

# Equality in Employment

*Despite the growth of laws and policies prohibiting discrimination in employment, equal access to, and equality within, employment remains out of reach for many, with experiences of discrimination continuing to be all too common. The gender pay gap persists, for example, with women earning on average 16.4% less than men in the EU in 2014,<sup>1</sup> and 15.2% less than men across the Organisation for Economic Co-operation and Development (OECD) in 2013.<sup>2</sup> Instances of discrimination on religious grounds seem to be increasing. Persons with disabilities and lesbian, gay, bisexual and transgender (LGBT) persons remain at considerable risk of unemployment and segregation into low-paid work.<sup>3</sup>*

*The consequences of the financial crisis of 2008 and the rise of austerity measures have had a considerable negative impact on equality in employment.<sup>4</sup> Precarious forms of work, which have become more common post-crisis, are disproportionately undertaken by women, especially migrant women, thus exacerbating the existing gender pay gap. The high unemployment rates which have followed the crisis allow for discriminatory practices to become tolerated, as discrimination becomes less of a government priority and people are perceived to be grateful just to have a job.*

*The Equal Rights Trust spoke with equality experts from Serbia and the United States for their views on the continuing challenges faced in combating discrimination in employment. Brankica Janković was elected by the Serbian Parliament in May 2015 to the role of Commissioner for Protection of Equality, having previously been State Secretary at the The Ministry of Labor, Employment, and Social Policy. Chai Feldblum was appointed to the Equal Employment Opportunity Commission (EEOC) as a Commissioner by President Obama in 2010, and was previously a Professor of Law at Georgetown University.*

1 Eurostat, “Gender pay gap statistics”, February 2015, available at: [http://ec.europa.eu/eurostat/statistics-explained/index.php/Gender\\_pay\\_gap\\_statistics#Gender\\_pay\\_gap\\_levels](http://ec.europa.eu/eurostat/statistics-explained/index.php/Gender_pay_gap_statistics#Gender_pay_gap_levels).

2 Organisation for Economic Co-operation and Development, “Gender wage gap”, available at: <http://www.oecd.org/gender/data/genderwagegap.htm>.

3 International Labour Organisation, *Equality at work: The continuing challenge*, 2011, Paras 184 and 205.

4 *Ibid.*

**Equal Rights Trust: You are widely recognised for your experience in advocating for equality in employment. How did you become involved in this area of work? What life experiences and influences played a role in getting you to your present position?**

**Brankica Janković:** My professional career has always been focused on the care of people and those social groups that are in the greatest need of help from society, no matter who they are – the elderly, children, the disabled, women, or members of some marginal social groups. The “small” man and the problems that he cannot solve has always been the centre of my attention and my interest has been both in finding legal mechanisms and institutional solutions to solve these problems and in creating legal standards where they do not already exist.



*Brankica Janković*

It hasn't been easy to find the path in a, very often, “hypernormative” world, but every achievement (for example, if one person has overcome their problem and is now going on with their life) has made me happy and motivated me to continue working even harder. At one point in my career, I was given a chance to create a legal framework. I can say now that for some citizens, both male and female, the framework was beneficial but in some cases it transpired to be unhelpful. Although, of course, I did my best. It is not easy to regulate life through legal standards; jurisprudence is demanding and has one set of rules, whereas life has another set of rules and is much faster. Problems are getting more complex and I am always keen to search for new solutions. It is one of the reasons why I was nominated for my current position.

**Chai Feldblum:** I grew up as an Orthodox Jew – my father was a Holocaust survivor from Lithuania and my mother came from a long line of Hasidic Rabbis in Eastern Europe. Although I stopped observing Orthodox Judaism by the time I was a young adult, my early childhood years were shaped by a commitment to social justice and a belief in treating all people on their merits. That commitment stayed with me throughout my professional career.

As a young lesbian lawyer in the mid-1980s, I saw the devastation wrecked on the gay community because of AIDS and because of the discrimination suffered by people with AIDS and HIV infection. That led to my work in helping to draft and negotiate the Americans with Disabilities Act of 1990, while I was a lawyer with the national American Civil Liberties Union (ACLU). The ADA provides far-reaching protection for all people with disabilities, including

people with AIDS. I also continued to work towards equality for LGBT people, both at the ACLU and later as a consultant to various national LGBT groups. In that role, I helped draft early versions of the Employment Non-Discrimination Act, which would have prohibited employment discrimination based on LGBT status in employment if Congress had passed it.

As a professor for 18 years at the Georgetown University Law Center in Washington, D.C., I was able to do legislative and administrative work to fight poverty in this country by supervising law students who worked for Catholic Charities USA. I feel incredibly grateful that my early commitment to making the world a better place has allowed me to be involved in these various efforts – culminating in my current position as a Commissioner at the national government agency charged with enforcing employment discrimination laws.



*Chai Feldblum*

**Equal Rights Trust:** Although the law in many countries is developing to prohibit discrimination in the workplace, discrimination continues to be a daily experience for many people when they go to work. What do you think are the key issues that need to be addressed in order to combat this?

**Chai Feldblum:** The biggest issue to combat, from my perspective, is the attitude that a person's characteristic – be it race, national origin, sex (including pregnancy, sexual orientation or gender identity), religion, age or disability – has any relevance to a person's ability to do a job, assuming that person is otherwise qualified to do the job. If we could magically erase that assumption, we could probably get rid of most discrimination tomorrow.

But because that is not going to happen tomorrow, the most important issue is to achieve accountability in the workplace. The heads of most companies or organisations don't want discrimination to happen in their workplaces. They know that discrimination is bad for business and bad for productivity. But discrimination won't stop unless every single manager that permits discrimination to happen is called to account. If people knew they would be fired if they engaged in or participated in unlawful discrimination that would be a great motivator to stopping discrimination. And that could happen tomorrow.

**Brankica Janković:** Unfortunately, we live in circumstances when, due to the world economic crisis, it is extremely hard to find a job and most employees are forced to put up with

different forms of discrimination, due to their fear for their own existence. This is a terrible situation, as no form of discrimination can be tolerated, no matter how “small” or “bearable” it is. In my opinion, the laws in Serbia are able to effectively combat discrimination and they provide full protection against discrimination. However, there is a problem in the application of those laws; the way in which provisions are interpreted and how court proceedings are organised. To combat discrimination, authorities, independent institutions such as the Commissioner for Protection of Equality, and an independent judiciary must identify and condemn discrimination. The operation of market rules and the desire for profit can also be useful to combat discrimination; no company wants to be stigmatised or recognised as a violator of its employees’ rights to non-discrimination.

In addition to and alongside that, the politics of a country should be based on a strong will to stop discrimination – to prevent and punish it. The Commissioner’s office, through its preventive work, public speaking and recommendations (both in individual cases and as general measures), does a lot but we cannot be alone in this combat. Our natural partners are the legislative, executive and judicial powers. For example, we are very proud of the results we have achieved together with the National Employment Service and key job advertisers, who have followed our recommendation in relation to drawing employers’ attention to discriminatory elements in their job advertisements. Through this, we have broadened the knowledge about discrimination which in turn leads to a wider implementation of laws and prevents discriminatory behavior.

Last but not least, the role of the media is crucial. The media can help ensure the successful implementation of laws and the prevention of discrimination. Collectively, it has to find its place in this combat against discrimination as it has a key role in shaping the social reality. In this era of the media, journalists and editors should understand how strong and powerful their influence is when it comes to promoting equality in society. The Commissioner’s office therefore engages in continual cooperation with the media in Serbia.

**Equal Rights Trust: International human rights law recognises that everyone has the right to work. Discrimination exists both within the workplace and as a barrier to obtaining employment. How significant do you think the impact of discrimination is in restricting people’s right to work?**

**Brankica Janković:** Discrimination has a lot of forms. Every day, the Commissioner’s office encounters direct and obvious forms of discrimination as well as indirect and latent ones, which are harder to recognise. It takes place in all aspects of employment; in the recruitment process, in the workplace, when changing your job, etc. Discrimination in Serbia is quite widespread in the area of employment and access to employment.

Let’s take gender, for example, as a personal characteristic. Women often say that they have been unable to keep their job because they want to have children. This is the result of a long-standing practice. Questions like “are you planning to start a family” are quite common during job interviews. This is a clear example of unlawful, discriminatory behaviour on the

part of an employer. There are also similar situations happening within the workplace. Women are transferred to lower positions after coming back to work from maternity leave and sometimes they are even dismissed while still on maternity leave. There is a lot of talk about reconciliation between family and work life but achieving that demands full implementation of anti-discrimination and other relevant laws.

Whether a person is offered or loses a job or is promoted or demoted is often dependent on their political or trade union affiliations, though it is very difficult to prove discrimination in these situations. It is an obvious restriction of people's right to work and the rights that certain categories and groups of people are entitled to. A person's age is also determinative of whether an employer will hire that person or dismiss them. Employers often don't want older employees and take decisions which cannot be justified at all by objective criteria. All of this tells us that the reasons why people's right to work is restricted can be discriminatory to a great extent. And this is especially true during a long-standing economic crisis such as that which is taking place in Serbia, where there are no strict market rules and there is no control of the enforcement of laws.

**Chai Feldblum:** As you know, the United States does not recognise a general right to work either as a federal statutory or Constitutional right. Our law does prohibit using certain characteristics as the basis for any employment decision, including hiring, promoting, firing, and setting terms and conditions of employment. These characteristics are: race; national origin; sex (including pregnancy, sexual orientation and gender identity); religion; age and disability. But if a person is fired or not hired for a reason that is not on this list (for example, the person has red hair or the person grew up in New York City or for any other arbitrary reason), the person has no federal legal right to contest that employment action. However, as you note, even in countries where there is a general right of work, that right can be undermined if discrimination occurs and people cannot enter the workplace because of that.

I think that employment discrimination has decreased in the United States since the passage of Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, and the Americans with Disabilities Act of 1990. More people have been able to enter the workforce and get jobs that are commensurate with their abilities. They have no longer been held back because of their race, national origin, sex, religion, age or disability.

With regard to not being held back because of sex, the EEOC, the Commission on which I serve, was the first to rule that a woman who was discriminated against because of pregnancy had been discriminated against on the basis of sex. Ultimately, it took Congress to affirm that common-sense conclusion. In recent years, the EEOC has ruled that a lesbian, gay, bisexual, heterosexual or transgender person who is discriminated against on the basis of sexual orientation or gender identity has been discriminated against on the basis of sex. My guess is that the courts will agree with this common-sense conclusion as well in the coming years.

The decrease in employment discrimination in the United States has been due to changes in social attitudes and vigorous enforcement of our employment civil rights laws. But there is

no doubt that discrimination still hinders the ability of too many people to get and keep jobs that are commensurate with their abilities. The EEOC recently issued a report called *American Experiences v American Expectations*, which vividly describes the advances we have made in workplace diversity and the challenges we have yet to overcome.<sup>5</sup>

**Equal Rights Trust: In your country how easy is it for victims of workplace discrimination to access justice? What more, if anything, needs to be done?**

**Brankica Janković:** We are an unjustifiably long way from justice in Serbia. I see it as one of the main challenges in the process of developing a more modern and efficient society and state in which everyone has to participate, all institutions, civil sector, both male and female citizens. The Commissioner will be a leader but, of course, only within its legal competence. What else is needed in the fight for a better position for the employees? An independent judiciary, independent institutions established by the law and Constitution, an efficient Labour Inspectorate and other bodies in charge of solving problems and settling disputes in the workplace, a free media and free market, well-organised trade unions whose ultimate goal is the protection of employees, and more work, in fact more vacant positions.

As I mentioned above, the unemployment rate in Serbia is very high due to the undeveloped labour market and the economic crisis. As a result, employees and those looking for a job are ready to make many sacrifices in order to keep, or to get, a job. We therefore can't say that there is an easy way to justice. On the contrary, a person who has experienced discrimination may not decide to look for justice with the Commissioner or in court if they fear they will be victimised and lose their livelihood or experience revenge or bullying in the workplace. Discrimination is also difficult to prove as all the evidence is in the hands of an employer, and witnesses to discrimination are mostly colleagues who are afraid to testify. That is why the reversal of the burden of proof is of great importance and is applied in proceedings in front of the Commissioner. The Commissioner strives to build a relationship of mutual trust with citizens based on everyday results, professionalism, devotion, integrity, independence and efficiency so that people will be encouraged to ask us for help and protection against discrimination.

**Chai Feldblum:** The law in the United States establishes an effective administrative complaint system that makes it relatively easy for victims of workplace discrimination to access justice. However, two barriers in our country still exist that reduce access to justice and need to be addressed.

A charge of employment discrimination can be brought to any EEOC office across the country to take advantage of this administrative process. There is no need for a person to have a lawyer to file a charge. We make it easy for people to contact us. We use a range of publicity measures and we take calls from around the country. Once people bring their charges to us,

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5 US Equal Employment Opportunities Commission, *American Experiences v American Expectations*, July 2015.

we can often help them early in the process. For example, in our last fiscal year, we helped 15,318 individuals get some form of relief from employment discrimination, without those individuals or us as an agency having to go to court. All of these resolutions came about because the employer agreed to some voluntary settlement. However, the reason employers often settle is that they know that either we as the government agency, or the person who has experienced discrimination, can bring a lawsuit in court if a settlement is not reached.

Unfortunately, we can help only a fraction of the people who come to us with stories of discrimination. And we bring only about 200 cases a year in court as an agency. For most people, we simply issue a notice allowing them to bring their discrimination claims in court. But once a person goes to court, access to money becomes a factor. Building an effective case requires an effective lawyer and a person generally needs money to secure the services of an effective lawyer. While there are efforts around the country to provide lawyers (and often law students working under lawyers) to help low-income workers file employment cases, the demand way outstrips the supply. This is a significant barrier that reduces access to justice in the United States. Providing free legal services to people on low incomes is the only way to eliminate this barrier.

The second barrier, and one that has increased in recent years, is the practice of employers requiring employees to arbitrate their employment discrimination claims in a non-judicial setting, often using an arbitrator hired by the employer. This significantly restricts the ability of millions of employees to access the courts. This barrier would be most effectively reduced if Congress prohibited mandatory arbitration agreements in cases of employment discrimination.

**Equal Rights Trust: The US Supreme Court has recently held, in *Equal Employment Opportunity Commission v Abercrombie & Fitch*, that an employer who had not employed a Muslim woman whose head scarf was not in accordance with their “Look Policy” had discriminated against her. Where do you think the balance lies with accommodating religious freedom in the workplace?**

**Chai Felblum:** I think our federal law strikes the right balance in accommodating religious freedom in the workplace. Under our federal Constitution, religious organisations can hire employees in ministerial positions without being bound by our federal civil rights law. That is an appropriate accommodation for the rights of religious organisations to hire the people they want for unique ministerial positions that lie at the core of religious practice. There is also a statutory exemption that permits religious organisations to discriminate on the basis of religion (e.g. to prefer persons of their own religion in hiring) in employment, but that exemption does not permit discrimination on any other basis such as sex, race, national origin, and disability.

Second, under our federal statutory law, a private employer with more than 15 employees (that is not a religious organisation) may not discriminate on the basis of religion. This means an employer may not refuse to hire someone because of that person’s religion (or lack of religion) or because of the religion of those with whom the person associates. Our law also

requires an employer to accommodate the religious practices of an employee, if doing so will enable the employee to do the job. For example, an employer may have to make an exception to a “no head coverings” rule in order to allow a female Muslim employee to wear a hijab while at work. This rule is appropriate because we do not want religious people in our country to have to choose between having a job and following their religious observances. However, our law also places a limit on the right of the religious employee. If accommodating an employee’s religious practice would place an undue hardship on the employer, the law does not require the employer to make that accommodation. For example, assume a religious employee asks for a shift assignment that would allow that person not to work on the Sabbath. In many cases, this request will not be problematic and so the employer is required under the law to make that accommodation. But if there are particular circumstances in the workplace that would make such an accommodation an undue hardship (perhaps because of the limited people available to do the job), then the law relieves the employer of that obligation. Determining when an accommodation would pose an undue hardship is necessarily a very factually specific determination. But this type of individualised analysis is precisely what is required to strike the right balance between the employee’s religious need and the needs of the employer’s business.

As an overall matter, I think our federal and constitutional law strikes the right balance to ensure that religious pluralism in our country flourishes and that employers get the work done.

**Brankica Janković:** The answer to this question is very complex and can’t be given in a few sentences or without a thorough consideration of each and every case. In order to illustrate that fact, I will give you an example. In the case *Kurtulmuş v Turkey*, a ruling of the European Court of Human Rights (ECtHR),<sup>6</sup> a university professor was banned from wearing a veil as a symbol of her religion. However, the ECtHR didn’t rule in her favour, stating that, in that particular case, when we are talking about the relations between the state and religion, the role of the state carries considerable weight. The court decided that in a democratic society the state has the authority to put a restriction on wearing veils if this kind of practice is against the interest of other people’s protection and their rights. In *Kurtulmuş*, the Court held that the plaintiff decided to work in public administration and the dress code in public administration was the same for all employees, with an aim of supporting the principles of secularism and neutrality of public administration and public education in particular and could be justified. In the *Abercrombie & Fitch* example, on the other hand, the defendant was an entrepreneur who applied the company’s policy, which banned all employees from wearing caps (but did not define cap). The court ruled in the plaintiff’s favour. The plaintiff, as the court established, should have received different treatment.

There are many examples that are similar to both cases. I remember the case of a nurse who was banned from wearing a necklace with a cross, the symbol of her Christian religion. The ECtHR ruled against the nurse as the hospital clearly emphasised that the ban was in place

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<sup>6</sup> *Kurtulmuş v Turkey*, App. No. 65500/01, 24 January 2006.

for safety reasons and, given their particular work, there was potential danger if nurses wore that kind of pendant on a necklace.<sup>7</sup>

Accordingly, the answer to this question is very complex and the specific facts of every particular case should be taken into consideration. In my opinion, we are still far from finding the balance you are talking about. We persistently have to work on it – trying to find common denominators of problems, bearing in mind that every religion is unique but never disregarding the legitimate interests that may oppose it. It is critical that we find solutions that do not deny anyone their human rights or discriminate against any person for any reason.

**Equal Rights Trust: The introduction of paternity rights or flexible parental rights is increasingly being seen as one way to promote gender equality in the workplace. How significant do you think the introduction of such rights can be?**

**Chai Feldblum:** Parental rights and workplace flexibility are important means to promote gender equity in the workplace. First, providing mothers a reasonable amount of paid time off after childbirth or adoption is an important factor in keeping women connected to the workforce and hence promotes gender equity. Second, if fathers get paid time off in such circumstances as well and use that time for caregiving, that practice increases gender equity both at home and in the workplace. Third, as we all know, caregiving for children and aging parents can last many years as one is holding a job, and hence flexible work arrangements that are used equally by women and men to deal with caregiving responsibilities also promote gender equity.

For these reasons, paid parental leave (used equally by women and men) and flexible work arrangements would advance gender equity in the workplace and beyond. Employers, employees and government actors here in the United States are beginning to understand the importance of these policies and are grappling with how to best institute them in our country – understanding the utility of encouraging voluntary efforts by employers, but also the need for mandatory labor standards to provide some of these rights.

**Brankica Janković:** Equality between men and women, especially in traditional societies like ours in Serbia, is not easy to achieve, including when it comes to having a job, doing business, and supporting a family. In Serbia, unfortunately, you will often hear women say that some things are not a man’s job. It doesn’t mean that a man will refuse to do them but a woman will do them instead of him no matter what. In addition to these stereotypes, there are even more widespread stereotypes that a man in Serbia cannot do a “female job” as he will be considered weak. In addition to implementing the laws to combat discrimination, we have to raise awareness about equality between men and women and its importance. The Commissioner’s office has been doing this for some time. Of course, many things have

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<sup>7</sup> Case of *Chaplin v the United Kingdom*, one of four cases heard together in *Eweida and Others v the United Kingdom*, App. Nos. 48420/10, 59842/10, 51671/10 and 36516/10, 15 January 2013.

changed and they change every day. For example, fathers are on leave taking care of their children while mothers are at work. But it is still an exception, not a rule. Future generations have to be taught that gender equality is not a sacrifice made by one side and it is not a shame but a “normal” type of behaviour typical of a democratic, developed society.

I strongly support the initiation of parental rights; this is the proof of the gender equality that Serbia is striving for and hopefully will achieve very soon. For me as a woman, mother and as Commissioner for Protection of Equality, this is one of the most important mechanisms for achieving equality for all citizens, both male and female. I am also of the opinion that it is necessary to introduce some measures to incentivise fathers to use this right more often as their role in the life of a child is as important as that of mothers.

**Equal Rights Trust: The compulsory retirement age is being abolished in an increasing number of countries. Do you see this as a positive step? What can be done to prevent discrimination against older workers?**

**Brankica Janković:** Increasing the compulsory retirement age limit or abolishing it all together, which has become quite common recently, can have its advantages and disadvantages. On the one hand, there are people who are, regardless of their age, still vigorous, able to work and whose contribution is, due to their experience, really priceless. On the other hand, there are a considerable number of professions that simply “wear out” a person and he or she can’t do his or her job anymore. When raising the compulsory retirement age limit, it is necessary to consider the life expectancy in each particular country. In the future, decision-makers have to take into consideration that, although Serbia has made a huge step forward in this field, it has not yet reached the average European life expectancy for either men or women. I hope and wish that this European standard will soon be reached. We must also ensure full implementation of protective and health measures in the workplace in order to protect the mental and physical health of employees so that they can work later in life.

The issue of age discrimination in employment is particularly relevant as it is currently on the increase as many middle-aged persons are made redundant due to the global economic crisis. These professionals find it very difficult to find a new job or retrain for a new one. The main task of the Commissioner is to deal with these cases as soon as they are discovered or reported. However, I want to emphasise that this issue should be addressed by the whole of society, not just those who make political, economic and legal decisions.

**Chai Feldblum:** I remember being surprised, when I spoke at an international conference in London several years ago, that mandatory retirement was still permitted in many countries. It has been prohibited in the United States since 1967, when Congress passed the Age Discrimination in Employment Act. If you are an employee working for an employer with 15 or more employees in the United States today – you cannot be forced to retire at any mandatory age.

I welcome the fact that mandatory retirement is being abolished in more countries. There is no reason to have a blanket rule that a person may not work past a certain age. That makes

no sense in light of the ongoing capacity and interest in working that we all have as we age. Of course, no person should be retained in a job if he or she is not doing the job as required. But the reason to let that person go is because the person is not doing the work up to the required standards, not because of the person's age.

Prohibiting mandatory retirement will, however, never be enough to stop discrimination against older workers. There are many other ways in which older workers are discriminated against in the workplace. Sometimes these ways are subtle and sometimes they are disturbingly direct. The subtle forms of discrimination lie in negative attitudes towards older workers – the belief that they will be difficult to manage, are not comfortable using the latest technologies, or cannot learn new tasks. The direct ways occur when managers are explicitly told to hire “young, fresh faces” (or something along those lines) or are told to get rid of older workers to save money. These are the forms of age discrimination we are fighting right now in the United States.

**Equal Rights Trust: Migrant workers continue to face significant abuses of their rights, including forced labour, trafficking and dangerous conditions of work. Do you think that the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families goes far enough in protecting migrant workers and, if not, what more should be done?**

**Brankica Janković:** Serbia became a signatory to this important Convention in 2004 but it has not ratified it yet. It is the first international treaty that regulates the rights of migrant workers and their families. I believe that the Convention does go far enough to initiate work on the protection against discrimination of this group of people. However, the fact that it has been ratified by only 46 countries tells us a lot about how slowly we are progressing from the initial steps of protecting their rights. I also find it very important to consider which countries have signed and ratified this Convention. Most countries that have a huge influx of migrants are not signatories. It is not enough just to pass good conventions, we must fully and efficiently implement them. It is therefore necessary to work on further ratification of this important international document and reinforce mechanisms that will control abuse of the position of migrant workers and their families.

Serbia is mostly a transit country for migrants on their way to their final destination. Discrimination against migrant workers is forbidden by law in Serbia and the Commissioner's office monitors the situation of migrant workers and is ready to sanction all discriminatory acts against them. However, preventing discrimination alone is not enough, it is necessary to introduce special interim measures that will provide those people and their families with fair treatment and make them feel dignified while they are in Serbia. In my opinion, we as a state and society are responsible for this.

**Chai Feldblum:** I don't have a position on the Convention, since it is not within the purview of the EEOC. However, I believe all of us – across the globe – must fight as hard as we can to protect migrant workers against abuses. This has been a top priority for the EEOC over the

past decade. In a plan in which we set forth our strategic enforcement priorities, protecting migrant and immigrant workers was among those priorities. Over the past five years, we have brought a number of high-profile cases challenging abusive employment practices against migrant workers. The legal tool we have is our employment law that prohibits discrimination based on national origin and we have used that tool effectively in a number of cases.

**Equal Rights Trust: The right to form and join trade unions is recognised in international human rights law. What is your opinion of the contribution of unions to combating discrimination in employment and in light of this, how significant do you think the right to join a trade union is?**

**Chai Felblum:** In the United States, the right to join a union and the right to be free of employment discrimination are considered two distinct rights. The right to join a union is protected under the National Labor Relations Act; the National Labor Relations Board and the courts enforce that right. The right to be free of employment discrimination based on certain characteristics is protected under a series of civil rights laws; the EEOC and the courts enforce those rights. My knowledge and practice therefore lie in the latter area.

The research shows, however, that these two rights are interdependent. As a historical matter, the union movement has been a major force behind enactment of every employment civil rights law in the United States. As a practical matter, individuals who are members of unions have additional avenues to use for redress in discrimination claims. So on both the macro and micro level, I believe greater union representation in a country is a positive element in reducing discrimination in the workplace.

**Brankica Janković:** I remember the saying “a powerful trade union, a powerful state”. Today, both in theory and practice, it is proven that a well-organised trade union is very important in the fight for workers’ rights, and that trade unions can contribute a lot to the prevention of discrimination and the promotion of workers’ equality. The workers’ right to join such powerful, well-organised and successful trade unions and to enforce their rights in that way is therefore of great importance in the fight against discrimination, and our Labour Law recognises this by guaranteeing employees absolute freedom in joining and gathering in trade unions.

However, I am afraid that, in previous decades, the work of trade unions in fighting for human rights – the right to work, the right to a wage that will provide a dignified life to a worker and his or her family – was disregarded. What we, as a body that combats discrimination, are therefore striving for is to educate people that solving a problem of discrimination actually leads to improvements in the labour market, in the health care system, in education or wherever a discriminatory act is eradicated. Our aim is to make trade unions able to recognise a discriminatory act, to combat it using legal tools and to be a natural associate and partner with the Commissioner on Equality, thereby realising their important role in the combat against discrimination.

**Equal Rights Trust: Governments around the world have been introducing austerity measures in response to financial crises. In your country, what impact do you think that such measures have on equality in employment?**

**Brankica Janković:** Austerity measures are necessary in order to overcome the crisis. However, the point is to strategically define the goals of such measures, balance priorities, define a starting point and make joint efforts to overcome the crisis. We always have to take a wider view and be very careful when executing austerity measures; they shouldn't restrict human rights in any way. It seems to me that by applying some solutions, we go back in time 20 or 30 years to a time that was not good for promoting equality. As I mentioned earlier, people in Serbia do not recognise the importance of combating discrimination and the positive impact this has on the labour market. Thirty-six percent of the complaints the Commissioner receives are in the field of employment. Much of the everyday discrimination we see is not related to austerity measures; giving a job to a less qualified man but not to a woman just because she is a woman doesn't have much to do with money. Or dismissing a pregnant woman and hiring another person. Changing our stereotypes, the prejudices that inhibit us in promoting equality in society, can be an easier way of solving problems that are caused by the economic crisis. In this regard, Serbia has introduced legislative amendments for positive action when employing vulnerable groups.

**Chai Feldblum:** One way to respond to a financial crisis is for a government to introduce austerity measures. However, the response of the United States to the 2008 economic crisis was to engage in stimulus activities, rather than austerity measures. For that reason, I do not have an opinion on the impact that austerity measures instituted by a government would have on equality in employment.

I can tell you that the financial crisis itself – and the surge in unemployment that was part of that crisis – may well have resulted in greater inequality in employment. The statistics show that the unemployment rate for African-Americans was 14.8% immediately after the financial crisis in 2009. Today that number is down to about 9.1%. However, the unemployment rate for white persons is currently 4.6%, down from a high of 8.5% after the crisis. Of course, there are many variables that can cause these results, including discrimination. The goal of the EEOC is to root out those causes that stem from discrimination.

**Equal Rights Trust: A recent report by the OECD, *In It Together: Why Less Inequality Benefits All*, concluded that the increase in the number of people either self-employed or employed in temporary and part-time work is one driver of growing income inequality. Do you agree that more needs to be done to create job stability if inequality is to be reduced?**

**Chai Feldblum:** The issue of income inequality is a very significant one that all countries, including the United States, must grapple with and address. When income inequality derives from discrimination based on a protected characteristic under our civil rights laws, that is within the purview of the EEOC and, as I hope I've indicated, we are doing as much as we can

to combat such inequality. But discrimination is just one factor that causes income inequality and greater structural reforms are necessary as well.

While I don't have the opportunity to be working on those efforts right now, I applaud my many colleagues throughout the United States government and in non-governmental organisations who are doing this work. And who knows – maybe this will be one of the issues I will work on after I step down from the Commission when my term ends in July 2018. Certainly, it is a problem that will still be there – with plenty of people still needed to work on it.

**Brankica Janković:** Types of employment, having an employer or being self-employed, working hours and everything else that influences our earnings are regulated in different ways, in different European countries. I absolutely agree that job stability is necessary and it is one of the conditions needed to reduce inequality. But I also think that the examples you have given, do not themselves cause differences in earnings or job instability. Research has obviously confirmed that the above-mentioned examples affect stability, however, it is the choice of the individual employee to accept a particular type of employment (part-time, full-time etc.). Of course, this must be a free choice and not imposed by employers or the labour market. If the employer treats his employees differently on the basis of their working hours or temporary or permanent status etc., then the answer is to change the discriminatory behavior of the employer, not the model. This is the case particularly when we are talking about flexible working hours.

It is a good idea to also think about the advantages of a part-time job or self-employment. Let us look at those discussions about the necessity to create balance between work and family life with a particular emphasis on the position and discrimination of women. These models of engagement actually help to find that balance and employees, regardless of gender, can meet their needs in their work as well as in their private life.

Differences in earnings have to be identified in other segments as well. If a man and a woman do the same kind of job and they are not equally paid it is an employer's decision and nothing else. I absolutely agree with the statement that less inequality is beneficial to all and we have to strive to reach equality in the labour market. Reasons for inequality shouldn't be simplified. They should be fully exposed and tackled. That is exactly what the Commissioner for Protection of Equality is doing.

Interviewer on behalf of the Equal Rights Trust: Jade Glenister