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BREAKING THE SILENCE OF PAY: TRANSPARENCY AS EVIDENCE IN GENDER-BASED WAGE DISCRIMINATION

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Abstract
The gender pay gap represents one of the most persistent and deeply rooted forms of structural inequality in the labour market of the Republic of Serbia. Despite formal legal guarantees of the right to equal pay for equal work or work of equal value, available data from the Statistical Office of the Republic of Serbia confirm that women earn on average around 13% less than men, have a lower employment rate, and are disproportionately concentrated in sectors with lower average wages, such as education, healthcare, and trade. This gap persists across all levels of education and is further reinforced by pronounced occupational segregation along gender lines. One of the key factors contributing to the persistence of the gender pay gap is the lack of pay transparency. In practice, employers rarely disclose salary amounts or ranges in job advertisements, the criteria for determining pay are often opaque, and employees do not have access to information on wage structures within organizations. Such practices facilitate both the emergence and concealment of discriminatory pay differences, as employees are unable to determine whether they are being paid equally compared to colleagues performing the same or comparable work. From the perspective of the legal framework, the regulations of the Republic of Serbia, primarily the Labour Law, the Anti-Discrimination Law, and the Gender Equality Law, formally guarantee the principle of equal pay and prohibit gender-based discrimination in all aspects of working conditions. However, the issue of the gender pay gap still does not occupy a sufficiently prominent place within their activities. From the perspective of evidentiary law, pay transparency has particular procedural significance. It can be concluded that improving pay transparency within the legal system of the Republic of Serbia is not only a matter of social and economic policy, but also an important procedural instrument in judicial proceedings for protection against discrimination. By developing clearer rules on access to wage information, strengthening institutional capacities, and aligning with European standards, the conditions are created for more effective proof of violations of the right to equal pay and for providing stronger judicial protection to employees.
Keywords: pay transparency, gender pay gap, gender inequality, EU standards, Serbian labour legislation, Directive 2006/54/EC

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RAZBIJANJE TIŠINE O PLATAMA: TRANSPARENTNOST KAO DOKAZ U DISKRIMINACIJI ZARADA NA OSNOVU POLA

Apstrakt
Jaz u zaradama između žena i muškaraca predstavlja jedan od najupornijih i najdublje ukorenjenih oblika strukturne nejednakosti na tržištu rada u Republici Srbiji. Uprkos formalnim zakonskim garancijama prava na jednaku zaradu za isti rad ili rad jednake vrednosti, dostupni podaci Republičkog zavoda za statistiku potvrđuju da žene u proseku zarađuju oko 13% manje od muškaraca, imaju nižu stopu zaposlenosti i u većoj meri su koncentrisane u sektorima sa nižim prosečnim zaradama, kao što su obrazovanje, zdravstvo i trgovina. Ovaj jaz prisutan je na svim nivoima obrazovanja i dodatno je produbljen izraženom profesionalnom segregacijom po osnovu pola. Jedan od ključnih faktora koji doprinose opstanku jaza u zaradama jeste nedostatak transparentnosti u pogledu plata. U praksi, poslodavci retko objavljuju iznose ili raspon zarada u oglasima za posao, kriterijumi za određivanje plata često su netransparentni, a zaposleni nemaju pristup informacijama o strukturi zarada unutar organizacije. Takve prakse pogoduju kako nastanku, tako i prikrivanju diskriminatornih razlika u zaradama, jer zaposleni nisu u mogućnosti da utvrde da li su jednako plaćeni u odnosu na kolege koje obavljaju isti ili uporediv rad. Sa stanovišta pravnog okvira, propisi Republike Srbije, pre svega Zakon o radu, Zakon o zabrani diskriminacije i Zakon o rodnoj ravnopravnosti, formalno garantuju princip jednake zarade i zabranjuju diskriminaciju po osnovu pola u svim aspektima radnih odnosa. Međutim, pitanje jaza u zaradama još uvek ne zauzima dovoljno istaknuto mesto u njihovoj praktičnoj primeni. Iz perspektive dokaznog prava, transparentnost zarada ima poseban procesni značaj. Može se zaključiti da unapređenje transparentnosti zarada u pravnom sistemu Republike Srbije nije samo pitanje socijalne i ekonomske politike, već i važan procesni instrument u sudskim postupcima zaštite od diskriminacije. Razvojem jasnijih pravila o pristupu informacijama o zaradama, jačanjem institucionalnih kapaciteta i usklađivanjem sa evropskim standardima stvaraju se uslovi za efikasnije dokazivanje povrede prava na jednaku zaradu i obezbeđivanje snažnije sudske zaštite zaposlenih.
Ključne reči: transparentnost zarada, jaz u zaradama između polova, rodna nejednakost, standardi EU, zakonodavstvo o radu u Srbiji, Direktiva 2006/54/EZ

INTRODUCTION

"Each member state should guarantee respect and application of the principle of equal pay for equal work or work of equal value between male and female workers."
(European Union, 1957, Article 141)

An examination of employment practices in the Republic of Serbia reveals that job advertisements rarely disclose the amount or range of remuneration for the position in question. It is common practice for employers to indicate that salary will be determined upon completion of the recruitment process, i.e. following negotiations with the selected candidate, on the assumption that this approach affords them a more favorable bargaining position (Pfeffer, 1998). Such practices risk placing candidates in an unequal negotiating position with respect to working conditions, an

asymmetry that may serve the direct interests of employers at the expense of workers (Jones, 1926). This concern is particularly salient where the successful candidate is a woman, given that women frequently occupy a structurally disadvantaged position in the labour market relative to men (Federici, 1975).

The absence of pay transparency may further contribute to a situation in which employees holding the same or comparable positions receive unequal remuneration for equivalent work, without any awareness of such disparities. Available data confirm that the gender pay gap persists in Serbia, underscoring the need to strengthen mechanisms for detecting and addressing discrimination in the field of labour and employment.

The most recent data published by the Statistical Office of the Republic of Serbia (SORS) corroborate the existence of significant gender disparities in both employment and earnings: women exhibit a lower employment rate, receive lower average wages, and are disproportionately concentrated in lower-paid sectors of the economy. According to the Labour Force Survey, Serbia currently counts 2,869,500 employed persons, with an overall employment rate of 51.2%, a decline of 0.2 percentage points relative to 2024, an unemployment rate of 8.7%, and 44.0% of the working-age population outside the labour force, among whom women constitute the majority (SORS, Labour Market – Labour Force Survey).

With respect to earnings, SORS data indicate that the average net salary of women in Serbia amounts to 101,256 dinars, compared to 116,337 dinars for men, a differential of approximately 13% to the disadvantage of women (Labour Market – Earnings, September 2025). Notably, while wages generally rise with increasing levels of educational attainment, the gender wage gap persists across all educational levels.

This disparity is further compounded by occupational segregation: women are overrepresented in comparatively lower-paid sectors such as education, healthcare, and retail trade, whereas men predominate in higher-paid industries including manufacturing, construction, and mining (Earnings of Employees by Activity, Qualification Level and Gender, September 2025).

In this context, enhanced pay transparency emerges as a significant instrument for identifying and substantiating wage discrimination, as well as for ensuring more effective enforcement of the right to equal pay in both judicial and administrative proceedings.

The transparency of wages means that workers are informed about the scale of labor valuation and have a clear picture of the amount of net wages from the lowest to the highest level for specific jobs (Ramachandran, 2011). This alone allows workers to see and prove potential gender-based discrimination and makes visible gender bias in pay systems and the assessment of certain professional skills that are often seen as feminine qualities, which as such should not be paid extra (European Commission, 2021). The best example of this are health workers, nurses and paramedics, who, despite the fact that they perform some of the most difficult and important jobs, due to the stereotypical view of care as something "natural" for women, are not valued at all and most of the time their salaries are significantly below average (State Statistical Office, 2021).

More than two-thirds of the health workforce worldwide, including 85 percent of nurses and 90 percent of health professionals involved in long-term care, are women (Jones & Gates, 2004). The inequality and undervalued payment in practice results in reduced motivation and productivity for work and subsequently causes negative economic effects. To make matters worse, women have also faced the burden of additional unpaid work caused by the closure of schools and childcare facilities and have lost their jobs in greater numbers as they work in the sectors that were most affected by the COVID-19 crisis. Hence, it is necessary to urgently open the topic of salary transparency as a significant step in the fight against gender bias in their determination.

In this way, a change in attitudes towards women's wages can be encouraged by raising awareness and stimulating debate about the causes of structural wage differences between male and female workers. There is a real hope that these policies will inspire changes for a wider consideration of the concept of gender equality at the company level and promote closer cooperation between employers and workers' representatives.

Adopted on May 10, 2023, Directive (EU) 2023/970 by the European Parliament and the Council for greater application of the principle of equal pay for equal work or work of equal value between men and women through salary transparency and enforcement mechanisms, is the latest attempt to improve the situation in the EU in this segment (Marçal, 2016). In that context, it is worth seeing what Republic of Serbia can extract from this directive in order to improve its legislation and implementation and contribute to the fight for gender equality, while also taking advantage of the economic benefits that inevitably follow from such changes.

The paper analyzes the position of the Serbian legislation in relation to the protection of the right to equal pay for work of equal or equal value and considers the possibilities of reducing the gender gap through wage transparency. By presenting two parts, the first of which analyzes the provisions of the Directive, and the second proposes solutions for appropriate implementation in the Serbian context, the purpose of this paper is to point out the serious problem of the gender wage gap. The above points out that the in Republic of Serbia certain parts has the necessary legal basis for reducing the gap, but also that in reality almost no steps are taken to address the problem.

The methodological approach of this document relies primarily on desk research, which includes a legal analysis of the Directive and the domestic legislation. The desk research includes a review and analysis of secondary sources of data from available publications, research, reports and documents related to gender pay gap and salary transparency, with a focus on the situation in the Republic of Serbia and the EU.

Therefore, the paper provides an overview of the possible application of the Directive in national legislation and includes a critical review of the existence of advantages and disadvantages of domestic policies and mechanisms for the protection of the principle of equal pay through salary transparency.

PART ONE – THE CONTEXT BEHIND THE DIRECTIVE

The gender pay gap occurs when, under the same working conditions, women are paid less than men for the same or work of equal value in terms of the required skills, responsibility and commitment (Brynin, 2017). Formal recognition of this problem at the international level dates back to 1951 (Brandão, 2021), when the Equal Pay Convention was adopted as an attempt to overcome the gender pay gap (ILO, 1951). The almost universal ratification of this Convention, by 173 countries, is a good indication of how much importance countries around the world attach to achieving this goal (Kazandziska, Risteska & Schmidt, 2012).

At the European level, the right to equal pay for equal work or work of equal value is among the basic principles of the European Union and is the basis of economic gender equality, and is primarily guaranteed by the Treaty of Rome (European Union, Article 141). The requirement to ensure equal pay is regulated in Directive 2006/54/EC (European Parliament & Council, 2006) and additionally in 2014, with the recommendation of the Salary Transparency Commission (European Commission, 2014). However, the implementation of this principle in practice remains a challenge despite the legal framework in the EU, including for candidate countries such as Republic of Serbia, mostly due to the significant lack of salary transparency (European Commission, 2020). The current situation shows that the gender gap in wages in the European Union is about 14 percent, hence this phenomenon has long-term consequences on the quality of life of women and their exposure to poverty . Subsequently, the gender gap in wages is reflected in the gender gap in pensions, which at the EU level is 33 percent (Eurostat, 2020).

The multiple calls of the European Parliament (EP) for greater engagement in this field, complemented by the enormous economic and social consequences of the pandemic caused by the COVID-19 virus and taking into account that women are significantly more affected (Eurofound, Women and labor market equality, 2020), suggest taking immediate measures to overcome this problem (European Commission, 2021). In June 2019, the EP asked the Commission to develop concrete steps to improve salary transparency (Council of the EU, 2019), after which the Commission put forward a detailed plan for new binding measures to increase salary transparency in the Gender Equality Strategy 2020-2025.

The general assessments and conclusions that indicate that the right to equal pay is not applied or not properly implemented in practice and the serious lack of transparency of wages in many member countries, are also the bases from which this Directive derives (O'Reilly et al., 2015). Building on Directive 2006/54/EC (Revised), the Directive introduces new and more detailed rules to ensure compliance with the principle of equal pay for equal work or work of equal value between men and women and is based on three objectives:

- establishing salary transparency;
- facilitating the application of key concepts relating to the principle of equal pay, including "pay" and "work of equal value"; and
- strengthening enforcement mechanisms. (European Commission, 2021).

In a way, the Directive is the crowning achievement of the EU's commitment to equal pay for equal work, as one of the oldest principles of the EU established by the founding of the European Economic Community, in the form of a precondition to ensure its functioning in the common market. Considering that the European Pillar of Social Rights and its 20 principles are the EU's compass for building a fairer Europe and promoting better living and working conditions for all, the directive comes as a logical next step in the direction of ensuring gender equality.

Namely, on March 3, 2021, the Commission presented an ambitious action plan throughout the EU and this Directive is part of that wider package of measures and initiatives aimed at tackling the roots of the gender gap and at the economic empowerment of women. The directive is considered a suitable legal instrument that establishes the framework for improving the application of the principle of equal pay through salary transparency and strengthened enforcement mechanisms. On the one hand, the directive would enable the strengthening of existing provisions, while on the other hand, it leaves enough space and discretion to the states regarding the way of implementing the new rights and obligations, taking into account their national context. As such, this approach is consistent with previous activities undertaken in relation to employment and non-discrimination issues. Finally, the decision to make a standalone Directive, i.e. not to change or replace Directive 2006/54/EC (Revised), is due to the scope and structure of the previous directive.

In this regard, the jurisprudence of the Court of Justice of the European Union provides an important interpretative framework for understanding the scope and application of labour and equality rights relevant to pay transparency and gender-based wage discrimination. The cases of Case C-66/85, Deborah Lawrie-Blum v Land Baden-Württemberg, Case C-428/09, Union Syndicale Solidaires Isère v Premier ministre and Others, Case C-229/14, Ender Balkaya v Kiesel Abbruch- und Recycling Technik GmbH, Case C-413/13, FNV Kunsten Informatie en Media v Staat der Nederlanden, Case C-216/15, Betriebsrat der Ruhrlandklinik gGmbH v Ruhrlandklinik gGmbH, and Case C-658/18, UX v Governo della Repubblica italiana are particularly relevant, as they have been extensively examined in both academic literature and judicial practice.

Collectively, these judgments contribute to the clarification of key concepts such as the definition of a “worker,” the boundaries of employment relations, and the applicability of labour and equality protections, all of which are foundational for assessing access to rights, evidentiary standards, and the enforcement of the principle of equal pay. Their doctrinal significance lies in shaping a coherent legal framework within which issues of pay transparency and gender pay discrimination can be more effectively identified, interpreted, and adjudicated.

Bearing in mind that the legal and institutional mechanisms for protection and prevention of discrimination related to the gender gap in earnings do not fully produce the expected results, it is particularly important to consider how the solutions from the Directive can be applied in the context of the Republic of Serbia. In this sense, key institutions in the Republic of Serbia, such as the Ministry of Labour, Employment, Veterans and Social Affairs, the Labor Inspectorate, the

Commissioner for the Protection of Equality and the Protector of Citizens (Ombudsman), in practice do not always provide efficient and functional protection against discrimination in this area, insufficiently record cases of this type, rarely act on official duty and often do not have sufficient capacities for timely recognition of this type of discrimination.
In addition, there is no developed and uniform judicial practice in this area in the Republic of Serbia, which raises questions regarding the level of information and awareness about the protection of this right, the availability of judicial protection in a geographical and material sense, as well as insufficient motivation of employees to initiate proceedings due to fear of job loss, stigmatization or social consequences.
In this sense, in the first part of the paper, the three objectives of the proposed directive will be specifically considered in order to identify the key elements on the basis of which the legal and institutional system of the Republic of Serbia could be improved, while in the second part, concrete proposals for changes and improvement of existing legal solutions are presented.

TRANSPARENCY OF SALARIES

The protection of labor rights and overall labor legislation in the EU is regulated within the framework of human rights and the Charter of Human Rights of the EU (Charter of Fundamental Rights of the European Union, 2012). The four essential elements related to salary transparency that will be considered are:

- the right to information about the salary;
- reporting by companies;
- salary revision; and
- collective bargaining of wages.

The transparency of wages in the sense of the Directive begins even before the employment itself, that is job candidates have the right to know the starting level or salary range for the specific position, the value of which should be determined based on objective and gender-neutral criteria. This information should be specified in the employment advertisement or otherwise publicly available without the need for the candidate to request it directly before applying (Article 5 paragraph 1 of the Directive). In addition, the employer may not in any form, orally or in writing, personally or through a representative, ask candidates about the amount of salary in previous jobs (Article 5 paragraph 2 of the Directive) .
This is to break the streak of a continuing gender pay gap, because often women who were previously paid less continue to receive lower wages due to their prior earnings history (Bessen, Meng & Denk, 2020). Furthermore, throughout the employment, transparency means that the employer will provide workers with an easily accessible description of gender-neutral criteria on the basis of which salary levels and advancement conditions are determined (Article 6).

The prevailing situation in Serbia is one in which companies rarely disclose salary estimates, the criteria governing wage determination are frequently opaque, and no explicit legal obligation to ensure pay transparency exists. Concurrently, monitoring of the implementation of national measures aimed at reducing the gender pay gap remains incomplete.

The elimination of gender bias in wage-setting may yield significant benefits on multiple fronts as it may positively influence job satisfaction and employee engagement, while simultaneously affording employers reputational advantages, improved retention of qualified personnel, and potentially enhanced productivity and profitability (Arabadjieva, 2021). Strengthened enforcement measures would, in turn, facilitate greater access to justice and more consistent realization of the rights to equality and non-discrimination.

The Directive adopts the definitional framework of Directive 2006/54/EC (recast) with respect to pay and direct and indirect discrimination, while introducing a series of new concepts, including pay levels, the gender pay gap, average pay, the average pay gap, and categories of workers. Its scope of application encompasses both the public and private sectors, with the explicit objective of extending coverage to the broadest possible range of workers, including those engaged on fixed-term, part-time, and agency contracts. In general terms, protection is envisaged for all those who qualify as "workers" within the meaning established by the case law of the Court of Justice of the European Union (Kilpatrick, 2011).

Among the central objectives of the Directive is the promotion of pay transparency. Employees are entitled, upon request, to receive information concerning their individual remuneration and the average pay levels, disaggregated by gender, for categories of workers performing the same work or work of equal value (European Commission, 2021). Employers are required to notify employees of this right at least once per year and to furnish the requested information within a reasonable timeframe, subject to compliance with applicable data protection requirements.

Beyond the individual right to pay information, the proposed Directive provides for pay audits and encourages collective bargaining as complementary mechanisms (European Commission, 2021, pp. 27–28). Pay audits are to be conducted, where warranted, in organizations employing at least 250 people, through a joint assessment carried out by employers and workers' representatives, with the aim of identifying and remedying gender-based pay discrimination.

The gender pay gap must be understood within its broader socioeconomic context, as it reflects both women's access to economic opportunity and the structural dynamics of the labour market (Bishu & Alkadri, 2017). Accordingly, the effective implementation of the principle of equal pay for equal work or work of equal value necessitates the further development and clarification of the key concepts underpinning pay transparency.

KEY CONCEPTS OF THE PRINCIPLE OF EQUAL PAY

The Directive underscores the need for greater definitional precision with respect to the concepts of "pay" and "work of equal value," grounded in the established case

law of the Court of Justice of the European Union, as a prerequisite for effective application of the equal pay principle (Määttä, 2008). In practice, difficulties arise from the absence of uniform definitions in national legal systems, generating interpretive ambiguities and inconsistencies in application. The establishment of clear and harmonized criteria at the EU level, and correspondingly within Member States and candidate countries, would therefore contribute to more coherent and consistent implementation of this principle (Burri, 2019).

Both this Directive and Directive 2006/54/EC (recast) define "pay" broadly to encompass not only basic or minimum wages, but any consideration, whether in cash or in kind, received by a worker, directly or indirectly, from the employer in respect of employment. This expansive definition is designed to eliminate all forms of direct and indirect gender-based discrimination across every dimension and condition of remuneration. Where pay structures rely on job classification systems, such systems must be founded upon objective, gender-neutral criteria.

The concept of pay is accordingly interpreted to include diverse forms of work-related income, among them bonuses, overtime compensation, travel allowances, housing benefits, severance payments, sick pay, and pension entitlements. It is further recognized that pay discrimination may assume an intersectional character, whereby gender-based inequality intersects with other protected grounds such as racial or ethnic origin, religion, disability, age, or sexual orientation.

"Work of equal value" denotes work assessed by reference to objective and gender-neutral criteria, including educational qualifications, skills, responsibilities, effort, and the nature of the tasks performed. In this connection, the Directive requires Member States to develop methodologies for evaluating and comparing the value of work, so as to determine whether workers are situated in comparable circumstances (Goharian, Ma, & Verberne, 2021).

Importantly, the assessment of equivalence in work need not be confined to workers employed by the same employer or during the same period. Where a single source determines the conditions of pay, comparisons may be drawn in a broader context. In the absence of an actual comparator, recourse to a hypothetical comparator or other probative evidence indicative of potential discrimination is permitted (Walczak, 2011).

The concepts of "pay" and "work of equal value" continue to develop through the evolving case law of the Court of Justice of the European Union, confirming that the gender pay gap demands a systemic and multifaceted response. A violation of the right to equal pay for equal work or work of equal value constitutes both a form of discrimination and a breach of fundamental human rights within employment relations, rendering robust and effective enforcement mechanisms of particular importance in court procedures.

ENFORCEMENT MECHANISMS

The right to pay information equips workers with the data necessary to assess whether they are remunerated on equal terms relative to colleagues performing the same or equivalent work, and to assert their right to equal pay. Enforcement mechanisms empower workers to request from employers information on both individual and average pay levels, disaggregated by gender.

The Directive provides that employers with more than 250 employees must publish gender pay gap data at least once per year, covering the preceding four-year period. This information is to be made accessible to employees, their representatives, labour inspectorates, and equality bodies. Employers are required to furnish additional explanations upon request and, where disparities cannot be attributed to objectively neutral factors, to adopt corrective measures in cooperation with workers' representatives. Any pay differential of at least 5% triggers a mandatory review of pay structures.

Member States are obliged to guarantee access to judicial proceedings, encompassing claims for compensation in respect of outstanding pay, allowances, and non-material harm, without any prescribed upper limit. Courts are empowered to order the cessation of unlawful conduct, impose financial penalties, and require organizational remedial measures. Trade unions, equality bodies, and workers' representatives are afforded the right to participate in proceedings on behalf of employees.

In cases where a prima facie case of discrimination has been established, the burden of proof shifts to the employer (Directive 2006/54/EC; Court of Justice of the European Union, 1989). Where an employer has failed to comply with transparency obligations, this burden is automatically reversed. National courts may order the disclosure of confidential information relevant to the proceedings, and limitation periods must extend to a minimum of three years.

Financial penalties are calibrated to the gravity of the infringement, with specific sanctions envisaged for repeated violations, including the withdrawal of access to public benefits. Employers participating in public procurement are required to demonstrate compliance with equal pay obligations. Workers and their representatives must be afforded effective protection against dismissal or other adverse treatment arising from the exercise of their rights under the Directive.

PART TWO – LEGAL STATUS IN THE REPUBLIC OF SERBIA

The Constitution of the Republic of Serbia guarantees the equality of citizens in rights and freedoms irrespective of sex, race, nationality, social origin, political or religious belief, property status, or social standing (Constitution of the Republic of Serbia, 2006). It enshrines the right to work, free choice of employment, protection at work, and fair remuneration, while expressly prohibiting discrimination (Articles 21 and 60). Although the principle of equal pay for equal work or work of equal value is not explicitly articulated at the constitutional level, it follows unambiguously from the foundational constitutional prohibition of gender-based

discrimination. In this way, gender equality is established as one of the cardinal principles of the Serbian legal order, providing a constitutional basis for the reception of European standards in this domain.

The legislative framework governing equal pay between men and women is dispersed across several statutes. The Labour Law stipulates that employees are entitled to equal remuneration for the same work or work of equal value, alongside a general prohibition of gender-based discrimination in employment (Labour Law, 2005/2023). The Anti-Discrimination Law affords supplementary protection against discrimination in employment and labour relations (Anti-Discrimination Law, 2009/2021), while the Gender Equality Law establishes a positive obligation to ensure equal opportunities across all spheres of social life, including employment and work (Gender Equality Law, 2021). Certain collective agreements also contain provisions prohibiting discrimination and guaranteeing equal working conditions (General Collective Agreement, 2015).

Notwithstanding this multi-layered framework, pay transparency in Serbia remains unsystematically regulated, the sole formally regulated transparency obligation being the requirement to disclose salary information in job advertisements. It is therefore necessary to examine the constitutional and legislative pathways for transposing the solutions contained in the Directive, with a view to ensuring greater accessibility of wage information, narrowing the gender pay gap, and strengthening the legal protection of employees (European Commission, 2021).

The Labour Law of the Republic of Serbia constitutes the primary statutory framework governing employment relations and contains a general non-discrimination clause prohibiting employers from placing candidates or employees at a disadvantage on the basis of gender or other protected characteristics (Labour Law, 2005/2023). The Law explicitly provides that women and men must be afforded equal opportunities and treatment with respect to access to employment, promotion, vocational training, working conditions, and the right to equal pay for equal work or work of equal value.

However, the Law does not furnish precise definitions of the concepts of "pay" or "pay transparency," a lacuna that considerably complicates the practical application of the equality principle. A necessary first step toward alignment with European standards would be the introduction of clear legislative definitions of terms such as "remuneration," "net salary," "pay transparency," and "equal pay for equal work or work of equal value." Operationalizing pay transparency would further require imposing an affirmative obligation on employers to make available to employees the criteria governing the determination of pay levels and the conditions for advancement.

While the Labour Law already proscribes both direct and indirect discrimination in employment, promotion, training, and working conditions, additional protection is afforded by the Anti-Discrimination Law (2009/2021) and the Gender Equality Law (2021). Of particular normative significance is the provision requiring employers to specify the amount of the basic salary or the range of net salary in public job

advertisements (Article 23), which constitutes an embryonic form of statutory pay transparency.

Enforcement of these provisions rests primarily with the Ministry of Labour, Employment, Veteran and Social Affairs, the Labour Inspectorate, and the Commissioner for the Protection of Equality, while trade unions and civil society organizations contribute to oversight functions and the promotion of worker awareness. This institutional architecture provides a foundation upon which the solutions of the Directive may be incorporated into domestic legislation, most notably through the reinforcement of pay transparency obligations and enhanced protection against discrimination.

The Anti-Discrimination Law of the Republic of Serbia prohibits discrimination on grounds of sex, gender identity, and other personal characteristics across all spheres of social life (Anti-Discrimination Law, 2009/2021). Unequal remuneration for equal work or work of equal value is expressly treated as a form of discrimination, and the Law extends its protective scope to more complex forms of disadvantage, including multiple and intersectional discrimination. For instance, a woman from the Roma community may simultaneously be subjected to discrimination on grounds of gender, ethnicity, and socioeconomic status, a convergence of inequalities that demands a correspondingly nuanced legal response.

This broader protective framework operates in conjunction with the Commissioner for the Protection of Equality, an independent body competent to receive complaints and issue recommendations. The existing legal framework permits the initiation of judicial proceedings for protection against discrimination in employment, including claims relating to equal pay. Nevertheless, the absence of systematic regulation of pay transparency remains a significant obstacle, rendering its introduction through targeted amendments to labour and anti-discrimination legislation essential for substantive alignment with European standards.

Serbian courts and competent authorities are already empowered to order the cessation of unlawful conduct and the enforcement of corresponding obligations; further legislative amendments could expand the range of available remedies to include organizational measures and financial penalties designed to ensure substantive equality. Civil society organizations, trade unions, and equality bodies are entitled to participate in proceedings on behalf of employees, with their consent, thereby reinforcing the institutional framework for protection against discrimination.

Within the Serbian legal system, the Commissioner for Protection of Equality occupies a central position in the architecture of anti-discrimination protection, as a specialized body competent to determine the existence of gender-based discrimination in employment relations in both the public and private sectors. In cases where a prima facie case of discrimination has been established, the burden of proof shifts to the employer to demonstrate that any pay differential is attributable to objective, gender-neutral factors. Furthermore, where an employer has failed to comply with pay transparency obligations, this reversal of the burden of proof operates automatically, without the need to first establish a prima facie case. The Commissioner additionally exercises advisory and preventive functions; proceedings before this body are conducted free of charge and within expedited timeframes,

rendering it an accessible and important mechanism for the protection of the right to equal pay.

In practical terms, prima facie evidence means that the employee has presented sufficient initial facts to create a credible presumption of discrimination, without yet proving it fully. In pay discrimination proceedings, this typically involves showing indicators such as a measurable pay gap between men and women in comparable positions, lack of transparent or objective pay criteria, or statistical disparities suggesting unequal treatment. Once this threshold is met, the court treats discrimination as plausible on its face, and the burden shifts to the employer to prove that the pay difference is justified by objective, gender-neutral factors.

The limitation period for bringing a claim under the Anti-Discrimination Law is six months from the date on which the claimant became aware of the discriminatory act, or one year from the occurrence of the act, a timeframe that falls short of European standards. In conformity with the Directive, this period should be extended to a minimum of three years, with the limitation period suspended where the employee initiates proceedings before the employer, a trade union, the Labour Inspectorate, or an equality body. Serbian civil procedural law already provides for a limitation period of three years from the discovery of damage and five years from its occurrence, provisions broadly consistent with European requirements, though formal harmonization remains warranted.

It is further necessary to ensure that successful claimants are entitled to full reimbursement of procedural costs, while employers who successfully demonstrate the absence of discrimination should not be awarded costs, except in cases of manifest abuse of process. Pay transparency must be more comprehensively regulated through amendments to the Labour Law and, where appropriate, through subordinate legislation, in order to achieve full and effective alignment with European standards.

Finally, employees and their representatives must not be subjected to any disadvantage as a consequence of exercising their right to equal pay or other rights guaranteed under European standards. The law should introduce specific protective measures shielding employees and their representatives from dismissal or other forms of adverse treatment following the lodging of a complaint or the initiation of proceedings.

The latest available institutional data reveals a striking scarcity of proceedings specifically addressing gender-based pay discrimination in the Republic of Serbia across all procedural categories. In the administrative sphere, the Commissioner for the Protection of Equality, the primary body competent to receive and process discrimination complaints, handled a total of 3,695 cases in 2024 of which 714 constituted formal discrimination complaints. Gender was recorded as the most frequently cited ground for discrimination in submitted complaints, followed by disability, health condition, and age, while the field of work and employment was among the areas most commonly referenced.

However, the Commissioner's annual reports do not disaggregate complaints relating specifically to unequal pay on grounds of sex as a discrete statistical category,

rendering it impossible to establish a precise figure for such cases. The dominant pattern of gender-based complaints in the employment field concerns disadvantage arising from pregnancy, maternity leave, or marital and family status, not wage inequality as such. While labour and employment have consistently accounted for the largest share of discrimination complaints since the institution was established in 2010, a slight decline was recorded in 2023, when this proportion fell to approximately 26 per cent of all complaints.

The Labour Inspectorate presents an equally sparse picture: research conducted by the Kvinna till Kvinna Foundation confirms that labour inspectors tended to know about the Labour Law, yet had few discrimination-related cases and did not appear to treat gender-based discrimination as a priority. The Protector of Citizens (Ombudsman) similarly had very few cases in this domain, despite demonstrating familiarity with the relevant legal framework.

The situation in the judicial sphere is equally concerning. Serbian civil courts possess jurisdiction to adjudicate claims arising from discriminatory pay practices under both the Labour Law and the Law on the Prohibition of Discrimination, including the power to award compensation for material and non-material damage and to order the cessation of discriminatory conduct. Nevertheless, courts still have little judicial practice in gender-based discrimination cases related to labour, and few judges appeared to be knowledgeable regarding the relevant legal framework (Kvinnatillkvinna, 2025). The absence of a developed body of case law makes any meaningful assessment of implementation particularly difficult.

As regards criminal proceedings, the Serbian Criminal Code contains no specific offence of gender-based wage discrimination; while general provisions on the violation of the right to equality exist, prosecutions on this basis in the context of pay disparity are virtually non-existent. Research consistently identifies a cluster of interconnected systemic barriers that explain these persistently low reporting and litigation rates: workers' concerns over anonymity, fear of job loss, bureaucratic procedures, difficulties in documenting cases, and, in certain instances, distrust in institutions.

Moreover, the monitoring of gender pay gap indicators in Serbia remains incomplete, with key labour market data gaps undermining the capacity of both individuals and institutions to identify and respond to wage discrimination. Taken together, these findings compellingly demonstrate that the absence of recorded proceedings does not reflect an absence of discrimination, but rather the structural inadequacy of existing protection mechanisms and the profound obstacles that employed women face when seeking to assert their right to equal pay through formal legal channels.

CONCLUSION

Within the legal system of the Republic of Serbia, the gender pay gap and the question of pay transparency remain insufficiently developed both in public discourse and in legal practice. Although the domestic normative framework formally guarantees the principle of equal pay for equal work or work of equal

value, primarily through the Labour Law and the Anti-Discrimination Law, enforcement mechanisms remain underutilized, and the evidentiary use of pay-related data in protection proceedings is comparatively rare.

This is evidenced by the fact that, over the past three years, no state-initiated proceedings for the protection of the right to equal pay have been recorded, pointing to two interrelated systemic deficiencies: first, the insufficient effectiveness of existing protection mechanisms in judicial and administrative proceedings; and second, the limited accessibility of relevant information, an institutional trust deficit, inadequate awareness among employees as to how to identify potential wage discrimination, and the chilling effect of anticipated workplace repercussions.

In this context, the harmonization of domestic law with European Union law, in particular with the standards established by Directive 2006/54/EC and the emerging regulatory framework on pay transparency, constitutes a critical normative reference point for strengthening legal protection in Serbia. Although the Republic of Serbia is not yet formally obliged to transpose all provisions of new European instruments, its status as a candidate country entails a commitment to the progressive alignment of its legislation and institutional practice with European standards, including the reinforcement of pay transparency mechanisms and the enhancement of institutional protection against discrimination.

From the perspective of judicial proceedings, pay transparency is of particular procedural importance, insofar as it enables the collection of data capable of serving as evidence in proceedings for the protection of the right to equal pay. Data on wage structures, job evaluation systems, criteria for pay determination, and statistical disparities in earnings between men and women may constitute key indicators in establishing the existence of discrimination. Relevant evidence in civil proceedings may accordingly include data on average wages disaggregated by employee category, employer records on job classification systems, and internal documents concerning pay policies.

Consonant with contemporary anti-discrimination law standards, judicial practice has increasingly recognized the centrality of the shifting burden of proof in discrimination cases. Once an employee establishes a presumption of unequal treatment, the onus shifts to the employer to demonstrate that any pay differential is grounded in objective and gender-neutral factors. In this procedural context, pay transparency acquires additional evidentiary significance, as it furnishes the factual foundation necessary to establish a prima facie case of discrimination.

It may therefore be concluded that the improvement of pay transparency within the Serbian legal order is not merely a matter of social and economic policy, but an instrument of procedural importance in judicial proceedings for protection against discrimination. Through the development of clearer rules on access to wage information, the strengthening of institutional capacities, and progressive alignment with European standards, a more robust legal framework may be constructed, one

that enables more effective proof of violations of the right to equal pay and affords employees stronger and more reliable judicial protection.

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REZIME

Nedovoljna pažnja koja se posvećuje pitanju rodnog jaza u platama u javnom diskursu slabi napore države da obezbedi i garantuje sprečavanje ove nejednakosti. Činjenica da u poslednje tri godine nema podataka o pojačanim sudskim ili upravnim postupcima za zaštitu prava na jednaku platu ukazuje na probleme koji se

ogledaju u neefikasnosti zaštitnih mehanizama u okvirima institucija koja se može dovesti u vezu sa neinformisanošću zaposlenih žena, ali i strah od mogućih posledica na radnom mestu. Tela za zaštitu ravnopravnosti u Republici Srbiji, kao što su Zaštitnik građana i Poverenik za zaštitu ravnopravnosti, kao i institucije nadležne za zaštitu radnih prava, pre svega Ministarstvo za rad, zapošljavanje, boračka i socijalna pitanja i Inspektorat za rad, imaju važnu ulogu u sprečavanju i sankcionisanju diskriminacije u oblasti rada i zapošljavanja. Ipak, u praksi se može uočiti da pitanje rodnog jaza u zaradama i ostvarivanje prava na jednaku zaradu za isti rad ili rad iste vrednosti još uvek ne zauzima dovoljno značajno mesto u njihovom delovanju, niti se ovom pitanju posvećuje dovoljna pažnja u okviru informativnih, preventivnih i nadzornih nadležnosti ovih institucija. Situacija je posebno izražena u segmentu transparentnosti zarada. Iako srpsko zakonodavstvo garantuje pravo na jednaku zaradu, pitanje transparentnosti plata nije posebno uređeno, niti postoji obaveza poslodavaca da objavljuju raspon plata u oglasima za zapošljavanje ili da obezbede veću dostupnost informacija o strukturi zarada unutar organizacije. Stoga je neophodno dalje jačanje institucionalnih kapaciteta nadležnih organa, kako bi mogli efikasnije da prepoznaju i procesuiraju slučajeve povrede prava na jednaku zaradu, uključujući i mogućnost pokretanja postupaka po službenoj dužnosti. Istovremeno, potrebno je raditi na podizanju svesti javnosti o značaju transparentnosti zarada kao mehanizma za otkrivanje i sprečavanje diskriminacije u oblasti rada i zapošljavanja. Relativno jednostavno rešenje za prevazilaženje identifikovanih problema u Republici Srbiji moglo bi se postići izmenama i dopunama zakonodavstva radi postepenog usklađivanja sa standardima Evropske unije u oblasti transparentnosti zarada. U tom kontekstu, posebno je značajna Direktiva 2006/54/EC o primeni principa jednakih mogućnosti i jednakog tretmana muškaraca i žena u oblasti zapošljavanja i rada, kao i standardi koji proizlaze iz prakse Suda pravde Evropske unije čime se stvaraju pretpostavke za efikasnije dokazivanje povreda prava na jednaku zaradu i pružanje snažnije sudske zaštite zaposlenih.

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