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In 1991, the Parliamentary Assembly of the Council of Europe adopted a Recommendation (No. 1146) on Equal Opportunities and Equal Treatment for Women and Men in the Labour Market. It calls on the governments of member-states to pursue and intensify their work in order to achieve complete equality between women and men in employment and employment relations (working time, equal pay, abolition of vertical segregation, i.e. concentration of women or men in certain functions, levels of responsibility or positions). These and similar principles have been incorporated in the legislation of the EU, while the acceding countries need to adjust their national legislation accordingly. Slovenia has provided the main legal mechanisms of promoting equal opportunities in three laws: the Parental Care and Family Cash Benefits Act (see SEM 3/2002: 30 and 8-9/2002: 24), Equal Opportunities Act (see SEM 1/2004:20-21) and the **Employment Relationships Act (ERA)**, which we present here.

Even though the law has been in force for over a year, an analysis from the point of view of equal opportunities is still relevant because concrete problems of implementation are only emerging now. The ERA introduces **a number of new provisions regarding equal opportunities and equal treatment of women and men**, which are the result of not only international pressure, but also professional work and years of negotiations between the social partners (a particular commitment was shown by some trade unions). As far as implementation is concerned, the ERA prohibits discrimination based on gender and prescribes detailed procedures for employers to prevent discrimination and guarantee equal opportunities for women and men in employment and employment relations. While the ERA retains the protection for some categories of workers (in relation to pregnancy and parenthood), it no longer regulates maternity and child-care leave. The issues of absence from work due to maternity/paternity are now regulated by the Parental Care and Family Cash Benefits Act, which was the first to introduce normative measures aimed at promoting equal opportunities. The ERA protects the integrity and dignity of job-seekers and employees, provides sanctions, creates the possibility of institutional control and, consequently, the possibility of taking measures against discriminatory practices in the labour market.

The central provision which institutes the **principle of prohibition of discrimination** is **Article 6**. Here, the law defines areas of employment relations where equal opportunities and equal treatment must be guaranteed to all. The article also stipulates that a job-seeker must not be put in an unequal position because of personal circumstances described in this law, including gender. The law prohibits both **direct and indirect discrimination**: the latter exists where seemingly neutral provisions, criteria and practice result in a situation where some individuals find themselves in a disadvantaged position. Article 6 introduces and defines a **reverse burden of proof**: if a worker provides evidence of the violation of a prohibition of discrimination, it is up to the employer to account for the discriminatory treatment. The law provides for three types of sanctions: (i) it imposes liability for damages on the employer according to the general rules of civil law; (ii) it enables the worker to cancel the contract in certain circumstances, while retaining the right to severance pay and compensation; and (iii) it provides judicial protection to the unselected candidate if they invoke the violation of prohibition of discrimination. Supervision of implementation of the ERA is conferred on the **Labour Inspectorate**, which can assign a case of violation of the prohibition of discrimination to a magistrate together with the proposal to launch the procedure regarding violations. A fine is also envisaged: not less than SIT 1 million for an employer which is a legal entity and not less than SIT 500,000 for an employer who is a natural person; and SIT 80,000 for the person accountable as the employer. In 2003, the Inspectorate treated one case of breach of this provision.

Prohibition of discrimination is also provided by provisions prescribing equality in conditions of work, pay and reasons for dismissal. Below, we present how the key articles of the ERA implement the principle of prohibition of discrimination in employment relations.

Article 25 prohibits any implication of priority to a particular gender in advertising a job vacancy, except in exceptional cases (if a particular gender is necessary to do a certain type of work). In the case of a breach of this provision, the Labour Inspectorate has the same authority as described above, including the same amount of fine. The Inspectorate has still not taken any steps in this field even though it has been alerted to (many) alleged cases of breach of this provision. An important new provision is that it is prohibited to demand information not directly relevant to employment in the contract of employment (**Article 26**). Candidates are not obliged to answer any questions concerning their family or marital status (**Article 27**) and are guaranteed protection in the labour court, while the Inspectorate can impose the same sanctions as described above.

An important provision is also laid down in **Article 45** (listed under the title of 'employer's obligations') which **prohibits exposure to sexual harassment**. This provision is limited to the obligation of the employer to ensure an environment where employees are not exposed to unwanted actions of a sexual nature, including unwanted physical, verbal or non-verbal actions which result in threatening or humiliating employment relations (read more on this subject in the next issue). A reverse burden of proof also applies here. The employer is in violation of this provision if it fails to ensure such an environment and the employer

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is liable for damages according to the principles of civil law. The Inspectorate has not reported any violations of this provision, however, two proceedings are currently underway after complaints of an alleged violation of this provision have been filed. The law provides institutional support for the prevention of sexual harassment, while judicial practices will establish the standards of resolving this problem.

According to the ERA, **gender and family obligations cannot constitute a reason for an ordinary termination of an employment contract (Articles 89 and 115)**. Nevertheless, the Legal Information Centre and the Labour Inspectorate have recorded cases where employers have cancelled a contract of employment for these reasons.

Another important provision is laid down in **Article 133**, which **prohibits gender-based discrimination in the field of remuneration: equal pay should be given for equal work or work of equal value**. Differences in pay are becoming a universal and global phenomenon and can be seen as another aspect of the systematic discrimination of women. Hence, efforts to ensure equal opportunities are becoming global. Two important international documents which regulate this area and were used in drawing up the ERA are Convention No. 100 on equal pay for men and women for work of equal value adopted by the International Labour Organisation (ILO) in 1951 and EU Directive 75/117/EC. Provisions of employment contracts, collective agreements or employers' general acts which are contrary to this provision are void. The ERA does not provide any measures of the Labour Inspectorate if this article is violated.

An important provision which forms part of the **special protection of some categories of workers** is that the night work of women is prohibited in industry and construction (**Article 153**). Growing criticism of ILO Convention No. 89, which prohibits the night work of women in industry, began to emerge as early as in the 1980s. The main argument is that the prohibition is itself causing discriminatory employment practices. Some countries have already derogated from the Convention (such an initiative has been rejected by the Slovenian Economic and Social Committee). As a result, the ILO adopted Night Work Convention No. 171 in 1990, which regulates safety measures related to night work which apply to all workers regardless of sex. In Slovenia, ILO Convention No. 89 is still valid and prescribes the conditions in which night work for women can be introduced.

The same group of provisions commit an employer to facilitate the reconciliation of work and family responsibilities (employment increasingly determines the structure of one's spare time). These provisions are very important for equality between women and men because they are based on the assumption that both parents have family obligations (this includes the protection of parenthood in relation to night and overtime work). The **ERA commits an employer to guarantee the right of absence from work due to parental leave to both parents**, thereby ensuring that this right is inherent for both parents. This is an important normative shift towards accomplishing the principle of the reconciliation of different roles.

Another important new provision is the protection of information about pregnancy: the employer has no right to seek information about a worker's pregnancy unless the worker agrees to give such information (the Inspectorate has no authority here). A mother who is breast feeding has the right to at least one hour **break** daily for **breast feeding during work time** (8 reported cases of violation so far). All workers who have children aged up to 15 have the right to one additional day of annual leave. In the case of violation of these two provisions, workers may use several forms of institutional protection. If the worker is refused one additional day of leave, the Inspectorate may force the employer to implement the law by issuing an order or sending the case to the magistrate.

Employment is an important social institution because it provides a source of status and identity, brings together personal and social goals and ensures legal order and control. It is also an important integrating social factor. The processes of economic and social transformation invariably undermine the foundations of gender equality. This is why the mechanisms proposed by the ERA, upgraded by control and protection measures, are an important step in ensuring gender equality. This law, like many others, faces an **implementation gap**. The law regulates a very sensitive, but highly important, area of social relations which is determined by social constructs and additionally shaped by existential fears. There are a number of anecdotes on different cases of violation of this law. One of them concerns the right to parental leave. This right is inherent and is no longer a matter of the employer's arbitrary decision. However, these rights are often not exercised for fear of losing one's job or are misunderstood. It should be added, therefore, that appropriate (and responsive) legal and judicial protection should be established and provided, in addition to recommendations (see SEM 1/2004: 20) of which the continuous promotion of rights is the most important. Further, measures should be developed to protect a person who files a case of violation from being victimised by the employer. The role of the **Legal Information Centre** should also be reviewed in the process of eliminating systemic shortcomings. The Centre could contribute more to protecting and implementing the ERA's provisions if it enjoyed appropriate institutional as well as continuous and stable financial support.