

Women in Academia and Equality Law

Aiming High—Falling Short?

**Denmark, France, Germany, Hungary, Italy,
The Netherlands, Sweden, United Kingdom**

Editor

Roger Blanpain

Guest Editors

Ann Numhauser-Henning

Contributors

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CONTRIBUTORS

Susanne Burri is a lecturer of Gender and Law at Utrecht University. She has written widely on non-discrimination law in Dutch, European and international law and on the reconciliation of work and family life.

Anne-Marie Daune-Richard is a sociologist researcher at the Centre National de la Recherche Scientifique in Aix en Provence. For the last twenty years her research has dealt with gender issues focussing on work and employment. Her empirical studies have been concerned with the social construction of the feminine labour supply; i.e. the relationship between paid and unpaid work, and between family and employment careers. She is now looking at the demand side and has been studying how the management of employees by firms leads to the splitting of male and female tracks. As far as European comparisons are concerned, she has been involved in comparisons between France, the United Kingdom and Sweden.

Almut Kirschbaum is a researcher at the Humboldt University of Berlin. Her main research interests are gender and transformation of work and organisations. Previously she conducted a research project in the field of equal opportunities and women in Academia at the University of Oldenburg.

Csilla Kollonay Lehoczy is professor of Law at Central European University, Budapest, and a member of the European Commission's Network of Legal Experts on Equal Treatment between Men and Women.

Christopher McCrudden is professor of Human Rights Law, Oxford University (1999 – to date); Fellow and Tutor in Law at Lincoln College, Oxford (1980 – to date), and an Associate Member, Centre for Socio-Legal Studies (1993 – to date). Member of the Scientific Board of the European Commission's Expert Legal Network on the Non-Discrimination (2004 – to date); Member of the European Commission's Expert Network on the Application of the Equality Directives (1986 – to date). He is currently a member of the editorial boards of several academic journals.

Ann Numhauser-Henning, LL.D., is professor of Civil Law at Lund University, and has been the head of the Norma Research Programme since its start in 1996. She is currently also the Pro-Vice-Chancellor of Lund University. She has written widely on labour law, especially employment law and non-discrimination law. A more recent field of research is social security law in a European integration perspective. She is a member of the European Commission's Network of Legal Experts on Equal Treatment between Men and Women, the Commission's Network

CONTRIBUTORS

on Non-Discrimination and the European Commission's European Observatory on Social Security for Migrant Workers.

Lynn Roseberry (B.A. Yale 1982, J.D. Arizona State University 1988, LL.M. Harvard Law School 1992, PhD Copenhagen Business School 1999) is associate professor at the Copenhagen Business School law department. Her primary area of teaching is Danish and comparative labour law. Her primary research interests are discrimination in employment and the protection of labour rights in the era of globalisation.

Dagmar Schiek (born 1962; PhD in Law, Hamburg University, 1992; *Habilitation*, Bremen University, 1999) is Jean Monnet Professor of European Economic Law at Carl von Ossietzky University of Oldenburg and a member of the EU Commission's Network of Legal Experts on the application of Community Law on Equality Between Women and Men. She is currently a visiting academic at London School of Economics. She worked for the Berlin and Hesse Government respectively from 1990 to 1993, and was inter alia responsible for the ministerial draft of the Land's Equality Act.

Elena Urso (born 1964) is a researcher at the Faculty of Law of the University of Florence and a teacher (*Professore a contratto*) of child law at the Faculty of Sciences of Education. In recent years she has done research and co-operated with academics from the United Kingdom and other countries, mainly in the area of protection of children's fundamental rights. Her main fields of interests are comparative law, family and child law, tort law and civil protection of human rights.

FOREWORD

Equality is one of the most fundamentally formulated human rights of our times and at the same time one of the most difficult objectives to reach.

No doubt, there is hardly a stronger human right than that all men, women included, are born equal. Consequently, we find this right not only in the Universal and European Declarations of Human Rights, but also in the projected EU Constitution, EC law and in numerous national constitutions and legislations. Over the years different aspects, especially at EU level, have been clearly addressed: the notion: direct and indirect discrimination versus differentiation, sexual harassment, the forbidden grounds of discrimination, the problems related to proof, and the reversal of the burden of proof, positive discrimination, sanctions, action programmes and the like.

And nevertheless, progress is slow, if indeed there is progress at all. Undoubtedly, some advances have been made regarding equal pay, vocational training and the like. But, no doubt, overall tensions between nationalities are growing, especially regarding migrants and relating to religion to give a few examples. In quite a number of countries xenophobia is on the rise and extremist parties, wanting to sending foreigners home, get increasing support in the polls.

If we look at the discussion relating to Turkey joining the EU, many Europeans seem to be opposed, for reasons of rejecting the foreign culture and religion.

Also the goals of equality between men and women have hardly been reached. Undoubtedly some progress has been made, but there remain a lot of flaws. One is the glass ceiling – the (lack of) presence of women in Academia being precisely an example of one.

These facts teach us that there are basic reasons, inherent the way our societies function, which relate to values and conceptions, which are transferred over the generations in an almost silent way about the role of the two sexes and which put a brake on the equality development.

Therefore, it is more than necessary to analyse the societal reality regarding equality in depth, see what the developments are, how they are caused and how they can be effectively remedied.

In this Bulletin, we proudly welcome the results of a two-day conference held at the University of Lund, where the role of Women in Academia and Equality were discussed by prominent scholars, specialised in teaching, research and university administration.

The goal to have a fair, let's say an equal representation of women in Academia, was put forward, also from the knowledge that a lot of precious human resources

FOREWORD

are wasted at a time where we need the intellectual input in order to successfully take up the challenges of the information society.

All aspects are examined, so regarding the selection of academics, the selection criteria, the possibilities of positive action, the role of the Academia vs. the role of the market and the broader societal approach of opening the society towards a natural movement leading to more equality.

No doubt the best should prevail, but all should be given the opportunity and the chance as well in theory as in practice to become the best. And there is the question of whether the quality concept is also gender biased.

We are extreme grateful to Professor Ann Numhauser-Henning and her colleagues for gives us such a deep-seated analysis of the problems women in academia encounter and for showing us some ways forward.

Roger Blanpain

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INTRODUCTION: AIMING HIGH – FALLING SHORT?

Ann Numhauser-Henning

1 INTRODUCTION

This publication is based on a conference held at the Law Faculty of Lund University in Lund on the 2–3 December 2004. In arranging the conference, as well as in editing this anthology, I was assisted by research assistant Hanna Pettersson, LL.M., to whom I am grateful. Gathered there were some fifty people to compare knowledge and experiences regarding *Women in Academia and Equality Law*. The immediate background to the conference was my concerns as the pro-vice-chancellor of Lund University to report by the end of the year on the Swedish Government's recruitment targets for new women professors for the period 2001–2004. The target for Lund University was set to 20% and I knew that this was going to be hard to reach. (Later on, the target turned out to be failed, Lund University reaching only 17% women professors among those newly recruited and/or promoted during the indicated period. For the period 2005–2008 the target for Lund University is now set to 26%.) The explanation for this was, of course, manifold.¹ One of the reasons, I assume, was the fact that the European Court of Justice (ECJ) in the *Abrahamsson*² case had rejected important sections of the Swedish regulations on positive action in the area of higher education presented to the Swedish higher education institutions as an important means for reaching these targets when they were once introduced in 1997. Were these realistic targets in a European setting? I felt the need to see a fuller picture and gathered a number of colleagues from other European Union (EU) Member States – some of them, as myself, members of the European Commission's Network of Legal Experts on Equality between Men and Women. During two days we made presentations of domestic experiences and regulations and discussed the possibilities within Community Equality Law

1 Later on, 11–12 May 2005, another conference was held in Lund – *Jämt ut? Om att nå målet fler kvinnor i Akademien* (Outcome equal? How to reach the goal of more women into Academia) – with the purpose to explore in a broader perspective hitherto research and experiences as regard women in Academia and what it will take to meet this challenge for the future.

2 Case C-407/98 *Abrahamsson v. Fogelqvist* [2000] ECR I-5539.

along the lines of this introduction: *Is there really any scope for positive action in Community Equality Law?*, *The motives for promoting women in Academia – are they compatible with Community Equality Law?*, *Recruitment targets for women professors – how do we get from here to there?* and *Community Equality Law and education and research policies in an enlarged Europe – what will be the impact on women in Academia?*

This anthology contains reports from eight countries: Denmark (Lynn Roseberry), France (Anne-Marie Daune-Richard), Germany (Dagmar Schiek and Almut Kirschbaum), Hungary (Csilla Kollonay Lehoczky), Italy (Elena Urso), the Netherlands (Susanne Burri), Sweden (Ann Numhauser-Henning) and the UK (Christopher McCrudden). The reader will find that the reports differ somewhat in length and character, among other things due to fact that the authors in some cases are social scientists and not legal scholars but also to the characteristics of the country at stake. Despite this disparity, we have found it useful to gather the information thus compiled in this volume of the Bulletin of Comparative Labour Relations. The countries’ reports cover the issues of public policies and their results regarding women’s representation in Academia, equal opportunities and positive action regulations (if any) in the area of higher education as well as information regarding positive action measures in practice. The purpose of this introduction is to link the contents of the different countries’ reports to the overarching questions of the conference and to give the readers an idea of the stimulating discussions they provoked. It also contains some personal reflections, of course, as to the questions discussed. Needless to say, I am myself entirely responsible for this introduction and the views and conclusions expressed here.

A common denominator for all the countries’ reports is not only Community Equality Law but also European Higher Education Policies in general, to be presented more closely below in Section 5. Here it might be sufficient to say that in the 1990s there was a growing awareness in all Member States and also within the Community institutions of the fact that women were under-represented in the scientific community and that something would have to be done about it. As a result of the hitherto efforts there is now a full set of indicators measuring women in science and Academia throughout the EU (see further Section 5 below), which gives us the following picture of women’s representation within the different strata of Academia.

Figure 1
Men and women among academic staff by grade 2002 (per cent). Source: European Commission – Research: Women & Science and Indicators, Table 10. http://europa.eu.int/comm/research/science-society/women/wssi/downindi_en.html

Sex	Grade D	Grade C	Grade B	Grade A
Men	59	60	68	86
Women	41	40	32	14

Already the ETAN Report³ concluded that making change happen required a mix of equal treatment, positive action and gender mainstreaming. As we will see from the following and from the different reports, the opinions on how to go about differ in the Member States. Whereas some seems to be reluctant to use positive action measures proper, others have intrinsic programmes using both legal and economic positive action strategies. The actual proportion of women in Academia differs a lot throughout the EU. The Commission’s data base gives us the following picture regarding the proportion of women full-professors in the different Member States in the year 2002.⁴

Figure 2
Women among academic staff Grade A by country 2002 (per cent). Source: European Commission – Research: Women & Science and Indicators, Table 10. http://europa.eu.int/comm/research/science-society/women/wssi/downindi_en.html

Malta	2	Greece	11	Finland	20
Austria	4	Lithuania	12	Portugal	20
Cyprus	6	Slovenia	12	Latvia	23
The Netherlands	7	Hungary	14		
Germany	8	Sweden	14		
Denmark	9	UK	14		
The Czech Republic	9	EU 25	14		
Slovakia	9	Italy	15		
		France	16		
		Belgium	16		
		Estonia	17		
		Spain	17		
		Poland	18		

As we can see from Figure 2 the proportion regarding EU as a whole was 14% in 2002. Only one country – Latvia – has a proportion of women professors well over 20%, followed by Finland and Portugal with 20%, respectively. In the span 15–19% we find Italy, France, Belgium, Estonia, Spain and Poland. Medium performers

3 *Science Policies in the European Union: Promoting Excellence through Mainstreaming Gender Equality*, November 1999. The report was the product of a group of experts set up by the Commission under the auspices of ETAN, the European Technology Assessment Network.

4 Since there is no one way to define the different categories when comparing different countries, the figures presented here may well differ somewhat if compared to the figures given in the respective country’s report.

are Greece, Lithuania, Slovenia, Hungary, Sweden and the UK. There is also a group of countries where women represent less than 10%: Malta, Austria, Cyprus, the Netherlands, Germany, Denmark, the Czech Republic and Slovakia. As will become clear from reading the countries' reports, there is no simple inter-relation between the share of women in the highest academic positions and the equal opportunity policies of a given country, and even less so concerning the attitude towards positive action proper.

2 IS THERE REALLY ANY SCOPE FOR POSITIVE ACTION IN COMMUNITY EQUALITY LAW?

In the beginning there was only the principle of equal remuneration hosted in Article 119 of the original Treaty of Rome. Gradually, the principle of equal treatment between men and women has gained a more general standing within Community Law. Since the 1997 Treaty of Amsterdam, equality of opportunity is enshrined in Articles 2 and 3 EC. Especially the wording of Article 3(2) EC⁵ has been said to require a proactive approach in gender equality issues on behalf of the EU institutions. Moreover, since 1996 the Commission's strategic approach to the question of equal opportunities between men and women is 'mainstreaming', i.e. to integrate it into all major policy areas.⁶ It has also been one of the central pillars of the EC employment strategy since the Luxembourg Summit in December 1997. Furthermore, Article 141 EC now provides the specific legal basis for equality of treatment between men and women not only with regard to remuneration but in a broader and more general meaning.⁷ Article 141.4 also provides scope for positive action within the realm of Community Law. Throughout the history of Community law these provisions and their predecessors have given rise to a number of Directives etc. on equal treatment between men and women, the Equal Treatment Directive 76/207/EEC, recently amended by Directive 2002/73/EC, being the most central one. Against this background the ECJ has developed a comprehensive bulk of case law at the heart of Community Law.

This is not the place to give an extensive presentation of the ECJ's case law, not even regarding positive action. Only some overview information will be provided in order to back up the remarks given in the discussion. First, however, I will make some general comments on the concept of positive action as such.

5 'In all the activities referred to in this Article, the Community shall aim to eliminate inequalities, and to promote equality, between men and women.'

6 Incorporating equal opportunities for women and men into all Community policies and activities, COM(1998)122 final.

7 Art. 141.3: 'The Council ... shall adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay ...'.