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## THE IMPORTANCE OF THE PRINCIPLE OF EQUAL TREATMENT OF MEN AND WOMEN IN EUROPEAN UNION LAW\*\*

**ABSTRACT:** The issue of equal treatment of men and women represents an inexhaustible topic for research. Since the problem of gender-based discrimination is closely related to the establishment of equal treatment, the investigation of this topic should begin at the supranational level, as is the system of law in the European Union. The origin and development of the principle of equal treatment within the community of European states was gradual, leaving room for further refinements. However, the normative framework that was set was not accompanied by practical changes in providing equal opportunities for women in employment and at work, hence scholars continue to deal with the phenomenon of the gender pay gap, job segregation, the glass ceiling, and the problem of reconciling family and professional life, as a consequence of the unequal position of men and women in society.

This paper examines the origin and development of the principle of equal treatment within the European Union, with the initial hypothesis that even the current normative framework is not capable

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of preventing the consequences of gender-based discrimination that exist in practice.

**Keywords:** equal treatment, gender equality, European Union law, prohibition of discrimination

## INTRODUCTION

The establishment of equal treatment for men and women is important for the functioning of any society, and the value of this principle is even greater considering some authors, like Hepple, believe that “at the heart of the concept of decent work lies equality.”<sup>2</sup> Therefore, this principle has held a significant place in the standard-setting within numerous organizations. One such organization is the International Labour Organization, whose standards Valticos believes have significantly contributed to the establishment of equal opportunities and the elimination of unequal treatment.<sup>3</sup>

The foundations of the principle of gender equality were laid by the International Labour Organization, which is based on the principle of equality,<sup>4</sup> having adopted a series of significant conventions aimed at protecting particularly vulnerable categories. The principle of equal treatment entered through the “back door,” as Kovačević points out, with the demand for ensuring equal pay for work of equal value by men and women.<sup>5</sup> Although the first interventions occurred in the field of protecting women as the weaker gender, the shaping of the principle of equal remuneration only took place with the adoption of Convention No. 100 on Equal Remuneration for Men and Women, which, among other things, represents the most widely accepted document.<sup>6</sup> In addition to the aforementioned convention adopted in 1951, Convention No. 111 concerning discrimination in respect of employment and occupation, as well as Convention No. 156 on equal opportunities and treatment of workers with family responsibilities, also play an equally important role in establishing a gender-neutral policy. Reljanović emphasizes the importance of the standards defined within the ILO in the area of discrimination prohibition, many of

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<sup>2</sup> Hepple, B. (2001). „Equality and empowerment for decent work“. *International labour review*, vol. 140, no. 1, 5.

<sup>3</sup> Valticos, N. (1979). *International Labour Law*. Boston: Cambridge University Press, 104.

<sup>4</sup> Kovačević, Lj. (2021). *Zasnivanje radnog odnosa*. Belgrade: Faculty of Law of the University of Belgrade, 1008.

<sup>5</sup> Kovačević, Lj. (2021). *Zasnivanje radnog odnosa*. Belgrade: Faculty of Law of the University of Belgrade.

<sup>6</sup> Brković, R., Vučinić, D. (2020). “Equal opportunities and treatment in employment and occupation“. *Zbornik radova Pravnog fakulteta u Nišu*, no. 87/2020, 170.

which have a universal character, and notes that the European Union calls for cooperation among states within this organization, aiming for a greater number of ratified conventions.<sup>7</sup>

### **Development of the Prohibition of Gender Discrimination in EU Law**

Gender equality represents one of the most significant achievements of the European Union and is a principle proclaimed in its founding acts, which continues to evolve. It is important to emphasize that the principle of equal treatment of men and women in the European Union did not develop immediately as such, but evolved through adherence to the principle of equal pay for equal work between men and women. The reasons for such a formulation were not random and were conditioned by economic interests, specifically the need of certain states to prevent unfair competition through the costs that could be incurred by employers who respect the principle of equal pay for equal work.<sup>8</sup> This principle found its place in the Treaty establishing the European Economic Community<sup>9</sup> and later in the Treaty on the Functioning of the European Union.<sup>10</sup> Changes occurred with the decision of the European Court of Justice in the case of *Defrenne*<sup>11</sup>, which gave this principle a social significance, promoting the prohibition of discrimination between men and women, thereby relegating the economic context of this principle to the background.

The foundations of the principle of equal treatment were laid with the establishment of the community, specifically with the signing of the Treaty of Rome in 1957, which committed the contracting states to ensure equal pay for equal work, as formulated in Article 119.<sup>12</sup> With the signing of the Treaty of Amsterdam in 1997, this principle was proclaimed as one of the goals of the European Union, with the obligation to apply it in all societal spheres and at

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<sup>7</sup> Reljanović, M. (2012). „Međunarodna organizacija rada i zabrana diskriminacije pri zapošljavanju“. *Strani pravni život*, no. 3/2012, 93.

<sup>8</sup> Kovačević, Lj. (2021). *Zasnivanje radnog odnosa*. Belgrade: Faculty of Law of the University of Belgrade, 1019.

<sup>9</sup> Treaty establishing the European Economic Community, available at <https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX:11957E/TXT>, article 119.

<sup>10</sup> Consolidated version of the Treaty on the Functioning of the European Union, [http://www.azk.me/1/doc/Ugovor\\_o\\_funkcionisanju\\_EU.pdf](http://www.azk.me/1/doc/Ugovor_o_funkcionisanju_EU.pdf), article 157, point 1.

<sup>11</sup> *Defrenne v. Sabene*, no. 43/75 April 8, 1976.

<sup>12</sup> Prechal, S., Burri, S. (2009). *Pravila o EU rodnoj ravnopravnosti: kako su ona preneti u nacionalno pravo*. Luxembourg: European Commission, 14.

all levels.<sup>13</sup> Besides the detailed concept of work of equal value in Article 141, the principle by the Treaty of Amsterdam became a mandatory function of all bodies and organizations within the community of European states, and thus a compulsory principle for member states. This led to the creation of the term *gender mainstreaming*, which literally means the integration of the principle of gender equality into the main currents.<sup>14</sup> The significance of this document is even greater considering that it was the first time affirmative action measures were crystallized as necessary to ensure the equal inclusion of women as the less represented gender in employment and advancement. In the theory of European Union law, Article 13 is referred to as revolutionary because it allows the adoption of acts to prevent and combat discrimination.<sup>15</sup> The effects of this provision are far-reaching, as directives that have played a significant role in the field of anti-discrimination have been adopted on these foundations. The importance of the signed Treaty is also noted by Catherine Barnard, who points out that the proclamation in this treaty gave the principle of equal pay an extended understanding.<sup>16</sup> The founding treaty applied the principle of equal pay only to jobs that were the same or comparable, blatantly ignoring the fact that jobs do not have to be formally the same but produce equal value for the employer, and therefore employees performing them deserve to be paid the same. Thus, since the signing of the Treaty of Amsterdam, the principle of equal pay encompassed work of equal value, which required a deeper reflection on the jobs being compared. This is considered a kind of evolution of law within the European Union, thereby expanding the issue of equal treatment. Matijević and Čorić point to the indirect significance of the Treaty signed in Maastricht in 1992, which confirmed the importance of the prohibition of discrimination within the *acquis communautaire*.<sup>17</sup> The prohibition of discrimination is also an integral part of the Treaty of Lisbon.<sup>18</sup>

<sup>13</sup> Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, OJ C 340, article 2.

<sup>14</sup> Antonijević, Z. (2011). *Rodna ravnopravnost u Evropskoj uniji, zakonodavstvo i sudska praksa*. Belgrade: Prosecutors Association of Serbia, 5.

<sup>15</sup> „The Council may, by unanimous decision, on the proposal of the Commission and after consulting the European Parliament, take appropriate measures to combat discrimination based on gender, race or ethnic origin, religion or belief, disability, age or sexual orientation. These decisions must not affect other provisions of this Treaty and must respect the scope of competencies available to the Community.“, quoted according to: Matijević, M., Čorić, V. (2007). „Antidiskriminacione mere u okviru Evropske unije“, 50 godina Evropske unije (ed. Jovan Čirić). Belgrade: Institute of Comparative Law, 102.

<sup>16</sup> Barnard, C. (2012). *EU employment law*. Oxford: Oxford University press, 263.

<sup>17</sup> Matijević, M., Čorić, V. (2007). „Antidiskriminacione mere u okviru Evropske unije“, 50 godina Evropske unije (ed. Jovan Čirić). Belgrade: Institute of Comparative Law, 103.

<sup>18</sup> Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, OJ C 306, Article 19.

## **Prohibition of Gender Discrimination through European Union Directives and the Practice of European Courts**

Although the principle of non-discrimination based on gender is defined in the founding acts, the need for concretization and elaboration of this principle continues. Barnard believes that the lack of equal opportunities in access to the labor market contributes to the current issues of equal treatment of men and women, resulting in higher unemployment among women than men, as well as inequality of opportunities in the labor market, leading to women generally being engaged in atypical jobs.<sup>19</sup> This is certainly linked to the greater representation of women in unpaid domestic activities, taking on the main role in childcare and care for family members in need, which results in accepting lower-paid jobs or part-time work, and consequently lower earnings and pensions.

The first concretization of the principle of equal treatment of men and women occurred with the adoption of Directive 75/117/EEC on equal pay<sup>20</sup>. Stemming from the Treaty of the European Community of 1957, the Directive aimed to establish the principle of equal pay for work of equal value. To facilitate the implementation of this principle, it was necessary to classify jobs, which would lead to wage classification. The European Court of Justice's activities and the case 43/75 *Defrenne v. Sabena*<sup>21</sup> contributed to a better understanding of the Directive. The ambitious goals of this directive had a long path to implementation, and one of the problems in its application was the broad interpretation of the term wages.<sup>22</sup> Answers were found in the case law of the Court of Justice of the European Union, which clarified that wages

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<sup>19</sup> Barnard, C. (2012). *EU employment law*. Oxford: Oxford University press, 253.

<sup>20</sup> Council Directive 75/117/EEC, available at <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31975L0117:EN:HTML> (Accessed on September 30, 2021).

For example, Professor Jovanović categorizes the sources of law in the European Union into those that pertain to equal treatment of men and women in the employment process, where he considers Directives 76/207/EEC and 2000/78/EC, and then those that ensure equal treatment during employment, as well as upon termination of employment, in terms of categorizing reasons for dismissal as impermissible that relate to pregnancy, maternity, maternity leave, which is found in the Charter of Fundamental Rights of the EU; cited according to: Jovanović, P. (2011). „Aktuelni aspekti principi zaštite zaposlenih“. *Zbornik radova Pravnog fakulteta u Novom Sadu*, no. 3/2011, 146.

<sup>21</sup> *Defrenne v. Sabena*, Judgment of the Court of April 8, 1976. The Court affirmed the principle of equal pay for men and women for work of equal value, as otherwise it constitutes direct discrimination based on gender. Differences can only exist if there is an objective reason, and that it is based on different qualifications, working conditions, and the nature of the job.

<sup>22</sup> Antonijević, Z. (2011). *Rodna ravnopravnost u Evropskoj uniji, zakonodavstvo i sudska praksa*. Belgrade: Prosecutors Association of Serbia, 12.

from an employment relationship include not only the basic pay for work performed but also allowances for overtime, bonuses, per diems on business trips, including severance payments, thus extending the discrimination between men and women regarding wages to allowances and bonuses. Numerous uncertainties remained regarding earnings that the Directive's text did not resolve. In this regard, the European Court of Justice's significant case regarding the need to clarify that unequal pay for part-time employees in relation to full-time employees does not constitute discrimination, as confirmed in the ruling of case 96/80 *Jenkins vs. Kingsgate*.<sup>23</sup> According to the principle of *pro rata temporis*, the Court indeed could not find elements of direct discrimination. However, the Court noted that unequal treatment could be discussed if the employer employs women, who work part-time to a greater extent than men who work full-time.<sup>24</sup> This laid the foundation for recognizing indirect discrimination years later, although the ruling in the *Bilka-Kaufhaus* case, decided much earlier, is a pioneer in proclaiming the prohibition of discrimination.<sup>25</sup>

Pioneeringly formulated, it was soon complemented the following year by the adoption of Directive 76/207/EEC on the implementation of equal treatment for men and women with regard to employment, vocational training and promotion, and working conditions.<sup>26</sup> One of the novelties introduced by this Directive is the expansion of prohibited bases for discrimination, including discrimination based on family and marital status besides gender. With the re-proclamation of equal treatment in all types of professional orientation and retraining, this directive only deepened issues of gender discrimination, thus creating the basis for the adoption of new Directive 2002/73/EC.<sup>27</sup> This docu-

<sup>23</sup> Judgment of the Court of March 31, 1981.

<sup>24</sup> Antonijević, Z. (2011). *Rodna ravnopravnost u Evropskoj uniji, zakonodavstvo i sudska praksa*. Belgrade: Prosecutors Association of Serbia, 13. Similarly, the Court concluded while considering the issue of additional earnings in case 109/88 *Danfoss*. As the Court established parameters for acquiring additional earnings in the form of physical mobility, training, and experience, it found that women could be placed at a disadvantage in relation to the criterion of mobility due to gender roles assigned to women, who, in addition to their professional role, also have a primary role in the household, which reduces their ability to adapt to the place and time of work.

<sup>25</sup> *Bilka-Kaufhaus GmbH*, Case C-170/84. The case concerned the disadvantageous position of part-time employees, who were predominantly women, compared to the position of full-time employees, resulting in a disadvantageous situation for women in acquiring rights to old-age pensions.

<sup>26</sup> Directive 76/207/EEC on implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion and working conditions, available at <https://op.europa.eu/en/publication-detail/-/publication/701c4ff4-6cb7-4899-b44b-b1eb65fe2953/language-en>

<sup>27</sup> Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the

ment emphasized that it would not be considered discrimination if a particular job requires a specific gender only when it is determined by the nature of the job, and it provided for affirmative action measures since privileged treatment was proclaimed for pregnant women and mothers in employment. In addition, a special corpus of their rights was envisioned, allowing pregnant women to enjoy the right to take time off for prenatal exams, with a prohibition of dismissal at the beginning of pregnancy, as well as exemption from night work. The goals set were ambitious, considering some of the judicial decisions made before the adoption of this directive.<sup>28</sup>

With the development of community law, the principle of equal treatment of men and women also developed, gaining application in other important spheres.<sup>29</sup> This led to the specification of existing directives in the field of work

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principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, available at <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32002L0073> (Accessed on September 8, 2022).

It is also worth mentioning Directive 79/7/EEC on the implementation of the principle of equal treatment for men and women in the field of social security, Directive 86/613/EEC on equal treatment of men and women in certain areas such as agriculture, with the proclamation of the principle of equality also in the sphere of self-employed men and women, Directive 92/85/EEC on improving the health and safety of pregnant workers, mothers who have recently given birth and women who are breastfeeding, Directive 96/34/EC on parental leave with a specifically proclaimed right for a parent to return to work after its use and special protection from dismissal. Finally, complementing all these directives is Directive 97/80/EC on the burden of proof in cases of gender-based discrimination.

<sup>28</sup> The case that attracted the most attention was the 'male midwives' case. In the case 165/82 *Commission v. United Kingdom*, Judgment of the Court of 17 October 1995, the Court took the position that there is no place for discrimination in employing only women for the position of a midwife, considering the high level of sensitivity required for the job. Finding no contradiction with Community law, the Court reached this conclusion by pointing out the unique relationship between the patient and the midwife, where the special sensitivity of the person was set as a key factor for performing the midwife's job. In doing so, the Court, guided by its own reasoning on gender roles, deprived men of the sensitivity required for this job, although a gynecologist, who can also be male, participates in the same life situation, as the nature of his job is not determined by gender. Therefore, we consider the Court's reasoning in this stance to be quite questionable.

The stance taken in the case S-450/93 *Kalanke v. Freie Hansestadt Bremen*, Judgment of the Court of 17 October 1995, was also contentious. The Court considered that the provisions of German law, which give priority in career advancement to the less represented gender in managerial positions of equal qualification as an affirmative action, were actually a deviation from the principle of equal treatment. This ignored the significantly lower percentage of women compared to men in such positions. We can conclude that this decision represented a step backward for European Union law.

<sup>29</sup> The need to extend the principle of gender equality to other spheres, beyond the field of work, led to the adoption of Directive 2004/113/EC to achieve gender equality between men and women in the provision of goods and services. Definitions of direct and indirect discrimination are adopted, and the application of this

and employment by adopting the new Directive 2006/54/EC.<sup>30</sup> This is, in fact, a comprehensive Directive, adopted with the aim of consolidating the principles of equal treatment proclaimed in different spheres.<sup>31</sup> Nielsen highlights that the goal of adopting this directive was actually to systematize issues related to gender equality to make the Directive more applicable,<sup>32</sup> while Barnard believes that a comprehensive directive is always a better solution due to the incorporation of public policy.<sup>33</sup> The importance of this directive is evident in the field of reconciling professional and private obligations and establishing equality of men and women as parents, as it provides for a special form of leave for child care, so-called parental leave, which can be used by the child's father, in addition to the existing right to maternity leave. This only anticipated the possibility for fathers to use this leave, while special paternity leave would wait a little over a decade. Kovačević indicates that this comprehensive directive also influenced the progressive understanding of the European Court of Justice regarding the principle of equal treatment.<sup>34</sup> This relates to the understanding of direct discrimination based on gender, which encompasses unjustifiable differences based on criteria related to the gender of the worker, such as pregnancy or childbirth.<sup>35</sup> Such reasoning by the Court was valuable in recognizing rights from the corpus of motherhood and their interconnection with discrimination based on gender. The European Court of Justice confirmed

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regulation is extended to the field of social security. <https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=celex%3A32004L0113> (Accessed on October 1, 2021).

<sup>30</sup> Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), Available at: <https://eur-lex.europa.eu/eli/dir/2006/54/oj> (Accessed on September 19, 2022).

<sup>31</sup> Mulder, J. (2018). „Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)“. *International and European Labour Law* (ed. Edoardo Ales, Mark Bell, Olaf Deinert, Sophie Robin-Olivier). Hart Nomos Beck, 549.

<sup>32</sup> Nielsen, R. „2006/54/EC: Gender equality“. *EU Labour law – a commentary* (ed. Monika Schlachter). Wolters Kluwer, 30.

<sup>33</sup> Barnard, C. (2012). *EU employment law*. Oxford: Oxford University press, 259.

<sup>34</sup> Kovačević, Lj. (2021). *Zasnivanje radnog odnosa*. Belgrade: Faculty of law of the University of Belgrade, 1021.

<sup>35</sup> Judgment in case C-177/88, *Elisabeth Johanna Pacifica Dekker v. Stichting Vormingscentrum voor Jong Volwassenen/VJV-Centrum/Plus*, of November 8, 1990. Similarly, the Court took the same stance regarding unequal treatment directly or indirectly related to pregnancy in the case of Case C-32/93, *Carole Louise Webb v. EMO Air Cargo (UK) Ltd*, ECJ, dated 14 July 1994, as well as due to non-renewal of a fixed-term contract because of pregnancy in the case of Case C-438/99, *Maria Luisa Jimenez Melgar v. Ayuntamiento de Los Barrios*, ECJ, dated 4 October 2001.



this in the *Dekker* case<sup>36</sup>, considering discrimination based on pregnancy as discrimination based on gender, given that only women, by nature, can give birth. Similarly, it decided in the *Hertz* case<sup>37</sup>, creating a proactive approach when it comes to discrimination based on motherhood.<sup>38</sup> The European Court of Human Rights case *Zarb Adami*<sup>39</sup> should not be forgotten, where the legal provision allowed people with family obligations to be exempted from jury duty, leading to unequal gender representation at Maltese courts in favor of men. In addition to the above, the Directive first introduced the right to leave for adopting children, and such provisions undoubtedly affected the amendment of the legislation of member states, while practice will show the impact on the prohibition of discrimination against employed parents when returning to work, which was one of the intentions of the Directive's authors. A shift was also observed in the definition of indirect discrimination, as it no longer requires a quantitative criterion in the form of a certain percentage of people who are put at a disadvantage due to an ostensibly neutral norm, criterion, or practice.<sup>40</sup> Such a definition should be considered a step forward, given that it facilitates the proof of indirect discrimination.

We can agree with Barnard that the principle of equal treatment is a driver of change in EU law,<sup>41</sup> as confirmed by the recently adopted Directive 2019/1158 on reconciling the professional and family lives of parents and caregivers.<sup>42</sup> Establishing a balance between family and professional life is considered an important segment of the principle of equal treatment, hence the term work-life balance has been formed in theory.<sup>43</sup> The inability to reconcile family and private life negatively reflects on children, who suffer from

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<sup>36</sup> C-177/88, *Elisabeth Johanna Pacifica Dekker v. Stichting Vormingscentrum voor Jong Volwassenen/VJV-Centrum/Plus*, November 8, 1990.

<sup>37</sup> CJEU, C-179/88, *Handels- og Kontorfunktionærernes Forbund I Danmark v. Dansk Arbejdsgiverforening*, November 8, 1990

<sup>38</sup> Masselot, A., Caracciolo di Torella, E., Burri, S. (2012). *Fighting discrimination on the grounds of pregnancy, maternity and parenthood*. European commission, 6.

<sup>39</sup> *Zarb Adami v. Malta*, app. no. 17209/02, of June 2, 2006.

<sup>40</sup> Nielsen, R. „2006/54/EC: Gender equality“. *EU Labour law – a commentary* (ed. Monika Schlachter). Wolters Kluwer, 36.

<sup>41</sup> Barnard, C. (2012). *EU employment law*. Oxford: Oxford University press, 253.

<sup>42</sup> Directive (EU) 2019/1158 of the European parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019L1158> (Accessed on July 17, 2022).

<sup>43</sup> Kirton, G. (2011). „Work-life balance, attitudes and expectations of young black and minority ethnic graduates“. *Equality, inequalities and diversity, contemporary challenges and strategies* (ed. Geraldine Healy, Gill Kirton, Mike Noon). London, 252.

insufficient attention.<sup>44</sup> There are also consequences for the state's economic plan, as economists warn that there has been a 10% drop in GDP per capita in the European Union, which could be mitigated by involving men more in the sphere of unpaid work to reduce the disparity with women's representation in family obligations.<sup>45</sup> The most significant contribution of this directive is the clear formulation of paternity leave, which Chierogato says is a right that has been long awaited.<sup>46</sup> The proclamations contained in this directive are significant, including 10 paid working days for fathers to care for a child, and the right given to the other "equivalent parent," which refers to the pioneeringly regulated right of parents from same-sex communities and adopters,<sup>47</sup> then the right to flexible work until the child turns eight, as well as the prohibition of dismissal while using leave. Not only have fathers emerged from the shadow of employees with family duties with the adoption of this directive, but an attempt has been made to break the stereotype that the mother's role in raising children is natural and inalienable. The shift should also be seen in recognizing the fact that there are family members who require care, without which they cannot function, and that support in the form of a special corpus of rights must be provided to those employees who care for them. However, the most significant contribution of this directive is seen in encouraging employees in EU member states to establish a balance between family and professional life.

### EUROPEAN REALITY – THE GAP BETWEEN LEGISLATION AND PRACTICE

The normative framework presented appears to provide a solid foundation for achieving equal opportunities for men and women, especially in the realm of work. However, statistics indicate that the state of gender equality does not correspond to the analyzed policies and adopted regulations. Firstly, in the labor market of the countries of the European Union, there is a noticeable

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<sup>44</sup> Gvero, S. (2019). „Pravo na odsustvo sa rada radi brige o djetetu – neophodnost izmjene normativnog pristupa“. *Pravo i privreda*, no. 1–3, 2019, 142–143.

<sup>45</sup> Employers Association of Slovenia (2017). *Pomirenje poslovnih i porodičnih obaveza i rodna ravnopravnost, regionalni pregled i smjernice*. Belgrade: Work Family balance, 13.

<sup>46</sup> Chierogato, E. (2020). „A work-life balance for all? Assessing the inclusiveness of EU Directive 2019/1158“. *International Journal of comparative labour law and industrial relations*, vol. 36, issue I, 8.

<sup>47</sup> Cafala, L. (2020). „The transposition of Directive 2019/1158 in Italy: unresolved issues and complex solution“. *Revue de droit compare du travail et de la securite sociale*, no. 4/2020, 84.

underrepresentation of women compared to men, with women having more stable and enduring careers.<sup>48</sup> This unequal representation of women in the labor market has been one of the reasons for job segregation. As a result, there are jobs predominantly held by male workers and those dominated by women. Consequently, women are more represented in jobs that are not typically male, such as teaching, law, social protection, and social sciences in general, while fields like engineering, agriculture, and construction in the European Union are essentially a man's world.<sup>49</sup>

Beyond the underrepresentation of women, inequalities in opportunities for men and women in the European labor market have also led to a noticeable gender pay gap. Although the principle of equal pay formed the basis for anti-discrimination legislation in the European Union, starting with the founding Treaty, research indicates that women in this community earn on average 16% less than their male counterparts for the same job.<sup>50</sup> There are multiple reasons for this situation. Authors primarily point out the imbalance in the distribution of family responsibilities, predominantly borne by women, who more often choose to work part-time to reconcile family and professional obligations. In doing so, women consciously accept lower monthly income, which decades later results in lower pensions. Research shows a higher percentage of mothers aged 25-64 working part-time compared to those without children, and this percentage is also higher than that of fathers who use this working arrangement to combine job and family duties, which is only 4%.<sup>51</sup> Hence, it is emphasized that women's careers are much more frequently interrupted due to motherhood than is the case with the career of a male parent.<sup>52</sup> The inequality of opportunities for men and women implies social problems such as the challenge of reconciling family and private life. In addition to causing psychological stress, depression, reduced work motivation, and generally

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<sup>48</sup> The research relates to women with one child up to 12 years of age, aged 25–64, who are less represented compared to men, whose careers last 37.9 years compared to the average career duration of 29 years for women; cited according to: Davaki, K. (2016). *Differences in woman's and man's work, care and leisure time*. European Parliament, 16.

<sup>49</sup> Mills, M., Tsang, F., Prag, P., Ruggeri, K., Miani, C., Hoorens, S. (2014). *Gender equality in the workforce: reconciling work, private and family life in Europe*. European Commission, 5.

<sup>50</sup> International trade union confederation report, *The decent work agenda: a gender perspective*. Brussels, 2009, 15.

<sup>51</sup> Davaki, K. (2016). *Differences in woman's and man's work, care and leisure time*. European Parliament, 16.

<sup>52</sup> Schulze, E., Gergoric, M. (2015). *Maternity, paternity and parental leave: Data related to duration and compensation rates in the European Union*, Policy Department C: Citizens' Rights and Constitutional Affairs (European Parliament 2015), 72.

deteriorating health and efficiency of employees,<sup>53</sup> today's legislations, including supranational European Union law, struggle to find an adequate way to balance these important life spheres.

Influenced by patriarchal attitudes, modern societies have not abandoned the role of motherhood as the primary one, while the father is still seen as the sole breadwinner. This perpetuates discrimination based on motherhood, often resulting in women being excluded from performing certain tasks.<sup>54</sup> The birth of a child naturally forms a bond between mother and child, which is why it is traditionally believed that it is solely the mother's responsibility to take leave for child care. Consequently, only 2% of fathers in the European Union make use of this right.<sup>55</sup> Therefore, maternal absence from work upon the birth of a child leads to almost unavoidable career interruptions as mentioned earlier. This way, women are excluded not only from the labor process but also from further education, affecting the full realization of their intellectual capacities, providing some authors the basis to argue the justification of making a difference in the wages of men and women for work of equal value.<sup>56</sup> The unequal chances for men and women on a professional level are also reflected in the inequality in the distribution of household chores. Data supports the fact that women in the European Union spend 18 hours per week on domestic chores, while men spend three times less.<sup>57</sup> Women entering the labor market and contributing to the household budget has not reduced their domestic responsibilities but has, on the contrary, created an additional burden of obligations.

Additionally, authors highlight that the differences in unequal pay for work of equal value between men and women can also be explained by

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<sup>53</sup> Buddhapriya, S. (2009). „Work-family challenges and their impact on career decisions: a study of Indian woman professionals“. *Vikalpa*, vol. 34, no. 1, 33.

<sup>54</sup> A good illustration is the already mentioned case of *Zarb Adami*, in which the European Court of Human Rights determined that a provision of Maltese law is discriminatory, allowing for the exclusion from the civic duty of jury service of those persons who have family responsibilities, which in most cases are women; cited according to: Etinski, R. (2013). „Indirektna diskriminacija u sudskoj praksi Evropskog suda za ljudska prava“. *Zbornik radova Pravnog fakulteta u Novom Sadu*, no. 1/2013, 59-60.

<sup>55</sup> Davaki, K. (2016). *Differences in woman's and man's work, care and leisure time*. European Parliament, 49.

<sup>56</sup> Wood, G. R., Corcoran, E. M., Courant, N. P. (1993). „Pay Differences among the Highly Paid: The Male-Female Earnings Gap in Lawyers' Salaries“. *Journal of Labor Economics*, 417–441. The mentioned authors believe that a woman, after giving birth, has a reduced intellectual capacity for work, which results in her being assigned a lower-paying job position.

<sup>57</sup> Mills, M., Tsang, F., Prag, P., Ruggeri, K., Miani, C., Hoorens, S. (2014). *Gender equality in the workforce: reconciling work, private and family life in Europe*. European Commission, 18.

traditions in the occupational choices of men and women.<sup>58</sup> This is connected to job segregation that creates so-called “male” and “female” occupations, with the latter naturally being less paid. This is further compounded by the opportunity for overtime work, and consequently higher earnings at the end of the month, which is more available to men, a situation that can be considered a result of the uneven distribution of family chores. In this context, there are views that women, due to such roles, are less represented in jobs that involve overtime work, such as managerial positions.<sup>59</sup> Furthermore, some authors believe that women with family responsibilities are pushed out of such jobs because these responsibilities prevent them from participating in after-hours meetings, which are considered part of the job.<sup>60</sup> There are also stereotypes that women are not suited for such jobs due to a lack of commitment.<sup>61</sup> These theoretical positions are supported by statistics showing that less than 10% of managers in the European Union are women, and this percentage is even lower when it comes to the highest earnings in corporations.<sup>62</sup> It is rightly concluded that high positions in the workplace and the employment of women are inversely proportional, with the share of women decreasing as one moves up the hierarchy to higher-paid positions.<sup>63</sup>

The effects of not providing equal chances for men and women in employment, which are also visible through the possibility of advancement, should be connected to the aforementioned issues. The disregard for gender-equal policies, combined with stereotypes that the nature of employed men is leadership-oriented and that they are more capable, results in only one woman occupying one of the three highest-paid positions in companies in member states.<sup>64</sup> In this regard, the theory of the glass ceiling should be mentioned, representing barriers that are invisible and seemingly non-existent to women

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<sup>58</sup> Prechal, S., Burri, S. (2009). *Pravila o EU rodnoj ravnopravnosti: kako su ona preneti u nacionalno pravo*. Luxembourg: European Commission, 14.

<sup>59</sup> Kirton, G. (2011). „Work-life balance, attitudes and expectations of young black and minority ethnic graduates“. *Equality, inequalities and diversity, contemporary challenges and strategies* (ed. Geraldine Healy, Gill Kirton, Mike Noon). London, 262.

<sup>60</sup> De Spiegelaere, S., Piasna, A. (2017). The why and how of working time reduction. European trade union institute, 65.

<sup>61</sup> *Gender and career development*. European foundation for the improvement of living and working conditions. Dublin, 2007, 25.

<sup>62</sup> Meyerson, E. D., Fletcher, K. J. „A modern Manifesto for shattering the glass ceiling“. *Harvard Business Review*, no. R00107, 127.

<sup>63</sup> *Gender and career development*, European foundation for the improvement of living and working conditions. Dublin, 2007, 25.

<sup>64</sup> Mullally, S. (2003). „Beyond the limits of non-discrimination: promoting gender equality“. *Equality in diversity* (eds. Cathryn Costello, Elis Barry). University of Leicester, 295.

who want to advance in their jobs but are simultaneously solid enough to prevent them from doing so. Women in employment face such barriers when they seek to advance to higher positions, which are better paid, but due to inequality of opportunities at work, they are only allowed to advance up to a certain level. The organization of “Equal Pay Day” indicates the reality of wage inequality between men and women for the same job in Europe, aiming to highlight the struggle of women to catch up to their male colleagues by performing work of equal value.<sup>65</sup> This day is organized annually and is marked in the member states on the day when women finally manage to equal the earnings of their male colleagues for the same job, starting from January 1st. Although the legislative framework for providing equal opportunities is clear and implemented in member states, data indicates that “Equal Pay Day” in 2019 was only reached on November 5th at the European Union level, which are disheartening facts that show a woman needs almost 11 months to earn the same as men in the workplace. The progress of certain countries should be taken into account; for instance, in Spain, this day was achieved on February 22nd of the mentioned year, and three days later in Austria, according to data available from the European Commission.

### **THE EROSION OF GENDER RELATIONS DURING THE CORONAVIRUS PANDEMIC – EXAMPLES FROM SOME EU COUNTRIES**

Gender relations were examined in light of measures taken to prevent the spread of the coronavirus in the first months of the pandemic, based on statistical data from certain countries of the European Union. The closing of educational institutions and workplaces, along with the shift to working from home, further influenced the already unequal relationship between men and women. This situation necessitated a different organization of families worldwide. Additionally, women were more affected by the pandemic because they were overrepresented in front-line job sectors.<sup>66</sup> Due to social isolation, parents in many EU countries could not rely on older family members for

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<sup>65</sup> European Commission, Equal Pay Day: Joint Statement by First Vice-President Timmermans and Commissioners Thyssen and Jourová, [https://ec.europa.eu/commission/presscorner/detail/en/statement\\_19\\_6192](https://ec.europa.eu/commission/presscorner/detail/en/statement_19_6192) (Accessed on October 5, 2021).

<sup>66</sup> International Labour Organization, *Covid-19 and the world of work: impacts and responses*, Geneva, 2020, 6. For more about the position of frontline employees, see: Rajić Čalić, J. (2021). „Pravni položaj zaposlenih u prvoj liniji za vreme vanrednog stanja usled pandemije virusa Kovid 19 u Srbiji“, *Pandemija Kovida 19: pravni izazovi i odgovori*. Belgrade: Institute of Comparative Law, 15–113.

childcare, necessitating a balance between work duties and at least one parent working from home. Initial research results come from Spain and Italy, countries that were most affected by the virus in the first wave of the pandemic. In these states, women took on the bulk of domestic responsibilities.<sup>67</sup> The assumption of household duties by the parent who agreed to work from home suggests that this situation deepened the existing gender inequality between men and women. In these countries, women, working from home, caring for children, and doing housework, bore this additional burden. This is especially emphasized by authors in Italy, noting the increase in hours women spent on household chores and childcare compared to the period before the lockdown.<sup>68</sup> The research also showed that a high percentage of men continued to work at their workplace, compared to a higher percentage of mothers who agreed to work from home. Particularly concerning are comparative data outside the EU states, in the United Kingdom, the USA, China, and Japan, which show that women faced unemployment to a large extent, as a result of reduced labor market demand, and they had difficulty reintegrating into the labor market.<sup>69</sup> Changes in the labor market and the lack of jobs could further negatively affect women's employment, increase their involvement in household chores and childcare, and deepen the gender gap, which is why the International Labour Organization's call for all measures to prevent the virus from spreading must be aligned with gender equality policies is unsurprising.<sup>70</sup>

## CONCLUSION

We can conclude that the development of European legislation has been on an upward trajectory concerning the principle of equal treatment. However, it seems that the normative framework has not been followed by success in implementing rights, or, as Kovačević reasons, it has not been accompanied by

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<sup>67</sup> Del Boca, D., Oggero, N., Profeta, P., Rossi, Maria Cristina, (2020). Women's and men's work, housework and childcare, before and during COVID-19. *Review of Economics of the Household*, 2020, 18, 1001–1017. file:///E:/ZA%20RAD/INSTITUT/JRC/rad%20za%20EU/Women's%20work,%20housework,%20and%20childcare%20before%20and%20during%20COVID-19%20VOX,%20CEPR%20Policy%20Portal.html (Accessed on October 7, 2021).

<sup>68</sup> *Ibid.*

<sup>69</sup> Belot, M., Choi, S., Tripodi, E., Van den Broek-Altenburg, E., Jamison, C. J., Papageorge, W. N. (2020). *Unequal Consequences of COVID-19 across Age and Income: Representative Evidence from Six Countries*, (IZA Institute for labour economics 2020), 10.

<sup>70</sup> International Labour Organization, *Covid-19 and the world of work: impacts and responses*. Geneva, 2020, 18.

“equal quality of men and women’s work engagement,” which is why the listed manifestations of unequal treatment are still present.<sup>71</sup> It is rightly concluded that societal problems cannot be solved merely by enacting laws, or by “legal fetishism”,<sup>72</sup> which seems particularly the case with the prohibition of discrimination based on gender. European standards represent minimal conditions that contracting states should follow in standardizing national provisions. Some have gone further. For instance, a positive trend in anti-discrimination legislation is noticeable in Nordic countries, such as Sweden, which has established a specialized ombudsman for gender equality, a useful example of legislative policy followed by Denmark and Norway.<sup>73</sup> In Sweden, an employer with a collective of more than ten members is obliged to adopt an “annual equality plan,” which involves assessing equal pay for male and female employees at the workplace, considering the systematization of job positions.<sup>74</sup> Unions in Northern European countries provide special support in the implementation of these plans, seen as a social catalyst for change and a cornerstone of respect for human rights and equality principles. Strengthening unions, as social partners, can serve as a good example for other member states, whose activities can solve some significant societal problems.

Nevertheless, what we consider important for establishing the principle of equal treatment relates to recognizing the needs men have when establishing equal treatment. Although when discussing the preservation of the principle of gender equality, attention is mainly focused on women, who most often encounter discrimination at work, we agree with those authors who propose that in addition to valuing women’s needs, men’s needs should also be considered, especially in light of fathers’ rights to parental leave, recognizing the role they have in family duties.<sup>75</sup> We share the opinion that for the development of the principle of equal treatment, in general and in the European Union, it is necessary to pay attention to the specific needs of men, instead of expanding the concept of protecting women.<sup>76</sup>

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<sup>71</sup> Kovačević, Lj. (2021). *Zasnivanje radnog odnosa*. Belgrade: Faculty of Law of the University of Belgrade, 1061.

<sup>72</sup> Jašarević, S. (2014). „Antidiskriminaciono pravo Srbije u oblasti rada i standardi Evropske unije”, *Perspektive antidiskriminacijskog prava* (ed. Željko Potočnjak, Ivana Grgurev, Andrea Grgić). Zagreb: University of Zagreb – Faculty of Law, 50.

<sup>73</sup> Bell, M. (2002). *Anti-discrimination law and European union*. New York: Oxford University press, 199–200.

<sup>74</sup> Jovanović, P. (2011). „Aktuelni aspekti principi zaštite zaposlenih“. *Zbornik radova Pravnog fakulteta u Novom Sadu*, no. 3/2011, 148.

<sup>75</sup> Kovačević, Lj. (2021). *Zasnivanje radnog odnosa*. Belgrade: Faculty of Law of the University of Belgrade, 1061.

<sup>76</sup> Grgurev, I. (2014). „Diskriminacija trudnih radnica: Kako uspješno pomiriti trudnoću sa zahtevima tržišta“. *Perspektive antidiskriminacijskog prava* (ed. Željko



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