

Equal Opportunities
for Women and Men

 NATIONAL WOMEN'S
INFORMATION CENTER

*Monitoring law and
practice in new member states
and accession countries of the
European Union*

2005

PARTICIPATING COUNTRIES:

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Czech Republic
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Equal Opportunities for
Women and Men

Monitoring law
and practice in

Poland

by Eleonora Zielinska

2005

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Preface

BRINGING THE EU HOME

“Bringing the EU Home” is a three-year project (2004–2006) conceptualized as a follow up to the Program on Equal Opportunities for Women and Men in the European Accession Process (EOWM), which was a joint initiative of the Open Society Foundation Romania and the Network Women’s Program of the Open Society Institute*. The EOWM projects stemmed from the Open Society Institute project to monitor the progress of candidate countries as they prepared themselves for integration into the European Union and ensured that they met the Copenhagen political criteria, particularly in relation to the independence of the judiciary, minorities’ rights, and anti-corruption. Given the *acquis communautaire* in the field of equal opportunities for women and men, which accession countries are required to adopt and comply with, an independent programme, EUMAP, to evaluate the status of accession countries from this perspective was developed.

An assessment of the status of equal opportunities, *de jure* and *de facto*, was carried out in seven of the ten candidate countries: Bulgaria, the Czech Republic, Estonia, Hungary, Lithuania, Poland and Romania. The EU Directives on equal opportunities provided the framework for monitoring and analyzing corresponding legislation, institutions and practices. The Directives related to the principle of equal pay for work of equal value; equal treatment as regards employment; protection of pregnant, and breastfeeding women, and women who recently gave birth; the burden of proof in cases of sex-based discrimination, and non-discrimination against part-time workers were analyzed in 2001. The remaining Directives on self-employed workers, parental leave, and social security schemes were assessed in 2002.

The final report, including an overview and executive summary for each country, was published in November 2002. Each country report and executive summary was translated into the national language and used as an advocacy/research tool. 2002 and 2003 were years of intensive outreach efforts, both nationally and at the EU level. Countries organized roundtables and meetings for NGOs, government officials, lawyers, and media to publicize the findings of the reports. The English version was used for advocacy at the EU level, and sent to members of Parliament from EU and candidate countries. Country information was presented twice at meetings in Brussels, and the final reports were launched at the European Parliament in November 2002.

* Monitoring the EU Accession Process: Equal Opportunities for Women and Men 2002, <www.eonet.ro>

The project “Bringing the EU Home” aims to promote awareness, advocacy and enforcement of equal opportunity legislation at the national level and to build the capacity of national actors in civil society to use EU-level mechanisms effectively. In this context, new, updated monitoring was carried out in 2004.

A detailed assessment of the legislative developments, institutional mechanisms, policies, programs and research at the national level was carried out in Bulgaria, the Czech Republic, Estonia, Hungary, Lithuania, Poland, Romania, Slovakia* and Turkey.*

Each country report contains key recommendations related to legislation, institutional mechanisms, policies and programs, awareness raising and research initiatives and outlines specific areas of concern. On-going updates will be made to the reports and available online, in order to ensure different groups can access the most current information easily.

The project further aims to help raise the significance of equal opportunities on the European agenda within new member states and within the process of on-going and new accession negotiations, and create a unique platform for new member states and accession countries. It is therefore about “bringing the EU home.”

We would like to thank all individuals who were involved in this monitoring project and whose invaluable contributions and support made the publication of these reports possible.

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Table of Contents

1. Legislative Overview	7
1.1 Harmonization of the Polish Law with European Law	7
1.2 Overview of the Transposition of the Directives as of May 1, 2004	8
1.2.1 Council Directive 75/117/EEC	9
1.2.2 Council Directive 76/207/EEC	9
1.2.3 Council Directive 92/85/EEC	17
1.2.4 Council Directive 97/80/EC	19
1.2.5 Council Directive 97/81/EC.	19
1.2.6 Council Directive 86/613/EEC	20
1.2.7 Council Directive 96/34/EC	21
1.2.8 Council Directive 96/97/EC	23
2. Institutional Mechanisms	24
2.1 Government Plenipotentiary for Equal Status of Women and Men	24
2.1.1 Objectives and Expected Outcomes	27
2.1.2 Partnership with Civil Society	29
2.1.3 Main Scope of Activities	32
3. Policies, Programs and Awareness-Raising	33
3.1 Policies	33
3.1.1 Gender Equality Strategy	33
3.1.2 Gender Mainstreaming	34
3.1.3 Promotion of Women's Participation in the Labor Market	34
3.1.4 Gender Pay Gap	34
3.1.5 Other Policies	35
3.2 Programs	35
3.2.1 International Cooperation	35
3.2.2 Training Programs	36

3.2.3	Structures to Support the Implementation of the <i>acquis communautaire</i> Related to Equal Opportunity	36
3.2.4	Other Programs	37
3.2.5	Evaluation	37
3.3	Awareness-Raising	38
3.3.1	Dissemination of Information	38
3.3.2	Campaigns for the General Public	38
4.	Research and Statistics	39
4.1	Gender Pay Gap	39
4.1.1	Monitoring Wage Gaps	40
4.2	Gender Composition of Central and Local Decision-Making Bodies	40
4.3	Data on Gender Segregation in the Labor Market	41
4.4	Data on the Incidence of Sexual Harassment in the Workplace	42
4.4.1	Disputes Related to Sexual Harassment, Unfair Dismissal and Employment	43
5.	Key Areas of Concern and Recommendations	45
5.1	Key Areas of Concern	45
5.2	Key Recommendations	46
5.2.1	Legislative Measures	46
5.2.2	Institutional Mechanisms	46
5.2.3	Policies and Programs	47
5.2.4	Awareness-Raising	47
5.2.5	Research and Statistics	47
	References	49

1. LEGISLATIVE OVERVIEW

1.1 Harmonization of the Polish Law with European Law

After Articles 68 and 69 of the European Agreement of December 16, 1991, establishing the association of the Republic of Poland and the European Communities and the Member States,¹ Poland made a commitment to harmonize Polish law with the *acquis communautaire* in the fields, *inter alia*, of protecting employees at their workplace and of regulating social security schemes. The accession negotiations in the area of social policy and employment were closed on June 1, 2002.²

The harmonization of Polish law with the *acquis communautaire* was not made by a single act. It is a long-term and difficult process which has not been completed yet. The adopted amendments to the Labor Code³ and the legislative acts concerning social security were introduced in several successive steps.

The first amendment was made in 1996, when the principle of equal treatment, the prohibition of discrimination and the obligation of employers to respect the dignity and other personal rights of their employees were included into the main provisions of the Labor Code.⁴ The adoption of the Act on the Social Security System in 1998⁵ was the second change. This law contains, *inter alia*, the provisions for equal treatment. The third stage of harmonization of Polish law began in 2001, when some of the abovementioned Sections of the Labor Code were amended more precisely in accordance with provisions set forth in the Directives 75/117/EEC and 76/207/EEC. A newly introduced Chapter II/A to the Labor Code, titled “Equal Treatment of Women and Men”, came into force on January 1, 2002.⁶ The fourth phase began

¹ The Act of December 16, 1991, published in *Dziennik Ustaw* (the Official Journal of the Republic of Poland) of 1994, No. 11, item 38.

² See Report on the realization of the *National Program of Preparations for Accession to European Union*, available in Polish at <http://orka.sejm.gov.pl/unia2000.nsf>.

³ Act of June 26, 1974, the Labor Code, unified text in *Dziennik Ustaw* of 1998, No. 21, item 94, with subsequent amendments.

⁴ Act of February 2, 1996 on Amending the Labor Code and Some Other Acts, came into force on June 2, 1996. *Dziennik Ustaw* of 1996, No. 24, item 110.

⁵ Act on the Social Security System, *Dziennik Ustaw* of 1998, No. 137, item 887, with subsequent amendments.

⁶ Act of August 24, 2001, on Amending the Labor Code, *Dziennik Ustaw* of 2001, No. 128, item 1405.

when the Act of November 14, 2003⁷ entered into force. This law was aimed at harmonizing the regulations of the Labor Code with three anti-discriminatory directives⁸ and led to amending the Chapter II/A of the Labor Code which is now titled “Equal Treatment in the Field of Employment”. These amendments apply labor regulations to the cases of discrimination not only on grounds of sex but also on grounds of age, disability, race, religion, and sexual orientation.

1.2 Overview of the Transposition of the Directives as of May 1, 2004

The legislative efforts aimed at the transposition of *acquis communautaire* into Polish labor law and social security system concerned almost all the directives on equal treatment. However, it should be noted here that the Amending Act of November 14, 2003, which was to universalize the provisions set forth in the Chapter II/A of the Labor Code, did not include the issues important from the perspective of non-discrimination of women in employment or defined them in more general way. It brought a risk of lowering the standard of protection against discrimination on grounds of sex. Moreover, the implementation of the newest anti-discriminatory directives has not been completed and made in an adequate way (I will refer to this later). Nevertheless, as a result of introducing all of these amendments to Polish labor law, the Polish legislation has met the legal requirements of the European directives on equal treatment to a large extent. A research done in 2000–2001 aiming to examine the harmonization of Polish equality law with the EU standards allowed to set forth a number of recommendations to be fulfilled in the future.⁹ The following is an analysis of to what extent the recommendations made in 2002 has been implemented and an assessment of the current harmonization.

⁷ Act of November 14, 2003 on Amending the Labor Code, *Dziennik Ustaw* of 2003, No. 213, item 1081.

⁸ These are the following directives: Directive 2000/43/EC of 29 June 2000 on the implementation of equal treatment of persons regardless of their race or ethnicity; Directive 2000/78/EC of 17 November 2000 establishing the framework conditions for equal treatment in the field of employment; and Directive 2002/73/EC of 23 September 2002 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.

⁹ See Joint Program of the Network Women’s Program and the Open Society Foundation Romania, *Monitoring the EU Accession Process: Equal Opportunities for Women and Men. Country Reports: Poland* (Budapest: Open Society Institute/EU Accession Monitoring Program, 2002), pp. 362–365.

1.2.1 Council Directive 75/117/EEC of 10 February 1975 on the Approximation of Laws of the Member States Relating to the Implementation of the Principle of Equal Pay for Women and Men

- The term ‘equal pay for equal work’ should be introduced into Article 33 of the Constitution, and the principle of ‘equal pay for work of equal value’ and its definition should be introduced into the Labor Code.

This recommendation has been partially implemented. Although no amendments were made to the Constitution, the Amending Act of August 24, 2001 introduced relevant changes to Section 18(3)(c) of the Labor Code.¹⁰ This regulation was amended by the terms of Act of November 14, 2003, in which the legislator crossed out the words “irrespective of their sex” which made this clause more universal. The new Section 18(3)(c) provides that “The workers have the right to equal remuneration for equal work or work of the same value” (§1). “The remuneration includes all its components, irrespective of their names and character, as well as other benefits relating to work, granted to the workers in a financial form or in another form” (§2). “The works of equal value are works which require from the employees comparable professional skills and qualifications certified by documents set forth in separate regulations or by practice and professional experience, as well as comparable responsibility and effort” (§3).

- There should be a system of work evaluation that allows for the comparison of different types of work.

In Poland, there is still no general job classification system for calculating remuneration. The lack of universal system of work evaluation and comprehensive criteria does not allow comparing different types of work. There is no available information about the efforts undertaken to elaborate such documents.

1.2.2 Council Directive 76/207/EEC of 9 February 1976 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

- The term ‘indirect discrimination’ should be compatible with Article 2 of Directive 97/80/EC.

The Amending Act of August 24, 2001 introduced much broader changes in a definition of discrimination in comparison to what had been recommended.

¹⁰ Section 18(3)(c) stipulated *expressis verbis* that workers have the right to equal remuneration for equal work or work of the same value, irrespective of their sex.

First, the *general anti-discriminatory principle* set forth in Section 11(3) of the Labor Code changed as its understanding was approximated to the aforementioned anti-discriminatory directives as well as to the directive on part-time employment. This principle stipulates now that “[a]ny discrimination, both direct and indirect, in part-time or full-time employment, in fixed term contractual employment or non-fixed contractual employment, in particular on grounds of sex, age, disability, race, nationality, religion and beliefs, and sexual orientation is inadmissible.”

Second, Section 18(3)(a) of the Labor Code which prohibits discrimination relating to the initiation and termination of employment relationships, working conditions, promotion and access to vocational training to increase professional skills and qualifications was also amended in order to be applicable to the other possible grounds for discrimination, not only related to sex. The regulation in force stipulates that “[t]he employees should be equally treated in the area of establishing and concluding the employment relationship, working conditions, promotion and access to vocational training in order to increase their professional skills, in particular regardless of their sex, age, disability, nationality, race, religion and beliefs, and sexual orientation.”

Third, a definition of *direct discrimination* has been introduced to the Labor Code. Section 18(3)(a)(§3) provides that direct discrimination occurs when an employee in comparable situation has been, is or could be treated in a less favorable way than other employees.

Fourth, the definition of *indirect discrimination* has been changed. Following the amended Section 18(3)(a)(§4) of the Labor Code: “Indirect discrimination occurs when, as a result of apparently gender-neutral provision, applied criterion or undertaken effort, for one or more reasons listed in §1, there is or there could be a disproportion with regard to the conditions of employment to the detriment of all or of a significant number of workers belonging to a group differentiated on grounds of one or more reasons listed in §1, if such a disproportion cannot be justified by other objective reasons.”

Fifth, two new paragraphs were introduced to Section 18(3)(a) of the Labor Code which concern instigating to discrimination, mobbing and sexual harassment.

The assessment of these amendments relating to a definition of discrimination is not unambiguous. Following the Amending Act of August 24, 2001, the amended Section 11(3) of the Labor Code can be assessed positively as the wording “in employment relationship” was replaced by the term “in employment.” This resulted in eliminating certain unclearness which the 2002 Report had already noted and which raised a question whether the prohibition of discrimination can be also applied to the process of

hiring new employees.¹¹ Following the amended clause, it is precise and clear now that prohibition covers all aspects of employment relationship, beginning with the recruitment process, defining the employment relationship, its continuation and termination.¹² 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. The intention of EU legislature was the wide understanding of this idea, and in particular coverage by the impact scope of equal treatment directive not only on access to wage earning employment, but also self-employment. Although the Polish Labor Code applies the general definition “in employment,” the usage of the wording “initiation of employment relationship” in Section 18(3)(a) of the Labor Code deprives self-employed persons of protection from discrimination set forth in this clause.

It is rightly noted in the Polish bibliography of labor law¹³ that the Polish list of grounds for discrimination enumerated in this provision does not provide precise transposition of the EU original version. For example, “belief” understood in an atheistic sense are not referred to as inadmissible grounds for discrimination. Instead, the provision enumerates only “religion.” Although this enumeration is only an example, it must be assessed negatively given the fact that this regulation plays informational and educational role, and that Poland is a country where the Catholic Church has an enormous influence on social life.

Besides, it is noted that the definition of *direct discrimination* relates wrongly past behavior or hypothetical behavior to the very discrimination and not to the treatment of the other persons as it should be. The intention of the EU definition of direct discrimination is admission that such discrimination occurs not only when a given person is treated in a less favorable way than another person but also when treatment of the injured person is detrimental in comparison to treatment of another person in the past or to hypothetical treatment of another person. Polish regulation does not express this idea in a precise and clear way, and is illogical while referring to the hypothetical situation.

Although the definition in force of *indirect discrimination* is more approximate to the definition set forth in the EU directives on equal treatment than it was in its previous version, it is still not satisfactory enough in discussing certain aspects. To establish the

¹¹ See Eleonora Zielińska, *Monitoring the EU Accession Process: Equal Opportunities for Women and Men. Country Reports: Poland* (Budapest–Warsaw: NWP–OSI, Stefan Batory Foundation, 2002), p. 74.

¹² Compare to Małgorzata Gersdorf, Krzysztof Rączka and Jacek Skowroński, *Labor Code, Commentary*, 6th edition (Warsaw: Lexis.Nexis, 2004), p. 51.

¹³ See in particular Irena Boruta, “The Prohibition of Discrimination in Employment: A New Regulation,” *Praca i Zabezpieczenie Społeczne* 2004, 2, p. 3. One can also find in this article more extensive discussion on the insufficiencies of the above-mentioned Polish regulation.

case of indirect discrimination within the meaning of EU directives, it is crucial to find whether the reason of differentiation (other than sex) is only apparent or true. The reason of such a differentiation is true when “it is justified by a legitimate aim,” and the aims are adequate and necessary. The Polish provision, which refers only to *objective justification*, leaving out the phrase “legitimate aim” and neglecting the principle of proportionality, means that the Polish law still does not reflect the original legal concepts of the European Union.

While reviewing the transposition of EU directives, it should be also noted that the exemplary enumeration of grounds for discrimination set forth in Section 11(3) of the Labor Code has been expanded. It cannot, of course, be assessed negatively as the EU directives create only a certain minimum standard. Nevertheless, due to wrong 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 in practice to unjustified complaints (e.g., Section 18(3)(b)(§2), point 3).

- A provision should be adopted to set forth the conditions in which preferential treatment in employing a person belonging to an under-represented sex is admissible in order to achieve real equality.

Compensative *preferential treatment* set forth in Article 2(4) of Directive 76/207/EEC has been introduced to Section 18(3)(b) of the Labor Code. The amended regulation stipulates that “Measures undertaken for the given period, aimed at ensuring equal opportunities for all or for a significant number of workers differentiated on one or more grounds enumerated in Section 18(3)(a)(§1) do not constitute violation of the principle of equal treatment in employment.” The aim is to eliminate the scope of real inequalities in favor of these differentiated workers.

- References to the sex and age of potential employees in job announcements should be prohibited, as should questions regarding family or marital status, and reproductive rights.

A general provision set forth in Article 12 of the Act on Employment and Counteracting Unemployment¹⁴ is supposed to prevent from discrimination during recruitment process. Following the Amending Act of 2001,¹⁵ it imposes on labor offices the obligation to provide assistance in finding employment for all persons searching for work, regardless of their sex. Article 12(3)(a) prohibits employers to set requirements in job or apprenticeship advertisements which may discriminate candidates on grounds of sex.

¹⁴ Act of December 14, 1994 on Employment and Counteracting Unemployment, *Dziennik Ustaw* of 2001, No. 6, item 56, unified text with subsequent amendments.

¹⁵ Act of June 22, 2001 on Amending the Act on Employment and Counteracting Unemployment. *Dziennik Ustaw* of 2001, No. 89, item 973.

- Provisions should be adopted to guarantee equal treatment with regard to professional training.

Following the Amending Act of August 24, 2001, the regulations set forth in Directive 76/207/EEC were transposed quite precisely, including also access to vocational training. According to Section 18(3)(b)(§1) of the Labor Code, “[a]ny differentiation by the employer of the worker’s situation on one or more grounds enumerated in Section 18(3)(a)(§1), resulting in particular in 1) refusal to conclude or to terminate the employment relationship, 2) unfavorable calculation of remuneration for work and other employment conditions or ignoring the worker in promotion or granting other benefits relating to work, 3) ignoring the worker in nominating to vocational training aimed at increasing her or his professional skills, shall be considered a violation of the principle of equal treatment in employment, with reservation to (§2 and 3).”

While criticizing the formulation of this regulation, it is emphasized that its synthetic formula does not reflect the broad meaning of ‘conditions of access to employment’ which according to the anti-discriminatory directives include promotion, selection criteria and recruitment conditions. Similarly, it does not address the broader sense of the principle of equal access to training and vocational training and does not indicate that equal access means access to all types and grades of vocational counseling as well as training aimed at professional re-orientation.

This regulation stipulates also that the principle of equal treatment in employment cannot be violated by the following actions:

- “1) not employing the job applicant on one or more grounds enumerated in Section 18(3)(a)(§1) of the Labor Code, providing that it is justified by the character of the job, working conditions or job requirements imposed on the workers;
- 2) terminating employment conditions in terms of working hours, providing that it is justified by reasons not relating to the worker;
- 3) undertaking measures that differentiate the legal situation in favor of the worker, due to the protection of parenthood, age or disability;
- 4) setting the employment and termination conditions, the basis for remuneration and promotion, and access to vocational training, given a criterion of professional experience.”

The formulation of admissible exceptions from the principle of equal treatment is particularly missing. The fact that they were too much generalized caused exclusion of actions aimed at protection of pregnancy as one of admissible exceptions (the provision refers to protection of parenthood). Besides, wrong formulation of point 1) is in contradiction with the prohibition of discrimination on grounds enumerated in Section 18(3)(a). Of course, an adequate interpretation can help to avoid negative consequences

of this wrong transposition. Nevertheless, it shall be noted that regulations formulated in such an incorrect way have no informational or educational value.

- There should be an explicit legal provision defining and prohibiting sexual harassment.

Section 18(3)(a)(§6) of the Labor Code concerning *sexual harassment* (and (§5) relating to *harassment*) was amended by the Act of November 14, 2003. It stipulates that “[a]ny unwanted sexual behavior or behavior relating to sex of the worker which is aimed at or results in violating the dignity of the employee, humiliating or humbling the employee is considered discrimination based on sex.” The unwanted behavior includes physical, verbal or non-verbal components (sexual harassment).

Section 18(3)(a)(§5) provides that also encouraging others to violate the principle of equal treatment in employment and behavior which is aimed at or results in affecting the dignity or humiliating or humbling the employee (harassment) shall be considered discrimination on grounds enumerated in (§1).

In fact, the definitions of sexual harassment and of harassment enshrined in the Polish Labor Code differ from the EU definitions due to several reasons. As regard to sexual harassment, the Polish legislator seems not to make a difference in particular between sexual harassment and harassment on grounds of sex of the employee. As regard to “ordinary” harassment, the Polish legislator ignores the relation between the respective behavior and sex (or age, race, sexual orientation etc.) of the worker. As a result, any humiliation of the employee or affecting of her or his dignity – irrespective of the reason – can be considered harassment within the meaning of this provision of the Labor Code. Moreover, the Polish definition contains premises of “affecting dignity” and “humiliating or humbling the employee” which are presented as alternatives, while the EU definition presents them in conjunction. Although provisions set forth in the Polish Labor Code ensure the wide protection of the employee, they do not correspond with the anti-discriminatory clauses among which they were placed. As a result, it may blur a difference between ordinary harassment enshrined in Section 18(3)(a)(§5) and mobbing which is referred to in Section 94(3)(k) of the Labor Code.

- The law should stipulate *expressis verbis* that disputes relating to discrimination constitute cases involving the employment relationship, and effective judicial remedies for discriminatory practice should be made available to victims.

Until 2002, when the regulations set forth in Chapter II in relation to equal treatment entered into force, the Polish Labor Code had not provided for any specific sanctions against an employer who violated the prohibition of discrimination incorporated into Section 11(3). Moreover, pursuing claims concerning discrimination on grounds of sex before the court had been almost impossible, as the provisions for equality and non-

discrimination had been very general at that time and the courts, especially the courts below, considered with reserve all claims based on such general principles or general clauses. The situation improved after the 2001 Amending Act had entered into force which specified violation of the principle of equal treatment in concrete obligatory norms addressed directly to an employer. Simultaneously, Section 18(3)(d) was introduced into the Labor Code which clearly provides for compensation for a discriminated employee. Following amendments adopted in 2003,¹⁶ the clause stipulates that “[a] victim of violation by an employer of the equal treatment in employment has the right to compensation amounting to no less than the lowest remuneration for work, calculated by separate regulations.”

- Protection against the termination of the employment relationship in reaction to a complaint of discrimination should be legally guaranteed.

The Amending Act of 2001 which came into force as of January 1, 2002 introduced the prohibition of dismissing an employee in revenge for bringing the discriminatory case before the court. According to Section 18(3)(e), the fact that an employee exercises her or his rights relating to violation of the principle of equal treatment in employment cannot provide a ground for a termination of the employment contract with or without notice from the employer.

This regulation is criticized as it limits itself only to giving a notice and termination of employment relationship without notice but it does not cover other possible reprisals performed by an employer. It is emphasized that such a situation can be partially explained by the fact that these employer’s actions – for example, a penalty – are subject to the court’s control.¹⁷ This explanation is a thin one as giving a notice and termination of the employment contract without a notice are also subjected to the court’s control. This regulation should be amended.

- The existence of independent authorities should be encouraged, and NGOs should be encouraged to provide expertise on cases of discrimination, including through legal aid and representation.

Until now, the Government Plenipotentiary for Equal Status of Women and Men has been in charge of all forms of discrimination. However, it must be noted that assistance in individual cases of discrimination has never been within the scope of the duties of the Plenipotentiary. Occasionally, the cases of discrimination on grounds of sex have been investigated by the Ombudsperson. Depending on who actually holds this office, such

¹⁶ Contrary to the directive’s provisions, the original regulation stipulated that the maximum amount of compensation cannot be higher than six times of the lowest remuneration for work.

¹⁷ Gersdorf, Rączka, Skoczyński, *op.cit.*, p. 72.

cases attract more (especially when professor Ewa Łętowska was the first Ombudsperson) or less attention (e.g., for professor Andrzej Zoll, the current Ombudsperson).

For years, women's circles have been making efforts to expand the scope of the competence and duties of the Government Plenipotentiary for Equal Status of Women and Men, including providing assistance for individual persons who would like to exercise their rights in a case of discrimination. In 2003, one more attempt was made to establish a special Anti-Discriminatory Office (a draft statutory Act on General Inspector to Counteract Discrimination) which would have such competence. Another attempt was aimed at increasing the rank and expanding the scope of duties of the Government Plenipotentiary for Equal Status of Women and Men (a draft statutory Act on Equal Status of Women and Men). A draft statutory Act on General Inspector to Counteract Discrimination has not passed through the interdepartmental consultations. A draft statutory Act on Equal Status of Women and Men, in a very restricted form due to exclusion of the possibility of acting in individual disputes relating to violation of the principle of equal treatment, was brought once again before the Parliamentary Committee.¹⁸

- Specialized training should be provided for judges and lawyers on how to identify and handle cases of discrimination.

The training for lawyers, including judges and trainee solicitors is provided to a very limited extent by non-governmental organizations with little support of the Government Plenipotentiary for Equal Status of Women and Men.

- A broad public information campaign should be carried out to educate society in general on these issues.

The amendments of the Labor Code were not accompanied by a wide educational campaign performed by the Polish Government. It must be assessed as a lack of interest of the subsequent governments of the Republic of Poland in developing a policy aimed at promotion of gender equality. It is characteristic that the current government composed of left-wing parties (the Alliance for Democratic Left [SLD] and the Union of Labor [UP]) have not taken satisfactory steps in that respect, despite the declarations made by these coalition parties during Parliamentary election in 2001. The right-wing parties at least did not make such promises.

¹⁸ Note that the bill on the equal status of women and men is the longest discussed draft in the history of the Polish Parliament. The first version was presented in 1993 and since then it has been amended and debated in every four-year term.

1.2.3 Council Directive 92/85/EEC of 19 October 1992 on the Introduction of Measures to Encourage Improvements in the Safety and Health at Work of Pregnant Workers and Workers Who Have Recently Given Birth or Are Breastfeeding

The regulations set forth in the Polish Labor Code relating to protection of maternity were approximate to a large extent to the European Communities' standards even before 1989, and in some respects they even exceeded the minimum standard (for example, the maximum duration of maternity leave). For that reason, they were not amended for a long time. However, it was outlined in the 2002 Report that some improvements are needed, and in particular:

- The obligation to transfer pregnant women to other work and the related guarantees outlined in the report should be extended to breastfeeding women.

The Act of 2001 amended Section 179 of the Labor Code. The regulation in force obliges an employer to transfer pregnant or breastfeeding woman employee who performs a work which is not allowed for her to other work, or, if it is not possible, to relieve her from work without affecting her right to remuneration. If an employer does not fulfill this obligation, it will be considered – according to Section 281(5) – a violation of an employee's rights. The similar principle is applied when the worker performs work which is allowed for pregnant or breastfeeding woman employee, but working conditions change for the worse so much that the worker should not perform this work. In this case an employer is obliged to adjust her working conditions to the requirements set forth in the legal provisions, or to shorten her working time. "If it is impossible or aimless, the employee should be transferred to another work, and if it is not possible, she should be relieved from work. After termination of the reasons provided justification for transferring an employee to another work, or shortening her working hours or relieving her from work, an employer is obliged to employ the worker on the terms set forth in the employment contract." Section 179 of the Labor Code is criticized as it allows for an interpretation which ignores such an obligation towards other women (i.e. who are not pregnant and not breastfeeding) who perform works considered particularly onerous or harmful to women's health (the Ordinance of the Council of Ministers of September 10, 1996 on the Specification of Occupations Prohibited to Women¹⁹). It is recommended to introduce a clear statement that an

¹⁹ Ordinance of the Council of Ministers of September 10, 1996 on the Specification of Occupations Prohibited to Women, *Dziennik Ustaw* of 1996, No. 114, item 545, amended by the Ordinance of July 30, 2002, *Dziennik Ustaw* of 2002, No. 127, item 1092.

employer is obliged to transfer to another work any female employee who performs job which is enumerated in the aforementioned Ordinance.²⁰

- There should be a clear obligation to notify a pregnant woman employee of the hazards to her health and security due to working conditions.

According to Polish regulations, it is a duty of an employer to assess, at his own expenses, the specific hazards for pregnant and breastfeeding women's health, and to make the results of such investigation available for all employees. This obligation results from a general provision of Section 227 of the Labor Code determining measures which an employer should undertake to prevent from occupational diseases and diseases related to work. Following the 2003 Amending Act,²¹ Section 227(2) specified in a more detailed way what should be set forth in the Ordinance, among others an obligation to make available for employees the results of such research.

- It should be made possible for the father to benefit from part of the maternity leave (after the time necessary for the women to fully recover from the birth). In the case of adoption or for raising a child, the father should be allowed to totally or partially use the leave treated as maternity leave, which has so far been granted exclusively to women.

According to Section 180(5) of the Labor Code, an employee who took at least 14 weeks of maternity leave has the right to shorten the remaining two weeks of the leave. The father caring for the child may take, at his written request, the remaining part of the leave. However, this regulation allows the father of the child to take only two weeks of the leave as maternity leave for the first child is 16 weeks long.²² If a woman giving birth for the first time takes two weeks (or more) of maternity leave before the birth, to which she is entitled according to Section 180(3) of the Labor Code, she will use the admissible length of the leave and the father of the child will not be able to exercise his entitlement. It can be questionable why the remaining part of the maternity leave can be taken only by the father of the child who is employed but cannot be taken by the father of the child who is not employed but has health insurance or has a status of unemployed person. Section 180(2) of the Labor Code granting the 18 week-long maternity leave only to adoptive or foster mothers and excluding adoptive and foster

²⁰ Gersdorf, Rączka, Skoczyński, *op.cit.*, p. 613.

²¹ The Act was promulgated on January 1, 2004, but it has been in force since May 2, 2004, that is when Poland became an EU Member State.

²² As the leave is 18 weeks for a second child and 26 weeks for each subsequent child or in the case of multiple births, the father of the child or children is entitled to take four or twelve weeks of the leave respectively. It should be emphasized that the length of maternity leave was extended in 1999 to 26 weeks for the first and subsequent child and to 39 weeks in the case of multiple births. The Act of December 21, 2001 restored the length of maternity leave as it was before 1999.

fathers provides a violation of the principle of gender equality. Despite previous recommendations the regulations have not been amended.

1.2.4 Council Directive 97/80/EC of 15 December 1997 on the Burden of Proof in Cases of Discrimination Based on Sex

- There should be a presumption of indirect discrimination where non-favorable action is directed towards a high number of representatives of one sex.
- Employees should be made aware of the reversal of the burden of proof and offered the necessary support mechanisms to bring legal action in cases of discrimination.

The above cited regulations set forth in Section 18(3)(b)(§1) of the Labor Code *reverse the burden of proof* in cases of discrimination brought before the labor courts in the part in which “an employer is obliged to prove that grounds other than sex were taken into consideration in initiation or termination the employment relationship, in calculation less favorable remuneration for work, in determining other employment conditions, in ignoring the worker in promotion or granting other benefits related to employment, or in ignoring an employee at nomination to the vocational training.”

On the one hand, Polish regulations concerning the burden of proof are approximate or even stronger than the minimum requirements set forth in Directive 97/80/EEC. But on the other hand, enumeration of grounds to which such a reversed principle of burden of proof is applicable does not include sexual harassment. It is a serious omission of the Polish regulation. Despite the recommendation, a presumption of indirect discrimination where non-favorable action is directed towards a high number of representatives of one sex has not been introduced either. Information-disseminating campaigns aiming to raise awareness of the reversal of the burden of proof in cases of discrimination have not been launched.

1.2.5 Council Directive 97/81/EC of 15 December 1997 Concerning the Framework Agreement on Part-Time Work Concluded by UNICE, CEEP and the ETUC.

- Continuous research should be carried out to determine how many women engage in part-time work, and the reason for doing so.
- Part-time work and the flexible organization of working hours should be encouraged not only for women, but also for men, in order to ensure a more just distribution of responsibilities in the home.

As a result of amendments introduced to the Labor Code in 2001 and 2003, Polish regulations were changed to comply with requirements set forth in Directive 97/81/EEC. One amendment to Section 11(3) on the prohibition of discrimination widened the range of its application to definite term employment (besides non-fixed term employment) as well as to part-time (besides full-time) employment (see page 10 above). Section 29(2) of the Labor Code contains now prohibition of determining working and remuneration conditions less favorable in relation to employees performing the same or similar work on a full time basis in the event of concluding a part-time employment contract. An employer is obliged to consider an employee's request for changing working hours. According to Section 151(5) of the Labor Code, an employer must determine in the employment contract the admissible number of overtime hours authorizing a part-time employee to pay supplement. According to Section 94(2) of the Labor Code, an employer is obliged to notify employees of the possibility of being employed on a full time or part time work basis. These regulations meet to a large extent the requirements of the aforementioned EU directive. There is a need, however, of further amendments. The definition of 'part-time employee' (according to Article 3(1) of the above Directive) is still lacking. Polish regulation does not provide for any sanctions if an employer does not meet his obligation of notifying employees about the possibility of working on the full or part time basis. An employer should be more clearly obliged to facilitate the transfer of employees from full-time to part-time work and vice versa, including skilled and managerial positions. There should be legal provisions concerning facilitation an access of part-time employees to vocational training in order to expand their potential for occupational development and increased job mobility. There is a need for research on how the principle of equal treatment is respected in a case of full-time and part-time workers. Promotional and educational campaigns should be carried out to encourage men to work on part-time basis in order to ensure a more just reconciliation of professional and family life.

1.2.6 Council Directive 86/613/EEC of 11 December 1986 on the Application of the Principle of Equal Treatment between Women and Men Engaged in an Activity, Including Agriculture, in a Self-Employed Capacity, and on the Protection of Self-Employed Women during Pregnancy and Motherhood

- The principle of equal treatment should be included in the Act on the Social Security of Farmers.
- Self-employed workers engaged in agricultural and non-agricultural work should have the same rights and benefits.
- The provision according to which a spouse who participates in running the business is only entitled to insurance if both persons share the same household should be reconsidered.

Polish regulations concerning the entitlements of self-employed workers engaged in agricultural and non-agricultural work comply largely with the requirements of equal treatment of women and men and for that reason they did not require any crucial amendments. Article 5 of the Act of 1999 on Economic Activity²³ grants everyone freedom of commercial activity on equal basis. Article 1 of the Act of 1990 on the Social Security of Farmers²⁴ stipulates that social insurance for farmers covers also members of their household working with them (i.e., farmer's relative over 16 years old who lives in the same household). According to Article 5 of the Act on the Social Security of Farmers, the provisions apply also to the farmer's spouse, unless the spouse does not work in the farmer's agricultural farm or in the household directly associated with it. According to Article 6(2)(5) of the Act on the Social Security Systems, "the obligatory retirement and disability insurance applies also to the persons cooperating with persons performing non-agricultural economic activity." The category 'cooperating person' includes, for example, a spouse, providing that she/he shares common household with a person performing non-agricultural activity and cooperates with him/her in running this economic activity. Although much of the Polish regulations comply with the EU standards, some of the detailed provisions do not meet the criterion of equal treatment. For example, it is not understandable why sharing common household with a person performing non-agricultural economic activity is an obligatory requirement for a spouse to be entitled to the retirement and disability insurance. Moreover, the regulations relating to maternity and parenthood benefits make a difference between self-employed and contractual workers.

1.2.7 Council Directive 96/34/EC of 3 June 1996 on the Framework Agreement on Parental Leave Concluded by UNICE, CEEP and the ETUC

- Provisions should be adopted to provide for childcare/parental leave to be taken until the child reaches the age of eight.
- Workers should be granted the right to return to the same job or, if this is not possible, to an equivalent or similar job with the same salary.
- Exceptions to the ban on employers terminating an employment contract should be limited (at least during the minimum period of time set forth in the framework agreement).

²³ Act of November 19, 1999 on Economic Activity, *Dziennik Ustaw* of 1999, No. 101, item 1178, with subsequent amendments.

²⁴ Act of December 20, 1990 on the Social Security of Farmers, *Dziennik Ustaw* of 1998, No. 7, item 25, unified text with subsequent amendments.

- More flexible working arrangements should be supported, together with the possibility for each spouse to take childcare leave, so that both partners may reconcile their professional and family responsibilities on equal terms.

Following the Amending Act of November 14, 2003, the regulations relating to *parental leave* (in Poland known as childcare leave) set forth in the Labor Code have been completely changed. The amendments covered most of the recommendations presented in the 2002 Report. According to the regulations in force, both women and men, on equal basis, are entitled to take up to three years of childcare leave until the child reaches the age of four, providing that they have been employed for at least six months.²⁵ Different norms apply in the case of caring for a disabled child.

A childcare leave can be taken in four parts. According to Section 186 of the Labor Code, both parents or caretakers entitled to it may simultaneously take the childcare leave for a period of up to three months. According to Section 186(1), an employer cannot give a notice or terminate the employment contract from the day of submission of a claim for childcare leave by an employee until the end of this leave.²⁶ Section 186(4) stipulates that an employer is obliged to allow an employee to return to a post equal or corresponding to that held before leave was taken, with remuneration not lower than that provided for in the contract previously held. According Section 186(5), the duration of a childcare leave is included in the period of employment on which employee's entitlements depend. Section 186(1) stipulates that an employee entitled to take a childcare leave may submit an employer a motion to shorten her/his working hours to the amount which is not less than half of the full-time work in the period when she/he is permitted to take such a leave. However, this entitlement is granted only to one parent. Section 188 of the Labor Code provides that an employee caring at least one child up to the age of 14 is entitled to take two days off, without affecting her/his remuneration.

The Act of June 25, 1999 on Pecuniary Benefits Paid by the Social Security in Case of Sickness or Maternity²⁷ grants an employee the right to care benefit in the amount of 80 percentage of her/his monthly remuneration in order to personally care for a healthy child under eight years of age²⁸ or an ill child under 14 years of age but the absenteeism cannot be longer than 60 days per year. According to the Polish Labor

²⁵ The six months of employment included also previous employment.

²⁶ Dismissal is permitted only in the cases of declaring bankruptcy or liquidating the company or circumstances in which the employee is at fault.

²⁷ Act of June 25, 1999 on Pecuniary Benefits Paid by the Social Security in Case of Sickness or Maternity, *Dziennik Ustaw* of 1999, No. 60, item 636.

²⁸ This may be caused by unexpected closing of the nursery, kindergarten or school, giving birth or illness of the person normally caring for the child.

Code, the care benefit is granted also in the event of illness of a family member or a child over 14 years old, but only for the period up to 14 days per year. Polish regulations concerning the parental leave meet to a large extent the minimum standards as required by Directive 96/34/EEC. They are even much broader in the sense that the length of the childcare leave may be up to three years (in comparison to the three months required in the European Union). Nevertheless, the childcare leave can be taken only until the child reaches the age of four and this principle should be changed in accordance with the Directive in question which grants the parental leave until the child reaches the age of eight. The Polish regulations do not clarify the status of the employment contract at the duration of the childcare leave.

1.2.8 Council Directive 96/97/EC of 20 December 1996 Amending Directive 86/378/EEC on the Implementation of the Principle of Equal Treatment for Men and Women in Occupational Social Security Schemes

- The Act on the System of Social Security should be amended to include a provision regulating the compensation available to a worker who suffered detriment as a result of the violation of the principle of equal treatment.
- Polish law related to the third pillar (old-age insurance schemes) should be harmonised with the provisions of the Directive.
- Equal ages of retirement for women and men should be adopted.
- All risk(s) associated with an employee's inability to work should be transferred to the social security agency, rather than the employer (which currently leads to discrimination against women, who more often take paid days off to care for children, etc.).
- Provisions related to compulsory insurance in open retirement funds, as well as optional insurance in workers' retirement programs, should be introduced to direct all resulting disputes to social security courts, as opposed to common civil courts.

The Polish social security system is based on three pillars (two mandatory: reparticipatory and based on cumulated capital, as well as the third pillar – of voluntary insurance). Regulations set forth in Directive 79/7/EEC apply to the first two pillars. The third pillar covers all forms of voluntary insurance, including as well occupational social security schemes in the understanding of Directive 96/97/EC. Article 2(a) of the Act of 1998 on Social Security Systems²⁹ provides for “the principle of equal treatment

²⁹ Act of October 30, 1998 on Social Security Systems, *Dziennik Ustaw* of 1998, No. 137, item 887, with subsequent amendments.

for all insured persons regardless of their sex, marital status, family status, etc. and guarantees the right to assert claims before the court in the case of violation of the principle of equal treatment.” This provision specifies also that “the principle of equal treatment applies in particular to: 1) conditions of coverage by the social security system, 2) the duty to pay and assess premiums for social security, 3) assessment of the benefit level, 4) the period of benefit payments and maintaining the rights to benefits.”

The Act of 1998 on Occupational Social Security Schemes³⁰ does not provide for a similar guarantee. It can be assumed that the regulations enshrined in the Constitution relating to the principle of equality and non-discrimination as well as Article 2(a) of the Act of 1998 on the Social Security Systems may apply also to the occupational social security schemes, but in order to avoid the possible controversies and to facilitate pursuing the claims it was recommended to reiterate this principle in the Act on the Occupational Social Security Schemes alongside with the guarantee for access to social security courts. This recommendation, however, has not been implemented. Doubts remain concerning those regulations of the Act on the Occupational Pension Schemes which maintain a different retirement age for women and men also in the situation where an employer covers part of the premium (base premium). Such differentiation does not meet the requirements of Directive 96/97/EEC as the European Court of Justice in Luxembourg interprets it.

2. INSTITUTIONAL MECHANISMS

2.1 Government Plenipotentiary for Equal Status of Women and Men

The institutional mechanism on gender equality in Poland is the Government Plenipotentiary for Equal Status of Women and Men. The Plenipotentiary is placed at the executive, governmental level as the Under-Secretary of State in the Chancellery of Prime Minister.³¹ The Plenipotentiary informs the President of the Council of Ministers about all the threats to the implementation of the tasks entrusted to her. The

³⁰ Act of August 22, 1997 on Occupational Social Security Schemes, *Dziennik Ustaw* of 2001, No. 60, item 623 – unified text.

³¹ Until May 1, 2004, the Governmental Plenipotentiary for Equal Status of Women and Men was placed as the Secretary of State in the Chancellery of Prime Minister. Due to the dismissal of the Government of Leszek Miller, the position of the Plenipotentiary was vacant as Minister Izabela Jaruga-Nowacka who had held this post was appointed to the Deputy Prime Minister Position. On 12 August 2004, a new person was appointed to the Governmental Plenipotentiary for Equal Status of Women and Men position but the rank of the Office was lowered as the Plenipotentiary is the Under-Secretary of State.

Plenipotentiary shall submit to the Council of Ministers periodic information about her work as well as the analyses, evaluations and conclusions, pertaining to the areas of her activity.

Currently, the Plenipotentiary acts on the grounds of the Ordinance of the Council of Ministers of June 25, 2002 on Government Plenipotentiary for Equal Status of Women and Men.³² This government unit has been operating since 1987 on the grounds of different decrees and ordinances. Its name and placement as well as competence have been constantly amended.

The duties of the Plenipotentiary within the scope of equal status of women and men include specifically: making analysis and evaluation of the legal and social situation with respect to equal treatment and equal opportunities for 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 areas of social life. The Plenipotentiary exercises her duties through submitting to appropriate bodies proposals to issue or modify the legal acts in order to respect the principle of equal status for women and men; expressing opinion on legal acts and other government document drafts, affecting the situation within the equal status of women and men; developing legal acts and other government document drafts, affecting the situation within the equal status of women and men; promoting, disseminating and propagating the issues related to equal treatment and equal opportunities for women and men, including the awareness of discrimination based on sex as well as undertaking informative and educational actions aimed at raising the social awareness in that respect; cooperation with appropriate units of public administration, non-governmental organizations and institutions within the scope of their responsibility for implementation of programs promoting equal status of women and men and counteracting discrimination based on sex; initiating and implementing or coordinating and monitoring the implementation of government programs aimed at achieving equal status of women and men and counteracting discrimination based on sex.³³

In addition, the duties of the Plenipotentiary, executed in agreement with the Minister of Foreign Affairs, include cooperation in the matters related to equal status of women and men and discrimination on grounds of sex with foreign countries, international organizations and institutions; preparation of reports on realization of international agreements binding the Republic of Poland and pertaining to the equal status of women and men and combating discrimination based on sex; as well as presentation of

³² Ordinance of the Council of Ministers of June 25, 2002 on Government Plenipotentiary for Equal Status of Women and Men, *Dziennik Ustaw* of 2002, No. 96, item 849.

³³ *Ibid.*, Articles 3 and 8.

opinions about the possibilities of binding the Republic of Poland by other similar international agreements.³⁴

The duties of the Plenipotentiary include also making arrangements for establishing an office for counteracting discrimination based on race, ethnic origin, religion or belief, age and sexual orientation. Until the office in charge of counteracting discrimination is established, the duties of the Plenipotentiary include also promoting, initiating, implementing or coordinating the implementation of government programs aiming to counteract discrimination on the grounds mentioned above.

There are 22 persons employed in the office of the Plenipotentiary, including 14 specialists (three men out of 14). Out of these 14 specialists one person is in charge of violence against women, three persons are responsible for labor market and social security system, one person deals with women's health, seven persons are in charge of international cooperation and the European integration. It shall be noted that in 2001, after the office had been established, it was granted nine and a half full-time posts and later on, when the scope of its competence was extended, the number of full-time posts increased.

Most of the persons employed in the office who are in charge of anti-discriminatory issues are graduates from the universities (bachelor's or master's degree) and have some work experience in non-governmental organizations. This fact was taken into consideration at the recruitment process.

According to information accessible in the office of the Plenipotentiary, its 2004 separate budget covers 1,000,925 Zlotys (about 427,777 Euros). Given the inflation rate, it has not been changed in comparison to previous years. 600,000 Zlotys (about 133,000 Euros) are allocated for the grant competitions for the associations and foundations. The additional funds in 2003 and 2004 in the amount of 30,000 Zlotys per year (about 6,666 Euros) were granted to the Plenipotentiary for the management of all the European programs, including the programs "European Community Framework Strategy on Gender Equality 2001–2005" and "European Community Action Program to Combat Discrimination 2001–2006." The Plenipotentiary evaluates and monitors the projects submitted by other actors aimed at occupational integration and re-integration of women within the framework of the Sectoral Operational Program on Human Resources Development financed by the European Social Fund 2004–2006. The Plenipotentiary monitors also the implementation of the Community Initiative EQUAL (2004–2006).

³⁴ *Ibid.*, Article 5.

2.1.1 Objectives and Expected Outcomes

Exercising the duty of gender mainstreaming, the Plenipotentiary expressed its opinion on legal acts and other government document drafts and programs within the scope of equal status of women and men. For example in 2003, the Plenipotentiary submitted proposals to modify the Act of November 14, 2003 amending the Labor Code in order to harmonize Polish law with EU standards, assessed the government programs on social policy and engaged actively in counteracting unemployment through promoting equal opportunities for women in the labor market, combating violence against women, trafficking in women and anti-discriminatory actions.

Besides, the Plenipotentiary submitted to the President of the Council of Ministers a number of own proposals amending legal acts and programs. It included also introduction to the Polish labor law provisions against sexual harassment in accordance with EU directives. It required amending of the Labor Code and the Penal Code.

In 2003, a new stage of *The National Action Plan for Women 2003–2005* was developed which provides implementation of the Beijing Platform for Action. The Council of Ministers adopted the National Plan on August 19, 2003. The first Plan was adopted by the Government composed of Alliance for Democratic Left (Sojusz Lewicy Demokratycznej, SLD) and the Polish Peasant Party (Polskie Stronnictwo Ludowe, PSL) in 1997 but its realization was suspended after a right-wing government took power.

The Plenipotentiary, within the scope of her competence, does not have any power to make decisions. Her competence is limited to monitoring, analyzing, assessing, informing, promoting, educating, and signaling. She may also influence on the government policy within the scope of equal status of women and men through submitting, with the consent of the President of the Council of Ministers, the drafts of government documents, related to the scope of her responsibility, under the consideration of the Council of Ministers.³⁵

The Plenipotentiary may apply to appropriate bodies of government administration, indicating the problems within the scope of her responsibility, the solution of which falls within the competence of such bodies, with a motion to consider the matter and to take a stand on it.³⁶

Until 2003, the office of the Plenipotentiary was centralized. After 2003, several Voyevod's Plenipotentiaries for Equal Status of Women and Men were established in the voyevodships (regional level of executive government authorities) and one plenipotentiary has been nominated at a lower level (at the local county level). As of

³⁵ *Ibid.*, Article 8.

³⁶ *Ibid.*, Article 6.

May 1, 2004 the plenipotentiaries for equal status of women and men have been nominated in 13 voyevodships (out of 16). All of them are women. In two voyevodships the plenipotentiaries hold simultaneously the position of director on social policy. In one voyevodship the plenipotentiary is senior specialist in the social policy department. In one voyevodship the plenipotentiary holds simultaneously the position of the Voyevod's Plenipotentiary for Ethnic and National Minorities.

The Plenipotentiary fulfils her duties in cooperation with appropriate units of government administration, which are obliged to cooperate and support the Plenipotentiary, specifically by providing all the information and documentation necessary for implementation of her duties. Besides, the Plenipotentiary shall undertake cooperation with local self-government units and non-governmental organizations in order to realize the tasks entrusted to her properly.³⁷

According to the Report submitted by the Government Plenipotentiary for Equal Status of Women and Men in 2003,³⁸ the office undertook cooperation with international organizations such as the United Nations, the Council of Europe, and the European Union. The Plenipotentiary maintains contacts and cooperation with her equivalents in other European countries which resulted in running twinning projects in cooperation, especially with similar offices in Scandinavian countries and in Austria. The Plenipotentiary maintains also contacts with the persons in charge of social issues employed in foreign diplomatic agencies in Poland.

There is a lack of a specific internal mechanism to monitor the implementation of the duties entrusted to the Plenipotentiary. As in a case of any other government plenipotentiary, her activity is under control of the President of the Council of Ministers.

The representatives of non-governmental organizations are members of the Program-Consulting Council established by the Plenipotentiary and have an opportunity to submit their comments and suggestions towards issues which have been included to the agenda of the Council's meetings which take place every two months.

The Program-Consulting Council composed of 30 members is nominated by the Plenipotentiary. Its members are female and male experts from academic circles, representatives of the Parliamentary Group of Women and of some Warsaw women's organizations. The criteria of nominating the non-governmental representatives are not clearly specified.

³⁷ *Ibid.*, Article 6.

³⁸ Available at the Plenipotentiary's website: <http://www.rownystatus.gov.pl>.

The annual reports of the Plenipotentiary are to be published on the office's website.³⁹ It should be noted, however, that for the moment only the 2003 Report is available. The list of grants awarded to NGOs by the Plenipotentiary is also made public on the website. It is not clear whether the Plenipotentiary's reports have been formally consulted with social partners. Conferences and seminars on equal status of women and men organized by the office and other actors such as NGOs, academic circles and the Parliamentary Group of Women as well as interventions in media may provide the possible forum on which these reports may be discussed. The only formal forum for the possible dialogue with the Plenipotentiary is the aforementioned Program-Consulting Council.

2.1.2 Partnership with Civil Society

The relationship between the Plenipotentiary and the civil society has undergone different stages. Before the Beijing Conference in 1995 the left-wing government established the Forum of Non-Governmental Organizations composed of organizations aimed at promoting gender equality which served for developing a dialog to deal with women's issues. During the period of 1997–2001 there was a crisis in the cooperation between the government and women's organizations after the new right-wing government withdrew from implementing the commitments contained in the Beijing Platform for Action. The gender equality dimension of the social dialog was replaced by traditional pro-family discourse with increasing participation of organizations affiliated with the Catholic Church. The Forum of Non-Governmental Organizations established at the Plenipotentiary's Bureau found a new placement at the Parliamentary Group of Women.

After the 2001 parliamentary elections, when left-wing parties regained power, social dialogue between the Plenipotentiary and women's organizations was re-established in a form of sharing information, opinions and views within the aforementioned Program-Consulting Council and common endeavors. One of such forms of cooperation is an annual open grant competition for non-governmental organizations to cover areas of concern which are considered a priority by the Plenipotentiary. For example, in 2004, the competition was devoted to award grants for initiatives to counteract social exclusion, addressed mainly to unemployed persons living in rural areas, to combat violence against women, to counteract sex discrimination, and to realize reproductive rights and promote reproductive and sexual health and rights. Fifty-four grants were awarded in this competition with an amount of grant not exceeding 2,000 Euros.

³⁹ See <http://www.rownystatus.gov.pl>.

There is a lack of formal consultation procedures. Nevertheless, some drafts of government documents proposed by the Plenipotentiary or actions planned within the Office are consulted with selected non-governmental organizations. The cooperation was exemplary between the Plenipotentiary and non-governmental organizations when, within the scope of EU directives on equal treatment, a new legal instrument was drafted to introduce a definition of sexual harassment to the Labor Code and Penal Code. Another example is a draft law on counteracting violence in intimate relationships which was prepared in collaboration with the Women's Rights Center and consulted with some other women's organizations. Phases I and II of the National Action Plan for Women were both developed in an extensive cooperation with women's organizations. For example, *La Strada* – the Foundation for Counteracting Trafficking in Women prepared basis for the part concerning trafficking in persons.

However, due to the lack of official consultative procedures, not all interested organizations had an opportunity to submit their comments. It was caused by the very short time provided for consultation and by the fact that many organizations do not have access to the internet where one can find information about the Plenipotentiary's activity and submitted drafts of new legal regulations.

Experts from the Office of the Government Plenipotentiary for Equal Status of Women and Men take part as co-organizers or speakers in many conferences on gender equality which take place all over Poland. For the training purposes, the Plenipotentiary asks for help of gender equality experts from the academic circles, NGO trainers as well as foreign experts.

The access to information on the Plenipotentiary's activity is quite easy thanks to efforts made by the Bureau itself (updated website), its publications and thanks to the National Women's Information Center OSKa which inform and comment currently on, *inter alia*, the Plenipotentiary's activities in a monthly publication *Calendar of Events*.

There are approximately over 300 women's organizations in Poland. Most of them came into being after 1989. They fall with the two distinctive groups: organizations fighting for women's rights as individual persons and organizations which perceive women's issues mainly or exclusively in the context of family. As it has already been mentioned, the Plenipotentiary cooperates only with organizations belonging to the first group.

In the recent years in Poland many non-governmental organizations have undertaken numerous actions related to Poland's accession to the European Union. Interviews

conducted with representatives of thirty NGOs involved in such activities⁴⁰ indicated that they mostly organized various informational campaigns; coaching and training courses enabling women to learn their rights; explaining operations of various EU institutions and the ability to use EU funds; and prior to European Parliament elections, campaigns promoting the election of women running for the EP membership. The most involved organizations in presenting EU legal standards related to equal treatment of women and men was the Women's Rights Center which published a collection of equality directives translated into Polish, tribunal case law and comments by Polish authors. This publication had two editions and was used by the Ministry of Justice, the Parliamentary Group of Women and the Government Plenipotentiary for Equal Status of Women and Men.

Similar initiatives have been undertaken by the National Women's Information Center OSKa. Its publication, *The Women's Guide to Europe*, contained basic information, *inter alia*, on how the situation of Polish women would change after accession to the European Union and how to take advantage of this accession. Another OSKa publication addressed to the problems of women living in rural areas also showing them advantages of the European accession. A special issue of quarterly OSKa Bulletin presented different, also critical, views on the European integration and the possible advantages for women. Besides, in 2004 OSKa in cooperation with Heinrich Böll Foundation (Polish Office), and women's organizations Gender Studies from the Czech Republic and Aspekt from Slovakia ran a project titled "Women in the Election to the European Parliament in 2004."

Non-governmental women's organizations closely cooperate with the Government Plenipotentiary for Equal Status of Women and Men as well as with voivodship-level plenipotentiaries for equal status. They helped to disseminate information about the National Action Plan for Women through seminars and conferences. Besides, this cooperation consists also in developing draft laws and commenting on them as well as co-organizing and participating as experts in different gender trainings. These organizations also play a crucial role in 'passing down' the information, including issues of the European Union. Representatives of non-governmental organizations take part in various seminars, workshops and training courses for other women. Although there is a close cooperation with the Plenipotentiary, rarely there is any regular collaboration with other ministries. Many government bodies, especially the Ministry of Economy and Employment, the Ministry of Education, the Ministry of Justice and business self-

⁴⁰ Interviews were conducted by the team under the supervision of professor Małgorzata Fuszara. The interviews are part of the project *Constructing Supranational Political Spaces: the European Union, Eastern Enlargement and Women's Agency*, sponsored by the National Science Foundation Project, Grant No. BCS-0137954, Project Coordinator Professor Joanna Regulska. Unpublished material.

governments, associations and corporations have special regulations regarding cooperation with non-governmental organizations. Nevertheless, it is very rarely that they ask for cooperation women's NGOs.

Training courses for judges, prosecutors and counselors regarding violence against women are an example of cooperation between women's organizations and the government bodies. Cooperation of the Plenipotentiary with trade unions is less intensive. According to both trade unions' documents and conducted interviews,⁴¹ only the Commission for Women of All-Poland Alliance of Trade Unions OPZZ (one of three national trade union federations in Poland) is in regular cooperation with the Government Plenipotentiary for Equal Status of Women and Men. Although there is the National Section of Women within the Independent and Self-Governing Trade Union Solidarity, it does not cooperate with the Government and the Government Plenipotentiary for Equal Status of Women and Men. Moreover, the organization does not see possibility or need for such cooperation.⁴² Nevertheless, there is evidence of participating of the representatives of this trade union in some seminars organized by the Plenipotentiary. The Plenipotentiary has occasional contacts with the third trade union network called Trade Union Forum, which does not have separate body for women's issues.

2.1.3 Main Scope of Activities

The main scope of activities of the Plenipotentiary is communication and awareness-raising but there are also other areas of concern. Besides the interventions in media, organizing conferences and seminars, the Plenipotentiary grants every two months an award for promoting equal status of women and men titled "Swedish gender equality glasses." It is granted to individual persons and institutions which notice the problem of gender discrimination and make efforts to counteract it. Those who are not able to see that discrimination exists are granted "a prescription to see an oculist." The Plenipotentiary monitors also widely public life from gender equality perspective and, if there is a need, reacts and makes interventions. For example, she wrote a letter to former Prime Minister Leszek Miller to protest against the behavior of one of the ministers who harassed sexually a female translator at an official visit abroad. Another example of her interventions is a letter to the Ministry for Internal Affairs in which she

⁴¹ *Ibid.*

⁴² It results from the fact that its program differs from the areas of concern and interests of the Government Plenipotentiary for Equal Status of Women and Men. For example, the "Solidarity" National Section of Women supports the protection of human life from conception till natural death, is against equal pension age for women and men, and is for longer maternity leave.

appealed for ensuring safety to women's organizations and individual women engaged in action performed by Women on Waves who sailed to Poland in June, 2003. The Plenipotentiary appealed to the Ministry of Health to authorize subsidization of contraception and coverage by health insurance assisted reproduction.

The launching of the National Plan for Action for Women, which took shape in consultation with women's organizations and adopted by the Government, is another example of the Plenipotentiary's activity in the field of policy-making. The Plenipotentiary is also in charge of implementing or coordinating some of the EU programs, but the Plenipotentiary does not have a quasi judicial competence. As it has already been mentioned, this kind of competence was included into the original draft Act on Equal Opportunities for Women and Men. This proposal, however, was not accepted in the legislative bill which is now being discussed in the *Sejm*. It seems also that the Plenipotentiary is not seeking to expand her competence in that respect.

3. POLICIES, PROGRAMS AND AWARENESS-RAISING

3.1 Policies

As it has already been mentioned, the Government Plenipotentiary for Equal Status of Women and Men made the Government approve the second stage of implementing the National Action Plan for Women in 2003. Some of the tasks set forth in this program concerning female economic activity have already been implemented by the Ministry of Economy and Employment within the framework of its own activity. Others are in the process of implementation and will be monitored by the Plenipotentiary for Equal Status of Women and Men.

Since no additional funds within the state budget were allocated for the purpose of implementation of the National Action Plan for Women, one may be afraid that some of the tasks set forth in this program may not be completed. Particular ministries in charge of implementation of the specific parts of the program were asked to reallocate the necessary funds from their own budgetary reserve.

3.1.1 Gender Equality Strategy

Comprehensive *gender equality strategy* has not been developed in Poland yet. Under the leadership of the former 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 harmonizing of the Polish law with EU *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 Government Plenipotentiary for Equal Status of Women and Men which resulted in not developing 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 to stop any positive actions aimed at promoting equal opportunities for women and men.

3.1.2 Gender Mainstreaming

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

3.1.3 Promotion of Women's Participation in the Labor Market

There is no specific comprehensive policy related to the *promotion of women's participation in the labor market* that would aim to reconcile family and professional life. Efforts have been made to eliminate female unemployment which until the end of last year has been much higher among women than men. It sounds promising that one focus of the structural funds' policy is on counteracting gender discrimination in the labor market. The Government Plenipotentiary for Equal Status of Women and Men is in charge of monitoring Action 1.6 on the Occupational Integration and Reintegration of Women within the Sectoral Operational Program of Human Resources Development financed by the European Social Fund. One can also expect that new initiatives and model solutions will be implemented by the means of the Community Initiative EQUAL which tests new ways of tackling discrimination and inequality experienced by those who are looking for a job, including women as a vulnerable group. One of its themes concerns reconciling family and professional life, as well as the reintegration of men and women who have left the labor market, by developing more flexible and effective forms of work organization and support services.

3.1.4 Gender Pay Gap

There is no specific governmental policy aimed to reduce the gender pay gap. The gender pay gap is considered inevitable and with exception of the aforementioned

amendments of the labor law no coordinated efforts have been undertaken in order to ensure equal payment for women and men.

3.1.5 Other Policies

The Polish government does not carry out a policy to remove obstacles faced by women trying to reach higher and managerial positions. There is no policy at the governmental level to promote the involvement of men in achieving gender equality and to support men in *sharing family responsibilities*.

The need to eliminate *gender stereotypes in education* has been discussed for a long time. Some research had been done which proved that the textbooks and manuals recommended by the Ministry of Education are full of gender stereotypes.⁴³ Despite the fact that the National Action Plan for Women obliges the Ministry of Education to review all textbooks in that respect, no efforts have been made to eliminate the ones which strengthen gender prejudices.

As for the elimination of *sexual harassment*, all efforts were limited to legislative amendments.

There is no *evaluation process* to assess the progress made in different policies related to gender equality which results mostly from the fact that there are no such policies.

3.2 Programs

3.2.1 International Cooperation

In addition to the National Action Plan for Women, the Government 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 a Danish–Austrian consortium. The twinning program “Strengthening Anti-Discrimination Policies” is run in cooperation with Ludwig Boltzman Institute of Human Rights from 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 understanding of gender discrimination.

⁴³ See Elzbieta Kalinowska, “Women and Men, Girls and Boys. Gender Division Presented to Children in the Textbooks,” in Renata Siemieńska (ed.), *Images of Women and Men* (Warsaw: Wydawnictwo Naukowe “Scholar,” 1997), pp. 115–151.

The tasks related to the assessment of the implementation of existing legislation on gender equality have been included in both aforementioned programs. However, as it has already been indicated, Polish legal regulations concerning equal treatment that are transposing the EU directives aim at eliminating any type of discrimination, including discrimination on the grounds of sex.

Shadow reports were prepared by Polish women's NGOs to the Beijing conference in 1995 and the Beijing+5 Conference in 2000. Federation for Women and Family Planning presented alternative reports to the UN Committee on Human Rights in 1998 and to the UN Committee on the Covenant on Social, Economic and Cultural Rights in 1999. Both were discussed in the 2002 Report.

3.2.2 Training Programs

Within the framework of the "Enhancement of Policies on Equal Treatment of Women and Men" program, four workshops were organized for judges and other lawyers. The agenda of the training course for judges of the labor courts led by experts from Denmark and Austria in collaboration with judges of the Supreme Court and specialists from the Ministry of Economy and Employment included the presentation of the EU directives on equal treatment, specific judgments and the road to the European Court of Justice. Besides, workshops aimed at promotion women in political life were run by women's NGOs such as OSKa, the Center for the Advancement of Women (e.g. "Political Academy of Women"), etc. Special training courses on the elimination of violence against women were conducted by the Women's Rights Center with financial support from the Government Plenipotentiary for Equal Status of Women and Men, the Ministry of Justice, and some European Union funds. These courses were addressed to policemen and policewomen, prosecutors and trainee solicitors. These highly specialized courses were preceded by the workshop aimed at teaching the participants to identify gender stereotypes, how to take control of them. They were also equipped with the knowledge of the international standards on gender equality and of the way to put them into practice. They were informed about measures and strategies on promoting gender equality and counteracting gender discrimination.

3.2.3 Structures to Support the Implementation of the *acquis communautaire* Related to Equal Opportunity

There are no specific structures in place in Poland to support the implementation of *acquis* related to equal opportunities. Due to the fact that equal treatment was protected in the Labor Code, monitoring of its implementation is in the scope of

duties of the State Employment Inspection and Social Employment Inspection which were widely described in the 2002 Report.

3.2.4 Other Programs

There is no specific program to encourage men to take a greater role in family life, to change attitudes regarding family responsibilities, to encourage the sharing of parental leave schemes by both parents, to support flexible working arrangements, or addressing gender equality within social security schemes.

3.2.4.1 *Self-Employment*

In that context it should be emphasized that according to research findings, the widespread phenomenon of women establishing business enterprises was generally a result of such events as loss of employment in a state-owned company and almost non-existing opportunities to find meaningful work. Nevertheless, it should be noted that the Government has undertaken initiatives of, for example, providing higher reimbursement of training costs attended by female owners of small companies. However, in many regions of Poland there are no information, consulting and training centers created specially for women. No special credit-loan lines are established and women are not offered with other loan or credit guarantee facilities (e.g., as a part of the existing governmental program supporting small and medium size enterprises).⁴⁴ Despite the Government's declaration that it is necessary to equalize opportunities of women, the limited scope of initiatives undertaken by the Government in this respect make these declarations virtually irrelevant.

3.2.4.2 *Sexual Harassment*

No information is available on a program that would specifically address the topic of *sexual harassment in the workplace*. Legal measures aimed at eliminating of this practice have been included in the National Action Plan for Women.

3.2.5 Evaluation

There is no special body to assess the impact of the aforementioned programs. As it has already been mentioned, the Plenipotentiary for Equal Status of Women and Men is in charge of monitoring implementation of the European Social Fund in the Framework of Action 1.6 on Occupational Integration and Re-Integration of Women and of the

⁴⁴ Cf. Ewa Lisowska, *Women's Enterprises in Poland as Compared to Central and Eastern European Countries*. (Warsaw: Warsaw School of Economics, 2001), p. 29ff.

Community Initiative EQUAL. Both will be implemented in the period between 2004 and 2006.

3.3 Awareness-Raising

3.3.1 Dissemination of Information

All the information concerning gender equality legislation at the EU and national level are accessible at the websites of the Government Plenipotentiary for Equal Status of Women and Men, the Ministry of Economy and Employment, the Office for the Committee of the European Integration, and the Parliament of the Republic of Poland. Some women's organizations published brochures and other publications related to the subject.

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

There has been no nationwide campaign undertaken by the Ministry of Economy and Employment or trade unions to inform public about new regulations in the Labor Code. The Ministry of Economy and Employment and the trade unions such as Solidarity or OPZZ limit themselves only to organizing from time to time (once a year or every two years) conferences regarding to that subject for not more than 50 participants. New labor law regulations are reported by media (for example, the daily newspaper *Rzeczpospolita* has a special law section where all information concerning legal amendments is published).

3.3.2 Campaigns for the General Public

The campaigns for the general public on gender discrimination are carried out by non-governmental organizations or informal groups. Since 2000, an informal group Women's Alliance of the Eighth of March has been organizing street demonstrations on the International Women's Days. It spread out from Warsaw to other cities with the involvement of many local groups. In 2004, a campaign "T-Shirt Freedom" was initiated by a group of students. They encouraged well-known people to wear T-Shirts with slogans such as "I am a lesbian", "I had abortion", "I don't go to the church", "I have menstruation", "I was in prison" etc. It was made public and pictures were published in *Wysokie Obcasy* (a supplement to *Gazeta Wyborcza*).

There has been no specific public campaigns related to sexual harassment, or sharing of family responsibilities.

4. RESEARCH AND STATISTICS

4.1 Gender Pay Gap

Official statistics clearly reveal that an unjustified gender pay gap exists in Poland. According to the most recent statistical data of the Central Statistical Office from 2003,⁴⁵ the average salary among women was equal to 83 percent of the average salary among men. This figure represented some decrease compared to the previous years in the disproportionality between the salaries of women and men. For example, statistical data from 1999⁴⁶ indicate that the average salary among women in that year was equal to 79 percent of the average salary among men. The highest disproportion of salaries between women and men was noticed in the occupational group of crafts and related trades, where women earned 63 percent of men's average salary and this difference has not changed for the last three years.⁴⁷ The gender pay gap is also visible among the Polish Members of Parliament, where women, constituting 20 percent of deputies and senators, are paid 71 percent of the male parliamentarians' average salary. Compared to statistical data from 1999, the gender pay gap has actually widened by eight percent (in 1999 female Members of Parliament received 79 percent of the salary their male counterparts earned⁴⁸). The gender pay gap is also visible in feminized occupational groups such as teachers, in which women's average salary was equal to 85 percent of the average men's salary. However, it must be noticed that the gender pay gap changed in comparison to 1999 female average salary on the favor of women. (In 1999, women teachers earned 79 percent of men's average salary.) Among those who earn the highest salaries, men constitute 80 percent and women only 20 percent.⁴⁹

⁴⁵ Main Statistical Office (GUS), *Statistical Yearbook of the Republic of Poland, 2003* (Warsaw: GUS, 2003), p. 182.

⁴⁶ Main Statistical Office (GUS), *Statistical Yearbook of the Republic of Poland, 2000* (Warsaw: GUS, 2000), p. 164.

⁴⁷ Main Statistical Office, *Statistical Yearbook of the Republic of Poland, 2003*, p. 182.

⁴⁸ In 1999, women constituted 13 percent of the Polish Members of Parliament.

⁴⁹ Women's Rights Center, *Report: Polish Women in the 1990s* (Warsaw: Women's Rights Center, 2000), p. 63.

4.1.1 Monitoring Wage Gaps

The State Employment Inspection is in charge of monitoring the implementation by the employers of the Labor Code, including the realization of the principle of equal pay for the work of the same value. In 1997–1999,⁵⁰ the State Employment Inspection monitored the gender pay gap in a comparable way in order to see how the employers observe the provisions referring to the protection of women’s work and prohibition of discrimination on the grounds of sex. The results of the control indicate that discrimination in the determination of the remuneration for the work was observed in 29 percent of the establishments. Although in the examined establishments the women’s average salaries were lower of only two percent in 1998, and of eight percent in 1999, in some economic sectors such as services the disproportion to the detriment of women was much higher (for example, in 1999, women earned 79 percent of men’s average salary). It should be noted that this research was limited to the following four criteria: contents of provisions regarding remuneration; age; length of service; and level of education (ignoring such criteria as the type of the post and the work performed, and the promotion system involved). The results obtained led the authors of the report to the conclusion that “although they do not unambiguously indicate that there is discrimination in the determination of the remuneration for the employees of both sexes, these results allow to state that women are not treated equally to men on a few grades of the hierarchy of posts.”

4.2 Gender Composition of Central and Local Decision-Making Bodies

In the newly formed Government which constituted after the European election there is only one woman in the Deputy Prime Minister position but she is a minister without portfolio. She was appointed to that position as she is the head of the coalition party Labor Union. In the current government no woman holds a ministerial post. (In the previous Government, which resigned on May 1, 2004, there were three female ministers). On August 12, 2004 a new woman was appointed to the Government Plenipotentiary for Equal Status of Women and Men position to replace Izabela-Jaruga Nowacka who had been appointed to the Deputy Prime Minister position. It must be noted, however, that the rank of the Plenipotentiary Office was lowered as the new Plenipotentiary is not a member of the Cabinet and is an Under-Secretary of State.

The Polish Parliament consists of two chambers: the Lower House *Sejm* (460 members) and the Upper House Senate (100 members). In the parliamentary elections

⁵⁰ State Employment Inspection, “Report on the Evaluation of the Observance of the Provisions Referring to the Protection of Women’s Work and the Interdiction of Discrimination on Grounds of Sex.” *Law and Justice*, 2000, No. 2, pp. 28–31.

in 2001, 93 women were elected to the *Sejm* (20.21 percent) and 23 women to the Senate (23 percent). In comparison to the former composition of both chambers of the Polish Parliament, the number of women increased significantly.⁵¹

Women's participation in governments at the provincial level as well as at the municipal level is much lower. Following the 2002 municipal election, women constitute 17.76 percent of members of local self-governments and 7.34 percent of members of the governing bodies. In comparison to the municipal election in 1998, the participation of women has dropped.

Since the re-establishment of the post of the President of the Republic of Poland, it has always been held by a man.

In the European elections in which Poland, as a newcomer to the European Union, took part for the first time, seven women out of 54 Polish Members of the European Parliament were elected (representing 12 percent).

4.3 Data on Gender Segregation in the Labor Market

The majority of Polish women are employed. The actual proportion depends on the age brackets: the most active are women of the age between 33 and 49. Over 80 percent of them are employed. In 1989, a total of eight million women were employed in Poland, constituting 46 percent of the work force.

Some economic sectors are feminized to the large extent. This trend affects especially medium staff employed in the health care (e.g., women constitute 93 percent of the nurses employed on full-time basis), teachers (women represent 72 percent of the full-time workers in that sector), clerical workers (women constitute 61 percent of full-time workers), models, shop assistants, demonstrators and workers performing simple jobs in trade and services (women represent 60 percent of full-time workers).

Given the directive on equal treatment for women and men who are self-employed and their assisting spouses it should be noted that transition in Poland allowed to create conditions for the development of entrepreneurship. Women have taken this advantage

⁵¹ After 1989, the number of women members in the Polish Parliament dropped dramatically. For example in 1991, only 9.5 percent of the *Sejm* members were women and eight percent of the Senate members. In 1997, the number of women increased insignificantly to 13 percent in the *Sejm* and to 12 percent in the Senate. It means that in comparison to the previous term, women's participation in the *Sejm* increased by 35 percent and by 48 percent in the *Senate*.

much more frequently than men.⁵² At present, there is a big number of women among self-employed. In the record year of 2002, 1.2 million women worked as self-employed which amounted to 18 percent of the total women workforce in the national economy.⁵³ It is interesting that, as empirical research conducted among the Polish entrepreneurs⁵⁴ show, while there is a clear gender segregation in the labor market between female and male employees, one can hardly find such disproportional representation between female and male entrepreneurs.

Gender disaggregated data are available in the Statistical Yearbook of the Republic of Poland published every year by the Main Statistical Office (GUS).

4.4 Data on the Incidence of Sexual Harassment in the Workplace

In the recent years several cases of sexual harassment have been brought before the court. They covered drastic sexual harassment (e.g., forced sexual abuse by use of undue authority or difficult conditions of the abused person) and for that reason these cases were examined before the criminal court (several per year). However, the court statistics does not show that these cases of sexual harassment took place in the workplace. Sometimes harassed persons brought cases before the civil court claiming the violation of their dignity or other personal rights. It should be emphasized that until 2004, it was the only way of claiming rights by sexually harassed persons as sexual harassment was not considered a form of discrimination. However, such cases were rarely brought in the court due to long-term and oppressive proceedings, and high

⁵² While in 1993 the number of self-employed persons increased by three times in comparison to the total number of self-employed persons in 1985 (with the exception of individuals in agriculture), the number of self-employed women increased five times. See Women's Rights Center, *The Impact of the Process of Privatization on the Situation of Women. Polish Women and the Economy of Transformation Period*, B. Żylicz, ed. (Warsaw: Women's Rights Center, 1999). The newly published report of the World Bank indicates that between 1985 and 1998, the number of women with their own registered company outside of farming grew five times, while in the same period corresponding indicator for men barely doubled. Now the representation of women among the total of self-employed in Poland is among the highest, compared to other European countries. See The World Bank, *Gender and Economic Opportunities in Poland: Has Transition Left Women Behind?* Report No. 29205, (Warsaw: The World Bank, 2004), p. ix.

⁵³ Main Statistical Office (GUS), *Economical Activity of the Polish Society*. Second Quarter of 2000. In the series "Information and Elaborations of the Main Statistical Office" (Warsaw: GUS, 2000), p. 13.

⁵⁴ See Lisowska, *op.cit.*, p. 29ff.

costs.⁵⁵ Statistics concerning the cases related to the violation of personal rights does not specify whether this violation concerned sexual harassment.

There is no research on gender stereotypes in primary and secondary schools undertaken at the governmental level. However, some research has been done by individual experts and researchers.⁵⁶ There is no new research on the quality and affordability of childcare services.

4.4.1 Disputes Related to Sexual Harassment, Unfair Dismissal and Employment

Although Sections 11(2) and 11(3) were incorporated into the Labor Code only recently, there are already a number of judgments in relation to these provisions. Most of them concern the general understanding of the principle of equal treatment and non-discrimination in employment. Only a few referred directly to equal treatment of women and men or discrimination on the ground of sex. As to the first group of law cases, there is a judgment of the Supreme Court in which the Court recognized that in the sense of Section 11(3) of the Labor Code discrimination means illegitimate deprivation of or limitation of rights related to the employment relationship or unequal treatment of workers due to their sex, age, disability, ethnicity, race, belief, especially political or religious, and trade union membership. According to this judgment, discrimination should be also understood as granting of some employees fewer rights than other employees in the same factual and legal position, for one of the aforementioned grounds.⁵⁷

The Decision of the Supreme Court of March 4, 2000 is an example of the second type of judgments. The Supreme Court recognized that an applicant who had responded to the employer's offer which was discriminatory on the grounds of sex (Section 11(3) of the Labor Code) but as a result was not employed could claim for compensation on the basis of the provisions related to illicit acts (Section 415 of the Civil Code).⁵⁸ Another judgment concerned the suspicions brought by the Social Insurance Institution (ZUS) that some women are employed while being pregnant because they want to cheat ZUS out of maternity benefit. The Court of Appeals in Lublin stated that "The recognition that an employment contract made with a

⁵⁵ See Zielińska, *op.cit.*, p. 96.

⁵⁶ See Kalinowska, *op.cit.*

⁵⁷ Judgment of the Supreme Court of September 10, 1997, published in UI PKN 246/97, OSNAP 1998, No.12, item 360.

⁵⁸ Judgment of the Supreme Court of March 4, 2000, published in UI PKN 314/99, OSNAP 2001/15/480.

pregnant woman is illegitimate would result in imposing a ban on employing pregnant women. And as such, it would be in contradiction with the fundamental principle of the labor law set forth in Section 11(3) of the Labor Code which prohibits any discrimination in the employment relationships.”⁵⁹

It is not easy, however, to agree with the decision of the Supreme Court which stated that the termination of a contract with a female employee who reached the retirement age of 60 and automatically is entitled to retire is justified (Sections 45(1) and 39 of the Labor Code) and cannot be considered discrimination on grounds of sex or age (Section 11(3) of the Labor Code).⁶⁰ The retirement age for women is lower than the retirement age for men (60 and 65). The retirement of a woman in the age of 60 is her right and not her duty. For that reason forcing her to retire should be recognized discrimination on grounds of sex.

The State Employment Inspection is in charge of monitoring the observance by the employers of the labor law. For the last 10 years, the intensification of control and a number of establishments which violated the right of female employees raised. In 1991, violations of the special protection of female work were found in 26 percent of the controlled establishments and they concerned 10 percent of female employees. In 1992, the percentage of firms violating female employees’ rights increased to 32 percent,⁶¹ in 1998 it increased further to 66.7 percent, and in 1999 it decreased moderately to 63 percent.⁶² In 1990, the State Employment Inspection stated that the severe violations included employing women to perform works prohibited to them such as weighting lifting. Besides, a number of prohibited posts decreased.

In 1992, the most common violations included: the lack of specification of the works prohibited to women, performing by pregnant women works which are dangerous or harmful for them, termination of employment contracts with pregnant women, forcing women to work at night or over-time, not paying supplement benefits to pregnant women, not granting women childcare leaves or days off to take care of a sick child.⁶³

⁵⁹ Judgment of the Lublin Court of Appeals of April 29, 1999, published in U OSA 2000/3/11.

⁶⁰ Judgment of the Supreme Court of April 21, 1999, published in UI PKN 31/99, OSNAP 2000/13/505.

⁶¹ See Małgorzata Fuszara, and Monika Tarnowska, “Women: A Category of Employees under Special Protection?” in *What Does It Mean to Be a Woman in Poland?*, A. Titkow and H. Domański, eds. (Warsaw: The Institute of Philosophy and Sociology of the Polish Academy of Science, 1995).

⁶² State Employment Inspection, “Report on the Observance of the Labor Law by Employers,” available in Polish at www.pip.gov.pl/html/pl/old/spraw2002/sprw-int/spis_spr_02.htm.

⁶³ Fuszara and Tarnowska, *op.cit.*, p. 132.

In 2000–2002,⁶⁴ the State Employment Inspection still founded that employers did not make a list of factors harmful to health involved in particular work or did not adjust the enumeration of the occupations prohibited to women to the specific conditions of their companies. In 2002 it concerned 25.7 percent of the supervised employers (32.5 percent in 2001 and 40 percent in 2000). The State Employment Inspection report emphasizes that the lack of specification of occupations prohibited to women has no impact on the number of women performing prohibited works which has been low for years. (In 2002, women performed prohibited works only in two companies.) It is also noted that there has been no case of not granting a parental leave to a male employee what can be explained by the fact that fathers are not interested in enjoying their parental entitlements.⁶⁵

It must be added, however, that fines given to employers for not observing the female workers' rights were rather low.⁶⁶ For example, in 1991, employment inspectors punished companies with an average fine of 329,000 Zlotys. It is rightly emphasized that the amount of fines was disproportionately low in comparison to income of the companies contemporary of that time and to new opportunities created by the labor law. The Labor Law stipulated at that time a fine up to 5 million Zlotys.

Polish media quite frequently report on sexual harassment cases if they are made public. Other problems related to discrimination are rarely raised and only when reports are issued.

5. KEY AREAS OF CONCERN AND RECOMMENDATIONS

5.1 Key Areas of Concern

The Government Plenipotentiary for Equal Status of Women and Men is assumed to be a “passing” institution as her power exists until the entrusted tasks are done. 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 lead to institutional dependence on the subsequent governments. Such a placement does not allow to act independently and to run independent policy in comparison to other ministers being the head of particular departments. The fact that the Plenipotentiary was entrusted with new tasks in 2003 related to counteracting discrimination based on race, ethnic origin, religion or belief, age and sexual

⁶⁴ State Employment Inspection, *op.cit.*

⁶⁵ *Ibid.*

⁶⁶ Fuszara and Tarnowska, *op.cit.*

orientation and making arrangements to establish a new office in charge of counteracting discrimination may give rise to fears that in future gender equality will be marginalized.

There was clearly no political will within the Government led by the Prime Minister Leszek Miller to promote gender equality.⁶⁷ It seems to be necessary to make the Government aware that equality between women and men is one of the priorities of the European Union and as such should be actively promoted.

There is an urgent need to support initiatives undertaken by women's non-governmental organizations within the scope of aforementioned programs and to ensure an effective implementation of the existing programs.

The collection of statistical data is satisfactory in Poland. Nevertheless, in comparison with previous years there are fewer analyses of professional quality and comprehensive nature.

5.2 Key Recommendations

5.2.1 Legislative Measures

- The provisions concerning equal treatment of women and men set forth in the Labor Code must be improved.
- Legal protection against discrimination on grounds of sex should be extended to areas of social life other than employment.
- Legal regulations concerning the Government Plenipotentiary for Equal Status of Women and Men should be amended in order to base it on statutory law.

5.2.2 Institutional Mechanisms

- The rank of the Office of the Government Plenipotentiary for Equal Status of Women and Men should be raised.
- The Office of the Government Plenipotentiary for Equal Status of Women and Men should be equipped with a broader competence for decision-making and executive power as well as quasi-judicial powers.

⁶⁷ The Government led by Leszek Miller was dismissed on May 1, 2004. The new Government and its Prime Minister Marek Belka gained approval of the Polish Parliament in June 2004.

- The budget of the Office should be increased in view of the importance of 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.
- The Government should further institutionalize the gender equality framework by establishing an anti-discriminatory office with quasi-judiciary competence in order to deal with discrimination cases.

5.2.3 Policies and Programs

- The Government should run an active pro-equality policy in the form of affirmative action.
- In collaboration with non-governmental organizations, the Government should develop specific programs on gender equality and ensure their effective implementation and evaluation.
- Initiatives undertaken by women's non-governmental organizations within the scope of the aforementioned programs aimed at promoting equal opportunities for women and men should be supported as a matter of priority and effective implementation of existing programs should be ensured.

5.2.4 Awareness-Raising

- The Government should undertake systematic efforts to improve gender-sensitivity in the wider 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 case of a violation.

5.2.5 Research and Statistics

- 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 for the 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.

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WHAT IS THE SITUATION IN POLAND?

Polish legislation, for the most part, meets the legal requirements of the EU Directives on equal treatment. However, there is still no general job classification system for calculating pay, and this means that different types of work cannot be compared.

The institutional mechanism on gender equality in Poland is the Governmental Plenipotentiary for the Equal Status of Women and Men. The Plenipotentiary has different tasks, but no power to make decisions. Its responsibilities are limited to monitoring, analyzing, assessing, informing and educating.

In March 2005, the Parliamentary Committee on the Equal Status of Women and Men was established to deal particularly with equality between women and men in political, economic and social life.

The bill on the equal status of women and men is the longest-discussed draft in the history of the Polish Parliament. The first version was prepared in 1993 and since then it has been amended and debated in every four-year term.

In December 2004, the Government adopted a bill on combating and preventing family violence. The draft law was debated by the Polish Parliament in February 2005, but has not been adopted yet as it requires some amendments.

WHAT DO THE FACTS SAY*?

- As of 2003, women earned 83 percent of men's average salary, indicating a reduction in the pay gap in recent years;
- More cases of sexual harassment have been taken to court in recent years. However, court statistics do not show that the alleged sexual harassment took place in the workplace;
- 58.1 percent of women and 35 percent of men believe that women are discriminated against in Poland; 31.7 percent of women and 25.2 percent of men admit that they have personally experienced gender discrimination.

* Sources of data: *Polish Country Report* (prepared as part of the report: *Equal Opportunities for Women and Men: Monitoring law and practice in new member states and accession countries*, available at www.oska.org.pl); and the public opinion poll conducted by Pentor on 8 March 2005.

DISCRIMINATION AGAINST WOMEN

“Discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

(Convention on the Elimination of All Forms of Discrimination Against Women, Article 1.)

THE EU'S COMMITMENT TO GENDER EQUALITY

“The EU has a long-standing commitment to promoting gender equality, enshrined in the Treaty since 1957.

The Community legal framework ensures that women and men are equal before the law. [...] Moreover, equal treatment legislation is a firmly established integral part of the *acquis communautaire* that countries applying for EU membership have to respect.”

(Community Framework Strategy on Gender Equality (2001-2005), Introduction; http://europa.eu.int/comm/employment_social/equ_opp/index_en.htm)

THE ACQUIS COMMUNAUTAIRE

“The *acquis communautaire* is the body of common rights and obligations which binds all Member States within the European Union. It comprises Community law, all acts adopted under the second and third pillars of the European Union and the common objectives laid down in the Treaties.”

(http://www.eu2005.lu/en/savoir_ue/glossaire/glossaire_a/index.html#Acquis%20communautaire)

WHAT DO THE EXPERTS SAY?

- As the Governmental Plenipotentiary for the Equal Status of Women and Men acts on grounds of the Ordinance of the Council of Ministers, the existence of this Office depends on the good will of the Prime Minister;
- Neither a comprehensive gender equality strategy, nor a comprehensive gender mainstreaming strategy has been developed in Poland;
- 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. There are also no specific programs to support flexible working schemes or to address gender equality within social security schemes.

WHAT NEEDS TO BE DONE?

- The provisions on equal treatment for women and men set forth in the Labor Code need to be improved;
- The government should strengthen the institutionalization of a gender equality framework by establishing an anti-discrimination office with quasi-judicial authority to deal with discrimination cases;
- The government should undertake systematic efforts to raise awareness in society about gender and discrimination.

DID YOU KNOW:

58.3 percent of women and 48.4 percent of men think that Polish women fare worse than women living in other EU member states. Only 6.9 percent of women and 7.5 percent of men say that Polish women are living in better conditions than women in other EU Member States.

MORE INFO:

www.oska.org.pl; www.rownystatus.gov.pl