Executive Summary for Poland

Introduction

The legislative efforts aimed at transposing the *Acquis Communautaire* into Polish labour law and the social security system concerned almost all EU Directives on equal treatment. However, the Amending Act of 14 November 2003, which was to universalise the provisions set forth in Chapter II of the Labour Code, either did not include issues important from the perspective of non-discrimination of women in employment, or defined them in a more general way. The Act risked lowering the standard of protection against discrimination on grounds of sex.

The implementation of the newest anti-discriminatory directives has not been complete or adequate. Nevertheless, as a result of the introduction of all these amendments to the labour law, Polish legislation in force meets the legal requirements of the EU Directives on equal treatment to a large extent.

The monitoring report from 2002 set forth a number of recommendations; not all of these have been implemented. For example, there is still no general job classification system for calculating remuneration. Importantly, the lack of a universal system of work evaluation and comprehensive criteria does not allow for different types of work to be compared.

Following the Amending Act of 24 August 2001, the amended Section 11 (3) of the Labour Code can be positively assessed, as the wording 'in an employment relationship' was replaced by the term 'in employment'. This resulted in eliminating a certain ambiguity that was signalled in 2002, and which raised questions as to whether the prohibition of discrimination could also be applied to employees' recruitment.[1] Following the amended clause, it is clear now that the prohibition covers all aspects of the employment relationship, beginning with the recruitment process, defining the employment relationship, its continuation and conclusion.[2] Nevertheless, regulations in force concerning access to employment still do not meet the current EU standards introduced by the directive 2002/78/EC for several reasons. Although the Polish Labour Code applies the general definition 'in employment', the use of the phrase 'initiation of an employment relationship' in Section 18 (3)(a) of the Labour Code deprives self-employed persons of the protection from discrimination set forth in this clause.

[1] See E. Zielinska (2002: 74).

[2] Compare to M. Gersdorf, K. Rączka, J. Skoczyński (2004: 51).

Although the definition of indirect discrimination in force is more approximate to the definition set forth in the EU directives on equal treatment than its previous version, it remains unsatisfactory in certain aspects. For example, the Polish provision referring only to objective justification, and omitting a legitimate aim and the principle of proportional means to the aim, does not reflect the original EU idea.

It should be also noted that the exemplary enumeration of grounds for discrimination set forth in Section 11 (3) of the Labour Code has been expanded. It cannot, of course, be assessed negatively as the EU directives create only a certain minimum standard. Nevertheless, due to the incorrect identification of admissible exceptions from the principle of equal treatment within the meaning of these directives, the application of anti-discriminatory regulations in force may lead to unjustified complaints in practice (e.g. Section 18 (3) (b) § 2, point 3).

Institutional mechanisms

The institutional mechanism on gender equality in Poland is the Governmental Plenipotentiary for Equal Status of Women and Men. The Plenipotentiary is placed at the executive, governmental level as the Secretary of State in the Chancellery of the Prime Minister.

The duties of the Plenipotentiary within the scope of equal status of women and men include

- Analysing and evaluating the legal and social situation with respect to equal treatment and equal opportunities for women and men;
- Initiating and co-ordinating actions aimed at achieving equal treatment and equal opportunities for women and men, as well as protection against discrimination based on sex in all areas of social life.

The Plenipotentiary, within the scope of competence, does not have any power to make decisions. The competence is limited to monitoring, analysis, assessment, informing, promotion, and education. The Plenipotentiary may also influence governmental policy within the scope of equal status of women and men by submitting, with the consent of the President of the Council of Ministers, drafts of governmental documents related to the scope of her responsibility under the consideration of the Council of Ministers.[3]

Until 2003, the office of the Plenipotentiary was centralised. There have been gradually established Voyevod's Plenipotentiaries for the Equal Status of Women and Men (regional level of executive governmental authorities) and one plenipotentiary has been nominated at the lower level (at local county level).

[3] § 8 of the mentioned above Ordinance.

There is no specific internal mechanism to monitor the implementation of the duties entrusted to the Plenipotentiary. As in a case of any other governmental plenipotentiary, the activity is under control of the President of the Council of Ministers.

Representatives of non-governmental organisations are members of the Programme-Consulting Council established by the Plenipotentiary and have an opportunity to submit their comments and suggestions towards issues that have been included on the agenda of the Council's meetings, which take place every two months.

The Governmental Plenipotentiary for Equal Status of Women and Men is assumed to be a "passing" institution as the power exists until the entrusted tasks are complete. The current placement of the Plenipotentiary within the State's structures and the fact that the Office is established on the grounds of the Ordinance of the Council of Ministers leads to institutional dependence on subsequent governments. The fact that the Plenipotentiary was entrusted with new tasks in 2003 related to combating discrimination based on race, ethnic origin, religion or belief, age and sexual orientation, and making arrangements to establish a new office in charge of combating discrimination, may give rise to fears that gender equality will be marginalized in the future.

Policies, programs and awareness raising

In Poland, no comprehensive gender equality strategy has been developed yet. Under the leadership of the Prime Minister Leszek Miller, the only efforts made by the Government to promote gender equality were 'imposed' by the European Commission within the process of harmonisation of Polish law with the *Acquis Communautaire*. There was a lack of clear political will to promote equal treatment of women and men and to support the efforts made by the Governmental Plenipotentiary for Equal Status of Women and Men, resulting in the lack of a coherent gender equality strategy. The fact that equal treatment of women and men was placed in the general anti-discriminatory context would rather enforce this tendency and may lead any positive actions aimed at promoting equal opportunities for women and men to stop.

There is no comprehensive gender mainstreaming strategy in Poland. In 1997, the former Plenipotentiary for Family Affairs and Women organised a workshop for members of the Council of Ministers, aimed at presenting the idea of gender mainstreaming to decision-makers and consulting on its implementation. However, the expected outcomes were not achieved because most of the Ministers delegated lower officials to take part in the workshop, and due to the changes in the Government.

One cannot say that there is a specific comprehensive policy related to the promotion of women's participation in the labour market understood as the reconciliation of family and professional life. Occasionally some efforts have been made to eliminate

female unemployment, which until the end of last year was much higher among women than men. It is promising that one focus of the structural funds policy is on combating gender discrimination in the labour market.

There is no specific governmental policy aimed at reducing the gender pay gap. The gender pay gap is considered inevitable and, with the exception of amendments to the labor law, no coordinated efforts have been undertaken in order to ensure equal payment for women and men.

In terms of the elimination of sexual harassment, all efforts have been limited to legislative amendments.

In addition to the National Action Plan for Women, the Governmental Plenipotentiary for Equal Status of Women and Men implements two other programs within Phare 2002. The Program "Enhancement of Policies on Equal Treatment of Women and Men" is carried out in collaboration with Danish-Austrian consortium. The twinning program "Strengthening anti-discrimination policies" is run in co-operation with the Ludwig Boltzman Institute of Human Rights in Austria. It concerns mainly the elimination of discrimination based on race and ethnic origin, but due to the focus on awareness-raising of different professional groups (e.g. lawyers), the project helps indirectly to better an understanding of gender discrimination.

There are no specific structures in place in Poland to support the implementation of the *acquis* related to equal opportunities. Because equal treatment was protected in the Labor Code, the monitoring of its implementation falls within the scope of duties of the State Employment Inspection and Social Employment Inspection.

There are no specific programs to encourage men to take a greater role in family life, to change attitudes regarding family responsibilities, or to encourage the sharing of parental leave schemes by both parents. Nor are there any specific programs to support flexible working arrangements or to address gender equality within social security schemes.

Research and statistics

Official statistics clearly show an unjustified gender pay gap. According to the newest statistical data of the Central Statistical Office, as of 2003,[4] women's average salary was equal to 83 percent of men's average salary. This indicates a certain reduction in the disproportion between women's and men's payment compared with previous years.

[4] Main Statistical Office (2003: 182).

For example, statistical data as of 1999[5] indicate that the average women's salary was equal to 79 percent of men's average salary.

More cases of sexual harassment have been brought before the court in recent years. These cases covered 'drastic' sexual harassment (i.e. forced sexual abuse using undue authority or difficult conditions of the abused person) and for that reason these cases were examined before the criminal court. However, the court statistics do not show that these cases of sexual harassment took place in the workplace. Persons subject to harassment have brought cases before the civil court claiming a violation of their dignity or other personal rights. It should be emphasised that until 2004, this was the only way of claiming rights by the sexually harassed person, as sexual harassment was not considered a form of discrimination. However, such cases were rarely brought to court due to long-term oppressive proceedings, and high costs.[6] Statistics concerning cases related to the violation of personal rights do not specify whether this violation concerned sexual harassment.

There is no systematic campaign to promote gender equality legislation once it is adopted at the governmental level, though some newspapers publish articles on the specific topics (for example, the "Gazeta Wyborcza" published a series of articles about mobbing and sexual harassment).

Key recommendations

- The provisions concerning equal treatment of women and men set forth in the Labour Code must be improved;
- Protection against discrimination on grounds of sex should be extended to areas of social life other than employment;
- Legal regulations concerning the Governmental Plenipotentiary for Equal Status of Women and Men should be amended in order to base it on statutory law;
- The rank of this Office should be raised;
- The office should be equipped with a broader competence for decision-making and executive power as well as quasi-judicial powers;
- The budget of the Office should be increased with a view to conducting research, monitoring and developing a gender mainstreaming strategy, and coordinating its implementation and evaluation;
- A decision should be made as regards the scope of accountability of the Office; in case an anti-discriminatory office is set up, there should be a unit in charge of promoting equal treatment of women and men.

[5] Main Statistical Office (2000a: 164).

[6] E. Zielinska (2002: 96).

- The Government should run an active pro-equality policy in the form of affirmative action;
- The Government should strengthen the institutionalisation of a gender equality framework by establishing an anti-discriminatory office with quasi-judiciary competence in order to deal with discrimination cases;
- The Government should – in collaboration with non-governmental organisations – develop specific programs on gender equality and ensure their effective implementation and evaluation;
- The Government should undertake systematic efforts to gender sensitise society and raise awareness in the areas of discrimination;
- Gender equality education should be introduced at all levels of the education system, including continuing education aimed at promoting the right to equal treatment and the possibilities of pursuing claims in a case of a violation;
- Initiatives undertaken by women's non-governmental organisations within the scope of mentioned above programs should be supported as a matter of priority and effective implementation of existing programs should be ensured;
- Additional funds should be raised to conduct research on the impact of EU directives on implementing the principle of equal treatment between women and men;
- Separate statistics should be provided on cases of discrimination on grounds of sex;
- Special records of cases of sexual harassment in the workplace should be kept, and internal procedures should be set up within companies.