



European network of legal experts in gender equality and non-discrimination

NEWS REPORT

Country:	Belgium
Title:	"Women only" fitness center not illegal
Date:	9 April 2015
Expert:	Jean Jacqmain
<u>Context</u>	
Issue at stake:	Gender equality in access to good and services
Ground of discrimination:	Sex
Source:	National court decisions: Civil Court in Liège, 23 January 2014 and Court of Appeal in Liège, 4 November 2014, <i>Journal des tribunaux</i> , 2015, P. 42 with S. van Drooghenbroeck's case note
Field:	Goods and services
Applicable law:	<i>Décret</i> of the French-speaking Community of 12 December 2008; federal Gender Act of 10 May 2007; Institutional Reform Special Act of 8 August 1980.

Content

Case law: When a fitness centre that had been previously open to persons of both sexes was converted into a "women only" facility, a male customer brought a claim against the fitness centre, complaining that this change constituted discrimination on the ground of gender.

Decision of the Court: On 23 January 2014, the Civil Court in Liège applied Article 8 of the federal Gender Act, found that there was direct discrimination and ordered the owner of the facility to put an end to the claimant's exclusion.

However, on 4 November 2014 the Court of Appeal in Liège quashed that judgment. The Court found that under Article 35 of the *décret* (act of a federate parliament) of 12 December 2008, which transposed Article 4(5) of Directive 2004/113/EC within the French-speaking Community's jurisdiction, the disputed difference in treatment was justified by the legitimate aim of enabling women to perform fitness exercise in privacy and with apparatus adapted to their morphology ("morphology" was the exact wording used by the Court). The "women only" policy was an effective and appropriate means to achieve that purpose, and did not result in a disproportionate inconvenience for the claimant as he had access to another facility within a reasonable distance.

Key points of analysis: Access to goods and services falls within the scope of the federal Gender Act of 10 May 2007, with the exclusion of matters on which the various federate authorities have jurisdiction. Under Article 8, direct discrimination grounded on gender is prohibited. By way of exception, Article 9 admits that certain goods and services may be intended for persons of one sex or the other, but an ancillary Royal Decree must establish an exhaustive list of those goods and services. In the absence of such a Decree (which has not been adopted so far), the courts have no power to apply

the justification test. Now, "sport" falls within the scope of the *décret* of 12 December 2008, under which the courts do have such a power. However, there is no unanimous opinion on the inclusion of fitness in the notion of "sport", hence the discrepancy between the analyses of the Civil Court (which applied the federal Act) and the Court of Appeal (which opted for the federate *décret*).

Internet link source: All legal texts available in French and Dutch via <http://www.juridat.be>, accessed on 25 February 2015.