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Legal and sociological analysis of the
right to equal treatment in the field of
labour market discrimination against
women

Theses of the doctoral thesis

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I. Summary of the research task

Everyone has an opinion about the (social) situation of women, but the discourse is often steeped in emotion, which prevents constructive thinking together. The classic answer is that more than half of society is made up of women, so it is important to talk about discrimination against women. In my opinion, the issue is not a question of numbers, but of the situation of any subordinated or vulnerable social group in societies that consider themselves developed, and it is necessary to talk about the situation of these groups, regardless of ideologies, and to aim to improve their situation. Women are indeed the largest minority group in terms of numbers, but this large number also brings with it our diversity. We differ along countless dimensions, and yet many of our experiences can be similar. However, it is not possible to capture this within the scope of this essay. The world of work plays a significant role in our lives. As well as our livelihoods, it can also be the arena for our personal aspirations, and until retirement we spend a significant part of our days at work. The context in which

this happens is not insignificant. Today, women face a double burden, double bind and double standards in the labour market. These concepts will be explained in this essay.

The issue of women's social position is present in the public discourse, which gives the illusion that we are talking about a richly researched area, with many recent studies. The criticism that everything has already been said on the subject is understandable. However, it is clear from the essay that there has been less and less research over the last decade. Furthermore, different disciplines often ignore each other's knowledge and findings, and do not interweave their theories in space and time. The issue of gender inequality, although there is a visible attempt to marginalise the topic in Hungary, will not lose its relevance as long as Hungarian society does not transcend the problem.

This paper starts from the question: despite formal equality of rights, what are the legal and sociological factors that explain the disadvantaged position of women in the labour market? What are the legal and cognitive barriers to individual rights enforcement? Are the instruments of

legal protection effective? To answer these questions, it is necessary to review the literature on women in a number of disciplines. Feminist movements have only existed for 235 years, which is roughly 4-5 lifetimes. Considering that the values of society change slowly, this is not a long time in this sense, yet the role of women in society has changed a lot in that time - compared to men.

II. Research methodology

The research is exploratory and summative. It aims to bridge the gap that exists today with regard to the situation of women in the labour market: data are scattered and available in many different places. The paper is built on three pillars. Firstly, I present the social and economic changes that I consider relevant and that have affected the situation of women. The role of women in the family and the family as a form of cohabitation have been transformed, and the foundations of the family as an economic partnership have been weakened by the emergence of romantic emotional attachment. The industrial revolution has changed our living spaces, urbanisation has set in and family life and

work have in many cases become disconnected. The changing labour market enabled women to take paid work and, over time, to reduce their financial vulnerability. As a result of secularisation, moral standards have been relaxed and the institution of divorce has become a realistic option to end unhappy marriages. With the expansion of education, women were now able to acquire the knowledge that not only helped them to prosper, but also broadened their labour market opportunities. The history of feminism is a little out of the ordinary, but it has brought about inevitable changes in the status of women. The changes in some areas have led to the creation of new families and forms of cohabitation, a reduction in the number of marriages and, what is a problem in modern societies, a reduction in the number of births in political life. This is indeed an issue for reflection in ageing societies, but it is not discussed in detail in this paper. It has been a long road to the achievement of formal equality of rights, which in fact arrived in our country in the wake of forced emancipation. Its effects are still felt in Hungarian - and other post-socialist - societies today. Still remaining on the ground of social sciences and

sociology of law, I will then present some theories that I consider relevant to gender inequalities in society. I will outline the theories at three levels: micro-level theories at the individual level, meso-level theories at the organisational level and macro-level theories at the societal level, which examine the issue of discrimination against women. Whichever way you look at it, moving from the individual to the societal level, or moving from the societal to the individual level, these theories are often interlinked and can be understood in a systematic way. In the field of sociology of law, I rely heavily on Catharine MacKinnon's theories of identity and difference, and her critical approach to the legal system. I will then describe what I have called the cognitive barriers to law enforcement, which in my studies have helped me to understand the abstract and concrete barriers to individual law enforcement.

The second pillar of the thesis focuses on the situation of the Hungarian labour market. First, I will look at the legal regulation in this area. Beginning with the United Nations, I will present the international conventions that have an impact on the anti-discrimination standards in Hungary.

Among the European institutions, I will briefly discuss the role of the Council of Europe, and then I will describe the European Union's system of legal sources and the rules that apply to Hungary. Finally, I will outline the national legislation on equal treatment. After an overview of the legal rules, I will present the strategy of gender mainstreaming, which permeates the rigid system of legal norms. After the system of rights and obligations, I present a reactive system of instruments for individual enforcement in labour market discrimination cases. I take the categories of Tamás Gyulavári and Miklós Kádár^[1] as a starting point for the presentation of the institutional system, thus distinguishing between general, special and special jurisdiction forums. I then present the situation of Hungarian women in the labour market strictly based on (statistical) data. Without explanatory theories, I try to illustrate the different segments of employment in Hungary in a quasi-objective way, in the light of figures. The significance of the regime change in this area is unquestionable. Previously, in order to achieve full employment as an economic policy goal, the level of female employment was high. The transition

to a market economy affected women less adversely than men, while at the same time the exemption from the 'work requirement' allowed room for the strengthening of traditional family values. Gender segregation in the labour market was already in place before the change of regime, but the transition has also strengthened the role of women in certain areas (e.g. the commercial sector). Over the past decades, segregation has become such a rigid structural feature that neither women nor men workers can break it. The data suggest that the impact of childbearing on employment is a serious issue for consideration. The data show that women pay the 'price' of having children on the labour market, which can also affect their financial situation in the future, e.g. the rules for determining the amount of old-age pensions. The third pillar of the thesis will go through the categories of each area of discrimination, linking them to the history of legal regulation in that area and attempting to support the thesis' claims with some empirical data. Among the discrimination areas, the difficulties in accessing employment and the metaphors used to illustrate the status of women in the labour market further illustrate the picture

that can be drawn from the statistics. The principle of equal pay for equal work is one of the oldest principles of international law, yet the pay gap has not been closed. Recognising this, the European Parliament and the Council (EU) have drafted a new Directive 2023/970 (10 May 2023) on strengthening the application of the principle of equal pay for men and women for equal work or work of equal value through wage transparency and enforcement mechanisms, the effects of which are yet to be assessed, but which could be a really interesting challenge for the Hungarian approach and legislation. Within the field of discrimination against women, the study of maternity disadvantage can be seen as a major direction for domestic research. As the thesis explains, women may not only be disadvantaged in the labour market compared to men, but their parental status may further worsen the already unequal position of women in the labour market. Finally, I look at harassment in the workplace. Despite the fact that there has not been a representative survey on this issue in the EU for almost 30 years, there are several examples of harassment in the official cases published by the Fundamental Rights

Commissioner's Office. In the final chapter, I will review the case law of the Equal Treatment Authority, then the Fundamental Rights Agency, and within it the Directorate General for Equal Treatment, and, by way of illustration only, show the usefulness of the narrative life history interview in this area. After having extracted the research material, I will briefly summarise the decisions according to the areas described earlier.

III. Main findings of the research

This thesis is the conclusion of a doctoral study that started in 2017. During this time, the issue of equal opportunities has been almost completely marginalised in Hungarian social policy. The systematic dismantling of the civil sector, the deprivation of research resources, the abolition of the Equal Treatment Authority, the arbitrary transformation of the methodology of official statistical data are all circumstances that hinder the understanding and targeted improvement of the social situation of Hungarian women and any other minority group. In public discourse, the framing of the gender issue, the confusion with trans and queer theories, the mixing of the

unscientific concept of gender identity with child protection, have led to extreme emotions that cast a strong shadow over the discussion of gender inequalities in a cultured manner. This is true despite the fact that the latter tendencies are not unique to Hungary. Due to these factors, I faced a number of obstacles during the writing of the thesis, which required flexibility in the original research design. In my work, I have endeavoured to provide a comprehensive summary of the situation of women in the labour market from the legal and sociological point of view, but I must admit that an overview of the Authority's practice is only the tip of the iceberg. the Authority will find an infringement if the person who has suffered harm is likely to have a protected characteristic (perceived or real) under the Equal Treatment Act and to suffer prejudice in relation to it. The respondent (employers) had to prove that there was no infringement or that the requirement of equal treatment was not complied with. The categories of manifestations of discrimination in the labour market can be applied on the basis of the subjects of the decisions available. I will mainly focus on those

decisions where the Authority has found an infringement. The case of difficulty in finding a job, the use of forbidden questions at a job interview, has been the subject of several decisions.

In all cases in which a job applicant was rejected because of answers to "forbidden questions in a job advertisement", the employer made the reason clear. This supports my hypothesis that there is a high latency for discrimination in access to employment. Labour market segregation is also evident in the Authority's practice. In several cases, the Authority has taken decisions to exclude female applicants from professions which society considers to be male-dominated.

Contrary to our preliminary expectations, the pay gap is a well-known issue before the Authority. There have been a number of cases where a female employee has been found to be earning less than a male colleague and has sought redress from the Authority. In relation to having children, a number of dilemmas have become apparent to me. Whether it is taking part in a reproductive procedure or early pregnancy (first 12 weeks

of pregnancy), women find themselves in a very difficult situation on the labour market. If, during the job interview, a job applicant indicates her intention to undergo a reproductive procedure because of foreseeable tests and interventions, she will not even get the job. If pregnancy is discovered during the probationary period, there is also a high probability that the employment contract will be terminated without justification. Fixed-term contracts are not renewed in the event of pregnancy. Furthermore, pregnant women are already missing out on pay rises, as they will soon be leaving the workplace. In addition to having a child, returning to work after the birth of a child also encourages discrimination in the labour market. Two issues have typically arisen in these cases. One is that the woman who wishes to return to work is hired in a position inferior to her previous job or has her managerial appointment withdrawn. A common explanation is that the company has been reorganised, the job has been reallocated or the old position has been abolished. Another is the failure to adjust wages after years of caring for children, or the absence of certain benefits (cafeteria, Elisabeth vouchers, private pensions,

etc.). In my opinion, a significant number of the attempts to get out of infringement decisions cannot really be called justified. They give the impression that the employer was aware of the discrimination it was committing. And in cases where a settlement has been reached, the companies involved in the proceedings hardly contest the applicant's allegations.

The Authority's decisions help to understand the nature of discrimination cases, but they are far from revealing the gender inequalities in the labour market. The decisions that are made public only give an insight into a small corner of the Authority's work, as not all cases are made available by the Authority.

IV. Author's publications on the subject

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