

RESEARCH CENTRE FOR GENDER EQUALITY

Good Practice Guide

on the Effective Exercise of Gender Equality Rights

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PREFACE

The General Secretariat for Equality and Research Centre for Gender Equality (K.E.T.H.I.) taking into consideration the low level of women's knowledge regarding their rights, a fact which renders impossible their participation in labour, family or any other social ground, decided to dynamically intervene in this sensitisation process, addressing both women themselves and the institutions involved.

On this basis, in the framework of the 4th community action program, our Research Centre drafted and implemented the project "Equality rights - From legislation to everyday life". As the President of the Board of K.E.T.H.I., I am particularly proud of the aims accomplished, which are:

- exchange of information and experience amongst the transnational partners regarding good practices in exercising equality rights,
- women's encouragement in exercising their rights through legal means,
- attorneys' information regarding latest developments in national and European legislation regarding equality matters,
- women lawyers' networking on a national and European level, and
- development of a legal aid pilot project scheme in cooperation with Athens Bar Association.

As far as the first aim is concerned, I am satisfied to present you this Guide of Good Practices, which includes, as mentioned above, the experience from our transnational partners. This useful handbook has been edited by Panayiota Petroglou, attorney at law, and translated by Spyros Kremezis and Dr Rosi Posnik (DJB), attorneys at law, as well, whom I also thank, along with Sophia Spiliotopoulou (attorney at law, vice president of EWLA), who drafted the preface.

Vasso Artinopoulou

President of the Board of K.E.T.H.I.

PREFACE

Gender equality is a fundamental principle and a fundamental human right in the Community legal order. The Treaty of Amsterdam has explicitly made it a “task” and an “aim” of the Community and has imposed on the Community the positive obligation to eliminate gender “inequalities” and to “promote” gender equality “in all its activities”, including, but not limited to, all areas of social policy (Articles 2 and 3(2) of the EC Treaty). Provisions of the Treaty and several Directives guarantee more particularly equality between women and men and prohibit any direct or indirect discrimination on grounds of sex in respect of pay, professional training, employment and social security. These provisions have brought about considerable improvements in national legislation.

The impressive body of case law of the Court of Justice of the European Communities (ECJ), by which EC gender equality legislation has been interpreted, has very significantly contributed to the development of national jurisprudence. This is particularly true in our country, Greece, where courts, and particularly the three supreme courts, the Council of State (Supreme Administrative Court), the Supreme Civil and Penal Court and the Court of Audit, are interpreting and applying not only the legislation, but also the constitutional gender equality provisions, in the light of and in conjunction with Community law. This jurisprudence has led to important legislative, and even constitutional, development, the most recent of which is the repeal of a constitutional provision that allowed derogations from the gender equality principle and the insertion in the Constitution of a new provision, by which the State is required to promote positive action [Article 116<2>]. This constitutional provision is also due to the persistent efforts of Greek women’s NGOs, and in particular of the Greek League for Women’s Rights and its president, Professor Alice Marangopoulos, who put forward, as examples, the recent relevant provisions of several European Constitutions. The new constitutional provision, which was finally almost unanimously adopted by the Greek Parliament, is mostly inspired by Article 3(2) of the German Constitution and Article 7(2) of the Austrian Constitution. In this way, Greece contributed to the formation of a common constitutional tradition on positive action, which is a source of EU human rights law. This is a very good example of the beneficial effects which can be achieved, even at constitutional level, through the exchange of “good” principles and practices.

However, in spite of the progress made at Community and national level, gender discrimination is still widespread in all countries and in all fields and gender equality - real, substantive gender equality - has yet to be achieved. Gender “inequalities” whose elimination is required by the Treaty, are *de facto* situations, which affect mainly women, owing to prejudices and stereotypes that have infiltrated social and economic structures. These inequalities are often multiple (due to the female gender and to one or more other grounds of discrimination, e.g. disability, age, race, colour etc) and they often survive, even after gender discrimination in legislation is eradicated. As the ECJ very pertinently states, “*the mere fact that a male candidate and a woman candidate are equally qualified does not mean that they have the same chances*”, “*particular because of prejudices and stereotypes concerning the role and capacities of women*”.

The inferior status of women in the labour market and in society at large is a serious concern in the

¹ ECJ Case C-158/97 *Badeck* [2000] ECR I-1875, para 21.

Union. This is why the promotion of gender equality has been proclaimed by the European Social Agenda as a particular strategic objective of the Union in all social policy areas and the Union is closely collaborating with the UN in implementing the Beijing Platform for Action, which aims at the "empowerment" of women.

It clearly results from research² and everyday experience that the cases which reach the ECJ, and even those which reach national courts of competent national authorities of bodies, are just the tip of the iceberg. In all Member States, levels of litigation and complaints are very low in relation to existing gender discrimination and inequalities, which affect mostly women. While men are ready to use employment law and, more particularly gender equality legislation, in order to improve their situation, women are reluctant to claim their rights. This is mostly due to lack of information and support; to the socio-economic context, which still promotes the image of women as dispensable workers and perpetuates the feminisation of poverty and social exclusion; to the fear of unemployment, which for women is much higher than for men and mostly long-term. Moreover, women are often unable to prove their case, since crucial evidence either does not exist or is possessed by the employer. Non transparent methods of assessment and indirect discrimination hamper access of women to employment and their advancement. The threat of deterioration of working conditions and the spectre of unemployment haunt the victims of discrimination and deprive them of witnesses. It is thus no wonder that the principle of effective judicial protection has been formulated and developed by the ECJ primarily in cases of gender discrimination and that the first directive dealing with the burden of proof applies to gender discrimination cases.

There is, consequently, a strong need to exchange and develop good practices, which help women claim their rights and obtain effective protection from the courts and other competent national authorities. KETHI and its partners, the Legal Aid Fund for Women, Austria, the National Centre of Information and Research for Women and Families (CNIDFF), France, the German Women Lawyers Association (DJB) and the Centre of European Initiatives (CDIE), Italy, must be congratulated for their idea to elaborate a Good Practice Guide and for the wealth of information they have each contributed thereto. The questions put by the questionnaire that served as a basis for this guide are very pertinent; the outline is very well articulated and makes the Guide's contents easy to find and to use. Panayota Petroglou, who was entrusted with the difficult task of drafting the Guide, has been able to classify all this material and to present it in a systematic, coherent and user-friendly way, against the background of existing Community law, taking also into account the ongoing process for the amendment of Directive 76/207/EEC on equal treatment of men and women in employment and professional training. The reflections and proposals, in conjunction with the analysis of the situation in the partner countries, as presented in each chapter, can contribute very considerably to the improvement of national legislation and to its more effective implementation. Furthermore, they are a substantive contribution to the efforts to update existing gender equality directives, in particular Directive 76/207.

² See in particular *Michel Verwilghen* (edit). "Access to equality between men and women in the European Community", Records of the Proceedings of the European Conference, Louvain-la-Neuve, 1992, Presses Universitaires de Louvain, 1993; *J. Blom, B. Fitzpatrick, J. Gregory, R. Knight, U. O' Hare*, "The Utilisation of Sex Equality Litigation Procedures in the Member States of the European Community. A comparative study", 1996; *Sacha Prechal, Linda Senden and Babette Koopman*, "Monitoring, implementation and application of Community Equality Law, General Report 1997 & 1998 of the Legal Experts' Group on Equal Treatment of Men and Women", European Commission, Employment & Social Affairs, 1999: http://europa.eu.int/comm/employment_social/equ_opp/index_en.htm. The two first of these publications are quoted in the Explanatory Memorandum of the Commission's Proposal for a Council Directive on the burden of proof in cases of discrimination based on sex, in support of the statement that gender discrimination persists and that several measures have to be taken, including Community legislation on the burden of proof.

As pointed out in its Introduction, this Guide is primarily addressed to policy makers. The hope is also expressed that it will be a useful tool for all actors involved directly or indirectly in the pursuit of gender equality: State, regional and local administration, equality organisations, labour inspectors, union officials, employers organisations, NGOs, individual employers and individual women and men. Indeed, this Guide is worth reading very carefully by all actors, at both national and Union level, to the benefit of them all. It is, undoubtedly, a valuable tool for promoting the achievement of real, substantive, gender equality, a universally recognised fundamental principle and human right and a strategic goal of the Union.

Athens 15 December 2001

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INTRODUCTION

Gender equality has been strengthened by the Treaty of Amsterdam: substantive gender equality is now proclaimed as a task and an aim of the Community.

However, gender equality in day-to-day life is still being undermined by the fact that women and men do not enjoy equal rights in practice. Women are not integrated in the labour market as well as men. They generally have less regular and secure jobs and carry more of the burden for the care of the children and other dependants. Moreover, women's employment rates remain low whereas women's unemployment rate remains systematically higher than that of men. Even in those countries where women have achieved high employment rates, there is still segregation of women and men in the labour market, and women are paid less than men for the same work or work of equal value.

Moreover, experience and research have shown that in the Member States levels of gender equality litigation and complaints are very low in relation to existing discrimination and inequalities, which affect mostly women. Lack of information and support, (mostly long-term) female unemployment, difficulties in the collection of evidence, the fear of retaliatory measures against the victims and/or their witnesses along with the socio-economic context, which still promotes the image of women as dispensable workers and perpetuates the feminisation of poverty and social exclusion, are important reasons for this situation¹.

In this context, the promotion of gender equality should be recognised as one of the fundamental strategic guidelines in all social policy areas and should be supplemented by specific measures concerning women's access to decision-making and the **reinforcement of equality-related rights and of the rights aimed to reconcile family life and working life.**

This necessity led to the idea of writing a Guide which would highlight good practices that promote and ensure the enforcement of gender equality rights across the 5 partner countries, enriched with some general reflections and proposals for future action. The objective of the Guide is to help raise the level of awareness and the exchange of experience in this field. Although addressed primarily to policy makers, it will - hopefully- be also a useful tool for all actors involved directly or indirectly in the pursuit of gender equality rights: State, regional and local administrations, equality organisations, labour inspectors, union officials, employers' organisations, non governmental organisations, employers and individual women and men.

This Guide is one of the results of the project "**Equality Rights: from Legislation to Everyday Life**", run within the framework of the Fourth Community Action Programme on Equal Opportunities for Women and Men and promoted by the **Research Centre for Gender Equality (KETHI)**. KETHI is a legal entity under

1. See S. Koukoulis-Spiliotopoulos, "From Formal to Substantive Gender Equality, The Proposed Amendment of Directive 76/207, Comments and Suggestions", based on a paper presented to the Committee on Women's Rights and Equal Opportunities of the European Parliament on the occasion of the public hearing of 28.11.2000, Marangopoulos Foundation For Human Rights, Sakkoulas/Bruylant, 2001.

private law, founded in 1994 and supervised and funded by the General Secretariat for Equality of the Ministry of the Interior, Public Administration and Decentralisation which, among its other aims, offers information and consultation services on women's employment and legal advice to women, enabling them to better qualify for employment or to improve their position and exercise their rights in the labour market.

The aim of the project "Equality Rights: from Legislation to Everyday Life" was to exchange information and experience with transnational partners on methods and good practices for exercising equality rights, to improve awareness amongst women on Community gender equality law, to empower, encourage and facilitate women to exercise their rights through legal action, to improve knowledge on Community Equality Law amongst law professionals, to improve services offered to women by legal advice agencies at prefecture or regional level, to encourage women lawyers' networking at national and European level and to develop a pilot programme for legal aid for women in cooperation with the Bar Associations in five Greek cities.

Along with KETHI, transnational partners from four Member States, selected on the basis of their experience and knowledge in the field of the exercise of gender equality rights, participated in the above project:

The French partner, the **National Centre of Information and Research for Women and Families² (CNIDFF)**, is a specialised organisation for the provision of information/consultation services on women's employment and legal advice.

The German partner, the **German Women Lawyers Association³ (DJB)**, is specialised in networking women lawyers and was one of the founding organisations of the **European Women Lawyers Association (EWLA)**.

The Austrian partner, the **Legal Aid Fund for Women** supports judicial or administrative proceedings concerning women and their children in all fields of law (e.g. social security, labour law, family law, protection against violence) by financing a competent legal representation.

The Italian partner, the **Centre of European Initiative⁴**, has been designated by the Labour Ministry as an Equality Agency in Milano and as a local government agency expert.

The contents of the Guide are based on the partners' national reports, which are the responsibility of the following, to whom we are greatly indebted:

Austria

Anna Sporrer, European and constitutional lawyer, member of the European Commission's legal expert group on equality law, President of the Legal Aid Fund for Women **with the collaboration of Renate Egger**, psychotherapist, Counselling Centre for Women, Legal Aid Fund for Women, **Elfriede Fröschl**, sociologist, Counselling Centre for Women, Legal Aid Fund for Women, **Gerda Hammerer**, practitioner at law and **Eva Plaz**, attorney at law, Legal Aid Fund for Women.

2. Centre National d' information et de documentation des femmes et des familles (CNIDFF).

3. Deutsche Juristinnenbund (DJB).

4. Centro di Iniziativa Europea.

France

Chantal Chevrolier, National Centre of Information and Research for Women and Families (CNIDFF).

Greece

Panayota Petroglou, Lawyer in labour and gender equality law, KETHI.

Italy

Anna Catasta, in collaboration with **Elisabetta Maggi** and **Enrica Fasano**, Centre of European Initiative.

Germany

Cornelia Fischer, with the collaboration of **Juliane Freifrau von Friesen** and **Elisabeth Müller**, German Women Lawyers Association (DJB).

Panayota Petroglou was responsible for the drafting of the Guide, which, following the comments and suggestions of the transnational partners, acquired its actual form by a general consensus of us all.

The Guide will be published not only in Greek and English, but also in German, French and Italian, and the partners will take care of its dissemination in their country of origin.

The elaboration of the content of the Guide was based on a questionnaire addressing the key issues in the field of enforcement of equality rights and which actually correspond to the headings of the 9 chapters of the Guide: **Information/Consultation Services on Women's Employment, Legal Advice Services, Legal Aid Schemes, Judicial Process** (including locus standi to pursue judicial or other procedures, length of proceedings, protection of claimants/witnesses against victimisation, burden of proof and remedies), **Control Mechanisms** (including independent bodies, labour inspectorate and control mechanisms at international level), **Networking, Education/Training, Campaigns and Equality Friendly Policies** (including positive action measures, state grants/subsidies-public procurement and award of premiums/seals of quality).

Each chapter (and where necessary its subsections) is divided in four parts: Analysis of the situation in the partner countries, Reflections, Good Practices, Proposals.

When analysing the situation in the partner countries, we have tried to describe the good practices in the briefest possible way. However, this has not been always feasible without running the risk to leave ambiguities to the reader, due to the complexity of the various issues, measures or institutions and in particular due to the variety of the legal systems in the partner countries. Moreover we have considered that a more detailed description of the competencies and the function of independent equality organisations and institutions (such as the Equal Treatment Commission and the Ombudsperson for Equal Treatment in Austria, the Councillors for Equal Opportunities in Italy, the Commissioners on Women's Rights in Germany) may prove a valuable source of information and inspiration in the future, in view of the amendment procedure of Directive 76/207/EEC, on the implementation of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions⁵.

5. OJ L 39, 14.2.1976, p. 40-42.

As "good practices" are considered those provisions, institutions, measures, actions and policies that facilitate women's access to employment and the effective exercise of gender equality rights in the fields of training, employment and social security. However, it should always be kept in mind that their applicability must be examined closely in the framework of the particular legal system and socio-economic context of each Member State. Transplanting a good practice at the wrong time or under the wrong circumstances could produce adverse effects.

Under "Reflections", we have tried to present in a succinct way the problematic, which has so far been developed in each particular issue. Finally, in the section "Proposals", ideas and suggestions for future action that have not (or have not fully) been implemented in any of the partner countries are submitted to the reader for consideration. Most of these reflections and proposals are based on Community documents, papers of experts in Community law and research conducted at European level.

In particular, it should be stated that most of the issues dealt with in this Guide had been the subject of a comprehensive comparative study on the Utilisation of sex equality litigation procedures in the (then 12) Member States, conducted in the years 1993-1995 by Barry Fitzpatrick, Ursula O' Hare, Jeanne Gregory, Robert Knegt and Judith Blom for the Directorate General V of the European Commission. To its important findings, frequent reference is made throughout the Guide.

Moreover, the drafting of the Guide has coincided with the on-going procedure for the amendment of Council Directive 76/207/EEC. In this context, the proposals of the European Commission and of the European Parliament and the debate which has taken place on this occasion, has already focused on issues dealt with in the Guide, such as: the establishment of independent bodies, the locus standi of unions, NGOs and independent bodies to pursue judicial or other action on behalf or in support of the victim, group actions, the protection of claimants/witnesses from victimisation, the burden of proof, effective judicial protection and sanctions, annual equality plans, positive action measures and public procurement procedures, etc.

Thus, it happens that some of the reflections and proposals presented in the relevant chapters of the Guide are, partially or even fully, in line with some of those contained in the relevant proposals of the European Commission and the European Parliament, as well as in two well-known documents on the amendment of Directive 76/207: Sophia Koukoulis-Spiliotopoulos' book "From Formal to Substantive Gender Equality, The Proposed Amendment of Directive 76/207, Comments and Suggestions"⁷ and MEP Heidi Hautala's relevant report to the European Parliament⁸. The relevant positions and resolutions of the women NGOs: Greek Women's League for Women's Rights, Association of the Women of Southern Europe (AFEM), Deutscher Juristinnenbund (DJB) and European Women Lawyers Association (EWLA), have been taken into account as well.

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6. J. Blom, B. Fitzpatrick, J. Gregory, R. Knegt, U. O'Hare, "The Utilisation of Sex Equality Litigation Procedures in the Member States of the European Community. A comparative study", 1996.
 7. S. Koukoulis-Spiliotopoulos, *op.cit.*
 8. H. Hautala, Report on the proposal for a Directive of the European Parliament and of the Council 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, Committee on Women's Rights and Equal Opportunities, Report of 15.5.2001, EP Final A5-0173/2001.

Last but not least, we would like to thank all the transnational partners for their ideas, proposals and hard work. It is true that the drafting of the Guide has been a huge, difficult and time consuming task. However, the exchange of information and experience among the professionals participating in the project has been a very valuable experience, which we hope that the readers of the Guide will share with us.

I. INFORMATION/CONSULTATION SERVICES ON WOMEN'S EMPLOYMENT

ANALYSIS OF THE SITUATION IN THE PARTNERS' COUNTRIES

In the partner countries, information and consultation services on women's employment are provided by a wide range of public, semi-public or private organisations, trade unions, entrepreneurial associations, chambers of commerce and NGOs. The initiatives presented below are considered to involve high level of expertise and to offer these services in a systematic, comprehensive and innovative way.

In **Austria**, the **Association for the Promotion of Employment, Training and Future of Women in Vienna ("abz-wien")**⁹, founded ten years ago, has proven to be an innovative good practice in the field of consultation/information services on women's employment. The aim of "Abz-wien" is to promote employment of women returning from parental leave. Women are given advice and job orientation, are trained on the job and employed by the institute as "transit employees"; during this training they are "lent" to enterprises for a period of 8 weeks, their employment relationship being with the association, to which the enterprise gives a financial contribution. After this probation period, it is up to the private enterprise to employ them or not; however, a high percentage of 80-90% of trained women continue employment with the same enterprise or are subsequently employed by other undertakings. "Abz-wien", which regularly collaborates with more than 50 undertakings in Vienna, offers job orientation courses to approximately 130 women per year and provides approximately 40 jobs for "transit employees" per year.

This initiative is financed by the Labour Market Service and provides not only consultation of women and employers on personnel recruitment, but also offers intensive practice, like office management, IT and media courses to women and IT and office services to undertakings.

In **France**, the **National Centre of Information and Research for Women and Families (CNIDFF)** animates and coordinates **the national network of Information Centres on Women Rights (CIDF)**, consisting of 121 local associations and 22 regional unions, with the aim to promote equal opportunities between women and men. The CIDF provide on a multi-disciplinary basis information and consultation services, ranging from simple interviews to advisory consultations and from close support at the outset to individual or collective follow-ups in the juridical, professional, economic, social and family field.

The CIDF, currently employing 873 employees, run 770 information centres in France, where 312.616 persons sought advice and 469.333 requests for information were dealt with in 1999.

One of the main tasks of CIDF is to **support women's access to employment, training and the creation of professional activities**. In carrying out this task, CIDF closely collaborate with National Employment Agencies and are regularly involved in the planning for integration and employment at regional and local level.

9. Verein zur Förderung von Arbeit, Bildung und Zukunft von Frauen - "abz-wien".

To better achieve their goals in the employment field, CIDF have proceeded since 1985 to the creation, within their organisational structure, of the so-called **Offices of Individual Support for Employment (BAIE)**. BAIE aim to support individual women, facing particular difficulties related to integration in the employment market, to allow them to realistically formulate a concrete employment programme and to offer them the methods, technical means and literature for its realisation. BAIE's methodology is based on the concepts of flexibility (i.e. the needs and limits of the individual woman are taken into account), duration (i.e. the time necessary to change the rhythm of the individual woman is taken into account) and moral contract (a definite goal is set from the beginning of the collaboration between the consultant and the woman involved).

In their support services, BAIE make great use of the **Portfolio** (or competence folder) concept, developed since 1983 by CIDF. The Portfolio works as a tool which allows women to self-evaluate their capacities for training, to recognise their strong points and give them value by choosing a realistic orientation; thus, they acquire a better self-image and a bigger certainty about their objectives and can reclaim their own way.

The Portfolio method aims to develop a framework for recognising experiential assets. It corresponds particularly well to the need of women who lack qualifications in relation to the positions that they hold and has proven an effective and reliable tool in order to transform qualities into qualifications.

In **Greece**, information/consultation services on women's employment are provided by **the Research Centre for Gender Equality (KETHI)** in Athens and the 4 major Greek cities: Thessaloniki, Patras, Volos and Heraklion.

KETHI is a legal entity under private law, founded in 1994 and supervised and funded by the General Secretariat for Equality of the Ministry of the Interior, Public Administration and Decentralisation. The basic aim of KETHI activities is women's advancement in all areas of political, economic and social life, within the framework of the policies defined by the General Secretariat for Equality.

Actually KETHI runs 5 Information and Counselling Units for Women's Employment in Athens and the 4 major Greek cities Thessaloniki, Patras, Volos and Heraklion whose aims are to facilitate the integration and re-integration of women in the labour market, to promote women's entrepreneurship and to offer counselling to unemployed women, enabling them to effectively pursue their personal and employment aims.

Along with these units, KETHI operates in the same cities Information and Counselling Units for Women's Social Intergration which provide psychological-social support and counselling to socially excluded women for their integration or reintegration in the labour market and in society.

In **Italy**, the **Women's Information Desks** were set up within the framework of European projects of the EU NOW Initiative during the 1994-1999 period, forming part of the European Social Fund's Multi-regional Operational Programmes or covered by regional or local funding.

Women's Information Desks are organised: a) as public services situated in public employment organisations, b) as services provided by private social organisations through contracts with the local authorities or c) as services of the local authorities themselves. They provide special services addressed to

women who seek employment, including vocational guidance and insertion in the workplace as well as support to women employed in atypical jobs, thus allowing a broad-based approach to the inactive female population which is in precarious financial conditions.

Moreover, the Women's Information Desks:

- provide information on employment rights and equal opportunities.
- promote all over Italy employment services focused on 'inactive' and unemployed women.
- experiment integrated pathways provided by several services in relation to employment and social services.
- experiment pathways aiming to allow women users to carry out an overall assessment of their skills but also to draw up their own professional project.
- experiment pathways for inserting women in entrepreneurial activities.
- develop networking-based employment.
- develop actions to improve the quality of female employment, especially in situations where women find that they have reached a glass ceiling, when they have no further prospects or when their jobs lead to segregation.

Moreover, in **Italy**, the **Resource Centres**, developed within the framework of the European inter-regional co-operation projects Recite II, aim to integrate women in the socio-economic context and to facilitate their access to resources and opportunities within the local development plans through the provision of information, support to planning as well as training. They focus on the creation and/or reinforcement of the local centres for equal opportunities, most often municipally run services, which provide first-phase information and legal support to women facing problems in entering the workplace or personal difficulties.

In **Italy**, it is ascertained that co-operation between the various services addressed to women who face difficulties in entering or re-entering the labour market is getting more and more indispensable and that the combination of expertise and experiences not only facilitates the access of women to the labour market but may solve personal and social problems as well. In view of the above, the Italian Minister for Labour has recently issued a national call for bids to promote a tool of technical assistance for all employment centres in order to develop support actions for the insertion of women in the labour market. The call for bids includes a well elaborated repertory of methodologies, experimentation on overall skills assessments in groups as well as on an individual basis and actions for disseminating and increasing awareness of such opportunities addressed to decision-makers in the fields of active employment and policies for equal opportunities.

REFLECTIONS

1. In almost all Member States, the **unemployment rate remains systematically higher for women** than for men and **long term unemployment hits harder women** than men, while overall women's employment rates remain low in many Member States. Even in those countries where women have

achieved high employment rates, the **segregation of women and men in the labour market** remains a major concern in the European Union. Women generally have less regular and secure jobs and carry more of the burden for the care of children and other dependants.

2. In this respect, the European Social Agenda, as endorsed by the Nice European Council, recalls that the Lisbon European Council set a **goal of full employment in Europe** in a society more adapted to the personal choices of women and men. The ultimate goal is to bring the employment rate (which currently stands at an average of 61%) up to a level which is as near as possible to 70% by 2010 and to increase the proportion of working women (currently an average of 51%) to over 60% by 2010.
3. In this context, **information and consultation services focusing on the integration or reintegration of women in the labour market** should be developed at State, regional, local level, on a public or private initiative. Such services **have to address the causes of women's actual situation in the labour market and develop specific tools that allow a more individualised approach to each particular case.**
4. Moreover, **research on the quantitative and qualitative output of such tools** at Community and national level will help evaluate their effectiveness.
5. Finally, **dissemination of information and experience** on the adoption and implementation of such tools and the results of relevant research could prove valuable in the context of designing the Member States' employment policies.

GOOD PRACTICES

- *Information and consultation services for women who return from parental leave and seek to re-enter the labour market, including intensive practice and on the job training and subsidised placement in private enterprises for a fixed time period (Austria).*
- *Elaboration of methods and tools that allow more individualised information/consultation and support services (France).*
- *Special information/consultation services for women who seek employment, including vocational guidance and insertion in the workplace, as well as support to women employed in atypical jobs (Italy).*
- *Community funding of local centres for equal opportunities which provide information and legal support to women facing problems in entering the labour market (Italy).*
- *National call for bids to promote tools of technical assistance for all employment centres in order to develop support actions for the insertion of women in the labour market (Italy).*

PROPOSALS

- * To establish **information and consultation services focusing on the integration or reintegration of women in the labour market** at State, regional, local level, on a public or private initiative and promote the already existing ones.
- * To promote the elaboration of methods and tools that allow **more individualised information and consultation services for women** who seek to enter or re-enter the labour market and **research for their evaluation in quantitative and qualitative terms** both at Community and at national level.
- * To **take into account research and experience on such methods and tools in the context of Member States' employment policies and the Council Decisions for their Guidelines.**

II. LEGAL ADVICE SERVICES

ANALYSIS OF THE SITUATION IN THE PARTNERS' COUNTRIES

Legal advice services offered by Trade Unions, Chambers of Labour

In **Austria**, in the field of labour law and in particular gender equality labour law, the Chamber of Labour¹⁰ and the Trade Unions support employees by offering free legal advice.

More specifically, members of the Chamber of Labour are entitled to free legal advice in labour and social security cases. According to the statutes of the Austrian Federation of Unions, every member of a trade union may make use of the facilities the union provides, but there is no legal entitlement to support. Free legal advice is given to all members in vocational training or employment cases.

In **Italy**, trade unions provide free legal advice to their members by legal experts in gender equality law.

Legal advice services offered by Labour Inspectors

In **France, Greece and Italy**, Labour Inspectors offer to employees and employers free legal information and advice in labour law cases, mainly in the framework of individual litigation, with the aim to prevent and regulate rising conflicts. The advisory role of Labour Inspectors is very important, in particular as far as it concerns the immediate satisfaction of claims in the form of out-of-court settlements. Actually, in an important number of cases Labour Inspectors intervene effectively between employers and workers, achieving a peaceful solution of their disputes.

Legal advice services offered by Equality Independent Bodies/Agencies

In **Austria**, the **Ombudspersons on Equal Treatment** support employees by offering free legal advice in employment equality law cases.

In **Germany**, **Commissioners for Women's Rights**¹¹ aim at the implementation of equal chances between women and men. It is an institution which is obligatory only in the public sector and can be found both in the administration at federal and regional level and in numerous municipalities and universities.

The first Commissioner was appointed in 1975 in Nordrhein-Westfalen. Until 1982 many other Länder followed this example by establishing such posts in their administration. Today Commissioners for women's rights can be found at federal level as well as in every Land. Since the beginning of the eighties, positions for Commissioners were created at local level, too. Nowadays, about 1265 Frauen- und Gleichstellungsbeauftragte work in local administrations.

The status of Commissioner for women's rights within the administrations at federal and regional level follows two different models: according to the "administrative concept," the Commissioner is part of the administration and fulfills his/her functions as a civil servant and public official. According to the "staff

10. The Chamber of Labour represents all non-self-employed persons in the private sector compulsorily and is governed by the "Chamber of Labour Act".

11. Frauenbeauftragten und Gleichstellungsbeauftragten.

council concept", the commissioner is elected by the female employees and his/her post is honorary.

One of the tasks of Commissioners for women's rights is to offer consultation services on all issues concerning the employment situation of female workers. Such services cover dealing with complaints, for instance of sexual harassment, as well as offering advice on opportunities for career advancement, on issues related to the employment situation of working mothers or the elimination of existing disadvantages to the detriment of women workers.

In order to provide more efficiently legal advice services, Commissioners for women's rights are entitled to organise consultation hours and meetings.

In **Italy**, **Councillors for Equal Opportunities** provide free information and advice on gender equality labour law.

Legal advice services offered on a semi-public or private initiative

In **France**, some **Information Centres on Women's Rights (CIDF)** organise legal advisory services for the public offered by lawyers specialised in employment law or by industrial counsellors. In the **C.I.D.F. of Creteil** (in the suburbs of Paris) in collaboration with the Bar Association, legal advisory services for the public are held once every fifteen days through appointment with specialised lawyers indicated by the Bar Association. Thus, 4 to 5 persons per day receive free legal advice. In the **C.I.D.F. of Nancy** (in the North-East of France), legal advisory services for the public are held once a month through appointment with an industrial counsellor. There are about 20 cases monthly, most of which concern sexual harassment (the victims are mostly women), dismissals, redundancy payments, psychological pressure. Above legal advisory services for the public are free and the lawyers are volunteers. All persons have equal access thereto.

Currently, at the **Paris Bar Association**, specialised lawyers offer to the public free legal advice which is going to be extended to labour law cases as well.

In **Greece**, free legal advice in gender equality law is offered in the **Information and Counselling Units for Women's Employment of the Research Center for Gender Equality (KETHI)** in Athens and the 4 major Greek cities: Thessaloniki, Patras, Volos and Heraklion.

Statutory legal aid (for legal advice)

In **France**, statutory legal aid covers the so-called "access to the rights" as well.

Aid for access to rights includes: a) general information about rights and obligations, as well as orientation toward competent organisations; b) aid in the accomplishment of every initiative with the aim of exercising a right or the execution of an obligation of judicial nature, and assistance during non-judicial procedures; c) consultation in judicial matters; d) aid in preparing and lodging judicial documents.

The Departmental Council for Aid in the Access to Rights decides on the sum of consultation fees, which can remain at the charge of the beneficiary according to his/her resources and the nature of the consultation.

In **Germany**, the law on legal aid (for legal advice)¹² grants aid for out-of-court enforcement of one's

12. Das Beratungshilfegesetz.

rights. Such aid covers advice as well as representation.

Free legal advice is given by the Court of first instance in civil proceedings¹³ or by attorneys at law to persons lacking the financial means to cover the costs of legal advice.

However, as in the context of statutory aid lawyer fees are too low (approx. 10 Euro per advice), most lawyers are reluctant to work on this basis and prefer to offer legal advice in advice centres established following an agreement with the administration of justice in the Länder.

REFLECTIONS

1. Awareness of equality principles and concepts, the scope of Community equality law and the national provisions consistent with it is often limited not only among individual employees, but also among employers, union officials and general legal practitioners. Thus, along with the often complex nature of the concepts involved, notably indirect discrimination and equal pay for work of equal value, make indispensable **the provision of expert, reliable and accessible legal advice on gender equality issues.**
2. **Legal advice with a high level of expertise ensures the identification of even opaque gender equality cases.** Moreover it can lead to **satisfactory out of court settlements.** Thus, long and costly litigation procedures may be avoided. Nevertheless, even if this is not the case, expert legal advice **ensures in the best way access to non judicial and judicial protection and can facilitate the collection of evidence,** especially in cases of equal pay for work of equal value, indirect discrimination, sexual harassment, before the initiation of judicial action or at the pre-hearing stage.
3. **Legal advice should be covered by statutory legal aid, before and irrespective of the initiation of judicial proceedings.** However, **if income conditions for entitlement thereto are too strict, wronged individuals, who in gender equality cases are mostly employees or pensioners, will not be able to meet them.**
4. This gap cannot be effectively filled by **Labour Inspectors:** equality does not always rank high on their list of priorities. Even if the case is not so, they are usually overburdened with workload and lack the necessary means and staff. Moreover, they do not dispose of the necessary expertise to identify and deal with gender equality issues, notably the opaque ones, concerning payment systems and indirect discrimination, which are directed at the structures of the labour market and are applicable to groups of workers¹⁴.
5. **Within trade unions,** gender equality issues are not always high in the agenda and sufficient resources do not always exist. Moreover, trade unions are usually reluctant to support claims against provisions of collective agreements signed by them or against members of the same union (e.g. in sexual harassment cases).

13. Amtsgericht.

14. See J. Blom. B. Fitzpatrick, J. Gregory, R. Knecht and U. O' Hare, op. cit.

6. Women's or Human Rights NGOs cannot be an alternative, due to their often limited resources.
7. In this context, it seems that **legal advice of a high level of expertise could be better provided by Equality Independent Bodies/Agencies.**
8. However, in order to ensure the widest possible coverage and the decentralisation of legal advice services, **networking between all the above actors** (Equality Officers/Independent Bodies, Labour Inspectors, trade unions, NGOs) is deemed necessary; moreover **partnerships with the local Bar Associations** for the creation of legal advice centres within the Bars or within local employment information centres should be considered.

GOOD PRACTICES

- **Free legal advice** by Trade Unions (*Austria, Italy*), the Labour Inspectorate (*France, Greece, Italy*), Equality Officers/Independent Bodies (*Austria, Germany, Italy*), legal advice centres (*Germany*) and employment information centres (*France, Greece*).
- **Scheduling of consultation hours and meetings within the administrative units of the public sector by Equality Officers** (*Germany*).
- **Partnership between information centres for women's employment and the local Bar Associations for the provision of free legal advice** (*France*).
- **Coverage of legal advice by Statutory legal aid schemes** (*France, Germany*).

P R O P O S A L S

- * To ensure that **legal advice is covered by statutory legal aid without too strict income prerequisites.**
- * To promote the provision of **legal advice within the administrative units of the public sector.**
- * In order to ensure the provision of legal advice of a high level of expertise, to promote **networking between all possible actors in gender equality litigation and specialised Equality Independent Bodies/Agencies.**
- * To promote the **creation of legal advice centres through partnerships with local Bar Associations and to make available the necessary funding therefore.**

III. LEGAL AID SCHEMES

ANALYSIS OF THE SITUATION IN THE PARTNERS' COUNTRIES

Statutory Legal Aid

In all partner countries, conditions for statutory legal aid are so strict, that it seems that victims of discrimination can seldom benefit from legal aid in order to bear the cost of -often lengthy and expensive- judicial procedures.

In **Austria**, the general legal aid provisions are laid down within the Civil Rules of Procedure and the General Administrative Rules of Procedure: the decision making body has to allow legal aid, provided that: a) the claimant is not able to bear the costs of litigation, b) the claim could not be raised without obvious impairment to her/his indispensable maintenance and c) the claim is not obviously mischievous or without prospects.

In **Germany**, provisions on legal aid for representation in court are included in the Code of Civil Procedure. The basic principle of legal aid is that the instituting of legal proceedings or defense to preserve rights must not materially damage the position of the applicant or his/her family. As a consequence, the State grants financial aid to persons who lack the financial means to cover the cost of a legal action. Legal aid is applicable in all judicial proceedings, including proceedings before labour courts. The legal aid is granted on a regular basis if the applicant has not sufficient financial means and if his or her lawsuit may be -at least partially- successful. The Constitutional Court of Germany held that the check of possible success in court by the judge must not be too strict; the judge has to check if a person with sufficient financial means would reasonably decide to file a law suit or to defend himself or herself against a law suit. In general, legal aid functions sufficiently.

In **France**, the statutory legal aid system includes both judicial aid and the so-called aid for the exercise of one's rights out of court or in prejudicial procedures. Judicial aid consists in financial aid granted by the State to persons with insufficient resources at the time of a legal action. It is intended to cover expenses related to procedural costs (honoraria for the lawyer, bailiff costs, expert or technical costs, costs of the process or execution of a legal decision, indemnities to the witnesses). According to the size of the interested party's monthly revenue and family responsibilities, the aid can be total (the costs being taken up entirely by the State) or partial (the costs assumed being only a quarter or a half). The ceilings fixed for entitlement to judicial aid are revised each year. If the conditions on the resources are met, French as well as foreign citizens, under certain conditions or for particular procedures, can benefit therefrom. Judicial aid is granted at every procedural level, for actions aiming to attack (the petitioner will have to justify that the action is not obviously without grounds) or to defend oneself or for the execution of a rendered judgement. Such aid can be granted for a bargaining procedure, before the initiation of a judicial litigation as well.

In **Greece**, legal aid is almost inexistent, because procedural provisions that allow litigants to be exempted from costs and have a lawyer appointed for free assistance are rigorous (one has to establish he/she is a pauper) and rarely applied.

Legal Aid provided by Trade Unions

In **Austria**, the Chambers of Labour¹⁵ are legally obliged to offer to their members legal advice and representation at courts in labour and social security cases. During the last 5 years, the Chamber of Labour (which has regional chambers in all Austrian regions) intervened in 70 cases concerning equal treatment issues, the half of which are related to sexual harassment at the workplace.

The statutes of the Austrian Federation of Unions have specific provisions on legal protection for workers as well. Every member of a union may make use of the facilities the Union provides, but there is no legal entitlement to support. Free legal aid (*gratis*) is given to all members in cases related to vocational training or employment. Legal aid covers legal advice, interventions and representation before the courts or administrative authorities, except in cases which arise between members of the unions (e.g. in sexual harassment cases). All cost is borne by the Federation of Unions. Nevertheless, there are almost no gender equality law cases supported through legal protection by the trade unions.

In **Italy**, trade union organisations dispose of experts in legal issues and jurisprudence and provide free legal assistance to their members.

Legal Aid provided on a private initiative

In **Austria**, in 1998, the Austrian Association of Women Lawyers, the Counselling Centre for Women and the Vienna Women's Shelter Association set up the Legal Aid Fund for Women as an association under the Austrian "Act on associations". This Legal Aid Fund supports judicial or administrative proceedings concerning women and their children in all fields of law (e.g. social security, labour law, family law, protection against violence) by financing a competent legal representation. The first aim is to launch test cases, but the Fund also helps women in financially difficult situations. The cases, which are supported, are selected by a counselling forum, which consists of lawyers as well as social workers. The fund started its activities in 1999 and spent about 40.000 Euro for the support of 20 cases that year while in 2000 17 cases were supported at a cost of around 30.000 Euro. Approximately one third of these cases can be regarded as "test cases". The Fund is financed by private sponsors and by the Austrian government, though in 2000 the subventions by the government were restricted.

All cases, which have been supported by the Fund, could not have been brought to court, without the financial support of the Fund. This is due to the fact that women often lack the financial means and often have to maintain and to care for their children as single parents. The experience has shown that, without this financial support, especially women in crises would have to abstain from the enforcement of their rights.

15. See footnote 10.

Pilot legal aid schemes in the framework of equality programmes

In **Greece**, the Research Centre for Equality Issues (KETHI) was the first to promote the creation of pilot legal aid schemes for gender equality cases in the framework of the E.U. co-funded one-year programme "Equality rights: from legislation to everyday life". Actually, in close collaboration with the Athens Bar Association, 5 legal aid schemes were set up within the Lawyer Bars in Athens and 4 major Greek cities (Thessaloniki, Patras, Volos and Heraklion). The aim of this project is to offer free legal advice and representation before the Greek courts of any jurisdiction and instance and the European Court of Justice, to victims of sex discrimination, and in particular women, who have not sufficient economic means for this purpose (not necessarily paupers). Moreover, cases of general importance ("pilot test cases") can be funded through these legal aid schemes as well. The interested parties can choose their own lawyer or a lawyer from a list set up by each Bar. These lawyers offer free legal services and representation and are paid the minimum fees provided for each jurisdiction and instance directly from the local Bar through KETHI funding. Special training seminars have been organised for the lawyers interested in handling equality cases through this legal aid programme.

In view of the generally recognised success of this programme, efforts are made to support and continue the operation of the already created legal aid schemes and to encourage and promote the creation of new ones all over Greece.

REFLECTIONS

1. It has been ascertained¹⁶ that **the costs for pursuing gender equality claims through the judicial process are a major impediment to the utilisation of litigation** across the Member States. The issue of costs is particularly acute in relation to opaque equality questions, such as equal pay or indirect discrimination cases, given the complexity of the issues.
2. **Statutory legal aid is awarded under strict income conditions which, especially in labour law or social security cases, cannot be easily met by employees or pensioners.** Even when awarded, legal aid is not always available before all instances (including the ECJ preliminary reference procedure), or is insufficient to cover the cost of lengthy and expensive proceedings.
3. Especially as far it concerns **the procedure before the European Court of Justice**, it happens that lawyers hesitate to request preliminary references and judges often do not make them because of the costs involved. The conditions of legal aid laid down by ECJ Regulation, as those in most of the partners' countries procedural regulations, are so strict that only paupers can profit therefrom¹⁷.

16. See J. Blom, B. Fitzpatrick, J. Gregory, R. Knegt and U. O' Hare, *op. cit*

17. See S. Koukoulis-Spiliotopoulos, A. Petroglou and P. Petroglou, "Equality litigation", June 1995, Greek report in the framework of the comparative study on the Utilisation of sex equality litigation procedures conducted in the years 1993-1995 by B. Fitzpatrick, U. O' Hare, J. Gregory, R. Knegt and J. Blom for D.G. V, European Commission.

4. Legal aid is often crucial for litigation in **cases or test-cases aiming to establish for the first time case-law with a wider impact on national and Community jurisprudence and in cases affecting (directly or indirectly) a larger number of individuals**. Such cases do not usually satisfy the strict income conditions set by the procedural provisions on statutory legal aid, while they cannot be brought forward without any sort of financial aid.
5. Furthermore, **financial assistance** might be necessary **for legal representation in non-judicial procedures and at the pre-hearing stage** as well, especially as far as it concerns collection of evidence in cases of equal pay for work of equal value, indirect discrimination (i.e. statistical data), sexual harassment.
6. This gap cannot always be filled by **trade unions**: gender equality issues are not always high in their agenda and they often lack sufficient resources. Moreover, they are usually reluctant to support judicial action against provisions of collective agreements signed by them or against members of the same union (e.g. in sexual harassment cases).
7. Women's or Human Rights **NGOs** cannot be an alternative due to their often limited resources.

GOOD PRACTICES

- *Statutory legal aid in order to cover every stage of proceedings for the exercise of gender equality rights, including information and consultation in legal matters, assistance and representation before any competent authority or independent body and representation in judicial procedures (France).*
- *Free legal aid by Trade Unions (Austria, Italy) and Chambers of Labour (Austria) to their members.*
- *Funding or support by other means of legal aid schemes established by women's or human rights NGOs (Austria).*
- *Creation of pilot legal aid schemes with the collaboration of the Bar Associations through funding from Community programmes (Greece).*

PROPOSALS

* To provide **adequate statutory legal aid in administrative or other non-judicial procedures, at the pre-hearing stage, in all jurisdictions and judicial instances and before the European Court of Justice for low-income applicants, ensuring that the income ceilings thereto are not too strict**, given the specific nature of labour and social security gender equality cases.

* To **establish (and support eventual already existing) equality legal aid funds**, run by independent bodies, Bar Associations or NGOs having an interest in ensuring compliance with Community and national equality law, in order **to bring test cases of a general interest or group related gender equality cases** before national courts and the European Court of Justice.

IV. JUDICIAL PROCESS

The principle of effective judicial protection¹⁸, as a general principle, i.e. a binding legal norm, of Community law and a source of fundamental human rights has been formulated for the first time by the European Court of Justice in gender equality cases. In formulating and developing this general principle, the ECJ drew inspiration from Articles 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and from the constitutional traditions common to the Member States. Thus, this general principle ranks higher in the hierarchy of Community law than secondary law and prevails over the latter, imposing obligations on all Community institutions and organs and all national authorities (legislative, administrative, judicial).

The right to effective judicial protection implies the more particular rights to effective access to court, effective judicial control of compliance with Community law or national law which is consistent with it, and the right that real and effective sanctions be imposed.

IV.1. LOCUS STANDI TO PURSUE JUDICIAL OR OTHER PROCEDURES

ANALYSIS OF THE SITUATION IN THE PARTNERS' COUNTRIES

Locus standi of Trade Unions

From all partner countries, it seems that only in France, Austria and Greece trade unions have a -wider or narrower- locus standi to bring cases on behalf of or intervene in favour of their members in judicial or non-judicial procedures.

In **Austria**, the social partners represented within the Equal Treatment Commission¹⁹ are entitled to bring motions to the labour courts for declaratory judgements in the case an employer has not complied with the Commission's recommendations. However, since 1979 this legal measure has never been used by the social partners in any case (!).

Furthermore, collective bargaining partners are entitled to bring a motion to the Supreme Court for a declaratory judgement on the question of the existence or non existence of rights. This question has to deal with labour law matters and has to be of interest for at minimum three employees or three employers. These rights may derive from the application or non application of a collective agreement provision, which might be illegal under equality law. The Court may declare the provision as invalid; however, this is not an erga omnes nullity and only has consequences for the case concerned.

18. On the general principle of effective judicial protection, see S. Koukoulis-Spiliotopoulos, op. cit.

19. Chamber of Labour, Unions, Chamber of Economy, Federation of Industries.

In **France**, trade unions can bring a case in the name of the victim of discrimination in equal treatment or equal pay cases, provided they inform the victim in writing and the victim does not object within 15 days. In cases of sexual harassment, the trade union has to be provided with the victim's written consent.

Actually, a bill under the title "the law of social modernisation" expected to be passed at the end of June 2001, provides for locus standi of trade unions to institute judicial proceedings on behalf of wronged employees even without the latter's consent. The same bill provides that the personnel delegates can ask of their own motion the employer to remove discriminatory regulations or practices related to pay or working conditions; if the latter does not adopt the necessary measures, personnel delegates have standing to bring the case before the Conciliation board²⁰.

In **Greece**²¹, as far as it concerns the procedure in civil courts, unions have locus standi: a) to pursue individual claims of their members arising out of collective agreements or arbitration decisions, unless the aggrieved worker objects; b) to intervene in favour of their members in any trial the latter have started; c) to intervene in any trial concerning the interpretation or application of a collective agreement to which they are party or of an arbitration decision that covers them, with a view to protecting the collective interests at stake. In practice, unions sometimes intervene in favour of their members but rarely make use of the first and third possibility.

Unions and employers' organisations have locus standi to lodge petitions with the Supreme Administrative Court for annulment of collective agreements/arbitration decisions which have been extended by ministerial decision, provided that they bind them and affect all or a category of their members. In practice, they seldom challenge sex discriminatory clauses.

Locus standi of NGOs

It appears that, among the partner countries, only in **France** certain NGOs (e.g. the Association against Violence to Women at Work) have the locus standi to initiate judicial proceedings in the name of the victim of discrimination in equal treatment or equal pay cases, provided they inform the victim in writing and the victim does not refuse in 15 days' time. In cases of sexual harassment, the NGO has to be provided with the victim's written consent.

Locus standi of Equality Independent Bodies/Agencies

In **Austria**, the Equal Treatment Ombudsperson can seize the Equal Treatment Commission with a case, of her/his own motion or after an individual's complaint.

Moreover, in cases of sex discriminatory job advertising, the applicant as well as the Ombudsperson on Equal Treatment is entitled to bring a motion against job agencies before the competent administrative body (but not before the court).

²⁰. In France since 1986, conciliatory jurisdiction (Conseil de prud'hommes) is competent to regulate every individual conflict occurring at the conclusion, execution or breach of a work contract. The conflict can be resolved by way of conciliation or by a judgment after trial. The attempt of conciliation is obligatory and takes place in the presence of a counselor for the employer and one for the employee.

²¹. For the locus standi of trade unions in Greece, see S. Koukoulis-Spilliotopoulos, A. Petroglou, P. Petroglou, *op. cit.*

In the public sector, the competent Ombudsperson on equal treatment may submit information to the disciplinary authority with the victim's express consent, alleging a disciplinary offence against the presumed respondent. Furthermore the responsible Ombudsperson as well as the ministerial working group on equal treatment affairs are entitled to file an application before the Federal Equal Treatment Commission.

In **Italy**, public and private undertakings with more than 100 employees are obliged to submit a report every two years on the status of their male and female staff. When such reports show that discrimination of a collective nature exists, the Regional Councillor for Equal Opportunities can initiate legal proceedings against the employer.

Locus standi of individual workers to challenge for annulment collective agreements/ arbitration decisions

It seems that in the partner countries there is no established locus standi of individual workers to challenge for annulment collective agreements/arbitration decisions.

In **Greece**, in 1983 the Council of State, reversing its well-established case-law, deprived workers of the locus standi to lodge petitions for annulment of collective agreements/arbitration decisions, which had proved a most effective remedy. Since then, workers can only bring actions for amounts denied by virtue of an illegal clause in the First Instance Civil Court, but the clause remains valid. This is one of the reasons why discriminatory clauses have persisted until recently²².

In **Austria**, the repeal of discriminatory provisions of collective agreements is up to the social partners who have concluded it and can only be succeeded through political pressure; however, even here the Equal Treatment Commission has played an important role. After a working group of experts was charged to detect direct discriminatory wage groups for women²³ and other directly discriminatory provisions in collective agreements, those provisions were eliminated by the social partners.

In **Germany**, individual workers can challenge for annulment collective agreements only by including a claim for incidental review in their individual claim/action before the labour courts. A decision of an arbitration committee within the undertaking²⁴ can be challenged on legal grounds in the same way. Moreover, a decision of an arbitration committee can be challenged on the ground that the committee has exceeded the limits of its discretion only by the works council or the employer within a two weeks time limit.

22. A case of discriminatory clauses on family allowances of a 1981 arbitration decision covering contractual personnel of public hospitals led to the European Court of Justice judgement of 28.10.1999 (C-187/98 Commission v. Hellenic Republic): The Hellenic Republic was found to have failed to fulfil its obligations under Community law (art. 119 Tr., art.3 Directive 75/117/EEC) by not abolishing with retroactive effect, from the date of entry into force in Greece of these Community-law provisions, regulations which impose on married female workers conditions which are not imposed on their married male counterparts in respect of the grant to employees of family or marital allowances, allowances which are taken into account in determining their income for purposes of calculating pension rights.

23. Frauen-Leichtlohngruppen.

24. Einigungsstelle.

REFLECTIONS

1. Experience and research²⁵ have shown that levels of gender equality litigation and complaints are very low in relation to existing discrimination and inequalities, which affect mostly women. This is because, in many cases, isolated victims of gender discrimination, and more particularly **women, are reluctant to claim their rights and hesitate to initiate judicial or administrative proceedings or even make a complaint to any competent person or body**, due to lack of information and support, difficulties to prove their case and for fear of unemployment, deterioration of working conditions and victimisation.
2. Moreover, **class action has proved very effective in some Member States** in the case of discrimination affecting a group of persons; however, in this case, it may not be feasible to obtain the approval of each individual affected.
3. In view of the above, **associations, organisations or other legal entities should have locus standi to pursue judicial, administrative or other proceedings either on behalf or in support of wronged individuals or groups**, without any prejudice to the right of the latter to pursue such proceedings themselves. Thus, effective access to court, which, according to well-established ECJ case law, is an element of effective judicial protection, will be further promoted and better safeguarded.
4. Furthermore, experience has shown that **parties to collective agreements are reluctant to proceed to the amendment of or challenge for the annulment of discriminatory clauses contained in the collective agreements concluded by them**. Where the right to challenge for annulment such clauses is restricted only to the parties whereas individual victims of discrimination stemming therefrom do not have such a standing, discriminatory provisions may persist for long periods with multiple adverse effects for the wronged individuals.

GOOD PRACTICES

- *Locus standi of trade unions (France and Greece) and NGOs (France) to bring a case in the name of wronged individuals.*
- *Locus standi of trade unions to intervene in favour of their members in any trial the latter have started (Greece).*
- *Possibility for social partners represented in independent equality bodies, such as the Equal Treatment Commission in Austria, to bring to labour courts motions for declaratory judgments in case employers do not comply with this body's recommendations (Austria).*

²⁵ See S. Koukoulis-Spiliotopoulos, *op. cit.*

■ *Standing of independent bodies, such as the Councillors for Equal Opportunities in Italy, to initiate legal proceedings against public or private undertakings, when discrimination of a collective nature is evident in the periodical reports on the employment status of male and female staff, that employers have to draft and present thereto (Italy).*

■ *Locus standi of independent bodies to initiate non-judicial procedures of her/his own motion or after an individual's complaint (Austria).*

■ *Power of independent bodies, such as the Equal Treatment Ombudsperson in Austria, to bring a motion against job agencies for discriminatory job advertising before the competent administrative body (Austria).*

PROPOSALS

* To ensure that **the equality rights conferred by Community gender equality legislation and the national provisions consistent with it may be effectively relied upon** before the national courts by the persons concerned, after possible recourse to other competent authorities, even where discrimination occurs after the employment relationship has ended²⁶.

* To provide that **associations, organisations or other legal entities may pursue on behalf or in support of any individual or group, with their consent or approval, any judicial and/or administrative or other procedure** provided for the enforcement of rights or obligations under Community gender equality law or under national provisions consistent with it, without prejudice to the right of these individuals or groups to pursue such proceedings themselves²⁷.

* **To grant to associations, organisations or other legal entities** having an interest in ensuring that the Community gender equality law or the national provisions consistent with it are complied with, the right of collective action, i.e. the power to ask the court, of their own motion, to rule whether unequal treatment is present, aside from the particular circumstances of an individual case.

* To ensure that, **in case of failure of proceedings conducted by an association, organisation, or other legal entity without the participation of the complainant, the latter should not be bound by the res judicata**²⁸.

* To provide for the **locus standi of individual workers to challenge for the erga omnes annulment of discriminatory provisions of collective agreements/arbitration decisions**²⁹.

26. See S. Koukoulis-Spiliotopoulos, op. cit.; Hautala Report to the European Parliament on the amendment of Directive 76/207, op. cit..

27. Ibid.

28. Ibid.

29. See S. Koukoulis-Spiliotopoulos, A. Petroglou, P. Petroglou, op. cit.

IV.2. LENGTH OF PROCEEDINGS

ANALYSIS OF THE SITUATION IN THE PARTNERS' COUNTRIES

It seems that in all the partner countries judicial proceedings last quite long and it might take 1-2 years to obtain a first instance judgment (e.g. from 6-18 months in Germany to 1-2 years in Greece and France).

REFLECTIONS

The length of proceedings is a disincentive for litigation in any case. However, experience and research³⁰ have shown that the difficulties in the collection of evidence, the complexity of the legal principles, the interaction between national law and Community law, the scope for appeals and references to the ECJ and the consequent financial implications which are quite likely **in gender equality cases, have the effect of extending the length of proceedings even further.**

PROPOSALS

* To **examine the length of proceedings in gender equality cases** with a view to promote their speedier resolution.

IV.3. PROTECTION OF CLAIMANTS/WITNESSES AGAINST VICTIMISATION

ANALYSIS OF THE SITUATION IN THE PARTNERS' COUNTRIES

In **Austria**, there is no explicit legislation against victimisation in gender equality cases. Only where victimisation itself creates discrimination on grounds of gender, claimants or witnesses are covered. The Equal Treatment Commission has stated in several cases "follow up discrimination" of victims.

In **France**, the worker instituting an action for the respect of the principle of equal treatment is protected against dismissal or any disciplinary sanction. No employee who has testified on discriminatory actions or who has denounced them can be punished or dismissed. Any act of victimisation is null and void. The dismissal of an employee due to legal action brought by her-/himself or in favour of her/him relating to issues concerning employment equality, is null and void in case of lack of "real and serious reason" justifying it. In this case, the employee must be reintegrated and considered as if she/he had never ceased to be

30. See J. Blom, B. Fitzpatrick, J. Gregory, R. Knecht and U. O' Hare, op. cit.

employed. If the employee refuses reintegration, she/he is entitled to compensation at least equal to the salary of the last six months and to legal or conventional redundancy compensation.

In **Germany**, protection of claimants/witnesses is governed by the general procedural rules.

In **Greece**³¹, statutory protection of witnesses against victimisation is considered satisfactory. However, most workers prefer not to risk dismissal or detrimental modification of working conditions. Thus, although there is abundant case law on victimisation of workers for pursuing their own claims by judicial process or otherwise, there is almost no case law on victimisation of workers for assisting colleagues as witnesses in court, although the legal issue would be the same.

However, it has happened that penal courts convicted claimants and witnesses in recent cases of sexual harassment for slandering of the harasser, although the claim of the harassed worker had already been upheld by the labour court. Thus, the fear of initiation of penal proceedings against claimants and/or witnesses in sexual harassment cases, seems to be a major disincentive for litigation in sexual harassment cases.

REFLECTIONS

1. Experience and research³² have shown that, in view of the problems which make victims of discrimination, in particular women, reluctant to claim their rights (e.g. unemployment, lack of information and support, prejudices and stereotypes, increasing feminisation of poverty and social exclusion), **protection of claimants and witnesses against victimisation is absolutely necessary in order to enforce equality rights.**
2. Moreover, the European Court of Justice has ruled that, having regard to the fundamental nature of the right to effective judicial protection, **employees enjoy such protection even after the employment relationship has ended**³³. The protection afforded to them against retaliatory measures of the employer **should not be limited to cases of dismissal**, "which although an exceptionally serious measure, is not the only measure which may effectively deter a worker from making use of the right to judicial protection".
3. **Particularly in cases of sexual harassment, claimants and their witnesses suffer from retaliatory measures by harassers in the form of penal judicial action against them.**
4. In view of the above, **protection against victimisation should cover any adverse treatment or adverse consequence, including the taking of judicial action against claimants, even when taken after the**

31. For the protection of claimants/witnesses against victimisation, see S. Koukoulis-Spiliotopoulos, A. Petroglou, P. Petroglou, op. cit.

32. See J. Blom, B. Fitzpatrick, J. Gregory, R. Kneigt and U. O' Hare, o.p.

33. ECJ Case C-185/97 Coote [1998] ECR I-5199.

end of the employment relationship. Such a protection should not be limited to employees but should be provided also to candidates for employment or training, and trainees³⁴.

5. Furthermore, **anyone supporting in any way** (as a witness or otherwise, within the undertaking or the workplace, in or out of court, before a competent authority or agency or trade union or NGO) **a person who considers her/himself a victim of discrimination, should also enjoy the same protection**³⁵.

GOOD PRACTICES

■ *Protection of claimants in gender equality cases and of witnesses supporting workers against dismissal or any detrimental modification of working conditions or disciplinary sanctions. Any adverse treatment thereof or any adverse consequence thereon should be considered as null and void (France, Greece).*

PROPOSALS

* To introduce into the national legal systems such measures as necessary **to protect employees, candidates for employment or training, trainees, as well as trade union delegates, whatever their situation as victims or witnesses, from dismissal or any other adverse treatment or adverse consequence, including the taking of individual action against them, as a reaction to a complaint or to proceedings of any kind,** aimed at enforcing compliance with the principle of gender equality.

IV.4. BURDEN OF PROOF

ANALYSIS OF THE SITUATION IN THE PARTNERS' COUNTRIES

In **Austria**, Directive 97/80 on the burden of proof has not yet been fully implemented. More particularly, in the private sector, the Equal Treatment Act since 1990 provides for a kind of shift of burden of proof: a plaintiff in court has to state the circumstances of the discrimination in a reliable manner, whereas the claim has to be withdrawn when the employer can credibly show that there were other, non-discriminatory reasons for his/her conduct. However, Directive 97/80 requires stronger wording. In the public sector, civil servants employed on the basis of a private contract are not covered at all. For civil servants employed on the basis of public law, there is no need for implementation, because of the possible exemption of art. 4(3) of the above Directive.

34. See S. Koukoulis-Spiliotopoulos, op. cit.; Hautala Report, op. cit.

35. Ibid and Resolution of the European Parliament on the amendment of Directive 76/207 (31 May 2001).

In **France**, the employee has to bring forth elements and facts establishing discrimination and the employer to prove objective reasons justifying the inequality. Directive 97/80 has not been implemented yet, but a bill under the title "the law of social modernisation" is expected to be passed by the end of June 2001.

In **Germany**, generally parties bear the burden of proof of all the facts beneficial to them. As a consequence, the claimant has to prove all the facts founding her/his claim and the defendant has to prove all the facts denying the claim.

However, it is provided that differential treatment on grounds of sex is permissible only if such an agreement or measure related to access to work, working conditions or termination of the employment relationship or pay concerns an activity which, owing to its specific nature, can only be performed by workers of a particular sex. In this case, it is the employer that bears the burden to prove that the activity can be performed only by workers of a particular sex. By these provisions adopted since June 1998, the German legislator considered that Directive 97/80 has already been transferred into German law; however, legal experts do not unanimously agree with this.

In **Greece**, Council Directive 97/80/EC on the burden of proof in sex discrimination cases has not been transposed yet in the national legal order. According to the existing judicial procedure³⁶, the general rule is that the claimant must invoke and prove the facts on which the claim is based; the defendant has the burden of disproving them and proving the defences. If there is a rule and an exception in the legal provision to be applied, the defendant must prove the exception (e.g. that there is a serious reason justifying a dismissal during pregnancy and thereafter).

Moreover, proof of claims is facilitated by the following procedural provisions. At the pre-hearing stage any party may request that the court order: a) the personal appearance of both parties or their legal representatives at the hearing; b) that a public authority submit a document; c) that the other party produce certain documents. At the hearing stage: a) each part must produce documents used or invoked at the trial; b) each party or a third party must produce documents in his/her possession which may constitute evidence, unless there is a serious justification. An action for production of documents is possible as well.

On the other hand, the administrative procedure being inquisitorial, administrative courts have the power to request of their own motion, any useful information from any public authority, individual or legal person.

In **Italy**, a partial inversion of the burden of proof has been provided since 1991. When the plaintiff furnishes factual elements -derived even from statistical data on hiring, compensation schemes, assignment of duties and posts, transfers, career advancement and dismissal- suitable for presenting the allegation in precise and concordant terms, the existence of discriminatory acts or behaviour based on sex is presumed and the employer bears the burden to prove that no discrimination exists.

36. See S. Koukoulis-Spiliotopoulos, A. Petroglou, P. Petroglou, op. cit.

REFLECTIONS

1. The ECJ has formulated and developed the **principle of transparency of the employer's acts and/or omissions**³⁷. According to this principle, **once the person who considers her/himself a victim of discrimination establishes before a court or other competent authority a presumption or a prima facie case of direct or indirect gender discrimination, the burden of proof that there has been no discrimination should shift to the defendant**³⁸.
2. The shift of the burden of proof was provided by **Directive 97/80**³⁹ **on the burden of proof in cases of discrimination based on sex** and has been included, in an improved wording, in Council **Directives 2000/43/EC** "implementing the principle of equal treatment between persons irrespective of racial and ethnic origin"⁴⁰ and 2000/78/EC "establishing a general **framework for equal treatment in employment and occupation**"⁴¹.
3. However, although **the deadline for the implementation of Directive 97/80 has already expired, not all Member States have adapted their national procedural provisions thereto**.
4. Furthermore, **the shift of the burden of proof should apply even where it is an association, an organisation or another legal entity that pursues the proceedings on behalf of or in support of a wronged person or group**⁴².
5. However, **it should not apply to criminal procedures**, given the well-established general principle of the presumption of innocence in such cases⁴³.

GOOD PRACTICES

- *Implementation of Directive 97/80/EC (Italy).*
- *Procedural provisions that facilitate the production of evidence (Greece).*

37. See in particular ECJ Case 318/86 Commission v. France [1988] ECR 3559, para 27; Case 109/88 Danfoss [1989] ECR 3220, para 12; C-262/88 Barber [1990] I-1889, para.3.

38. See in particular Danfoss, op. cit., paras 14-16.

39. OJ L 14, 20.1.1998, p.6-8.

40. OJ L 180, 19.7.2000, p.22-26

41. OJ L 303, 2.12.2000, p.16-22.

42. Proposal of the German Association of Women Lawyers (DJB) endorsed also by the Greek League for Women's Rights and Association of Women of Southern Europe (AFEM). See S. Koukoulis-Spiliotopoulos, op. cit. para 47a and Annex.

43. *Ibid.*

PROPOSALS

* To take such measures as are necessary, in accordance with national juridical systems, to ensure that, **when persons who consider themselves wronged because the principle of equality between men and women has not been applied to them, establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of this principle. Such measures should not apply to criminal procedures.**

* To ensure that the **above measures apply to any legal proceedings pursued, on behalf or in support of any individual or group, by associations, organisations or other legal entities entitled thereto.**

IV.5. REMEDIES

ANALYSIS OF THE SITUATION IN THE PARTNERS' COUNTRIES

Nullity of discriminatory measures

In **Austria**, civil law in general distinguishes between "absolute" and "relative" nullity. The first sanction in case of discriminatory clauses in collective agreements is "relative" nullity, which means that it has to be declared by judicial decision. The consequence of such a declaration will be that the employees will benefit from better conditions⁴⁴. However, when the court finds a certain provision to be null and void, this will only have legal consequences in the case concerned. The nullity takes effect *ex tunc* and the claim is subject to the general Statute of Limitations (3 years for civil claims).

In case of pay discrimination, the employee has to receive the difference in pay.

Moreover, in discrimination cases related to social benefits, vocational training and conditions of work, wronged individuals have to be included in the relevant measures. As far as discriminatory dismissals are concerned, the victim is entitled to reinstatement together with backpay for wage losses since the date of the dismissal.

In **Germany**, in case of a dismissal, an employee must be reinstated, if she/he was dismissed on other grounds than conduct, inability or redundancy. However, where it appears from the circumstances of the case that it is not possible to maintain the working relationship, the court may decide that the employee is not to be reinstated but is entitled to compensation. In practice, such cases are very rare. The upper limits for compensation are the equivalent of 18 months' salary, depending on age and years of service.

44. There is a leading case Supreme Court's decision which declared a certain group of the wages' scheme within the collective agreement for workers in electricity plants as invalid because of indirect discrimination of women. This case was brought up to the Supreme Court by trade unions. The court found a certain group of the wages' scheme within the collective agreement for workers in electricity plants to be invalid, because of discriminatory classification criteria. Comparing the grading criteria of the lower group, in which only women were categorised, to the (male dominated) higher group, in which only 15% of all female workers were scaled, the court, with reference to Community equality law, found that those criteria were discriminatory because they only referred to physical abilities and were not adequate and proportional. As a result, the women were entitled to the higher wages' scheme.

In case of sexual harassment the employer has to take the adequate legal measures, including transfer or dismissal of the harasser. If the employer does not take any measure or takes only inadequate measures, the harassed employee has the right to stop working without losing her/his salary, if this is necessary for her/his protection.

In case of a discriminatory transfer, the wronged employee can refuse the lower- grade job and claim to be reinstated or accept the new job under the reservation that this new job is in accordance with the employment contract. If the court rules that the transfer constitutes a violation of the employment contract and is therefore unlawful, the employer has to reinstate the employee. The Works Council must be heard and must agree with the transfer as well. There are also restrictions on the possibility to transfer members of the Works Council, disabled persons or pregnant employees.

In **Greece**⁴⁵, in all labour disputes, the claimant can ask the labour court for a declaration that an act or omission of the employer concerning the claimant is null and void. Thus, if the claim is upheld: a) in the case of a refusal to hire, the claimant is considered automatically hired and awarded full pay since that hiring; b) in the case of a dismissal, the claimant is considered non dismissed and awarded full pay without interruption; c) in the case of non promotion, the claimant is considered retroactively promoted and awarded corresponding pay; d) a unilateral detrimental modification of working conditions amounts to dismissal. Worker may either object and continue working under initial conditions, claiming the salary agreed upon, or consider him/herself dismissed and claim redundancy compensation; e) in the case of pay discrimination, the claimant is entitled to the differential pay.

In administrative judicial proceedings, illegal administrative acts or omissions can be challenged for annulment. If the petition for annulment is upheld, the annulment has retroactive effect *erga omnes*: the act is invalid *ex tunc, erga omnes*, i.e. it is deemed as not having been issued while in the case of annulment of an omission, the competent authority must issue the act omitted.

In all above cases of nullity, the backpay or compensation is increased by legal interest which nowadays amounts to 12,50% yearly. However, the rate of interest to be paid by the State and legal persons governed by public law⁴⁶ amounts to only 6% yearly.

In **Italy**, dismissals due to maternity (during pregnancy or for one year after confinement, adoption or fostering of a child) or due to marriage (from the time of the wedding bans to a year after the wedding of male and female workers) are considered null. If a judicial claim is upheld, wronged individuals are awarded full pay since the dismissal and are entitled to compensation increased by legal interest and the legal expenses.

To protect workers from dismissals presented as "resignations", during the above mentioned time

⁴⁵ For remedies in the Greek legal order, see S. Koukoulis-Spiliotopoulos, A. Petroglou, P. Petroglou, *op. cit.*, T. Mitsou, "Les voies d' application en Grèce du droit de l' égalité des hommes et des femmes", in M. Verwilghen (edit.), *Equality in law between men and women in the European Community*, Louvain-la-Neuve, 1986, p. 193-314; S. Koukoulis-Spiliotopoulos, "Remedies in Equality Law: Judgement No 1360/1992 of the Greek Supreme Civil Court", in *Industrial Law Journal*, vol. 22, June 1993, p. 146-151, and "Les sanctions non pécuniaires", in M. Verwilghen (edit.), *Access to Equality*, *op. cit.* p. 133-159, Chr. McCrudden, "Access to Equality between Women and Men in the EC: the Lessons from the Louvain-la-Neuve Conference", in M. Verwilghen (edit.), *Access to Equality*, *op. cit.*, p.231-259.

⁴⁶ Among the latter are e.g. public hospitals, universities, social security organisations etc.

periods, resignations have to be submitted and confirmed by the dismissed workers within a month to the competent public authorities. If this procedure is not followed, workers are entitled to the compensation provided for dismissals.

Mere Compensation

In **Austria**, in case of discrimination with regard to access to work or career advancement, wronged individuals were entitled to compensation, which -in the private sector- had to be up-limited and even shared among all discriminated persons(!). After the ECJ Draehmpaehl case, the Federal Equal Treatment Act was amended and above provisions were abolished. Moreover, victims of sexual harassment are entitled to a compensation⁴⁷.

In **Germany**, in case of a refusal to hire, the applicant discriminated against may claim appropriate financial compensation⁴⁸. Due to the ruling of the European Court of Justice, the financial compensation can not be limited to 3 months' salary, as provided in the German Civil Code. However, the wronged applicant cannot claim to be employed.

Judicial orders requiring changes in employment practices

In **Italy**, when discrimination on the grounds of sex is ascertained, the judge may order the employer to establish a plan for removing the discrimination within a defined time limit. In doing so, the employer has to hear the company trade union representatives or, in their absence, the trade unions, as well as the competent regional councillor for equal opportunities, who is competent for subsequently checking whether discrimination has ceased.

Criminal sanctions

In **Greece**, the national legislation⁴⁹, which implemented the equal pay and equal treatment directives, does not provide for penal sanctions, although sanctions, as laid down by other provisions, are not affected. Actually, it seems that no such sanctions have been inflicted for breaches of Act 1414/1984.

On the other hand, the national legislation, which implemented Directive 92/85/EEC⁵⁰, provides -by reference to health and safety regulations- penal sanctions for employers in breach thereof⁵¹:

Moreover, according to a general clause, any breach of the labour legislation (including equality

47. Compensation at the minimum of ATS 5000 (approx. 363 Euro).

48. Paragraph 611a(2) of the Bürgerliches Gesetz Buch.

49. Act 1414/1984.

50. Presidential Decree 176/1997.

51. In the case of an intentional breach, imprisonment or fine of at least 100.000 GrDrs (293,5 Euros) or both whereas in the case of an unintentional breach, imprisonment or fine without any minimum level is provided.

legislation) on pay, working conditions, health and safety is punished by penal sanctions of imprisonment and/or fine⁵², except if it is otherwise provided in specific laws.

In **Italy**, criminal sanctions are provided: a) in case of non compliance of the employer with judgements or judicial orders⁵³, b) in the case of discrimination relating to access to work, equal pay, posts, duties and career advancement as well as retirement age⁵⁴, c) in the case of infringement of regulations on night shifts of pregnant women⁵⁵.

Administrative sanctions

In **Austria**, in cases of sex-discriminatory job advertising the applicant as well as the Ombudsperson for Equal Treatment Affairs are entitled to have recourse against job agencies before the administrative body. The sanction is an administrative fine⁵⁶.

In **Greece**, since 1998, Labour Inspectors are competent for imposing high administrative fines for any breach of labour law (including gender equality legislation)⁵⁷. Since then, all other administrative fines provided by specific legislation were abolished, except those provided for breaches of health and safety regulations. All the above fines are subject to recourse to the First Instance Administrative Courts.

Moreover, Labour Inspectors have the right to order that an undertaking in breach of any provision of labour law (including equality law) should provisionally stop -partially or totally- its operation for a period of up to 6 months. A provisional interruption of operation for a period longer than 6 months or even a definite interruption can be ordered by the Minister of Labour, after a Labour Inspector's reasoned proposal.

Sanctions related to grant, subsidies and public procurement

In **Italy**, when individuals who have stipulated tender contracts for public works, services or supplies are found to discriminate by acts, pacts or behaviour, this can lead to the rescission of the benefit. In more serious cases or in case of recurrence, this may lead to the exclusion of the person in charge from any other concessions of financial facilities or credit for a time period of up to two years. This provision is not enforced, if a settlement is reached.

REFLECTIONS

1. Sanctions are an element of effective judicial protection. Member-States should ensure that **real and effective sanctions for breaches of Community equality legislation and the national provisions**

52. Imprisonment for at least 3 months and fine of at least 100.000 GrDrs (293,5 Euros) or both are provided.

53. Imprisonment for up to 3 months or fine up to £.400.000 is provided.

54. A fine ranging from £. 200.000 to £. 1.000.000 is provided.

55. Imprisonment from 2 to 4 months or fine from £.1.000.000 to £.5.000.000 is provided.

56. A fine of 5000 ATS (approx. 363 Euro) is provided.

57. A fine of 50.000 GrDrs (approx. 146 Euro) to 30.000.000 GrDrs (approx. 88.054 Euro) is provided.

- consistent with it are not only provided, but effectively imposed in practice by the competent national authorities as well⁵⁸.
2. As far as it concerns civil sanctions, **injunctions or reparation in naturam** (e.g. reinstatement, nullity of a refusal to hire or to promote, nullity of a dismissal) **are far more effective than compensation and may be combined with it**⁵⁹.
 3. In cases where the sanction consists in **compensation**, this **must be adequate, proportionate to the damage sustained and dissuasive**. It may not be limited by an upper limit fixed a priori and may not have to be shared among all wronged individuals. Moreover interest should be awarded to compensate for the eventual devaluation of the capital sum of the compensation until its actual payment⁶⁰.
 4. A striking indication of the ineffectiveness of Community and national gender equality legislation has been the continuation of discriminatory job advertising in all the Member States. **Elimination of discriminatory job offers or advertisements or job descriptions**, whether addressed to the public at large or to a certain circle of persons, **cannot be left to individual litigation**, given the difficulties for the collection of proof and the reluctance of candidates to make judicial claims. It has to be sanctioned with administrative fines or other sanctions on the motion of independent bodies and/or competent public authorities⁶¹.
 5. However, actually, **administrative fines** for breaches of the gender equality principle, even when provided by national legislation, **are very low and/or seldom imposed** by the competent authorities, whereas the interruption of the operation of the undertaking might have adverse consequences for the workers as well. It has to be examined whether **other forms of sanctions (such as those linked to public grants or procurement procedures) could actually prove more effective**⁶².
 6. Finally, **judicial orders requiring changes in employment practices might lead to a more collective oriented, and therefore more effective, model of judicial protection**.

GOOD PRACTICES

■ *In cases of gender discrimination, reparation in naturam: e.g. reinstatement (Austria, France, Germany) and automatic hiring or promotion or, in case of unlawful dismissal, continuation of the employment relationship (Greece). More particularly:*

58. See S. Koukoulis-Spiliotopoulos, op. cit.; Resolution of the European Parliament, op. cit.

59. Ibid.

60. See H. Hautala, op. cit.; Resolution of the European Parliament, op. cit.

61. See S. Koukoulis-Spiliotopoulos, op. cit.; H. Hautala, op. cit.

62. See Resolution of the European Parliament, op. cit.

- a discriminatory refusal to hire is null and void and the claimant is considered automatically hired and awarded full pay since that hiring (**Greece**).
- in case of a discriminatory dismissal, reinstatement (Austria, Germany) together with backpay for wage losses since the date of the dismissal (Austria) or even better, nullity of the dismissal, i.e. the claimant is considered non dismissed and awarded full pay without interruption (**Greece**).
- in case of a discriminatory non promotion, the claimant is considered retroactively promoted and awarded corresponding pay (**Greece**).
- a discriminatory unilateral detrimental modification of working conditions amounts to dismissal (**Greece**).
- Resignation of female workers during pregnancy, maternity leave and up to a year after confinement, adoption or fostering of a child, as well as resignation of male and female workers for a period up to one year after marriage, have to be submitted to and confirmed by the worker at the competent employment public authorities (**Italy**).
- Administrative fines for discriminatory job advertising (**Austria**) and generally for any breach of gender equality legislation (**Greece**).
- Administrative sanctions related to public grants and subsidies and public procurement procedures (**Italy**).
- Judicial orders requiring changes in employment practices (**Italy**).

PROPOSALS

- * To ensure that **real and effective sanctions are provided and effectively imposed in practice** for breaches of Community equality legislation and the national provisions consistent with it. More particularly:
- * To establish **sanctions in the form of reparation in naturam** (e.g. reinstatement) for any breach thereof, including discriminatory refusal to hire.
- * To ensure that the **compensation awarded is not limited by upper limits fixed a priori, has not to be shared among all wronged individuals and includes legal interest** until the actual payment of the capital sum.
- * To establish **administrative fines or other type of sanctions** or readjust the already existing ones, so that they are **adequate and dissuasive**, especially in cases of discriminatory job advertising, and to **follow-up their enforcement and its consequences on discriminatory behaviours and practices**.

V. CONTROL MECHANISMS FOR THE IMPLEMENTATION OF EQUALITY LEGISLATION

V.1. INDEPENDENT BODIES

ANALYSIS OF THE SITUATION IN THE PARTNERS' COUNTRIES

The Equal Treatment Commission in Austria

In **Austria**, the **Equal Treatment Commission (ETC)** is an independent administrative body set up at the (nowadays) Ministry of Social Security and Generations which is activated before labour court proceedings or which operates in parallel with such proceedings and may express opinions or recommendations without binding force. The procedures before the Commissions can be compared to soft-law mechanisms comprising elements of mediation and arbitration. More particularly:

Austrian equality legislation provides for special enforcement machinery and procedures to be used by the Equal Treatment Commission, before or in parallel to court proceedings, which play an important role as far as it concerns access to courts; especially in cases of sexual harassment, an opinion given by the Equal Treatment Commission is often an indispensable precondition for successful judicial proceedings.

An employee who considers him/herself discriminated against has several options to enforce her/his rights: She/he can contact the Equal Treatment Ombudsperson to seek advice and support, she/he can file an application with the Equal Treatment Commission, she/he can directly bring a claim to the labour courts, or she/he can choose a combination of all three options. In addition to the assistance given by the institutions set up under the Equal Treatment Act, she/he also will get legal advice from the traditional representative bodies of employees, such as the trade unions and the Chamber of Labour.

In many instances, the Ombud seizes the Commission with a case, which can be followed by an individual complaint to a labour court. This is in keeping with the legislature's intention of providing for a pre-labour court procedure; in theory, however, -and there are some practical examples for that, too- it is also possible for cases to be dealt with simultaneously in different ways by the Commission, on the one hand, and the labour courts, on the other.

The Commission's decisions are delivered in the form of opinions or recommendations that are not binding. Unlike the labour courts, the Commission is an administrative organ that has no power of enforcement; all measures taken by the Commission are not coercive: while employers, for instance, and employees are obliged to furnish information, this obligation carries no sanction (*leges imperfectae*). Furthermore, the opinions and recommendations delivered by the Commission are not legally binding, either for the employer or for the labour courts, when the latter hear the case after the Equal Treatment Commission has given its opinion. The legislator has limited the Commission's power to legally not binding decisions intending to create an authority whose decisions would not compete with the ordinary judiciary.

The procedure before the Commission can be compared to a soft-law mechanism comprising elements of mediation and arbitration. The main aim of the procedure before the Commission is to mediate between

and conciliate the disputing parties; that is why the means and the scope of intervention are different from typical litigation procedures. The first step is to have mediation talks with all parties concerned; in the case of collective agreements, the Commission will initiate negotiations to reach a settlement. In addition to this, the Equal Treatment Commission can ask the employer to submit a written report, including a comparison of the number of women and men working in a specific area, together with information concerning working conditions, vocational training measures, advancement opportunities, as well as duration and conditions of termination of employment. If necessary, this report also needs to include data about the relationship between vocational training and career advancement.

As far as the law is concerned, the relationship between the Commission and the courts is only defined in vague terms. The courts can acknowledge the opinions of the Commission as private expert opinions, but they are not bound by them. A complaint brought before the Commission does not interrupt court proceedings and vice versa; the only thing is that the deadlines for claims to be brought to court will be interrupted by the Commission's procedure.

One of the problems in implementing equality law derives from the lack of follow-up mechanisms after the Commission has reached a decision, which means that the Commission gets to know whether its decisions have been acknowledged by the courts only by chance. Another problem is the complete lack of comprehensive information or statistics about the application of the Equal Treatment Act by the labour courts; only the Supreme Court's judgements are published.

Legally speaking, the Equal Treatment Commission is a "sui generis" institution, the like of which cannot be found in any other European country⁶³. The Equal Treatment Commission has been modelled as a "tripartite-body" inspired by the ILO-Statutes: there are four representatives from each side of industry (management and labour), as well as three members representing the State, one member representing the Federal Ministry of Economy and Labour, one the Federal Chancellery, one the Ministry of Justice; the latter is actually chairing the Commission.

As the Equal Treatment Commission represents both compulsorily representative organisations⁶⁴ as well as voluntarily representative organisations⁶⁵, it may be regarded as the "legalised" social partnership, which is a characteristic feature of the Austrian legal system.

The members of the Equal Treatment Commission who represent one of the social partners (management and labour) must state that they will exercise their mandate conscientiously and impartially. All mandates - even the Chair's - are exercised in an honorary capacity; the members must respect the confidentiality of business secrets and the privacy of the persons concerned; the sessions of the Equal Treatment Commission are not public. Despite the fact that the Commission's proceedings are not governed by procedural rules, the Equal Treatment Commission in practice applies the Administrative Rules of Procedure, which imply the requirement to establish the truth. This sets a clear contrast to labour court proceedings, where the parties can declare facts out of dispute. There is no cross-examination of the parties, especially not of the women concerned.

⁶³. Study of the Council of Europe.

⁶⁴. Chamber of Labour, Chamber of Commerce.

⁶⁵. Austrian Trade Union Federation, Association of Austrian Industrialists.

Despite the fact that the principle of equality includes mandatory provisions and is even binding for collective agreements, there is no direct effect on the collective (or individual) regulation as such. With regard to the autonomy of the parties to a collective agreement, the participation of the social partners in the Commission is thus highly important because the only way to eliminate discriminatory clauses in this field is by negotiation between the parties to the collective agreement. In 1985, the Equal Treatment Commission set up a working group of experts on collective agreements. As a result, the social partners eliminated most of the directly discriminatory provisions in collective agreements.

Another reason for including the social partners in the Commission's procedure is to make each party understand the position and arguments of the other and to mediate solutions which cannot easily be found by way of focusing on points of view in the course of judicial proceedings.

The Commission has the power to examine all issues concerning equal pay and equal treatment, including sexual harassment. The Equal Treatment Commission either decides on specific cases concerning individuals or on general questions concerning a discriminatory phenomenon or groups of individuals, for instance within the framework of a discriminatory collective agreement. In 1999 the Equal Treatment Commission delivered 12 decisions.

However, as the expert opinions or recommendations given by the Equal Treatment Commission are not legally binding, the only consequence of non-compliance with the Commission's recommendations by the employer is the entitlement of the social partners represented in the Commission to file a request with the labour court for a declaratory judgement to ascertain whether the employer's conduct has been discriminatory or not. Such judgements would have to be published. This can be regarded as a means of collective justice in this field, but social partners have never made use of it since its adoption in 1979.

When the Equal Treatment Commission gives opinions on general questions of discrimination, these opinions have to be published.

As far as it concerns the burden of proof in the Commission's procedure, there is no strict sharing of the burden between the complainant and the employer, as the Commission proceeds according to the General Administrative Rules of Procedure and therefore ascertains the truth.

The intention of the legislator was that the Commission's procedure should precede court action, in order to make it easier for the potential plaintiff to calculate the outcome and the cost-risk of the court proceedings. In some cases, the opinion of the Commission will be a necessary precondition for the court's judgement in particular on very detailed and specific questions. In fact, the work and expertise of the Commission over the almost 20 years of its existence have led to a high level of specialisation in equal treatment matters; therefore, it is no exaggeration to say that in Austria the Commission may be regarded as the vanguard of gender equality.

In contrast to this, many of the "hard-liners" among the lawyers feel that the first weakness of the measures and decisions taken by Commission might be seen in the lack of coercive power as well as the lack of legally binding sanctions. Some high court decisions show that the understanding of the specific character of the Commission is not widespread and common; the missing procedural rules create concerns

that the constitutional State might be put at risk and concerns with regard to Art. 6 of the Convention of Human Rights (fair trial) are raised. However, the lack of binding procedural rules can also be regarded as an advantage for the work and influence of the Commission. The Commission can be viewed as a soft law forum which tries to bring about changes in the opinions and the consciousness of the persons and institutions concerned, without which the implementation of anti-discriminatory regulations cannot be achieved. Thus, the Commission focuses its efforts on the elimination of discrimination by attempting to reach a friendly settlement between the persons and institutions concerned, and the lack of formal rules is felt to lead to more progressive results than other types of legal proceedings.

Nevertheless, one has to admit that the influence of the legal system on the reality of work is low as legal principles cannot easily overcome economic forces. Up to now, the labour market has been dominated by gender preferences favouring men. Men cannot become pregnant, for instance, they are considered to be more flexible and do not enjoy legal protection due to maternity or are - in contrast to women - not very often protected by law e.g. against dismissal during parental leave or leave for care. It would be an illusion to assess the potentiality of the law in this respect very optimistically, but with this in mind, it is important that the main representatives of the economic forces are integrated into the Commission's framework.

Despite the seemingly low impact of the principle of equal treatment on society, the "psychological effect" of the Equal Treatment Act and the Commission should not be underestimated: One has to consider, for instance, that it has led to the elimination of discriminatory provisions through negotiations on collective agreements and has promoted the respect of the parties to collective agreements for the legal principles laid down in the Equal Treatment Act. Moreover, practical experience has shown that an opinion given by the Commission can contribute to the exclusion of a discriminatory regulation from other negotiation positions and can result in an independent implementation within the framework of a specific collective agreement. Further cases, especially from the earlier days of the Commission's work, were resolved by friendly settlement and concluded informally; thus, "tough decisions" could be avoided. Other cases show that the mere threat of instituting Commission proceedings have led to remarkable results, especially in "semi-public" institutions like insurance companies, hospitals or banks which feared for their prestige. Another widespread effect can be achieved by the Commission's opinions on general questions, which have to be published.

Finally, it can be acknowledged that the institutionalisation of the Commission as a legally "low level" body and its mandate for non-judicial arbitration concur with the development towards non-judicial resolution and mediation of conflicts as they can also be found in the fields of family or penal law in the last years. Despite this fact, one has to admit that the importance of the "enforcement" of rights deriving from the principle of equality differs depending on whether such enforcement is obtained through the courts or through the Commission. Nevertheless, one has to remember that especially in the private sector, where an employee can be dismissed very easily, the "low level" procedure can entail advantages which cannot be guaranteed by "strict" courts proceedings.

Unlike in the public sector no evaluation has been made in Austria of the effects the Equal Treatment Act has in the private sector. Up to now, the political discussion as well as the reports on the effects of the Equal Treatment Act and the role and function of the Commission focus on the quantitative "output" and the length of the procedure. However, without any qualitative evaluation, the question of the role and function

of the Equal Treatment Commission cannot be answered adequately. The first step towards an evaluation of the effects would consist in the development of indicators for comparative studies; in Austria, this has not been done yet in respect of the private sector. Furthermore, an assessment of the importance of the Commission's procedure could also focus on the number of employees who benefit from it, or on indicators if general questions could be solved in leading cases and thus could be applied on a broader basis.

Despite the fact that the effects of the work of the Equal Treatment Commission on society are still unclear, it seems indispensable as a tool for the enforcement of women's rights.

The Equal Treatment Ombudsperson in Austria

In Austria, the **Ombudsperson for Equal Treatment Affairs** set up by the Ministry of Social Security and Generations has the right to lodge complaints with the Equal Treatment Commission, but not with the courts. Within the enforcement system, the Ombudsperson plays an important role. So far, most of the applications handled by the Equal Treatment Commission have been lodged by her; she takes part in the meetings of the Commission, has the right to speak, but not to vote. The Commission may request the Ombudsperson to lead further investigations into the conduct of the enterprises concerned. As the Equal Treatment Act prohibits discriminatory job advertisements, the applicant as well as the Ombud are entitled to file a complaint against job agencies before the administrative body; if an agency is found guilty of misconduct, the law provides for a fine⁶⁶ to be imposed.

After the office of the Ombudsperson was set up in 1990, the number of complaints brought before the Commission increased, especially when the new provisions on sexual harassment were adopted in 1992. In 1999, the Ombudsperson had to deal with 772 cases (145 cases brought by men).

Since 1998, it is provided that Equal Treatment Ombudspersons should be installed at the regional level in addition to the one existing in Vienna. This was the result of the yearly evaluations which showed that a high percentage of the cases handled by the Ombudsperson as well as by the Equal Treatment Commission come from Vienna and its surroundings, while women working in other parts of Austria do not have the same access to the advice and support they are supposed to have. The first regional office was installed in the western part of Austria in 1999.

In the public sector, the Equal Treatment Act for the Federal State provides for a network of institutions and responsible persons for the enforcement of equal treatment legislation: Ombudspersons (up to seven in every ministry), Working Groups on equal treatment questions within the ministries and the universities as well as an Interministerial Working Group chaired by the Minister for Women's Affairs.

Generally speaking, the Ombudspersons play a very important role in practical life: they may conduct investigations in the undertaking or ministry. In individual cases, no "ex officio" interventions are admissible and intervention has to follow a complaint. However, Ombudspersons can initiate proceedings of their own motion and deliver opinions in gender equality issues of general importance.

66. A fine of up to 5000 ATS (approx. 363 Euro) is provided.

The Councillors for Equal Opportunities in Italy

In **Italy**, Councillors for Equal Opportunities (male or female) are established at three levels: at national level by the Ministry for Labour and at regional and provincial level by the regional and provincial administration offices respectively. They are "functionally autonomous, equipped with staff as well as the necessary equipment and structures for carrying out their tasks. The staff, instruments and equipment are assigned by the body where the office is located".

"They carry out functions of promotion and control of the implementation of principles of equal opportunities and non discrimination of women and men in the workplace". Moreover, "in exercising the functions which are assigned to them they are public officials and are obliged to notify the judicial authorities of offences which they are aware of".

Councillors for Equal Opportunities must have specific expertise as well as several years of experience and a documented knowledge of the employment market and the specific regulations governing female employment as well as equal opportunities. In order to carry out their work, if they are salaried workers, they can ask for a leave of absence from their job by using special paid or unpaid leave.

The Councillors' main tasks and functions are:

- to identify unbalanced situations in terms of gender with the scope to promote equal opportunities.
- to promote positive action projects.
- to support positive employment policies, including training.
- in collaboration with the regional and provincial labour offices, to elaborate effective procedures for the identification and elimination of infringements of gender equality legislation and the principle of equal opportunities (e.g. by planning special training packages).
- to disseminate knowledge, exchange good practices and provide information.
- to evaluate positive action projects.
- to ensure communication and collaboration among the local government labour departments and other bodies promoting equal opportunities.

The issues addressed by the Councillors for Equal Opportunities often require immediate intervention and collaboration with the Labour Inspection and local bodies⁶⁷.

At the request of the Councillors for Equal Opportunities, the provincial and regional Labour Inspectors can require from the undertaking information on the employment status of female and male workers, as far as it concerns hiring, training, professional promotion, compensation, working conditions, termination of employment along with any other useful information. The Councillors for Equal Opportunities can also ask the Labour Inspectors to control whether gender discrimination exists in the workplace.

Finally, employers that have been found by judicial decision to discriminate on grounds of sex have been ordered to establish a plan for the elimination of discrimination within a fixed time period, have to consult the Councillors for Equal Opportunities on the implementation of the judicial decision; subsequently the latter control whether discrimination has ceased.

67. E.g. in the Piedmont Region, the Councillor for Equal Opportunities has initiated collaboration with the Employment Services in order to promote the provision of information services on women's employment and the control of the application of gender equality legislation.

The Commissioners for Women's Rights in Germany

In **Germany**, Commissioners for Women's Rights⁶⁸ are competent for the implementation of equal opportunities between women and men. It is an institution obligatory only in the public sector and can be found both in the administration at federal and regional level and in numerous municipalities and universities.

The first Commissioner was appointed in 1975 in Nordrhein-Westfalen. Until 1982 many other Länder followed this example by implementing such posts in their administration. Today Commissioners for women's rights can be found at federal level as well as in every Land. Since the beginning of the eighties, positions for Commissioners were created at local level, too. Nowadays, about 1265 Frauen- und Gleichstellungsbeauftragte work in local administrations.

To integrate the position of the Commissioner for women's rights, the administrations at federal and regional level apply two different models: according to the "administrative concept," the Commissioner is part of the administration and fulfills her functions as a civil servant and public official. According to the "staff council concept", the Commissioner is elected by the female employees and her post is honorary.

Commissioners for women's rights monitor the implementation of gender equality legislation, participate in administrative procedures concerning women, propose and implement social and organisational measures concerning the personnel as well as technical matters and offer consultation services to female employees.

For a most effective control of the implementation of gender equality legislation, Commissioners for women's rights have the right to request from the administration global and timely information about all matters covered by their tasks, to inspect files, especially those concerning job interviews, and personal documents, to participate in job interviews and in some cases in staff council meetings as well.

REFLECTIONS

1. Experience and research⁶⁹ have shown that isolated victims of discrimination, and in particular women, have only a very small chance of instituting judicial proceedings or receiving para-judicial protection; when, on the other hand, the matter can be taken up **by independent bodies or organisations established to defend human rights or women's rights**, the chances of violation of the principle of equality for women and men being thoroughly investigated and punished are greater⁷⁰.
2. Moreover, the interference and pressure of independent bodies and organisations is very **useful for cleansing the national legal order from directly or indirectly discriminatory provisions and practices**

68. Frauenbeauftragten und Gleichstellungsbeauftragten.

69. See Prechal, Senden, Koopman, Monitoring, Implementation and Application of Community Equality law, General Report 1997 & 1998 of the Legal Experts Group in Equal Treatment of Men and Women, European Commission, Employment & Social Affairs, 1999 in particular the Concluding Remarks; J. Blom. B. Fitzpatrick, J. Gregory, R. Kneigt and U. O' Hare, op. cit.

70. See S. Koukoulis-Spiliotopoulos, op. cit; H. Hautala, op. cit.

and for eliminating prejudices and stereotypes. Such bodies can therefore be very effective in designing and implementing a more strategic approach to the enforcement of gender equality⁷¹.

3. These bodies should be empowered to **receive complaints from individuals, groups and organisations, to pursue administrative or judicial proceedings, on behalf and with the approval of complainants or to intervene in their favour in any proceedings instituted by them, to make investigations or surveys** and to **publish reports** concerning gender discrimination and inequalities and to **make recommendations and proposals for legislation or other measures for the promotion of gender equality**⁷². These powers should cover all areas falling within the scope of Community gender equality legislation and the national provisions consistent with it.
4. However, such independent organisations should have **enough human and financial resources available to them**, in order to be able to carry out effectively the task of controlling the implementation of gender equality legislation. Only independent bodies with sufficient resources can effectively promote equality for women and men⁷³.
5. Moreover, **additional procedural guarantees should be provided for complainants (individuals or groups) who have recourse to independent bodies**, in order to ensure that their judicial protection will not be impaired⁷⁴.
6. Last but not least, **indicators should be elaborated and statistics and comparative studies** should be conducted **on the length as well as the quantitative and qualitative output of the procedures with such independent bodies**, in particular as regards the number of employees who benefit therefrom; the effect of leading cases relating to issues of general importance should also be taken into account.

GOOD PRACTICES

■ *Independent bodies in the form of one-person institutions (Ombudspersons in **Austria** or Councillors in **Italy**) and/or equality organisations (such as the Equal Treatment Commission in **Austria**) at national and at regional (or provincial) level, for the control of the application of Community gender equality legislation and the national provisions consistent with it and for the promotion of gender equality.*

■ *An independent equality organisation (ETC) on a tripartite basis (**Austria**).*

71. See S. Koukoulis-Spiliotopoulos, *op. cit.*; McCrudden, *Access to Equality*, in M. Vervilghen (edit.), *op. cit.*

72. See S. Koukoulis-Spiliotopoulos, *op. cit.*

73. See S. Koukoulis-Spiliotopoulos, *op. cit.*; H. Hautala, *op. cit.*

74. See S. Koukoulis-Spiliotopoulos, *op. cit.*

- Competence of an independent body (ETC) to **decide on specific cases concerning individuals or on general questions concerning a discriminatory phenomenon or groups of individuals**, for instance within the framework of a discriminatory collective agreement (**Austria**).
- Possibility of an independent body (Councillors for Equal Opportunities) to **ask the Labour Inspectors to require from the workplace information on the employment status of female and male workers and to control the application of gender equality legislation** (**Italy**).
- Competence of an independent body (ETC) to **ask the employer to submit a written report**, including a comparison of the numbers of women and men working in a specific area, together with information concerning working conditions, vocational training measures and advancement opportunities (possibly data about the relationship between vocational training and career advancement), as well as duration and conditions of termination of employment (**Austria**).
- Competence of an independent body (Councillors for Equal Opportunities) to **offer advice and consultation to employers for the establishment of equality plans at the workplace and to control the effective implementation thereof** (**Italy**).
- Entitlement of the independent body (ETC) to **ask the labour court for a declaratory judgement which will ascertain whether the employer's conduct has been discriminatory or not**, in cases where the latter has not complied with the body's decision (**Austria**).
- **Non binding opinions of an independent body (ETC) are acknowledged by courts as private expert opinions** (**Austria**).
- **Recourse to an independent body (ETC) does not deprive individuals or groups from access to court or to any other competent authority** (**Austria**).
- **Time periods for initiation of judicial claims are interrupted during the procedure before an independent body (ETC)** (**Austria**).
- Competence of an independent body (Councillors for Equal Opportunities) to **promote and evaluate positive action projects and employment policies, disseminate knowledge, exchange good practices, provide information and collaborate with labour inspections, employment offices and other public or local authorities for the elimination of discrimination, the promotion of female employment and of gender equality** (**Italy**).
- Possibility of the **Ombudsperson to lodge petitions with an independent body (ETC) and to lead further investigation in the undertakings concerned at the request of the latter** (**Austria**).

- Possibility of the **Ombudsperson to participate in the meetings of an independent body** for the enforcement of equality legislation (ETC) **with the right to speak (Austria)**.
- Possibility of Commissioners for women's rights in the public sector to **request information, inspect files, especially those concerning job interviews and personal documents, participate in the staff council meetings and in job interviews (Germany)**.

PROPOSALS

- * To provide for an **independent body for the promotion and implementation of the principle of equality for women and men**. This body may be part of independent, pre-existing agencies charged at national level with, in particular, the safeguard of individual's rights in all areas falling within the scope of Community gender equality legislation and the national provisions consistent with it⁷⁵.
- * To ensure that the functions of this independent body include **receiving, examining, investigating, giving an opinion on and pursuing complaints from individuals, groups of individuals and organisations of discrimination on grounds of sex, providing concrete help for victims, starting and conducting of their own motion enquiries, investigations or surveys concerning discrimination on grounds of sex, publishing reports, launching public awareness campaigns and making recommendations and proposals for legislation or other measures for the promotion of gender equality**⁷⁶.
- * To ensure that **individual or groups who have recourse to independent bodies shall not be deprived from access to court or to any other competent authority, shall not run the risk to see their claim time-barred and, in cases where proceedings conducted on their behalf, without their participation, fail, the res judicata shall not be binding on them**⁷⁷.
- * To provide for **annual or periodical statistics and comparative studies on the length and quantitative and qualitative output of the procedures with such independent bodies**, in particular as regards the number of employees who benefit therefrom, taking into account the effect of leading cases in issues of general importance as well.
- * To provide that **such statistics and studies, together with annual reports on the function and activities of these bodies, shall be sent to the national authorities and to the European Commission (DGV)**.

75. See H. Hautala, *op. cit.*

76. *Ibid*; S. Koukoulis-Spiliotopoulos, *op. cit.*

77. See S. Koukoulis-Spiliotopoulos, *op. cit.*

V.2. LABOUR INSPECTORATE

ANALYSIS OF THE SITUATION IN THE PARTNERS' COUNTRIES

In **Austria**, Labour Inspectors do not play a very important role in gender equality matters, except maternity protection and sexual harassment at the workplace. In practice most of the cases are handled by the Equality agencies and not by the Labour Inspectors.

In **France**, Labour Inspectors have the task to monitor the application of labour law. As far as gender equality is concerned, they control the application of gender equality legislation and the elimination of discrimination as far as regards access to work, working conditions and pay. They can institute proceedings after a complaint presented by the trade unions, the works council, the staff representatives and/or the victim her/himself or even of their own motion.

More particularly, as far as it concerns equal pay, Labour Inspectors can demand from the employer information on the norms, categories, criteria etc, which determine the pay classification in the enterprise. Subsequently, they can proceed to an investigation, during the course of which the employer and the employee(s) concerned can be assisted by a person of their choice. If discrimination is ascertained, Labour Inspectors can proceed with a lawsuit.

Moreover, employers have to submit to the Labour Inspectors written annual reports on the employment and training situation of male and female workers accompanied by the board of directors' opinion within 15 days. When breaches of employment regulations or of the duration of the working day are ascertained on the basis of these reports, Labour Inspectors can prepare a report of their own motion. In other cases of breaches, a formal claim of the interested party is necessary. Labour Inspectors have to remind employers of their obligations, invite them to take any useful measure to put an end to the violation and fix a time limit for their compliance with employment regulations. In case of non compliance, Labour Inspectors can refer the case to the judge. The reports of the Labour Inspectors are written in two copies: one transmitted to the *prefet* and the other to the public prosecutor, who decides whether penal proceedings will be initiated or not.

In **Greece**⁷⁸, since the 1950s, Labour Inspectors control the application of labour and health and safety legislation. They receive complaints from workers and unions and inspect workplaces (on their own initiative or following complaints), give information and advice, intervene between employers and workers attempting a peaceful solution of their disputes, inflict administrative sanctions and lodge complaints with criminal courts for infringement of labour legislation.

Since the legislative reform of 1999, Labour Inspectors constitute a Corps directly under the Minister of Labour and Social Security. They may refer to the Minister of Labour any issues that are not covered by the legislation in force or shortcomings or problems in its application and have for the first time the right to control the social security coverage of employees as well. It is provided that Labour Inspectors perform their

78. For the situation of the Labour Inspectorate in Greece, see S. Koukoulis-Spiliotopoulos, A. Petroglou, P. Petroglou, op. cit.

control activities 24 hours per day 7 days per week and, if needed, may enter any hour of the day or the night into the workplace, even without giving the employer prior notice. Moreover, a Special Corps of Labour Inspectors was created with the task to monitor the function of the local Labour Inspections and submit reports on the amelioration of their work as well as to control the application of labour legislation all over Greece.

Workers who consider themselves victims of a breach of labour law or trade unionists on behalf of or in support of individual workers can lodge a complaint with the competent Labour inspection which subsequently invites both parties with a view to conciliation. If a settlement is achieved, Labour Inspectors draw up a record of conciliation, which is signed by both parties and has the legal force of a labour agreement. Otherwise, Labour Inspectors draw up a record of non conciliation, which contains the declarations of the parties. Above records can be used in court as evidence of the facts established and the declarations of the parties. Thus, important and costless out-of-court settlements can be achieved⁷⁹.

Experience and research have shown that pregnancy and maternity protection (dismissals and to a lesser extent detrimental modification of working conditions) are the issues Labour Inspectors are most aware of and for which they receive the most usual complaints. Moreover, since 1997, employers who invoke serious reasons for the termination of the employment relationship of pregnant and breast feeding female workers until one year after confinement, have to put these reasons in written in the termination document and submit it to the Labour Inspectors; otherwise such termination is considered null and void, whether such reasons actually exist or not.

Equality offices originally established in each Labour Inspectorate in 1984 have mostly proven to be not effective, due to understaffing. Where they have been created, they have admittedly fallen into disuse, reportedly for lack of complaints.

Generally speaking, the institution of Labour Inspectors seems a well-established mechanism for the control of the implementation of sex equality legislation. Workers consider them as their protectors, as their interference may be very effective; it is mostly to them that workers and unions immediately turn in case of problems. However, Labour Inspectors are admittedly not able to cope with all their responsibilities due to lack of staff and means, limited information and further training.

In **Italy**, the Labour Inspection has the task to survey and control the correct implementation of gender equality legislation. Therefore, following a request made by Councillors for Equal Opportunities, Labour Inspectors have to examine and assess the cases of discrimination which are reported, with the appropriate urgency, inserting them in the ordinary programming and planning the interventions after assessing the interests of the different parties.

REFLECTIONS

1. Experience and research have shown that in countries where the institution of Labour Inspection is well established, it has proven **an effective mechanism for the control of equality legislation.**

⁷⁹. T. Mitsou, op. cit.

2. However, due to their heavy workload and their lack of specialisation, Labour Inspectors **are not always aware of or have inadequate information on gender equality principles, concepts and issues**, such as the concept of pay beyond basic salary, job classification, equal value, indirect discrimination, sexual harassment. In view of the above, national labour inspectorates should be identified as significant targets for equality awareness programmes and training on Community equality law and the national provisions consistent with it, as interpreted by Community and national jurisprudence.
3. Moreover, it has been proposed⁸⁰ that some **extension of standing to initiate judicial proceedings** beyond that of individuals, to include Labour Inspectors, could promote wider access to judicial process in gender equality cases in order that the public interest in equality objectives is realised.
4. However, this possibility will admittedly remain purely theoretical, if the actual situation and training of Labour Inspectors does not greatly improve by the **provision of staff and means and better information and sensitisation to gender equality issues**.
5. Last but not least, **networking and cooperation between local and central Labour Inspections and independent bodies or institutions specialised in equality** could ensure in the best way the effective implementation of gender equality principles.

GOOD PRACTICES

- *Possibility of Labour Inspectors to initiate control proceedings in undertakings following complaints by individuals, trade unions, work councils, staff representatives and of their own motion (France, Greece) or at the request of independent bodies (Councillors for Equal Opportunities) (Italy).*
- *Possibility of Labour Inspectors to refer cases to the judge (France) or the Public Prosecutor where criminal sanctions are provided (France, Greece).*
- *Obligation of employers to submit to the Labour Inspectorate their annual reports on the employment status of male and female workers together with a reasoned opinion thereon within 15 days (France).*
- *Obligation of employers to submit in writing to the Labour Inspectorate eventual serious reasons invoked for the termination of the employment relationship of pregnant or breast feeding female workers up to a year after confinement; otherwise the termination is considered null and void (Greece).*

80. J. Blom, B. Fitzpatrick, J. Gregory, R. Knecht and U. O'Hare, op. cit.

PROPOSALS

* To strengthen Labour Inspectorate by endowing it with the **appropriate staff and means and by ensuring the continuous and systematic information, sensitisation and training of Labour Inspectors** in Community law and the national provisions consistent with it, as construed by the ECJ and national jurisprudence.

* To ensure **the locus standi of Labour Inspectors to initiate judicial proceedings on behalf or in support of wronged individuals or groups.**

* To ensure **networking and cooperation between central and local Labour Inspectorate and specialised in equality independent bodies and institutions.**

V.3. CONTROL MECHANISMS AT INTERNATIONAL LEVEL: THE OPTIONAL PROTOCOL TO THE CEDAW

In addition to control mechanisms for the application of gender equality principles at national level, the Optional Protocol (O.P.) to the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) shall be mentioned, which (hopefully) will play an important role, especially when national proceedings have not been successful and the European Court of Justice cannot be involved because of the lack of an individual right to file a claim.

The OP was elaborated by an open ended working group within the framework of the UN-Commission on the Status of Women in the years 1996-1999 under Austrian Chairwomanship. The OP went into force at international level on 22 December 2000, three months after the date of the deposit with the Secretary General of the United Nations of the tenth instrument of ratification or accession. At national level it will be enforceable after a State Party to CEDAW will have recognised the competence of the Committee on the Elimination of Discrimination against Women (Committee) by fully ratifying the OP. The basic instruments are an individual claim procedure and - in cases of grave or systematic violations - an inquiry system.

Each woman or group of women, who consider/s that in any of her/their rights set forth in the Convention is violated by a State Party may submit a communication to the Committee. If somebody else acts on behalf of those persons, this shall be with their consent, unless the author can justify acting on their behalf without such consent. The OP provides for formal prerequisites (e.g. the communication has to be in writing and all domestic remedies have to be exhausted). Further the Communication will be declared inadmissible where the same matter has already been examined by the Committee or has been or is being examined under another procedure of international law. Before a determination on the merits has been reached, the Committee may transmit to the State Party for its urgent consideration a request that the State Party take such interim measures as may be necessary to avoid possible irreparable damage to the victim/s of the alleged violation. If the communication is admissible under these provisions, the Committee will initiate a written dialogue with the State Party concerned. Within six months the State Party shall submit to

the Committee written explanations or statements clarifying the matter. After examining a communication, the Committee shall transmit its views on the communication, together with recommendations, if any, to the Parties concerned. Within six month the State Party shall submit to the Committee a written response, including information on any action taken in the light of the views and recommendations of the Committee.

If the Committee receives information indicating grave or systematic violations by a State Party of rights set forth in the Convention, the Committee shall invite that State Party to co-operate in the examination of the information. The Committee may also designate one or more of its members to conduct an inquiry and -with the consent of the State Party- the inquiry may include a visit to its territory. After examining the findings of such an inquiry, the Committee shall transmit these findings to the State Party concerned together with any comments or recommendations and may invite the State Party to report or inform it of the measures taken in response to such an inquiry. But each State Party may at the time of signature or ratification of the OP declare that it does not recognise the competence of the Committee to conduct such an inquiry.

A State Party shall take all appropriate steps to ensure that individuals are not subjected to ill-treatment or intimidation as a consequence of communicating with the Committee pursuant to the OP. Each State Party shall make widely known and give publicity to the Convention and the OP and facilitate access to information about the activities of the Committee. No reservations to the OP are permitted.

ANALYSIS OF THE SITUATION IN THE PARTNERS' COUNTRIES

As of May 16th, 2001, 67 countries had signed and 21 countries had ratified the Optional Protocol to the CEDAW; among the latter are 6 EU Member States: **Austria**, Denmark, Finland, **France**, Ireland and **Italy**.

REFLECTIONS

1. As the CEDAW basically provides for the **right of de-facto equality of women and men in all fields** (political, economic, social, cultural, civil or any other field), cases concerning all matters of society and law may be brought to the attention of the Committee.
2. Especially in the beginning, it might be **advisable to lodge preferably communications concerning the infringement of an individual right of a person or persons** and not to submit questions of general policy, otherwise the Committee might be forced to consider and decide upon the difficult questions of justifiability of the rights which are set forth in the Convention.
3. Those fields in which violations of individual rights might be detected very easily and which have to be tackled very urgently might be **violence** (Article 1 CEDAW), **trafficking in women and exploitation of**

the prostitution of women (Article 6 CEDAW) or **employment and social security** (Article 11 CEDAW).
4. The OP maintains the standard and practice of other existing human rights instruments. Thus the OP extends and raises the effectiveness of the protection of human rights of women.

GOOD PRACTICE

- To sign and ratify the Optional Protocol to the CEDAW (*Austria, France, Italy*).

PROPOSALS

- * To sign and ratify the Optional Protocol to the CEDAW.
- * To disseminate information and launch awareness campaigns on the Optional Protocol to the CEDAW.

VI. NETWORKING

ANALYSIS OF THE SITUATION IN THE PARTNERS' COUNTRIES

Networking within trade unions

In **Austria**, the **Chamber of Labour** regularly organises meetings of all equality consultants and experts, discussing developments, cases, practices and so on.

In **France**, active networking is organised within trade unions. More particularly:

Within CGT-FO, since 1995-1996, a confederate commission, composed mostly of women, meets 2 times a year to deal particularly with subjects of employment equality that have previously been elaborated by working groups and prepares reports and proposals.

Within CGT, a co-educational women's collective, composed mainly of women, works on employment equality, night work, co-educational work and parity. For each subject, one member of the collective is appointed as a specialist, who follows up the subject and is present at relative hearings at the Observatory of Parity, the Senate or the National assembly. The collective has a bargaining force.

Within CFDT, a women's confederate commission provided by the Statutes meets 5 times a year. This commission has set up the network "professional equality and co-educational work", made up of delegates of different federal and regional organisations with the task to elaborate the implementation of the decisions of the confederate commission.

Within CGC, an informal network deals with issues, such as problems of women in employment, discrimination, night work, reconciliation of family life and professional life and health protection.

Networking among NGOs

In **Austria**, the Network of Women Counselling Centres gathers most women NGOs all over Austria which are dedicated to social, legal, psychological, health and other advice and support for women. This network plays an important role within the autonomous women's movements and regularly raises various questions of equality and human rights in public by campaigns and actions (like spending nights in front of the Federal Chancellery, "Sleepless Nights", in order to put political pressure on the government).

Networking among Legal Professionals

In **Austria**, the Austrian Women Lawyers Association regularly discusses all kinds of equality related political and legal developments, runs a conventional (by ordinary mail) and virtual network involving persons, other NGOs and institutions, gets involved in the political process etc.

In **Germany**, the German Women Lawyers Association⁸¹ is an organisation of women lawyers and

81. Deutscher Juristinnenbund.

women graduates in economics which aims at the further development of law in all areas and the achievement of equal opportunity and equal standing of women in all areas of society. In this context, the German Women Lawyers Association's commissions and working groups elaborate and submit legal expertise, suggestions and criticism to the Federal and State parliaments, governments and Administration, as well as to the media. The association is involved in processes before the Federal Constitutional Court and the Supreme Courts through the submission of opinions and participation in hearings. Furthermore the German Women Lawyers Association regularly informs its members about topical legal matters, offers further training through scientific events and seminars and cooperates in national and international networks.

Moreover, **at European level**, within the framework of the Action Programme on Equal Opportunities 1996-2000, the European Commission supported the foundation of the European Women Lawyers Association (EWLA), which is established by a steering committee consisting of members of the German and Austrian Women Lawyers Associations and the British Women Lawyers Conference. Target groups of the European Association are women lawyers and women lawyers' organisations in all Member States of the European Union, whose major concern is to promote equal opportunities by means of law. The aims of the European Association should be to bundle up the specific expertise in monitoring law and politics seen from the angle of gender and to built up a women lawyers' association acting at European level as a pressure-group by giving expert opinions and by lobbying political institutions, by informing and empowering women to claim their rights etc. The project itself is outlined as a kind of test case in practising strategies to influence and to lobby political institutions.

The founding Congress was held from 17-19 March 2000 in Berlin and was aimed at building a network of interested women and their organisations and to present the statutes of the Association, which had been prepared by the project team. At this conference also several panels were held: e.g. on the question, how such an association should contribute to gender equality, on questions of labour law and employment, gender violence, lobbying and on public procurement as a means of affirmative action.

EWLA held its second Congress from 1-3 June 2001 in Sevilla where the first general Assembly took place and the Executive Board was elected, each Member State of the European Union being represented therein. On this occasion EWLA has adopted 3 resolutions, on the Charter of Fundamental Rights of the European Union, the Amendment of Directive 76/207/EEC and Trafficking in Human Beings⁸².

Networking among Independent Bodies/Equality Institutions

In **Austria**, the Equal Treatment Act for the Federal State provides for a network of institutions and persons responsible for the enforcement of gender equality legislation: the Equal Treatment Commission, Ombudspersons, Working Groups on equal treatment questions within the ministries and the universities as well as an Interministerial Working Group on questions concerning this subject.

82. The proceedings of the EWLA's Congresses in Berlin and in Sevilla, as well as lot of other information about EWLA can be found on its website www.ewla.org.

In **Italy**, the Councillors for Equal Opportunities have established a national network aimed at comparing and exchanging information, experiences and good practices.

Moreover, the National Association of Female Councillors for Equal Opportunities promotes the establishment of equality councillors within private companies and their professional training.

Networking among women elected in local authorities

In **Italy**, the Regional Council for Lombardy has promoted a project called "A network of elected women" with the aim to build a permanent network of women elected in local authorities. This network elaborates policies with an added value to equal opportunities, concerning both political representation and administrative policies and disseminates information, data, methodologies and proposals presented in other European projects relating to equal opportunities policies and mainstreaming at local level.

Data banks/Virtual forums

In **Austria**, there is a private initiative called "Austrian Women On-line Magazine"⁸³ available without charge which not only provides articles and reports on women policy, but also legal information on equality matters, including information about relevant institutions and services like the Ombudspersons for equality etc. This initiative was started as a EU-project within the framework of NOW (ESF-financed) and after termination of this project was continued and put on a regular structure by an association which was founded according to the Austrian Act on Associations. The on-line magazine is financed by subsidies of ministries etc. and also earns financial means by offering services, like on-line presentations etc.

REFLECTIONS

1. Experience and research⁸⁴ have shown that networking (the creation of groups of individuals and organisations that can share experience and expertise) can **raise equality consciousness and increase expertise** through exchange of advice, information and good practices on a self-help basis. Moreover, it can help to design and implement very effectively **a more strategic approach to the enforcement of gender equality**.
2. In the light of the above, **the creation of new (and the support of already existing) networks within and between the different sectors, of those strategically placed to address equality questions both at national and European level seems crucial**.
3. However, effective networking, and in particular networking at European level, requires **sufficient financial resources** which could be allocated to a certain extent by national authorities and/or the European Commission.

83. On the website www.CeiberWeiber.at

84. See J. Blom, B. Fitzpatrick, J. Gregory, R. Knecht and U. O' Hare, op. cit.

GOOD PRACTICES

- *Creation of networks of equality experts within the Chambers of Labour (Austria) or the trade unions (France).*
- *Creation of networks among NGOs having an interest in ensuring enforcement of gender equality rights (Austria).*
- *Creation of networks among legal professionals having an interest in ensuring enforcement of gender equality rights (Austria, Germany).*
- *Creation of networks among independent bodies/institutions whose aim is to ensure enforcement of gender equality rights (Austria, Italy).*
- *Creation of networks among women elected in local authorities, who have an interest in promoting gender equality policies (Italy).*
- *Creation of data banks/virtual forums for the dissemination of information on the enforcement of gender equality rights and bibliography and research on women's issues (Austria).*
- *Establishment of a European Women Lawyers Association (Austria, France, Germany, Greece, Italy).*

PROPOSALS

- * To create and promote **networking within and between the different sectors of those strategically placed to address gender equality questions at national and European level⁸⁵.**
- * To make available sufficient financial funding to such networks, in particular at European level.
- * To support the **creation of data banks/virtual forums for the exchange of information, experience, expertise and good practices at national and European level.**

85. Ibid.

VII. EDUCATION/TRAINING

ANALYSIS OF THE SITUATION IN THE PARTNERS' COUNTRIES

In **Austria**, currently there are currently no general education programmes run by the government aiming at raising public awareness of the principle of equality as a fundamental right. On the initiative of a women's NGO named "Women's Rights - Human Rights", there was a public presentation of the Concluding Observations delivered by the CEDAW Committee on the Austrian State report in 2000.

The organisations of legal professionals (attorneys at law, judges) do not organise special programmes or seminars specially dedicated to equality law, but the Ministry of Justice considers initiating such seminars for judges.

The Chamber of Labour as well as trade unions traditionally organise seminars on equality matters for those who are involved in the promotion of equality rights. Both organisations have adopted or are going to adopt gender mainstreaming programmes within their structures.

Moreover, the media seem to focus more on sexual harassment cases: high publicity was given to a case where a (female) judge did not ascertain sexual harassment, as the victim was not good-looking and thus it seemed unlikely, that she had been harassed. Another case covered by the media concerned harassment in the metro: a woman was harassed in public. This incident raised awareness that the Austrian legislation does not provide for effective remedies against this kind of perpetration. However, it appears that cases where men file claims on grounds of sex discrimination attract higher attention: e.g. the ECJ judgement in the case Kalanke and recently an Austrian Supreme Court judgement finding that Austrian legislation was not in conformity with the ECJ jurisprudence on affirmative action in favour of women because not all individual criteria in favour of the male applicant for a post were taken into account.

In **Germany**, seminars on labour law, including to a certain extent equality rights, are organised by the various legal professionals' organisations (attorneys at law, judges).

Since its foundation, the German Women Lawyers Association⁸⁶ has always offered seminars and conferences on women's rights. These events serve both as a platform for women experts to present and discuss their theories and as on occasion for women lawyers' information about equality legislation and jurisprudence. The biannual Conference of the Association, which ends with the election of the executive board, attracts about 200 participants. Throughout the year, various events on federal as well as on local and regional level are organised.

In **Greece**, several seminars and conferences have been organised by judges' unions, as well as Universities, lawyers' and bar associations on gender equality and Community social legislation in general, mostly in collaboration with and with the support of the European Commission aimed at judges, lawyers and government officials; the proceedings of several of them were published in books and/or law reviews and they seem to have had a significant impact.

86. Deutscher Juristinnenbund.

Recently, in the framework of the E.U. funded programme "Equality rights: from legislation to everyday life", training seminars for lawyers on sex equality legislation and jurisprudence (both Community and national) were organised in Athens and the 4 major Greek cities (Thessaloniki, Patras, Heraklion, Volos). The rate of participation was surprisingly high and the seminars proved to be a success. Moreover, in the framework of the same programme a training seminar was organised for the first time for labour inspectors in Athens.

In **Italy**, training activities on gender equality law are widespread within trade unions, in the Commissions for Equal Opportunities and partly also within the Labour Inspectorate and among legal professionals.

The Centre for European Initiative has prepared specific educational material on gender equality for unionists training courses: real cases brought before the European Court of Justice are presented; the course participants are divided into groups and they discuss the judgements which are then presented and analysed in plenary sessions.

In several programmatic documents of the European Social Fund at regional level, allocation of resources is provided for the training of female councillors for equal opportunities, Labour Inspectors, etc.

Moreover, a training course addressed specifically to male and female Labour Inspectors is promoted by the National Association of Female Councillors for Equal Opportunities.

REFLECTIONS

1. Experience and research⁸⁷ have shown that **awareness of equality principles and concepts and the scope of Community equality law and the national provisions consistent with it, is rather low not only among individual employees and employers, but also among all those who could potentially be involved in equality cases** (lawyers, judges, union officials, Labour Inspectors). Less transparent forms of unequal treatment, in particular indirect discrimination, is often not noticed and fails to be challenged.
2. In order to develop equality consciousness, **a general training programme in equality law, including European equality concepts, should be incorporated in the education systems** of the Member States⁸⁸.
3. Moreover **specific training programmes should be organised for those strategically placed to address gender equality questions**, e.g. trade union officials, and in particular women unionists, women's NGOs, labour inspectors, lawyers, judges. These training programmes should focus on Community law, as construed by ECJ jurisprudence, and in the interaction between Community law and national law.

87. See J. Blom. B. Fitzpatrick, J. Gregory, R. Knegt and U. O' Hare, op. cit.

88. Ibid.

4. In particular as far as it concerns **legal professionals, equality training should encompass undergraduate, professional and continuing education.**
5. The media can play a major role in promoting equality consciousness. While media attention on gender discrimination individual cases may encourage litigation by other victims of discrimination, misinformation can have the opposite effect. **Training programmes** on developments in Community and national equality law should be also organised for the media (in all its forms) and access to a data bank with up to date information should be made available to them⁸⁹.

GOOD PRACTICES

- *Equality training seminars for judges by the Ministry of Justice (Austria).*
- *Equality training seminars for trade unionists (Austria, Italy).*
- *Community funded equality seminars for judges and legal professionals (Greece).*
- *Community funded equality seminars for Labour Inspectors (Greece, Italy) and Councillors for Equal Opportunities (Italy).*

PROPOSALS

- * To **incorporate gender equality training within the general education systems** of the Member States.
- * To promote **training programmes in Community gender equality law and the national provisions consistent with it for judges, lawyers, trade unionists, Labour Inspectors, women NGOs.**
- * To ensure that **gender equality training of judges and lawyers extend from undergraduate to professional and continuing education.**
- * To **ensure the realisation of such programmes through Community and national funding.**
- * To promote **training programmes on equality developments for the media** and ensure their access to a data bank of up to date relevant information.

89. Ibid.

VIII. CAMPAIGNS

ANALYSIS OF THE SITUATION IN THE PARTNERS' COUNTRIES

Campaigns as a tool of pressure for constitutional and statutory developments

In **Austria**, a referendum⁹⁰ was held from April 7th to 14th, 1997, on women's rights which was supported by 640.000 Austrian voters (around 10% of the Austrian voting population). The constitution foresees, that at a minimum of 100.000 votes, a referendum has to be brought into the parliamentary session (from this point of view the referendum can be regarded as successful).

The several demands of the referendum now have to be discussed in parliament and they are:

1. Enshrining the Principle of De Facto Equality into the Austrian Federal Constitution.
2. Subsidies and public procurement only in favour of enterprises that provide for representation of women within all levels according to the percentage of the female population.
3. Equal pay for equal work has to be achieved especially by a guaranteed minimum income of ATS 15.000.
4. Part time work and atypical employment have to be regulated like full time employment with regard to labour law and social security.
5. Individualisation of all social benefits in cases of unemployment and age.
6. The State has to provide for de facto equality also in the field of education. The government shall publish gender-related statistics on education and employment every year.
7. The State shall provide for care facilities for children, which are of high quality and respond to the needs of the working population. Daily mothers have to be trained and covered by labour and social security law.
8. Single parents have to be granted parental leave corresponding to the length of parental leave granted to both parents (2 years). (The reason for this demand is that parental leave is reduced from 2 to 1 1/2 years in the case only one parent takes parental leave, while, when both partners share the leave, it can be prolonged up to 2 years).
9. Legally guaranteed right for part-time work until a child enters school including the right to return to a full time job.
10. Protection from dismissal after parental leave up to 26 weeks.
11. Old age pension guaranteed not under the subsistence minimum. Individualisation of pensions for non-employed partners by contribution to pensions schemes made by the employed partner. Time for care for children and other members of the family as pension increasing factors.
12. The retiring age of women shall not be increased until de facto equality of men and women is reached.

The Independent Women's Forum, a Women NGO, which launched the referendum, has already fixed

90. Volksbegehren.

a medium term action plan to implement the demands and has tried to negotiate with the government. Furthermore, the former (long-term) Secretary of State and Minister for Women's Affairs, Johanna Dohnal, formed a group of 25 experts, who should monitor and evaluate the progress of implementation, provide counselling and lead the discussion at an expert level. Today, 4 years after this referendum the practical result is:

- * A Constitutional provision enshrining the principle of de facto equality and providing for positive action.

- * Public procurement guidelines implementing affirmative action aspects into the decision of the best offer in some ministries.

- * Due to an amendment of the Labour Constitution Act, affirmative action in the private sector shall be promoted by the establishment of women's commissions as part of the works councils at undertaking level and the obligation for the employer to consider such measures (but not the obligation to conclude collective agreements at undertaking level).

In **Greece**⁹¹, a wide campaign organised by women's NGOs and prominent women lawyers led by Professor Alice Yotopoulos-Marangopoulos brought about a constitutional amendment relating to positive action.

More particularly, some years ago, the Hellenic League for Women's Rights, considering that the provision of Article 116(2) of the Constitution allowing derogations from the gender equality principle has often served as an excuse for curtailing women's rights, started a campaign for its replacement by a constitutional provision on positive action, inspired by Article 4(1) of CEDAW. This campaign met with the approval and support of other Greek women's NGOs and women politicians. In December 1997, the League organised a round table discussion on its proposal. Members of the Parliamentary Committee for the revision of the Constitution and other MPs, academics and lawyers were invited to take a stand on the matter. Almost all those who participated in the round table agreed with the proposal.

As a result, a motion in line with this proposal was signed by 58 women and men MPs belonging to almost all political parties (with the exception of the Communist party) and was formally submitted to the competent Parliamentary Committee, which unanimously accepted it. This motion was subsequently almost unanimously adopted (with only one dissenting vote) by the Plenum of the Greek Parliament.

Subsequently, on 9 October 2000 the Hellenic League for Women's Rights organised a round table discussion, in collaboration with the Marangopoulos Foundation for Human Rights and the General Secretariat for Equality. The participants were representatives of the League, members of the Parliamentary Committee for the Revision of the Constitution and academics. During this discussion, the League presented a proposal for the wording of the above constitutional provision. This round table had wide coverage in the press. The next day, the League's proposal was signed by 22 women's NGOs and was formally submitted to the Parliamentary Committee, together with an explanation, which referred to a

91. For the recent constitutional amendment in Greece on positive action, see S. Koukoulis-Spiliotopoulos, "Greece: From formal to substantive gender equality: case-law, constitutional and statutory developments" in European Commission, Employment and Social Affairs, Bulletin Legal Issues in Equality, No 2/2000, Bulletin of the Commission's Network of Legal Experts on the application of Community law on equal treatment between women and men, p. 37-46 on http://europa.eu.int/comm/employment_social/equ_opp/newsletter/bulletin002eu.pdf.

Council of State judgement on positive measures in favour of women as well as to the relevant Community and international "acquis".

As a result, the Parliamentary Committee unanimously adopted a draft provision, which is almost identical to the said proposal. This draft provision was subsequently submitted to the plenum of Parliament and was passed with the following wording: *"The taking of positive measures for the promotion of equality between men and women does not constitute gender discrimination. The State shall take measures in order to abolish inequalities which exist in practice, in particular those which are detrimental to women."*

It is also worth mentioning that the gender equality and equal pay norms, along with some provisions on social rights, were included in the 1975 Constitution also following campaigns organised by women's NGOs and prominent women lawyers.

Campaigns for Information and Awareness-raising

In **Austria**, in 1996 the (former) minister for women affairs launched a campaign called "50:50 - complete men do half-half" aimed at motivating men to contribute to work in the household and care for children.

In **Germany**, the project of the Federal Government "Women and Profession"⁹², included the establishment of legal provisions promoting equality between women and men. In this context, the Federal Ministry for Family, old age, women and youth seeks to develop or concretise the legal provisions promoting equality between men and women in society and occupation, e.g. the Federal Act on Women promotion⁹³. Other initiatives in the framework of this project have been: the promotion of Total E-QUALITY seal, measures for the reduction of young women's unemployment, support for women who found an enterprise and the balanced participation of women in the field of universities.

In **Greece**, in the framework of the E.U. co-funded programme "Equality rights: from legislation to everyday life", a 8-pages leaflet with the same title has been issued by the Research Centre for Gender Equality (KETHI) in 5000 copies to be distributed on March 8th, 2001, women's day. It contains a list of all equality rights (equal pay, equal treatment, protection of maternity, measures for workers with family responsibilities) provided for the private sector in a simplified and understandable way and the addresses and telephone numbers of trade unions, Labour Inspections and the Counselling Units for Women's Employment of KETHI, where information and advice can be sought. This leaflet has been generally admitted as a successful campaign: the first 5000 copies have already been exhausted and new copies have been printed again.

In **Italy**, the Labour Ministry, the Ministry for Social Affairs and the National Committee for Equal Opportunities recently launched a wide-ranging information campaign on the exercise of women's rights as a way to obtain equal opportunities at work.

92. Frauen und Beruf.

93. Bundesfrauenfördergesetz.

The campaign included TV spots and advertisements in the mass media in order to increase the awareness of the public on the recent law on parental leave and to enhance the use of these rights also by fathers. Small posters and easily read leaflets were distributed to the competent authorities, but also in places of great traffic (e.g. underground stations, public transport).

REFLECTIONS

1. Experience has shown that **wide scale campaigns** for the promotion of gender equality issues **can lead to significant constitutional and statutory amendments.**
2. Moreover, **information campaigns on gender equality can promote equality consciousness and the implementation of gender equality rights.**

GOOD PRACTICES

- *Referendum as a means to promote Constitutional and statutory reforms and positive action measures (Austria).*
- *Campaigns as a means to promote Constitutional reforms on positive action (Greece).*
- *Campaigns to promote public awareness for the elimination of gender stereotypes (Austria).*
- *Campaigns to promote information on and implementation of equality rights (Greece).*
- *Campaigns for dissemination of new legislative measures on parental leaves (Italy).*

PROPOSAL

* Promoting and financing **campaigns both as a means for Constitutional and statutory reforms and as a means for dissemination of information, promotion of implementation of gender equality rights and sensitisation on gender equality issues.**

IX. EQUALITY FRIENDLY POLICIES

IX.1. POSITIVE ACTION MEASURES

ANALYSIS OF THE SITUATION IN THE PARTNERS' COUNTRIES

Legislative framework for positive action measures

In **Austria**, since an amendment in 1998, the Austrian Constitution provides for positive action and calls upon the Federal State, the regions and the communities to contribute to de facto equality of women and men.

In **France**, the "Roudy" law (Act 13.7.1983) allows temporary positive measures in favour of women in respect of access to work, training, promotion and working conditions, with a view to remedy existing inequalities.

In **Greece**, one of the most recent developments in the field of equality rights is the new Constitutional provision [article 116(2)] on positive action. It provides that positive action for the promotion of equality between men and women does not constitute gender discrimination and that the State should take measures in order to abolish inequalities which exist in practice, in particular those which are detrimental to women⁹⁴.

It should be also noted that a provision on positive action was included in the legislation implementing the equal pay and the equal treatment Directives since 1984.

Positive action in the Public Sector

In **Austria**, in the public sector, the Federal Equal Treatment Act (as well as most of the regional equality laws) lays down the **principle of positive action in favour of women**, which has to be applied within all administrative units where women are represented under a quorum of 40% relating to all salary classes and functions.

For instance, committees which decide on appointments shall be composed of women and men. If this is not the case, the responsible Ombudsperson on equality affairs has the right to take part in the sessions and to give her opinion on the candidates.

This provision is enforced by provisions which require that decision-making bodies and officials promote women on the basis of equal qualifications with regard to access to the public service and career advancement. The implementation of this concept is supported by affirmative action plans containing targets and goals as well as other issues like measures of organisation, vocational training etc., which have to be laid down by all ministers.

94. For the recent constitutional amendment in Greece on positive action, see supra "IX. Campaigns" and S. Koukoulis-Spiliotopoulos, "Greece: From formal to substantive gender equality: case-law, constitutional and statutory developments" op. cit.

The Equal Treatment Commission may deliver opinions to the head of the administrative units (ministers) on positive action measures not only in individual cases but also concerning groups of civil servants.

Moreover, each Ministerial Working Group has to deliver a proposal for an affirmative action plan for its administrative unit and an annual report to the minister.

Furthermore, the Interministerial Working Group on equality affairs has to elaborate proposals on questions concerning affirmative action within the civil service and has to advise the federal government in all general matters relating to equal treatment and affirmative action.

In **Greece**, a statute recently adopted by Parliament⁹⁵ provides that among other persons who are appointed by the State as members of service councils of the public service, local authorities and other legal persons governed by public law, at least one third should belong to each sex; the same applies to the members of the boards of legal persons of the public sector, who are appointed by the State, local authorities or other legal persons of public law, provided, in all cases, that the persons appointed possess the qualifications required by relevant legislation.

Positive action measures are also provided for the underrepresented sex in the Administrative Boards of athletic confederations and for the representation of women in the elections for local authorities.

In **Italy**, within the bigger public companies Committees for Equal Opportunities can be established to ensure that female workers are not discriminated against. The central Administration, the regions, the provinces, the municipalities and all public bodies at national, regional and local level must adopt positive action plans which aim to ensure, within their field, real equality in employment between women and men.

The adoption of positive action plans follows the obligation of public corporations with more than one hundred employees to submit every two years a report on the status of their male and female staff by category or position, as regards hiring, training, vocational training, promotion, mobility, dismissals, pre-retirement, retirement and redundancy compensation. This report is transmitted to the company trade union representatives and to the Regional Councillor for Equal Opportunities who can decide to bring legal proceedings against the company if they consider that discriminations of a collective nature exist.

Positive action in the private sector

In **Austria**, affirmative action within the private sector is promoted by the establishment of women's commissions as part of the works councils at undertaking level and the obligation for the employer to consider such measures (but not the obligation to conclude collective agreements at undertaking level).

Employers are not obliged to prepare reports on the employment status of their male and female workers. However, the Equal Treatment Commission may require a written report from the employer, including a comparison of the number of women and men working in a specific area, together with

95. For the recent provision see S. Koukoulis-Spiliotopoulos, "Greece: From formal to substantive gender equality: case-law, constitutional and statutory developments", op. cit.

information concerning working conditions, vocational training measures, advancement opportunities, as well as duration and conditions of termination of employment. If necessary, this report also must include data about the relationship between vocational training and career advancement.

In **France**, enterprises with more than 50 employees are obliged to produce and submit a written annual status report to the works council, which compares general conditions of employment and training for male and female workers (analysing their respective situation by professional category and as regards hiring, training, promotion, qualification, classification, working conditions and actual pay). This report contains the measures taken during the course of the year in order to ensure gender equality in employment and the objectives set for next year, along with their quantitative and qualitative definition and cost evaluation. It is submitted to the union representatives and the members of the business committee. Negotiation of an equality plan is allowed. However, if negotiation does not succeed, the plan can be set up by the business head after consultation with personnel representatives. Moreover, the report has to justify why actions foreseen by the previous report or those demanded by the Business Committee have not been realised. The eventual modified report along with the opinion of the Business Committee, is submitted to the Labour Inspectorate within 15 days. The report is available to every employee on demand.

In **Italy**, within the bigger private companies Committees for Equal Opportunities can be established. Positive action plans can be realised on a voluntary basis; in this case employers are entitled to total or partial reimbursement of the relevant financial costs by the Labour Ministry; positive action measures through vocational training are financed by the European Social Fund.

The adoption of positive action plans follows the obligation of private companies with more than one hundred employees to submit every two years a report on the employment status of their male and female staff by professional category or post, as concerns hiring, training, vocational training, promotion, mobility, dismissal, pre-retirement, retirement and redundancy compensation. This report is transmitted to the company trade union representatives and to the Regional Councillor for Equal Opportunities who can decide to bring legal proceedings against the company if they consider that discriminations of a collective nature exist.

REFLECTIONS

1. Since substantive gender equality is proclaimed by the E.U. Treaty as a "task" and an "aim" of the Community and since **positive action is a necessary means for achieving it, positive action cannot be considered discrimination or an exception to the gender equality principle**, under the Treaty, and it is obvious that **positive measures** are not simply allowed, they **are indicated** in order to ensure full gender equality in practice⁹⁶.

96. See S. Koukoulis-Spiliotopoulos "From Formal to Substantive Gender Equality, The Proposed Amendment of Directive 76/207, Comments and suggestions", op. cit.

2. Positive action **may include preferential treatment of the under-represented sex** in favour of persons of this sex who fulfill objective assessment criteria unrelated to any direct or indirect gender discrimination⁹⁷.
3. However, **positive measures should in the first instance aim at improving the situation of women in working life, according to Declaration No 28 annexed to the Treaty of Amsterdam**. Thus stereotypes and prejudices against women can be eliminated by, inter alia, increasing women's visibility in traditionally male jobs and posts of responsibility or decision making and by preventing indirect discrimination and inequalities to their detriment⁹⁸.
4. Positive measures shall be temporary and elapse when full equality for women and men has been achieved.
5. Work related to equality for women and men should be pursued **in a planned and systematic way, also at company level, where employers should be encouraged to establish annual equality plans including positive action measures**⁹⁹.
6. For a better understanding of the function of positive measures, it is crucial that **information** on adopted positive measures and their implementation is **exchanged between the Member States and that research on their quantitative and qualitative output is promoted both at national and European level**. Thus, Member States will better realise the importance and necessity of such measures and compare the way these provisions are implemented and citizens will have a full picture of the situation existing in each Member State.
7. Member State reports on positive action should be integrated into the annual report on the employment situation.

GOOD PRACTICES

- *Constitutional provisions relating to positive action (Austria, Greece).*

In the public sector:

- *Positive action measures in favour of women within all administrative units of the public sector where women represent less than 40% (Austria).*

97. Ibid.

98. Ibid.

99. See H. Hautala, op. cit.

- Requirement for decision-making bodies and officials to promote women on the basis of equal qualifications with regard to access to the public service and career advancement (**Austria**).
- Among persons who are appointed by the State as members of service councils of the public service, local authorities or other legal persons of public law, at least one third should belong to each sex (**Greece**).
- Among persons who are appointed by the State, local authorities or other legal persons of public law as members of the boards of legal persons of the public sector, at least one third should belong to each sex (**Greece**).
- Possibility of establishment of Committees for Equal Opportunities within the larger public companies (**Italy**).
- Obligation of public companies with more than 100 employees to submit every two years a report on the employment status of their male and female workers by category or position, as far regards hiring, training, vocational training, promotion, mobility, dismissal, pre-retirement, retirement and redundancy compensation (**Italy**).
- Obligation of the State Administration, regions, provinces, municipalities and all the public bodies at national, regional and local level to adopt positive action plans (**Italy**).

In the private sector:

- Establishment of Women's Commissions as part of the Works Councils at undertaking level (Austria).
- Obligation of enterprises with more than 50 employees to produce and submit to the works councils an annual report on the employment status of their male and female workers and to adopt equality plans accordingly (**France**).
- Obligation of enterprises with more than 100 employees to prepare every two years a report on the employment status of their male and female workers (**Italy**).
- In case of voluntary adoption of positive action plans, entitlement of employers to a total or partial reimbursement of the relevant financial costs by the State or the ESF (**Italy**).

PROPOSALS

- * To promote **measures providing for specific advantages, in the first instance in favour of women**, with a view to ensuring full equality in practice between men and women¹⁰⁰.
- * To take all necessary measures **to ensure that employers promote equality for women and men at the work place in a planned and systematic way**¹⁰¹.
- * To this effect, **to encourage employers to prepare annual equality reports, containing statistics on proportions of women and men at different levels of the organisation and on pay differentials** for equal work and for work of equal value. In case of discrepancies in this respect, employers shall be encouraged **to include in the annual report measures to improve the situation**¹⁰².
- * To provide that Member States should submit **annual reports** to the Commission on the positive action measures which they adopt or maintain, as well as on their implementation. On the basis of these reports, the Commission should adopt and publish annual reports establishing a comparative assessment of the positive measures in effect in each Member State and of their implementation¹⁰³.
- * To provide that **the conclusions of the Commission's assessment reports regarding positive action should be incorporated into the annual Joint Employment Report, and in the proposals under the 4th pillar in the annual Employment Guidelines and the recommendations to Member States**¹⁰⁴.
- * To promote **research on the quantitative and qualitative result** of positive measures both at national and European level.

IX.2. STATE AID/GRANTS/SUBSIDIES-PUBLIC PROCURMENT

ANALYSIS OF THE SITUATION IN THE PARTNERS' COUNTRIES

In **Austria**, in the private sector, promotional subsidies are provided only for enterprises that comply with gender equality law.

Furthermore, according to the Austrian public procurement acts, enterprises have to comply with labour and social security law to qualify for the award. As equality law is part of labour and social security law, the principle of legal compliance is implemented also in this field.

100. See S. Koukoulis-Spiliotopoulos, "From Formal to Substantive Gender Equality, The Proposed Amendment of Directive 76/207, Comments and suggestions", op. cit.

101. See H. Hautala, op. cit.

102. Ibid.

103. See S. Koukoulis-Spiliotopoulos, "From Formal to Substantive Gender Equality, The Proposed Amendment of Directive 76/207, Comments and suggestions", op. cit.

104. See H. Hautala, op. cit.

In this context, some ministries, like the Federal Chancellery, Ministry for the Interior and the Ministry for Social Security and Generations, have established guidelines for public procurement providing that positive action measures in favour of women shall be a criterion when determining the best offer. When two offers are equal, those enterprises shall be preferred, which have implemented affirmative action plans or measures for better reconciling of family and working life. Experience has shown that most enterprises not only provide obligatory information on equal treatment matters, but also for (facultative) information on positive action. The reaction of bidders shows that the requirement of this information is well accepted and does obviously not cause additional workload when preparing the offer. Administrative units, which have to deal with public procurement, consider that these guidelines encourage enterprises to engage actively in social and equality matters.

In **France**, following an agreement with the State, enterprises with less than 300 employees can receive financial aid in order to conduct studies on the situation in terms of gender equality at work and on the necessary measures for the elimination of eventual discrimination and the establishment of equal opportunities for women and men ("financial aid for auditing").

In **Germany**, the project Equal Opportunities For Women In Research And Teaching¹⁰⁵ aims to increase the percentage of women university professors which is actually only 9%. In this framework, financial support allocated to the universities in the future will depend on their respect of criteria ensuring gender equality. During the Expo 2000, the "International women university for technique and culture" was established as a model structure combining research, education, coaching and mentoring.

Moreover, in some German Länder the linking of public procurement to the promotion of gender equality has already had its first good results. Relevant legislation exists in the Länder of Berlin, Brandenburg, Saxonia-Anhalt and Thuringia, whereas practical experience exists only in Berlin and Brandenburg.

In Brandenburg enterprises which participate in public procurement procedures are given the possibility to improve their originally submitted offer, if they prove compliance with gender equality legislation and promotion of women.

In Berlin enterprises can only participate in procedures of public procurement of more than 100.000 DM, if they prove compliance with gender equality law and promotion of women and family.

Both models function without difficulties for either the administration or the enterprises.

In **Italy**, enterprises of the private sector that adopt voluntarily positive action plans are entitled to a total or partial reimbursement of the relevant financial costs by the Labour Ministry.

105.Chancengleichheit von Frauen in Forschung und Lehre.

REFLECTIONS

1. Experience and research¹⁰⁶ have shown that in the private sector, where financial incentives play a decisive role, **the linking of public procurement procedures to gender equality and family friendly policies is a necessary means of progress towards full and real equality between women and men.**
2. In this context, **compliance with Community gender equality law and the national provisions consistent with it could condition entitlement to participate in public procurement procedures.**
3. Furthermore, the adoption of positive measures promoting de facto gender equality, including measures promoting the reconciling of family and working life, could lead to the **preferential treatment of competing enterprises.**
4. Such positive measures could be, for instance: **to promote and employ women in areas where they are underrepresented, to provide paid training to women, to establish working hours compatible with family life, to provide for child care services inside or outside the enterprise, to avoid a disproportionate reduction of women workers in cases of redundancy etc¹⁰⁷.**
5. Moreover, **compliance with gender equality law and adoption of such positive measures could be set as a prerequisite for the award of State grants and subsidies.**

GOOD PRACTICES

- *Promotional subsidies only to enterprises that comply with gender equality law (Austria).*
- *Financial State aid for equality studies and positive action at the workplace for enterprises with less than 300 employees (France).*
- *Total or partial reimbursement by the State of the financial cost entailed by the voluntary adoption of positive action plans in enterprises of the private sector (Italy).*
- *Financial support allocated to universities subject to compliance with criteria ensuring gender equality (Germany).*

106. See the reports of A. Sporrer, J. Freifrau von Friesen and Christa Tobler in the proceedings of the Founding Congress of EWLA in Berlin, 17-19.3.2000 on the website of EWLA www.ewla.org.

107. See J. Freifrau von Friesen, op. cit.

- Entitlement to participate in public procurements over a certain amount (100.000 DM) only subject to compliance with gender equality legislation and promotion of women and reconciling of family and working life (**Germany**).
- Qualification for awards in public procurement procedures subject to compliance with gender equality law (**Austria**).
- In case of two equal offers in public procurement, preferential treatment of the enterprises which have implemented positive action plans or measures for better reconciliation of family and working life (**Austria**).
- Entitlement of enterprises which comply with gender equality legislation and promote women to improve their originally submitted offer in public procurement procedures (**Germany**).

PROPOSALS

- * To provide that a Member State may **take into account an undertaking's or organisation's record of compliance with national provisions implementing Community gender equality law**, including the record of compliance with national provisions of Member States other than the State in question¹⁰⁸, as well as the adoption of positive action measures, when awarding contracts and aid, grants or subsidies.
- * To provide that in public procurement, **authorities may include demands of positive action measures with a view to ensuring full equality in practice between men and women**¹⁰⁹.
- * To provide that **compliance with gender equality law and positive action measures are a prerequisite for State grants and subsidies**.

IX.3. AWARD OF PREMIUMS/SEALS OF QUALITY

ANALYSIS OF THE SITUATION IN THE PARTNERS' COUNTRIES

In **Germany**, the association Total E-QUALITY-Prädikat Germany e.V. assigns a seal of quality to enterprises, which promote gender equality in their personnel policy. Its aim is to prove that promotion of equality rights leads to efficient human resources management, which consequently improves the quality in the enterprise and ensures its competitive ability. The Federal Ministry for Family, old age, women and youth supports the following projects: a) a study examining the importance of the Total E-QUALITY seal for

108.Ibid.
109.Ibid.

women customers; b) a project evaluating the experiences of the enterprises awarded Total E-QUALITY seals and c) a project examining whether the criteria for the award of Total E-QUALITY seals could be applied in universities and research establishments as well.

Moreover, in the context of the competition "the family-friendly operation 2000: New opportunities for women and men", the Federal Ministry for Family, old age, women and youth has awarded premiums to enterprises which promoted family friendly measures, such as paternity rights and teleworking.

REFLECTIONS

1. Experience and research in the field of Total E-Quality Management have shown that **positive action at the workplace could lead to long-term viability and efficiency of the enterprises or organisations and that competitiveness depends to a great extent on their ability to mobilise the devotion, the existing skills and the innovative force of their workers.**
2. In this context, **State, regional, local policies or private initiatives who reward the adoption and implementation of equality plans and positive action in favour of the employment of women and reconciling of family and working life at company level in the form of premiums or Total E-Quality seals,** encourage the adoption, promotion and dissemination of such measures.
3. For a better evaluation of such rewards, **follow-up research on their quantitative and qualitative result should be conducted both at national and Community level. In particular research should focus in the importance of the Total E-QUALITY seal for women customers, the experiences of the awarded enterprises and the promotion of such measures to universities, research establishments and organisations of the public sector.**

GOOD PRACTICE

- *Award of premiums or seal of e-quality to enterprises, which promote gender equality, including the reconciling of family and working life, in their personnel policy (Germany).*

PROPOSALS

* To establish the award of a TOTAL E-QUALITY seal for enterprises that promote gender equality, including the reconciling of family and working life, in their personnel policy both at Community and at national level.

* To ensure that the adoption of positive action measures and plans, in the first instance in favour of women, is included in the criteria for the award of such seals.

X. ANNEX

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