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**THE IMPORTANCE OF THE COMMISSIONER IN THE
PROTECTION OF EQUALTY AND PREVENTING THE “GLASS
CEILING” EFFECT AND DISCRIMINATION OF WOMEN IN
LABOR AND EMPLOYMENT IN THE REPUBLIC OF SERBIA**

Abstract:

The “glass ceiling” effect is a discriminatory practice based on gender as a personal trait, first recognized in the United States in the early 1980s. It creates inequality between women and men in the areas of labor and employment and women’s political engagement. In this paper, we are starting from the historical origin, development and spread of this concept in the world and focusing on monitoring this effect in the field of labor and employment. Then we are trying to determine, through the practice of the Commissioner for the Protection of Equality, whether this phenomenon is recognized and widespread in the Republic of Serbia, as well as the significance of the Commissioner for the Protection of Equality in its elimination. Finally, we will try to determine, through a study of cases faced by the Commissioner for the Protection of Equality in practice, whether this act of gender discrimination is recognized as discriminatory practice in the Republic of Serbia, and to what extent certain strategic litigation, as well as opinions and recommendations of the Commissioner influenced the elimination of the “glass ceiling effect” at work and in connection to labor and employment of women in the Republic of Serbia.

Key words: “glass ceiling”, “mother’s path”, discrimination, gender, Commissioner for equality protection, corporate governance.

INTRODUCTION

Gender is one of the personal characteristics that even today, in the world globally, often causes unjustified inequality and discrimination. In many countries of the world, even in the most developed ones, there is still an ingrained understanding of the gender role of women and men, both in the family and in the wider community.

The position of women has changed throughout history. Certainly, the position of women today is better than it was in the past, thanks to the persistent struggle of women for their rights. As already pointed out in the United Nations Universal Declaration of Human Rights of 1948 (that was, 70 years ago), every human being enjoys basic human rights, such as the right to life without violence, slavery and discrimination, the right to education, to own a property, to work, to have the right to vote and the opportunity to participate in political decision-making, etc. These rights mean that women and men enjoy them equally without discrimination.

The struggle for gender equality has lasted for centuries. For instance, in many developed Western democracies, women were not given equal voting rights until the 20th century. In many countries, women have not had the right to own their property or the right to education in the past. In the 21st century, this is not the case on a global, planetary level.

Despite the fact that creation of the United Nations and the adoption of the Universal Declaration of Human Rights made women and men equal in terms of their rights, the struggle for true equality of women is still ongoing. During 70s - 80s years of the 20th century, Feminist movements around the world significantly contributed to the affirmation of women and women's rights on the one hand, and the elimination of systemic discrimination against women in many areas, on the other hand. However, it would be wrong to conclude that even today, women around the world are completely equal to men in many areas.

Existing firmly rooted, traditional, religious, patriarchal and other reasons, as well as social stereotypes about the gender roles of women and men, persist today. With social progress, new forms of gender discrimination are becoming more and more noticeable. One of them is the "glass ceiling" effect, which was first noticed only in the mid-1980s. In this paper, we will try to theoretically define this term as an act of gender discrimination, and then we will try to determine the extent of this phenomenon recognition and widespread in the Republic of Serbia. Through the

case study of the Commissioner for the Protection of Equality, we will then try to determine whether this act of gender discrimination is recognized as a discriminatory practice, to what extent certain strategic lawsuits and the opinions and recommendations of the Commissioner influenced the elimination of the “glass ceiling effect” at work and in connection with the work and employment of women in the Republic of Serbia. In that sense, we will try to see the role of the Commissioner in eliminating this phenomenon, as well as the importance of the influence of this independent state body on changes in certain sectoral policies in labor and in connection with the work and employment of women.

THE EFFECT OF THE “GLASS CEILING” AS A BASIS FOR INEQUALITY WOMEN IN WORK AND EMPLOYMENT - ORIGIN, DEVELOPMENT AND CONCEPTUAL DEFINITION

The “Glass Ceiling Effect” was first actualized in an article published by the Wall Street Journal in 1986, which, dealing with the corporate hierarchy in the private sector, rose the question of the so-called “Invisible barriers” in terms of gender inequality or women in conjunction with their career advancement. “Glass ceiling” is a term that in its historical initial and narrowest meaning, means a discriminatory practice that prevents qualified and capable women from advancing in companies or corporations (Antonija Jergovski, 2010. p. 403-412).

Over time, the “glass ceiling” effect begins to spread to other forms of inequality of women at work and in connection with work. Also, this concept is beginning to be studied in relation to other vulnerable social groups, which, like women, have often been the subject of inequality and discrimination in this area. However, some research has shown that the phenomenon of the “glass ceiling” is primarily related to inequality and discrimination against women (ie gender discrimination),(David A. Cotter, Joan M. Hermsen, Seth Ovadia, Reeve Vanneman, 2001, Pages 655–681.) and in the continuation of this paper, we primarily deal with the impact of this effect on (in)equality of women in work and in connection with work and employment (and not on the impact of this effect on other, marginalized and vulnerable social groups).

First, we will try to explain the etymology of this term and bring it into the context of inequality and discrimination of women in the world of corporate governance.

When you look at the sky in a room with a glass roof, it seems, at first glance, that the Sun and the stars are at your fingertips, that it is enough to go up the stairs towards them, and you will be able to touch them. However, glass is that “invisible” barrier, which, despite your attempts, prevents you from doing so. Glass is not visible at first glance, but in the corporate world and the system of advancement, it has been noticed that such an “invisible” obstacle is often faced by women. This opened the question of their (in)equality with in relation to work, especially in relation to career advancement and equal pay for the same work duties. Therefore, under the effect of the “glass ceiling”, in a narrower sense, we mean the inequality of women in relation to men in the field of work and employment and in terms of promotion and income.

In the United States, especially during the 1970s and 1980s, it became apparent that top corporate positions remained unattainable for females, and that women generally remained at the most middle-level management positions, regardless of their diligence, work and ability. Also, salaries for the same position and the same managerial level differed significantly on the basis of gender. One of the many studies in the United States has shown exact evidence of the existence of this invisible (“glass”) barrier when it comes to women as a vulnerable social group.⁴

During the 1980s, the term “glass ceiling” was often used in the United States in combination with another term. The term was “mom’s trail”. However, we could not conclude that these phrases are “synonyms”. While the term “glass ceiling” is primarily “linked” to wage inequality and the inability to advance in the hierarchical corporate ladder, the term “mother’s path” referred to employers’ understanding that gender should be taken into account for employment, work and advancement, because women “give birth” which in the short or long term means that the employed woman, due to the obligations she will have as a mother, will either leave the job on her own, or will be less committed to work and more to the child, which is one of the gender stereotypes.

As the term “glass ceiling” continued to develop, it increasingly began to include the term “mother’s path”. Thus, the term “mother’s path” becomes an integral part of the term “glass ceiling”, which in a new, and broader conceptual sense, begins to include all other “glass” barriers that women encounter in work and in connection with work and employment (including childbirth or reproductive function of

⁴ *Ibid.*: 655.

women). In any case, the “glass roof” effect and the “mother’s path” effect are becoming a unified term, which during the 1990s increasingly became the subject of debate both within the professional and scientific public, and in the media in the United States. It became especially important for the feminist movement at that time in this country.

Today, the effect of the “glass ceiling” means the following indicators of gender inequality: the existence of women’s segregated jobs; lower pay for women compared to men for the same scope and types of work; weaker possibility of women’s advancement; denial and / or violation of women’s reproductive rights, motherhood and family status, stereotypes about women’s ability to work, sexual blackmail of women at work and in connection to work and employment, etc. (Branka Galić, Krunoslav Nikodem, 2009. p. 253-271)

THE „GLASS CEILING“ EFFECT AS A GLOBAL PROBLEM OF GENDER EQUALITY

It is noticeable that this „effect“ was first „discovered“ in the United States. Therefore, at the beginning of this paper, we will also look at some ideological, cultural, political and other reasons, due to which this question was raised in the United States, as a country of liberal democracy. In Western European countries, especially in the Scandinavian countries, as well as in France, Italy and others, where the concept of the „welfare state“ dominated until the late 1980s, these differences were not as worrying, nor were they particularly researched as in the United States. This can be claimed for the former Socialist Federal Republic of Yugoslavia, where women, especially given the term „mother’s path“, enjoyed a high degree of protection at work through the right to maternity leave, compensation in the amount of 100% of personal income for maternity leave, significant funds for social benefits for women-mothers, as well as incentives in the development of their careers, etc.

However, that was not the case in the USA, in the country where the phrase „glass ceiling“ was „born“. In the conditions of liberal capitalism, women had to fight more for their rights, which created strong feminist movements there. The reflection of this struggle is also the „recognition“ of the „glass ceiling“ effect in this country, which was previously discussed.

In the meantime, the reform processes, which included the countries of Western Europe, led to the return and strengthening of neoliberalism, to the detriment of the welfare state, so that the existence of the “glass ceiling” effect became more noticeable in them, and especially, „Mother’s path.“ Thus, European countries, as well as European scientific circles in the last few decades, are increasingly dealing with this phenomenon. Continuing the scientific and professional study of this phenomenon in the United States, and in response to the growing concern of the general public, especially feminist movements and women, the US Department of Labor established the Glass Ceiling Commission in 1991. to identify the types of barriers that women face at work, as well as whether large corporations have corporate policies that reduce or completely “break” these barriers. The commission later found that corporate policies did not abolish, but on the contrary, created new barriers for employed women, and that the perception of employers (and even employees) was full of prejudices and stereotypes towards women.(Morgen Witzel, 2017, p. 321.)

In the first decade of the 21st century, the struggle in the United States to eradicate the „glass ceiling“ effect continues. Some US presidential candidates, especially Hillary Clinton, insisted on that.

The pre-election program of the candidates for the presidency of the USA in the 2008 and 2016 elections - Hillary Clinton, was significantly dedicated to strengthening the role of women in work and corporate governance (as well as in politics). Her goal was precisely to „break the largest and hardest glass ceilings“, including those in US political life. However, it also seems that Hillary Clinton herself became a „victim“ of the „glass roof“, in politics (Charlotte Alter, 2016.). She came to the «glass cliff», the candidate and potentially the first female president of the USA in the history of this country, but she still did not succeed in her two attempts.

Ms. Clinton «saw» the idea of breaking down invisible barriers in corporate policies in which special working bodies would be established in large corporations and companies, which would timely signal to corporations the existence of this effect, analyzing the presence of women (and other vulnerable groups) at high management positions and equality of women in the corporate system, etc.(Annie Karni, .2016.)

Finally, we should also take a look at the observation of the American professor Mariana Bertnard, related to reasons of the existence and persistence of the glass

ceiling effect. She points out that “..talent is evenly distributed between women and men, and that corporate governance that does not respect women’s leadership skills cannot be effectively managed.”(Marianne Bertrand, 2017) According to Professor Bertrand, the three key reasons why the “glass ceiling” effect exists and persists are:

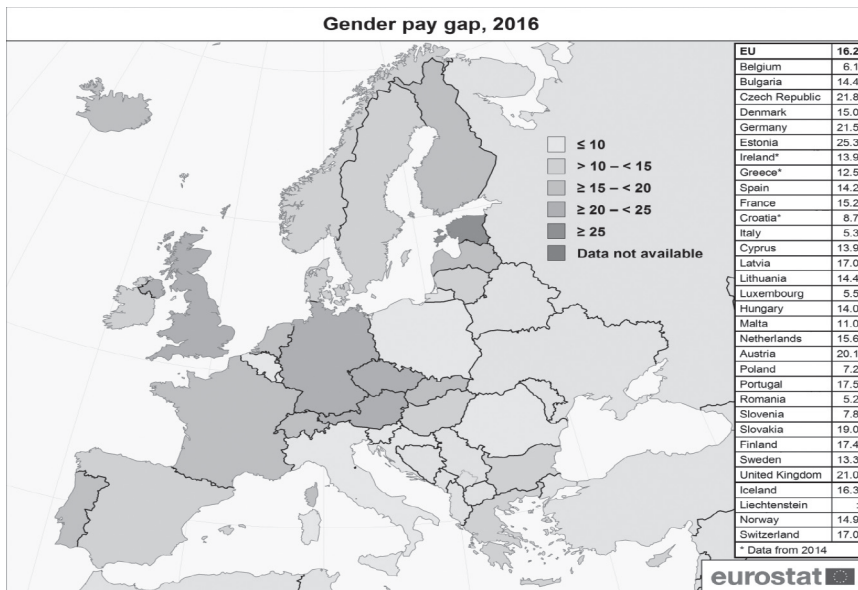
- Women with a college degree often opt for lower-paying jobs. Although women are better than men in terms of academic success, they are still generally under-represented when it comes to high-ranking and paid jobs. About 40% of women born in America in 1985 have a university degree, but still the educational advantage of women has not led to their higher incomes, nor to equal pay in terms of salaries with male colleagues of the same level of education and with the same job description;
- Certain research in the field of psychology has shown that men are more willing to take risks than women, and the willingness to take risks in corporate governance influences employees, especially men, to compete for better paid jobs and thus negotiate higher salaries. Regardless of whether there really is a psychological difference between men and women in terms of risk, this should not be a reason to set barriers towards women;
- The mentioned “mother’s path”, especially when it comes to caring for children, and the frequent inequality in partnerships between men and women, especially the stereotype that “a woman should take care of household chores”, leads to women more often opting for more flexible jobs, which do not require more time spent at work, which also affects their inequality in wages.⁵

The effect of the “glass ceiling” is also recognized on the European continent. However, European systems do not talk about the “glass ceiling effect”, as in the United States, but the issue of inequality of women at work and in relation to work and employment is covered through a broader concept - the concept of gender equality (gender issue). European countries, primarily the countries of the European Union, also follow this phenomenon or some elements of this phenomenon, which is what e.g. and the Eurostat survey published in 2018,(Renata Palen, Piotr Ronkowski, 2018.) and they work to eliminate it. The data shows that women, at the level of the entire European Union, are 16% less paid (for the same or similar jobs) than men. The smallest differences in salaries are in Romania and Italy (about

⁵ See: *Ibid.*

5%), Slovenia (about 8%), Croatia (about 9%) and the largest in Estonia (25%), the Czech Republic and Germany (22%).

Figure 1: Gender differences based on gender (taken from Eurostat survey)



Another study on the effect of the “glass ceiling” on women’s advancement (a comparative study of four countries - the United States, Japan, China and Germany) - showed that women have fewer opportunities for advancement and salary increases, for recognition at work, that they have less security at work compared to men, as well as fewer opportunities to present their skills, with a significantly higher psychological burden (Gunkel, M., J. Lusk, E., J., Wolff, B. i Li, F. (2007).

We can conclude that the “glass ceiling” effect is a global problem faced by women both in highly developed democracies, and even more so by women in countries in transition and in countries of imperfect democracy.

THE POSITION OF WOMEN IN THE REPUBLIC OF SERBIA FROM THE PERSPECTIVE OF «GLASS CEILING» EFFECT

As a «vulnerable» social group in the Republic of Serbia, women are often the subject of various forms of discrimination and inequality, which is discussed in the Strategy for Prevention and Protection against Discrimination, as one of the most important documents of public policy in this area. (Strategy for Prevention and Protection against Discrimination, Pages 32-33.) The strategy «identifies» the problems that women have as a vulnerable social group and envisages concrete measures, which should further improve the equality of women in relation to men, including in the field of work and employment (which are covered by discriminatory «glass ceiling» practices).

According to the Strategy, the key problems of women at work and in relation to work, which also relate to the effect of the «glass ceiling», are as follows: «... Although the Labor Law to some extent regulates the position and rights of employed women, cases of discrimination against women are still present in this area. The Labor Law itself, as a basic law in this area, contributes to this to a certain extent, because certain provisions do not clearly regulate the position and rights of employed women. It is therefore necessary to improve this legal text, especially those of its provisions, which relate to the area of prohibition of discrimination, harassment and sexual harassment, then to the mechanisms of protection of violated rights, with special emphasis on protection of women seeking employment and protection of women during maternity leave and childcare leave.

Statistics are that women are less employed than men (27.7% vs. 41.5%), higher female unemployment rate (26.1% vs. 25.0%) and inactivity rate (62.5% vs. 44.7%).⁶ The percentage of self-employed men is higher (27.9% vs. 12.7%), while women make up the majority in the group of helping household members⁷ (12,3%

⁶ Inactivity is a condition in which one unemployed person is looking for a job, according to the records of the National Employment Service. It often happens that women are only registered with the National Service, but that their only "activity" is to periodically report to the National Service, in order to exercise certain rights in case of unemployment (eg health insurance, etc.). The reasons for "inactivity" can be different, such as different "stereotypes" in partnerships, such as that a woman has a "place in the house", especially in the case of a woman's financial dependence on her husband as a spouse.

⁷ Women, especially those who are actively working, in addition to their work obligations, are often in the category of "helping household members". They are the ones who help elderly and sick members of the household, which is another stereotype in the Republic of Serbia and

vs. 4,6%). There are at least twice as many men employers than women. Except in the financial sector (53% of women), they make up the majority of employees in the lowest paid activities (textile industry, social welfare, etc.). Other data from the Strategy for Prevention and Protection against Discrimination also speak about the significantly worse position of women.⁸

As special measures in terms of preventing discrimination against women at work and in relation to work and employment, the Strategy envisages the following special measures that should, among other things, reduce the effect of the «glass ceiling» at work, employment and corporate governance. These measures are: to consistently implement the instruments of anti-discrimination policies, especially in employment action plans; to take steps to encourage the employment of women; to provide measures to reduce gender inequalities in the labor market; to close the pay gap between women and men; to eliminate discriminatory conditions in employment and promotion, in particular sexual harassment and blackmail; to harmonize labor legislation with the European Union Directive, which will enable the implementation of the principles of equal opportunities and equal treatment of men and women in relation to employment and occupation issues, etc (*Ibid*: page 37.).

Although certain measures from the Strategy that refer to women as a vulnerable social group have been implemented over the years, even in the field of labor and employment, there are still a number of phenomena that indicate the existence of the “glass ceiling” effect in the Republic of Serbia.

The director of the European Institute for Gender Equality, Virginia Lanback, assessed in mid-December 2018 that the Republic of Serbia has made progress in the latest Gender Equality Index of this Institute, but that there are still things to work on. Some of the things that Lanbakova emphasized as “problematic” also refer to the issue of the “glass ceiling” effect. She pointed out that in the Republic of Serbia, which is unfortunately a trend in other European countries, women still

speaks of the relationship that arises in partnership and family relations between a man and a woman. Women are not paid for their "additional work", and helping sick and old members of the household significantly exhausts women, which can have an impact on the attitude of employers towards women, differences in pay between women and men, etc.

⁸ For example, the Strategy states that during 2010, highly educated employed women had lower incomes by 16,368 dinars than highly educated men. On average, women received an 18% lower old-age and 14% lower disability pension than men. Also, "... women are more likely to face discrimination in employment, and pregnant women, mothers with children and women over the age of 40 are particularly disadvantaged."

do lower paid jobs, and that there is a kind of segregation of “male” and “female” occupations, where women are grouped in one, and men in other areas. (Viktorija Lambak, 2018).

The research published in 2016 showed numerous problems that women face at work and on the labor market in the Republic of Serbia, and that the difference in the employment rate between men and women is about 15 % points, and the difference in earnings „for the same job“ between men and women is about 14%.⁹

There are frequent cases of discrimination against women at work in connection to the effect of „mother’s path“, then, dismissal of women from work in case of serious illness, childbirth or pregnancy, and the case of „Jutka“ and many others are showing the problems that women face related to sexual harassment,.

The previous statement was supported by the Ipsos Strategic Marketing survey from March 2018, which showed that among the five biggest challenges that women face at work, according to respondents of both sexes are: the possibility of dismissal of women after maternity leave (71%); employer’s misunderstanding of sick leave due to children (64%); sexual harassment (57%); underestimation due to prejudices about lower value of women’s labor (43%) and less possibility of advancement (33%). (E. D. “Every seventh woman has experienced discrimination at work,” 2018.)

The Strategy for Prevention and Protection against Discrimination pointed out that the independent state body, which was established in 2009 by the Law - Prohibition of Discrimination Commissioner (hereinafter: the Commissioner), has a significant role in solving the problem of gender (in)equality, among other things in the field of labor and employment and even in the effect of the „glass ceiling“. Without going too far into the status and competencies of this independent state body, because it is the subject of study of numerous other scientific and professional papers, in the next part, we will pay special attention to case studies, more precisely - specific cases faced by this institution, especially those covered by the term „glass ceiling“ in its previously defined broader meaning.

⁹ More on the problems of women in work and employment in the study: Jelena Žarković-Rakić and Marko Vladislavljević, Women's Access to Economic Opportunities in Serbia, World Bank, March 2016, available at: <http://documents.worldbank.org/curated/en/326501473752177757/pdf/105793-WP-P156428-WomensAccessstoEconomicOpportunitiesinSerbia-PUBLIC.pdf> Accessed: 18.03.2020. year.

The reason for this analysis is to practically investigate and identify the extent to which the Commissioner's work can influence the elimination of discriminatory practices against women at work and in relation to women's employment in Serbia, as well as possible mitigation of the „glass ceiling“ effect through creating public policies in the Republic of Serbia in the future.

CASE STUDY - DEALING WITH THE „GLASS CEILING“ EFFECT IN THE PRACTICE OF THE COMMISSIONER FOR THE PROTECTION OF EQUALITY

The Commissioner for the Protection of Equality is an independent state institution established in 2009, based on the *Law on Prohibition of Discrimination*.¹⁰

The Commissioner is elected by the National Assembly by a majority vote of all deputies, at the proposal of the committee of the National Assembly, which is responsible for constitutional issues. The term of office of the Commissioner is 5 years, with the same person being elected no more than twice. The law prescribes precisely which person, with what professional qualifications and personal qualities, as well as under what conditions can perform the work of the Commissioner. A law graduate, a citizen of the Republic of Serbia, a person with at least ten years of work experience in legal affairs in the field of human rights protection, with high moral and professional qualities (which is extremely important) may be elected Commissioner. The seat of the Commissioner's office is in Belgrade (Ibid.: 28-29).

The Commissioner has at his disposal a wide range of mechanisms and powers in the fight against discrimination. The Commissioner has a legal obligation to point out the most typical, most common and most severe cases of discrimination, to initiate a change in the regulations on discrimination and give an expert opinion on them, as well as to make recommendations on the prevention and prevention of discrimination. The Commissioner also has an exceptional role in combating discrimination against individuals and groups. In these cases, through the legal possibility to give opinions and recommendations on complaints, the Commissioner influences changes in various discriminatory practices towards women. There are also stronger mechanisms available to the Commissioner. The Commissioner may also conduct court proceedings in cases of discrimination, initiate court proceed-

¹⁰ Law on Prohibition of Discrimination, "Official Gazette RS" No. 22/2009.

ings and file lawsuits and criminal charges. The Commissioner may also initiate a procedure for assessing the constitutionality and legality of laws and other regulations, on the basis of which certain discriminatory practices arise. Finally, the Commissioner may submit a proposal for the adoption or amendment of certain laws and regulations (or any part thereof) in order to prevent discrimination, as well as to monitor their implementation. Also, the obligation of the Commissioner is to submit a regular annual report to the National Assembly of the Republic of Serbia, as well as special reports (Ibid: 33).

Therefore, it is already clear from these legal provisions that the Commissioner has quite sufficient mechanisms to combat the “glass ceiling” effect, as well as to actively participate in creating public policies that will ensure that such cases of discrimination are eliminated or significantly reduced. Of course, the Commissioner cannot do this alone, because other political institutions in the political system of the Republic of Serbia must participate in this process in a coordinated manner (eg Ministry of Labor, Coordinating Body for Gender Equality, Ministry of Finance, Office for Human and Minority Rights, Government Republic of Serbia, etc.).

It seems at first glance that the function of the Commissioner in all, even in the field of gender equality, and especially from the point of view of this topic - discrimination against women in labor and employment caused by the “glass ceiling” effect is to be a kind of “whistleblower” to the existence of such cases, make certain proposals to prevent such cases in the future, and participate in the creation of public and sectoral policies and a legal framework that will eliminate such discriminatory practices.

His “alarm” stems from his cases in practice, on which he “builds” reliable records (records base) on the basis of which he influences the creation of public and narrower sectoral policies. What affects the fact that this institution can significantly contribute to the elimination of inequality of women based on the effect of the “glass ceiling”, are reliable records based on specific cases encountered by the Commissioner in his work.

However, the significance of the Commissioner’s influence in eliminating the “glass ceiling” effect depends to a large extent on the complaints submitted by citizens to the Commissioner. If women e.g. do not recognize gender discrimination in terms of promotion, especially in corporate governance in the private sector, the Commissioner is less able to act effectively. Or, for instance, if the Commissioner,

through specific cases, is not aware of the gender pay gap in specific cases, his or her ability to act is significantly reduced.

The Commissioner's annual report states that in terms of gender equality, the largest number of complaints in 2018 was filed due to discrimination in the field of labor and employment (20% of the total number of complaints based on gender discrimination, ie 33 complaints). This is already a good initial signal for the analysis of the Commissioner's ability to influence the elimination of the "glass ceiling" effect in the field of labor and employment. Analyzing other data from the Report, we notice that the complaints are most often referred to the change of position at work after the return of the woman from maternity leave. Most often, it was a fixed-term employment, which due to a certain maximum duration prescribed by the Labor Law was impossible to grow into an indefinite employment. All this is used as a justification and "cover" for bans on employment in the public sector. So, the Commissioner is faced with such cases, if we analyze the effect of the "glass ceiling" in a broader sense (which includes the term "mother's path"). However, if we look at the effect of the "glass ceiling" in the original, narrower sense (limited only to the promotion system and the gender pay gap), such cases, when it comes to corporate governance in the private sector, did not actually exist. The Commissioner noted the practice that women are discriminated against during promotion, especially due to maternity leave or childcare leave, but only in the public sector, more precisely in terms of promotion in courts, and on that occasion sent a recommendation in 2018 on measures for all courts in the Republic of Serbia, in order to achieve equality in the promotion of civil servants.¹¹

*Commissioner's recommendation to all courts in the Republic of Serbia 2018 – summary version*¹²

¹¹ Abbreviated regular annual report of the Commissioner for the Protection of Equality for 2018, the Commissioner for the Protection of Equality, march 2019. year, page. 31.

¹² Prepared by the author and based on the text published in the Abridged Annual Report of the Commissioner for the Protection of Equality for 2018. year, pages. 31-32.

The Commissioner learned that certain courts, when they are deciding on the promotion of their employees, civil servants, in situations when, in accordance with the law, employees are not evaluated for a calendar year in which they were absent for more than six months due to pregnancy, maternity or absence from work, child care, because the methodology ‘does not justify and does not respect’ this type of absence as socially significant and important. Breaking the sequence automatically disavows the clerks from the chance to advance. In this way, absence from work related to pregnancy, childbirth and child care has a negative impact on the employment status of women upon return from maternity leave, ie leave from work for child care. The Commissioner assessed that this Practice is contrary to the Constitution of the Republic of Serbia and anti-discrimination regulations, that leave due to pregnancy and parenthood due to the use of maternity leave, ie that due to child care, must not be an obstacle to women's advancement, and that the employer must ensure that such absences do not negatively affect the equal status of women. Due to all of the above, the Commissioner recommended to the courts that when deciding on the promotion of civil servants, they take into account as successive grades those grades obtained for the years in which the civil servant was evaluated, not counting the year in which she was not evaluated due to use of absences.

In another case from 2012, the complainant considered that her employer discriminated against her on the gender basis, marital and family status, given that she was transferred to a lower position after returning to work from childcare leave.

*Initiation of a strategic lawsuit by the Commissioner related to the return of an employee to a lower position after maternity leave - summary version*¹³

Reacting to the employee's complaint, the Commissioner asked the employer to submit a list of all workers who have used maternity leave in the last three years, with information on which jobs they were employed at the time of going to maternity leave and childcare leave. The commissioner then determined that

¹³ Prepared by the author and based on the text published in the Abridged Annual Report of the Commissioner for the Protection of Equality for 2012. year, page 65.

out of 58 workers who used this leave in that period, 14 or 21.14% of them were transferred to lower job positions. The Commissioner concluded that this was systematic discrimination against mothers, and based on this complaint and the submitted data, he initiated a strategic lawsuit against the employer, which the Commissioner and the complainant won the following year, and such a decision should have led to the abolition of this discriminatory practice at work.

Another interesting case, which can be subsumed under the “glass ceiling” effect, is the Commissioner’s opinion regarding enrollment in the military gymnasium for girls from 2013, which arose from the practice of the Military Gymnasium not to announce competitions for enrollment of girls in it. In that way, girls are denied the opportunity to perform the occupations they want in the future, which is a typical example of setting up an invisible barrier.

*Opinion of the Commissioner regarding the candidate’s complaint regarding enrollment to the Military Gymnasium in Belgrade*¹⁴

Until the school year 2013/2014. year, the competition for enrollment in the Military High School contained a discriminatory condition on the basis of which girls could not enroll. The Commissioner considered that setting this condition was an act of direct discrimination against girls, because the RS Ministry of Defense, Sector for Human Resources - Human Resources Administration, conditioned enrollment by gender of the candidate, as a result of which enrollment was prevented. Therefore, the Commissioner gave the opinion that the Ministry of Defense of the Republic of Serbia, the Sector for Human Resources, by anticipating such a condition of the competition, and imposing the gender of the candidate as a condition, violated anti-discriminatory regulations. In his opinion, the Commissioner recommended that the Ministry of Defense harmonize the competition with the Law on Prohibition of Discrimination and the Law on Gender Equality in the next enrollment, and to not violate anti-discriminatory regulations in subsequent enrollments. In the next enrollment in the Military

¹⁴ Prepared by the author and based on the text published in the Abridged Annual Report of the Commissioner for the Protection of Equality for 2013, page. 36-37.

High School, the Ministry corrected this discriminatory practice.

The next, and last case, which we will describe from the Commissioner's practice from 2016, points to discriminatory practices related to the effect of "mother's path" and backwardness in a position that led to a significant reduction of salary of a woman-mother who was employed at the time at the Ministry of Internal Affairs - Gendarmerie Command.

*Opinion of the Commissioner regarding the transfer to another position of a woman employed in the Gendarmerie Command - Ministry of the Interior of Serbia*¹⁵

The complainant is the mother of two minor children, employed in the Ministry of the Interior, Gendarmerie Command, in health care, in the workplace of a doctor. She was proposed to be transferred to the future Human Resources Department, where she would work for twice the salary, losing special status and benefited length of service. Considering that this proposal for less favorable relocation discriminated against her on the basis of marital and family status and gender, the applicant filed a complaint against the Gendarmerie Command. It is clear from the statement that the complainant was proposed to be transferred to another job solely because she did not participate in performing special tasks outside the detachment's headquarters, which is directly related to the fact that the complainant is a woman and mother of children under three, who used her right not to perform tasks in field conditions due to child care. During the procedure, it was also determined that a new Sector for Human Resources will be formed in the Ministry of Interior, and that in that sense a proposal was made for the assignment of employees to the future sector, and the list includes 12 women out of 14 proposed employees to which the complainant is. This fact undoubtedly shows that indirect discrimination was committed on the basis of gender of employees, based on prejudices and stereotypes that women are not as efficient and productive in operational work as their male colleagues due to their family obligations.

¹⁵ Prepared by the author and based on the text published in the Abridged Annual Report of the Commissioner for the Protection of Equality for 2016, page 64-65.

CONCLUSION

Reviewing all the Annual Reports of the Commissioner from 2010 to 2018, we can see that in the practice of the Commissioner for now, there are mainly cases related to the effect of “mother’s path” and its impact on salary and promotion, primarily in labor and employment in the public sector. The effect of the glass ceiling in a narrower sense, which includes invisible barriers to advancement (not caused by the “mother’s path” effect) and differences in salaries, especially in the private sector and corporate governance, is generally not visible in the practice and work of this institution.

Regarding the “mother’s path” effect, the case study shows that the Commissioner, thanks to his competencies, successfully eliminated certain discriminatory practices by influencing changes in sectoral policies in the field of labor and employment, as well as changes in the legal framework. By insisting, above all, on public sector institutions, some of the discriminatory practices related to gender have been removed. This refers to cases of discrimination in the system of promotion in courts and the Gendarmerie Command, as well as previous practices of discrimination against women when enrolling in a military high school.

Newly introduced practices in sectoral policies have led to the prevention of discrimination in terms of “backwardness” of women in the service, caused by maternity leave, which have resulted in a reduction of salaries for women who have decided to give birth.

However, there is no visible influence, at least for now, of the Commissioner in removing invisible barriers regarding the pay gap between men and women for the same jobs and tasks, as well as in the system of corporate promotion. As the importance of the Commissioner depends on the complaints of citizens, more precisely on the submission of individual petitions, it is necessary to consider the possibility of some other bodies in the “coordinating system” of state bodies and bodies responsible for labor and employment, human rights and women as vulnerable social groups on spreading awareness of what the “glass ceiling” effect is in labor and employment and in a narrower sense. This can also be achieved through support programs for non-governmental sector projects in this field.

However, the years have shown that the Commissioner can have a significant impact on eradicating this effect in the narrower sense in the future, especially if this independent state body is “armed” with cases reported by individuals, which would make this still insufficiently visible act gender discrimination significantly prevented or completely eliminated.

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**ZNAČAJ POVERENIKA ZA ZAŠTITU RAVNOPRAVNOSTI
U SPREČAVANJU EFEKTA „STAKLENOG PLAFONA“
I DISKRIMINACIJE ŽENA U RADU I ZAPOŠLJAVNU
U REPUBLICI SRBIJI**

Apstrakt:

Efekat „staklenog plafona“ je diskriminatorska praksa zasnovana na polu kao ličnom svojstvu, koja je prvi put prepoznata u SAD početkom 1980-tih godina 20. veka. Ona stvara nejednakost i neravnopravnost između žena i muškaraca u oblastima rada i zapošljavanja i političkom angažmanu žena. U ovom radu, polazimo od istorijskog nastanka, razvoja i širenja ovog pojma u svetu i zadržavamo se na praćenju ovog efekta u oblasti rada i zapošljavanja. Zatim pokušavamo da kroz praksu Poverenika za zaštitu ravnopravnosti utvrdimo, da li je ova pojava u Republici Srbiji prepoznata i rasprostranjena, kao i u čemu je značaj Poverenika za zaštitu ravnopravnosti u njenom eliminisanju. Na kraju, pokušaćemo da utvrdimo, kroz studiju slučajeva sa kojima se suočio Poverenik za zaštitu ravnopravnosti u praksi, da li je ovaj akt polne diskriminacije prepoznat kao diskriminatorska praksa u Republici Srbiji, kao i u kojoj meri su pojedine strateške parnice, kao i mišljenja i preporuke Poverenika uticale na to da „efekat staklenog plafona“ bude eliminisan na radu i u vezi sa radom i zapošljavanjem žena u Republici Srbiji.

Ključne reči: „stakleni plafon“, „mamina staza“, diskriminacija, pol, Poverenik za zaštitu ravnopravnosti, korporativno upravljanje.