

Gender Equality Standards in Poland The Results of the Enlargement Process

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INTRODUCTION

Great hopes and fears are connected with the enlargement process in the European Union and in the region of Central and Eastern Europe. The possible consequences of enlargement have been analysed from a great number of perspectives. However, gender equality in the enlargement process has not received much attention either from policy makers or from the general public. This is true both in the current EU institutions and member states, as well as in the accession candidates. Therefore, this is also true in Poland.

In 2001, the European Commission recognized that in Poland, *“Considerable efforts to align with the EC acquis have been undertaken and should continue to receive high priority [...]. While the amendments to the Labour Code constitute good progress, the necessary institutional framework for implementing and enforcing the acquis in this area should still be established. Further, actions should be undertaken to raise awareness of equal treatment for women and men, to improve the position of women in the labour market and to increase their representation in decision-making.”*

This considerable change in the European Commission’s assessment, in comparison with 2000, was a result of the adoption in 2001² of the amendments to the Labour Code, defining more specifically – among other things – the principle of equal treatment, and therefore harmonising the Polish legislation with the provisions set forth in the 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.

BACKGROUND

Gender equality was not placed high in the hierarchy of policy issues implemented by the Polish Ministry of Labour and Social Affairs from 1997-2001. There was lack of the political will to conduct a pro-equality policy in the integration of international standards. In 1997, for example, the national gender equality machinery was transformed into the Plenipotentiary of the Government for the Family. As a result, gender equality issues were dropped from the scope of interest of this office, and it began to perceive women only in the context of the family.

In 1999, the Parliament rejected a first draft Act on Equal Status, which provided for special means of protection against discrimination in employment and means to pursue claims in case of a violation of the principle of equality of women and men. In 2000, a draft on the creation of the Commission of Equal Status in the Parliament, whose tasks were to include analyzing draft statutory acts with regard to their consequences for both sexes, was also not adopted.

Currently women in the Polish Parliament are trying again to adopt laws concerning gender equality in various spheres of life. Their focus is on the institutional mechanisms to control the process of implementation of the principle of equal treatment of women and men. They are also looking closely at the position of women in the labour market and in the political life.

Criticism was expressed with regard to the information policy of the Polish Government on the equality of men and women. The provisions of EU law on this issue have been presented only partially to the public, and, moreover, not in the wider legal context of defining fundamental Community aims, principle and rules. As a result, the level of women’s awareness of the positive changes they may expect after Poland’s accession to the European Union has been really low.

IMPORTANT CHANGES

Undoubtedly, there have been some positive changes in the Polish legislation and reality following the inclusion of gender equality standards. If it were not for the harmonisation process, the legal regulations existing in Poland would have remained the same, and the debate, even though it was not long and seriously treated, would not have taken the place at all. The positive impact of the enlargement in Poland could be observed in the following spheres:

1. New gender equality legislation
2. Institutional mechanisms for gender equality

¹ **Network of East-West Women Polska (NEWW-Polska)** was established in **1999 in Gdansk, Poland** as an independent association that shares mission and goals of the Network of East – West Women (NEWW) located in the US. The Network of East-West Women (NEWW) began in 1990 in Dubrovnik, as an international communication and resource network supporting dialogue, informational exchange and activism among those concerned about women’s situation in Central and Eastern Europe and the former Soviet Union. NEWW-Polska’s mission is to empower women and girls throughout the East (Central and Eastern Europe) by dialogue, networking, campaigns, and educational and informational exchanges.

² The Act of 24 August 2001 on Amending the Act – the Labour Code and Some Other Acts, published in Dziennik Ustaw, the Official Journal of the Republic of Poland, hereinafter referred to as Dz.U., No. 128 of 2001, item 1405.

3. Social perception of the concept of gender equality

1. New gender equality legislation

Polish law explicitly prohibits discrimination on the grounds of gender. At the same time, the law guarantees equality in the workplace as well as the health and dignity of an employee. Prohibition of discrimination appears in the Polish Constitution of 2 April 1997, the most important legal act in the hierarchy of all legal documents in the Polish system. Chapter II, entitled "The Freedoms, Rights and Obligations of Persons and Citizens" enumerates the individual, political, economic, social and cultural freedoms and rights, which belong to every human being in the territory of Poland. This Chapter also specifically describes the rights and freedoms of every Polish citizen.

Basic guarantees for gender equality in the labour market, such as the right to equal treatment by public authorities and the prohibition of discrimination, are enshrined in Article 32. Article 32 does not enumerate the criteria for discrimination, but only states that the prohibition concerns discrimination "for any reason whatsoever," as it is clear that gender is one of these reasons. Article 33 of the Constitution relates to the issue of equality of women and men in the labour market. It states that "Men and women shall have equal rights in family, political, social, and economic life in the Republic of Poland," and that "Men and women shall have equal rights, in particular, regarding education, employment and promotion, and shall have the right to equal compensation for work of equal value, to social security, to hold offices and to receive public honours and decorations."

Based on the above articles, it can reasonably be interpreted that the Constitution guarantees equal position of a woman and a man in all spheres of life, from family life to economic life, connected very closely with the right to employment and occupation.

Prohibition of discrimination formulated as a constitutional principle is further developed in other legal provisions. As it was stated in the 'Introduction', there have been considerable changes in the **labour code**, which were the results of the harmonisation process as required by the EU. The modified provisions of the labour code entered into force on 1 January 2002. New Section 11(3) of the Labour Code prohibits any discrimination, both direct and indirect, in employment, in particular on grounds of sex, disability, race, and nationality, political or religious opinions. The Amending Act provides that indirect discrimination occurs when there is a disproportion with regard to the conditions of employment to the detriment of all or of a significant number of workers of one sex and which may not be explained by reasons other than sex (Article 18(3)(a)(3)). This definition of indirect discrimination is based entirely on definitions developed in the Community law and embodied in the EU documents.

Amendments to the Labour Code accepted new evidentiary principle. This principle states that in the case of any distinction of a discriminatory character, the burden of proof lies on the employer and that she/he must prove that the distinction was not discriminatory. Prior to this amendment, the burden of proof was on the plaintiff to prove that discriminatory behaviour occurred. Article 18(3)(b)(1) enumerates actions and events which violate the principle of equal treatment. In the end it is stated that "unless the employer proves that he took other criteria under consideration" (not sex of a person), the plaintiff will receive a remedy.

One of the new regulations of great importance in the labour law is granting an employee a possibility to claim compensation if the employer violates the principle of equal treatment of women and men. This rule is explicitly expressed in the provisions of Chapter IIa on equal treatment of women and men. Article 18(3)(d) specifies also a minimal level of compensation, by setting up the limits of "not less than the lowest salary for work and no more than the amount of six monthly salaries."

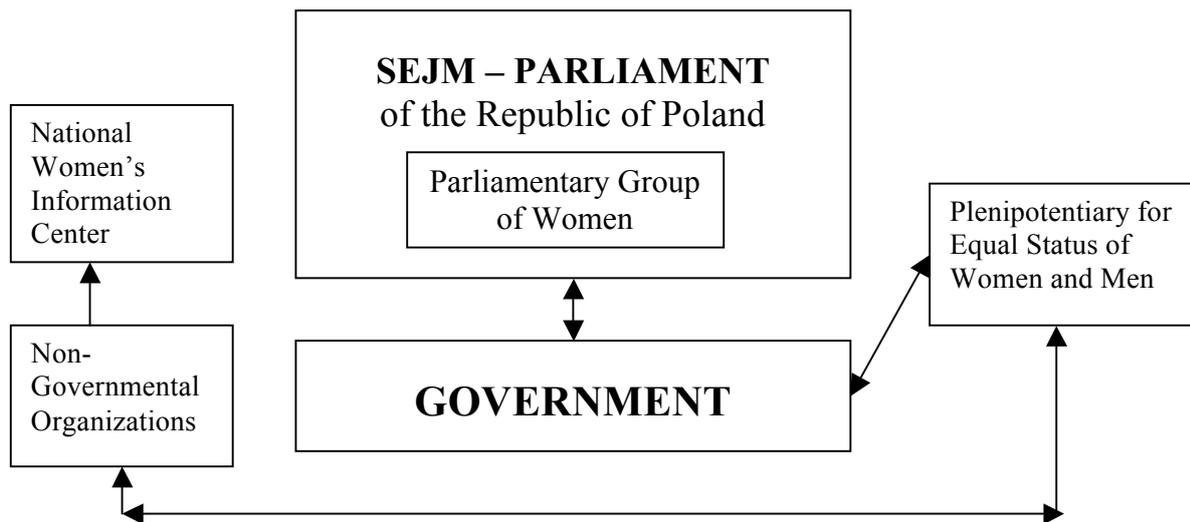
While incorporating this new Chapter into the Labour Code, Article 18(3)(c) introduced the principle of equal pay, however the Polish law does not define "work of equal value".

2. Institutional mechanisms for gender equality

As a result of the pressure of the negotiation process, new gender equality body was established in Poland in **November 2001. The Office of the Governmental Plenipotentiary on Equal Opportunities for Women and Men in Poland** is a higher-level institution, directly subordinated to and established with an ordinance of the Council of Ministers. However, it is not an independent public institution, like an Office of Equal Opportunities Ombudsperson in Lithuania³ for example. And it has to be highlighted that the national machinery on equal opportunities in Poland is not so extended as in Slovenia.⁴

³ An Office of Equal Opportunities Ombudsperson in Lithuania was established by the Parliament (*Seimas*) on 25 May 1999, according to the Law on Equal Opportunities of 1 March 1999.

⁴ In Slovenia there are several gender equality institutions: Office for Equal Opportunities, Advocate for Equal Opportunities for Women and Men (which will be employed at the Office for Equal Opportunities and will start work in 2003), Co-ordinators for Equal Opportunities, and Equal Opportunities Policy Commission, which was abolished after the national elections in 2000.



The Government Plenipotentiary for Equal Status of Women and Men

The Government Plenipotentiary for Equal Status of Women and Men was established on the basis of the Council of Ministers' Act of 20 October 2001. **The Government Plenipotentiary for Equal Status of Women and Men is the Secretary of State in the Chancellery of Prime Minister.** The current Plenipotentiary is Minister **Izabela Jaruga-Nowacka**.

The duties of the Plenipotentiary include:⁵

1. accomplishment of government policy within the scope of equal status of women and men,
2. making arrangements for establishing an office for counteracting discrimination based on race, ethnic origin, religion or belief, age and sexual orientation, including development of a schedule of measures aimed at creation of the office and preparation of legal acts drafts.

The duties of the Plenipotentiary within the scope of equal status of women and men specifically include: making analysis and evaluation of the legal and social situation with respect to equal treatment and equal opportunities of women and men, initiating and coordinating actions aimed at achieving equal treatment and equal opportunities for women and men as well as protection against discrimination based on sex in all the areas of social life; promoting gender mainstreaming approach; expressing opinion on legal acts and other governmental documents drafts, affecting the situation within the equal status of women and men, as well as developing legal acts on equal status of women and men. The Plenipotentiary is also responsible for cooperation with various entities, including NGOs, and organization of the awareness campaigns.

Parliamentary Group of Women

The idea of establishing the **Parliamentary Group of Women came about in 1991**, after significant changes in the Polish democracy. The main aim of the Group's activities is protection of women's rights regardless of the political divisions. In the declaration adopted in 2001, the need for activities aiming at increasing women's participation in decision-making and at the higher positions was particularly mentioned. The necessity of creating the mechanisms ensuring the realization of the constitutional rule of equal rights for women and men was therefore highlighted. One of the most important achievements of the Parliamentary Group of Women was the successful inclusion into the text of a new Constitution of 1997 of a statement guaranteeing equality between women and men. The Group is an author of **Article 33 of the Constitution** stating that: *Women and men shall have equal rights in family, political, social, and economic life in the Republic of Poland.* The Parliamentary Group of Women initiated a legislative process of adopting the draft law on equal status of women and men.

One of the major weaknesses of these institutional mechanisms is the lack of gender policies and means for their implementation. Other problems these institutions face include a lack of adequately trained staff and a shortage of financial resources.

⁵ Based on the Regulation of the Council of Ministers of 25 June 2002.

The Polish legal system does not, unfortunately, establish any particular institutions to investigate the enforcement of gender equality in employment. Nevertheless, some controlling authorities of an administrative character with more general competencies may investigate the implementation of this principle. An example of such an authority is the **State Employment Inspection**, which is authorised to control and supervise the observance of the labour law in the workplaces. The competencies of the Inspection also include controlling the observance of the provisions referring to the employment relationship, including remuneration for work. However, in case of violation of the principle of equal pay for equal work, the competent authorities of the State Employment Inspection are only entitled to address a motion to the manager of the workplace or to the entity superior to the workplace concerned.⁶

3. Social perception of the concept of gender equality

There have been also significant changes in the social attitude towards discrimination based on sex and the principle of equal treatment of women and men.

The results of the public opinion survey⁷ rather explicitly confirmed that discrimination in Poland is not a marginal phenomenon, rather the opposite – it is quite broadly recognized by the society. Every second woman (50%) sees the problem of discrimination against women in Poland. On the establishment of the Office of Plenipotentiary, more people support the opinion that appointing the plenipotentiary on equal status of women and men was necessary. Women (52%) speak about the need to establish such an office more often than men (38%). As to the issues the plenipotentiary should deal with, a definite majority of the respondents (both women and men) believe that actions should be taken to prevent domestic violence (84%) and to prevent sexual harassment at work (82%) and discrimination based on gender in the labour market – equalizing pay of women and men for the same work (85%) and equalizing the chances of both sexes for employment (80%).

What is also very significant, the idea of adopting a new law that would guarantee equal status of women and men is supported by 54% of respondents which see discrimination against women in Poland and only 16% of respondents who believe that women have the same chances and opportunities in life as men have.

CONCLUSION

The enlargement process has provided some important policy instruments for increasing equality between women and men. However, it needs to be ensured that gender equality is established as a priority in the government's activities.

A low level of awareness of rights related to equal opportunities and gender equality is evident both in the society in general and within the court system. Therefore, the most important is the introduction of special mechanisms to ensure that gender equality is not lost among broader non-discrimination considerations, such as the establishment and strengthening, through financial and personal resources, of special institutional mechanisms for gender equality. Additionally, increased support to women's NGOs working to ensure the effective implementation of the *acquis* on gender equality is very much needed. There is a strong feeling among women activists that Poland's accession to the EU, and in particular the harmonization of Polish law with the *acquis communautaire* in the field of equal opportunities for women and men, will contribute substantially to the elimination of many of the side effects of political and economic transformation.

Bibliography:

Monitoring the EU Accession Process: Equal Opportunities for Women and Men, Open Society Institute and EU Accession Monitoring Program, 2002

Steinilber, S. 2002. Women's Rights and Gender equality in the EU Enlargement. An Opportunity for Progress, WIDE Briefing Paper

Wilkowska-Landowska, A. 2002. Women at Work. Equality or Discrimination? Protection of Women from Discrimination and Sexual Harassment in the Workplace, NEWW-Polska

⁶ It should be noted that on 10 April 2001 the Sejm adopted the amendments to the Act on State Employment Inspection, which would seriously expand the powers of the employment inspectors by authorizing them to issue orders for an employer to pay remuneration for work or other performance granted to the employee. These orders are to be administratively enforced. However, the intention was not to give the inspectors a possibility to order the employer to pay the employee a sum that would compensate the contractual pay, as a result of the violation of the principle of equal pay.

⁷ The survey "Actual problems and events" was conducted by CBOS from 1 to 4 February 2002 on the representative group of 954 of adult residents of Poland.