

New legal strategies with the aim to combat the gender pay gap

Within the European Union, gender equality represents a fundamental value. It is recognised as being of decisive importance for economic growth, prosperity and competitiveness. However, the difference between hourly wages for women and men is on average more than 16 per cent within the EU. Despite of this fact, the aim is to close the gender pay gap until the end of year 2020. In order to reach this target, the EU-commission has made recommendations to the member states about introducing new methods that can enhance transparency in wage formation and pay determination from a gender perspective.

Until now, focus in equal pay legislation has been the development of the ban on discrimination, related to equal work or work of equal value. Our aim is to highlight new legal strategies which represent a shift away from a reactive towards a pro-active approach. We can observe this tendency in countries within the EU (Germany, United Kingdom, Denmark), within the EEA (Iceland) and in countries like Canada or Australia.

The background to these initiatives from the EU Commission is on the one hand that the gender pay gap is persistent, but also that litigation related to the ban on discrimination has delivered poor results. Experiences with equal pay cases from the Swedish Labour court can confirm the Commissions` conclusion. Since the ban on pay discrimination came into force 40 years ago, the plaintiff has been successful in not more than one and a half court cases.

In our presentation we focus on three currant models that aim to diminish the gender pay gap:

- In a recommendation from 2014 the EU Commission proposes to member states to take legal action in order enhance *pay transparency* in the wage setting process.
- A resolution from the EU Parliament in 2017 puts up the target to close the gender pay gap by the year of 2020, by way of different

forms of *public reporting* for employers in order to create more transparency in the wage setting process. United Kingdom and Germany have already legislation in place on “pay transparency and pay reporting”. Compulsive pay reporting in combination with a feed back to the employer, with figures about the gender pay related to equal work, is found in the Danish equal pay act.

- A third equal pay model can be observed in Iceland, where employers must undertake a *certification process related to an equal pay standard*. This legal approach has similarities with a former Swedish proposal on gender equality branding for companies and organizations, “*jämställdhetsmärkning*” (SOU 2002:30).

These three models will be presented and discussed in the light of the functioning of the Swedish labour market and Swedish legislation about pro-active measures in the anti-discrimination act. By tradition, the Swedish labour market is described in a way that employers` organizations and trade unions, without interference from state authorities, negotiate wages and terms of employment. We also comment on changes that can be observed within the last 10 or 20 years when it comes to preconditions for individual pay determination.

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Proposed paper session:

Legal mobilization. How and with what outcomes have international and European equality and anti-discrimination laws been invoked by individuals,