

## Interview with Professor Barbara Havelková\*

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*Sinossi:* In questa intervista del 28 ottobre 2024, durante la serie Equality Talks dell'Università di Udine, la Professoressa Barbara Havelková affronta l'evoluzione e le sfide delle leggi sulla parità di genere in Europa, con un focus sull'Europa centrale e orientale. Analizza come le riforme imposte dall'UE affrontino resistenze culturali in queste regioni, come dimostrato dalle leggi antidiscriminatorie nella Repubblica Ceca, dove l'inerzia sociale e istituzionale ne limita l'impatto. Havelková sottolinea il ruolo della Corte di Giustizia Europea nell'avanzamento dei diritti di genere e l'importanza dell'intersezionalità e delle misure preventive, come la Direttiva UE sulla Trasparenza Retributiva, per affrontare le disuguaglianze strutturali in modo più efficace rispetto al solo contenzioso. Discute, inoltre, i cambiamenti culturali promossi da #MeToo e l'adozione di quadri giuridici basati sul consenso per la violenza di genere, insieme al ruolo dell'accademia nella riforma legislativa. Questa intervista evidenzia la complessità dell'adattamento delle misure di parità di genere in contesti europei diversi.

*Abstract:* In this interview conducted on October 28, 2024, during the Equality Talks series at the University of Udine, Professor Barbara Havelková addresses the evolution and challenges of gender equality laws in Europe, with a focus on East Central Europe. She examines how EU-imposed reforms face cultural resistance in these regions, as seen with anti-discrimination laws in the Czech Republic, where societal and institutional inertia limit their impact. Havelková underscores the role of the European Court of Justice (ECJ) in advancing gender rights and the importance of intersectionality and preventative measures, like the EU Pay Transparency Directive, to address structural inequalities more effectively than litigation alone. She also discusses cultural shifts driven by #MeToo and the adoption of consent-based legal frameworks for gender-based violence,

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*along with academia's role in shaping reform. This interview highlights the complexities of adapting gender equality measures across diverse European contexts.*

## 1. Gender Equality and Legal Reforms in Europe

*Q1: How would you assess the pace of gender equality reforms in East Central Europe compared to the West, and what do these differences reveal about broader societal and political dynamics?*

*Havelková:* In East Central Europe, a notable tension exists between EU-imposed gender equality reforms and national perceptions. Anti-discrimination laws in the Czech Republic, for example, were mandated by the EU and introduced in Parliament primarily as membership requirements, with minimal discussion of their social benefits. As a result, these laws are often viewed as foreign impositions, leading to limited enforcement. This issue is compounded by a legal culture—also seen in Italy—of nominal compliance, where laws are passed but lack genuine integration. In contrast, countries like the UK typically adopt laws only when there is a commitment to enforce them fully.

Additionally, East Central Europe's state socialist legacy complicates views on gender equality; while socialism promoted women's workforce participation, it left domestic roles and gender-based violence largely unaddressed. Terms like gender, and the whole concept that our ideas about characteristics, abilities, roles, preferences of men and women, face resistance. This is both tied to state socialist past – in that equality of sexes was proclaimed but never really realized, – and current opposition from institutions like the Catholic Church. This complex history makes substantive reforms difficult, as engagement with gender as a social construct remains limited.

*Q2: Which areas of gender equality law need the most urgent reform, and what institutional or legislative changes are key to achieving substantive equality?*

*Havelková:* Recent years in Europe, particularly in East Central Europe, reveal that progress in gender equality is not linear; regressions are possible. Even just maintaining existing rights requires vigilance. The backlash against women's rights, especially reproductive rights, is evident in Poland's near-total abortion ban, contrasting starkly with France's recent constitutional protection of reproductive rights. This divergence reflects varying national approaches and underscores that gender equality advances differently across regions, with some areas seeing rights expansion and others experiencing retrenchment. In the Czech Republic, for example, reproductive rights discussions extend beyond abortion to include concerns over obstetric violence. There is a pressing need for reforms addressing how pregnant women are treated in medical settings, where systemic disregard for women's autonomy often frames women's interests as secondary to those of the child. Addressing gender equality issues effectively requires a localized, bottom-up approach, as the challenges differ significantly between countries. Listening to those directly affected

and fostering public discourse are essential steps in advancing fair, just, and effective reforms that resonate within each unique context.

## 2. The Influence of EU Law on National Gender Equality Policies

*Q3: How has EU law shaped national gender equality policies, especially in more conservative or post-socialist Member States? Could you provide examples where EU directives have spurred significant reforms?*

*Havelková:* In studying European anti-discrimination law, I have come to appreciate the critical role of equality bodies established by the Millennium anti-discrimination directives. Across the EU, these bodies vary significantly in their powers and functions. For instance, the Czech equality body is notably limited—it cannot decide cases, even in a non-binding way, nor represent individuals in court. However, despite their different mandates, many equality bodies have been highly effective in monitoring, educating, and providing a low-barrier platform for addressing discrimination. This institutional approach offers an alternative to individual litigation, which is often costly and emotionally taxing. People who may face discrimination can seek assistance from these bodies without legal fees or the formalities of a court, creating a supportive environment that many find preferable to traditional litigation.

Moreover, the EU has recently strengthened its stance on gender-based violence through the ratification of the Istanbul Convention and other measures, such as victim protection directives. These frameworks aim to address violence against women even in countries that have not ratified the convention, such as Bulgaria, where the Constitutional Court ruled it incompatible with the national constitution's biological view of gender.

The problem is that while such EU actions substantively enhance protections (at least on paper), they can also be perceived as overreach in Member States with conservative views, potentially sparking backlash. This tension between advancing rights and respecting national sovereignty mirrors similar debates around affirmative action, raising questions about the balance between promoting equality and maintaining political harmony within the EU.

*Q4: What tensions arise between EU-wide gender equality standards and national sovereignty, especially in post-socialist or conservative Member States? How do you see these dynamics evolving?*

*Havelková:* In East Central Europe, particularly in the Czech Republic, dynamics around gender, class, and social identity reveal unique tensions between democratic liberalism and socially conservative ideologies, even within pro-democratic groups. In the Czech Republic, socially conservative values persist strongly, even within pro-democratic circles. This resistance also extends to class issues, deeply rooted in post-socialist legacies.

Following the 1990s, neoliberalism or even ‘anarcho-capitalism’ gained considerable traction in Czech society, embedding ideals like the “invisible hand of the market” and laissez-faire economics. This shift left a lasting impression. Left-leaning spaces in politics are hollowed out, delegitimized by the state socialist history. Any mention of social justice is frequently dismissed as “neo-Marxist.” Consequently, there exists a political gap, with little tolerance for socially progressive agendas, which are often equated with failed state socialism.

By contrast, Western Europe sustains more robust left-wing dialogues on issues of identity, race, gender, and class, even if factional disagreements exist. Progressive movements for gender, race, and class equity, while contentious, have greater legitimacy and presence in Western Europe. In post-socialist countries, however, both identity-based and class-focused progressive conversations face significant challenges, as their legitimacy remains weakened by the lingering shadows of the region’s political history.

### 3. The Role of Courts in Advancing Gender Equality

*Q5: How pivotal have national and European courts been in advancing gender equality, and are there key cases where judicial intervention has significantly reshaped the legal landscape?*

*Havelková:* From a historical perspective, European Court of Justice (ECJ) rulings have been instrumental in advancing gender equality at the EU level. For example, the *Defrenne* saga, among other things, established the direct effect of the equal pay provision in the Treaty of Rome even in horizontal situations. In other words, the obligation to pay men and women equally was put not only on the state, but also on private employers.

And many were even of fundamental constitutional importance. For example, *Von Colson and Kamann*, where female applicants were denied prison jobs due to gender, led to the establishment of the principle of harmonious interpretation, also known as indirect effect. However, while courts are vital in shaping the law, their capacity for driving systemic change is limited when cases involve individual discrimination litigation at trial level. Pursuing a court case demands substantial resources—financial, emotional, and temporal—which can be especially burdensome for already vulnerable individuals.

This limitation underscores the need for preventative measures beyond litigation. The recent EU Pay Transparency Directive, for example, requires companies of a certain size to monitor, anonymize, and disclose pay data, reducing disparities proactively. Similar measures, like anti-harassment codes, aim to prevent discrimination and harassment before they occur. Courts thus remain essential as a last resort, but embedding preventative mechanisms in workplaces and society as a whole promises to strengthen anti-discrimination laws, fostering a culture of accountability and fairness.

## 4. Comparative Perspectives on Anti-Discrimination Law

*Q6: How do approaches to anti-discrimination law differ between Western and East Central Europe, particularly in gender equality? How do historical, cultural, or political factors shape these differences?*

*Havelková:* Anti-discrimination laws differ considerably between Western and East Central Europe due to historical, cultural, and socio-political factors. The Nordic countries, has integrated gender equality into the very fabric of its welfare and economic systems, focusing on both individual rights and social structures that support these rights. This includes provisions for extensive parental leave, universal childcare, and incentives for gender diversity in leadership. These countries generally adopt a proactive approach, aiming for substantive equality that addresses the root causes of gender inequality. Some previously more conservative countries, like Germany, have adopted this too, and it has served them well and improving gender equality.

In East Central Europe, however, anti-discrimination law is very much understood in terms of formal equality. Substantive equality measures – like indirect discrimination, shift of burden of proof, and positive action – are viewed with great suspicion, as something antithetical to equality.

*Q7: What lessons can be drawn from Nordic countries, often seen as models of progressive gender policies, for other nations aiming to implement more effective gender equality measures?*

*Havelková:* Transplanting social policies across cultural contexts proves challenging, particularly without local readiness and support. Effective policy adaptation requires a nuanced approach rather than uniform application. For instance, Nordic countries like Sweden and Norway have adopted radical feminist models regulating prostitution, viewing it as inherently oppressive. They criminalize buyers rather than providers, still using criminal law, but diverging from the historical approach of penalizing service providers, in other words, mostly women. Implementing it in East Central Europe would be challenging without extensive social infrastructure, such as requalification programs and support for individuals exiting prostitution. Also, it requires law enforcement to be understanding of vulnerable women, and brave to confront often powerful male buyers. I do not think we're there yet.

In contrast, policies around parental leave may translate more effectively across contexts. Sweden's shared parental leave model, incentivizing both parents to participate through financial support and loss of entitlement if unused, promotes equitable caregiving. The Czech Republic's model, by contrast, is long, low-paid and taken primarily by women, reinforcing gender disparities, as the long absence from the labour market impoverishes women. Research from France also indicates that early childcare socialization benefits children educationally. Germany illustrates how such Nordic-inspired models, adapted with

careful investment, can shift gender norms, boosting both women's labour participation and broader equality across varied social landscapes.

## 5. Intersectionality in Anti-Discrimination Law

*Q8: As intersectionality gains importance in understanding inequality, how do you see it shaping contemporary anti-discrimination law, especially in addressing overlapping forms of marginalization?*

*Havelková:* To me the question is whether intersectionality can be incorporated into anti-discrimination law without major structural changes. Sometimes it depends on the wording of statutes. But often it is about the courts' willingness to consider individuals' complex identities and context. Doctrinally, shifting the emphasis away from comparators and focusing on disadvantage or adverse treatment helps. European anti-discrimination law, in principle, permits this, depending on how it is implemented domestically.

However, intersectionality remains challenging, as courts often prioritize the most prominent basis of discrimination, addressing only one aspect of complex cases. For example, in India's *Vishakha* case, a group of men brutally raped and killed a social worker, woman, and Dalit. In that case, the Indian Supreme Court established protections against gender-based violence, but the caste aspect was largely overlooked, missing an opportunity to address intersectional harms. This challenge is also seen in the European Court of Human Rights (ECtHR), which may settle on one violation (e.g., Article 8—private and family life) without addressing discrimination (e.g., Article 14), leaving aside intersectional one. While this can simplify reaching a decision and writing a judgment, this approach risks overlooking key aspects of individuals' experiences.

To partially recognize intersectionality, the ECtHR assesses specific vulnerabilities of disadvantaged groups, scrutinizing actions more thoroughly when they impact these groups. Though not explicitly intersectional, this method allows courts to consider compounded disadvantages without significantly altering legal frameworks.

*Q9: What are the main legal challenges in proving discrimination cases involving intersecting identities, and how might practitioners and courts address these to ensure more comprehensive protection?*

*Havelková:* I think a big part of the problem lies in legal education, if it's very inward-focused. Many continental legal systems view law as an autonomous field, detached from social realities, which may suit routine cases but leaves practitioners underprepared for complex cases involving social, political, or philosophical issues.

Teaching feminism is valuable, but a similar effect can be achieved by fostering a critical, external perspective on the law – especially through socio-legal projects – an approach often rooted in feminist theory but accessible through other disciplines as well. Feminist legal critique has long emphasized a socio-legal, contextual view of law, teaching students

to analyse law within broader social dynamics. This perspective is crucial for developing a more nuanced understanding of law's role in society.

## 6. Gender and Economic Inequality in the Workplace

*Q10: The persistence of the gender pay gap points to deep-rooted structural inequalities. What do you see as the primary causes, and how can legal mechanisms more effectively address both overt and subtle forms of economic inequality?*

*Havelková:* The European Commission attributes the gender pay gap to several interconnected factors beyond explicit workplace discrimination. While legal measures, like equal pay laws and transparency policies, address some disparities, occupational segregation and unequal divisions of unpaid labour contribute significantly. Women remain concentrated in lower-paid, feminized sectors, while men dominate higher-paying fields. Without broader policy changes in family, social, and tax structures, workplace equality initiatives risk simply increasing women's workload without alleviating domestic responsibilities—a dynamic observed under state socialism, where women's employment rose without corresponding shifts in home labour. Achieving gender pay equity thus requires a holistic approach that spans family support, education in traditionally male-dominated fields, and societal shifts in expectations around unpaid care. Comprehensive gender equality, therefore, extends beyond pay laws and calls for systemic reform across multiple layers of policy to create truly balanced economic opportunities and responsibilities for both women and men.

*Q11: How can anti-discrimination law be used to tackle entrenched issues like unpaid care work and occupational segregation that still hinder women's full workforce participation?*

*Havelková:* Law and policy both play crucial roles in addressing gender equality, especially through initiatives like Sweden's parental leave model. This approach divides unpaid domestic work between men and women, encouraging both parents to participate in childcare and housework. Research from Sweden shows this policy has lasting impacts: it enables men to develop parenting skills and take on household responsibilities independently, laying a foundation for long-term equality in domestic roles.

Moreover, shared parental leave disrupts employers' biases against hiring or promoting women based on anticipated childcare obligations. When both parents are likely to take leave, the incentive to discriminate against women decreases, creating a more balanced labour market. This model can also reduce unpaid work by collectivizing some aspects, such as public provision of childcare and elder care. Germany, for instance, now sees access to childcare as a child's right, ensuring that families can depend on affordable early childcare support (although implementation varies somewhat).

Frankly, there are lots of things which can and will be automated in the future. But care is not one of them. More focus on, support for, and valuing of care – whether for children, the sick, or the elderly – will continue to be essential, . As societies age, demand for elder

care will rise, requiring thoughtful policies that support not only those receiving care but also caregivers themselves, recognizing the vital contributions they make to society.

## 7. The Impact of #MeToo and Social Movements on Gender Equality Law

*Q12: How has the #MeToo movement influenced legal frameworks on gender-based violence in Europe, and what further changes are needed to address the systemic issues it exposed?*

*Havelková:* The #MeToo movement encountered stronger, open opposition in East Central Europe compared to subtler, private resistance elsewhere. Yet, even in regions where the movement was not as expansive, its impact on social understanding was significant. A critical shift emerged as many men moved from viewing gender-based violence as rare, isolated incidents to recognizing it as a widespread reality affecting those close to them—partners, friends, and family. This realization fostered a cultural shift from automatic disbelief of victims to an assumption of credibility, fundamentally changing how many perceived the prevalence and nature of harassment.

And an equally important realization was that perpetrators are not some dark, lurking, twisted aggressors, but many men one knows. A prominent example is the ongoing *Pelicot* case in France, involving a woman who waived her anonymity after enduring prolonged abuse by her husband, who facilitated assaults by others. This case has resonated widely, challenging assumptions about perpetrators, who were often ordinary, seemingly respectable men. The case illustrates that, contrary to some narratives, violence is not confined to “deviant” individuals; it permeates everyday society, affecting women around us and perpetrated by familiar men.

Even without immediate legal reforms, this cultural shift has likely influenced the application of existing laws. Additionally, in many countries, the movement coincided with shifts towards consent-based legal definitions of rape, as promoted by the Istanbul Convention. This alignment has led to changes, even in places like the Czech Republic, where consent is now central to defining rape, replacing previous standards based solely on violence or threat.

## 8. The Role of Academia in Shaping Anti-Discrimination Law

*Q13: How do you see the interplay between academic research and legal reform in advancing gender equality? Can you share instances where scholarship has directly shaped policy or rulings?*

*Havelková:* It is an important question. Some colleagues (such as Jan Komárek and Tarunabh Khaitan) argue that academia should avoid activism, warning that directing interpreta-



tions to suit one's goals compromises scholarly rigor. I agree that as scholars with personal beliefs, we must strive for objectivity—acknowledging our perspectives while aiming for fair, thorough analysis.

Feminist critique has shown how neutrality can mask biases, but it does not reject the goal of objectivity; instead, it calls for awareness of positionality. While I hope my findings inform activism or legal reform, scholarship itself requires rigour and should not be reverse engineered from political aims; academic inquiry must maintain its integrity.

*Q14: What role should legal academics play in shaping public discourse and policy on gender equality, and how can they bridge theory and practical reform for societal change?*

*Havelková:* As an academic, I believe it is crucial to distinguish expert analysis from personal opinion. When speaking beyond my expertise, I clarify that I am sharing personal views, not research-backed insights. I aim to be clear about the basis of my statements—whether grounded in my studies or others' work—or, conversely, if they are informed but unsupported opinions. This self-discipline is vital, especially for public intellectuals, to maintain credibility and avoid leveraging academic authority for personal views unsupported by evidence, a standard not always upheld consistently across academia.