

## Subsidiarity: A Tool for Gender Equality in an Enlarged EU

Mirosław Matyja

Preparations for the foreseeable entry of over 100 million new citizens to the EU has led to significant changes in the Union's democratic structures. This evolution has its counterpart in applicant countries, where considerable progress has been made in incorporating Europe's existing legal norms of gender equality, as part of the accession process, in line with the proclaimed fundamental democratic values of Member States and of Union enlargement policy. [1] However, despite such progress, equality in day-to-day life is still undermined by unequal access to rights experienced by women and men in practice. Structural gender inequalities persist in many enlargement countries. Eliminating these is a challenge, but it can be advanced, I will argue here, by applying a fundamental tenet of EU decision-making in the candidate states - the principle of subsidiarity.

### Gender equality in EU legislation

The principle of equal treatment of women and men was first adopted by the European Community as the right of "equal pay for equal work". This provision, although of a limited scope, evolved progressively into a number of Community instruments that safeguarded the principles of equal access to employment, to vocational training and promotion, and to working and living conditions. It resulted in the principle of non-discrimination regarding sex or sexual orientation, as proposed by the Intergovernmental Conference for Reform of the European Union and of the Treaty. [2]

The 1998 Treaty of Amsterdam introduced several new provisions consolidating these principles into the core Community Treaty:

- **Article 2** proclaims the promotion of "equality between men and women" as a *fundamental task* of the Community.
- **Article 3(2)** provides for the elimination of gender inequalities in Community *objectives, strategies and actions* (a list of 21 such areas is provided in Art. 3(1)).
- **Article 13** explicitly mandates action to *combat discrimination* based on sex or sexual orientation *inter alia*.
- **Article 137(1)** calls for the Community to support States actions to promote "*equality between men and women with regard to labour market opportunities and treatment at work*".
- **Article 141** further refines these measures and, in addition, encourages "measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers".

These and earlier legal initiatives have been buttressed by a number of directives and, since 1982, action programmes to promote the situation of women in the labour markets and equality of opportunity.

Elsewhere, the EU has addressed the equilibrium of family and working life for women, and burden-sharing of family responsibilities with men. An example is the Commission communication "for a new partnership between women and men" destined for the Fourth UN World Conference on Women held in Beijing, September 1995. [3] Another is a 1992 Council recommendation including initiatives to support Member States' actions in developing childcare policies as a means of reconciling working and family life. [4] The EU has further adopted numerous texts on the reintegration and late integration of women into working life.

### Gender equality in the applicant states

These texts and initiatives together contribute to the comprehensive set of rules and principles collectively known as the *acquis communautaire*, to which candidate countries are obliged to conform as part of the accession process. The *acquis* are in constant evolution - a fact which presents accession countries with a problem of "moving goalposts" as they attempt to bring their laws and practice into line with changing Union norms.

A more profound problem is that the countries themselves inherited a "social *acquis*" from decades of communist rule. Nor should it be forgotten that these transformations take place against a background of political and social upheaval as the economies of Central and Eastern Europe shift from centrally planned to market-oriented economies. Since transition new gaps in social status and income have opened up not only between women and men, but between regions and subregions and even between states.

Partly in consequence, international commitments to secure equal opportunities for women in some of these countries are not respected *de facto*, despite the adoption of the *acquis*. Ten years down the road to transition and restructuring of the labour market, the most pressing issues for gender relations in the world of work appear to be:

- Inadequate participation of women in social dialogue and decision-making concerning the economic and political environment;
- Insufficient coverage and effectiveness of social protection and social services;
- Difficulties in securing employment and income in fluctuating labour markets. [5]

What are the reasons for this failure? In part it is to do with history. In contrast to the pluralist democracies, where gender equality is premised on the acknowledgment and acceptance of conflict between women and men, in the totalitarian systems that prevailed in central and eastern Europe equality was assumed by the law, but treated as banal and unimportant in practice. Women faced and continue to face unequal treatment and marginalisation as a matter of course. A second, related, reason is the weak connection between lawmakers and civil society. In general, sustainable communication and cooperation between national and international institutions and NGOs has not developed consistently. The introduction of legislation at the top, often for the benefit of accession negotiations, often lacks the full recognition and support of the public; mechanisms and motivation for implementation on the ground are often weak or non-existent.

### **The benefits of subsidiarity**

The principle of subsidiarity endorsed by the Treaty on European Union [6] is intended to guarantee a more efficient Europe, closer to its citizens and more respectful of local and national identities. The essential idea is that decisions be taken closest to where they will have their impact. This concept responds to a manifest tendency towards integration and unity of applicant countries at the local, regional, national and European levels for the promotion of personal capacities.

In accordance with the principle of subsidiarity, the organs of the EU (the Council, Parliament and Commission) must:

- act only in areas of common concern and when the states cannot act effectively on their own;
- highlight diversity while respecting the specific characteristics of states, regions, professions and gender;
- be transparent, clear and accessible to all citizens. [7]

Thus, centralised decisions are limited to those areas where they will be more effective than local decision-making. By corollary, in precisely those areas where they can be most efficient, the EU's central organs are required to take action.

Subsidiarity appears at the intersection of myriad problems concerning economics, law and public and business administration. As such, subsidiarity effectively touches on a vast set of tasks in which all social actors participate. The principle of subsidiarity accepts the primacy of *persons* as both the origin and the end of society, promoting personal development through social relations, and affirming the importance of social communities to the development of individuals. The principle is designed to regulate the distribution of competencies at various levels: in effect, personal responsibility is promoted at all levels. In sum, subsidiarity is a formal principle whose metaphysical ground is a person (woman or man).

In discussions about religion, politics, and community, the principle of subsidiarity is most often invoked as a basis for limited government. However, the principle has more relevance to such debates than its immediate implications for government policy, particularly as regards the idea of "community". Insofar as it recommends a pattern of organizing social life in general, and not just that part which touches on the state, subsidiarity has implications for the choices of families, neighbourhoods, commercial enterprises, indeed for all social agents, individual and corporate. Given the principles of subsidiarity and proportionality as set out above, the stated objective of the Union to promote gender equality, can be only partially fulfilled at the level of the State. However, by reason of the need for multilateral partnerships, trans-national information exchange of information and Union-wide dissemination of good practice, many aspects will be better achieved at the level of the European Union organs themselves. Indeed the EU is better positioned to provide and coordinate linkages between local governments and NGOs and other non-state actors across Europe with a view to implementing equal opportunities measures - through enlargement and beyond.

The principle of subsidiarity is immediately applicable to judicial, constitutional and social reforms in most Central and Eastern European countries. Such reforms would then point towards local, regional, national and international powers - according to the particularities in each case. Closely related to this, it is vital to highlight the importance of gender equality as a common good in all member countries of the European Union. Both in the proximate future (before enlargement) and in the long run (afterwards) the processes of equality between women and men demand rational decisions and actions at all political and social levels.

## Footnotes

[1] Treaty on European Union, Art. 6(1) and the Copenhagen Political Criteria.

[2] Report of the Reflection Group on IGC, 5 December, point 39.

[3] COM(95)221 final.

[4] Council Recommendation of 31.3.1992 on Childcare (92/241/EEC).

[5] International Labour Office, The Role of Trade Unions in Promoting Gender Equality Report of the ILO-ICFTU Survey, 2000, Geneva: ILO Gender Promotion Programme. Also, Henderson K. and Robinson N., "Post-Communist Politics", Prentice Hall, 1997.

[6] Article 3b of Title II of the Treaty on European Union.

[7] The subsidiarity principle, XVI FIDE Congress. Vol. I, 1994. See also Council of the European Union, Council Decision 1999/468/EC replacing Council Decision 87/373/EEC concerning procedures for the exercise of implementing powers conferred on the Commission. OJL 184/1999.