



**Legal seminar 6 October 2009
on the implementation of EU law on equal opportunities and anti-discrimination**

**SUMMARY WORKSHOP PROCEEDINGS
DISCRIMINATION IN ACCESS TO GOODS AND SERVICES**

Panel members

Chair: Dr Anneli Albi, expert gender Network
Panellists: Prof. Aileen McColgan, expert gender Network
Dr Eugenia Caracciolo di Torella, expert non-discrimination Network
Rapporteur: Dr Kristina Koldinska, expert gender Network

The panel was opened by a speech by Prof. McColgan, who presented the findings of two reports (Gender-segregated Services and Gender Discrimination in Access to and Supply of Goods and Services, and the Transposition of Directive 2004/113/EC) drawn up by the Network of legal experts on gender equality. There were some issues of particular interest which Prof. McColgan presented in detail:

There has been very little litigation in the area of equal access to goods and services, probably especially due to the victims' fear of the costs and risks incurred by legal proceedings in themselves; further causes could be the unavailability of representative action and ignorance of the law.

Problems have been reported in the implementation of the Directive, in particular relating to the complexity of its material scope and definitions of key concepts such as goods, services and for example harassment. There are also some doubts regarding the fact that important areas, such as education, are excluded from the Directive's material scope.

Some examples of gender-segregated services were listed, such as swimming pools and saunas, ladies' taxis, gentlemen's clubs etc. There are also some services where one sex is privileged, such as night clubs where women pay less to enter or for drinks.

The proposed Anti-discrimination Directive was also presented, especially from the point of view of its material scope, definitions of discrimination (including the definition of harassment), and permissible differential treatment.

During the discussion following the presentation, several questions were highlighted. It was noted that in some Member States litigation proceedings are free of charge, which should motivate victims and increase the number of cases. A very interesting and topical issue was the question of gender equality in advertising and the media as well as in shops, where a gender-based hostile environment can sometimes be found. Discussion also focused on the definition of harassment in the provision of goods and services, as well as the dilemma of how far a provider of goods or services can protect a pregnant woman. Pregnancy-related issues were discussed in more detail.

The workshop then continued with a presentation by Dr Eugenia Caracciolo di Torella, who identified problematic parts of the Directive and proposed some possible changes to its current text. The exception from the principle of equality regulated by Article 5 of Directive 2004/113 should be removed or at least amended.

The implications of an insurance company's right to distinguish on gender grounds on the condition that it publishes relevant statistical data are not as yet very clear and in practice seem to be quite problematic. The ECJ *Lindhorfer* case was presented as one of the very few cases already decided in the field of insurance, whereas the *Test Achat* case, also before the ECJ, is still pending.

A wide-ranging discussion ensued on the issue of insurance. It was argued that insurance companies fear litigation so much that the mere threat of it may encourage them not to discriminate, at least to a certain extent. It was also concluded that many Member States use the possibility of an exception only because it exists, especially in the field of motor insurance (in favour of women) and life insurance (in favour of men). The question of solidarity was also discussed, and how far it is still relevant and just to generalise using statistical data.

Conclusion

It was concluded that the area of gender equality in access to and supply of goods and services is still evolving very dynamically and that it is also highly problematic. The concept of substantive equality must be implemented in this field, and it was argued that substantive equality will not be achieved unless all actors and factors are taken into consideration. In sum, it is critical for the application of gender equality in the provision of goods and services that the philosophical commitment to equality be reconciled with actual practice.