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## **GENDER EQUALITY IN HIGHER EDUCATION AS PRECONDITION OF INNOVATIVE AND INCLUSIVE SOCIETY IN THE EUROPEAN UNION**

### **Abstract**

*The right not to be discriminated on grounds of gender is universally considered as a fundamental human right, enshrined in a major part of the international instruments concerned with human rights, and as a public good as well. Unfortunately, gender inequality in EU Member States still exists despite a sophisticated framework of EU anti-discriminatory law. Women are likely to be discriminated against on the basis of gender with respect to access to education, especially higher education, and with respect to taking up employment in educational sector. This leads to underrepresentation of women in higher education institutions, especially at higher hierarchical levels in the research field. This tendency has negative influence on social inclusion and innovation – crucial factors in securing competitive advantage in a globalised economy. The aim of this article is to analyse the principle of equal treatment of men and women with respect to tertiary education in the context of building inclusive and innovative society.*

**Keywords:** gender equality, women in science, tertiary education, gender discrimination, equal treatment of men and women

### **Introduction**

The question of access to and completion of education, especially at the tertiary level, is at the core of the EU's actions. This is acknowledged by the strategy Europe 2020, whose headline targets include reduction of the share of early school-leavers to 10% from the current 15% and increasing the share of population aged 30–34 having completed tertiary education from 31% to at least 40%. This target fits in with the aim of achieving smart, sustainable and inclusive growth, which also includes smart, sustainable and inclusive social growth (therefore, society).

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Hence, the key element of EU development plan is social inclusion. Social inclusion is understood as a process by which efforts are made to ensure equal opportunities for all, regardless of their background, so that they can achieve their full potential in life (UN 2009). Social inclusion also encompasses equal educational opportunity for all members of society, regardless of their irrelevant individual characteristics, for example gender. Hence, an inclusive society is deeply connected to an equal society.

What is an equal society? The answer is unequivocal and dependent upon the applied equality formula. Regardless of methodological nuances (equality is a broad and complex concept with different meanings encompassing non-discrimination, equal treatment, formal equality, substantive equality, equal opportunities etc.), we can presume that equal treatment means treating everybody in a similar situation in a similar way, i.e. without discriminatory differentiation. Equality is in that sense connected with non-discrimination, i.e. a prohibition to make a distinction on the basis of a characteristic that is considered to be irrelevant or otherwise unacceptable, unless there is a justification (McCrudden, Prechal 2009). Equality does not mean treating everybody as the same if they are in a different situation. This different situation with respect to access to education could be characterised by the demanded level of knowledge or skills, which can be considered as a justified differentiating criterion. But if people have the skills that allow them to start education at a specific level and in a specific area, they should be allowed to do so regardless of their individual characteristics, e.g. gender. Such an attitude allows to preserve egalitarian, but at the same time exclusive, character of higher education.

The aim of this article is to analyse the principle of equal treatment of men and women with respect to tertiary education in the context of building an inclusive and innovative society.

## **1. Gender Equality as a Principle of the European Union Law**

The right to equal treatment of men and women and the prohibition of discrimination on grounds of sex is one of the key values of the EU. According to art. 2 of TEU, “the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail”. Nevertheless, gender equality cannot be reduced to axiology, as in the EU legal system it also has a normative meaning. As it has been

stated many times by the Court of Justice of the European Union, gender equality is the specific enunciation of the general principle of equality, which is one of the fundamental principles of the EU law (Case C-117/76). This principle requires that comparable situations must not be treated differently, and different situations must not be treated in the same way, unless such treatment is objectively justified (Case C-236/09). Thus, to determine whether the difference in treatment prohibited by law implies discrimination on grounds of sex, it is necessary to examine whether the representatives of men and women are in a comparable situation, and if so – to establish whether there were no reasons that would justify differentiation. According to the settled case law of the CJEU, differentiation between women and men in a similar situation would constitute unlawful discrimination only when it cannot be objectively and reasonably justified, i.e. if it does not pursue a legitimate aim, or does not maintain a reasonable balance between measures taken and the intended purpose.

Prohibition of gender discrimination is binding both for EU institutions and Member States, which are not allowed to discriminate against women or/and men either directly or indirectly.

Direct discrimination occurs when one person is treated less favourably on grounds of sex than another is, has been or would be treated in a comparable situation. Indirect discrimination is a situation in which apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary. According to EU anti-discriminatory law, the definition of gender discrimination encompasses also harassment and sexual harassment. Under the EU anti-discriminatory law, harassment is understood as unwanted conduct related to the sex of a person that occurs with the purpose or effect of violating the dignity of that person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment. As sexual harassment, EU equality directives qualify unwanted conduct related to the sex of a person which occurs with the purpose or effect of violating the dignity of that person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment [Article 2(1) of the 2006/54/EU Directive]. Prohibited gender discrimination also includes instruction to discriminate against persons on grounds of sex and any less favourable treatment of a woman related to pregnancy or maternity leave.

The already broad scope of application of the prohibition of gender discrimination has been broadened by the CJEU, which held that the principle of equal treatment for men and women cannot be confined to the prohibition of discrimination based on the fact that a person is of one sex or another. In view of its purpose and the nature of

the rights which it seeks to safeguard, it also applies to discrimination of people who underwent gender reassignment (Case C-13/94).

## 2. Women in Higher Education

The right not to be discriminated on grounds of gender is universally considered as a fundamental human right, enshrined in a major part of the international instruments concerned with human rights, and as a public good as well. Unfortunately, gender inequality in EU Member States still exists despite a sophisticated framework of EU anti-discriminatory law. This also refers to gender inequalities in the area of education and should be considered in two aspects:

- 1) access to education, especially higher education,
- 2) underrepresentation of women at higher hierarchical levels in higher education institutions.

This first aspect could be the result of a narrow scope of application of the prohibition of gender discrimination in the EU law. EU directives stipulate the principle of equal treatment of men and women with respect to a limited number of issues, i.e. with respect to employment, social protection (Directive 2006/54/EC) and access to services, this however does not include educational services [Article 3 (3) of the Directive 2004/114/EC]. The access to higher education is protected only under the racial equality Directive 2000/43/EC with respect to racial or ethnic origin. As a result, the EU law does not provide any protection from unequal treatment based on e.g. disability, sexual orientation, social status or gender. It could be one of the reasons why despite an increase in the number of student in recent years, there is widespread evidence of underrepresentation of people of low socio-economic status, people with disabilities and certain minorities in higher education and why, despite progress towards gender equality, women are still underrepresented in science and technology [Recommendation No. R (98) 3].

What does it mean that this whole group of people should be protected against discrimination in access to education? Does it mean that access to higher education should be granted to all of them on no conditions? Certainly not. Undoubtedly, admission may be preceded by a preliminary examination that allows to assess the candidates' ability to study at the specific faculty or field of study or by any other recruitment procedure ensuring proper selection of future students. The principle of non-discrimination requires however that recruitment process is performed with uniform and objective criteria for all candidates, so that admission criteria are

transparent and as simple and as possible. Refusal of admission must be justified by reasonable, i.e. relevant and proportionate, arguments. Such an argument may be the skills or level of qualification, but never a person's irrelevant characteristics such as age, disability or gender (Szczerba-Zawada 2012). Only clear, objective and fair admission arrangements that do not either directly or indirectly disadvantage a person from a specific minority group can be considered as complying with the equality principle. This also refers to gender minority. Although there is not a great deal of information available as regards sex-segregated education (which is unregulated by EU law), the studies show that gender is one of the criteria of unequal access to education. In Ireland and the UK the prohibitions on sex discrimination in education in domestic law contain exceptions covering such education. In Spain, where public schools are integrated, private schools are entitled to educate boys and girls in separate classrooms. EU Member States also have a problem with gender equality with respect to access to higher education. For example, in not-so-distant past Polish military universities (e.g. Military University of Technology) did not allow women to participate in procedures for admission to higher studies. It must be emphasised that this discrimination is not only directly based on sex, but could also take the form of so-called indirect discrimination based on a *prima facie* objective characteristic, such as religion/belief, poverty or lack of childcare facilities and care for other dependents, which combined with gender affects women's and girls' educational opportunity.

To sum up, the Member States shall ensure procedures allowing all qualified applicants to pursue studies. The implementation of non-discrimination standard with respect to education, especially tertiary, should always be considered as added value – as contribution to securing democracy and building confidence in situations of social tension [Recommendation No. R (98) 3]. Obviously, widening opportunities for members of all groups in society to participate in higher education can be a challenge for maintaining good quality of higher education, but it should not be used as justification for lowering the teaching standards. There are scholars who are responsible for setting good quality of higher education, and taking steps to ensure such quality may be beneficial to future economic and social development.

The second aspect – women in science and research or, to be more precise, the lack thereof – has been recently recognized by the European Parliament. The Committee on Women's Rights and Gender Equality of the European Parliament has undertaken an initiative in order to examine the reasons why women are underrepresented at higher hierarchical levels in the research field, even in sector where they represent a majority – the educational sector. Since 2003, every three years the Directorate General for Research and Innovation of the European Commission publishes statistics and indicators on women in science and research which show, unfortunately, that

women employed as researchers still remain a minority (although the situation is getting better). According to the latest *She Figures 2012*, the proportion of female researchers has been growing faster than that of men (5.1% annually over 2002–2009, compared with 3.3% for men); the same holds true for the proportion of women among scientists and engineers). Nevertheless, women's academic career remains markedly characterised by strong vertical segregation. In 2010, the proportion of female students (55%) and graduates (59%) exceeded that of male students, but the number of men exceeded the number of women among Ph.D. students and graduates (the proportion of female students stood at 49%, and that of Ph.D. graduates at 46%). The same tendency is visible in Poland – women amount to 60% of students, but only 43% among Ph.D. graduates. Furthermore, women represented only 44% of grade C academic staff (the first grade/post into which a newly qualified Ph.D. graduate would normally be recruited) – in Poland 44% at the assistant professor's post (Młodożeniec, Knapieńska 2013), 37% of grade B academic staff (researchers working in positions not as senior as the top position, but more senior than newly qualified Ph.D. holders) – in Poland – 32% of docent and 20% of grade A academic staff (the highest grade/post at which research is normally conducted) – in Poland 27%. The underrepresentation of women is even more striking in the field of science and engineering. In terms of decisionmaking in 2010, on average throughout the EU-27, 15.5% of institutions in the Higher Education Sector were headed by women, and just 10% of universities had a female rector.

The reasons for this are varied. First of all money – the proportion of female researchers is negatively correlated with the level of R&D expenditure, which corresponds to the general trend according to which well-paid occupations are dominated by men. A gender gap continues to exist in the success rates of researchers to obtain research funding: higher success rates are recorded for men. The second question – the work-life issue. Work-life balance seems to be a key element in achieving gender equality. Apart from a “glass ceiling”, there is also a “maternal wall” that hinders the career of female researchers. Although work-life and work-family balance, in principle, concern scientists and researchers of both sexes, women are usually more affected, given that they still carry the main burden of care and domestic work. The third question - women's access to decisionmaking in science and research. The most important institutions in the scientific landscape continue to be dominantly led and managed by men (Publications Office of the European Union: 2012). It is a reflection of a broader problem of underrepresentation of women in the decision-making process. The abovementioned discriminatory treatment of women results from gender bias and stereotypes that affect women's scientific career: in hiring, publishing and funding. This is characterised by correlations between – the masculinity of women's first names

and the likelihood of being awarded judgeships, of downgrading psychologists' and sociologists' curriculum vitae when they bear a woman's name or of discriminatory pay for female attorneys (Ceci, Williams 2011). Even if many of these situations are not directly connected with gender (i.e. they do not amount to direct sex discrimination) but are caused by complex constellation of reasons, including gender, it does not mean that they are not discriminatory in nature. The fact that women have fewer financial resources because of their being more apt to occupy teaching-intensive positions or part-time positions (because of their gender), which results in lower quality of their papers in comparison to those of male authors (who have access to more resources), which in turn is the reason for the rejection of female authors' papers, still has to be considered discrimination, although different in character than in the situation in which the reviewers are aware of authors' sex and are less likely to accept women's papers. The reason for unequal treatment in each of these exemplary situations is gender, the difference lies only in the way and stage of application of the discriminatory criterion: either at the moment of assessing the quality of work (direct discrimination) or at the moment of accessing resources that influence the quality of the work assessed (indirect discrimination). The principle of gender equality proscribes both forms of discrimination – direct discrimination (discrimination based on gender *per se*) and indirect discrimination (discrimination based on criteria other than gender but leading to less favourable treatment because of gender). Hence *prima facie* objective criteria, such as family formation and childrearing, gendered expectations, lifestyle choices and career preferences that affect women's position in science (more than men's) because they represent the particular gender, has to be treated as lowering women's educational and professional equal opportunity and fought with anti-discriminatory instruments in order to mitigate their underrepresentation in tertiary education.

### **3. Equality Between Women and Men as a Condition of Social Inclusion and Innovation**

The problem in achieving the standard of real gender equality with respect to tertiary education suggests the need to re-examine the methods used to achieve substantive equality between men and women. A range of new approaches is emerging, which aim at institutional change through proactive measures to promote equality (Fredman 2009). Amongst the practices that encourage to apply gender equality in practice is diversity management.

Diversity management – whereby an organization recognises, values and includes women and men of different ages, abilities, ethnic origin, religion or sexual orientation – as studies show, makes for good business sense and leads to increasing the level of innovation and creativity of the organization (Stuber 2012). Gender diversity in decisionmaking bodies is shown to lead to innovative ideas, increased competitiveness and performance (Committee on Women's Rights and Gender Equality 2015), which also applies to university boardroom.

In that perspective, the link between women's non-discrimination with respect to education and innovative society seems to be obvious. This is of great importance, as knowledge and innovation are crucial in securing competitive advantage in a globalised economy (Managing Diversity at Work 2012). Taking advantage of equal access to higher education of men and women requires developing a policy of equal opportunities. This set of instruments is designed to meet all the requirements of the principle of equality. It is not limited to formal or *de jure* equality and the lack of discrimination, but encompasses also full and effective equality, so as to enable all individuals to develop their potential. The promotion of effective equality may require the adoption of special measures where it is necessary to take into account the specific conditions of groups in society that have been discriminated against so far in order to compensate for it [Recommendation No. R (98)3]. Such measures are allowed under EU law also with respect to gender, e.g. art. 3 of Directive 2006/54/EC stipulates that Member States may maintain or adopt measures with a view to ensure in practice full equality between men and women in working life.

These provisions have permitted exceptions from the concept of formal equality and opened the way for national measures in favour of women in order to promote equal opportunities for women and men (Ramos Martín 2013). Although the EU law restricts application of positive measures exclusively to eliminate existing inequalities affecting women in working life and to promote a better balance between the sexes in employment, it does not proscribe the Member States from setting higher standards of protection against gender discrimination in education as anti-discriminatory directives set the lowest common standard that must be achieved in all EU Member States. This minimum standard does not forbid Member States to adopt general and specific measures in order to eliminate or counteract the prejudicial effects on women in employment or seeking employment in tertiary education (e.g. in higher education institutions) which arise from existing attitudes, behaviour and structures based on the idea of a traditional division of roles in society between men and women, to encourage the participation of women in various occupations in those sectors of working life where they are underrepresented (i.a. in R&D sector) and at higher levels of responsibility in scientific institutions in order to achieve better use of all human



resources (Ramos Martín 2013). Only such measures will allow to build a “higher education population” that reflects the diversity of a changing society in EU Member State.

The obligation to promote social inclusion and participation of people with fewer opportunities in the field of education, and thus, women as well, is expressly placed on EU institutions, especially – European Commission – and Member States under a new EU programme for education, training, youth and sport, Erasmus+ (art. 11 of Erasmus+ regulation). What is very important within the framework of Erasmus+ programme, diversity and inclusion are treated as interconnected – both are equally important. Considering women as falling under the category of “young with fewer opportunities” allows to see the following aims of the programme in gender perspective (European Commission 2014):

- to create a common understanding of those who may be considered as people with fewer opportunities and a coherent framework of support for the Erasmus+ programme feature “Equity and Inclusion”;
- to increase commitment to inclusion and diversity from different actors in Erasmus+: Youth in Action;
- to promote Erasmus+: Youth in Action as a tool to work with young people with fewer opportunities and to actively reach out to disadvantaged groups;
- to reduce obstacles for young people with fewer opportunities to participate in the programme and help applicants to overcome obstacles;
- to support organisers in developing quality projects that involve or benefit young people with fewer opportunities by using such instruments as providing training, tools, funding, coaching;
- to set a link where relevant to other initiatives that benefit young people with fewer opportunities – both cooperation with other sectors as well as youth policy and projects at local, national and international levels;
- to invest in the intercultural and social skills of young people and youth workers, as well as their competences and ability to manage and work with diversity in all its forms;
- to increase the recognition of the experience and skills gained by young people with fewer opportunities in Erasmus+ and by youth workers working with them;
- to ensure that the focus on inclusion and diversity is present at all stages of Erasmus+: Youth in Action management, including promotion, support for applicants, selection of projects, and evaluation and dissemination of project outcomes.

By achieving these aims with respect to gender inequalities, Erasmus+ can give rise to a positive change for women as a disadvantaged group in society.

## Conclusions

Women encounter numerous obstacles in the field of education of social, economic and cultural nature that affect their educational situation irrespectively of or at least not directly because of their gender. But there are numerous situation in which gender seems to be the main (or even the exclusive) reason of their reduced educational opportunities. In this context, gender should be considered as an “absolute exclusion factor” leading to the violation of women’s fundamental right – the right to equal treatment. “When people’s fundamental rights are violated, they are always disadvantaged, no matter how common this situation is in a particular context” (European Commission 2014). Inequalities of men and women with respect to education, especially tertiary, should be considered as a serious social problem that influences the possibility of building an inclusive and innovative society, a society that is able to compete in a globalised world. In this perspective gender discrimination seems to be a multifaceted problem of social, economic and political nature.

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