

Geneva University

Faculty of Law

Formation of Human Rights 2021

Switzerland and Equal Pay

Obstacles preventing expectations from becoming reality

Evelina Acuviene

2021 November

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List of Abbreviations

European Convention on Human Rights – ECHR

Federal Department of Foreign Affairs – FDFA

Federal Office of Statistics – OFS

Gender Equality Act – GEA

Gender Equality Strategy – GES

International Labor Organization – ILO

The Convention on the Elimination of All Forms of Discrimination against Women – CEDAW

The International Covenant on Economic, Social and Cultural Rights – ICESCR

The International Covenant on Civil and Political Rights – ICCPR

United Nations – UN

United Nations Commission on the Status of Women – CSW

Introduction

Awareness and commitment to gender equality at work, as well as in social life have been more than ever prominent in national and international public debates. Participation of women in decision-making in public life and the elimination of violence against women were also the focal point of the UN Commission on the Status of Women (CSW) for the year 2021. At the framework of the last session Switzerland was focusing on equal pay, women's economic independence, sexual and reproductive health rights, and the fight against discrimination and violence¹.

Switzerland has recently made gender equality a priority for both domestic and foreign policy. "It is an exciting coincidence that in the year in which we are celebrating 50 years of women's suffrage in Switzerland, we are discussing the full and effective participation of women in decision-making processes in public life as a priority theme at the CSW²," stated Ursula Wyss of the Equal Opportunities and Global Gender Issues Section of the Federal Department of Foreign Affairs (FDFA).

However, despite its promising political declarations, Switzerland is internationally known for its especially slow policy regarding women rights. In comparison with its European sisters, Switzerland adopted most documents entrenching the respect of human rights at a relatively late date: the European Convention on Human Rights in 1974, the two human rights Covenants in 1992, the Convention on Discrimination against Women and the Convention on the Rights of the Child in 1997.

According to the Swiss Earnings Structure Survey, the pay gap between men and women in private sector was 19.6% in 2018³. Such a wide gap is in breach of the Gender Equality Act contained in the Federal Constitution. In addition to this, in the French speaking part of Switzerland 78% of mothers work part-time whilst fathers fill only 12% of such positions⁴. This demonstrates

¹ "Swiss focus on equal pay and gender equality in New York" <<https://www.swissinfo.ch/eng/swiss-focus-on-equal-pay-and-gender-equality-in-new-york/46450092>> (Accessed 2021 06 26)

² "CSW65: Switzerland active in advancing women's right" <https://www.eda.admin.ch/eda/en/fdfa/fdfa/aktuell/newsuebersicht/2021/03/uno-kommission-frauenrechte.html> (Accessed 2021 06 26)

³ Office fédéral de la statistique, Ecart Salarial <<https://www.bfs.admin.ch/bfs/fr/home/statistiques/travail-remuneration/salaires-revenus-cout-travail/niveau-salaires-suisse/ecart-salarial.html> > (Accessed 2021 09 13)

⁴ « La majorité des enfants vivent avec leurs deux parents en Suisse » <<https://www.swissinfo.ch/fre/la-majorite-C3%A9-des-enfants-vivent-avec-leurs-deux-parents-en-suisse/46608642>>(Accessed 2021 06 26)

that women still cannot be equal with men at work with regards to the career growth opportunities and equal pay also because of their familial responsibilities. Therefore, even though Switzerland's political aspiration remains highly proactive in regards with gender equality in work environment, the statistics are still discouraging.

This problem raises main question of my work – are promising political goals aimed at promoting equal pay properly reflected in Swiss international obligations towards human rights and its domestic law? What additional changes in legal domain are crucial to achieve the balance of salaries at a faster pace?

Seeking at least partially unveil the answers to these questions, I will structure this work into three main parts. The first part will be dedicated to review how the principle of equal pay is defined in European human rights acts and anchored in Switzerland's international obligations. In the second part I will perform the analysis of Switzerland domestic law acts defending the principle of equal pay. Furthermore, I am going to scope out the current landscape of existing research on Swiss jurisprudence regarding the implementation of equal pay principle. Finally, I will analyze the positions of stakeholders interview the interest parties such as the representatives of labor unions, women rights organizations to find out their position on the subject. The last part will be dedicated to briefly summarize the results and provide recommendations.

Definition of pay discrimination

In this work I will use the definition of pay discrimination as defined in International Labor Convention of Equal Remuneration No. 100: pay discrimination is observed in a situation when the work of equal value does not result in equal pay, and this pay gap is not justified objectively. This points to the situation, when the comparison of salaries of two persons of opposite sex, occupying the same position in the enterprise discloses a noticeable difference without being justified. In the event of pay discrimination, remuneration is considered as not limited to the basic pay or wage that the employer receives, but also to other forms of compensation, such as bonuses, stock options or overtime pay⁵. I will use the definition of the gender wage gap as it is defined by

⁵ See Article 1, ILO Equal Remuneration Convention (No. 100), 1951

the OECD - as the difference between median earnings of men and women relative to median earnings of men⁶.

1. Human rights instruments regulating equal pay and Switzerland's international obligations

1.1. European Convention on Human Rights and its Protocols

Right to equal treatment at work environment was established with the creation of European Convention of Human Rights and later enshrined by the addition of other human rights instruments. The roots of the principle of equal pay could be found in the Article 14 of ECHR prohibiting any kind of discrimination: "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status." However, the law experts agree that the applicability of the prohibition of discrimination of Article 14 of the ECHR has always been equivocal.

The main explanation for the Article's subordinate role is found in its accessory character. It means that the prohibition of discrimination can only be invoked in connection with one of the other rights protected by the Convention. To be justiciable before the Court, a difference in treatment must always relate to a substantive Convention right. However, since the Convention right can usually also be invoked on its own and almost any difference in treatment can be dealt with in that context, discrimination complaints often do not add very much to the other allegations made. Therefore, in many cases Court ends with ignoring a complaint in relation with Article 14⁷.

Therefore, general prohibition of discrimination was later strengthened by the addition of Protocol No. 12 to the Convention. Even though, the wording of non-discrimination grounds in Article 1 is identical to that in Article 14 of the Convention, the Protocol goes further by adding enlarged scope of protection and concerns cases where a person is discriminated against: the enjoyment of any right specifically granted to an individual under national law; the enjoyment of a right which may be inferred from a clear obligation of a public authority under national law, by

⁶ OECD, Gender wage gap (indicator), 2021 <<https://data.oecd.org/earnwage/gender-wage-gap.htm>> (Accessed 2021 08 24)

⁷ J. Gerards, The Discrimination Grounds of Article 14 of the European Convention on Human Rights *in* Human Rights Law Review 13:1(2013), p. 5. <<https://www.corteidh.or.cr/tablas/r30700.pdf>> (Accessed 2021 09 06)

a public authority exercising the discretionary power or by any other act or omission by a public authority⁸.

However, Switzerland has not yet ratified this protocol and remains one of few European states which has neither signed, nor ratified it. This is a real disadvantage considering that Protocol No. 12 reflects a balanced approach to possible positive obligations of the Parties under this provision as Parties are obliged to take measures to prevent discrimination, even where discrimination occurs in relations between private persons, so-called make “indirect horizontal effect”⁹. Prof. M. Hottelier considers this prevailing situation to be a consequence of federalism¹⁰ as the Article 147 of the Federal Constitution encourages “The Cantons, the political parties and interested groups to express their views when preparing important legislation or other projects of substantial impact as well as in relation to significant international treaties”¹¹. As good as it may sound, sometimes it results in a delayed legal action with regards to international treaties in comparison with other European countries.

1.2.The International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights (ICESCR) guarantees the right to work, the right to form trade unions, rights relating to marriage, maternity and child protection, the right to an adequate standard of living, the right to health, the right to education, and rights relating to culture and science¹². It was adopted by the UN General Assembly on 16 December 1966 and Switzerland entered into a commitment under international law to realize the rights contained in the ICESCR with the ratification of the Covenant in 1992¹³. In Switzerland, ruled by monistic system, ICESCR and other treaties directly become the part of its

⁸ See Article 1, Convention for the Protection of Human Rights (Protocol No. 12), Rome, 2000

⁹ See par. 24, Explanatory Report the Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 2000

¹⁰ M. Hottelier, De l'absence d'autonomie à l'indépendance : histoire et évolution de l'article 14 CEDH. In: Aux confins du droit : essais en l'honneur du Professeur Charles-Albert Morand. Bâle : Helbing & Lichtenhahn, 2001. p. 263.

¹¹ See Art. 147, Federal Constitution of the Swiss Confederation of 18 April 1999 (Status as of 7 March 2021)

¹² UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3

¹³ Federal Department of Foreign Affairs International Covenant on Economic, Social and Cultural Rights <https://www.eda.admin.ch/eda/en/dfa/foreign-policy/international-law/un-human-rights-treaties/international-covenant-economic-social-cultural-rights.html> (Accessed 2021 08 22)

domestic law. However, the formal validity of a treaty does not necessarily entail the direct justiciability of its provisions by the state's judicial organs. It means that not all formally valid international treaties contain provisions that can serve as legal basis for claim-rights of individuals before courts¹⁴.

The Committee on ESC Rights criticized this restrictive approach in its 2010 report on Switzerland, and stated that the lack of justiciability, specifically regarding Article 6 of ICESCR, guaranteeing the right to work, does not mean that it is not legally binding. The Committee also expressed a concern that even though these rights are not enforceable before the courts, they nevertheless have to be realized through the legislative process or through administrative measures. Therefore, approach that the Confederation holds towards social rights is depreciative from the legal point of view as Switzerland considers these rights to be limited only to programmatic character¹⁵.

Even after more than 10 years after such criticism, Switzerland's weak points regarding the fulfillment of obligations remains practically the same. According to the most recent remarks made by the Committee on ESC Rights, despite all the Switzerland's effort to promote gender equality, Swiss women still cannot enjoy their economic, social, and cultural rights with a full extent¹⁶. Traditional roles of men and women with regards to their familial responsibilities contribute to the tendency of women working part-time jobs and, in this way, strengthening the wage gap. The Committee specifically recommends Switzerland to redouble its efforts and create equal chances to succeed in professional field. It is emphasized that the Confederation must take more effective measures to eliminate structural causes that leads to the pay gap. These recommendations clearly demonstrates that the Committee recognizes that inequality of salaries is mostly caused not by direct gender discrimination in the workplace but by societal structure and inherent cultural particularities.

¹⁴ F. Weibel "The Justiciability of Economic, Social and Cultural Rights in Switzerland", Human Rights Clinic at the Faculty of Law of the University of Basel, 2016, p.5 < https://fian-ch.org/content/uploads/Justiciability-of-ESC-rights-in-Switzerland_FW.pdf > (Accessed 2021 09 07)

¹⁵ Committee on Economic, Social and Cultural Rights, Concluding Observations – Switzerland, UN DocE/C.12/CHE/CO/2-3, 2010, par. 37-39

¹⁶ Comité des droits économiques, sociaux et culturels, Observations finales concernant le quatrième rapport périodique de la Suisse, E/C.12/CHE/Q/4/, 2019 par. 22-23

1.3. International Covenant on Civil and Political Rights

International Covenant on Civil and Political Rights (ICCPR) with its Article 2 obligates each State party to respect and ensure to all persons within its territory and subject to its jurisdiction the rights recognized in the Covenant without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status¹⁷. The Confederation ratified ICCPR in 1992, however, Switzerland's reservation to Article 26 of ICCPR limits its effect to a comprehensive prohibition. Article 26 of ICCPR stipulates a universal prohibition of discrimination: it does not only entitle all persons to equality before the law as well as equal protection of the law but also prohibits any discrimination under the law and guarantees to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status¹⁸. As it is noted in "General Comment on Non-Discrimination", Article 26 provides that all persons are equal before the law and are entitled to equal protection of the law without discrimination, and that the law shall guarantee to all persons equal and effective protection against discrimination on any of the enumerated grounds¹⁹. The Committee holds opinion that Article 26 does not merely duplicate the guarantee already provided for in article 2 but provides an autonomous right itself. It prohibits discrimination in law or in fact in any field regulated and protected by public authorities. Article 26 is therefore concerned with the obligations imposed on States parties regarding their legislation and the application thereof. Thus, when legislation is adopted by a state party, it must comply with the requirement of Article 26 that its content should not be discriminatory. In other words, the application of the principle of non-discrimination contained in article 26 is not limited to those rights which are provided for in the Covenant.

Switzerland ratified the second optional protocol on 16 June 1994 and it came into force on 16 September 1994, yet the first optional protocol has not been adopted²⁰. Therefore it could be seen that Switzerland's obligations under the ICCPR do not include a universal, independent

¹⁷ See Article 2, ICCPR

¹⁸ See Article 26, ICCPR

¹⁹ See par.1-3, ICCPR General Comment No. 18: Non-discrimination, 10 November 1989.

²⁰ Federal department of Foreign Affairs <<https://www.eda.admin.ch/eda/en/dfa/foreign-policy/international-law/un-human-rights-treaties/international-covenant-on-civil-and-political-rights.html>> (Accessed 2021 08 23)

obligation to promote equal opportunity and prevent discrimination which could be considered as an impediment in the implementation of equal pay principle.

1.4.The Convention on the Elimination of Discrimination against Women

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in its Article 11 targets the right to equal pay: "The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work²¹. The importance of equal pay is specifically emphasizes at CEDAW General Recommendation No. 13, where The Committee recommends that the State Parties which have not yet ratified ILO Convention No. 100 should be encouraged to do so. The Committee also believes that the states should consider the study, development and adoption of job evaluation systems based on gender-neutral criteria that would facilitate the comparison of the value of those jobs of a different nature, in which women presently predominate, with those jobs in which men presently predominate, and they should include the results achieved in their reports to the Committee; they should support, as far as practicable, the creation of implementation machinery and encourage the efforts of the parties to collective agreements, where they apply, to ensure the application of the principle of equal remuneration for work of equal value²².

Regarding Switzerland, the Convention was ratified only in 1997. In 1999, the UN adopted an optional protocol to the CEDAW regarding an individual complaints' mechanism. The optional protocol was adopted in 2000 and with regards to Switzerland - 2008 it came into force²³. Apart from the corresponding legislative measures referred in Article 2, CEDAW also explicitly obliges Confederation to take action that stems from positive obligation - it means all appropriate legislative measures to eliminate discrimination against women by any person, organization or enterprise in all areas.

²¹ See Article 11, Convention on the Elimination of All Forms of Discrimination Against Women, 1979

²² See par.1-3, CEDAW General Recommendation No. 13: Equal remuneration for work of equal value, 1989.

²³ Federal Department of Foreign Affairs, "Convention on the Elimination of All Forms of Discrimination against Women"<https://www.eda.admin.ch/eda/en/home/foreign-policy/international-law/un-human-rights-treaties/convention-on-elimination-of-all-forms-of-discrimination-against-women.html> (Accessed 2021 09 02)

In its most recent concluding observations, CEDAW recommended Switzerland to continue increasing efforts to eliminate the gender pay gap and ensure equal opportunities for women in the labor market. The Committee took into the consideration the measures taken by the State party to reconcile family and work life. However, the Committee expressed concern that prevailing gender wage gap in both the public and the private sector continues to impact negatively on women's career development and pension benefits, while the lack of effective implementation of legislation on the principle of equal pay for equal work and work of equal value further hinders progress in this regard²⁴. In November 2020, Switzerland submitted its corresponding report²⁵ emphasizing vast improvements including the development of the first equality strategy and various amendments of law aimed at enhancing equality. The report mentions the series of new legislative provisions to improve pay equality: the requirement to conduct an equal pay analysis, greater flexibility in balancing work and care duties for family members, and, in revised company legislation, the introduction of guidelines on the gender composition of boards of directors and management boards.

Yet, despite the emphasis on legislative provisions and enumerated measures, the thorough plan of implementation as well as expected results are not laid down in this report. The steps to be taken to lower structural inequality are also not indicated, which substantially decreases any profound changes in the near future.

1.5. International labor standards addressing equal pay

ILO Global Wage Report explicitly identifies the different set of factors, contributing to gender pay gap, which are often interrelated. Occupational segregation and undervaluation of feminized industries, the “motherhood penalty”, the disproportionate burden of unpaid care work directing women into low-paid occupations, not to mention differences in participation in full-time wage employment. The motherhood penalty contributes to the gender pay gap through a variety of factors, including career interruptions or reductions in working time, over-representation in lower paying but family-friendly jobs, or discriminatory hiring and promotion practices that

²⁴ CEDAW “Concluding observations on the combined fourth and fifth periodic reports of Switzerland”, CEDAW/C/CHE/CO/4-5, par. 36

²⁵ Le Conseil Federal, Réponse de la Suisse à la liste de points et de questions établie en vue du sixième rapport périodique de la Suisse, Berne, 2020 par. 118-141

disadvantage women who are or may become mothers. Even though gender pay gap can be partly explained by factors indicated above, other unrelated factors may also be involved, such as discrimination, implicit biases, and social norms, further replicated at the company level. These gaps lead to substantive disparities in lifetime earnings, which continually reinforce women's unequal position in the labor market and the workplace²⁶.

According to official Swiss Federation statistics, almost 45%²⁷ of the wage gap still cannot be explained by objective reasons, such as years of training, years of employment, years of service, skills, or professional position. This points to the potential gender-based discrimination and breaches Confederation's obligations which are stipulated by Equal Remuneration Convention of ILO.

There exist numerous conventions and recommendations of International Labor Organization (ILO), setting out international labor standards related to equal pay. These documents contain labor rights, which because of their human rights content, are defined as fundamental labor rights, and were laid down in the universally applicable Declaration on Fundamental Principles and Rights at Work. The Declaration aims to protect from forced labor, exploitative child labor and discrimination in the workplace and guarantees the freedom of association and the related right to collective bargaining²⁸.

The principle of equal pay for work of equal value is enshrined in the ILO Equal Remuneration Convention Nr. 100. The right to equal remuneration applies not only in cases where men and women do the same or similar jobs, but also when they perform work that is different but of equal value, based on objective criteria, such as skills, working conditions, responsibilities, and effort. Remuneration is not limited to the basic pay or wage that the worker receives, but also other forms of compensation, such as bonuses, stock options or overtime pay²⁹. The principle of equal remuneration applies to all workers. Through their representative organizations, enterprises should work with government and workers' organizations to establish

²⁶ILO Global Wage Report 2018/19: What lies behind gender pay gaps, p. 37–38. <https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_650553.pdf> (Accessed 2021 09 10)

²⁷Federal Office of Gender Equality, Equal Pay Platform <<https://www.ebg.admin.ch/ebg/en/home/topics/work/equal-pay.html>> (Accessed 2021 06 24)

²⁸ See par. 2, ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, Geneva, 1998

²⁹ See Articles 1-3, ILO Equal Remuneration Convention (No. 100), 1951

job evaluation criteria. They should apply appropriate techniques for objective job evaluation to determine value, comparing factors such as skill, effort, responsibilities and working conditions.

As for Switzerland, the state has ratified numerous ILO's conventions, including its eight core conventions. Convention Nr. 111 was ratified by Switzerland in 1961 and contains a legislative mandate for the realization of equal opportunity in employment and occupation. This Convention covers both gender specific and racial discrimination made³⁰. Yet, the implementation of ILO's conventions has been proved to be difficult as in the ILO's Global Wage Report Switzerland was ranked as maintaining the second biggest median monthly wage gap after the Netherlands³¹. Such statistics lowers Confederation's' international image regarding human rights, as countries not as much economically advanced as Switzerland (e.g., Hungary or Slovenia), stands much higher in the scale of equal pay.

2. Equal pay in Switzerland's domestic acts

2.1. Swiss Federal Constitution and Federal Act on Gender Equality

Switzerland's obligations towards international human right instruments are primarily implemented through the Federal Constitution. The principle of gender equality is entrenched in the Article 8: "Men and women shall have equal rights. The law shall ensure their equality, both in law and in practice, most particularly in the family, in education, and in the workplace. Men and women shall have the right to equal pay for work of equal value³²."

Federal Act on Gender Equality (GEA), which came into force 1996 went even further with strengthening prohibition of discrimination of many aspects, including recruitment, allocation of tasks, working conditions, remuneration, professional development, promotion, and dismissal as well as sexual harassment. Article 3 of GEA states that "Employees must not be discriminated against on the basis of their sex, whether directly or indirectly, including on the basis of their marital status, their family situation or, in the case of female employees, of pregnancy. This prohibition applies to hiring, allocation of duties, setting of working conditions, pay, basic and

³⁰ See Article 1, ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

³¹ Global Wage Report 2018/19, p. 25

³² See Article 8 in Federal Constitution of the Swiss Confederation, 1999

continuing education and training, promotion, and dismissal. Moreover, the third part of the Article 3 emphasizes that appropriate measures aimed at achieving true equality are not regarded as discriminatory³³. Therefore, one cannot argue that *de jure*, the right to equal pay irrespective of gender is not properly reflected in the main Swiss document.

However, *de facto* the situation is not as optimistic as it appears. Prof. K. Lempen, who analyzed the jurisprudence in Switzerland with regards to discrimination in salaries, notes that in practice implementation of the right to equal pay for the work of equal value is problematic. Her analysis of the jurisprudence of Federal Supreme Court clearly demonstrated that the cases regarding discrimination of wages are frequently being sent back to the lower institution due to the lack of proof³⁴ which lowers motivation to make a claim of pay discrimination.

2.1.1. The long way of justifying direct pay discrimination

The Article 6 of GEA defines conditions that is necessary to state the fact of pay discrimination based on gender: “In relation to the allocation of duties, setting of working conditions, pay, basic and continuing education and training, promotion and dismissal, discrimination is presumed if the person concerned can substantiate the same by *prima facie* evidence”³⁵. This means that, if the complainant manages to justify the fact of discrimination, the burden of proof shifts to the employer which must prove that discriminations does not exist. To provide such proof, the employer must demonstrate that different treatment was caused by the objective factors influencing the value of work: education, qualifications, experience, concrete field of activity, implemented tasks, risks or other objective factors. If the employer fails to do that, the disparity of salary must be compensated in a year’s time. It is important to note that objective motives that legitimate the difference in remuneration only in the case if they influence the performance at work and its remuneration³⁶. Yet, this article is not as clear as it seems since it

³³ See Article 3, GEA

³⁴ K. Lempen, La discrimination salariale au regard de la jurisprudence récente 2011-2015 *in* : J.-P. Dunand/K. Lempen/P. Mahon. L’égalité entre femmes et hommes dans les relations de travail. 1996-2016 : 20 d’application de la LEg. Neuchâtel. Genève :Schulthess, 2016, p. 135-157

³⁵ See Article 6, GEA.

³⁶ ATF 130 III 145, consid. 5.2; ATF 127 III 207, consid. 3 *in* K. Lempen., Z. Seiler . Conventions collectives de travail et contrôle de l’égalité salariale entre femmes et hommes. 2020, <<https://archive-ouverte.unige.ch/unige:140149>> (Accessed 2021 09 16)

poses a question of its implementation: how much is sufficient to prove the fact of pay discrimination in practice?

According to the Federal Supreme Court, the comparison of salary with one colleague of other gender, exercising the same activity is sufficient to state the fact of pay discrimination. Some clarifications could be found in the jurisprudence of the year 2011, when the manager of the furniture shop in canton of Neuchâtel presented himself being a victim of pay discrimination since he claimed to have been earning less than his colleague working in the same network of shops within the same canton. However, the Cantonal Court did not find the claim legitimate because the wage gap had been less than 10 percent. After having analyzed this case, The Federal Supreme Court also found the case being not justified as the facts provided were not sufficient to prove that the functions of the employers were the same. Nevertheless, a very significant statement was made which may be relevant while deciding when pay gap could be considered significant. If there exist enough proofs that the applicant performs functions which are more difficult of his counterpart, then the wage gap which is less than 10 percent would be sufficient to justify the fact of pay discrimination³⁷.

However, the subjectivity still plays a significant role in the process of justification on the part of employer. For instance, a claim from a woman stating that she had been awarded a lower premium than her male counterpart, would easily be defeated in the event of the employer providing facts that her colleague man had been performing his tasks with a higher standard. Such hypothetical situation poses a question: who can ensure that the facts would not be taken out of context and result in the disadvantage of the complainant as the monopoly of facts usually lies in the hands of employer? Therefore, the lack of transparency remains a hurdle in justifying pay discrimination.

According to Ch. Spring, while evaluating the evidence and likelihood of the discrimination, some elements must be considered. There exist some indications, such as the absence of women in the highest positions or the bonuses allocated only to men employees which could possibly demonstrate discriminatory climate in the company. In this case, not only the court but the complainant herself may demand individual expertise to compare the value of diverse functions in the enterprise³⁸.

³⁷ ATF 4A_115/2011, consid. 5

³⁸ Ch. Sattiva Spring, La difficile preuve de la discrimination salariale, Plaidoyer 3/2013, p. 40-45

It should be also taken to consideration that limitations on dissemination of information regarding salaries at enterprises fail to address the issue of imbalance of power between the employer and the employees³⁹. For better transparency, it is generally recommended to develop more transparent labor markets, this means passing additional innovative laws on transparency, including promoting women's rights to request detailed information on pay, employers' duties concerning regular reporting on pay policies and practices, and conducting pay audits with the participation of stakeholder groups that involve directly affected individuals⁴⁰.

The shortcomings of the Article 6 of GEA that imposes the Court to proceed the reasoning of two stages should also been taken into consideration while analyzing current equal pay situation. As it was mentioned previously, after the Court determines that the proof of discrimination is delivered by an employee (assuring that the degree of burden of proof reduced), the employer must prove that discrimination does not exist in the company. In practice, complainants struggle to demonstrate that causal link between the adverse treatment and the protected characteristic. According to L. Farkas and O. O'Farrell, the key effect of the reversal of the burden of proof is that it alleviates the burden on complainants to show a clear causal link between the protected ground (gender) and the harm. Consequently, the burden of proof shifts even if the causation between the protected ground and the harm is only probable or likely. The problems arises in questioning how this connection is to be proved and therefore it is often a subject of debate⁴¹. In the case of Switzerland, such revolutionary proposition from prof. Bohler shall be considered: to modify the Article 6 of GEA so that the burden of proof would be reduced to much larger extent. This undoubtedly would require the colossal political will but would make the biggest impact on the judicial level and general situation of pay discrimination as well⁴².

Increased number of successful pay discrimination cases may become an enormous catalyst for wider change in general equal pat situation. However, victims of discrimination may be

³⁹ C. Estlund, Extending the Case for Workplace Transparency to Information about Pay *in* UC Irvine Law Review, 4: 781-800., 2014.

⁴⁰ J. Rubery, A. Koukiadaki, Closing the gender pay gap: A review of the issues, policy mechanisms and international evidence", p.105. https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_540889.pdf> (Accessed 2021 09 26)

⁴¹ L. Farkas, O. O'Farrell, Reversing the burden of proof: Practical Dilemmas at the European and national level, 2014 p. 47.

⁴² F. Bohler, La vraisemblance au sens de l'article 6 de la Loi fédérale sur l'égalité entre femmes et hommes au regard de la jurisprudence fédérale, Avis de droit, p. 54
<<https://www.ebg.admin.ch/ebg/fr/home/documentation/publications-en-general/publications-droit.html>> (Accessed 2021 09 27)

dissuaded from exercising their rights in court for fear of retaliation, or because of weak legislation, lack of faith in judicial settlements, or the complexity of procedures. Even where the legal provisions to protect individuals from reprisals exist, the proof requirements are often quite demanding, and evidence suggests that reprisals are still not uncommon in discrimination disputes⁴³.

Therefore, the employees who stand up for the victims of discrimination play an important role in implementing protection against discrimination in day-to-day working life. Prof. Pärli disclosed that Switzerland lacks proper protection of witnesses in the cases of gender pay compared with the practice of European Court of Justice. The concept of protection against victimization, which is integral to the EU directives on equal treatment, must be interpreted broadly and include all people who speak out in support of victims of discrimination. The victimization concept to a certain extent is addressed in Article 10 of GEA which implies increased protection against termination as a retaliatory measure. Yet GEA as does not explicitly make provision for any further protection to be extended to employees who defend or support victims of discrimination⁴⁴.

The lack of such law provisions could be considered as a drawback in GEA, as stronger protection would potentially encourage to witness in favor of the victim and limit the employers' capabilities to punish both the claimant and its supporters which will result in the increase in pay discrimination cases in courts. In the current situation, only a minority would risk to lose its position for the sake of human solidarity.

2.1.2. The arduous task of proving indirect pay discrimination

Even more difficulty comes with proving the fact of indirect discrimination. This form of discrimination, which conflicts with the principle of equal pay for work of equal value embedded in ILO Convention No. 100, accounts for the largest share of the residual wage

⁴³ OECD, Ending job discrimination, Policy Brief, July 2008, p. 5.< <https://www.oecd.org/els/emp/Ending-job-discrimination-2008.pdf>> (Accessed 2021 09 29)

⁴⁴ K. Pärli, Legal opinion "EU Equal Treatment Law on the Basis of Gender in Employment - Implications for Switzerland", Basel, 2021, p. 3.

gap⁴⁵.

According to the jurisprudence in Switzerland, discrimination of indirect nature is stated in such case when, despite the equal treatment, this treatment results in discrimination of other sex, affect larger proportion of the population, and could not be explained objectively⁴⁶. It is then recommended for the court, while evaluating if applied measures could disadvantage larger extent of population, to distance itself from the individual case and consider general context. The utilization of statistics and other probabilities could also be considered⁴⁷. However, to prove the indirect discrimination is even more challenging than a direct. A complainant who can identify a neutral criterion or practice which places her at a disadvantage, will only succeed if it will be demonstrated that other people who share her protected characteristic may be similarly disadvantaged.

For instance, the case of the teacher, working at the primary school in the canton of Aargau, could serve as one of the examples of failed attempt to prove the fact of indirect discrimination. This teacher made a claim to The Cantonal Court presenting herself as a victim of pay discrimination caused, according to the complainant, by the feminine specifics of the profession. The Cantonal Court rejected her claim stating that discrimination of salary was not legitimately justified. Furthermore, it was decided that the differences in salaries between the administrative and teaching personnel in general cannot be the basis of complaint. The Court admitted the fact that teachers receive 10 percent lower salaries than then personnel of administration, however, this difference touches all the department of teachers, including men as well.

The Federal Supreme Court admitted that this was the first case that a teacher at primary school made complaint of the wage discrimination based on gender. Nevertheless, it was decided that the profession of primary school teacher must be considered as of feminine nature because of the current statistics: in Switzerland, 81.5% of primary school teachers are women (the profession is feminine if the proportion of women is superior to 70 proc) and the number of men occupying the positions of primary school teacher's declines every year⁴⁸.

⁴⁵ILO Working Paper "A comparative analysis of promoting pay equity: models and impacts", 2006, Geneva https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_decl_wp_27_en.pdf (Accessed 2021 09 04)

⁴⁶ ATF125 II 385, consid. 3.b

⁴⁷ C. Whitebread, *Egalité salariale entre femmes et hommes : état des lieux* » in *L'égalité entre femmes et hommes dans les relations de travail 1996-2016: 20 ans d'application de la Leg.*, 2016, p.76

⁴⁸ ATF 8C_366/2014 , consid. 9.2.

It is necessary to emphasize that, according to the GEA, Swiss cantons as all employers must respect Article 8 of the Federal Constitution. The authorities are obliged to regulate salaries of their employees in non-discriminatory manner and in the event of violation - to find the right criteria for a retribution⁴⁹. However, the situation in Switzerland is more complex than it seems because of its federal peculiarities. As noticed Ch. Spring, the majority of pay discrimination cases in Switzerland generally celebrates the victory of federalism, when Federal Supreme Court is not inclined to put in question the decisions made by cantonal institutions. The Federal Supreme Court considers that such question must be within the jurisdiction of cantons as they have their separate system of evaluation and appropriate framework of expertise⁵⁰.

It is therefore quite evident that in Switzerland, an outcome of the battle for the right to equal pay on the large extent depends on the first instance – The Cantonal Court. It is striking that, according to the prof. Lempfen, even 70% of cases of pay discrimination were not successful and the Federal Supreme Court generally intervenes if the pay gap within the cantonal administration reaches 20 %. This means that only when the pay gap is sufficiently large, the claim can be admissible by a higher institution. This could be considered as a drawback in strengthening equal pay system because striving to eliminate pay discrimination, the smallest deviation from the norm counts.

As it was recommended by the ILO, new ways should be investigated to address the issue of depreciation of women's work in highly feminized occupations and industries. Raising wages in the latter is essential but not the only possible way - attracting more men into the education and health sectors is indispensable striving for more prominent change⁵¹. Such measures may contribute to lowering the complaints of indirect discrimination in Switzerland as well.

2.2.Revised GEA and its shortcomings

In 2016, the experts produced a critical report, where they enlisted numerous reasons why the enforcement of the GEA is much to be desired: complainants must reveal their identity (in 84%

⁴⁹ See Article 6, Federal Constitution

⁵⁰ Ch, Spring, Professions féminines et égalité salariale : un pas en avant et deux en arrière; analyse de l'arrêt du Tribunal fédéral 8C_693/2016 in Newsletter DroitDuTravail.ch, 2017

⁵¹ ILO Global Wage Report, p. 19

of cases their employment has ceased before judgment is delivered), litigation can be expensive, and courts of first instance recognize too many reasons to justify differences in pay⁵².

Therefore, it is not surprising that such status quo in equal pay situation resulted in Revised GEA, which came into the force on the 1st of July 2020. The Federal Council's first intention was that those enterprises with more than 50 employees conduct a wage analysis every four years. It was expected that greater wage equality would encourage more women to re-enter the labor market and so benefit the economy, whilst others feared that the measures would create too much red tape.⁵³

However, newly included Article 13 in Section 4 did not go that further and obliged companies with 100 or more employees at the start of any year conduct an internal equal pay analysis for that year. According to the new provision, the equal pay analysis shall be repeated every four years. If the number of employees falls below 100 during this period, the equal pay analysis shall be repeated when the number reaches 100 again. Revised GEA also notes that if the equal pay analysis indicates that the requirements are being met, the employer concerned shall be exempted from the obligation to conduct an analysis. Employers who have already been subject to such an analysis during the previous four years are also exempted, provided that the analysis has shown compliance with equal pay⁵⁴.

According to the Commission of the National Council for Science, Education and Culture⁵⁵, this law does not envisage neither the public list, nor the sanctions for enterprises which do not respect the principle of equal pay. It is not surprising - more cardinal amendments were objected by the significant opposition from the participants of discussions in the period of initial consultations. The intention of this amendment was to emphasize the individual responsibility of enterprises providing them a big discretionary power. This is approach which is common for neoliberal economies more benefits large enterprises and has so far demonstrated its inability to effectively fight against pay discrimination based on gender.

⁵² K. Lempen, A. Voloder, L. Jamet, Analyse de la jurisprudence cantonale relative à la loi sur l'égalité entre femmes et hommes (2004-2015), p.6 <https://www.unige.ch/droit/files/7215/0169/2406/analyse-LEg_2017-lempen.pdf> (Accessed 2021 09 20)

⁵³ The Swiss Parliament "Gender Equality: There's still some way to go" (<https://www.parlament.ch/en/%C3%BCber-das-parlament/political-women/gender-%20equality-still-some-way-to-go>) [Accessed 2021 09 02]

⁵⁴ GEA, Article 13

⁵⁵ Commission de la science, de l'éducation et de la culture du Conseil national, « Communiqué de presse : Loi sur l'égalité : La commission veut apporter des précisions concernant l'analyse de l'égalité des salaires », 24 janvier 2020 <<https://www.parlament.ch/press-releases/Pages/mm-wbk-n-2020-01-24.aspx?lang=1036>> (Accessed 2021 08 26)

As it could be seen from this amendment, radical changes could hardly be expected as the obligations for enterprises are exceptionally lax. The fixed number of 100 employers means that only a minority of companies in Switzerland are now required to conduct a wage analysis. New provisions do not provide any specific sanctions in the event of violations or in the event of irregularities being found - the obligation to repeat the analysis four years later, a period when the breach of GEA could be repeated many times. Therefore, the state left for the enterprises a wide margin of maneuver.

2.3. Equal pay analysis: drawbacks and potential opportunities

The new provisions specify that the equal pay analysis must be carried out following a scientific method, which complies with the law. In Switzerland such official system is *Logib*⁵⁶ - it enables employers to conduct their own equal pay analysis. Current assessment using *Logib* requires the employer to implement four steps: identify existing jobs or functions, evaluate each job, entering the data of employee, making attribution of jobs to employees. Further step is the automatic establishment of an expected ranking of employees, which is then compared against the effective ranking based on actual salaries. Through pair-based comparison, the instrument identifies individuals occupying a lower actual wage rank than would be theoretically expected, compared to at least one person of the opposite sex. These individuals are indicated as potentially suffering wage discrimination⁵⁷. However, systematic analysis of salaries within the enterprise is not directed to compare the salaries of two persons of the opposite sex – the comparison is performed by taking the integrity of the salaries in the company. Therefore, such analysis does not enable to evaluate the factors influencing separate salaries, it means – if the salary may be impacted by discriminatory prejudices.

It is also worth mentioning that such an evaluation does not automatically guarantee that the company's pay practice is free from discrimination⁵⁸. Pay discrimination can appear despite any established pay system due to the stereotypes that influence pay negotiations at the start of a new job or performance assessments related to bonuses or to the inclusion of potentially

⁵⁶ Equal pay analysis with Logib <<https://www.logib.admin.ch/home>> (Accessed 2021 09 13)

⁵⁷ Federal Office for Gender Equality, “Analyse equal pay – simply and securely with Logib” <<https://www.ebg.admin.ch/ebg/en/home/services/logib-triage.html>> (Accessed 2021 08 29)

⁵⁸ Hausamann/de Pietro, Teilstudie 2, in LEMPEN/VOLODER, JAMET, p. 43.

discriminatory variables. Furthermore, this approach does not take into consideration the recommendation of ILO and abstains from identifying the gender predominance of jobs. Since the prejudices and stereotypes about female jobs are the major cause of women's work being undervalued and underpaid, it is vital right from the start to identify which jobs are female dominated as these jobs are likely to be subject to wage discrimination. It is also important to identify male-dominated jobs for better comparison. It is possible, as it is done in some countries such as Sweden, to compare female-dominated jobs with all other jobs in the organization. In this case, it is not necessary to identify male-dominated jobs, therefore simplifying the process⁵⁹.

Nevertheless, it is possible to develop such approach that would enable the value of the company's functions to be defined and combined with variables that measure the individual characteristics of the employees. For example, Swiss experts suggest obtaining a score for each employee that would be based on the value of the function they occupy and on the human capital of the person concerned (e.g., years of service and professional experience). In theory, the person with the highest score would receive the highest pay and the person with the lowest score, the lowest pay. By drawing up a second ranking based on the real wages paid, the two rankings could be compared to detect any disparities. If these discrepancies were gender based this would lead to a supposition of gender pay discrimination regarding these individuals⁶⁰.

Iceland may be considered as one of the countries that could serve as a good example in striving establishing equal pay. In this country companies, and government agencies with more than 25 employees since January 2018 have been obliged to obtain government certification from an independent entity, certifying that their pay policies are following the principle of equal pay. Those companies that will not succeed in demonstrating pay equality will face fixed fines.⁶¹

The main distinctive feature is the difference in the application of burden of proof. As it was mentioned earlier, generally the complainant must present evidence of inequality in the workplace, but under Iceland's system, it's the employer that is responsible for evidence that employees are

⁵⁹ ILO: Promoting equity – Gender-neutral job evaluation for equal pay: A step-by-step guide, p.19 <https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_166583.pdf> (Accessed 2021 10 15)

⁶⁰ S. Binggeli / O. Schröter / J. Bieri, Pay equality analyses, *in*: Jusletter 26 March 2018, p.23

⁶¹ Government of Iceland, "Equal Pay Certification" <<https://www.government.is/topics/human-rights-and-equality/equality/equal-pay-certification/>> (Accessed 2021 11 23)

paid fairly. They do this using a two-step job evaluation system to disassociate work tasks from skills. This two-step system forces managers to value the task itself regardless of who is currently in that position. Even though in practice these changes are complex to implement, the employers appreciated the positive outcomes as the changes resulted in a straightforward structure, absolving some of the responsibility of individual managers, a confidence in the abilities of new hires, an increase in trust in the employer amongst female employees, and a sense of pride amongst all employees for being part of such a progressive project⁶². While Iceland's system is still in the early stages, initial signs suggest that requiring organizations prove they compensate employees fairly may be very effective.

Therefore, the recommendations by local Swiss experts and international practice in the application of equal pay analysis demonstrate that much more effective enterprise control with regards to equal pay could be achieved in Switzerland. Yet, it is evident, that political consensus and will, which would be a major catalyst for establishing more solid stance regarding possible future amendments of GEA, would not be easy to reach, keeping in mind the subtleties of federal system.

2.4. The Public Charter of Equal Pay and The Gender Equality Strategy 2030: an illusionary improvement?

The Charter was launched in 2016 by Federal Councilor Alain Berset and representatives from 25 cantonal governments as well as local authorities. It allows the public sector as an employer to highlight pay equality measures planned or already implemented, taking regional characteristics and political circumstances into account. The joint commitment is intended to have as broad an impact as possible and to send out a signal to employers in the public and private sectors. By signing the Charter, the Swiss Confederation, cantons, and communes manifest their will to advocate equal pay as employers, public tenderers, and subsidy providers. In concrete terms, this commitment entails promoting awareness of the GEA among public employees; regular monitoring of compliance with equal pay requirements within public administration, encouraging regular monitoring of compliance with equal pay requirements within public sector's institutions,

⁶² I. Wagner "How Iceland Is Closing the Gender Wage Gap" *in* Harvard Business Review, <https://hbr.org/2021/01/how-iceland-is-closing-the-gender-wage-gap> (Accessed 2021 10 16)

introducing control mechanisms to ensure compliance with equal pay requirements in the areas of public procurement and/or subsidization, participating in the monitoring program of the Federal Office for Gender Equality, which ensures the cohesion and visibility of this joint commitment⁶³.

However, despite positive intentions this Charter as all charters is not legally binding. Since it does not stipulate any deadlines and the implementation of different points could be performed gradually, it is not likely that it will be the major catalyst in promoting equal pay in the realm of public sector. Also, it does not target the issue of indirect discrimination of women typically in feminine professions as in a previously discussed case of primary school teacher.

Another promising document would be The Gender Equality Strategy 2030 (GES) which is the Swiss government's first national strategy specifically aimed at promoting gender equality. It focuses on four central themes: promoting equality in the workplace, improving work-life balance, preventing violence, and fighting discrimination. The key measures of the strategy are expected to be adopted or implemented by 2023. Elimination of pay discrimination is defined as one of the main objectives for the period of 2021-2023. It is optimistically expected that pay discrimination will be eliminated both in private and in public sectors. To implement this objective, the Swiss authorities are going to continue applying “Logib” system performing qualitatively analysis of salaries. The control of implementation will be performed the Federal Office of Gender Equality owning the mandate of adjudicator. Reinforcement of The Chart of Equal Pay is also expected by the year 2023. The strategy also states that The Federal Council examines the possibility of introducing obligation for the subsidized enterprises to provide the proof of equal pay and proof of stricter control of their practice⁶⁴.

The intention of establishing stricter and more legally binding requirements for subsidized enterprises could be considered as a positive shift. Nevertheless, most of the statements of GES seem more like vague political statements and the repetition of the promises that have been expressed in similar documents without enumeration of specific measures.

⁶³Charte pour l'égalité salariale dans le secteur public <<https://www.ebg.admin.ch/ebg/fr/home/themes/travail/egalite-salariale/engagement-du-secteur-public/charte-pour-egalite-salariale-dans-secteur-public.html>> (Accessed 2021 10 13)

⁶⁴ Bureau fédéral de l'égalité entre femmes et hommes, La Stratégie Egalité 2030, p. 6-7 <<https://www.admin.ch/gov/fr/accueil/documentation/communiques.msg-id-83294.html>> (Accessed 2021 10 18)

3. The positions of stakeholders: have expectations been met?

It is not surprising that revised GEA has been subject to a lot of criticism on behalf of trade unions, women organizations, and politicians, dedicated to battle gender inequality. The opinions to be presented in this section of course do not represent the position of all stakeholders interested in this subject, yet it enables to look at another coin of equal pay policies and try to answer a question if the amendments are exactly what their target – women – are really looking for.

3.1 Vicious circle of pay discrimination

The demands regarding equal pay expressed by feminist movements in Switzerland were best formulated in the manifesto of the National Women Strike of June, 2019⁶⁵. As stated by the document, current working hours are defined by a model of father working full time and his wife taking care of home and children. This schema, constructed by the stereotypes of masculinity and femininity is outdated. Hence, it is demanded that the working hours would be reduced to “live” more and work less. Familial and social responsibilities should also be shared equally between family members. The movement emphasizes the burden of invisible unpaid work that it is not taken into consideration, therefore it is demanded that domestic work would be recognized by social insurances. It is emphasized that so called feminine professions are depreciated and the competencies needed for them are not fully recognized, which prevent from the practical implementation of the principal equal pay for the work of equal value. Therefore, the revision of GEA, including stronger sanctions for enterprises and their control is essential. The sector of domestic work should also be the subject of the regulations of GEA since the right for equal pay must be the same for all irrespective of the work being performed.

Meanwhile, national counselor Isabelle Pasquier, fighting for gender equality in Parliament contributes with adding another undesirable consequence of gender pay gap and points to the current discussion taking place in Parliament of raising the retirement age for women from 64 to 65 – in line with that of men: *Women get 37% smaller pensions due to widely known reasons: they carry on the burden of unpaid work and because of that, many of them work part-time, which*

⁶⁵ Coordination Romande des Collectifs de la Greve Feministe et des Femmes, MANIFESTE <<https://www.grevefeministe.ch/manifeste-2/>> (Accessed 2021 09 28)

means they contribute less to their future pension. Also, they are overrepresented in the poor paid professions. These inequalities continues till the retirement age: as they earn less, they get smaller pensions, and this vicious circle never cease to continue. First measures should be: increasing the minimum wage; the problem of non-declared work should be properly tackled and the opportunity to work longer should be provided for those who wish to do that⁶⁶.

3.2. The unheard voice of Swiss syndicates

The national feminist strike took place on June 14 2019 and shortly after that, the revised GEA discussed in previous section was adopted. Aude Spang, the Secretary, responsible for the affaires of women and youth in one the most prominent syndicate in Switzerland “Unia”, does not find current changes to be sufficient to change existing status quo⁶⁷: *Labor unions as well as feminist organizations denounced the revised GEA immediately since the provisions that we had suggested were completely ignored. We demanded much more radical revision of this law. If we really want a law to be sufficient, it must be mandatory for all enterprises and the authorities must find appropriate technical tools to ensure it: if it was possible to make Logib work for the enterprises of 50 employees, it should be possible to find a right a tool for even smaller businesses. There should also exist real sanctions if discrimination is proved and overall process should be transparent to its core, which means it should be supervised not only by private accounting firms but by syndicates as well. Publishing results should also be mandatory. The revised GEA is effective as of 1 July 2020 and expires in 12 years, which is unacceptable and not going to change anything. When it comes to Gender Equality Strategy, our syndicate, which is considered one of the most influential in Switzerland, has never been requested to provide their comments.*

The Secretary of “Unia” perceives wage inequality not as independent problem but as an outcome of structural gender inequality: *The part of what is so-called “explainable” factors causing pay gap such as experience, age, education is not as explainable as it is supposed to be: we should raise a question: what leads to the situation that women have less experience and poorer education? It’s the outcome of the current social structure run by male-dominated model that is*

⁶⁶ National Counselor Isabelle Pasquier-Eichenberger, the comment obtained via email: isabelle.pasquier@parl.ch 2021 09 22

⁶⁷ Aude Spang, Secretary of Syndicate “UNIA”, Responsible for the Affairs of Women and Youth, interview held via Zoom (2021 09 16)

fundamentally erroneous. Yet, while contemplating future challenges and opportunities A. Spang remains optimistic: if we look back 50 years ago, we can see that things have evolved but these changes are not always seen right away. Every change in social history was brought by struggle and fighting, and any right we ever got was never caused by the initiative of bright left wing male politician - it happened because women fought for that and maybe pushed those men to do it. I strongly believe that the only way to get even more rights and to improve the situation is through struggle and through cooperation between syndicates and women organizations.

The counterpart of A. Spang - Michela Bovolenta - Secretary, responsible for the policy of women rights, migration, and children the Syndicate of Public Service (SSP VPOD), considers Gender Equality Strategy to be nothing more than the collection of sophisticated phrases with a lurking deception underneath. According to her, any new measures to strengthening gender equality could not be found in this strategic document - only a synthesis of those already in progress⁶⁸: *Equality Strategy 2030 totally ignores the demands of Feminist strike of 2019 and dismisses the recommendations for public sector workers provided by SSP. When it comes to the equality in work environment, The President of SSP, Katharina Prelicz made a proposition of Federal Council “Appreciation of women, working in care industry”, however, Federal Council rejected this proposition claiming that there is no need of supplementary measures! This demonstrates that GES 2030 promotes the policy of inefficiency and elitism as it proposes to increase the number of women occupying the positions of responsibility - a measure that touches only the minority of employees. Looking from the financial point of view, the Federal Council did not foresee any supplementary budget to assure the implementation of this strategy. The way to achieving equality seems still long and our mobilization is necessary more than ever. M. Bovolenta shares the same critique regarding current practice of equal pay analysis as her counterpart A. Spang: They continue to encourage the enterprises to perform pay analysis with Logib to verify if pay discrimination exist, yet there exists no obligation to correct the existing difference. Such measures have already proven to be inefficient. What is needed the most, it is minimum wage, state control and sanctions.*

⁶⁸ Michela Bovolenta Central Secretary, the Syndicate of Public Services. Commentary obtained by email and the permission to use author’s article “Une stratégie contre l’égalité” < <https://ssp-vpod.ch/news/2021/une-strategie-contre-legalite/>> (Accessed 2021 10 4)

Therefore, it could be noticed that the discourse of main stakeholders demonstrates the perception of wage inequality as the result of structural gender inequality. It is generally agreed that the comprehension of women - as caretakers - and men – as breadwinners - is slow to transform. The large number of women can never expect bigger wages and at the same time financial welfare in the retirement, as they are limited by the frames of “feminine” professions which are still over-represented by women. They remain the ones that take up part-time jobs at the same time carrying the burden of domestic duties which remains unrecognized not only by society but by social insurances as well. It is also evident that there is a huge discrepancy between demands of the main stakeholders and actual policy. Gender Equality Strategy, initially aimed at drawing the concrete steps to ameliorate gender equality, failed to take into consideration the demands of National feminist strike of 2019 and the recommendations of main Swiss syndicates.

Conclusions

My analysis of the mechanisms addressing the issue of equal pay, revealed that there exist significant shortcomings limiting the effectiveness of the implementation of equal pay principle both at the international and the national level. International human rights instruments regulating equal pay demonstrates that state’s obligations to fulfill its positive duties encompass the duty to ensure the implementation of equal pay principle. In this sense Switzerland is not fully in line with other advanced European countries. Distancing itself from the ratification of 12th Additional Protocol to the ECHR, Switzerland blocks the access to existing international grievance mechanisms for victims. The pending ratification of the 1st Optional Protocol to the ICCPR does not allow victims of discrimination to have recourse to the UN Human Rights Committee. In addition to that, reservations to the Article 26 of the ICCPR means that comprehensive discrimination prohibition has not been yet applicable. Recommendations from the ESC and CEDAW Committees seem to be hardly implemented - more effective legislative measures, creating the necessary foundations for equal opportunity in both economic and social terms are still very much needed in Switzerland. As the ILO and the CEDAW Committee constantly emphasizes in its recommendations, Switzerland should also investigate possible ways to address the undervaluing of women’s work in highly feminized occupations and industries.

Another obstacle preventing strengthening the implementation of equal pay principle is the limitations of Gender Equality Act. The analysis of equal pay regulations within domestic law showed that Swiss Confederation strives to fulfill equal pay principle with the Equal Pay Act. However, in practice progress in reducing gender pay gaps has been too slow. This acts directly touches only enterprises, having more than 100 hundred employers leaving untouched many small businesses with a wide margin to operate by their own. The absence of real sanctions for those who fail to achieve the equality of salaries and a lack of protection of victims could be considered as serious shortcomings. The analysis of the Swiss jurisprudence also demonstrated that in most cases, differences in salaries caused by the factor of gender were considered as not admissible by the court either because the comparison with neutral group or the opposite sex was not possible, or because the difference of remuneration was not objectively justified. The recommendations by experts to lower the burden of proof in pay discrimination cases and establish more transparency measures within the enterprises as well as the consideration of pay analysis methods performed in other countries are recommended.

The main line of the discourse of interviewed interest parties' leads to the conclusion that the acceleration of implementation of equal pay principle will require both political commitment and social transformation. As all interest parties agreed, the family model of "male-breadwinner" is still deeply entrenched in Switzerland. While public policies targeted at enhancing education, social protection, and improving social infrastructure, are indispensable to modifying gender pay gap, their effectiveness depends at least in part on shifting social norms and gender stereotypes. It is also clear that comprehensive approaches to gender equality are vital in combatting gender pay gap. The conciliation of the agendas of different political parties, women organization and syndicates seems hardly implemented, yet an only way to achieve more substantial change in the policy of equal pay considering the limitations of federalist system as such.

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