



NO WORKING AROUND IT

GENDER-BASED DISCRIMINATION IN HUNGARIAN WORKPLACES

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Cover photo: Silhouette of pregnant woman standing by the promenade looking over sky enjoying the beautiful sunset
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EXECUTIVE SUMMARY

“From the moment a female employee announces she is pregnant, the employer looks at her as a ‘ticking bomb’ that will sooner or later detonate.”

Ágnes Repka, human resources expert and employment law advisor, March 2020

Although the law prohibits gender-based discrimination in Hungary, women continue to experience widespread discrimination in the workplace and in the labour market more generally. The discrimination occurs in various forms due to women’s gender and in many cases specifically due to their motherhood.

The current COVID-19 pandemic has hit the Hungarian labour force hard, and further exacerbated this discrimination and gender inequality in the labour market. The health crisis has forced many women to give up their jobs to care for and educate their children as nurseries and schools have been closed. Moreover, as women on average earn less than their partners, and both employers and society expect women to care for children and manage the household, in many families men remain the sole breadwinner. The majority of those who have lost their jobs due to the economic impact of the public health crisis are women who have become fully dependent on their partners or family members. At the same time the pandemic has placed an additional burden on, and put at risk, frontline workers such as health and social care employees, shopkeepers, etc.

This report, for which the research was conducted prior to the COVID-19 pandemic, mainly focuses on gender-based discrimination against pregnant women in employment and women who want to return to work following maternity leave. We use the term gender-based discrimination to refer to instances when a woman is treated less favourably in a direct or indirect manner on the grounds of her sex/gender and/or of being a mother, than any other person with a comparable level of skills and experience and in a comparable position.

This report is primarily based on field research carried out in Hungary between June 2019 and March 2020, when Amnesty International delegates interviewed 40 women who experienced discrimination on grounds of their sex/gender and/or for being a mother, as well as 44 experts including trade union representatives, representatives of civil society organizations, labour rights lawyers and other labour rights experts such as legal experts from the Equal Treatment Authority, and academics. To supplement qualitative interviews, Amnesty International conducted a survey of 266 respondents in the public and private sectors in Hungary to obtain information on women’s experiences of unequal treatment in the workplace, and on remedies they have sought.

Hungary has ratified a range of international and regional human rights treaties that require respect for the principle of non-discrimination and for the equal rights of men and women to the enjoyment of all economic, social and cultural rights. These include the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). As a member of the European Union (EU) and the International Labour Organization (ILO), Hungary has also committed to implementing a number of obligations concerning labour rights. These are key legal instruments that prescribe what measures states parties such as Hungary should take to prevent and eliminate employment discrimination on the grounds of sex/gender and motherhood, and to protect workers.

The report finds that one of the key reasons for widespread discrimination against women employees in the labour market is the incomplete transposition of these relevant international and regional human rights obligations into domestic law. As well, laws regulating employment relationships and the law on equal treatment contain several significant loopholes that employers exploit, and in so doing, violate the rights of their employees.

In addition, the Hungarian authorities have failed both to effectively ensure that employers are aware of their legal obligations and to reinforce employers' compliance with the law. At the same time, many of the labour-related measures introduced by the government in recent years have had a particular and disproportionate impact on women employees, especially those who have low socio-economic status and/or are from disadvantaged backgrounds. Other government policies and communications have actively promoted gender stereotyping of women, principally highlighting women's role in raising children and caring for the family. Further governmental measures have associated women solely with family affairs. The Hungarian authorities must take urgent steps to address discrimination in the workplace that many women experience on the grounds of their gender/sex and motherhood.

DISCRIMINATION AGAINST PREGNANT WOMEN

“My employer... explained that my salary was too high, so we could either sign a new contract with a lower salary for me to go on maternity leave and get the benefits, or we should terminate the employment relationship – otherwise the company becomes bankrupt.”

‘Bernadett’, a victim of discrimination due to her high-risk pregnancy, January 2020

Our research found that many employers terminate the employment relationship with expectant women when they learn about their pregnancy, despite protections against such dismissals in the Hungarian Labour Code. One common discriminatory practice is that the employer terminates the contract without notice, alleging inappropriate conduct by the employee – despite the absence of any evidence of such conduct.

Many employers also take advantage of the weak provisions of the law to dismiss expectant workers. For example, both parties can terminate the employment relationship during the probation period without the obligation to provide reasons – a loophole and violation of EU law that must be addressed. Another practice employers often resort to is to not renew the contract of a pregnant worker when it comes to an end following a project, even though continued employment was originally foreseen and justified. While these discriminatory practices may have harmful impacts on the physical and mental state of expectant workers, women could also lose entitlement to certain social security family benefits if they do not manage to find another job or their baby is born more than 42 days after termination of their employment (and lose also the accompanying insurance coverage). They would in this case receive only very low-level universal family allowances. This problem is compounded by the fact that finding a job is very difficult in Hungary in advanced stage of pregnancy, as both victims of gender-based discrimination and experts told Amnesty International.

Expectant women with a high-risk pregnancy are in an even more vulnerable situation. In these cases, as it is uncertain how long the employee remains capable of working before her maternity leave, many employers resort to the easy but regressive option of terminating the employment so they can look for a replacement worker able to carry out the duties.

DISCRIMINATION AGAINST WOMEN WITH YOUNG CHILDREN

It should be acknowledged that since 2010 the Hungarian government has taken steps to improve women's employment, with a particular focus on those with young children. For example, the government has been increasing the number of nursery places across the country, amended the Labour Code allowing women to work part-time covering 20 hours per week until their child reaches four years of age (or six if the woman raises three or more children), and introduced tax breaks for families depending on the number of children.

While these measures have somewhat helped women to reconcile work and family life, they have not significantly aided their return to the labour market following child-related leave, and to address workplace discrimination. Furthermore, very few steps have been taken to encourage men to share childcare, household and other care duties with women, or to change stereotypical perceptions of gender roles. Some steps, among others, include additional days of paid holiday to care for a child, the opportunity for men to take parental leave and five working days (or seven in case of twins) of paternity leave, but many men do not take advantage of these leaves. Caring for a child is still considered the woman's main task not only by society, but also by employers.

The Labour Code stipulates that employers may not terminate the employment relationship by notice during maternity leave, and during a leave of absence taken without pay to care for a child. In addition, the employer should take the employee back into her original role or must offer an equivalent role if the previous position is no longer available. As employees are often not acquainted with these obligations and employers choose to ignore them, therefore, often this does not happen. Another significant disparity is that although by law employers are required to offer wage adjustments after child-related leave, there is no legal sanction should they fail to do so. This disparity is exacerbated by the fact that employees are often not aware of pay raises in their workplace given an inherent culture of secrecy around salaries in Hungary.

The report also describes how the state and employers exert pressure on families so that only women, not men, care for sick children. By law, working parents whose child is sick and is younger than twelve years of age can take sick leave and are entitled to statutory 'sick pay to care for a child', if they are insured and pay health insurance contributions. In reality, mostly women take this sick leave. Amnesty International interviewed several women whose employers did not tolerate this type of absence and dismissed them. While both society and employers consider women the primary caregivers and childrears, women are punished in the workplace for carrying out these tasks.

The report finds in addition that this type of discrimination can also occur against men. As one woman explained, her husband was bullied by his colleagues and manager when he did not take part in optional parties following team events, due in part to the fact that within a space of six months he had to stay at home twice with their sick child.

“My husband was working among six men, who all held the view that women should care for sick children. ... They pestered him a lot, and if he hadn't quit, we had the impression that they would have continued bullying him until he would resign – or come up with a reason to dismiss him.”

'Veronika', whose husband experienced discrimination, 24 February 2020

This report also identifies unfair treatment regarding part-time and remote working, and finds that many companies have had difficulties with implementing the law concerning flexible working. At the employee's request the employer can reduce their working hours from full to part-time (20 hours per week) following the employee's return to work from maternity or parental leave; this arrangement can occur before the child reaches four years or in the case of three or more children until the youngest reaches six. While the law allows only this particular form of part-time employment, many employers refuse to accommodate employees' request for it, as Amnesty International learned from interviews with women in the public and private sectors.

With regard to remote working, many employers have held negative attitudes towards it, as they do not trust the employee's commitment and productivity while working outside the office – despite in most cases no evidence to support this lack of trust. This attitude may change due to the current COVID-19 pandemic, which has required many companies to experiment with remote working on a large scale, to survive and to keep employees safe.

ACCESS TO REMEDIES

Besides the fact that employees are often not aware of their rights and the respective obligations of their employers, Amnesty International's research also found that many women do not seek reparation for the harm they have suffered. One of the key reasons is that victims of gender-based discrimination are, once again, not familiar with potential avenues for remedies and thus do not pursue them. Awareness of anti-discrimination legislation and the related legal remedies remains relatively low, as a representative study found, with only 40% of people found to be familiar with the Equal Treatment Authority and only just over half – 51% – under the impression that there is a law to protect against discrimination.

Our research shows that women often fear retaliation for reporting discrimination both internally to their employer and through external legal avenues, such as launching a complaint with the Equal Treatment Authority or taking a case to court. In addition, women employees and experts interviewed by Amnesty International stated that while internal complaint mechanisms often do not exist or complaints are not properly investigated and acted upon, accessing external legal remedies leads to legal and practical barriers that deter victims of gender-based discrimination from seeking and obtaining justice.

Submitting a complaint to the Equal Treatment Authority

One of the legal avenues that victims of gender-based discrimination can choose is making a complaint to the Equal Treatment Authority, an independent national body responsible for monitoring the implementation of the principle of equal treatment. Although the Authority in its decisions can sanction perpetrators in the procedure, those punitive measures are not sufficiently proportionate regarding the harm suffered by the victim and dissuasive enough with respect to deterring future violations. If the Authority establishes an infringement of the principle of equal treatment, the most serious sanction it can impose is to fine the violator. This fine, however, is paid to the state, not to the victim. The only instance in which the victim can obtain real compensation is if the Authority concludes an amicable settlement between the parties and the employer voluntarily chooses to compensate the victim.

Besides investigating complaints, the Authority has a remit to start proceedings without receiving notice of a particular discrimination case and to organize trainings on equality and non-discrimination. Due to constrained human and financial resources, however, the body cannot carry out these functions effectively.

Submitting a claim to court

Hungarian law also allows victims of alleged violations of the principle of equal treatment to take a case to court, even if there is an ongoing complaint with the Equal Treatment Authority. Most individuals who seek remedy choose this legal option, as it can provide real reparation for victim, including compensation and stronger sanctions. However, court proceedings also have shortcomings.

Our report found that court procedures are expensive due to legal representation costs – claimants need to hire an employment lawyer. Those who cannot afford legal representation can request state-funded legal aid, but the means test threshold for eligibility is very low.

If discrimination results from unlawful termination of employment, many victims decide not to make a claim, as the amount of compensation payable is limited to a maximum of the equivalent of twelve months' pay. For this amount of money, it is often not worth the victim starting legal proceedings, given the costs they can incur and the fact that lawsuits can last up to one-and-a-half years at first instance only.

The fact that proving discrimination is very difficult compounds these barriers. The law foresees that the burden of proof rests with the defendant, i.e., the employer, to demonstrate that discrimination did not occur. Actual practice, however, contradicts the law as often courts require the claimant, i.e., the employee, to prove that discrimination has occurred.

RECOMMENDATIONS

In light of the above findings and conclusions Amnesty International makes the following recommendations (a full list can be found at the end of the report):

The Ministry of Innovation and Technology should urgently:

- Encourage men to play a bigger role in household tasks and childcare by a) extending paternity leave to at least 10 working days and make it obligatory, as per the new EU directive on balancing work and family life, and b) making at least two months of the parental leave non-transferable and obligatory for the man in the household, and ensure it is adequately compensated.

- Propose legislation to amend Article 61(3) of the Labour Code and relevant provisions of Act on Civil Servants of Public Service and of Act on the Legal Status of Public Servants to allow women and men to work part-time also covering 30 or 35 hours per week, including the opportunity for flexible working time until the child reaches the age of four (or six in case of three or more children).
- Incentivize companies to employ women with children and to introduce flexible working conditions, by a) reinstating the incentive that allows companies to employ two part-time staff in a full-time position with the benefit of not paying 'social contribution tax' for them, and b) eliminating the complete payment of social contribution for women in part-time or full-time positions for the first two years and keeping the 50% discount for that payment, but extending it to the full salary.

The Ministry of Human Capacities should urgently:

- Increase the monthly amounts of the universal maternity support allowance, family allowance and childcare allowance, which have not increased since 2008, to adequate levels, by ensuring that their yearly rise follows inflation.

The Ministry of Justice should urgently:

- Improve access to legal remedies for employment discrimination by amending the rules for exemption from court fees to also fully or partly cover legal representation fees, according to a means-test.
- Propose legislation to increase the level of reparations that can be claimed in court.

The Parliament should urgently:

- Strengthen the Equal Treatment Authority by increasing its yearly budget to undertake more intensive outreach, promotion and training activities, and to increase its legal personnel to be better able to investigate complaints.
- Improve the remedies for discrimination, for instance by giving the Equal Treatment Authority the power to award exemplary compensations to be paid to the claimant.

Employers in all sectors should:

- Introduce equal opportunity plans, take steps to achieve their objectives and targets, and monitor compliance.
- Conduct obligatory equality, diversity and discrimination courses for every newcomer, in particular managers, including training on gender-based discrimination, and increased trainings for managers on this issue.
- Develop an effective, easy-to-understand and easily accessible complaint reporting procedure that is known to employees, and also safe and anonymous, thereby reducing the risk of retaliation against complainants that seek to effectively investigate and sanction gender-based discrimination issues and incidents.
- Accommodate more flexible working conditions that meet the need of employees with childcare responsibilities and include these conditions in local collective working agreements.

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Although the law prohibits gender-based discrimination in Hungary, women continue to experience widespread discrimination on the grounds of their sex/gender and for being a mother both in the workplace and in the labour market more generally. This report examines the discrimination pregnant women and women with young children face in their workplace.

One of the key reasons for this widespread discrimination against women employees is the incomplete transposition of the relevant international and regional human rights obligations into domestic law. As well, laws regulating employment relationships and the law on equal treatment contain several significant loopholes that employers exploit, and in so doing, violate the rights of their employees. In addition, the Hungarian authorities have failed both to effectively ensure that employers are aware of their legal obligations and to reinforce employers' compliance with the law.

Besides the fact that employees are often not aware of their rights and the respective obligations of their employers, many women do not seek reparation for the harm they have suffered. While victims are often not familiar with potential avenues for remedies, many fear retaliations for reporting discrimination both internally to their employer and through external legal avenues. Moreover, there are several legal and practical barriers to access to justice that hinder victims of gender-based discrimination to seek effective remedies.