

Making Equality Effective

Sandra Fredman
Professor of Law
Oxford University

The Complaints led model

- Victim must
 - initiate complaint
 - find evidence
 - prove breach of discrimination law against named perpetrator
- Remedies:
 - Win or lose
 - Backward looking - compensation

Complaints Led model

- | | |
|---|--|
| <ul style="list-style-type: none">• Advantages<ul style="list-style-type: none">• Not dependent on institutional initiative• Defined right• Remedy to specific individual• May deter | <ul style="list-style-type: none">• Disadvantages<ul style="list-style-type: none">• Burden on individual• Possible victimisation• Problems of proof• Not systematic• Costly and slow• Requires victim and perpetrator• Remedies don't require structural change |
|---|--|

Modified complaints led model

- *Minimise burden on individual*
- Class actions (all have identical claim)
- Wider standing: commission, union, NGO on behalf of victim/without identified victim
- *Modify adjudicative body*
- Specialised tribunals – quicker and cheaper,
- Initiated by victim/ initiative of body
- BUT: still require proof of breach
- **Conciliation and persuasion: non judicial bodies.**

Modified complaints-led models

- | | |
|--|-----------------------------|
| • Advantages | • Disadvantages |
| • Quicker and cheaper than courts | • Not widely used |
| • Less burden on complainant | • Dependent on resources |
| • Possibility of forward-looking remedies | • Lack of awareness |
| | • Wider structural problems |

Proactive models

- | | |
|---|---|
| • Complaints led model | • Proactive model |
| • Initiated by victim | • Initiated by body capable of change |
| • Proof of breach by identified perpetrator | • Structural inequality |
| • Compensation to individual | • Positive steps towards structural change |

Proactive Models

- Initiative with employer rather than victim
- Change systematic rather than ad hoc
- Responsibility with those who can bring about change; no need to prove fault
- Group remedies – institutional change
- Participation

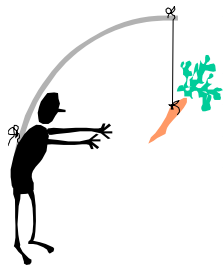
Functions of proactive measures

- Eliminate unlawful discrimination: more effective anti-discrimination laws
 - Equal pay
- Promote equality
 - Quotas, family friendly measures
- Prevent new measures from creating or perpetuating inequality
 - Impact assessment

Structure

- Who is responsible?
- Who participates and why?
- How is effect evaluated? Role of monitoring
- Enforcement

Questions for Discussion
Enforcement



- Reliant on participants' energy/political goodwill
- Rights or policy?
- Reporting requirements
- 'Enforcement pyramid'
- Trade Unions and collective bargaining

2. Defining the goals

- Targets
- Measurement
- Data Collection

3. Role of individual

- Conflict between individual and collective?
- Individual as trigger for general duty?



Functions of Participation

Gaining information
Those affected best placed

- Giving information
- Transparency
- Accountability
- Publication

Influence decisions
Deliberative democracy
'Learning'
Voice

- Better Compliance
- Instead of 'victim'

**Proactive measures: changing
practices and policies**

Berta Valdés de la Vega
Professor of Law
University of Castilla-La Mancha

**Proactive measures in private
enterprises (Spain)**

- **Fostering equality:**
 - equality label
 - CSR measures
 - balance composition in companies’ boards.

- **Enterprises' obligations and measures:**

- **Obligations:**

- Real equal treatment and opportunities in the workplace
- prevention of sexual or gender-based harassment in the workplace

- **Measures:**

- Whatever measures required
- Equality Plan

- **Equality Plan in private enterprises:**

- **Structure:**

- Responsibility: Enterprise. Legal obligation to negotiate.
- Monitoring: mechanisms for supervising implementation of Equality Plan.
- Enforcement: failure to comply with obligations is serious infringement

- **Equality Plan in private enterprises:**

- **Functions:**

- Measures to make anti-discrimination law more effective: modifying criteria applied to promotion, to job classification system and to salary structures.
- Promoting equality: positive actions in job recruitment and in promotion; promotion of joint responsibility for childcare.

**Affirmative action and
promotion in Public Sector**
(Austria, Germany and Estonia)

• **Obligations:**

- Eliminating under-representation of women (less than 40% Austria)
- Selecting employees from the underrepresented sex (up to 50% Germany)
- Duty of promotion gender equality (“as equal as possible” Estonia)

• **Responsibility:**

- Network of institutions and persons (ministers, ombudspersons, working groups, Austria)
- Public bodies (Germany).
- State and local government agencies (Estonia)

• **Enforcement:**

- Report to Parliament (Austria, Germany and Estonia)
- Equality body (Germany and Estonia)
- Enforcement and political commitment

USING PROACTIVE MEASURES TO PROMOTE EQUALITY IN DISTRIBUTION OF CHILDCARE RESPONSIBILITIES

THE HUNGARIAN AND SPANISH EXAMPLES

mr. iur. Goran Selanec, LL.M.
Network of Legal Expert for Gender Equality, Croatian member

The purpose of the comparative approach

- Facilitate critical assessment of the ability of different measures to contribute to the redistribution of childcare responsibilities between sexes
 - identify the extent to which different models use different proactive measures to achieve this goal
 - assess their capacity to achieve this goal

Why Hungary and Spain?

- How different social backgrounds effect models of proactive measures?
 - different historical, cultural, political and legal backgrounds – different limitation faced by the models
- Important connection: dominant social position of the traditional family model

Focus on the distribution of childcare responsibilities

- Disproportional distribution of childcare responsibilities one of the central sources of labor market inequality between sexes.
- The effectiveness of different models of proactive measures significantly depends on their ability to:
 - 1) Redistribute the traditional distribution of childcare responsibilities between the sexes;
 - 2) Properly reward the childcare efforts as socially beneficial work.

The Hungarian model: responsibility

- Legal position of the proactive measures:
 - In principle not legally mandated – strong commitment to formal equality.
 - Contingent on the initiative of private actors.
 - Exceptions:
 - Duty to inform employees of flexible working time opportunities.
 - Public employers required to develop Equal Opportunities Plans.
 - Questionable effectiveness.

The Hungarian model: the cornerstone

- The “family friendly workplace’ or ‘women friendly workplace’ competitions.
 - The evaluation criteria:
 - training, offering choices between work-time patterns, part-time employment or other forms of flexibility, adjusting vacation leaves to childcare responsibilities, etc.
 - education and training opportunities adjusted to different stages of person's life or opportunities for tele-work and project development/implementation during pregnancy and childcare leaves.
 - Implied effect: competition seems to favor those measures that can accommodate women's role as primary care-providers (and not substantially undermine it).

The Hungarian model: the cornerstone

- Employers' response:
 - ▣ Most frequent measures: wide range of medical and social benefits for women; so called "young mammy" training programs; work-time flexibility; adjusted leaves.
 - Correspond to women's needs as primary care-givers.
 - ▣ Small number of employers offer measures such as the childcare services or fully paid paternity leaves.
 - ▣ Absence of effective monitoring system.

The Hungarian model: the childcare leaves system

- Merely 5 days of paternity leave.
- The parental leave:
 - ▣ rather long;
 - ▣ reasonably flexible;
 - ▣ sensibly supported;
 - ▣ parents allowed to work during the parental leave and still receive the allowance.
- Questionable effectiveness due to:
 - ▣ the issue of affordable childcare services ;
 - ▣ existing pay-gap between sexes
- Consequently, the system tends to perpetuate the existing gendered distribution of childcare responsibilities

The Spanish model: responsibilities

- In principle, proactive measures are legally mandated.
 - ▣ Obligation to develop proactive measures preventing sexual or gender harassment.
 - ▣ Equality Plans for employers with 250+ employees.
- Attractive incentives for private initiative.
 - ▣ The so called equality labels.
- Established systems of monitoring the implementation.

The Spanish model: the cornerstone

- Equality Plans:
 - ▣ Purpose: identify and proactively address the disadvantage
 - ▣ Obligations:
 - Assessment based on data from several important areas
 - Develop concrete and appropriate measures
 - Negotiate with social partners
 - Establish mechanisms for monitoring the implementation

Equality Plans

- Employers' response - significant variety:
 - ▣ Measures aiming to prevent inequality: the bias language screenings; gender diversity of selection committees; screening of promotion criteria to prevent direct and indirect discrimination; restructuring of the job classification system and the salary formation system (especially the role of bonuses).
 - ▣ Measures aiming to achieve equality: affirmative **action** in recruitment or promotion training programs.
- Limited effectiveness of Equality plans in facilitating redistribution of childcare responsibilities:
 - ▣ Measures aiming to accommodate women's role of primary care-providers: awareness measures that aim to reveal stereotypes and promote joint parenthood responsibility; flexibility of working hours (starting or finishing hours, part-time options, reduced hours options); adjusted leave options.
 - ▣ Measures aiming to counteract negative implication of women's role of primary care-providers: professional training to parents is during working hours, promotion criteria are screened for their effects on those with family duty; shorter working days due to family obligations are counted as full days; performance bonuses for those on childcare leave are calculated proportionally.
- Tension with the existing Equality Plans
 - ▣ Measures aiming to achieve equality lack a proper support from the measures aiming to counteract negative implication of women's role of primary care-providers

The Spanish childcare leaves system

- Implies a will to move away from the traditional family model
- 16 weeks of childbirth/adoption leave
 - ▣ 6 mandatory weeks + 10 "transferable" weeks
 - ▣ Decision regarding 10 weeks rests with a mother
- 4 additional weeks of parental leave
 - ▣ Offered to fathers or to the "agreed" parent
 - ▣ Available after or simultaneously with the childbirth leave.
- Both leaves fully compensated.
- Encourages parents to share childcare responsibilities.

Concluding remarks

- Both models contain similar limitations:
 - Do not insist on measures challenging traditional distribution of childcare responsibilities within a family.
 - Frequently rely on measures that perpetuate women's gender role of primary caretakers.
- Why Spanish model seems to be more effective:
 - unrestrained by the formal notion of equality
 - legally mandated – clear distribution of responsibility
 - involvement of social partners
 - monitoring system
 - willingness to allow greater freedom in family relations