

Abstract

As states in Central and Eastern Europe become members of the European Union, their attention to gender equity policies must meet EU standards. Through a discussion of how culture and history shape the expectations and perceptions of gender equality, the author highlights the struggle in achieving and maintaining these standards. A snapshot of the Polish experience provides a perspective of how some states are working towards addressing inequalities.

Introduction

In 2004 a group of ten countries¹ from the region of Central and Eastern Europe became members of the supranational organisation called the European Union (EU). For women's groups that was supposed to be a positive step, especially with regard to gender equality standards, as these had been receiving much attention throughout the whole process of accession, both from policy makers and from the general public. Although it had been noticed that the new EU members were undertaking considerable efforts to align the European Community law (EC law) with regard to gender equality standards, it had also been stated that these issues should continue to receive high priority. The necessity of establishing the institutional framework for implementing and enforcing the laws in the area of equal treatment for women and men, as well as providing effective instruments to combat different forms of discrimination, had been regularly highlighted. The fact of accession was also welcomed by neighbouring countries as they were expecting to be included into the programmes of promoting gender equality, and through that, gain further support for their local or regional initiatives. Now, after more than two years from the main wave of accession, the first conclusions are being drawn based on the experiences of not only new member states, but also other countries from the region of Central and Eastern Europe. Therefore, the aim of this paper is to focus on the laws and mechanisms established to promote gender equality standards in different countries of the CEE region (and not only EU member states). The paper will also briefly analyse the Polish situation in that regard, as here we have an interesting example of how the political circumstances may endanger the implementation of previously adopted regulations and limit the development of anti-discrimination policies.

The title of this paper is slightly provocative, and answering this question is not an easy task at all. First of all, the process of implementation of any standards is difficult, time-consuming and requires forward planning. Secondly, the empowerment of women and promotion of women's human rights are very often perceived as the most controversial concepts in our societies. Also, what makes the whole process even more difficult is that national institutions tend to be reluctant to adopt new strategies and introduce new policies. However, the more this mission seems impossible, the more it is a challenge.

Societies are increasingly aware that promotion of gender equality and women's empowerment is not just important for women themselves, but it is critical for effective development in all areas. Various international actors have highlighted that policies, programmes and activities that fail to take gender inequality into account, and fail to empower women, will have limited impact and can lead to serious cost to societies.

Over the past decade, there have been significant advances for women in many parts of the world in relation to health, education and employment. Even in areas where progress has been made, there is still much work to be done in order to improve the situation. In many countries, as in the CEE region, the gains made in terms of improved access of women to education have not contributed to their increased employment opportunities. While access to health services has improved in many countries, in other countries women are still denied their reproductive rights (such as in Poland).

There are numerous obstacles women encounter on their way to achieving gender

equality. Deeply rooted negative attitudes and stereotypes are among those which are the most visible and difficult to tackle and still existing in most of the societies. Women's main role is understood as holding responsibility for domestic affairs. Home and family are seen as women's domain. Therefore, as long as these attitudes are prevailing and working against women, gender equality will never be fully achieved. Another serious constraint is the lack of political will to ensure the necessary political changes and allocation of sufficient resources. Gender equality standards are not being included into the priority areas within the governmental policies. As experience of CEE countries shows, without at least limited support for introducing equality laws, progress cannot be made and equal opportunities cannot be secured for both women and men. The state is thus obliged to ensure that all members of society will exercise rights and that women will not be discriminated on the basis of their sex.

Central and Eastern Europe – historical background

The countries in the CEE region have made significant improvements in the past fifteen years in terms of strengthening a democratic approach and respect for individual liberty, personal freedom and human rights. Many countries made important progress towards creating effective institutions in support of a new market economy, as well as towards ensuring much greater participation of citizens in governance.

Despite those undeniable achievements of the transition process, concerns had been increasingly expressed as to gender inequalities and the deterioration of women's human rights. The advent of more democratic regimes has paradoxically led to lower

percentages of women in political decision-making positions and decreasing participation in public life. Violence against women has been also on the rise, including increasing numbers of women and girls becoming victims of crime and trafficking.

The unique feature of the CEE region is related to the fact that even before the transition began, the issues connected with gender equality had been present within the governmental policies. Many still claim that protections women acquired at that time were broader and more effective than those guaranteed nowadays. But it needs to be understood, that the reasons for adopting those equality policies were different than the arguments put forward now.

In most of the CEE countries, the key provisions declaring gender equality were contained in constitutions and labour codes. Constitutional provisions prohibited discrimination, and provided women and men with equal rights in all areas of public, political, economic, social, and cultural life. The constitution gave citizens the right to work, and required equal remuneration for equal work. It provided for a broader protection for mothers and children, especially during pregnancy and childbearing period.²

During the communist regime, many CEE countries did not establish special institutions to deal specifically with gender equality, as it was believed that existing ministries could also handle women's issues.³ Some CEE countries had a labour inspectorate to assist with the enforcement of equality issues.⁴ Specialized labour courts were established to deal with issues relating to employment relations.⁵

Gender equality legislation in CEE countries

In recent years, a number of countries in the CEE region have adopted Gender Equality Laws (GELs), Anti-discrimination laws, or amendments to their family, criminal or labour codes with an intention to improve women's access to their rights. Several countries have been considering enacting similar legislation. There may be numerous explanations for the recent occurrence of the GELs throughout the region of Central and Eastern Europe. Among others, there are at least two dominant political and social dynamics that make this an opportune time to promote gender equality through introducing new legislation. The first is a strong interest in accession and integration to the European Union, and the second is the recovery and stabilization in South Eastern Europe following violent conflict while in a period of continued instances of instability. CEE countries that aspired or still are to join the EU had to demonstrate that they had taken action to eliminate discrimination against women and were making efforts to ensure gender equality consistent with EU legal standards.⁶ Other factors include an interest to align with international donors' priorities, perceived need to have a respectable human/women's rights record and the fact that there are growing numbers of nascent "gender experts" in the region who are willing to work, usually with donor support, to draft and enact legislation.

As mentioned previously, many of the CEE countries have adopted or are considering adoption of gender equality legislation. Equal Opportunities Law/Gender Equality Laws have been adopted in Albania, Bosnia and Herzegovina, Croatia, Lithuania, Slovenia, and Ukraine. The countries that are still in a process of preparation include Serbia,

Montenegro and FYR Macedonia. In some countries the provisions against discrimination on the basis of sex have been included into anti-discrimination legislation like that in Bulgaria, Romania, and Slovakia. In Poland and other countries, there is not a separate law on gender equality, but relevant provisions are incorporated into labour codes.⁷

The existing gender equality laws cover certain spheres of public and private life, but most commonly they focus on eliminating discrimination in employment. The other areas of concern include education, health care, access to public offices, media, sexual harassment, and gender based violence.

While gender equality laws present an excellent opportunity to provide an antidote to the poor performance of the regional governments catalogued by the CEDAW Committee,⁸ the initial analysis of these laws and experience in enforcing them is not encouraging. The gap between the laws and the reality of women's lives continues largely unaffected by these legal documents. There is scant evidence that these laws are being implemented. Hence, implementation of these and related laws is proving problematic and disappointing. Why are the laws poorly enforced and implemented? A combination of reasons is the common answer – including deficiencies in formulation of the law, but also, lack of knowledge of these laws among the ministerial, legal and judicial bodies as well as among the general public, weak capacity among designated implementing bodies, absence of political will, and limited resources. These are the reasons the laws are not reaching their intended use. Therefore, partly due to the process of drafting the laws, partly due to the shortcomings in the laws themselves, partly to the failures of responsible government

entities, and partly to ignorance of the laws among those who should enforce them and those who should benefit from them, we still face a lack of sufficient gender equality protection mechanisms. Criticisms of the current legislation can be drawn in the areas discussed below.

Drafting the laws

The drafting committees lack appropriate expertise. The lack of lawyers on the committees and the lack of constitutional and legislative expertise among the lawyers resulted in problems ranging from vague and unenforceable provisions to dysfunctional implementation mechanisms.⁹

These laws are modelled on the foreign gender equality acts and these acts are ill adapted. In many cases, the development of the GELs was financially supported and guided by multilateral and bilateral organizations. This resulted in introducing the influence of legal systems different from most in the region. Indeed, many of the models that inform the CEE laws originate in the West. Whether Swedish, Norwegian, Finnish, EU, or even CEDAW – such models are commonly based on a human (individual) rights approach. The idea that the model can and should be “adapted” to suit the local context is good in theory, but presents two problems. First, the functional success of these models is dependent on civil and judicial systems vastly different than those in the region. Secondly, the drafters tend to pick and choose language from the models as it appeals to them, and this piecemeal approach understandably results in incoherent and unenforceable provisions.^{10 11}

Drafting and enacting gender equality legislation has had low priority compared with economic and structural reforms in the

region. In the process of transitioning from a centralised or planned economy, to a market economy with more democratic forms of governance, external pressure and support has focused on economic and monetary policies or broader public sector reforms. Enacting strong and enforceable gender equality legislation has not attracted the same level of resources and commitment

Shortcomings in the laws

Frequently, the laws are not structured well and do not clearly state the prohibition of discrimination and promotion of equality. The statement of purpose of the law does not reflect the CEDAW model as very often they fail to stipulate the need and necessity for the elimination of gender stereotypes.

Contrary to the EU regulations and definitions embodied in the EU directives, the definition of discrimination, within most laws of the CEE, does not cover both direct and indirect discrimination and very often the laws do not provide for special temporary measures.¹²

There is no clear and accessible system that includes procedures for complaints, investigation, arbitration, court action and remedies. Liability for discriminatory actions is not clearly established. Very often it is not clear what kind of action will be taken or which remedies are available to the victims.¹³

Governmental failures

There is a strong historically based reliance on the government to promulgate and particularly to enforce the law in the CEE countries. The weak political will of governments with respect to gender issues presents an ongoing challenge to ensuring that resources are allocated and that there is respect for the intent of the law. Very often the government decides on weakening the

institutional base designated to promote gender equality, which in turn has a negative impact on the overall enforcement of these legal standards.

Lack of awareness

It is commonly agreed upon throughout the region that very few people within the government and even fewer in the general population are aware of the Gender Equality Laws. Faced with proposals for legislation that promotes gender equality, representatives of ministries and/or Parliament very often either insist that their Constitutions are adequate to provide men and women with equality or deny that there are any issues of gender-based fairness in the country.

National gender equality machinery

The implementation of gender equality laws is problematic due to the ineffective performance of government agencies and other institutions responsible for promotion of these legal standards. Some of the mechanisms created to deal with gender equality lack clearly defined roles, or do not have the capacity, skills and resources to undertake the prescribed functions. National structures are not sustainable and also extremely vulnerable to political changes and pressure from their governments. Lack of autonomy and independence undermines the capacity of these mechanisms to implement their mandates. Among various effects, this can considerably weaken their reporting capacities, which is an essential element of their accountability system.

Existing national structures dealing with gender equality that are covered by the laws could be divided into several types:

- Departments/offices/councils/sectors in the Ministry of Labour and Social Affairs

in Bulgaria, FYR Macedonia, Romania, Serbia and Montenegro, Slovakia.

- Ministry of Health, Family or Welfare such as in Latvia, and the Ukraine; and under the Prime Minister or in its office like in Albania, and Croatia.
- Ombudsperson/commissioner/advocate, this position was created to handle complaints as to violations of the law and/or to monitor progress of gender equality this is found in the Ukraine, Croatia, Macedonia, Montenegro, and Lithuania.

Moreover, there have been equal opportunity parliamentary commissions established in a few countries. In Croatia, Czech Republic, and Latvia it is a Parliamentary Sub-committee on Gender Equality; in Serbia and Montenegro, a Committee on Family Affairs, Health, Social and Ecology Protection in Parliament; and Slovakia developed a Commission for Equal Opportunities and Status of Women. In other countries female MPs set up forums for cooperation. In the FRY Macedonia a Women's Parliamentary Caucus for the empowerment of female deputies was organized and in Poland a Parliamentary Group of Women working for advancement of women was established.

Despite the progress in introducing legal provisions against discrimination and adopting or developing gender equality acts, there are still no legal guarantees for the continuous existence of national machineries and/or for their status and position in the government. The only positive exceptions are Croatia, Lithuania, and Slovenia.

Croatia

The Governmental Office on Gender Equality was established in July 2003 on the basis of the Gender Equality Act. It is

an independent body responsible primarily to the Government. It formulates the government policy concerning equal gender status, and initiates legislative actions. The Office on Gender Equality also performs policy analysis and the coordination and monitoring for the implementation of gender policy. Other gender equality bodies include the Parliamentary Committee on Gender Equality that was established in 2000 and mainly deals with how gender equality is implemented in legislation. Furthermore, Croatia has an Ombudsperson who takes on cases where the public authority has endangered citizens' rights. Although in this instance, no specific reference is made to gender discrimination.

Lithuania

The Office of Equal Opportunities Ombudsman, functioning since 1999, is an independent state institution answerable to the Parliament. It is one of the key institutions within the gender equality machinery and takes overall responsibility for the supervision and implementation of the Law on Equal Opportunities for Women and Men in Lithuania (adopted in 1998). The Equal Opportunities Ombudsman is appointed by the Parliament for a four-year term. The Ombudsman investigates individual complaints on gender discrimination and sexual harassment; submits recommendations and proposals to the Parliament, governmental institutions on gender equality policy, and recommendations for amendments to the existing legislation. The Ombudsman has a right to investigate administrative cases and impose administrative sanctions in case of violations of the GEL. The Ombudsman has also a right to refer the complaint to the pre-trial investigation bodies and to send recommendations to the institutions that are claimed to have breach the law.

Slovenia

The Gender Equality Ombudsman office was established in 2003 as a result of the Equal Opportunities Act, an umbrella law providing a common basis for creating equal opportunities for women and men, which came into force in July 2002. The Act defines and prohibits both direct and indirect discrimination. Moreover, the Act allows for positive measures to ensure equality and provides for the introduction of gender equality into education in order to tackle stereotypes of gender roles reinforced by society. Currently the main governmental body dealing with gender equality is the Office for Equal Opportunities established in 2003. The Office functions under the State Secretary, responsible to the Government not attached to any specific ministry. Its tasks include monitoring and coordinating gender equality issues towards all the ministries and to participate in the preparation of laws and regulations. It also performs policy analysis, advocacy. Gender focal points are established within several ministries.

The gender equality legislation, even if adopted and put in force, in almost all the countries is far from being effectively implemented in practice. In all of the countries, institutional mechanisms have objectively proven that they are inadequately equipped to work for the advancement of women.

In the light of the fact that conservative forces are gaining increased power, the sustainability of national machineries is still threatened. Therefore, women's NGOs believe that national machineries ought to be strengthened by providing them with a stronger legal basis, the mandate to formulate the governmental gender policy, and the authority to initiate legislative action. National machinery must be either independent from the government or placed at the highest level within the

government and have a clear mandate for gender equality. The recent changes in the Polish political sphere clearly show that the institutions dependent on the government cannot play their role of standard-setting bodies as their existence is under threat of liquidation every four years. Last year, when the conservative party "Law and Justice" came into power, its first decision concerned closing the Office of the Plenipotentiary for Equal Status of Women and Men.

The Polish example

Gender equality was not placed high in the hierarchy of policy issues implemented by the Polish Ministry of Labour and Social Affairs between 1997 and 2001. There was lack of political will to conduct a pro-equality policy in the integration of international standards. In 1997, the national gender equality machinery was transformed into the Government Plenipotentiary for the Family.¹⁴ 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.

However, after parliamentary elections in 2001, a new Government established an Office of the Plenipotentiary for the Equal Status of Women and Men. This, of course, was an indirect consequence of the EU negotiation process and the pressure put on Poland by the EU authorities. The Office was a higher-level institution, directly subordinate to the Prime Minister. Hence its only perceived major weakness is that it was not an independent public institution. The Plenipotentiary did not have its own legislative initiative and could only present draft legislation that had been previously accepted by the Prime Minister. In 2002 the Government enlarged the Plenipotentiary's scope of competence by adding such

tasks as combating discrimination on the grounds of race, ethnic origin, religion and beliefs, age and sexual orientation. It soon became evident that the existence of the Office and its ability to fulfil the mandate was subject to the political will of the governing party. In October 2005, the newly elected Government immediately decided to dismiss the Plenipotentiary and the Office ceased to exist.

Since November 2005, issues related to discrimination are dealt with by the Department of Women, Family and Counteracting Discrimination, which is placed within the Ministry of Labour and Social Policy. The Department, as stated on its website, is responsible for coordinating actions pertaining to the status of women and family in society, and fulfils tasks pertaining to counteracting discrimination for any reasons in all domains of social, economic, and political life, except for issues related to counteracting ethnic discrimination. The Department clearly focuses on women in the context of their position within the family and the labour market, while lacking a feminist approach to highlight the importance of ensuring equality of men and women in all spheres of life. Liquidation of the Office of the Plenipotentiary constituted a step back on the way towards empowering women and ensuring their participation in a public life on an equal footing with their male counterparts. The main problem remains, that is, to guarantee stability of the results that have been accomplished. Whether that mission will be successful, is again, difficult to predict.

Conclusion

Obviously, good laws and strategies are not enough to change or improve gender inequalities. The CEE countries should establish a new legal culture by adopting laws

that shape society to view equal rights and opportunities as a legitimate and essential component of the overall legal framework. Equal opportunities legislation should be supplemented by the development of an independent monitoring mechanism, such as ombudspersons or similar institutions, with the power to recommend corrective actions concerning any existing or anticipated shortcomings.

Access to justice for women is deficient in the region, as well as the information on the rights and legislation. There is a huge gap between theory and practice of implementation of basic equality standards. The limited number of court cases concerning sex discrimination illustrates the lack of adequate enforcement by government bodies and the reluctance of women to bring charges to the courts. In general, one may claim that there is a considerable resistance across the region of CEE to a gender equality issue and its implementation. The reason for that most likely stems from a long-standing tradition of a verbal commitment to equality inherited from the Soviet times. Most people are confident that equality between women and men has been achieved and is an integral part of their life. In this respect, national mentality and societal stereotypes are the main barriers to overcome.

Here, civil society has a critical role to play. Moreover, since the reality in the region is that the institutions responsible for implementation of the laws are gender blind and patriarchal, thereby political will and the commitment to the allocation of resources will not come on its own, any attempt to press for implementation of gender equality laws would have to rely on support and full engagement from civil society groups. Non-governmental organisations and civil society groups

and networks have already contributed to increasing the visibility and recognition of the importance of gender equality and women's empowerment. Their role in advocating for, and monitoring implementation of, the commitments made by governments has been particularly significant. Establishing stronger partnerships among civil society and between governments and civil society could inevitably enhance implementation.

The accession process and requirement to implement the EU equality standards contributed to adoption of important policy instruments for increasing equality between women and men. If it were not for the harmonisation process, the legal regulations existing in many countries of the region would have remained the same, and the debate, though it was not taken seriously by all the partners, would not have taken place at all. The positive impact of the enlargement process could be seen through adoption of new gender equality legislation and setting up a base for establishing gender equality machinery. Because of EU regulations, awareness of equal opportunities is increasingly present within governmental bodies.¹⁵ Therefore, it is not so crucial to adopt new laws anymore, as it is more important to develop strategies to ensure that the adopted standards will be enforced.

That mission is, without any doubt, possible. It cannot be announced successful yet as there is still a lot to be done and the situation varies depending on the country. However, there have been certain steps undertaken and positive changes have appeared so that mission definitely has to be continued.

Endnotes

- 1 These countries include Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, and Slovenia, as well as Cyprus and Malta. Bulgaria and Romania are to become EU members in 2007.
- 2 Sloat, A., *Legislating for Equality: The Implementation of the EU Equality Acquis in Central and Eastern Europe*, Jean Monnet Working Paper 08/04, New York 2004.
- 3 The first separate institution dealing with gender equality was created in Poland, quite early, in 1986. The Government's Plenipotentiary for Women was established as a result of implementing the recommendations of the World Conference on Women in Nairobi. It was originally attached to the Ministry of Labour and Social Welfare. *Ibid.*
- 4 In Hungary, for example, the central office of Labour Inspection was given the power to handle general discrimination-related problems that were reported to them by workers in individual factories. *Ibid.*
- 5 Labour courts still exist in many countries, and the assessment of their work is positive.
- 6 The EU's commitment to promote gender equality constitutes an integral part of the EU legislation since 1957. The countries applying for EU membership are obliged to respect equal treatment legislation and to harmonise their own legal framework with the equality regulations adopted by the Union. The process of harmonization in the area of gender equality covered several major directives describing primarily various spheres of employment. Right now the European Union legislates also in other spheres and ensures equality in treatment also in political life, as well as insurance or taxes.
- 7 Currently the Polish Labour Code prohibits any form of discrimination, both direct and indirect, in the area of employment, in particular on grounds of sex, disability, race, and nationality and political or religious opinions. Amendments to the Labour Code introduced also a new evidentiary principle (shifting burden of proof on an employer, so s/he must prove that the distinction s/he made or other behaviour was not discriminatory).
- 8 All 28 governments in Central and Eastern Europe and the Commonwealth of Independent States (CEE/ CIS) have ratified the Convention for the Elimination for All Forms of Discrimination Against Women (CEDAW). CEDAW itself imposes the responsibility on its signatories to prevent discrimination on the basis of sex and to promote de facto equality between men and women and to take affirmative steps to eliminate sex-based stereotypes. The legal mandate for effective gender appropriate legislation is thus clear.
- 9 For example, in Bosnia and Herzegovina, according to the 2003 Gender Equality Law, two Gender Centres are authorized to investigate claims brought by the citizens. However, despite the clear language of the statute stating that right of the Centres, they lack the legal authority to conduct investigations, as there are no secondary laws

- specifying that authority.
- 10 UNDP-UNIFEM Regional Programme, Concept Note. *Advancing Implementation of Gender Equality Legislation in Central and Eastern Europe and the CIS*, page 3. Bratislava, 2005.
 - 11 For example, the prohibitions of sexual harassment, harassment, and "gender-based violence" found in the texts of GELs are far broader in scope and more idealistic in intent than their EU counterparts.
 - 12 The exceptions are the Slovenian Act on Equal Opportunities for Women and Men (specifies the types of special measures which could be adopted), Gender Equality Act in Croatia or draft law for Montenegro.
 - 13 In Bosnia Herzegovina's law publication or presentation of "*any person in an offensive or demeaning manner with regard to gender is prohibited.*" Advertising or features depicting sexually explicit material might well be considered offensive or demeaning, yet it is undefined whether the publisher, the advertiser, or the author is responsible for an alleged violation and unclear who will hold the perpetrator accountable and what the consequences of the violation might be.
 - 14 Changes of the position and tasks of the office responsible for the Government's policy on gender equality and significant changes of the name of the Plenipotentiary office reflected the ideological dispute taking place in Poland since 1986 (in 1986 – it was Government Plenipotentiary for Women, in 1991 – for Women and the Family, in 1995 – for the Family and Women, and in 1997 – for the Family).
 - 15 One of the best examples is Slovenia with its well-prepared civil servants and detailed equal opportunities programmes. There is a general understanding in Slovenia that to make the gender equality work in practice, legislation has to be accompanied by relevant action plans and educational activities.