Equal Opportunities in the Czech Republic and other East-Central European Countries as Part of the Requirement for Accession to the European Union

This contribution will look at some of the issues concerning equal opportunities for men and women in the Czech Republic and other former East European countries, as these have become one among many preconditions for entry into the EU. It can be concluded that behind the issue of equal opportunities lies a broader question of what new set of relationships between East and West are coming into place.

Equal opportunities are being given a high profile at European Union level, and the Czech Republic (CR), together with other countries that are waiting to join the EU are being asked to adopt EU standards and to create conditions for equal treatment for men and women before entry. What is this process about and what goals are being pursued?

This article will explore the question of what it means to adjust the national legislation on equal opportunities to that of the EU, and what kind of process has been unleashed. It will draw on the experiences from a series of PHARE projects, first in the CR in 1996, and later in 1998-99 in Poland, Hungary and Slovenia. These projects, initiated by the European Commission, were designed to review the existing national legislation on equal opportunities for men and women in the accession countries. The screening of that legislation led to a series of recommendations for change in order that the national legislation is in line with the legislation of the EU. The logic of the exercise was that once the legislative framework is harmonised (or approximated), then the entry into the EU will be easier. This means that once the former countries of Eastern Europe establish similar legal ground rules and interpret the law in a similar way, then accession into the 'common European home' is a matter of time and finer technicalities. The aim is a partnership of like-minded legal states. But is this really so?

The approximation exercise now covers a much larger area of social, legal, financial, commercial and even cultural matters. However, equal opportunities for men and women came at an early stage, to pave the way for further work in the harmonisation process. This was, in the authors view, because everyone on both sides – that is in the CR as well as at the EU level – assumed that equal opportunities is an easy, 'soft' subject to cover. After all, the old socialist constitutions were very clear on equality. Equal rights for men and women were written into the statute books, and generally, men and women received equal treatment before the law. In addition, many surveys have shown that men and women did not see themselves as discriminated against along gender lines. Hardship, in the old system, was meted out to everyone equally except the top elite. The issues, so hotly debated in the EU, have not yet arrived. There was no part-time work that would be less well-paid; there were no 'housewives' who stayed at home, dependent on their husbands to bring in cash and control the household budget; no dichotomy between paid and unpaid work; and in the last instance, no problem of money economy where the movement of capital determines the distribution of incomes and salaries and generates male-dominated structures of inequality. So to approximate equal opportunities legislation was seen as a relatively simple proposition.

However, the exercise proved to be more complex. On the one hand, because the EU follows its own motives by laying down conditions for the harmonisation of the legislative framework for the countries that wish to become members of the EU. On the other hand, because the exercise became entangled in the history of the formalism of the countries of East-Central Europe. It became evident during the projects, that the two sides do not conceptualise equal opportunities in the same way. It also became evident that the process of accession contains within itself hidden agendas on both sides.

Let us look at three things: first, what were the difficulties and the 'hidden agenda' on the side of the accession countries; secondly, what are some of motives and 'hidden agendas' on the part of the EU; and thirdly what can be gained by looking at equal opportunities as a social issue.

To begin with, one of the main difficulties was to do with the most basic issue of interpreting equal opportunities. It seems that the countries of East-Central Europe, the Czech Republic included, still operate on the basis of collectivist notions of rights and responsibilities. Equality is therefore a matter of legal and constitutional rules in the most essential sense, usually granted by the state. It is not a matter of inter-personal negotiations, a relational issue, or as in the language of social policy, a societal issue. The example of the Scandinavian approach to gender, for example, is that the social standing of men and women, including their position in the labour market, needs to be problematised, not merely codified. This is where some of the lessons from the EU can be helpful. But to arrive at a consensual view of this kind takes time, and usually requires some form of battle with the legislative arm of the state. This too emerged as a difficulty during the projects. The majority of the East-Central European accession countries have a specific understanding of the role of the state *vis à vis* the citizens, or the civil society. The Prussian concept of state administration, for example, still predominates in the CR, and this means that the legislators are seen, and see themselves, as the guardians of a higher order, upholding it on behalf of a greater good or a greater authority. They are not, on the whole, servants of the citizens. Often, it is quite the reverse. Even the reform of state administration that is currently being undertaken in the CR relies heavily on the argument of reforming the institutions and on the role of the profession itself, not on what kind of service is to be provided, to whom, and why.

This continued formalism, when translated to equal opportunities during the projects, manifested itself in an emphasis on proving that the national law does not differ from the EU law where equal treatment is concerned. Equal opportunities were on the whole interpreted as absence of discrimination. An absence of discrimination is qualitatively different, I would argue, from a positive endorsement of equal treatment, in much the same way as the absence of identifiable illness does not automatically signify a healthy individual or a healthy society.

The exercise was therefore not so much concerned with finding out and defining what is the actual existing reality in the post-communist social systems with respect to equal opportunities for men and women, and then addressing these, as much as with proving 'European' democratic heritage.

It was in the interest of the respective ministerial departments responsible for European integration to focus on the narrow legal aspect of equal opportunities. In that way, any necessary changes to the national legislation could stay in-house, that is, to be supervised by the appropriate ministerial and legal experts. The terms of reference of

these projects required a review of selected documents made available by the ministries, and a muted discussion with selected legal departments. No one else need not worry; one legal state can reasonably communicate with another legal state and get the matter settled with minimum of social disruption. The departments for European integration seemed to have been instructed to speed up the process of approximation. The European Commission even gave a signal that the time of actual implementation when real sanctions might apply was still far off. Thus, what had happened was that money was being spent, some EU documents were being translated, and some amendments to national legislation were added, whilst the status quo in society remained unchanged.

The hidden agenda was: "we are good European boys here in East Central Europe."

This is, of course, a slight exaggeration. But on the whole, the difficulties that came to surface during the projects were to do with the unwillingness to extend the debate on equal treatment beyond the legislative framework itself. Often the inclusion of the social context was seen as a diversion, or at best, as something that is at present unmanageable. Unmanageable because social habits, customs, and cultural attitudes are outside of the law. It was pointed out that certain aspects of inter-gender behaviour will remain within the cultural mores, and indeed, one has to accept that the law cannot 'solve' all life situations. This is in many ways one of the central points – one cannot legislate for everything. At the same time, however, law and life must interact with each other. Only where different life situations can be presented through the diverse voices of different individuals, can the policy making process be truly representative. It is in the loosening of the legal grip and through creating conditions where an individual's representations can be made, that new ways of securing the voluntary co-operation of citizens to obey the law of the land are found.

Opening up a public debate on what individuals experience as equal or unequal opportunities in everyday life can become messy, but it is the only way to break the deadlock between *de jure* and *de facto* inequality. Some debates along these lines are already taking place in the CR and elsewhere in East Central Europe, and are to be encouraged.

As indicated earlier, the EU has become a very influential regulator of such debates and processes of change. The EU, as it is now known, grew from the shared idea among the powerful original six countries that an integrated common market is a good thing for long-term economic prosperity in post-war Europe. Equal opportunities for men and women, as briefly enshrined in Article 119 of the Treaty of Rome in 1957, were to ensure that no unfair competition on the labour markets of Europe would arise. Unfair, at that time, meant that women should not jump the job queue just because they have traditionally been paid less then men, even for doing the same work. Post-war Europe was to combine economic shrewdness, such as making sure that employers could not undercut each other, with fairness, that is gradual recognition that men and women, if they were to participate on the labour market equally, should also have equal rights. These two, shrewdness and fairness do not sit together comfortably though. As is more than well-known, equal opportunities had to be fought for step by step for a long time before they began to be taken seriously. And even now, it is not always obvious whose interests are being followed in upholding the complex web of EC Directives.

The concept of a common market was altered to embody the European Community in the 1970's, and then the European Union in the 1980's. The paradox is that as the language of unity is being reinforced at the top level, backed by the processes of integration

and harmonisation, we are discovering more disagreement and diversity. It is no accident that for the first time since its inception, the EU in the 1990's became seriously concerned with social policy issues of social cohesion, harmony and regional democracy. The common market did not produce the desired economic stability. Despite promoting fairness, unemployment has risen and is rising. Social exclusion is one of the main worries, threatening the fabric of the whole unified polity. The concept of the European Union is therefore a contested notion. In some of the more critical writers' view, the EU has failed in its major task, that is, to transcend the role of the post-war nation-state. What can be seen, is a further contradiction, that is, that the EU in fact defends the traditional role of the nation-state, except on a larger pan-European scale. The current difficulties with European integration and enlargement (of which approximation is an integral part), is that the institutions of the EU, i.e. the Commission, behave and act as a benevolent patriarch. The accession countries of East-Central Europe are being invited to share in the benefits of being part of international decision-making, something they lacked before. This is a powerful incentive. Yet, in order to be part of the 'club', there are conditions to fulfil. One of the conditions is to become a legal state along the lines of the EU. The difficulties of defining the EU and its economic self-interests mean that the accession countries are caught in an unfinished business of the European Union's own fuzzy democratic process. For the process of enlargement could go both ways – either the way of mutual partnership, or the way of new dependency. At the moment, the exercises to do with approximation are stuck at a stage that does not really help the in-coming 'new democracies'. They are stuck at a stage of proceeding with institutional reform in a most unimaginative, and often passive way (despite the training of key personnel, and transferring responsibilities to the domestic governments). The uncertainty of the EU about its own future means that to enlarge became synonymous with replicating itself. Thus, the countries of East-Central Europe are asked to emulate the institutions and the ways of doing things of those of the EU. The hidden agenda is expansion. The more recently initiated process of institution building inside the accession countries themselves remains a cut and dried affair, predicated on technical procedural matters and on legal conformity.

That is where the issues on equal opportunities become once more relevant. The significance of promoting equal opportunities lies in creating a social climate of trust and confidence for all individuals within a given political system, to pursue their rights. Not by turning to the constitution, but to fellow citizens, whereby no-one dares to transgress decent treatment of each other because it is in no-one's interest to do so. Discrimination is not about visible ways of differential or preferential treatment of one sex over another, which would be relatively easy to outlaw. Discrimination is about the invisible ways of behaving, bestowing preference or privilege to one section of society as opposed to another (or one individual/sex as opposed to another), without anyone being able to find ways of disclosing it as an improper practice. Discrimination therefore rests on the given, traditional, informal, call it cultural, ways of preventing people from raising their voices. It rests on invisible intimidation, on knowing that the boss will make my life hell if I, as a woman, for example, raise the issue of an unfair promotion that went to a man. It rests on social and cultural hierarchies that seem so 'natural'. It rests on fear of making a move against the established ways of doing things. Its essence is in being afraid to challenge bad practice. As an issue, it is therefore completely central to a well-functioning civil society.

The projects then raised the point of how important it is to pay attention to the implementation of equal treatment. It was accepted that the law, in its broadest sense, is essential as a starting point. How legal rights are then implemented, applied and safeguarded, is another matter. As is well-known from the past bureaucratic and centralist practices, the law can be invoked by the authorities at every available opportunity to prove that the state is indeed a legal state, yet the citizen may not feel any of its benefits whatsoever. The application and implementation can turn into a highly controlled affair.

Equal opportunities, it can be concluded, are about rights of individuals within a democratic structure. They are not about individual battles for supremacy, or about absolute equalisation of all actions. Thus, one is back to what law can or cannot do. It can guarantee and it can protect. It must give out a clear message that unlawful practices will not be tolerated. Yet, to get to that stage, there has to be an active civil society, with a whole range of its own structures, voices, and challenges. There are numerous cases of unequal treatment being challenged either in national or international courts within the EU. The moral of this is that the law and the courts only provide a stepping stone. It took years to get the right of equal pay for work of equal value to be established in the EU. It will take further years to make sure that it is upheld. It does not follow that once the law is there that it will always be obeyed. But it does make a difference if you, as an individual know that you will be supported when you decide to pursue your rights, and that your actions will not be dismissed as trivial or over the top if you continue to do so. Thus, it may help to have job evaluation schemes in place to determine that two jobs, even if they do not have the same content or title, but are of equal value in terms of skills and contribution, will be rewarded equally. This could mean a tremendous boost to those who feel that their skills are not recognised or appreciated. For example, if you happen to work in an environment that is either very 'male' or very 'female', your work may be undervalued, since it is 'natural' for women, for example to have patience in repetitive jobs, whilst concentration on detail in male jobs is rated as a form of expertise. A job evaluation scheme may go a long way to saying that women's patience is equal to male expertise, thus raising self-awareness, self-respect and fairness on both sides. That, in itself, cannot be bad for economic prosperity and work motivation. Arbitration procedures may not be everything, and one would like to see a situation where they may be used only as a last resort. However, how many situations are there where it takes time and effort to see that there is anything wrong at all? Defining what is, is therefore particularly important. On this note, definitions need to contain what is visible, as well as what is less visible. For example, stating that women and men have an equal right to apply for a job does not clarify what conditions may be in place to prevent one or the other from being able to fulfil that job. Indirect discrimination involves situations where there may be a rule or a requirement attached to a particular job, which one sex can fulfil more easily than the other. Their right to apply is equal, but their selection for that job will depend on whether or not they can fulfil that particular condition, and that can mean that the 'invisible' hand of tradition prevails. The practice of employers therefore has to be made explicit and accountable. Their decisions on employing a man or a woman need to be made transparent. The burden of proof about whether or not there has been discrimination against one sex or the other now lies with the employer in most countries. It enables the individual to be free to make a claim, and worry less about gathering evidence to convince the traditional sceptics. In addition, most definitions of equal treatment contain a clause that an individual who finds himself or herself wronged by an employer (or the state, in cases of pension

entitlements), will be protected against intimidation, i.e. someone wanting to silence this particular individual because he or she is seen to create trouble; and against victimisation, if they take their complaint to court. Victimisation in this respect can mean lowering the individual's chances of employment with another employer by exposing them as 'difficult', or not providing them with appropriate compensation to which they are entitled. In most EU countries now, in cases of proven indirect discrimination or victimisation, high rates of compensation are usually paid, thus it becomes unprofitable as well as socially unacceptable for employers to behave in such a way.

Indirect discrimination can also mean a very 'innocent' rule that only full-time workers can benefit from occupational pension schemes. Or it can mean that a payment for a job does not include additional perks (particularly non-cash benefits, such as the use of a company car, seasonal travel tickets, attendance of training courses paid for by the company, contributions to a non-occupational retirement scheme, etc.) in calculating the total earnings for social security purposes. It may be culturally accepted that men when they work in a male, for example, managerial, environment, expect these perks. But all these perks need to be declared and are nowadays defined as pay through the original Article 119 of the Treaty of Rome, with the purpose that women's pay in equal managerial positions is not lower because they are not part of men's executive networks where such perks may be distributed.

It may take a long time to get all this right – in the EU as well as in the accession countries. What has become obvious through these approximation projects are two things. One is that the law is clearly rooted in the historical and political structures of any particular country, and thus has to be treated accordingly. If we are to encourage new legal practices, we also need to encourage new and active social structures. Citizens' involvement is crucial. Law, in that sense can never be a destination for a process of change. Secondly, if there is to be a new European partnership that has a real rather than a symbolic meaning, then the EU has to be much more self-critical. Mutual showing off between the EU and the accession countries about how clever and muscular their respective legal systems are, only serves the purpose of prolonging the belief in the Emperor's new clothes.

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