Executive Summary for Estonia

Introduction

Although the process of transposing the *Acquis Communautaire* was well advanced by 2002–2003, Estonia still lagged behind in some areas, including in the field of gender equality. As of this writing, the national laws have been essentially harmonised with the *acquis* on gender equality. As the legal provisions in this area were only adopted relatively recently, it is difficult to make far-reaching conclusions on their application at this stage. A preliminary analysis though reveals many shortcomings and inconsistencies with European standards in the implementation of these legal norms.

The main development since 2002 has been the adoption of the long-waited Gender Equality Act (hereinafter "GEA"), which entered into force on 1 May 2004. The purpose of this Act is to ensure the principle of equal treatment as provided for in the Constitution of the Republic of Estonia, and to promote gender equality as a fundamental human right and a general good in all areas of social life. For the first time, Estonian legislation defines terms such as 'gender equality,' 'equal treatment,' as well as 'direct' and 'indirect' discrimination, and 'sexual harassment.'

By transposing EU equality standards into its national laws, Estonia initiated a very formalistic reform. The radical legal change took place though without substantial consultation with persons to whom new norms would apply,[1] and there was no real public debate.

By completing the first essential phase of legal reform in order to achieve real equality, Estonia has only taken the first step. In order to make gender equality a reality, many active measures must still be taken and new practices must be introduced. Without these, the deep structures of inequality risk remaining intact for a long time to come.[2]

Although new legislation grants powers to several existing institutions and creates new bodies for gender equality, effective remedies that would be easily available to every

[1] However, a recent study (from 2003) by the Estonian Open Society Institute on attitudes towards gender equality legislation reveals that 81 percent of people interviewed back the inclusion of the principle of equal pay for work of equal value into legislation. 75 percent are in favour of a law that would guarantee women equal opportunities with men to enter any job. 91 percent support legal norms that protect pregnant and child caring women from employers' arbitrary actions.

[2] The presentation *Has legal reform in Central and Eastern European States Concerning Gender Equality Been Successful?* for the EU-China Human Rights Network seminar on Gender and Law in Beijing 2004 was used in writing this introduction.

citizen are not yet present. Gender equality institutions are not systematic, and there is a possible overlap of powers possessed by several institutions. Apart from the obligations imposed on employers to promote gender equality foreseen in the GEA, there are no effective means to prevent employers from continuing discriminatory practices, especially sanctions or fines within the meaning of Directive 2002/73/EC that ought to be transposed by October 2005.

Institutional mechanisms

The ministerial bureau of gender equality at the Ministry of Social Affairs was reorganised and enlarged by decree in May 2004. The functions of the department include elaborating gender equality politics, and co-ordinating the elaboration and implementation of gender mainstreaming measures.

Article 9 of the GEA provides a function of promoting gender equality in all agencies of state and local government. They are required to promote gender equality systematically and purposefully, and to change the conditions and circumstances that hinder the achievement of gender equality. When planning, implementing and assessing national, regional and institutional strategies, policies and action plans, the agencies are to take into account the different needs and social status of men and women and consider how the measures applied and to be applied will affect the situation of men and women in society. Considering the overall level of awareness on gender equality issues, guidelines and consultations will need to be provided in order to guarantee the fulfilment of the obligation pursuant to Article 9.

The department has the power to draft governmental and ministerial policy decisions in the respective area. It also engages in dialogue with the concerned interest groups, elaborates surveys, and reports on the compliance of internal legislation with international standards. Its main concrete task is to co-ordinate the work of strategies to integrate the principle of gender equality into all governmental and municipal politics. The department may also counsel anyone on questions of equal treatment or help victims of discrimination. The Estonian National Gender Equality Strategy, which is being elaborated under the coordination of the Gender Equality department, should be concluded by the end of 2004.

An inter-ministerial commission for the promotion of gender equality was created through Governmental Order of 27 November 2003. The Commission's essential task is to draft, in accordance with Article 2 of the EC treaty, a strategic development plan to include the eradication of gender inequality and promotion of equality principles into the plans of actions, projects and programs of all public authority bodies.

The general functions of the Ministry of Social Affairs in the field of gender equality were specified by the GEA, creating more detailed rights and obligations in order to supervise the implementation of the GEA. The ministry provides consultations on

matters related to the implementation of the principle of equal treatment, and gives instructions for the implementation of the act. The ministry also publishes reports on the implementation of the principle of equal treatment for men and women.

The most important institutional innovation contained in the GEA is the creation of a new body that aims to combat discrimination and promote gender equality, and also receive applications from citizens. Following the example of posts of Gender Equality Ombudspersons set up in some countries, the GEA foresees the post of a Gender Equality Commissioner. According to the Act, the Commissioner shall be an independent and impartial expert who acts independently and monitors the implementation of the GEA. Although the GEA entered into force on 1 May 2004, the Gender Equality Commissioner has not yet been appointed. This is due to the need to change the State Public Servants Official Titles and Salary Scale Act, which is expected to be completed shortly. It is hoped that a Commissioner will be appointed in the first months of 2005.

Policies, programs and awareness raising

The overall goals of the 2004 National Employment Plan are to increase employment, avoid long-term unemployment and prevent people in at-risk groups from 'falling out' of the labour market. In order to achieve these goals, several gender-specific means are noted and envisaged in the national plan.

The most important active employment measures are public employment offices and their services; training of unemployed workers; subsidies for employers who employ less competitive unemployed workers; and start-up capital to begin entrepreneurial activities.[3] Although several development plans emphasise active employment measures, public expenditure on these measures is relatively small when compared with other European countries. The number of participants in these measures has in fact decreased since 1995. The state mostly provides trainings; wage subsidies are not at all common.

When assessing the general awareness on gender equality issues, some positive developments can be noted, although there is still a lot of room for improvement. The media has slowly become more interested in the issue and the number of articles on gender equality has been increasing. On the other hand, there is a need to make the GEA and its contents more familiar to citizens. This should include *inter alia* awareness raising by employers in the workplace. Expectations from the process of awareness raising should be realistic, because people's attitudes do not change overnight, but in the period 2002–2004 some positive developments have certainly been noted.

[3] PRAXIS Reelika Leetmaa, Andres Võrk, Raul Eamets, Kaja Sõstra *Evaluation of Active Labor Market Policies in Estonia.*

Research and statistics

Women employees continue to earn almost 25 percent less than their male counterparts. The gender gap has remained constant throughout the decade and is visible in all fields of professional life. According to the Estonian Social Insurance Board, in the capital city the gender pay gap is as high as 30 percent.[4] A new survey on the gender pay gap in the Estonian labour market was published recently. It analysed the main features and patterns of paying wages to male and female employees, the overall status of female workers, and reasons for gender inequality.

Differences in pay are not only apparent when comparing the average pay for male and female workers. Segregation in the labour market has also led to a situation in which poverty is an issue for women and children. According to data from the Estonian Statistical Office, there is a difference in annual disposable income per household member depending on the sex of the head of the household. A difference in income is visible in the total income, and income from wage labour. In 2003, the gender pay gap had increased to 11.4 percent.

According to the Estonian Social Insurance Board, as of 30 September 2004 parental benefit (100 percent of the previous monthly wage) was paid to the mother in 98.3 percent of cases, and to the father in 1.5 percent of cases. It is still very rare that fathers take parental leave, although they have been granted this right in law for many years.

Estonian women spend on average twice as much time doing housework than men (four hours per day and 2.2 hours per day respectively). At the same time, men have longer working days in paid employment.[5]

Key recommendations

- The process of setting up new institutional bodies foreseen in the GEA should be finalized. In particular, the rapid appointment of the Gender Equality Commissioner is critical;
- Now that the GEA has been adopted, more attention should be paid to awareness raising of its contents for citizens. This should include the informing of employees by employers of their rights enshrined in the Act (this obligation is also set forth in the GEA);
- The process of awareness raising on equal treatment via media channels should be actively continued and promoted. The establishment of new strategies for awareness raising by institutional bodies foreseen by the GEA (for example, the

[4] A. Reinap, Naised teenivad meestest neljandiku võrra vähem in *Postimees* 8.4.2004.

[5] Ü. Mattheus, Naised teevad meestest poole rohkem kodutöid, in *Postimees*, 29.7.2004.

gender equality council and commissioner) is necessary, as the adoption of the Act is an important message that must be conveyed to every citizen;

- Employers should become more active, and their contribution to promoting equal treatment should be systematically monitored by the relevant bodies set up by the GEA. A regulation of the Government of the Republic should be adopted establishing a procedure for collecting statistical data and a list of data;
- Awareness should be raised on the possibility of receiving consultations by an official of the Ministry of Social Affairs on matters related to the implementation of the principle of equal treatment for men and women. The office hours of the consultant should be published on the website of the Ministry of Social Affairs, as foreseen by the GEA;
- The role of trade unions should be stronger. They should have important tasks in the process of awareness raising and information distribution. In addition, effort should be made to enhance effective co-operation between trade unions and the relevant government offices;
- In order to mainstream gender equality, the issue should be included in programmes at different levels of the educational system;
- In the future, the position of the Commissioner should be strengthened in order to provide the post with decision-making powers in specific cases, taking the powers of the Legal Chancellor as a role model (currently it may only issue opinions). The institution of the Commissioner should develop into a real specialized out-of-court institution for settling disputes relating to discrimination on the basis of gender;
- In practice, the Commissioner should also have a bureau with advisers in order to support the Commissioner in her/his work;
- Despite the inclusion of the right to equal access to employment, much remains to be done in terms of effective implementation of the rights of job applicants. For example, they should be granted the right to bring an action before a Labour Dispute Committee in the Individual Labour Dispute Resolution Act. Their rights should also be stipulated in the Code of Civil Procedure;
- Judges and lawyers should be trained on gender equality issues, including the principle of reversing the burden of proof;
- In order to encourage men to take parental leave, the discriminatory general provision foreseeing the right to receive parental benefits only for the mother until the child is six months old should be amended to allow parents to choose who will care for the child and receive the benefit.