BULLETIN
LEGAL ISSUES IN GENDER EQUALITY

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The information contained in this Bulletin reflects, as far as possible, the state of affairs on 15 March 2007.

Introduction – some general trends

The European Year of Equal Opportunities for All started at the European level with an Equality Summit held in Berlin on 30 January. This summit was opened by Vladimir Špidla, EU Commissioner for Employment, Social Affairs and Equal Opportunities and Ursula von der Leyen, German Minister for Family Affairs, Senior Citizens, Women and Youth. This first major event of the European Year brought together EU Ministers, members of equality bodies, representatives of trade unions, employers and civil society. The Network of legal experts in the fields of employment, social affairs and equality between men and women was represented as well by Ms De Simone. Some 450 persons were invited. The summit had three goals: to launch the European Year, identify specific measures to realize equal opportunities in Europe and share good practices.[1]

A new website on the European Year was launched with information in German, English and French.[2] The major aims of the European Year are to provide information to citizens of their rights to non-discrimination and equal treatment, to promote equal opportunities for all and to initiate a debate on the benefits of diversity. Most activities will take place at national, regional and local level in the 27 Member States and in Iceland, Liechtenstein and Norway. The national activities are identified and implemented by National Implementing Bodies. They define the national strategies and priorities and identify specific activities to meet them. This Bulletin provides information on some conferences at national level and projects in the framework of the European Year.[3]

A survey on discrimination in the European Union was carried out for the preparation of the European Year.[4] It shows that a large proportion of Europeans are of the opinion that discrimination is widespread in their country. Some 40 % of the Europeans consider that discrimination based on gender occurs.[5] A large majority is of the view that more women are needed in management positions (77 %) and as Members of Parliaments (72 %). There is broad support for measures on equal opportunities in employment. The survey shows that the level of awareness of anti-discrimination legislation is quite low. Only a third (32 %) of European citizens know their rights should they fall victim to discrimination or harassment.

Furthermore, different studies are being carried out at European level. This concerns for example a mapping study on existing national legislative measures and their impact in tackling discrimination - outside the field of employment and occupation - on the grounds of sex, religion or belief, disability, age and sexual orientation[6] and a study on multiple discrimination in the European Union.

The report of the European Commission on equality between men and women 2007 was published in February 2007.

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[1] See http://ec.europa.eu/employment_social/eyeq/index.cfm?cat_id=LY.
[2] See http://ec.europa.eu/employment_social/eyeq/index.cfm?cat_id=SPLASH.
[3] See for example the reports concerning Bulgaria, Estonia, Liechtenstein, Romania and Slovenia.
[4] *Discrimination in the European Union*, Special Eurobarometer 263, European Commission, January 2007. See for a summary: http://ec.europa.eu/employment_social/eyeq/uploaded_files/documents/eurobarometer_report_summary_en.pdf.
[5] *Discrimination in the European Union*, Special Eurobarometer 263, European Commission, January 2007, p. 10.
[6] A. McColgan, J. Niessen, F. Palmer, *Comparative analyses on national measures to combat discrimination outside employment and occupation. Mapping study on existing national measures - and their impact in – tackling discrimination outside the field of employment and occupation on the grounds of sex, religion or belief, disability, age and sexual orientation, VT/2005/062*, European Human Consultancy & Migration Policy Group, December 2006 and A. Masselot *et al.*, *Comparative analysis of existing impact assessments of anti-discrimination legislation. Mapping Study on existing national legislative measures - and their impact in – tackling discrimination outside the field of employment and occupation on the grounds of sex, religion or belief, disability, age and sexual orientation, VT/2005/062*, European Human Consultancy & Migration Policy Group, December 2006.
See http://ec.europa.eu/employment_social/fundamental_rights/public/pubst_en.htm#stud.

It includes various recent statistics on women and men in (un)employment, in education, on gender segregation and pay gaps, percentages of men and women in decision-making positions, etc.[7] The main two identified areas of concern are growth and employment, and demographic change. According to this report, not all Member States had fulfilled their obligations as regards the transposition of Directive 2002/73/EC at the end of 2006. Four procedures against Member States were still running at the end of 2006.

Not surprisingly, important gender gaps disadvantaging women remain in the labour market. However the rate of female employment is growing steadily, even faster than that of men and stood at 56.3 % in 2005. If this development continues, the Lisbon objective of 60 % female employment by 2010 will be attained.

Yet important disparities and inequalities remain and their consequence is a persistent gender pay gap. Women are still paid 15 % less than men for every hour worked on average. In the private sector women in 2002 earned on average 25 % less than men, according to the Group of experts on Gender, Social Inclusion and Employment, which has recently published a report on the gender pay gap.[8] The authors of the report conclude that despite an extensive legal EU framework with regard to equal pay, the impact depends on the effectiveness of the enforcement, which may be problematic. Moreover, rules of procedures for application may be missing, especially with respect to the principle of equal pay for work of equal value.

Similar conclusions are drawn by the Network of legal experts in the fields of employment, social affairs and equality between men and women, which has also recently published a report on Legal Aspects of the Gender Pay Gap.[9] The aim of this report is not so much to provide a detailed overview of the national equal pay legislation,[10] but rather to help reduce the often blurred discussion about the 'gender pay gap' to its essence and to reflect on the question of how law and legal instruments may help to close the gap. One of the conclusions is that the gender pay gap is primarily a socio-economic problem that will by no means be resolved by legal rules alone. However, the experts do envisage a role to be played by the law, primarily by providing a framework for all the actors involved. Indeed, by explicitly prohibiting direct and indirect pay discrimination and enforcing this prohibition effectively, and by imposing obligations concerning equal pay upon the social partners and employers in particular, law may be a useful tool. However, also these experts conclude that the main problem is how the law is put into practice and is enforced.

The contributions of the experts of the network to this Bulletin show a great variety of actual issues in the different Member States and the EEA countries, both as regards legislation and case-law. Different examples of adopted legislation and proposals in order to enforce gender equality are reported. For example in Belgium, a Mainstreaming Act recently entered into force, which is aimed at enforcing the Beijing resolutions of 1995 and at integrating the gender dimension in all federal policies. In Iceland, a proposal aimed at fighting the gender pay gap is discussed. An amendment of the Gender Equality Act would give an employee the right to provide information at any time about his/her remuneration to a third party. Companies would be forbidden to impose rules on employees to remain silent about their remuneration. Such a provision could contribute to increased pay transparency, which is often still lacking.

Legislation aimed at a more equal representation of men and women in politics has been adopted in France, with parity mandatory on certain lists.

As regards the reconciliation of work and family life, interesting developments are reported as well. In Spain an Act on the Promotion of Personal Autonomy and Care for Persons in Situations of Dependency has been adopted. This law establishes dependency care assistance in the form of for example services or financial support. In Ireland, the length of maternity leave and additional (unpaid) maternity leave has been increased. The same is true for adoptive leave and additional adoptive leave.

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[7] European Commission, *Report on equality between men and women*, Luxembourg: Office for Official Publications of the European Communities, 2007, KE-AJ-07-001-EN-C, COM(2007) 49 final.

[8] Group of experts on Gender, Social Inclusion and Employment, *The gender pay gap – Origins and policy responses. A comparative review of 30 European countries*, Luxembourg: Office for Official Publications of the European Communities, 2006.

[9] Network of legal experts in the fields of employment, social affairs and equality between men and women, *Legal Aspects of the Gender Pay Gap*, February 2007. See: http://ec.europa.eu/employment_social/gender_equality/legislation/report_equal_pay.pdf.

[10] A general overview was presented in the Network's Bulletin 1/2004, available at http://ec.europa.eu/employment_social/gender_equality/legislation/bulletin_en.html.

The minimum and maximum payments of maternity or adoptive benefits have been increased. In Cyprus an amendment to increase the length of maternity leave up to 25 weeks is pending. In Malta, family-friendly policies and measures are now applied to the whole public service. The pressure to develop similar strategies in the private sector is increasing. In Italy, different positive action measures have been taken such as extended possibilities to adapt working time aimed at a better balance of work and care. In Estonia, also fathers, not only mothers, are now entitled to parental benefit. However, the contributions of some experts also show drawbacks and problems in this field. In some Member States, for example, statistics show that the allocation of a low or even no parental benefit during parental leave has the effect that such leave is taken predominantly by mothers and much more seldom by fathers. Another problem occurs when different provisions apply to parents who opt for parental leave immediately after the period of maternity and adoption leave and those who do not choose this option. Sometimes amendments of the labour law code fall short in addressing the issue of reconciliation of work and family life or a gender impact assessment of the proposals is lacking. In Greece, some interesting judgments uphold the right to parental leave for both men and women, interpreting the Greek Constitution and legislation in the light of EC law. However, a few recent cases regarding transitory rules did not grant the same rights as regards parental leave to female judges.

It is also reported that a reform of the unemployment insurance might amount to indirect sex discrimination by increasing the minimum requirement from 70 to 80 hours of work during a month in order to qualify for an unemployment benefit. Part-time workers, mostly women, will have more difficulties fulfilling this requirement.

The transposition process of Directives 2000/78/EC and 2002/73/EC is still ongoing in some Member States. Some draft proposals have been rejected. In many states the transposition of Directive 2004/113/EC has now begun. Some experts report problems regarding the use of actuarial factors based on sex, for instance in a pension system. Reluctance to restrict the contractual freedom of private parties in the access to and supply of goods and services has also been pointed out.

In quite some contributions to this Bulletin attention is paid to specialized bodies. In some countries, a body covering all grounds of discrimination has been established.

Many interesting cases on gender equality are described in the contributions. Worth mentioning is that the French *Cour de Cassation* has for the first time explicitly applied the concept of indirect discrimination in a decision. Even if the way in which an advantage granted to workers was apparently neutral, it is indirect discrimination in relation to their health. An Italian case confirms the strong protection of women against dismissal during their pregnancy. In this case the woman was working on a fixed-term contract of vocational training and employment. The compensation included not only the remuneration from the date of dismissal until the end of the contract, but also the period of suspension of the working relationship during maternity leave. In Norway, a dismissal of an employee during her trial period after she had notified her employer of her pregnancy was considered invalid by a civil court. The employee received compensation which included loss of income, loss of maternity benefits due to her loss of income and future loss of income for a period of six months.

State of affairs in EC policy instruments related to gender equality issues

The most recent Official Journal of the European Communities can be found on the following website: http://europa.eu.int/eur-lex/lex/JOIndex.do?ihmlang=en.

See generally Eurlex: http://eur-lex.europa.eu/en/index.htm.
See also PreLex, the database on inter-institutional procedures:
http://europa.eu.int/prelex/apcnet.cfm?CL=en.

Proposal for a Directive of the European Parliament and the Council on working conditions for temporary work. COM (2002) 149 final — 2002/0072(COD), OJ C/203E/1, 27 August 2002.
See http://europa.eu.int/prelex/detail_dossier_real.cfm?CL=en&DosId=172619.
See http://europa.eu.int/prelex/detail_dossier_real.cfm?CL=en&DosId=186510#364993.

Opinion of the European Economic and Social Committee on the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions A Roadmap for equality between women and men 2006-2010, COM(2006) 92 final, OJ C 318, 23 December 2006, p. 173–179.
See http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/c_318/c_31820061223en01730179.pdf.

Report of the Committee on Women Rights and Gender Equality on a Roadmap for equality between men and women (2006-2010), (2006/2132/(INI)), PE.378.533v02-00, A6-0033/2007.
See http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A6-2007-0033+0+DOC+XML+V0//EN&language=EN.

Opinion of the Commission pursuant to Article 251(2), third subparagraph, point c) of the EC Treaty on the European Parliament's amendments to the Council's common position on the proposal for a Regulation of the European Parliament and the Council establishing a European Institute for Gender Equality amending the proposal of the Commission pursuant to Article 250 (2) of the EC Treaty, COM/2006/0860 final - COD 2005/0017, 15 December 2006
See http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0860en01.pdf.

Regulation (EC) no. 1922/2006 of the European Parliament and of the Council of 20 December 2006 on establishing a European Institute for Gender Equality, OJ L 403, 20 December 2006, p. 9–17.
See http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_403/l_40320061230en00090017.pdf.

Addendum to Regulation (EC) no. 1922/2006 of the European Parliament and of the Council of 20 December 2006 establishing a European Institute for Gender Equality (OJ L 403, 20 December 2006), OJ L 54, 22 February 2007, p. 3.
See http://eur-lex.europa.eu/LexUriServ/site/en/oj/2007/l_054/l_05420070222en00030003.pdf.

Council of the European Union, Appointment of the Management Board of the European Institute for Gender Equality, 25 January 2007, 5652 SOC 28.
See http://register.consilium.europa.eu/servlet/driver?lang=EN&ssf=DATE_DOCUMENT+DESC&fc=REGAISEN&srm=25&md=400&typ=Simple&cmsid=638&ff_TITRE=Gender+Equality&ff_FT_TEXT=&ff_SOUS_COTE_MATIERE=&dd_DATE_REUNION=&rc=3&nr=123&page=Detail

Report from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on equality between women and men – 2007, COM (2007) 49 final, 7 February 2007

See http://eur-lex.europa.eu/LexUriServ/site/en/com/2007/com2007_0049en01.pdf.

Communication from the Commission to the European Parliament and the Council, Gender Equality and Women Empowerment in Development Cooperation, COM (2007) 100 final, SEC (2007)332, 8 March 2007.
See http://eur-lex.europa.eu/LexUriServ/site/en/com/2007/com2007_0100en01.pdf.

Other relevant news and publications:

Expert Group on Gender, Social Inclusion and Employment, **Gender inequalities in the risks of poverties and social exclusions for disadvantaged groups in thirty European Countries,** (9 February 2007), European Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities, Unit G.1, July 2006, Catalogue no. KE-76-06-201-EN-C; ISBN 92-79-02572-4.
See http://ec.europa.eu/employment_social/emplweb/gender_equality/publications_en.cfm.

A. McColgan, J. Niessen, F. Palmer, **Comparative analyses on national measures to combat discrimination outside employment and occupation. Mapping study on existing national measures - and their impact in – tackling discrimination outside the field of employment and occupation on the grounds of sex, religion or belief, disability, age and sexual orientation**, VT/2005/062, European Human Consultancy & Migration Policy Group, December 2006
See http://ec.europa.eu/employment_social/fundamental_rights/public/pubst_en.htm#stud.

A. Masselot et al., **Comparative analysis of existing impact assessments of anti-discrimination legislation. Mapping Study on existing national legislative measures - and their impact in – tackling discrimination outside the field of employment and occupation on the grounds of sex, religion or belief, disability, age and sexual orientation**, VT/2005/062, European Human Consultancy & Migration Policy Group, December 2006.
See http://ec.europa.eu/employment_social/fundamental_rights/public/pubst_en.htm#stud.

Expert Group on Gender, Social Inclusion and Employment, **The gender pay gap – Origin and policy responses**, (9 February 2007), European Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities, Unit G.1, July 2006, Catalogue no. KE-76-06-200-EN-C - ISBN 92-79-02565-1
See http://ec.europa.eu/employment_social/emplweb/gender_equality/publications_en.cfm.

Network of legal experts in the fields of employment, social affairs and equality between men and women, **Legal Aspects of the Gender Pay Gap**, February 2007.
See http://ec.europa.eu/employment_social/gender_equality/legislation/report_equal_pay.pdf.

State of affairs in equality cases pending before the Court of Justice

All cases, which have been decided or for which an opinion has been delivered, can be found on the website of the Court of Justice: http://curia.eu.int/index.htm.
Recent case law specifically relating to gender equality can also be found on the following website: http://europa.eu.int/comm/employment_social/equ_opp/rights/jurisprud.html.

1. Cases decided
No relevant cases decided between 11 December 2006 and 15 March 2007.

2. Cases for which an opinion has been delivered
Case C-227/04 Lindorfer
Date of deposit: 2 June 2004
Opinion: 8 September 2005
Second Opinion: 30 November 2006
Article 141 EC – Pension rights

3. Pending cases
Case C-116/06 Kiiski
Date of deposit: 28 February 2006
O.J.: 25.05.2006/C 121/5
Opinion: 15 March 2007
Directive 76/207/EEC and Directive 2002/73/EC

Case C- 231/06 Jonkman
Date of deposit: 22 May 2006
O:J.: 12.08.2006/C 190/9
Directive 79/7/EEC

Case C- 232/06 Vercheval
Date of deposit: 22 May 2006
O:J.: 12.08.2006/C 190/10
Directive 79/7/EEC

Case C- 233/06 Permesean
Date of deposit: 22 May 2006
O.J.: 12.08.2006/C 190/11
Directive 79/7/EEC

Case C-267/06 Tadao Maruko
Date of deposit: 20 June 2006
O.J.: 16.09.2006/C 224/20
Directive 2000/78/EC – Barber

Case C-300/06 Voß
Date of deposit: 6 July 2006
O.J.: 14.10.2006/C 249/2
Article 141 EC – Remuneration for additional work

Case C-460/06 Paquay
Date of deposit: 17 November 2006
O.J.: C 326, 30.12.2006, p. 44–45
Directive 92/85/EEC – Dismissal

Case C-506/06 Mayr
Date of deposit: 14 December 2006
O.J.: C 56, 10.03.2007, p. 14
Directive 92/85/EEC – Pregnant worker

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News from the member states

AUSTRIA
Anna Sporrer

Official Journals, court decisions, initiatives for legislation and other parliamentary materials are available in German on the Internet at: http://www.ris.bka.gv.at.

1. Case-law
1.1. Constitutional Court: the Child Care Benefit Act is constitutional
The Constitutional Court (*VfGH*) has dismissed an application by the Supreme Court to repeal a provision of the Austrian Child Care Benefit Act stating that the provision according to which the entitlement to receive child care benefit expires upon the birth of the following child is constitutional. In its application for review, the Supreme Court expressed the following views. A person in the same situation as the claimant, who had given birth to two children within a relatively short period of time and who had lost in full her entitlement to the child care benefit paid for the first child after the second child was born, was objectively treated unequally as compared to others who had care obligations for only one child and received the full amount of the child care benefit and also as compared to persons who received a supplement of 50 % to the child care benefit after a multiple birth. Thus the principle of equal treatment has been violated.

The Constitutional Court took an opposing view and pointed out that the entitlement period for child care benefits of 30 and/or 36 months took into account the average situation in Austria, namely an average interval between childbirth of 3.3 years, so that it was permissible for legislators to rely on this fact. The Constitutional Court found that the legislators were not obliged to assess different amounts of benefit to be paid on a case-by-case basis or for certain groups depending on the individual circumstances of the case. Legislators were thus free to decide to what extent they wanted to implement their intentions (in this case compensation for care services and mitigation of the financial burden).[11]

1.2. High Administrative Court
1.2.1. Direct application of Community law
The High Administrative Court has set aside a notice issued by a regional health insurance company by means of which the application for repayment of unemployment insurance contributions submitted by a male employee was dismissed. The complainant had stated that an exemption from the obligation to pay unemployment insurance contributions was provided for women upon completion of their 56th year and to men only after completion of their 58th year. Invoking Directive 79/7/EEC and the decision by the European Court of Justice of 4 March 2004 in case C 303/02 (Haackert), the Administrative Court found that this provision under unemployment insurance law bore no necessary and objective relation to the difference in retirement ages. Furthermore, the benefit system under unemployment insurance law, as opposed to the benefit system under the state pension insurance scheme in Austria, did not provide for different age thresholds for women and men. In the opinion of the Administrative Court, the provision referred to resulted in unlawful discrimination on grounds of gender pursuant to Directive 79/7/EEC, so that the public authority would have been obliged to take any measure possible to prevent such discrimination, in particular by applying the provisions for the benefit of the disadvantaged group.[12]

1.2.2. No age discrimination thanks to recognition of length of service
The Administrative Court has dismissed a complaint filed by a male civil servant who claimed he had been discriminated against on grounds of age by the recognition of his seniority in the remuneration system and the holiday regulations for civil servants that provide for automatic pay scale rises and increased holidays after 25 years of service.

[11] *VfGH* of 4 October 2006, G 4306 et al.
[12] *VwGH* of 20 December 2006, 2005/08/0057.

The Administrative Court justified its decision by invoking the judgment of the European Court of Justice of 3 October 2006 in case C 17/05 (Cadman), in which the ECJ recognized that it was the legitimate objective of the remuneration policy to reward, among other things, acquired professional experience that enables an employee better to perform his/her duties. Taking into consideration that the ECJ decision referred to dealt with a case of gender discrimination, the Administrative Court concluded that, as the considerations of the ECJ were decisive for a question concerning lawful discrimination on grounds of gender, the decision would apply all the more to the core issue of discrimination on grounds of age. In the view of the Administrative Court the ECJ's considerations could be equally applied to and be decisive for the case under review which dealt exclusively with the question of whether unequal treatment on grounds of age was justified.[13]

1.2.3. Unequal treatment under state and company pension schemes

In addition, the Administrative Court has dismissed a complaint filed by a female doctor who had built up pension rights both under the state pension scheme pursuant to the General Act on Social Insurance and under the welfare fund of the medical association. Under the state pension scheme, she was entitled to an old-age pension starting from her 60th birthday, while under the welfare fund of the regional medical association her entitlement started only after having turned 65. As her male colleagues were entitled to receive both benefits, those under the state pension scheme and those under the welfare fund, without any deductions, as soon as they reached the statutory retirement age of 65, the complainant felt discriminated against pursuant to Directive 76/207/EEC. However, the regulations of the welfare fund of the regional medical association provided for the option of early retirement for female doctors in exchange for certain reductions in the pension payments. The Administrative Court found that these reductions were not discriminatory, but actually an improvement of the situation of female members of the medical association, the more so as there was no possibility at all for male members to receive pension benefits prior to their 65th birthday. The regulation had been preceded by a 1993 decision of the Constitutional Court repealing the lower retirement age of female members of the medical association. However, the retirement age for female doctors under the welfare fund was not consequently raised for all women doctors, but only for certain women during a transitional period. Against this background, the Administrative Court dismissed the complaint as being unjustified.[14]

2. International law: Withdrawal of a reservation to the CEDAW

The reservation made by Austria to Article 11 of the Convention on the Elimination of all Forms of Discrimination against Women upon ratification has been withdrawn with regard to night work performed by women. At the same time Austria clarified that the reservation concerning the special protection of working women is being maintained.[15]

BELGIUM

Jean Jacqmain

1. Legislation

1.1. The 'Mainstreaming' Act

The new Act aiming to enforce the resolutions of the 1995 Beijing Conference and to integrate the gender dimension into all federal policies[16] was promulgated on 12 January 2007 and published in the *Moniteur belge/Belgisch Staatsblad* of 13 February.

1.2. Other pending Bills

A general (federal) election has been called for 10 June which means that the federal parliament was dismissed at the end of April.

The Bill amending the Harassment Act[17] has been adopted and should be published shortly.

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[13] *VwGH* of 14 December 2006, 2005/12/0235.
[14] *VwGH* of 21 November 2006, 2003/11/0047.
[15] Official Journal Part III no. 154/2006.
[16] See Bulletin no.2/2006.
[17] See Bulletin no.1/2007.

The proposed new set of anti-discrimination laws[18] has become caught in a cross-fire of criticism, which gave rise to a battle of amendments and counter-amendments from the political parties represented within the federal coalition. However, it was adopted just in time and its publication is expected as well.

2. Case-law

On 6 November 2006, the Labour Court of Brussels[19] referred to the Court of Justice for preliminary ruling in case C-460/06, *Paquay*. The facts of the case are worth reporting.
Ms. Paquay had been employed for eight years as a secretary at a firm of architects when she took maternity leave until the end of December 1995. She was dismissed on 21 February 1996, with a notice period of six months. Six weeks into this notice period, the employer terminated the contract and paid the remuneration due for the remainder of the six months. The employee immediately summonsed her former employer in the Labour Court, claiming that the notice period had been too short (a claim that the Court was to find ungrounded) and that she was entitled to fixed damages (equal to six months' remuneration) as the dismissal was related to her maternity.

That the Labour Court of Brussels did not rule on the case before 2006 appears to be entirely due to the claimant's inertia, which remains unexplained. However, the legal aspects of the dispute are extremely interesting. Under Article 40 of the Working Conditions Act of 16 March 1971, it is prohibited for an employer to pursue any action aimed at terminating the employment contract from the moment when he/she has been informed of an employee's pregnancy up to the end of the month which follows the expiration of her maternity leave, unless it is for reasons completely unrelated to the physical condition which results from pregnancy or delivery; in case of dispute, the employer carries the full burden of proof. It is obvious that Ms. Paquay was dismissed after the period of protection had expired.

However, the notion 'pursuing any action aimed at terminating the contract' has given rise to some scattered case-law, among which certain decisions[20] admitting that it covered constructive dismissal. The employee stated that during her pregnancy the employer had advertised her position aiming to replace her not only when she took maternity leave, but also when she had served her notice period. If the employee would have induced the Labour Court to engage in a more thorough discussion of the eventuality of constructive dismissal, domestic law might have sufficed to grant her redress. Given the claimant's passive attitude, the Court instead turned to Community law, as Article 40 of the Act of 16 March is considered to implement Article 10 of Directive 92/85/EEC. This gave rise to the first question which the Labour Court of Brussels submitted to the ECJ: does the prohibition mentioned in Article 10 extend to an intention to dismiss as evidenced by the steps which an employer takes to replace the employee?

Should the ECJ's answer be negative, the Labour Court also envisaged that the employer's questionable behaviour might be construed as gender discrimination under Directive 76/207/EEC (as it stood at the time of the facts); indeed more and more Belgian courts are aware that adverse treatments related to maternity must be analyzed in the light of Directive 76/207/EEC as well as of Directive 92/85/EEC, following the ECJ's reasoning in C-438/99 *Jiménez Melgar*. However, the domestic law on gender equality in working conditions (at the time of the facts, the Act of 4 August 1978, and the present Act of 7 May 1999) does not provide for any fixed damages as redress for acts of discrimination. Consequently, with its second question to the ECJ the Labour Court wished to find out whether, if the employee's dismissal had to be regarded as gender-related discrimination, fixed damages at least equal to those provided in Article 40 of the Act of 16 March 1971 (as the implementation of Directive 92/85/EEC) should be awarded.

[18] See Bulletin no. 1/2007.
[19] *Rôle général* no. 44.748/97, unreported.
[20] Including the *Cour de cassation*'s judgment of 27 September 1982, *Chroniques de droit social*, 1982, p. 485, annotated by J. Jacqmain.

The expert wishes to remark that the Labour Court of Brussels made no mention of Article 11 of Directive 92/85/EEC or Article 6 of Directive 76/207/EEC (now Article 6.2, integrating the ECJ's reasoning in C-271/91 *Marshall II*): i.e. is a Member State at liberty to limit the amount of the damages which may be awarded in implementation of Article 10 of Directive 92/85/EEC, even if that amount is insufficient to deter employers from dismissing employees in consideration of their maternity?[21]

BULGARIA
Genoveva Tisheva

The priorities related to gender equality at the end of 2006 and in the first months of 2007 consisted of the launching of the European Year for Equal Opportunities for All and the Campaign of the Council of Europe against violence against women, including domestic violence. On the whole, it can be said that so far, including during the latest period covered, no substantial practical steps have been taken towards the further implementation of the EU gender equality standards and the EU Roadmap on Gender Equality.

1. Legislation: Legislative developments

During the last three months no concrete initiatives were taken to elaborate a new draft Bill on Equal Opportunities for Women and Men. The previous draft was rejected by the leading parliamentary Committee on Human Rights and Religious Denominations. The draft failed mainly due to the lack of a clear institutional mechanism for gender equality as is also required under EU standards.

It has recently been announced that a new draft will be elaborated by a group of female MPs. Nevertheless, no draft exists at the moment and the assistance offered by women's NGOs was rejected by the legislator at this stage. The delay in adopting the law will affect the implementation of the EU standards.

2. Case-law: Court cases

There have been no important developments in the case-law related to the implementation of EU standards.

3. Policy initiatives and other developments

During the period under consideration, the National Council on Gender Equality- which is an advisory body to the Council of Ministers- held a session. In the absence of a law on equal opportunities and of a functioning mechanism on gender equality, it was concluded that even the 2006 plan on gender equality had not been implemented by the different Ministries. In the meantime, no budget was allocated for gender equality for 2007.

Therefore, for the year 2007 the government does not have a clear concept of possible activities or a corresponding budget for the purpose of the implementation of EU standards. This is a situation which will reflect on the perspectives for 2008 and for the use of the structural funds. The justification given is that the government wishes to wait for the law on equal opportunities to be adopted.

Bulgaria's EU membership is thus marked by a lack of gender equality mechanisms and of any budget allocations for this purpose.

A national plan for a campaign against violence against women, in particular domestic violence, was initiated by the Ministry of Labour and Social Policy. The plan meets the criteria of the campaign of the Council of Europe, and also of the Roadmap on Gender Equality.

The women's networks of the Bulgarian Socialist Party, which is currently one of the main political forces represented in Parliament and the government, proposed the adoption of an internal party quota of 30 % women to be placed on the lists for the forthcoming elections of the European Parliament.

[21] See the Network's report on Pregnancy, Maternity, Parental and Paternity Rights, under Belgium, at 3.

CYPRUS
Lia Eftstratiou-Georgiades

Legislation
The Parliamentary Committee on Legal Affairs is currently discussing an amendment to the legislation with a view to increasing the period of maternity leave from 16 to 25 weeks. All the parliamentary parties are in agreement on the passing of the legislation. The Ministry of Labour and Social Insurance agreed to submit the draft amendment after consulting with the Labour Advisory Body.

Court cases: Criminal Appeal no. 25191/2005
Offences:
(a) indecent assault against a woman (maximum sentence provided by legislation: two years' imprisonment),
(b) sexual harassment of a woman subordinate in the work place, in violation of the provisions of the Equal Treatment in Employment and Vocational Training Law of 2002 (maximum sentence provided by legislation: £ 4,000 (approximately 6,720 euro) or six months' imprisonment, or both).

According to the facts of the case, the defendant, aged 50, and a member of the Diplomatic Service, was positioned as the Ambassador of the Cyprus Republic in Sweden. The defendant allegedly committed the above offences between 2002 and 2005 and was charged on 24 counts. This was the first sexual harassment case ever to be brought before a Cypriot Court based on offences provided by the Equal Treatment in Employment and Vocational Training Law of 2002.

The Court accepted the evidence adduced by the Counsel for the Republic, which was based on the testimony given by the two complainants, and found the accused guilty on all charges.

The Court severely criticized the behaviour of the convicted Ambassador, noting that:

> *"…his repeated illegal actions were not a result of a momentary and isolated mode of conduct. The instances of indecent assault and sexual harassment were numerous.*
> *The events induced feelings of fear, anxiety and insecurity in the complainants and human and sexual hypostasis. The defendant's undesirable and illegal actions therefore amounted to sexual harassment, shattering the dignity of the complainants in their workplace, thereby amounting to discrimination on the grounds of sex in the workplace. By exploiting his authority as the complainants´ senior, the defendant imposed pressure upon the complainants and thus engaged in aggressive and offensive behaviour against the victims, violating their right not to constitute an object of exploitation on grounds of sex in the workplace."*

The Court relied heavily on Directives 76/207/EEC and 97/80/EC and on Cypriot legislation implemented on the basis of these Directives in its findings regarding which actions should be penalized as constituting discrimination on the grounds of sex. The defence argued in favour of suspension of the prison sentence, but this argument was rejected by the Court.

Before passing sentence, the Court weighed all the evidence and the facts placed before it, as well as the personal circumstances of the defendant. Having noted the seriousness of the charges and that the maximum penalty imposable by law was imprisonment, the Court imposed the penalty of imprisonment for each charge. Consecutive sentences ranging from one to seven months' imprisonment were imposed.

It should be noted that the Court took the opportunity to suggest that the six months' imprisonment – which is the maximum sentence provided by the Equal Treatment in Employment and Vocational Training Law of 2002 – did in fact not adequately reflect the seriousness of the offence and did not satisfactorily contribute to the safeguarding of the rights of employees.

Ombudsman/Commission for Administration: File no. C/N 44/2006
In this case, the complainant alleged that her superiors, instead of examining her complaint of sexual harassment in the workplace, in fact proceeded to punish her and ordered disciplinary action against her.

After investigating the complaint, the Ombudsman concluded that the complainant's supervisors had acted precisely as prohibited by the Equal Treatment in Employment and Vocational Training Law of 2002.

The Ombudsman noted that no measures were taken to halt or prevent the instances and consequences of the sexual harassment and that, despite the provisions of Section 12 of the Equal Treatment in Employment and Vocational Training Law of 2002, the fact that the complainant had succumbed to the sexual harassment had been used against her. More specifically, the Ombudsman found that, when the complainant proceeded to report the sexual harassment to her Supervisor, she actually instead of being considered the victim was held responsible for the incidents. The authority involved based its decision on the fact that the complainant had tolerated the sexual harassment and found that she had committed disciplinary offences for which she was subsequently convicted and suspended.

The Ombudsman concluded that the complainant should be allowed to return to the workplace, without any implications for or changes in the conditions of her employment. In addition, the Ombudsman held that the complainant should be paid for the hours that she had been forced to take sick leave and for the period of suspension. The complainant indeed returned to her workplace. In conclusion, the Ombudsman suggested the implementation of measures to prevent similar instances in the future.

Policy initiatives and other developments
The Minister of Labour and Social Insurance announced that the Government, in its efforts to reconcile family and working life, is studying an increase in the number of day-care centres and extensions of the period of maternity leave and parental leave. In addition, the Minister announced that it is considering the payment of a lump sum of £20,000 (approximately 33,600.00 euro) to women who decide to have a third child.

Cyprus, together with Greece, France, Spain, Italy, Belgium, Luxemburg, Hungary and Bulgaria, has signed a common statement entitled 'Reinforcing Social Europe'. According to the document, the achievement of the Lisbon goals will be made possible through social policies of growth and competition. The common goal is the improvement of production, social cohesion and equal opportunities.

The Ministry of Labour and Social Insurance is currently investigating the viability of the Social Security Fund, as well as the possible measures for its reorganization in order to achieve the payment of higher pensions.

On 1 March, Parliament and the National Machinery of Women's Rights organized an event in Parliament on the topic 'Against Domestic Violence'.

CZECH REPUBLIC
Kristina Koldinská

Legislative developments
Czech legislation was substantially amended through Act no. 135/2006 Coll., which entered into force on 1 January 2007. The Act amends the Penal Code (Act no. 140/1961 Coll.) and introduces the possibility of expelling from the family home, for up to ten days, a person who has committed domestic violence, in order to protect the family against further attacks. The power to expell the aggressor from the house is entrusted to the Police. The family, generally a female partner, is expected to contact an intervention centre, which shall provide counselling, basic social services and other types of intervention in order to help the family to find a solution or at least to start to act in order to find a solution.

This kind of legislation has been anticipated for a long time and the possibility of expelling the aggressor may be considered as a positive measure to protect victims of domestic violence.

Legislation/draft legislation/proposals for legislation (including delegated legislation)
In March 2007 the Ministry of Justice, which was charged with preparing a new Bill on anti-discrimination, sent a new draft to other Ministries and the Bill will soon be discussed in the government.[22]

The new Bill implements all the relevant anti-discrimination directives, including Directive 2004/113/EC.

According to the Bill, the right to equal treatment shall be ensured as regards the right to employment and access to employment, enterprise and self-employed activities, dependent work and remuneration, membership of and activity within trade unions, works councils or employers' organizations, membership of and activity within professional chambers, social security and providing social advantages, access to health care, access to education and access to goods and services, including housing.[23] The Bill defines direct and indirect discrimination and all grounds of discrimination. Discrimination is prohibited on grounds of: race, etnic origin, sex, sexual orientation, age, handicap, religion or faith, or on other grounds, especialy on grounds of language, political opinion, membership or activity in political parties or political movements, trade unions and other corporations, on grounds of health, social origin, property, matrimonial or family situation or obligations towards family. Discrimination on grounds of sex shall be understood also to mean discrimination on grounds of pregnancy or maternity and on grounds of sexual identification. Harrassment, sexual harrassment and persecution are defined as well. Legal definitions come mostly from the wording of relevant directives.

Like the first draft, the Bill defines the competence of the public defender of rights (the ombudsman) within all issues regarding equal treatment. The reason for extending the competences of an already existing body was mainly financial. The ombudsman shall provide legal assistance regarding protection against discrimination, issue recommendations and opinions, carry out independent research, and provide the public with information.

The entire Bill will soon be discussed in the Government.

Court cases
In January 2007 the mass media drew attention to an already decided case from North Moravia (near Ostrava). In this case, for the first time in Czech history, a homosexual succeeded in a claim for damages, on the ground that he was rejected for the position of masseur in a rehabilitation centre due to his sexual orientation.[24] Mr. Sydor brought his case before the court, won the dispute, and the employer was ordered by the court to pay 70 000 CZK (some 2400 euro). Unfortunately, it has not been possible to find more concrete information about this case due to privacy reasons (the case has not yet been published).

Infringement proceedings
Infringement proceedings have been brought against the Czech Republic for not implementing the directives regarding supplementary pension schemes. The proceedings have now reached the stage of the reasoned opinion, which the Commission has sent to the Czech Republic.

Decisions, recommendations etc. (where and if appropriate) by national equality bodies
In March 2007 the Government began its discussion of the Report on the Fullfilment of the Priorities of the Government in the Enforcement of Equality between Women and Men during 2006. The Government is expected to confirm the Report and to adopt a new draft for Priorities in Apríl 2007.

Activities, initiatives, developments which relate to the enforcement of gender equality law (this should be understood broadly, also including awareness raising, training etc.)
In the first months of 2007 several seminars and lectures were organized by the NGO Gender Studies. The initiatives related to the following themes: gender and globalization (changes in employment within a globalized economy), caring fathers, etc.

[22] The first draft was prepared by the Ministry of Labour and Social Affairs and sent to Parliament in January 2005. It was rejected by Parliament in May 2006.
[23] See § 1 of the Bill.
[24] Case no. 17c159/2004 Sydor.

In February 2007 the NGO Gender Studies launched an important campaign entitled Do Not Let Yourself Be Discriminated Against. The campaign is accompained by billboards and information leaflets. The campaign kicked off with the publication of a study 'The Costs and Benefits of Equal Opportunities for Women and Men'.[25] It targets employers and brings forward several economic arguments as to why support for equal opportunities can be regarded as beneficial for businesses .

DENMARK
Ruth Nielsen

Amendment of the Gender Equality Act – Implementation of Directive 2004/113/EC
Denmark has had a Gender Equality Act since 2000 which in broad terms covers the issues governed by Directive 2004/113/EC. There are, however, certain shortcomings in the Danish Gender Equality Act compared to the Directive.

On 31 January 2007, the Minister for Equality presented a proposal to Parliament to amend the Act on Gender Equality in order for Denmark to (partially) implement Directive 2004/113/EC. Under Article 5(3) of the Directive, Member States may defer implementation of the measures necessary to comply with Article 5 on gender equality and actuarial factors until two years after 21 December 2007 at the latest. Denmark is going to make use of this provision and defer implementation of Article 5 of the Directive until later, December 2009 at the latest.

The main content of the amendments is: clarification of the scope of application of the Gender Equality Act, re-wording of the definitions of discrimination in accordance with Directive 2004/113/EC and insertion of a new provision on the invalidity of provisions that are in violation of the ban on sex discrimination in individual or collective agreements.

The prohibition against sex discrimination (as defined by the Directive) shall, according to section 1a of the proposed amendment, apply to employers, authorities or organizations within the public administration and in connection with general activities. It shall also apply to authorities, organizations and all persons who provide goods and services, which are available to the public irrespective of the person concerned as regards both the public and private sectors, including public bodies, and which are offered outside the area of private and family life and the transactions carried out in this context. The definitions of direct and indirect discrimination and sexual harassment are re-worded in accordance with Directive 2004/113/EC. In addition, a definition of harassment is inserted in the Act.

After the amendment the Gender Equality Act will explicitly state that direct discrimination occurs where one person is treated less favourably, on grounds of sex, than another is, has been or would be treated in a comparable situation; indirect discrimination: where an apparently neutral provision, criterion or practice 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; harassment: where an unwanted conduct related to the sex of a person occurs with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment and sexual harassment: where any form of unwanted physical, verbal or non-verbal conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.

Under Article 13 (b) of Directive 2004/113/EC Member States shall take the necessary measures to ensure that the principle of equal treatment is respected in relation to the access to and supply of goods and services within the scope of this Directive, and in particular that any contractual provisions, internal rules of undertakings, and rules governing profit-making or non-profit-making associations contrary to the principle of equal treatment are, or may be, declared null and void or are amended. Hitherto, there has been no such provision in the Gender Equality Act. A new section 3b implementing Article 13(b) of Directive 2004/113/EC is proposed.

[25] *Machovcová, K* (ed.) (2007) *Náklady a zisky rovných příležitostí pro ženy a muže*, Gender Studies, o.p.s.

According to the proposed section 3a, the Gender Equality Act does not preclude differences in treatment, if these are justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

New Act on a Complaints Board on Equality

On 15 January 2007, the Minister for Employment circulated for public hearing (the proposal has not yet been put before Parliament) a proposal for a new Act which will establish a Complaints Board on Discrimination on all the prohibited grounds in the Discrimination Act (*Forskelsbehandlingsloven*) and in the gender equality legislation, i.e. the Gender Equality Act, the Equal Treatment Act, the Equal Pay Act, the Act on Leave and Benefit on grounds of Pregnancy and Childbirth (*Barselloven*), the Act on Parental Leave and the Act on Equal Treatment of Men and Women under Occupational Pension Schemes. The Anti-Discrimination Act (*Forskelsbehandlingsloven*) covers other grounds of prohibited discrimination than gender, such as ethnic origin, religion or belief, age, handicap, sexual orientation, political opinion or social origin.

The new Complaints Board will deal both with discrimination in employment and in other areas, e.g. the provision of goods and services. The existing Complaints Board for Gender Equality is expected to be abolished by 1 January 2008 as a result of the coming Act. Its functions will be taken over by the new Complaints Board.

ESTONIA

Anneli Albi

Legislative developments

On 25 January 2007, the government presented to Parliament the Draft Equal Treatment Act.[26] The adoption of this Act is required in order to implement Council Directives 2000/43/EC and 2000/78/EC. The draft Act was considerably amended as compared to the initial draft that was presented to the Ministries and NGOs for consultation. The Act aims to guarantee protection against discrimination on the grounds of race, ethnicity, colour, language, origin, religious or other beliefs, political or other opinion, property or social status, age, disability or sexual orientation. According to section 2(1), discrimination is prohibited in all social spheres, including employment relations, self-employment, health, social care, social security, education, and goods and services available to the public. The Act establishes the concepts and principles of equal treatment, the rules on implementation and promotion of the principle of equal treatment, and provides for the creation of the institution of Equality Commissioner with a remit to resolve discrimination disputes. The draft Act passed the first reading in Parliament; however it failed to proceed to the second reading as the Parliament's Constitutional Affairs Commission decided on 19 February 2007 to continue the discussion of the draft Act within the Commission. The Act was subsequently dropped from the agenda due to the end of Parliament's term of office, as the elections for a new Parliament were held on 4 March 2007. According to section 96 of the Parliament's Rules of Procedure Act, all pending draft legislation shall be dropped from the legislative proceedings upon termination of Parliament's term of office.

On 22 February 2007, Parliament adopted amendments to the Parental Benefit Act.[27] The amended Act clarifies a number of issues regarding the payment of the parental benefit, taking into account the court practice and the challenges that have arisen in implementing the Act. The amended Act entitles fathers to a parental benefit when the child reaches 70 days of age. Hitherto only mothers were entitled to the parental benefit in the first six months after childbirth, unless the mother had died or failed to fulfil her parental obligations (section 2(2) PBA).

Case-law

In the beginning of 2007, the Gender Equality Commissioner, whose remit includes issuing opinions on applications where individuals claim discriminatory treatment, has on several occasions provided overviews of her work in the media. In order to explain the scope and meaning of the Gender Equality Act, she provided an overview of two cases in particular.

[26] Available in Estonian at http://www..riigikogu.ee, draft Act 1101 SE.
[27] Available in Estonian at http://www.riigikogu.ee, draft Act 1085 SE.

In the first case, a female job applicant had initially been offered, in an oral conversation, the post of a specialist, with a salary of 13,000 EEK (833 euro) per month. However, after her prospective the employer learnt that she was pregnant, she was instead offered the post of assistant, with a salary of just 5,500 EEK (353 euro) per month. The Gender Equality Commissioner held that such conduct constituted discriminatory treatment.[28] In the second application, a female employee with a 1-year old child had been excluded from any overtime work on the assumption that she had family obligations. The Commissioner held that an employer is not allowed to assume that the employee would not consent to work overtime; the employee should be consulted on whether she needs special protection due to family obligations. Otherwise, the employer's knowledge of an employee's family obligations might become an obstacle to free self-fulfillment and contravene equal treatment.[29] In order to increase awareness of gender equality issues, the Commissioner additionally responded to readers' questions in two online interviews, conducted by a daily business newspaper *Äripäev*[30] and a popular internet portal *Delfi*[31].

Policy initiatives and other developments

On 4 March 2007, parliamentary elections were held in Estonia. According to the preliminary results, the Reform Party is entitled to 31 seats, the Centre Party 29, the Union of Pro Patria and Res Publica 19, Social Democrats 10, the People's Union 6 and the Greens also 6. According to the preliminary results, 24 women obtained a seat in Parliament which consists of 101 members in total.

A book 'Female Ministers of the Republic of Estonia. Women in the Top of Politics' has recently been published.[32] This volume offers an overview of all women who have served as Ministers during the 89 years since Estonia first obtained its independence, and includes the years under the Soviet Union's occupation. The book includes interviews with several Ministers, as well as a theoretical part to analyze the broader issues surrounding gender and politics.

In recent months, Estonian society has engaged in an active debate on the issue of guaranteeing a place in kindergarten for every child. The Pre-School Child Care Institutions Act in its current form sets out that the local government has to guarantee a place in a childcare institution for every child under its territorial jurisdiction and whose parents wish to make use of the facility. However, in practice, children in a large number of municipalities have to wait for years for a place in kindergarten. As was previously reported, the Estonian Child Protection Union requested the opinion of the Chancellor of Justice in this regard; in November 2006, the Chancellor of Justice organized a roundtable with parents, representatives of the Ministry of Education and Science, the Ministry of Social Affairs, the Minister of Population and other organizations dealing with child care.[33] As a result of the roundtable and further consultations, the Chancellor of Justice in February 2007 submitted certain recommendations to the Ministry of Education and Science, the Ministry of Social Affairs, the Minister of Population Affairs and the Association of Municipal Governments. The Chancellor called on the Ministries to carry out an analysis of the reasons why the municipalities have been unable to guarantee a place in kindergarten for every child. The Chancellor pointed out that the state should put in place an effective information system that would provide an overview of the childcare services and institutions; such a system would help to better predict the demand for places in kindergarten. The Chancellor also noted that childcare is a state function delegated to local governments, and it is therefore incumbent on the state to provide corresponding financial resources for the delivery of this service.

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[28] '*Tööandja takistas raseda karjääri*' (Employer obstructs career of pregnant woman), *Eesti Päevaleht Online*, 22 January 2007, http://www.epl.ee.

[29] Summaries of the Gender Equality Commissioner's opinions will be made available at the website http://www.svv.ee.

[30] http://www.ap3.ee/Default.aspx?link=http://www.ap3.ee/Default2.aspx?InterviewID=fcc3382f-dcf7-4e84-8c15-dea51a212916.

[31] http://www.delfi.ee/news/paevauudised/eesti/article.php?id=15292217.

[32] "*Eesti Vabariigi naisministrid. Koguteos naistest poliitika tipus*", edited by M. Sutrop, K. Lõuk, T. Kiho (*TÜ Eetikakeskus ja Eesti Naisüliõpilaste Selts*, Tartu, 2007).

[33] See http://www.oiguskantsler.ee/index.php?newsID=169&menuID=39.

In addition, he held that the Ministry of Education should review the principles of remuneration of the kindergarten teachers so as to put them on a par with school teachers, and analyze the need for a change in the qualifications system which currently requires kindergarten teachers to undertake an additional exam to act as qualified babysitters. Finally, he advised the Ministry of Social Affairs that the requirements for kindergarten buildings and territories might be too strict, and that the municipal governments should pay more attention to the planning proceedings, to ensure that enough social buildings, such as kindergartens, are built alongside private accommodation.[34]

Finally, a conference will be held in Tallinn on 30 March 2007 in order to inaugurate the Year of Equal Opportunities. In connection with the Year of Equal Opportunities, the government submitted an Equal Opportunities Action Plan to the European Commission on 15 December 2006.

FINLAND

Kevät Nousiainen

1. Legislation

No relevant developments.

2. Case-law

The Labour Court has decided a case[35] concerning an employee's right to continued pay during maternity leave, where the employee's maternity leave coincides with her home-care leave. Home-care leave is unpaid leave during which the employee is entitled to a flat-rate allowance; such leave is optional after maternity, paternity and parental leave periods. Under many collective agreements, an employee is entitled to pay during maternity leave. When home-care leave was introduced, it became unclear whether an employee was also entitled to pay during maternity leave when the maternity leave starts during the home-care leave. In a previous case,[36] the Labour Court had ruled that no pay was due to a mother who had started maternity leave while still on home-care leave, because the parties to the collective agreement had agreed to give priority to the first cause of absence to occur, i.e. in that case: home-care leave. However, where no practice is agreed upon, the terms of the collective agreement have to be interpreted literally, and pay is due to all employees starting maternity leave, also to those on home-care leave. In the present case, the parties to the collective agreement had discussed the interpretation of the relevant term of the collective agreement during negotiations, but had agreed to disagree on this interpretation. In the case at hand, no pay was granted by the employer during maternity leave if this leave commenced during home-care leave. As this interpretation by the employer had become the practice, the Labour Court held that this had also become the interpretation shared by the parties. The Labour Court therefore decided that the actual cause of absence here was home-care leave, and that no pay was due to employees starting maternity leave while on home-care leave.

FRANCE

Hélène Masse-Dessen

1. General events

For the first time, a women has been appointed the President of the Social Chamber of the *Cour de cassation* (Ms. E. Collomp). The Dean of this Chamber is also a woman (Ms. M.F. Mazars), as is the President of the Social Section of the *Conseil d'Etat* (Ms. Y. Moreau).

All candidates for the next presidential election are obliged to put forward projects in favour of women. The candidates have so far mentioned violence against women, equality and also care. Parental leave is also part of the public debate.

A new convention has been signed between 8 Ministers to promote gender equality in education.[37]

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[34] http://www.oiguskantsler.ee/index.php?weeklyID=99&menuID=38.
[35] TT 2007-16
[36] TT 1997-23
[37] See http://www.education.gouv.fr/cid4006/egalite-des-filles-et-des-garcons.html.

2. Legislation

2–1 Some of the decrees necessary for the application of the law on equal pay between men and women described in previous Bulletins have still not been published. At least two of them have not yet been made public.

2–2 Law for equal access of women to elected positions adopted

The multiple provisions of this law should lead to better representation of women in elected assemblies and the executives of towns, departments and regions. Depending on the size of the town or city, parity is required on more or fewer lists. For some elections the list must consist of alternate male and female candidates.[38]

3-Collective bargaining

More collective agreements have been identified as dealing with gender equality. They have been published and studied.

The site on which collective agreements on that topic are published[39] quotes 2 branch of industry agreements (Banks, and Popular Banks, both on 15 November 2006) and 2 company agreements (the AREVA European agreement of 16 November 2006 and the *Française de Mécanique* agreement on 15 November 2006). Most of these agreements attempt to increase knowledge about the actual situation of women and oblige employers to give precise information. They also provide for training for women and improved rights after maternity leave. Some agreements have begun to consider qualifications.

4 Case-law

4-1 As described in the two previous Bulletins, resistance against GRIESMAR[40] is still substantial and solutions are still hardly being discussed. Many cases are pending concerning special pension schemes in the public sector (*Electricity, Banque de France*). Public employers keep refusing to apply the GRIESMAR solution. Although the HALDE (High Authority against Discrimination and for Equality) has given a very clear and strong opinion[41] on the situation at *Electricité de France and Gaz de France* after the decisions of the *Conseil d'Etat,*[42] many cases are still pending. Several Courts of Appeal have refused to grant the relevant rights to male employees, arguing that the benefit is linked to maternity and not to the raising of children as in the GRIESMAR case.[43]

On the same topic, the decree organizing the special pension scheme of '*clercs de notaires*'[44] has been declared unlawful[45] where it only grants advantages to women. The same has been decided where railway workers are concerned.[46]

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[38] http://www.senat.fr/dossierleg/pjl06-093.html

[39] http://www.egaliteprofessionnelle.org.

[40] ECJ 29 November 2001. Male civil servants are granted equal rights to additional pension when they have children.

[41] Deliberation no. 2006-313 of 18 December 2006 on the case of Mr MORAEL (Not yet published). This deliberation states that EDF and GDF should modify the paragraphs of the statutes which exclude men from the advantages granted to women on the basis of raising children.

[42] 18 December 2002 (*Plouhinec*) req. no. 247.224, Rec. p. 476 and 7 June 2006 (*Bernard c/ Sté Gaz de France*)

[43] Deliberation no. 2006-313 of 18 December 2006.

[44] Sollicitors' clerks.

[45] *Considérant que les dispositions précitées du 1° de l'article 84 du décret du 20 décembre 1990 prévoient la possibilité pour les clercs et employés de notaires de sexe féminin de bénéficier sous certaines conditions d'une pension à jouissance immédiate ; qu'aucune autre disposition ne prévoit l'octroi d'avantages analogues et sous les mêmes conditions aux clercs et employés de notaires de sexe masculin ; qu'ainsi, les dispositions litigieuses introduisent une discrimination entre salariés masculins et féminins qui n'est justifiée par aucune différence de situation relativement à l'octroi de l'avantage en cause et qui, par suite, est incompatible avec les stipulations précitées de l'article 141 du traité instituant la Communauté européenne, dont le 4° paragraphe ne peut être interprété comme autorisant le maintien d'une telle discrimination; Considérant qu'il résulte de ce qui précède que les dispositions litigieuses du décret du 20 décembre 1990 doivent être déclarées illégales dans la mesure où elle excluent du bénéfice de l'avantage qu'elles instituent les clercs et employés de notaires de sexe masculin*; CE 13 December 2006, Req. no. 291595.

[46] *Considérant que les dispositions précitées du règlement PS 10 D de la SNCF prévoient la possibilité pour les agents féminins ayant eu trois enfants ou plus de bénéficier, sous certaines conditions, d'une pension à jouissance immédiate (note : this means normal pension, calculated under 15 years of work,*

The consequences of GRIESMAR are therefore still a very important topic of debate.

4-2 The *Cour de cassation* has also decided that pension benefits fall under the protection of Article 14 of the European Convention of Human Rights, and under Article 1 of the First Protocol. Article L. 351-4 of the Social Security Code grants advantages to mothers both when they have left work to raise children and when they have not. The Court held that this advantage is a property right and falls under the First Protocol, so that it must be justified. As a consequence, a man who has raised his children alone must receive the same benefits as granted to a woman who did not leave work to raise hers.[47] This case seems very odd in the light of the possibility provided by Directive 79/7 for advantages granted to women. In any case, this case-law of the Court of Strasbourg will lead to changes in pension law.

4-3 Another case worth noting was decided by the Labour Code, which held that pregnant women may have their dismissal nullified, even if the employer was unaware of the pregnancy, if the woman declares that she is pregnant immediately after dismissal. However, the Court stated that this provision is not relevant during a probation period when the contract can normally be terminated without giving any justification.[48] The Court did not refer the case for a preliminary ruling.

4-4 The Court also ruled in an interesting case about the assisting spouse of a lawyer. This lawyer pretended that the work his wife did in the office was only assistance given by a family member and not salaried work and therefore not professional work. The Court ruled that no dependence has to be proven in case of helping spouses, and that the fact that the wife worked in the office was sufficient to prove that she was an employee.[49]

4-5 Last, but not least, the *Cour de cassation* has for the first time used the term 'indirect discrimination'. A decision of 9 January 2007 stated that the way in which an advantage granted to workers was calculated was, although it was apparently neutral,[50] an instance of indirect discrimination related to the health of the worker.

Normally the pension cannot be obtained before the normal age of retirement, and this is an exception which was granted only to mothers). ; qu'aucune autre disposition ne prévoit l'octroi d'avantages analogues sous les mêmes conditions aux agents masculins qui ont assuré l'éducation de leurs enfants; qu'ainsi, les dispositions litigieuses introduisent une discrimination entre agents féminins et agents masculins qui n'est justifiée par aucune différence de situation relativement à l'octroi des avantages en cause et qui, par suite, est incompatible avec les stipulations précitées de l'article 141 du traité instituant la Communauté européenne, dont le 4ème paragraphe ne peut être interprété comme autorisant le maintien d'une telle discrimination; CE 6 December 2006 Req no. 291473.

[47] 21 December 2006 no. 04-30586. *Attendu que l'arrêt retient que l'avantage résultant de l'article L. 351-4 du code de sécurité sociale dans sa rédaction applicable à l'espèce est accordé aussi bien aux femmes qui ont poursuivi leur carrière sans interruption qu'à celles qui l'ont interrompue, qu'il n'existe aucun motif de faire une discrimination entre une femme qui n'a pas interrompu sa carrière pour élever ses enfants et un homme qui apporte la preuve qu'il a élevé seul un enfant; Que de ces constatations et énonciations, dont il ressort l'absence de justification objective et raisonnable de la discrimination litigieuse, la cour d'appel a exactement déduit qu'en vertu des dispositions combinées de l'article 14 de la Convention et de l'article 1er du Protocole no. 1, directement applicables à toute personne relevant de la juridiction des Etats signataires, M. X... devait bénéficier de la majoration de durée d'assurance sollicitée.*

[48] Cass. Soc. 21 December 2006 no. 05 44 806.

[49] *Attendu, cependant, que l'existence d'un lien de subordination n'est pas une condition nécessaire à l'application de l'article L. 784-1 du code du travail réglementant le statut du conjoint salarié ; Qu'en statuant comme elle l'a fait, par des motifs inopérants, alors qu'il résulte de ses propres constatations que Mme X... a travaillé effectivement dans le cabinet d'avocat de son époux, en vertu du contrat de travail à temps partiel du 1er juin 1996, à titre professionnel et habituel et que cette activité s'est poursuivie jusqu'en 2002, la poursuite du travail sans rémunération et sans protestation de l'intéressée ne pouvant constituer la preuve d'une rupture amiable, la cour d'appel a violé les textes susvisés; Cass. Soc. 24 January 2007 05-44346, to be published in the report of the Court.*

[50] *Une telle modalité de calcul constituant, malgré son caractère apparemment neutre, une mesure discriminatoire indirecte en raison de l'état de santé du salarié.*

GERMANY
Dagmar Schiek

1. Legislation (and similar)

1.1. On 1 January, the new Act on wage statistics became effective (*Verdienstestatistikgesetz*).[51] Like its predecessor, the Act requires the establishment of wage statistics at regular intervals, making reference to the gender of employees. However, the scope of application has been widened considerably, as the Act now encompasses all service providers as employers, whereas its predecessor was mainly restricted to agricultural and production enterprises. The Act also requires statistics for part-time employment to be established. All in all, female employment is now better covered. Thus, a more realistic picture of the gender pay gap should emerge, once the first reports are due in four years' time.

1.2. Further, progress is finally being made in the implementation of Directives 2004/113/EC and 2002/73/EC towards the establishment of an *Antidiskriminierungsstelle* (ADS - Anti-Discrimination Body). As required by both these Directives, Germany has introduced a statutory obligation for creating a federal anti-discrimination body in August 2006 (§§ 25-30 *Allgemeines Gleichbehandlungsgesetz* – General Equal Treatment Act)[52]. A website for this body[53] was established in early September 2006, but finding a suitable person as head of this body seemed to be taking a long time. Finally, on 21 February 2007, Dr. Martina Köppen was inaugurated in this position.[54] She has a doctorate in European Law, which she obtained at one of Germany's military universities, and has worked as the European representative for the German Bishops' Conference before taking up her new position. She appears to have no discernible knowledge of anti-discrimination law or policy as evidenced by publications or other activities undertaken in this field in the past. This is very interesting, given the fact that since the adoption of the German Anti-Discrimination Act no less than 40 commentaries to the Act have been published, authored by lawyers from all political camps. The staffing of the body has not progressed any further than the appointment of the head of the body. The application deadlines for several executive positions with responsibility for counselling, public relations and research only expired on 20 February,[55] and information on a time frame within which the Anti-Discrimination Body will be fully functional is not available at present. The Ministry stresses that consultation is up and running, since the ADS have been answering 900 questions between the time when its website was first launched and 21 February.

2. Case-law

2.1. Federal Social Court 12.12.2006, B 13 RJ 22/05[56]

Specific rules for the pensions of mothers were at issue in this case. Atypically for German women, the claimant paid pension contributions throughout her over 40 years of employment. She achieved this by continuing to pay contributions during the period when she was not working from 1969 until 1975. During this time, she gave birth to her children, for which under German law a fictional statutory insurance period exists. The voluntary contributions coincided with this fictional insurance. As a consequence, the maximum insurance contribution was exceeded, which resulted in the voluntary payment being partly useless. The claimant could not have foreseen this development when she paid the voluntary contributions, as the rules on fictional statutory insurance for mothers were only introduced after she had paid them. She applied to have the voluntary contributions accrued to a different period, when her wages were low and the maximum contributions would thus not be exceeded. This request was denied. The Federal Social Court could not find a case of gender discrimination, because the rules for resolving the adding up of voluntary and statutory contributions did not refer explicitly to gender.

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[51] *BGBl*. I 1996, 3291 of 27 December 2006, see for a read only version: http://www.bgblportal.de/BGBL/bgbl1f/bgbl106s3291.pdf.
[52] The text of the legislation can be found at: http://www.gesetze-im-internet.de/agg/BJNR189710006.html.
[53] http://www.bmfsfj.de/Kategorien/Ministerium/antidiskriminierungsstelle.html.
[54] http://www.bmfsfj.de/Kategorien/Presse/pressemitteilungen,did=93608.html.
[55] http://www.gaybrandenburg.de/images/stories/dokumente/20070129123131.pdf.
[56] Retrievable under http://www.bundessozialgericht.de.

The court did consider that the statutory contributions for child raising are in most cases – if the parents do not apply for allocation to the father – allocated to the mother and that consequently it is mostly women who suffer the detriment, but did not conclude that this could possibly be a case of indirect gender discrimination. No reference was made to Community law either, although this might well be a case of discrimination contrary to Directive 79/7/EEC.

3. Other news

3.1 International Women's Day

International Women's Day this year nearly coincided with the 20th anniversary of a federal ministerial body for women and equality affairs. On 6 of March 1987, the Kohl government introduced this institution. It was first headed by Rita Süßmuth (CDU) and, after the reunification, provided the first political office for Angela Merkel, now chancellor of Germany. At the time, introducing the 'women's Ministry' seemed a very intelligent move, given the fact that the Kohl Government had introduced a variety of legislative measures that led to the lowering of the effective income of women and to the reinforcement of a family model based on female non-paid work. In 1996, the *Bundeserziehungsgeldgesetz* introduced a small basic payment for all mothers, whether they had been in employed work before confinement or not, instead of a substantial payment related to prior earnings for mothers who had been employed. Up to the present day, the combination of parental leave and a low parental benefit encouraged families to decide to allocate unpaid family work to the parent earning less, typically the mother. The improvement in gender equality which came with the *Bundeserziehungsgeldgesetz* was thus largely ineffective in practice: the formal right of fathers to claim the benefit was used by less than 3 % of fathers. Ironically, Angela Merkel's successor from the same party has now introduced a higher parental payment, while leaving the possibility of prolonged parental leave in force. This will continue to encourage women to drop out of employment (as reported in Bulletin 1/2007). Another measure lowering the effective wages of women was the *Beschäftigungsförderungsgesetz*, which legalized less secure forms of employment such as fixed-term contracts without objective justification and variable contracts. The former became the standard first form of employment for women of childbearing age, whereas the latter was used in many service sectors for the employment contracts of predominantly female part-time employees. International Women's Day 2007 also saw a press campaign by the *BILD Zeitung*, stressing that Germany is really lagging behind in all issues of gender equality, most notably with regard to the family model based on the non-employed mother, which was encouraged by both these developments.

3.2 Public debate on childcare and family models

Another interesting issue in the German news presently is the public debate on exactly this family model. Following the introduction of a parental payment at a rate which makes taking parental leave affordable even for parents with higher incomes (see the report for Bulletin 1/2007), there is a growing demand for qualified and affordable childcare. In the case of better-off couples, who are targeted as those who can make good use of the new provisions, neither of the parents leave work for longer than one or two years. Accordingly, to raise birth rates, more is needed than financial relief for the first 12-24 months of a child's life. The current Minister of Family, Youth, the Elderly and Women's Affairs has devised a plan to raise coverage of early-age full-time childcare considerably. The aim is to dedicate 3 billion euro over the next three years to enhancing the availability of day care for children under three years old. These plans have given rise to a fierce debate on family models within Ursula Leyen's own party, the Christian Democratic Party. She faced attacks by clergymen, one of whom went as far as accusing her of using women as birth machines. There is also considerable debate between the parties of the government coalition. The Social Democratic Party does not quite approve of the order of measures taken: in 2006, the opportunities for deducting the costs of private childcare from taxes were enhanced, from which only parents profit who can afford to pay for private care because their income level is within the upper third of incomes. Now, the Social Democrats argue in favour of measures such as abolishing tax advantages for married couples in order to finance public childcare, to which their coalition partner is opposed, because this would make the model of the one-earner family financially less attractive. In any case, a public debate on these issues was long overdue in Germany, and the feature in the *BILD Zeitung* on International Women's Day demonstrates that public opinion is finally shifting in favour of working mothers.

GREECE
Sophia Spiliotopoulos

Case-law
Parental leave
1. Positive approach by the courts and the authorities as employers
1.1. Granting of parental leave to fathers subject to the conditions applying to mothers
As we reported in the previous Bulletin (1/2007), reconciling family and work, as a right of both men and women, is nowadays a widely discussed subject in Greece, due also to the acute demographic problem. Thus a continuous flow of judgments which interpret, in a wide and teleological way, Greek legislation and even the Greek Constitution in the light of EC law and uphold the right to parental leave for both men and women can be noted. In the Bulletin referred to we reported two recent judgments delivered by the Athens Administrative Court of Appeal (AACA). By the first of these judgments (no. 2546/2006) the AACA annulled a refusal to grant to a male civil servant the 9-months' paid 'child-raising leave' which was provided by Article 53(2) of the Civil Servants Code (CSC) for women only; by the second judgment (no. 494/2006), the AACA annulled a refusal to grant to another male civil servant the reduced working day provided by the same CSC provision also to mothers only, as an alternative to the 'child-raising leave'. Both judgments interpreted Greek legislation in the light of the provisions of Article 21(1) and (5) of the Greek Constitution,[57] in conjunction with the general principle of EC law on reconciling family and work and Directive 96/34, as well as in the light of Article 4(2) of the Greek Constitution (the gender equality principle) in conjunction with Directive 76/207.

As we noted in the previous Bulletin, the above judgments relied on the same legal basis as that underpinning certain landmark judgments of the Council of State (Supreme Administrative Court, CS)[58] and specifically referred to them. We thus considered it highly improbable for these judgments to be reversed by the CS. It has since become clear that neither judgment has been appealed against to the CS by the Greek authorities in question as the male civil servants' employers (the Ministry of Justice, in the first case, and a municipality in the second); the judgments have thus become irrevocable under Greek law. This shows that the authorities are gradually becoming aware of the right of men to parental leave.

We must now look into a problem which arose in respect of some judgments that upheld a right to the 9–months' paid 'child-raising leave' or the reduced working day: the relevant statutory provisions grant this leave and (alternatively) the reduced working day until the child reaches the age of 4 years. However, due to the slowness of Greek justice, although the fathers brought their cases while the children in question were still under 4 years of age, by the time the judgments were delivered, the children were all older than 4. In the previous Bulletin we therefore asked what these fathers should do, given that they had won their cases, but might not be able to exercise their rights? Should they claim compensation from the Greek State – their employer – for non-compliance with EC law? According to more recent information, some of these fathers were allowed to take the whole leave for a period that went beyond the child's fourth birthday. This is a very welcome *restitutio in integrum*. Indeed, no amount of damages can compensate for the loss of the opportunity to care for one's very young child.

1.2. Damages for refusal to grant parental leave
Following the landmark CS Plenary judgment no. 3216/2003,[59] several women judges filed an application with the Ministry of Justice requesting that they be granted 'child-raising leave'. The Ministry rejected these applications. The women judges did not consequently seek the annulment of these refusals, but lodged an action with the Athens First Instance Administrative Court (AFIAC) against the Greek State for moral damages on the ground that, due to the unlawful refusal of the Ministry of Justice to grant them this leave, they were being deprived of their absolute right to care continuously for their children during the early stages of their development. The damages claimed by each of them amounted to 15,000 euro.

[57] These provisions require the protection of the family, motherhood and childhood, and the taking of measures for coping with the demographic problem.
[58] In particular CS Plen. no. 3216/2003, Bulletin no. 3/2004, CS 1 and 2/2006, Bulletins no. 2/2006 and no. 1/2007, regarding women and men judges.
[59] See previous note.

They relied on the general principle of EC law on the reconciliation of family and work and on Directive 96/34 and invoked the CS Plenary judgment referred to above.

By its judgments no. 12154/2006 and no. 12155/2006 the AFIAC awarded each of them damages in the amount of 10,000 euro plus legal interest from the time the action was lodged until the payment of the amount. These judgments relied on the legal basis invoked by the claimants and on Article 105 of the Introductory Law to the Civil Code, under which compensation can be claimed against the State for damage incurred as a result of an unlawful act or an unlawful omission to act (in these cases, the Ministry had unlawfully omitted to act, i.e. had not granted the requested leave). These are, to our knowledge, the first cases of this kind. As the period within which an appeal from these judgments can be lodged by the state (within 60 days of the notification of each judgment), we cannot yet predict the final outcome of these cases. However, we will continue to follow them and will return to this issue in a future Bulletin.

2. Unexpected negative approach by the Council of State

Unfortunately, the exemplary flow of CS case-law was interrupted by two unexpected CS judgments, which constitute a step back. More particularly these concerned the following.

As we already explained in previous Bulletins,[60] the Code on the status of judges (Judicial Code)[61] did not expressly provide for parental leave until 2003. While the case which led to the landmark CS Plenary judgment no. 3216/2003 was pending, parental leave for both men and women judges was introduced by an addition to Article 44 of this Code. The new provision constituted a step back as compared to the *acquis* recognized by the above CS Plenary judgment, as it introduced stricter conditions for granting the parental leave to judges than those applying to civil servants, which the CS Plenary had considered applicable to judges as well. Consequently, in subsequent cases, the CS ignored this provision.

In 2004 a further addition was made to the same Article of the Judicial Code, by which female (not male) judges were granted 9-months' paid child-raising leave, to be taken within 2 months after the end of maternity leave. As maternity leave for women judges is 2 months before and 3 months after childbirth, the result is that this leave may be taken up to 14 months after childbirth (3 months' maternity leave + a 2-month period during which the 9-months' leave can be granted + 9 months' leave). Moreover, it was provided by a transitory provision that such leave could be taken only by mothers whose maternity leave ended before the entry in force of the new provision (29 July 2004), and in any event within the year 2004, and not before.[62] As we commented in Bulletins no. 3/2004 and no. 2/2006, the new provisions were directly discriminatory against fathers. Moreover, the transitory provision deprived mothers of the possibility to take the leave up to when the child reaches the age of 4, which was already part of the *acquis*. These provisions thus again constituted a step back which is not allowed under either the Greek Constitution or Directive 96/34.

In dealing with an application from a male judge, the CS (judgments nos. 1 and 2/2006, reported in Bulletin no. 2/2006) ignored all amendments made to Article 44 of the Judicial Code and applied the *acquis* recognized by CS Plenary no. 3216/2003. Moreover, it resulted from these judgments that the CS recognized that the right to parental leave is personal and autonomous for each parent, man or woman.

However, quite amazingly, two more recent CS judgments (no. 587/2006 and no. 3405/2006), which dealt with applications from female judges for the annulment of the refusal to grant them the 9-months' paid child-raising leave, applied the aforementioned transitory provision, which was added in 2004 to Article 44 of the Judicial Code and which deprived mothers whose child was born after 2004 of the parental leave. The first of these judgments completely ignored EC law and the previous landmark CS judgments; it dismissed the application summarily, considering that the transitory provision did not conflict with any of the provisions of the Constitution (without specifically mentioning which), as it was justified on grounds of public interest; it referred to the speech of the Minister of Justice during the parliamentary debate on the relevant Bill, who invoked the increased need for judges and the need to prevent the absence of large numbers of judges who are mothers.

[60] Bulletins no. 3/2004, no. 2/2005 and 2/2006.
[61] Code for the Regulation of Courts and the Status of Judges (Act 1756/1988).
[62] This paragraph was added to Article 44 of the Judicial Code by Article 1 of Act 3258/2004.

The second judgment gave a more detailed justification of the dismissal of the application: it explicitly stated that the *acquis* recognized by CS Plenary no. 3216/2003 was modified by the new provisions and that the transitory provision was not contrary to either the Constitution or Directive 96/34. The new provisions constituted a specific national measure aimed at transposing Directive 96/34 in respect of judges and lay within the limits provided by this Directive, since the national legislator enjoys discretion regarding the shaping of the content of the right granted by the Directive. Thus, in contrast to mothers who are civil servants, mothers who are judges cannot be granted the parental leave at any time until their child reaches the age of 4 years, unless they already brought their claims before the entry in force of the new provisions. The CS justified this restriction of the rights of female judges on grounds of public interest, and more particularly in view of the 'strategic importance of their duties', 'which are connected, *inter alia*, with the smooth and swift administration of justice'.

It is obvious that the aforementioned transitory provision conflicts with Directive 96/34, as it results from ECJ case-law, and in particular Case C-519/03, Commission v. Luxembourg. Consequently, the CS should have ignored this provision and should have continued to apply the *acquis.*

HUNGARY

Csilla Kollonay-Lehoczky

In summary, the past three months have not been a period of much progress regarding gender equality, neither in legislation nor in practice.

Legislation

The beginning of the year has brought a number of belt-tightening measures for the whole country. Among other measures a number of social benefits have been cut, some of them directly affecting child-caring parents.

A step backwards is the abolishment of the former state-sponsored waiver of the tuition fee for those enrolled in some form of public, higher or post-graduate education while suspending their career for childcare leave.[63] As the advantage of the positive action was double, its abolishment also has a doubly negative effect: the withdrawal of the support disproportionately affects women and their labour market chances under the current situation, while at the same time also abolishing an incentive making childcare leave more attractive for parents of both sexes, thereby decreasing the chances of a more even distribution of the taking of such leave between men and women.

Publicized as compensation for the withdrawal of this form of financial support, applicants to higher education who are on maternity or parental leave within the period between the application deadline and the decision on admission are now entitled to additional points in the competition for admission.[64] This trade-off (hastily attempting to offer something that does not cost the government any money) creates a questionable advantage (which may be suspected of being discriminatory and is lacking in reasonability and proportionality) for a small group. It generates a negative atmosphere around the advantaged 'young mothers',[65] while at the same time it is completely unsuitable as a substitute for the former form of support.

Cases decided by the Equal Treatment Authority (ETA)

On its website, the ETA has published two cases on gender discrimination[66] that were decided in the past three months. The cases reflect a fairly cautious, hesitant attitude.

The first case, decided in December 2006, was a clear-cut gender discrimination case, with an explanation by the ETA that raises questions. The female complainant applied to a publicly advertised vacancy of machine operator, where work had to be performed in three shifts.

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[63] See: '*Report on Positive Action Measures*', April 2005, under Hungary, header 'Legislation'.

[64] Governmental Decree 237/2006 (XI.27) on the admission procedures to higher education institutions, Article 21, § (4) as amended effective from 1 January 2007, and with elevated points from 1 January 2008. The advantage in points is equal to the advantage given to disabled applicants.

[65] Although parental leave and consequently preferential treatment in education can be profited from by both parents, the media and even politicians repeatedly speak of benefits for 'young mothers', thereby reinforcing and bolstering the public's perception that "normally" mothers take such leave.

[66] Anonymous.

She was unsuccessful, and the employer's representative declared (and confirmed in the procedure) that they did not hire women due to the physically strenuous and dangerous nature of the job. No trial period was offered to the woman and the employer continued employing new workers after having rejected the female applicant. The ETA found that this constituted discrimination. A logical sanction in such a case would be to oblige the employer to hire the rejected woman. However, the ETA did not take any steps to promote the employment of the aggrieved women, but only prohibited the employer from displaying a similar attitude in the future and imposed a fine (the amount of the fine was not made public). It explained the sanction as follows: "[t]he Authority took into consideration (…) that the protection of women's rights is still unresolved (emphasis added) when violations do not occur in an existing legal relationship, but through a rejection to hire them or through the unfavourable assessment of their application (…)". There is nothing (no legal provision or established case-law) in Hungarian law to support this statement. The ETA, instead of pro-actively promoting consistent enforcement, and resolving existing uncertainties, refers to the non-binding (and occasionally mistaken) commentary attached to the legal database by database's publisher.[67]

The second case[68] concerned the non-hiring of an intern at a commercial agency at the end of her internship. The female applicant claimed gender discrimination with reference to the contract offered to the male intern, who had performed a shorter internship than she had. The ETA rejected the claim, with reference to the justification given by the employer citing reasons other than sex. The reasons ('appears uninterested', 'not making use of training opportunities', 'not loyal to the office', 'autonomous ideas on everything', 'unable to accept the hierarchy within the agency') were of a general, unclear character, not suited to being either proven or disproven, capable of covering up any real reasons. Such types of reasons are unacceptable as justification for a dismissal under the clarity requirement of the Labour Code and the established case-law on termination of employment.

The two cases seem to contradict the earlier approach taken by the ETA, when it expressed that the scrutiny of non-discrimination has to be the same in cases of non-prolongation of expired fixed-term contracts, dismissals or refusals to hire a person (in that case a pregnant woman).

ICELAND

Herdís Thorgeirsdóttir

Legislative developments

Act no. 167/2006 amending the Act on Maternity/Paternity Leave and Parental leave[69] took effect on 1 January 2007. The new law comprises payments from the Maternity/Paternity Leave Fund[70] and home care payments according to the Social Assistance Act no. 118/1993. Before the new law was passed parents receiving payments from the Maternity/Paternity Leave Fund were not also at the same time eligible for home care benefits that are paid to persons who are responsible for supporting disabled or chronically sick children either staying at home or in hospital.[71] The new law also stipulates that the Labour Directorate will manage the Maternity/Paternity Leave Fund instead of the State Social Security Institute.[72]

On 7 March, the Minister of Social Affairs introduced some suggestions for a legislative proposal amending the Gender Equality Act no. 96/2000. In the summer of 2006, the Minister had appointed a committee from among the various political parties which was chaired by former Supreme Court Justice, Ms. Gudrun Erlendsdóttir. The resulting proposal will be introduced in the first session of the Althing after the parliamentary elections which will take place on 12 May next. One proposal receiving most of the attention is that employees may at all times give information to third parties on their pay within the meaning of the law, e.g. general remuneration, either direct or indirect.

[67] No. 564/2006.
[68] No. 47/2007.
[69] No. 95/2000.
[70] Act on Maternity/Paternity Leave and Parental Leave no. 95/2000, Article 4.
[71] Social Assistance Act no. 118/1993, Article 4.
[72] The estimated cost of home care payments in addition to the other payments is 16 million ISK.

The lack of pay transparency has been much discussed in recent years[73] as one of the primary causes of the prevailing gender-based pay inequality (15.7 %). This proposal does not mean that pay transparency is required, but rather that companies may not make it mandatory in their rules that employees remain silent about their wages and terms.

The SA Confederation of Icelandic Employers has voiced opposition to this proposal, arguing that it puts a burden on employers and may also have the effect of keeping everyone's wages down as employers may justify such moves with reference to equality. The employers' confederation also emphasized that the potential abolition of pay secrecy will lead to bad morale in workplaces with growing competition between employees.[74] Members of the opposition in the Althing proposed changes to the Gender Equality Act in the autumn of 2006[75] emphasizing in the explanatory report to the proposal the need to introduce effective means to abolish the prevailing gender-based pay gap by abolishing pay secrecy[76] and additionally pointing out that 30 % of single mothers in Iceland must survive on payments which are under the poverty threshold.

Other significant changes that were proposed are the following:

- That the Centre for Equal Rights is given permission to request from public institutions, municipalities, employers and NGOs all necessary information required to fulfil its tasks and make inquiries into individual matters. If the requested information is not provided the Centre may impose fines on the parties refusing to cooperate.
- That the Complaints Committee on Equal Status is authorized to issue binding opinions.
- There are various other suggestions concerning procedures before the Complaints Committee, such as postponements to press charges and issue opinions. The Complaints Commission will be competent to suspend the judicial effect of an opinion upon further specified conditions and can also decide that the party against whom the charges are brought is liable to pay the claimant's costs during the procedure, but that if the claim is found not to be substantiated the Complaints Committee may find the claimant liable to pay the legal costs. It is also suggested that if a case is decided in favour of the claimant he/she is given legal aid if the party against which the action was brought brings a case for the invalidation of the ruling.
- It is suggested that the number of members of the Equal Status Council be increased and that the tasks of the Council be decided in parliamentary resolutions on programmes on matters of equality. The Equal Status Council is also to participate in the preparation of an equal rights conference held every other year.
- That an action plan is attached to the programmes on matters of equality that companies and institutions employing more than 25 people must prepare according to the law at present. The action plans must be reconsidered every three years and presented in a report to the Centre for Gender Equality subject to daily fines for those who do not adhere to this rule.

Court cases

There are no court decisions to report with respect to gender equality.

Policy initiatives and other developments

According to a report on the impact of the Act on Maternity/Paternity Leave and Parental Leave from 2000,[77] the Act has been well received as around 90 % of fathers make use of their right by on average taking 97 days' leave, while mothers take an average of 180 days' leave. Furthermore, the birth rate has increased in the wake of these changes and now stands at 2.1 children per woman, making Iceland and Turkey the only states in Europe where the birth rate suffices to sustain the population.

[73] Cf., resolution of the Conference on Networking: Empowerment of Women 2005 on pay secrecy, http://www.bifrost.is/kennarar/default.asp?sid_id=24690&tre_rod=001|011|&tId=1.
[74] Interview with the director of the SA Confederation on National Public Radio on 8 March 2007.
[75] 5 October 2006.
[76] Referring *inter alia* to the Danish law on pay equality (*Lov om lige løn til mænd og kvinder,* no. 756/2003, 21 August 2003, Article 2).
[77] Report in English: http://www.jafnretti.is/D10/_Files/parentalleave.pdf.

The Minister of Social Affairs has signed a regulation abolishing a prior practice with regard to payments from the Maternity/Paternity Leave Fund where parents who had a second child within three years from the birth of a previous child received payments which amounted to 80 % of the payments from the Fund and were thus receiving lower payments than they would have if the interval between the children had been longer. Parents should not be punished for the shorter interval between children and will therefore be receiving payments amounting to 80 % of their wages based on the two income years preceding the birth of the older child.

IRELAND

Frances Meenan

1. Legislation

From 1 March 2007 maternity leave is 26 weeks with additional maternity leave (unpaid) of 16 weeks, with adoptive leave being 24 weeks and additional adoptive leave (unpaid) 16 weeks. These changes apply to persons who commence their leave or additional leave after 1 March 2007. Maternity/adoptive benefit effective from 1 January 2007 is a minimum payment of 207.80 euro and a maximum payment of 280 euro weekly.

2. Cases

(i) Victimization

Jones v Norwich Union International Limited.[78] The claimant alleged that the respondent directly discriminated against her on grounds of gender.

The respondent claimed that her claim relating to her application for the post of Sales Support Manager in April/May 2004 was out of time. She was interviewed for the position on 20 April 2004; did her psychometric test on 29 April 2004 and gave her presentation on 12 May 2004. The claim was referred on 16 December 2004 citing the first incident of discrimination as 20 April 2004 and the last incident on 17 September 2004. There was also a claim in respect of a further competition in August 2004. Section 77(5) of the Employment Equality Act (as amended) provides *inter alia* that a claim for redress must be filed with the Equality Tribunal (or Circuit Court) within six months from the date of occurrence or as the case may be the most recent occurrence of the act of discrimination or victimization. The equality officer considered a similar issue on time limits in *Department of Health and Children v Gillen*[79] in which case the claimant complained that after he had reached the age of fifty, he was no longer considered as being suitable for promotion purely on age grounds.

He claimed that on two occasions when he competed, he was rejected on the grounds that he was over 50 years of age. The Labour Court held 'in the view of the Court, these two acts can be considered as separate manifestations of the same disposition to discriminate. If the last alleged act of discrimination is within the time specified in the Act, the Court may take into consideration previous occasions in which the complainant was allegedly discriminated against on the same ground. The Court, therefore, takes the view that both complaints are validly before the Court.' In the current case the claim in respect of the second competition was referred within the statutory time period for referring a claim and thus the complaint in relation to the earlier competition is validly before the Tribunal.

The position of Sales Support Manager was advertised internally and externally on 30 March 2004 with a closing date of 8 April 2004. The claimant applied for the position on 7 April 2004 and submitted an application form and *curriculum vitae*. On 5 May 2004 the successful male candidate submitted an application for the post, but without a curriculum vitae. The equality officer considered that the role profile drawn up for the post details the qualifications required; however, it was not possible to assess the claimant's qualifications as compared to the male applicant as it did not appear that a curriculum vitae was submitted with his application form, notwithstanding that the application form requested that a curriculum vitae be forwarded to human resources. The claimant also submitted that at a meeting in February 2004 the Managing Director advised the meeting that he had not been informed of the claimant's pregnancy and that given the situation there was a need to 'put the cart before the horse and get this unit up and running'.

[78] DEC – E 2006 – 062.
[79] ADE/03/15 Determination no. 0412 27 July 2004.

It was held that on the balance of probabilities that the respondent discriminated against the claimant in relation to the post of Sales Support Manager on the basis that the male candidate's application was submitted late following consultation with the managing director in relation to his proposal, the claimant's pregnancy was referred to by the managing director at a meeting in relation to the development of the sales strategy, a lack of transparency regarding assessment of the successful candidate's 'on the job performance', the post in respect of which recruitment was taking place changed during the process from Sales Support Manager to Technical and Sales Support Manager on foot of a proposal from the successful male candidate, inconsistent evidence in relation to when the nature of the post changed, one of the marking sheets for the claimant was missing, and there was a mismatch between the competencies in the role profile form and assessment criteria.

Subsequently the successful male candidate resigned his position and the claimant was so advised and received an e-mail to the effect that as she was not successful in the original application it was assumed that she would not be re-applying for the position of Sales and Technical Support Manager in August 2004. The claimant said that such assumption was incorrect. The qualifications required were substantially higher than for the post of Sales Support Manager. The equality officer considered that there was insufficient evidence to substantiate the claimant's claim that the statement was discriminatory on grounds of gender.

The equality officer considered the claimant was discriminated against in relation to the posts she was offered following her return from maternity leave. Of course, there is an entitlement to return to suitable alternative work on expiry of maternity leave.

The claimant states that she was referred for an independent medical examination once she had accumulated three weeks' sick leave and previously had no history of illness. She claimed that she was treated differently from colleagues who were not so referred within such a timeframe. The equality officer on hearing evidence from the respondent considered that the claimant was not treated less favourably. The equality officer raised issues of concern about the communication between the company's HR department and the doctor. The claimant also applied for permanent health insurance but was turned down as due to her absence she was no longer a member of the scheme. The respondent denied liability stating that there was no evidence that she was ill.

The equality officer ordered:

1. the sum of 20,000 euro compensation for the effects of the act of discrimination plus interest at the Courts Act rate from the date of referral of the claim (16 December 2004) and ending on the date of payment;
2. the sum of 10,000 euro compensation for the effects of the act of victimization;
3. review of the process of referring an employee to a company doctor;
4. the respondent to review the claimant's application for income continuance in the light of the revised medical report dated 1 February 2006.

(ii) Complaint against School's Arbitrator

In *Bermingham v. Mater Christi Secondary School and ASTI /JMB Appeals Board,*[80] the dispute concerned a complaint that the claimant was discriminated against on grounds of gender when a male colleague was appointed to a promotional post. Such complaint was found to have been filed outside the statutory time limit. There was a further claim that she was discriminated against by an all male appeal panel which upheld the appointment of her male colleague. With reference to the complaint against the school's arbitrator the equality officer considered Section 13 of the Employment Equality Act 1998 (as amended) which provides:

> *'A body which –*
> *(a) is an organization of workers or of employers*
> *(b) is a professional or trade organization, or*
> *(c) controls entry into, or the carrying on of, a profession, vocation or occupation,*
> *shall not discriminate against a person in relation to membership of that body or any benefits, other than pension rights, provided by it or in relation to entry to, or the carrying on of, that profession, vocation or occupation'.*

[80] DEC – E207 – 004.

The equality officer considered that the arbitrator clearly does not fall within the definitions in Sections 13 (a) and (b). In respect of Section 13 (c) entry into the profession of teaching is governed by the attainment of specified qualifications and an appointment to a teaching post, neither of which is within the remit of the arbitrator. The arbitrator is jointly appointed by the Joint Managerial Body (the employer's representative body) and the ASTI (Association of Secondary Teachers in Ireland) and his function is to hear arguments supporting each side's position, seek such advice as he saw fit and then come to an independent conclusion which is binding on both parties. The equality officer did not consider that he controlled the carrying on of the profession of teaching in the generalised sense as envisaged by Section 13(c). Accordingly this is not a valid complaint within the terms of the legislation.

3. General Election – May/June 2007

The National Women's Council of Ireland[81] has issued a seven point manifesto for the next government to include a demand for more women in decision making and also economic equality between women and men (elimination of the gender pay gap, a wage for all carers, all women on social welfare to receive full payments in their own right, flexible part-time education and training opportunities, a full contributory pension for all women who spent time out of paid work to care for their children, a cost of disability payment, e.g. transport costs).

4. Pensions

The latest figures on pension coverage from the Central Statistics Office covering the final quarter of 2005 show that while there is still a gender gap in pension coverage (58.3 % for men and 50.6 % for women) this 7.7 % gap is significantly smaller than the 11.3 % gap there had been in 2002.[82]

ITALY

Gisella De Simone and Anna Rivara

1. Legislative developments

1.1 EC law for 2007

Act no. 13 of 6 February 2007[83] delegating to the Government the power to issue decrees in order to implement EC Directives, includes EU Directive 2006/54 on the 'implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation' (recast). Although the deadline for implementing this piece of EC law is still far off, Act no. 13/2006 already takes it into consideration. Moreover it provides for a shorter term within which the delegated power has to be exercised (12 months instead of 18). The Directive has not aroused any particular comments among scholars or in the literature. The surprisingly prompt provision for its implementation may be indicative of a choice to seize the opportunity to intervene concerning several gaps and incoherencies in the recent 'Code for Equal Opportunities between Men and Women' issued by Decree no. 198/2006.[84]

1.2 Occupational schemes

Supplementary social security (the second pillar of the pension system), which was already in force on paper but at a stand still as regards its real implementation, could finally take off thanks to the possible (and promoted through incentives) addition of severance pay (*trattamento di fine rapporto*)[85] to the supplementary pension funds.

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[81] http://www.nwci.ie.

[82] Industrial Relations News IRN 1 10 January 2007.

[83] Published in OJ no. 40 of 17 February 2007 - Ordinary Supplement no. 41/L, http://www.PARLAmento.it/parlam/leggi/elelenum.htm.

[84] A consolidation act called 'Code of equal opportunities between men and women under Article 6 of Decree no. 246/2006' which brought together all existing anti-discrimination provisions related to gender, including Act no. 215 of 25 February 1992 on Positive Actions for Female Entrepreneurship (published in OJ no. 56 of 7 March 1992) published in OJ no. 125 of May 2006, http://www.parlamento.it/leggi/deleghe/06198dl.htm).

[85] This is a form of deferred pay, set aside annually and matched by the employer, which is paid to the employee at the end of the working relationship.

Decree no. 252/2005[86] provides that all employees in the private sector will have to choose before 30 June 2007 whether they wish to maintain their severance pay at their employer's or whether they wish to contribute to a category/open supplementary pension fund in order to increase the amount of their total pension claim. In this historical reform, it is worth underlining a gap which could be deemed a sign of a lack of mainstreaming in this apparently gender-neutral legislation.

Article 5 (1) of the Act on the Protection of Motherhood and Fatherhood (Act no. 151/2001)[87] provides that workers making use of parental leave may request the advance payment of part of the severance pay in order to increase his/her income, according to Article 7 of Act no. 53/2000.[88] Although Article 5 also provides that supplementary social security funds can regulate the possibility to request this advance payment, Article 7 expressly refers to this advance payment only for cases of leave for professional training purposes. In practice, the regulation of the funds may provide for other cases, but like under the regulations on the protection of motherhood and fatherhood, this is just a possibility and not a worker's full right based on the law. Moreover, Article 11 of Decree no. 252/2005 regulating a worker's right to the advance payment of severance pay where he/she opts for the supplementary pension fund only refers to cases provided for by Article 2120 of the Civil Code, such as covering health expenses and buying the 'family home'.

1.3 Positive actions under Article 9 of Act no. 53/2000

As we mentioned in the previous Bulletin, the Budget for 2007[89] has switched the funding allocated to positive actions for the reconciliation of work and care time[90] from the Occupational Fund to the Family Fund. The final text of this Act provides some further remarkable changes on this subject. Article 1 (1254) of the Budget for 2007 widens the scope of application as to the institutions entitled to this financing (which was limited to private enterprises) by extending it to certain public authorities, such as local health units and hospitals. However, these can only obtain the funding after all requests of private subjects have been dealt with and there is still funding left. Article 1 (1254) also adds some further objectives of these positive actions such as the substitution, re-entry in the labour market, the scheduling of working time and the professional training of workers who take care of under-age children, disabled persons or dependent elders.

As regards positive actions aimed at boosting 'flexitime', these grant priority to parents of children of up to 12 years old (8 years in the previous Article 9) or up to 15 years old (12 years in the previous Article 9) or parents taking care of disabled children. By contrast, a step back occurred as regards the notion of part-time work for the purpose mentioned above. In fact, the present text does not refer to part-time work as a temporary (i.e. reversible) measure, which is consistent with the legislation in force which does not provide for a worker's right to return to a full-time job.[91] This means that an excellent opportunity was missed to provide an incentive for the temporary use of this measure.

Moreover the Family Fund, in addition to providing support to positive actions, can also support the promotion of, giving professional advice on, the planning and the monitoring of these measures as well as the functioning of the Technical Commission set up to admit enterprises to this financing. This could be useful, on the one hand, but it could also cover up possible risks as to the wasting of resources on the other hand.

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[86] Published in OJ no. 289 of 13 December 2005 - Ordinary Supplement no. 200, http://www.tfr.gov.it/tfr/menuAlto/norme.

[87] Decree no. 151/2001, published in OJ no. 96 of 26 April 2001, http://www.parlamento.it/leggi/deleghe/01151dl.htm.

[88] Act no. 53 of 8 March 2000, on Supporting Motherhood and Fatherhood, Time for Care and for Vocational Training, and Coordinating the Hours of the Municipal Public Services, published in OJ no. 60 of 13 March 2000, http://www.PARLAmento.it/parlam/leggi/elelenum.htm.

[89] Act no. 296 of 27 December 2006, published in OJ no. 299 of 27 December 2006**,** http://www.PARLAmento.it/parlam/leggi/elelenum.htm.

[90] Article 9 of Act no. 53/2000 concerns undertakings enforcing collective agreements which provide for positive actions aimed at allowing biological/adoptive parents to make use of flexitime schemes through *temporary (according to the previous Article 9*) part-time work, tele-work, working from home, and other measures, as well as positive actions designed to help parents who re-enter labour market after parental leave by means of vocational training.

[91] Article 5 (2) of Act no. 61/2000 on part-time work only provides the possibility that the individual employment contract gives priority to workers in the recruitment of full-time workers in the same municipality and for the same or equivalent job.

Incidentally, we must also note that one of the 12 points of the plan presented by the new Prodi government, which obtained a vote of confidence of Parliament after the recent crises, concerns providing support to the family through the increase of family allowances and of crèches.

2. Case-law

Judgment no. 2244 of 1 February 2006 of the Court of Cassation[92] has confirmed an interpretation of the prohibition of dismissal during pregnancy ensuring strong protection for the worker. The case in question concerned the dismissal of a woman employed under a fixed-term contract of vocational training and employment (*contratto di formazione e lavoro*) which was in violation of the ban provided by Article 54 of Decree no. 151/2001.

According to the Court, the ban applies to the mere objective state of pregnancy, which means that unfair dismissal involves the compensation for damages which are calculated on the basis of the worker's right to remuneration from the date of dismissal to the expiration of the contract. What is remarkable about this judgment is that the calculation of the compensation took into account the period of suspension of the working relationship for the purpose of maternity leave. As this entails the extension of the duration of the contract for reasons outside the parties' will, the compensation shall also include this period.

LATVIA

Lîga Biksiniece

Legislative developments

The **Amendment to the Civil Code** concerning non-discrimination in access to goods and services adopted on 7 September 2006 by the Parliament on first reading was rejected on second reading in January 2007. In the first draft the wording of Article 1403a went beyond the requirements of Directives 2004/113/EC and 2000/43/EC, as it prohibited different treatment on several grounds – gender, age, race, color, ethnicity, religious, political or other convictions, or other circumstances. Politics is currently not prepared to restrict the principle of the self-determination of contracting parties under private law in this way. Parliament assigned to the government the task of drafting new proposals for legislation in order to implement the principle of non-discrimination in access to goods and services in other legislative acts than the Civil Code. Unfortunately, therefore, politics is reluctant to introduce the principle of non-discrimination into private law, particularly, access to goods, services and housing.

Policy initiatives and other developments

The Ministry of Welfare is actively working on the preparation of *The Programme for the Implementation of Gender Equality 2007-2010,* which should be adopted by the Cabinet of Ministers shortly. Governmental and non-governmental institutions are actively involved in this process. The main ingredients of the programme are awareness raising in society and among policy makers; the prevention of domestic violence; the reconciliation of work and family life and promoting a healthy way of living. The improvement of the monitoring of gender equality implementation policies is one of the horizontal priorities of the programme.

LIECHTENSTEIN

Nicole Mathé

1. Legislative developments

There are no legislative developments to report at this time.

2. Court cases

No court cases have been heard or decided.

3. Infringement proceedings

No infringement proceedings have occurred.

[92] Published in *Massimario di Giurisprudenza del Lavoro* 2006 no. 12, p. 920.

4. Policy initiatives and other developments

4.1. Equality is worthwhile

An information campaign entitled 'Equality is worthwhile' about equality in professional life was launched for the year 2007 by the government's body for equal opportunities, INFRA (information and contact point for women) and LANV (interest group for employees in Liechtenstein) and addresses the concerned public. The aim is to promote the knowledge of equality law among employers and employees. Companies can profit from equality, as the more responsible persons are informed, the better equality will be implemented. Fair employment relationships lead to motivated employees and to the prevention of high costs. Therefore equality has to be dealt with by management.

Brochures expressly addressed to the management of companies explain the main points of equality law. Moreover special information about the equality law as well as a brochure concerning sexual harassment at the workplace are provided for employees. By means of examples and cases the main questions are described.

This campaign aims to make equality law more popular among the people concerned and to improve their knowledge of it.[93]

4.2. Women's networks

The women's section in Vorarlberg, the specialized unit for gender equality in St. Gallen and the Gender Equality Office in Liechtenstein have initiated the networking project '*Frauennetzwerken*' in the form of three events in Liechtenstein, Vorarlberg (Austria) and St. Gallen (Switzerland). These events offer women an opportunity to engage in cross-border exchanges in their respective fields of activity. Thereby a framework for networking is created where women can come into contact with each other, as networking is one of the most important preconditions for political and professional advancement. The next event is planned for 10 May 2007 in St. Gallen.[94]

4.3. Training course in politics (*Politiklehrgang*) 2007

Women who are active in institutions, chambers, political parties, public bodies, organizations, associations or initiative groups or are willing to participate in such groups now have the opportunity to participate in this course which in 2007 is being organized for the fourth time. This training course too is organized in cooperation with the Commission for Gender Equality, the Gender Equality Office and the women's section in Vorarlberg (Austria). The course aims to train women in putting across their capacities in political committees and in public. In the training course women become acquainted with the rules for political activity. They receive support for their social political commitment or for their political work and learn about basic political facts and rules. Furthermore, the course aims to improve their self-esteem and teaches women techniques for leading a discussion.

So far, 57 women (27 from Liechtenstein and 30 from Vorarlberg) have successfully completed the course and are willing to inform others of their experiences and the impressions gained from the course.[95]

4.4. Women in politics

Through an initiative of the commission for gender equality in the context of the 2007 municipal elections, the names and images of all female candidates will appear on a poster to make the public aware of the fact that it if they wish to have women represented in political functions, they will actually have to vote for them.

4.5. European Year of Equal Opportunities for All 2007

On 12 February 2007 the kick-off event for the 2007 European Year of Equal Opportunities for All took place in Liechtenstein.

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[93] See for more details http://www.llv.li/amtsstellen/llv-scg-gleichstellung-veranstaltungen/llv-scg-gleichstellung-kampagne_zum_gleichstellungsgesetz-2.htm.

[94] http://www.llv.li/amtsstellen/llv-scg-gleichstellung-veranstaltungen/llv-scg-gleichstellung-frauennetzwerken-einladung.htm.

[95] http://www.llv.li/amtsstellen/llv-scg-gleichstellung-veranstaltungen/llv-scg-politiklehrgang2007-3.htm.

Female members of the government, the director of social services and the director of the body for equal opportunities all attended and presented the projects planned throughout the year.[96]

Conferences on gender in medicine, gender mobility and equal opportunities in companies will especially deal with aspects of gender equality. Furthermore the organization *Frauennetz Liechtenstein*[97] will come up with a project regarding women and estate planning consisting of three elements:

1. suggestions for amendments to the succession laws,
2. an information event, and
3. a seminar for strengthening self-esteem.

Women are generally not very well informed about the existing legal possibilities for sharing in family assets and income and often lack the confidence to claim their rights.

4.6. Gender pay gap in the administration of Liechtenstein

On 14 March 2007 the information office of Liechtenstein's administration published the results of an analysis with regard to the equal pay of men and women that started in July 2006. The outcome was that there are no signs of gender discrimination. A thorough consideration of statistics concerning wages gave no indications for pay discrimination. All pay differences are due to the ranking of different salary categories according to the description of positions in the administration. Nevertheless a remarkable pay difference between men and women has been revealed, but this is mainly due to the fact that women are overrepresented in low salary classes and underrepresented in higher salary classes. According to the administration, the analysis showed good practice concerning equal pay. However, the Liechtenstein Institute that carried out this study added that if the aim is to equalize the salaries of men and women, more women have to be in higher positions.

5. Developments in general discrimination law

5.1. Initiative for an Anti-Stalking Act

Representatives of the organizations INFRA (information and contact point for women) and of the *Frauenhaus* (women's refuge) exchanged experiences with the deputy president of the government on 7 March 2007 to find out more about the practical situation with regard to government initiative introducing a new provision against stalking in the Penal Code.

Such an initiative regarding protection against stalking is currently on the agenda for discussion in the Parliamentary session of 14 to 16 March 2007.

LITHUANIA

Tomas Davulis

Legislation

On 13 February 2007 the Lithuanian Government adopted Resolution no. 198[98] aiming to update the legal framework for the Commission on Equal Opportunities of Women and Men which was created in 2000 to coordinate the implementation of the principle of equal opportunities for women and men in the activities of state institutions and establishments. Together with a formal update of the document and the renewal of the personal composition of the Commission due to changes in the government structure a few novelties were introduced. Firstly, the objectives and competences of the Commission were concretized to encompass programmes and measures as well as special programmes in the various areas devoted to particular problems in equal opportunities for women and men (e.g. violence against women) and the integration of the gender aspects in the programmes of not directly gender-related areas and the supervision of their implementation.

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[96] See for more details http://www.llv.li/amtsstellen/llv-scg-gleichstellung-veranstaltungen/llv-scg-gleichstellung-chancengleichheitsjahr2007.htm.

[97] http://www.llv.li/amtsstellen/llv-scg-gleichstellung-netzwerke/llv-scg-gleichstellung-netzwerke-frauennetz_liechtenstein.htm.

[98] Official Gazette, 2007, no. 23-883.

The will to strengthen the relationship and interaction with NGOs in the field of gender equality was reflected in the provision allowing NGOs to participate directly in the work of the Commission, alongside representatives from all Ministries of the Republic of Lithuania and the Department of Statistics. The non-governmental organizations for women and men will be represented in the Commission by up to 4 representatives. However, the new rules neither identify relevant NGOs, nor define the criteria for the selection of competent NGOs. The right to approve the personal composition of the Commission was vested in the Ministry of Social Security and Labour.

Case-law
The situation concerning case-law in the field of gender equality has not changed during the period under consideration – no cases regarding gender equality or the prohibition of discrimination have been brought before the courts and no relevant court decisions have been handed down.

Other news
The Office of the Ombudsman of Equal Opportunities announced the statistical data concerning the number of complaints and investigations before it in 2006. The majority of complaints and investigations alleged discrimination on grounds of sex (27). Other complaints were related to discrimination based on age (22), ethnic origin (20), disability (11), religion and belief (6), sexual harassment (2) and sexual orientation (2). Most of the complaints dealt with discrimination in the field of employment (37), actions of state and public institutions (26), the provision of services (21), and education (10).

On the occasion of 8 March 2007, International Women's Day, summaries of statistical data about gender equality were presented to attract public attention to the political, economical and social situation of women in Lithuania. For example, today in Lithuania women fill 23 % of the seats in Government (3 out of 13), 23 % of the seats in Parliament (33 out of 141), 0 % of the posts of Vice-Chairman of Parliament (0 out of 6), 7 % of the posts of Chairman of the Parliamentary Committee (1 out of 15), 38 % of Lithuanian Members of the European Parliament (5 out of 13), and 0 % of the posts of Rector at Universities (0 out of 15). Women fill 5 % of the posts of Mayor, 21 % of the seats of the Councils of Municipalities (22 % after the last municipal elections in February). In the universities women form the majority of all students (60 %). On average, women earn approximately 82 % of men's salaries and in the public sector this is even less (78 %). Women constitute 94 % of all victims of sexual violence, 82 % of victims of spouse (partner) violence, 64 % of victims of violence on the part of children. The risk for women of being murdered or of suffering violence at home is three times higher than in any other place. The poverty rate for women is rising twice as fast as that for men. The number of women among unemployed persons is increasing steadily and reached 62 % in 2007. Today 53 % of all persons emigrating from Lithuania are women.

LUXEMBOURG
Viviane Ecker

1. Legislative developments
1.1. Parental leave
A law of 22 December 2006[99] introduced some amendments to the legislation on parental leave as regulated under the law of 12 February 1999 introducing parental leave and leave for family reasons which are incorporated into the National Action Plan for Employment. The amendments mainly aim to comply with the ECJ judgement of 14 April 2005, in the case *Commission of the European Communities v Grand Duchy of Luxembourg* (case C-519/03), in which the Court held that the provisions of national law concerning the substitution of maternity leave for parental leave and the date from which an individual right to parental leave is granted, did not comply with Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave.

[99] *Mémorial A* no. 242 p. 4828.

The previous provision according to which the right to maternity leave arising during parental leave replaces the latter which must then come to an end, has been replaced by a new article providing that the parental leave will be interrupted if a pregnancy or an adoption occurs and that the remaining portion of that parental leave will be added to the upcoming maternity leave. The new law now grants a right for parental leave of three months' duration without financial compensation for parents who do not opt for parental leave immediately after the period of maternity leave or adoption leave and for parents whose children were born or adopted before 31 December 1998 (the law of 1999 has limited the right to parental leave to parents of children born or adopted after 31 December 1998). These new provisions have been severely criticized as they propose different treatment between parents who opt for parental leave immediately after the period of maternity or adoption leave and those who do not choose this option.

1.2. A Bill aiming to transpose Directive 2002/73/EC into national law was submitted to Parliament on 1 March 2007. It proposes to replace the Act of 8 December 1981 transposing Council Directive 76/207/EEC into Luxembourg law. The provisions are restricted to the minimum requirements included in the Directive and the bringing of the law into line with the law of 13 July 2006 transposing Directives 2000/43/EC and 2000/78/EC into national law. This law creates the legal basis for a Centre of Equal Treatment excluding all grounds of discrimination, including sex discrimination, but so far this independent body has not yet been established. The Bill contains provisions for both the private sector and the public service.

1.3. A Bill aiming to amend the law of 15 November 1978 concerning abortion[100] was presented on 8 March 2007 by Ms Lydie ERR, a socialist Member of the Parliament. By her proposal this MP wishes to provide for the decriminalization of voluntary terminations of pregnancies during the first 12 weeks or the first 14 weeks in case of amenorrhoea. Special advice on birth regulation should be provided by professionals to every woman requesting an abortion. The proposal also aims to make it an offence to impede abortion, in order to prevent intimidation of the women concerned and of persons performing abortions.

Under the 1978 law, abortion is legal during the first 12 weeks of pregnancy under certain circumstances. Women who consent to illegal abortion and persons performing illegal abortions are subject to punishment under criminal law. The Committee on the Elimination of Discrimination against Women, which is the monitoring body for the Convention on the Elimination of All Forms of Discrimination against Women, has at several times pointed out to Luxembourg that punishing women who underwent an abortion was inappropriate and reminded Luxembourg that the Beijing Platform for Action, adopted at the 1995 Fourth World Conference on Women, had urged governments to review abortion laws.

2. Case-law

There have been no important decisions in the field of equality or gender equality.

3. General developments

On 26 April 2007 the association *Cid Femmes* will organize the sixth annual Girl's and Boy's day with the support of the European Social Fund and the Ministry of equal opportunities to make young girls acquainted with professions traditionally occupied by men and young boys acquainted with so-called typical female professions.

MALTA

Peter G. Xuereb

1. Legislative and Judicial Developments

There is no new major legislation or draft legislation to report for this period, except for the removal of the 20 hour per week threshold that used to apply to part-time employees for qualification for certain benefits. This threshold has been removed by Legal Notice 140 of 2007 (the Part-Time Employees Amendment Regulations, 2007) for those whose part-time employment is their principal employment as re-defined.

[100] *Loi du 15 novembre 1978 relative à l'information sexuelle, à la prévention de l'avortement clandestin et à la réglementation de l'interruption de la grossesse (Articles 348 -353-1 du code pénal)*.

In what may turn out to be a landmark judgment delivered in February 2007, the civil court has apparently paved the way for a woman who was born male and underwent a sex change operation to marry. This is the first such ruling in a case of gender reassignment. The woman had applied for a name change on her birth certificate. The court ruled that her sex had been changed irreversibly, and ordered that her birth certificate be altered to show her female name and sex. The woman had applied to marry but the Public Registry had refused to issue the wedding banns. Applying Chapter 255 of the Laws of Malta, the Civil Court (Second Hall) now ruled that the proposed marriage was no longer a proposed marriage between persons of the same sex and ordered the Public Registry to proceed with issuing the banns. The Director of the Public Registry immediately appealed against this ruling, by instituting proceedings in the Civil Court First Hall, on the grounds that the change in the act of birth, allowing that document to show new name and gender, was only intended to protect the right to privacy and to avoid that person's embarrassment, and not to declare femaleness for the purpose of marriage. He further argued that the operation had been merely 'cosmetic' in effect. The judgment has not yet been officially reported, and the above reflects the way in which the case was reported in the Press in late February 2007. The case is still pending on 'appeal' at the time of this report.

2. Infringement Proceedings

None have been reported.

3. Policy Initiatives and other Developments.

3.1 The third Annual Report of the National Commission for the Promotion of Equality (henceforth NCPE), the national equality body, and covering 2006, was published in February of 2007.[101] As the NCPE is expected shortly to assume responsibility across the grounds of discrimination, the priorities for 2007 are set out as being: (1) audit and amendment of laws across all grounds of discrimination; (2) capacity-building of the NCPE itself; (3) training, education, awareness-raising and media; (4) widening of the network with other national and international entities. The NCPE will be working closely with the National Coordinating Committee set up to implement the EU Year of Equal Opportunities for All. Again, the report states that many complaints were received in 2006,[102] but that many complainants later withdrew their complaint. A substantial number of complaints are reported to have concerned the disparities between indefinite and fixed-term contract employees.[103] While there is an indication of the nature of complaints received and followed up, there is little detail as to the actual facts and outcomes. It also reports several training initiatives across the public sector. It records successful lobbying for the mainstreaming of family-friendly measures. On projects, the NCPE reports working on six main projects, with the aims of proposing change and raising awareness. A main project is ESF no. 23 on Gender Mainstreaming, now concluded, the research results of which have not yet been published but will throw light on family-friendly measures, the gender pay gap, career paths and conditions for graduates and teleworking; Project ESF no. 46 focuses on the study of education, employment and training, social security and tax, criminal, civil and family legislation and will make recommendations. The report highlights all events organized and attended, and all awareness-raising activities undertaken during 2006.

3.2 It was a matter of great satisfaction, not least for the National Commission for the Promotion of Equality, which had lobbied for it, that the Head of the Civil Service announced in December of last year the 'extension' of family-friendly policies and measures applicable to the civil service across the entire public service. It is expected that this will lead to wide take up of the option to work reduced hours in order to care for children under the age of 12. Pressure is now growing on private sector employers to follow suit, as is the stated intention of the government, and some major unions have already began to make related demands.

3.3 The government has declared that childcare facilities are a high priority for the government and announced its plan to open three new childcare centres in state schools by the beginning of the new scholastic year in October 2007.

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[101] Available on the NCPE website at http://www.equality.gov.mt.
[102] See pp.12 and 13 of the report.
[103] Page 14.

Apparently over 90 % of all children over two and a half years of age attend kindergarten, but there remains the need to provide facilities for those under that age in the government's view. At the same time, a public opinion survey carried out by EMCS Ltd. (an economic and management consultancy company) reports that 53 % of respondents felt that mothers of children who are under three years of age 'should not be in employment'. Most of the current 60 childcare facilities are private. Government has also announced its intention to bring in other 'innovative systems' such as home-based childcare. Government is anxious to boost the female employment rate from the current 35 % to at least 41 % by the year 2010. On the occasion of International Women's Day, the Prime Minister urged the Malta Confederation of Women's Organizations to present suggestions for the next budget on the basis of the Care Services Manifesto drawn up at the European Women's Lobby's Prague Seminar of October 2006 and presented by the Confederation to him on 7 March. The manifesto addresses the low participation rate in employment, and issues of parental leave including uptake of paternal leave among other matters.

3.4 In a press release to mark Women's Day, 8 March 2007, the Minister for the Family and Social Solidarity, Dolores Cristina, spoke of the 'validation of women' over the past 18 years in particular, and highlighted the main planks of the government's agenda for the immediate future. These are: addressing the question of the low percentage of women in the workforce; and equal access to full participation in power structures and decision making.

3.5 The Malta Labour Party has adopted a number of Social Policy Plans, to be implemented should it be returned to government in the forthcoming general elections, to be held probably around March of 2008. The Plans address priority issues and make recommendations and proposals on Equality between Men and Women, the Family, the Elderly, Youth, and Working Conditions, Employment and Housing. These proposals range from childcare facilities in the public sector, to breast-screening programmes, and include measures to safeguard the rights of co-habiting couples, the use of quotas to improve the representation of women in positions of responsibility, the giving to self-employed women of the same maternity benefits as are enjoyed by women in employment, pro-rata benefits for part-time workers who pay social security contributions, review of the Domestic Violence Act, and reduction of court fees to ensure that women without independent means have access to justice.[104]

3.6 Satisfaction has been expressed in the Maltese press[105] that the 2007 Equality Report published on 7 March by the European Commission shows that the gender pay gap in Malta is the lowest in the 27 EU Member States, standing at 4 %. This is based on the difference between male and female average gross hourly earnings as a percentage of men's average gross hourly earnings. However, the same Report reported that Malta has the lowest official rate of women's participation in employment, standing at 33.7 %. This contrasts with the predominance in numerical terms of women in higher education.[106]

Meanwhile, in recent weeks, by Legal Notice no. 140 of 2007 (the Part-time Employees Amendment Regulations, 2007), new legislation has removed the 20 hour per week legal threshold (as was supplemented by a 14 hour per week threshold for those whose part-time employment was their principal employment) that had prevented part-time employees from qualifying for *pro rata* benefits.

4. Developments in general discrimination law

No major developments are reported. However, from recent statements in the press it appears that the time is close when the National Commission for the Promotion of Equality between Men and Women (the NCPE) will be designated the single Equality Body for all grounds of discrimination. This may well be accompanied by the amendment of relevant legislation across the board in the light of experience. Also, Legal Notice 85 of 2007 was passed with a view to further implementing the principle of equal treatment between persons irrespective of racial or ethnic origin in accordance with Directive 2000/43.

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[104] The Policy Documents are available on the Malta Labour Party website at http://www.mlp.org.mt.
[105] See for example, The Times, 8 March.
[106] The latest news release dated 8 March from the National Statistics Office, on employment and education of women in Malta, can be found on the NSO website at http://www.nso.gov.mt/statdoc/document_file.aspx?id=1949

Legal Notice 86 of 2007 (the Equal Treatment in Self-Employment and Occupation Order, 2007) specifically implements the relevant provisions of Directive 2000/43 and 2000/78 in the context of self-employment and occupation.

THE NETHERLANDS

Ina Sjerps

1. Legislative developments

There are no legislative developments to report.

2. Case-law

On 5 January 2007, the Dutch Supreme Court (*Hoge Raad*)[107] decided a case on pension rights between *Vendex KBB* (a chain of department stores) and a group of atypical workers. Employees who work less than 12 hours per week, or whose contract period lasts less than 8 weeks are considered 'helping workers'. Employees working more than 12 hours a week during a period longer than 8 weeks, but who work less than full timers, are considered part timers. Until 1 January 1978, both groups (helping workers and part timers) were excluded from participation in the KBB pension scheme. From 1978 onwards, however, part time workers were no longer excluded, but nothing changed for helping workers. Contrary to full timers, the part timers either must have worked for KBB for 5 years (from 1986 onwards: one year) before they could participate in the scheme, or join the scheme on a voluntary basis. From 1992 onwards, this latter condition was abolished and all employees, also the 'helping workers' were allowed to participate in the scheme without waiting periods. The claimants all worked for KBB as part timers or 'helping workers' before they were allowed to participate in the pension scheme. They claim that KBB has to allow them entry into the scheme over the period during which they were employed by KBB but excluded from the scheme. The employees claim that the KBB scheme went against Article 119 EC (now 141 EC). KBB claims that the employees brought their claims too late, and that they are barred by lapse of time.

The arrangement between 1978 and 1992, during which part timers either had to wait 5 (later 1) years before entry into the scheme, or had to voluntarily join the scheme, is not equal to the scheme for full timers, who automatically joined the scheme. The Supreme Court held, however, that part timers were not barred from participation, and that they were therefore not excluded from the pension scheme.

3. General developments

3.1 Equal pay

On 27 January 2007, the project team '*Gelijke beloning, dat werkt*' (Equal pay, that works) organized its closing conference. The project team was installed by former Minister for Social Affairs, Mr. De Geus, in January 2006. The group consists of representatives of the social partners and the Equal Treatment Commission. The final report can be found at http://www.gelijkloon.nl. The recommendations focus on the role of collective agreements in achieving equal pay, the role of works councils in promoting equal pay, and individual strategies for pay negotiations between employees and employers.

3.2 New cabinet

The Netherlands has a new government. The governing coalition is made up of Christian-Democrats (CDA), Social-Democrats (PvdA) and the Christenunie (CU). The Christenunie is a small orthodox protestant party. Not the most orthodox, as that is the SGP. The CU is not against women voting or against women being appointed or elected in public functions. It is for the first time in history that an orthodox protestant party forms part of the governing coalition.

Five of the 16 Ministers, and 6 of the 11 State-Secretaries are women (one from the CU). The responsibility for Women's emancipation has been transferred from the Minister of Social Affairs to the Minister of Education (Mr. Plasterk). The Vice-Prime-Minister for the Christian Union, Mr. Rouvoet, is Minister for the newly established post of Youth and Family.

[107] LJN: AY8771, C05/193HR.

3.3 Pregnancy leave for the self-employed

The *Vereniging voor Vrouw en Recht Clara Wichmann* (organization for women & law) is fervently lobbying for a pregnancy- and maternity leave scheme for self-employed women.[108] The largest Dutch Trade Union Federation, FNV, has started a petition to support this claim.[109]

On the initiative of two MPs,[110] Parliament has invited the Minister of Social Affairs and Employment to develop a proposal for such a scheme. The former Minister for Social Affairs and Employment, Mr. De Geus, wrote to Parliament that he would leave this to the new Minister.[111] The new coalition government will investigate options for a pregnancy and maternity leave scheme for self-employed women.[112]

3.4 Navy

On 12 January 2007 for the first time in Dutch history, a female naval officer, Jeannette Morang, came in command of a navy vessel, the HR. MS De Ruyter.[113]

NORWAY

Helga Aune

1. Legislative developments

There have been no relevant legislative developments during the period covered by this report.

2. Court cases – Gender Equality and Discrimination Ombud (Ombud) and Gender Equality and Discrimination Tribunal (Tribunal)

Civil courts: Oslo municipal court[114]

An eighteen-year old employee was given notice during her trial period seven days after she had informed her employer of her pregnancy. During the seven days the employer had produced two warnings of disfunctioning at work, but had also failed to fulfil the formal requirements for due notice of termination under the Working Environment Act of 2005 (WEA). The court ruled that the notice of termination had been issued invalidly, both according to the regulations of the WEA and of the Gender Equality Act. The employee was awarded damages in the amount of NOK 125,000 in addition to compensation in the amount of NOK 136,383, to a total of NOK 265,000. The compensation included lost income and loss of maternity benefits due to the lost income and future loss of income for a period of six months.

Labour Court[115]

The airline SASBraathens had one collective agreement for cabin crew and one for pilots. Both agreements offered pension coverage of 70 % of the income based on an average of retirement benefits from the national insurance scheme and the individuals' accumulated pension rights. The employer and the cabin crew's union entered into an agreement that coverage may be reduced from 70 % to 67 % on the condition that this reduction was also introduced for the pilots. The reduction was made in respect of the cabin crew and seemingly also in respect of the pilots, but the pilots had shortly before been granted other benefits in compensation. The cabin crew's union argued that the reduction violated the conditions agreed upon for a possible reduction and in addition violated the principle of gender equality as laid down in Sections 1a and 3 of the Gender Equality Act. The majority of the Labour Court found that the employer had indeed violated the agreed conditions and ruled that all employees should receive 70 % coverage. The court did not consider the gender equality legislation relied on by the union.

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[108] http://www.vrouwenrecht.nl.
[109] http://www.fnvzzp.nl.
[110] *Van Gent* and *Verburg*, Parliamentary documents 30 800, XV, 48.
[111] Letter of 30-1-2007; Parliamentary dossier TK 29497-20.
[112] Coalition agreement p. 29, § 5; http://www.kabinetsformatie20062007.nl/Images/Coalitieakkoord%20CDA-PvdA-CU_tcm149-92516.pdf.
[113] According to a press release from the Ministry of Defence of 12 January 2007, http://www.mindef.nl.
[114] TOSLO-2006-52718.
[115] ARD-2006-15 (case 51/2005, no. 23/2006).

Ombud
Several complaints have been dealt with. Two examples are the following. In one case, a hospital had denied some patients the right to wear all-covering swimwear. The Ombud ruled that such a prohibition was in violation of the Anti-Discrimination Act as this would exclude all those who for religious reasons would want to cover their bodies. In another case, a woman had accepted a job offer as a substitute for a period of 18 months. After the employer learned that the woman was pregnant, the employer withdrew the job offer. The Ombud found that the employer had clearly violated Sections 3 and 4 of the Gender Equality Act and recommended that the employer should re-offer the position to the woman if nobody else had been employed in the meantime or that he should pay due compensation.[116]

Tribunal: Case 17/2006, decision of 15. February 2007
A female senior consultant filed a complaint regarding equal pay whereby she demanded the same pay as a male typographer working in the same enterprise. The Tribunal concluded that the work in question was of equal value. However, the Tribunal also decided that the pay had been close to equal for 2006 when bonuses were included and that after an improved bonus system in 2007 no difference in pay remained between the two employees in question.

3. Infringement Proceedings
The Bronnoysund Register Centre is a government administrative agency responsible for a number of national regulatory and registration schemes for business and industry. The Centre has now issued a warning that two large enterprises, Avinor AS and Nor-Cargo Thermo AS, may have to be dissolved as companies due to violations of the regulations regarding gender representation on company boards following Section 20-6 of the Public Limited Companies Act of 1997. In both companies, all employee representatives on the board are men. Both companies have stated that they will launch new elections for employee representatives.[117]

EFTA Court Case E-2/07
An action against Norway was brought before the EFTA Court on 19 February 2007 by the EFTA Surveillance Authority (ESA). ESA has requested the EFTA Court to declare that by maintaining in force rules in the *Lov av 28. juli 1949 nr. 26 om Statens Pensjonskasse* relating to pension rights accrued on the basis of periods of employment after 1 January 1994 pursuant to which the survivor's pension of a widower whose spouse became a member of the Public Service Pension Fund prior to 1 October 1976 is curtailed in relation to his other income whereas a widow in the same circumstances receives her survivor's pension without curtailment, Norway has failed to fulfil its obligations under Article 69 (1) EEA and Article 5 of the Act referred to at point 20 in the Annex XVIII of the EEA Agreement (Council Directive 86/378/EEC on the implementation of the principle of equal treatment for men and women in occupational social security schemes, as amended by Council Directive 96/97/EC), as adopted by Protocol 1 thereto.[118]

4. Policy initiatives and other developments
The Minister of Culture, Mr Trond Giske, on 8 March 2007 presented a report on the status of equality in the culture sector. The Minister stated that this was the first time that a collection of statistics was presented like this for the culture sector. The figures all make clear that efficient measures must be put into place to improve the equality situation. As a brief overview of some of the findings, it is pointed out that there are no female orchestra leaders, conductors or administrative managers. Furthermore, 71 % of the presidents of the boards of orchestras are male, 62 % of board members are male and 62 % of all artistic personnel are male. In the film industry 80 % of all leadership positions are male. At museums 64 % of the executives are male. In the theatre, opera and ballet sectors, 80 % of all managers are male.[119]

The government is discussing the possibility of extending fathers' share of the parental leave by eight weeks in addition to the current six weeks. This would be non-transferable leave.

[116] Source http://www.ldo.no.
[117] Source http://www.dagbladet.no/nyheter/2007/03/07/494283.html.
[118] Source http://www.eftacourt.lu.
[119] Source: *Dagbladet* newspaper of 8 March 2007.

The long-term aim is to bring about a shift in the roles occupied by men and women towards the more equal sharing of care duties at home thus also affecting the roles played by men and women in the employment market.[120] No legislative proposal to this effect has as yet been presented.

5. Developments in general discrimination law
Tribunal: Case 2/2007, decision of 25 January 2007.
A man complained that he had been discriminated against on grounds of ethnicity when he was not offered a job after his trial period. He claimed that this was in violation of Section 4 of the Anti-Discrimination Act. He also claimed that he had been harassed on grounds of ethnicity by the employer. The Tribunal arrived at the same conclusion as the Ombud, namely that no violation of the Anti-Discrimination Act had taken place. The claimant had been unable to present sufficient evidence to shift the burden of proof onto the employer.

In a letter to the Minister of Employment and Inclusion, the Ombud has called for stronger protection against discrimination against handicapped persons. The Ombud pointed out that homosexuals are protected against hateful and condescending statements by provisions in the Criminal Code and that similar provisions should apply for handicapped persons.[121]

POLAND
Eleonora Zielińska

1. Legislative developments
No relevant legislative developments have taken place.

2. Legislation/draft legislation/proposals for legislation
2.1 Concerning employment and social security
The Polish Government has announced new pro-family policy aims to 'boost the nation's birth rate' and to 'improve the quality of life and circumstances of Polish families'.[122] The proposal will be submitted to Parliament for approval. A public opinion poll (conducted by CEBOS) showed that Poles cite as the main reason for postponing or declining parenthood women's fear that they might lose their jobs (62 % of respondents), and therefore most of the proposals are aimed at further improving the situation of women in the labour market. Details of the programme were set out on Women's day by Joanna Kluzik-Rostkowska, who as the Deputy Minister for Labour and Social Policy is responsible for family matters. It would for example provide for tax exemptions for each child, a guarantee that the social security payments will be taken into account as community of property in cases where only one spouse works and the other resigns in order to raise the children. The programme intends to develop the possibilities for flexible working hours as well as teleworking (and other forms of working away from the office), to facilitate the reconciliation of university studies and maternity, to strengthen the system of preschools, and gradually to extend maternity leave to 26 weeks in 2014 from the current 18.[123] The government acknowledges that it is a 'costly policy' (with implementation costs being $ 5.6 billion), but believes that the funding will be guaranteed by a constant annual economic growth of 5 %.[124] When it was alleged that the extension of maternity leave may result in further discrimination against women in employment, Ms Kluzik Rostkowska assured that the part of the leave (currently at most 4 weeks) which fathers are entitled to take instead of the mother will also be gradually extended. In Poland, unfortunately, only around 1 % of male employees that are entitled to paternity leave annually make use of this opportunity.

2.2. Other legislative developments that are important for gender equality issues
The parliamentary proceedings on the draft law amending the Polish Constitution of 1997 have continued.

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[120] Source: http://www.aftenposten.no/nyheter/iriks/article1672587, http://www.aftenposten.no/nyheter/iriks/article1658636 and http://www.nav.no.
[121] Source: *Aftenposten*, 10 March 2007.
[122] The Polish birth rate of 1.22 children per woman is the lowest in the European Union. *Gazeta* 10-11 March 2007.
[123] Compare: http://www.rodzina.gov.pl.
[124] *Rzeczpospolita*, 7 March 2007.

The Special Parliamentary Committee has declined the amendment of Article 38 (dealing with the right to life)[125] and has instead accepted an amendment concerning Article 30 of the Constitution which states that "The inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens. It shall be inviolable. The respect and protection thereof shall be the obligation of the public authorities", to which the proposal is to add the phrase 'from the moment of conception' to the modified text of this provision.[126] The Polish women's (feminist) organization continues to organize actions against this initiative, as it did for example on the occasion of International Women's Day on 8 March last. The President of the Republic of Poland expressed his criticism of the planned amendment of the Constitution, which in his opinion may endanger the existing 'fragile compromise on the abortion issue'. The support of the First Lady for a letter of protest against this amendment which was written by liberal female journalists has provoked the outraged response of priest Rydzyk, Director of the influential Catholic broadcast 'Radio Maryja'.

3. Court decisions

The Constitutional Tribunal in a judgment of 6 March 2007 decided that Article 32, paragraph 1, points 2 and 3 of the Law of 25 June 1999 on social security payments in case of sickness and maternity is partially incompatible with Article 2 (the principle of the rule of law) and Article 32, paragraph 2 (anti-discrimination clause) of the Polish Constitution of 1997.[127] Up to this judgment, self-employed persons under the optional health insurance system were not entitled to paid leave to care for a sick child. By contrast, employees (for whom health insurance is mandatory) are all entitled to such leave. These discriminatory provisions affected around 1.9 million self-employed persons in Poland, of whom more than 1/3 are women.[128] The Tribunal in its reasoning of the abovementioned judgment pointed out that the differentiation between the situations of persons under the health insurance system based on the nature of that system (i.e. mandatory or optional) is contrary to the Constitution. Insured persons paying the same contributions may expect to be granted the same benefits regardless of their obligatory or optional participation in the system.

4. Important cases brought to the courts (but which have not yet been decided)

The criminal proceedings initiated by the District Prosecutor of Łódź in December 2006 after it was revealed by journalists that the leader of the political party Selfdefence, Andrzej Lepper, and his associate, Stanislaw Łyżwiński, used to promise jobs in their MPs' offices in exchange for sexual favours[129] is still pending. The Public Prosecutor has charged two party members, in particular with corruption, sexual harassment and rape. S.Łyżwiński has been suspended from membership of 'Selfdefence', but recently reappeared at a press conference at the side of the party leader. Other party members undertook several successful actions to sully the reputations of the alleged victims, which may discourage potential witnesses from testifying or reporting similar crimes.

5. Reactions to and follow-up given to judgments by the ECJ

No developments can be reported.

6. Infringement proceedings

No infringement proceedings involving Poland have occurred.

7. Policy initiatives and other developments

The opinion has been expressed that "Polish women are some of the most resourceful in the world. More and more companies in Poland are being established by women and although they still hold few key posts in large corporations, they have been climbing the managerial ladder with growing confidence."[130]

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[125] *Sejm print* no. 993 of 5 September 2006.
[126] *Gazeta* 3-4 March 2007.
[127] http://www.trybunal.gov.pl/Rozprawy/2007/rozprawy.htm.
[128] *Gazeta Prawna* of 5 March 2007.
[129] http://ens.pap.pl/demo / http://wiadomosci.onet.pl/1445123,11,item.html.
[130] Michal Jeziorski Women Winning Ground '*Warsaw Voice*' 7 March 2007, http://www.warsawvoice.pl/view/14102.

8. Developments in general discrimination law

There are no developments in general discrimination law to report. However, it is worth noting that in Poland the general attitude towards the idea of diversity, equal treatment and non-discrimination is unfavourable. In an attempt to spread intolerance in other EU countries, Roman Giertych, Poland's Deputy Prime Minister and Minister of Education, during a meeting of EU education ministers in Heidelberg maintained his controversial proposal to include a total ban on abortion and a prohibition to 'promote' homosexuality and the position of homosexuals in any possible future European constitution. A Polish government spokesman and Polish Foreign Minister Anna Fotyga responded by stating that in this Giertych had presented his personal opinions only and that these did not reflect the official views of the government.[131] The Prime Minister however refused to accept a motion for Giertych's impeachment demission.

PORTUGAL

Maria Do Rosário Palma Ramalho

1. Legislation

During the period covered by this report, no significant legislative measures regarding equality were taken.

However, a major legislative development is currently taking place following the approval in a national referendum of a Proposal to amend the Criminal Code in relation to voluntary abortion.

The Portuguese Criminal Code considers voluntary abortion as a crime (Article 140), with exceptions for abortion under particular circumstances, such as pregnancy caused by rape or the endangerment of the mother's life or health due to the pregnancy or severe defects in the foetus (Article 142 of the Criminal Code). In all other situations, voluntary abortion is a crime punishable by up to 3 years' imprisonment of the woman in question (Article 140(3) of the Criminal Code). This legislation was already submitted to a national referendum before, in 1998, but the outcome of this referendum was that the law should remain unchanged.

On February 2007, a new referendum was held on this issue with a view to the amendment of these rules in the Criminal Code to introduce a new exception to the criminal provisions regarding abortion. This time, the outcome of the national consultation was that the Criminal Code should be amended so as to legalize abortion upon the decision of the pregnant woman up to the end of the tenth week of pregnancy. Following this national consultation, Parliament is currently preparing a Law that will amend the Criminal Code accordingly. This development is considered by most sectors as an important step towards substantive gender equality.

2. Case-Law: survivor pension and equality

The situation concerning case-law in the field of gender equality has not changed during the period covered by this Bulletin: almost no cases regarding gender equality were brought before the Courts and no relevant decisions in this area have been published.

Nevertheless, two cases brought before the Supreme Court regarding survivor pension and equality should be noted: the first judgment establishes that the requirements for access to a survivor pension should be identical for married persons and for cohabiting persons;[132] the second judgment deals with the survivor pension in the case of cohabiting couples and establishes that the calculation of this pension must be based on the same criteria in the public and in the private sector. This being the case, the Court considered that the different rules currently in place in this field for public servants and persons working in the private sector go against the Portuguese constitutional principle of equality.[133]

[131] http://www.eux.tv/article.aspx?articleId=3894.
[132] Ac. STJ of 4 November 2006 (Proc. no. 06/A/3361), at http://www.dgsi.pt.
[133] Ac. STJ of 1 March 2007 (Proc. no. 07/A/136), at http://www.dgsi.pt.

3. Other areas

During the period covered by this report, the following initiatives were taken by the Commission for Equality in Access to Employment and at the Workplace (CITE):[134]

- the Commission has created a national prize to promote gender equality and reconciliation practises at the company level. This year the prize called the 'Equality is Quality Prize'[135] was awarded to two companies with good practises in this area, such as extended and paid maternity leave (also paid to fathers in their employment), care facilities for young children, and several practises to promote the better reconciliation of family and working life.
- the Commission also reinforced its investment in training activities in the area of gender equality, as well as in the publication of studies in this area aimed at practitioners in the field.[136]

ROMANIA

Roxana Teşiu

1. Legislative developments

1.1 Legal aspects implied by the private pension system reform

Romania is currently passing through a very complex and important reform of the pension system, including the partial privatization of the system. It has been highlighted by specialists that such a reform has critical gender impact and includes discriminatory provisions that will affect women. In this regard, it has been argued that for equal contributions, women will receive a smaller pension than men, the difference being estimated to represent 25 %. In this regard, the non-governmental organizations and trade unions replaced state institutions' responsibility in developing a gender impact assessment system related to the pension system reform. Unfortunately, despite the public campaigns supported by non-governmental actors, requesting the governmental institutions to proceed to a thorough gender impact analysis for adjusting the reform process in the sense of correcting gender disparities, there is no evidence that such a process will be undertaken by the governmental institutions responsible for implementing the reform. The most disputable aspect requested to be analyzed refers to the actuarial factors vs. different annuities issued for men and women. It has been argued that, as regards women being part of the group targeted by the mandatory private pensions, the state's option for using different annuities based on sex will lower the monthly pension for women. In this regard, the NCCD (National Council for Combating Discrimination) has been officially requested by non-governmental organizations to analyse to which extent the utilization of different actuarial factors based on sex violates Article 16 of the Constitution that stipulates that "Romanian citizens are equal before the law and public authorities, without any privilege or discrimination." Furthermore, it has been argued that the utilization of different biometrical tables for women and men also violates the legal provisions of the 2002 Equal Opportunities Act, by promoting a form of direct discrimination affecting women. In this regard, Article 6(1) of the 2002 Equal Opportunities Act defines direct discrimination as "the situation in which a person is treated less favourably on the basis of his/her gender than he/she would have been treated had he/she been of the other sex in a comparable situation." There are three exceptions provided under Article 6(2) of the Equal Opportunities Act pointing to specific and exclusive situations that are not considered as constituting direct discrimination. These exceptions are to be interpreted strictly. The utilization of different biometrical tables for women and men cannot be included in any category stipulated as representing an exception described by law.

[134] This Commission (CITE - *Comissão para a Igualdade no Trabalho e no Emprego*) is an official agency for equality issues that operates under the Ministry for Labour and Social Security Affairs, but also contains representatives from the major unions and employers' associations.

[135] "*Prémio Igualdade é Qualidade*".

[136] We underline the publication of a digest of case-law in the area of gender equality in employment covering the pas 20 years. This book entitled '*22 Anos de Jurisprudência Portuguesa sobre Igualdade Laboral em Razão do Sexo (1979-2001)*' was published in January.

1.2 Legislative Proposal for an 'Emergency Ordinance on the application of the principle of equal treatment between women and men within occupational social security schemes' currently at the public debate stage of the procedure

The Romanian national legal framework is not currently in compliance with the European equality standards, as no national legislation has been adopted yet to transpose the legal provisions of Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes, as amended by Council Directive 96/97/EC of 20 December 1996 amending Directive 86/378/EEC on the implementation of the principle of equal treatment for men and women in occupational social security schemes. Therefore, in accordance with the engagements undertaken by the Romanian Government as a Member State of the European Union starting 1 January 2007 to completely transpose the *aquis communautaire*, a proposal for an emergency ordinance has been issued by the Ministry of Labour, Social Solidarity and Family in order to cover the principle of equal treatment between women and men in occupational social security schemes. There is some pressure to adopt such a legal initiative to prevent possible infringement procedures against Romania.

1.3 Legal development of the Family Code: Equal Opportunities for women and men. Marriage between minors no longer possible in the future

A group of three MPs have initiated a legal proposal for amending and completing the Family Act (Act no. 4 of 1953) so as to introduce equal marriage ages for men and women. Currently, Article 4, paragraph 1, of the Family Act stipulates that 'Men may marry only if they have turned 18 years of age and women only if they have turned 16 years age'. The second paragraph of Article 4 further stipulates that for solid reasons, women can marry if they have turned 15 years of age, but only with the special consent of the territorial administrative authority within whose jurisdiction she resides and based on a medical certificate. The solid reasons referred to usually represent pregnancy. Such legal provisions are obsolete and date from the times of the communist regime, when everything was done to support pro-natal communist policies. According to the legal initiative proposed, Article 4 of the Family Act shall be amended to provide that 'The minimum age for marriage shall be 18 years'. The current proposal for equalizing the legal age for marriage in Romania intends to repeal the unconstitutional provisions of Article 4 of the Family Act. In this regard, it is argued by the initiators that different marriage ages for women and men violate the legal provisions of Article 48(1) of the Constitution that stipulate equality between spouses. The legal proposal under discussion was adopted on 14 March by the Juridical Commission of the Senate and, according to the legislative procedure, it shall be submitted for approval to the Juridical Commission of the Chamber of Deputies.

1.4 Legal provisions on legalizing prostitution in Romania

The Ministry of the Interior is currently structuring a legal proposal designed to legalize prostitution in Romania. Currently, prostitution is an offence according to the legal provisions of Article 328(1) of the Criminal Code.[137] One of the most important provisions in regards to legalizing prostitution in Romania refers to the introduction of prostitution in the National Classified List of Occupations. A further request addressed to the Ministry of Labour, Social Solidarity and Family is to be expected in this regard. The Minister of Justice and the Minister of the Interior have publicly declared their support for legalizing prostitution and supporting legal initiatives designed to permit the establishment and functioning of brothels in Romania. One of the strongest arguments in favour of the legalization of prostitution as provided for by the Ministry of the Interior refers to the fact that this occupation could contribute to the gross national product by approximately 1 %. According to the current legal provisions of the Criminal Code, prostitution is considered an offence punishable by imprisonment from 3 months to 3 years.

2. Court decisions

None are reported for the period.

[137] Criminal Code of Romania of 21 June 1968, republished in Official Gazette no. 289 of 14 November 1996.

3. Infringement Proceedings
None are reported for the period.

4. Policy initiatives and other developments
4.1. No approval from the Superior Council of Magistrates for the list of candidates for the European Court of Human Rights (Strasbourg)
On 1 March 2007, the Superior Council of Magistrates declined to approve the list of candidates nominated for the position of judge at the European Court of Human Rights, due to the fact that all five candidates were men. According to resolutions 1366/2004 and 1426/2005 of the Parliamentary Assembly of the Council of Europe, lists of candidates that do not comprise candidates of both sexes will not be taken into consideration by the Parliamentary Assembly. Therefore, the Superior Council of Magistrates decided to postpone the selection procedure in order to give women judges an opportunity to register their candidatures. If after the expiry of the postponed deadline no women candidates have registered, the list will be sent to Strasbourg in its original exclusively male composition.

4.2 Official Opening of the European Year of Equal Opportunities for All – Year 2007
The Romanian European Year of Equal Opportunities for All – Year 2007 is placed under the High Patronage of the Romanian President. The official opening of the year is set to take place on 20 March 2007 at the Cotroceni Palace.

SLOVAKIA
Zuzana Magurová

1. Legislation
In February, the Ministry of Labour, Social Affairs and Family submitted a draft revision of the Labour Code and the vice premier submitted a draft amendment to the Anti-Discrimination Act. No gender analysis or gender impact assessment of the proposed changes to both Acts was performed. NGOs have initiated the submission of comments regarding both drafts[138] to the Ministry and to the Government.

The Union of Mother Centres which represents nearly one hundred Mother Centres in Slovakia is refusing to accept some of the over a hundred amendments to the Labour Code. Although a few of the proposed changes may contribute to the better reconciliation of work and family duties of employees, the amendment lacks provisions that would enable employees to fully balance their family and working lives. Such inadequate legislative changes are not in compliance with the governmentally approved Proposal of Measures for Reconciling Family and Working Life for 2006 with Prospects up to 2010. According to this Proposal, approved by the Slovak government on 21 June 2006 by resolution no. 560/2006, the government is obliged to introduce a variety of measures (including legislative ones) "to support the increase in employment and employability of persons with family responsibilities and to reduce the risk that these persons will face the dilemma of 'work versus family' or will become subject to discrimination on the labour market and in employment for the reason of family care."

The main changes and additions requested by the Union from the Ministry were the following:

- Changing and supplementing the proposed provisions on telework and domestic work as non-traditional forms of employment that enable an employee to work at home or at another place apart from the premises of the employer, with the possibility to schedule work and working time independently and with guaranteed support from the employer. The EU-level social partner agreement on telework, concluded in July 2002 was neither reflected in Slovakian labour legislation, nor applied in collective agreements.
- Changing the conditions of drawing substitution leave as a compensation for hours that an employee with children under 15 has worked overtime.

[138] This happened as part of a legally prescribed procedure that enables individuals and organizations to comment on draft laws once released for interdepartmental commenting proceedings; if the comments are submitted jointly by at least 500 citizens and/or organizations, the Ministry/government submitting the draft law is obliged to deal with the comments and either to approve them or initiate discussions with the representatives of the public submitting the comments.

This would allow parents to draw their substitution leave up to one year from the time when they worked overtime, mainly during school holiday.

- The possibility of job-sharing explicitly to be incorporated into the Labour Code.[139] This would prevent persons with parental responsibilities and with a need to work on reduced working time from having to carry out the full-time amount of work in reduced working hours and for a lower salary. This would also prevent these persons from having to work overtime.
- Terminological change in the current Slovak equivalent of the English expression maternity and parental 'leave'. The current Slovak equivalent of the word 'leave' translates as 'holiday' – which is an inadequate term for intensive, continuous and highly responsible work. The current Slovak name for maternity and parental leave is unacceptable as it creates the impression that this demanding period of care is a period of rest and relaxation. This devaluates the status of persons – mainly women – who carry out this work.

During the discussion of the amendments, representatives of the Ministry of Labour, Social Affairs and Family were inclined only to accept changes concerning the regulation of telework. They were not willing to discuss the question of the terminological change of the current Slovak equivalent of the English expression maternity and parental 'leave' with the explanation that motherhood is the 'basic mission' of women, that it is not possible to compare child care with work and there is not enough room for a 'public discussion' on this topic.

The government had originally planned to submit the draft revised Labour Code for discussion to Parliament during the March session, but there are so many objections to the draft, that the Labour Code is now only expected to be discussed in April. The Labour Code amendment was originally scheduled to take effect in July of this year, but due to the number of political and business objections the deadline is currently under threat. The changes concerning working time, definition of 'dependent work', employment contracts, dismissals and redundancy payments are among the most controversial issues. Employer organizations and organizations representing self-employed persons argue that the changes will decrease labour market flexibility, as well as jeopardize employment in the country. The trade unions, on the other hand, appear to be satisfied with the proposed changes, as they will benefit employees and are in line with the unions' demands. The trade unions insist that their demands are well founded and that the aim of the unions is not to threaten the employers.

The governmental draft amendment to the Anti-Discrimination Act is the result of the Commission's formal announcements concerning a breach of the Treaty consisting of the incorrect and incomplete transposition of Directives 2000/78/EC and 2000/43/EC, addressed to the Slovak Republic. The most controversial is the definition of discrimination, which is very abstract and allows exceptions, using the terms 'good morals' and 'possibilities of the person in question', which are uncertain and the definition of harassment, which is not sufficiently protective.[140]

In submitted comments to the draft revision of the Anti-Discrimination Act the NGOs proposed to include the definition of sexual harassment and the creation of an 'equality body' in accordance with Directive 2002/73/EC, which is still not fully transposed in national legislation.

2. Case-law

No new decisions have been handed down by the Constitutional Court and Supreme Court which are related to equal treatment in the areas regulated by the Anti-Discrimination Act.

The scheduled second session of the court of first instance of Žilina, in the case of a female gynecologist, was postponed from March to April.

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[139] The current wording of the Labour Code implicitly allows job-sharing but as employers are not very inventive in generating family-friendly policies, this form of employment is non-existent in Slovakia.

[140] Anti-Discrimination Act - Section 2(1) Compliance with the principle of equal treatment shall consist of the prohibition of discrimination on any grounds, in the exercise of rights and responsibilities in compliance with good morals, and in the adoption of anti-discrimination measures insofar as the adoption of such measures is necessary in view of the specific circumstances and possibilities of the person who has an obligation to comply with the aforesaid. Section 2(5) Harassment shall mean such treatment of a person which that person can justifiably perceive as unpleasant, inappropriate or offensive (…).

In November 2005 she claimed that she had been discriminated against on grounds of sex in access to employment. Her application for the post of ambulance gynecologist was rejected in favour of a male applicant who was not as well qualified as she was. He had a lower post-graduate diploma and no supplementing certificates of specialization.

No legislative changes have yet resulted from ECJ judgments.

In February, the President appointed nine judges to the Slovak Constitutional Court. Three of them are female and for the first time the president of the Constitutional Court is female. At a press conference in March she said that the Court will first deal with motions that were filed quite a few years ago, citing as an example the law on abortion, which is the Court's oldest contested case, filed in 2001.

Representatives of the National Union of Employers and the Slovak Association of Employers have decided to file a complaint to the Constitutional Court against the Tripartite Act, the revision of which was adopted by Parliament in November 2006 and signed by the President in March 2007. The Tripartite Act, which indirectly amended the Act on Collective Bargaining, establishes a council that includes representatives of trade unions, the government and employers. It also includes clauses that will allow the Ministry of Labour, Social Affairs and Family to impose high-level collective agreements on employers who have not signed such a document. According to the representatives of the employers, such a provision is at odds with the freedom of contract principle and thus with the Slovak Constitution.

3. Policy initiatives and other developments

At the beginning of the year 2007, a new research study 'Women, Men and Age in Labour Market Statistics' was published.[141] This study is the result of the project called 'Plus for Women 45+' of the EU Community Initiative EQUAL. The main goal of the study is to gain better insight into the situation of women and men in the sphere of paid work. It presents many quantitative data on the labour market and on the broader demographic context classified by gender and age. Wherever possible, it compares indicators for Slovakia with averages for EU countries.

During a scientific conference in February the results of research carried out within the PD IS Equal 'Slovakia on the Way to Gender Equality' were presented. The research focused on equality and coordination in collective bargaining and collective agreements, the status of women on the labour market and hazards which they encounter, and experience and opinions gathered from employment policy implementation.[142]

In February the Slovak National Centre for Human Rights organized a conference 'Together towards diversity'.[143]

On the occasion of the visit of the Swedish Equal Opportunities Ombudsman, Mr C. Borgstrom, the Embassy of Sweden in cooperation with the Government Office and the Ministry of Labour, Social Affairs and Family of the Slovak Republic organized the seminar 'Gender Equality - Swedish and Slovak Experiences'.

A conference on 'Equal rights – Equal Opportunities?' was organized by the EC Representation in the Slovak Republic on 2 March. In the first panel entitled 'Equal opportunities: Right and Principle' the Commissioner of the EC for Employment, Social Affairs and Equal Opportunities, V. Špidla, participated.

The governing coalition Smer was the only party in Slovakia to commemorate International Women's Day (8 March). Smer however views the day as a party meeting rather than a political challenge that could lead to gender equality. This means that one of society's main days for equality has been neglected during the European Year of Equal Opportunities. Feminist organizations proclaimed that women's rights should be remembered on this day; as today society all too often forgets to include 'gender democracy' among priorities.

As part of the institutional reform at the Ministry of Labour, social Affairs and Family, a new Division on Gender Policy and Equal Opportunities directly subordinated to the Ministry was created on 15 March. The former Department for Family and Gender Policy mostly dealt with social aspects and benefits for families and the gender agenda remained uncovered.

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[141] More information available on http://www.ivo.sk.
[142] More information is available on http://www.erpa.sk.
[143] More information is available on http://www.snsplp.sk.

SLOVENIA
Tanja Koderman-Sever

2. Policy initiatives and other developments

2.1 Conference on Collective Bargaining on Equal Opportunities

On 7 December 2006, a Conference on Collective Bargaining on Equal Opportunities was organized by the Committee for Equal Opportunities operating under the Free Trade Unions Association. It was organized for the presidents of the trade unions' negotiation delegations competent to conclude collective agreements in all areas covered by the Free Trade Unions Association's activities. They discussed the following topics: the detailed analysis of statistical data on the pay gap between men and women, the determination of salaries in practice and possible causes of inequality, the conclusions of studies on the reconciliation of professional and family life, techniques and professional guidelines of the Free Trade Unions Association for collective bargaining on equal opportunities.

2.2 Activities of the Office for Equal Opportunities

- The Office for Equal Opportunities ran a media campaign 'Daddy, be active!' in November and December 2006. The campaign kicked off by launching radio commercials on thirteen radio stations across Slovenia followed by the broadcast of the educational documentary 'Daddy be Active' on national television in January 2007. The documentary was intended for a wide public and will also be used for raising awareness among employers and trade unions, as a teaching tool in schools and parental schools and in other programmes for parents. It will also be distributed as a CD-ROM to different organizations which may play an important role in encouraging active fatherhood and changing the traditional roles of men and women in society and within the family.
- The Office for Equal Opportunities has prepared a preliminary analysis from the gender perspective of the local elections held in 2006. According to this analysis the percentage of elected female councillors on municipal and city councils has risen by 8 % compared to the local elections of 2002.
- The Office for Equal Opportunities also prepared a report on the number of calls to a free toll and anonymous telephone number in 2006. This number is open to anyone who feels that his/her rights have been violated or restricted on sex-related grounds.
  In 2006, 3-4 calls a day were placed to this number, of which 62.6 % were placed by women and 37.4 % by men. As to the content of the calls, labour-related issues prevailed (with the emphasis on cases of unlawful dismissal due to pregnancy and cases where employment contracts of limited duration were not extended due to pregnancy).

2.3 Recommendation by the National Assembly of the Republic of Slovenia

The National Assembly of the Republic of Slovenia after having considered the 10th Regular Annual Report of the Human Rights Ombudsman for the year 2005 adopted a Recommendation in which, among other things, it urged the government to:

- establish appropriate measures which would guarantee conditions for equal treatment in the assertion of rights in all fields of social life irrespective of personal circumstances;
- ensure the adequate legal protection of employees and effective control over the implementation of laws;
- be critical towards repeated proposals for reducing workers' rights.

2.4 Discussion of alleged cases of sexual harassment in the Slovenian Army by the Commission of the National Assembly of the Republic of Slovenia for Petitions, Human Rights and Equal Opportunities

The Ministry of Defence has submitted reports on two alleged cases of sexual harassment of two female members of the Slovenian Army to the Commission of the National Assembly of the Republic of Slovenia for Petitions, Human Rights and Equal Opportunities. The Ministry re-emphasized that no sexual harassment had taken place and presented key mechanisms to prevent human rights violations and to protect dignity at work. However, the opinion of the Advocate for Equal Opportunities for Women and Men ran in the opposite vein as she concluded that in the Slovenian Army the employer failed to provide adequate protection against sexual and other harassment in the workplace.

2.5 Statistical data on the pay gap
According to statistical data of the Office for Statistics of the Republic of Slovenia, Slovenian women on average earned 93 % of men's monthly gross salary. The highest pay gap between men and women occurs in the healthcare and social security sector and the lowest in public administration.

2.6 Adoption of the Declaration on the Adoption of the Solemn Declaration of the Parliamentary Assembly of the Council of Europe
On 2 February 2007, the National Assembly of the Republic of Slovenia adopted a Declaration on the Adoption of the Solemn Declaration of the Parliamentary Assembly of the Council of Europe Parliaments united in combating domestic violence against women.

2.7 Meeting of the Slovenian Women's Lobby
A meeting of the Slovenian Women's Lobby, whose founding act has already been signed by 12 Slovenian organizations and 17 individuals, took place in Ljubljana on 15 December 2006. Iluta Lace, the vice-president of the executive board of the European Women's Lobby (EWL), also attended the meeting.

2.8 Activities of the Ministry of Labour, Family and Social Affairs
The Ministry of Labour, Family and Social Affairs on its website provides information concerning its activities in the framework of the 'European Year of Equal Opportunities for All'. Presently, the information consists of:
- the publication of an invitation for tenders for the pre-selection of performers of activities in the Year of Equal Opportunities and
- the decision on the appointment of the national working group for the preparation and implementation of the European Year of Equal Opportunities.

2.9 Findings on Social Perspectives 2006
In December 2006, the publication 'Social Perspectives 2006' was published by the Institute of Macroeconomic Analysis and Development. It states that the fact that women devote more of their spare time to domestic work (88 % as compared to only 49 % in the case of men) does not affect the relationship between women and men because they have accepted the unequal distribution of domestic work, but that it did cause difficulties in the reconciliation of work and family life for women.

2.10 National Programme 'For women in science'
The National Programme 'For women in science' is being implemented by the Slovenian National Commission for Unesco and L'oreal. In the framework of this programme, two female natural scientists preparing a Phd will receive scholarships in the amount of 5000 euro.

2.11 The programme of measures for the active employment policy for 2007-2013
The programme of measures for the active employment policy and the plan for its implementation which was adopted by the government on 23 November 2006 envisage measures to reduce female unemployment.

SPAIN
Berta Valdes

1. Developments in legislation
1.1 Promotion of Personal Autonomy and Care for Persons in Situations of Dependency Act 39/2006
The objective of Act no. 39/2006 is to regulate the basic conditions guaranteeing equality in the exercise of citizens' subjective rights to the promotion of personal autonomy and care for dependent persons. 'Dependent' is understood as the permanent state of persons who, for different reasons,[144] need the care of another or other persons or substantial aid in order to perform basic activities in their daily lives.

[144] The reasons envisaged in the Act are those relating to age, illness or disability, and linked to the absence or loss of physical, mental, intellectual or sensory autonomy.

Recent studies show that the current number of dependent persons in Spain exceeds 16.6 %, which amounts to a little over 6.6 million people. Act no. 39/2006 itself states, in outlining the grounds for legislation, that up until now 'it has been families, and especially women' who have taken upon themselves the care of dependent persons. The passing and implementation of this Bill entails reviewing this traditional system of family care, which has been shown to be inadequate for several reasons. The first is the increase in the dependent population;[145] the second, the changes in the family model; and the third, the progressive absorption, over the last ten years, of almost three million women into the labour market. The new law establishes dependency care assistance which may take the form of services or financial assistance. The purpose of assistance will be to promote personal autonomy and attend to the needs of people with difficulties with regard to performing basic activities in their daily life. One of the guiding principles of Act no. 39/2006 (Article 3) is 'the inclusion of the gender perspective, bearing in mind the different needs of women and men', which will regulate eligibility for assistance.[146] Additionally, the Public Authorities must ensure (Article 4) that dependent persons enjoy fundamental rights, such as equal opportunity and non-discrimination on the grounds of sexual orientation or identity.[147]

1.2 Royal Decree 1417/2006, whereby an arbitration system is set up to resolve complaints and claims with regard to equal opportunities, non-discrimination and accessibility on the grounds of disability

This Act complies with Article 17 of Act 51/2003,[148] which establishes the creation of an arbitration system to resolve complaints or claims from persons with a disability with regard to equal opportunities and non-discrimination. The system does not have special formalities, is of a voluntary nature, and is binding and effective for both parties. The issues which may be the subject of arbitration are the ones that demarcate the field of application of Act 51/2003.[149] Labour arbitration is excluded from the arbitration system of Royal Decree 1417/2006. The creation of this arbitration system makes allowance for Community rules which envisage, in the Member States of the European Union, the establishment of conciliation procedures complementary to judicial and administrative procedures.[150]

1.3 2007 Interconfederal Agreement for collective bargaining (9 February 2007)

The signatories to this Interconfederal Agreement are the most representative employers and trade union organizations at the national level;[151] it sets out the criteria and orientations to be applied in collective bargaining processes throughout 2007. Chapter VI is devoted to equal treatment and opportunities for different groups, and women are included here. The signatories consider that collective bargaining is a suitable means by which a greater level of equality may be achieved between men and women in the workplace.

[145] Dependency and disability situations are closely linked to age: 32 % of people over the age of 65 suffer from some kind of disability, while this percentage falls to 5 % for the rest of the population.

[146] This is, as Rodriguez, Emma, *Comments on Dependency Act* (press article), p. 18 points out, "a new element in the legislative text compared to parliamentary Bills", an element introduced after the criticism levelled at the parliamentary Bills, which omitted all reference to the gender perspective.

[147] Rodriguez, Emma, cit. The Act emphasizes those rights "the entitlement to which might be curtailed owing to the situation of dependency".

[148] Act 51/2006 on equal opportunities, non-discrimination and universal accessibility of persons with a disability.

[149] These are: a) Telecommunications and IT; b) Urbanized public spaces, infrastructures and building; c) Transport; d) Goods and services available to the public; e) Relations with Administrations.

[150] Royal Decree 1417/2006 cites, as Community rules, Directive 2000/43/CE and Directive 2002/73/CE, which amends Directive 76/207/CE.

[151] Employers' organizations are: *Confederación Española de Organizaciones Empresariales* (CEOE) (Spanish Confederation of Business Organizations) and the *Confederación Española de la Pequeña y mediana Empresa* (CEPYME) (Spanish Confederation of Small and Medium-Sized Companies). Trade union organizations are: the *Confederación Sindical de Comisiones Obreras* (CCOO) (Trade Union Confederation of Workers Commissions) and the *Unión General de Trabajadores* (UGT) (General Union of Workers).

For this purpose it is deemed appropriate to introduce, especially, the following provisions in collective bargaining: a) declarative anti-discrimination clauses; b) positive action clauses to promote women's access in equal conditions to sectors and occupations where they are under-represented; c) recruitment, training and promotion systems based on objective and neutral technical criteria as regards gender; d) the elimination of wage differences for work of equal value; e) provisions enabling the application of women workers' rights to reschedule their work timetable in cases of violence against women (provided for in Organic Law 1/2004 regarding comprehensive protection measures to combat violence against women); f) work hazard prevention measures for maternity, breastfeeding and reproduction; g) measures to address sexual harassment.

2. Case-Law

2.1 Constitutional Court judgment 324/2006, of 20 November 2006

This judgment analyzes the scope of the holiday entitlement of a female worker who is off work. Initially, she was off work for medical reasons. Later, after giving birth to a baby girl, the worker went on maternity leave. Subsequently, she was given maternity leave for a period of 16 weeks. The employee took the first leave the day before the start of her holiday period (31 July 2002), being the month of August, the usual holiday period for all employees. A collective agreement establishes that holidays must be taken within the calendar year. The Constitutional Court states that there are two time limitations with regard to taking annual leave: a) the establishment of a specific holiday period and b) the end of the calendar year as the deadline for taking annual leave. Both conditions treat holidays as a right subject to a deadline before which it must be exercised, which may cause the right to be forfeited in cases of illness. In judgment 324/2006, the Constitutional Court held that maternity cannot bring about a restriction in rights. A suspension of the employer-employee relationship due to maternity must ensure the integrity of worker rights, including the taking of annual leave outside the fixed period and outside the calendar year. A restriction of the right to annual leave might be constitutionally legitimate if it arises from a case of *force majeure*, such as worker illness. Such a restriction, however, is prohibited if the cause is maternity, a condition which is intimately related to gender, that is, to the female condition of the worker.

2.2 Constitutional Court judgment 17/2007, of 12 February 2007

The Court here considered discriminatory a company decision to cancel the employment contract of a female worker on the grounds of failing the trial period. The worker in question considered that the real reason for the cancellation was that she was off work four times due to problems during pregnancy. In claims of discriminatory treatment the burden of proof is reversed. The worker provided sufficient evidence to suggest a reasonable doubt regarding a cause-effect connection between the work absences due to pregnancy and the company decision. The employer did not provide evidence to support its decision and the dismissal was ruled to be null on grounds of discrimination.

2.3 Constitutional Court judgment 3/2007, of 15 February 2007

The Constitutional Court considered that a judgment of the Social Court in Madrid was in breach of the basic right to non-discrimination on grounds of gender. The case concerned a female worker who requested a shorter working day from her employer on the grounds of legal guardianship of her son, a child under the age of six. The employer did not agree to a reduction on the days and at the times requested by the employee as it considered that this would be outside the worker's normal working day.[152] The law (Article 37.6 of the Workers Statute) does not stipulate whether the needs of the employee must have priority over the organizational demands of the employer. In judgment 3/2007 it was held that the Social Court had not assessed the constitutional dimension of the right to a shorter working day, the purpose of which is to strike a balance between working life and family life from the perspective of the right to non-discrimination on grounds of gender.

[152] The work timetable and the establishment of the period within which the shortened working day is to be completed corresponded to the employee's working hours, but this must be within the normal working day. In this case the employee worked rotating morning and afternoon shifts and requested a shortened working-day from Monday to Wednesday during the afternoon shift. This involved altering the rotating shifts and was the reason why the employer refused the request.

The Constitutional Court did not go so far as to say that the right of the employee must prevail over the needs of the employer beyond what is stipulated in the regulation, but it imposes an obligation on the judicial body to weigh the specific circumstances. In the aforementioned situation, weighing the constitutional dimension must prevail and serve as a guideline when addressing any doubts with regard to the interpretation of Article 37.6. As this had not taken place, the contested judgment of the Social Court was annulled.

SWEDEN

Ann Numhauser-Henning

1. Legal developments

Notification to the Commission on possible infringement

The Swedish Confederation of Professional Employees *'Tjänstemännens Centralorganisation'* (TCO) has notified the Commission of what they find to be an infringement of Community Law on the part of Sweden – the recent reform of the unemployment insurance scheme.[153] The reform was introduced in government Bill no. 2006/07:15 on Unemployment Insurance for Work.[154] The Bill's general aim is to reform the unemployment insurance scheme so as to strengthen the incitement to take on a new job and thus to underline the transitional character of unemployment insurance.

The changes in the working requirements during the 12-month qualifying period – with the minimum requirement going up *from 70 to 80 hours of work a month* during six months – that gave rise to the debate on the Bill's possibly sex-discriminatory character. This debate was initiated by the TCO, arguing that this requirement of longer part-time hours during the qualifying period amounts to indirect discrimination against women, as twice as many women than men have a working week of 1-19 hours on the Swedish labour market. For this reason, the government has now been reported to the Commission.

2. Case-law

2.1. Labour Court case no. 2006:126

This case concerned three vacancies for the position of chief within the police force. A woman, who was already an employee of the local authority in question, was among the applicants. All three positions were given to male applicants.

The Court found that a prima facie case of discrimination had not been proven either in regard of the process of hiring (the taking of references) or in regard of the actual appointments (it was not proven that the candidates were in a similar situation). A later reduction in salary was not found to amount to victimization, as it was the effect of the claimant leaving a temporary position of chief. A case of discrimination was therefore not found.

3. Policy initiatives and other developments

3.1 The Equal Opportunities Ombudsman's (EOO) Annual Report 2006

According to the EOO's Annual Report 2006, 362 complaints were lodged with the Ombudsman in the year covered by the Report. Some 133 complaints were dismissed for not being related to the claimant's sex. Of the 229 remaining cases, 135 concerned employment, 11 the new ban on parental discrimination, 4 the Act against Discrimination in Higher Education, 9 the new 2006 Pupils Discrimination Act and 70 the 2003 Act against Discrimination in Other Sections of Society.

[153] See: *Strider a-kassereformen mot EG-rätten, TCO granskar nr 16/06*, 31 October 2006, TCO, Stockholm.

[154] See the Swedish report in Bulletin 1/2007.

UNITED KINGDOM
Christopher McCrudden

Legislative developments
Department of Trade and Industry, Maternity entitlements and responsibilities: a guide - babies due on or after 1 April 2007
This guidance describes the rights of both pregnant employees and their employers and their responsibilities towards each other following the amendments to legislation made by the Work and Families Act 2006 and consequent regulations. It describes the position which applies in England, Wales and Scotland. In Northern Ireland corresponding legislation applies.[155]

Court cases
Burden of proof in sex discrimination cases
The Court of Appeal has considered the issue of the burden of proof in sex discrimination cases following the amendment to the domestic sex discrimination legislation, with effect from 12 October 2001, implementing Council Directive (EC) 97/80 (on the burden of proof in cases of discrimination based on sex). The claimant argued that the employment tribunal had misdirected itself in law on the burden of proof, in that it had failed to place on the employer the burden of proving that it had not committed the alleged acts of unlawful discrimination against the employee. Instead, it had placed the burden on her of proving all the elements of her discrimination claims. She contended that the correct approach was that, as she had established two fundamental facts, namely a difference in status (e.g. sex) and a difference in treatment, the tribunal should have drawn an inference of unlawful discrimination by the employer.

The Court of Appeal held, however, that it was not sufficient for a complainant simply to prove facts from which a tribunal could conclude that the respondent 'could have' committed an unlawful act of discrimination. The bare facts of a difference in status and a difference in treatment only indicated a possibility of discrimination. They were not, without more, sufficient material from which a tribunal 'could conclude' that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination. 'Could conclude' in the domestic legislation implementing the Directive had to mean that 'a reasonable tribunal could properly conclude' from all the evidence before it. That would include evidence adduced by the complainant in support of the allegations of sex discrimination, such as evidence of a difference in status, a difference in treatment and the reason for the differential treatment. It would also include evidence adduced by the respondent contesting the complaint. The tribunal would need to consider all the evidence relevant to the discrimination complaint; for example, evidence as to whether the act complained of had occurred at all; evidence as to the actual comparators relied on by the complainant to prove less favourable treatment; evidence as to whether the comparisons being made by the complainant were of like with like; and available evidence of the reasons for the differential treatment. The absence of an adequate explanation for differential treatment of the complainant was not, however, relevant to whether there was a prima facie case of discrimination by the respondent. The absence of an adequate explanation only became relevant if a prima facie case was proved by the complainant. The consideration of the tribunal then moved to the second stage. The burden was on the respondent to prove that he had not committed an act of unlawful discrimination. He might prove that by an adequate non-discriminatory explanation of the treatment of the complainant. If he did not, the tribunal had to uphold the discrimination claim.[156]

Equal Opportunities Commission seeks judicial review of UK government's implementation of Equal Treatment Directive
The Equal Opportunities Commission (EOC) has lodged judicial review proceedings against the United Kingdom Government in relation to the way the Government has implemented the amended Equal Treatment Directive. The UK regulations implementing the Directive introduce new provisions into the Sex Discrimination Act (SDA) and came into force on 1 October 2005.

[155] http://www.dti.gov.uk/employment/employment-legislation/employment-guidance/page34031.html.
[156] *Madarassy v Nomura International plc* [2007] EWCA Civ 33, 26 January 2007, Court of Appeal.

The EOC considers that under the Government's regulations women may not enjoy the full protection against sexual harassment and pregnancy discrimination required by the Directive, and that they could lose aspects of existing maternity rights already established in UK case-law. The EOC considers, first, that the definition of harassment in the regulations is too narrow, and does not reflect the broad protection in the Directive. For example, the regulations appear to give no apparent protection to women harassed by clients, even when their employer knows of the harassment and could take steps to prevent it, but does not do so. Second, women's rights during maternity leave are also unclear as a result of the new regulations. Women and their employers now do not know whether a woman is protected if she is not consulted about a change to her job while on maternity leave, or if she falls behind a queue for promotion because her time on additional maternity leave is excluded from length of service. Third, pregnant women did not previously have to show that they had been treated worse than they would have been before they were pregnant. But under the new regulations they may have to. Women have different needs when they are pregnant, so it does not always make sense for a woman to compare her situation with what would have happened had she not been pregnant.[157]

Policy initiatives and other developments

Final report of the Equalities Review published

A United Kingdom government review of equality legislation and policy (chaired by Trevor Phillips, the new chair of the combined human rights and equality commission beginning its work in October 2007) has published its final report. It argues that the key barriers to making further progress lie in several areas. It sets out policy recommendations to address these problems.

First, despite a strong public value of fairness and equality, prejudice persists. This has serious negative consequences for the treatment of women, people of different ages, ethnic minorities, disabled people, people with particular beliefs, transgender people, and lesbian and gay people. This prejudice forms a backdrop for the other three key problems that are holding progress back: a lack of agreement about what needs to happen; uncertainty about who should act; and the tools we have not being fit for purpose.

Second, there remains a lack of awareness and understanding about what equality means, how it relates to what organizations do, what is required or permitted under the law, and who is responsible for delivering on this. It is too frequently regarded as code for 'political correctness' or petty bureaucracy. Poor measurement and a lack of transparency have contributed to society and governments being unable to tackle persistent inequalities and their causes. The data available on inequality are utterly inadequate in many ways, limiting people's ability to understand problems and their causes, set priorities and track progress. And even where data do exist, they are not consistently used well or published in a way that makes sense.

Third, there has been little clarity over who should deliver what, and whose responsibility it is to take the lead. This is made worse by limited accountability: across sectors, promoting equality has not been a central or significant part of the leadership role. Many organizations have viewed equality as peripheral to their core business. There also remain questions about the influence and impact of the media. A lack of meaningful engagement also contributes to this problem: communities and individuals are often not sufficiently empowered to have their say on the issues and services that affect their lives.

Finally, the tools available are not fit for the purpose of achieving equality in Britain. There are limitations in the law – which is complex, inconsistent in the way it treats different groups, and poorly understood. In some cases the law actually restricts action on inequality, and in others the action possible has been interpreted too narrowly – as for example with public procurement. There has also been a tendency to focus legal requirements, and the action that follows, on process rather than the outcomes sought. And problems with the form of the law have been made worse by unclear guidance and insufficient support, and by a blunt and inflexible enforcement regime.

The Review makes several recommendations to address these problems. It sets out ten steps to greater equality, which complement and reinforce each other, each contributing to a systematic overall framework for creating a more equal British society.

[157] EOC Press Release, 26 February 2007.

These are:

1. Defining equality;
2. Building a consensus on equality;
3. Measuring progress towards equality;
4. Transparency about progress;
5. Targeted action on persistent inequalities;
6. A simpler legal framework;
7. More accountability for delivering equality;
8. Using public procurement and commissioning positively;
9. Enabling and supporting organizations in all sectors;
10. A more sophisticated enforcement regime.

The Review sets out a vision for the future, against which progress should be checked, five years from now. There would be a shared understanding of what is meant by equality and a common framework of measurement at national, regional and local levels. Political, managerial and community leaders would take direct and personal responsibility for promoting greater equality and will test themselves on progress by the outcomes they achieve, rather than the processes they have adopted. Promoting greater equality and tackling entrenched inequalities would be embedded in the way that public institutions carry out their business. There would be an active pursuit of the public sector equality duties and a dynamic, systematic, and evidence-based approach to taking action. There would be an honest, transparent means of assessing the progress of the public, private and voluntary sectors in achieving a more representative workforce at all levels. Information would be readily available on a consistent basis. Prejudice in society on grounds of age, gender, race, religion and belief, disability, sexual orientation and gender identity would have been demonstrably reduced. There would be measurable progress in achieving greater equality and tackling the most entrenched inequalities identified.[158]

The Government has not yet responded to the Review.

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http://www.theequalitiesreview.org.uk/upload/assets/www.theequalitiesreview.org.uk/equality_review.pdf