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GENDER EQUALITY IN NORWAY

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Introduction

At the 6th European Ministerial Conference on Equality between women and men last week in Stockholm, one sub-topic was “Gender Equality as an integral part of human rights in a democratic society”. The title shows the importance of achieving gender equality.

This report presents an overview of the norwegian system, with regards to norwegian legislation, practical measures and case law from the norwegian supreme court in the field of gender equality. different web-addresses are listed for further information available online.

Legal basis

The Norwegian Constitution dates from 1814 and it is the oldest written Constitution in Europe still in effect.

Few individual rights are expressly laid down in the Norwegian Constitution. The Constitution does not have a general "Bill of rights", – like the one found in the amendments to the Constitution of the United States – nor an extensive list of economical, social and cultural rights found in certain recently adopted Constitutions.

In 1994 the Norwegian Constitution was amended as to reflect the importance of human rights. The provision declares that "It is the responsibility of the authorities of the State to respect and ensure human rights. Specific provisions for the implementation of treaties hereof shall be determined by law."

The Human Rights Act of 1999 gave The European Convention of Human Rights the legal force of national parliamentary legislation. The Convention is therefore invoked directly before the national courts. The Human Rights Act states that the Convention shall prevail over any other conflicting statutory provisions.

Although few individual rights are expressly laid down in the Norwegian Constitution, the notion of equality was of importance to the founders of the Constitution, and it reflects ideals of equality for its time. During the 20th-century, the notion of equality expanded, and the focus on equality was turned to the matter of equality between man and woman. As one of the first countries in the world, Norwegian women were granted voting rights in 1913, after an amendment to the Constitution.

Today, Norway is in many aspects considered to be one of the leading countries in the world with regards to the work being done in order to achieve full equality between men and women.

The prohibition of discrimination on the basis of gender is to a large extent regulated by explicit legislation.

The issue was first addressed in The Gender Equality Act, enacted in 1978.¹ The purpose of the Act is to promote gender equality, and it aims in particular at improving the position of women.

¹ The Act of 9 June 1978 No. 45 relating to gender equality. http://odin.dep.no/filarkiv/258356/Gender_Equality_Act.doc The responsibility of public authorities and private sector organisations to promote gender equality is enshrined in the Act's section 1 a, along with a requirement to report gender equality in the annual accounts.

The persistent work for achieving gender equality is reflected in The Anti-Discrimination Act, enacted in 2005.² The purpose of promoting gender equality is explicitly stated in the first provision of the Act, along with the aims of ensuring equal opportunities and rights, and preventing discrimination based on ethnicity, national origin, descent, skin colour, language, religion or belief.

Another important regulation in this field is the Act relating to Worker Protection and Working Environment of 2005.³ The Act is of particular importance for women as it prohibits an employer from discriminating a woman because of pregnancy or motherhood.

The above mentioned statutes give an alleged victim of discrimination the possibility to file for pecuniary damages from the employer, with the burden of proof favourable to the alleged victim.

Treaties

Norway has ratified a number of treaties of importance to the enforcement of gender equality, inter alia:

- The Universal Declaration of Human Rights
- The European Convention for the Protection of Human Rights and Fundamental Freedoms
- Convention of the ILO No. 100 Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value
- Convention of the ILO No. 111 Discrimination (Employment and Occupation)
- Convention of the ILO No. 156 Concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities
- International Covenant on Economic, Social and Cultural Rights
- International Covenant on Civil and Political Rights
- Convention on the Elimination of All Forms of Discrimination against Women
- Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women
- United Nations Convention against Transnational Organized Crime and The Palermo Protocol

Norway has signed the Convention on Action against Trafficking in Human Beings, but the Convention is not yet ratified.

As Norway is a party to the European Economic Area Agreement, a number of ECC Directives have been implemented.

Institutional framework

² The Act of 3 June 2005 No. 33 on prohibition of discrimination based on ethnicity, religion, etc. <http://odin.dep.no/filarkiv/258353/diskrimineringsloven-engelsk-endelig.doc>

³ The Act of 4 February 1977 No. 4 relating to Worker Protection and Working Environment, Chapters X A and X B. <http://www.arbeidstilsynet.no/regelverk/lover/pdf/7529.pdf>

In order to strengthen the institutional framework for ensuring equality, certain governmental bodies were reorganised 1 January 2006.

At that time, the tasks of different bodies⁴ were transferred to an Equality and Anti-discrimination Ombud,⁵ and to The Equality and Anti-discrimination Tribunal.

The aim of the new Equality and Anti-discrimination Ombud is to promote equality and combat discrimination on the basis of gender, ethnic origin, sexual orientation, disability and age. It has been deemed necessary not to distinguish the different kinds of discrimination.

The Ombud shall enforce the various legislation in the area of equality and monitor 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).

The Ombud may investigate and make recommendations in cases of alleged discrimination. The parties to the case are not legally bound to comply with the recommendation, but a recommendation is normally accepted. If one party is unwilling to accept the Ombud's recommendation, that party may bring the matter before the Equality and Anti-discrimination Tribunal.

The Tribunal may confirm or change the recommendation of the Ombud. Its decisions are administratively binding, and it may order the payment of a daily fine until compliance with its decision. The decisions of the Tribunal may be overruled by a court of law.

The Ombud and the Tribunal handle most cases in the field of gender equality. Only a few cases are brought before the Courts.

In a broader perspective, it may be noted that a National Plan of Action to combat Racism and Discrimination has been adopted. The plan contains measures in key areas of legislation and policy, such as employment, public service, the criminal justice system and local communities.

Case-law

Only a limited number of cases with regards to the topic of gender equality have been brought before The Supreme Court.

However, as early as in 1975, the Supreme Court passed a ruling of specific importance. A married couple had built a house, by use of the husband's salary and his extensive work on the house during the building process. The husband argued that as a result the house belonged to him alone. The Supreme Court found that the work of a housewife and her care for the three children has been necessary for the husband's ability to work on the house, and decided that the house were joint property.⁶

⁴ The Gender Equality Ombud, the Gender Equality Board of Appeals, the Gender Equality Centre and the Centre against Ethnic Discrimination.

⁵ <http://www.ldo.no/>

⁶ The decision is published in the Official Gazette, Rt. 1975 page 220.

The Norwegian Marketing Control Act⁷ states that an advertiser shall ensure that an advertisement neither conflict with the inherent equality of the sexes nor exploit the body or imply any offensive or derogatory judgement of man or woman. In 1987 a business woman was fined for violating this provision based on the way female models were presented in an advertisement for women's underwear.⁸ As a result of this legislation and case law, Norwegian advertisement appears modest compared to advertisement found in other parts of Europe.

The Supreme Court has handled a number of labour law cases. However, with regards to labour law and gender equality, the case law from the Supreme Court is limited. In general, such cases are solved before reaching the Supreme Court. The last Supreme Court case in this area of the law dates from 2002, where the Supreme Court upheld the dismissal of a professor based on his sexual harassment of female co-workers and students.⁹

Newer case law deals with other issues of gender equality. By a Supreme Court ruling in February this year, two men were convicted of trafficking, and sentenced to imprisonment in respectively five and three years. The case was the first of its kind in Norway. In its reasoning, the Supreme Court paid great attention to the international conventions in this area.¹⁰

Later in February the Supreme Court convicted a father and his son for having attempted to force the daughter/sister to enter into a forced marriage.¹¹

Efforts have been made to strengthen the response of the criminal judicial system with regards to cases regarding discrimination, racism, violence against women and trafficking.

Historically, the focus on gender equality has been on enhancing the rights of females, and the work in this field is carried on. However, the issue is equal treatment of gender, which a judgment from the EFTA Court reflects.

As a party to the European Economic Area Agreement, though not a member of the European Union, Norway is required to adhere to the EEC Directive on the Equal Treatment of men and women. In its judgment of January 2003,¹² the EFTA Court found that a reservation of certain academic positions – professorships – for women at the University of Oslo was incompatible with the EEC Directive. The Court noted that the "Directive is based on the recognition of the right to equal treatment as a fundamental right of the individual, and that national rules and practices derogating from that right could only be permissible when they show sufficient flexibility to allow a balance between the need for the promotion of the underrepresented gender and the opportunity for candidates of the opposite gender to have their situation objectively assessed".

⁷ Act No. 47 of 16 June 1972 relating to the Control of Marketing and Contract Terms and Conditions, <http://www.forbrukerombudet.no/index.gan?id=706>

⁸ The decision of the Supreme Court is published in the Official Gazette, Rt. 1987 page 1191.

⁹ The decision of the Supreme Court is published in the Official Gazette, Rt. 2002 page 273.

¹⁰ The decision is published in the Official Gazette, Rt. 2006 page 111.

¹¹ The decision is published in the Official Gazette, Rt. 2006 page 140.

¹² EFTA Court case no. E-1/02.

The judgment illustrates how international regulation may place limitations as to how extensive a national "affirmative action" may be.

Norway has a long tradition of gender mainstreaming¹³ as one among other approaches to promoting gender equality.

Lately the company laws in Norway have been amended as to achieve the government's target of 40 per cent board representation by both sexes in the boards of all state-owned enterprises and privately owned public limited companies. The amendment set forth specific requirements with regards to gender.¹⁴

The amendments have lead to an increase of female board member in privately owned public limited companies from 9% in 2004 to 17 % in 2006. The number is now rapidly increasing. If a company does not comply with this requirement by the end of 2007, the company may be dissolved.

The persistent work in the field of gender equality in Norway has lead to results in other areas as well. In 2001 more than 50% of the students at the Norwegian Universities were women. When looking at the elected politicians to the Parliament for the period of 2001-2005, 41,4% were women. As for the Courts, the number of female judges is rapidly increasing, and women now hold about 30 % of the offices.

The topic of gender equality is of great importance. Gender equality is about justice, and it is about respect for human dignity. Mutual exchange of information at seminars as this one may encourage every country to a take a step further in this work.

¹³ The Council of Europe's Group of specialists on mainstreaming has agreed on the following definition:

Gender mainstreaming is the (re)organisation, improvement, development and evaluation of policy processes, so that a gender equality perspective is incorporated in all policies at all levels and at all stages, by the actors normally involved in policy-making, cf. http://www.coe.int/T/E/Human_Rights/Equality/02._Gender_mainstreaming/

See The Public Limited Companies Act section 6-11a, 20-6 and The Limited Liability Companies Act section 20-6 setting forth the following requirements:

If the board of directors have two or three members, both sexes shall be represented.

If the board of directors have four or five members, each sex shall be represented with at least two members.

If the board of directors have six to eight members, each sex shall be represented with at least three members.

If the board of directors have nine members, each sex shall be represented with at least four members, and if the board of directors have more than nine members, each sex shall be represented with at least 40 per cent of the board of directors