

European Congress on "Gender Equality and Professional Life - Current Developments in Europe;" Organised by the Association Française des Femmes Juristes (A.F.F.J.) & the European Women Lawyers Association (EWLA) in Paris, 20 and 21 September 2002

## **EQUAL TREATMENT FOR WOMEN AND MEN IN EMPLOYMENT:**

### **The European Parliament view**

Heidi Hautala MEP, 20 September 2002

The European Commission presented in June 2000 a proposal for revision of the Equal Treatment in Employment Directive<sup>1</sup>. The Amsterdam Treaty had brought equal treatment legislation into the sphere of co-decision, which meant that the European Parliament was for the first time equal to the Council of Ministers as a legislator in this field. The institutions found agreement in April 2002 on a joint text for the revised directive, two days ahead of the deadline for conciliation procedure, foreseen in the treaties. As the Rapporteur for the European Parliament I am pleased to say that many if not most of the innovative elements in the directive have been initiated by the Parliament's report.

### **1. Gender Equality in European legislation**

Gender equality at the community level has progressed by small steps throughout the European integration process. The principle of equal pay was already included in the Treaty of Rome in 1957. The Equal Treatment in Employment Directive, dating from 1976, has been an effective tool in protecting equal opportunities in professional life across the community. In the past 5 years alone the European Court of Justice (ECJ) has given 44 judgements which have further consolidated equal opportunities law.

Our society and working life have gone through a considerable transformation during the 25-year lifetime of the now revised directive. In the Amsterdam Treaty<sup>2</sup> the Union committed itself to mainstreaming gender equality into all policies and expressly recognised positive action in favour of the under-represented sex in a professional activity. During the years obstacles in the way of equality have crystallised, and where formal inequalities diminish - de facto equality is far from achieved. Sexism and discrimination against women are unfortunately still well established in professional life.

Somewhat ironically, an "unholy alliance" of growth-economists and proponents of gender equality in employment has emerged recently. Men with calculators have realised that demographic inevitabilities will mean equal participation of women is sorely needed in the ageing European economy and employment markets. Where day-care facilities, shorter working hours, and other initiatives aimed at reconciling family and working life used to be advocated only in the name of enlightenment, now these types of initiative find solid support from statisticians and economists.

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<sup>1</sup> COM(2000) 334, Proposal for a Directive of the European Parliament and of the Council amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions

<sup>2</sup> in force 1.5.1999

## 2. European Parliament- a forum for European debate on EU law-making

Some critical remarks have been made regarding the lengthiness of the decision-making on the revision of the Equal Opportunities in Employment Directive. Personally I believe that to reflect reality and needs in different Member States and provide for an effective tool in the future, the co-decision procedure, which allows for open transparent debate documented in all official languages, was absolutely necessary. The deliberations of the European Parliament make European Union decision-making more accessible and understandable to the public and provide for a unique forum for different viewpoints to be openly heard.

I also feel that the European Parliament fulfils an important function in the institutional balance of co-legislating European law. Where the European Commission has the right of initiative and the obligation to look at the "big picture", the Council tends to view any new legislation through the lens of whether it would necessitate changing national laws. Where the Council can sometimes be extremely resistant to any change, the Parliament needs to find a compromise between Members across the whole spectrum of political families in order to press for legislative muscle. At the same time Members, as directly elected representatives, need to be able to articulate their proposals to the citizens and prove results to their electorate.

Given the limited resources Members have as Rapporteur's for conducting research and acquiring advice on a particular report, networks of expertise such as EWLA are of great importance to the work of the institution. Statements and Position Papers delivered by organisations with well-established reputations as credible representatives of a particular interest group can be of paramount importance in the decision-making of individual members. I would also like to express my sincere gratitude to EWLA, whose experts and members of the board have provided me, as the Parliament's Rapporteur, with invaluable support and in-depth knowledge when drafting the legislative text.

## 3. Key debates during the European Parliament deliberation

### **Definition of sexual harassment**

One of the most significant changes introduced by the Parliament was in the definition of sexual harassment. The Council insisted until the very last stages of the conciliation on a definition which would have put the victim of such aggression under a burden to be able to prove that also an intimidating, degrading or humiliating environment would have been created at the workplace. This would have, to my understanding, rendered the definition in practice meaningless, knowing that proving sexual harassment is already extremely difficult. Indeed, sexual harassment happens most often between two people when other colleagues are not present; it is the victim alone who is left with the intimidation, degradation, and humiliation

In accordance with the compromise found between the institutions the definition of sexual harassment in the Directive now reads: "where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs with the purpose or effect of violating the dignity of a person, **in particular when** creating an intimidating, hostile, degrading, humiliating or offensive environment." The directive also confirms that sexual harassment is discrimination on the grounds of sex and thereby prohibited.

### **Pro-active measures to prevent sexual harassment and equality planning at the workplace**

The proposal presented by the Commission lacked concrete tools and methods of promoting factual equality at the grass roots level at the workplace. Given that those cases where, in situations of discrimination, judicial remedies are sought represent only a tip of the iceberg of inequality in the employment market, it is of utmost importance to prevent sexual harassment and find tools to tackle discriminatory practices in the workplace.

Members of the Women's rights Committee in the EP also broadly supported my proposal to oblige employers to take preventive measures against sexual harassment. A formulation was found, again at the conciliation stage between the Parliament and Council, which allows different approaches in the application by Member States, but still confirms that the employer cannot escape having responsibility over sexual harassment when it takes place at the workplace. Victims of sexual harassment at the workplace or at the place of training are dependent for income or finishing a degree and thus in a particularly difficult position.

According to studies every other woman experiences harassment during her career. Although providing judicial remedies and possibilities for eventual financial indemnities, the fact remains that consequences to the victim cannot be truly compensated. Parallel to securing effective legal sanctions efforts must be made to change attitudes at the place of work.

Through studying national equality legislation in different Member States I discovered an excellent method in practice in Sweden, Belgium and Finland, namely equality planning. This tool allows for detecting discriminatory circumstances and unequal treatment of women and men at the workplace and for working towards solutions to the problems. Colleagues in the European Parliament agreed with the usefulness of introducing this idea at the European level and Commissioner Diamantopoulou was open to consider and support the Parliament's initiative.

### **Effective sanctions and extending protection to adoptive parents**

The European Parliament felt strongly about ensuring strong wording in the directive on judicial sanctions, where compensation to victims may not be restricted by a fixed upper limit. This in fact means that an employer shall not be able to take calculated risks when discriminating on the grounds of sex. At the moment in Finland, for example, a company can take the decision to employ a male candidate even if a female applicant is more competent, knowing that there is a fixed compensation amount (two years salary) that the courts would grant to the victim of discrimination should she take the matter to court and should it be able to be proven that she was discriminated against.

The directive prohibits the discrimination against women on the grounds of pregnancy or maternity leave. The Parliament also fought hard to grant a right of return to the same job or an equivalent post after maternity but also paternity or adoption leave, where such rights are recognised by Member States. To not recognise the rights of adoptive parents in today's society would certainly have made the directive outdated before its entry into force.

### **What was not achieved**

As a Rapporteur, I need to also highlight some issues where the European Parliament would have liked to see the directive go further but was not able to persuade the representatives of Member States.

The end result lacks explicit text on the prohibition of general exclusion of one sex to any professional activity and binding gender mainstreaming. Some Member States still exclude women from professions such as fighter pilots and in others religious entities fear the Courts would find their practices discriminatory.

We also failed to have explicit prohibition of discrimination of fathers as well as mothers exercising rights related to parenthood or reconciling family and working life. I believe that a text consolidating and codifying the existing jurisprudence of the ECJ would have been useful, knowing that where gradually national laws grant men more equal rights related to parenthood and family, men who use these rights are often heavily discriminated against by the employers.

At the moment there is no EU legislation on "papa-leave" or paternal leave. The Commission has woken up to consider the issue, and perhaps rather sooner than later we will see a proposal for EU minimum norms for fathers' leave. I believe any steps towards dividing the employer's costs over parenthood more equally between the two parents' employers is going to the right direction. The fact that at the moment the mother's employer carries most of the cost and risks of employee's parenthood, affects directly the employability of women in their mid thirties to forties.

### **4. The impact of the revised Equal treatment in employment Directive**

Many changes in the revision codify the jurisprudence resulting from the application and interpretation of the old directive 76/207/EEC. The new elements, such as the definition of sexual harassment and the proactive measures to prevent sexual harassment and to introduce systematic equality reporting at the work place, should amount to significant changes in national laws and practices. As a principle it is very important that the new directive recognises rights of fathers and adoptive parents at an equal footing with maternity rights which traditionally have been linked to the medical condition of pregnancy and childbirth.

The reviewed directive also requires Member States to establish **Equality Bodies** for the monitoring, analysis, promotion and support of equal treatment for men and women. Within three years of the publication all Member States have to have the necessary structures in place, and this new obligation will have to be implemented as part of the *aquis communautaire* also in the Central and Eastern European accession countries.

In most countries with a history of socialism, during the transition to market economies the situation of women has weakened in many respects. I find the requirement to establish institutions with the responsibility to monitor the attainment of gender equality in the implementation of policies: one of the most important achievements of the revision.

I would like to invite specialists such as members of the EWLA to monitor closely the implementation of the revised Directive into national laws. For example the paragraph on the need of employers to take preventive measures against sexual

harassment will be an important test case for the evaluation of the final outcome of the directive. In the conciliation representatives of the Commission and Council confirmed to me that the formulation agreed upon will in practice have the effect that employers will be obliged to take action. We will all need to be vigilant and ensure the practical interpretation of the directive will truly further gender equality in Europe.