

GENDER INEQUALITY IN THE CROATIAN LABOUR MARKET – LEGAL AND ECONOMIC ASPECTS

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Abstract

The normative analysis of solutions contained in the Croatian labor-regulative system *prima facie* does not find flagrant deficiencies of legal provisions or their significant discrepancies from comparative national systems of European states or international labour standards, but anti-discrimination measures in the conditions of inadequate level of court protection and inefficiency of labour inspectors in protecting substance rights often result in further reflections of discrimination arising from the anti-discrimination basis.

The gender analysis of the labor market in Croatia suffers from a lack of statistical information and research, limiting analysis and leading to the use of prior estimates and hypothesis. Therefore, scant statistical information and research about women in the labour market hinders their effectiveness with policymakers in the implementation of government procurement laws or policies that promote women in the labour community.

In the circumstances of negative transitional changes, significant impact of the Church on all spheres of the social and political life, unemployment, poverty and disallowed practice that makes a women undesirable work force, a prevention of multiple forms of discrimination and genuine affirmation of the equal distribution of gender roles in social and family life has to become a permanent imperative in the society that is pursuing values and principles of equality

The paper discusses women's position in the Croatian labour market within transitional context, especially from legal, economic and political point of view. The purpose of this paper is to promote women position in the labour market as equal part of labour force.

Key words: gender inequality, labour market, gender roles, legal and economic aspects

1. Introduction

The Republic of Croatia, being a typical country of Central and Eastern Europe (CEE), has been facing for more than a decade now striking challenges of two parallel processes - transition to the market economy and democratic society and globalization, both causing tremendous changes in economic, political and social spheres of people's life. While both processes have been offering opportunities beyond expectations, their threats have been equally challenging. In the line with the experiences in other CEE countries documented in the vast body of research (e.g. Kantor 2004, Thomson 2002, Nowicka 2004, Ruminska-Zimny 2002), the costs of globalization and complicated transitional process in terms of raising inequalities in distribution of opportunities and resources have been affecting more women than men in Croatia.

Women in Croatia have been adversely affected by male-dominated privatization process and male-biased technological modernization, discriminated at the labor market in terms of age, wages and career advancement possibilities, faced with greater and long-term unemployment especially when middle-aged or older, marginalized in terms of participation in decision-making and policy creation, confined to "feminine" professions with low pay and low skills and the like, hindered by the lack of resources and opportunities in their potential entrepreneurial venturing, etc. Considering the fact that 52% of Croatian population is women (Census 2001), it is distressing that Croatia does not fully capitalize on more than a half of its human resources thus undermining their competitive potential.

In the light of growing international awareness of the role of women in economic and social development, its efforts to become a member of the European Union (EU) which is committed to achieve gender equality and its endeavors to increase national competitiveness and to ensure sustainable growth and development in the highly dynamic and globalized world, Croatia must increase the awareness of the need to empower women to realize their full potential in their political, economic and social participation in overall national development.

2. Gender and gender equality

The main goal of the development process is to advance the life of every person regardless of their ethnicity, race, age, abilities and naturally gender. Advancement of life includes not only basic rights to secure basic needs of every person such as food, shelter, clean water or clothing but also rights to have a gainful employment, to exercise religion, to obtain education, to maintain health and the like. However, the experiences across the world show that there is a difference in economic, social and political activities of women and men that often make women less equitable in attempt to ensure the full use of their potential.

For the purpose of this paper, gender is a culturally-based concept that defines womanhood and manhood by social perceptions whereas sex is a biologically-based concept that defines male and female by genetic composition.¹ In another words, gender is an analytical tool for understanding social processes, i.e. identifies the social behavior of women and men and the relationship between them. Identifying gender issues in the international context is complex because the definition of gender varies in different cultures with age, race and socio-economic status. It represents a dynamic concept that changes over time and location. The focus in this paper is on women in Croatia, i.e. their economic and legal status in the Croatian society.

According to the World Economic Forum (WIF, 2005), gender equality refers to that stage of human social development at which the rights, responsibilities and opportunities of individuals are not determined by the fact of being born male or female. Despite of the efforts to heighten the awareness of gender issues, the reality remains that no country has managed yet to eliminate the gender gap in terms of *economic participation* of women in the workforce, *economic opportunity* of women in economic involvement, *political empowerment* of women in decision-making and policy creating structures, *educational attainment* of women, and *health and well being* related to the equal possibility of women ranging from sufficient nutrition to the fundamental safety and integrity of a person. Croatia does not differ regarding such gender asymmetries.

There are two indices measuring the building capacities of women and their empowerment in human development - gender development index (GDI) and gender empowerment index (GEM). The GDI measures achievement in the same dimensions as the Human Development Index (HDI)² but adjusts the results in life expectancy, educational attainment and income for gender inequality. The GEM captures gender inequality in key areas of economic and political participation and decision-making in both public and private sectors, including: women's and men's shares of administrative and managerial positions, of professional and technical jobs, their shares of the national income and their shares of parliamentary seats.

3. Gender (in)equality in Croatia

Croatia does not differ in terms of experiencing gender asymmetries described above. According to the Human Development Report (2004), Croatia ranks 43rd of 144 countries in terms of GDI, and 36th in terms of GEM. This places it among

¹ More detailed explanation of the difference between sex and gender can be found in Blau, F. et al. (2001).

² HDI focuses on three measurable dimensions of human development - long and healthy life of a person, education and standard of living.

countries with high human development.³ However, the women in Croatia are still considered the minority in terms of their economic, social and political potential. Even though the situation has been changing and more and more women are entering the labor market or Parliament, their contribution to the overall national development is still a story of expectations unmet.

3.1. Women in political arena

Pre-socialist time had been tough on women in Croatia who were economically, politically and socially deprived of the same rights like men. The year of 1945 when the women got the right to vote and socialism as an order meant a significant change in women's position within the system. It had introduced the principles of gender's equality and parity that legally granted women rights equal to those of men in their economic, social and political lives. However, those changes did not translate into reality. In socialistic system, women were not proportionally represented at higher levels of decision-making bodies. This is vividly illustrated by the data on women's participation in Croatian Parliament (Sabor) in table 1.

Table 1 Participation of women in the Croatian Parliament, 1958-1990

Phases	Period	Women delegates
octroyed phase	1958-1965	24.1%
competition phase	1965-1984	7.9%
key phase	1984- democratic changes	18%

Source: Lovrin-Grgic, 2002.

Women's participation in political life has been increasing since the 1990s. Women have been accounting for 21.7% of Croatia's Parliament. Compared to women representation in the national parliaments of the 45 members of the Council of Europe, Croatia is above the European average of 18%. Croatia had adopted a number of provisional special measures to achieve gender equality in the electoral lists of the various political parties. Such measures, however, had not increased women's representation at the local government level, which stood at about 14%.⁴

³ Regarding GDI in world, the best performer is Norway and the worst performer is Niger. Regarding GEM, the best performer is Sweden and the worst Saudi Arabia. Other countries' statistics available from Lopez-Carlos, A., Zahidi, S.: Women's Empowerment: Measuring the Global Gender Gap, World Economic Forum, 2005 at www.weforum.org

⁴ Data obtained from www.stopvaw.org/Croatia.html (Accessed on 18th July 2005)

3.2. Women in economic arena

Even though socialism has introduced the principle of gender equality and parity that legally granted women rights equal to those of men, the gender specific legislation typical for socialistic countries enacted in the 1960-70's prevented women from certain careers especially highly paid occupations (Bliss and Garratt 2001). Such legislation worked in favor of Croatian families making women more oriented towards the functions of mothering and homemakers, while at the same time causing disruption in the equality of women. The lack of a developed service sector and evident socio-political structure that has been marked by the separation of male and female roles ensured that women with full time jobs were responsible for the majority of the housework. According to Sroda (1992) and Bishop (1990) Eastern European women performed 60% more housework than Western women. Also, they held majority of lowest paying and often monotonous and unsafe jobs concentrated in textile and food industry, educational and health services, earning 65% of the average man's wages.

The era of transition has put Croatian women in yet another hardship causing their unfavorable position in society and workplace. As a result, they are often under-represented in well-paid positions, improperly trained for careers in the new economy and lacking institutional and policy support to activate more in labor market while handling demanding role in the family.

Croatian women had a significant role in the process of transition, however the benefits from it have not been equally distributed. According to the Government statistics (2005) the share of women in the total number of unemployed reaches 54%, in informal economy 65% and part-time employment up to 86%. Among long-term unemployed persons in Croatia 60% are women. They were often among the first to be laid off in times of corporate restructuring. Women are holding the majority of jobs in public sector, 52% and only 39% of jobs in private sector. It has been estimated that only 30% of total entrepreneurs in Croatia are women. They are also trailing men when it comes to self-employment (28%). At the level of management within organizations, top management positions belong to only 27% of total employed.⁵ Women tend to earn less than their men counterparts up to 75% of average salary men earn which is found similar to such experiences in other CEE countries. To

⁵ In March 2003, the Croatian State Institute for the Protection of the Family, Maternity, and Youth released a study that showed half the companies surveyed did not have a single woman in a senior managerial position and less than 3 percent of companies had more than four women in such positions. Data obtained from Croatia, Country Reports on Human Rights Practices - 2004, Released by the Bureau of Democracy, Human Rights, and Labor, February 28, 2005 www.state.gov (Accessed 18th July 2005)

summarize it, women are significantly constrained to developed careers as men in many aspects of business life.⁶

Even though the transition of Croatia has not been gender neutral, it has created new opportunities for women to improve their chances on the labor market through entrepreneurship and self-employment. These opportunities are not yet fully realized by Croatian women but they have been viewed as a way of empowering women in economic, social and political sense since entrepreneurship is not just a business form but the way of behaving as well.

3.3. Female entrepreneurship

In spite of all problems encountered or maybe because of them, more Croatian women are increasingly interested in entrepreneurship. This is supported by the fact that 27% of all employers in Croatia are women, as managers or as entrepreneurs. Even though more and more women are «pushed into» the labor market, larger number of women in labor force did not translate into an increased number of women in entrepreneurship. Similar to the case of female entrepreneurship around globe in general and transitional economies in particular, Croatian men start their own business more often than women.

Entrepreneurial climate within a country has significant impact on propensity of women for entrepreneurial activities. The research at Babson College supports this thesis (Echeverri-Carrol and Brandazza 2002). Based upon the survey on a representative sample of 1,000 adults, the rate of new business creations has been estimated. The results suggested significant difference among countries in new start-ups. When diversified by gender, the data showed relatively similar start-up participation rates for women and men in the USA and Canada, both countries having high levels of entrepreneurial activities measured by TEA (Total Entrepreneurial Activity) index⁷ - 11.94 and 8.01 respectively. Opposite showed to be true for countries with low levels of entrepreneurial activities where start-up participation rates were

⁶ American scientists state three factors that constrain women to achieve career similar to their men counterparts: (i) absenteeism of women from work place (e.g. maternity leave); (ii) communication climate which suffers from stereotypes (e.g. woman as sexual object, woman as mother, etc.); (iii) invisible barriers as products of those stereotypes and which operate through “glass ceilings”, keeping women in so called women areas or women activities (Wood, 1993). See in Leinert-Novosel, S.: *Politika zapošljavanja žena, Politička misao*, vol. XL, br.3., 2003, p. 113

⁷ The TEA index is uniquely created indicator by GEM which measures a total entrepreneurial activity within a country. It combines the number of persons active in start-up process or managing business not older than 42 months. The identification of those persons is obtained by survey on random sample of at least 2000 adults in country participating in GEM project. More on TEA indexes on the official GEM site, www.gemconsortium.org

significantly disproportionate for women and men.⁸ The case of Croatia follows this line of reasoning. Croatian TEA index of 3.69 in 2003 (all participating countries' average is 6.878) has been lower than in countries with similar socio-cultural and economic heritage such as Hungary or Slovenia. This has been reflecting on women engaged in entrepreneurial activities where men become more than two times often entrepreneurs than their female counterparts (table 2). It is evident that men are more entrepreneurial inclined whether entrepreneurship is seen as an opportunity or threat which is in congruence with world statistics - in 39 GEM countries men are 1.8 times more engaged in entrepreneurship than women.

Table 2 TEA index by gender in Croatia, 2003

Gender	TEA <i>total</i>		TEA <i>opportunity</i>		TEA <i>necessity</i>	
	2002	2003	2002	2003	2002	2003
Female	1.58	1.42	0.74	0.53	0.64	0.72
Male	5.12	3.69	3.20	2.95	1.05	0.42

Source of data for 2002: GEM for Croatia, Singer e. al., 2003

Source of data for 2003: Singer et al, 2004, working materials

Constraints affecting women entrepreneurs in Croatia range from various perceptions and social norms that are institutionalized in various aspects of socio-economic life in the country. Most common problems cited as major constraints to greater female entrepreneurship development in Croatia are similar to those worldwide (RRIF 5/2003): difficult access to financing, information; insufficient skills and knowledge and education opportunities; overburden by work and child/household responsibilities; gender division of labor and gender role socialization.

Women in Croatia experience less opportunity than men to gain access to credit for various reasons. Mostly it is due to weak collateral position since women often are not owners of real estates or they show greater unwillingness to use household assets as collateral. In some cases, women complain that some loan officers show a bias against female entrepreneurs.

Access to information is a general problem of SMEs due to the competition over information with larger companies which have more power and resources to access it. Information is best obtained in Croatia through informal networks, membership in

⁸ According to GEM (2003), the highest levels of entrepreneurship among women has been noted in Thailand where 18.5% of women surveyed are entrepreneurs, India 14.1%, Argentina 11.5%, China 11.0%, New Zealand 10.6%, Mexico 10.3%, Chile 9.5%, Korea 8.6% and the United States (8.1%). The lowest levels of female entrepreneurship has been recorded in Japan 0.6%, Belgium 1.5%, Russia 1.6%, France 2.1%, Hong Kong 2.3%, Spain 2.6%, Sweden 2.6%, Singapore 2.7% and Slovenia 2.9%.

various associations and engagement in various activities and events. Women have greater difficulties to engage in such activities and events, that often take place after working hours, than men due to their additional work as homemakers.

Gaining relevant and additional knowledge and skills for women is also more difficult since their responsibilities and work at home leave them less time available for attending formal and informal trainings. Also, trainings and educational programs tailored to women's need both professional-wise and organization-wise are currently insufficient in Croatia although they have been emerging lately (e.g. seminars and workshop organized by regional Centers for entrepreneurship across the country).

Noted problems are concerning the fact that women tend to engage in entrepreneurial activities which are of lesser value markets implying less innovation as well. Namely, many women entrepreneurs engage in low value markets where barriers to enter are less in number but in turn such sector is more crowded and thus offering less opportunity to further grow and develop especially using innovations.

The common denominator to some of problems stated is the fact that women do need to cope with work and family. Petrović (2002) states that women are overburden by the responsibilities at work and home. Croatian women have it more difficult than women in more developed countries to combine their duties as homemakers and workers; they have it more difficult compared to men which proves to be true for all transitional economies.⁹ It seems that women of transitional economies have been victims of generating new roles in economy while not having traditional roles in family revisited.

This is partly due to general economic conditions (e.g. lower incomes buy less help in the house, for example housekeeper or electric appliances or less free time in general) but to society's perception of woman's role in the household where women typically do most of the housework and child care themselves. Vučinić-Palašek (1995) states most of the women in Croatia are employed while being housekeepers at the same time at home (44%) being responsible for most, if not all, housework and family care; more rare cases are successful employed women with career who share their housework and family care with other members of the family (9%).

Also, society is less informed about successful businesswomen, particularly entrepreneurs. According to the results of MediaNet (RRIF 5/2003), familiarity to

⁹ For example, women in world, e.g. Australia, work 38 hours at home alone doing housekeeping and providing childcare compared to 16 hours of man's engagement at home activities. Combined with working hours at work, women work 1.5 months more than men. The more dramatic results come from Central and Eastern Europe where women work 85 hours at work and home together compared to men who work 70.6. Twenty years ago women in transitional economies worked 70 hours per week which represented a significant difference compared to 55 working hours of women from Western countries (Petrovic 2002).

business women of Croatia is much less than familiarity to women in politics or media. Out of 406 people surveyed (18 years and older), 80% could not name a single business woman in Croatia while only 1.7% surveyed could name only three business women. On question about women in politics, surveyed people named spontaneously 30 various names. These results imply that there is a serious lack of awareness of economic activities and successes of Croatian women in the business community. Less women's contribution to the national economy is known, less is the possibility to develop and fully utilized women's potential as economic agents.

4. Women and labor market in Croatia

The official statistical data show that women constitute 58% of unemployed population in the Republic of Croatia although they are participating with 52% in the total number of population. At the same time, as it has been mentioned earlier, only 30% of women are entrepreneurs and only 6% occupy managerial positions.¹⁰ Therefore, stated data unquestionably point at the fact that the female sex has been jeopardized in the sphere of work and employment and thus evidently under-represented in a domain of jobs which are characterized by the leading positions and high earnings. Data also reveal that the women in Croatia are well educated, but despite that feebly represented at the leading positions in the bodies of the state administration and public enterprises while the proportion of female sex is particularly high in less professional, industrial, commercial and office work¹¹ as well as in the sphere of service sector which is generally known to have low salaries and inadequate possibilities of professional advancement and training. Stated statistics in the European context do not represent unexpected deviations since the level of female unemployment is only smaller in the Baltic states. Globally speaking, this is also the case in some parts of East Asia and in developed countries such as Australia, Canada, Japan, New Zealand and the United Kingdom.¹² However, experts see the reasons for such "positive" statistics for women in the fact that women are more and often willing to accept jobs with significantly unfavorable conditions of employment and work that it is case with male population. Women are ready to accept shorter working hours instead of not working at all, thus conscientiously but inevitably become underemployed. Furthermore, it makes them in the context of the present

¹⁰ Cf. web site of the Croatian Employment Service at <http://www.hzz.hr/docslike/statistike/tablica%201.xls> and web site of the Central Bureau of Statistics at <http://www.dzs.hr/StateInfo/SIFrameH.htm>

¹¹ *Nacionalni akcijski plan zapošljavanja 2004*, Republika Hrvatska, Vol. 1, Uvod, zbirne analize i mjere, p. 24.

¹² *Time for Equality at Work, Global Report under the Follow-up to the ILO Declaration on fundamental Principles and Rights at Work*, International Labour Conference 91st Session 2003, International Labour Office, Geneva, p. 42.

discrimination long-term discouraged, often leaving their active role in the search for job.¹³

Croatian endeavors for the full membership in the European Union, the process of harmonization of the legislation which started long time ago and the geographical location, i.e. immediate state border with the member states on the North (Hungary), West (Slovenia), and south (maritime border with Italy) and the neighborhood with the West Balkan, states of the Central European province and those established after the break up of ex-Yugoslavia, which are troubled by the same problems of political and economic transitions, building of societies based upon the rule of law and equality of each individual, the domain of sex/gender equality has been justly and necessary positioned at the heart of the professional and multidisciplinary discussions.

In such a context, the European Employment Strategy and by it formulated equal employment possibilities, confirmed at the Lisbon summit in 1997 and the directives of European Council, that emerged from the Amsterdam Treaty¹⁴, on decreasing a gender segregation gap on the labor market deserve a full attention in the case of Croatia which statistics, despite *de iure* equality between women and men, portray ever present *de facto* inequality and everyday discrimination of women on the labor market, but in the social life in general.

5. Gender equality – legal and institutional form of protection

The composition of the labor force in the countries of EU shows similar trends known to the Croatian society as well. It represents *inter alia* gender division, then 35-48% (Sweden) participation of women in the active population, their higher level of educational attainment and further great responsibility for the unpaid work at home.¹⁵

Elaborated data are witnessing about generally present and widely spread gender segregation, but also about the unquestionable necessity of effective and full integration of women on the labor market, not only in the context of promoting gender

¹³ Cf. Ibid.

¹⁴ The purpose of European integration according to the Treaties: “The Community shall have as its task [...] to promote throughout the Community a harmonious, balanced and sustainable development of economic activities, a high level of employment and social protection, equality between men and women, sustainable and non-inflationary growth, a high degree of competitiveness and convergence of economic performance...” , Article 2 of the *Treaty establishing the European Community*, OJ C 325/40 , 24. 12. 2002.

¹⁵ Gonäs, L. , *Gender Segregation and the European Employment Strategy: Levels and Divisions*, European Journal of Industrial Relations, Vol. 10, No. 2, 2004, p. 139-159

equality but also in the context of mentioned, necessary and inevitable economic independency of women. Focusing on such an approach and goals are leading to the reduction of their proportion in poverty, which makes difficult for women to become financially independent in the case of divorce, single parenting and family violence as legal and social categories. That will consequently, and not less important, change gradually a rooted perception and stereotypes of the woman's role in the family and society, and increasingly expressed economic independence will strengthen her position in all spheres of life.

The role of legal and institutional forms in protection of gender equality, i.e. in the majority of cases the equality of women in working and social environment, requires short analysis of the legislation and responsible bodies.

5.1. Constitution, laws and institutions

Croatian Constitution has promoted the gender equality as one of the highest values of the constitutional order and as such made it a basis for its interpretation¹⁶, and thus has unquestionably made a step further than the future Constitution of Europe. Namely, the latter has promoted the gender equality as objective not a higher-order value¹⁷, even though the equality of women and men has been formerly incorporated in the article 2 of the Amsterdam Treaty (1997), instead of previous article 141 (ex 119) of the Treaty of Rome (1952). Hence, the establishing agreements at the end of 1990s have incontestably expressed the great value of the gender equality strategy.¹⁸ However, what has happened that the support to gender equality in the European Constitution has decreased, maybe best explained Shaw through a conclusion that only a few women have been included in the work of Convention to establish a Constitution for Europe.¹⁹ Croatian constitutional maker, from contemporary perspective, has not been as much dedicated to the idea of gender equality during the last changes of the Constitution, its declarative promotion in the

¹⁶ "Freedom, equal rights, national equality and equality of genders, love of peace, social justice, respect of human rights, inviolability of ownership, conservations of nature and the environment, the rule of law and democratic multiparty system are the highest values of the constitutional order of the Republic of Croatia and the ground for the interpretation of the constitution." Article 3 of the *Constitution of Republic of Croatia*, Narodne novine, No. 41, 2001.

¹⁷ Article 3 "The Union's Objectives" paragraph 3 [...] "It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child." *Treaty establishing a Constitution for Europe*, OJ C 310/11, 16. 12. 2004.

¹⁸ Walby, S., *The European Union and Gender Equality: Emergent Varieties of Gender Regime*, Social Politics, Vol. 11, No. 1, Spring 2004, p. 7.

¹⁹ Shaw, J., *The European Union and Gender Mainstreaming: Constitutionally Embedded or Comprehensively Marginalised?* Feminist Legal Studies 10, 2002, p. 213-226.

highest constitutional value as to a desire to integrate European requirements and values in the national legislation. Daily discriminatory practice at all levels of work and employment, as well as within the family itself, points out that Croatian women have no more luck with changes in the Constitution of the Republic of Croatia than the female citizens of EU even though the expression of the constitutional acts could indicate otherwise.

The position of women in the Croatian labor market has been mostly determined by the provisions of the Labor Act passed in 1995, which after lengthy *vacatio legis*, started to be implemented at the beginning of 1996. The same law lived through significant changes and appendices in 2001, 2003 and 2004²⁰ when in its *corpus* became *mutatis mutandis* integrated solutions of the relevant directives of the Union from the domain of gender equality. After the initial slip in 1995, the law-maker has finally defined the direct and indirect discrimination, introduced the institute of harassment and sexual harassment (which are being recognized as the form of sexual discrimination), by which he unquestionably created a necessary legal framework for the protection of women in working environment and in the process of employment. However, the process of harmonization of the legislation also contains significant failures in terms of introducing and then rapidly abolishing the provision on positive discrimination of under-represented sex in employment. The previous provision of the article 3(2) of the Labor Act was enabling, in the case of two candidates both meeting the same requirements for employment, that the employer gives an advantage to the sex which is under-represented in his case. That is, the provision was undoubtedly too generally formulated and could easily become an introduction to new forms of discrimination. However, the explication of the Government, that the relevant solution has not brought adequate results so it should be eliminated, is not acceptable from any of the standpoints. We believe that abolished provision is only sufficient legal basis in the fight against gender segregation in access to occupation and employment, including promotion²¹ and has represented *de iure* the provision which would in the majority of cases protect women.

Social norms and stereotyped view on the gender roles in the family life and business environment, as well as the real relationships between genders at the labor market where men dominate, only deepen the problems of segregation which is denoted even in the European Employment Strategy as a significant problem. Thus, sex-dominated occupations and sex segregation could be overcome only if one notices the discriminatory practice and unacceptable treatment. The European

²⁰ *Zakon o radu*, (pročišćeni tekst), Narodne novine (Nn.), No. 137, 2004.

²¹ Vinković, M., *Gender Equality and the Process of Harmonisation of the Croatian Labour Law*, Croatian Yearbook of European Law and Policy (CYELP), Vol. 1, 2005, p. 6; Herman, V., Vinković, M., *Ravnopravnost spolova – ogledi o izabranim pitanjima europskog i hrvatskog radnoga prava*, Zbornik Pravnog fakulteta u Zagrebu, 3-4, 2003, p. 837.

Court of Justice had earlier treated segregation as acceptable and interpreted it as an exception of the equality principle²². However, we believe that the gender segregation represents a form of indirect sex discrimination²³ and its further issues could be observed only from that aspect. Implications it causes in the everyday life of women incontestably point at such a conclusion because it is rather impossible to exclude its relationship with common perception about the height of costs related to employing a woman, including the period of motherhood and absence from work as well as often pointed low level of readiness for overtime work and motivation during the work as well as limited mobility compared to men.²⁴

Working hours/time are one more part of the labor relations which deepens the problems of gender segregation on the labor market and has a negative impact on the treatment of women and mothers. Croatian lawmaker has limited working time to maximum of 40 hours per week coupled with the obligation that the employee in time *vis maior*, an extra amount of work and other cases of urgent situation, upon the request of an employer works longer than working hours but most 10 hours per week (overtime work).²⁵ *Mutatis mutandis*, this is relatively common time limit of the full time duration, but in the case of motherhood and parenthood, it becomes a problem. Moreover, a distribution of the care for children and family confirms absolute inequality between women and men. For a man, more children almost always mean greater activity at the labor market while a woman is always put in the worse position with long and anti-social working hours, especially in the countries burdened by the transitional problems. The substantive equality concept implies that it is not enough to work on banning such forms of indirect discrimination but use positive action, i.e. positive discrimination, eliminate past and future failures which make women suffer on the labor market in the time of motherhood.²⁶

The protection of motherhood in the Croatian labor legislation²⁷ notes down solutions which are at glance more favorable for the mother and father of a child than it is case in other European countries (long period of maternity or parental leave) but only with the intention to increase population births and without adequate material compensation. It is more a political than legal measure, which using populist methods additionally made the role of woman more paternal and reduced it to the level entirely unacceptable for the concept of gender equality. Croatian model, even

²² Herman, Vinković, op. cit. , p. 820.

²³ Vinković, op. cit. (CYELP) , p. 206.

²⁴ Cf. *ILO Report*, op. cit. (n. 3), p. 50.

²⁵ Cf. Article 38(1) and 41(1) of the *Croatian Labour Act*.

²⁶ Cf. Bell, M. , *Equality and the European Union Constitution*, *Industrial Law Journal*, Vol. 33, No. 3, September 2004, p. 247.

²⁷ See for exemple Vinković, M. , *The Motherhood in the Republic of Croatia – Protection of biological condition or discrimination?*, *CYELP*, Vol. 2, 2006 (to be published).

tough it is the case of positive discrimination of the special biological state of a woman and of a period of child rearing to which a woman is almost completely dedicated, has resulted in further problems for women in the labor market. Protective legislation has made her in everyday life an adverse part of the labor force. That is, the discriminatory practice has actually emerged from the anti-discriminatory basis.²⁸ The woman becomes a working subject who should be avoided and who is daily exposed to the discrimination at work and in the process of employment; in family, intention to give birth or to further increase her family by being forced to sign illegal contract clauses which obliged her not to have children at the particular time upon obtaining employment contract, etc.²⁹ This is a practice that men most definitely do not go through in the process of employment, work or advancement, but it is applied to the opposite sex. Herewith it is still seen, as Olson notices, that the work today is less strictly gender divided but there is no clear transition to some new, post-industrial order of relationship between sexes.³⁰ We dare to add that there is no shift in the family and wider social environment, so that any attempt to change perceptions and to reconstruct present deficiencies of unconscious mentality and rooted stereotypes is turned into the Sisyphus work.

Besides that, the time women spend doing house work not only in the time of motherhood but later too, additionally jeopardizes a possibility of their full time employment. The system of part-time work, that is almost completely immanent to the female population on the labor market, additionally discriminates women if it is not adequately applied and institutionally protected. It cannot be said that the part-time work is not regulated in Croatia³¹, but one notices its extremely low level of employment. This is partly due to the provisions of the Pension Insurance Act related to the part-time work employment³² that have been up till recently quite discouraging, complete absence of the transition from fixed to flexible working hours, high rate of unemployment and extremely big illegal labor market.

Women are today both homemakers and breadwinners, constantly traversing the boundary between unpaid and paid work.³³ Their work in the family and household is invisible, it takes place during the time foreseen for rest and leisure and demands the continuous balance between paid and unpaid duties.³⁴ Croatian circumstances and insufficiently developed protective mechanisms do not know atypical forms of

²⁸ Ibid.

²⁹ Ibid.

³⁰ Olson, K. , *Recognizing Gender, Redistributing Labor*, Social politics, Fall 2002, p. 381.

³¹ *Croatian Labour Act*, article 39.

³² *Nacionalni akcijski plan zapošljavanja*, op. cit. (n. 2), p. 17.

³³ Fredman, S. , *Women at Work: The Broken Promise of Flexicurity*, Industrial Law Journal, Vol. 33, No. 4, p. 300.

³⁴ Supiot, A. , *Beyond Employment*, Oxford University Press, 2001, p. 54.

employment with the possibility of adequate application of the various forms of part-time work, i.e. part-time employment, temporary or occasional work, etc. However, these are precisely the types of employment which could greatly synchronize family and business duties of women and men in the time of motherhood and parenting as well as to more equally distribute responsibilities between both sexes. Women in Europe work part-time in all phases of life³⁵, but they are still non-standard workers marginalized and mostly excluded from the employment protection rights.³⁶ Because of the atypical relation with the employer courts have it difficult to protect their rights and obligations that emerge from such an employment relation³⁷, but one expects significant changes in that field and more intense degree of protection, which *mutatis mutandis* enable existing directives of the EU. Establishment, i.e. more adequate legal regulation of such forms of work in Croatia must not fail to take place because they exist in a significant degree on the black labor market and mostly affect younger population and women. Better quality of legislation will most definitely contribute to the flexibility of the labor market and labor force in general. Moreover, the right to part-time work will contribute to the creation of own employment and promotion of equal opportunities, particularly for younger people and women. That process will not be fast when it comes to increasing the proportion of male population in part-time work because the increasing trend will be influenced by the diversity of each society as well as by the system of values that each society promotes. However, a data that 26% of men who use this type of work in the Netherlands is quite encouraging.³⁸

Integration of women on the labor market is most evidently noticed through the increasing rate of their employment and the policy of interrupting career, maternal leave and significance of work in different forms of part-time work are of equal importance for both sexes.³⁹ In such a context, a cooperation of social partners is necessary to solve the issues of gender discrimination and segregation at all levels of social life as well as active social policy directed towards the care for children so that greater part of women could participate more actively on the labor market.⁴⁰

The issue of the equal pay for the equal work and the work of equal value, emerged from the article 141 EC Treaty, has found its position in the Croatian labor legislation which precisely defines what is the equal work and the work of equal

³⁵ Fredmpan, op. cit. , p. 302.

³⁶ Ibid. , p. 305.

³⁷ Ibid. , p. 311.

³⁸ Cf. Schmidt, M. , *The Right to Part-Time Work under German Law: Progress in or a Boomerang for Equal Employment Opportunities?* Industrial Law Journal, Vol. 30, No. 4, December 2001, p. 351.

³⁹ Adamović, M. , *Komparativna analiza Europske strategije zapošljavanja, nacionalnih akcijskih planova zemalja članica Europske unije, i nacionalnog Akcijskog plana zapošljavanja Republike Hrvatske za 2004.*, Zagreb, 2004, p. 9.

⁴⁰ Ibid. , p. 22-23.

value as well as that is the notion of the pay in such a context. Latter mentioned is of extreme importance for the Croatian legal corpus and courts in the time to come even though they neither understand such interpretations of pay, *ad verbum* copied from EC Treaty, nor long-term consequences which they will produce in the context of rulings of the European Court of Justice (ECJ). The Croatian reality is characterized by the gap between legal norms and every day realities in respect of equal pay for women and men. Due to the lack of data in Croatia, it is not possible to make an analysis of pay according to gender, but it has been indirectly proven that professions and work performed by mostly women are lately much less paid.⁴¹ One should not live in illusion that the situation is idealistic in the EU despite the casualty of the ECJ and the fact that almost 30 years⁴² have passed by since the case *Defrenne vs. SABENA*⁴³ and acceptance of Equal Pay Directive⁴⁴, since the statistics point out that women earn 84% of men's pay.⁴⁵ Stated data, however, must not be used as a justification but as a pointer to the necessity of permanent promotion and full implementation of the equality principle in the sphere of pay at the national level.

The issue of gender equality in Croatia is also regulated by the provision of the equally named law –Gender Equality Act⁴⁶ which denotes the same presence of women and men in the all spheres of public and private life, their equal status, equal possibilities in realization of all their rights as well as the equal benefits of achieved results.⁴⁷ Even though the Law has defined basic notions, emphasized the role and obligation of media, political parties and education in promotion of gender equality and established the obligation of founding the Office for gender equality of the Government of the Republic of Croatia as well as the Ombudsman for the gender equality, its main failure is that it has been accepted in the form of common not constitutional, i.e. organ law. Such a status in the hierarchy of legal regulations is at least surprising since the gender equality is denoted as the higher value of the constitutional order of the country. Thus, passing that law in the inadequate procedure actually represents a step backward in the promotion of the gender equality, a

⁴¹ Milidrag-Šmid, J. , Kokanović, M. , *Položaj žene na tržištu rada* in: *Diskriminacija žena u Hrvatskoj*, ICFTU CEE Women's Network & Ženska sekcija sindikata SSSH, Zagreb, 2000; Zaborski-Čunović, K. , *Žene na tržištu rada, Nestaje li jaz u dohotku između muškaraca i žena, tzv. Gender pay gap (I)*, Kruh i ruže, No. 21, 2004, at <http://www.zinfo.hr/hrvatski/stranice/izdavastvo/kruhiruze/kir21/21trzisterada.htm>

⁴² *Case 43/75 Defrenne v SABENA* [1976] ECR 455.

⁴³ *Directive 75/117/EC on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women*, [1975] OJ L 45/19.

⁴⁴ Bell, op. cit. , p. 251.

⁴⁵ *Ibid.* ; *Commission Annual Report on Equal Opportunities for Women and Men in the European Union 2002*, COM (2002), p. 19.

⁴⁶ *Zakon o ravnopravnosti spolova*, Nn. , No. 116, 2003.

⁴⁷ Article 5 of the *Gender Equality Act*.

conscience attempt to legally lessen the highest constitutional values, as well as an example of its fundamental ignorance. Unfortunately, wider social discussion that was lead at that time, as well as extremely nomotechnical and content qualitative suggestions of the Constitutional law on the gender equality of the Rodin's work group and the female Association B.a.b.e. have not resulted in its acceptance due to the lack of political will. Thus, the Croatia has lost a possibility for a constitutional law of the working group of the Faculty of Law to become one of the best laws related to the issues of the gender equality in Europe and wider.

The problem of Croatian national Gender Mainstreaming concept, as well as the one in EU, is its "soft law" character and counseling nature of provisions⁴⁸, what together with the loss of its focus limits the effectiveness of the interventions.⁴⁹ By that, it actually loses the legal nature and necessary function in the fight against gender inequality and shows its primary necessary political function.

In the context of the protection and surveillance of the Constitution- and laws- promoted gender equality one should not underestimate the founding of the Government office and the Ombudsman, but the transitional circumstances and limited outreach of their work place the greatest responsibilities on the Croatian courts themselves. However, court practices in this domain are almost missing. Not because the situation is ideal in one transitional country like Croatia but because of the unquestionable fear for own job and existence, as well as the lack of faith in the possibility to ensure institutional protection of the woman's right in the face of court. Significant is the lack of lawyers who know the subject materials and relevant European law, and at the wider level the influence of media and Church on all spheres of social life in Croatia and thus on mentioned situation. We can hold against media their insufficient activity in this field and paternalistic, sexist portray of a woman and against the Church its eclectic promotion of the gender segregation in its own structures and thus indirectly promoting the inequality between women and men in the family as a traditional value of a society and consequently in wider social and business environment.

6. Conclusion

Elaborated and exposed problems of the gender inequality on the labor market in the Republic of Croatia are the consequence of social stereotypes and institutional protection which does not provide adequate protection. Legal and political framework is essentially similar to the problems in the EU, but the subordinated position of a

⁴⁸ Cf. Walby, op. cit. (n. 9), p. 7

⁴⁹ Cf. Beveridge, F. , Nott, S. , *Mainstreaming: A Case for Optimism and Cynicism*, Feminist Legal Studies, Vol. 10, 2002, 299-311.

woman in the working environment and family is the result of the multifaceted forms of discrimination emerged from the anti-discriminatory legal basis.

We believe that the gender segregation is the form of indirect discrimination because it is a consequence of social stereotypes about the perception on gender roles. Present and expressed psychological element, i.e. traditional understanding of female and male jobs and obligations in the family, influences the attitudes of employers, but on individuals as well, and results in subjective favoring of one gender enabling it advantages through, so to seem, neutral practice, criteria or provision.

Croatian society, in the manners of own and European dilemmas in the area of gender equality, must strengthen institutional protection of women's rights, encourage the work of women's think-tank associations, develop atypical forms of employment contracts, initiate transition from fixed to flexible working hours and give greater attention to feminist activities. Such an approach, coupled with changing educational policy, education of judges and work inspectors in the domain of gender equality and final acknowledgment of informal forms of education as well as more intensive and more responsible role of media, can lead to realization of *modus* for breaking down stereotypes and achieving equal distribution of responsibilities in family and working environment, affirming the principles and values of equality as inseparable parts of individual's integrity in general.

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