

Gender perspective of labour law



Course Gender perspective of labour law

– learning goals –

- ▶ 1) The course is designed to create a framework for understanding gender perspectives on key labour law institutions.
- ▶ 2) The course tends to stimulate students to critical thinking and cooperative learning in order to better conceive the need, challenges and obstacles for effective implementation of gender equality principle in the world of work.
- ▶ 3) Students should be able to use the gender equality principle as a basis for re-evaluating applicable sources of law and legal concepts, as well as existing legal problems regarding the status of women, persons with family duties and non-binary people in the world of work
- ▶ The course is developed by team consisting of Prof. Dr. Ljubinka Kovačević (University of Belgrade); Prof. M^a Isabel Ribes Moreno, Prof. Dr. Thais Guerrero Padrón, Prof. Dr. Carmen Jover, Prof. Dr. Angustias Benito Benítez (Universidad de Cádiz); Prof. Dr. Eleonor Kristoffesson, Dr Maria Sjöholm (Orebro University); Dr. Carlo Petta (LUMSA University)

Importance of gender perspective of labour law

- ▶ Employment relationship, as the central institute of labour law, is connected with the idea that an employee exclusively or predominantly makes a living by working on behalf and under prerogatives of an employer. This is because an employer, in addition to the *de facto* authority, manifested in economic dominance, also has the legally recognized managerial, normative and disciplinary prerogatives.
- ▶ Legal subordination and economic dependence of employees, however, produce the need to create and implement norms that can prevent abuse of employer's prerogatives and protect employees, as a weaker party to the employment relationship.

In that sense, the history of labour law can be seen as a process of gradual limitation of the employer's prerogatives in order to create the conditions for effective enjoyment of labour rights, including the right of jobseekers and employees to protection against discrimination.

This is why the principle of equality and the principle of non-discrimination appear as basic principles of contemporary labour law. An important segment of protection of jobseekers and employees from discrimination is their protection from gender-based discrimination.

- ▶ Traditional labour legislation, as a rule, did not take into account experiences typical for female workers, nor did it identify the specific consequences that the seemingly neutral labour law rules or practices had on women.

Gender perspective of development of labour legislation

- ▶ Labour law contributed to the legal invisibility of women, as well as to the legitimization of the patriarchal concept of work.
- ▶ Labour law is traditionally conceived according to the *model of male worker who is employed on the basis of a standard (open-ended full time) employment contract*, which resulted in failure to recognize or provide sufficient consideration of the specific needs that women have as participants in the labour market.
- ▶ This is reflected in the field of social security law, which is built on the *male breadwinner model*.
- ▶ This approach survived after the Second World War, even after the lifting of the ban on employment of married women, which existed in certain countries, and the intensive inclusion of women in the labour market in Europe and North America.
- ▶ Unequal treatment of men and women in the world of work was based, above all, on the inequality that existed between them in the family and the society, since the power that men had in the family and the society facilitated their domination in the world of work.
- ▶ Labour legislation traditionally regulated only a few marginalized "women's" labour issues, primarily *maternity protection and special protection of women due to their weak constitution*; and, later, the issue of equal pay for men and women for equal work.


Gender perspective in labour law as a scientific discipline

- ▶ Sex and gender, as a rule, are not considered an important analytical category in labour law.
- ▶ This was reflected in the content of Labour Law textbooks, in which issues related to the position of female workers were often ignored or only mentioned in several footnotes, or, at best, covered in one or two lessons, which, again, were dedicated to typical women's labour law topics.
- ▶ In the 1980s, social sciences started applying a *feminist method*, which opened up a new set of labour law issues.
- ▶ In addition to the changes that have taken place in the family structure and the affirmation of the new concept of a *dual breadwinner model*, new gender-sensitive issues have emerged, among much else because of emergence of a number of non-standard forms of work, many of which have been extremely precarious, and in which women are disproportionately more represented than men.
- ▶ Legal systems do not recognize all these changes, and some are waiting to be recognized by the lawmakers and social partners, since some of them are perceived as accidental, i.e. as part of the social context in which labour law is created, applied and interpreted.

Gender as analytical category within labour law

- ▶ Contemporary labour law, when creating conditions for achieving gender equality, is **aimed primarily at women's empowerment in the world of work**. This approach is justified, given that female workers are more likely to face unfavourable treatment and are more likely to be discriminated against than men.
- ▶ However, persisting with this approach can lead to an oversimplified understanding of the principle of gender equality, *ignoring the special needs of men in the world of work, as well as ignoring the importance of their role for consistent implementation of the principle of gender equality and women's empowerment*. (e.g. pressures on boys and men to accept and abide by gender stereotypes in the world of work, including the stereotype that measures concerning the reconciliation of professional and family duties of employees should only be addressed to women as well as to the stereotype that male workers do not need special protection in the workplace).
- ▶ In order to eliminate gender-based discrimination from the world of work, there is a **need to take into account the special needs of men and non-binary people**, in addition to the needs of female workers.

Course content

- 1) Access to employment and equal treatment of job seekers
 - 2) Equal treatment of men and women at work
 - 3) Labour law measures to encourage improvements in the occupational safety and health
 - 4) Protection of workers on work–life balance for parents and caregivers
 - 5) Gender–based harassment, sexual harassment and other forms of gender–based violence at work
 - 6) Gender perspective in collective labour law
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1) Access to employment and equal treatment of job seekers

1.1. Job advertisement and job requirements

1.2. Gender-based discrimination during the hiring process

1.3. Public incentives for the recruitment and maintenance of women in employment

1.4. Gender quotas and other positive action measures

- ▶ Gender-based discrimination limits freedom to choose employment (as a part of right to work), as well as a possibility of worker to provide a source of income and to develop his/her personality through the work. The principle of gender equality is in the heart of the concept of decent work, along with demands for elimination of gender-based discrimination and provision of full participation of men and women in the world of work.
- ▶ Although rates of educational attainment and gender parity are increasing globally, women still face particular barriers in accessing decent employment and are more likely to be: a) in informal employment or unpaid family work; b) tied to household and care responsibilities, which can restrict access to education and training, or participation in the labour force; c) subject to occupational segregation and confined to low-skilled occupations with lower pay.
- ▶ Students will analyse the risk of gender-based discrimination of job seekers during the hiring process, since employer has many prerogatives that can be abused for exclusion of persons of certain gender from fully participating in professional life.
- ▶ This will include the issue of (im)permissibility of fixing certain sex as a requirement of a particular job, the issue of (gender neutral) job advertisements, the issue of statistical stereotypes and testing of physical requirements of job candidates, as well as the issue of obligations and duties of employer, social partners, public employment services and private employment agencies regarding promotion of gender equality.

2) Equal treatment of men and women at work

2.1. Working conditions and promotion

2.2. The principle of equal pay of men and women and gender pay gap

2.3. Gender equality, flexible employment contracts and flexible working conditions

2.4. Gender-based discrimination regarding termination of employment

- ▶ Between 1995 and 2015, the labour force participation rate for women decreased from 52.4 to 49.6 per cent, with a higher risk for women of being unemployed compared to men (especially the case for women in North Africa and the Arab States). The employment rate of women is lower in most countries and they have been found to be more fragile in times of crisis, with high rates of female unemployment. Even today there are highly feminized jobs with worse working conditions.
- ▶ Since equal treatment has to be guaranteed at **each stage of employment relationship**, students will examine gender based discrimination regarding all working conditions, including wages, promotion as well as termination of employment.
- ▶ One of the main features of contemporary labour market is **dominance of women in non-standard forms of employment**, some of which may fall outside the formal sector (and outside the scope of relevant legislative provisions).
- ▶ The high participation of women in part-time work, the consequences of maternity at work, particularly in terms of dismissal, and the inexplicable pay gap are aspects will be examined on the basis of Directive 2006/54 and its interpretation by the Court of Justice.

3) Labour law measures to encourage improvements in the occupational safety and health

3.1. Maternity protection

3.2. Protection of workers who have recently given birth

3.3. Protection of workers who are breastfeeding

3.4. Occupational risk assessment and prevention

- ▶ In the field of employment, pregnant women, as well as women who have recently given birth or are breastfeeding need special protection from the point of view of prevention of occupational risks, in order to preserve their safety and health at work, and that of the foetus and newborn child.
- ▶ At the international level (United Nations, ILO, Council of Europe) as well as in the EU (Directive 92/85/EC), legal instruments have been adopted to protect women against dangerous and unhealthy work.
- ▶ We will analyze different opinions regarding these norms: one of them is that some of these protective measures are paternalistic and harmful to women as competitors on the labour market ("benign discrimination", because some protective measures (e.g. absolute prohibition on women's night work in industry) deny the possibility of women to work and earn under equal conditions with men.

4) Work–life balance for parents and caregivers

4.1. Reconciliation issues

4.2. Discrimination based on family issues

4.3. Paternity and other family–related leaves

- ▶ For most women, working for an employer is accompanied by unpaid work in the household, i.e. housework and child care (and not only childcare by mothers, but also participation of grandmothers in raising grandchildren) and care for family members dependent on assistance from others. This **double working engagement of women** represents a great challenge for the female workers and their employers, as well as for the society as a whole.
- ▶ Family duties are one of the main obstacles for women in carrying out their work activities–
- ▶ **Work–life balance and co–responsibility between sexes** are crucial for the achievement of decent work.
- ▶ Family–related leaves were firstly female–focused measures oriented towards protection of health and safety of employed women just before and after childbirth. Late 20th century has witnesses an expansion of various forms of leave for women and men, since significant increase in the number of working mothers has created the need to outline legal norms that may lead to an even division of family duties between men and women.
- ▶ ILO instruments, like Maternity Protection Convention, 2000 (No. 183) and Workers with Family Responsibilities Convention, 1981 (No. 156) take into account this issue.
- ▶ Several proposals for Directives within the EU framework have been formulated to promote co–responsibility and, consequently, to achieve greater integration of women in the labour market.
- ▶ The reform of the Directive 92/85/EEC is needed, and even the recent Directive 2019/1158/EU aiming to reduce the gender gap to achieve decent work, may be regarded not enough to this objective.
- ▶ Students will analyze the advantages and deficiencies of the regulation of family–related leaves and the problem of flexible hours, the controversial use of leaves on regard the new forms of maternity and assisted reproduction.

5) Gender-based harassment, sexual harassment and other forms of gender-based violence at work

- ▶ Gender-based violence is rooted in gendered power relations in the economy, the labour market, the employment relationship, organizational culture and cultural factors.
- ▶ Issues arising from sexual harassment, gender-based harassment and the growing increase of cyberbullying, share common problems.
- ▶ These problems will be taken into account from the approach of ILO (Convention nos. 111 and 190) and EU sources of law (Directive 2006/54/EC).

6) Gender perspective in collective labour law

6.1. Gender balanced policy in workers' representatives, and in management and decision-making body in trade unions

6.2. Collective bargaining agreement with gender perspective: Gender action plans

6.3. Gender perspective in social dialogue

- ▶ Social partners play their role in achieving gender equality through strengthening *the (bipartite and tripartite) social dialogue on gender issues*, because social change connected with the implementation of gender equality principle would not be possible without the participation of stakeholders in the process;
- ▶ ***Collective agreements are powerful tool for achieving gender equality in the world of work*** (normative part of the collective agreement can regulate gender issues; all the working conditions that are otherwise regulated by normative part of the collective agreement, can be reviewed from a gender perspective (pay, working hours, health and safety); there is a possibility for re-examination, from a gender perspective, of the criteria for the selection of candidates for employment, conditions for advancement and other issues where we have to consider the special needs of a certain sex/gender as well as workers with family duties).
- ▶ Gender issues, however, are rarely regulated by collective agreements. An important reason for this is that **modest number of female workers are trade union members, or members of trade union committees that participate in negotiations with employers, or members of trade union governing bodies that make important decisions.**
- ▶ Also, it is necessary to strengthen the role of *employers and employers' organizations* in this area (overcoming cultural, social and economic barriers that make it impossible or difficult for women to become managers and employers; encouraging women's self-employment, keeping gender-sensitive statistics, adopting gender equality action plans, codes of conduct, etc.).
- ▶ We will try to examine the role of trade unions, employers, employers' organizations and social dialogue in ensuring gender equality.
- ▶ The importance of works councils, including European Works Councils, and other (non)institutional forms of employee participation in decision-making for the effective application of the principle of gender equality will be examined.