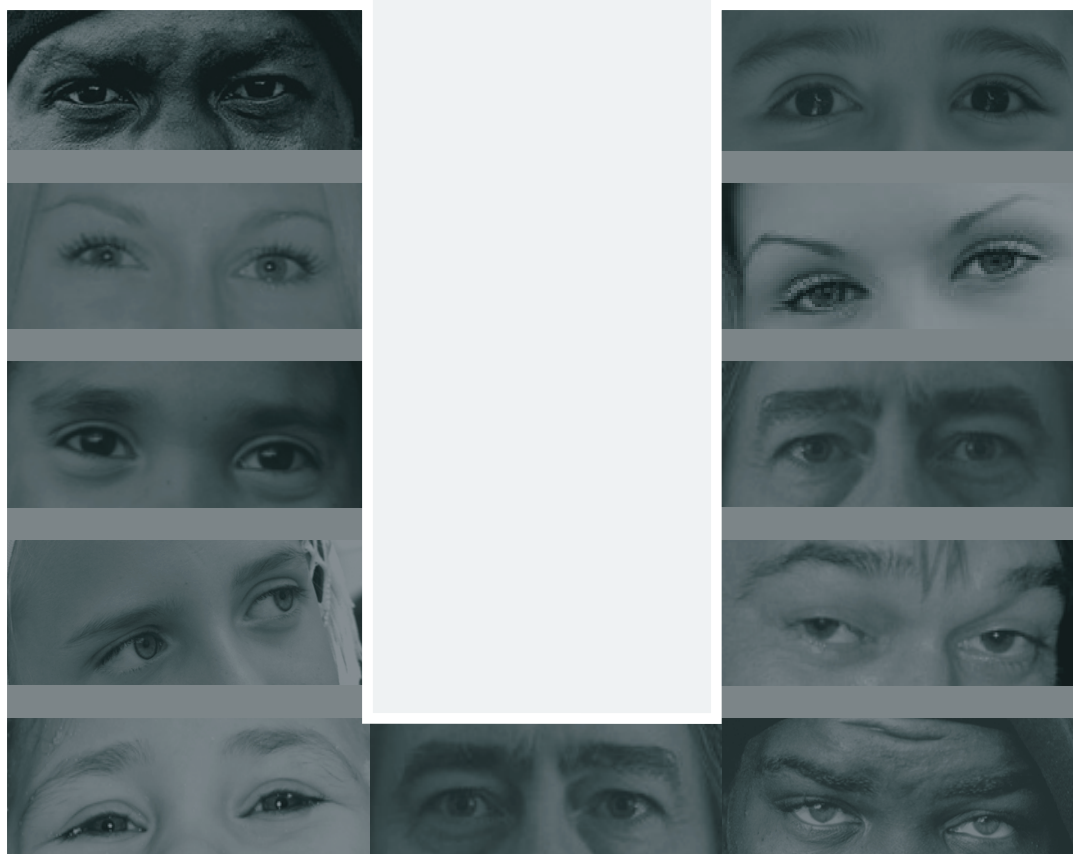




Sex-segregated Services



Sex-segregated Services

EUROPEAN NETWORK OF LEGAL EXPERTS IN THE FIELD OF GENDER EQUALITY

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European Commission
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List of Abbreviations

AT	Republic of Austria
BE	Kingdom of Belgium
BG	Republic of Bulgaria
CY	Republic of Cyprus
CZ	Czech Republic
DE	Federal Republic of Germany
DK	Kingdom of Denmark
EE	Republic of Estonia
EL	Hellenic Republic
ES	Kingdom of Spain
FI	Republic of Finland
FR	French Republic
HU	Republic of Hungary
IC	Republic of Iceland
IE	Ireland
IT	Italian Republic
LI	Principality of Liechtenstein
LT	Republic of Lithuania
LU	Grand Duchy of Luxembourg
LV	Republic of Latvia
MT	Republic of Malta
NO	Kingdom of Norway
NL	Kingdom of the Netherlands
PL	Republic of Poland
PT	Portuguese Republic
RO	Romania
SE	Kingdom of Sweden
SI	Republic of Slovenia
SK	Slovak Republic
UK	United Kingdom of Great Britain and Northern Ireland

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Part I

Sex-segregated Services

1. Introduction

This report aims to give a picture of what is happening (or not happening) as regards the provision of sex-segregated services in the Member States, Iceland, Norway and Liechtenstein. The focus is on access to and the supply of sex-segregated leisure-related services alone, and the report does not deal with sex-segregated conditions, premiums etc. in insurance, religious contexts or health services. The supply of goods is covered only to the extent that they are closely related to services.

Public discussion and debate about sex-segregated services and sex discrimination (for example as regards pricing) in access to services appears to be very limited indeed, with occasional exceptions relating to (for example) the provision of cheap or free access to nightclubs and/ or cheap drinks to women. This does not mean, however, that such practices are unusual. It is clear from the responses to the questionnaire that there are a number of areas in which differential treatment by sex is commonplace. Sometimes such treatment may be justified on grounds of personal privacy, decency, safety considerations, etc, while other examples serve to reinforce sexual stereotyping and the commoditisation of women. What is clear is that the nature of much of this differential treatment, even where it is inconsistent with the legislative provisions in force, is such that legal challenge to it rarely occurs except where there exists an ombudsman or equivalent. The reasons for this are further considered below.

Common forms of differential treatment

Among the most commonly cited examples of differential pricing of services were those involving access to nightclubs¹ and hairdressing services,² mention also being made in a number of reports about differential pricing structures in dating services.³ Sex segregation is commonplace in the context of fitness clubs, saunas, spas and similar and public swimming pools⁴ while a number of country reports mention the (declining) existence of single sex hairdressing and similar facilities.⁵ It is relatively common for fitness clubs to cater exclusively to women⁶ or, in the case of mixed clubs, to have studio areas set aside for women (but not to have equivalent areas for men). The Iceland report also mentions specialist classes in health clubs for men and women (i.e., women's or men's martial arts or circuit training classes or similar) while Poland's report refers to the provision of dance classes for women.

¹ Hungary, Estonia, Italy, Denmark, the UK, Lithuania, Luxembourg, Portugal, Bulgaria, Liechtenstein, Poland and Slovakia, though in the latter case it appears to be more related to gay/lesbian bars.

² Austria, Germany, Ireland, Italy, Latvia, Liechtenstein, Norway, Sweden, Poland, the UK. Latvia also mentions differential pricing in relation to manicure and pedicure services. In Austria a 2005 report showed differences of up to 340 %.

³ Norway, Denmark, Sweden, Iceland.

⁴ Netherlands, the UK, Lithuania, Hungary, Belgium, , Germany, Latvia, Finland, Luxembourg and Cyprus. In Italy it appears that there are women-only hotels.

⁵ Portugal, for example, and the Czech Republic.

⁶ The Netherlands for example, Lithuania, also Poland and the UK.

Differential pricing is not the only example of differential treatment in the context of nightclubs, several experts referring also to restrictions on women accessing strip clubs and the like⁷ and on men and women respectively accessing lesbian and gay facilities, and different age limits or other entrance requirements for men and women.⁸

Discrimination in access to film showings was mentioned by the Polish and German reports, though other reports mention ‘targeted’ cinema⁹ (and in the case of Iceland, television) programming designed to appeal to women or men and the Finnish report referred to the marketing of sports and leisure activities to one or other sex. Other sex segregation takes place in ‘private’ clubs as a result of which it will in some cases fall outside the current scope of the prohibition on sex discrimination,¹⁰ while some parking facilities are reserved to women in a number of states including Germany, Luxembourg and Portugal. The Polish report discloses the existence of a female driving school and a number of taxi services which specialise in secure taxi services for women as well as the operation of specialist travel agencies and holiday packages for women. In Germany single-sex cafés and bars operate (in the case of male-only facilities being directed at gay men).

Less commonplace than single-sex gyms and/or women’s facilities in mixed gyms is differential pricing in access to gyms which, however, does feature in a number of states.¹¹ Other relatively infrequently mentioned examples of differential pricing include admission prices for women (and children) in access to football matches, which appears to be motivated in some cases by efforts to reduce hooliganism (Poland),¹² otherwise more generally to encourage more women to attend (as in Austria). While not directly targeted at sex segregation as such, a number of national reports expressed concern that predominantly male and predominantly female sports/ leisure interests attract differential public financial support.¹³

In the Czech Republic dance classes are more expensive for girls than for boys, few of whom participate, and whose fees are effectively subsidised by would-be female dance partners while in Finland differential pricing occurs not only in bars and restaurants but also in relation to cruise tickets.

2. Relevant legislation

Substance

Council Directive 2004/113¹⁴ regulates discrimination and harassment ‘[w]ithin the limits of the powers conferred upon the Community (...) [by] all persons who provide

⁷ Bulgaria, Czech Republic. In Latvia there has been public debate as to the exclusion of men from male strip shows aimed at women.

⁸ Sweden, Poland and Denmark mention different age requirements and Greece the requirement imposed by some nightclubs on men (but not women) to be accompanied.

⁹ Iceland and Luxembourg.

¹⁰ In Denmark the Gender Equality Complaints Board has in a number of cases ruled that it lacked jurisdiction to deal with complaints of sex discrimination by ‘private’ sports clubs and ‘swingers’ clubs of a non-commercial nature though cf the decision of the Netherlands Equal Treatment Commission in ETC Opinion 2001-27, considered below at text to fn 41.

¹¹ In Poland and Iceland, in which the Directive has not been transposed.

¹² This in Poland. In Italy and Austria this form of differential pricing also occurs, and it also seems Belgium.

¹³ Finland, Ireland, Lithuania, Hungary.

¹⁴ Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, *Official Journal* L 373, 21/12/2004 P. 0037 – 0043.

goods and services, which are available to the public irrespective of the person concerned as regards both the public and the private sectors, including public bodies, and which are offered outside the context of private and family life and the transactions carried out in this context'. The Directive does not (article 4(5)) 'preclude differences in treatment, if the provision of the goods and services exclusively to members of one sex is justified by a legitimate aim and the means of achieving that aim are appropriate and necessary'. In addition, article 6 provides that: 'With a view to ensuring full equality in practice between men and women, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to sex'.

Many EEA states have legislation which appears to be at least broadly in conformity with Council Directive 2004/113. The only exceptions appear to be the Czech Republic, Liechtenstein, Iceland, Poland and Greece, in which transposition has yet to occur.¹⁵ In Austria the Directive has been transposed at federal level but not in all of the nine regions, while in Belgium transposition has occurred at federal level, but only in to a limited extent at lower levels of government which, for the most part, have jurisdiction over these types of discrimination.¹⁶ and Austria in which transposition has occurred at federal level only and (in particular in the case of Belgium) A number of states have provisions along the lines of Article 4(5),¹⁷ others having exceptions more or less tightly drawn. The only potentially relevant exception to the prohibition on sex discrimination in Estonia, for example, concerns single sex not-for-profit membership organisations, which may in any event fall outwith the scope of the Directive.

Dutch and UK legislation also provide defences narrower than Article 4(5) of Council Directive 2004/113 in the form of closed lists (discussed immediately below) which generate difficulties for services such as women's taxis. Thus in the UK the only relevant exceptions relate to:

1. 'voluntary bodies' whose 'activities (...) are carried on otherwise than for profit', which are permitted to restrict membership and the provision of 'benefits, facilities or services' etc to persons of one or other sex subject to (where EC law is applicable) a proportionality requirement; and
2. (again, subject to a proportionality requirement where EC law is applicable) sex segregation where:
 - a. 'users [of facilities] are likely to suffer serious embarrassment at the presence of' a person of the opposite sex, or are 'likely to be in a state of undress and (...) might reasonably object to the presence of a' person of the opposite sex; or
 - b. 'physical contact between the user and any other person is likely, and that other person might reasonably object if the user were a' person of the other sex.¹⁸

¹⁵ Draft legislation exists in Poland. Note that Latvia's legislation covers only the supply of goods and services for personal use while there are gaps as to, in particular, enforcement in a number of other states (in particular Estonia, Finland and Sweden).

¹⁶ The Flemish *decreet* of 10 July 2008 prohibits discrimination on a number of grounds including sex in relation to goods and services but permits justification of direct as well as indirect discrimination.

¹⁷ Sweden, France, Spain, Bulgaria, Slovenia, Latvia, Cyprus, Italy, Lithuania, Luxembourg, Malta, and in Austria and Belgium, though only in relation to federally regulated matters (and, in Austria, in some but not all of nine regions).

¹⁸ Sections 34 and 45 of the Sex Discrimination Act 1975.

In addition, the legislation provides that ‘For the avoidance of doubt it is hereby declared that where a particular skill is commonly exercised in a different way for men and for women it does not contravene subsection (1) for a person who does not normally exercise it for women to insist on exercising it for a woman [or a man] only in accordance with his normal practice or, if he reasonably considers it impracticable to do that in her [or his] case, to refuse or deliberately omit to exercise it’.¹⁹

In the Netherlands sex segregation in services is lawful only if it is (a) preferential treatment for the benefit of women; (b) necessary for the protection of women and maternity or (c) a case in which sex is a determining factor. This last question falls to be determined by a Ministerial Order which mentions, so far as relevant here, cases of sanitary facilities, changing and sleeping rooms and saunas (all insofar as facilities are equally available for both sexes), sports and beauty contests (insofar there is a relevant difference in sex), and necessary and proportional differential treatment for the protection of health and against sexual harassment and violence. We shall see below that the Dutch approach has resulted in findings of discrimination in a number of cases which in other jurisdictions would be regarded as falling within an exception to the prohibition on discrimination or as not discriminatory. Danish law is also narrower than the Directive when it comes to exceptions, allowing positive action only where the responsible minister has authorised measures for the promotion of gender equality aiming at preventing or compensating for unequal treatment on the ground of gender.

Irish law is broadly in line with the Directive, the Equal Status Act providing, so far as relevant here, general exceptions relating to ‘preferential treatment or the taking of positive measures which are *bona fide* intended to (i) promote equality of opportunity for persons who are, in relation to other persons, disadvantaged or who have been or are likely to be unable to avail themselves of the same opportunities as those other persons, or (ii) cater for the special needs of persons, or a category of persons, who, because of their circumstances, may require facilities, arrangements, services or assistance not required by persons who do not have those special needs’.²⁰ In addition, Irish legislation provides specific exceptions in relation to the prohibition on discrimination by members’ clubs (including golf clubs and similar) where a club’s ‘principle purpose is to cater only for the needs of (...) persons of a particular gender’.

Hungarian legislation provides an exception in relation to the prohibition on discrimination in access to premises which are established specifically for a group defined by an otherwise prohibited characteristic (including sex) with the aim of preserving traditions or maintaining cultural or personal identity. In such cases the restriction on access must be obvious from the name of the establishment and from the circumstances of the use of the service and must be imposed in a non-humiliating way. In addition, Hungarian law recognises an exception in relation to ‘genuine and reasonable differentiation’.

German law allows differential treatment related to considerations of safety, the protection of privacy or personal security and ‘granting special advantages and lack of any legitimate interest in enforcing equality’. While a proportionality requirement is thought to be implicit in the law, the national expert suggests that the last of these exceptions would extend to differential pricing intended to increase a customer base where ‘[i]f forced to treat everyone equally, [the service provider] would not extend

¹⁹ Note also that, where services are provided by public authorities, exceptions are provided broadly in line with Article 4.5 of Council Directive 2004/113/EC.

²⁰ Equal Status Act 2000, Section 14(b) as amended in 2004. The Irish legislation covers eight other grounds as well as gender (marital status, family status, sexual orientation, religion, age, disability, race and ‘Traveller’ status).

the lower price to everyone, but would increase the price for all. Therefore, enforcing equality would not benefit those that were excluded by the service provider's policy, provided, however, that the primary intention was not to exclude a specific group'. Among the situations understood to be covered by this exception are "ladies' nights" at discos or bars, where women are admitted at a reduced ticket prices and/or pay less for drinks', this because 'the service provider aims at winning both (new) female and male customers because the existence of a sex-balance among the customers renders the establishment attractive'. The national report also suggests that the exception would extend to 'cafés or bars for women only, or for lesbians or gays only, and that some commentators (though not the German national expert) consider that it would extend to 'a men-only poker bar [because] (...) a service provider has the right to define the audience by which he/she expects to make most money', though 'the problem (...) arises of how to define whether the primary intention is to winning a special target group or to exclude a special group'.

Enforcement

Substantive law is one issue, but the elimination of unlawful discrimination also requires adequate enforcement mechanisms. In practice Swedish legislation does not impose any penalty in respect of 'minor' discrimination, this because the Equal Opportunities Ombudsman does not take such cases to court. Similarly in Finland, where the Directive has not yet been transposed, the only recourse is by way of complaint to the Equality Ombudsman. While the approach taken by the Equality Ombudsman appears to be broadly in conformity with the substance of Council Directive 2004/113 (emphasising justification and proportionality), the failure to implement the Directive means that the position as regards remedies is unsatisfactory as the Ombudsman's role is merely advisory, save that s/he can bring a case to the Equality Board which may order cessation of an unlawful practice. Estonian domestic law does not have any enforcement mechanisms except in relation to employment and the Gender Equality Commissioner's opinions are not binding on the parties. Nor do the provisions on the reversal of proof apply outside employment.²¹

In Germany, enforcement is by means of individual action only and the discriminator can (contrary to Council Directive 2004/113) escape a damages penalty by showing an absence of fault. Even where provision is made for remedy, complaints of discrimination outside the employment context tend to be rare. In Lithuania, for example, where domestic legislation closely mirrors Council Directive 2004/113²² and where fines have been imposed by the Ombudsman on occasion in relation to differential pricing by nightclubs, complaints are rare and the practice continues. In Latvia, where the only remedy is from the courts, cases are not taken because the costs associated with legal action outweigh the compensation available in this context. The costs of litigation in the UK courts also outweigh any compensation likely to be awarded in goods and services cases, particularly given the rule that the loser pays the other side's legal costs.²³ And in Denmark, whose Gender Equality Complaints Board has consis-

²¹ A draft Act would if implemented bring Estonia's legislation into conformity with the Directive as regards enforcement, though it widens the exception presently permitted by providing that the provision of goods or services wholly or mainly to persons of one sex will not be regarded as discriminatory if it has a legitimate aim and the means used are proportionate in relation to the purpose.

²² Similarly Luxembourg, Malta, Slovenia, Spain.

²³ Enforcement is by individual legal action save in the case (so far as relevant here) of discriminatory advertisements in respect of which the only enforcement mechanism is legal action by the Equality and Human Rights Commission.

tently ruled against night clubs in respect of differential pricing, the only available sanction is compensation for the additional cost of entrance to the (male) complainant and discrimination in this context continues unabated.

Ireland allows enforcement of the equality provisions both through the Equality Tribunal (which can award compensation and there is no liability for costs) and the ordinary courts, in the case of discrimination by clubs serving alcohol where the court can order the suspension and withdrawal of the alcohol licence of ‘discriminating clubs’.

3. Case law

Pricing

Nightclubs and similar

In Finland, where relevant sex discrimination legislation has been in place since 1986, the Equality Ombudsman generally regards differential pricing other than on a strictly limited basis (such as discounts for women on ‘Mothers’ day lunches’) as unlawful. One case decided by the Ombudsman involved ‘two ladies for the price of one’ cruise prices which were declared unlawful as was differential pricing by a bar/restaurant on ‘Ladies nights’.²⁴ The approach of the Lithuanian Ombudsman in fining nightclubs for discriminatory pricing has been mentioned above. Slovenia’s Advocate for the Equal Opportunities for Women and Men has also upheld complaints as to differential night club pricing as has Estonia’s Gender Equality Commissioner, who relied in part on a decision of the Irish equality body in rejecting the argument that the practice could be seen as (lawful) positive action in favour of women (this because such a determination would require findings that women were underrepresented in nightclubs and that different entry fees would help to reduce this inequality).²⁵ Denmark’s Gender Equality Complaints Board has determined 21 complaints in respect of differential pricing of night club entrance and has in each case found the practice contrary to law and Norway’s Gender Equality and Anti-Discrimination Ombud has disapproved of differential price arrangements for access to a bar, concluding that economic and/or marketing considerations did not justify direct discrimination.²⁶ Austria’s Equal Treatment Ombudsperson has filed an application for an expert opinion of the Equal Treatment Commission on differential pricing of night club access.

Personal services

Norway’s Gender Equality and Anti-Discrimination Ombud has also disapproved of differential pricing of male and female hairdressing services as has Sweden’s Equal Opportunities Ombudsman,²⁷ though in the latter case no compensation was awarded (this on the basis that the discrimination complained of, which had ceased, was insufficiently serious to merit an award). Denmark’s Gender Equality Compensation Board, by contrast, has rejected challenges to differential pricing of hairdressing services while Austria’s Equal Treatment Ombudsperson is intervening in a number of hairdressing cases.

²⁴ Respectively Decisions 42/39/03 and TAS/314/06.

²⁵ Annual Report of the Gender Equality Commissioner 2005/2006. Cf the approach of the Dutch Equal Treatment Commission, text to fn 39 below.

²⁶ Cases 2005/200, 2003/276, 2002/331 respectively. The Ombud also ruled in case 2005/104 that charging women half price for meals on a Wednesday was unlawful.

²⁷ Case 833/2006.

Sweden's Equal Opportunities Ombudsman settled a claim in respect of discrimination in the pricing of dating services with a payment of EUR 2 500²⁸ and Norway's Ombud has disapproved of differential price arrangements for dating services, again on the basis that economic and/or marketing considerations could not justify direct discrimination.²⁹

Positive measures

Norway's Ombud has, however, rejected a complaint against the differential pricing of an information technology event which was accepted to be motivated by the idealistic, rather than economic, desire to encourage underrepresented women to participate in the event and was, in the view of the Ombud, a measure to stimulate women to break stereotypical patterns in line with the aims of Norway's equality law.³⁰ Similar conclusions were drawn by Iceland's Complaints Committee on Equal Status in respect of the charging by a golf club of discounted rates for women aged between 21 and 66 for access to a golf club, the Committee concluding that the practice promoted rather than denied equality.³¹ By contrast, arguments as to justification were rejected by the English House of Lords in a case involving a challenge to differential pricing by a public authority swimming pool based on (then different) state pensionable ages for men and women.³²

Other

In Finland a challenge to the subsidisation by a local authority of ice hockey rinks (used mainly by men and boys) but not riding associations (used mainly by girls and women) was found not to violate the relevant equality legislation, because the ice hockey facilities were publicly owned whereas the riding association was private, though the Ombudsman did recommend that consideration be given in future by the authority to the fact that women appeared to find it necessary to establish private sports facilities whereas public provision was made in the case of popular male activities.³³ Austria's Equal Treatment Ombudsperson has filed an application for an expert opinion of the Equal Treatment Commission on differential pricing of football matches but Slovenia's Advocate for the Equal Opportunities for Women and Men has rejected complaints against lower cash prizes offered in male and female sporting competitions where the registration fees also differed.

Sex segregation

Saunas and similar

The decisions reached in relation to sex-segregated services are more varied than those relating to differential pricing arrangements. In Slovenia, for example, the Advocate for the Equal Opportunities for Women and Men rejected a challenge by a man refused entry to a sauna on the one day a week in which it was closed to men. And in the Netherlands the Equal Treatment Commission rejected a challenge to the (non-symmetrical) provision by a sauna of a 'woman's day' on the basis that there was in-

²⁸ The settlement was reported in the Ombudsman's 2007 Annual Report.

²⁹ Cases 2005/200, 2003/276, 2002/331 respectively. The Ombud also ruled in case 2005/104 that charging women half price for meals on a Wednesday was unlawful.

³⁰ Case 2002/110.

³¹ Case no. 4/2002.

³² *James v Eastleigh Borough Council* [1990] 2 AC 751.

³³ Decision 5/51/04.

sufficient demand to have a day reserved to men. In Hungary, however, the Ombudsman upheld a challenge to the refusal of access on the part of women to a Turkish baths, accepting that sex-segregation was justified on decency grounds but ordering that the baths also open for women-only sessions during the week (the level of attendance having the effect that those sessions now account for one day a week).³⁴

Sports

Differences of outcome have also occurred in relation to single-sex sporting activities. Hungary's Ombudsman has accepted on a number of occasions that the operation of women-only gyms falls within the 'genuine and reasonable differentiation' defence available under Hungarian legislation. Female gyms are defended sometimes by reference to the 'specialist' equipment they feature, on other occasions by reference to considerations of 'privacy' broadly understood to include the ability to exercise free from concerns about make-up, appearance etc.³⁵ Ireland's equality tribunal, however, has ruled against a health club which reserved an area for the exclusive use of women where this was justified on grounds of women's potential embarrassment at exercising in the same area as men, but was in fact in full view of men.³⁶ And in the Netherlands the Equal Treatment Commission has suggested (though not decided) that a woman-only sports club was inconsistent with the law.³⁷ In Denmark, by contrast, the Gender Equality Complaints Board has accepted the provision of women-only spaces in a fitness club, women-only swimming sessions (and differential dress codes for male and female diners) as lawful.³⁸

Nightclubs

Sweden's Equal Opportunities Ombudsman has rejected a complaint from a man refused entry to a nightclub during a lesbians' night as the differential treatment complained of was intended to create a 'sheltered zone' for lesbian women. (The Ombudsman has also rejected a number of complaints from women denied access to swimming pool facilities when bathing topless, this by reference to 'reasons of privacy and decency' in recital 16 of the preamble to the 2004/113/EC Directive.³⁹) The Dutch Equal Treatment Commission has, however, ruled that a disco could not bar access to men in order to create a gender balance in the clientele.⁴⁰

Other clubs and similar

The Netherlands' Equal Treatment Commission has considered a challenge to alleged discrimination by a private rifle association. Interestingly, although the complaint failed as not proven, the Commission ruled that the domestic legislation was applicable to rifle association, whose members were admitted by a vote, because the association rendered services in public (having public shooting facilities and the ability to

³⁴ Case no OBH 5726/2005. In Finland the Equality Ombudsman typically requires that sex-segregated services must be balanced by similar services available to the other sex.

³⁵ Poland for example cites both reasons

³⁶ *Curran v Total Fitness Dublin* DEC-S2004-164.

³⁷ ETC Opinions 2004-75 and 2008-12 respectively. Also (ETC Opinion 2005-169) ruled that a divorce lawyer could not refuse to take on male clients.

³⁸ By contrast, in *Gallagher Merlin's Night Club* DEC-2002-113. Ireland's Equality Tribunal ruled against a nightclub operating differential dress codes for men and women (i.e. a 'no sandals' policy for male customers).

³⁹ Case 998/2007.

⁴⁰ ETC Opinion 2007-36.

participate in official matches).⁴¹ The application of anti-discrimination legislation to members' clubs was restricted, however, by the controversial decision of Ireland's High Court in *Equality Authority v Portmarnock Golf Club & Ors*, which concerned a challenge to a bar on female membership at one of Ireland's most prestigious clubs.⁴² Irish legislation applies to members clubs but provides that 'a club shall not be considered to be a discriminating club by reason only that (...) (a) (...) its principal purpose is to cater only for the needs of (i) persons of a particular gender (...)'.⁴³ Women were permitted to play and were 'entitled to access to the bar and restaurant and all other Clubhouse facilities available at the Golf Club', but were denied membership. The lower court ruled that 'The principal purpose of the Club is to play golf' and 'The ordinary words of the statute do not ascribe to men's golf a special need'. The High Court, however, accepted that 'there is nothing inherently undesirable with persons seeking – in a social context – the society of persons of the same gender' and that the exception to the legislative prohibition on sex discrimination should, accordingly, be broadly interpreted to cover the club notwithstanding the fact that women were not, in fact, barred from the club's facilities.

Social reasons for single-sex facilities were accepted by a Polish court in a challenge to a small chain of 'ladies club/cafeterias' ('Babie Lato') established to promote a specifically 'female' atmosphere and featuring 'chairs wide enough to be comfortable for seating even for chubby women with their handbags [and] tables tall enough to enable to keep legs comfortable, even while wearing 11 cm high heels'.⁴⁴ Men are admitted to the cafés only if wearing comedy female wigs provided for the purpose. The complainant had been refused service when he refused to wear a wig. The question for the Polish court (Poland not having implemented the Directive at the relevant time) was whether the differential treatment was justified. The challenge was rejected by the court which ruled that, because the café was designed by women for women, to enable women to talk openly on issues specific to them, which they could not comfortably discuss in the presence of men, and the wig was designed not to violate men's dignity but rather to differentiate them visually from women and to deter them from frequenting the club, the differential treatment was justified.⁴⁵ According to the (male) judge, men who were sufficiently sensitive to women's needs would regard the wig as a joke and men who felt offended by it and viewed it in terms of a 'war of the sexes' showed a deficiency of empathy which prevented them from understanding that their presence, as men, could deter women from discussing private and intimate issues.

Other

In the Netherlands the exceptions to the prohibition on sex discrimination (including segregation) take the form of a closed list. The Dutch Equal Treatment Commission, however, dismissed a challenge to a woman's taxi service on the basis that the complainant did not have sufficient interest in it (one taxi from a fleet was reserved to women and the Commission found that he had not been disadvantaged by it),⁴⁶ a decision the country expert characterized as 'seeking a practical solution for this type of

⁴¹ ETC Opinion 2001-27.

⁴² [2005] IEHC 235, 10 June 2005.

⁴³ Equal Status Act 2000, Section 9(1)(e).

⁴⁴ Polish legislation is not in conformity with Directive 2004/113 but imposes some restrictions on discrimination in access to goods.

⁴⁵ Judgment of 21 December 2005, case no XIW 2617/05, unreported.

⁴⁶ ETC Opinion 2008-102.

sex segregated service, since literally spoken it would not fall under any of the exemptions or exceptions that are provided for in the law’.

What might be characterized as a *de minimis* approach was rejected by the English Court of Appeal in a challenge to the operation of a ‘men only’ area in a wine bar (men were permitted to stand at the bar whereas women were required to sit at a table).⁴⁷ According to the Court of Appeal, overturning the conclusion of the trial judge below that any discrimination was *de minimis*, the use of the *de minimis* principle was questionable ‘in a situation where that which has been denied to the plaintiff is the very thing that Parliament seeks to provide, namely facilities and services on an equal basis’. Further, ‘the whole rather special attractiveness of the particular area of the premises in question is denied to the woman. Its popularity is undoubted. It affords a somewhat unique atmosphere which is clearly greatly appreciated and is in great demand by men, and I cannot, therefore, assume that there is no true demand for it by women.’ The lack of complaint by women over the years ‘cannot, in my view, outweigh the obvious fact namely that there is a deprivation of a facility that is greatly prized by men and was sought by the plaintiffs’.

Portugal’s Commission for Citizenship and Gender Equality has ruled that the reservation of ‘pink’ parking spaces in commercial shopping facilities was inconsistent with gender equality as it was premised on stereotypes about women’s driving skills and penchant for shopping.

4. EU action

There was some support among the experts for soft action in the form of consciousness raising etc (Estonia, Slovenia), research into compliance by clubs with legislation (Ireland) The German expert, however, warned that Commission action may be ‘counter-productive in Germany because [it] would reinforce the view that European anti-discrimination legislation is over-reaching [which] might endanger other urgently needed actions of the Community, such as a harmonisation of all EU anti-discrimination legislation (‘horizontal approach’) covering all grounds of discrimination enumerated in Article 13 EC’. Austria’s expert took the view that there were more pressing matters for the European Commission than access to clubs though she took a different line in relation to differential pricing of hairdressing/ dry-cleaning services. Additionally or in the alternative, the operation of sex-segregated services appears to (as the Hungarian expert put it) be an issue ‘belonging to (or at least blinking at the borderlines of) private life’. The Greek expert took the view that there were more pressing matters for the Commission to attend to, but that the exclusion of women from men’s clubs such as the influential ‘Athens club’ perpetuates the disproportionately male nature of the ‘establishment’ and ought to be addressed.

Others supported action against discrimination in access to clubs (Poland) and ‘more pressure on Member States to introduce effective sanctions’ (Denmark), including loss of alcohol licenses in the case of discrimination by nightclubs and similar. The Lithuanian expert suggested that Article 4(5) was unsatisfactory as ‘broadly formulated [giving] very wide room for interpretation’, a view echoed by the Hungarian expert who drew attention in particular to the provision’s “‘symmetric”, gender blind approach’. The Polish report suggested amendment to Directive 2004/113 to include references to illegitimate, as well as legitimate, forms of differential treatment in its preamble. On a different note, Luxembourg’s expert points out that ‘[s]ex-segregated

⁴⁷ *Gill v El Vino Co Ltd* [1983] QB 425.

assistance services just like sex-segregated lobbying associations or networks are meant as instruments which precisely aim at fighting inequalities between women and men' which for 'many years [have] contribute[d] to the promotion effort of equality between women and men'. Other sex-segregated provisions, such as 'men only' or 'women only' sessions in fitness centers 'are meant to encourage men or women to take part in activities like wellness'.

5. Analysis

Council Directive 2004/113 prohibits discrimination on grounds of sex in access to goods and services. Having defined discrimination to encompass both less favourable treatment on grounds of sex (direct discrimination) and the application of 'an apparently neutral provision, criterion or practice [which] would put persons of one sex at a particular disadvantage compared with persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary', the Directive provides that:

4.5. This Directive shall not preclude differences in treatment, if the provision of the goods and services exclusively or primarily to members of one sex is justified by a legitimate aim and the means of achieving that aim are appropriate and necessary (...)

6. With a view to ensuring full equality in practice between men and women, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to sex

Under 6. Conclusions below I will consider the compatibility or otherwise of the various examples of differential treatment considered. It is useful for this purpose to categorise the examples as follows:

1. differential pricing of services:
 - 1.1. designed to encourage greater participation by an under-represented sex (as in the case of differential pricing of gyms, or weight-lifting clubs);
 - 1.2. designed to encourage greater participation by persons of one sex *in order to* attract greater numbers of persons of the opposite sex;
 - 1.3. which operates (as in the case of hairdressing services) as a proxy for the greater time typically expended on women or men or (possibly) the greater willingness of women (or men) to pay;
2. sex segregation of services utilised by both men and women:
 - 2.1. where the segregation is for reasons of decency (as in the case of saunas or, in cases where cultural sensitivities are at issue, swimming pools and other exercise facilities). This type of segregation may be structured so as to provide single-sex facilities for women but not for men (see 3.1 below), as distinct from 'separate-but-equal' provision (that is, different but equivalent areas or time slots for men and women);
 - 2.2. where the segregation is designed to avoid embarrassment (as may be the case for single-sex facilities within gyms), the embarrassment being connected either with typically different levels of strength or skill in a particular context (as in the case of weight lifting, for example) or the potentially sexual nature of male-female relationships (as where women wish to avoid appearing sweaty and unattractive in front of men). This type of segregation may also be directed at protecting women from sexual harassment, and may

be structured so as to provide single-sex facilities for women but not for men (see 3.2 below);

3. single-sex provision of services:
 - 3.1. where single-sex services are provided for reasons of decency (see 2.1 above);
 - 3.2. where the provision of single-sex facilities is designed to avoid embarrassment or sexual harassment (as at paragraph 2.2 above) in the context of, in particular, physical exercise;
 - 3.3. where the segregation has its roots in the differential exercise of skill in respect of 'male' and 'female' services (as in the case of male 'barbers' and women's hairdressing shops or beauty salons), whether or not the gender distinctions in the nature of the services have eroded over time;
 - 3.4. where single-sex provision is connected with safety issues, as where taxi services are provided especially for women, or special female parking areas are provided, or women-only accommodation is provided for women fleeing violence;
 - 3.5. where single-sex provision is designed to counter stereotyping of women (or men) or its effects (as for example in the case of a women's driving school, or the provision of women-specific training in IT, or (hypothetically) a woman-only trekking or mountain-climbing holiday) or a men-only course in cooking with children;
 - 3.6. where single-sex provision is designed for essentially social reasons, as in the case of male-only golf clubs or women's cafés, or women-only holidays;
 - 3.7. where single-sex provision is associated with the provision of facilities targeted at lesbian women or gay men, as in the case of single-sex nightclubs. Here the rationale may relate to maximising the opportunities for gay men or lesbians to socialise amongst themselves, and may in addition be designed to keep out potentially hostile visitors (in particular, in either case, heterosexual men); and
 - 3.8. where services are designed specifically for and delivered only or primarily to persons of one sex and are connected with sex (as in the case of 'gentlemen's' lap-dancing clubs, in the event that such clubs refuse to admit women), or women-only access to male striptease events or 'sex parties' (where 'sex toys' etc are marketed).

6. Conclusions

The categorisation above does not claim to capture all forms of sex-segregation and sex-differentiated pricing but it does serve to bring into focus the significant issues for discussion that arise in connection with such practices, in particular the extent to which they should be considered compatible with Council Directive 2004/113/EC.

Decency

The first point that can be made is that some of the practices are intended to further what might be characterised as socially beneficial ends (such as fitness) by trying to counter differential participation rates of men and women in (particular types of) organised sport or (where sex-segregated sessions are provided in swimming pools and similar) by enabling participation by those who would otherwise be prevented by cultural or religious attitudes to decency, or by embarrassment, or fear of sexual harassment, from taking part. Permitting such practices does not appear to be inconsistent

with considerations of sex equality, and indeed may further substantive equality between women and men by encouraging women's full access to the public sphere, thus falling within both Article 4(5) of the Directive (providing that any disparity in service provision is proportionate) and within Article 6 (which provides that 'With a view to ensuring full equality in practice between men and women, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to sex').

Differential treatment in this context may be objectionable under Article 4(5) where, for example, single-sex provision for one sex is not adequately balanced by the provision of appropriate opportunities for persons of the other sex to access the facility or service at issue. The equality issues here, particularly if the position of women and men whose religious or cultural practices limit the circumstances in which contact between men and women is regarded as appropriate is taken into account, might be regarded as pertaining more to *equivalent* service provision rather than *uniform* service provision. This is not to say that every swimming session provided for women (and children) has to be balanced by one restricted to men. Relevant questions will concern the level of demand for single-sex swimming and how that demand can fairly be met. But there is nothing intrinsically hostile to sex (as distinct from race) equality in providing separate services in some cases for women and men. One only has to consider the possibility of communal changing rooms open to both men and women to see this. Further, the fact that views as to the appropriate level of social contact between men and women, or the clothing appropriate to such contact, will differ across ethnic and religious groups does not make it any less important to meet the needs of those (particularly women) who will not be able to engage in activities such as swimming and other sports except in conditions of sex segregation. Article 6 may apply in this context to require services to be provided on a separate basis for women even where no such requirement arises for men (this to counter, for example, sexual harassment).

The remarks made above concern the encouragement of participation in what might be categorised as socially beneficial activities. Other sex-segregation is designed to facilitate engagement by women or men in activities involving public nakedness (for example in the use of saunas or, in Latvia, public bath houses). Whether or not saunas are particularly beneficial to health (and many would suggest that they are) there is no reason of principle to object to sex segregation in these circumstances as long as there is no unjustifiable disparity in the levels of access provided to men or women (this by virtue of Article 4(5)). Indeed the provision of single-sex services may be necessary in order to allow women to avoid sexual harassment, thus bringing into play Article 6. The most obvious analogy here would again appear to be with communal changing or toilet facilities which are not generally regarded as giving rise to considerations of sex equality (except, as often happens in the UK, where public buildings are very well equipped with men's toilets and very sparsely with women's). It is the case that the use of single-sex facilities may provide opportunities for networking and similar (see further below) but it is likely to be disproportionate to restrict them on this basis, not least where Article 6 (positive action) applies.

Safety etc

Sex-segregation for reasons of safety or personal security, which arises particularly in the context of women's taxi services, parking facilities, and accommodation, may be regarded as resting on negative stereotypes about male sexual and other violence. It is undoubtedly the case, however, that male-female violence is commonplace, fre-

quently involves sexual assault, and (almost invariably) is inflicted on women by men, rather than vice-versa. Again subject to considerations of proportionality as regards the provision of services to men, where such services are required, there ought to be no principled objection to services whose sex-segregation is based on reasonable considerations regarding safety. Here it is perhaps useful to refer to the German approach which, in applying the personal security exception, does not require that a specific danger exists, but rather that fear of violence etc is rational and not merely subjectively perceived. Under such circumstances it would appear that Article 4(5) and Article 6 are both engaged in the legitimating process.

Counteracting stereotypes

Sex-targeted services designed to counter stereotyping of women (or men), or the effects of such stereotyping, should be regarded as furthering the legitimate aim of sex equality rather than being inconsistent with it and as a result being justified under Article 6 as well as Article 4(5), in each case subject to reasonable considerations of proportionality.

Social segregation: an ‘asymmetric’ approach?

More problematic is sex-segregation designed for essentially social reasons, such as male-only golf clubs or women’s cafés. On the one hand, when the target group is women, such segregation can be seen as allowing a retreat from a male-dominated social space, escape from sexual harassment and the threat of sexual harassment and other forms of sexual violence, and the opportunity to create networks which can begin to counter the differential power wielded by men in society. On the other hand, male-only preserves allow the perpetuation of power imbalances through networking.

It may be that the answer to this difficulty lies in a reading of Article 4(5) of the Directive in conjunction with Article 6. It should be recalled here that the Directive applies only in relation to those ‘goods and services (...) which are available to the public’ and that it does not, therefore, ‘bite’ on small clubs which could reasonably be regarded as ‘private’. But, insofar as the Directive does have application, the exclusion of women from (for example) a prestigious golf club at which, more than likely, numerous ‘networking’ opportunities are available to men involved in business, the professions and similar, might reasonably be regarded as disproportionate to any legitimate aim, given its potentially damaging impact on women, and therefore as not saved by Article 4(5). Indeed the question might arise whether the aim of such clubs can be regarded as legitimate at all. In the Irish golf club case discussed above, the High Court accepted that ‘there is nothing inherently undesirable with persons seeking – in a social context – the society of persons of the same gender’. This may be so, but this is not the same thing as saying that the facilitation of such wishes in the public sphere is a legitimate aim, in particular given the deleterious impact it has on women’s ability to network for professional and other reasons. By contrast, a networking organisation of women designed to ameliorate some of the disadvantages suffered by women in business (disadvantages associated with, for example, minority status, sexism, and/or restrictions on networking opportunities associated with childcare responsibilities) might well be regarded as a proportionate means of achieving a legitimate end (furthering equality) under Article 4(5), as well as being justified under Article 6 of the Directive.

The objective of furthering equality would serve also (as would considerations of personal security and the right to be free from harassment) to justify, under Article 4(5), the provision of services targeted to women or men and intended in fact to be

utilized by gay men or lesbian women. Allowing gay men and/or lesbian women a safe social space in which to create and further relationships between persons of discriminated-against minority groups must surely be seen as a legitimate aim. And given the abundance of services available to men and women other than on the basis of this type of sex-related distinction, it is unlikely that such sex segregation will have any disproportionate effect.

Using sex as a proxy for effort etc

Practices of differential prices for women's and men's haircuts may have their roots in the disproportionate number of women and men respectively having hair which is more or less time-consuming to style, but they are indefensible when the obvious alternative exists of pricing services on the basis of the effort required to be expended on them. In the hairdressing context this might involve differential pricing by hair length and/or requirements for blow-drying or other styling. In the context of dry-cleaning there is no apparent justification for pricing, for example, men's and women's jackets differently, though it may well be the case that suit trousers are more time-consuming to press than a skirt (but less time-consuming than a dress) in which case there ought to be no objection to prices reflecting this. Differential pricing for hairdressers and similar is particularly problematic from an equality perspective given women's consistently lower levels of income than men and the disproportionate expectations commonly imposed on women in terms of grooming (clothes, make-up, hair cuts and colour and similar).

Services with a sexual component

Distinct problems arise in relation to differential pricing designed to encourage greater participation by persons of one sex *in order to* attract greater numbers of persons of the opposite sex, as where women are given cheaper access to dating services or nightclubs etc, or are provided with cheaper drinks than men in the latter context. The difficulty with this type of differential treatment is that it carries overtones of the commoditisation of women, their objectification as 'bait' by which the 'real' (male) customers can be 'reeled in'. The intention in these cases is not to attract women *for the sake of attracting women* (as might be the case, for example, where fees for a physics course which traditionally attracted disproportionately male applicants were set at a lower level for women). The real target is (high-spending) men and the weapon is sex. This practice is objectionable in the extreme because it perpetuates the common view of women as 'game' and, more than likely, contributes to sexual harassment.

Problematic for different reasons, under the Directive, is the provision of specifically 'sexual' services to men and women. Lap dancing clubs and similar exist as essentially male spaces in which women are sexualized and commoditized and, frequently, business contacts are furthered. The exclusion from such clubs of women ought not reasonably to be regarded as furthering any legitimate aim for the purposes of Article 4(5), though the use of such clubs for business 'entertainment' purposes is extremely problematic on sex equality grounds even where women as well as men are customers.

Differential pricing of services

Article 4(5) permits differential pricing of services only where such pricing is intended to result in the 'provision of the goods and services exclusively or primarily to members of one sex, and where such provision is justified by a legitimate aim and the

means of achieving that aim are appropriate and necessary'. It is hard to see how differential pricing could result in the provision of services exclusively to persons of one sex so article 4(5) would appear, in practice, to apply to situations in which the goods or services are provided more cheaply to members of one sex with a view to providing those goods or services primarily to persons of that sex, where such 'targeted' provision is justified, and where the means of achieving it (i.e., differential pricing) is appropriate and necessary. This would not obviously apply to a situation in which a nightclub allows cheap or free entry or drinks to women in order to attract male clients, though it might permit differential pricing designed to attract women (or men) to a traditionally male (or female) preserve. Questions may still be raised as to the proportionality of the measure of unequal treatment adopted to pursue a legitimate aim of (for example) attracting more women into a course on IT, or more men into a course on parenting. Given the fact, however, that women typically enjoy considerably less income than men, questions might arise as to whether it is ever proportional to use pricing as a method of attracting men to (and, relatively speaking discouraging women from) traditionally female spheres. And where (as in the nightclub example) the intention is to use women (or men) as 'bait', in a situation in which sex (as distinct from gender) is on the table, the issue is the lack of any aim which could possibly, consistent with a commitment to gender equality, be regarded as legitimate by virtue of Article 4(5).

Finally

It is clear from the above that the issue of sex differentiation in the supply of services in leisure time, although a subject which generates relatively little comment and limited litigation across the EEA states, does in fact give rise to a number of important and difficult questions which go to the heart of sex equality analysis. Among these questions are those concerning the appropriate sphere of the 'private' and the relationship between equality and 'decency', the importance of gender solidarity among women as a tool for fighting gender inequality, and the resulting need for an asymmetric approach if the regulation of this area is not to exacerbate existing disadvantages accruing to women. On the analysis above, the combination of Articles 4(5) and 6 of Council Directive 2004/113 provides useful analytical tools which could gainfully be applied to prohibit a number of practices common to many Member States, though difficulties in enforcement in this area are likely to present continuing obstacles to the elimination of discrimination.

Part II: National Reports

Overview

This table gives an overview of the 30 countries in this report. Per item is indicated if it is incorporated in the report or what is mentioned about it in the report of the desired country.

	<i>Examples</i>	<i>Legislation</i>	<i>Methods of Enforcement</i>	<i>Case Law</i>	<i>Role of Equality Bodies and NGOs</i>
AT	X	Equal treatment Act	Ombudsman/Courts		X
BE	X	Act of 10 May 2007 ('Gender Act')	Equality body/Court		X
BG	X	Law on Protection from Discrimination	Equality body/Court		
CY	X	Law 18(1)/2008	Ombudsman/Court		
CZ	X				
DK		Gender Equality Act	Equality body/Court		X
EE	X	Gender Equality Act	Equality body		X
FI	X	Act on Equality between Women and Men	Ombudsman/Equality Body		X
FR	X	Act of December 2007 and Act 2008	Equality Body/Court		
DE	X	General Equal Treatment Act	Court		
EL	X				
HU	X	Equality Act	Ombudsman/Court/Equality body		X
IC	X		Equality body	X	
IE	X	Equal Status Acts 2000 to 2008	Equality Tribunal/Court	X	X
IT	X	Decree no 196/2007 and the Code of Equal Opportunities	Equality body		
LV	X	Law on the Protection of Consumer Rights	Court		X
LI	X				
LT	X	Equal Opportunities Act of Women and Men of 1 December 1999	Ombudsman		
LU	X	Law of 18 December 2007	Equality Body		
MT		Equality for Men and Women Act 2003	Equality body/Court		X
NL	X	General Equal Treatment Act	Equality body/Court	X	

	<i>Examples</i>	<i>Legislation</i>	<i>Methods of Enforcement</i>	<i>Case Law</i>	<i>Role of Equality Bodies and NGOs</i>
NO		Gender Equality Act	Ombudsman/ Equality body		X
PL	X		Court	X	
PT	X	Law n. 14/2008	Court		X
RO		Governmental Ordinance 137 of 31 August 2000			
SK	X	Anti -discrimination Act	Court		
SI		Act Implementing the Principle of Equal Treatment and Consumers Protection Act	Equality body/Court		X
ES		Law 3/2007 about equality between women and men	Court		
SE		Prohibition of Discrimination Act (from the 1 st of January 2009: Discrimination Act)	Ombudsman		X
UK	X	Sex Discrimination Act 1975	Equality body/Court	X	

Reports from the Experts of the Member States and EEA Countries

AUSTRIA – *Anna Sporrer*

General remarks

At the moment, there is no debate in Austria concerning sex-segregated services, but on the occasion of the transposition of EC Directive 2004/117/EC by the recent amendment to the Equal Treatment Act, OJ I 98/2008, which went into force on 1 July 2008, there has been some attention in the media on these issues.

One of the examples, which was mentioned often are the different prices for women and men for services of hairdressers. In 2005, the Chamber of Labour (*Arbeiterkammer*) which also handles matters regarding consumer protection, conducted a study on this topic which showed that there are differences up to 340% depending on whether the customer is a woman or a man.

In the spring of 2008 there was a debate on lower prices for tickets for soccer games for women, which was justified by the 'Austrian Soccer Federation' (*Österreichischer Fussball-Bund*) by the aim of encouraging more women to see the games. (See also part 4 of this report)

Legislation

Legislation in this field has been enforced by the implementation of EC Directive 2004/117/EC by the recent amendment to the Equal Treatment Act, OJ I 98/2008.

The amended law now contains a chapter on the principle of equality in the access to and the provision with goods and services. The provisions apply to legal relations, including the initiation of such relations, which are available to the public. Explicitly excluded are any legal relations for which the regions have the legislative powers, relating to private and family life, the content of media and advertisements and public or private education.

The law defines direct and indirect discrimination as well as sexual harassment. Exceptions are made for those differentiations which are justified by a legitimate aim and if the means to reach this aim are appropriate and necessary.

Furthermore, positive action is allowed to prevent or compensate for disadvantages. The sanctions that the law provides for are compensation of the financial loss, as well as for personal damage. In cases of harassment and sexual harassment, a minimum of EUR 720 has been set.

Enforcement

These provisions have to be enforced by civil courts and the burden of proof is shifted to the defendant.

Case law

Until now there is no case law in this field.

Role of equality bodies and NGOs

An Equal Treatment Ombudsperson has been appointed, who is responsible for these kinds of discrimination. She has recently filed an application for an expert opinion of the Equal Treatment Commission on the following issues: Tickets for soccer games,

‘ladies’ nights’ in discos, clubs etc., and the different ages for ticket discounts for women and men in public transportation, which is linked to the different pension ages in Austria.

Concerning the different prices for hairdresser services, the Equal Treatment Ombudsperson has already intervened in some cases.

Conformity with Directive 2004/113EC

In the transposition process, the Directive has generally been implemented in its exact wording into Austrian law.

Further actions

I am of the opinion, that more action should be taken on the question of different prices for hairdresser services or dress cleaning services, because many women need these services.

Concerning clubs and other leisure services, I am of the opinion that there are more urgent problems of discrimination which should be handled more effectively.

BELGIUM – Jean Jacqmain

General remarks

It should first be stressed that no comprehensive information is available on the objective of this report. However, in order to help the federal minister of Equal Opportunities draft the Royal Decree mentioned below under Legislation, the Institute for the Equality of Women and Men (the gender equality agency under Article 12 of Directive 2004/113/EC) commissioned the University of Antwerp to perform a survey, the results of which were delivered to the Institute at the end of July 2008. This survey, conducted through random polling, and only in Flanders given the short time available, reveals that sex-segregated services are certainly no major issue for public debate, which may explain the absence of any related political debate.

Another interesting hint is to be found in the Institute’s *Activity Report 2007*, also made available in July 2008. Among its various tasks, the Institute gives advice to persons who feel discriminated against on gender-related grounds. According to the report, in 2007 27 persons filed complaints concerning the access to goods and services: 4 women and 23 men. The absolute figures have no real meaning, as the Institute is not widely known yet, but the gender breakdown suggests that there are men who complain about initiatives such as reduced prices for women in cafés and restaurants and at football matches, and ‘women and children only’ hours in swimming pools, while very few women find reasons to grouse.

Which immediately points at an extreme confusion between purely commercial gestures and more or less well-inspired or misguided attempts at positive action, the latter not necessarily aimed at promoting gender equality, as religious and cultural dimensions may intervene as well (see below under Further actions).

Legislation

a) The Act of 10 May 2007, aimed at combating discrimination between women and men (colloquially, the ‘Gender Act’) contains a prohibition of discrimination in the access to and supply of goods and services (Article 8).

Article 9 (1) allows for possible exceptions and is a literal copy of Article 4(5) of Directive 2004/113/EC. Under Article 9(2), a comprehensive list of these exceptions

must be provided in an ancillary Royal Decree (RD) after the Institute's opinion has been obtained (see above under General remarks). Under the original Article 9(3), until such an RD was promulgated, it is up to the courts to assess if any exceptions could be allowed, but (as a result of a misguided amendment to the bill of law) this power could only be exercised until 21 December 2007.

More than one year after the Gender Act came into force, no ancillary RD has been promulgated yet, due mainly to the protracted political crisis (although the newly appointed federal minister of Equal Opportunities requested the Institute to take the preparatory steps mentioned at 1). Consequently, at the time of writing, no exception to the prohibition is legally admissible.

b) It should be mentioned that the Gender Act is only applicable within the jurisdiction of the federal parliament, while matters such as culture (in the broadest meaning) and sport have been transferred to the various Communities and Regions. None of the federate authorities has taken any steps to implement Directive 2004/113/EC within its own jurisdiction.

c) In the Flemish Community and Region, the decree of 10 July 2008 (*Moniteur belge/Belgisch Staatsblad* of 23 Sept.) 'providing a framework for the Flemish policy of equal opportunities and equal treatment' is applicable to goods and services (within the Flemish parliament's jurisdiction). It includes a prohibition of discrimination (based on any 'Article 13' criteria, including sex, plus a number of 'home made' additions such as language and health), but any discrimination, be it direct or indirect, may be justified. There is no provision for exceptions as meant in Article 4(5) of the Directive.

Enforcement

Given the present absolute character of the prohibition of discrimination (see above under legislation), and the fact that practices of gender segregation or unequal treatment are known to exist (see at 1), one must infer that legislation is not enforced properly. The situation is made worse by the lack of another ancillary regulation as provided for under Article 38(1) of the Gender Act: inspectorates must be assigned by Royal Decree to safeguard compliance with its provisions, but so far, no such RD has been promulgated either.

Case law

There is no known case law in connection with the whole material scope of Directive 2004/113/EC. Indeed, while the legislation on other Article 13 discriminations' (the former Act of 25 February 2003 and the present 'Discrimination in General' Act of 10 May 2007) also includes goods and services within its scope, the only relevant case law concerns discrimination in access to accommodation, inspired by homophobia.

Role of equality bodies and NGOs

There is only one distantly related case to mention under this heading. After the Institute initiated proceedings, the Commercial Court of Brussels ruled in a case against a DVD rental firm and a publicity agency which suggested men to 'Rent a Wife' from a large selection (for 'wife', the visitor of the related website then discovered they had to read 'DVD'). However, the issue was blatant sexism (or extremely bad taste) rather than discrimination in the sense of the Directive.

Conformity with Directive 2004/113/EC

As mentioned under Legislation, the transposition is formally impeccable, but practically non-existent.

Further actions

In order to receive statutory healthcare and sickness social security benefits, any resident in Belgium must register with one of the Sickness Funds, where a (theoretically optional) subscription fee gives access to various extra bonuses (such as childbirth gifts, reduced rates in holiday facilities, etc). Now, the fee is the same for men and women, but when both members of a married couple are wage earners, some Sickness Funds automatically increase the man's fee (by a modest amount) and reduce the woman's (considerably). Even if such practice reflects gender stereotypes, up to now nobody has considered it necessary to challenge such practice in court. Similarly, there are no complaints when restaurants offer Saint Valentine's Day menus for two 'with half price for the lady'. It is submitted that more structural matters would require action in the first place instead of such practices of sex-segregated services in leisure time. However, taking a broader view, it would be very useful for the Member States that the interaction (or mutual exclusion) of Article 4(5) and Article 6 (positive action) of the Directive be clarified.

Sources

- Gender Act of 10 May 2007;
- Discrimination in General Act of 10 May 2007; both available at <http://www.juridat.be>
- Commercial Court of Brussels, 26 September 2007, *Journal des tribunaux*, 2008, p.107; *Rechtskundig Weekblad*, 2007-08, p.1212 with comments by J. Vrielinck and S. Sottiaux .
- Activity Report 2007 of the Institute for Equality of Women and Men, available in French and Dutch at <http://www.iefh.fgov.be>

BULGARIA – Genoveva Tisheva

General remarks

There is no current debate on this issue in Bulgaria. In Bulgaria, sex-segregated services in the field of leisure mainly exist in the field of access to discos and strip clubs.

In the first case, women are invited to enter discos at night and to attend male erotic shows. They are encouraged to do so through free-access days during the week, free access during the whole night (ladies' nights) and free access to male erotic shows.

The second category of sex-segregated services is the access to men-only strip clubs. For example, one of the highest-ranking clubs in downtown Sofia, 'Taboo club' is advertised as a club for entertainment and pleasure for 'refined gentlemen'.

Legislation

The legislation applicable to the issue is Article 7 paragraph 1, p. 18 of the Law on Protection from Discrimination (LPFD). This provision regulates the exception to equal access and supply of goods and services, which is in full compliance with Article 4 paragraph 5 of Directive 2004/113. In fact, differences in treatment are allowed if the provision of the goods and services exclusively or primarily to members of one

sex is justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

Enforcement

The relevant provision in the LPFD has been in force since 20 December 2007 (*SG No. 100/2007*).

Case law

So far, this provision has not been invoked before a court or before the Commission for Protection from Discrimination. This legislation is still very recent.

Role of equality bodies and NGOs

No relevant cases have been brought before the equality bodies.

Conformity with Directive 2004/113EC

Legislation, in terms of exceptions to the equal treatment principle, is in conformity with EU law.

Further actions

I think the issue deserves more research and analysis. Sex-segregated services in leisure have various other aspects which are not just related to the exceptions provided for in Directive 2004/113. The segregated services in this area bear the marks of gender stereotyping much more than services in other fields and these stereotypes have to be thoroughly analyzed. For example, the reasons behind incentives for women in accessing discos, the reasons for excluding women from access to some strip clubs. In order to formulate suggestions, I would need to do further research for Bulgaria and would need to collect more information on the situation in the other EU countries.

CYPRUS – Evangelia Lia Efstratiou-Georgiades

General remarks

In Cyprus, according to the Constitution, all persons are equal before the law. Every person shall enjoy all the rights and liberties provided by the Constitution ‘without any direct or indirect discrimination against any person on grounds (...) of sex’ (Articles 28(1) and 2).

Despite this, there are traditional places such as coffee shops, (*cafenia* = *καφενεία*), particularly in the villages, where only men go after work, to play backgammon, cards and discuss politics, etc.

In the past few years, women have become active in politics and in decision-making centres, and have also begun to visit the coffee shops during special political and cultural gatherings. Furthermore, as far as I know, there are private gyms and Hamams (Turkish Baths), which specify certain days for men or for women, for practical reasons (such as the cultural and traditional perception of visual contact between men and women in the nude) and not because of the segregation of men and women. The entrance fee per person is the same for men and women. Also, all public swimming pools can be used by both men and women at all hours. There are no travellers’ clubs or golf clubs to which only men are admitted. Women’s or men’s organisations probably exist that organise trips for their members, without however prohibiting the participation of the husband or wife of the member of the organisation arranging the

excursion. Prices in discos are also the same for men or women, although the possibility does exist for ladies' nights or bachelors' nights to be organised, provided the interested party rents the entire disco. Hairdressers stipulate if they offer services only to men or women or if they are unisex. Their prices depend on the services requested by the customer. Certain services exist that have different prices, but this difference is related to the type of service and not to the gender of the person seeking it.

There is no political debate whatsoever with respect to sex-segregated services in Cyprus.

Legislation

On 17 April 2008, Parliament passed a law on the implementation of the principle of Equal Treatment between men and women in the access to and supply of goods and services in line with Directive 2004/113/EC, which was published in the Official Gazette on 2 May 2008.⁴⁸

This law applies to all persons who supply goods and services to the public, both in the public and private sectors, and outside private and family life. Every person is free to choose with whom they conclude a contract, provided the selection of the other contractual party is not made on the basis of sex. This law does not apply: (a) in education; (b) in mass media and advertising; and (c) in employment and vocational activities. Any discrimination on the grounds of sex in applying the scope of the law is forbidden, but the law does allow for different treatment in providing goods or services to persons of one sex if there is appropriate justification for this. Also, positive actions are allowed if they serve the purposes of the law.

Enforcement

Law 18(1)2008 entered into force on 2 May 2008 and specifies the authorities that are authorized to monitor the provisions:

- (a) the Registrar of Insurance is the body authorized to control and monitor insurance contracts;
- (b) the District Court is the body authorized to resolve queries and to provide remedies on the grounds of sex. The District Court shall award just and equitable compensation which shall cover at least the whole of the damage actually suffered, plus nominal interest;
- (c) the Commissioner of Administration (the Ombudsman) is the body authorized for out of court protection;
- (d) the National Machinery of Women's Rights is the body authorized to promote equal rights principles and accordingly to inform every other relevant body;
- (e) the Minister of Justice and Public Order must report on the application of the Law to the Commission before 21 December 2009 and then every five years;
- (f) furthermore, it is provided that a breach of the Law is punishable with a fine of up to EUR 7 000 or up to six months imprisonment or both.

From information that I have there are two Non Government Organizations (Women's Association Protoporia and Cyprus Gender Equality Observatory) that have requested that they be appointed as the bodies for the promotion of Equal Treatment by the National Machinery for Women's Rights (NMWR).

⁴⁸ Law 18(1)/2008.

Case law

There are no cases based on Law 18(I)/2008, since it has only been in force for a very short period of time.

Role of equality bodies and NGOs

For the Ombudsman to take action, a complaint has to be lodged and no one has lodged any complaints yet. The same is true for the two Non Government Organizations (Women's Association Protoporia and Cyprus Gender Equality Observatory) that have not received any complaints either.

Conformity with Directive 2004/113/EC

The Law on Equal Treatment between Men and Women as regards access to and supply of goods and services has incorporated all articles of Directive 2004/113/EC.

Further actions

I believe that the NMWR should promote dialogue with the NGOs as soon as possible, in order for the aim of Directive 2004/113/EC and Law 18 (I)/2008 to be analysed, and mainly to promote the principle of equal treatment, encouraging dialogue with the relevant institutions that have a legal interest in contributing to the fight against discrimination based on gender as regards access to and supply of goods and services. Also, training and education programmes should be created for members of bodies (NGOs) who are charged with the defence of human rights or with the guarantee of individual rights or with the application of the principle of equal treatment.

The European Commission should take action in order to combat sex-segregated services. I would like to suggest a) organising educational seminars, in collaboration with all members of the EU, for individuals connected to NGOs, as well as those that work in the public sector; b) organising seminars in Brussels in which those who attended the seminars in their own country would participate in order to bring each other up to date as well as get to know each other better and c) creating a European network of information for the bodies, institutions, individuals that will be charged with the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination based on gender with regard to their access to goods and services and the supply thereof.

CZECH REPUBLIC – *Kristina Koldinská*

General remarks

In the Czech Republic, there is no public debate on these issues, although there are a few examples of sex-segregated services, or rather, of sex-segregated conditions, under which services are provided. The following examples can be mentioned:

- There are some erotic clubs where only men are allowed to enter.
- In the Czech Republic, there is a tradition of taking dancing lessons at the age of 16. There is a big lack of boys. Therefore, almost all dancing schools provide dancing lessons to boys free of charge, or for just a symbolic amount, whereas girls have to pay quite a lot (they are actually charged for the boys' lessons as well).
- Some hairdressers provide services only to women. Their number has been decreasing in the past few years. A similar situation occurs in the area of cosmetics. Some years ago, this was a service just for women, now it is beginning to change.

Legislation

There is no legislation applicable to these issues.

Enforcement

No enforcement of any legislation applies.

Case law

No case law available.

Role of equality bodies and NGOs

There is no information available in this regard.

Conformity with Directive 2004/113EC

No answer possible.

Further actions

From the point of view of the Czech Republic, the issue is quite irrelevant and there is no real problem regarding sex-segregated services. Therefore, I do not think that there is a need for any action by the Commission from the Czech perspective.

DENMARK – *Ruth Nielsen***General remarks**

There is not much debate on these issues in Denmark, but a number of cases have been decided on by the Gender Equality Complaints Board (see below).

Legislation

The Danish Gender Equality Act, which in broad terms covers the issues governed by Directive 2004/113/EC, is applicable if a service is offered to the public in a sex-segregated way.

Enforcement

Complaints about alleged violations of the Gender Equality Act can be brought before the Gender Equality Complaints Board, which by 1 January 2009 will cease to exist and be replaced by a general complaints body for all prohibited discrimination grounds. Cases may also be brought before the regular courts.

Case law

So far, no cases on sex-segregated services have been brought before the regular courts.

Role of equality bodies and NGOs

In Denmark, there is no monitoring body in the sense required by Article 20 of the Recast Directive (2006/54/EC) and Article 12 of Directive 2004/113. There is a Gender Equality Complaints Board. It has heard a number of cases on sex-segregated services.

There have been 21 cases on different prices for men and women when entering discotheques.⁴⁹ The Gender Equality Complaints Board has consistently held that such price differentiation is a violation of Section 2 of the Gender Equality Act.

The only sanction applied in Denmark is that the Complaints Board rules that the discotheque has acted in an unlawful way and if a man has paid more than a woman it awards compensation equalizing the cost. Experience has shown that such sanctions are not effective. Many discotheques continue to differentiate prices by sex regardless of the decisions of the Gender Equality Complaints Board.

There has also been a case where a discotheque set different age requirements by sex (25 years for men and 18 years for women). This was also considered a violation of the Gender Equality Act.

In some cases, adaptation to traditional differences between women and men has been accepted as lawful. The Gender Equality Complaints Body has accepted it as lawful that the price for haircuts is different for men and women. It has also accepted it as lawful that a fitness and wellness centre offered women-only rooms and that a restaurant issued different dress codes for male and female guests. However, different rates for men and women in teleservices of a sexual character has been considered unlawful.

Some instances of sex-segregated services may be lawful as positive action. In Denmark, the Gender Equality Act provides for measures to promote gender equality stating that, notwithstanding the prohibition of discrimination on grounds of sex, the responsible minister, within his area of responsibility, may permit measures for the promotion of gender equality aiming at preventing or compensating for unequal treatment on the ground of gender. The Minister for Gender Equality is authorised to lay down rules specifying the cases in which measures to promote gender equality may be taken without authorisation under *general remarks* above. By statutory instrument no. 233 of 2004, the Minister for Gender Equality issued rules – originally for three years – on initiatives to promote gender equality pursuant to Section 3 of the Gender Equality Act and Section 13 of the Equal Treatment (in Employment) Act. By statutory instrument 340 of 2007 these rules were made permanent.

The Complaints Body for Gender Equality has held that it was unlawful to offer a computer course and a course in handling electric equipment especially for women. Such courses might be permitted by way of positive action, but that would require permission from the relevant minister.

The Complaints Body for Gender Equality has held that it was lawful for a municipality to offer special opening hours for women in a swimming pool.

In a few cases, the Gender Equality Complaints Board has held that it did not have the competence to deal with a certain case, because the service provider was a private association of a non-commercial nature, for example a sports club or a swinger club.

Conformity with Directive 2004/113EC

Danish legislation generally corresponds with the Directive.

Further actions

The issue is covered by Directive 2004/113/EC and the Danish Gender Equality Act. As mentioned above, the sanctions applied in Denmark are not very effective. A more

⁴⁹ Decisions from the Gender Equality Complaints Board are available in full text in Danish at www.ligenaevn.dk

effective sanction would probably be to deny discotheques an alcohol licence if they violate equality legislation. I think the Commission should put more pressure on Member States to introduce effective sanctions.

ESTONIA – Anneli Albi

General remarks

Estonia has seen virtually no political debate on the issue of sex-segregated services. The only exception concerns the difference in nightclub entry fees for men and women, which has been discussed in a number of newspaper articles. The Gender Equality Commissioner has also received a number of complaints on that matter (see below).⁵⁰

Legislation

The relevant issues are regulated by the Gender Equality Act (GEA). While the GEA contains no explicit provisions with regard to sex-segregated services, it is important to note that the requirements of the GEA apply to ‘all areas of social life’, and that the Act applies to both the public and the private sector (Articles 1(2)(1) and 2(1) GEA). However, the Act contains two exceptions: the requirements of the GEA do not apply to (a) professing and practising faith or working as a minister of a religion in a registered religious association; and (b) relations in family or private life (Article 2(2)). Additionally, the GEA stipulates that acceptance of women or men only as members of a non-profit association is not considered to be direct or indirect discrimination based on sex, where it is based on the Articles of Association (Article 5(2)(3)).

Enforcement

No implementing legislation exists and no particular measures have been taken thus far by the enforcement agencies.

Case law

No court cases concerning sex-segregated services have been brought in Estonia.

Role of equality bodies and NGOs

The Gender Equality Commissioner has received several complaints concerning different nightclub entry fees for men and women, as women can often enter nightclubs for free, whereas men have to pay.⁵¹ The Commissioner pointed out that nightclubs have to act in accordance with the principle of equal treatment because their activities as service providers fall within the scope of the GEA. Nightclubs are public places where all members of the public have a right to enter and to be treated equally. The Commissioner found that different entry fees may be directly discriminatory towards men: since men have to pay, they are treated less favourably than women. The Commissioner pointed out that a similar position was taken by the equality bodies in other

⁵⁰ See e.g. ‘Naiste odavampilet diskrimineerib mehi’ (Cheaper ticket for women discriminates men), Postimees 8 August 2005, available at: <http://www.postimees.ee/080805/esileht/173566.php> Online interview with the Gender Equality Commissioner, *Äripäev*, 23 January 2007, <http://www.ap3.ee/Default2.aspx?InterviewID=fcc3382f-dcf7-4e84-8c15-dea51a212916> (both in Estonian, both last visited 30 September 2008).

⁵¹ Annual Report of the Gender Equality Commissioner 2005/2006, pp. 36-37, available (in Estonian) at <http://www.svv.ee/failid/2006.pdf> (last visited 30 September 2008).

countries, such as the UK and Ireland. In relation to the question whether different nightclub entry fees could be regarded as measures of positive action which would be permissible under Article 5(2)(5) of the GEA, the Commissioner referred to a decision by the Irish equality body, according to which such fees cannot be regarded as positive measures; in any event, such a suggestion would require proving that women are underrepresented in nightclubs and different entry fees help to reduce this inequality.

The Commissioner also pointed out that, at present, the GEA does not expressly provide for a right of recourse to courts in order to request compensation for damage or termination of a harmful activity, as the scope of Article 13 of the GEA on remedies only covers employment disputes. Consequently, the Commissioner called for an amendment to the GEA in order to transpose Directive 2004/113/EC in its entirety. The activities of the Commissioner herself are limited to issuing opinions to the applicants; the Commissioner has no power to give binding instructions to service providers.

Conformity with Directive 2004/113EC

As pointed out above, the provisions of the GEA apply to all areas of social life, including the provision of services both in the public and private sector, although the Act contains no specific provisions on the provision of goods and services. This means that at present the issue of providing sex-segregated services is not explicitly regulated, and therefore the general requirement of equal treatment applies. There is one exception to the general rule: Article 5(2)(3) of the GEA allows the acceptance of women or men only as members of a non-profit association, where this is based on the Articles of Association. Under this provision, it is possible to form non-profit organisations into which only persons of one sex would be admitted. It is not excluded that membership of such organisations could also be related to the provision of some sort of services. However, during the debates on the draft of the GEA, it was envisaged that this provision would apply mainly to student associations and organisations which, as a rule, accept only male or female students for historical reasons. One problematic issue may be that this provision does not include the requirement of a legitimate aim and of compliance with the principle of proportionality (e.g. that only women can belong to a women's choir).

One area where further legal clarification appears to be in order is the burden of proof. In its current version, the GEA provides that the principle of shared burden of proof applies to work-related discrimination only, with no mention of the provision of goods and services. According to Article 4(1) of the GEA, if a person discovers that he or she has been discriminated against on the grounds specified in Article 6 GEA (discrimination in professional life) or Article 8 GEA (discriminatory offer of employment or training), and submits an application to a competent body describing the facts relating to such discrimination on the basis of which it can be presumed that discrimination has occurred, the person against whom the application is submitted shall, at the request of the competent body, explain the reasons and motives of the behaviour. If the person fails to do so or refuses to give an explanation, such behaviour shall be considered equal to acknowledgement of discrimination by this person.

Furthermore, the GEA in the present form does not regulate explicitly the right of recourse to courts in order to request compensation for damage or the termination of a harmful activity. The scope of the respective provision, Article 13 of the GEA, only covers employment disputes. However, despite the lack of a specific provision and consequent difficulties that individuals may face in protecting their rights effectively,

it is always possible to submit a claim for compensation directly on the basis of Article 25 of the Estonian Constitution.

In order to address these weaknesses, a draft Act to amend the Gender Equality Act, the Civil Service Act and the Labour Contracts Act is under discussion in Parliament.⁵² One of the aims of this draft Act is to bring the Estonian legislation fully in line with the requirements of Directive 2004/113. The draft Act amends Article 5(2) of the GEA, by providing that the provision of goods and services only or mainly to persons of one sex is not considered to be discriminatory if it has a legitimate aim and the means used are proportionate in relation to the purpose. The draft Act also amends Article 13(1) of the GEA, by laying down a general right to claim compensation and termination of the harmful activity. Additionally, the draft Act extends the principle of the shared burden of proof to cover discrimination in the provision of goods and services, and brings the concept of burden of proof fully in line with that used in the EU Directives.

Further actions

In assessing the issue of sex-segregated services, the key concept ought to be the principle of proportionality. While the provision of sex-segregated services may be justified if the principle of proportionality is complied with, it may, however, contribute to the perpetuation of stereotypes and gender inequality in society if the provision of a service to women or men only has no legitimate aim and breaches the proportionality principle.

It would seem most appropriate for this area to be addressed by the Commission by way of soft action, such as campaigns to raise awareness and promote public discussion.

FINLAND – Kevät Nousiainen

General remarks

Finland has a long history of marketing by restaurants, bars or cruise organisers that favours women. Typically, those who provide such services give discounts on drinks, entrance fees or cruise tickets for women. The practice is believed to be economically lucrative. Men have complained about such practices in the media and to the Equality Ombudsman (see under *Role of equality bodies and NGOs*.)

Special sports courses and activities are often marketed to women or men, but this practice has caused little comment in public debate. Certain services have traditionally been sex-segregated, most typically sauna facilities offered for the general public or run by associations. Such services to the public are generally offered to men and women separately, but so that men and women are allocated different time slots. The practice in itself is both accepted and acceptable, but a frequent criticism is that the most desirable time slots are given to either men or women – in other words, the criticism has not been that the facilities should be shared, but that they should be provided on a basis that does not favour one sex. Swimming pools are not usually sex-segregated. A very popular swimming pool and sauna complex run by the Helsinki city leisure administration has separate hours for men and for women, in order for the visitors to be able to swim naked if they wish. A debate resulted in adjustment of the

⁵² Draft Act amending the Gender Equality Act, the Civil Service Act and Labour Contracts Act, No. 317 SE I. Available in Estonian at: www.riigikogu.ee, accessed 30 September 2008.

time slots, but the segregation continued. Another special arrangement in Helsinki is that a small public swimming pool has a women-only slot for Muslim women and girls, who would not otherwise use the service. The practice is motivated by the need of all residents to learn swimming skills.

A debated issue seems to be how public funding is used to subsidy services that are either sex segregated, such as single-sex sports activities, or more popular with either women or men (sports facilities, cultural facilities etc.). Even where there is no explicit gender segregation of leisure-related services, certain types of services and activities are much more frequented by either men or women. This, however, is seen as a matter for gender equality planning (gender impact assessment and gender budgeting) rather than non-discrimination.

Legislation

So far, Finland has only partially implemented Directive 2004/113/EC. The Act on Equality between Women and Men, which under Section 7 prohibits direct and indirect discrimination based on gender, has a general scope which covers the provision of goods and services, but appropriate procedures, compensation and reparation are not available to victims at the moment.

Enforcement

The Equality Ombudsman and the Equality Board supervise compliance with the Act on Equality. Because so far victims of discrimination have no access to judicial remedies by claiming compensation, their only recourse is to inform the Equality Ombudsman on the violation. The Ombudsman's competence is merely advisory, but the Equality Board may prohibit a person to continue a practice that violates the Act. The Equality Ombudsman may bring a case to the Equality Board, but so far, no cases concerning discrimination in the access to and supply of goods and services have been brought before the Board. The Ombudsman has given numerous opinions related to these issues, however (see under *Role of equality bodies and NGOs*).

Case law

I have found no relevant case law.

Role of equality bodies and NGOs

The Equality Ombudsman has often been contacted on matters concerning leisure-related services since the Act on Equality between Women and Men was enacted in 1986. Some guidelines on sex-segregated services are now available in opinions of the Ombudsman on such cases. The Ombudsman has subjected cases of segregated services that are motivated by commercial interests and cases where the difference in treatment cannot be justified by an acceptable aim of the activity to closer scrutiny. Thematic, time-limited promotion events have been assessed more leniently (e.g. 'mothers' day lunch discounts for women') than regular policies. When the Ombudsman found acceptable reasons for continuing a sex-separated service, she required that similar services be offered to both sexes.

The Ombudsman has published a number of official statements on sex-segregated leisure-related services, which illustrate her guidelines. One of the statements ('Lady-Line')⁵³ concerned a long-standing market practice of offering discount cruises ('two

⁵³ Decision 42/39/03, at <http://www.tasa-arvo.fi/Resource.phx/tasa-arvo/tasa-arvoaltuutettu/laivayhtio.htm>, accessed 10 September 2008.

ladies for one') to women only. The Ombudsman referred to the Act on Equality, Section 7, which prohibits discrimination on the ground of gender, and to Directive 2004/113/EC. The shipping company justified its marketing practice by claiming that the programme on the cruise was offered especially for women, and that there were other cruises on offer to both sexes. The Ombudsman held that the marketing practice violated both the prohibition of discrimination in the Act on Equality and the Directive and that the justifications offered did not meet the requirements of the Directive, thus judging that the practice should be discontinued.

Another published case concerns the pricing policy in a restaurant.⁵⁴ Women were allowed in free of charge on Friday evenings and they were also given discounts on certain drinks, while men paid an entrance fee and got no discounts. The restaurant justified its policy by claiming that Fridays were thematically reserved for a 'Ladies Night'. The restaurant had also allowed university students and VIP customers to enter free of charge. Again, the Ombudsman held that the policy violated both Section 7 of the Act on Equality which prohibits sex discrimination in all areas of life, and that the Act was to be applied so that the requirements of Directive 2004/113/EC are met. The restaurant was unable to offer any valid justification for the policy and was asked to discontinue it.

The third published opinion of the Ombudsman concerned suspected discrimination of a riding association,⁵⁵ when the provincial administration had subsidised the construction of facilities for ice hockey rinks, but not for riding associations. Ice hockey rinks are mostly used by boys and men, and riding establishments by girls and women. The Ombudsman stated that the decision on subsidies was made within the discretionary power of the administrative body and did not violate the Act on Equality, because when subsidising sports facilities, the facilities which were controlled by municipalities were to be given priority. According to the Ombudsman, however, it seemed that the impact of the public subsidy policy was out of proportion, because it seemed that women find it necessary to establish private sport facilities in order to engage in the type of sport they wish, while popular male activities are catered for from public funds. Private facilities fall outside the scope of public subsidy policies, because they do not fall under municipal control. The provincial administration was to take gender equality into consideration in the future, and equality planning should be used when different types of leisure services are subsidised.

Conformity with Directive 2004/113/EC

It seems obvious that legislation is not in conformity with the Directive. The Equality Ombudsman refers to the Directive and has clearly found guidelines that are more or less in line with what differences in treatment may be considered acceptable in the light of the Directive (paragraphs 16 and 17). However, until remedies are in place, the Directive is not appropriately implemented.

Further actions

The implementation of the Directive is overdue. A Bill amending the Act on Equality was presented to Parliament in September.

From the Finnish point of view, the problems connected to services that are either sex-segregated or disproportionately favoured by one of the sexes seem to be caused

⁵⁴ Decision TAS/314/06, at <http://www.tasa-arvo.fi/Resource.phx/tasa-arvo/tasa-arvoaltuutettu/ravintolanhinnoittelu181007.htx>, accessed 10 September 2008.

⁵⁵ Decision 5/51/04, at <http://www.tasa-arvo.fi/Resource.phx/tasa-arvo/ajank/lausunto5-51-04.htx>, accessed 10 September 2008.

not so much by the fact that the services are segregated, but by the fact that services that are favoured more by one of the sexes are treated unequally by authorities and providers of the services, or that segregated services are offered in a manner more favourable to one sex. The case discussed under *Role of equality bodies and NGOs* (riding association) illustrates this situation.

FRANCE – Sylvaine Laulom

General remarks

In France, there is absolutely no debate going on regarding sex-segregated services. Directive 2004/113 was implemented in December 2007 and May 2008, and it has not given rise to any discussion on the extension of the principle of equal treatment or on the precise scope of the exceptions. The provisions implementing the Directive were part of a more general Act whose aim was to complete the implementation of all relevant EC Directives on discrimination. There was some debate and some criticism on certain parts of the Act, for example on the new definitions of discrimination and harassment, but no debate or criticism regarding the new principle of equal treatment between men and women in access to and the supply of goods and services.

The only public debate on this issue is about the decision of a number of cities to allow the exclusion of men from public swimming pools at specific hours. However, in these cases, the debates do not focus on the principle of equal treatment between men and women and on the exceptions authorized. As in the debate on headscarves, when a statute was adopted prohibiting the wearing of signs through which students manifestly show a religious allegiance, debates concentrate on religious issues and specifically on the principle of *laïcité*.⁵⁶ These specific hours for women in swimming pools are viewed as a religious use of a public place or as a restriction of a public service which should not be allowed considering the principle of *laïcité*. Recently, the secretary of state for urban policies, Fadela Amara, stated that she is very attached to the principle of *laïcité* and that these specific hours for women in swimming pools are ‘dangerous’. If they could have positive effects in helping women to go outside, it could also contribute to the reinforcement of inequalities between men and women (*Libération*, 20 June 2008).

Legislation

Directive 2004/113 was implemented without any debate by two Acts. The first Act of December 2007 has copied Article 5 of the Directive (see the new Article 117-1 of the Code of Insurance). The 2008 Act also copies the scope and most of the exceptions in Directive 2004/113. It provides a general prohibition of direct or indirect discrimination based on sex in access to and the supply of goods and services. The Act also adopts the exception by using almost the same terms as the Directive. The principle of non-discrimination shall not preclude differences based on sex when the provision of goods and services exclusively or primarily to members of one sex is justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. However, the Act does not exclude, as the Directive does, the non-discrimination principle for the content of media or advertising. This exception was in the original proposal, but it has disappeared in the final text. For the Senate, it would

⁵⁶ The concept of *laïcité* means a strict neutrality towards religious beliefs and a complete division between religions belonging to the private life and public spheres.

have provided a legal basis for the prohibition of sexist advertising. Concerning public or private education, the Act merely states that the non-discrimination principle does not prohibit the organisation of non-mixed schools.

Enforcement

Naturally, some sanctions are provided in case of violation of the principle of equal treatment. However, until now, the enforcement of the principle of equal treatment between men and women in the access to and supply of goods and services does not seem to attract great interest.

Case law

As the implementation of the Directive is recent, no case law has been reported on discrimination in relation to access and supply of sex-segregated leisure-related services.

Role of equality bodies and NGOs

The HALDE, the *Haute Autorité de Lutte contre les Discriminations et pour l'Égalité*, the French equality body, has undertaken some action regarding discrimination based on race or origin in the access to and supply of services. However, no such action has been reported on sex discrimination.

Conformity with Directive 2004/113

French legislation on this issue has been copied from the Directive. Thus, Article 4(5) of the Directive has been copied into the French legislation: the principle of non-discrimination shall not preclude differences based on sex when the provision of goods and services exclusively or primarily to members of one sex is justified by a legitimate aim and the means of achieving that aim is appropriate and necessary. However, no views or comments have been given on the actual meaning of the scope of this exception and what could constitute a legitimate aim. There has been no confrontation of the scope of the exception with some existing practices, for example discos or restricted access to certain clubs.

Further actions

I think that this legislation is not sufficiently well-known and that it could be interesting to start some information campaigns, which can induce a debate of what is allowed or not and what could be a legitimate aim.

GERMANY – Beate Rudolf

General remarks

Germany has numerous sex-segregated leisure services, e.g. specific hours at public swimming pools (including saunas) reserved for women, women's fitness centres and commercial women's sports clubs. In contrast, such sex-segregated leisure services do not exist for men. With respect to dating services and travellers' clubs, no such sex-segregation has come to this expert's knowledge. Discos and nightclubs usually admit men and women at the same price. There are, however, cafés and bars that exclusively cater to a female or male audience; in the latter case, a male homosexual audience. Some cinemas offer 'ladies' nights' or 'men's nights', showing romantic movies during the first, and action movies during the second.

The issue of sex-segregated services is not a subject of public debate in Germany. During the parliamentary debates on the implementation of the European anti-discrimination directives (i.e. until the summer of 2006), the question of whether different treatment based on sex remained permissible surfaced repeatedly. The examples put forward were, in particular, different prices for men and women at hairdressers, parking spots reserved for women in parking garages, and special opening hours for women at swimming pools and in saunas. There was widespread agreement that the latter two differentiations should (and would) remain permissible, whereas the price difference at hairdressers should not be justified by the customer's sex, but by the amount of time and work that the hairdresser would have to spend on the haircut.

Legislation

The applicable national legislation for the question of sex-segregated services is Article 20(1) Nos. 1-3 of the General Equal Treatment Act (*Allgemeines Gleichbehandlungsgesetz, AGG*).⁵⁷ This contains the conditions for justifying different treatment based on sex (as well as religion and belief, disability, age, or sexual orientation) in the provision of goods and services available to the public. Availability to the public is defined as a good or service offered through so-called 'mass contracts', i.e. contracts which are typically concluded irrespective of the identity of the other contracting party, or where the identity of that person is of little importance.

According to Article 20(1) AGG, different treatment based on sex (or any other of the grounds listed above) is justified in the provision of goods and services if there is an objective reason. Relevant examples of such reasons are the prevention of danger or harm to others (no. 1), the need to protect a person's privacy or personal security (no. 2), or the granting of special advantages when there is no legitimate interest in enforcing equal treatment (no. 3). Other reasons may be put forward as a justification but must be comparable in their significance to the examples given.

It is generally acknowledged that this justification for 'objective reasons' includes the requirement that the different treatment in question is proportionate. This follows from a systematic interpretation of the law, as well as its drafting history and an interpretation in light of Article 4(5) of the applicable European Directive (2004/113).

The legislative materials and academic writing have specified the contents of the justifications listed in the law:

No. 1 Prevention of danger or harm: The purpose of this justification is to permit the service provider to be able to fulfil his/her obligations to ensure safety to his/her partner in a contractual relationship. As the law applies to mass contracts, the service provider cannot be required to adapt his/her safety measures to each individual with whom a contract is concluded. He/She must be permitted to resort to standardised measures. Hence, there is a need for a possible justification if that standardisation runs

⁵⁷ [2006-I] Official Journal (*Bundesgesetzblatt, BGBl.*) 1897. The German version reads:

‘§ 20 Zulässige unterschiedliche Behandlung

(1) Eine Verletzung des Benachteiligungsverbots ist nicht gegeben, wenn für eine unterschiedliche Behandlung wegen der Religion oder der Weltanschauung, einer Behinderung, des Alters, der sexuellen Identität oder des Geschlechts ein sachlicher Grund vorliegt. Das kann insbesondere der Fall sein, wenn die unterschiedliche Behandlung

1. der Vermeidung von Gefahren, der Verhütung von Schäden oder anderen Zwecken vergleichbarer Art dient,

2. dem Bedürfnis nach Schutz der Intimsphäre oder der persönlichen Sicherheit Rechnung trägt,

3. besondere Vorteile gewährt und ein Interesse an der Durchsetzung der Gleichbehandlung fehlt.’

(No. 4 contains a justification for different treatment based on religion or belief, paragraph 2 applies to insurance premiums.)

along the lines of the prohibited grounds of differentiation. However, the proportionality requirement ensures that the service provider takes reasonable safety measures before resorting to excluding certain groups of persons. The examples given for this category pertain to the exclusion of minors from access to high-risk physical activities. In contrast, it would not be proportionate to exclude women in general from a certain dangerous physical activity by assuming that they lack the strength to perform it. Here, the service provider would be required to resort to a non-sex-based determination of a person's physical strength. What would be justified under this provision is the exclusion of pregnant women only from a certain physically straining activity endangering the foetus, such as riding a roller coaster or bungee jumping.

No. 2 Protection of privacy or personal security: For the protection of privacy, objective and understandable reasons must be put forward. The usual examples given here are special women-only opening hours at swimming pools. Women's fitness clubs also fall into this category. In both situations, the different treatment based on sex serves to protect women from unwanted approaches or (sexual) harassment in an environment where they may feel particularly vulnerable. Women's parking spots or women's cabs are the typical example for protection of security. In this case, the reasons of personal security must be objectively understandable; it is not necessary for a specific danger to exist. Therefore, it is irrelevant whether women have been the victims of criminal offenders in the relevant parking lot; it suffices that women in general are more vulnerable in deserted, unlit areas. However, the danger of falling victim to a criminal act must be founded in reality; a merely subjective feeling of danger is not sufficient.

No. 3 Granting special advantages and lack of a legitimate interest in enforcing equality: The usual examples given here are target-group specific offers that aim at winning special customer groups and that do not aim at excluding special groups of persons. The argument presented is that the service provider offers the service at a special (lower) price so as to extend his/her business. If forced to treat everyone equally, he/she would not extend the lower price to everyone, but would increase the price for all. Therefore, enforcing equality would not benefit those that were excluded by the service provider's policy, provided, however, that the primary intention was not to exclude a specific group. This justification applies to 'ladies' nights' or 'men's nights' at cinemas, for example, where the service provider aims at winning an additional audience. According to academic research, it also applies to 'ladies' nights' at discos or bars, where women are admitted at reduced ticket prices and/or pay less for drinks. In these cases, the service provider aims at winning both (new) female and male customers because an equal balance among the customers renders the establishment more attractive. Moreover, academic authors consider the justification applicable in cases where an establishment caters to a specific audience, such as cafés or bars for women only, or for lesbians or gays only, or a men-only poker bar. The argument presented is that a service provider has the right to define the audience by which he/she expects to make most money. The problem, however, arises of how to define whether the primary intention is to win a special target group or to exclude a special group.

Enforcement

This legislation can only be enforced by private claimants bringing a suit for discrimination against the provider of the service. They can, however, only claim cessation, non-repetition and damages, including moral damages; there is no cause of action for conclusion of the contract being illegally denied (Article 21(1), Article 21(2) (1), and

Article 21(2) (3) AGG). In the case of a claim for damages, the defendant can exonerate himself/herself by showing that he/she did not act negligently or intentionally (Article 21(2) (2) AGG).

Case law

So far, no cases have been published concerning the conformity of sex-segregated services to the AGG.

Role of equality bodies and NGOs

Up to now, the (Federal) German Anti-Discrimination Body (*Antidiskriminierungsstelle des Bundes*) has not undertaken any initiatives with respect to sex-segregated services. The same holds true for NGOs; there are no initiatives concerning sex-segregated leisure services.⁵⁸

As the German Anti-Discrimination Body does not have the power to make decisions in individual cases or to settle cases, there is no relevant practice to report here.

Conformity with Directive 2004/113EC

German legislation is in conformity with Article 4(5) of Directive 2004/113/EC. Although the text of the law does not expressly require proportionality for a justification under Article 20(1) AGG, the need to interpret the law in conformity with the Directive is unanimously stressed in legal commentaries, so that it is not to be feared that courts will decide otherwise. With respect to enforcement, German legislation falls short of the requirements of the Directive in that it permits an exoneration of the service provider in a claim for damages by showing lack of fault.

Further actions

As the provision of sex-segregated services has provoked neither public debate nor case law after the entry into force of the German legislation implementing Community law, it seems that the law in place is appropriate and there is no serious problem of sex-discrimination in leisure services in Germany. I therefore do not see any need for action on the national level.

For the same reason, I do not consider that the European Commission should take initiatives to combat sex-segregated services in leisure time. Rather, it seems to me that any actions in this regard will be counter-productive in Germany, because they would reinforce the view that European anti-discrimination legislation is over-reaching. This might endanger other urgently needed actions of the Community, such as a harmonisation of all EU anti-discrimination legislation ('horizontal approach') covering all grounds of discrimination enumerated in Article 13 EC.

GREECE – Sophia Spiliotopoulos

General remarks

There is no debate going on regarding sex-segregated services in leisure time and there do not seem to be any problems such as exclusion of one sex from travellers' clubs or golf clubs or from public swimming pools at specific hours. It seems, however, that in some places where there are mineral water springs and the bathing facili-

⁵⁸ The German Women Lawyers Association (*Deutscher Juristinnenbund, djb*) is undertaking actions with respect to sex differentiation in private insurance systems.

ties are limited (e.g. in small islands or towns), women and men are allowed in at different hours, for practical convenience and privacy reasons, something that the clients themselves, mostly elderly persons, prefer.

The only case where I found a noteworthy gender-discriminatory practice is that of an old exclusive elite club, the 'Athens Club', which was established in 1875 as an association under Greek civil law. Its honorary president was the King (as long as there was one, i.e. until 1975), while the male members of the royal family were *ipso jure* honorary members. Neither its statute nor its internal regulations exclude women. However, in practice, it is a tradition inspired by British gentlemen's clubs not to accept women as members and this practice still continues. It seems to be justified by reference to the wording of the statute regarding candidate members and members, which is phrased using masculine pronouns ('he', etc). I don't know whether any woman ever attempted to become a member, in any event, no woman has openly challenged this practice. Women are allowed to use the club's facilities (e.g. to participate in dinners or lunches), subject to the same conditions as male non-members, that is, if they are invited by a club member. Non-members, men or women, are not allowed access to the reading room.

There do not seem to be different prices for male and female access to discos. It seems, however, that, at least in some of them, there is a practice for doormen not to allow unaccompanied men, but to allow unaccompanied women. The extent of this practice and its frequency, even in the same disco, cannot be ascertained.

Regarding hairdressing services, there are no official compulsory price lists. It is up to each hairdressing salon to fix its own prices, provided that it posts its price list. It seems that there is a practice for hairdressers who provide their services to both men and women to charge more for women's haircuts than for men's haircuts, unless the man has long hair. The extent of this practice and its frequency even in the same salon cannot be ascertained.

It does not seem that women pay less for tickets to football matches.

Dating services, whether advertised on-line or in newspapers (even 'serious', and widely circulating ones) are obviously suspect. It is clear that they cover traffickers and procurers. One can find a lot of advertisements from foreign and Greek businesses under the title 'dating services', e.g. on the Google website. Many of them advertise the services of foreign women (most of them from former member states of the USSR or from Bulgaria, Romania or Poland), offered in Greece. These services are overtly or covertly sexual. There are dating businesses that publish ads with photos of nude and/or semi-nude women, while on other web addresses they publish seemingly 'serious' dating ads; the telephone numbers and sometimes the postal address are the same in both kinds of ads.

Legislation

There is no national legislation applicable to these issues.

Enforcement

There is no enforcement, since there is no legislation on the issues.

Case law

There is no relevant case law.

Role of equality bodies and NGOs

Neither NGOs nor equality bodies have dealt with cases regarding sex-segregated services of the above kinds, as there does not seem to be any interest in such issues, since other issues, such as reconciliation of family and work, are of more immediate concern.

Conformity with Directive 2004/113EC

Allowing women and men separately to mineral spring bathing facilities does not seem to me to constitute gender discrimination. It is a question of privacy and it corresponds with clients' wishes; thus it does not fulfil the criterion of 'less favourable treatment' provided by the definition of 'direct discrimination' (Article 2(a) of Directive 2004/113) and therefore it does not fall under the prohibition of Article 4(1) of the Directive. Differences in haircut prices do not constitute gender discrimination either, provided that the criterion is the nature and complexity of the work (e.g. long or short hair), not the sex of the client. Access to discos is not worth dealing with under the gender equality point of view. It does not seem to be a general practice. Moreover, it usually happens in places where the so-called 'night godfathers' are active and it seems to be part of the aims of this activity.

The only case where I think that there is (direct) gender discrimination in the sense of Directive 2004/113 is the exclusion of women from the Athens Club. This practice is a remnant of the 'old boys' network' mentality, which is connected to persons who share or wish to share socio-political and/or economic power or who belong or wish to accede to the 'establishment', where women are not wanted. It is a remnant of patriarchal concepts and stereotypes, which serve no legitimate aim under the Directive; therefore, there is neither a legal nor a social reason to maintain them. The unjustified nature, indeed the absurdity, of this practice is confirmed by a provision of the Athens Club's statute, according to which the Prime Minister, the former Prime Ministers and the Presidents of the Supreme Courts become club members, if they wish so, by simple decision of the club's board, without going through the normal procedure, while ministers, foreign ambassadors and heads of foreign missions and international organizations become temporary members as long as they hold these posts, by simple board decision as well. Up to now there has been no female Prime Minister or Supreme Court President, but this might happen in the future, while at the moment there are several women ministers, ambassadors etc. However, no woman holding any of the above posts seems to have expressed interest in becoming a member of this club.

Further actions

My opinion is that it is not worth dealing with practices of spring water bathing facilities, hairdressers and discos. As pointed out above, the extent and frequency of these practices is unknown. Moreover, as also pointed out above, the first are not discriminatory, the second may be discriminatory in certain circumstances, but State authorities have nothing to do with them and no woman will go to court for 4-5 Euros; she will rather go to another, less expensive hairdresser. Disco practices, where they occur, should rather be dealt with within the framework of other suspect disco practices (e.g. related to drugs and/or trafficking).

Regarding dating services and the relevant ads: I have pointed them out to the National Commission for Human Rights, as trafficking in human beings and in other 'commodities' is its growing concern, and I hope that it will again request the police

to take more effective measures and that the Public Prosecutor will order investigations; the matter has now been included in its agenda.

The European Commission should consider that practices like the Athens Club tradition are discriminatory under Directive 2004/113 and should warn Member States were such practices occur. Although women do not seem to be bothered about it, it is a question of principle, as I have already pointed out. As for dating services, this matter clearly falls within the competence of the DG JAI and Interpol. Our DG could draw their attention to the suspect ads.

HUNGARY – Csilla Kollonay Lehoczky

General remarks

In Hungary, there is no debate going on regarding sex-segregated services at this point in time. Earlier, some issues were raised on existing *de facto* segregation (to be mentioned below). However, these were not general debates, the conflicts have been solved and these issues did not rise to the level of political debates.

Neither are there obvious examples of sex-segregated services. The ‘men-only’ Turkish baths attracted attention in 2005⁵⁹ (details below), but, after having found a solution, the whole issue faded away. At a certain time, there was a taxi company that tried to carve out its place in the market by offering discount prices for transporting women in evening hours. However, this dubious offer has since disappeared from the company’s advertisements. It is still customary for ‘girls’ not to pay an entrance fee at some public places, primarily in disco bars or similar places for young people. Fitness and beauty salons are occasionally established only for men or for women.

As to sports activities, there no longer is any segregation. All kinds of sports that used to be considered ‘male sports’ in the past are now available for women as well (football, water polo, heavy athletics and boxing, as well as new sports like golf; in technical sports, only a few exceptional women are known to participate). It is another issue that attention in the highly popular sports focuses on the male teams and male achievements while female teams and athletes frequently have less financial resources, worse facilities and less support. Especially in football there are complaints due to managerial reluctance.

Legislation

There is no special legislation applicable to the subject. ‘Sex-segregated services’ are regulated by the provisions of the Equality Act, by Article 30 on the access of goods and services. It is a violation of the principle of equal treatment if at premises open to customers, particularly in catering, commercial, cultural and entertainment establishments, on the basis of sex (or other prohibited ground) the provision of services or sale of goods is denied or neglected, if different quality of goods and services is provided, or if a notice or sign is put up indicating that certain individuals are excluded from the provision of services or sale of goods at the premises.

Exceptions are provided in paragraph (2) of this article, for cases when the premises are established specifically for a group defined by characteristics that is otherwise a prohibited ground of discrimination (i.e. sex, race, nationality, religion, family status etc.) with the aim of preserving traditions or maintaining a cultural or self identity.. In

⁵⁹ See General Report 2008, Hungary, part 2.8

such cases, access to those premises – opened to a smaller public – may be limited or subject to membership or specific conditions.

The possibility of exceptions is, however, surrounded by numerous restrictions. Thus, the limited access must be obvious from the name of the establishment and from the circumstances of the use of the service. Furthermore the exception must not be created in a manner humiliating and defamatory to individuals who do not belong to the particular group, and furthermore it must not allow any abuse of the law.

Enforcement

There is no major practice of sex-segregation in services, in part because it does not exist on a visible level, and because the few cases that occur or the existing exceptions are not generally objected to by the public and not legally challenged. This is in part a result of the perception in Hungary that such issues belong to (or at least hug the borders of) private life where legal regulation should not intrude.

Thus, court enforcement cannot be reported, the Ombudsman and the Equal Treatment Authority (ETA) have received a few complaints (see below.)

Case law

So far, no case law is known regarding sex-segregated services. One case has been investigated by the Ombudsman and one by the Equal Treatment Authority.

A report was issued by the Ombudsman of Hungary in March 2005, when he received a complaint before a renovated and newly re-opened Turkish health bath was accessible only for men on weekdays.⁶⁰ Since the Ombudsman may only investigate legal violations committed by public bodies, its examination was not based on the Equality Act, instead, it examined whether the health bath was a public body, if not an authority. Considering that health-bath services have been listed as one form of medical treatment in the law on health care and some of such services have been covered by the national health insurance fund, which is a public authority, the Ombudsman considered Turkish baths a public service belonging under his supervision. The bath in question referred to traditions and business aspects (supposed low female attendance) for not reserving separate days for women.

A detailed analysis comparing the advantages and disadvantages of the chemical and physical effects of the minerals and the temperature on male and female bodies concluded that there was no significant sex-based difference in the biological effect that would indicate the necessity of the difference in access. It was also mentioned that the ‘Turkish’ way, i.e. taking the bath without clothes (wearing only an apron) was considered substantial for the healing effect and to avoid any infections, making the separate use for the two sexes necessary – wearing bathing suits and shifting to shared use was no solution. The defence by the management of the bath that there was another health bath in Budapest allowing women was not accepted, because that facility was not of different value; the bath in question offered a healing radioactive effect of the water which was not present in the other ones accessible for women.

The case was solved with a promise that the bath will have women-only days twice a week during a trial period.⁶¹ At the moment, only one day is reserved for women. It might be stated that, in apparent lack of interest from women to use the facilities, the case was more a matter of principle rather than having any practical sig-

⁶⁰ Case no. OBH 5726/2005

⁶¹ A somewhat absurd – but reasonable – ‘side effect’ of this decision was that a nearby café offered a free coffee, tea, soft drink or a glass of wine to those who could show a bath ticket for the ‘women day’.

nificance. However, before reaching such a conclusion it might be taken into consideration that the demand for a service also depends on its easy or more difficult availability, as well as being influenced by an encouraging or discouraging public attitude.

The ETA assessed the case of a fitness studio after receiving a complaint claiming that the equal access to services requirement was violated by the exclusion of men from the services of the studio, and by the words – ‘For women only’ – on its sign over the entrance. The authority decided (with reference to two Constitutional Court decisions emphasizing the differences between the body of men and women) that the studio was specially set up for the development of the female body, its equipment was adjusted to the needs of women and in the local community there were other similar facilities available for men, and that therefore the fitness studio applied reasonable exception from the prohibition of discrimination. In this case, the ETA did not rely on the exception permitted by Article 30(2) of the Equality Act specifically for the provision of services. Instead, it used the general exception under Article 7(2) that permits any differentiation on the basis of the prohibited grounds if, by objective consideration, it has a reasonable explanation directly related to the relevant relationship.

ETA also assessed the case of a homosexual man who submitted a complaint against a bank, alleging that his request for a loan was rejected because he named his same-sex partner as guarantor. The complaint was rejected because the claimant failed to submit evidence upon the call of the ETA.

Role of equality bodies and NGOs

The above case was the only one known so far in the relevant field.⁶²

The role of NGOs specialized in gender equality might be significant, showing more attention and sensitivity than average society. The Turkish bath issue was raised and highly publicized by a feminist internet journal. On the other hand, such services have not been yet the target of the NGOs, it seems that their small resources are invested in issues considered more serious a problem in the field of equality of the sexes.

Conformity with Directive 2004/113EC

The legal situation seems to be in conformity with Directive 2004/113. The question remains of how courts will assess the exceptions, when case law is still developing.

Further actions

In my view, the exceptions permitted by the Directive and the areas exempted from its scope are too broad. While, indeed, employment and occupation are covered by other directives, this is not true in the case of media, advertisement and, in part, education. Therefore their exclusion by Article 3(3) has significantly decreased the potentially positive effect of the Directive. In Hungary, advertisements and media are among the main ‘preservers’ and ‘promoters’ of gender stereotypes that prevent the real development and fulfillment of equality of women in family, society and, consequently at the workplace, even if a lot has been done for it. Also, Article 4(5) permits exceptions that are too broad due to its ‘symmetric’, gender-blind approach.

⁶² It has to be mentioned that when the complaint is rejected the decisions are not usually published.

General remarks

There is no on-going debate in Iceland regarding sex-segregated services and there are no apparent examples concerning this issue. There are, however, examples from the entertainment industry of such services without evoking any particular reaction from feminist circles or others. The private broadcaster *Channel 2* sometimes advertises ‘girls’ nights’ – with *Sex and the City* and other programmes that they deem relevant for female viewers rather than men. Movie theatres also try to attract women advertising ‘ladies’ nights’ featuring films catered to women. Health clubs also have special programmes for women closed to men and vice versa. Furthermore, there have been reports that the website ‘Private Matters’ (a popular dating service dating back to the year 2000) does not charge women who use this service, while men do have to pay.

Legislation

There is no legislation

Enforcement

There is no legislation

Case law

In a case brought before the Complaints Committee on Equal Status in 2002, the applicant complained that the lower annual fees for women of a golf club violated the Gender Equality Act no. 96/2000.⁶³ The annual fee for women within the age group of 21-66 had for a long time been 50 % lower in order to increase their participation which was 18% in 1999 and 24% in 2002. The explanation given by the Club was that the difference in fees constituted positive discrimination intended to encourage women to play golf. The applicant pointed to the fact that the discount for women substituted family discount discriminating between married and unmarried women; that lesbian couples were benefitting more than two homosexual men in a relationship. The applicant maintained that the justification given by the Club was not convincing, as women under 21 were not given a discount; women were not given precedence on waiting lists unless they were spouses; and women over 67 paid the same fees as men.

The opinion of the Complaints Committee was that by offering discounts to women in the age group 21-66, the Reykjavík Golf Club was not in breach of the Gender Equality Act in light of the GEA’s aim to establish and maintain equal status and equal opportunities for women and men and thus promote gender equality in all spheres of society.

Role of equality bodies and NGOs

There are no actions from equality bodies.

Conformity with Directive 2004/113EC

The Goods and Services Directive has not been enacted in accordance with the European deadline (i.e. by 21 December 2007). The Directive is not a part of the EEA agreement and the EEA Joint Committee has not yet made its decision whether to implement the Directive or not. The GEA prohibits discrimination in areas of employ-

⁶³ Case no. 4/2002. A against the Reykjavík Golf Club. Opinion issued on 26 June 2002.

ment, occupation and vocational training, while Directive 2004/113 covers other areas outside employment and professional life and would hence supplement the existing legislation if transposed.

Further actions

A casuistic approach needs to be adopted. For example, there is an annual congress called 'Networking – the Empowerment of Women', held annually since 2004, which is not closed to men but is first and foremost directed at women for the reason expressed in the title. And there are legitimate reasons for certain kinds of sex-segregated services, such as health clubs where women do not feel comfortable working out with men.

Obviously, events that are directed at women for obscure reasons and with murky motives should be challenged and are usually challenged by NGOs and subsequently in the media. The above summary of the Complaints Committee's opinion in 2002 shows that there is a genuine lack of understanding, failing to see that this is discrimination as women are categorized into age groups, rendering the Golf Club's motive suspicious, since, if the only aim was to increase the participation of women, younger women and older women should also be encouraged.

The best pro-active measure is to call attention to any kind of sex-segregated service which is degrading for women, also calling attention to activities that are obviously demeaning for women.

IRELAND – Frances Meenan

General remarks

In general, there is no national debate with respect to the provision of sex-segregated services in Ireland. When the Equal Status Act 2000 was passed, there was debate in particular with regard to golf clubs where membership may be male only or where there were different grades of membership related to a person's gender. One particular all-male tennis club opened its membership to women, as did 'gentlemen's clubs'. The days of '*nurses' nights*' in dancehalls or '*ladies' choice*' dances are long gone. However, there would be still be a price difference in an Irish chain of hairdressers where a ladies' 'cut and style' would be EUR 51 whilst a man's would be EUR 34.50.⁶⁴

Legislation

The Equal Status Acts 2000 to 2008 provide that there cannot be discrimination (direct, by association or indirect) with respect to the provision of goods and services on grounds of gender, marital status, family status (the definition includes pregnancy), age, disability, race, religion, sexual orientation or the traveller ground (people with a shared history, culture and traditions including, historically, a nomadic way of life on the island of Ireland). There cannot be gender or sexual harassment. The Acts cover the disposal of goods and services and *inter alia* activities of clubs registered under the Registration of Clubs Acts 1904 to 1999. Clubs must be registered under these Acts in order to have a drink licence and the sole sanction against a club is the suspension or loss of registration (drink licence) from which much of its income derives. There are certain exceptions in respect of authenticity or where privacy is relevant.

⁶⁴ Personal contact with Peter Mark, hairdressers.

Enforcement

The application of this legislation has been important, especially in relation to golf clubs.⁶⁵ There are approximately 400 golf clubs, of which two allow male membership only. Many of the other clubs had restricted membership rights for women in that men were full members (i.e. full voting rights, entitlement to play seven days per week, management committee rights etc.), where women, however, were frequently associate members only, in that they did not have full voting rights and they could not play golf on a Saturday. The Acts provide that a discriminating club is a club which has 'any rules, policy or practice which discriminates against a member or an applicant for membership' and also clubs where 'a person involved in its management discriminates against a member or an applicant for membership in relation to the affairs of the club'. Accordingly, many golf clubs have amended their rules where there may be a men's club and a women's club with proportional representation on the management committee of the 'main' club or else an option where either gender may become full members and that the traditional female associate membership is now closed and women can opt for a 7-day or 6-day membership. With respect to enforcement, application can be made to the District Court for a declaration that the club is a discriminating club. The consequences of such a finding vary, depending on whether it is the first such finding, if so the certificate of registration is suspended for 30 days. On the second or subsequent finding of discrimination, the club's (drinking) licence may not be renewed nor can a new licence be granted.

Case law

The relevant case with respect to gender was the Portmarnock Golf Club case,⁶⁶ a male-only club which is one of the oldest and most well-known clubs in Ireland. On the Equality Authority's application, the District Court declared that it was a discriminating club and its licence was suspended for 7 days. This was appealed to the High Court and there was another set of proceedings, where the trustees of the club sought a declaration that the club was not a discriminating club. Section 9 of the Act provides that a club shall not be a discriminating club by reason only that 'if its principle purpose is to cater only for the needs of (...) persons of a particular gender (...)'. The Court considered that there was nothing undesirable with persons seeking in a social context the society of persons of the same gender. It was held that the club was not discriminatory.

In *Curran v Total Fitness Dublin*,⁶⁷ the claimant referred a claim of gender discrimination and victimisation to the Equality Tribunal. The claimant was a member of the respondent gym and enjoyed attending at a peak time. As membership of the club grew, the claimant found increasing delays in getting to the equipment. He asked why there was an area of the gym reserved for women only, even though women could

⁶⁵ Information obtained by personal contact from the Golfing Union of Ireland and the Irish Ladies' Golf Union of Ireland. These bodies cover the island of Ireland, but reference is only made to Ireland (the Republic of Ireland).

⁶⁶ In the matter of Section 2 of the Summary Jurisdiction Act, 1857 as amended by Section 51 of the Courts (Supplemental Provisions) Act, 1961, *the Equality Authority v Portmarnock Golf Club and Ors and Robert C. Cuddy and David Keane v The Equality Authority Ireland and The Attorney General* [2005] IEHC 235(10 June 2005). Reference is not made to constitutional issues with respect to freedom of association. <http://www.bailii.org/cgi-bin/markup.cgi?doc=/ie/cases/IEHC/2005/H235.html&query=portmarnock+and+golf+and+club&method=boolean>, accessed 16 September 2008.

⁶⁷ DEC-S2004-164. <http://www.equalitytribunal.ie/index.asp?locID=91&docID=800>, accessed 16 September 2008.

also use the equipment in the main gym. He was advised that it was to prevent embarrassment exercising in the same area as men; the ladies' gym was in full view of all members. The claimant's membership was terminated. It was held that there was discrimination. The respondent was ordered to review all of their Irish-based clubs to ensure compliance with the legislation. They were also to provide training for all staff.

There have been a number of cases on the family status ground; for example, access to a public house where the claimant was told by the doorman that she could not bring her baby and buggy inside⁶⁸ or the refusal of service in a restaurant to a mother with her five month old baby;⁶⁹ both were held to be discriminatory. In this latter case, the equality officer recommended that the representative body of the restaurant business develop a code of practice in conjunction with the Equality Authority. A theatre insisted that a mother breastfeeding a two year old child must pay for a ticket which was held not to be discriminatory.⁷⁰

Dress codes were considered in a number of cases, where in one particular case a man claimed he was discriminated against on the gender ground because he was refused access to the nightclub. The nightclub operated a dress code policy whereby men could not wear sandals and women could. The nightclub was ordered to revise its written dress code policy to ensure it applies equally to both male and female customers and to immediately remove the sign which prohibits male customers wearing sandals in the nightclub.⁷¹

Role of equality bodies and NGOs

The Equality Authority has played a significant role in cases under the Equal Status Acts. In particular, the Equality Authority was plaintiff in the application to have Portmarnock Golf Club held to be a discriminating club. The Authority was involved in other investigations with respect to golf clubs.⁷² The Equality Authority has published a booklet entitled *The Equal Status Acts 2000 to 2004*⁷³ and *Guidelines for Equal Status Policies in Enterprises*⁷⁴. Various trade bodies have issued booklets and disseminated information with respect to equal status, for example in the hospitality sector. Private sports bodies have issued guidelines and information packs on equal status, e.g. Golfing Union of Ireland.

Conformity with Directive 2004/113EC

In general, there is conformity with Directive 2004/113. As regards individual compensation, it is very modest at EUR 6 350.00. However, a gender ground application may be made to the Circuit Court which has unlimited jurisdiction in awarding damages. However with respect to clubs, Section 9(1)(a) does not seem to comply with Article 4(5). Section 9(1)(a) provides that a club is not discriminating if its principal

⁶⁸ *Barry v Richardsons Pub* DEC-2004-020. <http://www.equalitytribunal.ie/index.asp?locID=91&docID=768>, accessed 16 September 2008.

⁶⁹ *Shanahan v One Pico Restaurant* DEC-S2003-056. <http://www.equalitytribunal.ie/index.asp?locID=94&docID=400>, accessed 16 September 2008.

⁷⁰ *Stevens v The Helix Theatre* DEC – S2008-033. <http://www.equalitytribunal.ie/index.asp?locID=140&docID=1783>, accessed 16 September 2008.

⁷¹ *Gallagher v Merlin's Night Club* DEC-2002-133. <http://www.equalitytribunal.ie/uploadedfiles/Press/Press2003/DECS2002133.pdf>, accessed 16 September 2008.

⁷² Irish Times 22 October 2002, *Bray Golf Club has fortnight to end bias against women*.

⁷³ <http://www.equality.ie/index.asp?locID=106&docID=226>, accessed 16 September 2008.

⁷⁴ <http://www.equality.ie/index.asp?ACTIVEGROUP=2&locID=109&docID=-1>, accessed 16 September 2008.

purpose is to cater for *inter alia* persons of a particular gender. Article 4(5) requires that there be a legitimate aim. There is no evidence that the playing of golf, by men only (for example) is a legitimate aim. There may be other groups, for example the Irish Countrywomen's Association, where the aim is for the assistance of women especially women living in rural Ireland, or widows' or widowers' associations.

Further action

Discrimination is isolated. However, it seems unfair that such clubs can get public funds in order to organise, for example, the Irish Open (golf championship). In practical terms, it is hard to find information on this matter as each sports club/ swimming pool or any other leisure activity is particular to an area or a group of persons. Another issue is that men's sports such as rugby, tennis, GAA (Irish Gaelic Athletic Association), golf etc. get much more sponsorship than the equivalent women's sports, where applicable.

There is a procedural issue in that in the early years of the application of the legislation there was a large volume of claims with respect to access to public houses (pubs/bars). The vast majority of claims were brought by travellers and as a result the Equality Tribunal did not have the resources to hear all claims, hence such claims must now be brought before the District Court and such information is virtually impossible to obtain.

The Equality Authority in Ireland should be asked to carry out a study as to how golf clubs are applying the Irish legislation and how they propose to comply with the Directive. This would at least produce an overview of the situation.

ITALY – Simonetta Renga

General remarks

In Italy, there is no debate at all as regards differences in access or prices of services based on sex, and such differential treatment is very rare.

We have a very small number of cases of sex-segregated services, such as hotels to which only women are admitted or different prices for male and female access to discos, as well as to happy hours or football matches (both as regards the single match and the season ticket). Hairdressers are probably the only service where different prices have always been applied, yet without any debate.

Legislation

EC Directive 2004/113 has recently been implemented by Decree no. 196/2007⁷⁵, which adds ten articles to the Code of Equal Opportunities⁷⁶. The Decree literally copies the text of the Directive, including the provisions on its substantive scope and on the exceptions allowed.

Enforcement

The legislation implementing Directive 113/2004 is very recent and we have not seen any cases yet on its enforcement.

⁷⁵ Published in OJ no. 261 of 9 November 2007, <http://www.parlamento.it/leggi/elelenum.htm>, last accessed 8 September 2008.

⁷⁶ Decree no. 198/2006, published in OJ no. 125 of 31 May 2006, <http://www.parlamento.it/leggi/deleghe/06198dl.htm>, last accessed 8 September 2008.

Case law

No case law on these issues is to be recorded.

Role of equality bodies and NGOs

Neither the Department of Equal Opportunities, part of the Prime Minister's Offices, nor the specific equality body entitled to enforce Directive 113/2004 under Decree no. 196/2007 have distributed any news on their activities. Nothing can be reported on this item.

Conformity with Directive 2004/113EC

On the whole, Decree no. 196/2007 satisfies EU law requirements, but does not go any further, as it merely literally transposes EC provisions, including Article 4(5).

The only provision which is slightly different from the text of the Directive regards the promotion of equal treatment. On this specific item, it can be observed that, on the one hand, some doubts have risen regarding the real independence of the Equality Office provided by Article 12 of Decree no. 196/2007, as it comes under the General Division of the Equal Opportunities Department, part of the Prime Minister's Offices, without any budget allocation. On the other hand, Article 12 adds the promotion of studies, research, professional training and exchange of good practices, also aimed at working out guidelines on fighting discrimination, to the other functions expressly provided for by the Directive as regards equality bodies. It also states that, for this purpose, the General Division mentioned above can team up with associations, organizations or other legal entities which have a legitimate interest in ensuring that the provisions of the Directive are complied with and which are entitled on this ground to engage, on behalf or in support of the claimant, with his or her approval, in any judicial and/or administrative procedure.

Further actions

In Italy, sex-segregated services are a marginally small problem, although it could have an indirect and slight influence on the achievement of gender equality at work, by avoiding social stereotypes.

The existence of such differences in our country is actually negligible, while we are still very far from substantial equality, both at the workplace and in the individual and social spheres. Therefore, as we have few resources and as the present Government keeps cutting public finances, we are forced to concentrate on the most urgent and central issues.

Directive 2004/113 itself can be considered a sufficient measure within the policy of equal opportunities to be promoted at EU level as far as access and supply of sex-segregated leisure-related services are concerned.

LATVIA – Kristīne Dupate

General remarks

Clubs

There are no public clubs providing sex-segregated services. This phenomenon may be explained by the traditions inherited from Soviet times. During the Soviet occupation, at least direct discrimination with regard to the access and supply of services did not exist. Besides, in those days, leisure-related services were minimal and were pro-

vided under the motto ‘for all working people’. Due to this ‘anti-bourgeois’ policy, no exclusive clubs existed, such as for golf, tennis, etc. Such traditions have now regenerated in the form of private clubs, where indeed, in some of them, sex is the determining condition for becoming a member. However, such clubs do not have their own facilities (golf or tennis courts). They usually rent publicly accessible facilities.

Hygiene/wellness/beauty services

There are some public bathhouses offering services at specific hours. In general, Latvia has two kinds of public bathhouses. One kind offers relaxation and restoration services. They have been established recently and are usually suitable either for individual use or for use by both sexes simultaneously. With regard to the second kind of bathhouses, again the specific situation of Latvia must be taken into account with regard to Soviet times: these offer a simple service – having a wash. In Soviet times and also nowadays, a considerable part of the population have housing without a bathroom. Since the greatest part of such public bathhouses have operated since Soviet times, many of them do not have separate facilities for each sex. For this reason, many of these public bathhouses restrict services at specific hours for each sex.

In this regard, it is useful to mention one incident at the end of 1990’s which was widely discussed in the mass media. After the collapse of the Soviet Union, the Latvian economy crumbled. This means that a considerable part of the infrastructure was destroyed too. This especially concerned the infrastructure of centralized heating supply. As a result, many villages were deprived of central heating services and consequently had no supply of warm water. So people could do nothing else but attend public bathhouses to have a wash. In one of such villages, the public bathhouse was privatized. This bathhouse was appropriate for single-sex use only, and therefore had an attendance schedule for each sex. This bathhouse did not make a profit. The only profitable business was the bar located next to the bathhouse, owned by the same owners. The owners soon recognized that during women’s days, the bar was considerably less attended and consequently less profitable, while on men’s days the opposite was the case. For this reason, the owners decided to provide bath services for women three days per week, on working days, and for men on weekend days. Women claimed to be discriminated against, because it is more convenient for the employed to attend a bathhouse in the weekend. At the time, there were no legal provisions in place prohibiting such discriminatory practices. However, this case highlights many aspects of gender inequality. For example, women attended the bathhouse together with the children, since they were/are in charge of childcare, then due to this double burden they did/do not have time to sit at the bar and they had/have less financial resources to spend at the bar.

In general, sport clubs⁷⁷/wellness centres are open to both sexes. However, the mass media recently published information on a new business project, the opening of a sports centre providing services for women only. The owner stresses that the idea is to provide sporting services based on a methodology based on the different physiology of the female.

A large number of beauty salons applies different price lists for haircuts and for manicure and pedicure services for men and women.

⁷⁷ In the sense of providing services of gym, aerobics, body bike, yoga etc. Body bike is one kind of the sport activities provided for the customers in group by the sport clubs. Group of people in the closed facility perform sporting activities by using special equipment – bicycles without wheels having the same effect as if they were ride a normal bicycles

Services of night clubs/performances

Many night clubs tend to set different entrance fees for male and female visitors. The majority of night clubs offers women either free entrance or a reduced entrance fee. There were many commercials advertising such special offers for women, until recently. After the partial implementation of the Directive 2004/113 into Latvian law in July and following information provided by mass media about the prohibition of discrimination binding to all service providers, such commercials have become less widespread.

There is no widespread practice of different kinds of shows and performances intended for one sex only. For example, women are admitted to legal strip clubs, although, of course, this service is intended for men.

The only case that raised public debate concerned the entrance conditions to the well-known Chippendale show. Some men claimed that it is discriminatory to advertise that only women will be admitted. The manager of the Chippendale show announced that men will also be admitted, but that in principle this show is only intended for women. Finally, the media reported, at least two men attended the show among thousands of women.

Accessibility

The Latvian Ombudsman Office, which is the National Equality Body, has received complaints on problems of accessibility of certain services due to childcare obligations. First, certain services are not accessible with baby carriages, for example shops and medical services. Some shops and institutions providing medical services lack the space for entering with a baby carriage, but at the same time fail to provide safe storage services. Other problems are caused by the lack of child-care services. For example, one woman was forced to leave her 3-year-old child chained up in a waiting room for half an hour, because the doctor refused to give her gynaecological sonography in the presence of the child. The doctor argued that he/she must be able to concentrate during the treatment in order to provide good service. Moreover, children could damage the medical equipment and do not generally follow hygienic norms.

Legislation

On 19 June 2008, the Parliament adopted amendments to the Law on the Protection of Consumer Rights which came into force on 23 July 2008. These amendments partially implement the requirements of Directive 2004/113. They implement concepts such as direct and indirect discrimination, instruction to discriminate, harassment, sexual harassment, burden of proof and right to the compensation for moral damage.

With regard to the exceptions, Article 3 (2) of the Law on the Protection of Consumer Rights provides exceptions that are similar to Article 4(5) of Directive 2004/113: difference in treatment is allowed if the provision of the goods and services exclusively or primarily to the members of the one sex is justified by a legitimate aim and the means are proportionate.

Enforcement

With regard to enforcement, Latvia only has one option, which is to bring the case to court.

Case law

No case law is available yet, because prohibition of the discrimination with regard to the access to and supply of the goods and services as described above was implemented and came into force at the end of July this year.

Role of equality bodies and NGOs

No cases have been handled by the National Equality Body or NGOs for the same reason: the recent implementation of the principle of non-discrimination with regard to the access to and supply of the goods and services into Latvian law. According to the Ombudsman Law, the only civil cases where the Ombudsman may represent the interests of a person is in non-discrimination cases.

Conformity with Directive 2004/113

With regard to the material scope, Directive 2004/113 has been implemented partially into Latvian law. The only law providing prohibition of discrimination with regard to the access to and supply of the goods and services is the Law on the Protection of Consumer Rights. The scope of the said law is limited itself. The law specifically applies to the field of consumer protection as provided by EU law. This means that this amendment only prohibits discrimination on the grounds of sex insofar as it concerns access to and supply of goods and services provided for personal use of the recipient (not for the purpose of performing professional activities) and if the provider for this purpose acts within their professional capacity. Outside the provider-consumer relationship, discrimination is not prohibited under any national law. Directive 2004/113 has not been implemented yet with regard to insurance services.

Effective enforcement is problematic. At present, Latvian law provides for only one possibility – to bring the case to court. Although the Administrative Violation Code provides for administrative penalties if someone violates the principle of non-discrimination as provided by normative Acts nothing testifies that this provision has been ever applied in practice.

In practice, the only remedy – to bring an individual claim to court, cannot be considered as very effective, because financially speaking the loss and damage are usually lower than litigation expenses would be. Besides, for the majority of the population, litigation expenses would cost several months worth of income. Consequently, in practice, people only bring cases to court if the violation of rights was very serious or is highly important for personal reasons.

Further actions

Latvian level

It is suggested to implement the principle of non-discrimination as regards access to and supply of goods and services into Latvian Civil Law. This would fully cover the material scope of Directive 2004/113.

A state institution should be authorized to impose administrative penalties as already provided by the Administrative Violations Code. This would preferably be the Centre for the Protection of Consumer Rights.

European level

No suggestions.

General remarks

There is no specific political debate going on in Liechtenstein concerning this topic. Nevertheless, I would like to mention some examples showing that sex-segregated services do exist in Liechtenstein. A disco in Balzers is offering free entry for ladies all night long and the prices at hairdressers are consistently higher for women than for men, for the same service. The prices for children are interesting to observe: girls and boys pay the same price for a haircut until the age of three, but from the age of four, the price difference between a girl's and a boy's haircut gradually increases. The girl's cut is always more expensive than the boy's. A girl between 10 and 14 pays CHF 49.50 (ca. EUR 30.90) for a cut compared to a boy of the same age, who only pays CHF 39.50 (ca. EUR 24.60). On the other hand, there was a fitness club offering a summer programme with a special price only to women. Two weeks later, the same fitness club had also created a special offer for men, mentioning that they adapted the offer for women to men.

Legislation

There is no national legislation applicable to these issues.

Enforcement

Since there is no legislation, there is no enforcement for this issue.

Case law

There is no relevant case law concerning these issues.

Role of equality bodies and NGOs

Based on the information available, equality bodies have not taken any action.

Conformity with Directive 2004/113/EC

As there is a lack of specific legislation, it is most probably not in line with the Directive. The staff position for equality has informed me that Liechtenstein intends to implement Directive 2004/113/EC in the near future.

Further actions

In my opinion, national legislation should introduce adequate norms to guarantee gender equality also in cases of access and supply of goods and services in leisure time. Furthermore, there should be campaigns to make people aware of the fact that these issues are important in gender equality law.

I am in favour of any action taken; in my opinion it should include proactive measures.

I suggest campaigns to raise awareness using concrete examples, to make it easy to understand for regular people. In addition to this, key persons and institutions should be called on to promote changing the law. Training courses will be necessary for those who have to apply and observe the law.

General remarks

Currently, there is no public debate on sex-segregated services in Lithuania. The legislator already prohibited any discrimination based on sex in the area of provision of services in 2002 (see below). Some 3-4 years ago, public attention triggered investigations by the Office of Ombudsman of Equal Opportunities into different prices for male and female access to discos. At that time, a number of disco owners were given administrative fines for collecting different prices. Since then, this practice has decreased to some extent but still occurs since the chance of getting caught is slim. More evident and frequent examples are women's sport clubs where only women are allowed to enter. The exclusiveness of the club is motivated by the aim to train specific physical skills under gender-specific exercise programmes.

Legislation

The Equal Opportunities Act of Women and Men, of 1 December 1999⁷⁸, which in particular aims to transpose relevant EC legislation, deals with this issue in detail. First of all, Section 5-1 of the Act requires every seller or producer of goods to apply equal conditions of payment and guarantees for the same products, goods and services or products, goods and services of equal value⁷⁹ to all consumers, regardless of their sex. In addition, Section 5-1 prohibits expressing humiliation, scorn or the restriction of rights on the grounds of sex and forming public opinion such that one sex is considered superior to another. Furthermore, Section 7-1 of the Act expressly states that the following actions of a seller or producer of goods or a provider of services shall be considered as a violation of equal rights for women and men, if, on the grounds of a person's sex:

- 1) different conditions of payment or guarantees for the same goods, services or products of equal value, or different opportunities for selecting goods and services are established;
- 2) in information about products, goods and services or advertising them, public opinion is formed such that one sex is considered superior to another, and consumers are also discriminated against on grounds of sex;
- 3) a person who has filed a complaint concerning discrimination is prosecuted.

The Equal Opportunities Act of Women and Men includes possible derogation from the principle of equal treatment provided in Article 4 (5) of the Directive 2004/113/EC. When defining direct discrimination as a treatment where one person is treated less favourably on the grounds of sex than another is, has been or would be treated in a comparable situation, the legislator includes as one of the possible exceptions the sale of goods or the provision of services solely to, or in particular to, persons of one sex if this is justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.

Enforcement

The Ombudsman of Equal Opportunities has the competence to investigate any violations of the Equal Opportunities Act of Women and Men.

⁷⁸ State Gazette, 1998, no. 112-3100.

⁷⁹ What those 'products, goods and services of equal value' are remains unclear.

Case law

No cases have been brought to court so far.

A few disco owners received administrative fines for collecting different entrance fees for men and women. More often, the Office of the Ombudsman of Equal Opportunities has dealt with ‘discriminatory advertisements’, i.e. advertisements where the picture of a woman or her body was used in a humiliating manner. For example, the picture of a half-naked woman when advertising meat products with the phrase ‘When you want some meat (...)’ or the quiz question of a telecommunications company to its customers: ‘Who is a man’s best friend – a book or a blonde?’ In such or similar cases, it was found that this constituted a violation of the law.

Role of equality bodies and NGOs

NGOs may lodge complaints with the Office of Ombudsman of Equal Opportunities. This has the competence to investigate violations of the Equal Opportunities Act of Women and Men. Usually, the Office of Ombudsman of Equal Opportunities investigates individual complaints.

Conformity with Directive 2004/113EC

It seems that national legislation has been brought in line with Directive 2004/113/EC and goes even further than required. The exception of Article 4(5) of the Directive was simply rewritten and its practical meaning remains unclear.

Further actions

For the time being, there are sufficient legal instruments to preserve equal treatment in the area of provision of services. The main practical problem is related to the reluctance of individuals to initiate legal proceedings in the courts. Investigation by the equality bodies plays a crucial role here, but the procedure of the collection of evidence is more complicated.

The exception of Article 4(5) of the Directive is broadly formulated and allows much room for interpretation. The practical usefulness of this exception is also questionable. Keeping the definition of indirect discrimination in mind, the possibility to abolish this exception may be investigated by the Commission.

LUXEMBOURG – *Anik Raskin*

General remarks

In Luxembourg, there is neither public nor political debate on the issue of sex-segregated services. One can at most mention the question of parking spaces reserved to women, which is discussed from time to time by readers of the Luxembourg newspapers.

Legislation

On 18 December 2007, the Parliament adopted the law which transposes Directive 2004/113/CE. The law entered into force on 21 December 2007.

According to this law, discrimination between women and men is prohibited in the access to and supply of goods and services which are available to the public and which are offered outside the area of private and family life. This prohibition does not apply to the content of media and advertising nor to education.

Differences in treatment are not considered as violations if access to and supply of goods and services intended exclusively or primarily for one sex is justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

Enforcement

No information available.

Case law

There is no relevant case law on the subject.

Role of equality bodies and NGOs

The national equality body, the *Centre pour l'égalité de traitement*, will probably be operational by late 2008. Consequently, the centre has not taken any decisions or made any recommendations yet.

Until now, no organization has operated specifically in the field of access to and supply of goods and services.

Conformity with Directive 2004/113EC

Since the Luxembourg law has literally reproduced the provisions of Directive 2004/113/EC, Luxembourg legislation is in conformity with this Directive. However, as the concepts of 'legitimate aim' and 'appropriate and necessary aim' have not yet been assessed by the national courts, the extent of their meaning still remains rather vague.

Further actions

It may be important to make a clear distinction between different types of sex-segregated services.

Sex-segregated assistance services, like sex-segregated lobbying associations or networks, are meant as instruments aiming precisely at fighting inequality between women and men. For many years, this type of services has contributed to the promotion of equality between women and men. Even if, as mentioned above, the concepts of 'legitimate aim' and 'appropriate and necessary aim' have not been assessed yet by national courts, this type of sex-segregated services seems to us to fulfil the requirements of the law. It does not appear very convenient to contest these important instruments.

Some sex-segregated services are meant to encourage men or women to take part in activities like wellness. In Luxembourg, for example, the majority of wellness centres reserve one day, or part of a day, in the week exclusively to women. Several of them do the same for men.

Other services such as cinemas' 'ladies nights' or free drinks for women occur in Luxembourg. Concerning free drinks for women, the aim is to insure the presence of women in order to encourage men to enter bars or clubs. There does not seem to be much objection to these two types of services, although they may seem debatable under the law adopted on December 2007.

In the Luxembourg context, it may seem premature to take any action other than publicity campaigns in order to inform the population on the recently adopted law.

One of the projects on which the *Centre pour l'égalité de traitement* is currently working is the launch of a comprehensive information campaign which will include access to and supply of services.

In Luxembourg, discrimination is still often perceived as exclusively concerning the labour market. Because of this, possible problems concerning sex-segregated services will probably be communicated to the new equality body (operational by late 2008) rather than brought to court.

However, since the *Centre pour l'égalité de traitement* will treat equality between women and men as part of other discrimination grounds, a specific information campaign on Directive 2004/113/CE would certainly be welcome in Luxembourg.

In a second phase, after two to three years, an evaluation could identify the possible improvements to be made at legislative level, something that is currently rather difficult.

MALTA – Peter Xuereb

General remarks

There is no political debate on the relevant issues at the moment.

Legislation

The general law is to be found in the Equality for Men and Women Act 2003, Chapter 456 of the Laws of Malta. The directly relevant legislation is Legal Notice 181 of 2008, namely the Access to Goods and Services and their Supply (Equal Treatment) Regulations ('the Regulations'). These were promulgated on 1 August of this year in order to give effect to Council Directive 2004/113/EC. These Regulations were adopted under the powers given the Minister by the Equality for Men and Women Act 2003 (EMWA), Chapter 456 of the Laws of Malta. The exceptions allowed under the Regulations are: justification of difference in treatment by the provision of goods and services exclusively or primarily to members of one sex by a legitimate aim, where the means of achieving that aim are appropriate and necessary; the use of sex as a factor in insurance and related financial services where the use of sex is a determining factor in the assessment of risk, but only if the resulting differences are proportionate and based on relevant and accurate actuarial statistical data. The relevant provisions reproduce the wording of the Directive, but in the case of actuarial factors there is no reference to the deadline of 21 December 2007, the date set out in the Directive for transposition of the Directive by the Member States.

Enforcement

Provisions for enforcement are set out in the Regulations. It is achieved in one of two ways. The first is the filing of a civil case before the courts of law. The other is the involvement of the National Commission for the Promotion of Equality (NCPE), Malta's equality body, which, following the filing of a complaint, can enter into mediation between the parties. Should mediation fail, the NCPE may press on with legal action in support or on behalf of the victim and with the victim's approval, as it is empowered to do by virtue of Article 8 of the Regulations.

Case law

There is as yet no relevant case law. This is due most certainly to the fact that specific legislation in this regard has only most recently been adopted. Nor have there been any cases under preceding general law that might be applied, such as the EMWA itself.

Role of equality bodies and NGOs

An unspecified number of complaints were received and under investigation by the NCPE in 2007, according to the NCPE Annual Report for 2007, which lists complaints by heading and refers to three relevant headings, namely: gender discrimination vis-à-vis goods and services; discrimination in services offered by banks; and gender discrimination in payments for services. However, details are not released by the NCPE.

Conformity with Directive 2004/113/EC

The transposition of the Directive through Legal Notice 181 of 2008 appears to be in conformity with the relevant Directive. One caveat refers to the late date of the coming into force of the Directive, a point noted above explicitly in the context of the use of actuarial factors in contracts between the stipulated date of implementation as set out in the Directive and the actual date of implementation. It is too soon to say how Article 4(5) of the Directive, reproduced word for word as Article 4(8) of the Regulations, will be interpreted and applied.

Further actions

I would hazard stating that on the face of it there does not appear to be a real problem in Malta. One can only know whether, and if so how big, an issue sex-segregation in the provision of goods and services is once the NCPE releases some information, or when the new legislation produces some litigation. Prima facie, there does not seem to be any significant concern among the general public or NGOs about the issue. Nor does there appear to be evidence of any problem in the context of leisure time. It has to be said that there is no solid material on the question.

Websites

- National Commission for the Promotion of Equality: www.equality.gov.mt
 - Legal Notices: www.doi.gov.mt
 - Laws of Malta: <http://www2justice.gov.mt/lom/home.asp>
- Accessed 11 September 2008.

NETHERLANDS – Rikki Holtmaat

General remarks

There has been relatively little debate about sex-segregated services in the Netherlands.

As the answers below will show, Dutch equal treatment law does allow segregation with regard to certain services that are mentioned explicitly. Except for this, there is little room to supply or offer sex-segregated services. However, some sex-segregated services seem to exist in the Netherlands merely by the grace of the fact that they have never been contested. For example, a short survey has shown that there are about 100 women-only fitness clubs in the Netherlands, in spite of the fact that this kind of service does not seem to comply with Dutch equal treatment law.

Legislation

Under the General Equal Treatment Act (*Algemene Wet Gelijke Behandeling*, hereafter ‘GETA’), it is forbidden to make distinctions based on the grounds that are men-

tioned in Article 1(b), among which the ground of sex. This includes the prohibition to give instruction to discriminate. The scope of the GETA is extended to access to and supply of goods and services by Article 7. Paragraph 1 of Article 7 provides as follows:

‘It shall be unlawful to make distinctions in offering or supplying goods and services, in concluding, implementing or terminating agreements on the subject (...), if such acts are committed:⁸⁰

- a. in the course of carrying on a business of exercising a profession;
- b. by the public services;
- c. by institutions which are active in the field of housing, social services, health care, cultural affairs or education; or
- d. by private persons not engaged in carrying on a business or exercising a profession, insofar as the offer is made publicly.’

With regard to prohibition, the following exemptions (limitations of the scope) are to be applied:

- Unilateral governmental decisions and acts do not fall under the scope of Article 7.⁸¹
- With regard to Paragraph c. of Article 7(1), schools and other institutions of education may apply requirements insofar as these requirements are necessary to realise the institution’s founding (ideological or religious) principles and are not *solely* based on one of the forbidden grounds (see Article 7(2)). With regard to sex-segregated education, Article 7(2) states explicitly that such kind of education must necessarily arise from the institute’s foundation and character. In addition, equal facilities for both sexes must be available in that case.
- Article 7(3) of the GETA contains an exception regarding the private nature of the circumstances to which the legal relationship pertains (e.g., a woman who rents out a room in her own house may lawfully require that the person who rents the room is female).⁸²
- The internal affairs of associations fall outside the scope of the GETA. This follows from parliamentary history and is not explicitly provided for in any Article of the Act.⁸³ However, with respect to offers and supply of goods and services that are made publicly by private associations, this exemption does not apply; in that situation, the GETA does apply.

Apart from the foregoing specific exemptions, the extension of the GETA to goods and services has the effect that sex-segregated services are usually to be regarded as *direct* distinctions on the ground of sex. This is significant, because under the GETA direct distinctions are forbidden *unless* one of the (limited) legal justifications or exceptions can be applied. This means in practice that sex-segregated services may only be justified if the sex-segregation:

⁸⁰ It should be noted that the limitations to follow under a-d also apply to the other areas covered by Article 7, i.e. 2. the provision of career orientation and guidance (*loopbaanoriëntatie*); 3. advice or information regarding the choice of an educational establishment or career.

⁸¹ J.H. Gerards and A.W. Heringa, *Wetgeving Gelijke Behandeling*, Deventer: Kluwer 2003, pp. 72-73, with references to ETC case law.

⁸² This topic was discussed in great detail in the second evaluation report about the functioning of the GETA, which was published late 2006. See M.L.M. Hertogh & P.J.J. Zoontjens (eds): *Gelijke behandeling: principes en praktijken. Evaluatieonderzoek Algemene wet gelijke behandeling*. Wolf Legal Publishers Nijmegen 2006. The part about the relationship between equality and freedom of association and the right to privacy was written by Prof. Paul Zoontjens. See pp. 175-216.

⁸³ This topic was also discussed in great detail in the second evaluation report about the functioning of the GETA. See the previous footnote.

- can meet the criteria of *preferential treatment* (under the GETA only permissible for the benefit of women);⁸⁴
- can be established as being necessary for the *protection of women and maternity*;⁸⁵
- can be established as being a case in which ‘*sex is decisive*’. With regard to this phrase, Section 6 of Article 2 delegates the definition of such cases to a Ministerial Order. This ‘Equal Treatment Decree (*Besluit Gelijke Behandeling*)’⁸⁶ lists cases of sanitary facilities, changing and sleeping rooms and saunas (all insofar as the facilities are equally available for both sexes), beauty contests and sports contests (insofar as there is a relevant difference in sex), life insurances (same) and in case of difference in treatment for the protection of health and against sexual harassment and violence. Such sex-segregated services aimed at protection must be necessary and proportional.

As exceptions must always be interpreted in a strict sense in non-discrimination law,⁸⁷ the GETA makes it quite difficult to render sex-segregated services apart from cases that fall under the exemptions (from the scope) or that are mentioned in the Equal Treatment Decree. Recently, the Equal Treatment Commission (hereinafter: ETC) dismissed a complaint about a sex-segregated service (a taxi service for women only) with reference to a lack of sufficient relevance for the claimant, which ground is laid down in Article 14, Section 1(b) GETA.⁸⁸ This decision could be regarded as seeking a practical solution for this type of sex-segregated service, since literally speaking it would not fall under any of the exemptions or exceptions that are provided for in the law.

Enforcement

The GETA enables individuals to file a complaint against supposed unlawful unequal treatment before the ETC. The decisions of the ETC are not officially binding, but they have certain authority. In addition to the ETC, it is possible to bring a case before a District Court, whose decisions are (of course) binding.

Case law

- ETC Opinion 2001-27 (membership of a rifle club):

A private rifle association was accused of denying membership to women. Under the regulations of the rifle association, new members are admitted by voting. By a vote in a general meeting on five candidates, two men were admitted unanimously, one woman was admitted in spite of several negative votes, and two women were refused. All three women who had tried to obtain membership brought an action before the ETC against the rifle association. Although this was a private association, the ETC deemed the GETA applicable, because the association was rendering services in public (among which the shooting facilities and a permission to participate in official matches). However, the complaint was rejected because the association had in fact some female members, which proved that women were not excluded systematically, and they succeeded to make a reasonable case for the assumption that in this specific case the women were rejected because of other circumstances.

- ETC Opinion 2004-75 (women’s day in a sauna):

A man contested a women’s day in a sauna. Saunas are mentioned in the Equal Treatment Decree/Order (*Besluit Gelijke Behandeling*) as a service that can be re-

⁸⁴ See Article 2(3) GETA.

⁸⁵ Article 2(2) GETA.

⁸⁶ *Besluit Gelijke Behandeling*, Koninklijk Besluit of 18 august 1994, *Stb.* 657.

⁸⁷ See *Kalanke and Marshall*

⁸⁸ See Opinion 2008-102 below.

garded as a case in which ‘sex is decisive’,⁸⁹ provided that equal facilities for both sexes are available. Although the sauna did not have a ‘men’s day’ and therefore seemed to fail in offering equal facilities, the ETC deemed the women’s day justified, as the owner made plausible that there was hardly any demand for a men’s day.

– ETC Opinion 2008-102 (women’s taxi service):

A taxi company had reserved one of their taxis for women only. The company argued that this service was justified because their female customers often feel uncomfortable in taxis with men, especially in the evening and at night. This service was contested unsuccessfully by a local antidiscrimination organization. The ETC found that the complaint was of too little importance, as only one out of about 40 taxis was reserved. According to the ETC, this service was not likely to cause extra waiting time or other disadvantages for men. Therefore, there was a lack of interest for the requesting party which is a ground for rejection laid down in Article 14, Section 1(b) GETA.

– ETC Opinion 2008-12 (women’s fitness club):

In opinion 2008-12, the ETC judged a requirement to speak the Dutch language fluently that was set by the management of a fitness club unlawful, but mentioned as an *obiter dictum* (provision 3.25) that the management did not seem to comply with the legal requirements regarding offering sex-segregated services, as they ran a fitness club for women only. The ETC found that ‘none of the legal exemptions seems to apply in this case’.

– ETC Opinion 2007-36 (disco rules):

Discos are not allowed to deny entrance to men in order to establish an equal proportion of male and female visitors. None of the legal exemptions can be applied.

– ETC Opinion 2006-121 (‘ladies’ nights’):

Discos are not allowed to apply different entrance fees for men and women in order to establish an equal proportion of male and female visitors. None of the legal exemptions can be applied.

– ETC Opinion 2005-169 (female lawyer for women only):

A female lawyer who is specialized in divorce proceedings is not allowed to offer her services to women only. The Bar (*Orde van Advocaten*) had advised the ETC to allow this specific kind of segregated service because of the need for specific empathy with the woman’s position that can be desirable in such cases. The ETC, however, found that none of the legal exemptions can be applied, and that female lawyers should nevertheless be able to empathise with and represent both sexes in divorce proceedings.

Role of equality bodies and NGOs

Apart from the abovementioned cases, no specific actions were taken by the national Equal Treatment Body, the ETC.

Conformity with Directive 2004/113EC

Dutch legislation concerning sex-segregated services is in conformity with Directive 2004/113/EC and even seems to exceed the requirements. As stated above, Dutch equal treatment law forbids sex-segregated services unless one of the legal exemptions can be applied. In practice, the cases mentioned in the Equal Treatment Order (the above-mentioned circumstances in which ‘sex is decisive’) are the only cases in which sex-segregated services might be justified. This boils down to a *closed system* of possible justifications for sex-segregated services. Article 4(5) of the Directive,

⁸⁹ See Article 2(3) GETA in conjunction with the Equal Treatment Order.

however, only prescribes that sex-segregated services shall have a legitimate aim and shall be proportional. This can be considered as an *open system* of justifications.

Further actions

As stated above, Dutch legislation on the issue might be unduly restrictive since it applies a closed system of justifications instead of an open system. Of course, certain types of sex-segregated services can harm the principle of equality and non-discrimination, but such cases could also be eliminated by complying with the requirements of Article 4(5) of the Directive. There are examples of harmless and even favourable segregated services as well (e.g. a taxi service for women only in the evening hours). An open system of justifications (as reflected in Article 4(5) of 2004/113/EC) seems to leave sufficient room for such forms of sex-segregated services, and is also effective when wanting to eliminate discriminating and undesirable kinds of sex-segregated services.

As follows from the foregoing, with regard to current Dutch legislation and situation, no further action from the European Commission seems to be necessary.

NORWAY – Helga Aune

General remarks

There is no debate on this issue on a political level.

Legislation

The relevant legislation is the Gender Equality Act (GEA) Section 3, stating the general rule of prohibition of direct and indirect discrimination. The GEA applies to all levels of society, not limited to the employment market. In addition, there is a prohibition in the Marketing Act (LOV-1972-06-16-47) Section 1, second paragraph, against marketing that portrays one gender in a condescending or disrespectful manner.

Enforcement

The Marketing Act is enforced by the Consumer Ombudsman and the Market Council (*Markedsrådet*). The GEA is enforced by the Gender Equality and Anti-Discrimination Ombudsman and the Gender Equality and Anti-Discrimination Tribunal. Both organizations make their decisions public on their websites. In addition, the Council's and the Tribunal's decisions are published on the same website where ordinary court cases are published, see www.Lovdata.no

Case law

There is no case law from the ordinary courts.

Role of equality bodies and NGOs

Some examples of cases assessed by the Gender Equality and Anti-Discrimination Ombudsman:

- Case 2005/104 – A restaurant advertised with 50 % off on the menu for women on Wednesdays. After the Ombudsman had explained the content of GEA Section 3 with prohibition against direct discrimination, the restaurant changed its practice.
- Case 2005/200 – The Ombudsman raised the issue of different prices for men and women at hairdressers with the National Hairdresser Association (NFF). The Ombudsman explained the content of GEA Section 3 and pointed out that different prices

for men and women for a visit with the medical doctor or the physical therapist is regarded as absolutely unacceptable to most people. The NFF pointed out that different amounts of time might be an objective reason for various prices but agreed that men and women should pay the same price for the same service. The NFF was going to recommend a revision of all price lists at all hair studios. In addition, the NFF was going to start modernizing its terminology.

– Case 2003/276 – The Ombudsman received information that a disco bar had free entrance for women throughout the summer season, while men had to pay their entrance fee. The Ombudsman stated that neither an economic nor a marketing perspective allowed this as sufficient grounds for direct discrimination and asked the disco bar to change its practice.

– Case 2002/331 – The Ombudsman received a complaint from a man who felt it as discriminatory that men had to pay a fee to read their mailbox in an internet dating service, while women could read their mailbox for free. The Ombudsman stated that the economic perspective does not allow this as a sufficient ground for differential treatment.

– Case 2002/100 – The Ombudsman received a complaint from a person who had attended a computer technology event which had charged different participant fees for men and women. The organizer of the event argued that the different prices were a measure aimed at encouraging women to participate, as they were clearly underrepresented. It was a pure idealistic motive, not an economic one. The Ombudsman found after their evaluation that the measure was intended and effective as an action to stimulate women to break stereotypical patterns in line with the aims of the GEA Section 1, and that therefore Section 3 was not violated.

The Gender Equality and Anti-Discrimination Tribunal has seen some cases but none that are of special relevance.

Conformity with Directive 2004/113EC

Yes. Norwegian legislation is in line with the Directive.

Further actions

Each incident in itself may seem unimportant or may be regarded as a curiosity. However, viewed together, many of these cases are the result of gender stereotyping, patterns which are ‘accepted’ with the idea that ‘this is how we have always done these things’ and ‘what’s wrong with that?’. The change of attitudes and gender stereotyping, and the way people think in practice is at the core of creating equal opportunities regardless of sex and is also stated as an obligation in CEDAW Article 5a. Based on this, I believe it is important to address these issues. If one replaced the word ‘gender’ with ‘ethnicity’, many people would automatically agree that it cannot possibly be right to practise sex-segregated services.

Based on my answer above, I would like to state that the European Commission should take action to combat sex-segregated services in leisure time.

I believe a wide range of activities must be involved in the work of raising awareness and effecting change. In addition to awareness-raising campaigns, I believe that some type of control measures, such as the ones performed by the Gender Equality and Anti-Discrimination Ombudsman in Norway, must be in place to show that this is a serious matter.

General remarks

Sex-segregated services exist in Poland and also show the tendency to increase. They are found in different branches of leisure services such as clubs, discos, sports enterprises, dance schools, etc. The first ladies club/cafeteria, called 'Babie Lato', was established in 2005 as a joint venture of 38 women from Częstochowa. This restaurant characterized itself as 'specially designed for women, not only due to the specific atmosphere, but also due to equipment well acquainted with women's needs' (chairs wide enough to be comfortable even for chubby women with their handbags, tables enough to enable to keep legs comfortable, even when wearing 11-cm heels). According to the club's regulations, men are allowed to access this club only on the condition that they agree to wear funny female wigs (provided by management of the club). 'Babie Lato' turned out to be a business success and it now has franchises in four big cities in Poland.⁹⁰

Networks of fitness centres exclusively for women⁹¹ have been established in several Polish cities; Warsaw alone has 6 such centres. It happens quite often that the trainers in such centres are all women as well. The need for sex-segregated sports centres is explained by the necessity of having special training equipment, accommodated to female health requirements. They encourage women to come, by appealing to their well-being and comfort (emphasizing that there is no need to dress up or wear make up).

Some normal fitness clubs reduce the entrance fees for women, e.g. 25 % reduction in fees for body building training for women⁹².

Several sports companies, in order to encourage women to attend football matches, offer free admission for them (as well as for children)⁹³. They believe that the presence of women and children will reduce the hooliganism often occurring at sports stadiums.

In eleven cities, the Multikino enterprise offers exclusive movie shows for women: 'Cinema on heels'. The choice of films is influenced by women's expectations: sometimes the movies are followed by dance or fashion shows, the promotion of cosmetics, lectures/presentations of healthy life styles etc.⁹⁴

There are some travel agencies that offer special travel tours for women. The Marek Kamiński Foundation has organized such travels to Mauritius. Safari Travel has a wider range and specialises in 'qualified tourism' and targets women who like challenges.⁹⁵ Another travel agency has a special programme for women, called 'Lektyka', and organises special trips for women on request.

Many discos and night clubs offer different kinds of discounts or reductions to women. For example, women have free entrance on certain days and hours (e.g. on

⁹⁰ http://www.babielato.com.pl/index2.php?option=com_content&do_pdf=1&id=17, accessed 8 September 2008.

⁹¹ <http://www.gymnasion.pl/woman.php>, accessed 8 September 2008.

⁹² <http://www.akademiaruchu.com.pl/pol/Zajecia/Taniec/Salsa-Solo-dla-Pan>, accessed 8 September 2008.

⁹³ <http://motorlub.webd.pl/forum/viewtopic.php?t=781>, accessed 8 September 2008.

⁹⁴ busko.net.pl/katalog/obiekt.php?ob_id=415&n='BODYMANIAK'%20Klub%20sportowy - 32k, accessed 8 September 2008.

⁹⁵ <http://www.travelforum.pl/r-ne-biura-r-ne-oferty/4501-biuro-podr-y-dla-kobiet.html>, accessed 8 September 2008.

Saturdays until 10 p.m.⁹⁶ or until 11 p.m.⁹⁷). In other clubs, the first 100 women can enter for free⁹⁸. Some clubs and discos address invitations especially for women⁹⁹ by offering them entrance for half price.¹⁰⁰ Some clubs have different age requirements for women and men (21 for women v. 23 for men).¹⁰¹ Some dance schools offer special dance courses for women e.g. 'Salsa solo for women'.¹⁰²

In 1996, in one of the cities in Poland (Gliwice), the first driving school for women was initiated, only employing female instructors.¹⁰³

In some large Polish cities, there is a taxi service operating under the slogan 'Save taxi', where the drivers are often women. In addition to regular taxi transportation, this phone taxi service also offers to safely accompany their clients to their front door or to wait until 'the light in the house goes on'.¹⁰⁴

The problem of sex-segregated services is not a subject of on-going wider social debate in Poland. However, from time to time, different aspects of the issue have been discussed in public and faced quite vocal social resonance as well as mass-media coverage. In the last decade, such public debate occurred twice; in 2005,¹⁰⁵ in connection with the refusal of providing services to a man in the first ladies-only restaurant 'Babie Lato', and recently (2007-2008) in relation with the Draft Law on Equal Treatment aimed at the implementation of EU directive 2000/43/EC on equal access to goods and services. The latter discussion proved, in particular, the lack of knowledge and awareness among journalists and society on the issues related to equal treatment and gender discrimination.¹⁰⁶

⁹⁶ www.echodnia.eu/apps/pbcs.dll/article?AID=/20080711/STUDENT0201/508363633 - 33k, accessed 8 September 2008.

⁹⁷ www.m7club.pl/freerajd/index.php/regulamin.html - 39k, accessed 8 September 2008.

⁹⁸ swidwiny.republika.pl/clubs_main_frame.htm - 2k, accessed 8 September 2008.

⁹⁹ www.mmwroclaw.pl/meeting/446/Tylko+dla+Pan!.html - 65k, accessed 8 September 2008.

¹⁰⁰ wroclaw.pogodzinach.pl/info.php?id=/109/STUDIO%20P-1 - 26k, accessed 8 September 2008.

¹⁰¹ www.echodnia.eu/apps/pbcs.dll/article?AID=/20080829/KULTURA01/697555562, accessed 8 September 2008.

¹⁰² <http://www.akademiaruchu.com.pl/pol/Zajecia/Taniec/Salsa-Solo-dla-Pan>, accessed 8 September 2008.

¹⁰³ motorlub.webd.pl/forum/viewtopic.php?t=781 - 78k, accessed 8 September 2008.

¹⁰⁴ <http://www.taxi.barbakan.krakow.pl/taxi/ofirmie/kobieta.html>, accessed 8 September 2008.

¹⁰⁵ http://manager.money.pl/strategie/case_study/artykul/babie_lato_udany_biznes_kobiet_pracujacych_19_0_168211.htm, blog.rp.pl/warszawa/2007/11/24/agnieszka-sijka-seksmisja-w-wielkim-miescie/ - 30k, new-arch.rp.pl/artykul/735886_Seksmisja_w_wielkim_miescie.html - 23k. Dziennik Zachodni 14 December 2005, accessed 8 September 2008.

¹⁰⁶ In one of the press articles, which was extremely hostile to the idea of equal access to services, published in the very popular daily Rzeczpospolita, the journalist Ewa K. Czaczkowska, trying to prove the absurdity of the Directive, gave the example of a ladies' hairdresser who would be obliged to serve men as well, despite of the fact that it is clear from the Directive that the principle of equal treatment in the access to goods and services does not require that facilities should always be provided to men and women on an equal basis, as long as they are not provided more favourably to members of one sex. Another example given in this article refers to the worries expressed by the president of the association of multi-children families '3+' which claimed that if the Directive were implemented, her association should also accept members with no children as members. The journalist seems to share this concern without any comment, which makes the impression that she does not know that one of the legitimate aims of differences in treatment might be the protection of the freedom of association. E. K. Czaczkowska 'Przyjdzie ustawa i wyrówna' (Comes the Law and Equalized), published in Rzeczpospolita on Sunday, 24 August, 2008 / www.iarticle.wn.com/view/2008/08/02/przyjdzie_ustawa_i_wyr_wna/ - 137k, www.intermedialna.com.pl/index.php/2008/08/przyjdzie-ustawa-i-wyrownaw/ - 188k-, accessed 8 September 2008.

Legislation

There is no specific Polish regulation addressing the issue of equal access to services. The act aimed at transposing into Polish law the provisions of Directive 2004/113 EC is still in the phase of ministerial draft.¹⁰⁷

Enforcement

The legislation in force, however, provides a limited legal basis for combating discriminatory treatment in the field of access to certain goods. Article 135 of the Code of Contraventions¹⁰⁸ states that anyone selling goods in a retail enterprise or in a food services enterprise who hides goods designated for sale from the customers or intentionally, without justified reason, refuses to sell such a good, shall be subject to a fine (not less than PLN 20 (about EUR 3.6) and not exceeding PLN 5000 (about EUR 1650) This provision, introduced in the early 1970s, was aimed at combating speculation with goods, very common under the socialist system. In order to apply this provision to cases related to general services, a broad interpretation must be applied, which might be considered as inadmissible.

Case law

In 2005, shortly after Poland's first ladies' restaurant 'Babie Lato' was opened, one of the male customers refused to wear the wig and still demanded that the restaurant to serve him. After the waitress refused to serve him, he called the police and filed a complaint before court, on the basis of Article 135 of the Code of Contraventions, for intentional refusal to sell a meal, without justified reason. The District Court of Częstochowa (Contraventions Department) did not find the waitress guilty and dismissed the case.¹⁰⁹ In the grounds of this decision the Court found that restrictive access to services in this club has the rational justification related to the needs and expectations of the customers, being the target group of the cafeteria in question. This restaurant was designed by women for women, in such a way that they could communicate on issues specific for them, openly and without the need to whisper, e.g. topics that they would not address in the presence of men. The requirement for men to wear wigs was not indented to violate their dignity but to differentiate them visually from the rest of customers and eventually dissuade them from frequenting this club.¹¹⁰

Role of equality bodies and NGOs

There is no relevant information that any equality body or NGO in Poland has recently taken any action or initiated any cases regarding sex-segregated services.

The Department of the Family and Counteracting Discrimination at the Ministry of Labour and Social Policy, which declares to be the equality body in the sense of Directive 2002/73/EC¹¹¹ has no mandate to get itself involved in individual cases.

¹⁰⁷ <http://www.mps.gov.pl/bip/download/Ustawa%20o%20rownym%20traktowaniu%2016-07-08.pdf>, accessed 8 September 2008.

¹⁰⁸ Law of 20 May 1971, *Dz.U.* 2007, no. 109, item 756, unified text.

¹⁰⁹ Judgment of 21 December 2005, case No. XI W 2617/05, not published, acceded by courtesy of Ms. Małgorzata Bieńkowska, creator and manager of 'Babie Lato' clubs.

¹¹⁰ Men sensitive enough to women's needs – wrote the judge (who was a man) - will treat this requirement as a good joke. Men who felt offended prove to perceive the problem in the context of 'war of the sexes' and showed an inability to empathise and symptoms of homophobia, which prevented them from understanding that their presence, as men, may constitute an obstacle for women to talk about private and intimate topics.

¹¹¹ <http://www.kobieta.gov.pl/?1,23,459>, accessed 1 September 2008.

There is no relevant information as to the role of this equality body in the field of other activities related to the issue covered by the Directive.

Conformity with Directive 2004/113EC

In my opinion, all the examples I have described above, in particular those of the fitness centres, movie shows and women's trips are in conformity with Directive 2004/112/EC, since they may be perceived as promoting women's well understood interests.

The same could be said with regard to ladies-only cafeteria –clubs, although formally those facilities do not have the form of an association and theoretically are open to the whole general public. These clubs set additional conditions exclusively for men and, although discouraging them from attending this place, these should not be perceived as unjustified different treatment. Those clubs are aimed at the fulfilment of justified women's needs, to sometimes be in exclusively female company. They may be also perceived as a form of compensation for women for years of disadvantages linked to their sex. In addition, the described precondition for men's presence in 'Babie Lato' is designed to educate men, since it should help them overcome the gender stereotyped thinking according to which it is offending for men to be (or make them behave like woman). The requirement to wear a wig cleverly shows men just how women felt over centuries, when different restrictions were introduced for their participation in public life. Therefore, those conditions should not be perceived as offending men or demonstrating women's power through the setting of rules, but rather as measures to promote real equality between women and men.

The existence of women-only driving schools could be justified by the need to learn to drive a car in an environment that is free from the gender stereotype that women are worse drivers than men. Women's taxi services may be justified by safety concerns.

With regard to the reduction of fees and free entrance for women to different leisure services, my opinion is ambiguous. On the one hand, the reduction of fees for body building classes may, to a certain extent, be justified by the need to promote this kind of fitness services, usually practiced by men, among women. Free entrance to football matches may also be perceived as promotion of these sports among women. However, the sports club's official explanation of such moves, referring to safety concerns, contradicts such intention.

On the other hand, free admittance for women to discos and nights clubs raised many doubts as to the justification of such unequal treatment, since it maintained gender stereotypes about buying female company and women amusing themselves at the cost of somebody else. This different treatment should be perceived as particularly disadvantageous for women, if one realizes that free entrance does not limit the doorman's power to let or refuse them. It might lead to cross-discrimination based on age or appearance and contribute to low self esteem of many women. For these reasons, such preferential treatment should be considered as a violation of the principle of equal access to certain goods and services.

Further actions

The problem, often indicated, in relation to equal access to certain leisure facilities applying selection criteria at the entrance is that many clubs have written rules according to which persons can be rejected: persons that are under age, drunk, being under influence of drugs, or inappropriately dressed (e.g. in sports uniforms or wearing hats

or caps).¹¹² However, the customers are usually aware of those rules and doormen have the arbitrary power to reject people. According to these rules, there is practically no instance to appeal from such refusal. Some of the doormen practise discriminatory practices, based on race or ethnic origin of customers, their sexual orientation, appearance and age. In addition, the different age criteria for women and men provided for in some club regulations may be perceived as unequal treatment per se. The European Commission should take action in order to prohibit, in particular, different rules for one sex in relation to entrance to clubs (in particular, reduced fees or free entrance for women).

Directive 2004/113/EC should be modified in the sense that the preamble should not only list legitimate differences in treatment, but also point out some illegitimate differences in treatment.

PORTUGAL – *Maria do Rosário Palma Ramalho*

General remarks

As far as we know and were able to investigate, there is no political debate whatsoever concerning this issue in Portugal.

We are naturally aware of the fact that some services are reserved either to women or to men (for instance, hairdressers reserved to men, as well as hairdressers just for women) and some services are offered to men or to women at different rates (discos with ‘ladies’ nights’ are common). We have no knowledge of leisure clubs or sports activities excluding people of one sex apart from religious academies or clubs, but we cannot assure that this does not occur. However, these practises seem to be considered normal or unimportant and have not raised any political debate on the issue.

Nevertheless, this does not mean that political parties and organisations do not pay any attention to these issues. As an example, we will describe a recent action taken by a left-wing party (*Bloco de Esquerda*), supported by the public Commission for Citizenship and Gender Equality¹¹³ under *Role of equality bodies and NGOs*.

Legislation

The national legislation applicable to these issues is Law n. 14/2008, of 12 March 2008, which has transposed Directive 2004/113/CE, of 13 December 2004.¹¹⁴ This legislation applies to all activities performed both by private and by public institutions, regarding the supply and access to goods and services, with the exception of goods and services offered in private and family life, publicity and media, education and the area of employment.¹¹⁵ The legislation prohibits both direct and indirect discriminatory practices on the grounds of gender, in these areas.

Given its broad scope, this legislation also applies to leisure goods and services. However, the most important provisions in this Law regard insurance contracts (and other financial contracts), access to health services, and contracts regarding property.

¹¹² <http://www.ds.art.pl/kluby.php?miejsce=0064&impras=0>. accessed 8 September 2008.

¹¹³ *Comissão para a Cidadania e Igualdade de Género* (CIGE). This agency is the official body that deals with gender equality problems not related to employment.

¹¹⁴ We described this legislation for Flash Report 2008-3.

¹¹⁵ Article 2, No. 1 and No. 2 of Law No. 14/2208, of 12 March 2008.

Enforcement

The rules regarding the enforcement of these legal provisions are established in the same legislation. The Law establishes the right to access to justice,¹¹⁶ the reversal of the burden of proof¹¹⁷ (Article 9 of Law No. 14/2008) and the right of NGOs and other associations related to gender rights or to the protection of consumers to participate and to promote legal actions regarding these issues (Article 11 of Law No. 14/2008).

Also, the implementation of these rules is supposed to be monitored by national institutions, such as the Commission for Citizenship and Gender Equality (CIGE). This Commission will monitor all procedures regarding the application of sanctions in relation to these rules and will register all these procedures.¹¹⁸

Case law

We have no knowledge of any case law regarding the conformity of such services to relevant national equal treatment legislation.

Role of equality bodies and NGOs

To our knowledge, equality bodies pay attention to these issues and take action regarding sex-segregated services. As an example, we will describe a recent action taken against a commercial mall, whose owner had reserved a number of ‘pink’ parking places for women, supposedly for easier parking. This situation was formally brought before the Commission for Citizenship and Gender Equality by a political party stating that it was discriminatory (in this case, related to the social stereotype that women find driving more difficult and that they go shopping more frequently). The CIGE endorsed this complaint and wrote a letter to the owner of the mall, but the result of this action is unknown¹¹⁹.

Conformity with Directive 2004/113EC

We believe that the legislation described above is in conformity with Directive 2004/113/EC, in particular Article 4(5).

Further actions

Our personal opinion on this issue is that the present legislation on this subject (both at Community level and at national level) is quite sufficient and adequate concerning the issue of gender equality in the supply and access to leisure goods and services.

Given the different traditions of the Member States in leisure activities and also the connection of some of these activities to education or to religion, we believe that the European Commission need not take any action in order to combat sex-segregated services in leisure time. In our opinion, actions in this particular area would risk having a negative effect on the gender equality principle as a whole, since they would divert the attention of public powers from other discrimination issues of major importance.

¹¹⁶ Article 8 of Law No. 14/2008, of 12 March 2008.

¹¹⁷ Article 9 of Law No. 14/2008, of 12 March 2008.

¹¹⁸ Articles 14 and 17 of Law No. 14/2008, of 12 March 2008.

¹¹⁹ This case is described at www.labor.pt (issue of 4 September 2008).

ROMANIA – *Roxana Teșiu*

General remarks

Sex-segregated services are not an issue in Romania.

Legislation

Article 10(f) of Governmental Ordinance 137 of 31 August 2000, republished, stipulates that:

‘In accordance with the ordinance herein, discrimination of a natural person, a group of persons or a legal entity, on account of their belonging or the belonging of their management to a race, nationality, ethnic group, religion, social or disfavoured category, on account of their beliefs, sex or sexual orientation, shall constitute contravention, if the deed does not fall under the incidence of criminal law, by means of:

(...)

f) denying the access of a person or group of persons to the services provided by shops, hotels, restaurants, bars, discotheques or any other service providers, whether they are in public or private property, excepting the situation when this restraint is objectively justified by a legitimate aim and the ways of reaching it are adequate and necessary.’

Enforcement

Since there is no legislation, there is no enforcement.

Case law

There is no case law on the subject.

Role of equality bodies and NGOs

There is no information available.

Conformity with Directive 2004/113/EC

Since there is no legislation, it cannot be in conformity with the Directive.

Further actions

There is no information available.

SLOVAKIA – *Zuzana Magurová*

General remarks

This issue is not regulated by law and so far it has not been the subject of any official survey, analysis or political discussion. It is not part of the agenda of any organization dealing with the issues of gender equality. For this reason, the author does not have any official data or statistics.

Some feminist non-governmental organizations monitor the provision of sex-segregated services as part of their activities. But these organizations have not yet summarized and published their observations. The information is only collected from personal interviews.

In Slovakia, differences occur in the amount of the entrance fee for certain bars and disco clubs, where women sometimes pay a reduced or no entrance fee (during certain hours or days). Differences in payment of the entrance fee also occur in certain

gay and lesbian bars. In some gay bars, only women pay the entrance fee, and, the other way around, in some lesbian bars only men pay the fee. In golf clubs or travellers' clubs, dating services and swimming pools we have seen no differences.

Legislation

There is no 'special' national legislation regulating sex-segregated services. The 'general' Anti-Discrimination Act (adopted in 2008, following amendment) applies to these issues. According to the Act on consumer protection, discrimination of the consumer by the seller is also prohibited.

Enforcement

There is no information on the enforcement of the law on this issue.

Case law

No cases involving sex-segregated services are known in Slovakia.

Role of equality bodies and NGOs

The Slovak National Centre for Human Rights (regarded as equality body) has not yet initiated any cases involving sex-segregated services.

Conformity with Directive 2004/113EC

The amendment to the Anti-Discrimination Act, which expanded the application of equal treatment to all persons providing goods and services, is in conformity with Directive 2004/113/EC.

Further actions

The problem of sex-segregated services does not require increased attention or adoption of any special measures, because it is sufficiently regulated by Directive 2004/113/EC.

SLOVENIA – Tanja Koderman Sever

General remarks

There has been no debate in Slovenia regarding sex-segregated services.

Legislation

To these issues, the Act Implementing the Principle of Equal Treatment¹²⁰ (hereinafter the AIPET) and the Consumers Protection Act¹²¹ (hereinafter the CPA) apply. The AIPET provides for equal treatment of all people irrespective of gender in the access to and supply of goods and services that are available to the public (Article 2). In addition, it provides for a legal basis for allowing different treatment based on gender regarding access to and supply of goods and services exclusively or primarily to members of one sex when different treatment is justified by the legitimate aim and if the means of achieving that aim are appropriate and necessary (Article 2a). The CPA

¹²⁰ Act Implementing the Principle of Equal Treatment (*Zakon o uresničevanju načela enakega obravnavanja*), Official Gazette RS, No. 93.

¹²¹ Consumers Protection Act (*Zakon o varstvu potrošnikov*), Official Gazette RS, Nos [98/2004](#), [126/2007](#)

also obliges enterprises to sell goods and provide services to all consumers under equal conditions (Article 25).

Enforcement

Individuals, non-governmental organizations, trade unions and other civil society organizations or other legal persons can present an initiative for hearing a case in writing or orally to the Advocate for Equal Opportunities for Women and Men (hereinafter the Advocate). After hearing the case, the Advocate issues a written opinion stating her or his findings and assessment of the circumstances of the case, deciding whether the ban on discrimination has been violated. If the alleged offender does not cooperate with the Advocate because he or she failing to give appropriate explanations or additional information relevant to the issue the opinion, the Advocate can refer the case to the competent inspection service.

One of the competent inspection services is the Market Inspectorate of the Republic of Slovenia, which can impose a fine of EUR 3 000 to 40 000 on a legal person or a sole entrepreneur for not selling goods or providing services to consumers under equal conditions (Article 77 of the CPA).

Case law

There is no case law available regarding the conformity of such services to relevant national equal treatment legislation.

Role of equality bodies and NGOs

The Advocate, working within the Office for Equal Opportunities, has decided in five cases regarding sex-segregated services in the last three years.

In 2005, a male claimant argued discrimination for not having been allowed to enter into a sauna on a day that was reserved for female guests only. The Advocate did not find any discrimination, because the sauna was reserved for female guests only once a week.

In 2006, the Advocate decided in two cases of alleged unequal treatment based on gender, concerning amounts of rewards in sport competitions. Although the amounts were lower for women, discrimination was not found.

In 2007, she decided in two cases of alleged unequal treatment. Two male claimants argued discrimination because the entrance fee to a certain night club was charged only to men. The Advocate found discrimination in both cases. In her written opinions, she emphasized that the enterprise should have indicated legitimate reasons to justify different treatment: the argument of free economic initiative is not enough to justify it. Because the alleged offender did not inform the Advocate about the measures adopted to rectify this infringement in accordance with her recommendations, she referred both cases to the Market Inspectorate of the Republic of Slovenia, which most likely imposed an administrative fine for not selling goods or providing services to consumers under equal conditions according to Article 77 of the CPA.

Conformity with Directive 2004/113/EC

Legislation and the majority of cases decided by the Advocate are in conformity with Directive 2004/113/EC. In my opinion, the decision and the grounds given in the case concerning different rewards in sport competitions for female and male winners were a bit doubtful. The Advocate did not find any discrimination because men and female winners did not start from a comparable situation, since the registration fees for male and female competitors were not the same.

Further actions

I think discrimination in relation to access and supply of sex-segregated services is not one of the most important issues to deal with at the moment. But this does not mean that it is not important. On the contrary, I think we have to raise this issue and start discussing it, since the majority of people do not even consider that different prices at hairdressers or ladies' nights, for example constitute discrimination of one of the sexes. Consumers, suppliers of goods and services and officials employed in competent inspection services must be aware that when enterprises and entrepreneurs exercise the free economic initiative guaranteed by the Constitution of the Republic of Slovenia, they are restricted by the right to equal treatment regardless of gender, which is also guaranteed by the Constitution.

The European Commission should take some measures to raise consumer awareness, suppliers of goods and services and inspectors that are competent to fine offenders.

In my opinion, Directive 2004/113/EC provides a sufficient legal framework to combat discrimination in relation to access and supply of sex-segregated leisure-related services. I think it is the responsibility of the Member States to start debates on this issue, to recognize discrimination in the provision of some services and to subsequently take their own measures. But to do this, some non-legislative measures containing guidelines and the recognition of discriminative sex-segregated leisure-related services by the European Commission would be more than welcome, since this issue does not seem to be of great political importance in Slovenia.

SPAIN – Berta Valdés

General remarks

At the moment, there is no political debate going on regarding the access and supply of sex-segregated leisure-related services.

Legislation

Law 3/2007 about equality between women and men dedicates Chapter VI to equal treatment between men and women in the access to goods and services and their supply. Article 69 states that all persons (in both public and private sectors, including public bodies) who provide goods and services to the public must satisfy the principle of equality between women and men in their transactions. The services are those offered outside the area of private and family life and the differences in treatment are to be permitted when the provision of services exclusively or primarily to members of one sex is justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. Law 3/2007 allows the government to introduce some proportionate differences related to premiums and benefits using the possibility of Article 5(2) of the Directive.

Enforcement

The consequence of the failure to comply with obligations stated in Article 69 is that the victim of discrimination in the access of services has the right to claim and obtain a real and effective compensation or payment of damages.

Case law

There is no relevant case law related to the supply of sex-segregated leisure services.

Role of equality bodies and NGOs

The institute of the woman, *Instituto de la Mujer*, has the competence to assist victims of discrimination and to assess any kind of claim or complaints on grounds of gender equality. However, the information that the institute is giving about discrimination in the access and supply of sex-segregated services is that the issue has raised no social debate.

Conformity with Directive 2004/113

This Directive was implemented by Law 3/2007 about equality between women and men, with a nearly literal transposition of the most relevant provisions of the Directive, so there is general conformity with Directive 2004/113. Moreover, Law 3/2007 includes specific protection for pregnant women, meaning that the person who provides a service is not allowed to make any enquiries about the pregnancy of a person who requires the service.

Further actions

From my point of view, and although in Spain there is not a general political debate regarding this matter or any relevant claims at the courts, it seems to me that some services are indeed sex segregated. But the lack of research on the subject and the almost complete absence of social debate make it difficult to give a diagnosis of the problem and to think of any appropriate proposals that would improve the situation.

SWEDEN – Ann Numhauser-Henning

General remarks

There is, to my knowledge, no political or public debate going on in Sweden on these issues.

Legislation

Currently, equal access to goods and services is regulated by the (2003:307) Prohibition of Discrimination Act (*lagen om förbud mot diskriminering*). The 2003 Act as such covers discrimination in various areas of society and on various grounds (gender, ethnic origin, religion or other belief, sexual orientation and disability) including gender discrimination as regards goods, services and housing. The specific rule on goods, services and housing is found in Section 9 of the 2003 Act and covers all the grounds already mentioned. For gender discrimination there is an exception in Paragraph 2: the prohibition of sex discrimination does not apply in connection with the provision of insurance services, or other services or housing, if the different treatment given to women and men respectively can be justified by a legitimate aim and the means are appropriate and necessary for achieving this aim. An example mentioned in the *travaux préparatoires* is sheltered housing for female victims of violence.

On 1 January 2009, the 2003 Act was replaced by the new (2008:567) Discrimination Act (*Diskrimineringslagen*) covering all grounds (i.e. gender, transsexual identity/expression, ethnicity, religion and other belief, sexual orientation, disability and age) and all areas of society. In this Act, Directive 2004/113/EC is implemented through the rules in Chapter 2 Section 12. A prohibition of discrimination applies to anyone (or his/her representative) who (1) outside private and family life provides goods, services or housing for the public, or (2) arranges a public meeting/gathering. Compared to the 2003 Act, the new Act has a wider scope, since the prohibition also

applies to private persons when providing goods, services or housing for a general public, for instance acting as a landlord. – The second paragraph of Section 12 still includes an express exception for gender discrimination related to the provision of insurance services as well as other services or housing, if the different treatment can be justified by a legitimate aim and the means are appropriate and necessary for achieving this aim. In this regard, nothing has changed.

Enforcement

The 2003 Prohibition of Discrimination Act is monitored by the Equal Opportunities Ombudsman/EOO (*Jämställdhetsombudsmannen/JämO*). As of 1 January 2009 JämO and three other ombudsmen will be merged into a new single body, *Diskrimineringsombudsmannen/DO*, covering all grounds.

Case law

There is no case law yet on gender discrimination and services, or on goods and housing.

Role of equality bodies and NGOs

The EOO has the competence to represent the victim in any alleged case of discrimination and thus also regarding gender discrimination and the provision of services. The same will be the case for the new DO according to the 2008 Discrimination Act as of 1 January 2009. NGOs, apart from trade unions, have no right to represent victims of discrimination under current legislation. However, according to the 2008 Discrimination Act, as of 1 January 2009, certain NGOs will be given the possibility to bring an action to court provided that they have the consent of the individual concerned. Both the DO's and the NGOs' right to bring such an action is secondary to the right of any trade union to represent their member.

Since the 2003 Act entered into force, the EOO has received a number of complaints concerning gender and services. In 2007, for instance, according to the EOO's 2007 Year Report, the EOO received a total of 78 complaints under the 2003 Act, of which 32 (11 by men) concerned services and 3 (1 by a man) housing. There were no complaints in 2007 concerning the provision of goods. At the same time, in 2007, 30 claims concerning services were assessed: in 28 of those, no discrimination was found, 1 case was settled, and in 1 case discrimination was found but was not sanctioned. Four complaints about housing were assessed; no discrimination was found. The service case settled concerned a 'dating service': discrimination was found and the claimant received SEK 25 000 (about EUR 2500). The other service case, where discrimination was found as well, concerned a show for ladies only, 'Ladies Night', where a man denied entry was found to have been discriminated against. The discrimination was, however, not found to be severe enough to prosecute or to warrant payment of damages. The EOO declared her worry that – in accordance with this decision - 'minor' discrimination can go on in Swedish society without penalties (see further below). – According to the general comment by the EOO on these issues in the 2007 Year Report, in 2005 and 2006 most complaints in this area had been presented by men, mostly concerning gender differences in age requirements to entry private clubs and in prices concerning 'Internet dating'. In 2007, there was a considerable number of complaints by women, however, having been denied availability to public and private swimming pools when bathing topless.

A number of relevant decisions in this area by the EOO are available on the EOO's webpage: www.jamombud.se/library/print/default.asp?page=%2Fjamojuridik%2Fjamosb

One statement concerns the services covered by Section 9 of the 2003 Act. The EOO found that a 'free' (no fees) chatting community on the Internet was a service under the Act, since the provider received indirect payment through advertising, etc.

The decision in case 998/2007 (2007-11-30) concerns topless swimming by two women in a public swimming –pool. The EOO found that not allowing topless swimming in the facility was within the exception in Section 9 Paragraph 2 of the 2003 Act and referred to the 'reasons –of privacy and decency' argument in part 16 of the preamble of Directive 2004/113/EC.

The decision in case 833/2006 (2006-12-20) regards differential price setting by a hairdresser. The price for women was SEK 180, compared to SEK 160 for men. The defendant's argument for the higher price for women was that it is more time consuming to cut a woman's hair. The EOO found it to be discriminatory to have gendered price setting, whereas it was acceptable to adjust prices at the individual level according to the time consumed. However, since the hairdresser had already changed prices to a gender-neutral price (SEK 170) and since the damage caused on the alleged victim was too small to warrant payment of damages, no action was taken and the case was closed although discrimination had been found.

In another decision (no reference number given) the EOO found the exception rule in Section 9 Paragraph 2 of the 2003 Act applicable to a situation where a man was denied entrance to a night club arranging a night for lesbian women only. No discrimination was found, since the need to create 'a sheltered zone' for lesbian women was found to justify the 'ladies only' rule.

Conformity with Directive 2004/113EC

In my opinion, the decisions by the EOO on the scope of the exception rule in Swedish law implementing the Directive is within the scope of Article 4(5). There can be some debate, however, on the implementation of Article 14 in the Directive, taking into account the interpretation of the EOO in various cases that small differences in price setting (and such), although discriminatory, are too 'minor' to act against. This does not, in my opinion, seem to be in accordance with Community law. On the contrary, to make Community law effective – in this case, Directive 2004/113/EC –it is necessary to act against these cases of discrimination in society as well. Though the economic damage is minor, the 'offence' suffered by the victim can (and must) still be remedied.

Further actions

I do not believe that any further action by the European Commission is necessary at this stage. However, as argued above, it is necessary to raise awareness that non-justified sex-segregated pricing, etc., of services is unacceptable and that discrimination deserves to be remedied, even if the relevant economic loss is 'minor' in character.

General remarks

In the UK, it is not unusual for swimming facilities to offer segregated male and female sessions, and for mixed-sex gyms to have separate areas set aside for women to use in the absence of men if they wish to do so. Some gyms are also open to women only, while many private boxing and other sports clubs are *de facto*, if not formally, exclusively male preserves. ‘Ladies’ nights’ are commonplace at many nightclubs, allowing women cheap or free entrance or reduced prices for drinks. Golf clubs and private members’ clubs sometimes practise sex discrimination, excluding women from membership (or full membership) or restricting them to particular areas of club premises. Hairdressers regularly charge more for cutting women’s hair though generally hairdressers’ and (traditionally male) barbers’ shops will cut both men’s and women’s hair. Some ‘ladies’ cab’ services are staffed exclusively by women for women (and children). Toilet facilities tend to be sex-segregated though mixed sex toilets are becoming more commonplace in restaurants in larger cities. Such political debate as does occur tends to be directed at mixed-sex hospital wards (a very contentious topic given longstanding government commitments to reduce or eliminate these) and golf clubs which discriminate against women. Much less political focus is directed towards ‘ladies’ nights’ and the like, although they do attract occasional comment in the press.

Legislation

Leaving aside the educational context, the Sex Discrimination Act 1975 (Section 1 having defined direct and indirect discrimination), prohibits discrimination by ‘any person concerned with the provision (for payment or not) of goods, facilities or services to the public or a section of the public ... against a woman [or man] who seeks to obtain or use those goods, facilities or services—

(a) by refusing or deliberately omitting to provide her with any of them,
or

(b) by refusing or deliberately omitting to provide her with goods, facilities or services of the like quality, in the like manner and on the like terms as are normal in his case in relation to male members of the public or (where she belongs to a section of the public) to male members of that section (...)

Harassment is also prohibited where the provision of the goods, service or facility falls within EU law. Section 29(3) provides that:

‘For the avoidance of doubt it is hereby declared that where a particular skill is commonly exercised in a different way for men and for women it does not contravene Subsection (1) for a person who does not normally exercise it for women to insist on exercising it for a woman only in accordance with his normal practice or, if he reasonably considers it impracticable to do that in her case, to refuse or deliberately omit to exercise it.’

Further exceptions are provided by Section 34, as far as relevant here, in relation to ‘voluntary bodies’ whose ‘activities (...) are carried on otherwise than for profit’, which are permitted to restrict membership and the provision of ‘benefits, facilities or services’ etc. to persons of one or other sex, subject to (where EC law is applicable) a proportionality requirement. Section 45 SDA contains further exceptions permitting, insofar as is relevant here, discrimination where ‘male users are likely to suffer serious embarrassment at the presence of a woman’ or ‘a user is likely to be in a state of undress and a male user might reasonably object to the presence of a female user’, or

‘physical contact between the user and any other person is likely, and that other person might reasonably object if the user were a woman’ (or vice versa in any case). This is, again, subject to a proportionality requirement where EC law is applicable.

Because the courts interpreted Section 29 so not to apply to the actions of a public authority other than those which can be carried out also by private sector actors, Section 21A prohibits discrimination by public authorities, Section 29(2) defining public authorities widely to cover ‘any person who has functions of a public nature’. Section 21A provides a table of exceptions which are applied only to the extent that they are compatible with EU law (that is, to the extent that they are permitted by Article 4.5 of the Directive or, as a form of positive action under Article 6). They include, insofar as relevant here:

8	The provision of a service for one sex only where only persons of that sex require the service.
9	The provision of separate services for each sex where a joint service would or might be less effective.
10	The provision of a service for one sex only where— (a) the service is also provided jointly for both sexes, and (b) if the service were provided only jointly it would or might be insufficiently effective.
11	The provision of a service for one sex only where— (a) if the service were provided for both sexes jointly it would or might be less effective, and (b) the extent to which the service is required by the other sex makes it not reasonably practicable to provide separate services for that sex.
12	The provision of separate services for each sex in different ways or to different extents where— (a) if the service were provided for both sexes jointly it would or might be less effective, and (b) the extent to which the service is required by one sex makes it not reasonably practicable to provide the service for that sex in the same way or to the same extent as for the other sex.
13	Action taken for the purpose of assisting one sex to overcome— (a) a disadvantage (as compared with the other sex), or (b) the effects of discrimination.

Enforcement

The legislation is enforced for the most part by individuals who must, however, litigate in the county court (or, occasionally, the High Court). In either case, they are at risk of huge costs awards if they are unsuccessful. The Equality and Human Rights Commission (formerly the Equal Opportunities Commission) also has an enforcement role, but discrimination of at least some of the forms outlined in the first section above is relatively commonplace.

Case law

There have been a number of cases on discrimination in the area of goods and services, *James v Eastleigh* [1990] 2 AC 751, for example, establishing that charging different levels of fees for male and female swimming pool users (where this was based on national pensionable ages) breached the Sex Discrimination Act 1975. There would in my view be no legal justification for the charging of differential fees as regards entry to nightclubs, use of online or other dating services etc., unless the service

provider was providing services other than to the 'public' or a section of it. This turns on whether a membership club which provides services to its members actually selects its members individually, and it is this 'private' exception which allows discrimination by 'private' members clubs. Otherwise, the operation of sex-segregated services (such as a 'ladies-only' gym or a single-sex swimming session) turns on the application of Sections 29(3), 34 and 35. Another interesting case is *Gill v El Vino Co Ltd* [1983] QB 425, in which the Court of Appeal ruled that the operation of a 'men-only' area in a wine bar (men were permitted to stand at the bar whereas women were required to sit at a table) breached the Sex Discrimination Act.

Role of equality bodies

The focus of the EHRC and its predecessor body (the EOC) has not been on this area, which has traditionally been regarded as less significant than employment-related cases. To my knowledge, there have not been any formal investigations on sex-segregated services, as distinct from (for example) discrimination against women by the providers of banking services. The EHRC/EOC do not themselves determine cases (though they may issue non-discrimination notices after conducting formal investigations) and they have not supported any reported cases in the area.

Conformity with Directive 2004/113/EC

In my view, domestic law is in conformity with Article 4(5) of Directive 2004/113/EC, though it can be argued that a wider scope for positive action would also be consistent with the Directive. I am thinking in particular of single-sex cab services, which are not in my view lawful under the SDA.

Further actions

My own opinion is that single-sex provision is acceptable where (1) it is targeted at, and proportional to, reducing sex-related disadvantage or (2) it is designed to preserve decency or for reasons of safety and does not result in significantly disparate impact between the sexes. In my view, the existence of 'ladies' nights' designed to attract men into bars by promising plenty of available women lured by free entry and/or cheap drinks is demeaning. I find it difficult to argue, however, that women should be required to pay more in such cases given the existing gender wealth gaps.

In my view, the existence of sex-segregated services is far from being one of the more important issues facing the EU, though I do think that male networks of power which flourish, for example, in members' only clubs is a significant problem. Having said this, in my view, women's experience of glass ceilings is likely to be more connected with unequal childcare responsibilities than the existence of male golf clubs.

Annex I

European Network of Legal Experts in the field of Gender Equality Report Sex-segregated Services 2008

Questionnaire

Introductory remarks

This will be a report with a compilation of what is happening (or not) in this area in the Member States. In this report, discrimination (in particular, direct sex discrimination) in relation to access and supply of sex-segregated leisure-related services will be addressed (discos, dating services, golf clubs, swimming pools, travellers' clubs etc.). The scope of this report is limited and will not include the following issues: sex-segregated conditions, premiums etc. in insurance, religious issues and health services. The report should mainly cover services. Goods should only be covered as far as they are closely related to the services described (for example, free drinks for women during certain hours in bars).

General question

1. In some countries there is a debate going on regarding sex-segregated services, such as travellers' clubs or golf clubs to which only men or only women are admitted, or men being excluded from public swimming pools at specific hours. A related issue is the setting of different prices for male and female access to discos, for example (including at 'ladies' nights') or for hairdressing services, or women paying less for going to football matches.
Is there any (political) debate going on in your country regarding these issues and if so, what are the main issues in the debate?

Relevant legislation

- 2.1 Is there any national legislation applicable to these issues? Please specify which legislation applies, its scope and whether there are specific exceptions applicable to such services.
- 2.2 Is this legislation enforced and if so, how?

Relevant case law

3. Is there any case law available regarding the conformity of such services to relevant national equal treatment legislation?
Please describe the most relevant cases and those that in your view are the most interesting.

Role of equality bodies and NGOs

4. Have equality bodies or NGOs taken any action or initiated any cases regarding sex-segregated services? If this is the case, please describe the actions or cases.
Have equality bodies made any decisions in cases or settled any cases?

Conformity with Directive 2004/113/EC

5. Do you consider the legislation and the cases you describe under 2, 3 and 4 to be in conformity with Directive 2004/113/EC, in particular Article 4(5)?

Your own opinion on the need for any further action

- 6.1 What is your own opinion on this issue?
- 6.2 Do you believe that the European Commission should take any action in order to combat sex-segregated services in leisure time? Should proactive measures be taken or any other kind of measures?
- 6.3 If so, what kind of actions would you suggest?

