

Eve C. Landau and Yves Beigbeder.
From ILO Standards to EU Law: The Case of Equality between Men and Women at Work. Leiden: Martinus Nijhoff Publishers, 2008. Pp. 340. €110. ISBN: 9789004157187.

Since its establishment in 1957, the European Union or, to be more precise, the European Economic Community was motivated by the vision of a single market, where the peoples of Europe would be able to conduct economic transactions without suffering from barriers to trade. EU law, EU legislation, and its interpretation by the European Court of Justice (ECJ) are aimed at promoting the single market vision, based on the four freedoms, one of which is the free movement of persons. These legally-established freedoms aim at

removing obstacles to trade. Obstacles to the free movement of persons may include direct or indirect discrimination of employees at work. Discrimination may be based on grounds of religion, race, or sex. This book concentrates on the last.

The book provides a comprehensive and detailed survey of the development of equal opportunity standards for men and women in the ILO and in the EU during the course of the 20th century. The book includes a foreword by Professor Lucius Caflisch, a former Judge of the European Court of Human Rights and Member of the International Law Commission of the United Nations.

Written by two lawyers specializing in the study of international organizations, the labour market, and EU law,¹ the book draws an interesting link between the regional, EU, system and global systems, in particular the ILO, depicting the process by which the notion and standards of gender equality were developed by these organizations in a unique, multidisciplinary approach. EU law, being inspired by ILO Conventions, has enforced these standards as binding law via EU Directives which harmonize the laws of the Member States.

The book is divided into four parts: The first part (chapters 1, 2) is dedicated to the role of global organizations in the development of labour law. It covers the contribution of two global organizations, the UN and the ILO, the former dealing with the abolition of all forms of discrimination whilst the latter focuses on discrimination in the world of work, in employment and occupation (Convention No. 111).

¹ Eve C. Landau, Docteur en Droit (Paris), Diploma of the Hague Academy of International Law, Fellow of the Alexander von Humboldt Stiftung, Former Professor of Law at Webster University, Geneva, and the Universities of Luxembourg, Geneva, Jerusalem, and Tel Aviv. Former external collaborator of the ILO. Yves Beigbeder, Doctor in Law (Grenoble), a former WHO official and lecturer at European and North American universities, and for UNITAR (Geneva), now a Legal Counsel for international civil servants.

In the second part of the book, chapters 3 and 4 respectively refer to the role of two European organizations, the EU and the Council of Europe, in the development of equality standards of labour law. The major contribution of the latter is in the form of international conventions: the European Social Charter and the European Convention on Human Rights. The final chapter of this part, chapter 5, is dedicated to the examination of the informal relationship between the ILO and the EU, as well as to the assessment of the strong impact of norms and standards developed by the ILO on EU substantive laws and on the role of the social partners in elaborating legislation.

The third part of the book refers to selected important workers' rights and reviews their development in recent decades:

Equal pay: Chapter 6 points to the fact that – although this is not explicitly mentioned by the ECJ – the ILO conventions' provisions are the source of EU law concerning equal pay for equal work, a principle which was extended by both the ILO conventions and EU law to cover equal pay for work of equal value. The book discusses the interpretative difficulties attached to this extended standard and reviews the wide definition of 'pay' in EU law which corresponds to the concept of 'remuneration' of the ILO.

Equal treatment: Chapter 7 deals with equal opportunities and access to jobs in general. Some specific aspects of this issue are further treated in other chapters. It reflects advancements and improvements that have been achieved by now in EU law concerning this matter, pointing to the ILO conventions, the relevant ECJ rulings, and EU directives. However, the authors note that inequality still remains. This chapter is not as fully comprehensive as the others. A partial reason may be that some of the matters relevant to this issue are dealt with in other chapters. Yet, the issue of indirect discrimination, for instance, could have been more fully dealt with in this chapter.

Protective measures for women: Chapter 8 reflects the effect of societal developments on the treatment of working women on ILO law,

which is one important aspect of equal treatment generally examined in the former chapter. It describes the historical evolution which led to the *revision and abolition* of protective measures, realizing that they became counter-productive and limited the choice of jobs for women in the workplace: while women were formerly considered as the weaker sex which should bear traditional family responsibilities, they are now regarded as equal workers who should be treated without discrimination compared to men, being allowed to work at night, work in underground mines, carry heavy weights, etc. Thus, the adoption of the principle of equal treatment for men and women in EU law substituted the notion of protective measures for women at work.

The protection of pregnancy, maternity, and parental leave: Chapter 9 refers to the aspects which factually differentiate women from men: pregnancy and maternity. In order to ensure effective equality of treatment, these aspects must be addressed by the law. As in the other cases mentioned, in this case EU law was also inspired by ILO law, implemented it, and gave teeth to the international standards. However, in this case the book notes that the initial approaches of the two organizations differed. The ILO was created, to a large extent, to protect workers, including women workers. The EU started immediately with the principle of equal treatment for men and women, then developed the rights (rather than protection) of pregnant women and women after birth as a legitimate exception to the principle of equal treatment of men and women at work. The book reviews the ECJ decisions which further developed these rights, even at risk, in some cases, of favouring the employee at the expense of the employer.

Workers with family responsibilities and child-care: Chapter 10 presents the ILO Convention on workers with family responsibilities which opened a new era of recognition with regard to sharing family responsibilities by men and women. This idea was later adopted by EU law and rulings regarding entitlement to child-care.

Part-time work and indirect discrimination: Employers may prefer full-time workers over part-time workers, but their interest is not nec-

essarily shared at the state level, taking into account economic and social considerations. It is therefore important to ensure that part-time workers are not discriminated against, deterred, or denied the right to work. Chapter 11 finds ‘complete harmony’ (at 204) between ILO law and EU law referring to the protection of part-time workers, which indirectly protects women who work part-time because of their family responsibilities. Both adopt the *pro rata temporis* principle, to apply proportionate treatment in terms of proportional remuneration and other conditions of work, such as leave, bonuses, amenities, privileges, between full-time and part-time workers. Prior to the adoption of this principle, part-time workers in the EU were discriminated against in terms of relative remuneration and other working conditions compared with full-time workers. The principle of proportional treatment is particularly important in the case of women, who form 80 per cent of all part-time workers in the EU. Exceptions to this principle are maternity and injury, which are accorded full protection.

The burden of proof and indirect discrimination: Chapter 12 covers a procedural aspect of litigation on the rights of workers: the burden of proof. Nevertheless, reading it, it becomes evident that this aspect bears substantial implications for the enforcement of workers’ rights in the EU. The authors come to the conclusion that ‘the importance of the shifting of the burden of proof to the stronger party to the dispute [the employer – NM] recreates a balance and restores the equality of the parties before the law, which is a guarantee to fair trial’ (at 212).

The dignity of the worker. Sexual harassment: Chapter 13 concentrates on the sexual abuse of workers, describing the relatively more advanced and specific position concerning this matter taken by EU legislation, compared to the ILO instruments. The EU first dealt with this subject in a Code of Conduct to protect the Dignity of the Worker in 1990, but only in 2002 was Directive 2002/73/EC enacted, which included a definition of sexual harassment and treated it as a form of sex discrimination, thus giving this issue legally binding status, for the first time in EU law.

In this context it is stressed that both the ILO and the EU refer to the national level for concrete action, while they see their own role as providing minimum standards, offering guidance and procedures, and encouraging governments to take action. It is nevertheless realized that changing norms of behaviour in this sensitive area is a time-consuming effort of all actors involved, i.e., governments, social partners, NGOs, and international organizations.

Positive or affirmative action: This controversial issue, dealt with in Chapter 14, has found a solution in the fair balance of interests, as evidenced by the rulings of the ECJ, allowing positive action for women only when it does not result in discrimination against men. It is stressed, though, that the measures of empowerment of women are within the competence of the Member States, while the EU institutions are assisting and supervising this action.

The *fourth part* of the book refers to future challenges, i.e., future prospects for the development of both ILO and EU law. Chapter 15 focuses on the new dimensions added to the subject matter in the agenda of the ILO and the EU in the new millennium. While the ILO developed a Decent Work Agenda, summing up the aspirations of people in their working lives, involving the opportunities for work which is productive, freely chosen, and delivers a fair income, in the EU the new millennium raised awareness of further aspects of discrimination, beyond gender discrimination, i.e., discrimination based on race, ethnic origin, religion or belief, disability, age, and sexual orientation. The book calls on decision-makers not to abandon the continuous struggle to achieve gender equality at work, as a key to the achievement of further social and economic ends. It further depicts the intention to enhance cooperation between the EU and the ILO for the promotion of these mutual goals. Thus, for example, the EU holds observer status in all deliberations of the ILO and implements the ILO's Decent Work Agenda. This practice seems to complete the process which is well-described in this book, whereby EU law, and in particular the ECJ, 'faithfully translated into practice the standards of the ILO' (at 257). This conclusion is well reflected

in the annexes, revealing the mirror image resemblance between the ILO Conventions and EU Directives. The annexes are followed by a list of all cited cases of the ECJ.

The book was published at a timely moment when the ILO declared 2009 to be a year of 'gender equality at the heart of decent work'. It should further be read in the light of the EU Lisbon Agenda 2000, aiming at turning the EU into 'the most dynamic and competitive knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion . . . by 2010'.²

The book reiterates that 'in spite of the evidence of progress, the gap between policy and practice remains significant' (at 20). The authors express their hope that the EU model described in the book will help other countries and regions on their own road to equality.

The book has already proved to be an accessible source of up-to-date and rich material on equality at work. Indeed, it is a well-written, comprehensive, and clear guide, summarizing and analysing the development of gender equality treatment both in the ILO and in the EU. As such, it is an important instrument for studying the evolutionary and historical dimension of this subject, as well as the current legal situation according to ILO and EU law. It may further be used as a guide for the interpretation of these laws, useful for practitioners and academics alike. Its bright writing and short and focused chapters make it a very appealing book. Beyond these practical aspects, the book is a tribute, long overdue, to the ILO, the guardian of social justice and equality, for being the locomotive of the train of equality.

Nellie Munin

Senior Lecturer, Zefat Academic College Law School, Israel. International trade law and EU law expert. Former Chief Legal Advisor, State Revenue Administration, the Ministry of Finance, Israel. Former Minister of Economic Affairs in the Israeli Mission to the EU
Email: gmun@netvision.net.il

doi: 10.1093/ejil/chq018

² See www.europarl.europa.eu/summits/lis1_en.htm#a.