1. DEVELOPMENT OF LEGISLATION

In February 2009, Austrian law in the area of equal treatment for women and men will have been in force for 30 years. In this contribution, the development of the legislation will be outlined against the background of the major international obligations. Attention will be paid to some specific features of Austrian law, including the monitoring mechanisms, with emphasis on the position, role and practice of the Austrian Specialised Equality Body.

1.1 First Steps towards Equality: the 1979 Legislation

In 1979 there was a pressing obligation to enact a provision for equal pay because of the International Labour Organisation Convention no 111, which Austria had ratified in 1973. At that time the general pay schemes (collective agreements) in Austria, negotiated by trade unions and the Chamber of Commerce, provided different levels of minimum pay for women and men. In fact this was what the ILO mainly asked Austria to change, and this is indeed what was changed during the first few years after the Equal Treatment Act was enacted.

Besides the pressure from the ILO, one of the main motives for the creation of the new law was the recognition of the fact that the market economy did not automatically proceed in the direction of more equality for women. In the first commentary to the 1979 Equal Treatment Act, published in 1981, it was stated that there was ‘still a strong preference for male employees in the labour market’ because of their inability to get pregnant and the possibility for men to work at night without restrictions.¹ At that time – and almost up to the year 2000 – night work by women was in principle forbidden by the law. Though the law allowed many exceptions, the general impression amongst the public and employers was that women did not work at night.

It was discussed in Austria during the preparation of the Equal Treatment Act whether the Act might create a new level of protection for women at work that might therefore reduce even further the opportunities of individual women fighting for equality in the labour market. Other experts argued that discrimination on the ground of gender was not only an individual problem of the person affected by discrimination, nor did it solely constitute an individual offence by the person who acted discriminatorily. These experts emphasized the fact that due to a general attitude in society, in many cases women’s work was considered to be less valuable than that of their male colleagues was and that change would have to occur on a more general level. Many experts on women strongly doubted whether a general practice such as wage discrimination against women, which saved employers a lot of money, would ever change voluntarily. All attempts at voluntary awareness-raising, social agreements and other instruments that have been made, have only proved the importance of a legal obligation prohibiting discrimination on the grounds of gender.

The first Equal Treatment Act was short, simple and quite narrow in its scope: it stated that within an employment relationship, discrimination between women and men with regard to payment was forbidden. The legal obligation was also one of the pillars of the practical work of the Equality Body for equal treatment, the Austrian institution set up for training, legal advice and public awareness-raising in the field of equality for men and women.

The main advantage of the existence of a legal obligation, compared with a system that is based on mere agreement, is that as soon as there is a law, the problem shifts from the victim to the perpetrator of the proscribed act. Before a legal obligation existed, unequal pay was seen merely as a problem of the person being treated unfairly. She (for it was a woman in the majority of cases) had to convince the employer to pay her the same as her male colleagues. Experts could only support her with arguments in her favour, but had no effective tools. After the law came into force, the Specialised Equality Body could use the law as a tool and assist the employer to bring his practice in line with the law.

The draft for the 1979 Equal Treatment Act was also supposed to include protection against discrimination on the ground of religion or belief, ethnic origin or sexual orientation (not just gender). It is not clear why this was not finally realised in the Act. It may well be the main reason was that there was only an explicit international obligation concerning equal pay between women and men. Later international obligations – especially those of the European Union – often led to amendments of the Equal Treatment Act in Austria. Without such an international obligation, improvements in the law often could not be effected. Therefore, the overview given below includes the major international instruments that led to the enactment of national law in the field of equality between men and women. It provides a summary of the development in the private sector, however legal developments for civil servants at the federal and provincial levels proceeded along similar lines.