

Equal Opportunities for Women and Men



FOUNDATION FOR
THE WOMEN OF HUNGARY

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

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PARTICIPATING COUNTRIES:

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Czech Republic
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Hungary
Lithuania
Poland
Romania
Slovakia
Turkey

Equal Opportunities for Women and Men

Monitoring law
and practice in

Hungary

by Andrea Krizsán, Enikő Pap



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NETWORK WOMEN'S PROGRAM

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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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1. LEGISLATIVE OVERVIEW

1.1 Overall Changes in Gender Equality Policy

In the Hungarian context, the change of government in May 2002 brought about important changes in the gender equality policy approach. The shift from a conservative government to a socialist-liberal coalition was clearly reflected in the field of equal opportunity policies. Along with this change the approaching date of the accession of Hungary to the EU has also facilitated some improvements. Three main pillars of change should be mentioned.

The first and most important one is the shift in the governmental approach to the necessity of a comprehensive anti-discrimination policy in Hungary. Until 2002 the government had consistently argued for the regulation of discrimination by means of relevant sectoral laws, rather than by comprehensive anti-discrimination legislation. The amendment of the Labor Code to include detailed anti-discrimination provisions, discussed in the previous report¹ can be seen as part of this approach – in addition to the legal harmonization. The governmental point of view was heavily opposed not only by experts and advocates but also by some opposition Members of the Parliament and by the Parliamentary Commissioner for the Rights of National and Ethnic Minorities. Three anti-discrimination bills reached the Parliament in 2000–2001, one on ethnic discrimination, one on gender based discrimination and a general one covering all relevant grounds of discrimination. All of these have been turned down without being debated in the plenary session. As the bills show there was no agreement between advocates for a comprehensive anti-discrimination policy on whether this should imply one general law or several ones, one for each important ground of discrimination.

In November 2002, soon after the governmental changes, preparation of the Hungarian comprehensive anti-discrimination act was launched by the Ministry of Justice. Wide social debate of the bill has started in early 2003. The Act was accepted by the Parliament in December 2003 and entered into force in January 2004. The issue of whether one or more anti-discrimination acts were needed in Hungary was not opened up for debate by the Ministry. The draft from its inception proposed to tackle discrimination on all grounds, including gender, together. It proposed to establish only one specialized agency. Given the crosscutting relevance of the act for almost all issues

¹ See Open Society Institute, “Equal Opportunities for Women and Men in Hungary.” In *Monitoring the EU Accession Process: Equal Opportunities for Women and Men, 2002* (Budapest: Open Society Institute, EU Accession Monitoring Program, 2003).

discussed in this report we shall present it in more details in the second part of this introductory chapter.

A second element of change concerns the gender equality machinery. In 2002, the newly elected government repeatedly changed the status of this mechanism. First it elevated from the status of Secretariat for the Representation of Women at a relatively low level of the hierarchy in the Ministry of Social and Family Affairs to become the Directorate General for Equal Opportunities in the Ministry of Employment Policy and Labor. The DG had a separate Directorate dealing with equal opportunities for women and men. In the next step at the beginning of May 2003 equal opportunities were elevated to ministerial status. The former head of the Directorate General for Equal Opportunities, Katalin Lévai, was appointed Minister for Equal Opportunities without portfolio in May 2003. The new governmental body in charge of equal opportunities was launched in January 2004 and was called the Government Office for Equal Opportunities. The changes on the one hand brought the issue to a different, higher status. On the other hand, all issues of equal opportunity, including gender equality, were brought under a single institutional umbrella.

The Fall 2004 change and restructuring of the government brought yet another change to the gender equality machinery. The Government Office for Equal Opportunities was joined together in a common structure with parts of the previous Ministry of Health, Social and Family Affairs and the Ministry for Children, Youth and Sports. The super-ministry is now called Ministry of Youth, Family, Social Affairs and Equal Opportunities and is lead by the previous Minister for Equal Opportunities. Only one small department is dealing with gender equality issues in the Ministry, under the supervision of a deputy state secretary in charge of strategic development and international affairs. The department is at the same level as the departments for Roma policy and disabled policy, however contrary to the gender department those two are under the deputy state secretary for equal opportunities. Given the recent nature of these last changes this report will only analyze the operation of the Hungarian gender equality mechanism before its integration into the new super-ministry. Details concerning the operation of the equal opportunity mechanism, and specifically its gender equality unit will be discussed in the chapter dedicated to the mechanism.

The third major trend of change is a shift in the process of Hungary's accession to the EU from emphasis on legal harmonization towards emphasis of policy implementation. Within this framework several policy documents have been developed, policy processes have been started that have crucial relevance from the point of view of equal opportunities on grounds of gender. Of crucial importance are among others: the launching of a National Development Plan (NDP) as part of preparing Hungary for access to European Structural Funds; signing the Joint Inclusion Memorandum (JIM) and preparing the National Action Plan on Social Integration (NAPSI) as part of the

process of preparing Hungary for involvement into coordinated European level social inclusion efforts; launching the policy process preparing Hungary for full fledged involvement into the European Employment Strategy. All of these processes treat equal opportunities and gender equality as important horizontal principles. Involvement in these processes is a step forward in the implementation and operationalization of the legal principles that came through to Hungary in the first wave of legal harmonization. Details and practical implications of these policy trends will be discussed under each relevant subheading of the report.

1.2 The Act on Equal Treatment and the Promotion of Equal Opportunities

With regard to the equal treatment between women and men, the most important and comprehensive step in the Hungarian legislation in the past two years was the adoption of the Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities (hereinafter AET). The act came into force in January 2004. It determines those organizations fulfilling public tasks in wide understanding, which have to observe the principle of equal treatment in *all of their relationships*, procedures and measures. The Act also defines all those relevant relationships in relation to which actors defined by the law have to observe the equal treatment principle, regardless of whether they were included among the previous organizations or not. The scope of the Act does not extend to – among others – family law relationships and relationships between relatives. The scope was one of the reasons for which non-governmental organizations formulated criticisms against the Act.² In its opinion, the Hungarian Women's Lobby suggested a comprehensive review of the scope in order to expand the application of the Act to all for-profit and non-governmental organizations. The opinion says that the Act arbitrarily determines certain criteria for the entrepreneurs, business associations and non-governmental organizations in deciding for them to pertain to the scope of AET or not.³

The Act defines in more details the following concepts: direct and indirect discrimination; harassment; unlawful segregation; and victimization. Sexual harassment is not specifically defined in the Act. The Act applies a wide ranging taxation for the grounds of discrimination, including sex, family status, motherhood (pregnancy),

² See "Opinion and Critique of the Hungarian Women's Lobby Concerning the Draft Act on Equal Treatment and the Promotion of equal Opportunities." November 28, 2003. (A Magyar Női Érdekérvényesítő Szövetség bírálata és javaslatai az egyenlő bánásmódról és az esélyegyenlőség előmozdításáról szóló törvényjavaslathoz, 2003. november 28.). Published in Hungarian at <http://habeascorpus.hu/allaspont/kritika/antidiszkr.2003.11.28.pdf>.

³ *Ibid.*, pp. 13–16.

fatherhood and part-time nature or definite term of the employment relationship or other relationship related to employment.⁴

The AET gives standing before courts and in administrative procedures for social and interest representation organizations and for the Equal Treatment Authority (to be discussed below) to act as a representative authorized by the victims in procedures initiated because of a violation of the principle of equal treatment. Article 20 introduces the *actio popularis*. (Until now the Equal Opportunities Act protecting disabled persons was the only legal source to allow applying this legal institution in Hungary⁵). A public prosecutor, the Equal Treatment Authority or the social and interest representation organizations can initiate lawsuits under civil or labor law for the violation of the principle of equal treatment before the court. The condition of this procedure is that the violation of the principle of equal treatment is based on a characteristic that is an essential feature of the individual, and the violation of law affects a larger group of persons that cannot be determined accurately.

The provisions concerning the *burden of proof* are important elements of the Act; they shall not apply to criminal procedures and to procedures of minor offences. Before the AET's coming into force the Labor Code was the only Act in Hungary containing the principle of shifting the burden of proof. However, the Labor Code, contrary to the AET, did not require the victim to prove that he/she had suffered a disadvantage.

The Act regulates the principle of equal treatment in specific chapters in five fields: employment, social security and health care, housing, education and training, sale of goods and use of services.

The AET initiates the National Equal Opportunity Program in Articles 31–36. The objective of the Program is to prevent negative discrimination and to promote the equal opportunities of certain specific social groups in all aspects of life. The Program is to include all governmental measures serving this objective.

The Act also stipulates that public bodies and legal entities having a majority state ownership that have more than fifty employees are obliged to pass equal opportunity plans.⁶

⁴ The other grounds are the followings: racial origin, color, nationality, national or ethnic origin, mother tongue, disability, state of health, religious or ideological conviction, political or other opinion, family status, sexual orientation, sexual identity, age, social origin, financial status, the membership of an organization representing employees' interests, and other status, attribute or characteristic.

⁵ Act XXVI of 1998 on Rights and Promotion of Equal Opportunities of the Disabled.

⁶ The specific form and scope of equal opportunity plans is defined under Article 70/A of the Labor Code introduced by an amendment prescribed in the AET.

The AET defines the procedure to be applied in case of violating the Act, which is to enter into force from January 1, 2005. A public administrative body called the Authority⁷ will ensure compliance with the principle of equal treatment.

Although the law is relatively progressive in its definitions and in the forms of discrimination that it covers, it can be seen that the judges and law enforcement professionals will play active role in the future in interpreting it and filling its definitions with real contents.

The main criticisms formulated against the Act by different NGOs concerned the fact that by regulating discrimination on all grounds within the framework of one single law it remains on a general level and the specificity of the different grounds may be diluted. A major evaluation and criticism of the Act as far as its adequacy to pursue gender equality is concerned was formulated by the Hungarian Women's Lobby in their above mentioned document commenting on the draft Act launched in November 2003.⁸ While the Lobby appreciated the political will to finally take on board the issue of anti-discrimination after several years of neglect, they especially criticized that the Act is unable to deal with the specific forms of discrimination that occur in the case of the different grounds, and especially on grounds of gender. They warned that the absence of specific gender equality related articles of the Act might maintain the need for a separate gender equality act in Hungary. Another criticism formulated concerned not so much the law but the policy surrounding it and the lack of encouragement and support for victims, relevant NGOs and the society to work towards the implementation of the law. The Lobby also warned that the Act does not deal with several major fields of discrimination, such as discrimination occurring in the court procedures and discrimination occurring by the discriminative laws.

1.3 Assessment of the Recommendations Made in the 2002 Report

- 1.3.1 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

Recommendations

- Hungarian legislation should be amended to include the obligation to inform employees of their rights in accordance with Article 7 of the Directive.

⁷ Often referred to in the media as Equal Opportunity Commission.

⁸ See "Opinion and Critique," *op.cit.*

- The Act on Labor Inspection should be modified to enable the investigation of discrimination and of the implementation of the principle of equal pay for equal work or work of equal value *ex officio*.
- Hungarian authorities should consider the adoption of the models or systems of job classification in place in the EU member states.
- Judicial training programs should include information on the comparability of jobs, with a particular focus on European case law.
- The institution of *actio popularis* should be extended to cases of discrimination on grounds of sex, including the violation of the principle of equal pay.

With the AET's coming into force, the wording of the Labor Code, including the part prescribing equal pay for equal work was changed from saying the principle of prohibition of discrimination into saying the observation of principle of equal treatment.

Meanwhile it should be mentioned that the Contravention Decree⁹ still speaks about the violation of the prohibition of discrimination as a labor force contravention, despite the fact that the Labor Code already contains the requirement of observation of equal treatment.

Hungarian legislation has not been amended to include the obligation to inform employees about their rights in accordance with Article 7 of the Directive.

The Act on Labor Inspection has not been modified to enable the investigation of discrimination and the implementation of the principle of equal pay for equal work or work of equal value in *ex officio*. Moreover, with the amendment of the Act¹⁰ the situation has become worse: since 2002 only those persons are entitled to initiate the procedure whose rights or rightful interest are affected by the case. (The affection of right or rightful interest had not been a condition for initiating a procedure before this amendment.) Meanwhile, if established, from January 2005 the Equal Treatment Authority will have the power to conduct *ex officio* investigations in those of the above cases where the employer belongs to one of the following categories: the Hungarian state, local and minority self-governments and all bodies thereof, organizations exercising public powers as authorities or armed forces and policing bodies.

No information is available about the plans to amend the systems of job classification in place or to adopt of existing models of other EU Member States. Based on available

⁹ Government Decree No. 218 of 1999 (XII. 28) on Certain Contraventions.

¹⁰ Coming into force in February 2002.

information judicial training programs do not include information on the comparability of jobs, with a particular focus on European case law.

Several training programs have been organized concerning equal treatment. The Ministry of Employment Policy and Labor has sponsored three training programs for labor judges on legal harmonization, with special emphasis on equal treatment issues (in 2001, 2003 and the next is going to take place in March 2005). The National Judicial Council (OIT) has sponsored a training program for over 100 judges in October–November 2004, in cooperation with the Human Rights Information and Documentation Center (Emberi Jogi Információs és Dokumentációs Központ – INDOK) in Budapest. The Equal Opportunities Action Program sponsored a similar training program for labor judges and labor inspectors in 2001, in cooperation with the INDOK at Budapest, Győr and Debrecen. The National Employment Public Foundation (Országos Foglalkoztatási Közalapítvány, OFA) has been running a training program for 300 professionals, including governmental officials, employee and employer organizations' experts on the social dimension of the EU. This program has organized many seminars, conferences, published books on equal treatment and equal opportunities issues. OFA also maintains a website and a monthly internet leaflet on EU social policy, including equal treatment.¹¹

As it is stated above the institution of *actio popularis* was introduced for all grounds of discrimination by the AET from January 2004.

- 1.3.2 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

Recommendations

- The Act on Vocational Training should be amended to include a provision prohibiting discrimination.
- Marital or family status should be included among the impermissible grounds for discrimination in all labor laws and provisions.
- The Labor Code should be amended to include provisions on sexual harassment.
- A 'Parliamentary Committee for Equal Opportunities' or an 'Ombudsman for Equal Opportunities' should be established.

¹¹ See <http://www.ofakht.hu>. Information about the training program was obtained from Tamás Gyulavári, lecturer, University of Pécs, Department of Labor and Social Law.

The Act on Vocational Training has not been amended to include a provision prohibiting discrimination. However, the AET has filled this gap. The family status, as it is mentioned above, has been included among the grounds for discrimination in the AET.

Unfortunately, neither the Labor Code nor the AET includes specific provisions on sexual harassment. Though the AET contains the concept and prohibition of harassment, in order to fully meet the requirement of the Directive it is necessary to explicitly regulate sexual harassment.

The above mentioned Authority in charge of implementing the law, to be established by a separate decree by January 2005, meets the requirements of a specialized body for investigation of gender discrimination and for overview of the prevailing laws on the matter. However, the Authority's scope of action is not restricted to gender equality cases but it is meant to include cases of all other grounds of discrimination prescribed in AET. At this moment it is not clear in what organizational structure will the Authority have to cover all the grounds in all their specificity.

Another important legal change to be mentioned under this Directive is the doubling of the highest labor force fine imposed for the infringement of certain labor laws and regulations – including observation of equal treatment and regulation concerning the employment of women – from 3 million Forints (about 12,245 Euros) to 6 million (about 24,490 Euros).¹²

1.3.3 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

Recommendations

- Hungarian law should be amended to provide that in workplaces where there is no labor safety representative (i.e., in workplaces with fewer than ten workers), employees should be directly informed of the results of any risk assessments.
- The Labor Code provisions on maternity leave should be amended to ensure compliance with Article 8(2) of the Directive.
- Hungary should introduce provisions and proactive programs to facilitate the fair division of responsibilities between both parents with regard with raising and caring for a child.

¹² Act XXV of 1996 on Labor Inspection, Article 7.

- Hungarian law should be amended to stipulate that female workers can choose to perform night work while the child is under one year of age, but cannot be obliged to do so.

According to the new provisions of the Act on Labor Safety,¹³ employees pertaining to vulnerable groups have to be protected from harmful risks to health which particularly affect them. The Act determines the concept of vulnerable groups. It is a “category of employees which is increasingly threatened by or indicated to be risks connected to working, because of their physical, psychical conditions or state (i.e., juveniles, pregnant and breastfeeding women, women who recently gave birth, older employees and employees whose ability to work has changed)”. Before this new provision came into force the concept of vulnerable groups had been included in the Minister of Public Welfare Decree No. 33 of 1998 (VI. 24.) on the Medical Examination and Reporting of the Professional and Personal Hygienic Aptitude. However, the latter concept’s scope is tighter than the above, it has no general determination and applies only a taxation to the persons considered as vulnerable: juveniles, pregnant, breastfeeding women, women who recently gave birth, older employees.

The problem is that the previous concept in the Decree has not been replaced with the new concept proposed by the Act. This means that the current Hungarian legal system has two concepts for vulnerable groups with different contents. This discrepancy is not relevant from the point of the groups protected by the Directive discussed here – both of them refer to the Directive’s target groups –, but should be resolved to avoid legal uncertainty.

Hungarian law has been amended in 2004 to provide that in workplaces where there is no labor safety or other relevant representative, all employees shall be directly informed of the results of any risk assessments.¹⁴

The Labor Code provisions on maternity leave have not been changed. According to regulation a woman is entitled to take advantage of the leave; meaning that the two weeks mandatory leave – as it is in Article 8(2) of the Directive – is not prescribed by the law.

Concerning sharing responsibilities between parents in child-caring the amendment of the Labor Code should be mentioned. The new Article 138/A. has a symbolic message prescribing that upon the birth of his child, a father shall be entitled to five days of paid leave, which the employer shall allocate within the two-month period following the date of birth on the days requested by the father. Absentee pay shall be provided for

¹³ Act XCIII of 1993 on Labor Safety, the provision came into force in 2004.

¹⁴ Act XCIII of 1993 on Labor Safety, Article 59(2).

the duration of such worktime allowance. The law says that the absentee pay shall be financed from the central budget.

There are only a few sporadic, occasional proactive programs to facilitate the fair division of responsibilities between both parents with regard raising and caring for a child.

Hungarian law has not been amended to stipulate that female workers – instead of the prohibition – can choose to perform night work while the child is under one year of age.

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

Recommendations

- The definition of ‘discrimination’ should include ‘indirect discrimination’ not only in the Labor Code, but also in all substantive laws related to the scope of the Directive (i.e., the Civil Code and the Act on Vocational Training) and the Constitution.
- The procedural rule on the reversal of the burden of proof should be introduced into all laws governing procedures in cases of discrimination.
- Training courses should be organized for all law enforcement officials and lawyers and a training manual including relevant EU case law should be published and used in such training.

Before passing the AET the concept of indirect discrimination was only applicable under the Labor Code. The most important change in the legislation pertaining to this Directive is that the concepts of direct and indirect discrimination have now been defined by the AET. Thus their application has become general.

The AET also contains the shifting of the burden of proof. However – as it is mentioned before –, the Hungarian regulation prescribes that the injured party or the party entitled to assert claims of public interest must prove that the injured person or group has suffered a disadvantage.¹⁵ Compared to this, the Directive requires from the injured persons only to consider themselves wronged because the principle of equal treatment has not been applied and to establish facts from which it may be presumed that there has been direct or indirect discrimination.

¹⁵ It also has to be proved that the injured party or group possesses characteristics defined in Article 8. If the case described above has been proven, the other party shall prove that it has observed or in respect of the relevant relationship was not obliged to observe the principle of equal treatment.

See 1.3.1 on information about training courses organized for law enforcement officials and lawyers on equal treatment and equal opportunity issues.

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

Recommendations

- Part-time work should be encouraged by positive means, not solely or primarily for women, but for both sexes. Such programs should link the idea of more equal distribution of responsibilities in the family with the concept of flexible working schedules.
- The existing system of health contributions whereby employers pay a flat fee amount for employees regardless of the working hours of individual employees should be changed to a system whereby the health contribution is proportionate to the employee's working hours, and in this way encourage part-time work.
- The introduction of Point 3 of Clause 5 of the Framework Agreement is recommended to harmonize Hungarian law with the actual aim of the Directive and to encourage work mobility.

This Directive was the only one during the period of writing the 2002 report¹⁶ which had not been harmonized.

So far the Labor Code has been changed. The new Article 84/A(1) says that where an employee wishes to modify the employment contract in connection with *a*) full or part-time employment, or *b*) the unfixed duration of employment, the employer shall, at its own discretion, determine whether to accept the proposal for modification in light of work scheduling, feasibility and filling the position in question. The employer shall notify the employee within fifteen days concerning its decision.

According to Article 84/A(2) the employer shall inform the employee in the most appropriate manner and in due time about the positions for which the above requests for modification of the employment contract can be accommodated.

As a new positive step, Act IV of 1991 on the Promotion of Employment contains a provision since January 1, 2003 ensuring the possibility of support for part-time

¹⁶ Open Society Institute, "Equal Opportunities for Women and Men in Hungary." In *Monitoring the EU Accession Process: Equal Opportunities for Women and Men, 2002*. (Budapest: Open Society Institute, EU Accession Monitoring Program, 2003).

employment and flexible forms of employment which occur through computer technology tools out of the seat or settlement of employer.

The system of health contributions has not been changed: employers still pay a flat fee amount for employees regardless of the working hours of individual employees, so the health contribution is not proportionate to the employee's working hours. It is still a gap in encouraging part-time work. However, with a modification of the health contribution act, from January 1, 2004 the fixed healthcare contribution shall not be paid – among others – during the period of payment of maternity benefits and child-care allowance, child-care benefits and child-rearing allowance.¹⁷

There is no information about programs encouraging part-time work for both sexes.

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

Recommendations

- The definition of the term 'self-employed' should be clarified in Hungarian law in accordance with the definition under Directive 86/613/EEC.
- The prohibition of sex-based discrimination and the principle of equal treatment should be incorporated into related legislation, such as the Act on Social Security Provisions and the Act on the General Rules of Public Administration Procedures.
- The category of 'contributing family member' should be extended.
- Self-employed persons should also be eligible for unemployment benefits.

The definition and the exact translation of the term 'self-employed' has not been clarified in Hungarian law.

Observation of the principle of equal treatment has been introduced as a general requirement by the AET.

The category of 'contributing family member' has not been extended. Self-employed persons are not eligible for unemployment benefits yet. However, with a modification of the Act on Promotion of Employment from January 2005 individual entrepreneurs

¹⁷ Act LXVI of 1998 on Health Contribution, Article 7(1)(a).

and members of business associations will be entitled to entrepreneurs' benefit in case of being unemployed.¹⁸

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

Recommendations

- Employees should be entitled to unpaid leave to care for a child until the child reaches the age of eight and irrespective of whether the child is chronically sick or severely handicapped.
- Both male and female employees should be able to avail themselves of more flexible working schedules.
- Employers should be given incentives in order to introduce such forms of work.
- Both parents should be entitled to a sickness benefit if the child is under the age of one.
- Positive steps should be taken to encourage men to have a greater share in family responsibilities and to apply for parental leave.
- Non-transferable leave for which fathers would be eligible after the birth of the child should be introduced.

The system of unpaid leave for the care of children has not been changed. It means that parents – as a main rule – are entitled to unpaid leave in order to care for the child until the child reaches the age of three; if the employee receives a child-care allowance (in the case when the child is chronically ill or severely handicapped) he/she is entitled to the leave until the child reaches the age of fourteen; and in the event of the child's illness – he/she is entitled to leave to provide home care until the child reaches the age of twelve.

The right for the fathers to have a five days work-time allowance upon the birth of their child should again be mentioned here as it serves the realization of a non-transferable leave available for fathers after the birth of the child. It can also serve as a means to encourage fathers – though symbolically – to have a greater share in family responsibilities.

Due to the recent amendment¹⁹ of the Act LXXXIII of 1997 on Compulsory Health Insurance both parents are entitled to a sickness benefit if the child is under the age of

¹⁸ Act IV of 1991 on Promotion of Employment and Provisions for the Unemployed, Article 44.

one. Before the amendment only the mother or the single father was entitled to this benefit.

With regard to atypical forms of employment, the introduction of telework into the Hungarian legislation as a new regulation in the Labor Code (and in the Act on Labor Safety) is a positive step forward.²⁰ The Labor Code defines the concept of the ‘tele-worker’; the required elements of a work contract; the rules concerning the employer’s obligation to give information; his/her rights to supervision; and the rules concerning compensation. Moreover, the Act CXVII of 1995 on Personal Income Tax was amended in 2004 to regulate the cost reimbursement concerning telework.

Part 3 of the report provides further details about positive programs encouraging the realization of this Directive.

1.3.8 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

Recommendations

- Continuous efforts should be made to annul any existing discriminatory provisions. Legal supervisory mechanisms should be developed, and steps should be taken to raise gender awareness within society.
- Professional training for administrators should be organized, as well as training on the importance of equal opportunities.
- Greater steps should be taken to ensure the implementation and enforcement of Hungarian laws on social security.

As it was mentioned before the discriminative provision concerning sickness benefit has been changed.

The Authority to be established by 2005 can be seen as a legal supervisory mechanism under this Directive, even though at this point it is unclear how it will operate. For details on training, see information under 1.3.1. Steps to raise gender awareness within society are still unsatisfactory.

¹⁹ Article 44; the new regulation came into force on May 1, 2004.

²⁰ Labor Code, Articles 192/C–193/A.

1.3.9 Progress in the Transposition of 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 as of May 1, 2004

The corner stone of progress made with respect to this Directive is the AET and all related amendments brought about by it, as described above. The absence of a specific regulation on sexual harassment should be reiterated here.

1.3.10 Summary

In summary, it can be stated that along with many improvements in the Hungarian law, brought about primarily by the AET, there are still some gaps and discrepancies as measured against the words of the Directives. Gaps are caused in some places by not conforming even *de jure* to the text of the Directives. In other cases, and this is more prevalent, inconsistencies can be derived from the failure of the Hungarian policy framework to follow the spirit of the Directives – to move beyond the wording of legal amendments and implement general gender equality.

The major problem is the lack or sporadic nature of comprehensive, informative, awareness raising policies, programs, campaigns and materials, as well as wide-range training programs for the policymakers and law enforcement officials concerning equal treatment and gender equality.

2. INSTITUTIONAL MECHANISMS

2.1 Equal Opportunity Institutions

The first institution dealing with women's policy was created in Hungary at the end of 1995. The Secretariat for Women's Policy, called Equal Opportunity Secretariat from August 1996, was established within the Ministry of Labor. In its first phase of existence – until elections in 1998 – it was considered a relatively “progressive and effective organ,”²¹ though not empowered and thus not capable to pursue any gender mainstreaming tasks.²² Its tasks could be identified as research, publication and communication under the aegis of raising social awareness concerning gender equality issues and representing women's interests in government policy. The programs of the Secretariat included civil forums, exhibitions, founding an Equal Opportunity Award for media, an oral history database, conducting a test court case in employment discrimination, and the publication of different materials (volumes, reports, statistical data etc.). The Secretariat developed intensive working relationship with the media and women's organizations.²³ A legal aid telephone hotline also started to operate in 1997.

After the elections in 1998, the new conservative government stopped the operation of the Secretariat as it was, and established the new Secretariat for the Representation of Women at a much lower level of the ministerial hierarchy in the Ministry of Social and Family Affairs. The new Secretariat mostly continued the tasks defined by its predecessor but at a slower pace and with much less visible impact. However, a number of important publications can be mentioned: a volume on prostitution and trafficking, an edited volume on the analysis of statistical and other data concerning women (a second item in a series started by the previous Secretariat), a booklet on statistical data broken down by gender, Hungary's fourth and fifth combined report to the CEDAW in Hungarian and English, a few informative booklets concerning women's rights and the translation of the 1998 Council of Europe Report on Gender Mainstreaming.²⁴

²¹ International Helsinki Federation, *Women's Status in Hungary*, 2001 Report (Vienna: IHF-HR, 2001).

²² Ildikó Biró and Erzsébet Mária Szabó (eds.), “Institutional Mechanisms for the Advancement of Women in Hungary” (Karat Coalition, 1999). Available at http://www.karat.org/documents/hungary_mechanisms.shtml

²³ On the activity of the Secretariat see Tamás Gyulavári, “Egy ‘próbapér’ története” (The Story of a Test Trial), *Fundamentum* (1998), 4, 155–158; “Egyenlő Esélyek Titkársága” (Secretariat for Equal Opportunities), *Fundamentum* (1998), 4, 153–154.

²⁴ The publication only included a one-page general introduction written by the head of the Secretariat and there was no other commentary on the relevance of the report for Hungary.

In 2002, the newly elected social-liberal government changed the status of the Secretariat yet another time. The new Directorate General for Equal Opportunities started its operation in the Ministry of Employment Policy and Labor, only one of its departments dealt with equal opportunities for women and men. At the beginning of May 2003 the Government announced that equal opportunities are to be elevated to ministerial status. The former head of the Directorate General for Equal Opportunities, Katalin Lévai, was appointed Minister for Equal Opportunities without portfolio in May 2003. She was in office until her election into the European Parliament in June 2004. Her successor, Kinga Göncz, former state secretary in the Ministry of Social and Family Affairs, was appointed as of June 2004. Meanwhile the new governmental body in charge of equal opportunities was launched in January 2004 and was called the Government Office for Equal Opportunities.

The Government Office for Equal Opportunities was in charge again not only for women's issues but equal opportunities on other grounds. The Directorate for Gender Equality dealt with gender equality issues within the Office. There were separate Directorates dealing with issues of the Roma, disabled, civil society, and regional development.²⁵ As mentioned above the November 2004 governmental change brought the gender equality machinery to yet another status. The machinery is now integrated into a new ministry called the Ministry for Youth, Family, Social Affairs and Equal Opportunities, which is lead by the previous Minister for Equal Opportunities. The same previous small section called the Department for Gender Equality deals with gender issues in the Ministry, under the supervision of a deputy state secretary in charge of strategic development and international affairs. The departments in charge of Roma policy and disability issues are placed under the deputy state secretary for equal opportunity issues but at the same level within the ministerial hierarchy.

The analysis in this chapter of the report will cover the functioning of the Directorate for Gender Equality within the Government Office for Equal Opportunities that is the period until October 2004, when the gender equality mechanism was integrated into the new Ministry for Youth, Family, Social Affairs and Equal Opportunities. The reason for this is that the changes occurred only recently – after completing the analysis for the report – and many aspects of the functioning of the new structure are still unsettled.²⁶

²⁵ For the organizational structure of the Directorates within the Government Office for Equal Opportunities, see http://www.eselyegyenloseg.hu/hivatal_szervfel.html

²⁶ Data collection for the report was closed as of October 2004.

2.2 Council for Women's Affairs

Along with the governmental gender equality machinery, in 1999 a higher-level consultative, coordinating body was also launched: the Council for Women's Affairs. It consists of representatives of all Ministries and the Office of the Prime Minister; six members representing national women's associations; five acknowledged researchers and social scientists dealing with gender issues; and three NGO members engaged in related activities. The tasks of the Council were to contribute to and comment on those decisions and policies of the Government that are gender related, to initiate legal regulations and new programs promoting gender equality, to comment on reports and information material concerning gender equality. According to the decree establishing the Council all relevant ministries have the duty to allow the Council to exercise its right to give opinions in the course of the preparation of resolutions and statutes concerning women's rights.²⁷ The Council stood until the 2002 parliamentary elections. Its reforms including the amendment of the Government Decree No. 1059 of 1999, were initiated under the new government, and the reform process seemingly blocked its reestablishment. No analysis is available about the work of the Council this far. No reports were issued concerning its activities, protocols of its proceeding are not public. According to Government Decree No. 107 of 2003 on the Minister for Equal Opportunities and Government Decree No. 222 of 2003 on Government Office for Equal Opportunities the operation of the Council is the task of the Minister and the Government Office for Equal Opportunities. After a two years long non-operation a so-called launching meeting of the Council took place in October 2004 at the initiative of the Government Office. However, the meeting did neither result in appointing the new members or reappointing the previous members of the Council, nor resulted in defining the task and targets of the Council. Along the representatives of concerned ministries basically all relevant NGOs were invited, and no decision was made as to who will be the three NGO delegates that are required for the Council to operate. Also it was not determined who will be the five experts to be delegated. No information is available about future plans concerning the Council.

²⁷ Government Decree No. 1059 of 1999 on Launching the Council for Women's Affairs.

2.3 The Directorate for Gender Equality

The Directorate for Gender Equality is integrated in the structure of the Government Office for Equal Opportunities.²⁸

There are other professional Directorates within the Government Office (Directorate for the Coordination concerning Disabled People, Directorate for Roma Integration, Directorate for Networking and Regional Development, Directorate for NGO Relations). The Directorate does not prepare annual reports. However, the Government Office monthly reports to the Parliament; and the report of the Directorate is a part of this larger report. The Directorate works on the basis of six months work plan. The Directorate's rules of procedure are now being approved. This is the first time since the creation of the mechanism to have such a document.

2.3.1 Mandate

The regulation of organization and operation says that the Directorate for Gender Equality promotes gender equality and equal opportunities of women and men. The Directorate:

- evaluates individual draft laws and the government's draft action plans with respect to gender equality;
- works out the strategic document titled National Action Plan for gender equality, supports, monitors and assesses the implementation of the program,
- enforces the realization of aims of EU policy and strategy for advancing gender equality, monitors the accomplishment of the long-term and short-term duties determined by the EU documents;
- operates the Council for Women's Affairs, performs its secretarial duties;
- gives opinion and contributes, in coordination with other administrative, professional and civil organizations, to the elaboration of training and awareness raising programs targeting to reduce violence and prejudice and to develop receptive social dialogue;

²⁸ Legal basis for the Directorate for Gender Equality is the Government Decree No. 222 of 2003 (XII. 12.) on the Government Office for Equal Opportunities regulating the roles and responsibilities of the Office. Government Decree No. 107 of 2003 (VII. 18) contains the tasks and competences of the Minister without Portfolio for Equal Opportunities. Regulation of organization and operation of the Governmental Office replaces and supplements the tasks concerning gender equality laid by Government Decree No. 222 of 2003 – indicating these tasks as the responsibility of the Directorate for Gender Equality.

- organizes training courses aiming to promote equal opportunities for different target groups of women, announces competitions to support initiatives by different representative organizations of women;
- contributes to perform the tasks of combating domestic violence, establishes crisis intervention (victim support) centers and shelters for victims of domestic violence;
- follows the conventions and documents of the EU and other international instruments concerning equal opportunities with attention; takes part in elaborating of international agreements.

However, there is a wide gap between the proposed aims and the tasks, which can be and are realized. Deficiencies derive from – among others – the insufficient human resources and the permanent restructuring during the history of the machinery. Now the Directorate is headed by an acting Director, without a deputy. The staff in October 2004 consists – besides the Director – of two civil servants with contracts for fixed period, two civil servants with contracts for undetermined periods and four employees who are not civil servants. Expertise of the staff in gender issues is not required; however, they regularly take part in the professional programs concerning the issue. It means that officially altogether nine people are responsible for the coordination and implementation of gender equality policy in Hungary. The lack of human resources and the significant fluctuation in the past explain to a large extent the absence of inadequate planning and implementation in the field of gender equality policy.

The specific objectives are laid by the above mentioned regulations. The general substantive legal framework of the operation for the Directorate is the UN CEDAW Convention with the related Recommendations and the relevant part of EU *acquis*. However, because of the above mentioned difficulties the performed tasks are far behind the requirements.

2.3.2 Decision-Making Process

Every employee is responsible for their own professional field in the Directorate. There are regular staff-meetings discussing the previous and future tasks and responsibilities, the strategy is result of common decision, the decision-making is democratic. However, at the level of the Government Office the interest representation of the Directorate meets with difficulties many times.

The Government Office for Equal Opportunities has the task to design and initiate the state level strategy on equal opportunity policy, to stand for and apply the principle of equality of opportunity across different governmental branches, to coordinate and facilitate action directed to its implementation in cooperation with governmental

bodies and the different other relevant state and non-state stake-holders.²⁹ *De jure* the Minister for Equal Opportunities and her Office is the main actor in defining, initiating, shaping and coordinating equal opportunity policy, including gender equality policy, at all governmental levels. The actual power of the Office is determined however not only by its competencies but also by its capacities. The impact and voice the Office has on the different relevant issues is determined by several factors: by the resources and expertise available to the office, by the levels of cooperation – formal and informal – between the Office and different Ministries and state agencies and by the level of politicization of the issues at stake.

2.3.3 Monitoring

The Directorate is operating according to the general public administration rules. There is no internal monitoring. As far as external monitoring is concerned: both the NGOs and trade unions play a role in it – however, not in an institutionalized way but rather by means of criticism, advising and initiatives concerning certain issues.

The first annual report made public on the website of the Government Office for Equal Opportunities is the one published in 2004. The 2003 report was also accessible but only in hardcopy, so much less widely. The reports cover a general overview of tasks, but on relatively little details, no accounting is available on financial matters. Promotion of gender equality is one subchapter in the annual report. No wide debate has taken place on either of the publicized reports of the mechanism. There is no information about publicly released reports of the gender equality mechanism in earlier years.

The Directorate has been criticized by NGOs for the limited transparency of its accountings.

2.3.4 Consultation and Cooperation with Civil Society

The women's NGO sector is relatively diverse in Hungary, but not all representatives of this diversity have equally loud voices in the policy debates. In the Hungarian context it should be underlined that women NGOs have an indispensable role, they lead the way, ahead of the government towards the enforcement of women's rights and gender equality. The main NGOs having an active policy role especially throughout the last years' important gender equality related policy processes (passing the AET, the debate on domestic violence and the debate on prostitution) are the Women Against Violence (NANE) Association, the Habeas Corpus Working Group, and the Women's

²⁹ Government Decision No. 222 of 2003 on the Government Office for Equal Opportunities.

Rights and Children's Rights Research and Training Center Foundation.³⁰ The Foundation for the Women in Hungary (MONA) assumes a significant role especially in awareness raising work.³¹ Several other NGOs conduct small gender equality related projects. Hungarian trade unions and their women organizations have also been pioneers in this field (especially MSZOSZ Trade Union's Women's Branch). The establishment of the Hungarian Women's Lobby in October 2003 has to be mentioned here as an important step towards empowering women's NGOs, by bringing many of them together under one institutional umbrella.

There is some cooperation between the Directorate and the media, the international and non-governmental organizations. Occasionally the Office organizes meetings and consultations with NGOs, but there is no regular consultation process and information flow towards women's NGOs. In 1996 the mechanism established a regular information forum for these organizations called Civil Forum but lately this has not been operational. In cases when draft laws are opened up for social debate, the Directorate may act as an agent between relevant NGOs and the ministry in charge of launching the debate by passing the list of non-governmental organizations to that ministry. However, willingness of several ministries to involve women's NGOs to the process is not at a required level yet.

It should also be noted that after a prolonged process of planning the first Women's House was established in Budapest in partnership between women's NGOs and the Government Office on December 15, 2003. The Women's House is operated by several women's NGOs who will offer their services in fields related to gender equality: such as services to victims of gender discrimination, trainings, launching of awareness-raising campaigns.

The mechanisms consult with civil society in their activities only occasionally. In its open tenders the Directorate occasionally invites experts or members of civil society as external evaluators for evaluating proposals. The Directorate also invites civil participants/experts to its programs as trainers. If there are special tasks requiring expert knowledge, the Directorate sometimes contracts independent experts. There are no regular consultations with experts along the different priority areas of the mechanism.

2.3.5 Access to Information

A great step forward in this field is the creation of the website of the Government Office for Equal Opportunities. There is no thematic separation in the website – so gender

³⁰ See <http://www.nane.hu> and <http://habeascorpus.hu/index.nyito.htm>.

³¹ See <http://www.mona-hungary.org>.

issues are not treated separately – but a lot of relevant information is collected on it. The website contains information about the Office, about the relevant laws, programs, tenders and news. A further development helping the access of information is the independent WAP portal of the Government Office. The portal ensures – without Internet access, through mobile phones – distribution of the latest news, including information on tenders or programs, and the information data-base of the Office.

The Directorate is currently editing a CD-ROM containing information on women's rights, including the relevant Hungarian laws and international legal sources (main documents of the EU, the United Nations, and the Council of Europe).

Taking into consideration the limited access to the internet, especially in the countryside, the Office and the Directorate occasionally resorts to paper-based distribution of information. For example, the newsletter of the Government Office for Equal Opportunities is circulated in 500 copies. The newsletter has dealt among others with women's issues, and is distributed to local governments and NGOs. The last edition of the newsletter was published in June 2004.

The Directorate sends its publications to the major public libraries and to the libraries of ministries. Moreover, it supports the Women's House with publications.

3. POLICIES, PROGRAMS AND AWARENESS-RAISING

3.1 Policies

3.1.1 Gender mainstreaming

Thus far Hungary has not adopted any strategic policy document introducing gender mainstreaming. The concept of gender mainstreaming is mentioned in the 2003 Annual Report of the Government Office for Equal Opportunities³² indicating that gender mainstreaming serves the establishment of a “coherent women's policy that is consistent in all with the aims of the EU”.³³ The tasks attributed to the Office within mainstreaming are primarily the coordination of gender related actions of different Ministries in the fields of employment, social policy, education and economic policy, and monitoring of gender equality aspects of certain strategic policy documents. The

³² Government Office for Equal Opportunities, *Tárcaütkör 2003* (Government Office Review, 2003) (Budapest: Esélyegyenlőségi Kormányhivatal, 2003). Given that the report was written very soon after the establishment of the Office it can rather be seen as a mission statement.

³³ *Ibid.*, p. 23.

proposed programs under this heading are targeted gender equality programs, awareness raising campaigns, training, publications and development of NGO networks. No specific gender mainstreaming tools and instruments are mentioned. In the 2004 Report the requirement of gender mainstreaming is again emphasized as being a crucial strategy to be used toward the achievement of gender equality. It argues that: “Gender equality cannot be funded separately, cannot be promoted or managed as an independent or separate policy domain. It must constitute an integral element of the entire horizontal policy process from beginning to end and all government projects and programs must take account of it.”³⁴ The tasks attributed by the Report to the Office in the achievement of this goal are again rather unspecific: they are summarized as naturalizing the concept of gender mainstreaming within the Hungarian policy context, raising the awareness of policy makers with respect to it and more specifically “to coordinate the equal opportunity initiatives of the various Hungarian ministries”.

The above mentioned documents developed under tight EU guidance (JIM, NDP, NAPSI) are clearly the most advanced policy statements on gender mainstreaming within the Hungarian context. Whether they remain on paper or mainstreaming minded action is to follow them remains to be seen. At this moment it is too early to say.

3.1.2 Gender Equality Strategy

The 1997 National Action Plan³⁵ can be seen as the only policy document representing a comprehensive policy approach to the question of gender inequalities in Hungary. The Action Plan tackled the tasks of the state along seven headings: women’s human rights; implementation of women’s equal opportunities; improvement of women’s social equality; elaboration of recommendations regarding gender education in public schools; violence against women; coordination of activities involving women NGOs; and establishment of an information system for women on women. Specific tasks included:

- establish legal advice service for women;
- initiate training and education programs;
- elaborate recommendations to introduce gender sensitive elements in the education curricula;
- assess the regulation and its implementation in some gender specific areas (anti-discrimination, social support) and proposing changes;

³⁴ Government Office for Equal Opportunities, *Tárcaütköz 2004* (Government Office Review, 2004) (Budapest: Esélyegyenlőségi Kormányhivatal, 2004), pp. 7–8.

³⁵ Governmental Decree No. 2174 of 1997 on the Action Plan for implementing the tasks defined by the Fourth World Conference of Women.

- design women-projects to improve the situation of women in crucial fields (such as employment, healthcare);
- support gender related policy research;
- review available statistical data and make further collection of data gender sensitive; and finally;
- encourage a more active NGO sector.

The actors responsible for implementation included Ministers, the National Statistical Office, and the National Crime Prevention Council. The deadline for the different projects' implementation under the Action Plan was April 1998. An evaluation of the Plan done by Biró and Szabó³⁶ under the aegis of the Karat coalition shows that only minor tasks, mostly in the field of awareness raising, publications and training, have been achieved under the plan, those that were taken up by the Secretariat for Equal Opportunities.

Hungary has a fragmented gender equality policy. The core element is the equal treatment policy. However, as discussed earlier the recently passed Act on Equal Treatment and the Promotion of Equal Opportunities deals with gender based discrimination only as one of several grounds of discrimination.³⁷ Other elements of a fragmented gender equality policy can be put together from different sectoral policies with relevance for gender equality, such as policies concerning social inclusion, employment policy, family policy, policies dealing with domestic violence, prostitution, abortion, or imprisonment. Recent developments show the occurring of the gender equality principle as a horizontal principle in several policy processes initiated as part of Hungary's new membership in the EU. Gender equality is thus a horizontal principle in the National Action Plan for Employment and the National Development Plan³⁸ prepared by Hungary in order to define the criteria for access Structural Funds of the EU.

³⁶ Biró and Szabó, *op.cit.*

³⁷ Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities, adopted in December 2003. Even though the Constitution along with the general anti-discrimination clause has a separate article on gender equality (Article 66), unfortunately almost no Constitutional Court interpretation of this clause has taken place.

³⁸ National Development Office, *National Development Plan* (Budapest: Nemzeti Fejlesztési Hivatal, NFH, 2003), available at <http://www.nfh.hu/index2.htm?p=2&t=2&i=1777>.

3.1.3 The National Development Plan

The National Development Plan (NDP) is a document preparing the national policy machinery for spending structural funds as a new EU Member State. It introduces the concept of gender mainstreaming for the purposes of this particular spending area. Equal opportunity issues are translated by the Plan to questions related primarily to the Roma, women (identifying sub-groups of special needs), and disabled by trying to articulate cross-sectorial thinking.

According to the implementation plans of NDP, representatives of gender (women's) equality bodies, organizations are to be involved in the *monitoring committees* assigned to oversee the strategy formulation and operational activities of the five major program areas spending EU funds on social and economic development of Hungary in 2004–2006. Projects coming under the Structural Funds are co-financed up to 25 percent by the Hungarian state. In order to operationalize the equal opportunity principle an equal opportunity guideline was developed for applicants and evaluators.³⁹

3.1.4 Joint Inclusion Memorandum

Gender equality is also treated as a horizontal principle in the Joint Inclusion Memorandum (JIM)⁴⁰ signed by Hungary with the EC and the National Action Plan on Social Inclusion, which is in the process of deliberation as a follow up to the Memorandum.⁴¹ The National Action Plan, much like the Joint Inclusion Memorandum speaks about mainstreaming equal opportunity and social inclusion more generally (“Enforcement to combating social exclusion in all fields”), and within that mentions more specifically – among others – “to take into account the women’s perspective in every policy field.”⁴²

Prepared in the framework of the accession process, the Joint Inclusion Memorandum has the purpose of “preparing the country for full participation in the open method of

³⁹ See the Equal Opportunity Guideline for the Human Resources Operational Program. Foglalkoztatáspolitikai és Munkügyi Minisztérium Humánerőforrás-fejlesztési Operatív Program Irányító Hatóság (HEFOP IH) “Esélyegyenlőségi Útmutató” HEFOP/2004 B/9 Melléklet (Supplement) (March 2004).

⁴⁰ *Joint Inclusion Memorandum on Social Integration* (Társadalmi Befogadásról szóló Közös Memorandum), December 10, 2003 (Budapest: Hungarian Ministry of Health, Social and Family Affairs, 2003), available at http://www.eselyegyenloseg.hu/kirekesztes/tkek_memorandum/-tkek_memorandum.html.

⁴¹ Committee to Combat Social Exclusion, *National Action Plan on Social Inclusion: Hungary 2004–2006*, Draft, July 2004. Available at http://www.eselyegyenloseg.hu/pdf/ncst_en.pdf.

⁴² *Ibid.*, p. 19.

coordination on social inclusion upon accession". The JIM, signed with the Commission in December 2003, outlines the main problems Hungary faces in terms of social exclusion and poverty and presents what Hungary still has to do in order to translate the EU common social policy objectives into reality in the country. The Memorandum addresses the exclusionary effects of several social factors: among them poverty, ethnicity (with special emphasis on Roma), disability, gender and marginally sexual orientation. Gender equality, though considered separately in a section of the document, appears as a horizontal principle throughout all the chapters. Referring to the strategy to be followed, the document argues in its concluding chapter that "addressing social exclusion needs a comprehensive approach, which mainstreams gender equality, integrates Roma in the society and provides equal opportunities for people with disabilities".⁴³ Reference to mainstreaming is also made under the gender equality heading. It is argued that gender equality should be perceived as a comprehensive horizontal aim, which is above and between policy sectors. Tools enumerated for its implementation are appropriate statistics, monitoring, establishment of an expert committee and involvement of women's NGOs.⁴⁴ However, the approach of the document is strategic and of relatively high level of generality, thus unless complemented by further detailed policies designing tools and instruments its proposed gender mainstreaming approach remains nothing but rhetoric.

In the National Action Plan on Social Inclusion,⁴⁵ which is the national level follow-up to the Joint Inclusion Memorandum there are also clear references to the importance of gender mainstreaming, but the document is not mainstreamed. Gender issues are mentioned only in the context, and only in the section of employment.

Nevertheless, these documents, developed under tight EU guidance, are signaling the beginning of new processes, and are clearly the most advanced policy statements on the relevance of the gender mainstreaming strategy within the Hungarian context.

3.1.5 Policy on Women's Participation in the Labor Market

Until recently there was no comprehensive policy approach to promoting women's integration into the labor market. With Hungary's accession to the EU and joining into the policy process generated by the European Employment Strategy Hungary had

⁴³ Joint Inclusion Memorandum, *op.cit.*, p. 45.

⁴⁴ *Ibid.*, p. 42.

⁴⁵ *National Action Plan on Social Inclusion: Hungary 2004–2006*. Drafted by the Committee to Combat Social Exclusion, July 2004. Available at http://www.eselyegyenloseg.hu/pdf/ncst_en.pdf.

to develop its first National Action Plan for Employment for the year 2004.⁴⁶ The Action Plan was elaborated in cooperation between several concerned Ministries and just recently opened up for public debate, deals with equal opportunities between women and men as one of its directions for action. The Draft Action Plan, by its approach to first assess the problems and then to provide solutions for it, is a comprehensive approach to the issue of gender equality in the labor market. The problems it finds are categorized along three subchapters: first, combining work and care; second, segregation and wage differences; and third, fight against discrimination.

The main problems that it finds are the low employment level (50.9 percent for women) and the very high rate of inactivity for women (only 53.9 percent of women are active).⁴⁷ The plan finds worrying that the level of women's participation in the labor market has drastically decreased after the transition due to – among others – conservative attitudes towards the employment of women. It notes though that this has slightly changed in the last years especially among highly educated young women. The Action Plan explains the high inactivity rate by the extensive, almost exclusive role women play in child-care and care for other dependent family members; the disadvantageous impact of prolonged stay away from the labor market; and the insufficiency and inflexibility of child care facilities especially for early childhood period. It further discusses horizontal and vertical segregation and the unequal pay women have to face, and it mentions the need for handling discrimination. The strategy outlined by the Action Plan is articulated along several lines and tries to address the disadvantages women face in the labor market in a complex manner. Its main directions are the following:

- facilitating the maintaining of links to labor market while away for care (facilitating part time work, making childcare benefits more flexible, available alternatively for both parents, training and education facilities available for parents during childcare);
- providing increased, regionally dispersed and more flexible childcare and other care facilities;⁴⁸
- sensitizing employers to become more family friendly;⁴⁹

⁴⁶ Ministry of Employment Policy and Labor, *National Action Plan for Employment 2004*, Draft, (Budapest: FMM, 2004). Available at http://www.fmm.gov.hu/upload/doc/200406/nap_tervezet_0615.pdf, accessed on August 3, 2004.

⁴⁷ Based on 2003 data.

⁴⁸ European Regional Development Fund money will be used for increasing daycare services. Daycare facilities for disabled and for aged people are also planned.

⁴⁹ For more on the Family Friendly Workplace Award 2004, see http://www.eselyegyenloseg.hu/hirek/archive/hirek_20040610_2.html.

- facilitating women's (re)integration to the labor market;⁵⁰
- providing training and supported employment to women;⁵¹
- improving working conditions in sectors which predominantly employ women (like increasing salaries in the public sector);
- fighting discrimination: through establishment of the specialized anti-discrimination agency,⁵² through integrating the problem of the labor market position of women in the National Equal Opportunity Program, and through the employer level equal opportunity plans;⁵³
- decreasing labor market segregation of women by new innovative initiatives.⁵⁴

Despite the very progressive approach and language of the Draft National Action Plan, it is remarkable that the Plan was not mainstreamed, it dealt with gender issues only under the gender equality guideline (guideline 6), and it mostly overlooked the gender aspects of other guidelines. Besides, women as such are not considered as an endangered group in the document. "When implementing measures aimed at increasing employment, the Government gives priority to improving the situation of Roma people, older workers and people with disabilities" (page 7).

3.1.6 Conceptual Framework of the Governmental Demographic Policy

Another policy process worth mentioning is the recently launched Conceptual Framework of the Governmental Demographic Policy.⁵⁵ Though in a demographic

⁵⁰ 2001–2004 Phare Program HU0104-02 "Reintegration of women to the labour market" From 2004 programs tackling the reintegration of women to the labor market will be addressed under the *National Development Plan* and co-funded by the state and European Social Fund (Human Resources Operational Program). For more on this program in Hungarian, see <http://www.fmm.gov.hu/main.php?folderID=55&articleID=884&ctag=articlelist&iid=1>. Training for NGOs working on the reintegration of women in the labor market is also provided throughout 2004 by the Budapest Methodological Office for Equal Opportunities (Fővárosi Esélyegyenlőségi Módszertani Iroda), see <http://www.pestesely.hu/bemutakozas.htm>.

⁵¹ Via programs of the Employment Offices.

⁵² According to the Act on Equal Treatment, it should be launched by January 2005. See above at the discussion of the mechanism.

⁵³ To be developed by all public employers by 2005 in accordance with the Act on Equal Treatment. See above the discussion of the AET.

⁵⁴ The EQUAL Community Initiative is meant to serve this purpose from 2004. One of its four priority fields is decreasing inequality and segregation between women and men in the labor market. See <http://www.fmm.gov.hu/main.php?folderID=55&articleID=1010&ctag=articlelist&iid=1>

policy and not in a gender equality policy framework, it addresses the issues of childcare, sharing paid and un-paid work in the family and return to the labor market after childcare in a comprehensive manner. The document summarizes the current situation regarding family policy and it sets a number of strategic aims that are of relevance from the point of view of gender equality. It specifically proposes the need for promotion of sharing inside the family. Changes in the family support system are also proposed: family support should be provided even while the parent is employed, and the time period during which parents are eligible should be extended from three to six years of child's age. Support is slowly to be reduced as the beneficiary parent becomes more steadily reintegrated into the workforce. The need for more flexible daycare services is also addressed. The equality among parents is pronounced in the document, emphasizing the need for division of tasks. There is an understanding that familial roles need to change to move away from the classical family model focusing on the role of the mother. It is argued that equal opportunity needs to be encouraged between men and women. Since "According to today's societal reality, the primary responsibility of and the tasks associated with child-rearing are those of the mother, the women. (...) From a gender equality standpoint, a program needs to be developed that strengthens and supports equality with respect to the division of parental tasks and the establishment of familial roles. The initiative of the Demographic Committee program aims to discontinue inequalities, and thus promotes that fathers should be eligible to all types of support the same way as mothers are."⁵⁶ The Program is under public social debate. Its implementation is to start after adoption by the Government. It remains to be seen what specific practical policy actions will result from it.

3.1.7 Policy on Gender Pay Gap

Article 142/A of the Labor Code on equal pay for men and women sets the legal framework for the equal pay principle.

Introduction of the Equal Opportunity Plan institution for all employers can have a positive effect on reducing the gender pay gap. As mentioned above the AET stipulates that public bodies and legal entities having a majority state ownership that have more

⁵⁵ Office of the Prime Minister, *A népesedéspolitikai kormányprogram koncepciója* (Conceptual Framework for the Governmental Demographic Policy), launched in December 2003 (Budapest: Department for Strategic Planning and Analysis, Office of the Prime Minister, 2003), available in Hungarian at <http://www.stratek.hu/index.php?P=hir&L=1&M=4&T=2&HID=114>

⁵⁶ *Ibid.*, p. 19.

than fifty employees are obliged to pass equal opportunity plans.⁵⁷ Other employers are only recommended to do so. This far however there was no specific support from the government to employers for the preparation of these plans.

One measure having an indirect impact on the issue is the 50 percent wage increase for those working in the public sector.⁵⁸ This increase contributed considerably to the pay increase of women and the narrowing of the pay gap due to the over-representation of women in the sectors primarily affected (health care, education etc.).

3.1.8 Policy to Promote the Involvement of Men in Achieving Gender Equality and to Support Men in Sharing Family Responsibilities

In Hungary childcare benefits that are not strictly related to pregnancy and delivery are available to both parents without discrimination.⁵⁹ Benefits can be switched between the parents three times throughout the three years entitlement period. As it is mentioned above from 2003 fathers are entitled to five days paid leave after the birth of their child.⁶⁰ However, there is no separate policy on promoting involvement of men in achieving gender equality or promoting sharing between parents beyond the strategy described above. Therefore involvement of men in caring for children in practice remains symbolic. In fact in 2003 only six percent of those who received child care benefit, and 0.7 percent of those who received childcare allowance were man,⁶¹ showing that patterns are rooted in traditional stereotyped attitudes towards family roles.

The state has taken very few substantive steps in order to change these patterns. Policy documents addressing childcare generally recognize the need for maintaining the position of women in the labor market along with domestic work, and promote this through programs aiming at better facilities for women to combine paid and unpaid work. These documents, however, do not address the need for sharing work between women and men within the family. No government programs or projects address this side of the issue. Only the Government Office for Equal Opportunities has launched a

⁵⁷ The specific form and scope of equal opportunity plans is defined under Article 70/A of the Labor Code introduced by an amendment prescribed by the AET.

⁵⁸ Concerning its effects see the Hungarian *National Action Plan for Employment*, guideline 6 on gender equality.

⁵⁹ See the Open Society Institute, "Equal Opportunities for Women and Men in Hungary." In *Monitoring the EU Accession Process: Equal Opportunities for Women and Men, 2002* (Budapest: Open Society Institute, EU Accession Monitoring Program, 2003).

⁶⁰ See above, Labor Code, Article 138/A.

⁶¹ See 2002 Report for exact description of allowances. Source of Data: *National Action Plan for Employment 2004*, p. 42, fn. 35.

number of awareness raising programs and projects to promote the change of traditional gendered social roles. One such program was the tender of the Office published on March 2004 for photos made by high school students with the title “Changing Male Roles”.⁶² The tender had the aim of raising awareness among youth concerning social changes in the perception of male roles and concerning the need for equal opportunities for women and men. A related initiative was the “Male Month” program of the Office during May and June 2004. Two photo exhibitions were organized within its framework (one was the “Changing Male Roles”, the other one was the “Dear Child” created by a Swedish photographer, Ulla Lemberg), and related workshops and roundtable discussions also took place, all of them challenging traditional social roles attributed to men.⁶³

Another program, discussed already in the 2002 report, continued to operate during the last years: the “Family Friendly Workplace Award”.⁶⁴ The aim of the program is to motivate employers to change and to raise their awareness concerning the need for family friendly work environment, by publicizing and sharing good practices. The background material of this program has a very gender equality sensitive definition of the problem, however the way it defines family friendly workplace good practices seems to move away from this approach towards more gender neutral grounds, therefore allowing the program to move away from its initial purpose. It proposes the facilitation of reconciliation between professional life and private life (not so much unpaid work done at home), which is interpreted to include facilitating leisure activities just as well as childcare. The award-winning good practices unfortunately confirm this: they include open days for families, providing sport activities, providing health care services along with introducing flexible work-time schemes, or involving children of employees into summer work.⁶⁵

⁶² For more in Hungarian, see http://www.eselyegyenloseg.hu/esemenynaptar/archive/esemenynaptar_20040506_1.html.

⁶³ For more in Hungarian, see http://www.eselyegyenloseg.hu/hirek/archive/hirek_20040507_1.html One of the exhibitions and the workshop following its launch were organized in cooperation with the Swedish Embassy in Hungary, conveying the message of the Swedish sharing model to the Hungarian audience.

⁶⁴ See fn. 38 above.

⁶⁵ For presentation of the program see the issues of *Munkaiügyi Szemle (Labor Review)* in September 2001, September 2003, April 2004, and 2004 July-August.

3.1.9 Policy to Eliminate Sex-Stereotyped Choices in Schools and Other Policies in the Field of Education

The AET contains special provisions on the observation of the equal treatment principle in the fields of education and training. The law stresses the enforcement of this principle concerning – among others – the determination of conditions of selection and enrollment into education, and the establishment of educational requirements. As a result of the lobbying of feminist activists who later founded an association called IgEN, the last version⁶⁶ of the National Educational Curriculum talks about equal opportunity for both genders as a priority, enumerated along with other priorities such as democracy, humanism, respect for the individual, cooperation of basic communities (family, homeland, Europe, the world), solidarity and tolerance. Given the fact that this is recent amendment it is not yet possible to assess its practical implication, if any.

Moreover, there is no comprehensive state policy in the field of education focusing on gender issues and determining the required steps taken towards gender equality.

A recent initiative of the Government Office for Equal Opportunities sets out to support student initiatives in higher education institutions that promote equal opportunities between women and men.⁶⁷

3.1.10 Sexual Harassment

Sexual harassment has not been identified as a specific policy area to be addressed. However, some changes are expected in this field. This is because, in addition to the EU requirements, the latest procedure concerning a sexual harassment case coming to light from the Government Office for Equal Opportunities has raised the awareness on the issue.

3.1.11 Evaluation of Policies

Generally there is no evaluation process for assessing progress in different policy areas. In case of progress made within the framework of specific EU policy processes the monitoring mechanisms established by the Commission will be in place. For example, in case of the National Action Plan for Employment, after submission the European

⁶⁶ Government Decree No. 243 of 2003 on Releasing, Introducing and Implementing the National Educational Curriculum.

⁶⁷ See http://www.eselyegyenloseg.hu/kapcsolodo/palyazat_20040923.html.

Council may decide, by qualified majority, to issue country-specific recommendations upon a proposal by the European Commission. These recommendations have no binding force though.

3.2 Programs

3.2.1 National Equal Opportunity Program

According to the Government Program by the end of 2004 the National Equal Opportunity Program should also be launched. Based on preliminary information coming from the Government Office for Equal Opportunities⁶⁸ the Program will focus on five priority areas:

1. development of the *National Equal Opportunity Network* formed by the Equal Opportunity Houses aiming to provide information and services related to equal opportunity;
2. *awareness raising*: developing and providing trainings, programs, campaigns to influence public opinion and relevant actors through the public administration and media;
3. *access*: improving access for disabled people – both in the sense of physical access and access to information;
4. *crisis centers and shelters for victims of domestic violence*: developing the methodology for such centers and launching them;
5. complex programs for bringing to an end slums in disadvantaged regions and localities.

At this point it is not yet clear what will be the level of generality of the National Equal Opportunity Program and to what extent will put emphasis on gender equality issues beyond the obvious crisis center pillar. The gender equality component would have to be given a crucial role both in the awareness raising priority area and the development of the National Equal Opportunity Network.

⁶⁸ Government Office for Equal Opportunities, *Tárcatükör 2004* (Government Office Review, 2004). (Budapest: Esélyegyenlőségi Kormányhivatal, 2004).

3.2.2 Program on Tackling the Gender Gap in the Labor Market

One of the major national projects working towards the gender equality in the labor market is the three years long PHARE project⁶⁹ called “Reintegration of women into the labour market” aimed at women returning to the labor market after childcare or other inactive women beyond 40. The project is co-financed by the PHARE program (two thirds) and the Hungarian state (one third).⁷⁰ It distributes money to partnerships for 18 months long periods of training, capacity development and sustainable reintegration of groups of at least 40 women into the labor market. Its purpose is to enhance equal opportunities for women and men in the labor market through promoting re-integration and late integration of economically inactive women into the workforce.

A somewhat similarly targeted program continuing the work of the PHARE project is the 2004–2006 HEFOP tender launched under the Human Resources Operational Program of the National Development Plan.⁷¹ The tender aims at encouraging labor market reintegration of economically inactive women through alternative measures and strengthening women enterprises. This program will again be co-financed by the EC and the Hungarian state, with one fourth state funds.

3.2.3 Flexible Working Arrangements

Concerning supporting the flexible working arrangements we have to refer back to the mentioned amendments of the legislative framework. From January 2004 disadvantageous pension regulations were modified,⁷² and – as it is stated above – the regulation of health care contribution has also been changed in favor of part-time workers having small children. The Labor Code and the tax regulations were also amended so, as to regulate part-time work and telework. Moreover, Act IV of 1991 on the Promotion of Employment ensures the possibility of support for part-time employment and employment that occurs through computer technology tools out of the seat or settlement of employer.

In Hungary, however, in comparison with the EU-15, only a relatively few employees work in flexible work arrangements: 22.2 percent compared to the 45 percent EU

⁶⁹ See fn. 39. above.

⁷⁰ Altogether a budget of 3.965 million Euros (approximately 1 billion Forints).

⁷¹ HEFOP/2004/1.3.1, “Encouragement of women’s reintegration to the labour market.” See <http://www.fmm.gov.hu/main.php?folderID=55&articleID=884&ctag=articlelist&iid=1>

⁷² Pension regulations concerning the calculation of service duration were amended to become more favorable to part-time work. See *National Action Plan for Employment*, p. 27.

average.⁷³ In 2003 only 6.4 percent of women employees in Hungary worked in part-time employment.

Along with the necessary legal amendments, from 2002 the Telework Program Office of the Budapest Center for Labor Market Intervention was also launched, having as one of its tasks the promotion and supporting of the establishment of telework possibilities for the metropolitan area. From 2002 it runs a project financially supporting employers providing telework opportunities.

From 2004 the Telework Council is also operating. Moreover, from October 2004 for a period of six months the Ministry of Employment Policy and Labor has undertaken to temporarily support a number of employers in employing some close to 800 people on telework positions. The support provided consists in a contribution to the wages of these employees up to the level of the minimal wage.⁷⁴

The legal chance for supporting the part-time work and telework and available financial support will probably encourage the spreading of these forms of employment. However, neither the legal amendment process nor the work of the above mentioned Center had any specific emphasis on the gender equality aspects of promoting telework. The mentioned program supports specifically telework for disabled people, persons above 45, single parents and persons from disadvantaged regions.

There is no program addressing the topic of sexual harassment in the workplace, or addressing gender equality within social security schemes. Thus there is no evaluation process for assessing the impact of these programs.

3.2.4 EQUAL

Programs launched under one priority area of the Community Initiative EQUAL have to be mentioned. Starting from 2004 the EQUAL will support projects coming under its priority area “Fighting against labor market difference between women and men and women’s employment segregation”. In order to reduce horizontal segregation it primarily provides support for innovative projects aimed at awareness raising and orientation activities among youth to encourage them to work in fields dominated by the other gender group, or projects encouraging women to enter research and development or technical and natural science related employment fields. To address vertical segregation it provides support for initiatives aimed at changing attitudes and

⁷³ *National Action Plan for Employment*, p. 24.

⁷⁴ For more information on the telework program, see (in Hungarian) http://www.eselyegyenloseg.hu/hirek/archive/hirek_20040902_1.html

for development of specific methods to support promotion of women into higher managerial work positions.

3.2.5 Public Tenders

In June 2004 the Directorate for Gender Equality of the Government Office for Equal Opportunities made public a tender with three pillars. The first one is directed at capacity building of organizations and institutions (both state and non-state) having a role in the promotion of equal opportunities for women, to access EU and national level funding and project opportunities.⁷⁵ The second pillar is aimed at supporting programs that are dealing with public interest work for women, rehabilitation of prostitutes stepping out, development of health awareness of disadvantaged women, and development of health awareness and sexual education of teenagers (both girls and boys). The third pillar is designed to support organizing conferences and publishing books or other materials that promote gender equality.

The National Adult Education Institute on behalf of the Ministry of Employment Policy and Labor has also launched in September 2003 a tender for media adaptation of the equal opportunity topic. The Institute proposed to support media products that aim at changing the mentality of the population with respect to equality of opportunity in the field of work and popularize policies and programs related to promoting equality of opportunity with the means of written and electronic media. The budget allocated to the project was 80 million Forints (0.32 million Euros).⁷⁶

County level employment centers are also launching complex labor market programs aiming at the reintegration of women into the labor force.⁷⁷

3.2.6 Programs to Assess the Implementation of Legislation

There is no program through official bodies to assess the implementation of existing legislation on gender equality on a regular basis. Occasional assessment of implementation took place in the different stages of the EU accession and in

⁷⁵ Funds: pillar one 10 million Forints, pillar two 22 million Forints, pillar three 10 million Forints. See (in Hungarian) http://www.eselyegyenloseg.hu/kapcsolodo/20040605_01.html.

⁷⁶ Equal Opportunity in the Media, tender launched by the National Adult Education Institute (NFI), and commissioned by the Ministry of Employment Policy and Labor. See, in Hungarian, http://www.nfi.gov.hu/folder_palya/12_eselyegyenloseg/palya_eselyegyenloseg.htm.

⁷⁷ The National Action Plan for Employment mentions four counties initiating such programs, see *National Action Plan for Employment*, p. 44.

connection with drafting different strategic policy documents in joining relevant EU policy processes. Assessment of Hungary's fulfillment of the EU gender equality related directives took place in the process of drafting and accepting the Act on Equal Treatment.⁷⁸ Assessment of gender equality in Hungary was made in the social inclusion context by the Joint Inclusion Memorandum signed by Hungary and the EC in December 2003⁷⁹ and preparing the ground for the Hungarian National Action Plan on Social Inclusion for 2004–2006. Also the National Action Plan for Employment 2004 can be seen as an assessment of implementation of gender equality standards in Hungary, even though focusing only on employment related aspects. A major official assessment of the state of gender equality was the CEDAW report Hungary submitted in 2000.⁸⁰

The implementation of the *acquis communautaire* is primarily the task of a whole structure of institutions implementing law in Hungary: among others the labor courts and civil courts, the labor inspectorates, the consumer protection inspectorates. It will also be the task of the Equal Treatment Authority to be established by January 2005.

One task undertaken by the gender equality machinery in this field is the promotion of implementation of EU gender equality *acquis* and awareness-raising concerning its standards.⁸¹

3.2.7 Alternative Reports to Assess the Implementation of Legislation

In August 2002 the Women Against Violence (NANE) Association and the Habeas Corpus Working Group (HCWG) submitted a shadow report to the CEDAW on the realization of the Convention with the critical examination of the governmental report. The shadow report criticizes the absence of proper comprehensive anti-discrimination legislation beyond labor relations including sanctions, *actio popularis*, and awareness-raising for facilitating its implementation; the absence of a governmental gender equality mechanism possibly at the Ministerial level; the absence of regulation for domestic violence; the absence of proper regulation of prostitution; absence of good

⁷⁸ Adaptability, social dialogue and social rights. Anti-discrimination, Fundamental social rights and civil society. Model tables for the notification of the transposition of different EC Directives. Submitted by Hungary to DG Employment and Social Affairs along every Directive.

⁷⁹ *Joint Inclusion Memorandum, op.cit.*

⁸⁰ *Hungary's Joint Fourth and Fifth Periodical Report to the CEDAW Committee, 2000.*

⁸¹ See Government Office for Equal Opportunities, *Tárcatükör 2004* (Government Office Review, 2004). (Budapest: Esélyegyenlőségi Kormányhivatal, 2004).

practice guides and training for important actors playing a role in the implementation of gender equality policies; lack of proper awareness raising; lack of free of charge legal protection for victims; absence of any attempts by the state to dismantle gender stereotypes; the inadequate regulation of abortion; and asserted the need for better involvement of expert NGOs in state coordinated gender equality work (to mention only the most important ones).⁸²

3.3 Awareness-Raising

3.3.1 Activities of the Government Office

Since the issue of equal opportunity was elevated to the level of a minister without portfolio the main focus of the Government Office for Equal Opportunities was on communication and awareness raising functions. The Office has launched several campaigns and public calls for proposals concerning domestic violence, changing male roles, family friendly workplace award, just to mention the most important fields. Meanwhile much less has been done in the field of the monitoring and evaluation of draft laws and action plans. With regard to the two main legislative processes of concern for gender equality during the last year, the anti-discrimination law debate and the restraining orders for domestic violence cases debate, the standpoint of the Office had very small visibility. The Minister has not made any substantive contribution to either of the Parliamentary debates. The comments and suggestions of the Office submitted to the Ministry of Justice, in charge of codification, have been partially or totally disregarded. The Office was however a partner, though not a coordinator, in the development of the Joint Inclusion Memorandum, the National Action Plan on Social Inclusion, and the National Action Plan for Employment. Coordination for the process of finalizing the National Action Plan on Social Inclusion shifted to the Government Office only recently, as of July 1, 2004. It is not clear how much specific involvement this means for the Directorate for Gender Equality. More coordination tasks could be fulfilled by the Council for Women's Affairs if that would be standing. The Directorate developed a concept strategy for handling prostitution that has been presented at several conferences. It has also been actively involved in preparing the application criteria and some of the program packages within the process of distribution of Structural Funds, including the EQUAL program. Another emblematic activity of the Directorate is the operation of the first Hungarian crisis centre pilot program for victims of domestic violence. The Directorate is partner with different international organizations in organizing events, writing country reports or channeling information to them. The Office fulfils no adjudication tasks.

⁸² See: <http://hc.netstudio.hu/allaspont/report/cedaw.shadow.report.pdf>.

3.3.2 Public Access to Information

The website of the Government Office for Equal Opportunities is an important hub for a lot of information related to gender equality. Most relevant legislation is available on the site and there is up to date information on all programs that have to do with the Office. However, the site has no specific branch for gender equality related issues, all information is provided together regardless of grounds. There is very little and incidental information on programs and projects launched by Ministries and other offices. There are no links to NGOs, to internationally relevant actors, and to information and documents that are important but not produced by the Office. A good example for this problem is the unavailability of the last Hungarian Report to the CEDAW, not to speak of the shadow report. Another problem is that the website is only in Hungarian.

Websites of other ministries may contain information relevant to gender equality but there are no specific chapters of websites dealing with this issue (for example neither on the Ministry of Employment Policy and Labor nor on the Ministry of Social and Family Affairs website). The Ministry of Justice website has a separate chapter for domestic violence, which however is not linked to the Government Office website.⁸³

Equal Opportunity Houses and the Women's House are to serve in principle the better flow of information concerning equal opportunity issues. Given their recent establishment it is not yet clear how this will work in practice, and how much space will allow for gender equality specific information.⁸⁴

There was an example for initiatives to make popular measures and programs on gender equality once they are adopted (see further Ministry of Labor tender on media adaptation of equal opportunity described above).

No campaigns are undertaken by the Ministry of Labor and/or trade unions to inform employees of their rights. There are no specific public campaigns related to sexual harassment.

⁸³ See <http://www.im.hu/csaladonbelul>.

⁸⁴ See also: publications of the Government Office for Equal Opportunities above, especially *Women and Men*.

4. RESEARCH AND STATISTICS

4.1 Gender Pay Gap

The National Action Plan for Employment – referring to statistics from the year 2003 – contains the following data concerning the employment of women:⁸⁵

- 45 percent of all employed are women;
- 96 percent of office workers are women;
- 65 percent of assistant positions requiring higher education are women;
- 10 percent of managers in the private sector are women;
- 30 percent of entrepreneurs are women.

Despite the higher level of education of women, their gross average income is 19 percent lower than that of men. Taking a look at the main lines of occupation, it can be stated that women's wages make up 90 percent of men's wages in case of the so-called simple jobs (which do not require qualification), while 70 percent in case of jobs requiring higher qualification (university or college degree).⁸⁶ In positions of comparable income both in the private and in the state sector women are paid in average some 13–14 percent less than men.

Women are over-represented in poorly paid state sector jobs such as health care and education.

The gender equality machinery has published yearly in Hungarian and English since 2001 in cooperation with the Central Statistical Office the booklet *Women and Men in Hungary* containing relevant statistical data broken down by sex. The last such volume is the one just published in the fall of 2004 referring to the data from 2003.⁸⁷ The other important recent publication containing gender disaggregated data is edited by the Central Statistical Office.⁸⁸

⁸⁵ *National Action Plan for Employment*, p. 43.

⁸⁶ Central Statistical Office (KSH), with the Government Office for Equal Opportunities, *Nők és férfiak Magyarországon, 2003* (Women and Men in Hungary, 2003) (Budapest: Központi Statisztikai Hivatal, Esélyegyenlőségi Kormányhivatal, 2004), p. 116. The circulation of this report is 1200 copies in Hungarian. The English version is being prepared for publication with a circulation of 500 copies.

⁸⁷ *Ibid.*

⁸⁸ Central Statistical Office (KSH), *Társadalmi helyzetkép 2003* (The Society in 2003) (Budapest: Központi Statisztikai Hivatal, 2004).

The Employment Office (Foglalkoztatási Hivatal) regularly monitors the pay gap and publishes data on the topic.

4.2 Gender Composition of Central and Local Decision-Making Bodies

Women are very poorly represented in national politics. There was a slight increase in their representation after the 2002 parliamentary elections: the number of women MPs increased from 32 in 1998 to 35 in 2002, which is now 9.1 percent of all MPs. Among these, the Socialist Party (MSZP) has 23 women MPs, the right-wing FIDESZ has nine women MPs, the conservative Democratic Forum (MDF) has one, and the liberal Alliance of Free Democrats (SZDSZ) two. The European elections showed an interesting improvement: the FIDESZ–MPSZ list had six women among its 18 candidates (three out of its elected 12 MEPs are women); the MSZP had five women on the list of its first ten candidates (four out of its elected nine MEPs were originally women; later one more women replaced a resigned male MEP); the liberal SZDSZ had eleven women candidates on its list of 24 (one of its two MEPs is a woman⁸⁹); and the MDF had one woman on the list of its first ten candidates, at the top of the candidate list,⁹⁰ but she did not accept to perform the mission; the only one MEP of this party is a man at the moment.

In the 2002 local elections 14 percent of all elected mayors were women, with more women elected for smaller localities and less for larger ones. Only two metropolitan districts have women mayors. Meanwhile 34.7 percent of local councilors elected in 2002 are women.⁹¹

The President of the Hungarian Parliament is a woman. There are two women ministers in the Government (out of 17); and among the current eight judges of the Constitutional Court, only one is a woman.

⁸⁹ Recently, the first (male) candidate on this list stepped down after his election and was replaced by the third candidate on the list of the party: a woman. The balance of liberal MEPs is now one woman and one man.

⁹⁰ Data from the National Election Office website, www.valasztas.hu.

⁹¹ For more information on women in decision-making positions, see Klára Csányi, *Nők a hatalomban és a döntéshozatalban* (Women in Power and in Decision-Making Positions) (Budapest: Ministry of Interior, 2004), available at <http://web.b-m.hu/web/portal.nsf/aktualis/3B4B489204CEE010C1256EF2004413C1>.

Important research has been conducted on women's representation in politics, including their role in debate and in shaping gender equality policy between 1998 and 2002 by Gabriella Ilonszki, Ida B. Kelemen and Zsuzsanna Szeles.⁹²

4.3 Family Patterns and Responsibilities

The Budapest Subregional Office of the International Labor Organization has published in 2003 a comparative research on the gender dimensions of social security reform in Central and Eastern Europe. The three case studies are on Czech Republic, Poland and Hungary. The Hungarian chapter, written by Mária Frey and Erika Lukács includes data until 2000 on all relevant aspects of the Hungarian social security and pension system, including affordability of childcare services and also some limited information on household sharing patterns.⁹³ The Central Statistical Office (KSH) regularly conducts the Labor Force Survey which collects data among others about beneficiaries of child care benefits by gender. The KSH also conducted surveys on lifestyle-time utilization, the last time in 1999–2000. These surveys provide relevant information on time utilization of the population broken down by gender.

According to a recent publication of KSH, Hungarian women spend the most time in Europe doing the household work.⁹⁴ The book also points out that 53 percent of men between 18–75 years find proper if the work is more important for the men while the household and caring the family is for the women.⁹⁵

Data from KSH surveys broken down by gender are also available from the Women and Men yearbooks published commonly with the Government Office for Equal Opportunities.

There is accessible data disaggregated by sex in all policy fields (education, health, labor and employment, social security schemes) to some level, but collection of data is not always systematic or in-depth.

⁹² Ilonszki Gabriella, B. Kelemen Ida and Szeles Zsuzsanna (2003) *Fordulóponton: Képviselőnők 1998–2002 (At a Turning Point: Elected Female Representatives 1998–2002)* (Budapest: Mirovni Institute, 2003).

⁹³ Elaine Fultz, Markus Ruck and Silke Steinhilber (eds.), *Gender Dimensions of Social Security Reform in Central and Eastern Europe* (Budapest: ILO SRO, 2003), available at <http://www.ilo.org/public/english/region/eurpro/budapest/publ/social/gendim.htm>.

⁹⁴ Central Statistical Office (KSH) *Társadalmi helyzetkép 2003, op.cit.*, p. 10.

⁹⁵ *Ibid.*, p. 25.

4.4 Sexual Harassment

The courts do not register sexual harassment cases separately. There is no information about any recent survey and research in this topic in Hungary.⁹⁶

4.5 Gender Stereotypes in Education

There have been several research projects and initiatives concerning the links between gender and education, the integration of the gender perspective into education curricula. For example research has been conducted on the inclusion of the gender perspective in the Hungarian curriculum reform in comparison with the Slovenian process.⁹⁷ Another research project investigated the representation of women and men in primary school textbooks.⁹⁸

4.6 Quality and Affordability of Childcare Services

The above mentioned publication of Budapest Subregional Office of the International Labor Organization includes data until 2000 on affordability of childcare services.⁹⁹

A project funded by the European Union titled “Care Work in Europe. Understandings and New Directions” started in September 2001 and took place over 39 months. The focus was on care work in six partner countries, including Hungary. The prepared reports – which are available on the web – include the kinds of care services available in each partner country, reviews of policy and services, the research literature and statistical information.¹⁰⁰

According to the publication of KSH the number of day nurseries in Hungary decreased to the half between the years of 1990 and 2003.¹⁰¹ Linking to this, in the

⁹⁶ Research on categorizing harassment at workplace, including sexual harassment was conducted in the mid-1990s. See Kaucsek György, Simon Péter “Pszichoterror a munkahelyeken,” (“Psychoterror in the workplace”) in *Munkaiügyi szemle*. February–March, 1996.

⁹⁷ Research of Rédei Dorottya. See http://gender.bkae.hu/genderkonf2004_redai.php.

⁹⁸ Research of Kereszty Orsolya. See http://gender.bkae.hu/genderkonf2004_kereszty.php.

⁹⁹ See Elaine Fultz, *et al.*, *op.cit.*

¹⁰⁰ For more information, see the project website: <http://144.82.35.228/carework>. The Hungarian partner to the project was the National Institute for Family and Social Policy, Hungary.

¹⁰¹ Central Statistical Office (KSH) *Társadalmi helyzetkép 2003*, *op.cit.*, p. 177.

year of 2002 the main reason of the unsolved situation of child caring was the lack of spaces in day nurseries.¹⁰²

4.7 Relevant Disputes and Case Law

Concerning sexual harassment a professional dispute is around the AET. The Act – as it is mentioned in the first part of this report – contains the concept and prohibition of harassment in general but does not specifically mention sexual harassment. According to the experts who developed conceptually the Act its concept of harassment is meant to cover sexual harassment as well. This standpoint has been repeatedly criticized both by experts and by feminist NGOs on grounds that sexual harassment has several specific aspects, a distinctive coverage of which requires its regulation in a separate paragraph. Also reference has been made to EU requirements specifically concerning sexual harassment.

As far as we know the media has dealt with only a few – exactly three – cases of sexual harassment since 2002. One of them was against a shooting-range commander. He had been found guilty of crime named insult of subordinate. His punishment was reduced by the Supreme Court, instead of suspended imprisonment he got fine penalty. Another case happened in a hospital in the countryside. There was no media coverage of the procedure's result. The scene of the third case was the Government Office for Equal Opportunities. According to the initial statements of the President of the Office, the approach of the Office to the case will attempt to set a precedent to other employees in order to take such cases seriously. The internal investigation of the case has recently been closed. The incidence of harassment was neither proved nor refuted. Very little publicity was allowed for details of the case. The press statement made by the Office¹⁰³ referred only to general conclusions: it justified the closing of the case with the argument that the present regulation of sexual harassment makes it impossible to prove this offence, and an amendment of the law is needed in this matter. An interesting argument in the case – and also concerning the scope of the AET – was the refusal to shift the burden of proof with reference to the fact that the procedure against the public employee defendant was an internal disciplinary procedure, and therefore the principle of shifting the burden of proof does not apply.

¹⁰² Central Statistical Office (KSH), with the Government Office for Equal Opportunities, *Nők és férfiak Magyarországon, 2003, op.cit.*, p. 96.

¹⁰³ "Szexuális zaklatás: nem könnyű fellépni ellene" (Sexual Harassment: It Is Difficult to Act against It). Available at the Government Office for Equal Opportunities website: http://www.eselyegyenloseg.hu/hirek/archive/hirek_20040903_1.html.

Concerning unlawful dismissal, a Court Decision (EBH 2002.786) stated that the unlawful exceptional dismissal of employer can be a base of the responsibility for compensation of non-pecuniary damages. With regard to the equal pay for equal work principle, a recent Court Decision (BH 2004.123) stated that it should not be considered discrimination if persons receive different remuneration for equivalent work in case they are not on even terms.

5. KEY AREAS OF CONCERN AND RECOMMENDATIONS

5.1 Key Areas of Concern

A major concern raising from the above is the absence of a significant gender equality machinery/mechanism in Hungary. Whereas elevation of the machinery to the ministerial level is a very welcomed fact, concerns can be formulated about the weakening of the specific gender equality voice. It seems, based on the trends prevailing during the last years (since June 2003), that merging the gender equality machinery with other governmental mechanisms in charge of equal opportunity policies on other grounds has lead to the weakening of the gender equality voice. Absence of a specific gender equality voice and face is in itself a problematic feature in a policy context where gender equality concerns are not on the higher segment of the policy agenda. In this sense the existence of a specific gender equality mechanism is not to be justified only in terms of specificity of tasks but also in symbolic terms. Creation and maintenance of a distinctive gender equality voice within the government carries an important symbolic message towards the polity including both its female and male members. This does not necessarily entail an entirely independent gender equality machinery however. There can be careful ways to design such a symbolically representative mechanism even within a general equal opportunity policy framework as the one launched in Hungary in mid-2003.

Beyond public representation another issue of concern for the machinery is its resources, both human and financial. Part of the reason why the gender equality machinery lost its distinctiveness is the very limited resources and weight it has within the Government Office for Equal Opportunities. The staff of nine people (plus the six-people staff operating the crisis centre) is incredibly small for fulfilling the tasks gender equality mechanisms are usually attributed within the policy environments of most EU member states.

Another more general concern is the attribution of tasks and development of an operational strategy for the Hungarian gender equality machinery. Tasks attributed to the machinery by the yearly report remain at a general level. Most activities of the

Directorate for Gender Equality concentrate on awareness raising with very little emphasis on other activities that could contribute to the promotion and better implementation of gender equality policy in Hungary. Several successful gender equality mechanisms operate in different Member States of the European Union. There is vast policy analysis literature on the activity of such mechanisms. Moreover, there are very accessible other ways too to learn about the good practices and also failures of different other gender equality mechanisms that have a longer history the Hungarian one has.

The Council for Women's Affairs, seen in the Hungarian policy framework as the main institutional guarantee for the implementation of gender mainstreaming, is inoperative since 2002. This is a major concern both because the Council is the only forum in Hungary where women's NGOs, gender equality policy experts and representatives of the government could regularly consult on gender equality issues, and because in its absence the Hungarian approach to gender mainstreaming loses its legitimacy. There are two possible ways to address this problem. One solution is to relaunch the Council, reappoint its members and redefine its tasks so that it can meaningfully start implementing a gender mainstreaming strategy in Hungary. Alternatively the tasks of the Council could be regrouped to a strengthened gender equality mechanism. In this case the mechanism's approach to involving women's NGOs and experts in its work, and undertaking coordinating roles with respect to all governmental activities in the field of gender equality should be strengthened considerably.

As far as the thorough, consistent implementation of the *acquis*, and therefore many of the grounding principles for the equal opportunity of women and men, are concerned, the Equal Treatment Authority to be established under the AET as of January 2005 will have a crucial importance in Hungary. One of the main features of such institutions is their independence from those investigated. Independence can be conceptualized through three elements.¹⁰⁴ The first element concerns funding: the specialized bodies "should be provided with sufficient funds to carry out their functions and responsibilities effectively, and the funding should be subject annually to approval by the Parliament." The second element important from the point of view of independence is: ability to function without interference from the state, and the guarantees necessary for independence in appointing staff, managing resources, and expressing views publicly. The third element concerns appointment and dismissal of members or incumbents: guarantees shall be provided for preventing arbitrary dismissal, non-renewal and appropriate guarantees for fair appointment. Independence

¹⁰⁴ European Commission against Racism and Intolerance, General Policy Recommendation No 2: Specialized Bodies to Combat Racism, Xenophobia, Anti-Semitism and Intolerance at National level, Document No CRI (97)36, Principle 5, sections 1–4 (Strasbourg: Council of Europe, 1997).

as perceived along these three lines can be realized with carefully designed legislation by executive bodies, or eventually by enforcement agencies, just as well as it can be by independent parliamentary institution. Care should be taken that even if enforcement agencies are part of the central government they are not seen as acting on behalf of the central government, especially not in their investigations oriented towards other state organs. Incumbents are to be selected on the basis of their specialized expertise in the field, experience and skills shown in their previous work so as to minimize problems with accountability and with political bias.

The system of equal opportunity plans launched by the AET and the Labor Code and establishing requirements for employers as of December 2004 can have a remarkably positive effect on employment practices of both private and state owned companies. However, there is not enough knowledge at the workplaces on how to prepare it, what ideas could be used and how to finance it. A possibly influential initiative in this field is the good practice guide CD launched by the Metropolitan Equal Opportunity Office for developing equal opportunity plans.¹⁰⁵ We encourage the government to work out structures, which could provide continuous support and advise to employers in this field.

The major concern in this field is the absence of a coordinated comprehensive gender equality policy in Hungary, a concern that is clearly related to the above discussed absence of a significant gender equality machinery/mechanism. The analysis above shows that different fields of relevance for gender equality might have policies or programs dealing with gender equality, but there is an absence of a coordinated strategy that would give a direction and an evenness to progress in the field of gender equality.

5.2 Recommendations

5.2.1 Legislative Measures

- Hungarian legislation should be amended to include the obligation to inform employees about their rights in accordance with Article 7 of Directive 75/117/EEC.
- Hungarian legislation referring to the shifting of the burden of proof in cases of discrimination should define the *prima facie* case so as not include as a

¹⁰⁵ *Mi az Esélyegyenlőségi terv? Segédanyag intézmények és gazdálkodó szervezetek számára az Esélyegyenlőségi terv elkészítéséhez.* (What is the Equal Opportunity Plan? Guidelines for institutions and organizations for developing equal opportunity plans) CD-Rom. Budapest, 2004.

requirement the proof of suffered disadvantage, but only the criteria to make a presumption that there has been discrimination.

- The Act on Labor Inspection should be modified to enable the investigation of discrimination and the implementation of the principle of equal pay for equal work or work of equal value in *ex officio*.
- The Labor Code and the AET should be amended to include specific provisions on sexual harassment (at the workplace).
- The Labor Code provisions on maternity leave should be amended to comply with Article 8(2) of the Directive 92/85/EEC.
- The translation and definition of the term ‘self-employed’ should be clarified in Hungarian law.
- The category of ‘contributing family member’ should be extended.

5.2.2 Institutional Mechanisms

- The Minister for Equal Opportunities should keep the issue of gender equality as high on the agenda as equal opportunity concerns on other grounds. Regular media statements and press releases should be launched in which timely gender equality issues are commented upon.
- The Directorate for Gender Equality and its legal successor at any time should strive to have an independent and distinctive public voice and face within the Office, be present in all public activities related to gender equality policy, participating in all relevant policy debates, and public debates, taking part in important women’s NGO meetings, and launching consultation processes with established feminist experts. A distinctive newsletter, distinctive annual report, and a separate branch on the website would be possible first steps.
- The permanent staff of the Directorate should be increased. Policy experts on gender equality policy should be involved regularly in the work, possibly on a permanent basis.
- Certain tasks attributed to or considered important by the Directorate could be subcontracted to women’s NGOs, in this way promoting the development of a policy sensitive proactive feminist civil society, but also bringing about a more efficient functioning of implementation of gender equality policy.
- The budget of the Directorate should be increased accordingly to allow for involving more staff and experts and to allow for allocating tasks and resources for NGOs.

- The Council for Women's Affairs should be re-launched, or the tasks for coordinating the implementation of gender mainstreaming in Hungary should be attributed to another body, possibly to an enhanced gender equality mechanism.
- In establishing the Equal Treatment Authority the independence criteria should be considered as a priority. Independence can be realized with carefully designed legislation by executive bodies, or eventually by enforcement agencies, just as well as it can be by independent parliamentary institution. Care should be taken that even if enforcement agencies are part of the central government they are not seen as acting on behalf of the central government, especially not in their investigations oriented towards other state organs. Incumbents are to be selected on the basis of their specialized expertise in the field, experience and skills shown in their previous work so as to minimize problems with accountability and with political bias. In designing the specific structure of the institution these factors should be weighted according to their importance.

5.2.3 Policies and Programs

- Policy research should be initiated and funded by the Directorate aiming to develop a comprehensive strategy for the mechanism to pursue. Research should investigate possible tasks to be fulfilled, organizational issues, alternatives with respect to increasing available resources – both human and financial.
- The Directorate should develop a comprehensive strategy or action plan for promoting and implementing gender equality policy in Hungary applicable both for the short term (next one year) and for the long term (next five years), but detailed enough to propose clear specific targets for every relevant sector, to allocate tasks, people and resources. The strategy should be developed in a participatory manner, involving experts and NGOs.
- A regular internal and external monitoring, evaluation and review mechanism for the strategy should be set in place. An inter-ministerial committee (or make use of the Council for Women's Affairs) for periodical evaluation and review of the strategy should be formed. All relevant Ministries should have their appointed representatives in charge of gender equality issues. Policy expert and NGOs should also be involved in the process.
- A separate gender equality chapter to the National Equal Opportunity Program should be developed.

- Educational state policy should address gender issues and gender equality in a comprehensive way, including steps towards the elimination of sex-stereotyped choices in schools, the systematic review of textbooks and the integration of the issue into the educational curricula.
- The double-edged nature of extended leaves should be assessed and documented to determine the extent the long parental allowance hinders women in returning to the labor market particularly if not accompanied by a supply of flexible/atypical jobs.
- In order to avoid the catch situation caused by prolonged stay away of women from labor market due to childcare, childcare policy should focus not only on the payment of different forms of childcare benefits but also on subsequent or parallel support for reintegration in the labor market.
- Following the spirit of the National Action Plan for Employment within the framework of the gender equality strategy, separate chapters should be dedicated to comprehensive policies (not just small programs) for addressing the issues of:
 - Sharing unpaid work between parents, for example by introducing forms of childcare benefits, which can only be claimed by fathers, and by launching widespread awareness raising campaigns on the issue;
 - Facilitating the re-entry of women into the labor market, by allowing part-time and flexible work in parallel with certain forms of childcare benefits, and by providing more flexible child care facilities (accommodated to customary working hours);
 - Developing a chapter addressing sexual harassment. Employers should be required to develop their own company level procedures for sexual harassment to be included in their equal opportunity plan; awareness raising campaigns should also be launched;
 - Developing a chapter concerning the improvement of the political representation of women. Widespread public debate on the issue of quotas should be initiated, and women politicians should engage in and discuss the issue.

5.2.4 Awareness-Raising

- The programs and projects launched by the government offices dealing with equal opportunity issues should be made more visible.
- The flow of information and the exchange of important documents between international organizations, NGOs and government offices should be

facilitated by the Government Office for Equal Opportunities: for example, through its website.

- Wide range awareness raising programs should be launched on gender equality in all policy fields.

5.2.5 Research

- Horizontal gender segregated data at all governmental levels in all sectors should be generated systematically.
- The Directorate for Gender Equality should maintain a database of up-to-date gender segregated data where feasible and data sources.
- The Directorate should maintain a database of all gender equality related litigation.
- The Government, and specifically the Directorate, should encourage research on gender equality policy in Hungary and its compatibility with European standards expressed both in terms of hard law and in terms of softer policies.

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ANNEXES

Annex 1.2 The Act on Equal Treatment and the Promotion of Equal Opportunities

The Act CXXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities (hereinafter called the AET) determines first (Article 4) those organizations fulfilling public tasks in wide understanding, which have to observe the principle of equal treatment in *all of their relationships*, procedures and measures. These are: the Hungarian State, local and minority self-governments and all bodies thereof, organizations exercising powers as authorities, armed forces and policing bodies, public foundations, public bodies, organizations performing public services, educational institutions, social care, child protection and health care services, museums, libraries, voluntary mutual insurance funds, private pension funds, parties, and other budgetary organs.

In Article 5 the law defines all those relevant relationships in relation to which actors defined by the law, regardless of whether they were included in Article 4 or not, are to comply. The criterion for including these relationships under Article 5 was the public nature of the relationship. The following persons' and organs' given relationships are specified to belong under the scope of the law:

- those who make a proposal to persons not previously selected to enter into contract or invite such persons for tender;
- those who provide services or sell goods at their premises open to customers;
- self-employed persons, legal entities and organizations without a legal entity receiving state aid, in respect of their relationships established in the course of their utilization of such a state aid, from the time when the state aid is utilized until the competent authorities can audit the utilization of the state aid in accordance with the applicable regulations;
- and employers in respect of employment relationships and persons entitled to give instructions in respect of other relationships aimed at employment and relationships directly related thereto.

As a main message, Article 7(1) states that “direct negative discrimination, indirect negative discrimination, harassment, unlawful segregation, victimization, and any orders issued therefore mean a breach of the principle of equal treatment (...).” Article 7(2) states that the principle of equal treatment is not breached by any kind of provisions based on a characteristic related to any of the grounds of discrimination provided in Article 8 that they are found by objective consideration to have a reasonable explanation directly related to the relevant relationship. This exception is problematic insofar as it allows exceptions on grounds of reasonability for instances of differential treatment on grounds of race and gender – regardless of the direct and

indirect nature of discrimination – while the Race Equality Directive (Directive 2000/43/EC), as well as the Amending Directive concerning access to employment (2002/73/EC) as main rule, requires full ban in cases of direct discrimination.

The concept of *direct discrimination* is defined in Article 8. The Article says that “provisions that result in a person or a group being treated less favorably than another person or group in a comparable situation” because of his/her above-mentioned real or presumed characteristics are considered direct discrimination. Article 9 defines *indirect discrimination* as “Provisions that are not considered direct negative discrimination and apparently comply with the principle of equal treatment but put any persons or groups having characteristics defined in Article 8 at a considerably larger disadvantage compared with other persons or groups in a similar situation are considered indirect discrimination.”

Article 10(1) defines *harassment* as “a conduct violating human dignity related to the relevant person’s characteristic defined in Article 8 with the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment around a particular person.” Sexual harassment is not defined specifically in the Act. Articles 10(2) and (3) define the concepts of *unlawful segregation* and *victimization*.¹⁰⁶

In its Article 11, the Act also contains provisions concerning *preferential treatment*. According to this Article, “[t]he measure aimed at the elimination of inequality of opportunities based on an objective assessment of an expressly identified social group is not considered a breach of the principle of equal treatment if it is based on an act, on a government decree based on an act or on a collective contract, effective for a definite term or until a specific condition is met” or if “the election of a party’s executive and representative organ and the setting up of a candidate at the elections defined in the Act on Electoral Procedures is executed in line with the party’s fundamental rules.”

The Article also states that these positive measures shall not violate any fundamental rights, shall not provide unconditional advantage, and shall not exclude the consideration of individual circumstances.

In its Article 18(1), the Act gives standing before courts and in administrative procedures for social and interest representation organizations to act as a representative authorized by the victims in procedures initiated because of a violation of the principle

¹⁰⁶ “Unlawful segregation is a conduct that separates individuals or groups of individuals from others on the basis of their characteristics as defined in Article 8 without a reasonable explanation resulting from objective consideration.”

“Victimization is a conduct that causes infringement, is aimed at infringement, or threatens infringement, against the person making a complaint or initiating procedures because of a breach of the principle of equal treatment, or against a person assisting in such a procedure, in relation to these acts”.

of equal treatment. Also Article 20 introduces the *actio popularis*. (Until now the equal opportunity act protecting disabled persons was the only legal source to allow applying this legal institution in Hungary.¹⁰⁷) A public prosecutor, the Equal Treatment Authority or the social and interest representation organizations can initiate lawsuits under civil or labor law for the violation of the principle of equal treatment before the court. The condition of this procedure is that the violation of the principle of equal treatment is based on a characteristic that is an essential feature of the individual, and the violation of law affects a larger group of persons that cannot be determined accurately.

The provisions concerning the *burden of proof* are important elements of the Act. Article 19(1) stipulates that the injured party or the party entitled to assert claims of public interest must make a *prima facie* case in which they prove that a) the injured person or group has suffered a disadvantage, and b) the injured party or group possesses characteristics defined in Article 8. Article 19(2) states that if the *prima facie* case was made, the defendant shall prove that it has observed or was not obliged to observe the principle of equal treatment. These provisions shall not apply to criminal procedures and to procedures of minor offences. Until the AET's coming into force the Labor Code was the only Act in Hungary containing the principle of shifting the burden of proof. However, the Labor Code did not require the victim to prove that he/she had suffered a disadvantage.

The Act initiates the National Equal Opportunity Program in Articles 31–36. The objective of the Program is to prevent negative discrimination and to promote the equal opportunities of certain specific social groups in all aspects of life. The Program is to include all governmental measures serving this objective. The funds for the National Equal Opportunity Program should come from the central budget. The Parliament is to approve the Program every two years upon the recommendation of the Government, following social debate with relevant social and interest representation organizations and the organizations representing employers' and employees' interests. According to the Act the Program is to include – among others – measures required for awareness raising of the society, awareness raising with respect to available recourse against violations of the law, measures aiming at improving the situation of vulnerable groups on the labor market, measures improving participation of vulnerable groups in decision making at all levels, improving access of disadvantaged groups, and necessary legislative tasks towards fulfillment of the above. The Act provides that local authorities can adopt local equal opportunity programs consistent with the National Program.

¹⁰⁷ Act XXVI of 1998 on Provision of Rights and Equal Opportunity for Disabled Persons.

The Equal Treatment Authority will be established under the Government and supervised by the Government. It is provided however that the Authority shall act independently in exercising its duties defined in the Act (Article 13). Its independence is also ensured by having a separate budget line within the budget of the Prime Minister's Office. It will have different rights and tasks concerning the enforcement of the principle of equal treatment. It may conduct investigation concerning the violation of this principle; initiate a lawsuits for protecting the rights of persons and groups whose rights have been violated; review and comment on drafts of legal acts or make proposals concerning equal treatment; regularly inform the public and the Government about the situation concerning the enforcement of equal treatment; continually provide information to those concerned and offer help with acting against the violation of equal treatment; assist in the preparation of the reports for the Commission of the European Union concerning the harmonization of directives on equal treatment.

Article 16 regulates the legal consequences of the violation of principle of equal treatment. The Authority may a) order an injunction; b) prohibit the continuation of the conduct constituting a violation of law; c) make public its decision finding a violation of law; d) impose fine; e) apply legal consequences determined in a special act. These legal consequences have to be determined by taking into consideration all circumstances of the case and can also be applied collectively. The amount of the fine can be from 50 thousand to 6 million Forints (about 204 to 24,490 Euros). According to Article 17(3), the court can review a decision of the Authority.

The AET brought a number of amendments to the Hungarian legal system. The previous Section 5(1-2) of the Labor Code regulating prohibition of discrimination was changed. Now it states that "in connection with employment relations the principle of equal treatment must be strictly observed. Any consequences of the breach of the principle of equal treatment shall be properly remedied; the remedy shall not result in any violation of or harm to, the rights of another worker". For detailed regulation, the Commentary of Labor Code refers to the AET.

Moreover, observation of equal treatment was introduced also to other legal sources (for example, to the Act IV of 1991 on Promoting Employment and Supporting the Unemployed, and the Act on Labor Inspection). The Labor Code (Section 70/A) also contains detailed regulation concerning the above-mentioned equal opportunity plans. It states that the employer and the local trade union branch or, if there is no trade union, the workers council may jointly adopt an equal opportunity plan for a predetermined duration. It means that adoption of such plans – except in cases regulated in AET – is not obligatory. The Labor Code states that equal opportunity plans should consist of the assessment of the work conditions of workers belonging to disadvantaged groups, such as women, and working parents with two or more children under the age of ten and single parents with children under the age of ten. The

assessment should address issues related to wages, career advancement and training, the benefits available to such employees in order to reconcile work and family obligations. The plans also should set goals for the following period to ensure equal opportunities and designate means to facilitate the achievement of these goals.

Annex 2.3 The Directorate for Gender Equality

Annex 2.3.1 Financial Capacity

In the previous years the budget of the Directorate has witnessed a significant increase. Comparing to the budget of the year 2001, now the available amount is ten times higher, it is around 400 million Forints (about 163,235 Euros). A considerable amount of the money is spent on program costs. In 2004 57 million Forints will be spent to finance NGOs, in addition to support initiatives that are run by NGOs in cooperation with the Directorate (such as the Women's House). Beyond the targeted budget of the Directorate some programs relating to gender equality are financed from the central budget of the Government Office for Equal Opportunities.

Concerning other sources, the National Program for the Implementation of the Acquis has a remaining available amount from the budget of the previous year. Moreover, the Fourth (and Fifth) Community Action Program also has provided (and still provides) financial resources. The Structural Funds ensure more available sources.

Annex 2.3.2 Structure

The equal opportunity machinery was a centralized governmental bureau until late 2003. As it is mentioned above, the Directorate is part of the Government Office for Equal Opportunities. The Office has no local branches, there are no departments or people in charge of gender equality within the different other Ministries. However, with the launching of the idea of the National Equal Opportunity Program, the need for some decentralized action emerged.

One of the five pillars of the National Equal Opportunity Program¹⁰⁸ concerns the development of a National Equal Opportunity Network, which is to consist of the twenty (19 county-level and one in the capital city) *Opportunity Houses* (Esélyek Háza) established and operated in cooperation between the Government Office, local authorities and the NGO sector. Opportunity Houses are meant to be county level

¹⁰⁸ Köztársasági Esélyegyenlőségi Program. For more details on its proposed scope, please see Section 3.1 on Policies in the main text.

hubs where all equal opportunity-related information can be concentrated: information on programs, events, opportunities for launching projects or for cooperation. Tasks of the Opportunity Houses include methodological work, including gathering and analyzing relevant data, finding and training local people committed to equal opportunity issues, policy consulting, improving access to funds, communication and awareness raising tasks over equal opportunity issues, networking and coordination of activities, provision of legal and other services to victim groups. So far twelve Opportunity Houses have been established: the first one in October 2003, in Debrecen and the last one in June 2004, in Szolnok. The professional team of each House consists of three people. Gender equality is only one of several grounds of equality that the mechanism has to address. No reports are available yet on pursued activities, the efficiency of the network and the salience of the gender equality issue within the larger set of tasks to be covered remains to be seen.¹⁰⁹ It should be mentioned here that there is no official connection between the Directorate for Gender Equality and the Opportunity Houses.

Another initiative forecasting decentralization in one particular issue area handled by the gender equality mechanism is the Crisis Center initiative. The methodological background paper of the first crisis center established in Budapest for victims of domestic violence suggests that the Budapest unit is a first one in a series of such centers serving different regions of Hungary.¹¹⁰ The importance of this initiative is set by the fact that according to the methodology the Crisis Centers are meant to be involved not only in directly servicing victims but also in policy development related tasks, such as research, collection and analysis of data related to domestic violence, development and refinement of methodology, development and provision of training for relevant experts, organization of workshops and conferences, publication of reports and other materials on the topic. So far only the Budapest Crisis Center Pilot Program has been established and even that with only a relatively low capacity. Mainly due to financial and organizational reasons, it is not clear when the additional centers would be launched.

Annex 2.3.3 Cooperation

There is some cooperation between the Directorate and the media, the international and non-governmental organizations. An example for the cooperation with NGOs is

¹⁰⁹ Source of information: http://www.eselyegyenloseg.hu/ee_oeh_halozat.html (website accessed on July 16, 2004).

¹¹⁰ *Crisis Center. Draft Program for the Development of Victim Protection Services Fighting against Violence against Women and Children in the Family* (Budapest: Government Office for Equal Opportunities, 2004).

the Civic Forum, which gave a possibility every year for NGOs dealing with gender issues to encounter representatives of the mechanism. The last meeting of this series was in the Fall of 2003. Another possibility would be the Council for Women's Affairs – if it were still in operation. Concerning its relationship with the media, the Directorate gives regular information to newspapers and the electronic media about its programs and activities. A good example for the cooperation with international organizations is a conference organized jointly with the ILO in December 2003. The topic of the conference was encouraging gender equality at the workplace through collective bargaining and the family friendly workplace.



Equal Opportunities for
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WHAT IS THE SITUATION IN HUNGARY?

With regard to equal treatment between women and men, the most important advance in Hungarian legislation in the past two years was the adoption of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities. The Act prohibits discrimination on all grounds, including sex. There are no special provisions on gender discrimination, however. Based on the Act a public administrative body called Equal Treatment Authority is responsible for controlling/monitoring the observation of equal treatment principle. The Authority started its work in February 2005.

The restructuring of the Government in 2004 brought another change to the national gender equality machinery. A new ministry called the Ministry of Youth, Family, Social Affairs and Equal Opportunities is now led by the previous Minister (without portfolio) for Equal Opportunities. Only one small Department deals with gender equality issues in the Ministry, under the supervision of a deputy state secretary in charge of strategic development and international affairs.

WHAT DO THE FACTS SAY*?

- Women's gross average income is 19 percent lower than men's. In comparable positions both in the private and state sectors, women are paid an average of 13-14 percent less than men;
- Women are over-represented in poorly paid state sector jobs such as healthcare and education;
- Women are under-represented in national politics. 9.1 percent of all MPs are women;
- In 2003, men comprised only six percent of persons receiving a childcare benefit, and 0.7 percent of persons who received a childcare allowance.

WHAT DO THE EXPERTS SAY?

- Gender equality concerns are not high on the policy agenda in Hungary;
- The Act on Equal Treatment is relatively progressive in its definitions and the forms of discrimination it covers, but the Equal Treatment Authority, as well as judges and law enforcement professionals will have to play active role in interpreting the law's definitions;

* Sources of data: *Hungarian 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.mona-hungary.org)



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)

- There remain some discrepancies with regard to compliance of Hungarian legislation with EU Directives. Beyond problems with de jure implementation of the *acquis*, problems persist with de facto implementation as well: several policies and regulations for the promotion of gender equality are not enforced properly or fail in the absence of pro-active state support for implementation;
- 'Gender mainstreaming' appears in several strategic policy documents in Hungary (National Development Plan, National Action Plan on Social Inclusion, etc.), but it is mostly rhetorical, the respected documents could not be seen as mainstreamed from gender equality perspective;
- The country lacks a comprehensive gender equality strategy supported by strong enforcement and monitoring mechanisms.

WHAT NEEDS TO BE DONE?

- The national gender equality machinery should have an independent and distinctive structure and sufficient human and financial resources. The Minister for Equal Opportunities should place gender equality on equal footing with equal opportunity concerns on other grounds;
- A comprehensive strategy or action plan on gender equality is needed in Hungary. This strategy should contain implementation plans (both for short- and long-term) for each relevant policy field, awareness-raising activities and training programs both for professionals and the general public; and proscribe mechanisms for regular monitoring, review and impact assessment of gender equality policy;
- The explicit regulation of sexual harassment and the review of provisions concerning shifting the burden of proof are necessary in order to meet the requirements of the *acquis communautaire*;
- Existing policies and laws promoting gender equality should be implemented properly and, if implementation so requires, complemented by proactive measures targeted at changing the status quo reproducing inequality.

DID YOU KNOW:

Hungarian women spend the most time in Europe doing household work. In Hungary, 45 percent of employed persons are women; 96 percent of office workers are women; 65 percent of assistant positions requiring higher education are women; 10 percent of managers in the private sector and 30 percent of entrepreneurs are women.

MORE INFO:

www.mona-hungary.org; www.icsszem.hu