



Strasbourg, 15 October 2012

GEC (2012) 14
(English only)

**GENDER EQUALITY COMMISSION
(GEC)**

**REPLIES FROM NATIONAL FOCAL POINTS TO REQUEST
FOR INFORMATION ON STUDIES, SURVEY, STATISTICS OR REPORTS ON
WOMEN'S ACCESS TO JUSTICE IN MEMBER STATES
OF THE COUNCIL OF EUROPE**

Replies received by the Secretariat of the Gender Equality Division,
Gender Equality and Human Dignity Department, DGI

ESTONIA

According to the information received from the Ministry of Justice and via them also from the Supreme Court of Estonia, no specific analysis or study (even without gender aspect) concerning access to justice has been conducted in Estonia.

But the experts preparing the feasibility study might find to some extent useful the country study that was made for the FRA study „Access to justice in Europe: an overview of challenges and opportunities“ that you also referred to in your e-mail. The country study is available online at <http://fra.europa.eu/fraWebsite/attachments/access-to-justice-2011-country-EE.pdf>.

In recent years there has been wider discussion about restrictions that high state fees cause to the access to justice. There is also an analysis from the Supreme Court of Estonia on this issue dating from 2011, but this is only available in Estonian (<http://www.riigikohus.ee/vfs/1121/RiigiLoivud.pdf>). As for this matter, in June 2012 amendments of relevant legislation were adopted by the parliament concerning lowering state fees that have to be paid when referring to a court. The State Fees Act is available in English at: <http://www.legaltext.ee/text/en/2012X05K2.htm>. The experts might also find relevant the State Legal Aid Act which is available in English at: <http://www.legaltext.ee/text/en/X30066K5.htm>.

Some information about situation and developments concerning also access to justice aspects can be found from the annual reports of the NGO Human Rights Centre. The reports are available in English here: <http://humanrights.ee/en/activities/monitoring/annual-human-rights-report/human-rights-in-estonia-2011/>

Information about access to justice concerning gender equality and anti-discrimination law in Estonia and other EU Member States is available in „Comparative study on access to justice in gender equality and anti-discrimination law“ at http://ec.europa.eu/justice/gender-equality/files/conference_sept_2011/final_report_access_to_justice_final_en.pdf. Estonian Gender Equality Act and the Equal Treatment Act are available in English at: <http://www.legaltext.ee/text/en/X80041K1.htm> and <http://www.legaltext.ee/text/en/XXXX006K3.htm>.

Population survey about legal awareness of Estonian inhabitants was conducted in 2007 (requested by the Ministry of Justice) but it's report is available only in Estonian: (<http://www.just.ee/orb.aw/class=file/action=preview/id=30815/Eesti+elanike+%F5igusteadlikkuse+uuring.pdf>)

As to tackling the impediments of access to justice, we have some awareness raising activities to promote higher awareness (including of general population, of legal professionals etc) about the regulation in the Gender Equality Act. The Ministry of Justice has also taken steps to make legal information more easily accessible (and understandable) for people.

IRELAND

The Department (Ministry) of Justice and Equality have undertaken an extensive consultation across the Department in relation to published material of relevance to this study.

While the consultation identified a number of reports, on closer inspection, few of them differentiated between men's and women's access to justice.

In 2010/2011, Ireland prepared its Report to the UN under the UPR process. In developing the Report, an extensive public consultation took place at seven venues around the country. I have reviewed the documentation and find no specific references to "women's access to justice". All of the relevant material can be accessed on the dedicated website "www.upr.ie".

In recent times our Department of Foreign Affairs and Trade has also submitted Ireland's progress report under the ICESCR and again a review of the material does not specifically identify "women's access to justice" as an issue. Again the relevant material is on the Department's website - www.dfa.ie.

We are quite far behind in our reports to CEDAW - to my embarrassment - but the preliminary discussions in relation to the new report have also failed to identify this topic as an issue.

Obviously this is not to say that there may not be "problems" in Ireland - it is just that there appears to be little published material available to send to you. Our consultation in the Department offered us some material in relation to the Garda Síochána (the Irish police force - which is a national force).

The material they supplied is as follows:

An Garda Síochána

Ireland has taken specific steps to ensure that both men and women are members of the Garda Síochána Ombudsman Commission, the body which investigates complaints against Gardaí (see below). Steps have also been taken to ensure that men and women are also part of the Garda Síochána Inspectorate, the body which promotes efficiency and effectiveness in the Garda Síochána and provides advice to the Minister for Justice and Equality (see below).

Garda Síochána Ombudsman Commission.

The Garda Síochána Ombudsman Commission commenced operations on 9 May 2007, replacing the Garda Síochána Complaints Board. The overall objective of the Ombudsman Commission is to ensure that admissible complaints made against members of the Garda Síochána are examined in a way which is both transparent and equitable and to increase public confidence in the Garda Síochána. The Ombudsman Commission is independent in the exercise of its functions and is not subject to direction by the Minister or the Garda Commissioner in relation to the manner in which complaints are investigated.

The statutory provisions relating the Ombudsman Commission are contained in the Garda Síochána Act 2005, particularly at Sections 76 to 79. Section 65 (1) of the 2005 Act is concerned with membership of the Ombudsman Commission. The Commission consists of three members all of whom are appointed by the President. One of the members is appointed as Chairperson and at least one of the three members shall be a woman and at least one shall be a man.

GSOC's annual reports contains a reference to a gender breakdown of complainants.

Garda Síochána Inspectorate

The main functions of the Garda Síochána Inspectorate is to ensure that the Minister for Justice and Equality has independent objective information available to him or her in relation to the operation and administration of the Garda Síochána. The Inspectorate looks at standards, practice and performance of the Garda Síochána and benchmarks these against comparable international police forces. The key objectives are to ensure and promote efficiency and effectiveness in the Garda Síochána and to provide advice to the Minister.

Part 5 of the Garda Síochána Act 2005 -2007 sets out the establishment & functions of the Garda Inspectorate. Under Section 115 of the Act, the Garda Inspectorate consists of three members to be appointed by the Government and one of these members to be appointed as Chief Inspector. Section 115(3) requires that the Inspectorate "consist of 3 members and that at least one be a man and at least one be a woman". The first Chief Inspector, who served from 2006 to April 2012 was a women, Ms Kathleen O'Toole.

Finally, the Department of Justice and Equality is satisfied that An Garda Síochána is fully committed to ensuring that service to the community meets the needs of all people regardless of gender ,material status, family status ,age,relation,disability,sexual orientation or membership of the travelling community.

Access to Equality related Law

Finally, our Equality Authority has collaborated recently on a number of studies in relation to access to equality which may be of interest. The links are given below.

Pregnancy Discrimination in the Workplace: Legal Framework and Review of Legal Decisions 1999 to 2008, Joanne Banks & Helen Russell (ESRI)(2011)

(published jointly by the HSE Crisis Pregnancy Programme and the Equality Authority.)

This report provides an overview of the legal framework for maternity and employment protection in Ireland. It concluded that full-time workers and workers with short job tenures were more likely to take discrimination cases against their employers. <http://www.equality.ie/en/Research/Research-Publications/Pregnancy-Discrimination-in-the-Workplace-Legal-Framework-and-Review-of-Legal-Decisions-1999-to-2008.html>

Enabling Lesbian, Gay and Bisexual Individuals To Access Their Rights Under Equality Law, Walsh et al, (2007)

(commissioned jointly by the Equality Authority and the Equality Commission for Northern Ireland.)

This report includes consideration of the different experiences of lesbian women and gay men. <http://www.equality.ie/en/Research/Research-Publications/Enabling-Lesbian-Gay-and-Bisexual-Individuals-To-Access-Their-Rights-Under-Equality-Law.html>

LITHUANIA

1. *Access to justice in Europe: an overview of challenges and opportunities* (European Union Agency for Fundamental Rights, 2011); <http://bookshop.europa.eu/en/access-to-justice-in-europe-pbTK3111085/?CatalogCategoryID=cOwKABstC3oAAAEjeJEY4e5L>
2. European Union Agency for Fundamental Rights, *Country thematic studies on Access to justice: Lithuania* http://fra.europa.eu/sites/default/files/fra_uploads/1036-asylum_factsheet_Lithuania_en.pdf
3. Lithuanian Institute of Law in collaborating with Department of Criminology (University of Greifswald) in 2005 prepared analysis: *Prison sentence for women in Europe: current situation and assessment of needs and „good practices“ examples.*

MALTA

The National Commission for the Promotion of Equality (NCPE) did not publish any studies or reports related to access to justice.

NORWAY**Study on access of women to justice - information from Norway**

Reference is made to e-mail July 5th 2012 from the Gender Equality Commission. The Commission asked the national focal points of GEC to submit relevant national information on access of women to justice.

Reports, statistics and other relevant information from Norway:

To your information some of the submitted information is not officially approved by the ministry.

1) Information on legal rights**a. Women from ethnic minorities**

Information on JURK-project:

The ministry of children, equality and social inclusion gave financial support to a project on information on legal rights to women with immigrant background:

Information about rights to women with immigrant backgrounds: Information to women with immigrant backgrounds about rights in selected gender equality and family policy areas will be strengthened through different activities. This includes adapted information in BLD's domain, competence enhancement among teachers of Norwegian language and society for adults with minority language backgrounds, cooperation with Legal Advice for Women (JURK) and dialogue with relevant

voluntary organisations. (BLD)

Evaluation of this project is attached – (report from JURK)

2) The police

- a. We have collected gender relevant statistics from the Norwegian Police Directorate

Updated statistics (2012) on employees in the Norwegian police force:

All employees	Total	Women	% women
Police	7881	1957	25
Lawyers	868	393	45
Administrative personnel	4911	3418	70

Updated statistics (2012) on leaders in the police force:

Leaders	Total	Women	% women
Police	3281	584	18
Lawyers	289	75	26
Administrative personnel	378	210	55

Statistics on students at the police academy:

Female students

2012	40%
1995	24%
1985	14%
1970	2%

- b. Numbers on gender and crime – 2010 (from Statistics Norway)

[http://www.ssb.no/cgi-](http://www.ssb.no/cgi-bin/tabfig.cgi?kortnavn=lovbrudde)

[bin/tabfig.cgi?kortnavn=lovbrudde_en:14_15_17_21:0,straft_en:39_41_45_48:0,fengsel_en:47_48_49_50_57:0,vold_en:2:0&lang=en&tittel=Crime](http://www.ssb.no/cgi-bin/tabfig.cgi?kortnavn=lovbrudde_en:14_15_17_21:0,straft_en:39_41_45_48:0,fengsel_en:47_48_49_50_57:0,vold_en:2:0&lang=en&tittel=Crime)

3) The courts

- a. Education in law (numbers from Statistics Norway):

Fields of Education	Absolute figures			Per cent					
	Total			Men			Women		
	2001	2010	2011	2001	2010	2011	2001	2010	2011
Total	206 883	241 302	250 456	40.2	39.8	40.0	59.8	60.2	60.0
Social Sciences and Law ²	24 413	33 629	34 134	38.9	37.4	37.2	61.1	62.6	62.8

b. Numbers from Norwegian courts in 2011 (from the annual report of the central court administration):

There are 54% women and 46% men in judge associate positions. It has in recent years been a marked increase of women. The court administration assume that the high number of female in judge associate positions in the long term will contribute to increased women's share in the judge and court management positions. In the ordinary courts and the Finnmark Commission there are 22 women in leadership positions and 51 men.

67 percent of appointed leaders in 2011 are women. Of appointed judges in the ordinary courts is 49 percent of women and 51 percent of men. Moderate gender quota is practiced when appointing new judges.

Female judges are prioritized in the annually negotiations on payment / wages.

Several courts have in their annual reports commented on the importance of a gender-balanced work environment, and that it actively worked on joint environmental initiatives, inter alia to promote a workplace that is attractive to both sexes. Several reports initiated measures for the facilitation for parents of young children, both father and mother.

- c. The Ministry of Children, Equality and Social Inclusion, in cooperation with the Ministry of Justice, are looking into the possibility of extracting statistics on the relation between gender and civil cases brought before the courts. The work on the statistics is in progress. If possible we will forward the statistics subsequently.

4) Specific topics

- a. Violence against women

http://www.regjeringen.no/pages/36783932/ActionPlan_DomesticViolence.pdf

Chapter 3 and 4 are relevant for access to justice

<http://www.regjeringen.no/upload/JD/Vedlegg/Rapporter/BreakingTheSilence.pdf>

b. Discrimination

Abstract from a report by a commission appointed pursuant to a Royal Decree of 12 February 2010, submitted to the Ministry of Children, Equality and Social Inclusion on 15 November 2011.

(Official Norwegian Report NOU 2011: 18)

http://www.regjeringen.no/pages/36950733/PDFS/NOU201120110018000EN_PDFS.pdf

SAN MARINO

No studies, data, research, publications or statistics were found in San Marino, concerning activity on access of women to justice. This maybe because of the presumably very few recorded cases about obstacles to women's access to justice.

SPAIN

Women's Access to Justice: Preliminary Notes

Legislative framework

The right to equality is guaranteed by the Spanish Constitution (CE) 1978 in Sections 14 and 9:

Section 14:

Spanish people are equal before the law, without any discrimination on grounds of birth, race, sex, religion, opinion or any other personal or social condition or circumstance. Spaniards are equal before the law and may not in any way be discriminated against on account of birth, race, sex, religion, opinion or any other personal or social condition or circumstance.

Section 9:

2. It is the responsibility of the public authorities to promote conditions ensuring that freedom and equality of individuals and of the groups to which they belong are real and effective, to remove the obstacles preventing or hindering their full enjoyment, and to facilitate the participation of all citizens in political, economic, cultural and social life.

Section 24 of the CE also establishes the right to judicial protection of rights, regulating it in the following terms:

Section 24

1. All persons have the right to obtain effective protection from the judges and the courts in the exercise of their rights and legitimate interests, and in no case may there be a lack of defense.
2. Likewise, all have the right to the ordinary judge predetermined by law; to defense and assistance by a lawyer; to be informed of the charges brought against them; to a public trial without undue delays and with full guarantees; to the use of evidence appropriate to their defense; not to make self-incriminating statements; not to plead themselves guilty; and to be presumed innocent. The law shall regulate the cases in which by reason of kinship or obligation of professional secrecy, is not obliged to testify about allegedly criminal offenses.

Meanwhile, the Constitutional Act 3/2007 of March 22, for effective equality between women and men (hereinafter LOIEMH) stands as the law-code of equality between women and men in the Spanish legal system and obliges to mainstream the principle of equal treatment and opportunities for women and men in the conduct of all public powers (legislative, executive and judicial).

Article 12. Effective judicial protection

1. Any person may call upon the court to protect the right to equality between women and men, pursuant to the terms of Article 53.2 of the Constitution, even after termination of the relationship in which discrimination allegedly took place.

2. The capacity and legitimacy to participate in civil, social and contentious administrative proceedings relating to the defence of such right is incumbent upon natural and corporate persons having a legitimate interest therein as determined under the laws governing such proceedings.

3. Only the person subject to sexual harassment or harassment on the grounds of sex will be legally capacitated to institute the respective legal action.

Article 13. Burden of proof

1. Pursuant to procedural law, in proceedings in which the plaintiff alleges discriminatory conduct on the grounds of sex, it will be incumbent upon the defendant to prove the absence of discrimination in the measures adopted and their proportionality. For the intents and purposes of the provisions of the preceding paragraph, where deemed useful or relevant, judicial bodies may request a report or opinion from the competent public bodies, ex parte.

2. The provisions of the preceding item will not be applicable to penal proceedings.

The General Council of the Judiciary and its actions on equality

The General Council of the Judiciary (CGPJ) is the government of the judiciary throughout the country in accordance with the CE and the Organic Law 6/1985 of 1 July on the Judiciary. The CGPJ Equality Commission was established by the Constitutional Act 3/2007 of March 22 for effective equality of women and men, with the main purpose of advising the Plenary session on necessary or appropriate measures to actively integrate the principle of equality between women and men in the exercise of its powers and duties, develop previous reports on gender impact of rules and regulations and improve the parameters of equality in the judiciary.

The LOIEMH makes a modification of Law 6/1985, regulating the judiciary, by which, in the annual report that elevates CGPJ to Parliament on the status, operation and activities of the General Council and Courts of Justice, it will include a chapter on the gender impact in the Judiciary.

It should be mentioned that the General Council of the Judiciary has an Observatory on Domestic and Gender Violence.

On the website of the CGPJ there is a report on the activity of the Equality Commission, its agreements and decisions, as well as those adopted by other bodies of the Council due to the Commission aspiration of mainstreaming gender equality throughout CGPJ activities.

http://www.poderjudicial.es/cgpj/es/Temas/Igualdad_de_Genero/La_igualdad_de_genero_en_la_carrera_judicial

There are also gender impact reports on CGPJ regulatory activity and updated statistics on the participation of women and men in the judiciary system in such a matter as access, appointments or training.

Finally, on this website you can find issues such as reconciling family, personal and professional life, so important for the effective equality between women and men.

Among the studies conducted by this institution it highlights one on the implementation of the Law on Effective Equality of Women and Men. It studied 7476 sentences from social and administrative jurisdictions, the European Court of Human Rights and the Court of European Union.

The Equality Unit in the Ministry of Justice

The LOIE creates Equality Units in all ministries as governing bodies which shall carry out the functions related to the principle of equality between women and men in its functions, in particular, the following:

- a) Collect statistical information compiled by the bodies of the Ministry and advise them for elaborating them.
- b) Research in order to promote equality between women and men in the areas or activities of the Department.
- c) To advise the competent bodies of the Department to develop the gender impact report.
- d) Promote awareness by staff of the Department of the scope and meaning of the principle of equality by developing training proposals. To ensure compliance with this Equality Act and the effective implementation of the principle of equality.

These units, which work since 2009, will be regulated by decree in its detailed functions. This decree is currently in process and will be soon approved by the council of Ministers.

The Ministry of Justice has made great strides in the integration of women in the judiciary, prosecutors and court clerks.

The LOIE incorporated paragraph 5 to Article 433bis in the Organic Law of the Judiciary about the Continuing Education Plan of the Judiciary which will consider judges and magistrates training on the principle of equality between women and men and about gender perspective. The Judicial School annually imparts training on equality between women and men and on gender violence. Similarly, paragraph 2 is added to Article 434 stating that the Center for Legal Studies will provide training on the principle of equality between women and men and mainstreaming implementation by members of the State Prosecution, Judicial Clerks, Court officers and other staff of the Justice Administration.

Free Legal aid

The Spanish Constitution provides that justice shall be free when the law so provides and in any case, for those who have insufficient resources to litigate.

The right to legal aid includes, in general, the following features:

- Free advice and guidance prior to the beginning of the process.
- Assistance to the attorney or lawyer for detained or imprisoned people.
- Defense and free representation by counsel or solicitor or lawyer in the court proceedings.
- Free insertion of adverts or edicts, in the course of proceedings, which were required to be published in official newspapers.
- Exemption from payment of deposits for the filing of appeals.

- Free expert assistance in the process.
- Obtaining copies free, testimonies, instruments and affidavits.
- 80% reduction in customs duties or tariffs that apply for some solicitor proceedings.
- 80% reduction of customs duties on certain actions corresponding records and commercial property.

The Ministry of Justice is the competent body in this matter. There are reports of the requirements for access to these benefits on its website. Both financial and personal request and delivery modes can be done on line.

In addition, free legal aid in Spain is given in accordance with the applicable legislation in each region. The General Council of Spanish Lawyers has created a website with a map that provides the appropriate information depending on location of residence. <http://www.justiciagratis.es>

Currently, legislation on free legal aid is being reviewed for its improvement, with the aim of increasing control and efficiency in spending and the gender impact in access to justice. At present the project is under negotiation with the Autonomous Communities and hearing under the Professional Associations of Lawyers and Attorneys.

Changes in the new Regulating Law of the Social Jurisdiction

Uria Menendez Legal News publishes an article by attorney Martin Lourdes Florez which contained main modifications that occur in the new law 36/2011, of 10 October, regulating the social jurisdiction (BOE October 11, 2011), which repeals Royal Decree 2/1995 of 7 April, regulating the Consolidated Labor Procedure Law. The new law extends the legitimization of trade unions in defense of the right to equal treatment between women and men in all matters assigned to the social order. The author also points out that, regarding the reconciliation of personal, family and work, it enhances the involvement of joint bodies and the Equality plans monitoring organs in companies and that this procedure is extended to claims of women victims of gender violence, the reduction in working hours with proportionate reduction of wages, the rearrangement of the schedule, the application of flexible schedule and any matters relating to the organization of working time in the company.

Sources:

Website Ministry of Health, Social Services and Equality, Women's Institute:

http://www.inmujer.gob.es/ss/Satellite?c=Page&cid=1264005600118&language=cas_ES&pagename=InstitutoMujer%2FPage%2FIMUJ_Generico

Website General Council of the Judiciary:

http://www.poderjudicial.es/cgpj/es/Temas/Igualdad_de_Genero/La_igualdad_de_genero_en_la_carrera_judicial

Ministry of Justice website:

<http://www.justiciagratis.es>

Uria Menendez Legal News, "The New Law Regulating Social Jurisdiction", Lourdes Martín Florez

SUISSE

La Confédération suisse a donné mandat au Centre suisse de compétence pour les droits humains (CSDH) de réaliser une étude sur l'accès à la justice en cas de discrimination (mandat de prestation point 2.1. j). Cette étude du CSDH est menée en collaboration avec un groupe d'accompagnement composé de différentes autorités de l'administration fédérale concernées par l'étude et dont le BFEG fait partie. L'étude se veut similaire à celle réalisée pour les États-membres de l'UE et les pays de l'EEE/AELA intitulée « Comparative study on access to justice in gender equality and antidiscrimination law », de février 2011 et qui aborde la question des garanties procédurales, des conditions pour un recours effectif, proportionné et dissuasif et de l'efficacité du cadre juridique en pratique. Dans l'ordre juridique suisse actuel, il n'existe pas de loi générale de lutte contre la discrimination. La réglementation helvétique est éparse dans ce domaine et l'étude pourra faire office d'état des lieux du cadre juridique existant en permettant notamment l'identification des points forts mais aussi des besoins et lacunes du système légal suisse de lutte contre les discriminations.

La loi fédérale sur l'égalité entre femmes et hommes (LEg) du 24 mars 1995 s'applique à tous les domaines de la vie professionnelle, de l'embauche au licenciement en passant par la formation continue, le salaire ou encore le harcèlement sexuel sur le lieu de travail. En outre, la loi interdit les discriminations, qu'elles soient directes ou indirectes. Cette loi a fait l'objet d'une évaluation en avril 2005 qui a été synthétisée dans un Rapport relatif à l'évaluation de la loi sur l'égalité du 15 février 2006 (pour consulter l'ensemble des résultats de l'étude voir <http://www.bj.admin.ch/content/bj/fr/home/dokumentation/medieninformationen/2006/2006-02-16.html> et notamment le document comportant l'analyse des cas judiciaires en allemand). Ce rapport mais en lumière que la LEg a eu des effets positifs, mais que toutefois, elle ne peut pas, à elle seule, garantir l'égalité dans les rapports de travail. De plus, certains problèmes persistent et c'est principalement la peur du licenciement qui dissuadait encore les travailleuses et les travailleurs de se battre contre les discriminations.

Les litiges relatifs à la vie professionnelle, en matière d'égalité entre femmes et hommes, font l'objet d'une procédure de conciliation préalable à une action en justice, devant les tribunaux. Cette procédure de conciliation a aussi fait l'objet de l'évaluation de la LEg précédemment citée. Il ressortait qu'à l'issue de cette procédure de conciliation, les rapports de travail se poursuivaient dans 60 % des cas pour les litiges du secteur public, contre seulement 15% des cas pour les litiges du secteur privé.

Enfin, la Commission fédérale pour les questions féminines CFQF a élaboré un guide de la CEDEF pour la pratique juridique. Ce guide a pour but de faciliter l'utilisation de la Convention CEDEF dans la pratique des avocates et des avocats, des juges ainsi que des conseils juridiques.

TURKEY

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