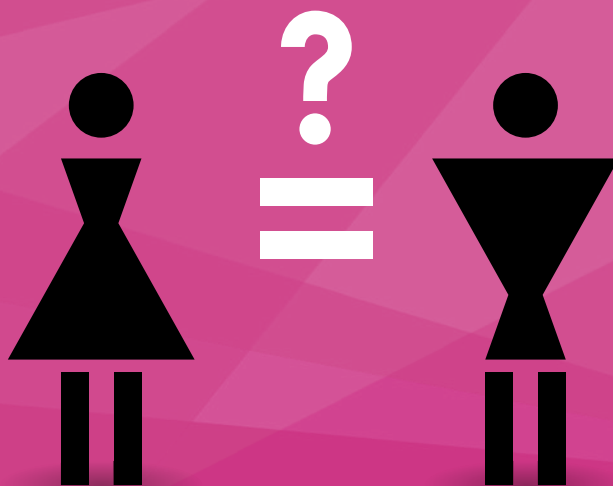


ENGLISH VERSION



COLLECTION OF CONTRIBUTIONS AT THE INTERNATIONAL CONFERENCE ON THE TOPIC OF GENDER PAY GAP

Gender Information Centre NORA
Office of the Public Defender of Rights

22. 1. 2016

Brno

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Introduction

Dear readers,

Our organization Gender Information Centre NORA (GIC NORA) has been involved in gender audit activities with various types of employers in the Czech Republic. Thanks to gender audits we have experienced the phenomenon of unequal pay between men and women in our country. We were and still are surprised by its high frequency and also by the attitude to the phenomenon in question- also on the part of victims of pay discrimination.

In the Czech Republic, there is still a prevailing belief that men are breadwinners, hence they deserve higher financial rewards than women. It should be noted that the belief is often shared by women themselves. However this gender stereotype does not reflect the diversity of family arrangements in our contemporary society where women are often breadwinners in their families, not men.

Unequal pay between men and women presents, in my opinion, a fascinating social phenomenon that has no simple solution. It combines in itself, as a matter of fact, several underlying causes. In addition to the above mentioned gender stereotypes, the causes include e.g. an unequal position of women and men in the labour market or in the field of homecare and family care. Only a common solution to the causes may lead to a reduction in unequal pay between men and women or to its eventual elimination.

We present to you a collection of contributions of the speakers at the international conference on unequal pay between women and men held in Brno on January 22, 2016. The conference took place within the project „Mind the Gap“ carried out jointly by GIC NORA and the Office of the Public Defender of Rights in the Czech Republic. The project was supported by the Open Society Fund Prague from the Let's Give Wo(men) a Chance programme, financed from Norway grants.

In the collection you will find examples of foreign approaches to tackling the issue of unequal pay between men and women as well as positions of leading Czech experts, representatives of the public sector and of major commercial entities.

I hope reading the collection will bring you substantial food for further inspiration on the subject.
Kateřina Hodická, director of GIC NORA

The Project is being supported by the Open Society Fund Prague from the Let's Give (Wo)men a Chance programme, financed from Norway Grants. With Norway Grants, Norway contributes towards a reduction in economic and social disparity and the strengthening of mutual cooperation in Europe. It promotes, above all else, environmental protection, research and scholarships, civil society development, health care, children, gender equality and an improvement in the efficiency of justice. The Let's Give Women a Chance programme promotes equal opportunities for women and men both in their work and personal lives as well as prevention and help for victims of domestic and gender-based violence in the Czech Republic. It is operated by the Open Society Fund Prague, which has been developing values of open society and democracy in the Czech Republic since 1992.

In the title of my paper I have purposefully paraphrased Article 1 of the Universal Declaration of Human Rights, which states that „All human beings are born free and equal in dignity and rights“, because not even in the 21st century have we managed to achieve real equality between the sexes in pay. This depressing conclusion can be made without requiring any proof in the form of extensive argumentation. The facts, in this case statistical data available e.g. in the Eurostat database,¹ speak clearly. Over the long term, the identified percentage difference in pay between men and women² is around 16 % in Europe, but it is even higher in the Czech Republic, reaching approximately 22 %. These data can be obtained from various sources³; however, the specific value that varies over time is not as important - although the Czech Republic's ranking so high in this index is not very encouraging⁴ - as the fact that we are failing to eliminate or at least substantially reduce such inequality.

Experts in this area generally agree that the law as a whole - in terms of pay - is sufficient and has no significant deficits. The obligation to ensure compliance with the principle of equal pay for men and women for the same work or work of equal value after all arises from primary law because it is imposed on the Member States by Article 157 of the TFEU,⁵ while gender equality in all areas, including employment, work and remuneration for work, is also explicitly guaranteed by Article 23 of the Charter of Fundamental Rights of the EU.⁶ Prohibition of gender discrimination as one of the basic principles of EU law is, of course, reflected in EU secondary law, in this case specifically in the so-called „Gender“ Directive 2006/54/EC (recast directive which

contains the provisions of most older directives concerning sexual discrimination).⁷ General prohibition of discrimination is also guaranteed by Article 14 of the European Convention on Human Rights. At the national level, the right to fair remuneration is protected by the Charter of Fundamental Rights and Freedoms, Article 28, which is then specified by the Labour Code (Article 110, and Articles 109 et seq. in the broader context)⁸.

So how do we explain that a right to equal pay, which in formal terms is almost perfectly guaranteed, is not reflected in the reality of social relations? The law is generally intended to regulate social relations, but in this case, with regard to statistically proven data (see above), it seems as if reality and the gender stereotypes deeply rooted in society are for some reason powerfully resistant to such just rule of law.

In terms of the Aristotelian concept of formal equality, strictly speaking it is only possible to grant equal treatment only to those individuals who are actually „the same or comparable“, where formal equality consists of both these dimensions (i.e. the same to the same and different to the different). This requires us to consider how significantly the actual difference of „womanhood“ from the male principle on which the expectations of employers are traditionally built, i.e. certain a „male norm“ in labour law (full time, professional career uninterrupted by motherhood or parenthood), contributes to these unfavourable statistics. In this regard, I consider it necessary to stress that whereas the biological difference of women is, in terms of discrimination law, a legitimate reason for making a distinction during their pregnancy and motherhood (and is the reason for

¹ <http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=tesem180&plugin=1>

² These differences are measured from the average difference in gross hourly earnings of all employees. In the European Union (hereinafter „EU“), gender pay inequality is officially known as the „unadjusted gender pay gap“ because it does not take into account all factors affecting it. For example, it does not take into account differences in education, professional experience, the number of hours worked, type of employment etc. Another method of calculating the same gender pay gap is to use the median. Its basic advantage as a statistical indicator is the fact that it is not affected by extreme values, from which it is „cleaned“.

³ In the Czech Republic, the development of salaries and wages at the national level is monitored by the Czech Statistical Office.

⁴ The same applies to the differences in the gender unemployment gap: [Accessed 29 April 2016]. Available at: http://ec.europa.eu/eurostat/statistics-explained/index.php/Employment_statistics/cs

⁵ Treaty on the Functioning of the European Union (the cited article corresponds to the former Article 141 of the EC Treaty, or Article 119 of the EEC Treaty, respectively).

⁶ Prohibition of discrimination in the broader sense is enshrined in Article 21.

⁷ Directive of the European Parliament and Council 2006/54/EC of 5 June on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation

⁸ Act No. 262/2006 Sb., Labour Code, as amended (hereinafter the „Labour Code“)

⁹ Bobek, M., Boučková, P., Kühn, Z. (eds.) *Rovnost a diskriminace (Equality and Discrimination)*. 1st edition. Prague: C. H. Beck, 2007, p. 111

granting a higher standard of legal protection),¹⁰ the work of women cannot be generally attributed a lower value based on prejudices and stereotypes. The value of women's work cannot be diminished just because of any actual or potential pregnancy and motherhood (maternity and parental leave typically anticipated by the employer) or because of part-time work in the case of care for a dependent family member, or, for example, because of expected lower physical performance. It is necessary to consistently insist on the fact that men and women are everywhere equal in their position as human beings with equal human dignity, including in the labour market. Their right to equal pay must therefore be protected (and enforced) in the same way, regardless of who is the „breadwinner“ in the family, whether the woman or man lives in a family or a partnership (and is raising children or not), or whether they are so-called „singles“ (a woman or man in any age category). The principle appears to be simple, the practical implementation is complex. When comparing the pay of men and women for the same work or work of equal value, we are interested in material equality, both *de iure* and *de facto*.

The case law of the Court of Justice of the European Union (hereinafter „CJEU“), which has continued to expand since the 1970s, has in the past repeatedly expressed its opinion regarding many specific problems and aspects of sexual discrimination, which includes unequal pay for women and men for the same work or work of equal value. Worth mentioning is the famous and long-standing judgement of 8 April 1976 in the case *Gabrielle Defrenne v Société anonyme belge de navigation aérienne Sabena*, C-43/75, ECR 1976 00455, in which the CJEU determined the direct horizontal effect of former Article 119 of the EEC Treaty and held that individuals can seek the enforcement of the principle of equal pay for equal work whether that work is performed in the public or private sector. The impact of part-time jobs, which are usually held by women, was addressed by the CJEU later, for example, in its judgement of 13 May 1986 in the case *Bilka - Kaufhaus GmbH v Karin Weber von Hartz*, C-170/84, ECR 1986 01607; the CJEU addressed the various components of pay in its judgements of 21 October 1999, *Susanne Lewen v Lothar Denda*, C-333/97, ECR 1999 I-07243 and of 26 June 2001, *Susanna Brunnhofer v Bank der österreichischen Postsparkasse AG*, C-381/99, ECR 2001 I-04961. In 2004, the CJEU put forward the so-

-called theory of a single source¹¹ in its judgement of 13 January 2004, *Debra Allonby v Accrington & Rossendale College, Education Lecturing Services, trading as Protocol Professional and Secretary of State for Education and Employment*, C-256/01, ECR 2004 I-00873. In the reasoning of the later judgement of 3 October 2006, *B. F. Cadman v Health & Safety Executive*, C-17/05, ECR 2006 I-09583, it provided a detailed analysis of the legitimacy of the use of the criterion of length of years worked for the purposes of granting higher pay. This list of important CJEU judgements is obviously not exhaustive and I mention it here only for comparison with the reality of the Czech case law in this area.

However, although (again intentionally) I am trying to compare the incomparable, historical experience cannot after all be simply „caught up with“, it cannot go unnoticed that despite the existence of good examples we practically have no Czech case law dealing with pay inequality. One of the reasons will surely be so-called „underreporting“, i.e. instances of discrimination not being reported. Another may be the still low awareness of Czech women of their rights, and also a certain lack of confidence in potential success. Research conducted by the Public Defender of Rights in 2015 highlighted the barriers faced by victims of discrimination on their route to justice.¹² According to the findings of the Public Defender of Rights, cases of (not only pay-related) discrimination are rare in Czech courts, and the courts are reluctant to transfer the burden of proof or be inspired by foreign case law in assessing the merits of cases. Well-known unequal pay cases have mostly ended up being dismissed as inadmissible (e.g. the resolution of the Supreme Court of 6 November 2007, file no. 21 Cdo 3069/2006), or for procedural reasons at lower judicial instances (the judgement of the District Court in Blansko of 30 June 2015, file no. 78 EC 1342/2011).

One way to bring about change could be greater salary (and wage) transparency, provided the Czech Republic and its public authorities were able to put into practice the Commission Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women through transparency, and provided labour inspectorates as the sole supervisory public authority in the protection of labour relations managed to effectively control and sanction unequal pay practices. It is true that this is not a simple task, but it cannot just be

¹⁰ See section 6 (5) of Act no. 198/2009 Sb., on Equal Treatment and Legal Means of Protection Against Discrimination and Amending Certain Laws (Anti-Discrimination Act), as amended (permissible forms of differential treatment), section 47 of the Labour Code (obligation of the employer to assign an employee to her original work and workplace after returning from maternity leave), etc.

¹¹ Existence or absence of a single source of remuneration („associated employers“, i.e. associated legal entities acting as a single employer to whom can be attributed responsibility for the identified pay inequality and who is also able to eliminate it).

¹² http://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyzkum/CZ_Diskriminace_v_CR_studie.pdf

abandoned in view of the above declarations (unequal pay being a serious violation of individual rights and serious infringement of a person's dignity; looking at the statistics, probably in most cases unequal pay negatively affects women, but unequal pay for men cannot be ruled out). It is also true that the legislation on wages (private sector) differs in certain aspects from legislation on salaries (public sector).¹³ However, the prohibition of discrimination applies equally to both sectors. Although wages in the private sector are autonomously determined by entities, contractual freedom is not unlimited.¹⁴ All employees have the right to fair pay, which they can seek not only through courts (the *ultima ratio*), but also through collective bargaining, in the private and public sectors alike. In terms of public scrutiny over whether this fairness is maintained, it must be admitted that it is primarily the state as an employer (municipalities, public corporations etc.) on whom the obligation to ensure pay transparency rests much more heavily and the burden of providing public information on salaries of employees is greater. It is entirely legitimate and correct to lay a greater degree of responsibility exactly where employees are paid from public funds. In this respect, the judgement of the extended senate of the Supreme Administrative Court of 22 October 2014, ref. no. 8 As 55/2012 – 62 marked a breakthrough.

This shift can only be warmly welcomed, although there may still be some doubt as to whether the Czech public is familiar with the conclusions expressed in the cited judgement or whether there is a broad consensus regarding these conclusions. It is also necessary to concede that not even stricter rules regarding remuneration

in the public sector can realistically guarantee that remuneration schemes are not (even in the public sector) distorted and unequal pay does not occur. Even a nearly perfect system of rules in the public sector allows their circumvention in a more or less sophisticated forms, and on the other hand, despite greater contractual freedom, the private sector can sometimes, in my opinion, paradoxically show a higher degree of „fairness in pay“ regardless of gender factors because the quality of work and competition for capable employees (and therefore even women and mothers) in this sector plays a greater role than anywhere else. That is why the existence of effective control mechanisms is a necessity in both sectors, in the private as well as in the public sector.

And finally, I cannot help noting that the Czech remuneration system deserves a deeper and more comprehensive analysis as a whole. Because there is no contractual freedom in the public sector and because in practically all components of remuneration work is valued according to legislation, or at least its limits are prescribed,¹⁵ it cannot be ruled out, in fact, that the levels of pay tariffs (pay grades and ranks) have over many years been artificially undervaluing employees in the sector, both men and women.¹⁶ This will again indirectly discriminate against women (typically employed, for example, in education and health care) in a *gender-segregated* labour market. Therefore, I will save my provocative question for last. Should everyone perhaps receive equally low pay? No. Everyone should receive equally good pay for the same work and work of equal value, irrespective of sex.



¹³ I leave aside the issue of remuneration under Act no. 234/2014 Sb., on Civil Service, as amended.

¹⁴ In: Havelková, B. *Rovnost v odměňování žen a mužů (Equality in Pay of Women and Men)*, published by Auditorium, 1st edition, Prague 2007, ISBN 978-80-903786-2-9, p. 46

¹⁵ For example, in terms of comparison with neighbouring Germany, the results of the Czech Republic are quite disheartening. On average, Germans receive up to three times higher wages and salaries, but they sometimes pay even half the price in stores. See: <http://www.novinky.cz/ekonomika/403841-cesi-plati-v-drogerii-dm-i-dvakrat-vic-nez-nemci.html>

¹⁶ The law generally allows (and legitimises) a situation where the wage, salary or agreed remuneration may not even reach the minimum wage. If this occurs, the employer is obliged to pay the difference (provisions of section 111 (3) of the Labour Code). Although these are rare instances, in terms of the system, the lower limit of „pay scales“ can be set very low almost permanently.

Slow Convergence in the Gender Pay Gap. Empirical Evidence from Norway

Institute for Social Research, Norway

Persisting gender inequalities

It is difficult to overcome processes that lead to gender inequality. After nearly 50 years of policy effort gender inequality persists in most European countries. Norway has, together with the other Scandinavian countries, been a leader in the implementation of an array of policies that promote gender equality. And today, girls outnumber men in higher education; women's labour force participation is nearly 80 %, compared to 83 among men; 90 % of children under school age are enrolled in day care centers; and the take-up and usage of the fathers' quota in our parental leave scheme is at a stunning 70 %.

Despite the very promising development in certain fields, substantial gender inequalities in the labour market persist. The Norwegian labour market is highly segregated, the share of women in leadership is still low, and the gender gap in work-hours and income remains. I will focus my presentation on the gender pay gap in Norway, and I will concentrate my attention on the development in the twenty-first century. However, I'll start out with a brief historic overview of how men's and women's pay have converged since the late 1950s.

Convergence in men's and women's wages until 1980s

Throughout history, women's labour has been paid less than men's. Figures from Statistics Norway show that in 1959, the Norwegian gender pay gap in monthly wages was approximately 66 percent (SSB(1994) Historical Statistics. Official statistics of Norway C188. Oslo: Statistics Norway).¹⁷ Through the next 20-25 years, men's and women's monthly wages converged at a fairly high rate, to a gap of around 20 % in the 1980s. Most of this convergence is explained by a reduction in the hourly wage gap.

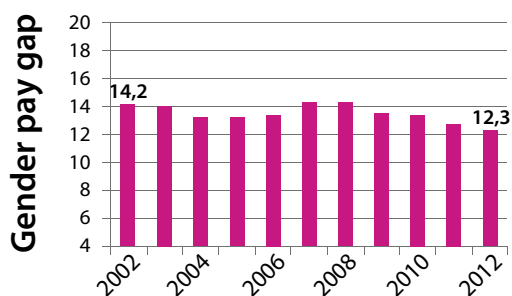
The convergence in income and wages has coincided with a massive increase in women's labour force participation together with the implementation of policies that facilitate women's participation in the labour force; such as paid parental leave and public childcare, although at a very small scale and not nearly enough to meet the demand.

There was no dramatic change in the pay gap in the 90s,

but from available data we observe a slow reduction in the gap during the 90s. This was mainly due to increased female labour force participation and attachment (Barth and Dale-Olsen 2004).¹⁸

The gender pay gap in the twenty-first century

The early empirical research on the gender pay gap in Norway was analyzed using different sources of data, and there are some issues related to comparability over time. Since 1997, Statistics Norway has collected wage statistics, comprising all public employees and a large representative sample of private sector employees. From these data we have information in monthly wages, including bonuses and other wage increments, weekly work-hours, industry and occupation, and we link this to other registers with individual characteristics such as age, education, marital status and children and so on. Our preferred measure of the gender pay gap is hourly wages. Monthly and yearly wages are sensitive to work hours per week, and worked weeks per year. When in fact 35 - 40 % of employed women work part-time, compared to 10 % of men, work-hours clearly contribute to gender differences in yearly and monthly earnings. These differences are unrelated to hourly wage-differences and express in a sense differences in effort. Moreover, we include both part-timers and full-timers in our analysis. Let me first start out with a graph showing the unadjusted gender pay gap in hourly wages (including bonuses and fixed and variable increments). As you can see, the gender pay gap follows a somewhat uneven path over the ten years we are analyzing, but all in all there was an overall reduction from 14,2 to 12,3 %.



¹⁷ http://www.ssb.no/a/histstat/nos/nos_c188.pdf

¹⁸ Barth, E. & Dale-Olsen, H. (2004) Lønnsforskjeller mellom kvinner og menn i et 30-års perspektiv («The gender pay gap in a 30 years' perspective»). *Søkelys på arbeidsmarkedet* 21(1), 65-74.

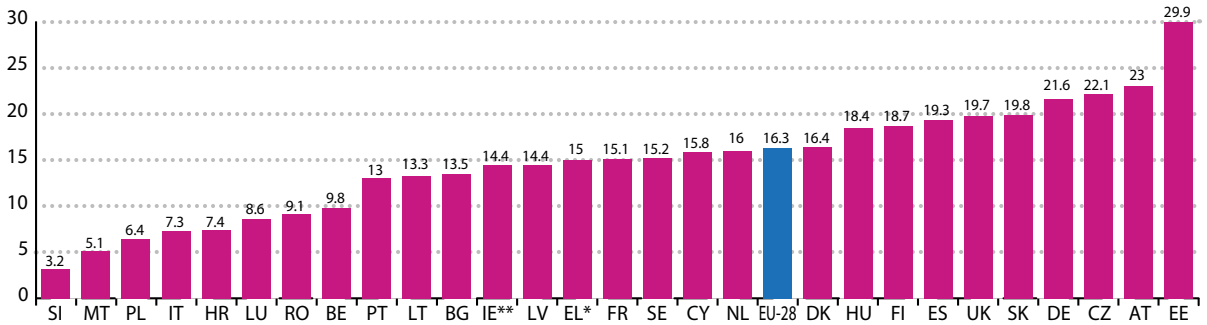
To put this in perspective, let me just show you a graph I've retrieved from Eurostat. The average gender pay gap in EU 28 is 16,3 %, but there are overwhelming differences across countries. According to this graph, the Czech Republic has an unadjusted gender pay gap of 22 %, the same level as Norway some 30 years ago. However, Norway, Sweden and Denmark have gender pay gaps very near the EU average. At the very bottom we have for instance Italy, but we know that the female participation rate is low, only 50 percent among 20-65 year olds. So, the level of the gender pay gap does not necessarily reflect the entire story of gender inequality in the labour market.

wages between men and women.

The importance of children

A fundamental question in the gender pay gap literature is how the gap is related to family, that is; the number of children an employed woman or man has. Mothers often take the lion's share of the workload in the family, work that is often uncompensated. If entering motherhood entails a cost which childless women and father's doesn't experience, this will have consequences for mother's careers and for gender equality in general. The literature often reports a motherhood penalty to wages.

Gender pay gap in unadjusted form in the EU and Member States



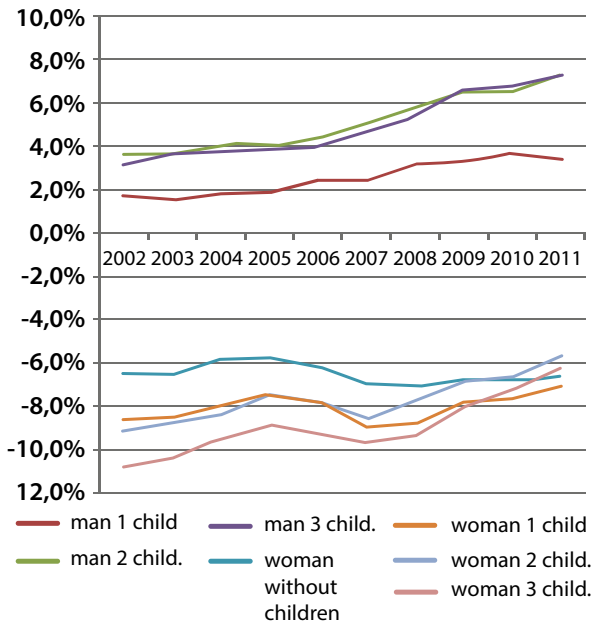
Let's go back to the gender pay gap in Norway. The fundamental question is whether women receive lower pay for equal work?

Well, not necessarily. Certain wage differences between workers are perceived as legitimate, such as wage inequality originating from differences in educational attainment, experience and whether one holds a part- or fulltime contract. Wage differences due to wage setting and wage bargaining differences in addition to different exposition to competition in the product- and labour market are considered as legitimate. We control for these factors and compare the hourly wages of men and women with nearly equal human capital (years of schooling, potential experience and fulltime), who work in the same occupation, in the same industry, in the same sector. Among men and women who are very much alike, we are left with a gender pay gap of 7 %. This primarily reflects the gender segregated labor market, where men and women work in different occupations and industries with dissimilar wages; that is men work in occupations and industries which on average pay better.

I want to emphasize that whether the remaining gender pay gap reflects discrimination of women in the labour market is not clear. There may be other legitimate differences between men and women whom we are unable to observe and control for, which also affects average

A crucial factor in Norwegian family politics is creating and maintaining an environment where mothers and fathers are considered as equal caretakers within the family and as equal employees in the labour market. Recent political initiatives have aimed at breaking the barriers to employment for women and mothers – and also men and fathers – through publicly subsidized, affordable, high quality daycare, and a father's quota in parental leave. Whether these initiatives have an effect on the gender wage gap is not clear, and it is not straight forward to overcome the methodological challenges associated with such effect-analysis. However, to shed light on the development, I have documented the motherhood penalty in Norway for women in childbearing age (20-45 years) in the first decade of the twenty-first century, in which the political initiatives in family matters have been many and expansive.

So in this graph we see the gap in hourly wages among women with 1, 2, 3 or more children, relative to very much alike childless women. The women included in the analysis are fulltime workers (to ensure comparability to previous studies), same age, same years of schooling, same marital status, living in the same region, working in the same industry.



First of all, initially there is a motherhood penalty, since mothers in general earn less than very much alike childless women. There is some variation in the motherhood penalty depending on the number of children, but overall it is negative. As you can see, the penalty is reduced in the first decade of this century and in 2011 mothers' of two and three children in fact have a small motherhood premia. This is new. It does not however indicate that there is a positive effect on wages of having two children (as opposed to none), but rather the results indicate that women who are productive in the labour market and earn high wages have two children. This suggests that it has become easier for women with high productivity in the labour market to combine work and family.

The relationship is opposite for men. Men with children experience a fatherhood premia. Fathers earn on average 4 % more than childless men. And fathers of two, three or more children earn the highest wages. Over time, the gap between fathers and childless men has increased, with the largest increase among fathers of two and three or more children.

Although the gap between women with and without children is small and to some extent has vanished during the first decade of the twenty-first century, the difference between mothers and fathers persists.

All in all, the gender pay gap in Norway has been very persistent in the first decade of the twenty-first century. This is also a period with high political effort to remove many of the barriers between work and family for women by making especially fathers more attached to family obligations through the father's quota.

At the moment, women's average hourly wages lie 6 years behind men's. An essential question is when women will catch up with men. I've forecasted the gender pay gap based on an average yearly decline of 1,34 %, which is the yearly average decline over the first decade of the twenty-first century. My calculations show that in 50 years, which is in 2062, the gender pay gap would be just above 6 % – half of the current gap. In fact, at the current rate of decline, it will take 187 years until we eliminate the gap.

Although this is a mere illustration, it emphasizes the fact that the remaining gender inequality in the labour market has no quick-fix; it will most likely not just disappear. The fairly stable pay gap over the last 30 years confirms the fact that overcoming the processes that generate gender inequality in the labour market is huge; it takes time and it takes determination. Girls and boys still choose very traditional educational tracks, few women have leadership positions, women seek the "family friendly" public sector more often when they enter motherhood, women work part time more often than men, they spend more time on unpaid domestic work and so on. Although the gender pay gap in hourly wages is low in comparison to many other countries, the fact that women on average work more part-time than men, contributes to substantial gender inequalities in actual income.

And recent research performed by myself and a colleague show that men among top earners also have positions that entitle them to very high capital incomes as well, whereas the top earners among women to a lesser extent have these privileges. In my view, unless we deal with the increasing inequalities at the top of the distribution, the gender pay gap will never be eliminated.



Even though progress has been made in recent years to reduce the gender pay gap, Austria's gender pay gap (GPG) remains one of the largest in the EU with 23 % in 2013.¹⁹ To explain the factors that cause the large GPG in Austria, I refer to a study carried out by Statistics Austria.²⁰ A 'decomposition' of the GPG showed that only 38 % of the total GPG can be explained by factors like branches, professions, educational attainment or full-/part-time work. These explainable determinants display existing structural inequalities – thus horizontal and vertical segregation - in the Austrian labor market. However, the large remaining part of 62 % of the GPG cannot be explained. This points to wage discrimination as a significant factor for the pay gap between women and men in Austria.

In order to reduce the GPG in Austria, different measures need to be taken to tackle structural inequalities as well as wage discrimination. Austria, on the one hand, has undertaken targeted action to reduce the barriers faced by women in full-time work. The provision of more and high-quality childcare and care facilities, the improvement of conditions for women re-entering the labor market and initiatives aimed at encouraging men to take parental leave have a positive effect on narrowing the gender pay gap. Empowering women and girls in their access to all occupations and positions is the aim of numerous initiatives by the Austrian Ministry of Education and Women's Affairs; inter alia the recently launched online information platform "Meine Technik / My Technology"²¹ and the project "Women are TOP! To the top by innovative corporate cultures!"²²

On the other hand, Austria has implemented measures to increase income transparency and thereby raise awareness of wage discrimination. Since 2011, one policy to address income disparities is the mandatory production of income reports for businesses with a certain number of employees. As of 2014, companies with 150 employees or more are required to produce income reports. Another measure targeted at increasing income transparency is the legal requirement to state the minimum wage in job vacancy advertisements.

In 2015, a study to evaluate these instruments was carried out and published.²³ The study aimed at evaluating the implementation of the legal requirements as set out in the Equal Treatment Act. Moreover, the study focused on whether these two instruments have contributed to an increase in income transparency in Austria. The views and experience of employees, applicants, members of work councils, human resources managers and of experts from the Austrian Public Employment Service, payroll services and personnel leasing companies were included in the comprehensive study.

The results of the evaluation show that the degree of implementation of the legal requirements is generally good. For example, 90 % of all examined job advertisements from the year 2014 included information on the (collective) minimum wage. Stating the minimum wage in job advertisements also makes differences in pay between branches visible and has a positive effect on pay transparency within companies.

However, the study also comes to the conclusion that there is, so far, little awareness among employees and applicants of the measures to increase income transparency, especially regarding the income reports. The income reports are rarely used as a basis or tool for initiating structural measures to reduce the gender pay gap within companies. Moreover, little involvement of the work councils in the set-up and discussion of income reports was reported by interview partners.

Therefore, promoting equal pay for women and men in Austria requires further efforts and initiatives in many areas of the Austrian labour market with the aim of reducing structural inequalities between women and men. It is just as important to strengthen income transparency in order to reduce wage discrimination and to raise broader public awareness for the topic of GPG.

¹⁹ Eurostat, http://ec.europa.eu/eurostat/statistics-explained/index.php/Gender_pay_gap_statistics

²⁰ http://www.statistik.at/web_de/statistiken/menschen_und_gesellschaft/soziales/gender-statistik/einkommen/index.html

²¹ <https://www.meine-technik.at/>

²² <https://www.bmbf.gv.at/enfr/women/employment/top.html>

²³ <https://www.bmbf.gv.at/frauen/gstam/einkommenstransparenz.pdf?56r3ym>

Kateřina Šimáčková

Essay on Equality in Diversity

Constitutional Court of the Czech Republic

Thank you for the invitation. I would like to say in advance that on my part this will not be in fact a judicial view, but will be some kind of very general and even homespun view of the issue of gender equality. I would like to think more generally about the equal access of women and men to public office and therefore to the decision-making on the allocation of resources in society. Furthermore, I would like to think about what I believe is an obstacle to such equal access, then the challenge of what could and should be changed by women themselves, and how they might contribute to improving the situation.

I am convinced, as the title of my paper would indicate, being an essay on equality in diversity, that men and women are actually different. This is how it should be, and besides it constitutes strong grounds for ensuring that women have the opportunity to participate in the management of society. Because they will bring a different perspective than men to the decisions that shape society. For me, justification of the need for greater representation of women in public office, and here I am referring to all positions of power, even positions of power in private business, does not lie in the fact that women are the same as men but in the fact that they are a little different. In the fact that they may have a slightly different style than men, different priorities and different skills. I am also aware of notions that regard gender as only a social construct. Even if this were the case, the female construct seems very likeable to me. Care, gentleness, lower levels of aggression, striving for harmony. In addition, women bear children, on average they can lift lower loads than men, they menstruate, they have more fat in their bodies and they have different facial features. I like to notice otherness and diversity in my surroundings and I consider it a great enrichment. Much more than sameness or making everything alike.

I really liked what Mrs. Halanová, the Mayor of Jílové u Prahy said in the magazine *Veřejná správa* (Public Administration): „It is important to be balanced. The views of men and women are different, but we share our lives.“ Of course, neither women as a group, or men as a group are alike within that group. To describe their characteristics, I use the traditional symbol of harmony, which is the connection of yin and yang. Yin has traditionally expressed feminine power and yang expressed masculine power. And no one would ever think that yin could

be weaker than yang. Everyone should have a harmony of yin and yang within themselves and every society striving for harmony should maintain it. And it must be also taken into account that there are yin men and yang women. Well, if I were to indulge in a little self-reflection, I may be a little more yang than women usually are.

To compensate for racial differences, it is sufficient to abstract the candidate's race from the decision-making processes or to give the candidate from a long denigrated and discriminated against ethnic background a certain advantage for some time and then return to not taking ethnicity into account. But this is simply not possible in the case of women. You cannot stop taking into account that a woman is a woman. She will simply carry as a burden a greater share of childcare. At least during the time of pregnancy and breastfeeding. It is more likely that they will take care of the elderly and the sick in their families or patients in hospitals. When the door of an apartment closes behind a married couple, the woman will almost always be the one in the couple who is physically weaker and would not be able to overpower the man. But women also live longer, they are more cautious drivers, they simply have a shorter period when they are able to reproduce than men, and their reproduction really takes much more effort and risk than men's.

When we try to prevent any gender discrimination, it is not enough to set a level playing field between men and women and say that this is enough to prevent discrimination. Especially since we leave the definitions of such playing field up to the courts, parliaments and scientists, the most senior representatives of which are still largely men, or women who have become more masculine to achieve such heights. Lately, I have observed more closely that in public debate some Czech-educated lawyers, usually men in good positions, rooted securely in their careers and raising several children at home have tended to question the current concept of equality and anti-discrimination. They wrinkle up their noses over quotas for women or ethnic minorities and efforts to revise the principle of formal equality or equality of chances towards a material view of equality, which I think is the only acceptable version. They use the argument that the classroom always goes only as fast as the weakest student as an argument against the promotion of inclusive education. They also contemptuously express their opinions regarding political

correctness, which is forcing us to abandon some old expressions and use terms that seem more appropriate to members of offended minorities.

I believe that you can recognise a decent person, and consequently also a society, by the fact that they show respect to everyone. Perhaps by calling them the way they wish to be called. Just as a side note, it took me quite a long time to achieve being called a female judge (in Czech: soudkyně) and not a judge (in Czech: soudce). And sometimes even this was unsuccessful. So these decent people protect the weak and in sports they cheer on those who are losing. In some gentlemanly sports, players even have handicaps that disadvantage those who were better at the sport in the past. It is interesting that the strong pressure against discrimination has been exerted at the top of society by EU law and that we see inspiration for positive action and the abjuration of improper language in the United States. I am convinced that it is no coincidence that these efforts come from an environment where the importance of free trade and business is emphasised. Discrimination is simply uneconomical and impractical for a thriving business environment and a free market. Equal treatment is really the most economically reasonable and most effective path to follow in the long term. However, for those who hold real power in their hands - to come back to our Czech lawyers who do not like anti-discrimination - anti-discrimination rhetoric and emphasizing a real-world view of equality between people is disadvantageous.

I understand that every male successful lawyer feels threatened by debates on gender equality. There are around 70 % of men on scientific boards at Czech law schools, and up to 80 % in Prague. We have about 78 % of male law professors versus 22 % of female law professors. The Supreme Court of the Czech Republic is made up of about 77 % of men and the Constitutional Court of the Czech Republic of 80 %. I can understand that these numbers are convenient to male lawyers and they see no reason to change them. Even at the Supreme Administrative Court, we have dropped from an initial 48 % of women to 31 %. The decline at the Supreme Administrative Court also convinces me that my foreboding regarding a fall in number of women in key legal positions has a rational basis. I have never been really satisfied with the representation of women in Czech politics and in other decision-making positions. Despite that, I always believed the situation would improve. That society itself would realise how wasteful it is not to use half of its potential. And that women would realise that taking care of their children also means taking care to ensure that their children live in a better world.

Resistance to forms of positive discrimination is often based on the argument of protecting freedom. Equality

is sometimes placed in opposition to freedom. However, without equality of rights freedom for women would remain a distant dream. In the past, the right to vote was granted only to men, so women gained the freedom to vote and thus to participate in political life only when they had won equal rights. Electoral quotas determining that there must be at least 40 % of each gender on a list of political candidates offers neutral protection to both men and women against discrimination. However, if a large majority of positions are held by men, then these quotas offer a way to greater parliamentary participation only to women. So if you belong to the weaker group, which does not hold power at the moment, equality does not come into conflict with freedom. Rather, it becomes essential to achieving it. Therefore, those who are weak, vulnerable, discriminated against, and who do not feel any conflict between freedom and equality see achieving equality as liberation. Eliminating prejudices that foster differences between people is not only a way for people to find freedom. In my opinion, without the abolition of discrimination and privilege we cannot talk about fair society. Today, we are debating why women have lower incomes than men.

I have to admit that the dimensions of human rights and justice in my thinking on this topic were in particular established by my files at the Supreme Administrative Court, where I focused on social and administrative affairs. The typical male income-related dispute was about whether a miner belonged to the AA1 category and was therefore entitled to a raise. For example, a long-time Chairman of the Mining Authority still managed, in addition to carrying out his function, to report for many years that almost every day in his role as chairman he had descended into the mine, thereby ensuring he took home a pension of about CZK 38,000. Women's disputes were, for example, about getting recognition of care for a disabled son before their retirement, and the pensions of these women were sometimes around CZK 7,000. So, income inequality and the undervalued duration of care for other family members has one, in my opinion extremely sad, consequence, which is that old or disabled women fall much more frequently into deep poverty.

And now let's think about why women have lower average incomes than men. I think there are three main reasons. Prejudices that lead employers into giving lower salaries to women than men for the same work. However, these may not only be the prejudices of employers, but perhaps even of the women concerned. The lower assertiveness of women encourages the employer to make a simple calculation: if you do not ask for a higher salary in a private company, the employer is never just going to hand it over. Why would they? And in my expe-

rience as an employer and lawyer, women simply ask for a raise less often and less convincingly than men.

Another reason that leads to women's lower income is that the jobs women seek are paid less than male jobs. Is this because there are more women occupying these jobs or is it that the jobs are less prestigious and therefore attract more women? Such a chicken and egg debate is unlikely to generate much light. But there is something strange about it, nonetheless. I think it was mentioned by Anna Šabatová right at the beginning that our society appreciates the work of sales representatives more than that of nurses; car salesmen have better salaries than women who take care of our children in kindergartens.

And the third reason that statistically significantly lowers the general average income of women in society is that within a hierarchical structure a man usually occupies a higher rank, and therefore has a higher salary than a woman. I have already mentioned some statistical figures from the Czech justice system. So, we know that about 23 % of the Supreme Court judges are female. However, 65 % of district court judges are female. And, of course, working at a higher level court results in higher pay. The same applies to the positions of presidents or vice-presidents of courts. There are only male presidents and vice-presidents at the high courts in Brno. At this moment, the only woman is Milada Tomková, Vice-President of the Constitutional Court. Come to think of it, we do have another important leading woman in the judiciary, Daniela Zemanová in the Judges' Union. Well, presumably because no remuneration is paid for this office. In fact, the post is associated with worries and trouble rather than benefits.

The first two reasons, i.e. lower pay for equal work and the overvaluation of yang positions at the expense of yin positions, would certainly be discussed, I am sure of

it, if the third problem I mentioned were solved. Specifically, by getting more women, and I mean the really feminine women, into decision-making positions. I believe that currently in our society, if a woman wants to ascend to a position of management or power she often must adopt a stronger masculine persona than the men themselves. You can appreciate this best when you observe how men at work boast about their children and how lovingly they look after them. On the other hand, women somewhat hide their parenting, so as not to be seen lacking the requisite enthusiasm for their work.

And now, what do we do about it? The first thing that sprang to my mind were quotas. This is not the topic of today's conference and I should probably not venture any opinion about them. Because if they happen to be introduced into legislation, there will surely be plenty of deputies or senators who would attack them before the Constitutional Court, of which I am a member, and I am afraid that even many female deputies and female senators would join them. Another anti-discrimination measure could be labour legal disputes - I do not know about you, but I recall two recent gender-related anti-discrimination decisions from the Czech judiciary and in both cases the man contested and won.

I also ask the question whether the Czech environment offers up enough women sufficiently prepared for those enlightened people who know that monolithic teams perform poorly and that the female element can be beneficial in top-level judicial decision-making, or in decision-making in general. I realised this when I actively participated in a discussion about why there were not more women on the Supreme Court, the Supreme Administrative Court and the Constitutional Court. I was aware that my arguments might easily founder upon the fact that I do not have adequately strong female candidates opposing their male colleagues.



Of course, here too one can use the cute argument „it will only be fair when there are as many incompetent women in politics as there are incompetent men“.

But for now let us stick with the fact that I would still rather be proposing competent candidates. Indeed, I realise that we have many female students at universities who are just as good if not better than their male counterparts. But the smart girls somehow vanish in their thirties and forties. Their bosses, colleagues and spouses certainly play a role in this disappearance.

But we too are a bit to blame. Is it because we hit the glass ceiling, because we look after our children and parents or promote the careers of our husbands, because at the last moment we do not say „I want it“ strongly and convincingly enough? I am also very sad about what I have also witnessed in my own surroundings. Men usually quietly encourage one another in a conflict with a woman, thus supporting the existing model of how the male world functions. Conversely, women often feel negatively about any affirmative action or women’s solidarity. But just because some of us have managed to reach a top position by sheer chance, perspiration or great timing in entering the labour market, or due to our own sacrifice and the sacrifices of our families, we should not forget about other women.

In her memoirs, Madeleine Albright wrote that she believed that there was a special hell for women who do not help other women. We women who are not indifferent to the future of our society should support a woman in her specific situation and, if at all possible, consider the representation of women as a priority. For example, we can help co-create a certain percentage base in specific authorities so that other women also

feel at home in such authorities. We need to take care of our position and our competence and yet still retain the positives of femininity. It is also important to support other women as they waver between family and work. To eliminate those pricks of conscience that are completely useless. And to support women overcome doubts regarding their own competence - but here I would like to note that only in those cases where such doubts are unjustified. We should also learn to perceive other women primarily as helpers and allies, not as rivals.

I would like to finish with a few pleas and bits of advice:

- Women in management positions, please do not act tougher than the men. Promote women’s issues, women’s style and feminine women.
- You women who feel more like carers than directors, support those women who want to run the world. Do not criticise them for their decision and especially for the way they care for their children, household and manage their private lives.
- Women who are also mothers, daughters and wives, educate your sons, husbands and fathers to respect the usefulness of the contribution of women in power.
- Employers, diverse teams are more stable and generate more balanced results. Besides, the average female employee is much more loyal to the company and the employer than the average man.
- And finally, even though I said I would focus mainly on women’s issues, dads and husbands, everyday care for children and the household will bring you much joy. And a woman to whom you give freedom and support, will give the same to you. Thank you.



How to Build a Case on Equal Pay - Learning from the Experience of Equality Bodies

Equinet – European Network of Equality Bodies, Belgium

EQUINET is the European network of equality bodies, with 45 members in 33 European countries. Equality bodies are public institutions set up across Europe to promote equality and tackle discrimination on grounds of gender, race, age, sexual orientation, religion and belief, disability or other grounds. They play a fundamental role in the non-discrimination architecture of the EU.

Their role is defined in accordance with EU equal treatment legislation requiring Member States to set up equality bodies to combat discrimination based on race and ethnic origin (Directive 2000/43/EC - Race Directive), as well as gender (Directive 2004/113/EC - Gender Goods and Services Directive; Directive 2006/54/EC - Gender Recast Directive; and Directive 2010/41/EU – Equal Treatment between Women and Men). However, many Member States have gone beyond these requirements and ensured that equality bodies can tackle discrimination across a range of grounds including age, disability, gender, race or ethnic origin, religion or belief, and sexual orientation.

As a network, Equinet relies on its members in all aspects of its work, from strategy to implementation. Our Czech member, the Public Defender of Rights, who hosted us for this conference, is very active in the network. In fact, Petr Polák, Head of the Division of Equal Treatment, is a member of our Executive Board. Our other board members come from equality bodies in Northern Ireland, Poland, Serbia, France, Belgium, Austria, Norway and Greece, and they give strategic leadership to the network, as Equinet is a membership driven network. It is the members' needs, in terms of capacity building as well as strategic priorities, that give Equinet focus and direction.

There is great diversity in such a large network. Mandates, size, grounds, structure and resources vary greatly from Sweden to Slovenia, but the fundamental goal and role of equality bodies is: anti-discrimination everywhere. Equality bodies have a distinct role from national governments and civil society organisations. As state actors, they promote equality and ensure that equal treatment legislation is applied by:

- Investigating cases of discrimination;
- Building a culture that is respectful of rights;
- Providing information and, in some cases, legal sup-

port to potential victims;

- Monitoring and reporting on discrimination issues;
- Conducting research and providing policy recommendations;
- Engaging with public bodies, employers and NGOs to foster non-discriminatory practices and ensure awareness and compliance with equal treatment legislation.

Equinet has a working group specifically dedicated to gender equality, consisting of members from the 33 countries. The question of equal pay has been high on the agenda since the working group was set up.

Equal pay was enshrined in the treaty that established the European Economic Community in 1957. Yet data shows that the problem persists to this day. In 2013, the Equinet Working Group on Gender Equality published a report on „*Equal Pay for Equal Work and Work of Equal Value: the Experience of Equality Bodies*”²⁴ The lessons learnt from this report echo the concerns we have heard today: awareness raising, job evaluation methods free of bias, encouragement to companies to tackle the gender pay gap internally, combatting gender stereotypes and cooperation with social partners were all highlighted in the report three years ago.

As was highlighted by several other speakers at the conference today, there is a need for continuous awareness raising. Underreporting of cases of equal pay remains a significant issue for equality bodies in their legal work. Equality bodies that provide support to the public are ready to assist victims, but often find there is a lack of reporting on the issue, leading to less case work on the gender pay gap. In the context of equal pay, it is important to keep in mind the distinction between direct and indirect discrimination. One thing that is sometimes forgotten is that discrimination on the grounds of motherhood or pregnancy qualifies as direct discrimination against women according to the established case law. Any measures that directly discriminate against people going on pregnancy leave or returning from maternity leave would be cases of direct discrimination against women. There are national contexts where the law explicitly states that “disbenefiting” parents returning from parental leave is prohibited (i.e. Sweden), but even

²⁴ <http://www.equineteurope.org/Equal-Pay-the-experience-of>

in countries where the law is not as explicit, it is worth keeping in mind that the experience also shows there is a need to establish job evaluation methods that are free of bias. Equinet has collected best practices on evaluation schemes from our members from Portugal to Ireland. The European Commission has recommended objective criteria for comparing and evaluating jobs. They include qualifications, professional experience as well as service time among the criteria that ought to be considered when assessing pay. However, there is no unified framework in Europe today. Some of the criteria have been transposed into local law, which is the case in Sweden and Norway, but in many countries applying the framework remains discretionary.

Encouraging companies to tackle the gender pay gap internally, discussed in an earlier panel today, is another important tool equality bodies also identify. This is not only important for the internal company culture, where attention to the gender pay gap benefits employees. Best practices can inspire change in a whole sector, where other companies may decide to emulate a best practice introduced by a leader in the field.

Equality bodies continue to see a need to combat gender stereotypes. Gender stereotypes have ring-effects on a number of issues that feed into the gender pay gap, such as gender segregation in caring responsibilities, uptake of family friendly work arrangements, and educational as well as professional choices. Gender stereotypes still play a role in preventing men and women today from making the choices and life decisions that would best suit their personal needs and circumstances.

Cooperation with social partners, both labour unions and employers' organizations, is an important tool for equality bodies as well. This may include participation in tripartite dialogues (as is the case in Portugal), but can also include supporting non-discriminatory collective agreements, training, legal assistance, check-lists for pay audits and marking systems for equal value jobs. The Equinet perspective *Equal Pay for Equal Work and Work of Equal Value* (2013) looked at the promotional work that equality bodies do in order to combat discrimination, and underlined the importance of reaching out proactively to social partners both in the promotional work as well as any legal work they do trying to deal with any given case. This continues to hold true today.

The timeliness of Equinet's contribution is that our Working Group on Gender Equality is currently developing a Handbook on how to build a case on equal pay, based on the experience of equality bodies. This Equinet

hand- book will be a practical tool, primarily for equality body staff, offering hands-on and step-by-step advice to assist equality bodies in tackling equal pay cases. In the course of the work, the Working Group collects best practices and identifies common challenges in building cases on equal pay.

As a practical manual and toolbox, the Handbook is structured according to the stages of building a case. We look at what to ask a claimant, how to gather data, gathering information from the respondent, the issues at stake in building the case, successful and unsuccessful arguments, and finally, the question of sanctions.

The issue of transparency arose several times in the debates today. Access to information is critical but often difficult. A claimant may meet obstacles when trying to access pay data on colleagues with whom they could compare themselves. There are countries where only specialised bodies have access to that kind of data - sometimes that includes the local equality body. When a person suspects they may be paid less than a colleague of the opposite gender, they may not be able to take their case further simply because they are not able to ascertain whether any discrimination has in fact taken place.

When a claimant comes to an equality body looking for assistance, their case worker aims to access all the information they can from the claimant, but also from other sources. In the Handbook, we provide guidelines on accessible resources that can be found online, as well as lists of other authorities that might be of help.²⁵

Once the facts have been established, it is time to build the case. If the claimant can show that there is reasonable suspicion that discrimination has taken place, the burden of proof shifts onto the employer to prove that discrimination has not taken place. In theory, it means that the claimant (and therefore the case worker) only has to provide enough evidence to support a reasonable suspicion. In practice, shifting the burden of proof can be difficult, also due to the intransigence of existing legal practice. The Handbook collects examples of how the burden of proof has been successfully shifted and will provide general advice on what is needed to achieve this.

There are some common arguments and counter arguments that employers use to justify unequal pay. For instance, it is frequently said that women bargain for a lower salary at the beginning of their employment relationship than their male colleagues. The Austrian

²⁵ Resources vary from country to country.

Supreme Court ruled that this was not sufficient justification for a persistent pay gap. Employers have their own obligation to adjust and correct any gendered differences in pay in the long run.

In our final chapter on sanctions we aim to highlight that a case does not end with a ruling, but with compliance. Some of Equinet's members have the possibility of issuing sanctions if a case of discrimination is identified. If there is no effective follow-up of a case, litigation loses out on an important preventive effect, as well as the possibility of social change occurring. Equality bodies have different mechanisms for following up on compliance with issued rulings. The Equinet paper on Sanctions Regimes in Discrimination Cases²⁶ provides more detail on these.

As regards methodology, the questions on which the Handbook is based were formulated collectively by the Working Group, and members collect information from colleagues and write chapters together. That means that the Handbook is written by practitioners, for practitioners.

There are some preliminary findings we are able to share with you at this stage. Proving and winning equal pay cases compared to other types of discrimination cases appears difficult due to the complexity of the facts and the particularities of each situation. Work of equal value is sometimes especially difficult to establish. In many settings, equality bodies find it hard to prove work of equal value if no clear rules and practices for comparing and assessing different jobs exist. Promoting the introduction and wide use of job evaluation schemes would be helpful in this context. Tackling discrimination in occupational social security schemes, likewise, appears to be quite challenging. We hope the Handbook will assist case workers in overcoming some of these challenges, and contribute to diminishing the gender pay gap so that it does not persist for another fifty years.



²⁶ <http://www.equineteurope.org/The-Sanctions-Regime-in>

Katrin Auspurg

Why Should Women Get Less?

Exploring Gender Pay Gap by Experimental Methods

Ludwig Maximilians Universität München, Germany

Thank you very much for inviting me and thank you very much for organising this very important conference. I am a researcher and professor at one German university, in the area of sociology, and with this background I am particularly interested in reasons underlying the gender pay gap. I think and I hope that these mechanisms are not only interesting for a scientific audience but also for a broader audience because only when we know more about the mechanisms causing the gender pay gap we might be able to establish meaningful interventions. So, today I would like to speak a little bit about the mechanisms – I want to show you some experimental methods of how to explore these mechanisms and I want to illustrate this with some data from Germany.

Let me first start with some remarks on the state of research, and with descriptive statistics. We already saw this figure on the gender pay gap in hourly wages observed in 2013 in different European countries. Here we have the gap observed in Germany. So, in Germany we have a very large gender pay gap. In 2013, it amounted to about 22 to 23 % lower hourly wages for women compared to men. This gap is very close to the gap observed for the Czech Republic, but these are the unadjusted gaps so it is not considered that men and women might, for instance, be working in different occupations.

So, in general, when we try to explain these gaps, there are two main strands of explanations. On the one hand, the gaps might be caused by the differences in productivity and human capital endowments of women and men and, on the other hand, there might still be differences left besides the possible differences in productivity and this is what we call discrimination. Studies trying to measure discrimination based on labour market data normally try to control, to eliminate as many factors as possible that are related to productivity. One tries to compare only men and women working in the same occupation and so on. But even when we do so, even after controlling several characteristics related to the labour market productivity such as education, labour market experience, different occupations and employers women and men work for, in most western societies, there is still a remarkable gap left. So, for instance, in Germany we still observe about 12 % lower earnings for females compared to males, in Norway the gap is about 7 %, so the question is: Are women like

men but only cheaper?

With non-experimental data, this question is very difficult to decide, it's very difficult to interpret the remaining gap. It might be evidence of discrimination but it might be also evidence for further unmeasured differences in productivity. For instance, it's very difficult to observe the true abilities or the work effort when using labour market data. So it's not easy with non-experimental data to measure possible discrimination but, also from a theoretical point of view, it's not so easy to assume at least simple forms of discrimination. That is at least what economists try to teach us. Following economic theories, employers with the inclination to discriminate have to pay a price for this discrimination: simply spoken, they do not hire just the best qualified workers but rather the workers they like and that can lead to a disadvantage on the market. For that reason, the prediction would be that, at least in the long run, these employers might be driven out of competitive markets and we can come to a similar conclusion from the viewpoint of social exchange theories: very unequal pay, at least in the case that it is considered as being unfair, should cause employees to reduce their work effort – employees might try to re-establish a fair exchange between wages and their work effort, so they might show higher rates of absenteeism or there might be union strikes and protests against unequal pay or even revolutions.

What we can learn from all these theories is that for pay inequalities to be able to survive in democratic societies with a high market pressure, they probably have to be supported not only by the privileged, but also by the disadvantaged group – that is women. This might seem surprising, but there is indeed some evidence that existing gender pay gaps are considered as being fair. There seems to be a kind of a normative counterpart in the form of just gender pay gaps. Maybe these fairness attitudes can explain why the gender pay gaps have been so persistent in western societies besides a lot of discussion in the media and politics. And at least I think we have a puzzle to solve: Why do individuals consider lower payments for women as being fair? And why is this true not only for males but also females?

In the following, I want to present you with two possible mechanisms. The one stems from the economic theory of statistical discrimination. True productivity of



workers is often not fully observable when hiring new employees; with information provided in CVs only, it's very difficult to estimate the future behaviour and work effort. The assumption is now that rational employers try to use easily observable characteristics such as gender as a substitute for the unobserved productivity. They are expected to base their decision on statistics on the typical behaviour of males and females; and we know from these statistics that females are more likely responsible for childcare and the housework, which might lead to a somewhat lower labour market work effort and work experience; women more likely show work interruptions for family reasons and this causes employers higher turnover and training costs. Rational employers might attach these costs to women in the form of comparatively lower pay in case they hire women at all. So a general assumption based on the theory of statistical discrimination would be that the more information there is on individual productivity, and the lower the group differences between men and women in labour market performance, the lower the discrimination of female employees should be.

This is not necessarily true from the viewpoint of alternative theories developed in sociology and social psychology. Following these theories we might still observe discrimination in the case that there is full information and in case there are no differences in performance; at least one might predict this fact from the perspective of rewards expectations and status belief theories. Following these theories, better resource endowments and persons with higher social status will be perceived as being, in general, more competent and higher performing. In organisations,

the people with many resources typically are managers, and managers are the persons who can make very important decisions for the firms or the persons who have many opportunities to express their opinions; and only for that reason they might be perceived as being very important for the goals of the organisation and to be high-performing. Thus higher resources and a higher status might be associated with a higher competence. The assumption is now that repeated interactions at work places prime specific performance expectations on different social groups. Often socio-demographic characteristics are strongly correlated with higher status positions and this might lead to not only the higher status positions, but socio-demographic characteristics getting connected with beliefs of higher performance. For instance, managerial positions are very often filled with men and, for that reason, it might be that not only the persons with many resources or with a higher status but also men in general are considered as showing a very high performance. In that way priming of stereotypes takes place and this might be the case even if these beliefs (stereotypes) are not justified by true performance differences.

Moreover, these stereotypes, the "status beliefs," are considered to be very persistent, even if there is some contradicting information. At least one might predict this with theories of double standards for performance evaluations. Following these theories, status beliefs already colour performance evaluations in a stereotype-confirming way so that a high performance is more strongly acknowledged for higher status groups – the men, because this fulfils the stereotype; while, at the same time, a low performance is more strongly acknow-

ledged for the lower status groups – the women. To put it in other words: in the case that members of a high status group show a low performance, this observation does not fit to the stereotype. So this piece of information might be perceived as a kind of a measurement error and is more likely ignored.

To summarise, following these sociological and social-psychological theories, gender earnings and status gaps might be experienced as being fairly deserved even in case they do not match the true performance differences; and status beliefs are considered as being very resistant against contradicting information which is probably interpreted in a gender-specific way.

How do we test these assumptions? In the following, I would like to present to you some evidence from Germany. In our studies we work with so-called “factorial survey experiments” which are combinations of surveys and experiments. Respondents are asked to evaluate short descriptions of hypothetical employees, so called “vignettes”; in these vignettes, characteristics of the employees can be experimentally manipulated to test their impact on the evaluations, while at the same time other disturbing factors can be controlled, i.e. can be held constant. A crucial advantage now is that this is not a lab experiment, we implement these experiments in surveys, so there are easy ways to approach broad population samples. Another advantage exists with the indirect evaluation task given with the vignettes. This task is less prone to social disability bias, which offers us better possibilities of observing a possible discrimination.

Here I show you an example of a vignette used in our study.

A 50-year-old man with vocational training is working as a programmer. His monthly gross earnings total 1,200 euros.

Are the earnings of this person fair or are they, from your point of view, unfair high or low ?

Unfairly low			fair				Unfairly high				
-5	-4	-3	-2	-1	0	+1	+2	+3	+4	+5	+6
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The vignette shows a 50- year old man with vocational training who works as a programmer and earns 1,200 EUR. The respondents are asked to evaluate if these earnings are fair, or if they are unfairly too high or unfairly too low. It’s an experiment, so we can simply manipulate the gender of this person and we can also manipulate further characteristics which might be interesting in exploring the mechanisms underlying fair pay; and what is even more important, here, in the experiment, the male and female vignette persons, on average, show

exactly the same labour market characteristics. So, if we find different evaluations of male and female vignette persons we know for sure that this is not caused by differences in the human capital endowment but rather evidence of some kind of discrimination that is going on. And we are also able to estimate the just gender pay gaps; in the case that we find different evaluations for male and female vignette persons we can estimate which amount of additional earnings would have to be presented to the male employees so that their earnings are considered as being as fair as the earnings of the similarly qualified female employees.

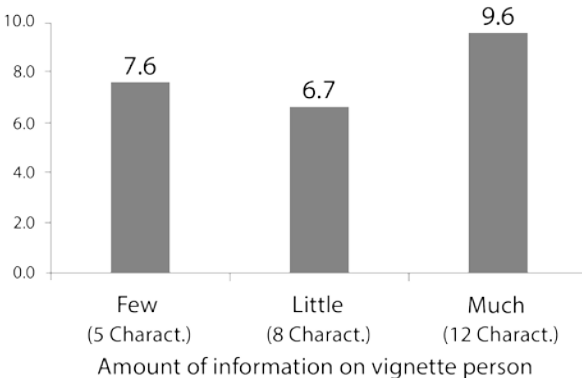
We implemented such vignettes in a general population survey in 2009 in Germany with more than 1,600 respondents from the adult population. Our respondents were asked to evaluate 10, 20 or even 30 vignettes. All in all, we gathered more than 26,000 valid vignette evaluations. What was very specific to our study was that we also varied the amount of information on the vignette persons to be able to test for statistical discrimination. We used experimental splits with 5, 8 or 12 characteristics informing on the vignette persons. I already showed you a vignette example with 5 different characteristics; about one third of our respondents had to evaluate such vignettes, and another third of respondents had to evaluate vignettes showing 8 characteristics. Here we added e.g. information on the job experience. And, finally, the last third of our respondents had to evaluate vignettes showing 12 characteristics. In these vignettes we provided even explicit information on the job performance.

For today, I think it’s most interesting: Do we observe any differences in the evaluation of male and female vignette persons? And is this still true in the case that we provide information on the work experience and on the job performance? And regarding the job performance, it’s also interesting if this piece of information is evaluated in a gender-specific way – are there any double standards in regard to the performance evaluations?

Here I show you the first result, the mean evaluations for the male vignette persons. You can see that both male and female respondents, on average, stated that these earnings are unfairly too low. But what happened when we confronted our respondents with female vignettes persons? The results were different. Now the respondents on average stated: these earnings are on average too high. And note again that the vignette persons, on average, showed exactly the same labour market characteristics, so this gender difference is not caused by any differences in the occupations or educational degrees etc. And the difference is highly statistically significant. As has already been said, we are also able to

estimate the just gender pay gaps. Following the evaluation of our respondents, they consider it as being fair when females earn about 8 or 9 % lower earnings than comparable male employees. This just gender pay gap is even a little bit stronger for the female respondents, but this difference was not statistically significant.

Now, what about the mechanisms? Are these gaps caused by problems of missing information? I show you again estimations of just gender pay gaps but now these are no longer differentiated by the gender of the respondents but by the amount of information we provided on the vignette persons. On the left, we have the just gender pay gaps for the vignette cases where we provided only very little information, only 5 characteristics, and you can see that this gap shrinks a little bit from the left to the right when we add information on the work experience – 8 characteristics. But then, when we provide complete information, and when we add also information on job experience, the gap again increases.



So, these gaps seem not to be caused simply by problems of missing information. What about status beliefs and double standards? What was very interesting is that the just gender pay gaps covary with the real gender pay gaps the respondents experienced in their own occupations. So, the higher the real gender pay gaps in the occupations of the respondents, the higher the just gender pay gaps they supported. And, in addition, there was also a tendency that just gender pay gaps correlate with the real gender pay gaps in the vignette persons' occupations. So it seems that the experience made on the labour market primes justice beliefs. This fits very well to the theory of status beliefs.

We also found some evidence for double standards: a "high performance" was more strongly acknowledged for the male vignette persons which fits exactly to the theory of double standards; but at the same time we observed that this was also true for a "low performance" and in that case we would have expected that this low performance is more likely ignored (and not accounted)

for the male vignette persons.

Summing up, the respondents in Germany supported just gender pay gaps of about 8 % higher earnings for male compared to female employees. This gap is not as high as the actual gender pay gap in Germany. But I think it is still a very remarkable gap and this result does not depend on the respondent's gender or the amount of information on employees, so statistical discrimination is not the whole story. Actual inequality and status differences in occupations seem to prime normative attitudes and that way existing inequalities get legitimised and maybe also reproduced. What can be learned with respect to policy interventions? The results suggest that more information or closing gaps in labour market experience might not be sufficient to close the gender pay gaps or to stop discrimination. One would rather need, in addition, permanent role models of women in high status positions, getting high earnings. But be aware that these are only first results for Germany. It would be very important to replicate this research in other countries which implemented other paying schemes.



Panel discussion

Barbara Havelková²⁷

Legal Aspects of the Gender Pay Gap

University of Oxford, UK

Discussion moderator - Zuzana Ondrůjová: „Do the reasons for inequality, in your opinion, generally lie in poor legislation? Either in terms of national law or EU law. If so, can you indicate what aspects play a role.“

Barbara Havelková: „I am afraid my answer to this question is one that you hinted at earlier, which is that the problem is not primarily in the legislation. I think that it generally lies in the understanding of what inequality and discrimination looks like in practice and what it includes. I think that the general notion that it is an expression of hatred, or a fully conscious prejudice consciously applied is wrong. Unequal pay between men and women is often not fully conscious, and therefore it does not stem from some misogyny or sexism. Instead, it is essentially a lack of self-reflection on how our existing ideas about men and women and how we assess their qualities and abilities, which are then reflected in remuneration, are gender-coloured, prejudicial and therefore unfair. The problem is therefore not primarily legal. The problem is rather the implementation of the right to receive equal pay from employers and the asse-

ssment of cases of pay discrimination by the courts.“

„In terms of some measures that could help here, I would try to find or try to use mainly “soft law” tools, i.e. different methodologies that would make it easier for employers to adhere to the existing legal framework. Better methodologies would also help public authorities such as the labour inspectorate. They can lead employers towards the elimination of discrimination, whether in the remuneration system in general or in terms of individual decisions. And not necessarily under the threat of sanctions, but perhaps positive cooperation. I think that there is a role, of course, for the Office of the Public Defender of Rights as well. Again, through raising public awareness, through a more detailed interpretation of the rules of law.“

„In terms of the laws as such, here I would like to mention a few things that might be worth considering. One is the question of transparency, meaning disclosure, or the potential obligation to publish anonymised information on incomes, especially for larger corporations. The European Commission recommends that companies with more than 50 employees should publish information on average earnings divided by job positions and by gender. It also recommends that gender pay audits should be conducted in larger businesses with more than 250 employees. Perhaps it is appropriate to point out that actually in the current situation we could already, to a certain extent, interpret these obligations into the law. For example, our Anti-Discrimination Act not only establishes the obligation of equal treatment, but also an obligation to ensure equal treatment. The latter obligation is obviously slightly different, more comprehensive, and one could argue that this obligation to ensure already contains the need for some proactive measures. Perhaps of this very type. But it has not happened yet. It is then a question, of course, whether it is necessary for the law to respond to these matters in more detail.“

„Another area, where I would consider new legislation, but again only because currently existing laws are not interpreted correctly in practice, is confidentiality clau-



²⁷ *Literal and subsequently approved transcript of the author's speech during a panel discussion on the topic.*

ses. Again, we can infer from the Labour Code that any act by which an employee waives his or her rights in advance is invalid. But it is simply not understood this way. So the question arises whether these things need to be regulated specifically. I will end here and give the floor to my colleagues."

In response to the discussion on freedom of contract, and whether there should be a distinction between the private and public sectors:

Barbara Havelková: „I would like to respond to the emphasis placed on the distinction between the public sector and the private sector, expressed by both Karel Šimka and David Kosař. I definitely agree with their point. I think that the reasons for transparency in relation to the public sector are, of course, different and also more serious. But I also think that, in the debate on the freedom of economic entities, the reality of how much power they actually wield in society is often underestimated. Here, we are talking mainly about larger companies, we are not talking about small family businesses. Most proposals of the European Commission are aimed at companies with more than 50 or even 250 employees, sometimes only at those that are traded on the stock exchange. They have considerable transparency obligations anyway. These are really big economic players, large employers, who have incredible power over people, especially in regions with weaker employment. They have influence over their consumers, which is why in fact we extensively regulate consumer protection. You simply cannot put poison in sweets or lead in toys for children. And this is a restriction of freedom on which we agree. At the same time, they have power over their employees, and that is why we have the Labour Code. That is why we have the Anti-Discrimination Act. It is therefore, I believe, generally accepted that the state may pursue some of its objectives through regulation and restriction of the freedom of businesses. The state addresses some of its policies by imposing obligations on private entities. For example, they are also required to deduct taxes on behalf of their employees and keep the tax authorities fully informed. What I want to emphasise is that the frequent argument that can be heard very often in the Czech context that an anti-discrimination law is somehow an extraordinary interference in the autonomy of private entities, does not hold up. The state interferes in the autonomy of private entities every day for various very good reasons. And therefore I would rather turn the debate the other way, since I think that it is not appropriate to ask „Why?“, but instead „Why not?“ After all, we know that this is a question of justice, which has a crucial socio-economic, socio-cultural

impact on half of the population, which affects them today and will do so for the rest of their lives, including in retirement and so on. So in my opinion, we must turn the question around and ask: „Why do we care about other things but ignore something so fundamental, unjust and often so economically disastrous to women such as the gender pay gap?“

Discussion moderator - Zuzana Ondrůjová: „It is an open question whether even the very concept of equal work and work of equal value is sufficiently clear. When the supervisory authorities, inspectorates and hence even the courts are confronted with a real case in practice, do they have enough legal footing? Is there potentially some deficit in the practice of judicial decision-making or in the control activities themselves?“

Barbara Havelková: „Firstly, it is necessary to say, and I think that we all also agreed, that it would be best to support employers primarily through various available methodologies or software, electronic systems that would help them meet the obligation of equal pay. Rather than considering enforcement to be primarily a duty of the courts. It is important to promote self-regulation or promote the attitudes of employers themselves. In the international context there are many very good and practical methodologies that interpret and explain the concept of equal pay and work of equal value and these could essentially be transferred to the Czech environment. The criteria are mostly the same. These are skills, effort, responsibility and working conditions. Those are the four criteria. But I think that what we need to realise is that when stated just like this, it still will not lead to anything. It is necessary to create more detailed subcategories and conduct a gender-sensitive evaluation of individual items within these subcategories. And here the main problem is gender ignorance, meaning ignorance of how gender prejudices and stereotypes work. It is necessary to keep very clearly in mind which criteria or sub-criteria are gender-burdened and in what way. Qualifications usually define education, skills and experience. But some experience will be typically undervalued. For example, experience in the non-profit, non-governmental sector or outside of employment, which women will have more often, is undervalued. Employers will tend to evaluate such experience as relevant less often than a standard uninterrupted career in one sector in one type of job position, which is more typical for men. The situation is similar for skills or abilities. Physical abilities, especially physical strength, are typically valued higher than communication and interpersonal skills. Here, I would like to note that I am not an essentialist, in the sense that I think women somehow inherently possess or gravitate towards certain

skills or jobs. However, contemporary society simply trains women for certain abilities much more and they can bring such skills to work teams. So again, it is not absolutely necessarily a question of more detailed legislation. Rather, it is necessary to have good instructions and good methodologies to apply it in practice. But it is also necessary to finally get over the backward, typically Czech reluctance to admit how gender influences our cognitive frameworks and our decision-making."

Discussion moderator - Zuzana Ondrůjová: „If we were to view these sectors, public and private, each differently, even though the legal rules apply to both sectors the same, would that not be some infringement of the coherence of the legal order?“

Barbara Havelková (in response to David Kosař and the discussion on women negotiating less): „I just wanted to say something very briefly about negotiation. Women are penalised for not asking for a higher salary, but as shown by foreign research, in the context of the United States, they are also surprisingly highly penalised when they do ask for a higher salary. Because this does not correspond with our idea of how women are supposed to behave (i.e. with appropriate docility and softness) at job interviews and in other contact with management. In other words, we again come to the problem of broader gender structures in society; to the problem of the issue of underreporting and the protection of personal data and commercial data.

„In terms of the difference between globalised and anonymous data on the one hand and specific data about employees on the other, I would like to add one more thing. A somewhat legal point. It refers to the difference between direct and indirect discrimination. If employers really do discriminate on grounds of gender, if they simply discriminate against women, this is unjustifiable from a legal perspective. But when it comes to discrimination, in my opinion we will be very often looking at indirect discrimination. In effect, this means that there will be some neutral criteria for remuneration which are, in fact, not that neutral because their effect will be significantly to the detriment of women compared to men. From a legal perspective, when these different effects are found the employer comes under scrutiny. The employer can then relieve itself of the burden of proof, and is thus relieved of the suspicion of discrimination, by justifying the criteria and proving that they are not a disproportionate means to achieve these legitimate objectives.“

„I have my doubts as to what David Kosař mentioned: that business entities would be somehow undermined by the disclosure of the information itself. I doubt that anyone would have an entire business model based on how they pay their people. Another objection concer-

ned the fact that if businesses begin to disclose information about wages, they would immediately become the target of endless anti-discrimination lawsuits. This is also hard to imagine. But even if this were the case, for all I know, we have this „get out of jail card“ in the form of justifiable *prima facie* of indirect discrimination. If employers have really good reasons for using certain criteria, they will be able to withstand anti-discrimination lawsuits. Either way, we are talking about very extreme cases not actually covered by the mainstream of actual practice that causes the gender pay/wage gap.“

Question from the audience: „I would like to stray a little into another sector, or into another area of law. I am referring to the opportunity to use or incorporate the principle of equal opportunities into public procurement and the procedures of tendering subcontractors for public services. In 2010, I was at a conference in Fem-Cities in Stuttgart, where deputies from German and Swiss cities were discussing what the rules were and how such requirements for equal pay and treatment were incorporated into these procedures or technical specifications. They explained what a struggle it had been for them when negotiating these things with politicians. And these are things being played out at the local level. I wanted to ask if you think that this may also be a path forward for the Czech Republic in future. Especially with regard to our circumstances, where it is difficult to incorporate other criteria into technical specifications. For example, quality criteria. And so we often have projects or activities where some tasks are not assigned to any tenderer within a certain time. So the question is, whether you think that this could be a way for us and how it would have to be underpinned in terms of legislation?“

Barbara Havelková: „I think that something a little bit different but nonetheless similar to what you mention is also the certification process. This means that you would not have to prove for a particular project that you would support something, but instead that you were just a company that complied with certain standards. This is probably a second option. I have to admit that I am no expert in the issue of public procurement and, in addition, it is probably a very technical discussion in many regards. But I do think it is definitely one of the versions for a certain „indirect“ regulation of equal treatment. And maybe it would also be more acceptable to those who would resent direct regulation under the threat of sanctions. Perhaps this is a more subtle way. Because it is not about a sanction but about conferring a certain advantage, let's say. The advantage being that one is awarded a public contract. And maybe because of this character it could also be more easily accepted in the Czech Republic. But it is just a thought.“

Discussion moderator - Zuzana Ondrůjová: „Do the reasons for inequality, in your opinion, generally lie in poor legislation? Either in terms of national law or EU law? If so, can you point to those aspects that play a role?“

Karel Šimka: „I am always a little bit cautious regarding measures ordered by the state to establish equality. Even though I very much agree with the objective they aim to achieve. In other words with the objective that, if possible, unless there are special reasons to the contrary, people who work in comparable situations receive comparable wages. I think there are many situations where grounds exist for a special procedure which would justify that two comparable people do not receive the same wage. However, in broad terms, I think we should be moving towards this aim. Regarding legislation, I think that in Europe in general or simply in the West, let's say, legislation enabling protection against inequality is pretty good. The standard seems to be sufficient. What concerns me more is always adopting new and more detailed regulation that will somehow actively create equality. Perhaps using the exact methods mentioned by my colleague, by in fact forcing private entities to implement state policy on equality by somehow making them pursue these political objectives in their sectors. Promoting equality is nothing more than a political objective. This is definitely a legitimate objective. But on the other hand, the idea of equality, the value inherent to equality inevitably conflicts with many other values that are also quite important. In particular, when it comes to the private sector, I think it conflicts with the value of freedom and the right to act according to one's will. I will say one thing that some people might not like, but I would argue that private entities, unlike the state, have a right to arbitrariness. This means that when concluding a legal relationship it has the right to act irrationally, based on their emotions or perhaps on the basis of other reasons than are publicly disclosed. And the question is to what extent the state should restrict this right to arbitrary behaviour in the area of labour relations and remuneration. I would make a very strong distinction between this and regulation in the public sector, where I am for strict regulation of equality and for transparency, which can be used to promote

equality. But in the private sector I consider freedom as a more important value than equality, especially freedom of contract. And in that sense I would be very careful about strengthening regulation directly related to the private sector. I heard my colleague from Austria describing the Austrian model (and its equivalents are also being introduced or considered in various other countries to one degree or another). I would be strongly against anything like this being gradually introduced, because it starts with non-binding anonymised reports, then the reports become more detailed, they become mandatory, then they must be disclosed and eventually wage regulation is based on these disclosed reports. And that would be precisely something that, in my view, would restrict freedom in a totally unacceptable manner. But I fear that developments are heading that way.“

Concerning support for employers through various methodologies and software, electronic systems etc. which would help them meet their obligation to provide equal pay.

Karel Šimka: „I do not like it at all. For a simple reason. Because all these methodologies force private businesses to choose employees according to some essentially objectifiable criteria. So we are creating some methodologies to accurately describe these criteria, if possible, to be able to differentiate between them, to be able to introduce some, let's say, evaluation mechanisms of how important the criterion should or should not, or can or cannot be. I think that this is a fundamentally flawed thought process. I think that it forces those entities to have a methodology. It prohibits them from making life simpler. It prohibits them from simply hiring whoever they like. Imagine if this logic – Barbara Havelková talked about all these regulations, consumer protection etc., imagine if this logic of employee selection and the use of some criteria and comparisons etc. was applied to other areas of how a private business functions. Then we could also have a system in which a company that wants to get a building built or get their plumbing, I don't know, repaired, would have to hold a public tender in the private sector for each such contract. We have it in the public sector for good reason, simply because we do not trust the agent, i.e. a public official, who acts on behalf of the principal, in this case the state, to be sufficiently objective because we know that their own

²⁸ Literal and subsequently approved transcript of the author's speech during a panel discussion on the topic.

private interests differ from the interests of the principal. And therefore we introduce some criteria that are perhaps, viewed from the outside, somewhat objectifiable and controllable; therefore we have introduced mandatory public tenders in the public sector. But on this point, please do not be mad at me, I would place much greater faith in a private business to use their own intuition or other method, or if it were a large company or some other organisation, using some sophisticated procedure, to simply choose some employees and pay them somehow. And if the employees did not like it, if they had the feeling that they were not paid well enough, they simply would not have to work there. Barbara Havelková talked about various multinational companies and other local, regional or other powerful players. Such players exist, of course. This is the reality of the world. But at the moment we begin regulating them so much that we prescribe to them (and ultimately even to those who are not as powerful) rules that are from our perspective either rational or irrational, depending on the debate, rules which they have to follow, then it will naturally lead to a situation where all these players, and we see this here, will try to formally follow these rules as best they can, but they will act hypocritically. They will have a great department for equal opportunities within the company. They will have someone in the department who they will have to pay. That someone will draw up various reports. These reports will be written, of course, so that they cause no harm to anyone, if possible, and so, eventually, we end up like the union members in Volkswagen who, to do what the management wanted, were properly motivated by - in quotation marks - „various benefits“. I do not want to scare you with an end-of-the-world-type scenario. This will obviously not happen. But all this regulation must result in its own circumvention. Attempts will be made to manipulate or simply circumvent it. And it will only lead, in my opinion, to those businesses having higher overheads. I acknowledge that the value of equality is important. But on the other hand, equality achieved in this way has some costs, it has some secondary negative effects - *side effects* - and no one really considers these too much.“

Discussion moderator - Zuzana Ondrůjová: „I would like to ask a question connected with what you have just said. Would you be in favour of the rules being completely different for the public and private sectors, even though the Labour Code falls generally on both sectors?“

Karel Šimka: „Well, I think it is wrong that the rules are not different. But I do see a trend in this regard. Barbara Havelková has described it here. The Anti-Discrimination Act is designed exactly in this way, although it is not interpreted that way in the practice of the courts. Thank God, in my opinion. However, there is a tendency towards this, of course. To somehow align the private and public sectors. I think that if we want to promote a value on which we set great political importance, then the entity promoting it, in this case society as a whole, should set an example through the institutions which it is able to control the most. And in such a case, yes, let's set a good example, let's demonstrate best practice in the public sector, let's show that the public sector is transparent, efficient, fair and decent, and let's make sure that in the public sector there is equality in selection, equality in remuneration, equality in access to such things as maternity leave and other areas that may be sometimes regarded within the public sector (for example, when hiring employees) as more undesirable than in the private sector, despite the fact that the public sector often operates over much longer timespans and it should easily cope with things such as the maternity leave of its employees. Unfortunately, the public sector does not behave so very differently from the private sector in this regard. I would even venture to say that the private sector, assuming rational entrepreneurs operate in it, and frankly for the most part these have to be rational entrepreneurs because otherwise they would ultimately not survive economically, is better able to ensure that a woman or man, it does not matter which, is remunerated adequately for their performance if the business in question feels that the value of pay equality is important to employees.“

Discussion moderator - Zuzana Ondrůjová: „Just a brief comment. Just yesterday we participated in a seminar with our guest from Norway, with our Norwegian expert, and talked about those percentages, you also have some of the statistical data in the files. I just wanted to follow up on what Dr. Šimka said about the distinction between the private sector and the public sector. Some statistics show that the GPG²⁹ is decreasing in the private sector, while it remains consistently high in the public sector. It is a little bit of a paradox. Would anyone like to respond to that. Do you have any explanation for that? Following what has been said? Is it somehow associated with greater freedom or excessive regulation?“

Karel Šimka: „I will venture a hypothesis, absolutely not backed up by any empirical data because I do not

²⁹ *Literal and subsequently approved transcript of the author's speech during a panel discussion on the topic.*

have it. I think that with the gradual stabilisation of the Czech Republic and its institutions, there has been the creation of certain „castles“ here. Castles in terms of institutions that are somehow garrisoned by certain people. And these castles are becoming much stronger in the public sector than in the private sector because the private sector simply has to adapt to changing conditions. The private sector must generate a profit. Whereas these castles in the public sector allow people to cement themselves within the institutional walls. And these fortresses, that were created at some point historically - it does not matter whether they were created in mid-1990s, at the beginning of the 21st century or maybe three years ago, depending on what institution it is - at some point someone establishes and occupies them, begins to manage them in a certain way and implements certain practices in them, including remuneration and salaries, and these habits do not change for a long time. And this may well be the reason that causes the public sector to lag behind in this way. Simply put, the private sector must be efficient and I believe that it is economically inefficient to pay women low salaries.”

On the topic of penalising women if they ask or even if they do not ask for a higher salary:

Karel Šimka: „I would just say a couple of sentences. People are penalised under a variety of circumstances that happen in their lives. If I am not mistaken, if you start to work at a time of economic crisis, your starting salary is significantly lower than if you start working in a comparable position during an economic boom. Simply because at the time of the boom there are less employees in the market and companies must award higher salaries under otherwise identical conditions. And this starting salary usually accompanies you throughout your working life. It will, of course, have various secondary effects, pensions, salary raises for promotions etc. However, another effect may be that during a boom you have a better chance to succeed in your profession, so you will have more professional successes on your CV than the person who started working during a crisis, and was let go due to labour cost savings. So life is unfair, and I am not sure whether we can take all similar such aspects into account. For example, I have no knowledge of any association for the protection of employees who started working during an economic crisis.“

Discussion moderator - Zuzana Ondrůjová: „What do you think explains the fact that such a massive problem (*the problem of the GPG*), which is proven by statistical data, is not sufficiently reflected in case law or even in any administrative practice in the Czech Republic? In contrast, the case law of the European Court of Justice, for example, is relatively rich. This is another paradox, and it

poses a question. We are looking for an answer why this happens here in the Czech Republic. And might this be caused at least in part by a disproportionate protection of personal data relating to the confidentiality of salaries and wages? Is such strict personal data protection appropriate? I ask because Dr. Šimka participated in one of the key judgements of the Supreme Administrative Court, specifically its extended senate, which concerned the disclosure of salaries where employees are paid from public funds. And I also want to go back to where I began - last year, the Constitutional Court dismissed the constitutional complaint of a business that opposed the disclosure of its economic information in a public register, from which, especially in the case of small businesses, armed with good knowledge about how these entities economically function, it is possible to calculate the salaries paid by them.“

Karel Šimka: „That is an eternal question, of course. Transparency versus privacy. There is no simple solution such as 1:0 or 0:1. In principle, it is a political issue that can be regulated differently by different societies. When writing our famous judgement on the disclosure of salaries, we had available a comparison of the degree of transparency in the public sector according to various aspects right across Europe. On one side, we have a very transparent Scandinavia, and on the other side a non-transparent southern or southeast Europe. The Czech Republic is somewhere in the centre, simply Central Europe. And again, we can distinguish between public and private sectors. Consumer protection and the associated obligation of companies to provide information etc. have already been mentioned here.“





This is a development which has come from elsewhere, from America. It applies to stock exchanges and trading on the stock exchange; the transparency of some big companies was brought in because of the desire for the stock market to function fairly. It is also a political issue. Of course, if you look at American cases of *insider trading* from our Central European perspective, they are extremely sensitively conceived. We would probably not see *insider trading* everywhere the Americans see it. It is really a question of transparency back to front. To what extent can I keep certain information secret and then use it? And how to use the fact that I have some undisclosed information? In the Czech environment, we have taken, I hate to use the term “social engineering”, but in simple terms, a certain social engineering step. I was the judge rapporteur, I wrote the judgement on salary transparency, so I spent quite a few sleepless nights over it. We said very radically that all salaries must be disclosed in the public sector, save for a very few exceptions. It is social engineering in the sense that we were going against the general feeling in society that salaries are a private matter. And this feeling also applies to or applied to, that is at least how I felt it and the response from public authorities confirmed it, of course, to salaries in public authorities. People working for public authorities were not at all happy that something could be disclosed about them. Everyone wants complete transparency as long as it does not concern their own salary. I had a wonderful experience in this context. There were two reporters at a press conference after the judgement

was announced. I believe one of them was from Prima TV and the other one from Česká televize. And the one from Prima was extremely happy to finally learn how much the reporter from Česká televize earns because, of course, the reporter from Česká televize falls under the regime of the Act on Free Access to Information and the TV station is obliged to declare how much they pay him for his reports. We, as a court, somehow managed to stand up under the pressure in terms of politics and value. I say politics because it is partly a political issue, and partly one of values. We withstood it, we took this social engineering step, but we will certainly not be popular in various areas of public administration. Of course, this social engineering measure can even be taken against the private sector. We have already spoken about it here. And you can take other steps such as disclosing more and more mandatory data, whether in a confidential scheme or a published one, for example, in the collection of deeds in the Commercial Register. You can do all this. It is simply a matter of political will and there is no simple solution. I do not have a strong opinion here. I am afraid of the situations that will probably occur, that data on the operation of companies will be massively reported to the state on-line within the confidential regime. I mean the control report and EET, i.e. in the area of taxes. I am afraid that in this way the state will receive such structured and rich information that it will be seriously abused. But this too is a political matter.”

Pavla Špondrová

lawyer and gender expert

Introduction

I cannot begin any other way than with a broad brush:

„Sure, Mr. Mareš has higher pay than Mrs. Pavlicová; he is the breadwinner and we would not be able to keep him here with a lower salary!”

A. Hrubíková, Primary School Director

„We do not keep any statistics on the sexes. We do not even need it because we pay people according to their performance, skills and experience, and not according to gender!”

H. Marenčíková, HR Specialist

„During the selection process, reluctantly we realised that women are less desirable as employees due to their subsequent absences: they either have children or will have them soon! That is simply the market!”

Z. Vaněčková, Store Manager

„Please, can you also sign here the amendment to the employment contract relating to the non-disclosure obligation regarding the amount of your salary.”

K. Grulák, HR Specialist

„When I found out that my colleague, who published and taught less than I did, often took home more money, with bonuses up to CZK 5,000, I asked the management why. They said that they would not discuss it with me and that if I did not like something, I could look for another job. Even though I am now somewhere else, I did not take them to court. It's behind me now and I do not want to try to resolve it.”

C. Cvejnová, University Teacher

„Please, tell me what woman wants to get home from work at ten in the evening! We really wanted a woman to work as the Director of the Sales Department, but it turned out that they were really not interested.”

V. Kolesár, HR Director

„When they asked me what my salary requirements would be, I tried to stay grounded with my suggestion. I do not want it to look like I care about the money too much!”

F. Haklová, Sociologist

„Men are generally better focused at work. It is a question of natural disposition and different functioning of the brain - to focus on one thing and not to see or hear anything else, just like when hunting deer. In addition to work, women think about their family, shopping, how they look and such like. It is natural that their performance is lower due to their lower ability to concentrate, and lower salaries are paid for lower performance.”

T. Hlaváček, Analyst

„Some industries, often those with higher pay, are driven forward by men rather than women. What can you do?”

T. Hlaváček, Analyst

Using the above quotes³⁰, taken from a number of discussions on gender equality that I have had in recent years with students, friends or with people whom I meet professionally, I am illustrating the fact that the existence of the GPG has a number of sources. These are:

- Pay non-transparency (dark blue, yellow, grey)
- Undervaluing women's work (dark green, purple)
- Horizontal segregation of the labour market (purple, light green)
- Vertical segregation of the labour market (orange, red)
- Traditions and stereotypes (dark green, purple, red, orange, light blue, light green, grey)
- Combining work and private life (red, orange, dark green)
- Inability or unwillingness to exercise one's rights or advocate on one's own behalf (dark blue, light blue)

³⁰ From real people; identities have been changed.

- Ineffectiveness of control mechanisms (dark blue, yellow, grey)
- Minimalist legislation (grey, dark blue)

If the issue of the GPG were one- or two-dimensional, finding a solution would be a relatively easy task. There are, however, as suggested above, many circumstances affecting the GPG, and it is therefore not possible to only focus on one, or only some of them, when looking for appropriate solutions. Complications arise not only owing to the multidimensionality of the issue but also to the fact that individual circumstances affecting the GPG further interconnect, combine and strengthen, thus requiring the search for and implementation of additional, combined forms of solutions.

1) Question for the panel discussion: Do you think that the reasons for the GPG generally lie in poor legislation, either in terms of national law or EU law? If so, please describe in which aspects.

Regarding the question asked, in my opinion, Czech legislation need not be considered deficient were it the case that other corrective mechanisms functioned effectively. For example:

- Consistent and conscientious work of the supervisory authorities
- And/or an active state policy requiring e.g. regular reporting
- And ideally also, and perhaps most importantly, business self-regulation.

It is clear, however, that self-regulation and the two previous mechanisms are ineffective in addressing not only issues of unequal pay, but also unequal treatment and discrimination in general in the Czech Republic. This is true both at the level of the Czech Republic, where the pay gap remains almost unchanged over time, but also at the EU level, where the European Parliament has repeatedly stated so in relation to one of the reasons for the GPG, i.e. the unequal representation of women and men in decision-making positions.³¹

Czech legislation lays down obligations in relation to the GPG relatively clearly. It says that employers are required to ensure equal treatment (Section 16 of Act no. 262/2006 Sb., Labour Code), and that ensuring equal opportunities means the adoption of measures that are a precondition for effective protection against discrimination and that can be, with regard to good moral principles, required given the circumstances and

personal situation (Section 5 (2) of Act no. 198/2009 Sb., on Equal Treatment and on Legal Means of Protection Against Discrimination and Amending Certain Laws (Anti-Discrimination Act)).

The Labour Code also elaborates in detail on what constitutes equal pay, specifically in section 110. It specifies what equal work and work of equal value means – it is work of equal or comparable complexity, responsibility and difficulty carried out under the same or comparable working conditions, with the same or comparable work performance and work results (para. 2). It is also explained what the terms complexity, responsibility and difficulty of work mean (para. 3), and how working conditions (para. 4), work performance and work results (para. 5) are assessed.

Therefore, the boundaries are set quite well. We have also established supervisory power, entrusted to the State Labour Inspection Authority (hereinafter SÚIP) and its regional inspectorates (section 3 (1)(a) of Act no. 251/2005 Sb., on Labour Inspection). The failure to meet the obligation of equal pay is an offence for natural persons and an administrative offence for legal entities in both the area of offences regarding equal treatment (section 11 (1)(a) and (b), or section 24 (1)(a) and (b) respectively) as well as employee remuneration (section 13 (1)(a), or section 26 (1)(a) respectively). The fine imposed can be up to CZK 1 million, or CZK 500,000, respectively.

The problem is, however, that in its supervisory activities, the labour inspectorate has for a long time prioritised issues relating to occupational safety and health (hereinafter OSH) and there has been significantly less space in the annual schedule of audits for other issues entrusted to the inspectorate. (Since 2006, no more than 1/3 of all supervisory tasks focused on topics other than OSH). In terms of scrutiny over equal treatment and non-discrimination in the workplace, there has only been a separate chapter since 2014³².

However, what is most alarming is that the SÚIP is still far from differentiating its supervision of compliance with equal pay obligations in relation to the various grounds of discrimination, and therefore it does not specifically address issues of equal pay for women and men. Which is strange in a country where the GPG has been in excess of 20 % for so long.

However, as mentioned above, employers have an obligation to ensure equal opportunities, including

³¹ Resolution of the European Parliament of 6 July 2011 on women and business leadership (2010/2115(INI)), available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0330+0+DOC+XML+V0//CS> and e.g. resolution of the European Parliament of 13 March 2012 on equality between women and men in the European Union – 2011 (2011/2244(INI)) available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2012-0069+0+DOC+XML+V0//CS>

³² Information gathered from the Annual Schedules of Audits in the Years 2008-2015, available at <http://www.suip.cz/rocni-program-kontrolnich-akci/>

taking measures that are a precondition for effective protection against discrimination. The SÚIP is therefore entitled to ask whether attention is being paid to the GPG in a particular organisation, whether statistical data are being kept on, whether a gender pay gap exists and how big it is. With the national pay difference exceeding 20 %, the failure to address the issue of the GPG is itself a violation of the obligation under section 16 of the Labour Code. Ensuring equal opportunities includes not only evening out potential differences in pay between men and women, but also keeping sufficiently credible statistics that can demonstrate the existence or otherwise of a GPG within the relevant organisation. However, in its annual report on the results of audits conducted by the labour inspectorate in 2014³³ the SÚIP itself stated in relation to audits of equal treatment and non-discrimination that „during audits, the inspectors try to evaluate the working environment and relationships in the workplace as objectively as possible, even though it is almost always a very difficult task. In the relevant audited area, inspectors usually cannot rely on documents presented by the employer; on the contrary, it is necessary to carefully interview employees and look for clues regarding potential unequal treatment.“

It is obvious from the above that the SÚIP itself does not have enough information on how to sanction the area of equal treatment and non-discrimination, what (and in what form) it should require from employers and how to approach the issue during audits.

This is not only about resolving specific complaints reported to the SÚIP or individual inspectorates, nor is it simply a matter of keeping statistics on the GPG, for example. As already mentioned above, the GPG has many causes and its existence can be indicated by a number of facts. Within the remit of the SÚIP and regional inspectorates, these may include, for example:

- Auditing the drafting of amendments to employment contracts regarding confidentiality in relation to the amount of wages or salaries or other benefits;
- Issues concerning the prevention of discrimination that should be elaborated on in the internal regulations of the organisation;
- The possibility for reasonable adjustment of working hours for people caring for dependants;
- Or whether there are transparent rules for career advancement and the hiring process;

- Others.

These examples of what information can be required during an audit are given because they address facts that can point directly to the existence or otherwise of discrimination or unequal treatment in the workplace. At the same time, as said above, these are factors that significantly influence the amount and the existence of the GPG.

Since we see how labour inspection works, since we know how frequent are the lawsuits concerning gender discrimination which might otherwise ideally have a preventive effect on other employers (a few cases every year)³⁴, and since we realise that activity by the state (such as the implementation of policies, campaigns, training staff, employees or employers etc.) is also not all that great, tightening up the legislation does seem to offer a possible way out of this vicious circle.

In addition to setting boundaries and defining concepts, legislation may also determine the procedures and rules for the proper fulfilment of legal obligations, as is a common practice in different EU countries.

Austria³⁵

For example, in Austria the legal obligation since 2010 on employers with more than 1,000 employees to annually file reports on GPG was introduced by an action plan, and the threshold number of employees has consistently fallen subsequently. Since 2014, all employers with more than 150 employees must report.

Belgium³⁶

One law adopted in Belgium in 2012 stipulates that the pay gap must be reported in the annual corporate audit. A comparative analysis of the pay structure must be conducted every two years in organisations with more than 50 employees, and if it is found that a GPG exists in the organisation, an internal action plan must be prepared and implemented. The law also provides a procedure for specific cases when pay discrimination is claimed. In such cases, the affected person must have the opportunity to consult a company mediator, who examines the matter, and if unequal pay is ascertained, they are required to mediate a solution between the affected person and the employer.

France³⁷

Under a decree of 2012, companies with more than 50 employees in France are required to adopt and

³³ http://www.suip.cz/_files/suip-efc9b3ed2c9c2d76499a86799906eaf4/rocni-souhranna-zprava-o-vysledku-kontrolnich-akci-suip-za-rok-2014_leden2015.pdf

³⁴ For example, in 2012, only four final judgements concerning non-discrimination cases under the ADA were delivered; information from the Ministry of Justice provided under Act no. 106/1999 Sb., on Free Access to Information, e-mail communication of December 2012, non-public document

³⁵ National Action Plan Gender Equality in the Labour Market, Federal Ministry for Women and the Civil Service, Austria, <http://www.bka.gv.at/DocView.axd?CobId=42528>

³⁶ Available in French and Dutch at: http://www.ejustice.just.fgov.be/mopdf/2012/08/28_1.pdf

³⁷ Text of the decree in French available at: <http://legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000026792583&categorieLien=id>

implement action plans that must also contain rules regarding equal pay. The government has also set up a website³⁸ which contains information for small and medium enterprises on how they can proceed in fulfilling the decree.

Similarly, the obligation to proactively address the issue of pay inequality through legislation has been established in Portugal, Spain, Sweden and the UK.³⁹

As we can see, tightening up legislation is quite a popular solution. One advantage of legal measures is their general mandatory nature and harmonising effect, whether it be the ability to impose sanctions, establish uniform rules for similar organisations or forms of positive motivation, for example, through granting state-guaranteed certificates and awards.

Legislation could therefore clarify the obligation to ensure equal treatment in the Czech Republic, for example by introducing the obligation to annually monitor the GPG and include the results in annual reports. If a GPG is identified, the obligation to take appropriate corrective measures and again report about them in annual reports should be stipulated. In my opinion, it is not necessary to reformulate sanctions, because the procedure would essentially fall within the scope of the competence of the inspectorate.

Regarding the EU level, I believe that the regulations contained in the directives and treaties are sufficient as the basis for developing legislation in individual countries. But it is necessary to qualify this by adding that if the EU regulations were more detailed, it would naturally lead to an improvement in the situation in the Czech Republic as well. This is the top-down method, which might not be a bad thing because the bottom-up approach, by which I mean independent legal initiatives in the Czech Republic in addition to company self-regulation, is a very long and winding road with an uncertain end.

From the perspective of the EU as a whole, embodied as it is by the European Commission and the European Parliament, more intensive harmonisation of the conditions and rules in individual countries is very much to be desired. This requirement was formulated by the Committee on Women's Rights and Gender Equality of the European Parliament as follows: „The Committee ... calls on the Member States to find a way to provide a definition in national laws of what is to be considered

as work of equal value, or a set of clear frameworks on the basis of which it would be possible to determine what should be regarded as work of equal value; considers that, in line with the case law of the Court of Justice of the European Union, the value of work should be assessed and compared based on objective criteria, such as educational, professional and training requirements, skills, effort and responsibility, work undertaken and the nature of tasks involved – other factors can also be taken into account, such as working conditions, physical and mental stress, competence and degree of independence, planning and decision making, ...”⁴⁰

2) Question for the panel discussion: What do you think explains the fact that such a massive problem (see the statistical data) is not sufficiently reflected in the case law of courts or in administrative practice? Could „under-reporting“ be due to disproportionate protection of personal data (confidentiality regarding salaries and wages)? Is such strict „personal data“ protection appropriate?

In my opinion, there are three ways in which case law and administrative practice is insufficient.

Firstly, in the Czech Republic there is something like a „tradition of not defending one's rights“. The public and individual citizens are not accustomed to, certainly also with regard to the legacy of the communist regime, fighting for their rights, opposing authority, whether the employer is the state or a private company. This does not happen even within the trade union movement where union members are often considered a strange group fighting for their own offices rather than for the welfare of employees. This failure is replicated at the level of individual life stories, where standing up for one's own interests is hampered, in addition to the aforementioned factors, by the following:

- Length of court proceedings;
- Uncertainty of the outcome also caused by the minimal experience of people in the justice system with anti-discrimination, including the judges;
- Limited offer of accessible advice from the non-profit sector, which is significantly underfinanced in the Czech Republic;
- Absence of clear and extensive education and awareness from the state about the rights and obligations of employees in the area of equal treatment.

³⁸ <http://www.ega-pro.femmes.gouv.fr/>

³⁹ For details on specific legislation and procedures in other EU countries see *Legislation and equality plans*, European Commission, online http://ec.europa.eu/justice/gender-equality/gender-pay-gap/national-action/law/index_en.htm

⁴⁰ See Report of the Committee at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bREPORT%2bA8-2015-0213%2b0%2bDOC%2bPDF%2bV0%2f%2fCS>

This point also includes the willingness of job applicants to sign „amendments to employment contracts“ regarding the obligation, under the threat of various sanctions by the employer, not to speak anywhere about the amount of their income. Men and women seeking employment are insufficiently aware that such an arrangement has no support in the Labour Code, meaning that the employer cannot impose any sanction based on labour law or private law or any other sanction on an employee who wants to freely handle and does handle their own personal data⁴¹, which certainly includes the amount of income. The Labour Code simply does not give the employer any such right to sanction in this regard (for example, sections 52, 144a, 146, 147, 310, 346b, 347c etc. of the Labour Code).

In the current situation, where the aforementioned violations of labour legislation by employers are commonly tolerated by the inspection authorities (meaning not controlled, though they commonly occur), it is no wonder that it seems legitimate to sign these so-called

„amendments“ with job applicants and to seek their compliance with such obligation. The lack of transparency in remuneration, where employees do not know each other’s salary, is one of the aforementioned circumstances affecting the GPG.

The second factor is surely the feeling that unequal pay is somehow intrinsic to our lives. Many of us share the idea that „a man should earn more than his wife“ because the man is the „breadwinner“. Men work more, better, spend more time at work and focus better, and on top of that they are natural leaders, so their dominance in decision-making positions does not seriously unnerve too many people in the Czech Republic. The significant presence of gender stereotypes is surprising in the country who elected Tomáš Garrigue Masaryk as their first president (an active fighter for women’s rights). The lack of information about what gender equality is, that a feminist is not a person who hates men, or that quotas are not a dirty word and are successfully applied in very many countries, companies and banks (even in the



⁴¹ Section 4 of Act no. 101/2000 Sb., on Protection of Personal Data and Amending Certain Laws and, for example, judgement of the Supreme Administrative Court, file no. 9 As 34/2008, available on-line: http://www.nssoud.cz/files/SOUDNI_VYKON/2008/0034_9As__0800068A_prevedeno.pdf

Czech Republic) also plays an important role.

To explain the third reason for the low transparency and in effect invisibility of the gender pay gap, let's go back to the issue of the protection of personal data. It is in fact a popular argument why it is not possible to monitor this area. As mentioned above, the amounts paid in wages and other forms of remuneration really are the personal data of individuals. They alone are entitled to dispose of, or grant permission for the disposal of such data. (I leave to one side the issue of public interest in the disclosure of the remuneration of senior civil servants, where the right to protection of personal data may be offset by the right of the public to the performance of public administration with due diligence and in accordance with the principle of cost-effectiveness, which in some cases involves the disclosure of even non-anonymised data about the amounts of financial remuneration.)

However, nowhere is it stipulated that every employer must publish a list of names of employees detailing information about the amount of their salaries or wages so as to determine the GPG within the organisation. Not at all. A suitable form of monitoring anonymisation, where only information about the gender and amount of remuneration, and possibly also the classification of the employee within the organisational structure, is recorded and analysed. Then it is possible to monitor gender pay gaps, ideally also at different levels of employment where it is generally true that the higher up in the organisational structure, the higher the GPG.

However, since the inspection authorities do not require any monitoring, since the drafting of „confidentiality amendments“ is not questioned by them, since there is not enough information in the society on what is and what is not permissible conduct by employers, and since we lack any real idea how to act in defence of our rights, the fact that there is significant „underreporting“ of cases of unequal pay for women and men in the Czech Republic should not, in my opinion, come as any surprise.

3) Question for the panel discussion: Is the concept of „equal work and work of equal value“ sufficiently clear from a legal perspective? In other words, is it possible in practice to effectively control pay equality through the competent authorities (SUIP and OIP)?

As I describe above, I believe that in terms of definitions, materially, the concept of equal pay is sufficiently regulated in Czech law, particularly with reference to section

110 of the Labour Code.

The supervisory authorities hit the rocks, as also shown above, when it comes to other circumstances. Root causes include the limited supervisory experience of authorities that have traditionally focused more on OSH issues, for which they have sufficient professional, personnel, and apparently even financial resources. An important role is also definitely played by the significantly lower sensitivity of OSH as a political issue. The situation is the opposite around issues of equal treatment. The lack of resources on all sides, including lacking political support, has so far meant that the gender pay gap is discussed only very rarely. A perfect illustration of this being the fact that there is not a single word about it in the annual summary reports or annual schedules of audits of the SUIP.

Conclusion

I have tried to deal with the presented questions in a simple manner. Less is sometimes more, and brevity and clarity sometimes communicate things better than a 100-page analysis⁴². Besides, the organisation of this Conference on the Gender Pay Gap is itself aimed at comprehensively addressing the issues of the GPG. In conclusion, I would like to return to my introduction and add another visual example to illustrate where (among other things) the real problem lies. If we have jobs requiring comparable levels of education, working time and intensity, how is it possible that work is financially valued significantly lower in so-called feminised fields than in those dominated by men? (purple)

⁴² Details about the GPG can be obtained from many publications. These can be found, for example, at the website of the European Commission, which addresses the GPG: http://ec.europa.eu/justice/gender-equality/gender-pay-gap/index_en.htm, or the website of the European Institute for Gender Equality, e.g. in the section Resource & Documentation Centre: <http://eige.europa.eu/rdc>.

The Issue of Comparability

What do you value more?

Saves your life.

Nurse
CZK 20,000



Saves your data.

IT Specialist
CZK 50,000



What do you value more?



Takes care of your children.

Kindergarten teacher
CZK 20,000



Takes care of your money.

Banker
CZK 50,000



What do you value more?



Current gender pay gap

The gender pay gap is part of the broad gender inequality in society. It is serious inequality, which although unfortunately remaining unresolved for many years, can be easily measured and is therefore visible. The average gender pay gap in the EU-28 in 2013 amounted to 16.3 %. However, in the Czech Republic it was significantly higher in the same period - 22.1 %.⁴³ The Czech Republic has long been recording some of the worst results for the gender pay gap. In 2013, it was the third worst in the EU-28 (the worst was Estonia with 29.9 %, followed by Austria with 23 %, while Slovenia had the lowest gap with 3.2 %). In terms of specific figures, a woman's average wage in 2013 was CZK 22,857 and a man's average wage in 2013 was CZK 29,116, which is a difference of CZK 6,259.⁴⁴ Current figures for 2014 so far do not show any improvement. In 2014, the gender pay gap in our country remained at 22.1 %.⁴⁵

Main causes of the gender pay gap

So, what are the causes of the gender pay gap in the Czech Republic? What are the sources for gender inequality in pay? There are many causes and they are interconnected by many factors. The phenomenon of the gender pay gap is very complex, and the degree to which individual causes contribute varies depending on location. However, the following causes are in the main indisputable. Firstly, the inequality in pay between women and men is affected by non-transparent systems of remuneration and career advancement in the workplace. Pay discrimination occurs through such systems either consciously, i.e. directly, or else it is brought about by employers unconsciously, i.e. indirectly. Another reason is the low level of harmony between one's work, private life and family life. In the Czech Republic there is a particularly significant shortage of childcare facilities (both for pre-school as well as school children), the effects of which are augmented by excessively long parental leave and low involvement of fathers in care. However, not even parents whose children are already adult can harmonise these demands sufficiently because care for family members in general is insufficiently formalised in the Czech Republic. All caregivers are then vulnerable in

the labour market due to the low percentage of high-quality flexible forms of work. Another role is played by so-called horizontal gender segregation in the labour market. In sectors dominated by women, wages and salaries are lower (e.g. nurses, teachers). This is also the result of a discrepancy between the social and financial valuation of work and the fact that women more often do unpaid work and work in precarious forms of employment. Society undervalues the skills, knowledge and competencies of women, while those of men are often overrated. This is, of course, associated with vertical gender segregation of the labour market, thus a disproportionate representation of women and men in leadership and decision-making positions, in other words at the top of the employment ladder you find an extremely low representation of women (so-called „glass ceiling“) contrasted with a majority presence of men (so-called „glass lift“). This applies to almost all areas of society – in politics, the public sector and the business sector, i.e. areas where society's important resources are located. Last but not least, another reason for the gender pay gap are the gender stereotypes and prejudices prevailing in society. They shape gender roles in the family and in the labour market, they influence the choice of education and profession, and, of course, are related with the greater social and financial valuation of so-called male professions compared to other so-called female professions. Here, I must reiterate the link to the low involvement of men in care as such.

Gender pay gap as an issue of family policy

It is no longer true that pay differences between men and women are exclusively an issue for women, or even only a small specific group of women. On the contrary, this is an issue (as can be seen above) that has a powerful effect: it infiltrates various social structures, affecting the entire society, entire families, which means women, men and children, as well as businesses and other employers' organisations, public administration and trade unions. Even today, however, we still hear the higher pay for men justified by their role as breadwinners. This is no longer true.

⁴³ Source: Eurostat.

⁴⁴ <https://www.czso.cz/csu/czso/4-prace-a-mzdy>

⁴⁵ Source: Eurostat. As at 15 February 2016, the average gender pay gap in the EU-28 was not known.

The issue of the gender pay gap must be seen as a serious problem in the context of the increasing poverty of families. The difference in average gross pay is about CZK 6,259 per month (see above). Annually, it is therefore over CZK 75,000. What does this amount represent for families? A luxury vacation twice a year, for example? Or could families buy a large luxury car every five years? Or invest in better housing or education for children abroad? Or perhaps families would opt for another child? All this and, of course, so much more could be achieved if women were to be remunerated for work fairly.

The gender pay gap also burdens the entire state, or at least its budget. If women earn less during their working age, then they have lower pensions and are at risk of poverty as they get older. This raises demands on the state budget, e.g. social benefits for single-member households in the form of extra housing allowance. There are also lower tax payments to the state treasury from lower wages and salaries. The lower valuation of women's work reduces the real cost of labour in the entire Czech economy, reducing the average wage and thus reducing the pressure to increase the minimum wage. This topic is related to the debate on the cost of labour in the Czech Republic (end of cheap labour) which is currently being promoted by trade unions.

The gender pay gap harms the entire country's economy and its productivity, because it is largely caused by the fact that employers factor into women's pay the possibility of their departure for maternity and parental leave and the greater need for childcare in later years (role as primary parent). However, we are now in a situation where women make up the majority of the university educated population in the Czech Republic, and therefore the employers' risk margin is causing human resources to be allocated incorrectly. This occurs in a situation when a person with certain qualifications receives less money than they would receive than if only the qualifications were taken into account. In this case, based on the simple market mechanism of supply and demand, fewer people with the respective qualifications would be willing to work at this lower price. A large part of the qualification potential is therefore unused and human resources are wasted. In the event that it becomes a mass problem (i.e. a pay difference in the order of tens of per cent affecting hundreds of thousands of people), such poor use of human resources will cost our economy billions annually.

Proposed solution – the Ministry of Labour and Social Affairs is launching a systematically organised project aimed at tackling the causes of the gender pay gap

Given the above, the Ministry of Labour and Social Affairs has prepared a long-term project called „22 % TO EQUALITY“ funded by the European Social Fund with an allocation of nearly CZK 76 million. The project aims to eliminate the causes of the gender pay gap by, among other things, involving the major actors in the phenomena – i.e. the State Labour Inspection Authority, the Labour Office, the Ministry of Labour and Social Affairs itself, as well as employers, trade unions and individuals affected by inequality. The project will have many important outcomes, some of which will be implemented in the Czech Republic for the very first time. Firstly, the Ministry of Labour and Social Affairs will conduct an in-depth analysis of the phenomenon in the Czech Republic using quantitative and qualitative methods. Based on this analysis, it will be possible to design a so-called on-line wage and salary calculator, which can be used by everyone to calculate the usual wage or salary depending on age, education, region, work experience, job classification etc. The *Logib* tool will be brought across from Switzerland and adapted to the Czech Republic, so that simply, efficiently and without any bureaucratic burden employers can test their own wage and salary policy. As part of the project, the tool, which has been successfully used in Switzerland as well as in Germany and Luxembourg, will be pilot tested directly in employers' organisations, to whom the project implementation team will also give advice on how to practically implement a gender equality policy according to specific settings for each organisation, and not only in the area of remuneration. A *Methodology for Controlling the Remuneration of Women and Men* will be prepared for the State Labour Inspection Authority and Regional Labour Inspectorates. Within the project, public administration will be educated in the area of gender equality in the labour market. An analysis of possible legislative measures leading to a permanent reduction in the gender pay gap in the Czech Republic will be conducted. Finally, the Ministry of Labour and Social Affairs wants to draw attention to the persistent problem of the gender pay gap through a massive communication campaign, contributing to the awareness of the problem and its subsequent solution. The project is planned as a five-year project, falling within the broader framework for addressing gender inequality in accordance with the Government Strategy for Gender Equality in the Czech Republic for 2014-2020.

I would like to start with repeating what has been told already several times today. While gender pay gap is a complex issue caused by a number of factors, there is no one policy that might help to eliminate it. Therefore, it has been advised to focus on several policies which can work all together focusing on increasing awareness of gender equality problems, changing the stereotypes, a more precise determination of rights and obligations, reconciliation of family and private life, decreasing segregation on the labour market and education, organizational practices and so one.

Continuing regular monitoring of the gender pay gap and analysing the situation is also very important while in finding the best measures to reduce the gender pay gap, one of the first steps should be analysing what is behind that phenomenon and which might be the reasons for changes. There are several policies already in place at the EU level and work with developing and implementing these policies is ongoing.

Additionally, collecting good practices at country level and sharing them between Member States is also very important. The data collection on the gender pay gap is coordinated at EU level. The role of EIGE in this progress is mainly to analyse the situation and prepare the recommendations if the gender pay gap is selected as an area of concern by the Presidency country.

All employers should ensure equal treatment for all in their organizations. In the context of reducing the gender pay gap, it would mean attempting to implement personnel practices that ensure gender equality, reduce unequal treatment and thereby also the wage differences between women and men in the organization. For example, organizations could regularly evaluate their jobs, analyse the wage data on the level of the organization, and make wages public, also survey the equal treatment experiences of their employees in the workplace.

From another point of view, it is also true that the gender pay gap indicator used for monitoring the situation in the EU has received a lot of criticism as it does not measure exactly the content of a famous message "Equal work, equal pay!". The gender pay gap indicator just measures the difference in hourly earnings between women and men, while education and work experience of people, different economic areas and different occupations are not taken into account. However, I would like to point out that the indicator still measures the pay differences, is also comparable between countries and has quite a long history which allows us to compare the situation

for the past decade. Additionally, some countries have analysed also the wages for women and men by occupation and the results have shown that, at least for the analysed occupations, the differences in wages are similar to the general gender pay gap indicator.

At the same time, I agree that this one number, which is 22 % for the Czech Republic for example, should be accompanied by other more in depth analyses so we can really understand what is behind the gender pay gap, what the reasons for unequal pay are and make evidence-based decisions. Several analyses on the gender pay gap have concluded that there might be some clear causes of the gender pay gap, as horizontal segregation in the education and labour market, differences in working time, dividing care responsibilities and paid work between women and men, women's under-representation in political and economic decision making, etc.

However, analyses of the explained and unexplained gender pay gap also show that available data cannot explain clearly all the reasons behind it. Only a small part of the gender pay gap can be explained by differences in human capital such as education, job and seniority. Therefore, the causes might come from gender roles and traditions, gender stereotypes and undervaluing of women's work and skills, which basically means discrimination or the fact that we do not have statistical data detailed enough to explain the causes of the gender pay gap. So, I would like to conclude that we need more in-depth analysis of the gender pay gap to address the problem effectively. Several countries have already improved data collection with linking different survey data or register data and have found possibilities for deeper analysis at country level. Eurostat, unfortunately, does not have access to all micro data available at Member State level; therefore, Member States could take the initiative and make that kind of in-depth analysis themselves.

Finally, the awareness raising has a very important role: we should not only produce analyses and reports but also make them publically available and present the results. Similarly, the policies and measures should be known by people: what kind of rights they have. For example, if a new policy is in place, the awareness raising campaign should follow. This is necessary both for making the changes known and for breaking down attitudinal barriers. Several studies in the Member States have shown that people do not necessarily know, or are not aware of, their options and rights.

Panel discussion

Tomáš Ervín Dombrovský⁴⁶

Positions of Social Partners on the Gender Pay Gap

LMC s. r. o. - operator of the websites Jobs.cz and Prace.cz, Czech Republic

Discussion moderator - Kateřina Hodická: „What is your personal attitude towards the topic of the gender pay gap?“

Tomáš Ervín Dombrovský: „A recent survey that we conducted clearly shows that half of Czech employees perceive pay to be unfair. Very strongly. So maybe you set a good example [Ed.: the author is referring to the declaration made by the representative of ČEZ that her company takes a fair approach to employees], but this certainly does not apply to all employers, unfortunately. Since I am constantly buried in data, I also have enough of the stuff to see differences in pay between men and women by sector, profession, and with regard to education and other factors. For me, the pay gap is a sad everyday reality, where you can elegantly and accurately identify the moments when the pay gap is growing or places where it is levelling out, etc. Typical is the fact that the pay gap significantly – to its maximum extent - increases to the detriment of women between 30 and 35 years of age, clearly in relation to maternity. Also alarming is the fact that, typically in the Czech environment, when looking at differences according to the level of management, the largest gender pay gap occurs in the case of top management, in the highest positions. In this case, the fish rots from the head, clearly. A slightly better signal is that these differences are lowest in middle management positions, in which women are doing better, so it is obvious that this might be a relatively promising signal for the future. Women who have succeeded in this way will move up to the top positions over time. I do not think that quotas will resolve all of the problems associated with this issue. Not at all. Instead, the driving forces will be good examples from practice.“

Discussion moderator - Kateřina Hodická: „I would like to ask directly whether you only have data for the private sector? And what type of companies do you have data for?“

Tomáš Ervín Dombrovský: „In terms of the positions

employers are hiring for, those are mainly private companies. They are companies owned locally or by foreign owners. Public administration represents a very small fraction, I think only 3 %. However, state-owned firms are already large clients. Almost everyone with over 500 employees advertises positions through us. In terms of data on the remuneration of existing employees from the Platy.cz service, this comes from about 90,000 questionnaires completed directly over the last 12 months by the specific individuals who hold those particular positions. In this case, it more or less corresponds to the real-life structure of employment in the Czech Republic. This means that the representation of employees in public administration is very significant, at the level of about 25 %. So the picture is clear there.“

Discussion moderator - Kateřina Hodická: „So let me ask you right away, do you see any trends there, a difference between the attitudes to the gender pay gap by employees in the public sector and in private companies (small, medium-sized and large businesses)? Can any systematic differences be observed there?“

Tomáš Ervín Dombrovský: „In terms of the private sector, I have prepared a few figures. I must get them out to help me because there are quite a few numbers there. Depending on the size of the company, the size of the institution, the biggest differences to the detriment of women versus men are in the largest companies over 3,000 employees, where the figure is a full 31 %. So the larger the institution, the more complex is the environment, where not everyone knows each other and so there is lack of transparency in remuneration, leading to greater distortion in remuneration for various groups of employees. The smallest differences are in firms with 250 - 1,000 employees. These are actually the ones that are changing from family and medium-sized business into larger ones; they set clearer rules and processes, etc. And then it breaks down. Regarding remuneration in the public sector, in terms of pay tariffs, pay scale

⁴⁶ Literal and subsequently approved transcript of the author's speech during a panel discussion on the topic.

salaries, there are minimal differences. This is simply due to the fact that there is a strict set of rules that are tied to education, years of experience etc. But when the bonus component enters the equation, the differences increase immediately. They are not as significant as in the commercial sector, but they are still very significant."

Discussion moderator - Kateřina Hodická: „And I would also be interested in the sample of respondents, so we get a more concrete idea.“

Tomáš Ervín Dombrovský: „In the case of wages and salaries of existing employees, it really is 90,000 pay-related questionnaires completed by individuals over the last 12 months. So that is a decent sample. It is nearly 5 % of the total employed population of the Czech Republic, with a structure roughly corresponding to the reality of the market.“

On the topic of salary negotiations during the hiring process:

Tomáš Ervín Dombrovský: „There is always a lot of space for negotiating the salary during the hiring process. The employer has a certain range, my colleague is right here, but on the other hand self-evaluation is extremely important. If women ask for less money, they are definitely causing harm to themselves. The fact that neither women nor men have a good idea of their value in the labour market is, unfortunately, a reality. Just the fact that when companies are hiring for new positions, employers only publish information at least on the range of the starting salary in job advertisements only for about one third of all vacant positions. That in itself speaks volumes. Many companies do not want to enter

possible starting salaries into the system, even if they remain hidden, because they are afraid that this could be relatively easily worked out by existing employees who would compare it to their current pay. So it is really not just a matter of non-transparency, but also the fear that if staff found out, the pressure and dissatisfaction among those who felt that they are paid less than their colleagues in comparable company positions would certainly increase. So I recognise a little bit of a guilty conscience whenever employers refuse for the most part to even hear about greater transparency...“

On the topic of collective bargaining / trade unions in one's own company:

Tomáš Ervín Dombrovský: „We also do not have trade unions. At this moment, there are 230 of us. We are all located in one building, except for a few people who are here in Moravia. So we can all come to some agreement within the confines of the company, mostly without any major conflicts. Světlana Tioková was right to point out that basically the lowest gender pay gaps are in those positions where there is the greatest shortage of people.

Only rarely do legislative measures, a quota of some kind, help to remedy the situation, unless it is extremely enforceable. Which is unfortunately not going to happen in our environment. Unfortunately, I do not believe that the measure being brought in by trade unions, i.e. the attempt at greater protection whereby the legal actions of employers would be invalid if they lead to unequal pay or treatment, will change anything with regard to whether people defend themselves or not. They will not defend themselves more, unfortunately.





For me, competition among employers for capable people leads to the greatest reduction of differences. So the current conditions of a lack of qualified people in the labour market are driving up pay much more effectively than any legislative effort in the last “X” number of years. As I said, I am not entirely convinced that quotas, once set, would be truly enforceable. Let’s all hope it is not one of those measures which are announced and everyone is given an obligation, but nothing actually changes in the market. Similarly as is the case with part-time jobs, to which there is also a legal right, but still they have not been created and people’s access to them is extremely complicated – particularly for parents returning from parental or maternity leave.”

On the topic of the legal right to part-time work:

Tomáš Ervín Dombrovský: „I would try to add something or maybe correct you. We were discussing this a year ago at a similar conference. People, who care for someone, typically a child under a certain age, are entitled to a part-time job if they ask for it and there are no operational reasons preventing the employer from complying with the request. People do ask for it, but nearly always a reason is found why it is not possible, even though sometimes such reason is pure hogwash.“

Responding to a question from the audience whether any company exists where remuneration is clearly transparent.

Tomáš Ervín Dombrovský: „You asked about a company which transparently remunerates its employees. Yes, it is a software development company based in Prague; I know the director. We discuss it quite a lot. They pro-

vide a beautiful example of when people within a team together determine their own pay, based on the value of work performed. Everyone on the team knows who makes how much and why. They can dispute it, they can argue about it, and they have extremely good feedback over the time that they have been testing it, because by eliminating this taboo jealousy among employees has been reduced: there is no longer any room for making assumptions. Everyone knows exactly why they make the money they do and how much and why their colleagues are paid such and such an amount. If there is a feeling in the team that someone is being overpaid, they discuss it quickly and transparently. They simply set up the system through auto-regulation and cope quite well by themselves. The only thing that they have said they are not yet able to get quite right, is for it to work across the entire company; so that, for example, people from administrative support would know the remuneration of product managers from other teams etc. In reality, it has only been set up in those teams that create some value together, who share a joint responsibility. So far it does not work so well right across the company. And for me, this is also the answer to the question about what needs to change in order for people to be willing to talk openly with their employers. As long as salaries and wages are intentionally made taboo, no one will be willing to discuss them. Let alone enter into labour legal disputes or God forbid, call in an inspection on their employer. Why would they do that? They would only cause harm to themselves. End of!“

Discussion moderator - Kateřina Hodická: „What is your personal attitude towards the topic of the gender pay gap?“

Ivana Šturmová: „My personal attitude is that if the pay for men and women is different for equal work, it is unfair. I work within the commercial sphere in a company that tells its employees that it wants employment procedures and remuneration to be fair. If the procedures and working conditions are equal, regardless of whether they apply to a man or a woman, then the employer fulfils their objective to ensure that employees feel good and perform well.“

Discussion moderator - Kateřina Hodická: „I would like to ask whether each of you have any personal or second-hand experience with the gender pay gap?“

Ivana Šturmová: „Second-hand experience, I would say. Generally speaking, employees usually do not have information about the pay of their colleagues to be able to compare it. For employees who are on a pay tariff the situation is easier because, for example, an electrician or a dispatcher has a tariff salary with a uniform base wage tariff which is set equally for all employees who perform this kind of work. In contrast, in the sphere of contractual wages, there is usually no knowledge about the wage of a comparable employee. Therefore, it can be hard to ask for a higher wage. And the idea that I would go somewhere and ask for a certain wage is perhaps misleading because the reality is often different. The person comes, applies for a job and it is already pre-valued.“

Regarding a comment from the audience that some people have a different experience during recruitment, such as when the prospective employer asks the candidate what sort of pay they are looking for and a negotiation then follows.

Ivana Šturmová: „That is true. I can confirm that the hiring process for certain positions is much as you have described. But I think that, in general, the employer has pre-valued the relevant position and will not go any higher.“

Answering a question from the audience about how things might be arranged so that the employee feels like they have, or indeed has, the opportunity to influence their wage and negotiate with the employer:

Ivana Šturmová: „I would say that you’ve hit the nail on the head, because that is the main problem. How can an employee fight for their rights if they do not know how much another comparable employee makes and there is no official mechanism to help them find out? And from what I have heard here today, no one yet has found a simple solution how to do it. Or only one, as one of the participants said here, when employees compare wages individually in small groups. And I do not know if that is a good thing. Personally, I would not find it very comfortable.“

I have extensive experience with trade unions because the trade unions in our company are active. A very good practice has been introduced where union representatives are members of the committee for the valuation of individual job positions. Then, in terms of those employees paid by tariff wages, they are classified into tariff grades and these grades are known to all employees, they are part of a collective bargaining agreement.



⁴⁷ Literal and subsequently approved transcript of the author's speech during a panel discussion on the topic.

Regarding GPG, we do not have a lack of knowledge and awareness but a severe lack of action. Gender pay gap violates existing law! That's a shame for our society and needs to be abolished by the government but other political issues are always more important and urgent.

The imperative of equal pay has been in existence for almost 60 years now. The UN-Universal Declaration of Human Rights from 1948 states, in article 23: „Everyone, without any discrimination, has the right to equal pay for equal work.“ The German constitution (from 1949) states, in article 3: „Men and women have the same rights.“ Thus, to implement equal pay is to enforce existing law. But the effective application of the existing legal framework on equal pay remains a constant challenge.

The gender pay gap exists for many and complex reasons, due to direct and indirect discrimination. The three main reasons are the following: Firstly, horizontal segregation. Women and men do different jobs. Predominantly women work in the service industry. Female-dominated sectors and the work that is mainly done by women within this sector are undervalued; for instance education and care work. The main causes for horizontal segregation are role models and gender stereotypes, employers' recruitment policies, a lack of gender competence of the teaching staff and of the advisers at vocational counselling institutions like the Federal Employment Agency and lack of gender sensitive occupational orientation at schools.

Secondly, vertical segregation. Women and men work in different positions. Vertical segregation is primarily caused by the low share of women in managerial positions. Women are poorly represented within higher-qualified and higher-paid positions and even when women hold higher-qualified positions, they earn far less than their male colleagues. Bonus and commission schemes, appraisal-based payment schemes and individual bargaining elements are all categories in which women are evidently especially disadvantaged.

Thirdly, gender differences in the labour market. Women have more constraints during their working live; due to a lack of fair reconciliation of work and care between men and women and insufficient child care facilities. This leads to a severe gap in the working volume: women work more often in (often minor) part-time jobs and interrupt their employment for longer periods than men.

I would propose a whole toolkit of concrete measures on pay transparency, compulsory by law, as a means to tackle pay inequality and the gender pay gap:

- an entitlement for employees to request information on pay levels, broken down by gender, for categories of employees doing the same work or work of equal value;
- regular reporting by employers regarding wages by category of employee or position, broken down by gender;
- pay audits in large companies;
- the inclusion of the equal pay issue and pay audits in collective bargaining. The social partners have a specific responsibility for implementing the principle of equal pay by concluding collective agreements.
- a clear definition of „work of equal value“ and the promotion of gender-neutral job evaluation and classification systems;
- strengthening the role of gender equality bodies;
- consistent monitoring and enforcement by the state;
- awareness-raising activities, like the Equal Pay Day on national and company level.

It is important not to forget that the gender pay gap is a structural problem and without serious structural changes all these specific initiatives will only have partial impacts. In this day and age, where flexibilisation, precariousness, unstable forms of employment and the deterioration of workers' rights are becoming more prevalent in the entire European Union, it is of utmost importance to have strong ties and cooperation with social partners, governmental bodies and gender equality bodies. The general focus should be on counter-acting the undervaluation of female-dominated care work, which is an underlining cause of the gender pay gap in all sectors. However, the reasons for the gender pay gap highlight the structural nature of the gender-based stereotypes which lead to discrimination and segregation in the labour market and are still deeply rooted in European societies and therefore strongly necessitate new approaches and coalitions between different action groups. Stronger co-operation between gender equality units, NGOs and trade unions in the different sectors, for example, would create new awareness and activity to combat the gender pay gap and gender-based discrimination.

Discussion moderator - Kateřina Hodická: „What is your personal attitude towards the topic of the gender pay gap?“

Světlana Tioková: „My personal attitude has slightly shifted after today’s conference. For me, this is a topic that just somehow follows on from our cultural history, where the woman has always been the one who takes care of the household, and the man has always been the hunter. And so I think this permeates everything that we are experiencing now. That women are always those who are willing to step back a bit, they provide *support* in companies. You can find them in the finance department, in the HR department, you can find them in the education department. Looking at other sectors, you see them in health care. It is always *support* to make sure people live well, so that they smile at each other, to have their basic employment needs taken care of. But a man, the hunter, always brought business. Numbers, values, money. So for me it works this way, but as I said, my thoughts have changed a little bit after today’s conference. Why should women be paid differently if they are able to bring in business as well as men? So I suppose that is my attitude.“

On the discussion about wage negotiations between employers’ organisations and candidates or employees:

Světlana Tioková: „I would like to support as well as challenge the discussion taking place here, because I have experience with two completely different companies. One is a manufacturing company, where I worked quite a long time before *Y Soft*, and then *Y Soft*, which is an IT company. There are two different aspects. If you have a clearly set wage for a candidate, who you can hire, then there is no discussion and if someone asks for more, they are not hired, and if they ask for less, then they still receive a wage that is somewhere within the pay scales. This applies mostly to manufacturing firms, machine operators and people who are classified according to some pay-scale methods. If you are offering an extremely rare position on the job market, or to put it better, if candidates for such a position are hard to find, most applicants know it and they will ask for any amount. And then you often assess whether you are willing to pay such an amount to people for their knowledge, even if you do not know whether the

candidate has such knowledge or not. And here I am talking about an IT company. So, when there is a clearly stated wage, you can discuss anything during the interview and the wage remains the same. And when the wage is not given, then it does not matter what you are talking about, it is simply about a decision, some tests, the approach taken by the candidate and the person interviewing the candidate.“

On the topic of disclosing the wages of employees:

„We have been discussing it internally for a long time, whether we want to disclose the wages of employees within the company. So far, we have not found the courage to do it, but the discussions are still ongoing. I would like to respond to Mr. Dombrovský, here, regarding the non-disclosure of wages in job advertisements. The fact that we do not do it is not because we are afraid that internal staff would see it and would say that the new arrival would be paid much more than current employees. Rather, we do not advertise salaries because we do not want candidates who are only motivated by money. We want candidates who will enjoy their job. At least, that is my approach and I have discussed it many times. I know that there are different opinions, but I still maintain that mine is right and nobody can convince me otherwise. You can try it later.“

Discussion moderator - Kateřina Hodická: „So I will just briefly ask whether or not you were convinced by the speech of our Austrian colleague this morning on the legislative measures adopted in Austria around 2011, one of which was a proposal to state the amount for which a new employee should be hired in all job advertisements. Did it not motivate you at all?“

Světlana Tioková: „Not yet. I think that unless it is laid down by law, we will not do it. At least as long as I have some decision-making power in this respect. But what I would certainly welcome is if employers had in fact averages for comparable positions, which they could then disclose within the company. Whether internally or for job candidates to make external comparisons. And to also use this average during the hiring process. Here again, the question is, if you have a company of 200 people and you have 150 different positions, then it

⁴⁸ *Literal and subsequently approved transcript of the author’s speech during a panel discussion on the topic.*

is quite difficult to calculate an average that is not so obvious if we still want to stick to the rule of not disclosing wages internally. When you have 200 people and there are 50 positions, the average is such that you cannot point to every line and tell who is in what position.

Generally, on the topic of the GPG in companies:

Světlna Tioková: „About this issue, it always comes to my mind that we in Y Soft are currently having two such discussions with the CEO. One of them goes like this: I say that there are no women in top management. He tells me that he would like one, but he cannot find anyone with qualifications who he would be willing to pay and employ in such a position. And I say that I would really like to have a man in the HR Department, but I cannot find anyone who would be willing to do administrative work in the HR Department. And so we tease each other and discuss the topic in this way. In the context of unequal remuneration. When I look at Y Soft as a company, where we have a female programmer, they simply have the same wages as male programmers. However, when I look at the HR Department, they are all women; when I look at the Finance Department, they are all women; then I look at the Training Department, and again, they are all women. Where can I get a comparison? If someone claims that our positions are undervalued in terms of wages, I would say how can I compare when we have no men in the company or in these departments? And if I had to draw comparisons across the market, which I think is how most research comparing positions between companies is conducted, no real-world research could possibly assess how demanding those positions are in these various companies. Even if the position has the same title, even if it had the exact same job description, then the demands are very different depending on the specific corporate culture. These are just a few thoughts about the topic.“

Responding to a question about the functioning of trade unions in the company and discussions with trade unions on GPG issues:

Světlna Tioková: „Thank you for the question. We do not have trade unions. I have experience with them from another company, but I think we are still too small for that and too spread out around the world.“

On the negotiating position of women and men on wages and the disclosure of wages:

Světlna Tioková: „I would probably split this into two parts. In my opinion, the problem that we are discussing cannot be resolved by disclosing wages. I think it is a step towards a solution but it will not solve the entire problem. There will always still be the second part made

up of personal feelings and the fact that I just do not know how to go to my supervisor and tell him, look, Joe here makes about five thousand more and I think that I work much harder and do a better job but I do not make the same money, why is that?

I think that what we need to achieve with the public is for them to know, to have the self-confidence and to be able to open such a discussion with their employer or supervisor. When I am speaking about an employer, I am referring to the hiring interview where many people, mostly women, simply ask for a lower amount than men. Even if they are programmers. Women simply ask for lower pay for the work they do. And it is only due to the fact that, as Mr. Dombrovský mentioned, there is a lack of people, do we as an employer try to keep wages at a certain level. But when a woman comes in for an interview to the Finance Department and asks for a certain amount and then there is a man applying for the exact same position and asks for ten thousand more, then the Financial Manager, because they are a financial manager, simply goes for the woman. Just because she asked for an amount that is ten thousand lower and the Financial Manager is keeping an eye on the finance.

And it is mainly up to the HR Department to make the call, compare experience, choose based on experience and to follow the set wage range that we have there. And if you are not sure about something, they will be hired for a junior position and will receive five thousand less. And once you have tested whether they work well or not, maybe after the trial period or half a year, after initial training, we will raise the wage to the corresponding amount. But by that you are already saying that you are not sure, that she is a junior, that she should be hired for a lower position with a lower wage. Where I want to go with this, is that the difference often starts during interviews. If it is not monitored (which is a duty of HR) then people start out with lower wages, etc.

When you join a company, this situation happens; it is not caught during the hiring process, and you cannot just run up to the supervisor and start complaining that something unfortunate has happened, I have somehow found out that my colleague is on a different wage. It is probably not a good idea to put your colleague “in it” like this when we all have it in our contracts that we cannot talk about pay. At least pretend that we did not talk about it. Better to find the courage within and simply go to the supervisor and make some inquiries.

If you said that your boss does not even have time to say hello to you, this is about attitude. But in this case, I would be mainly interested in their reasons. And if they are not able to explain them to me so that I understand them, I would look for a job where I am happier. Life is too short for us to work where we do not enjoy it.“

