

BULLETIN LEGAL ISSUES IN GENDER EQUALITY

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in the fields of employment, social affairs and equality
between men and women**

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The information contained in this Bulletin reflects, as far as possible, the state of affairs on
31 April 2006

CONTENTS

	Page
Introduction	7
State of affairs in EC policy instruments related to gender equality issues	9
State of affairs in equality cases pending before the Court of Justice	11
1. Cases decided	11
2. Cases for which an opinion has been delivered	11
3. Pending cases	11
News from the Member States	13
AUSTRIA	13
<i>Anna Sporrer</i>	
BELGIUM	14
<i>Jean Jacqmain</i>	
BULGARIA	16
<i>Genoveva Tisheva</i>	
CYPRUS	17
<i>Lia Georgiades</i>	
CZECH REPUBLIC	20
<i>Kristina Koldinská</i>	
DENMARK	20
<i>Ruth Nielsen</i>	
ESTONIA	22
<i>Anneli Albi</i>	
FINLAND	23
<i>Kevät Nousiainen</i>	
FRANCE	25
<i>Hélène Masse-Dessen</i>	
GERMANY	28
<i>Dagmar Schiek</i>	
GREECE	29
<i>Sophia Spiliotopoulos</i>	
HUNGARY	31
<i>Csilla Kollonay Lehoczky</i>	
ICELAND	32
<i>Herdís Thorgeirsdóttir</i>	

IRELAND <i>Frances Meenan</i>	34
ITALY <i>Gisella De Simone and Anna Rivara</i>	36
LATVIA <i>Līga Biksiniece</i>	37
LIECHTENSTEIN <i>Nicole Mathé</i>	38
LITHUANIA <i>Tomas Davulis</i>	40
LUXEMBOURG <i>Viviane Ecker</i>	41
MALTA <i>Peter Xuereb</i>	42
THE NETHERLANDS <i>Ina Sjerps</i>	44
NORWAY <i>Helga Aune</i>	45
POLAND <i>Eleonora Zielińska</i>	46
PORTUGAL <i>Maria Do Rosário Palma Ramalho</i>	49
ROMANIA <i>Roxana Teșiu</i>	49
SLOVAKIA <i>Zuzana Magurová</i>	51
SLOVANIA <i>Tanja Koderman</i>	52
SPAIN <i>Adriana Lozada Hernández</i>	53
SWEDEN <i>Ann Numhauser-Henning</i>	55
UNITED KINGDOM <i>Christopher McCrudden</i>	57

Introduction – some general trends

This Bulletin gives an overview of the current state of affairs in the field of gender equality. In particular it gives an account of the recent administrative, legislative and judicial developments that have occurred at European and national level. This introduction only highlights some of the issues that are discussed in the contribution of the national experts.

The European Commission has adopted the 'Roadmap for Equality between women and men'.¹ This Roadmap outlines the Commission's strategy in the field of gender equality for the period 2006-2010. It has identified six priority areas for which it proposes a set of objectives and actions. The identified areas go beyond the traditional gender issues that are related to the internal market to include issues such as gender violence, the elimination of gender stereotypes and gender equality in external and development policies. Some of the priorities that are identified in the Roadmap are also addressed in the contributions of the national experts.

One of the priorities that have been highlighted in the Roadmap regards the on-going wage disparities between men and women. This also appears to be a problem at national level. Several Member States have adopted incentives to bridge the pay gap between men and women. Some States have adopted legislation aiming to eliminate all wage disparities by 2010 through the process of collective bargaining. Others Member States have imposed a duty on employers to provide gender-specific information. A similar incentive has also been adopted on a voluntarily basis where large organizations were asked to submit an equal pay review. Finally equal pay groups have been established to propose initiatives that narrow the national pay gap.

The Roadmap further underlines the problematic scope of the unequal representation of women and men in economic and political decision-making. Similar concerns are expressed at national level, where new legislation is introducing gradual quota systems for female representatives. Legislation is also being proposed in a number of Member States in order to achieve balanced gender composition within the different national authorities. In addition, a proposal that enables female representatives to take pregnancy and maternity leave is currently pending. This positive trend is however not followed in all Member States. Projects to install quotas for female candidates in the coming elections have been abandoned. Opportunities have also been missed to examine the question of gender discrimination in the selection of top and middle managers in the federal and local police.

The reconciliation of family life and work through the adoption of flexible working conditions and parental arrangements is another priority area that the Commission has set itself for the period of 2006-2010. At national level, flexible provisions regarding parental leave are equally emphasized as a means to better balance family responsibilities with work. In some countries, legislation on parental leave is anticipated in the near future and in others laws have been adopted to protect employees against dismissal on grounds of parental leave until their return to work. In addition, several experts highlight available measures in their national systems that aim at encouraging more fathers to take parental leave. For example, fathers are entitled to take parental leave immediately after the birth of the child. Parental pay schemes are being reformed to make them more flexible for men. Some Member States have also revived the debate on paternity rights as a means to better balance the work/life burden. Whilst recent polls indicate that a right to paid paternity leave would be welcomed, some legislators have taken the debate further by proposing legislation on an independent right to paternity leave. Although these incentives contribute to a better work/life balance, legislation on paternity leave does not necessarily enhance the situation of all fathers. This is in particular true where the legislation has been proposed to limit the right to parental leave to fathers who are married and are living with the mother of their child.

¹ Communication of 1 March 2006 from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of Regions establishing a Roadmap for equality between women and men (2006-2010), COM (2006)92 final.

National experts have further highlighted favourable provisions regarding child benefits in their national legal systems in order to equally share family responsibilities with work. Some national legislation entitles young parents to different types of child benefits whilst some no longer exclude parents from full-time work when receiving a child-care allowance. Fathers could also be entitled to the same rights to child benefits by making the national legislation gender neutral.

Finally, some Member States have also made progress in implementing EU legislation on other grounds of discrimination. Some Member States have submitted proposals regarding discrimination against disabled persons, whilst others have taken first steps in implementing Directive 2004/113 into their national legal systems.

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 web-site: <http://europa.eu.int/eur-lex/en/oj/index-list.html>

See generally PreLex, the database on inter-institutional procedures:
<http://europa.eu.int/prelex/apcnet.cfm?CL=en>

- **Proposal for a Regulation of the European Parliament and of the Council of 8 March 2005 establishing a European Institute for Gender Equality.** COM (2005) 81
See: http://europa.eu.int/prelex/detail_dossier_real.cfm?CL=en&DosId=192619
- **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 27.08.2002 C/203E/1.
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
- **Proposal for a Directive of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).** COM (2004) 279 final – 2004/0084(COD)- supplement SEC (2004) 482
See: http://europa.eu.int/prelex/detail_dossier_real.cfm?CL=en&DosId=190518
- **Proposal for a decision of the European Parliament and Council of 1 June 2005 on the European Year of Equal Opportunities for All (2007) – Towards a Just Society.** COM (2005) 225.
See: http://europa.eu.int/prelex/detail_dossier_real.cfm?CL=en&DosId=192949
- **Communication of 18 October 2005 from the Commission to the European Parliament and Council: Fighting trafficking in human beings – an integrated approach and proposal for an action plan.** COM (2005)514
See: http://www.europa.eu.int/prelex/detail_dossier_real.cfm?CL=en&DosId=193428
- **Report of 22 February 2006 from the Commission to the Council, the European Parliament, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on equality between women and men — 2006.** COM (2006)71 final
See: http://www.europa.eu.int/prelex/detail_dossier_real.cfm?CL=en&DosId=193928

Other relevant news:

- **Women earn 15% less than men in the EU and are still finding work/ life balance difficult - Commission report.** (24/02/2006)
See: http://www.europa.eu.int/comm/employment_social/emplweb/news/news_en.cfm?id=129
- **Commission to tackle gender inequality with new roadmap and €50 million gender institute.** (03/03/2006)
See: http://europa.eu.int/comm/employment_social/emplweb/news/news_en.cfm?id=136
- **International Women's Day: A statistical view of the life of women and men in the EU25.** (08/03/2006)

See:

http://www.europa.eu.int/comm/employment_social/gender_equality/news/index_en.html

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 web-site 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 web-site: http://europa.eu.int/comm/employment_social/equ_opp/rights/jurisprud.html

1. Cases decided

CASE C-294/04 SARKATZIS HERRERO

Judgement of the Court: 16 February 2006

Opinion: 10 November 2005

O.J.: 11.09.2004/C 228/28

Directive 85/92/EC - Equal treatment - Maternity rights

CASE C-137/04 ROCKLER

Judgement of the Court: 16 February 2006

O.J.: 30.04.2004/C 106/37

Directive 96/34/EC - Sickness benefits- Parental leave

CASE C-185/04 ÖBERG

Judgment of the Court: 16 February 2006

O.J.: 10.07.2004/C 179/2

Directive 96/34/EC - Sickness benefit- Parental leave

CASE C- 423/04 RICHARDS

Judgment of the Court: 27 April 2006

Opinion: 15 December 2005

Directive 79/7 – Equal treatment – Pension rights - Transsexual

2. Cases for which an opinion has been delivered

CASE C-540/03 PARLIAMENT v. COUNCIL

Date of deposit: 22 December 2003

Opinion: 08 September 2005

O.J.: 21.02.2004/C 47/21

Action for annulment of Article 4 (1), 4(6) and 8 of Council Directive 2003/86/EC - Right to family reunification

CASE C-227/04 P LINDORFER

Date of deposit: 2 June 2004

Opinion: 27 October 2005

O.J.: 24.07.2004/C 190/10

Article 141 EC - Pension rights

3. Pending cases

CASE C-172/02 BOURGARD

Date of deposit: 10 May 2002

O.J.:30.04.2004/C 118/26

Directive 79/7/EEC – Progressive implementation of the principle of equal treatment for men and women in matters of social security.

CASE C-229/03 HERBSTRIETH

Date of deposit: 7 April 2003

O.J.: 30.04.2004/C 118/32

Directive 76/207/EEC – Directive 97/80/EC - Principle of equal treatment – Burden of Proof – claim for compensation

CASE C-204/04 COMMISSION V. GERMANY

Date of deposit: 7 May 2004

O.J.: 07.08.2004/C 201/14

Directive 76/207/EEC and Directive 97/81/EC

CASE C-17/05 CADMAN

Date of deposit: 11 January 2005

O.J.: 19.03.2005/C 69/18

Article 141 EC

News of the Member States

AUSTRIA²

Anna Sporrer

1. Legislation

The Public Procurement Act 2006,³ which renews the former Public Procurement Act, again permits the establishment of requirements with respect to women and disabled persons, and social and labour market policy in the procurement contract. Only the numbering of the provision in question has changed (from § 80 to § 99). It may be regarded as positive that the renewal of the law has not been used as an opportunity to lower the legal standard in this respect.

The aim of this act in general is to regulate the procedures for contracts commissioned by the federal ministries. The relevant provision just mentions these social issues as possible conditions for the contract under the precondition, that these requirements already have been published in the tender.

2. Case law

2.1. Constitutional Court: Violation of the right to equality of a homosexual⁴

The Constitutional Court has established a violation of the right to equality of a homosexual. Some time before August 2002, the claimant had been convicted on the basis of then § 209 of the Criminal Code for conducting a homosexual relationship with a person under 18 years. In August 2002, the Constitutional Court abolished § 209. The claimant applied to the police asking that they delete his details from their files, which the police refused. He then appealed to the Commission on Data Protection, which decided that the data in the card index, consisting of his first name, family name, address, date of birth and a reference number, were necessary for locating the file in question and that a criminal record is not data covered by the Data Protection Act.

The Constitutional Court however annulled the administrative order as it violated the claimant's right to equality, now that the retention of personal data could indeed create the impression that the claimant had been prosecuted under criminal law at some point.

2.2. High Administrative Court: No compensation for overtime work performed as a member of a working group for equal treatment⁵

The High Administrative Court has dismissed a claim for compensation for overtime worked by a female university employee as a member of the Equal Treatment Working Group established by the Universities Organization Act. In 2003, the claimant retired from her job and subsequently claimed compensation based on § 16 and § 49 BDG (Civil Servants' Statute). § 16 BDG entitles civil servants to compensation for overtime work provided that, according to § 49 BDG, they were ordered to perform the overtime by a higher-ranking staff member or subject to certain other conditions as set out in paras. 1-4 of § 49 BDG, such as preventing immediate danger. None of these conditions were argued to have been present by the claimant. Instead, she argued that her membership of the Working Group was part of her official duties and that the overtime followed logically if she was to carry out all her tasks and therefore did not need to be ordered by a superior.

According to the High Administrative Court the amount of the work involved did not justify the assumption that there was an implied order to work overtime. As the claimant had not received an actual order, the Court held that § 49 BDG was not applicable.

² 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>

³ Official Journal part I no. 17/2006.

⁴ Constitutional Court, 15 December 2005, B1590/03.

⁵ High Administrative Court, 24 February 2006, 2005/12/0079.

Discrimination and job application procedure⁶

The High Administrative Court has rejected a claim from a female civil servant who argued that she had been discriminated against on grounds of sex in a job application procedure for which she demanded compensation under the Equal Treatment Act. The claimant is a teacher and applied for the job of director of an institute of higher education for the textile industry and data processing. The job advertisement listed the following criteria: several years of teaching experience as well as supervisory experience and school management skills. For this post thirteen persons applied, among them the claimant and a male applicant, who was eventually appointed. The claimant filed a petition to the Equal Treatment Commission to review the decision under the Federal Equal Treatment Act. The claimant argued that the criteria used in the selection procedure were only established after all applications had been received. Secondly she claimed that the questions and examples put to the applicants during the interview had all been very general and openly worded. She also put forward that the male civil servant who was appointed had already been familiar with the selection procedure by having been present at a similar interview one week before his own interview.

The court observed that it took into consideration the difficulties encountered by the female civil servant to understand the criteria applied in the decision-making procedure as these are not commonly published. Both parties were required to clarify their position. The female civil servant had to specify her allegations of sex discrimination and the employer had to describe its motives for preferring the male applicant and to prove that these motives were not discriminatory. The High Administrative Court finally confirmed the employer's decision, now that even if the male candidate had not been appointed the female claimant would still not have been given the job as there were two other candidates considered more suitable.

3. Other information

3.1 Establishment of a "Family and Job Management Plc"⁷

A federal law which came into force on 1 January 2006 established a "Family and Job Management Plc" which is to implement measures for making family and work obligations more compatible. Some of its tasks are to establish a documentation centre for keeping records and statistics and for public relations purposes (for which € 523,000 in annual federal funding has been made available), to consult on and support regional and national family initiatives (for which € 2,140,000 in annual federal funding has been made available) and to disseminate information.

3.2 Record number of male child benefit recipients in Austria

In February 2006 the total number of persons receiving child benefit was 165,646 of whom 5,511 were male. This is a record so far of 3.33%, which means an increase by about 0.5%. Child benefit comes to € 14,53 daily and has never been increased so far. It is paid out for three years in case both parents look after the child, and for 2.5 years in case only one parent looks after the child. Protection against wrongful dismissal only lasts for 2 years, which is a fact that has often been criticized.

BELGIUM

Jean Jacqmain

1. Legislation

1.1 Mainstreaming at last

In order to implement the resolutions of the World Conference on Women, held in Beijing in 1995, Belgium adopted the rather unambitious Act of 6 March 1996, under which the federal government was to report yearly to Parliament on the measures it had taken to comply with the resolutions.

At the Minister of Equal Opportunities' initiative, the federal government has now decided to table a Bill aimed both at strengthening the Act of 6 March 1996 and at implementing the provisions of Directive 2002/73 on gender mainstreaming. Not only will the reporting system be made more

⁶ High Administrative Court, 19 December 2005, 2004/12/0027.

⁷ Official Journal part I no. 3/2006.

systematic and effective, but the gender dimension will be integrated in the federal government's terms of reference and in the policy of every federal department and public body. The Institute for the Equality of Women and Men will be the key facilitator of this new process, a mission which derives from its constitutive Act of 16 December 2002.

Incidentally, the Bill also authorizes the King (i.e. the federal government) to consolidate the various laws on equality of the sexes (in all aspects of social life), which is in response to Opinion no. 95, in which the Equal Opportunities Council recommended the elaboration of a Code of Gender Equality.

Needless to say, both the Act of 6 March 1996 and the Bill only apply within the federal authorities' jurisdiction.

1.2 Reconciliation of work and family life for self-employed persons

Under that heading, the Multi-Purpose Act of 27 December 2005⁸ has added to the social security scheme for self-employed persons (R.D. no. 38 of 27 July 1967) a new provision which authorizes the King to take the necessary steps. Thus, it was rather surprising to discover that the ancillary Royal Decree, of 17 January 2006⁹ is exclusively aimed at providing domestic help to self-employed women during the periods immediately preceding and following childbirth.

An Act of 20 July 2001 organized a system under which unemployed persons are encouraged to seek limited employment in private households, for which they receive a modest remuneration as a supplement to the unemployment benefit. The remuneration is paid in the form of "service vouchers", each of which is worth €6,70 and is supposed to be the equivalent of one hour's work.

The R.D. of 17 January 2006 entitles a self-employed woman to 70 of those service vouchers as "maternity support"; the vouchers must be used between the sixth month of pregnancy and the end of the sixth week following delivery. They must be used for payment of services related to housekeeping.

The new "maternity support" programme is financed by the social security scheme for self-employed persons, and devised as a complement to the six-week maternity leave (seven weeks in case of multiple birth). Indeed, Article 8 of Directive 86/613 envisages this "access to social services" as a possible response to the need for minimum protection of maternity; however, it is debatable whether the R.D. of 17 January 2006 takes an extremely realistic or a particularly chauvinistic view of the issue of reconciling work and care for self-employed persons.

2. Case Law: Gender discrimination among police managers: a missed opportunity

At the end of 2000, the Ministry of the Interior published an appeal to candidates for the selection of top and middle managers in the federal and local police. The *Centrale Générale des Services Publics* immediately filed a discrimination complaint with the Labour Inspectorate, claiming that the appeal had been worded in such a way that it was impossible for women to understand that they could apply just as well as men. The Labour Inspectorate established that the Equal Treatment Act of 7 May 1999 had been breached; the Minister of Employment and Equal Opportunities sent the LI's statement to her colleague of the Interior, who apologized profusely and protested that no discrimination had been intended.

When the results of the selection became known, it emerged that not a single woman had been selected. CGSP initiated proceedings with the *Conseil d'Etat* aiming for the annulment of the selection; besides bringing forward other grounds, CGSP again made the point that the absence of successful female candidates was *prima facie* proof of gender discrimination.

During the proceedings, the *auditorat* (which has the same function as the advocate-general with the ECJ) produced an opinion in which it questioned the *Conseil d'Etat's* jurisdiction under the Act of 7 May 1999. Indeed, the Act amended the Judicial Code to give the labour courts jurisdiction over all civil claims related to gender discriminations, even if the litigating parties are a public

⁸ M.B./B.S., 30 December 2005, 2nd ed.

⁹ M.B./B.S., 23 January 2006.

body and a tenured staff member; but it was never the legislators' intention to deprive the *Conseil d'Etat* of its power to annul an administrative decision when this was found to be illegal under the Act of 7 May 1999. Thus, the *auditorat's* opinion posed a potential danger to the effectiveness of the Act.

This issue will remain unsolved, however, because in its judgments of 27 February 2006,¹⁰ the *Conseil d'Etat* held that another ground brought forward by the CGSP (the fact that the unions had not been given the opportunity to monitor the selection process) was sufficient to entail annulment; consequently, it was no longer necessary to address the gender dimension of the case.

BULGARIA

Genoveva Tisheva

1. General Introduction

The period under consideration – from January till April 2006 – was mainly dominated by the elaboration of the new draft of the Law on Equal Opportunities of Women and Men in Bulgaria and by the starting practice of the relatively new Commission for Protection against Discrimination on gender issues and issues of multiple discrimination, including on grounds of sex.

The process of further harmonization with EU standards and the implementation of the legislation on gender equality already in place is confidently considered by the government to be going according to plan and the government feels that it is doing well in terms of equal opportunities for women and men and that no substantive changes are needed any more.

However, the lack of political will for proceeding on the Draft Law on Equal Opportunities of Women and Men and encouraging practice of the Commission for Protection against Discrimination show just the opposite.

2. Legislative and policy developments

A Draft Law on Equal Opportunities was elaborated by an expert group operating as part of the Ministry of Labour and Social Policy. The main elements of the Bill are: provisions regulating the institutional mechanism on gender equality at the level of the legislative and executive powers and also at local level, provisions regulating the mechanism for affirmative action where needed, etc. The Bill is still at the stage where consultations are taking place at the Ministry. Despite the initial plan to introduce the Bill in Parliament within the first six months of this year, it is now obvious that this time-limit will not be met. Stronger political will is needed to promote the establishment of a body responsible for policy in the field of equal opportunities for women and men. At the moment, Bulgaria lacks an institution which is permanently responsible for policy on equal opportunities. This lack is also felt considering the difficulties faced by the National Council on Equal Opportunities of Women and Men. The functions of this advisory body are very unclear, which could be remedied by the establishment of a key element in the institutional mechanism, namely a gender equality body responsible for equality policy on a daily basis.

In the light of Bulgaria's upcoming accession to the EU, the absence of a gender equality body jeopardizes the implementation of EU standards and policy on equal opportunities of women and men.

The fact that the EU Commission and ECJ case law are able actively to influence compliance with EU standards is evidenced by the changes which the Commission has suggested to the Law on Protection against Discrimination. Article 39 of this law is in the process of being amended by Parliament in order to bring it into line with *Kalanke* and *Helmut Marschall*.¹¹

¹⁰ n°s 155.623 and 155.630, *C.G.S.P.*, unreported.

¹¹ Article 39

(1) If the candidates for a position in the administration are equivalent in view of the requirements for occupying the position, the state and public bodies and the bodies of local self-

A positive trend is heralded by the establishment of a Sub-Committee on Women's Rights and Equal Opportunities of Women and Men within the Bulgarian Parliament. The Sub-Committee was created on 23 February 2006 as part of the Parliamentary Committee on Human Rights and Religious Denominations. The Sub-Committee will hopefully have a positive influence on the adoption of legislation in conformity with EU standards. It will function as part of the gender equality machinery in Bulgaria.

3. Legal practice

There has been no significant case law concerning the equal treatment of women and men under the Law on Protection against Discrimination.

After the establishment of the Commission for Protection against Discrimination, it became obvious that this Commission would act as the institution to develop practice in the field of equal opportunities. At the moment the Commission is trying to build its practice and to position itself among the other institutions. Acquiring independence and professional standing before state institutions is a difficult process. However, through its practice the Commission will gain the confidence of the citizen and civil society.

The difficulties experienced by the Commission in positioning itself are also reflected in its attempts to ensure equal opportunities for women and men in compliance with EU standards. After having been alerted by a non-governmental organization, the Commission found the following violation of the Law on Protection against Discrimination and the principle of equal opportunities. In August 2004 the Labour Code introduced parental leave as a non-transferable right for each parent, according to EU standards. The Progress report for Bulgaria's accession to the EU for that period records this as 'compliance with the Parental Leave Directive'. However, the transitional and final provisions of the Labour Code and secondary legislation for the implementation of the Labour Code provide that parental leave shall only be transferable until the end of 2006. The Commission found that this goes against the concept of parental leave itself as a non-transferable right and recommends to the government that it repeal the incompatible provisions, which also perpetuate negative gender stereotypes. This Commission's opinion provoked a negative response from the government, which considers its deviation from the main element of parental leave as perfectly legal. The government's lack of understanding of the main principles of the corresponding EU standard is obvious, given the comments by the Ministry of Labour and Social Policy, but also by the representatives of one of the main trade unions in Bulgaria. Furthermore, parental leave is considered a minor issue, which is not worth all the fuss. Eventually, the Commission's decision was appealed before the Supreme Administrative Court.

All this confirms that awareness of EU standards is still insufficient. A double standard is practiced by the government, i.e. reporting on the one hand to the EU Commission that the legislation is in compliance with the EU *acquis*, while on the other hand promoting a practice of implementation which contravenes EU law.

CYPRUS

Lia Eftstratiou-Georgiades

1. Legislation

1.1 Bill for the amendment of certain Articles of the Constitution

Following the decision of the Supreme Court of Cyprus in Civil Appeal no. 294/2005 (Attorney General v Costas Constantinou), the Government has submitted to Parliament a Bill for the Fifth Amendment of the Constitution. The Bill is currently being discussed by both the Parliamentary Committee on Legal Affairs and the Parliamentary Committee on European Affairs.

government shall employ the candidate of the less represented gender until the achievement of a 40% representation in the respective administrative units.

(2) Paragraph 1 shall apply also in the selection of participants or board members, expert working groups, governing, counsellor or other bodies, unless those participants are selected by means of a vote.

The Government decided to proceed with the amendment of the Constitution for the following reasons, which are set out in the body of the Bill:

1. After the signing of the 2003 Accession Treaty, the Republic of Cyprus must respect and apply the Treaties of the European Union as well as the decisions of the relevant organs of the European Community and of the European Union.
2. Cyprus must be in a position to exercise every choice and discretionary power afforded by European law and European Community law.
3. The Constitution of the Republic of Cyprus contains provisions which are incompatible and irreconcilable with the ability of the Republic to fulfil its obligations and commitments or which form obstacles to its ability to exercise choices and discretionary powers as a Member State of the European Union.
4. With the introduction of a new Article 1A and the amendment of Articles 104, 169 and 179 of the Constitution, which are not fundamental Articles, the abovementioned obstacles will be removed, considering however:
 - (i) the continuing occupation of Northern Cyprus by Turkish Troops and the non-involvement of Turkish Cypriots in the election and workings of the Parliament, as a result of the occupation.
 - (ii) The Law of Necessity justifies the continued exercise of powers of the Parliament to amend non-fundamental Articles of the Constitution provided that the amendments are absolutely necessary to create the legal framework for the proper functioning of the Republic of Cyprus as a Member State of the European Union.

1.2 Results of the Bill amendments concerning gender equality

The amendment of the Constitution will help: a) to promote gender equality and will eliminate the possibility of the Social Partners to rely on the High Court interpretation of Article 28. b) to promote positive action for the benefit of all groups which are in a disadvantages position on the labour market, especially the women.

Until today Equality between men and women is enshrined in Article 28(1) of the Constitution which prohibits any direct or indirect discrimination against any person, *inter alia*, on grounds of sex (Article 28(2)).¹²

The Supreme Court recognises that the constitutional principle of equality guarantees substantive equality. However, the Court did not allow actual positive action.¹³

The High Court interpreting article 28 of the Constitution found that positive measures used for the benefit of persons either for their gender or for their family position are unconstitutional.

Based on the above and the High Court decision in Civil Appeal no. 294/2005: Article 28 of the Constitution prevents towards the European Law.

In case of conflict between the provisions of the national or European Law and the Constitution of Cyprus, the constitutional provisions prevent.

As an example for understanding, the Law on Equal Treatment of Men and Women as regards access to Employment and Vocational Training (Law no. 205(I)/2002 as amended by Law no. 40(I)/2006) was passed for the purpose of harmonizing national law with Council Directives 76/207/EEC and 97/80/EC.

Article 2 provides «positive action» as measure to secure complete and actual equality between men and women. This “positive action” which is against the Cyprus Constitution is in practise void and null and can not apply.

¹² Nitsa and Georgia Zoukof v. Republic of Cyprus, 25 July 1990, case no. 912/89; Zoe Nikolaidis v. Republic of Cyprus, 19 January 1999, appeal no. 2148; Marina Christophorou v. The Republic, 1985 3 CLR 1868, 23 October 1985; Pelagia Eglezaki v. G. Attorney of Republic, 1992 1 A.A.D 697.

¹³ Micrommatis v. Republic of Cyprus, 2R S.CC 125; A. Mavrommatis v. Republic of Cyprus, 2023, 28 December 1998; Constantinou v. Republic of Cyprus, case no. 1063/99, positive action not allowed; President of Republic of Cyprus v. Parliament, report 2/89, 29 August 1989.

With the amendment of the Constitution the above obstacles will be eliminated and positive measures based on the Laws on Directives 76/207/ECC and 2002/73/EC, and European Law may be applied.

The Constitution when amended will be in line with European Community law.

2. Legislation: Amendment of the Equal Treatment of Men and Women in Employment and Vocational Training Law (Amending Law no. 40(I)/2006)

In March 2006, the House of Representatives enacted Law no. 40(I)/2006 which amends the Equal Treatment of Men and Women in Employment and Vocational Training Law and harmonizes it with Directives 76/207/EC and 2002/73/EC.¹⁴

The amendments are the following:

1. Article 2 amends and/or adds to and/or interprets the following terms in line with Directive 2002/73/EC:

“direct discrimination”, “indirect discrimination”, “discrimination on grounds of sex”, “sexual harassment” and “harassment”.

2. Article 4(2)(4) is amended on the point of professional activities which are exempted due to the fact that they can only be carried out by persons of a certain sex.¹⁵

3. Article 12 has been replaced with a new Article prohibiting the harassment or sexual harassment of employees and protecting employees against these practices. In addition, the employer has an obligation to take all necessary measures to put a stop to the harassment and/or sexual harassment.

4. A new Article 18A has been inserted which entitles trade unions to represent or support individuals before the competent court, administrative authority or extra-judicial mechanism in cases of alleged direct or indirect discrimination on grounds of sex. Furthermore the Commissioner of Administration (as the Gender Equality Body) has jurisdiction to hear and investigate complaints brought by trade unions or other organizations representing an individual.

5. A new Article 18B has been inserted on social dialogue for the promotion of equal treatment of men and women.

6. New Articles 19A and 19B concerning the promotion of equal treatment in the workplace and dialogue with NGOs have been inserted.

7. Finally, the Law provides that the Competent Authority must report to the European Commission within 3 months from the enactment of the Law so that the Commission is in a position to prepare a Report in conformity with the provisions of Directive 2002/73/EC. The Competent Authority must also inform the Commission every 4 years of any law or regulations enacted or decisions taken regarding positive measures in favour of women, as well as of their application.

Measures for the protection of women due to pregnancy, childbirth, nursing or maternity do not constitute positive action.

3. Renewal of collective agreements

In December 2005, 208 collective agreements expire in all sectors and they will be negotiated with new terms. (The above information was published in a newspaper).

Through dialogue and negotiation, the social partners have modified the collective agreements, abolishing every type of prejudice towards women or men in employment without providing positive action for the benefit of any specific person.

The Social Partners are bound to include in the collective agreement the conditions that are laid down in the legislation, especially concerning the following aspects: the trial period, minimum wage, increments, Cola (Cost of living allowance) working hours, overtime, annual leave, sick leave, the providential fund, medical care, maternity leave, conflict resolution procedures and dismissal.

From information on collective agreements obtained from the social partners in both the private and public sector and in governmental and semi-governmental sectors no provision has been

¹⁴ Law no. 205(I)/2002 entered into force on 1 January 2003.

¹⁵ Law no. 205(I)/2002 as amended by Laws no. 191(I)/2004 and 40(I)/2006.

made for positive action to benefit the sex that is underrepresented in the sector or the sector's high-ranking positions.

In practice, gender equality is not yet systematically promoted in the workplace in Cyprus.

The Women's Organisations are waiting for the amendment of the Constitution and demanding from the Social Partners to promote positive measures in favour of women.

The Ministry of Justice and Public Order through the National Machinery for Women's Rights which is the competent authority promotes overly ambitious measures for the implementation of gender equality at all levels in the national plan for 2006.

The Human Resource Development Authority of Cyprus (HRDA) offers programmes that help women to be active participants in the workforce.

CZECH REPUBLIC

Kristina Koldinská

1. Legislation

As regards recent developments in legislation on discrimination, there is still no positive news to report on the approval of the proposed Anti-Discrimination Act. The Bill has been rejected by the Senate of the Czech Republic and referred back to the Chamber of Deputies for further discussion. The next session of the Chamber of Deputies is planned for 18 April. The Bill was initially approved by the Chamber of Deputies by only one extra vote in favour. Now that the Senate has rejected the Bill, it must again be approved by the Chamber of Deputies but this time by an absolute majority, which means at least 101 votes in favour.

2. Case law

On 8 March, a case was brought before the court by a 51-year old female manager who passed two rounds in a job application procedure for a directorship in a large gas company in Prague, but was eventually passed over in favour of a male candidate. She alleges discrimination on the ground of sex. There is as yet no further news concerning this case.

3. Policy initiatives

On 27 March, the 2005 annual report of the Government Council for Equal Opportunities for Men and Women was published at: http://www.mpsv.cz/files/clanky/2615/vyrocní_zpráva_2005.pdf

4. Developments in general discrimination law

On 20 March, Parliament approved Law 115/2006 Coll. permitting registered partnerships for same-sex couples. According to the Law, both partners shall have the same rights and duties, especially to support each other materially, and if one partner dies, the other shall inherit his/her property as if they had been married. The law does not authorize the adoption of children by same-sex couples, not even in case one of the partners already has a child and the other would like to adopt it.

DENMARK

Ruth Nielsen

1. Force majeure for family reasons (Clause 3 in the framework agreement attached to Directive 96/34/EC).

Until recently the force majeure clause in Directive 96/34/EC on parental leave was, in Denmark, only implemented in a number of collective agreements allowing parents to stay home on the first day of a child's illness. On 30 November 2005, the Minister for Family and Consumer matters presented a proposal to Parliament for statutory provisions to implement the force majeure clause for urgent family reasons in the Parental Leave Directive. The proposal has been adopted and Act no. 223 of 22 March 2006 on employees' right to leave for special family-related reasons

entered into force on 1 April 2006. The Danish title is 'lov om lønmodtageres ret til fravær fra arbejde af særlige familiemæssige årsager'.¹⁶

2. The Act on reimbursement of pregnancy payments in the private sector (*Barselsudligningsloven*)

In spring 2004 the Confederation of Danish Trade Unions (Danish LO) and the Confederation of Danish Employers' Organizations (DA) concluded a collective agreement on the reimbursement of pregnancy payments by employers who are members of a DA organization.

On 8 December, the Minister for Family and Consumer matters presented a proposal for an Act on the reimbursement of pregnancy payments in the private sector (*Barselsudligningsloven*) to the Parliament. The new Act will require all employers in the private sector who are not under a similar obligation by virtue of a collective agreement to pay contributions to a pregnancy fund. When they actually pay out pregnancy-related payments to their staff they can claim reimbursement from the fund. The proposal is still (end of March 2006) being discussed in Parliament. A majority in the committee which deals with the Bill has recommended its adoption without amendments. A minority recommends adoption with amendments. The most controversial issue is the scope of the proposed Act. As the proposal stands (and probably will be adopted) it does not cover self-employed persons. The minority wishes that the proposal be extended also to cover the self-employed.

3. Gender specific wage statistics

In spring 2001, the then social democratic government proposed an amendment to the Danish Equal Pay Act to introduce a duty for employers with more than 10 staff to – upon request – produce gender specific wage statistics for the enterprise. The Act was passed in June 2001 but it was provided that the provisions on a duty to provide gender specific information should not come into force until 1 July 2002 in order to give the employers a possibility to prepare for fulfilling the duty. The present liberal-conservative government which took office in November 2001 amended the Equal Pay Act so that it became up to the Minister for Employment to decide when (if ever) the provision should come into force. It is now (end of March 2006) likely that it will never be put into force.

On 7 December 2005, the Minister for Employment submitted a proposal to Parliament to amend the Equal Pay Act. The new provisions will require employers with 35 or more staff and at least 10 staff members of each sex to disclose gender-specific wage statistics. There is already a duty on the part of employers to report their wages to Denmark's Statistical Bureau for statistical purposes, partly due to Denmark's duty to provide statistical information to the EU. If the employer so wishes he/she can obtain the gender-specific wage statistics which have to be disclosed to his/her staff free of charge from the Statistical Bureau. The proposal is still pending before Parliament. It has attracted many questions and criticism both from the right and the left wing flanking government. The party to the right of the government (the Danish People's Party) is generally against a duty for business to produce gender specific wage statistics which it thinks limits individual freedom. The parties to the left of the government and the trade unions – which support the 2001 Act which has never entered into force and which will be replaced if the present proposal is adopted – think the present proposal is a too weak an instrument to promote equal pay and covers too small a proportion of the labour market. The government estimates that the proposal covers around 800,000 workers/employees (500,000 in the public sector and 300,000 in the private sector; the total number of Danish wage-earners is around 2.2 million persons). In the public sector the employers already produce more detailed gender-specific wage-statistics than required by the proposal, so that only 300,000 persons will benefit from it. At the time of writing (end of March 2006) it is not sure what the outcome of the debate in Parliament will be.

¹⁶ The Act is available in Danish at http://www.retsinfo.dk/_GETDOC_/ACCN/A20060022330-REGL.

4. Amendment to the Equality Act – Gender composition of municipal committees, commissions, etc.

Under Section 8 of the Equality Act public committees, commissions and similar bodies set up by a minister for the purpose of laying down rules or for planning purposes of importance to society should consist of an equal number of women and men.

Authorities or organizations which are to suggest a member for a committee, etc. in compliance with Section 8 above shall suggest both a woman and a man.

On 22 February 2006 the Minister for Equality proposed an amendment to the Equality Act so that the duty to ensure a balanced gender composition of committees, commissions, etc. is extended from central authorities level to also cover the municipal level.

5. 2005 report and 2006 perspective and action plan for gender equality

The Minister for Equality has published the 2005 report and 2006 perspective and action plan for gender Equality, see http://ligeuk.itide.dk/files/PDF/Perspective_actionplan_2006.pdf.

ESTONIA

Anneli Albi

1. Legislative developments

- A draft Bill amending the Parental Benefit Act proposes to make it possible for fathers to receive parental benefit immediately after the birth of the child. Currently, fathers have no such right during the first six months after the birth. According to the Minister of Social Affairs, such a change will emphasize the importance of both parents caring for the children, and support the equal division of domestic tasks.¹⁷
- On 12 January 2006, the Chancellor of Justice sent a letter to the City Council of Tallinn with regard to the City Council's rules which allow only mothers to apply for a childbirth benefit of 5000 EEK (320 euros). Fathers currently have no such right, even if the mother is seriously ill or dies during childbirth. According to the Chancellor of Justice, such rules are incompatible with the Constitution and with Family Law, according to which parents have equal rights and duties towards their children.¹⁸
- On 26 January 2006, the Government approved the Action Plan on the fight against human trafficking.

2. Case-law

- The National Court decided in March 2006 that it is unconstitutional to reduce the amount of parental benefit on the ground of late payment of the salary through the employer's fault. The relevant provision in the Parental Benefit Act (§ 3(7)) was declared invalid.¹⁹

3. Policy initiatives and other developments

- In the aftermath of Sweden having criminalized prostitution, and Finland heading towards the same policy, public debate has started as to whether Estonia should follow suit. The Estonian Women Studies Information Centre has called for similar steps, in order to prevent Estonia becoming a destination of sex tourism. However, according to Mr Rein

¹⁷ *Postimees Online* 7 March 2006.

¹⁸ *Postimees Online*, 12 January 2006.

¹⁹ The decision is available in English at <http://www.nc.ee/?id=583>.

Lang, the Minister of Justice, Estonia has no plans to change relevant legislation. Estonian legislation currently penalizes pimping, but not the buying or selling of sex.²⁰

- PRAXIS, a centre for political studies, has carried out a study on the impact of the parental benefit which was introduced in 2004. The main effect appears to be that women with a high income in more cases now have second or third children. Other positive trends, such as a general increase in the birth-rate and an increase in the births of first children of women with high incomes already became visible in 2002. When the parental benefit was introduced, one of the risks feared was that women with a low income might opt to have more children, but this has not materialized.

4. Developments regarding other forms of discrimination

- On 8 February 2006, Parliament adopted a Bill amending the Employment Contract Act, which previously provided that an employer may terminate a employment contract on the ground that an employee has reached the age of 65. The Explanatory Note accompanying the Bill pointed out that this ground is incompatible with Directive 2000/78 and has been criticized by the EU, the Council of Europe and the ILO. A similar Bill had been voted on in 2005, but then failed to achieve the required majority. The Bill was resubmitted upon a request from the Chancellor of Justice to Parliament, in which he pointed out the unconstitutionality of the current provisions.
- Five non-governmental organizations have recently addressed letters to governmental institutions calling for the legal recognition of same-sex marriages. The Ministry of Social Affairs also called for a public debate in this respect. However, the Minister of Justice is sceptical that such a provision will be introduced into the new draft Family Act. Equally, the Chairman of the Legal Affairs Committee of Parliament is of the view that Parliament is unlikely to support legalization of homosexual marriages, with only the Social Democratic Party having indicated its support for such a move. A BNS poll has found that 62% of the population is against same-sex marriages, with only 30% in favour.²¹

FINLAND

Kevät Nousiainen

1. Enforcement of the Equality Act.

The Equality Board gave an advisory opinion to the Appellate Court of Rovaniemi in January this year.²² In the case in question, a County counsellor claimed to have suffered pay discrimination, because his pay was lower than that of three comparators holding similar offices in other Counties. There was some confusion about comparators in the court of first instance. The employer had offered a counsellor of the same County with different tasks for comparison. The Equality Board remarked that it is for the claimant to name the comparators. The claimant had named a person of the same sex as a comparator, which is not allowed under the Equality between Women and Men Act. The Board also gave an opinion as to who was to be considered the employer or the 'single source' responsible for pay in the case under discussion, but did not give a clear-cut solution to the problem. The Board remarked that the pay policy of the state has been delegated to the diverse administrative units to a greater extent than earlier, and referred to the guidelines given in C-320/00 *Lawrence*. Further, the Board remarked that the court also had to consider to what extent the Ministry could direct the pay policy at the units. The pay of County counsellors had started to diversify after 1997. The Board also pointed out that if the Court should find that all County counsellors have the same employer, it should consider whether the pay

²⁰ *Postimees Online* 17 December 2005.

²¹ *Postimees Online* 23 December 2005 and 04 January 2006.

²² Tasa-arvolautakunnan ratkaisu 2/05, of 18 January 2006.

system has been non-transparent to the extent that the burden of proof should shift to the employer, referring to Case C-381/99 *Brunnhöfer*.

2. Policy proposal on family-related leaves.

The parental leave which was introduced in Finland in the 1980s used to be wholly transferable between the parents, and the implementation of the Parental Leave Directive has brought no changes in this respect. The choices parents make have led to a persistently uneven use of leave. In 2004, 92 percent of the parental leave benefit was paid to mothers.²³ By the introduction of a 'bonus' two weeks of non-transferable parental leave in 2003 aimed at encouraging fathers to make more use of their right to parental leave, it was assumed that around 20 percent of fathers would make use of this advantage.²⁴ In reality, fathers have used their right to parental leave far less often.²⁵ While it is common for fathers to make use of paternal leave at the birth of a child, only eight percent of parental benefits were paid to fathers. It seems that fathers with higher incomes are more inclined to make use of the bonus parental leave.²⁶ Half of the fathers on paternal leave referred to economic reasons for not taking parental leave.²⁷ Young and less educated parents often refer to the loss of family income, if the father would make use of his options.²⁸ The employers' organization EK has calculated that the economic loss is not very great in double income families.²⁹ When taxes and other income-related factors are taken into account, the assumed loss appears far greater than the real loss.³⁰ The uneven sharing of parental leaves causes many problems in the sex-segregated labour market. Because days on family-related leave are considered the equivalent of days worked for the purpose of pay under the Annual Holidays Act 162/2005, employers of mothers bear the cost of the mothers' accruing holiday pay during their absence from work. Maternal, paternal and parental leave is covered by the Sickness Insurance Act, which sets a ceiling of 70 percent of previous income for benefits. Under many collective agreements, pay continues during maternal leave, but the employer receives the maternity benefit that the mother is entitled to. The Government Programme promises to seek ways of persuading fathers to take parental leave.

A tripartite working group set up to find a more balanced model of sharing the costs of family-related leaves made a unanimous proposal for the reform of the maternal and parental benefit system by the Ministry of Health and Social Affairs. The ceiling of 70 percent of income is to be lifted to 90 percent concerning the first 56 days of maternal leave. This would enable the employers to recover more of the pay during maternal leave which they may pay under a collective agreement. The ceiling would be raised from 70 to 80 percent concerning parental benefit paid to fathers during the 50 first days of parental leave, while the ceiling for mothers would remain at 70 percent. In order to compensate the burden now carried by the employers of female-dominated branches of industry, the social security contributions are to be increased to cover that burden entirely. The additional insurance costs are to be covered from employers' and employees' contributions. An information campaign to encourage fathers to take family-related leaves would also have to be conducted. Raising the ceiling for fathers' but not for mothers' parental leave benefit is justified by the aim of encouraging fathers to take leave. It has not been questioned during the public debate whether the actions planned might not be discriminatory in nature. Criticism has rather concentrated on the timing of the paternal leave. If taken immediately after maternity leave, it would interfere with breast feeding, according to the critics.

²³ Kansaneläkelaitos 2005. Kelan perhe-etuustilasto 2004. Edited Anu Valle, P. 14, 17.

²⁴ Government Proposal 147/2002.

²⁵ Takala, P. (2005), Uuden isyysvapaan ja isän muiden perhevapaiden käyttö. Helsinki, Edita, p.3.

²⁶ Op.cit., p. 5, 7.

²⁷ Op.cit., p. 11-12.

²⁸ Lammi-Taskula, J. (2003), Isät vapaalla. In Yhteiskuntapolitiikka 2003:68:3, p. 293 - 298.

²⁹ Sarromaa, S. (2004), Vanhempainlomat eurooppalaisittain – faktatietoa pähkinäkuoressa. In Suomen Nainen 14.5., p. 3.

³⁰ Kaunonen, E. (2006), Isän pitämän vanhempainvapaan vaikutus lapsiperheen talouteen, at <http://www.sak.fi/liitteet/185.pdf>.

3. Equality component' in the collective agreements.

The present 'income policy agreement' of 29 November 2004, concerning the years 2005-2007, contains an equal pay provision (provision 2.2.7), according to which collective agreements must contain a component of pay, the amount of which depends on the proportion of women under the agreement and the proportion of persons working for low pay. The component is to be divided among employees according to an agreement in each field. Follow-ups on previous similar agreements have shown that the 'equality components' within various fields have not been used to promote equal pay within the field, but have often been given to all employees regardless of sex.³¹ It seems that this will be the outcome of the present 'equality component' as well. The parties to the collective agreements have been unable to agree on how the sum in question is to be divided in the fields in question.

FRANCE

Hélène Masse-Dessen

1. Legislation

The topical issue in French legislation is the adoption by Parliament of the Act on equal pay between women and men and its partial invalidation by the Constitutional Council.

1. 1 The Act on equal pay between men and women

The Act was passed by Parliament on 23 February 2006. It includes various provisions and proposes different measures.³²

a) Topics dealt with in the Act as passed by Parliament

The Act deals with various topics.

The Act aims to reduce the wage disparities between men and women. It specifies that the pay gap must have been eliminated by 31 December 2010 and refers for this purpose to collective bargaining (see below b)).

It also gives a much wider definition of the various grounds for discrimination.³³ Previously, the employer was not allowed to take into account sex, family situation or sexual orientation and despite the C-339/95 Thibault, pregnancy was not among these factors. The Act has corrected this.

Many provisions relate to maternity and to the wages received after this period. According to the Act, wages must have increased after maternity leave by the general increase as well as the average increase of individual workers' pay received throughout the period of maternity leave as earned by wage earners in the same category.³⁴ This provision is intended to transpose Directive 2002/73. It takes into account the provisions included in some of the agreements signed under previous legislation since 2001.

Other clauses are related to paid leave after maternity leave (according to the Gomez case) and to compensation by means of social security for additional maternity leave granted in the case of premature birth requiring the hospitalization of the baby.

The Acts also deals with the reconciliation of work and family life and lays down a new rule: companies, through collective bargaining, have to take this problem into account in their staff management.

³¹Petäjäniemi, T. (2004), Selvitys hallituksen samapalkkaisuusohjelman rakentamisen edellytyksistä yhdessä työmarkkinaosapuolten kanssa, Selvityshenkilön raportti. Helsinki, Sosiaali- ja terveysministeriön työryhmämuistioita 2004:13,50.

³²<http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=MCPX0500038L>.

³³Labour code, Article L. 122-45.

³⁴Labour code, Article L 122-26. .

Finally, there were some provisions dealing with the representation of women within councils and boards, but these were annulled by the Constitutional Council due to irregular proceedings in Parliament (see below 1. 2).

b) Measures proposed

Intensified use of collective bargaining

According to certain provisions of the Act, collective bargaining has to find ways of reducing wage disparities. The provisions of the Act are thus not limiting but encouraging of collective bargaining.

Pay disparities have to be a thing of the past by 31 December 2010 and this has to be achieved through collective bargaining at branch or company level. More precisely, this problem must be discussed within the framework of the obligatory annual negotiation on wages. In fact, since the law of 9 May 2001,³⁵ each branch has had to take measures to ensure equality at work between men and women. The present Act however makes this obligation more specific and strengthens it. The measures have to be founded on precise, pertinent measures and a precise diagnosis of the gap between the remuneration of men and of women. The new Act specifies that remuneration includes wages, but also all advantages in kind.³⁶ The same provisions must apply to the company.

There are several instruments to ensure that the negotiations take place. For example, a trade union can require that discussions are entered into within 15 days. The Minister is authorized to establish a Joint Committee in a branch. However, no incentives or sanctions have been included. The sanction that had been proposed earlier (a contribution to be paid by the employers if no effective negotiations were held) was rejected in Parliament. One can therefore wonder about the efficiency of these measures.

However, collective agreements must, from now on, in order to be widened (i.e. to cover all employers and consequently all workers in the branch in question) deal with the additional issue of "eliminating the pay gap between women and men".³⁷

The difficulty is how to determine what is negotiable. "Pure" discrimination (about 5 to 10% of cases according to recent studies) cannot be the object of compromise. Only the consequences of classifications, specializations, and structural differences can be negotiated.

Objectives laid down as regards representation of women

Some provisions not only encourage negotiations, but also impose a quota for women's representation on councils and boards through prescribing specific objectives.

This was e.g. the case for staff representatives: within 5 years, the lists of candidates for election to the work's councils had to be precisely shared between men and women in each Electoral College.

In the same way, organizations will have to present many more women candidates for the next elections to certain boards. They will have to reduce the representation gap by a third compared to the last election. Finally, within 5 years, the percentage of representatives of only one sex in advisory and executive boards will have to be less than 80%.

This Act has given rise to an appeal to the Constitutional Council.

1.2 Partial annulment by the Constitutional Council

On 16 March 2006, the Constitutional Council annulled certain provisions of the Equal Pay Act.³⁸

³⁵ Law of 9 May 2001, no. 2001-397. Article L 132-12 for the branch; article L 132-27 for the company.

³⁶ As provided by Article L 140-2 of the Labour Code.

³⁷ Article L 133-5 of the Labour Code.

As the provisions were encouraging and charged the collective bargaining process with the responsibility to solve the pay gap problem, the Act as a whole was declared in conformity with the Constitution.³⁹

Some provisions, like Article 9 concerning employees, were cancelled for reasons of parliamentary procedure. According to this Article employees before going on leave could request a meeting with their employer to make clear their wishes concerning their career. Another provision that was annulled was Article 14, which was heavily criticized, and made it possible for titular people of a contract of employment to be temporarily assigned to another company. Finally, Article 18 was annulled which was based on a report to Parliament concerning the transferability of parental leave.

Finally, the restrictive provisions on women's representation on councils and boards were cancelled. The Council specified that the Constitution does not permit the enactment of restrictive rules based on sex, and, for that reason, rejected the provisions. The Council did not allow quota rules as an objective, instead of as a temporary measure to promote equality.

In short, all the encouraging provisions were saved especially those regarding equal representation of men and women in vocational training, but the Constitutional Council rejected all the restrictive ones.

2. Case law

Apart from the very important decision of the Constitutional Council quoted above, no especially important cases are to be commented upon.

Case law is becoming more specific concerning the notion of equal pay in general, and in the literature the difference between the non-discrimination principle and equal pay has been discussed.

The *Cour de Cassation* has decided⁴⁰ that collective agreements signed in different local branches of the same company can provide for different remuneration. The reason for this is the principle of free negotiation in each branch of the company and possible differences between the situation of local branches of the company.

The Constitutional Council (Decision no. 2006-563 DC, 30 March 2006) has established that the law allowing for less favourable contracts for younger workers (under 26) and allowing the employer to appoint people of the same age under different contracts is not discriminatory, because the fact that they are employed under different contracts makes their legal situation different. French tribunals seem to consider that the legal source of a situation is a sufficient justification for different remuneration.

3. Other developments

The law of 2 April 2006 "for equal opportunities" (pour l'égalité des chances), which includes the hotly debated "contract for first hiring" (contrat nouvelle embauche, called CPE), also modifies the powers of the High Authority against Discrimination.⁴¹

The High Authority is now granted the power to "propose to the author of discriminatory facts a compromise, consisting of the payment of a compromise fine, not over 3000 euros for a natural person and 15000 euros for a legal entity, and if necessary in compensation for the victim". This compromise can also consist of public announcements inside enterprises or even in the media.

³⁸ <http://www.conseil-constitutionnel.fr/decision/2006/2006533/index.htm>.

³⁹ Articles 1 to 6 of the Act.

⁴⁰ Cass. Soc. 18 January 2006, Droit Social p. 449.

⁴¹ <http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=SOCX0500298L>.

The compromise is a substitute for a criminal sanction. The High Authority is also granted more powers of enquiry and more possibilities to intervene in respect of administrative and judicial bodies. A decree is to be published to add complementary provisions.

The High Authority still has to prove its worth, especially where gender discrimination is concerned. Gender discrimination is only one of the topics under its competence. According to recent statistics, 1800 requests reached the High Authority before the end of February 2006. About half of these concern employment. 6% are based on gender discrimination, but half of these are from men who are seeking pension advantages after the 2003 Act following C-306/99 *Griesmar*.

GERMANY

Dagmar Schiek

1. Legislation

1.1 Progress of the Bill for the implementation of Directives 2000/43/EC, 2000/78/EC, 2002/73/EC and 2004/113/EC

Since the retabling of this Bill (as reported in Bulletin 01/06), the coalition parties and the government have continued to deliberate on the precise steps to undertake in relation to the implementation of these Directives. It is now expected that the coalition factions will table a Bill of their own before the parliamentary summer break.

2.2 Tax deductions for child care

On 7 April, the *Bundesrat* (convention of state governments) gave its consent to a federal government Bill on tax deductions for child care, which had been adopted by Parliament on 17 March 2006. Effective from 1 January 2006, employed single parents and married parents who are both employed will be able to deduct two-thirds of their child-care costs with an upper ceiling of 4000 euros a year from taxes. One of the aims of this new rule is to contribute to the reconciliation of work and care. The Bill has been criticized in that married parents with a higher income would profit considerably more than single parents, who are predominantly female. Other criticism was aimed at the fact that the Act will only help families where the mother is actually employed, thus sponsoring a specific model of parenthood. In the absence of available child-care institutions, buying private child care is often the only possibility for mothers if they wish to work. The costs of private care to cover full-time work by far exceed 6000 euros a year. As the tax deduction does not cover a substantial part of the high costs of private care, only a minority of well-earning mothers will be able to profit from the new rules.

2. Case Law

2.1. Federal Constitutional Court

On 28 March, the Constitutional Court delivered a decision concerning maternity leave and its consequences for contributions to unemployment insurance. From 1 January 1998 to 31 December 2002 women on statutory maternity leave under the *MuSchG*, which is compulsory, could not contribute to the public unemployment insurance scheme. They thus received different treatment from persons who received payments based on the Sickness Benefit Act after six weeks of illness. Although the legislation had been adapted in the meantime, past exclusion still had consequences for the time for which a woman could receive unemployment benefits and profit from state-funded re-integration measures. The Constitutional Court held that the legislation was not in conformity with the obligation of the state to protect mothers as established by Article 6 (4) of the German Constitution. It did not decide whether the gender equality rule under Article 3 (2) of the Constitution had also been violated, as even if such a violation was found, the outcome would have been the same as that already achieved by the finding of the first violation. The Court ordered the Federal Republic of Germany to issue legislation before 1 March 2007 remedying any disadvantages suffered.⁴²

⁴² Case no. 1 BvL 10/01 www.bundesverfassungsgericht.de.

2.2. Federal Administrative Court

On 26 January, the Federal Administrative Court delivered a decision on the question whether a female public servant living in a registered partnership with another woman could be denied a benefit to which she would have been entitled had she been married to a man. The Federal Administrative Court held that to deny her the benefit was lawful as registered partnership and marriage are fundamentally different situations. The issue of discrimination on grounds of the sex of a partner, i.e. gender discrimination, was not considered. The Court did consider Directive 2000/78/EC, but held that this did not apply to a denial of benefits on grounds of marital status, even where marital status was denied on grounds of the sex of a partner.⁴³

GREECE

Sophia Spiliotopoulos

1. Legislation

1.1. Discriminatory provisions regarding surviving spouses' pension repealed

The Code for Civil, Military and War Pensions granted a surviving spouse's pension to the widows of men covered by this Code, in case their husband died after having completed a certain number of years of service or was killed in action. Widowers in the same situation were granted this pension subject to additional conditions, namely that they had no income and were unfit for work at the time of their wife's death. ECJ case law⁴⁴ has shown that the scheme in question is occupational, which means that no exception to the equal treatment principle is allowed. The Court of Audit, which hears cases relating to pensions under the above Code, has since 1996 consistently held that this provision was contrary to the gender equality rule enshrined in the Greek Constitution (Article 4(2)) and to EC law. Moreover, the ECJ had already found Greece in breach of EC law, as it had not taken the necessary measures to comply with Directive 96/97.⁴⁵ Following the ECJ judgment, Decree 87/2002 was adopted, which purported to implement Directive 96/97, but did not state clearly which Greek schemes were occupational. It merely repeated the provisions of the Directive, including the definition of "occupational schemes", without any further specification. Thus, the concept of occupational scheme is not clearly defined in Greek law and several discriminatory provisions can still be found in social security legislation, including the provisions of the above Code on surviving spouses' pensions, as well as in similar provisions of the Code of Pensions of Railway Personnel. Article 4 of Act 3408/2005 now finally provides that the provisions of these two Codes which refer to widows also apply to widowers.

1.2. Maximum quotas for access of women to the Municipal Police abolished

Article 30 of Act 3448/2006 has repealed the provisions of Article 27(7) of Act 3013/2002 which fixed a maximum quota of 15% for access of women to the Municipal Police. By the same Article of this Act it is now provided that candidates who due to the quota were not employed in the past and who took successful legal action have to be appointed within three months of the publication of the final judgment. Moreover, women who were dismissed as a result of such final judgments have been given an opportunity for being re-appointed.

2. Case law

2.1 The Greek Council of State considers the principle of "harmonization" of family and professional life as a natural corollary of gender equality and a means to realize its substantive implementation.

The Greek Council of State (Supreme Administrative Court, SCC) has started the year 2006 off by delivering two landmark judgments concerning the parental leave of judges: judgments nos. 1 and 2/2006. The Code on the status of judges (Judiciary Code)⁴⁶ did not expressly provide for parental leave until recently. In its plenary judgment no. 3216/2003, the CS had already applied Article 44(20) of this Code in the light of the provisions of Article 21(1) and (5) of the Greek

⁴³ 2 C 43/04, www.bundesverwaltungsgericht.de.

⁴⁴ In cases 7/93 *Beune*, C-147/95 *Evrenopoulos*, C-366/99 *Griesmar* and C-351/00 *Niemi*.

⁴⁵ Case C-457/98 *Commission v. Greece*.

⁴⁶ Code for the Regulation of Courts and the Status of Judges (Act 1756/1988).

Constitution,⁴⁷ and of the general principle of EC law on reconciling family and work, recalling that Directive 96/34 constitutes a particular expression of this principle. The CS Plenum thereby annulled a decision refusing a female judge the 9 months' paid child-raising leave (following maternity leave, up until the child's 4th birthday) as provided under the Civil Servants Code for (only) female civil servants.⁴⁸

While this case was pending before the CS Plenum, a new paragraph was added to Article 44 of the Judiciary Code, which extended the application of the provisions on parental leave applying in the private sector to male and female judges.⁴⁹ The conditions for granting this leave were, however, stricter than the *acquis*, i.e. the provisions of the Civil Servants Code on child-raising leave, which the CS Plenum had held were applicable to judges. In particular, private sector parental leave can only be taken after one full year of employment with the same employer; it is unpaid; its duration is 3.5 months for each parent until the child reaches the age of 3.5; and social security coverage is only retained if the worker pays both his/her and the employer's social security contributions. In the literature, the new paragraph of Article 44 of the Judiciary Code was considered a step back compared to the *acquis*, and thus contrary to the Greek Constitution and EC law.⁵⁰ In subsequent judgments, the CS implicitly endorsed this view by ignoring the new paragraph and applying the *acquis*.⁵¹ All the cases in question concerned female judges. However, the CS Plenum judgment was a first step, and it remained to be seen whether the second step (annulment of the refusal to grant parental leave to a male judge) would be made.

Following CS plenary judgment no. 3216/2003, a second paragraph was added to Article 44 of the Judiciary Code entitling female (not male) judges to 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 + 2 month period during which the 9 months' leave can be granted + 9 months' leave). Moreover, it was provided that such leave could be taken from 2004 onwards and not before.⁵² As we commented in Bulletin no. 3/2004, this constituted direct discrimination against fathers and 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*. This recent provision thus again constituted a step back which is not allowed under either the Greek Constitution or Directive 96/34. Furthermore, as the first addition to Article 44 of the Judiciary Code was not repealed, the bizarre situation could occur that the first addition (3.5 months unpaid leave) would apply to fathers only, while the second addition (9 months' paid leave) would apply to mothers only.

The answer to this problem was provided in CS judgments nos. 1 and 2/2006, which ignored the first addition to Article 44 of the Judiciary Code and applied the *acquis*. The provisions of the Civil Servants Code, which granted the 9 months' paid child-raising leave to mothers and which according to the CS Plenum also applied to judges, and the second addition to Article 44 of the Judiciary Code were both interpreted in the light of the constitutional gender equality principle (Article 4(2)) and of the EC principles on equal treatment of men and women and reconciliation of family and working life. The CS also referred to ECJ case law concerning both these EC principles and to the duty of national courts to interpret national law in the light of EC law. Thus these judgments, like judgment 3216/2003 of the CS Plenum, interpreted both the legislation and

⁴⁷ These provisions require the protection of the family, motherhood and childhood, and the taking of measures for coping with the demographic problem.

⁴⁸ CS Plenum 3216/2003, see Bulletin no 3/2004.

⁴⁹ Article 5 of Act 1483/1984, as amended by Article 25 of Act 2640/1998.

⁵⁰ P. Petroglou, 'Comments on CS Plenum 3216/2003', 37 *Review of Social Security Law*, (2003), 902 (in Greek); S.Koukoulis-Spiliotopoulos, 'The harmonization of family and professional life of men and women: the EC and national *acquis* (on the occasion of CS Plenum 3216/2003)', 16 *Administrative Trial* (2004) 3, 572-592 (in Greek).

⁵¹ See e.g. CS 1706-1708/2004 and 2167/2004.

⁵² This paragraph was added to Article 44 of the Judiciary Code by Article 1 of Act 3258/2004.

the Constitution in the light of EC law. It was concluded that the provisions granting 9 months' paid child-raising leave to mothers were also applicable to fathers and the refusal to grant the applicant father this leave was consequently annulled. The judgments underlined that:

“the principle of reconciliation or harmonization of professional and family life constitutes a natural corollary to and a means to achieve the substantial implementation of the principle of equal treatment between men and women, by recognizing the personal right of men and women employed in both the public and the private sector to obtain parental leave, so that they can bring up their children. Thus, both women and men will be able to combine, in practice, their professional and family obligations, and more particularly, men will be encouraged to undertake an equal part of family obligations”.

Moreover, these judgments held that the leave could be requested at any time until the child reached the age of 4 (as provided by the provision of the Civil Servants Code also applying to judges), thereby ignoring the provision of the second addition to Article 44 of the Judiciary Code that the leave had to be taken within 2 months after the end of maternity leave. It was also held that the right of parents to this leave is autonomous for each child under 4. Therefore, the leave can be granted to the same parent successively, i.e. following the end of the leave granted for the first child, after which the parent is entitled to a further 9 months' leave for the second child, provided that this child is also under the age of 4. In judgment no. 1/2006 the entitlement of the applicant father to 9 months' paid leave for his first child was thus recognized, and in judgment no. 2/2006 his entitlement to a second period of 9 months' paid leave for his second child was also recognized.

These judgments are important for both judges and civil servants. For reasons of legal certainty and compliance with EC law in the manner required by the ECJ, both the Judiciary Code and the Civil Servants Code must explicitly provide for parental leave to be granted to fathers and mothers, as an autonomous personal right, in such a way that the *acquis* is maintained and no further steps back are made. The imminent amendment of the Civil Servants Code is an excellent occasion for that.

HUNGARY

Csilla Kollonay Lehoczky

The first quarter of 2006 brought only minor developments that were only in part connected to the position of women on the labour market.

1. Legislation

1.1 Opportunity to work full-time during maternity leave

Parents of a child over 1 year old who receive the low lump-sum childcare allowance may from 1 January 2006 work full time.⁵³ Previously employment outside the home for recipients of this allowance was only allowed to be part time and only if the child was older than 18 months. The new rule applies until the child reaches the age of 3 or, in case of twins, until they each reach school age, or, in case of a chronically ill or seriously disabled child, until the child reaches the age of 10. The provisions aim to provide parents with more options while taking care of a child under the age of 3. The new rules are to complete the process of shifting this type of child benefit away from any notion of “leave”. Originally the benefit was only available for employees who took unpaid leave from employment, later it became available for all who withdrew from the labour market, and now withdrawal from the labour market is not even required if the child is over 1 year old.

⁵³ Art. 21 of Act no. 1998 LXXXIV on family benefits.

1.2 Restraining orders in case of domestic violence

Keeping a long delayed promise, Parliament has finally adopted legislation on restraining orders. The Code of Criminal Procedure has been amended and now provides⁵⁴ for the possibility to prohibit suspects of violent crime to approach certain premises and certain persons for a period of 10 to 30 days if there is a well-founded suspicion that the suspect might influence witnesses or complete the crime. So as to prevent violations of the fundamental civil rights of the offenders only courts can issue restraining orders upon the request of a limited number of (involved) persons, and only after criminal proceedings have been formally initiated which is frequently something that can only be achieved by a complaint from the victim. For this reason, the law has been criticized by NGOs which claim that it is difficult to enforce due to an excess of bureaucracy and that it is therefore ineffective.

1.3 Surgical birth control

As a result of a Constitutional Court decision, the restrictions upon women's right to surgical birth control (namely that they are over 35 or have at least three children already) will be abolished as of 30 June 2006. If Parliament does not adopt different rules before that date, surgical birth control will become possible for women aged 18 and upwards. The new rules are criticized in many respects, among other things due to the fact that similar provisions are lacking for men, which puts the pressure of being responsible for birth control firmly on women.

1.4 Failed amendment of the Equality Act

The Draft Bill on the Amendment of the Equality Act⁵⁵ was finally adopted by Parliament, but the President of the Republic has now referred it back to Parliament for modification.

1.5 Proper labour relations rule

A new provision (Article 15) was inserted into the State Budget which establishes an additional requirement for entitlement to state subsidies or funding for employers, namely that the employers must be able to guarantee that proper labour relations prevail in their place of business. This means that they must be able to show that they have not been fined or given any other penalty by the Labour Inspectorate or the Equality Authority within the past two years. The new provision aims to reinforce the effective application of workplace protection rules.

ICELAND

Herdís Thorgeirsdóttir

1. Case law

1.1 The Reykjavík District Court has ordered the Church of Iceland to pay compensatory damages (but not pecuniary damages) to a female reverend⁵⁶ in a case concerning a disputed appointment to the post of embassy reverend in London in the autumn of 2003. The complainant contested the appointment of the successful candidate who happened to be the son in law of the Bishop of Iceland.

After the appointment of the successful candidate, the female reverend complained to the Church's Equal Rights Committee which concluded that the Church's equal rights policy had not been followed in this case. Before the Court, the reverend argued that the appointment was unlawful both from the point of view of procedure and substantively. She claimed both compensatory and pecuniary damages. The District Court held that the appointment procedure had neither complied with the Law on Appointment Committees for Ministers, nor with administrative practice which did not permit the Bishop to delegate his authority to an administrative committee established particularly for the purpose of this appointment without any

⁵⁴ Arts. 138/A, 138/B and 139(2) of Act no. XIX of 1998 on the Code of Criminal Procedure as amended by Act no. LI of 2006.

⁵⁵ See Bulletin 1-06 Hungary, 1.1.

⁵⁶ Reykjavík District Court, Case E 10430/2004: *Sigríður Guðmarsdóttir against the Church of Iceland*; 27 January 2006.

basis in the law, administrative rules or practice. The Church had been unable to prove that the same candidate would have been appointed if the administrative procedural practices and laws had been properly applied. Both the complainant and the candidate who was finally appointed were qualified and there was no indication that the appointed reverend was better suited to the position than the complainant. The Court also referred to the Supreme Court's interpretation of Article 24 of the Gender Equality Act⁵⁷ concerning the prohibition of discrimination in access to employment, namely that if a woman and a man apply for the same position the woman, if equally qualified taking account of education and other factors, must be appointed if women are underrepresented in the field in question. The Court therefore held that this provision of the Gender Equality Act had been violated. It did not, however, find it necessary to award pecuniary damages on the basis of this violation as it had not been shown that the claimant was evidently more qualified and would have been the obvious choice for the position, had the appointment procedure been in accordance with administrative procedures and the law. The Church has recently appealed against this judgment.

1.2 The Complaints Committee on Gender Equality by a majority of two (both women) out of three (a man dissenting) concluded, in a case⁵⁸ concerning the appointment of the rector of the Agricultural University, that the Minister of Agriculture had not violated the Gender Equality Act. Ten men and four women had applied for the position of rector. When a man was appointed, one of the women filed a complaint stating that the successful candidate did not have a superior knowledge of agriculture or superior management skills. In fact, she claimed that she was academically better qualified and questioned the qualifications of the successful candidate. She furthermore argued that the way in which the interviews had been conducted was unprofessional as the applicants' answers had not been recorded and the interviews had been conducted by different persons.

The Minister of Agriculture maintained that the female applicant had simply not been convincing during the interview. Her answers had neither revealed a thorough knowledge of agriculture nor had she given the impression that she had good management skills. He did not contest her academic qualifications or her broad scientific background but emphasized that the position of rector was first and foremost a management position requiring considerable leadership and communication skills - qualities which the Minister of Agriculture had not found the applicant to be endowed with during the selection process.

In reaching its conclusion, the majority of the Complaints Committee referred to two Supreme Court decisions⁵⁹ where the Court had allowed employers considerable scope to assess the importance of education and work experience as long as this assessment remained standard and objective, and in conformity with the Gender Equality Act. In evaluating the objectiveness of the employer's assessment regard must be had to the conditions set forth in legislation and in the advertisement for the position. Furthermore the Complaints Committee held that since the position of rector of the Agricultural University was a new and unstructured position the Minister of Agriculture should be allowed some scope in determining which skills mattered most in evaluating competence as long as the evaluation was objective.

The Complaints Committee noted in its conclusion that the interviews were conducted by staff of the Ministry of Agriculture and that the responses and examples of management skills of the selected applicant had not been recorded during or after the interviews. The Minister of Agriculture was unable to explain to the Committee why this had been omitted. There had not been any formal comparison of the skills of the applicants either. In spite of this the Complaints Committee concluded that the Minister of Agriculture, based on the mentioned case law, had some scope for determining which skills were of relevance in light of the fact that this was an unstructured position as had been mentioned in the advertisement which had also emphasized

⁵⁷ Law no. 96/2000.

⁵⁸ Complaints Committee on Equal Status case no. 7/2005, *A v. Minister of Agriculture*, 2 March 2006.

⁵⁹ Supreme Court cases nos. 121/2002 and 330/2003.

that management skills were required. It therefore did not find that there had been indirect discrimination in the meaning of Article 24 (3) of the Gender Equality Act.⁶⁰

The dissenting member, a male attorney, held that the Minister of Agriculture had discriminated against the applicant on the basis of gender. He contended that the woman was better qualified academically and had more practical management experience than the man who merely had “vision and ideas about management”. He further submitted that if such a subjective evaluation could be a determining factor more information was needed concerning the Ministry of Agriculture’s method for objectively reaching its conclusion. He subsequently added that where both applicants had been considered qualified, insufficient reasoning had been provided as to why the successful candidate’s skills were still considered superior, despite the fact that the Complaints Committee had explicitly asked for such information. As the method of evaluation was never clarified it could in his view not constitute proof in the meaning of the provision prohibiting discrimination. He argued that the Minister of Agriculture was therefore unable to prove objectively that another reason besides the applicant’s sex had been a decisive criterion in this case and that for this reason the appointment of the rector had to be considered a violation of the Gender Equality Act.

IRELAND

Frances Meenan

1. Legislation

1.1 Maternity

The Maternity Protection Acts 1994 and 2004 have been amended effective 1 March 2006 so that employees may have maternity leave for 22 consecutive weeks by the Maternity Protection Act 1994 (Extension of Periods of Leave) Order, 2006 (S.I. no. 51 of 2006). The maternity State benefit has also been increased effective from 2 January 2006 with a minimum payment of €182.60 per week to a maximum of €265.60 per week. Maternity leave will be extended to 26 weeks on 1 March 2007. There is no obligation on an employer to pay an employee during maternity leave. An employee is also entitled to an optional 12 weeks (unpaid by either employer or State) additional maternity leave (to be extended to 16 weeks on 1 March 2007).

1.2 Adoptive Leave

Entitlements in line with the new maternity entitlements have also been introduced in respect of the Adoptive Leave Acts, 1995 and 2005 by the Adoptive Leave Act, 1995 (Extension of Periods of Leave) Order 2006 (S.I. no. 52 of 2006). An employed adopting mother (or sole male adopter) shall be entitled to adoptive leave from his or her employment for a period beginning on the day of placement of not less than 20 consecutive weeks. An employed adopting mother (or sole male adopter) who has taken adoptive leave shall if he or she so requests, be entitled to further leave known as additional adoptive leave for a maximum period of 12 weeks. It should be noted that paid adoptive leave shall be 24 weeks from 1 March 2007 and unpaid adoptive leave shall be 16 weeks from 1 March 2007.

1.3 Parental Leave

On 10 November 2005 Dáil Eiréann sent the Parental Leave Bill 2004 to the Select Committee on Equality, Defence and Women’s Rights. The Bill has now passed Committee stage. The key provisions of the Bill include the raising of the maximum age of a child from 5 to 8 years; an increase in the maximum age of a child to 16 years for children with a disability; a statutory entitlement to take the 14 weeks parental leave in separate blocks of minimum periods of 6

⁶⁰ The Minister of Social Affairs appoints one member of the Committee and the Supreme Court two, according to Article 4 of the Gender Equality Act. The majority consisted of two women, one of them a practising lawyer, appointed by the Minister of Social Affairs and the other a high-ranking civil servant in the Ministry of Justice. The third male member was also a practising lawyer. The Minister of Social Affairs represents the same political party as the Minister of Agriculture who appointed the rector.

continuous weeks; the postponement of parental leave if the employee falls ill; strengthening of the provisions of the right to return to work and provision for statutory codes of practice in the manner in which parental leave and *force majeure* leave may be taken.

2. Case Law - Equality Officer Decisions

2.1 Gardiner v Mercer HR Consulting DEC – E 2006- 007

The Claimant complained that she was discriminated against by the Respondent on grounds of gender and family status when she was not permitted to return to the post she occupied before she commenced maternity leave, when she resumed work. The Respondent denied the assertions and argued as a preliminary point that the matter at issue was covered by the Maternity Protection Acts 1994 and 2004 and that it was therefore outside the scope of the Employment Equality Acts 1998 – 2004 and that the Equality Tribunal had no jurisdiction to investigate the claim.

The Equality Officer found that there were no specific restrictions under either the maternity legislation or the employment equality legislation which denied him jurisdiction to investigate the claim. He was satisfied on the basis of the evidence presented that certain tasks which had previously been the responsibility of the Claimant were assigned to her colleague, who had substituted for the Claimant during maternity leave by the Claimant's line manager and the job she returned to following maternity leave was not the same as the one she had occupied before that leave. He was also satisfied that the fact that the Claimant was returning from maternity leave and had a young child significantly influenced the Respondent's decision to restructure her job and remove certain prestigious tasks from her. He held that she had established a *prima facie* case of discrimination on grounds of gender and family status and the Respondent failed to rebut that inference. The Equality Officer found that the Respondent discriminated against the Claimant on grounds of gender and family status and awarded compensation in the sum of €15,000 for the distress suffered by her as a result of the discrimination. He also ordered the Respondent to put in place a mechanism to ensure employees who were absent from work on statutory leave, but particularly maternity leave, are advised of any issues which have a potential impact on their employment with the Respondent.

2.2 Maye v ADM Ringaskiddy DEC – E 2006 – 004

The Claimant claimed discrimination on the gender ground in that she was treated less favourably than other employees because of her pregnancy. After she furnished a medical certificate that she should be given daytime and light duties during her pregnancy her employer put her off work and it was only after her union intervened that she got a limited period of daytime light work. She claimed that in other situations the Respondent had been able to facilitate employees with light duties and day work.

The Respondent claimed that there was no suitable alternative work which did not pose a risk to her pregnancy and that they could not create work for her in the light of their grave financial situation. They argued they had acted in accordance with their obligations under the Safety, Health and Welfare at Work (of Pregnant Employees) Regulations, 2000 and their duty of care when they had taken her off work immediately on receipt of her medical certificate. They stated that company policy was only to provide light and/or daytime duties for short term periods and in order to facilitate rehabilitation into work. The Equality Officer considered that there was only a superficial effort to provide her with alternative working hours or review her duties.

The Equality Officer considered that the Claimant was subject to discrimination on the gender ground by her employer when she received less favourable treatment because of her pregnancy. She was awarded €13,981.18 which included an amount of €5981.18 equivalent to the Claimant's gross financial loss, and this element is subject to tax as it is in lieu of pay. The balance of €8,000 represents compensation for discriminatory treatment and consequentially is not subject to tax.

ITALY

Gisella De Simone

1. Legislative developments

1.1 Baby bonus

Act no. 266 of 23 December 2005 (the 2006 Budget) confirmed the allocation of 1140 millions euros at the Ministry of Finance for supporting families and for solidarity in social and economical development. In particular, a 1000 euro bonus will be granted for each baby born or adopted in 2005 and 2006. The bonus is awarded to the parents or to the person who has official custody of the child, provided that they are Italian or EU citizens who reside in Italy and that their family income is below 50,000 euros per year.

1.2 Quotas for women candidates in the political elections

On 13 February, the Chambers of Parliament were dissolved owing to the forthcoming political elections on 9 April. This means that the project to install quotas for female candidates has definitely been abandoned for this period of office of the legislator.⁶¹ Afterwards, the parties have still discussed the voluntary introduction of a quota system for the upcoming political elections. But even the intention of improving women's representation on the lists is accompanied by polemics on criteria by which to choose female candidates and by which to order their placement on the lists. However, both the choice for "harmless" candidates and the effect of the recent change in the electoral system from majority to proportional, where preferential votes are not allowed (meaning that the first person on the list is automatically the winner), could indicate that this was more of a cosmetic operation than a substantial change.

1.3 Directive 2004/113: a first step towards implementation

On 25 January, Parliament passed Delegation Act no. 29 (European Community Act⁶² 2005). Within 18 months from its entry into force (23 February 2006) the (future) Government has to enact a Legislative Decree to implement the Directive. No specific criteria to be respected by the Government have been fixed by the Delegation Act.

2. Other news

2.1 Report on the local Commissions for Equal Opportunities

The Equal Opportunities Commission (EONCO, the advisory committee of the Department for Equal Opportunities at the Prime Minister's Office, which is managed by the Minister for Equal Opportunities) has published the results of a survey concerning the Commissions for Equal Opportunities at regional and provincial level. The activities of these consulting commissions, which have to act in support of local governmental bodies, concern the promotion and control of compliance with the principle of equal opportunities between men and women in all aspects of social life. However, no specific provisions govern the activities of these commissions, which means that their composition, recruitment conditions, financing, and the very existence itself of these Commissions may vary significantly per region or province.

The study has shown that Commissions for Equal Opportunities have been established in almost all regions (apart from Sicily and Emilia Romagna), while at provincial level they are not yet widespread, and a huge difference can be noted in the number of Commissions established in the Centre-North (about 48) and in the South (only 10). Most of the Commissions have at their autonomous disposal a budget of a variable amount, which is allocated by the body under which they have been established and taking into consideration the Commission's plan of activities, which is organized into priorities and targets, while other Commissions simply have to depend on the financial management of the body under which they have been established.

The Commissions are usually composed of an average of 15-20 members, who are recruited through public competitions addressed to experts in these items or directly appointed by local governmental bodies.

⁶¹ See Bulletin no. 1/2006 on the contents of the Bill.

⁶² Which every year delegates to the Government the task of implementing EC law in the forthcoming year (so called *legge comunitaria*).

As far as their activities are concerned, violence, gender stereotyping, and, at provincial level, education, immigration problems, the health system and women's health, have all been taken into consideration. However, the main issues dealt with by the Commissions regard women's political representation and female entrepreneurship, but also women's presence in the labour market, and reconciling work, care and family life. The latter activities of these local Commissions, however, can overlap with possible initiatives taken by the Regional and Provincial Equality Advisors (governed by Act no. 125/1991) under whose competence they exclusively fall.

2.2 Women and sports: a highlight from the Winter Olympic Games

During the recent Winter Olympic Games (Turin, February 2006), the Regional Advisor (Piedmont), the Provincial Advisor (Turin) and the National Equality Advisor on the one hand, and the Women's Athlete Union (Assist) on the other hand, have questioned the unequal treatment between men and women in sports. In women's sports, less investments are made and there are fewer opportunities for rising to professional status. Moreover, as was underlined by the National Equality Advisor Isabella Rauti, an important legislative gap exists in respect of maternity protection for amateur athletes, as they are not covered by either the protection provided for employees or the protection provided for self-employed persons.

From a study carried out on the topic of "Women and men in sport: equality under construction", it emerged that women are represented in only a few disciplines of sport and mainly at local sporting events. Within the sport organizations it is rare that women occupy the highest positions and all Federation managers are men.

LATVIA

Līga Biksiniece

1. Legislative developments

On 11 April 2006, the Cabinet of Ministers adopted an amendment to Article 1403a of the Civil Code so as to provide for the principle of non-discrimination concerning access to goods and services. The wording of the new provision goes beyond the requirements of the Directives 2004/113/EC and 2000/43/EC as it prohibits different treatment on several grounds, namely gender, age, race, color, ethnicity, religious, political or other conviction, or other circumstances.

2. Court cases

The national equality body (Latvian National Human Rights Office) has submitted its first case to the court using its newly adopted right to assist victims of discrimination. The case in question concerns discrimination on multiple grounds in the employment sphere. The applicant, a Roma woman, had her application for the job of shop assistant turned down. The employer justified this decision in very vague terms, first referring to the woman's peculiar accent and later to her look and appearance. Such arguments are insulting and subjective and they were moreover unfounded as the woman had the necessary qualification to be a shop assistant and was a Latvian native speaker. The national equality body found discrimination in this case and an application has been made to the court for compensation. The court hearing will be held on 18 May 2006.

3. Policy initiatives and other developments

The Ministry of Welfare has been actively developing projects on gender equality, using EU Structural Funds. The wide-scale project "Administrative Capacity Building of Governmental Bodies and Social Partners in Gender Mainstreaming Development and Implementation" is currently in the middle stages of implementation. The aims of the project are: to raise awareness of key actors on the gender mainstreaming approach and its implementation in Latvia and to promote network building among key actors nationally and internationally – recognizing the important role of horizontal and cross-sectoral experience sharing and the value of cooperation with governmental, non-governmental and municipal organizations.

In the framework of this project, a comprehensive public awareness raising campaign on equal opportunities in employment and the social sphere was conducted during January and February 2006. Hopefully, it will prove to have contributed to a more effective implementation of equality law in Latvia.

LIECHTENSTEIN

Nicole Mathé

1. Legislative developments

1.1. Transposal of Directive 2002/73/EC

Referring to our previous report concerning the partial amendment of the Gender Equality Act (GLG) and the Labour Law dispositions (ABGB) for the purpose of transposing Directive 2002/73 on amending Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, progress can now be reported in the legislative process. The consultation period during which comments could be submitted was concluded on 15 of November 2005. The Notice and Proposal (*Bericht und Antrag*)⁶³ elaborated by the Government in February 2006 was passed on first reading during the parliamentary session of 15 to 17 March 2006. A second reading in Parliament is scheduled for one of the next sessions in April or May 2006. At this time, no obstacles are anticipated and it is expected that the revised legislation will enter into force in the summer or autumn of 2006.

2. Policy initiatives and other developments

2.1. Equality prize 2006

On International Women's Day, 8 March 2006, the government department for family and equal opportunities for the seventh time awarded the equality prize for promoting equality between women and men. Invitations to enter projects for this prize are sent every two years to organizations or private initiatives and companies in Liechtenstein. First prize was given to the project "Family managers - on their way to recognition" (*Familien-ManagerInnen – Unterwegs zur Anerkennung*) organized by the NGO *infra*, which stands for *Informations- und Kontaktstelle für Frauen*. The project intends to upgrade work performed in the family and housework. For this purpose an association of family managers will be created to raise awareness and promote actual measures to improve the situation of family managers. An important aspect of this project is bringing out the skills learned from family and housework, and to evaluate them and render them chargeable in the field of employment and for vocational and advanced training.

Second prize was awarded to the project "your – my = our language" (*deine –meine=unsere sprache*) that aims to stimulate the use of the German language by children who attend nursery schools in Liechtenstein. The main focus of the project is to increase the educational opportunities of immigrant children.

Third prize went to the Women's Commission for universities. The Commission is to represent women's concerns and comment on questions concerning women at universities. The project focuses on the development of the framework and structures that are needed for equality at work, and mainly for promoting gender equality. Increasing the number of female lecturers will also cause students to be more aware of gender equality when they themselves occupy key positions with decision-making power in the future.

2.2. Women 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 a networking project "*Frauennetzwerken*" that is to consist of three events in Liechtenstein, Vorarlberg (Austria) and St. Gallen (Switzerland) to offer women an opportunity for cross-border networking in their respective fields of activity. In this way, a platform will be created where women can meet, which is important as networking is one of the main preconditions for political and professional advancement.

⁶³ BuA no. 6/2006.

2.3. Gender mainstreaming in the administration

To promote the optimal regional implementation of gender mainstreaming, the regional governments of Vorarlberg (Austria), Liechtenstein and St. Gallen (Switzerland) have established cross-border cooperation in the form of the project "*Ländergender*". The main focus of this interregional project is to monitor and support the implementation of gender mainstreaming in the regional administration. Existing experience within the administration with the implementation of gender equality will be shared and combined with extensive know-how and practical input. The project addresses mainly decisionmakers and employees in the administration.

2.4. DemoGrazia – the prize for moral courage

On the occasion of the 20th anniversary in 2004 of women's suffrage in Liechtenstein a prize for social political moral courage was created named DemoGrazia. This prize which comes with a 10000 Swiss franc subsidy will be awarded in October 2006 for the first time.

2.5. Training course in politics (Politiklehrgang) 2006

In 2005, this course was offered for the second time to women who are active in institutions, political parties, public bodies, organizations, associations or initiative groups or aim to participate in such groups. This year, the training course will again be 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 teach women to make use of their talents and capacities in political committees and public posts. The training course familiarizes women with the rules of play in politics. They also receive practical support in their political work and acquire basic political skills. Furthermore, the course will heighten self-esteem and participants learn techniques for chairing debates.

2.6. Travelling exhibition – work life balance

The travelling exhibition "What is your life all about?" ("*Worum dreht sich Ihr Leben?*") or "A balance between family and work" is a joint project of the gender equality conference of the Eastern Swiss cantons and Liechtenstein. It shows how the division of tasks between couples in respect of looking after the family and having gainful employment works in the eastern part of Switzerland and in Liechtenstein and why child care facilities are profitable from an economic point of view. Companies that have had positive experiences with family-orientated measures also give feedback. The exhibition was shown for the first time in 2004 and can be rented at the Gender Equality Office in Liechtenstein.

2.7. Planned information campaign on the revised Equality Act

According to information given by the Gender Equality Office in Liechtenstein it is planned to launch a broad information campaign concerning the Equality Act once the revised version enters into force, which is expected for autumn 2006. The campaign is to inform especially companies by means of newsletters containing the main points of the Equality Act and employees by means of articles in newspapers and information distributed by employee interest groups such as the LANV (*Liechtensteinischer ArbeitnehmerInnenverband*) and NGOs.

3. Developments in general discrimination law

3.1. Act on Equal Treatment of Disabled Persons

The government submitted a Notice and Proposal (*Bericht und Antrag*)⁶⁴ concerning the Act on Equal Treatment for Disabled Persons to Parliament on 21 February 2006 and this was passed on first reading during the parliamentary session of 15 to 17 March 2006. The Act includes a general prohibition of discrimination and harassment of disabled persons and specific provisions against discrimination in employment. Moreover, it provides for significant improvement for disabled persons in the field of access to buildings, public roads and facilities and public transport.

⁶⁴ BuA Nr. 15/2006.

LITHUANIA

Tomas Davulis

1. Legislative developments

The Human Rights Committee of the Parliament of the Republic of Lithuania in its meeting of 18 January 2006 discussed a recent proposal (draft law no. XP-422) to amend the Equal Opportunities Act of Women and Men of 1 December 1999⁶⁵ (EOAWM). Despite the fact that Directive 2002/73/EC had already been transposed by Law no. X-304 of 5 July 2005⁶⁶ on the amendment of the EOAWM (see Report on the transposal of Directive 2002/73) the Committee still formally had to examine these last amendments after having received the opinions from the Legal Department of the Chancellery of the Parliament and the Department of European Law at the Ministry of Justice. These two institutions drew the attention of the Human Rights Committee to the discrepancies between the national legislation and the text of the Directive, in particular to the transposal of Article 2 (3) and the definitions of harassment and sexual harassment. Further criticism was expressed about the requirement in national legislation that the person who is discriminated against has to be a subordinate in order for the act to qualify as sexual harassment. The Committee has not followed the proposal, weakly arguing that “the majority of the remarks are obsolete” because of the adoption of the amendments to the EOAWM on 5 July 2005. Instead of further examining the conformity of the adopted Law with the Directive, the Committee proposed several other amendments to the EOAWM, in particular: to extend the term of office of the Equal Opportunities Ombudsman from 4 to 5 years;

- to allow the Equal Opportunities Ombudsman to decide to temporarily suspend the investigation of a claim due to sickness or business trip of the claimant or suspect;
- to allow the Equal Opportunities Ombudsman to forward the file of the investigation to the competent body of criminal pre-trial investigation or the state prosecutor, if there are indications that a criminal offence has been committed according to Section 169 of the Criminal Code of 28 October 2002.⁶⁷ This provision establishes the general criminal liability of natural persons who commit discriminatory acts. Discrimination on the grounds of *inter alia* sex is punishable by community service, or imprisonment of up to 3 years.

The majority of the Members of the Parliamentary Committee for Family and Children have submitted a proposal (draft law no. XP-874) to change the proposed amendment to the Law on Sickness and Maternity Benefits. It must be recalled that the proposed amendment to the Law on Sickness and Maternity Benefits, together with amendments to a number of other laws including the Labour Code of 4 June 2002, aimed to introduce a new paternity allowance of 100% of the salary, payable from the State Social Insurance Fund for the duration of the newly established parental leave (see last national Report for Bulletin 1/2006). The Committee was of the opinion that the paternity allowance should only be paid to those fathers who, besides the criteria established earlier concerning the maximum period of eligibility for social security (7 months during the last 24 months) and the actual exercise of the right to paternity leave, must also live together in marriage with the mother of the child.

2. General developments

On 9 January the Office of the Equal Opportunities Ombudsman announced the annual statistical data concerning complaints received and investigated by it. The total number of received complaints has risen from 57 in 2004 to 128 in 2005. The increase in the number is due to the fact that the Law on Equal Opportunities covering discrimination on grounds of age, disability, etc. came into effect on 1 January 2005 and the Office became the body responsible for monitoring and supervising the implementation of all anti-discrimination legislation. The majority of complaints received concerned gender discrimination (30 complaints) and age discrimination (30 complaints). Women had brought 76 complaints and men 46 complaints in all.

⁶⁵ State Gazette, 1998, no. 112-3100.

⁶⁶ State Gazette, 2005, no. 88 – 3281.

⁶⁷ State Gazette, 2002, no. 89-2741.

Public attention was recently drawn to the investigation by the Office of the Equal Opportunities Ombudsman of a complaint initiated by the Lithuanian gay movement. A local public servant responsible for cultural activities had prevented an exhibition in a local gallery in the small town of Juodkrante of pictures of gay and lesbian couples and was consequently warned by the Ombudsmen for violating the Equal Opportunities Act. The local public servant argued that she had acted to protect minors who might visit the exhibition as the gallery was connected by a passage to a secondary school. However, some law experts recently have drew the attention of public to the fact, that the Equal Opportunities Ombudsman was acting illegitimate since she has no competence to enforce the principle of equal treatment in the sphere of cultural life.

LUXEMBOURG

Viviane Ecker

1. Constitution

After years of negotiations the amendment to Article 11§2 of the Constitution, which aims to enshrine the principle of equality between women and men as well as the principle of positive action in the text of the Constitution, has finally been adopted on first reading by the Chamber of Deputies on 16 March 2006. According to Article 114 of the Constitution, a second reading will have to be held after a three-month interval. The final text reads as follows: "Women and men are equal in rights and duties. The State will actively promote the elimination of obstacles which might exist as regards equality between women and men."⁶⁸

2. Legislation

A Law of 6 March 2006 (Loi du 6 mars 2006 portant approbation du Protocole No 12 à la Convention de sauvegarde des Droits de l'Homme et des Libertés fondamentales, fait à Rome, le 4 novembre 2000) approved Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms and thereby introduced a general prohibition of discrimination into national law.

3. Case law

A retired agent of a European institution brought a claim before the Supreme Council of Social Insurance of Luxembourg (Conseil Supérieur des assurances sociales) against a decision of the National Solidarity Fund refusing her the flat rate child allowance (forfait d'éducation) which is normally paid to a parent who brings up a child. The decision had been taken in accordance with Article 7§2 of the Law of 28 June 2002 establishing the "forfait d'éducation," which excludes any person who is paid a statutory pension by an international organization from the benefit of this allowance. The claimant argued that this provision was discriminatory. The Supreme Council has now referred a preliminary question to the Constitutional Court asking whether this provision is contrary to the principle of equality as provided in Article 10bis of the Constitution.⁶⁹

4. General developments

On 6 March 2006, the Ministry for Equal Opportunities and the Parliamentary Commission for Family, Youth and Equal Opportunities organized a seminar on the implementation of the national action plan of equality for women and men. On this occasion, the Minister presented the 5th report under the Convention for the elimination of all forms of discrimination against women (CEDAW) as it was submitted to the CEDAW Committee on 1 March 2006. The report reviews the most significant areas of progress in relation to the equality of women and men during the last four years in all fields covered by the CEDAW Convention. In order to ensure further progress the government has developed a political strategy and through the elaboration of a national action plan it gives itself a means of analyzing and evaluating the action planned for the period 2006 –

⁶⁸ Original text: "Les femmes et les hommes sont égaux en droits et en devoirs. L'Etat veille à promouvoir activement l'élimination des entraves pouvant exister en matière d'égalité entre femmes et hommes. «

⁶⁹ Arrêt du Conseil Supérieur des Assurances Sociales du 7 novembre 2005, no. 2005/0180.

2008. During the seminar the national action plan was discussed with politicians, women's organizations, trade unions and employers' associations in order to ensure their cooperation in the implementation of the action plan.

MALTA

Peter G. Xuereb

1. Legislation and Judicial developments

1.1 Domestic Violence

A Domestic Violence Act, Act XX of 2005 (Chapter 481 of the Laws of Malta) is scheduled soon to be brought into force. It is the first *ad hoc* domestic violence law, and provides heightened protection to victims of domestic violence (most of whom are women), in many new ways, in many cases by amendment of the existing criminal and civil codes. These include new police powers, including the ability to proceed without a victim complaint, and also magistrate powers to order an accused to vacate the family home, as part of the courts' new powers to make a wide range of protection and treatment orders. It will protect against harassment and threatening actions, including verbal aggression, and omissions. The law can be found at www.justice.gov.mt/lawsformalta

There has been no official notification of infringement proceedings, nor have there been any major cases reported.

2. Policy Initiatives and other developments

2.1 Review of Legislation

Tax and social security

The government is currently drafting new women-friendly tax legislation. This will include structural changes to encourage women to work. The work is being done by a Tax Reform Commission set up by the Prime Minister to consider a number of proposals made by the National Commission for the Promotion of Equality (the statutory equality body, as set up by the Equality of Men and Women Act of 2003). These reforms will take their place alongside the other main policy planks of gender mainstreaming, flexible work arrangements, and high quality child-care. An obstacle to part-time employment is the statutory minimum threshold of social security contributions; this deters women from working on a part-time basis and the issue is to be revisited by government. Further impetus has been provided by the February Report of the Commission showing various gender gaps in Malta, and by the Gender Roadmap just published in March by the Commission. Government is also preparing for the transposition of the Equal Access to Goods and Services Directive.

2.2. Code of practice

Sexual Harassment in the Public Sector

On 15 December 2005, the head of the civil service announced guidelines to come into effect within a few weeks from that date on sexual harassment in the public sector. He launched the Guidelines acknowledging that impetus was given to this by the publication of a Code of Practice by the National Commission for the Promotion of Equality for Men and Women (the NCPE), the statutory Equality Body, last year. The Guidelines define sexual harassment as including harassment at the work place and also when on official duty outside the workplace. There is provision for disciplinary action, including dismissal, for perpetrators, and also for false complainants, with a right of appeal. The guidelines permit the lodging of complaints up to six months from the occurrence of the facts at the basis of a complaint. The guidelines extend to the treatment of 'clients' of the public service as well as public service employees.

3. Reports and Surveys

3.1 Paternity Leave

An on-line poll conducted by The Times, a Maltese English language daily, gave an interesting, if predictable, result. The majority of respondents favoured the introduction of paid paternity leave, but a quarter opined that the country as a whole could not afford to be so generous. Some 72.5 % respondents were in favour of its introduction. Most of these said it would enable men to share child-care in the first weeks after the birth of a child. The report of the results of the poll was carried in The Times of 15 December 2005.

3.2 Gender Pay Gap

The NCPE has commissioned (with EU funding) a national study on the gender pay gap in Malta. The last Commission Report showed that Malta has one of the lowest pay gaps in Europe, but it is thought that this may be due to the methodology adopted in the collection of statistics, and the baselines used (e.g. hourly rates, weekly rates, annual income). The NCPE study is expected to analyze this point. It is expected to have been published by September of this year.

3.3 NCPE Annual Report for the year 2005

The NCPE produced its Second Annual Report early in 2006. This covers the year 2005. The first report was published in March of 2005 and covered the first year of the NCPE's operation, i.e. 2004. As with the first report, the 2005 Report was launched at a conference addressed by the Minister for the Family and Social Solidarity. The NCPE is appointed by the Minister. The NCPE also launched its new website (www.equality.gov.mt) at the same conference. The Second Annual Report, referred to above, is available on this website. One point that emerged strongly at the Conference was that according to the Minister "Gender Balance is an important part of social dialogue", in other words the social partners are urged and expected by the government to address issues of gender balance in their dealings with one another. According to the Minister, they should discuss and make provision for child-care facilities, family-friendly working conditions, reduced and flexible working hours, maternity, parental and special leave, *inter alia*. The Minister also declared that "The NCPE has highlighted the need to move beyond legislation and policies and focus on practical inclusion and community participation – an approach which is sure to involve a wider sector of the population", adding that "This is something the NCPE will manage to accomplish". The Conference again highlighted the need for studies on gender and the taxation and social security systems. A report by the European Documentation and Research Centre of the University of Malta of June 2005 ("Anti-Discrimination, Equality and Inclusion in Malta", EDRC, 2005) had highlighted the need for a review of tax law and of the Social Security Act. The NCPE Report indicates that the NCPE is in close liaison with government over proposals to revise the Social Security Act. The Conference heard how some 175 calls were made to the NCPE regarding sexual harassment, leading to some 50 formal complaints, all of which were "followed up". The Conference also discussed the role of men and alternative working arrangements. The report highlights the apparently widening gap in good practice between the public sector where improvements have been registered (for example, in the areas of harassment control, and flexibility) and the private sector (page 14). The report also mentions input given by the NCPE in the context of EU initiatives, discussions and legislative proposals (page 20 et seq). Current initiatives for legislative reform are listed on pages 29 and 30 of the Report.

3.4 Updated Survey of Collective Agreements.

In the meantime an updated survey of Collective Agreements in Malta, was carried out and publicly launched by MISCO, a private research and consultancy company, on 1 March 2006.

THE NETHERLANDS

Ina Sjerps

1. Legislative developments

1.1 Pregnancy leave for politicians

After a long history of failed attempts, it finally looks as though a serious solution has been found, and politically accepted, for pregnancy and maternity leave for political representatives. At the moment, there is no arrangement for the substitution of a female political representative, e.g. an MEP, who takes pregnancy and maternity leave. During her leave, her vote is lost to her party and her work as a political representative is not taken over by anyone else. Previous attempts to allow for the formal replacement of a political representative during her pregnancy/maternity leave by another person, who steps down again when she returns from leave, were all blocked in the Senate. A new legislative proposal, however, now seems to receive broad political support. The *Tweede Kamer* (Chamber of Representatives) will vote on this Bill on Tuesday, 21 March.⁷⁰ When the Bill passes, it will also have to pass the Senate. Kathalijne Buitenweg, a Dutch MEP, has taken this opportunity to demand a similar arrangement for MEPs.⁷¹

1.2 Directive 2002/73

The implementation legislation for Directive 2002/73 was passed by the *Tweede Kamer* (House of Representatives) on 18 January 2006 and is now being dealt with by the Senate (*Eerste Kamer*).⁷²

2. Case law

Anne Gram, director of investments at MeesPierson Bank has won a third court case against her employer within 3 months. She can continue to work for the bank for the duration of her employment contract.

On 17 July 2005, Anne Gram gave birth to her second child. In December, her employer, MeesPierson bank (part of the Fortis financial conglomerate), informed her that the bank was seeking to dismiss her, as senior management doubted her commitment to the bank strategy. This, in spite of the fact that she had been promoted just before the start of her pregnancy leave. The bank started proceedings before the Amsterdam sub-district court to terminate the employment contract.

In the meantime, Anne Gram was not allowed to perform her regular duties after she had resumed work at the end of her maternity leave. She won two cases against her employer on this issue, and her employer had to reinstate her in her regular job.

Early March the sub-district court refused to allow the termination of the employment contract. The bank agrees with Anne Gram that it is likely that her dismissal was not motivated by poor performance, but by the fact that Anne Gram had issued an internal complaint concerning aggressive product pushing, a policy which she did not wish to comply with.

Two years ago, Anne Gram won a similar case against another former employer, ABN AMRO. This bank gave her a lower ranking job when she decided to work a four-day week after the birth of her first baby. In February 2004, the Amsterdam district court decided that the ABN AMRO bank had to reinstate her in her old job. Four months later, she left ABN AMRO to work for MeesPierson.⁷³

3. General developments

3.1 Equal pay 1

On 8 March, the Minister for Social Affairs and Employment announced several policy initiatives to reduce the pay gap between men and women.⁷⁴

The Minister has installed an equal pay working group consisting of social partners and experts (the working group "*Gelijke beloning, dat werkt*"). This working group has now published its working programme.⁷⁵ Part of the initiatives is a website,⁷⁶ instruments for social

⁷⁰ Tweede Kamer no. 30299.

⁷¹ <http://www.groenlinks.nl/europa/nieuws/Nieuwsbericht.2006-03-13.1350>.

⁷² www.eerstekamer.nl.

⁷³ NRC, 2 February 2006 and 10 March 2006.

⁷⁴ Press release 06/039; www.minszw.nl.

⁷⁵ Tweede Kamer 27099 no. 14; www.overheid.nl.

⁷⁶ www.gelijkloon.nl.

partners/employers with which they can check their pay systems, the organization of a debate between relevant parties, and a training course on “negotiating pay” for employees. On top of this, 8 September will from this year onwards be “equal pay day”. Employers and employees will be asked to check pay systems and individual wages on that day, with the help of internet tools.

3.2 Equal pay 2

Research by the weekly *Intermediair*⁷⁷ has revealed that young, well educated women scored a higher pay rise (5.5%) than men (3.8%) in 2005. Although women still earn less than men, they seem to be catching up in the group of higher educated, young employees. This development was seen in almost all sectors of the economy, even in the industry sector.

3.3 Constitution

The first Article of the Dutch Constitution provides the principle that all citizens should be treated equally. The wording of this provision was derived from the equality principle as laid down in Article 26 of the UN Covenant on Civil and Political Rights: All people in the Netherlands shall be treated equally in equal cases. Discrimination on the grounds of religion, philosophical or political orientation, race, sex or on any other ground is prohibited.⁷⁸ The Equal Treatment Commission has recommended that the following “new” grounds be included in Article 1 of the Constitution: disability/chronic disease, nationality, homosexuality or heterosexuality. The government has now asked a high level commission to write a report on the question as to whether it should follow the ETC’s advice.⁷⁹

3.4 Religion

An educational institute in Utrecht has refused to enrol a 20-year old female student because she refuses to shake hands with male teachers. She is a Muslim, and believes her religion prohibits her from shaking hands with men. The case has been brought before the Equal Treatment Commission which will have to decide whether the school is right in this case.⁸⁰

3.5 Discrimination in the labour market

A survey conducted by MegaJobs among 308 respondents for the jobsite www.dotwise.nl shows that one-third of all employees have experienced discrimination in the labour market in the last 3 years. Women and older employees experience discrimination the most. Many women have experienced that employers are not happy about the fact that they are or can become pregnant.

NORWAY

Helga Aune

1. The **Equality and Anti-discrimination Ombudswoman**, Beate Gangås, started her term as the new Ombudsperson on 1 January 2006.

The new address is: Gresen 5-7 (visitors)
Postboks 8049 Dep
N-0031 Oslo, Norway
e-mail: post@ido.no
ph: 47- 24 05 59 50 / fax: 47- 24 05 59 60
See: www.ido.net

⁷⁷ *Intermediair* loopbaanenquête 2005,
<http://www.intermediair.nl/artikel.jsp?id=206479>.

⁷⁸ Allen die zich in Nederland bevinden, worden in gelijke gevallen gelijk behandeld. Discriminatie wegens godsdienst, levensovertuiging, politieke gezindheid, ras, geslacht of op welke grond dan ook, is niet toegestaan.

⁷⁹ Staatscourant 2006, no. 53, p.10. Instellingsbesluit commissie rechtsbescherming non-discriminatiegronden artikel 1 Grondwet.

⁸⁰ www.refdag.nl; Reformatorisch Dagblad 31 January 2006.

The duties of the Ombudsperson are to promote equality and combat discrimination on grounds of gender, ethnic origin, sexual orientation, disability and age. The Ombudspersons monitors compliance with the relevant laws and promotes equality in all areas of society through various measures. Decisions by the Ombudsperson may be appealed to:

2. The Equality and Anti-discrimination Board of Appeals, whose new term also started on 1 January 2006.

The address of the Board of Appeals is:

Grensen 5-7 (visitors)
Postboks 8049 Dep
N-0031 Oslo, Norway
ph: 47- 24 05 59 70

The Equality and Anti-discrimination Authorities enforce the various Norwegian equality and anti-discrimination Acts, including:

- the Gender Equality Act;
- the new Act on the Prohibition of Discrimination on grounds of ethnicity, national origin, ancestry, skin colour, language, religious and ethical orientation (Anti-Discrimination Act), which was adopted by Parliament in 2005 and will enter into force on 1 January 2006;
- the new anti-discrimination regulations under the Working Environment Act (these regulations protect against labour market-related discrimination on grounds of gender and ethnic origin, etc., as well as on grounds of disability, sexual orientation, age and political conviction);
- the anti-discrimination regulations under the Housing Act.

The Ombudsperson also monitors the implementation of the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the UN International Convention on the Elimination of All Forms of Racial Discrimination in Norwegian law and public governance (CERD).

POLAND

Eleonora Zielińska

1. Legislative developments:

1.1 New pro-family remedies

On 29 December 2005, Polish Parliament passed two laws⁸¹ amending the Law on Family Allowances.⁸² As a result, two kinds of one-time child benefits of 1000 PLN (approx. 260 euros) each were introduced.⁸³ The first law guarantees this benefit for every child born in Poland after 8 November 2005, provided that the benefit is applied for to the local authority no later than 3 months after the birth. The second law entitles low income families⁸⁴ to an additional (also one-time) supplement to the family allowance of 1000 PLN per child (before 1 January 2006, this supplement was 500 PLN). The laws can be considered part of the fulfillment of the new Polish conservative government's promises to help families under its "pro-family" approach. Supporters of the law hope that it will also increase the birth rate to counteract the population decline in

⁸¹ Published in: Dz.U. 2005 no. 267 item 2260 and in Dz.U. 2006 no. 12 item 67.

⁸² Law of 28 November 2003, Dz.U. no. 228 item 2255.

⁸³ Both exempt from income tax.

⁸⁴ Families are considered to have a low income (which entitles them to a family allowance) if their income per family member does not exceed 504 PLN (in case of a family with a handicapped child: 583 PLN) (in 2004). Seventy percent of families in Poland belong to this category.

Poland. Women's organizations as well as the larger portion of society⁸⁵ argue, however, that the new benefits will not have this effect now that the continuous economic discrimination of women (particularly on the labour market) as well as lack of access to affordable child care in Poland are the major reasons that couples decide to remain childless. Even the Vice-Minister Joanna Kluzik Rostkowska (who, as was already reported, replaced the Plenipotentiary for the Equal Status of Women and Men) was against the one-time benefit, proposing instead an extension of maternity leave for another 2 weeks and a more comprehensive pro-family governmental policy. Her proposals included among other things the introduction of new, more flexible forms to perform work obligations for persons unable to reconcile work with family obligations (e.g. teleworking) and new additional forms of child care.⁸⁶

1.2. Draft legislation

Recently, three draft laws (one prepared by the government⁸⁷ and the others by two different groups of MPs)⁸⁸ for the amendment of the Labour Code have been presented to Parliament. All drafts proposed the extension of maternity leave by at least 2 weeks (which altogether makes for an 18-week minimum). The MPs' draft also included a prohibition for the employer to dismiss women returning to work after maternity leave within a period of 2.5 years, unless they were guilty of violating work obligations. The government opposed this prohibition arguing that the employer might refrain from employing young women for fear that they might soon become pregnant.⁸⁹

2. Policy initiatives and other developments

2.1. Equality body

After the abolition of the Office of Governmental Plenipotentiary for the Equal Status of Women and Men a new Department for Women, Family and Counteracting Discrimination (Departament do Spraw Kobiet, Rodziny i Przeciwdziałania Dyskryminacji) has finally been established under an ordinance of the Prime Minister of 9 December 2005 annexed to the Statute of the Ministry of Labour and Social Policy.⁹⁰ This Department headed by Joanna Kluzik Rostkowska has inherited most of the duties as well as part of the staff of the former Office of the Plenipotentiary for the Equal Status of Women and Men. According to Para. 21 of the Ministerial Regulations the Department for Women, Family and Counteracting Discrimination is responsible "for the coordination of activities connected with the status of women and the family in society and for carrying out the duties related to counteracting all kinds of discrimination in all areas of social, economic and political life, with the exclusion of matters connected with discrimination based on ethnic origin".⁹¹ In an interview⁹² Ms Kluzik Rostkowska assured the public that cooperation with

⁸⁵ <http://www.neww.org.pl/en.php/home/index/0.html>. Public opinion polls show that more than half of the Polish population think that the main reason for the declining birth rate is women's fear of losing their jobs and that if measures were introduced that enabled women to reconcile professional and family obligations they would have more children. Only 10% of the respondents believed that a one-time financial benefit might increase the birth rate. Compare Survey conducted in 2005 by CBOS, cited after PAP, wp.pl.

⁸⁶ Cf. her speech in the Senate: <http://www.senat.gov.pl/k6/dok/sten/003/t.htm>.

⁸⁷ Sejm print no. 148.

⁸⁸ Sejm print no. 298 and 298 A.

⁸⁹ Gazeta Wyborcza, 5 April 2006.

⁹⁰ <http://www.mps.gov.pl/index.php?gid=448>.

⁹¹ The duties within the scope of operation of the Department in particular include: 1) performing analyses and evaluations; 2) elaborating the principles of the policy and of legislation; 3) giving opinions on Bills and other governmental documents; 4) cooperating with the appropriate organs, non-governmental organizations, etc.; 5) initiating, realizing, coordinating and monitoring the realization of the governmental programmes for women and family; 6) coordinating cooperation with international organizations; 7) promoting, disseminating and propagating the issues of counteracting discrimination and equal opportunities; 8) elaborating and realizing the Project co-financed by the European Social Fund in the framework of the Sectoral Activities under 6.1 of the Operational Programme Development of Human Resources "Integration and professional reintegration of women".

the European Union is still advancing and that all European programmes which were initiated by the former Plenipotentiary are being continued. She also partially fulfilled her promise to reestablish at local level the bodies responsible for matters related to women, family and counteracting discrimination (which had been abolished at the same time as the Plenipotentiary). In four Voivodships, such bodies have now been created. However, some of them limit their mandate to family matters only. Ms Kluzik Rostkowska also declared her willingness to continue the elaboration of the website www.monitoring.rownystatus.gov.pl, which is funded under the Phare programme. However a new website www.rodzina.gov.pl has been created instead, which is limited to family issues only. As to discrimination based on sexual orientation Ms Kluzik Rostkowska avoided answering the question on cooperation with gay and lesbian NGOs, stressing the importance of first conducting reliable research on the extent of the problem and questioning the effectiveness of Equality Marches. On the other hand, one example of an interesting initiative announced by Ms Kluzik Rostkowska is the open competition for NGO's for projects aimed at the promotion of active participation by fathers in child raising.⁹³

2.2. Establishing the Plenipotentiary for Women in the Army

The Minister of Defence has recently created the post of Plenipotentiary for Women in the Army and has appointed Ms Colonel Beata Laszczak to this post. Her office has already received the first complaints of mobbing and sexual harassment. She also intends to promote changes in the legislation as women in the army are not entitled to parental leave (they may only apply for a special childcare leave which is only granted when there is nobody else who can take care of the child). The right to breastfeeding breaks is not applied in military service either. Finally, there is no guarantee that military couples may serve in the same location.⁹⁴

2.3. Equality initiatives

Another initiative worth mentioning, which has been successfully conducted by Motorola, aims to encourage young female high school graduates to continue their education in computer and information sciences.⁹⁵

3. Developments in general discrimination law and policy

3.1. Follow-up to the Equality March in Poznań

As was already reported, several hundred people gathered in Poznań on 19 November 2005 to demonstrate against discrimination based on sexual orientation, gender, race, and disability, despite the banning of the Equality March by the mayor. Several dozens of marchers were detained by the police. The Voivodships Administrative Court in a judgment of 14 December 2005⁹⁶ declared that the mayor's refusal to allow the march had been unlawful. For this reason, the Public Prosecution Services dropped the charges against the marchers.⁹⁷

3.2. Signs of official homophobia

Human Rights Watch has published an alert concerning official homophobia in Poland.⁹⁸ On 6 April an independent culture center and club called "Le Madame" was forcefully evicted from its current

⁹² Interview by Artur Czerwinski, NEWW-Polska. Source : <http://bi.gazeta.pl>.

⁹³ Competition: "Conscious paternity at every stage of a child's life".

⁹⁴ Gazeta Wyborcza from 21 March 2006.

⁹⁵ www.diversity.pl.

⁹⁶ File no. IV SA/PO 983 /05. For reasoning see <http://www.wsa.poznan.pl/index.php?id=27>.

⁹⁷ See also: [Gay March Banned](#).

⁹⁸ "Since Lech Kaczynski was elected president in November 2005, homophobic rhetoric from members of his Party, Law and Justice, has escalated. The party's leader (and President's twin brother), Jarosław Kaczyński, recently warned that in Poland "gay people are allowed to conduct perverse demonstrations in the streets, but it is forbidden to discuss the issue of moral censorship." Prime Minister Kazimierz Marcinkiewicz, also designated by the Law and Justice Party, has stated that, if a homosexual "tries to 'infect' others with their homosexuality, then the state must intervene in this violation of freedom." On January 26, the Sejm (or Polish parliament) elected as Ombudsman for Human Rights the lawyer Janusz Kochanowski, who has claimed that

location on the basis of a court order issued more than one year ago. Despite protests by many gay, lesbian, feminists and independent cultural associations and artists the city authorities refused to designate an alternative location for the club.

PORTUGAL

Maria do Rosário Ramalho

1. Legislation

During the period covered by this bulletin two legislative measures were taken that are worth noting:

1) Law no. 9/2006 of 20 March introduced several changes in the Labour Code (which was approved by Law no. 99/2003 as of 27 August). These changes relate mainly to collective agreements, and more specifically to the process of collective bargaining and of the replacement of collective agreements. These agreements are usually prepared to last for a certain length, but, for case that they are not replaced at the end of that term (mainly because the parties did not reach an agreement for the next collective instrument), the Code now establishes the possibility that they keep into force until they are in fact replaced.

Although these changes do not deal directly with gender equality, they are worth mentioning since the area of collective agreements is of general interest to the topic of equality between men and women.

2) On 30 March, the National Parliament approved Bill no. 224/X (which was proposed by the Socialist Party which is now in Government and has a majority in Parliament) which purpose is to achieve equality between men and women in the Parliament, in local government and in the European Parliament.

The proposal was formally based on Article 109 of the Portuguese Constitution (as amended by a recent Constitutional Revision) which states that gender equality in access to political functions must be achieved in practice, and on Article 9 h) of the Constitution, which states that the promotion of gender equality is a fundamental task of the State.

In order to pursue these objectives, the proposal now approved establishes the following rules:

- the lists of candidates presented for the purposes of election to the National Parliament, to the European Parliament or to local government must be composed in a way that promotes equality between men and women (Article 1);
- equality is considered to be the representation on such lists of at least 33.3% women or men (Article 2 (1));
- in order to comply with the requirements of Article 2 (1) the lists cannot include more than two candidates of the same sex in certain posts (Article 2(2)).

The proposal was approved in general, but still has to be discussed in detail at the level of the Parliamentary Commission. However, regardless of the legislative stage, this is a Bill of great importance.

2. Case Law

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.

ROMANIA

Roxana Tesiu

1. Legislative developments in the gender equality field

pedophilia and homosexuality are linked" www.hrw.org ,www.alertnet.org.

1.1 The need for strategic intervention and advancement of the equal opportunities legislation

In the light of the deadline of 30 June set by the Romanian Government regarding the national legislative measures to be taken for attaining EU membership on 1 January 2007, the Ministry of Labour, Social Solidarity and Family, and the National Agency for Equal Opportunities for Women and Men have to amend the law on equal opportunities to ensure the complete independence of the National Agency and its organizational separation from the National Council for Combating Discrimination. In this regard, a Bill for the amendment of the 2002 Law on Equal Opportunities between Women and Men has been proposed. However, the Bill does not separate the Agency from the Ministry of Labor, Social Solidarity and Family leaving it dependent in that sense (point 26). The Agency's budget is to be guaranteed from the state budget (point 26). However, the Agency's subordination to the Ministry of Labour, Social Solidarity and Family still implies that the decisions of the Agency's President have to be approved by the Minister on all policy documents. Moreover, and a critical point as regards the independence of the Agency, according to the current legal proposal (point 35), the Agency's President is the tertiary accountant for the budget received from the state budget. Consequently, all financial decisions taken by the Agency's President will have to be approved by two higher-ranking bodies. In this respect, the Romanian Government completely fails to ensure the practical independence of the National Agency on Equal Opportunities for Women and Men. Despite the standards established by Directive 2002/73, there is a complete lack of political will to create a solid and independent body for dealing with gender equality aspects in Romania.

1.2 Hearing organized at the Romanian Parliament, Commission for Equal Opportunities for Women and Men, Deputies Chamber

On 4 April 2006, a public hearing was organized by the Commission for Equal Opportunities for Women and Men and the Deputies Chamber on the amendments to the 2002 Law on Equal Opportunities between Women and Men. Two proposals are currently pending in this respect. One proposal has been initiated by a group of deputies. The Commission on Equal Opportunities and the Commission for Human Rights, Cults and Minorities at Senate level have adopted a joint report rejecting this proposal. Although legal reasoning is absent, the report expressly mentions that the rejection is motivated by the overlap in the powers of the National Agency on Equal Opportunities and the National Council for Combating Discrimination. However, it is impossible to deduce which sections of the proposal are intended. In this respect, it may be assumed that the lack of separate powers between the National Agency and NCCD was also noted by the Deputies in question. It also clearly shows how superficially members of the Senate treat the gender equality aspects of legislation. The Legislative Council was positive on the Bill, while the Government also rejected it.

Following the presentation of the National Agency in the institutional framework of dialogue between Romania and the EU, i.e. at 7th Sub-Committee on "Social Security" meeting held in Brussels, the Commission on Equal Opportunities for Women and Men at the Deputies Chamber announced that a hearing would be organized with the participation of the President of the National Agency. The main issues on the agenda are the presentation of the National Agency's report over the past 12 months and of a report on the topics discussed at the 7th Sub-Committee meeting.

2. Policy Initiatives and Other Developments: Black Book on Equal Opportunities for Women and Men in Romania. Protest of the Romanian NGOs as regards the lack of independence of the National Agency for Equal Opportunities for Women and Men

At the beginning of April 2006, the Black Book on Equal Opportunities for Women and Men in Romania was released by the AnA Society for Feminist Analysis. The central message of the book was to point out the failure of the Romanian Government to sustain effective public policies in the field of gender equality and to introduce adequate legislation in this field. As a result, there is an excess of decorative and inefficient state structures dealing with gender equality aspects in Romania, located at both Governmental and Parliamentary level, which prevents the creation of effective public policies and legal initiatives for advancing the gender equality agenda. On the

other hand, despite the excess of powers provided for by the law for state structures dealing with gender equality in Romania, including the National Agency, no financial resources are allocated to fund the activities of these institutions. On 30 March 2006, a public letter of protest was issued by the Romanian NGOs to raise the awareness of the Government concerning the weaknesses of the institutional framework for promoting gender equality in Romania. The protest also focuses on the need for the Romanian Government to commit itself at the highest level to both improving the legal framework and issuing consistent public policies in the field of equal opportunities for women and men. One specific requirement is that the Romanian Government ceases to consider gender equality as a marginal social aspect and begins to fulfil its obligations arising under the *acquis communautaire* in the field of equal opportunities for women and men.

Finally, it must be reported that even if the state institutions remain largely inactive, NGOs continue to put pressure on the Romanian Government to politically and legally address the gender equality agenda.

SLOVAKIA

Zuzana Magurová

1. Legislation

The new Criminal Code and the new Code of Criminal Procedure became effective on 1 January 2006. The new legislation does not contain a definition of domestic violence or violence against women. The legislation uses “gender-neutral” definitions such as “relative”.

2. Case law

2.1 Constitutional Court

On 18 January 2006, the Slovak Constitutional Court dismissed a submission by 13 citizens arguing that the ratification of the EU Constitutional Treaty by the Slovak Parliament was a breach of their rights and that the Treaty should have been approved in a referendum.

2.1. Discrimination in access to employment

No court hearings have yet taken place in the case concerning the female gynaecologist who in November 2005 claimed that she had been discriminated against on grounds of sex in access to employment. Her application for the post of ambulance gynaecologist was rejected in favour of a male applicant who was less well qualified, held a lower post-graduate diploma and had no supplementing certificates of specialization.

She also submitted her complaint to the Slovak National Centre for Human Rights which found that she had been discriminated against and she attached this opinion to her claim before the court. The Ombudsman whom she had also petitioned did not however find discrimination.

3. Policy initiatives and other developments

In January 2006 the **National action plan for the fight against trafficking in people for 2006-2007** was approved in which the Minister for the Interior admits that law enforcement bodies, Ministries and other authorities have failed to take coordinated steps to solve trafficking in people. The fight against trafficking in people is one of the key priorities of the Slovak Government and the Ministry of the Interior has appointed a national coordinator in charge of prevention and protection of victims of trafficking.

Each 31 January of every year, the **Slovak National Centre for Human Rights** is to publish an annual report concerning compliance with human rights in the Slovak Republic during the preceding year. However, the annual report for 2005 has still not become available.

In January, the **Ministry of Labour, Social Affairs and Family** started a twinning project to strengthen administrative capacities in gender mainstreaming in cooperation with France as a leading partner and Germany as a junior partner. Since 20 March additional information is available through a newly created web portal www.gender.gov.sk.

On 15 March 2006, an equal opportunities campaign was launched in the Slovak media in preparation of the European Year of Equal Opportunities in 2007.

As of 6 April 2006, the Slovak public broadcasting company Slovak Radio for the first time in its 80-year history has a female director.

SLOVENIA

Tanja Koderman - Sever

1. Legislative developments

1.1 Amendments to the General Assembly Elections Act

The Ministry of Public Administration has prepared amendments to the General Assembly Elections Act, which is to be harmonized with the Constitutional Statute regarding General Assembly elections and decisions of the Constitutional Court. One innovation is the gradual introduction of 35% quotas for women. These quotas are to be achieved gradually - the representation of women on the candidate lists for the next elections would therefore be 25%.

1.2 Amendments to the Parental Care and Family Benefits Act

The Government has prepared amendments to the Parental Care and Family Benefits Act for a summary proceeding in the National Assembly. This change expands the right to part-time employment for self-employed parents. Under the amended Act they would be entitled to payment of social security contributions until the child is three years old.

2. Policy initiatives and other developments

2.1 Organized Events

On International Women's Day several events were organized with the intention of highlighting the position of women in society and the importance of gender equality. One of the organizations to participate was the Office for Equal Opportunities, which held a conference on the partnership between women and men on the labour market.

2.2 Presentation of candidature for the seat of the European Institute for Gender Equality

At the beginning of March Slovenia presented its candidature for the seat of the European Institute for Gender Equality in the European Parliament in Strasbourg. In its campaign to promote the candidature, Slovenia prepared a newspaper in French and English, called Equality Times,⁹⁹ which was distributed among members of the European Parliament.

2.3 The Annual Report of the Advocate for Equal Opportunities for Women and Men and the Advocate of the Principle of Equal Treatment at the Office for Equal Opportunities¹⁰⁰

The Advocate for Equal Opportunities for Women and Men and the Advocate of the Principle of Equal Treatment issued the Annual Report for 2005 in which she mentions 17 cases of discrimination on grounds of gender, of which 5 deal with discrimination regarding child custody, 7 with discrimination in labour relations and employment, 1 with sexual harassment in the work place and 4 with discrimination in other fields.

2.4 The 4th Periodical Report of the Republic of Slovenia on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women

The government has adopted the 4th Periodical Report of the Republic of Slovenia on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women. The Report was prepared by the Office for Equal Opportunities under Article 18 of the Convention which imposes regular reporting on legislative, judicial and administrative measures taken by the signatory state in order to implement the provisions of the Convention and on the progress achieved by transposition and implementation of those measures.

2.5 Coordinators for equal opportunities for women and men within Ministries and local communities¹⁰¹

⁹⁹ <http://www.uem.gov.si/>.

¹⁰⁰ http://www.uem.gov.si/fileadmin/uem.gov.si/pageuploads/zagovornica_porocilo2005.pdf.

Until now 10 Coordinators for equal opportunities for women and men have been appointed within local communities and 16 within Ministries in accordance with the Equal Opportunities Act (hereinafter the EEA). Coordinators in local communities may take part in the preparation and implementation of the national programme, propose measures and activities in the field of the establishment of equal opportunities and have a consultative role in the formulation of solutions in order to achieve the aims of the EEA within the framework of an individual local community. In carrying out these duties, each coordinator for equal opportunities shall cooperate with the Office for Equal Opportunities.

Coordinators in Ministries are responsible for the implementation of duties within the competence of the Ministry on the basis of the EEA and cooperate for this purpose with the Office for Equal Opportunities.

2.6 Updated web page of the Supreme Court¹⁰²

The Slovenian Supreme Court has an updated web page with a very good search system where everyone has free access to the judicial practice of labour and social courts, the Higher Labour and Social Court, the Administrative Court and the Supreme Court.

SPAIN

Adriana Lozada

1. Draft legislation

1.1. Congress asks the government to modify requirements for maternity leave

The plenary of the Congress has recently approved a notice asking the government to apply maternity leave more flexibly so as to make it easier for parents to use this right. The Workers' Statute currently requires that the mother make use of the leave during the first six weeks immediately following childbirth, and that she must have paid social security contributions during 180 days during the five preceding years. Parliamentary groups consider that it is necessary to modify the period preceding childbirth in order to create more time for the mother to meet this requirement. This issue gave rise to an early debate on a topic to be introduced in the future Draft Act on Equal Treatment which has not yet been submitted to Parliament, namely the independent right to a paternity leave of 8 days full-time or 16 days part-time.

First, the Socialists blocked a Popular Party proposal for an independent three-week paternity leave, as they claimed that this issue had to be debated during the adoption procedure for the Draft Act on Equality. Many parliamentary groups have however criticized this decision because on the one hand the paternity leave which is supposed to be included in the Draft seems clearly insufficient and on the other hand the Government has been delaying the elaboration, negotiation and presentation to Parliament of this initiative for a very long time now. As a result, several left-wing parties have announced that if the Draft Act on Equal Treatment is not presented to Parliament shortly they will put forward proposals of their own concerning these same issues.¹⁰³

On 3 March, the Council of Ministers adopted a report on the Draft Act on Equality issued by the Labour Minister, but not the Draft Act itself. This means that the above comments are still not based on an official government proposal.

2. Case law

2.1 Cantabria Superior Court dismisses claim by Solvay and orders the appointment of a female applicant who was discriminated against during the selection process

The Superior Court of Justice in Cantabria (SCJC) has rejected claims presented by the enterprise Solvay contesting a previous Court decision. This same Chamber in 2004 obliged an employer to appoint a woman who had been discriminated against during the selection

¹⁰¹ <http://www.uem.gov.si/index.php?id=1081>.

¹⁰² <http://www.sodnapraksa.si/>.

¹⁰³ Notwithstanding, until the end of May 2006 no alternative proposals have reached Parliament.

procedure. She was the only female candidate to have passed all but the final round, but her application was finally rejected based on the final round consisting of a personal interview.¹⁰⁴

Indirect discrimination was alleged now that the employer had included certain requirements in the evaluation which were not provided for under the collective agreement and which worked to the disadvantage of female candidates due to their specific technical nature. The requirements in question were not even strictly necessary for the post. Direct discrimination was also alleged given the number of women (equally and better qualified) who were finally appointed, i.e. none. The union further claimed that the employer had failed to correctly implement legitimate positive action measures envisaged by the collective agreement aiming specifically to favour the most underrepresented gender in certain branches of employment. The claimant thus alleged violations of Sections 14 and 35 of the Spanish Constitution; Sections 4.2.c) and 17.1 of the Workers' Statute; Sections 96 and 179.2 of the Labour Procedural Code; Sections 18, 76, f) and Chapter XIV of the Collective Agreement for the Chemical Industry as referred to by final provision 15 of the application agreement of Solvay and of relevant Constitutional Court and European Court case law.

The decision is not open to appeal as it was taken in response to claims brought by Solvay and obliges it to employ the worker "preferably during 2006". This measure was positively received by the trade union USO which promoted claims against the employer and believes that this precedent will positively influence the resolution of two other cases that are still pending and in which similar claims were brought of discrimination occurring between the years 1999-2003.

3. Policy initiatives and other developments

3.1 Labour Court of Cataluña to decide equal treatment cases

The Labour Court of Cataluña (TLC) which in the past served as an extra-judicial dispute settlement mechanism to resolve labour disputes (unions and employers submitted some 786 such disputes during 2005) will from now on deal with disputes concerning gender equality, mobility and pension plans in enterprises in Cataluña.

The TLC was established in 1992 under the Inter-Professional Agreement for Cataluña concluded by employers and the main trade unions (CCOO and UGT) to give examples of good practice and negotiation and to resolve labour conflicts. A total of 1,800,000 workers and 125,000 employers have made use of the Tribunal since and a total of 6182 labour disputes were resolved by it (94.16% through conciliation and 56% through amicable settlement).

3.2 Excessively long shifts aggravate discrimination suffered by women according to recent studies

Even though the gender pay gap is traditionally regarded as the main reason why women abandon their careers, recent studies have shown that the principal barrier for women against effective equality is the difficulties they experience in reconciling family and work responsibilities. Nine out of ten persons who leave work to care for the family are women.

The Confederate Executive Secretariat of UGT states that 52% of all questions submitted to legal consultation services (*Artemisa*) concern equality in employment conditions and maternity and paternity leaves. The main concerns are measures that could help reconcile family and work, such as reduction of working hours, permitting breastfeeding breaks and more flexible shifts. The typical woman (93.7%) to consult *Artemisa* is between 30-44 years old, has had higher education, works in the service sector on an indefinite contract and has 5 to 10 years' work experience.

In an attempt to change the situation, some unions have initiated a campaign called *Apaga y vámonos* (*Turn Off and Let's Go*) in which the worker is asked not to stay at the office longer than necessary (www.apagayvamonos.info).

¹⁰⁴ Superior Court Decision 1161/2005.

SWEDEN*Ann Numhauser-Henning***1. Legislation****1.1 New Act prohibiting discrimination in basic education**

On 8 February 2006, the Swedish Parliament adopted a new Act banning discrimination and other forms of degrading treatment from educational facilities.¹⁰⁵¹⁰⁶ The Act was adopted in order to fully implement the Race Directive 2000/43/EC, the Framework Directive 2000/78/EC and the amended Equal Treatment Directive 2002/73/EC. The Act will enter into force on 1 April 2006 and goes beyond the requirements of the respective Directives since it covers all grounds but age equally (i.e. sex, ethnicity, religion or other belief, sexual orientation and disability).¹⁰⁷ The Act applies to pre-school facilities, school-age childcare, primary and secondary school and municipal adult education. The Act prohibits direct and indirect discrimination including harassment, instructions to discriminate and victimization and applies the reversed burden of proof in cases of alleged discrimination. Additionally, the Act imposes on the educator a duty to apply so-called 'active measures', including equality planning on a yearly basis. The existing ombudsmen (DO, HomO, HO and JämO) have had their competences expanded correspondingly and may also represent a pupil/victim of discrimination in court. Claims are presented to the ordinary court system and the remedies are damages for the violation and economic loss caused by discrimination.

1.2 Amendments regarding child benefit

The Parliament decided recently on amendments to the (1947:529) Child Benefits Act in order to make the rules gender neutral. So far, benefits as a rule have been paid out to the mother. According to the amended Act separated parents with shared custody can, if they agree, split the benefits equally. A requirement is that the child/children live periodically with their mother and father, respectively. Separated parents with shared custody can also make a common request that the benefit is paid out to the father in its entirety.

1.3 Government Bill concerning improved protection for employees on parental leave

In March, the Government presented its Bill on improved employment protection for employees on parental leave as well as fixed-term employees.¹⁰⁸ Here, I will concentrate on the new rules related to employees on parental leave, proposed to enter into force on 1 July 2006. The Bill also contains new provisions on the use of fixed-term contracts proposed to enter into force on 1 July 2007, which will not be reported here.

The proposal as regard employees on parental leave implies amendments to the (1982:80) Employment Protection Act and the (1995:584) Parental Leave Act. According to a suggested amendment in Section 11 of the 1982 Act the dismissal of an employee on parental leave in accordance with the 1995 Parental Leave Act is not 'effective' until the employee is back on duty (or, according to the original information available at the moment of dismissal, should have been back on duty). This means that the notice period starts to run only when the employee is or should have been back on duty. In the Bill the Government also suggests replacing the current prohibition of dismissal in Section 16 of the 1995 Parental Leave Act with a more general ban on differential treatment disfavours job applicants or employees on grounds related to parental leave according to that Act when the employer decides on an employment issue, decides on promotion or vocational training, applies pay or other terms of employment, manages or distributes work, or gives notice of termination, etc. According to Section 17 a dismissal solely on

¹⁰⁵ Lag (2006:67) om förbud mot diskriminering och annan kränkande behandling av barn och elever.

¹⁰⁶ See further Government Bill 2005/06:38.

¹⁰⁷ The new law will also cover students who are otherwise harassed or have their dignity violated by other students or the school's personnel.

¹⁰⁸ Prop. 2005/06:185, Förstärkning och förenkling – ändringar i anställningsskyddslagen och föräldraledighetslagen.

grounds related to parental leave can be declared null and void. The amended Act also applies the reversed burden of proof (Section 24) as is the case under the Equal Opportunities Act. Finally, the proposal suggests abolishing the requirement of 6 months' previous employment in order to become eligible for parental leave in certain situations. The Equal Opportunities Ombudsman will have the power to represent a victim at court in allegations based on the 1995 Act.

1.4 Inquiry Commission proposes a 'Single non-discrimination Act'.

The Discrimination Inquiry Commission, after four years of investigations, in February 2006 presented its findings as regards consolidated legislation against discrimination covering all grounds of discrimination and areas of society.¹⁰⁹

According to the proposal, the current seven domestic acts dealing with discrimination (including the 1991 Equal Opportunities Act, the 2001 Students at Universities Act and the 2003 Prohibition of Discrimination Act, all covering sex discrimination) will be replaced by a single 'Prohibition and other Measures against Discrimination Act' covering all grounds and areas of society. The new Act is proposed to cover not only sex, ethnicity, religion and other beliefs, sexual orientation and functional disability but also sexual identity and age, hitherto not explicitly covered by non-discrimination legislation. The proposed Act is divided into four chapters: Chapter 1 contains introductory provisions and definitions, Chapter 2 deals with working life, Chapter 3 with education and other areas of society, and Chapter 4 contains rules on how the supervision of compliance with the Act should be arranged. Additionally, the Commission proposes that the hitherto four Ombudsmen (the Equality Ombudsman, the Ombudsman against Ethnic Discrimination, the Disability Ombudsman and the Ombudsman against Discrimination because of Sexual Orientation) be amalgamated into one authority, the Office of the Ombudsman against Discrimination, covering all the protected grounds.

Basically, the new Act implies a consolidated version of the legislation hitherto in force. New grounds to be covered, however, are sexual identity and age thus introducing new rules. Sexual identity is defined as 'a person's identity, appearance or behaviour as regards sex, regardless of whether the identity, appearance or behaviour differs from what is traditionally deemed to constitute the norm for men and women respectively' covering so-called 'transpersons'. A point of departure has been that protection should be as equal as possible for the various grounds of discrimination. As regards sex, a discrimination prohibition is hitherto lacking in the areas of society of social services, etc., and health and medical care services. The suggested new Act would also cover those areas. However, as regards protection in areas of society such as goods, services and housing, public meetings and public events, the social insurance system and social services, health and medical services, etc., further investigations are considered necessary before the discrimination prohibition based on age can be formulated.

A novelty is that the new Act is suggested to cover not only natural persons but also legal persons in the areas of society where this is considered justified (including labour market policy activities, the setting up or running of business operations, membership, etc., goods, services and housing and as regards public appointments and public assignments). Another new feature is that the discrimination prohibition as regard goods, services and housing will apply to anyone (also private persons) providing such items to the public.

The legislation is proposed to enter into force on 1 January 2008 and will now be the subject of a consultation procedure.

2. Policy initiatives and other developments: Government Bill on gender policies

¹⁰⁹ As regards the Inquiry Commission's terms of reference, see further Dir. 2002:11, 2003:69 and 2005:8. The proposal was published in the Swedish Government Reports series, SOU 2006:22, and amounts to some 1500 pages.

On 22 March 2006 the Government presented a Bill on its future gender policies.¹¹⁰ The overarching goal is that 'Women and men shall have the same power to influence society and their own lives'. Additionally four sub-goals are set, concerning equality of representation in society, economic equality, equal distribution of non-paid family work and the abolition of violence against women. The Government also declares its intention to introduce a National Gender Equality Agency.

UNITED KINGDOM

Christopher McCrudden

1. Legislative developments: Equality Act 2006 and mainstreaming

In February, Royal Assent was given to the Equality Act which, among other things, dissolves the Equal Opportunities Commission and establishes a new Commission on Equality and Human Rights. The legislation also establishes a new statutory duty on public bodies to further gender equality. The Sex Discrimination Act 1975 is amended to provide that a public authority "shall in carrying out its functions have regard to the need to eliminate unlawful discrimination and harassment and to promote equality of opportunity between men and women."¹¹¹

The government has been consulting on the detailed implementation of this duty.¹¹² The consultation period ended in January 2006, and firm proposals are expected to be issued in the next few months.

2. Court cases: Employer collusion with trade unions to discriminate

In *Shepherd v North Yorkshire County Council*,¹¹³ the issue was whether an employer knowingly aided trade unions to discriminate against their women members. It was argued by women members of the largest public sector unions that there was an express or implied agreement between the employer and the unions to delay the implementation for as long as possible of an agreement that would have implemented a collective agreement that rated the women's work as equivalent to that of men under job evaluation studies. The Employment Appeal Tribunal decided, however, that, even if such an agreement had been reached between the union and the employer, it could not be held that this amounted to the employer aiding the union in failing to represent their members without discrimination. Proceedings are, however, continuing directly against the unions. The EAT held: "Merely by agreeing a particular result in collective bargaining an employer does not aid such an omission. It is one thing to take advantage of a failure, another altogether to aid it ... The claimants' argument in my judgment involves saying that merely because an employer and a union in collective bargaining have agreed an outcome which was detrimental to a union member, the employer thereby aided the union to fail to represent its member properly. To my mind the one does not follow from the other."

3. Policy initiatives and other developments

3.1 Equalities Review: Interim Report for Consultation

A Committee established by the Prime Minister to consider long-term policy across the range of equality issues has issued an interim report. In it, the Committee sets out the direction of its future work. Of particular interest is the announcement that it will consider further the use of public sector procurement as a level of change for equality.¹¹⁴

3.2 Women and Work Commission Report (February 2006)

¹¹⁰ Prop. 2005/06:155, Makt att forma samhället och sitt eget liv – nya mål i jämställdhetspolitiken.

¹¹¹ The legislation can be found at: http://www.opsi.gov.uk/acts/acts2006/ukpga_20060003_en.pdf.

¹¹² http://www.womenandequalityunit.gov.uk/publications/gender_duty_oct2005.pdf.

¹¹³ [2006] IRLR190.

¹¹⁴ The report can be found at:

http://www.theequalitiesreview.org.uk/documents/pdf/interim_report.pdf.

A Commission, established by the Prime Minister, chaired by Baroness Prosser (a former trade union leader), and composed of representatives of unions and employers' organizations, among others, reported in February 2006. It was charged with carrying out an independent review of the gender pay gap and other issues affecting women's employment. The Commission recommended a considerable number of policy changes, but could not agree on the need for more legislation. There was particular disappointment by some that the Commission did not recommend compulsory pay audits. Interestingly, however, the Commission did agree to recommend that there should be more use of public procurement measures to advance women's equality at work.¹¹⁵

3.3 Research by the Equal Opportunities Commission on equal pay audits

A major element in government policy on how to address the gender pay gap has been the promotion of voluntary pay audits. This initiative was launched some four years ago. Research by the Equal Opportunities Commission has found, however, that just one third of large organizations have completed an equal pay review, according to new research published today by the Equal Opportunities Commission (EOC). The EOC's Equal Pay Review research has found no significant increase in the number of large organizations completing a pay review over the last 12 months. At the current rate, the government will miss its own target of having 45% of large organizations completing pay reviews by 2008. The least activity is in the private sector, where the gender pay gap is already nearly ten percentage points higher than in the public sector. While 61% of large public sector organizations have completed an equal pay review or have their first EPR in progress, just 39% have done so in the private sector. The *Equal pay reviews survey 2005* was produced for the EOC by Lorna Adams, Katie Carter and Stefan Schäfer of IFF Research.¹¹⁶

¹¹⁵ The Women and Work Commission's report 'Shaping a Fairer Future' is available on the DTI's Women and Equality Unit website at:

www.womenandequalityunit.gov.uk/women_work_commission/shaping_fairer_future.pdf.

¹¹⁶ The survey is available at:

http://www.eoc.org.uk/PDF/WP_42_equal_pay_reviews_survey.pdf.