



„Towards effective gender equality legislation in Belarus – analysis and recommendations ”

Report from the strategic meeting

Warsaw, 28 – 29 April 2014

1. The goals, participants and experts of the strategic meeting

On April 28-29, 2014 the strategic meeting “Towards effective gender equality legislation in Belarus – analysis and recommendations” took place in Warsaw. The goal of the meeting was to develop an effective draft law on gender equality through the dissemination of expertise and utilization of Polish and Croatian experiences in this area and to develop a strategy for the advocacy for the adoption of the law on gender equality in Belarus by utilizing Polish and Croatian experiences in this area.

The meeting’s participants were the lawyers and activists working for women’s rights advancement in Belarus. The experts invited to the meeting were the lawyers and experts on gender equality legislation from Croatia, Poland and Germany: Sanja Sarnavka, Ines Bojić, Karolina Kędziora, prof. Małgorzata Fuszara and Silke Steinhilber.

Sanja Sarnavka for the last 12 years has been professionally engaged first as a coordinator and then as a President in the activities of the women’s human rights group B.a.B.e. (Be active. Be emancipated) in Croatia. She is an expert on advocacy and media in a gender context. Sanja is a member of the International Advisory Board of the Human Rights House Network, Zagreb and the Council for Civilian Oversight of the Intelligence and Security Services in Croatia. At the international level she has been active as a member of several international networks such as the East West Women, Astra, Karat, WIDE, WAVE, etc.). She is a member of the KARAT Board and Advisory Board of the EU Fundamental Rights Agency.

Ines Bojić is an attorney in law with a long history (since 2003) in the human rights field. She worked as a lawyer at the European Court of Human Rights and the Croatian Constitutional Court. She has been a legal representative in many cases before domestic courts and European Court in Strasbourg. Ines cooperates with several NGOs in Croatia, especially with B.a.B.e (Be active. Be emancipated). Currently she works as a legal coordinator of the Human Rights Law Clinic in Zagreb.



Malgorzata Fuszara – a lawyer and sociologist, an expert in gender studies, sociology of politic, ethnical and cultural minorities and a sociology of the law. She is a professor of the humanities and works at the Department of Sociology and Anthropology of Custom and Law of Warsaw University. She is a member of several drafting committees of academic journals such as „European Journal of Women's Studies”, „Signs: Journal of Women in Culture and Society” and „Societas/Communitas”. In her professional life she focuses on the issue of women’s participation in a social and political life. She conducts researches on gender and changes in social roles of women and men. She co-authored a model law on equal status of women and men that was voted in the Polish Parliament in 90ties but did not pass.

Karolina Kędziora - a solicitor, vice-chairperson of the Polish Society of Anti-discrimination Law, certified anti-discrimination trainer, member of the Anti-discrimination Education Association. In 2003-2006 Karolina worked for the Helsinki Human Rights Foundation. She is involved in litigation of rights at the Polish courts of persons who experienced discrimination. Karolina coordinates the informal network – Coalition for Equal Opportunities – that monitored the legislative process of adopting the so called “anti-discrimination” law in Poland in 2010 and co-authored the amendment of this law that is now being discussed by the Polish Parliament.

Silke Steinhilber has worked as a researcher and trainer on gender equality in social and employment policies in Central and Eastern Europe, Caucasus, Central Asia and the European Union since 1999. In 2001, she established her consultancy firm “Research, Evaluation and Capacity Development for Gender Equality” and has since consulted with the International Labor Organization, UNICEF, UNDP, Council of Europe, UN/ECE, and others, including trade unions and women’s organizations. A feminist political scientist by training, she has published widely on gender and the labor market, social security reforms and gender mainstreaming in social inclusion policy. She holds a PhD from the New School for Social Research, New York. Her dissertation was about family policy reforms in Poland and the Czech Republic between 1990 and 2005.

2. Process of formulating the Croatian Gender Equality Act and lobbying for its adoption and implementation [Sanja Sarnavka]

B.a.B.e was an organization that drafted the gender equality act in 2001. Due to our and other people’s efforts this act was passed by the Croatian Parliament in 2003. Then, some amendments were introduced in 2008. Having the gender equality law passed was just a beginning because later on a lot of effort was needed to make the law work in practice. In Croatia we have had the gender equality law for more than 10 years but still the incidents of gender based discrimination happens in public spheres. Therefore, promoting and monitoring gender equality is a never ending work. When talking about the advocacy for the gender equality law you should first take into consideration a context of the specific country where this law is going to be introduced. Therefore, what we have in Croatia cannot be just copied in



Belarus. Nevertheless, I will describe you a situation in Croatia and how we managed to have this gender equality act passed.

Out of all post-socialist countries the Croatian women participated in a second wave of feminism in the end of 70'. Croatia had a first shelter for battered women in 1987. It means that we have fought for women's rights for a long time. After the war when Croatia became independent many foreign donors came to my country and for the first time in our history the women's movement received a support from outside. During socialism the government did not see a problem of inequality and perceived a feminism as a bourgeois concept. However, when capitalism came the government said that women like to be at home, have many children etc., and that we don't need this feminist concept of gender equality imported from the West. The Catholic church which is very conservative in Croatia joined this discussion being strongly against women's rights. But the women's movement didn't surrender and we carefully planned our advocacy strategies in order to have as many people as possible understand what is gender equality and why we need it. We decided that we need the gender equality law because otherwise the women's rights would not be protected given the fact that the conservative forces were growing in power.

The first gender equality draft law was formulated by B.a.B.e in a close cooperation with the lawyers and trade unions. Luckily for us at the same time one professor at the Faculty of Law, a man, also drafted the gender equality act. We learnt about each other's work through media and came together to lobby for the act in the parliament. In the parliament we found women and men from different parties who supported us and within 2 years we succeeded to have the act passed. However, the law that was passed was not perfect of course. First of all it was not passed as a constitutional law, it did not contain any sanctions and there was not an independent body which would monitor and promote gender equality. Luckily for Croatia the Constitutional Court and the European Commission ordered the government to change this act. In 2008 the amendments were made and the law was passed by the parliament as the constitutional law.

What I find very important while lobbying for the law is to have many supporters from different backgrounds. B.a.B.e carefully planned different strategies to reach to different social and political groups. We were aware that in order to succeed we need media's support. Besides, when we planned our lobbying strategy we also thought about the arguments our opponents might use. So, B.a.B.e looked for the good arguments to defeat the opponents in discussion. First thing we noticed was that there was not gender segregated data in Croatia. The statistics are very important. If you don't have good statistics you cannot clearly say in which areas discrimination occurs. Statistics help to prove existing inequality and support the case. We decided to focus on media to prove that the women in Croatia are discriminated. We engaged in the global media monitoring process which happens every 5 years. In 1995 we did a survey of the media content and journalists. We found out that among the journalists there were 43% of women what was not bad but when we checked who were the main actors of the articles, TV programs and news we found out that women made only 17% of them. In 2000 this number increased to 18%, so we concluded that in such a slow pace of 1% every 5 years we need 160



years to achieve equality in media content. This was a very good argument. People understood that. What's more we started asking questions publicly why such a situation takes place and the politicians and journalists did not know what to answer. Next step B.a.B.e took was to explore how the women and men are shown in advertisements. We compared the women and men's pictures with the same products e.g. cars, beers, bottles of wines. We immediately noticed that in most cases the advertisements were very sexist. From my organization's experience I can say that exploring media is one of the best way to show people the existing inequality between women and men. It worked in case of Croatia very well. At the end of this media campaign we produced a documentary "Distorted reflection" which was shown in many cities and also broadcasted on TV. This simple message was what most of a society understood. We have noticed a big change in a society during the last 10 years. When we did this campaign the billboards and other forms of advertisement were full of sexism and they were a natural element of Croatian public space. Nowadays there would be a strong public reaction to these kind of advertisements. So, our strategy has worked. In 2001 we also did a research on the school books showing the stereotypes they promoted. It was also very successful method to reach to a society with a message that we need to do something about widespread discrimination of women. It was an intensive period of 2 years when we gathered statistics, explored the media, ran different campaigns addressing society and looked for supporters in the parliament.

The gender equality law was amended in 2008 but we still don't have an independent body that would monitor and promote gender equality. We have the parliamentary committee on gender equality with two external experts elected from academia or civil society organizations. Although they don't have a right to vote it is important that they can participate in the debates of this committee. Thanks to them the MPs are informed about the problems and the women's NGOs know what is going on in the committee. We have convinced the committee to organize the thematic sessions in the parliament where we rise the important issues concerning gender equality. From my organization's experience I must say that everything what is related to human rights and gender equality must be monitored and promoted regularly. It is never ending work since whatever we have managed to achieve is not sustainable and can be taken back. Therefore, B.a.B.e is always ready to organize new campaigns.

Main factors that decided about B.a.B.e success in having the gender equality act passed:

1. Our determination and courage. We travelled to the democratic countries, gathered their experiences on gender equality legislation and gender mainstreaming, and we dared to draft the gender equality act not waiting for the politicians.
2. Close cooperation with other women's organizations and the academics.
3. Support for our case from the academics and some MPs.
4. Having the representative in a working group on gender equality law in the parliament, so we were informed about how the process was going on.
5. Pressure that came from the European Commission due to the EU accession process.



Main obstacles in the process of pushing for the gender equality law:

1. Objections of some MPs and conservative forces to implement the law as we wanted it to be. In a result the law was not passed as the constitutional law, they did not agree to create an independent body for gender equality promotion, there was no sanctions.
2. Lack of trainings for people who were responsible for implementing this law e.g. judges.
3. Lack of statistical data.

The lack of statistics can be also a good argument showing that gender equality issue is ignored in the country if the state does not monitor how gender equality looks in practice. In Croatia gathering of statistical data is financed from the state budget.

Question: How did you cooperate with media and convince them to join and promote your campaigns?

Sanja Sarnavka: The problem is that the journalists usually think that they are very smart and they don't need to be educated in any topic. Therefore, at the very beginning when we tried to organize some training for the journalists it was very unsuccessful. But at the same time we had to train NGOs as the organizations did not have any experience in working with media, so we decided to invite the journalists to train the representatives of NGOs. The journalists liked this idea, especially that they were paid for being the trainers. Then, they just naturally became our friends and collaborators. When we started cooperating with the journalists it was a time when the state television changed into a public television with an independent council to decide about the content of TV programs. The content became coherent with the values claimed to be respected in Croatia, also with gender equality principles as they are mentioned in the article 3 of Croatian Constitution. With time B.a.B.e learnt how to organize the events which were attractive for the media and the media started to follow our activities. We have always planned the short-term, medium-term and long-term campaigns. For example our campaign on domestic violence was planned for 5 years and every year was dedicated to different target group, e.g. to women, men, decision makers etc. It is important to plan many different events in order to reach your goal. Therefore, in order to have a gender equality law passed you have to plan many actions and activities, and work jointly with as many supporters as possible.

Question: Do you have any sanctions for those who for example use sexism in advertisement or promote sexism in the media?

Sanja Sarnavka: In our first gender equality act there wasn't any sanctions but the amendments in 2008 introduced the sanctions. However, these sanctions are not very effective because our judicial system is of poor quality and Croatian courts have a tendency to investigate the cases for a very long time. Croatian people prefer not to go to the court. Nevertheless, we have noticed that this constant stressing and reminding in public that these kinds of advertisements etc. are not OK have significantly improved a situation. For example two weeks ago there was a sexist commentary on our public television about new woman prosecutor. The ombudsperson



immediately reacted to this commentary and the next day the public television apologized for what had been said a day before. The public culture has changed and now the media are careful not to be accused of promoting sexism.

Question: Is gender equality policy in Croatia financed from the state budget?

Sanja Sarnavka: Even before the gender equality act was passed we had had three or five year strategic plans on gender equality. But these plans were very general and did not say how this policy should be financed. Nowadays, the governmental body responsible for gender equality policy produces the so-called strategic papers but it does not monitor their implementation. Therefore, these papers are rather useless. The women's organizations in Croatia promote and monitor gender equality in the frame of their projects.

3. Process of formulating the Polish gender equality draft law and lobbying for its adoption in the Parliament [prof. Malgorzata Fuszara]

In Poland the law on gender equality was drafted at the beginning of the 90'. This first draft was formulated by the academics – ma and professor Eleonora Zielinska in cooperation with the women's NGOs and Women's Parliamentary Group. This group consisted of women from different political parties and they focused on the specific women oriented legislation and issues. The group served as a platform for discussing and pushing for the gender equality law.

There were two main reasons why we decided to draft this law. Firstly, the feminists realized that democracy did not necessary mean protection of women's rights, and the rights might be taken back from us as it happened in case of reproductive rights (in the end of 89' the reproductive rights were drastically limited and there were even attempts to introduce a total ban on abortion). We thought that we should not only defend our rights but also attack. Secondly, the women involved in the women's rights promotion went abroad and studied how the women's rights are being incorporated into the legal frameworks of the western countries. We looked especially at the United States and Scandinavian countries' examples. In case of the States the gender equality principles were incorporated into the specific laws e.g. the law on education, on health etc. While the Scandinavian countries chose a method of gender mainstreaming and had their gender equality legislation very general. We decided to take an example of Norway and Island. By drafting the law we wanted to show to the politicians and society that gender inequality exists and therefore gender equality principles should have a high hierarchy and be mainstreamed into all spheres of life in Poland. This was our strategic way of thinking. Our draft was very general and it covered all areas of social and political life.

The Women's Parliamentary Group took this draft to the parliamentary debate. We started a lobbying process using various strategies. In order to gain a support of parliament the women from the parliamentary group asked their parties' colleagues to support the draft and sign it. We also organized the meetings with the political parties' representatives. Nevertheless, there was no political will to pass this law even when the majority of the parliament consisted of the left-wing party's representatives. The main argument against this draft was that there is



no inequality in Poland and that our Constitution guarantees the equality to all. The lack of understanding of gender equality issue and the lack of support from politicians was one reason of our failure. The other one was that the topic of gender equality became politicized in a very bad way. In the corridors the politicians openly said that they would not support the draft because they did not see what their party could win on it. They just thought about themselves and not about Polish women. It was very difficult to argue with such an argument because it was not about the merit but about the political game. From my experience it seems that the crucial thing for adopting any law is the political will.

When Poland accessed the European Union we had to adjust our legal framework to the EU standards. This concerned also some gender equality regulations. Poland incorporated to the specific laws the minimum of what was required from us regarding gender equality. The most amendments were introduced to the Labor Code. Then, we already knew that it would be very hard to push for the law in a situation where part of our proposals concerning gender equality had been already incorporated mainly to the labor law. Therefore, we changed our strategy.

In 2009 the Congress of Women appeared on the political and social scene. It was a year when Poland celebrated an anniversary of the first democratic elections. The group of women from different backgrounds decided to organize the congress addressed to all women who might be interested in discussing the political and social issues. The congress was and still is very special as it gathers not only women from academia or NGOs but also women involved in business, trade unions, education, arts, media etc. It unites women from all sorts of different professional and social backgrounds. This year the 6th Congress of Women took place in Warsaw but there are also small congresses in local communities throughout a year. The congress is a very important women's platform to express our needs and press the government. It is big and influential enough to carry on an effective lobbying for women's rights. Our first goal was to introduce quotas on the electoral lists to the parliament. We collected more than 100 000 signatures of people and submitted the draft law on quotas to the parliament as a civic legislation. It was possible because of a great support we got from a society. We also managed to make the politicians support our draft and the law was passed. Since 2011 there must be at least 35% of women on every electoral list to the European, National and local parliaments. This success encouraged us to form a shadow cabinet of women. It was an important step as the Congress of Women is a movement without a specific structure and the shadow cabinet serves as an official voice of women on different political and social issues. We reach the people through media and we have the regular meetings with the prime minister. Thus, nowadays the shadow cabinet of women and the congress of women are the methods we use to lobby for women's rights. I'm talking about it to show you a different strategy apart from pushing for a single gender equality act.

From my experience I can say that there is a need for a constant pressure on politicians and immediate reactions to any conservative attempts as you can never be sure that the rights that women have now will not be taken back from them. Besides, to introduce gender equality law there is a need of great support from society. It means the constant campaigns addressed to



different groups of society. Now in Poland I don't see a possibility to introduce this general gender equality law, thus we have to focus on the specific laws and specific rights we want to have in our legislation framework. However, in my opinion even if you fail in having the gender equality law passed the efforts for its adoption are very important. Lobbying for the law means that you start a public discussion and make people aware that a problem with gender equality exists. I think the Congress of Women would not appear without our previous work for women's rights.

Question: Do you think that it is better to have one general law on gender equality than to have gender equality principles incorporated into the specific laws?

Małgorzata Fuszara: I think it is not possible to say that in all circumstances the general law is better than that incorporated into the specific laws. You should take into consideration the specific circumstances of every country. You cannot just copy another country's system and apply it exactly the same way in your country. In Poland we decided to draft the general law on gender equality because we had the concrete reasons for it. We wanted to solve all the problems with one piece of legislation which is much easier than checking every specific law if it includes gender equality principles. Beside, having this one piece of law would be a signal for a society that there is a problem and something must be changed in this area. If the gender equality principles are incorporated into e.g. just a labor code then a discussion is limited only to the area of labor relations.

Question: Do you think that having gender equality legislation is better than having a general anti-discrimination legislation which is a tendency now in EU.

Małgorzata Fuszara: I think this is a matter of strategic decision. But if you think that the gender equality regulations you have in your state's law do not guarantee good protection of women's rights then it is much better to have gender equality law. With such a law it is easier to show a significance of the issue and it is also easier for somebody who feels discriminated on gender ground to fight for her or his rights. It is also good if there is an independent body responsible just for gender based discrimination issues because a person who is responsible for all human rights' protection might not have enough knowledge or gender sensitivity to see a problem. From my experience it seems that when gender based discrimination is put together with discrimination on the other grounds then gender equality is often lost and perceived as less important than others. You should also remember that to make the law on gender equality work there need to be the sanctions .

Question: What is not possible to achieve if a country does not have a gender equality law?

Małgorzata Fuszara: In case of Poland it has not been possible to solve a problem of gender based discrimination in education and advertisement. The sexism in advertisement is not forbidden in Poland. This is a complex problem because Poland is a state party to CEDAW Convention which prohibits gender based discrimination in all spheres of life but in practice it



does not work. In case of education we have this constant discussion what it means gender equality and gender roles, and if it does not harm our children. Consequently there is no systematic actions aimed at introducing gender equality to the education sector. We have sanctions for not observing gender equality in the labor relations because it was demanded by EU. However, in other areas of life it is much more difficult to exercise women's rights and the protection of the rights is rather declarative.

Question: I think it is very important to attract to the idea of gender equality as many women as possible and make them our allies. But at the same time I think that we should also focus on men. It is difficult to achieve real gender equality without understanding and support from the men's side. Could you tell us what is your opinion on that and what strategy we should use to attract men to our idea?

Silke Steinhilber: I agree that in principle the men's support is very important. But from my experience I can say that there is a group of men who are lost cases and it is a waste of energy to work with them. Unfortunately many of those are in a position of power at the moment. Working with younger generation of men who are more open minded, who see how strong gender stereotypes and norms constrain their lives is promising strategy to some extent. But at the same time I also support a strategy of creating the spaces which are exclusively for women in order to deal with the existing imbalance of power.

Sanja Sarnvaka: You need to discuss the certain issues only with women in order to make them be aware that there is a gender imbalance. When our organization B.a.B.e was established it meant "Be active. Be emancipated" and we worked only with women. But 5 years ago we decided to change this phrase into "Be active" in a feminine form and "Be emancipated" in a masculine form ("Bądź aktywna. Bądź wyemancypowany"). We noticed that it is time to include men into our work as we have more and more male supporters. Therefore now we promote men as fathers or show that it is good to have a woman and a man working together. We work with men showing them that the countries which observe gender equality in all spheres of life are more economically stable and people there feel more happy than in other countries. Try to have a support for your case of everyone.

Silke Steinhilber: There is a big discussion among women's organizations and activists about women's rights and gender equality in a context of social privileges. In my opinion protecting women's rights and promoting gender equality mean giving up the privileges that women had had for many years. What I noticed in the Belarusian draft law is that a different retirement age for women and men is upheld and is considered as not discriminatory. From my point of view upholding the privileges for women is not justified. These privileges are the points where it is difficult to build alliances with men and to involve a larger group of particularly young women. Promoting equality and nondiscrimination means giving up old stereotypes which are also a part of the privileges. I think those are the important points when we think about broadening the alliances.



Question: In Belarus we hear the contradictive statements from the authorities about supporting gender equality on one hand and caring for demographic policy which is built on patriarchal values on the other hand. Depending on who is listening to them these people express different views. Do you have experience of similar contradictions and if so how they are resolved?

Sanja Sarnavka: Gender equality and demography can go together. It is like in the Scandinavian countries where if the government wants to have more children to be born it needs to support the young families. It means for example having the kindergartens that work from 6 in the morning till midnight because people, including women work in shifts. The state should provide free education and other supporting solutions. Thus, supporting young families by giving them a possibility to reconcile family and work life is a solution to demographic problems. This is a counter-argument to those who wants to have women giving birth to children by keeping them at home.

Silke Steinhilber: It happens everywhere that the same people say different things depending on who is listening to them. It happens quite often that the state administration understands promoting gender equality as promoting some very stereotypical notions of woman's and man's roles. They don't understand what gender equality means.

4. Process of developing the Belarusian Gender equality draft law, and social and political climate around this process in Belarus (challenges & strategy) [Ludmila Petina]

I have a feeling that we have many common problems with Poland and Croatia concerning gender stereotyping, complexity of gender equality's promotion and the fact that our governmental policies do not prioritize gender equality and we have to fight for it. However, there are also many differences between our countries. First of all a situation in Belarus is strongly linked with our political system. We live in an authoritarian state and the society, political parties, NGOs are under a strict control of the authorities. This is a serious problem because promoting and implementing gender equality is a democratic process. Gender equality we must be considered in a context of human rights. Unfortunately, human rights are seriously violated in Belarus. Belarus is a country of a gender paradox. We often talk about this issue in relation to the global rankings since Belarus ranks quite high in the UN gender equality rankings. It is because women in Belarus are better educated than men, women are highly integrated in a labor market, women are experts and specialists, and from 2004 almost 30% of both chambers of parliament consist of women. Although the indicators for gender equality seem to be good in reality there is a huge discrimination of women in all spheres of life. For example although there is so many women in the parliament they don't have any influence on the state's policy. The state's gender policy is formal to a large extent.

The women's rights organizations and activists are aware that a real change in an approach to women's rights and gender equality will be only possible when the political system



changes. Unfortunately, nowadays the state looks towards Russia. Looking at Russia means preserving the gender stereotypes of course. Our society grows in a patriarchal context and it is going with the official policy of Belarus. From 1986 the opposition does not have its representatives in the parliament and does not have any instruments to influence the legislative framework or get access to information.

Nowadays, in Belarus the most acute problem is discrimination of women on a labor market. This is vertical as well as horizontal discrimination and has a systemic and structural nature. Therefore, in order to improve a situation of women on the labor market we need to change an economic system as a whole. There is also gender based discrimination in other spheres of social, economic and political lives. We have a big problem of domestic violence having as many as 20 000 cases of registered cases of violence against women every single month. There is a real war going on behind a closed door. The government ignores this problem.

In my opinion a necessary condition to introduce gender equality in Belarus is a political will. This does not mean signing the international documents on protection of women's rights since Belarus has signed and ratified many of them but in practice a situation of women has not changed at all. The Belarusian legislation is gender neutral what means that there is no direct discrimination in the laws but at the same time these laws are not effective in protecting women's rights. Therefore, the women's NGOs have been pushing for the laws on domestic violence and equal opportunities for women and men. The draft law on domestic violence was developed in 2001 and since that time we haven't succeed in taking it further. Two years ago my organization updated this draft and started to promote it. We formed a network of many NGOs involved in lobbying for it and did a lot of good work. Nevertheless, the draft has not been put on the parliament's agenda.

We have started discussing the draft law on gender equality last year taking into consideration the alternative report from 2003 and latest CEDAW Committee's recommendations to Belarus. Officially Belarus has adopted 4 National Plans of Actions for Promoting Gender Equality but none of them was fully implemented. If there are some nationwide actions for promoting gender equality they are founded by international organizations. Now, we have 2 big projected funded by UN but I am afraid that when the projects end up the positive results they brought will disappear.

The Belarusian NGOs' projects often depend on funds from the international organizations and they must be officially registered. The NGOs can do lots of good work but we are often not permitted to invite journalists and disseminate information broadly. Therefore, our work usually focuses on a small group of people directly involved in the particular initiatives. Thanks to the efforts of NGOs we have the National Council for Gender Equality consisting of the representatives of government and 4 NGOs. It serves as a platform of cooperation between us and the government, and it gives us a chance to educate the civil servants about discrimination and gender equality. Unfortunately, the Council is not an effective instrument for promoting gender equality. We presented our draft law to the Council and it discussed whether this law is needed in Belarus. In January this year it decided that given the social and economic situation of the country there is no need for such a law to be adopted. They



advised to elaborate the specific legal provisions. Nevertheless, the women's organizations involved in developing the draft law still want to lobby for it. In order to do it we have created a gender platform, a strategic document which says that one of the elements to achieve gender equality is to adopt the Gender Equality Act. The document has been signed by 25 organizations, trade unions and opposition political parties. The platform is very important as it gives us opportunity to meet and discuss the strategies etc.

The facts that work in favor of our case are: the existence of gender platform and the National Council for Gender Equality, a long-term experience of women's organizations in working for women's issues and making alliances, and we have some funds to promote gender equality. We are aware that we need to collect good statistics to support our case as well as to monitor the decisions our government is taken concerning the National Action Plans for Promoting Gender Equality as well as other legislative initiatives. Through this monitoring we should indicate the places where the legislation should be improved. All these actions should take place in the framework of a broad public campaign and advocacy. Information campaign would build a circle of supporters. In my opinion the gender based problems should be resolved in a process of democratization of the country and improvement of its legal system.

Silke Steinhilber: Given the constitutional difficulties and a lack of democratic procedures in Belarus why have the women's organizations decided to push for the gender equality law? Isn't this law going to serve as another window dressing mechanism? What are the benefits of having this law passed in your situation?

Belarusian participant: From my organization's perspective this is a matter of a need to increase awareness on gender equality in a society. It is important to prepare the society for gender equality because as we saw it in our neighboring countries a transition from socialism into democracy does not necessary mean an adoption of gender equality standards. Our strategy is to promote democracy along with gender equality. We see a need for our work and that it should be done now.

Belarusian participant: From a perspective of my organization which focuses on development of gender education the law on gender equality would be like a map of goals we should aim at. The law would somehow direct our work. Having such a law would also have an educational effect on society. Nowadays a gender education is very weak and working on developing the draft law gives us an extra argument for why we should continue our educational work. This is a comprehensive attitude to resolve problems we are facing.

Belarusian participant: We also need this law because in 21s century a principle of the states are people and in Belarus we don't have the right proportions between women and men as social groups. Our men as a social group exhausted their potential. There is 11 years of difference in life expectancy between women and men in Belarus. The men are decision makers but at the same time they are not able to cope efficiently with their responsibilities. They drink a lot and they die. The women as a social group have much higher quality than men. Nevertheless, their



potential is not used fully. Women are subject to double discrimination: at work and at home. At work they end up on a level of middle management at most, they have no decision making power etc. So, very crucial argument for having the law on gender equality is that this law would help the country as a whole. We will be able to use the human resources that we have much better.

Ines Bojić: Are there any provisions against discrimination and sexual harassment in Belarusian criminal law?

Belarusian participant: In our criminal code there is a section about the sexual crimes. The sexual harassment is prohibited in for example labor relations. In our Labor Code there is an article that prohibits discrimination on different grounds but it is very general one. So far not a single case has been examined by a court basing on that article.

Belarusian participant: There are not effective legal mechanisms in Belarus to defend the human rights. We only have the declarative norms in our law. Women's rights' protection is limited to protecting mothers and the children.

Silke Steinhilber: There is a number of countries that in some characteristics are similar to Belarus such as Armenia or Kyrgyzstan. These countries have the gender equality law but it is rather useless. I'm concerned that your government will be smart to have this useless, very weak gender equality law. The political process will water this law down. It is a threat as long as the Belarusian society is unprepared and unreceptive. Having a weak law, nevertheless, would allow the government to boast about it. In such a situation it would be difficult to explain to the international community what is bad about this law. This is exactly what I see in case of Armenia. The international community is interested in ticking the boxes as much as the governments often are. Therefore, I think it would be good to keep in mind that maybe you don't want to have this law adopted very soon, that maybe it is better to work on it and lobby for it instead.

Belarusian participant: Having even a weak law would be a starting point to develop the gender equality institutions. Having the gender equality law in any form would already mean a lot for our country. The problem is that our government cannot imagine adopting even something like a weak law. Working on developing the draft law and having the meetings like this one with the foreign experts let us see different opportunities and strategies that we can follow. Maybe we should develop a strategy that will not aim at particular draft law but rather on general inclusion of gender issues into Belarusian legislation. This kind of approach might allow us to achieve some positive result in near future. Within the last 15 or 20 years we have achieved a significant progress in educating society about women's rights. The new generation is different and we hope that it is partly due to our efforts. I think that at this stage we should really focus on whose support we can win, including people in the ministries. We should also seek partners among international organizations. We need to find the ways to neutralize our opponents and to do this we need a long term strategy.



Sanja Sarnavka: The authoritarian regime you have in your country make your situation really difficult. In Croatia until 2000 we also had very authoritarian presidential regime and it was not easy time for the women's organizations. However, we had one important supporter - independent media which did not pay attention to what the president was saying. If you have at least one segment of society which disseminates your cause then you can get supporters. But in your situation I really don't know how you can reach the audiences. First you should reach the women and make them support your idea. Make them understand that they are discriminated. You need to be very creative. I also agree with Silke that maybe you should continue your work on a good gender equality law but keep it with you for the better times when it is not going to be corrupted.

Ines Bojić: I was wondering how it would be if you apply the existing provisions such as the article 13 of your Labor Code or the provisions on discrimination included in the Criminal Code. Belarus is also a state party of the CEDAW Convention, so you can have an access to the CEDAW Committee. This might be a path.

Belarusian participant: We have already had a few cases submitted to the UN Commission on Human Rights. The problem is that this commission gives recommendations to the Belarussian government which are not implemented. The same is in case of CEDAW Committee's recommendations.

Silke Steinhilber: Do the women's organizations in Belarus have a formal relationship with UN agencies present in Belarus? There are the Gender Theme Groups in these agencies. Are you invited to participate in the meetings of these groups? Are you recognized as partners?

Belarusian participant: Some of the women's organizations cooperate with the UN agencies because they implement the UN projects in Belarus. Within a scope of responsibilities these organizations might for example coordinate some activities such as a hot line for the victims of domestic violence. Sometimes the representatives of NGOs are invited to make an expert analysis of specific cases. For example there was this manual for journalists how to discuss gender issues. But this is not a regular cooperation and we rather perform an executive role. From my experience it seems that UN agencies are more interested in cooperation with the governmental institutions than with NGOs.

Silke Steinhilber: There are two things that I would like to highlight. First, the UN agencies' approach sometimes changes when the UN representatives change. So, your cooperation with them might change for better in a future. Secondly, given all the complications that we talked about I would advise you to formally approach the UN as a group, a coalition. Ask for a meeting with the resident representative as well as the chief of Gender Theme Group to discuss a situation, to highlight your work on the draft law, to have a topical discussion about issues around gender, and check it out what their reaction is. As the women's organizations move beyond the status of implementers only. Be recognized as the experts in the country. Looking at the UN agencies' programs, they are now in an early stage of preparing their new



Development Assistance Program for Belarus. The current one ends up in 2015 what means that in 2014 they should start a process of priorities' setting. This is often very much influenced by the governmental priorities but there is always a space for negotiations. Therefore, if there is any opening in any agencies to place gender issue within the UN agenda more, it is now, in 2014. This is your chance. This is the moment for NGOs to speak in one voice. Given the internal institutional pressure on gender mainstreaming I doubt that there is nobody in the UN agencies in Belarus to support your case. Look for the cracks and for those who are supportive and open.

Sanja Sarnavka: You can also threaten the UN agencies in a polite way that if they refuse to talk to you then you will inform the UN Women and the Secretary General that they are not interested in supporting gender equality implementation. It is worth a try.

Silke Steinhilber: The situation in Ukraine have made the EU politicians think a lot about how to deal with Belarus in a future. This situation might also open some new opportunities for women's rights work in Belarus.

Sanja Sarnavka: You should contact the Human Rights House Network's people who are in Minsk and ask them to advocate for your cause. The representatives of the network in Croatia regularly lobby for our case in Geneva and in Strasburg. You can use me as a contact person because I am on the board of this network.

Silke Steinhilber: There is very little data on gender equality in Belarus and in the international indexes Belarus usually is not covered. My advice for you would be also to develop a minimum gender based monitoring framework along with lobbying for the draft law. The minimum statistics required internationally. I would be happy to support you in that. Thinking about institutional mechanisms and monitoring framework should be a part of your work on the promotion of the draft law.

5. Substantive rights and obligations in gender equality legislation (GEL). Criteria for assessing good practice in national legislation [Silke Steinhilber]

I would like to present a framework of international practices in the area of gender equality legislation. What I find important from the political strategy's perspective is how the law was formulated, promoted and finally adopted in a country. These information tell you a lot about how it is being implemented and monitored afterwards.

First let's see what are the legal frameworks that shape the gender equality. The strongest legal framework for encompassing gender equality law is CEDAW Convention. Therefore, the ideal law would be in parallel with the whole CEDAW Convention. I don't think that such a law exists in the world. What is also often used by the countries are the ILO Conventions, among them Convention No 100 on equal pay and work for equal value, Convention 111 on nondiscrimination, Convention 183 on maternity protection and Convention



156 on workers with family responsibilities. The definitions you will find in Convention 100 and 111 and they are regarded as the core conventions. These ILO Conventions are often used to formulate antidiscrimination provisions in a labor code of the countries which don't have the encompassing gender equality law. There is no difference between the definitions in ILO Conventions and those in CEDAW Convention. The European Union countries usually based in their anti-discrimination policy on the EU Convention, the EU directives and on the judgements of the European Court of Human Rights. Although the CEDAW Convention protects gender equality much broader, the EU directives are stronger since they are mandatory for EU states.

The CEDAW Convention consists of 12 substantive areas that would be included in the ideal gender equality law:

1. Equality and non-discrimination
2. Political and public life
3. Employment and the world of work
4. Education
5. Health
6. Social and economic benefits
7. Civil equality
8. Marriage and family relations
9. Rural women
10. The stereotyping of women in media
11. Gender-based violence
12. Exploitation in prostitution of women

The first 4 of them are the most important and necessary for a good gender equality law. It is mandatory that the law provides definitions of gender equality and non-discrimination. It is also common that the law includes provisions on the political and public life, unemployment and the world of work, and on education. In the countries that don't have the gender equality law the definitions and the overall framework focus on the world of work provided in a labor code. It rarely goes as far as to protect the reconciliation of family and professional life. Regarding the political and public life in the countries without gender equality law there will be some provisions on equal treatment in these areas incorporated in the specific laws. It gets much more difficult with the 4th one – education. I cannot remember any country in the world that would have a specific law that guarantees equality in education. So, this is an important argument why it is much better to have an encompassing gender equality law. There are just areas of life which are not covered if a country does not have the general gender equality act.



The encompassing gender equality law, apart from the first 4 substantive areas, usually contains a chapter on health, on social and economic benefits, on civil equality, on marriage and family relations, on media, and gender based violence. Many gender equality laws, especially in Asian or South-Asian countries, have also a chapter on rural women. In case of gender based violence a country should also have a specific law on violence against women. This is what CEDAW Committee recommends. The exploitation in prostitution of women is a very controversial topic in Europe and this area is not usually included in the gender equality law. However, in order to fully reflect CEDAW Convention all these 12 areas should be covered by the gender equality law.

In my opinion the absolute key issue regarding the gender equality law is to establish a positive duty on a state to achieve or at least to work towards achieving a substantive equality for women and men. The state has to do something in order to achieve gender equality and it goes far beyond just equal treatment or equal opportunities. This issue should be fought for since it is very important.

CEDAW Convention says that women shall enjoy the exercise of all their fundamental rights and freedoms in the political, economic, social, cultural, civil and any other sphere of life without discrimination. However, when you analyse the gender equality laws in European, Caucasus and Central Asian countries they often don't contain these phrases “all fundamental rights and freedoms” as well as “any other spheres of life”. These phrases are the key points because they allow to include the issues that are not covered by the specific chapters of the law.

What is also very important to have in a gender equality law is the definitions of direct and indirect discrimination. If the law does not contain these definitions then it is very weak. This also applies to a situation when there is not an encompassing gender equality law in a country and you need to take a recourse to a labour code. Nevertheless, having a clear definition of direct and indirect discrimination in a labour code is not a common practice in Eastern European, Caucasus and Central Asian countries. The intersecting and multiple forms of discrimination should also be included in the gender equality law.

The law should bind the state, public authority representatives as well as private organizations and individuals. The mechanisms of implementation and monitoring are as important as the definitions because if there are no means to implement the law and no methods to monitor how the law works in practice then it is a very weak law.

Regarding the implementation and monitoring in terms of good practices it is internationally recognized that 7 components should be covered:

1. A harmonisation mechanism ensures that existing and future domestic legislation accords with the GEL.
2. A positive obligation is placed on public and private institutions to implement the GEL.
3. A mechanism is established to monitor both public authorities and private organizations and individuals in their implementation and observance of the GEL.



4. A complaints process ensures that victims of GEL violations can bring actions and receive appropriate remedies.
5. A mechanism is established to ensure the collection of gender statistics.
6. A review process determines whether the GEL is working effectively.
7. A funding mechanism for GEL implementation and monitoring activities is established.

More detailed information on this topic you will find in my paper “Substantive rights and obligations in gender equality legislation (GEL). Criteria for assessing good practice in national legislation.”

6. The Croatian Gender Equality Act [Ines Bojić]

The first gender equality law was passed in Croatia in 2003 and it was subject to a constitutional review soon afterwards. The law was reviewed by the Constitutional Court because of the complaint that such a law by its nature should be passed as a constitutional law what did not happen in 2003. In 2008 the Constitutional Court gave 6 months to make amendments to the law and pass it as the constitutional one. We had already known its shortcomings so it was not difficult to propose the amendments. The biggest shortcomings were a lack of penal sanctions and weak position of the ombudsperson. The parliament accepted these amendments and passed the law as constitutional one in 2008.

In order to join EU Croatia had to adopt many anti-discrimination regulations, and adopting gender equality law was a part of this process. Nowadays, in Croatia we have several binding laws which contain definition of discrimination and anti-discriminating provisions such as CEDAW Convention, European Convention on Human Rights, Declaration on Equality of Women and Men, EU directives, the Antidiscrimination Act, Gender Equality Law, Labor Law, Criminal Law and Constitution. Article 3 of Croatian Constitution says about the highest democratic values, including gender equality.

The accession process to EU had a great impact on developing the Croatian legal system. In the EU Convention there is the article No 14 which prohibits discrimination and there is also a protocol No 12 which guarantees equality in achieving any right prescribed by the law. The difference is that the article 14 protects the rights guaranteed by the European Convention but the protocol No 12 is much broader as it guarantees every person under jurisdiction of the European Court of Human Rights to have equal rights within any law. We can invoke this article and protocol directly in our courts. The Croatian legislation took a lot from the EU directives. For example a definition of gender equality in our law is the same as a definition formulated by the Council of Europe. We can say that to some extent an international context pushed us to adopt the gender equality law.

The article 1 of gender equality law describes the grounds for protection and promotion of gender equality and invokes these as a fundamental value of constitutional order of the Republic of Croatia. The article defines and regulates protection from gender based



discrimination and describes the preconditions necessary to create equal opportunities for women and men. The gender equality law contains several important definitions such as definition of gender equality, direct and indirect discrimination, harassment, sexual harassment and definition of specific measures. The law is oriented to a whole set of public areas where discrimination might appear. Nevertheless, it specifically addresses the areas of employment, education, politics, media and official statistics. The law is addressed to public bodies, units of local and regional self-government, legal persons with public authorities, legal persons that are majority-owned by the state and units of local and regional self-government, education and scientific institutions, media, natural persons, and to the private employers. Among them the public bodies and legal persons that are majority-owned by the state and units of local and regional self-government are required to apply specific measures, what means that they have this positive obligation to implement gender equality.

The law contains a definition of “gender equality” which says “Gender equality means that women and men are equally present in all segments of public and private life, that they have an equal status, equal access to all rights and equal benefits from achieved results“. The core of this definition are 4 values: women are equally present, women have an equal status, women have an equal access to all right, 4 women have equal benefits from achieved results. “Being equally present in all segments of public and private life” means that women and men are proportionally represented in all spheres of public and private life. “Women and men have equal status” means that they should have equal rights in every single status they might have like being an employee, parent etc. “Equal access to all rights” means that that every person has equal opportunity to use public goods. It can be also interpreted that the women should not bear any negative consequences in respect to their professional work due to their pregnancies. “Equal benefits” means that the effort put to different tasks for instance at workplace should be equally valued and paid.

The definitions of direct and indirect discrimination are very important part of the law:

- Direct discrimination is any treatment where, on the grounds of sex, one person is treated or has been treated or might be treated less favourably than another in a comparable situation.
- Indirect discrimination occurs where a neutral legal provision, criterion or practice puts persons of one sex at a disadvantage compared to persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

In both of these definitions say about a comparable situation between a woman and a man. To properly apply a definition of indirect discrimination we need to have the statistical data.

Among central definitions we also have a definition of harassment and sexual harassment:

- Harassment is any unwanted conduct related to the sex of a person that occurs with the purpose or effect of violating the dignity of a person and of creating an unpleasant, hostile, degrading or offensive environment.



- Sexual harassment is any form of unwanted verbal, non-verbal or physical conduct of a sexual nature that occurs with the purpose or effect of violating the dignity of a person, in particular when creating an unpleasant, hostile, degrading or offensive environment.

“Violation of dignity” might mean for example diminishing someone’s working contribution and effort in order to degrade this person in the eyes of co-workers and this kind of behavior must be motivated by the person’s sex. The harassing behavior might be obvious like making verbal offensive comments, but it might also be hidden like giving a person very demanding or absurd job that she won’t be able to accomplish.

Question: Were there any cases on sexual harassment in Croatia? And if yes, were they collective or individual cases? How were the evidences for the sexual harassment collected?

Ines Bojić: Yes, we had such cases. Even now we are having such a case. This is a case of young woman who worked at the faculty of state institution as an assistant to a professor. She complained to B.a.B.e and to Ombudswoman who found many violations in her case because this woman is protected not only by gender equality law but also by labor law. The Croatian labor code provides a special procedure for protecting dignity of an employee. Every employer who employs more than 20 people should have a special confidential person whose job is to protect the dignity of employees. So, a person who feels discriminated should have an opportunity to address this confidential person and have her case internally investigated. This is a case where there is no doubt that the woman was sexually harassed. Nevertheless, the internal proceeding within the faculty found the professor not guilty of sexual harassment. Now, B.a.B.e is preparing a civil suit for a court in a name of this woman. The Ombudswoman will be a third party in this proceeding. So, as you see even in cases of sexual harassment which seems obvious it is not easy to win the case. What is important is the positive role of Ombudswoman who helps the organizations or individuals to prepare the case and when the case is in a court she can take part in the proceeding and support the victim. According to the Croatian law even a civil society organization might be a third party in the court’s cases.

Question: Do you have in your Croatian legislation any liability for prostitution?

Sanja Sarnavka: In Croatia there is a discussion if a prostitution should be legalized. Nowadays, according to our Criminal Code both a client and a prostitute can be punished but in practice it never happens. Prostitution is often linked to trafficking in women. In Croatia there are action plans on trafficking but so far nothing significant has been done in this area. It is a difficult topic because Croatia is a country of origin, transit and final destination of prostituted. Due to the pressure of European Commission last year for the first time we had 35 women recognized as victims of trafficking. Until that time the trafficked women were treated just as illegal prostitutes.



Ines Bojić: Prostitution is regulated by the Croatian Act on Offences Against Public Peace and Order. There are not many cases in the courts.

Question: The chapter 5 on education, article 14.5 of Croatian gender equality act says about using linguistic standards indicating professional qualifications, professions and occupations in the feminine or masculine gender, depending on the sex of the recipient. Is it possible in your language to use feminine and masculine grammatical forms? In Belarus we have a big problem with this.

Sanja Sarnavka: Yes, in our language we have this feminine and masculine grammatical forms. Before the gender equality act was passed it was normal that women used the masculine grammatical forms. However, now using the feminine grammatical forms is very strictly observed in public, especially in media.

Question: How in your legislation on gender equality and nondiscrimination the military service obligation is solved? We had a big discussion when drafting our law if uphold or not the women's privileges for example a different retirement age or this military service issue which are usually seen as nondiscriminatory.

Sanja Sarnavka: Similarly to all socialist countries we had this list of duties that a certain groups of women should not perform, for example the women with small children should not take night shift etc. However, the first thing that European Commission demanded from Croatia was to eliminate these special provisions and provide for women and men the same working conditions. Croatia was against it and we had a debate with European Commission. Our argument was that we are a very patriarchal society and the women are still the ones who take care of children and elders and they are overloaded with work. But in the end Croatia eliminated these women's privileges. We also had to change the age of retirement, so that women and men retire at the same age of 65.

Silke Steinhilber: I'm more on a side of European Commission concerning elimination of privileges for women. However, it is important that compensation for a care work whoever does it, should be regulated in a country's social security system. But it should not, and this is my position and the EU standard answer, go by age of retirement. There should be other ways in a social security system to make sure that a care work is recognized by the state. This is done differently in different countries.

Question: How did you manage to establish the ombudsperson institution for gender equality? What kind of arguments did you use? Does a fact that this institution is financed from central budget affect the work of ombudsperson?

Sanja Sarnavka: Establishing the institution of ombudsperson for gender equality was a natural process because when we were working on our first draft law we showed that in many countries, even in those where there was no gender equality law, there was a person responsible for promoting equality. Thus, the ombudsperson institution was included in the first act on gender



equality. Unfortunately, it has never had much power. The ombudsperson produces the statements, recommendations, and what is important can be a third party in a court proceedings. She cooperates with NGOs like B.a.B.e. However, the ombudsperson's recommendations etc. are not obligatory for a government, parliament or court. What's more she is elected by a government what means that this institution might be easily corrupted. These are shortcomings of this institution in Croatia. But still it is good that we have it.

Ines Bojić: The special feature of this institution is that the ombudsperson, so far only women have been elected for this post, has her deputies and there has to be a combination of both sexes, so a woman and a man.

Question: My understanding is that first you had a general law on ombudsperson's institution and later on you had a law on these specific ombudspersons. Is that right?

Sanja Sarnavka: First we had an act on gender equality with a weak ombudsperson's position, and later the Antidiscrimination Act was passed where the ombudsperson institution was given the A level meaning that it was recognized as important institution. The gender equality act from 2008 describes all machinery for gender equality protection and promotion. In Croatia apart from the institution of ombudsperson there are also people responsible for gender equality in a governmental structure, in the ministries. However, they don't have a budget and time to really work for gender equality. In a result there is no gender mainstreaming. Therefore, it is important to have this ombudsperson dedicated to gender equality issue. Our ombudsperson writes for example very useful reports and analyzes which the NGOs can use for their work. It is the best to have an ombudsperson for gender equality as an independent body with its budget and a team of experts, lawyers who can investigate the cases.

Question: What would be the benefits for a government to have the ombudsperson given that this body has to be financed from a central budget and the ombudsperson's recommendations might disturb the government's work?

Sanja Sarnavka: Having an ombudsperson is obligation for a government because gender equality is recognized all over the world, at least de jure and orally, as a value.

Silke Steinhilber: If a government is not interested in advancing the human rights and gender equality in a country it will not help much to refer to CEDAW Convention or Beijing Platform for Action. By definition a role of ombudsperson is to control the government's actions. So if your government doesn't want to be controlled it will be very difficult to make it establish the institution of ombudsperson. There must be a political will.

Sanja Sarnavka: Tell your government "if you claim that you are so gender sensitive prove it. Let the ombudsperson prove that you are a gender sensitive government. Are you afraid of that?"



7. Preventing gender discrimination in Polish legislation [Karolina Kędziora]

In Poland there are 2 acts of law which mention discrimination: the Labor Code and Anti-discrimination Act. They contain a definition of "discrimination" according to the EU directives. Poland as a member of EU is obligated to protect from gender based discrimination in employment and occupation. From 2011 we also have the Anti-discrimination Act which guarantees a very limited protection against discrimination. Its full name is "The Act on implementation of certain provisions of the European Union in a field of equal treatment". Poland adopted just a minimum of what was required by EU, not taking into consideration CEDAW Convention. Consequently, there are areas where there is no protection against discrimination. For example at the universities the employees are protected by the Labor Code but not the students. This is a big problem especially in case of sexual harassment which is still a taboo in Poland. So far, we have had just 5 court cases basing on this act, among them 4 were conducted by my organization "Polish society of anti-discriminating law". The act is full of exceptions and it is difficult to understand who is protected by this act. The society does not know about this law, and even lawyers are not familiar with it.

Equality is also mentioned in Polish Constitution in articles 32 and 33 which say that everybody is equal before the law, everybody has a right to equal treatment by state's authorities, and nobody should be discriminated against in political, social or economic sphere for any reason. So, there is an open catalogue of grounds what is very important because it gives us, a group of lawyers and human rights defenders, an argument to push a government to amend the law and guarantee equal protection for everybody in all spheres of life. It is possible to invoke these articles in a court cases concerning discrimination.

There is also the Act on Human Rights' Defender or Ombudsperson. Poland was obliged by European Commission to establish an independent body to protect human rights. This ombudsperson is responsible for protecting against all kinds of discrimination, also on gender grounds. In practice it does not work well. The scope of responsibilities is too broad and there is always too little money allocated to the ombudsperson institution. Generally there is no political will in Poland to strengthen a position of this person.

The Labor Code guarantees the best protection against discrimination in Poland. The labor law is a modern one with an open catalogue of grounds for discrimination. The law protects against discrimination on the grounds of gender, age, disability, race, religion, political views, participation in a trade union, ethnic background, sexual orientation, all forms of employment". Fields of equal treatment according to the Labor Code are: concluding and terminating employment relationships, conditions of employment, promotion, and access to trainings to improve one's professional qualifications. What is important the Labor Code also protects against discrimination during a recruitment process but people don't usually know about it. The article 22 of the Labor Code specifies what the employer can ask during an interview. It is a closed list of questions, the employer cannot ask about family plans and family life of course. Nevertheless, in Poland discrimination during a recruitment process still happens quite often, especially on the grounds of gender and age. Forms of discrimination forbidden by



the Labor Code are: direct and indirect discrimination, harassment, sexual harassment, and encouraging to violate the principles of equal treatment. According to the Polish law it is prohibited not only to encourage somebody to discriminate another person or group of people but it is also prohibited to permit for discrimination at a workplace. It can be a situation when a discrimination against some employee takes place but the employer ignores this.

The Labor Code contains definitions of direct and indirect discrimination:

“The direct discrimination occurs when an employee for one or several reasons (...) was, is or could be treated in a comparable situation less favorably than other employees”.

In order to check if a direct discrimination occurred there must be a comparator. It is possible to compare someone's situation with a current situation of another person but also with a situation which took place in a past. It is also possible to compare someone's situation to a hypothetical situation e.g. if I had not been a woman I would have not lost a job in such circumstances. In case of direct discrimination an employer cannot justify himself/herself. Direct discrimination can be accidental and intentional but a court examines if a less favorable treatment took place.

“The indirect discrimination occurs where rules or practices appear on the surface to be neutral but in practice lead to exclusions in the area of concluding and terminating employment relationship, employment conditions, promotion, and access to the trainings to increase one's professional qualifications. Unless the rules or practices can be objectively justified for a sake of a goal which cannot be achieved in another way. The methods to achieve the goal have to be adequate and necessary”.

In case of indirect discrimination an employer can justify his/her discriminatory action if his/her goal is legitimate and aims at protecting the customers for example. In order to check if an indirect discrimination is justified in a specific situation it is important to answer 3 questions:

1. Does the applied rule, criterion or practice have a legitimate goal?
2. Are the methods used to achieve this goal adequate and necessary: can the goal be achieved in another way?
3. Is a burden of discrimination proportional to an interest of a person who discriminates.

In Poland most cases on discrimination concern a direct discrimination in labor relations. There are not many court cases on indirect discrimination.

“Harassment – it is an unwanted behavior that results in violation of a person's dignity or/and creation of hostile, humiliating, derogatory atmosphere”.

In case of harassment a court checks if there was an objection of a victim. The victim must object to the words or behavior which she/he finds discriminatory. Harassment is always examined by taken into consideration a perspective of an individual person because what is a



violation of dignity for one person might be an acceptable behavior for another one. Therefore, the objection of a victim is important in this case.

“Sexual harassment – it is an unwanted behavior of sexual character or which relates to a sex of employee that results in violation of a person’s dignity or/and creation of hostile, humiliating, derogatory atmosphere”.

In Poland it is difficult to talk about a sexual harassment because so many sexual behaviors are still seen as normal in the labor relations. The problem is that the employees, especially men, do not realize that certain kinds of behavior, for example telling the sexual jokes, are discrimination. The best way to prevent these kinds of behaviors is to have a law which obligates the employers to actively prevent all forms of discrimination in a workplace. According to the Polish law it is always an employer who is responsible for discrimination in a workplace even if it is not him/her who discriminates. In Poland the big companies make an effort to prevent discrimination by formulating the internal regulations with a list of unacceptable behaviors. This is due to a fact that a number of court cases against the employers increases with every year. Nevertheless, still many sexually harassed women prefer to give up their jobs and not to go to court being afraid of a public opinion. In case of sexual harassment as in a case of harassment there must be an objection of a victim.

The good law should also contain a chapter on so called “positive actions”. These are the situations when the employer treats a group of people in a favorable way because this group is underrepresented in a certain areas of employment. It is important that the positive actions should be temporary and its results regularly monitored.

Question: Who represents the victims of discrimination in a court in Poland?

Karolina Kędzióra: This is a complex situation because the lawyers and judges don’t know much about anti-discrimination law. It happens that the women come to my organization after visiting several law firms where they were told that the Polish law does not apply to their cases. At the universities the lawyers are not taught about anti-discrimination law. My organization “The Polish Society of Anti-Discrimination Law” cooperates with the Association of barristers and teach them about the anti-discriminating legislation. Nowadays, there is only my organization that deals with antidiscrimination cases. There are 5 lawyers in my organization and we cooperate with about 50 pro-bono lawyers across Poland. There is also the Helsinki Foundation for Human Rights and a few other organization but their priorities are other than antidiscrimination. I think that providing the lawyers for cases on inequality and discrimination is a task for our ombudsperson. However, this institution has only 5 lawyers who can represent the victims of discrimination and it seems that this situation will not improve in a near future.

Belarusian participant: Karolina’s words give one more argument for a necessity to have a specific law on gender equality. Otherwise there is no obligation on the state’s institutions to train the specialists who could protect the citizens against discrimination.



Karolina Kędziora: The important issue is the right to equal remuneration. In Poland an unequal remuneration is the most common violation of the rights guaranteed by the Labor Code, and it is often based on the grounds of gender and age. According to the Labor Code the employees have a right to equal remuneration for the same work or for a work of the same value. Although it is not directly said in our law, a term "remuneration" is broadly interpreted meaning not only money but any form of benefits that an employee can receive from an employer, e.g. private health service, mobile phone. According to the Labor Code "a work of equal value" means that the employees have: similar professional qualifications, similar job experience, similar responsibility and put a similar effort (physical and mental).

Very important issue in any antidiscrimination law is a shift burden of proof which means that it is an employer who must prove in a court that discrimination did not take place at a workplace. It is due to a fact that an employee usually has a limited opportunity to make sure that for example she/he earns less money than another employee performing a work of the same value. If the employee has the justified suspicions that this is a case she/he can go to court. The employee is always on a weaker position than the employer. According to our Labor Code an employee who win a case on discrimination in a court can get a compensation. The law only specifies that the amount of compensation cannot be lower than an amount corresponding to a minimal salary in Poland. The upper limit is not specified. Nevertheless, in practice the courts usually award a compensation which amount corresponds to the victim's salary earned in a company. The law does not mention the non-pecuniary damages. This issue is covered by Polish case law.

The Labor Code contains a list of obligations of an employer concerning preventing discrimination and providing the equal opportunities for the employees. Recently the Supreme Court has given a sentence that if an employer conducts the actions which can effectively prevent discrimination in a company then even if a violation took place the employer should not be seen as responsible for this violation.

Polish state's institutions responsible for equal treatment:

- Ombudsperson – an independent body financed from a central budget responsible for all issues concerning violation of human rights.
- Governmental Plenipotentiary for Equal Treatment – a person appointed to her post by the government, responsible for anti-discrimination policy and equal treatment. The current plenipotentiary does quite a good job, for example she pushed the government to sign and ratify the European Council's Convention on Preventing Violence Against Women, and also made the government to sign the first National Action Plan for Equal Treatment.

Shortcomings of our legislation.

- Polish law does not provide a possibility to use statistical data as the evidence in legal proceedings. The statistics would be very helpful especially in case of the proceedings



on discrimination. Nowadays, we can present the statistical data in the courts but the judges treat them as something additional and not as a serious evidence.

- Multiple discrimination is not directly defined in Polish law.
- The law does not provide a possibility to go to a court in social interest (actio popularis).
- The law does not consist a phrase that "compensation to a victim should be effective and proportionate to a damage she/he suffered". Consequently, the compensations adjudged by the courts are often too small.
- The law does not protect against discrimination in the area of education.

Question: In Belarus it is possible to get compensation in a court and the state allows to appoint fines to increase compensation. Besides, the official authorities force the parties to pay some fine to a state's budget. Do you have the same situation, especially in case of discrimination proceeding?

Karolina Kędziora: As far as I know there is a possibility to make the employer pay a fine to the Unemployment Prevention Fund if she/he violated a principle of equal treatment in job advertisement. In practice it happens very rarely.

Question: Does Polish law prohibit discrimination in advertising? Which one?

Karolina Kędziora: The individuals can go to a court invoking the regulations of the Labor Code if the advertisement relates to labor relationships

Silke Steinhilber: The ILO Convention No 111 prohibits discrimination in all employment related spheres, including job advertisement and access to employment. Every member country of ILO, also Belarus, is required to transpose the core ILO Conventions into the country's law. If the country transposes it correctly then the state guarantees protection against discrimination in employment relations, including job advertising.

Question: Does Polish law uphold the privileges for women such as a different age of retirement, favorable job conditions for mothers, exemption from a military service, etc.?

Karolina Kędziora: Our Labor Code guarantees some privileges to the certain groups of people such as the parents of small children or people with disabilities. Then, although these privileges are a form of unequal treatment it is not treated as discrimination. This is a kind of positive actions. In Poland in case of army or police there are usually limits on age and disability. These two grounds in case of military service are mentioned in EU directives as acceptable grounds of unequal treatment. In Poland there is also a separate law consisting a closed list of jobs which are not accessible for women who are pregnant and breastfeeding. Concerning the retirement age it is still a big discussion in Poland. Recently the government has extended it according to the EU requirements. Currently, the retirement age for women is 60 and for men 65 but a process of equalization has already started and in 2040 the retirement age will be the same for women and men.



8. The Belarusian gender equality draft law [Antonina Kovalieva, Elena Eskova]

Antonina Kovalieva

In a process of formulating our draft law we analyzed legislation of our neighboring countries such as Lithuania, Estonia, Commonwealth of Independent States, Ukraine, Kyrgyzstan and other countries of a former Soviet Union. The draft law is a relatively big legal act but it is not very balanced in terms of various sections and directions. It has still certain issues left open for further discussion. The draft law consists of 11 chapters containing the general provisions as well as specific provisions in different areas of life. The draft law starts from a preamble which describes what kind of relationships the law regulates. Then, we have a reference to the Belarusian Constitution.

The important part of the draft law are the definitions on gender, gender equality, discrimination, discrimination on ground of gender, direct gender discrimination, indirect gender discrimination, housework, quotas, equal rights for women and men, equal opportunities for women and men, sexual harassment and special measures. We included in the draft an issue of a housework which is not regulated in Belarusian Act on Marriage and Family, quotas and special measures that would support one of the sexes in a sphere where this sex faces discrimination. In article 2 we described a purpose of this act which is ensuring equal rights and opportunities of women and men in all spheres of political and public life, and creating a national mechanism (institutions and means) for ensuring gender equality. In article 6 we described the actions which constitute direct and indirect discriminations but in point 3 of this article we listed the actions which do not constitute discrimination such as a favourable treatment of women in case of military service, motherhood and retirement age. So, we decided to uphold the current legislation on these issues. We found it necessary to dedicate a separate chapter to collecting and monitoring statistical data on gender equality. In article 9 we wrote that "Monitoring and collection of statistical data on differences in income, access to vacancies on labour market, as well as in all spheres of political and public life is conducted separately with regard to women and men". We also wrote that the state and local authorities are obliged to see the experts' help while working on the legal acts in order to ensure gender equality. We dedicated a chapter to a post of ombudsperson for gender equality. There was a long discussion among human rights defenders if this post should be mention in the draft law given the current political situation in Belarus. We are aware that the ombudsperson appointed by the authorities might be just a decoration without any real power or influence. What's more there is a risk that having this post might be more harmful than useful for the case. However, those who worked and consulted the draft law reached a conclusion that even if the ombudsperson is not effective and useful, the fact that there is an official body responsible for gender equality is already a relevant advancement towards respecting human rights in Belarus. We are aware that it is not possible to include all necessary issues concerning a job of ombudsperson and that a separate legal act is necessary.



Elena Eskova

A difference between what we heard from the experts and what we have in our draft law is a matter of some shortages in a practice. Poland and Croatia are already in a process aiming at achieving gender equality and in case of Belarus we have simply drafted a law. What is important for us at this stage is that many entities are involved in discussing gender equality, the draft itself and the Belarusian legislation. If we want this law be adopted in a future, first of all we need to revise our country's legal regulations such as the electoral law where a current majority system should be replaced with a proportional system, we should also change our regulations concerning retirement. Hand in hand with discussion on a retirement age there should be a discussion on how to improve quality of citizens' life in order to extend life expectancy.

Belarus is a member of ILO and it ratified 48 ILO Conventions. Nevertheless, Belarus does not implement the international provisions on a country level. Our authorities and civil servants do not know what are the international laws or standards. Nowadays, an employee who feels discriminated can go to a court but it happens very rarely. In practice the employers are not punished by the courts and do not feel obliged to observe the principles of equal treatment. The message not to pay attention to other people's dignity comes from a high rank authorities whose attitude towards people is usually very rude. This is a chain reaction. The same is with the relations in employment. International legislation and standards related to anti-discrimination in employment are violated in Belarus, for example a short-term contracts are a norm in our country, an employee can be dismissed without any reason or explanation. It is also very difficult for women to get access to higher rank positions. The problem is also bad working conditions.

The chapter 4 of our draft law says about gender equality in a sphere of social and work relations. In this context we dedicated lots of time to an issue of sexual harassment. In Belarus it is a widespread problem and even women are not aware that the certain behaviors constitute as sexual harassment. Therefore, in the draft law we decided to specify as much as possible what it is naming the actions which should be regarded as sexual harassment. We also mentioned all types of liability that might be related to the discriminating actions. If there are some amendments made e.g. to criminal or labor code then these amendments will apply also to the gender equality regulations. The draft law describes the obligations of employers to observe the anti-discrimination and gender equality principles in a workplace and during a recruitment process. We stressed that interfering into a private life of employee is a violation. The draft law includes among others a shift burden of proof, an article on equal rights of women and men in a sphere of social life, article about guarantees of recognition of housework and equal treatment in a housework, the chapter on gender equality in civil service, and of course in education and culture.

We tried to include in the draft law all of many different provisions in order to follow all the international laws on gender equality.



Question: From my point of view as a lawyer, sociologist and somebody who works with gender issues in education and upbringing a definition of “gender” in the draft law is very narrow and insufficient. The characteristics of women and men are not included. What is a source of the definition used in the draft?

Antonina Kovalieva: I can’t remember exactly where we took this definition from but we did not analyze the sociological or methodological documents but the acts of law and draft laws. Based on what we had analyzed we chose this definition. This definition is suitable for a law making process. However, we are open for suggestions and ready to develop it.

Question: Although my organization participated in drafting this law there are some ideological points on which we are not of one mind. For example the retirement age issue. In our opinion having a different age of retirement for women and men is a discrimination. We should focus on equality in all spheres of life that applies to both women and men. Another thing is that in case of some articles a wording is very vague what can lead to manipulation. For example in article 8 you mentioned the special governmental body for equality. What do you mean by this body?

Antonina Kovalieva: Well, a special body that will function in the government, maybe something on a level of ministry.

Belarusian participant: I will very much insist on using as specific wording as possible. Instead of saying “governmental body” we can name a specific ministry. If there are the specific provisions there will be a chance to push the authorities to be compatible with these provisions and everybody will know who is responsible for what. In the draft law there is also a wording “competent body”. In my opinion it is too vague and should be specified, so a victim of discrimination knows who she should address to. Otherwise we just end up with the empty words.

Elena Eskova: We should remember that it is impossible to put everything in one legal act. In the gender equality law we can mention the institutions responsible for gender equality but we cannot specify their responsibilities and tasks in all cases. In case of a job of ombudsperson there should be the specific provisions in this law but in case of e.g. ministry of education its tasks related to equal treatment should be specified in the law on a work of this ministry. That is my explanation as a lawyer. Thank you for all your comments and we would appreciate it a lot if you put them in writing.

Silke Steinhilber: I think it is very important to balance the need or desire to work on a draft itself and on the concrete words with a desire to use this work on a draft law for a process of mobilization and sharing information and knowledge, and coming together as women’s rights activists. Balancing these two approaches is a big challenge. Therefore, a lot of tolerance on both sides is required. The tolerance on a side of those who want to focus on the specific wording and the tolerance on a side of those who are just committed to the issue, not lawyers



but interested in working on the draft law. Your specific political situation requires that you apply these two approaches at the same time. I would like to ask our experts from Poland and Croatia for your last comments on the Belarussian draft law.

9. Comments on the Belarussian draft law on gender equality from Polish, Croatian and German experts

Karolina Kędziora: I want to just highlight few things which from my perspective as a barrister are the most important:

- Definitions included in the draft law. I have got some doubts if some definitions you used are sufficient to effectively prevent discrimination. For example a definition of direct discrimination says "discrimination that directly indicates sex". There is nothing about a comparator that is very important in case of direct discrimination. In order to decide if a direct discrimination took place we need to have a person with whom we can compare a situation of a potential victim of discrimination. You should develop this definition and make it more detailed.
- You have an article about a right to equal remuneration but you should also have an article about a work of equal value, including a detailed definition on what it means "equal value".
- Your draft law contains many examples. In my opinion giving the examples in a legal act, especially as many as you do, might seriously limit this law. From my experience as a lawyer working on the discrimination cases I can say that there is many situations that we cannot predict while formulating the law. Having an open catalogue of issues in the law is a good practice but giving the examples might cause that the courts will have doubts if a specific situation constitutes as discrimination or not because it is not described as an example in the law.
- I would recommend looking at the definitions include in the EU directives and see if they can be useful for your draft law somehow.

Sanja Sarnavka: This is my recommendation concerning your draft:

- Be very careful and specific in case of definitions, especially when you define "discrimination". I advise you to do what Croatia did, I mean use a definition used in EU directives.
- I've noticed that you use in the draft law both terms "gender" and "sex". You should take decision and just stick to one of these terms. In Croatian gender equality law a term "equality of sexes" is used instead of "gender". This was a decision of our government that did not like a term "gender".



- It is very important that working on the draft law initiated a discussion on gender equality issues in your country, at least among some groups of people. You should continue your work and promote this draft law despite the fact that you are not going to have this draft law passed in a near future.
- Focus now on conducting a research and collecting statistical data to strengthen your arguments for why this law is needed in Belarus. That is what we did in Croatia after drafting the first law on gender equality. B.a.B.e started to do research on school books and then on media to prove that sexism and stereotypical views on women and men prevail in public sphere. In our case this strategy worked and it has been a significant progress in advancing gender equality in Croatia. Let's continue to collaborate and think what would be the best actions in your situation.

Ines Bojić: Generally I have the same remarks as my Polish colleague:

- Be careful about definitions you included in your draft law. In case of a definition of "direct discrimination" you should mention a comparator.
- Reflect on adding a definition of "harassment". In Croatian law we have both, a definition of "harassment" and of "sexual harassment". You can also broaden the definition of "sexual harassment" and include a term "offensive and unpleasant environment".
- You should include some sanctions for not observing the principles of gender equality if you want this law work in practice. Now, the law that you drafted would be described by the lawyers as "lex imperfecta".
- In case of some articles you put yourself at risk to limit application of this law. For example in the article 6.2 and 6.3 you closed a list of actions by using a phrase "other actions indicated in this law". Leave this list unexhausted by saying "any other actions". You also take a risk in the article 14 where you indicate the types of physical behavior and you name them: touching, forcing to sexual activity, sexual intercourse or attempt of rape. The last thing should be "rape" of course which is not mentioned here. Actually, you do not have to include in your law a list of actions. I would recommend leaving it to your jurisprudence.
- I would also advise you to include in your working group an expert who knows technically how to write a good law. I am an experienced lawyer but I would not dare to draft a law. The law must be clear and precise, and every person to whom the law is addressed must be aware of the consequences this law bears. Otherwise you will have the law which is not good in practice.

Sanja Sarnavka: I would like to reflect on what Ines said about knowing the techniques of formulating the law. I don't agree with this recommendation. In my opinion at this stage of



work and given a political situation in Belarus you should put in your draft law whatever you want without focusing too much on having a perfect law.

Ines Bojić: I don't agree with you Sanja because if a law is drafted by a university professor, as it happened in case of Belarussian draft law, there is a tendency to write it in a form of a textbook with definitions on this and that but these definitions are more philosophical than juridical. This is a sphere where I see a danger because you are putting yourself in a risk to limit yourselves in applying this law.

Silke Steinhilber: I would like to highlight that it was an interesting exchange between a lawyer and a person who is not a lawyer. In a way it is exactly a situation you are in right now and it is one of the challenges you need to face. After all what I heard yesterday and today about a political situation in Belarus and the small chances of having this law passed in a near future I'm much inclined to side with Sanja in this exchange. In a moment you are right now it is more convenient to have this draft law in a kind of textbook fashion. I would suggest to use this draft for awareness raising and mobilization purposes. Promote it among the women's organizations or potential allies as well as among those who are your opponents in a political discourse. I think you are not at a stage to focus on drafting a perfect law.

There are few points I would like to add to what the other said about the definitions and concepts:

- In my presentation I stressed how important it is to highlight a positive duty on a state to promote equality, how it goes beyond equal opportunities and equal treatment. That's in line with CEDAW Convention. I think that you should make that point stronger in your draft. You should highlight more the responsibilities that the CEDAW Convention puts on a state.
- Check again the definitions and align the terms which you use in your draft more with international terminology. Although for political reasons it might be smarter not to highlight that you looked at the EU directives. Do not mention the EU directives but mention the CEDAW Convention and ILO Conventions.
- Look again at the article 9 regarding a collection of statistics because it is too focused in my opinion on desegregation. Monitoring of gender equality and collecting gender sensitive statistics go beyond desegregation.
- The article 10.3 says that the state has a right to introduce special measures. I would highlight again that there should be some form of obligation imposed on the state to achieve gender equality, not the right.
- I think that in terms of implementation mechanisms there is a need for further discussion. In my opinion all state institutions should be obligated to contribute to implementation of the gender equality law. It should be clearly said in the law.
- About a process of drafting this law. After what I heard from you I think that more consultations on this draft are needed. I would consider doing the consultations not for



a full draft but that you focus a discussion on the specific parts of it. If you discuss a full draft during the round table meetings it is very difficult to capture all the comments and give the experts a chance to express their opinions thoroughly.

- I think that Sanja's point about research and data collection is essential. Doing a research and collecting a data is a good strategy in your situation where there is no chances to get this law passed in a near future. The statistics will make your arguments stronger and you will be well prepared for a discussion with your opponents.
- There are some contentious points which you will have to face at some moment such as a retirement age. Discussion on gender equality always brings many contentious issues between people who advocates for women's rights because equality is not always the same as privileges that have been granted to women for many years. If you are looking for allies you must think strategically. Elena was right when she said that if you force to have a retirement age equal for women and men you will lose a support of the trade unions. Therefore be strategic. It is a moment when tolerance is needed to move further. Don't focus now on the points that might divide your movement, rather focus on raising awareness in a society and on creating greater sensitivity for the gender issues.

Is there anything you would like to add, Sanja, in terms of a process of drafting the law?

Sanja Sarnavka: We have never planned to have a perfect law because it is not a role of civil society organization. Our role is to open space and show the directions. It is not that we fully succeeded. We had the law passed but we failed to have an effective, independent institution for promoting gender equality. The ombudsperson is depended on the government and does not have a real power. Therefore, you should remember that a final version of your draft law is not going to be the law that will be passed. You should put all your efforts to convince the society, politicians and government that this law is important and that gender inequality exists in your country. Be creative and put your message in a very simple way. Be brave and if necessary also provocative in order to attract public attention to your case. You need to have the multilevel activities to challenge existing situation because otherwise even the best law will do nothing.

The report has been prepared by Agnieszka Walko-Mazurek from KARAT Coalition, Warsaw, 05.2014