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REPORT FROM THE COMMISSION TO THE COUNCIL

on the situation with regard to the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion and working conditions in Greece

(Council Directive 76/207/EEC of 9 February 1976)

REPORT FROM THE COMMISSION TO THE
COUNCIL ON THE SITUATION WITH REGARD TO THE IMPLEMENTATION
OF THE PRINCIPLE OF EQUAL TREATMENT FOR MEN AND WOMEN AS
REGARDS ACCESS TO EMPLOYMENT, VOCATIONAL TRAINING AND
PROMOTION, AND WORKING CONDITIONS IN GREECE

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INTRODUCTION

Within the general context of the duties conferred on it by Article 155 of the Treaty establishing the European Economic Community and on 9 February 1981 in application of Article 10 of Directive 76/207/EEC, the Commission, in ensuring that the provisions of the Treaty and the measures taken by the institutions pursuant thereto are implemented, submitted a report to the Council on the situation at 12 August 1980 with regard to the implementation of the principle of equal treatment.¹

Directive 76/207/EEC has been in force in Greece since 1 January 1981, as the Act of Accession did not provide for any special delay for its implementation. The assessment of the legal and de facto situation should therefore be extended to include Greece and an analysis should be made of the measures taken by the Government and the two sides of industry, if applicable with a view to attaining the standards laid down by the Directive at national level in Greece.

In December 1983, a preliminary draft report was submitted for an opinion, to the Advisory Committee on Equal Opportunities for Men and Women; the Greek equality law had not then been published. At the time, there was only one draft and one proposal for a law, both intended to cover equal pay and equal treatment for male and female workers.

The text of the preliminary draft had to be revised after Law No 1414/84 "on the implementation of the principle of the equality of the sexes in the field of labour relations and other provisions" was adopted on 30 January 1984, and forwarded to the Commission on 15 March 1984.

This report has been prepared along very much the same lines as the report from the Commission to the Council on the situation at 12 August 1980 with regard to the implementation of the principle of equal treatment.

¹COM(80)832 final.

Finally, this document applies only to the provisions of Law No 1414/84 concerning Directive 76/207/EEC.

As far as equal pay is concerned, please refer to the "report of the Commission to the Council on the application of the principle of equal pay for men and women in Greece"¹.

This report is based essentially on information provided by the Greek Government in response to a detailed questionnaire which was also used in connection with the previous report dated 9 February 1981. The answers to the questionnaire were forwarded officially in April 1982.

THE LEGAL SITUATION

Until 2 February 1984, when Law No 1414/84 entered into force, the principle of equal treatment in Greece was essentially enshrined in a few ill-assorted provisions in legislative texts which did not necessarily have the principle of equality in view.

1. Legislation in force prior to Law No 1414/84

- Article 4(2) of the 1975 Constitution

"Greek men and women have the same rights and obligations".

However, Article 116(2) provides that "exceptions to the provisions of Article 4(2) are authorized only in exceptional cases expressly provided for by law".

As regards the scope of Directive 76/207/EEC, it should be noted that such a broad exception could give rise to legal difficulties in view of the wording of Article 2(2) of the Directive. Everything depends on the interpretation of the concept "cases expressly provided for".

¹COM(84) 667 final of 04.12.1984

The National Collective Agreement of 26 February 1975, ratified by Law No 133/1975, on the implementation of the principle of equal pay for men and women, increases in the number of days' annual leave and the introduction of a 45-hour week for manual workers.

- Article 16 of Law No 1264 of 1982 on the democratization of the trade-union movement and the consolidation of workers' trade-union rights.
- Law No 1302 of 1982 ratifying International Labour Convention No 103 concerning maternity protection.
- Law No 1288 concerning the "regulation of matters which are the responsibility of the Ministry to the Prime Minister and YENED" (Greek radio and television network) (Official Gazette I 12, 1.10.1982). Article 6 of the Law set up the Council for Equal Treatment of Men and Women.
- Law No 1329 of 15 February 1983 on the application of the constitutional principle of equality between men and women in the Civil Code and its Introductory Act, commercial legislation and the Code of Civil Procedure and on the partial modernization of the provisions of the Civil Code concerning family law. (Official Gazette I 25, 18.2.1983).
- Law No 1342/83 ratifying the United Nations Convention on the Elimination of all Forms of Discrimination against Women.

2. Objectives

As part of its five-year economic and social development plan for 1983-1987, the Greek Government announced a number of objectives.

For the first time, the five-year plan contains a section on sexual equality.

After describing the types of discrimination persisting in the field of labour relations, the list of objectives includes:

- the elimination of inequalities suffered by women in legislative texts and the introduction of measures to promote an improved social status for women,
- creation of adequate social facilities and essential infrastructures, and improvement of the present system of financial aid to women and families,
- adoption of a major programme aimed at eliminating sexist prejudice in the various strata of society, by disseminating information and circulating literature on the equality of men and women.

In connection with these objectives, mention should be made of the draft law on the protection of workers with family obligations and the Greek Government's affirmation that "all international labour conventions relating to sexual equality will be ratified shortly".

3. Law No 1414/84

The Government formed after the elections in October 1981 has prepared a draft law intended to transpose into national legislation both Directive 75/117/EEC of 10 February 1975 on equal pay and Directive 76/207/EEC of 9 February 1976 on equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions. This text replaced a draft presidential decree drawn up by the previous government, which was also intended to bring Greek law into line with the two Directives but did not, according to the present government, satisfy all the requirements.

This work resulted in the adoption, on 30 January 1984, of Law No 1414/84 "on the principle of sexual equality in the field of labour relations, and other provisions"¹, which entered into force on 2 February 1984.

¹Official Gazette, 2.2.1984, I 10, p. 59.

CONCORDANCE BETWEEN NATIONAL LAW AND DIRECTIVE 76/207/EEC

Content and scope of equal treatment

Article 2.1.

"For the purposes of the following provisions, the principle of equal treatment shall mean that there shall be no discrimination whatsoever on grounds of sex either directly or indirectly by reference in particular to marital or family status."

While the principle of equal treatment is set out as above in the text of the Directive, the same cannot be said of the concepts of indirect discrimination or marital or family status.

The report from the Commission to the Council on the situation at 12 August 1980 with regard to the implementation of the principle of equal treatment (COM(80) 832 final, p. 13) clearly states that "The Directive refers specifically to indirect discrimination because, while it is easy to eliminate obvious forms of discrimination in most cases, the process of discrimination continues in situations where it is not obvious.

The problems of implementation are frequently concentrated in this area. It is particularly important, therefore, to make express reference to indirect discrimination in the implementing laws and, where possible, to define the terms".

However, the Directive does not define indirect discrimination,¹ nor the terms "marital or family status".

Greek jurisprudence has not yet had the opportunity to rule on the concept of indirect discrimination, which would even seem to be unknown in Greece.

¹ However, see the answer to written question No 2295/80 (OJ C 129, 29.5.1981, p. 25), which provides the necessary basis for a definition of this concept.

A few isolated decisions (Council of State 4256/1979, Athens Appeal Court 7254/1979, Supreme Court 1465/B/1980, Council of State 520/1983) are not sufficient to enable a reliable opinion to be formed on the matter.

The Ministry of Justice, which was asked for an opinion by the Ministry of Labour in connection with a questionnaire concerning the implementation of the Directive on equal pay (75/117/EEC), did not provide sufficient information to give a clear idea of the position of the Greek authorities in this respect.

Greek Law No 1414/84 does not define any of the three concepts mentioned in the Directive. The Law uses general formulas such as "all discrimination on grounds of sex or family situation is prohibited" in relation to vocational guidance or training (Article 2), or to access to employment (Article 3). Other provisions refer only to discrimination on grounds of sex. This is the case with Article 4 (equal pay), Article 5 (working conditions and occupational advancement).

One may wonder why the Law ignores discrimination on grounds of family situation in Article 5 (and 4) and yet prohibits it in Articles 2 and 3.

Moreover, indirect discrimination is referred to expressly only in the second paragraph of Article 3. This provision recalls "that it is prohibited to refer to the sex or family situation of a worker or to use criteria or principles which might, even indirectly, lead to sex discrimination in publications, advertisements, circulars or regulations concerning the recruitment of workers, admission to theoretical or practical vocational training courses or the granting of leave.

Without prejudice to the jurisprudence which may develop in application of Law No 1414/84, the Commission understands this to cover all discrimination, direct or indirect, formal or actual, by reference to the objective of the Law which is to eliminate obstacles encountered by women. Nevertheless, the Commission would like the Greek Government to give details regarding its interpretation of the Law, since this is not clear either from the text or from the preparatory work.

As regards the second paragraph of Article 3, the Commission assumes that from now on it would be an act of indirect discrimination to impose criteria, even in a context of formal equality, that applied only to workers of a particular sex. This would be the case for a job offer conditional upon physical characteristics peculiar to one sex, or a job advertisement expressly stating that the applicant should be free of military service obligations, especially when such service is compulsory for men only.

FIELD OF APPLICATION OF THE EMPLEMENTING MEASURES AS REGARDS SUBJECT MATTER AND PERSONS

Article 1:

"1. The purpose of this Directive is to put into effect in the Member States the principle of equal treatment for men and women as regards access to employment, including promotion, and to vocational training and as regards working conditions and, on the conditions referred to in paragraph 2, social security. This principle is herinafter referred to as 'the principle of equal treatment'.

"2. With a view to ensuring the progressive implementation of the principle of equal treatment in matters of social security, the Council, acting on a proposal from the Commission, will adopt provisions defining its substance, its scope and the arrangements for its application."

The Greek Government has announced its intention to implement equality between

the sexes in all areas of economic activity at all levels of the occupational hierarchy. It intended that the draft law under preparation should cover all areas concerned by Directive 76/207/EEC.

In the words of Article 1 of Law No 1414/84, setting out its field of application, the provisions of the Law "apply to salaried employees working under the protection of a contract of employment subject to civil law and to persons engaged in one of the liberal professions".

There can be no doubt that the Directive applies to all persons gainfully employed, whether subject to public service staff regulations, a contract of employment or in a self-employed capacity.

Thus the Commission notes that Article 1 of the Greek Law narrows the field of application to salaried employees subject to civil law only and, more strangely, to the liberal professions only. Two observations must be made, one concerning the civil service, the other self-employed persons.

1. The civil service

The Commission notes the statement before the Greek Parliament by the Minister for Employment that "there is no discrimination between men and women in the civil service"¹. However, he has said elsewhere: "The draft does not concern itself with the civil service as it is not our responsibility"². Nevertheless, the spokesman for the Government majority spoke of the public sector before the same house in somewhat different terms: "Unfortunately, the principle of formal equality is not actually observed - and we have all been witness to these injustices."³ While the situation is not rosy in the public sector, it is unfortunately quite unacceptable in the private sector"⁴.

¹ Greek Parliament, session of 01.12.1984, preparatory work, p. 2007

² " " " 28.11.1983, p. 1895

³ " " " " p. 1865

⁴ " " " " p. 1866

Moreover, according to Mrs Benaki, "the customs service accepts only 5% of women. According to decision 6785/83 concerning recruitment into the police force, the required levels of training differ for men and women"¹. This statement led the Minister of Labour to reply as follows: "In the public sector we are making good progress. If there is a certain amount of minor discrimination, as I have heard (...), if there are quotas, we will look into them and eliminate them"².

Presidential Decree 611/1977 (civil service code) provides for the possibility of recruiting women not to the principal posts but as auxiliaries in the armed forces, gendarmerie, city police, rural police, fire service and customs service, provided they are paid the same as men doing the same work.

¹Greek Parliament, session of 28.11.1983, p. 1878.

²Greek Parliament, session of 28.11.1983, p. 1895.

Furthermore, according to the Commission's information, women are refused access to military schools.

2. The self-employed occupations

The Commission fails to understand why, given the Greek legal system, Law No 1414/84 refers only to the liberal professions and simply ignores all other situations.

Thus all categories of self-employed workers are excluded from the field of application of the Law, such as those working at home, on piecework, with an order from a factory. It is even more surprising that Law No 1302/82, which ratified International Labour Convention No 103/1952 concerning maternity protection, should also cover women working on piecework.

The parliamentary proceedings indicate vain attempts to improve the Law, to bring it into line with the Directive.

The present drafting of the Law is therefore not in conformity with the Directive on these points.

IMPLEMENTATION OF THE DIRECTIVE

Articles 3, 4 and 5 of the Directive state that, in the three areas it covers:

- (a) any laws, regulations and administrative provisions contrary to the principle of equal treatment shall be abolished;
- (b) any provisions contrary to the principle of equal treatments which are included in collective agreements, individual contracts of employment, internal rules of undertakings or in rules governing the independent occupations and professions shall be, or may be declared, null and void or may be amended.

Following the report from the Commission to the Council on the situation at 12 August 1980 with regard to the implementation of the principle of equal treatment (COM(80)832 final), the implementing measures taken in compliance with the Directive must be aimed not only at formal provisions, but also at any discriminatory acts, practices and circumstances in areas covered by the provisions of the Community act.

In other words, the Directive lays down two types of obligation:

- 1) the creation of a general, positive entitlement to non-discrimination which is applicable to de facto discrimination and can thus be invoked before the courts;
- 2) the adoption of various measures to deal with the different subject areas.

Accordingly, implementing measures must prohibit de facto discrimination in the areas covered by the Directive and allow any victims the right of appeal.

In general, this obligation is expressly stated in the laws of the Member States.

Article 15 of Law No 1414/84 stipulates that "any provisions of laws, decrees, collective agreements, arbitration awards, ministerial orders, staff rules of undertakings or businesses, individual contracts of employment and provisions governing the liberal professions which run counter to the provisions of this Law are hereby repealed".

OCCUPATIONAL ACTIVITIES EXCLUDED FROM THE FIELD OF APPLICATION

Article 2(2)

"This Directive shall be without prejudice to the right of Member States to exclude from its field of application those occupational activities and, where appropriate, the training leading thereto, for which, by reason of their nature or the context in which they are carried out, the sex of the worker constitutes a determining factor".

Article 9(2)

"Member States shall periodically assess the occupational activities referred to in Article 2(2) in order to decide, in the light of social developments, whether there is justification for maintaining the exclusions concerned. They shall notify the Commission of the results of this assessment".

During the preliminary stages of work on the Directive, it was made clear that this derogation was intended to be interpreted strictly and to cover the entire field of possible exceptions. A broad interpretation of Article 2(2) would defeat the entire purpose of the Directive. The Commission has already initiated infringement proceedings based on its interpretation of Article 2(2), against some of the Member States. It points out that, "while Article 2(2) of the Directive authorizes the Member States to exclude certain occupational activities for which, by reason of their nature or the context in which they are carried out, the sex of the worker constitutes a determining factor, the system of derogation is based on this factor alone, so that no derogation is possible unless, for objective reasons to do with its nature, the job can be carried out either only by a man or only by a woman."¹

¹COM(80)832 final, p. 39.

Current legislation provides for exceptions to the principle of equal treatment where the sex of a worker constitutes a determining factor in carrying out the activity concerned.

According to the Government, the present restrictions in the private sector are based exclusively on protective legislation and relate principally to the following trades: street sweepers, dockers, builders of cranes and heavy equipment, drainage engineers and sewer men, building workers, steel workers and metal workers.

Article 10 (1) (b) states that the Law does not affect "provisions restricting access by persons of a given sex to certain occupational activities or to training leading thereto, when the sex of the worker is a determining factor in carrying out such activities".

In general, the Commission does not consider that simply repeating the terms of a directive in national legislation can be regarded as an adequate transposition into national law. Moreover, it stresses the difficulty in monitoring the use which is made of this exception created by national legislation in the absence of a precise definition of the posts covered by it.

Article 10 (3), the logical corollary of Article 10, (1) (b), stipulates that a job advertisement is not regarded as discriminatory when specific reference to one sex is absolutely necessary ; i.e. where the job offered can be performed only by a person of that sex.

PROTECTIVE MEASURES FOR WOMEN WHICH DO NOT CONFLICT WITH THE DIRECTIVE

Article 2 (3)

"This Directive shall be without prejudice to provisions concerning the protection of women, particularly as regards pregnancy and maternity".

Article 2 (3) refers particularly to pregnancy and maternity as, in practice, protective legislation restricting access by women to certain work or laying down specific working conditions for women is covered in Articles 3 (2) (c) and 5 (2) (c) and the second paragraph of Article 9 (1) of the Directive.

The Greek Government has already indicated that women civil servants with dependent children may work two hours a day less when the children are under two years of age and one hour less when the children are aged between two and four. Furthermore, pregnant civil servants must stop work in the eighth month of pregnancy, as they are entitled to two months' normal leave on full pay. A further two months' leave may be taken after the birth if the child survives. The Greek Government considers that these provisions are covered by Article 2 (3) of the Directive. However, this interpretation may be questionable and one wonders whether this is not an aspect of working conditions, in which case men and women workers must be treated equally.

In the private sector, measures have been taken in line with the International Convention of the International Labour Conference in Washington concerning the Employment of Women before and after Childbirth.

ACCESS TO EMPLOYMENT AND PROMOTION

Article 3

- "1. Application of the principle of equal treatment means that there shall be no discrimination whatsoever on grounds of sex in the conditions, including selection criteria, for access to all jobs or posts, whatever the sector or branch of activity, and to all levels of the occupational hierarchy.
- "2. To this end, Member States shall take the measures necessary to ensure that :
 - (a) any laws, regulations and administrative provisions contrary to the principle of equal treatment shall be abolished ;

- " (b) any provisions contrary to the principle of equal treatment which are included in collective agreements, individual contracts of employment, internal rules of undertakings or in rules governing the independent occupations and professions shall be, or may be declared, null and void or may be amended ;
- (c) those laws, regulations and administrative provisions contrary to the principle of equal treatment when the concern for protection which originally inspired them is no longer well founded shall be revised ; and that where similar provisions are included in collective agreements labour and management shall be requested to undertake the desired revision".

The guarantee of equal access to employment is now enshrined, for the areas covered by Law No 1414/84, in Article 3.

According to this provision "access to employment, in all branches of economic activity and at all levels of the occupational hierarchy, may not involve any discrimination on grounds of sex or family situation".

This broad wording might suggest that the Greek Law had the same field of application as the Directive ; however, the Article should therefore be interpreted in conjunction with Article 1, which excludes the civil service and all self-employed persons except the liberal professions.

1. Vacancy notices and job advertisements

The Commission shares the view of the Greek Government that Member States' efforts to eliminate formal discrimination in access to employment can best be assessed in vacancy notices or job advertisements ; the visible side of discrimination can give an indication of the general behaviour of employers in the public and private sectors, showing just how far stereotypes still play a part and tend to limit women to a small number of occupations and sectors.

Article 3 (3) of Law No 1414/84 lays down a general ban on referring to the sex or family situation of a worker or using criteria or factors which might, even indirectly, lead to sex discrimination in publications, advertisements, circulars or rules concerning the recruitment of workers, admission to theoretical or practical vocational training courses or the granting of leave.

The only exception provided for is in Article 10 (3), under which notices or advertisements are not discriminatory when made necessary by the job offered, when it can be carried out by a man only or by a woman only.

Nevertheless, the Commission observes that both private and public sector advertisers continue, at the time of writing, to draft discriminatory job advertisements (annex).

The Commission would like to know whether any proceedings have yet been initiated in this connection.

2. Access to employment for pregnant women

As far as pregnant women are concerned, the third paragraph of Article 3 states that an employer may not refuse to employ a woman because she is pregnant.

When recruitment is subject to the presentation of a medical certificate, a pregnant woman need not present such a certificate if the necessary medical examinations would involve a health risk to her or the foetus. In this case, the medical certificate must be presented after the birth.

POSITIVE ACTION (*)

Article 2 (4)

"This Directive shall be without prejudice to measures to promote equal opportunity for men and women, in particular by removing existing inequalities which affect women's opportunities in the areas referred to in Article 1 (1)".

The second paragraph of Article 10 of Law Nr 1414/84 provides that "measures taken in favour of persons of a given sex which help combat inequality and re-establish equal opportunities do not constitute discrimination and are not affected by this Law".

The Law states that such measures include "vocational training programmes, measures to promote employment in certain sectors of occupational activity where workers of a particular sex are poorly represented and exceptional measures for persons with special family obligations".

It should be noted that the term "positive action" does not appear in Directive 76/207/EEC or in Greek Law Nr 1414/84. However, the term is used by both English- and French-speaking legal authors and may soon have a basis in Community law, since a draft Council recommendation refers to "the promotion of positive action for women" (**).

Both Directive 76/207/EEC and the Greek Law transposing it into the national legislation acknowledge that legal provisions on equal treatment are not in themselves sufficient to eliminate de facto inequalities suffered by women in working life.

(*) This term replace "positive discrimination" used in the report from the Commission to the Council on the situation at 12 August 1980 with regard to the implementation of the principle of equal treatment ..., COM (80) 832 final, p. 64.

(**) O.J., Nr C 143, 30.5.1984; O.J. No L 331, 19.12.1984.

The Directive does not oblige Member States to take measures authorizing the use of positive action, but some countries have availed themselves of this possibility.

Two observations should be made in relation to the Greek Law : firstly, a specific provision is made which is therefore subject to a strict interpretation ; and secondly, the measures are to be taken when workers of either sex are poorly represented.

This is an issue of fact which, in case of a dispute, is left to the final judgment of the trial judge. Finally, the Greek Law has a broader field of application since it also includes persons with special family obligations.

Greece had already set up a system of positive action in favour of women before the entry into force of Law Nr 1414/84. Worthy of special note is the O.A.E.D. (*) project to provide 800 accelerated training places for unemployed women aged over 25 seeking employment in trades traditionally occupied by men, such as plumber, electrical technician or joiner.

The programme was launched officially on 14 November 1983 and nine accelerated training centres were opened covering several regions of Greece. Each participant receives an allowance of 800 drachmas a day.

Furthermore, at the European colloquium on positive action to promote equal treatment for men and women (Athens, 27-29 September 1983), the President of the Council for Equal Treatment of men and women announced that the Urban Communications Authority planned to take on in early 1984 "100 to 150 women bus drivers, subject to prior training by the O.A.E.D."

The Commission would like to know the results of these initiatives, and especially whether the programmes have actually been carried out and whether they have enabled women to be recruited.

(*) the body responsible for employment.

ACCESS TO VOCATIONAL GUIDANCE AND TRAINING

Article 4

"Application of the principle of equal treatment with regard to access to all types, and to all levels, of vocational guidance, vocational training, advanced vocational training and retraining, means that Member States shall take all necessary measures to ensure that :

- (a) any laws, regulations and administrative provisions contrary to the principle of equal treatment shall be abolished ;
- (b) any provisions contrary to the principle of equal treatment which are included in collective agreements, individual contracts of employment, internal rules of undertakings or in rules governing the independent occupations and professions shall be, or may be declared, null and void or may be amended ;
- (c) without prejudice to the freedom granted in certain Member States to certain private training establishments, vocational guidance, vocational training, advanced vocational training and retraining shall be accessible on the basis of the same criteria and at the same levels without any discrimination on grounds of sex".

The Directive is intended to cover vocational guidance and training. It does not define what is meant by vocational training, but the provisions of Article 4 together with the work done in preparation make it possible to identify the types of training which would have to be covered by implementing measures. These are :

- vocational secondary and higher education.

The Statements contained in the annex to the minutes of the Council stressed the close links between general education and vocational training and recalled that the problem of equal opportunity in the context of full access to all forms of education was currently being studied ;

- training and apprenticeship in the self-employed occupations and professions and the small business sector ;
- continuing training ;
- advanced training and retraining organized by the public authorities or employers ;
- training and advancement schemes within state or private business undertakings.

The Directive allows Member States to make exception for private vocational guidance and training establishments in their implementing legislation. The Council minutes cited above do call on the Member States, however, to encourage equal access, without discrimination on grounds of sex, to private vocational training establishments. Private establishments are understood in this case to mean teaching establishments and not private business undertakings.

Education in Greece is organized on the basis of Article 16 of the Constitution which makes the provision of education a fundamental duty of the State. According to the Government, no distinction is made in education between men and women, since the rules are general and make no reference to sex. The Government also states that a recent law (more precise details are not given, but it was apparently prior to Law N° 1414/84) has enabled schools of midwifery, nursery teaching and nursing to admit men from now on.

Furthermore, "colleges of education may no longer, as they have done until recently, set aside a given percentage of admissions for each sex".

However, the Commission noted that at 1 October 1983 the vocational training given by "ERGATIKI ESTIA" (workers' centre), a body subject to the supervision of the Ministry of Employment, was available only to girls for the academic year 1983-84.

The same applies to military schools where women are still refused access, or schools are reserved for women only. Such is the case of the School for Military Nursing Officers (*). Ministry of Education statistics, though covering a limited period only, are a measure of continuing segregation in the various areas of vocational training covered by the Directive.

The Commission would like to see these statistics updated.

Article 2 of Law N° 1414/84 provides that, subject to the provisions of Article 10 of that Law, all discrimination on grounds of sex or family situation is prohibited as regards :

- (a) access to, content and application of programmes or systems of vocational guidance, vocational training, apprenticeship, further training, advanced training, retraining, public vocational training, information to workers and their families and, in general, programmes contributing to workers' intellectual, social and economic development ;
- (b) participation in examinations and the fixing of the conditions for obtaining and issuing diplomas, certificates or other study qualifications, training leave and the award of grants or other study facilities.

(*) Greek Parliament, session of 28.11.1983, draft law adopted and referred to on page 9 above.

ACADEMIC YEAR 1979-80

OCCUPATION	UPPER SECONDARY		SECONDARY - REFORMED SECTIONS		LOWER SECONDARY		INTERMEDIATE - TRADITIONAL SECTIONS		TOTAL	
	total	women	total	women	total	women	total	women	total	women
electricians	5 944	297	1 269	-	3 476	16	2 842	17	13 531	330
mechanics	4 790	161			5 768	6	441	-	10 969	167
decorators							403	281	403	281
tailors/ dressmakers			8	8	58	53			66	61
joiners					132				132	
farmers/ stockbreeders	1 183	626			60	60			1 243	686
office workers			26	17					26	17
TOTAL	11 887	1 084	1 303	25	9 494	135	3 686	198	26 370	1 542

Source: Ministry of Education statistics.

EQUAL TREATMENT AS REGARDS WORKING CONDITIONS

Article 5

"1. Application of the principle of equal treatment with regard to working conditions, including the conditions governing dismissal, means that men and women shall be guaranteed the same conditions without discrimination on grounds of sex.

2. To this end, Member States shall take the measures necessary to ensure that:

- (a) any laws, regulations and administrative provisions contrary to the principle of equal treatment shall be abolished;
- (b) any provisions contrary to the principle of equal treatment which are included in collective agreements, individual contracts of employment, internal rules of undertakings or in rules governing the independent occupations and professions shall be, or may be declared, null and void or may be amended;
- (c) those laws, regulations and administrative provisions contrary to the principle of equal treatment when the concern for protection which originally inspired them is no longer well founded shall be revised; and that where similar provisions are included in collective agreements labour and management shall be requested to undertake the desired revision".

The Directive does not define what is to be understood by "working conditions". During the preparatory work in the Council (Council Doc. 463/75 (SOC 64) of 10 April 1975), the representative of the Commission's Legal Service had observed that this concept should be understood in the broadest sense.

From the Greek Government's reply to the Commission's questionnaire, it appears that in Greece working conditions in the public sector are defined in the following way: the duties and obligations of civil servants and persons with equivalent status, the conditions governing promotion, changes of status, remuneration, working time, etc.

The Commission would like to have detailed information on the instruments laying down such conditions. There is no precise legal definition of the term "working conditions" in the private sector.

Article 5 of Law No 1414/84 entitled "Working conditions and occupational advancement" prohibits "any discrimination on grounds of the sex of the worker whether as regards working conditions, occupational development or career advancement".

Paragraph 2 of the same article stipulates that the conditions governing work on Sundays and public holidays and overtime work must be the same for both male and female workers.

Article 5 (and Article 6 on dismissal) call for the comment which has already been made on page 6.

Whereas Articles 2 and 3 refer to discrimination on grounds of sex or family status, Articles 5 and 6 mention only discrimination on grounds of sex.

The Commission would like a detailed explanation of this discrepancy between the articles of Law 1414/84 under discussion.

The permission to arrive late provided for in the public sector¹ is also granted in public undertakings. For example, the national collective agreement governing employees of the State electricity company concluded on 27 September 1983 lays down that:

"Permission to arrive late granted to mothers under administrative decision no 470 of 27.11.1972, the period in question being two hours for children up to the age of two and one hour for children up to the age of four, may, in the case of married couples working for the State electricity company, be granted to either partner on submission of a joint request to their respective departments".

¹cf. p. 14 above

The Commission's understanding is that this clause does not apply to all the employees of this public undertaking, but only to those whose spouses are also employed there. However, the number of persons involved is certainly very small. This permission to arrive late would appear to be working condition, in which case men and women must be treated in the same way without any discrimination on grounds of sex.

PROTECTIVE LEGISLATION

Article 3.2.c

1. "Application of the principle of equal treatment means that there shall be no discrimination whatsoever on grounds of sex in the conditions, including selection criteria, for access to all jobs or posts, whatever the sector or branch of activity, and to all levels of the occupational hierarchy.

2. To this end, Member States shall take the measures necessary to ensure that ;
 - c) those laws, regulations and administrative provisions contrary to the principle of equal treatment when the concern for protection which originally inspired them is no longer well founded shall be revised; and that where similar provisions are included in collective agreements labour and management shall be requested to undertake the desired revision".

Article 5.2.c

1. "Application of the principle of equal treatment with regard to working conditions, including the conditions governing dismissal, means that men and women shall be guaranteed the same conditions without discrimination on grounds of sex.

2. To this end, Member States shall take the measures necessary to ensure that

c) those laws, regulations and administrative provisions contrary to the principle of equal treatment when the concern for protection which originally inspired them is no longer well founded shall be revised; and that where similar provisions are included in collective agreements labour and management shall be requested to undertake the desired revision".

Article 9.1, second subparagraph

"However, as regards the first part of Article 3(2)(c) and the first part of Article 5(2)(c), Member States shall carry out a first examination and if necessary a first revision of the laws, regulations and administrative provisions referred to therein within four years of notification of this Directive".

The so-called protective legislation referred to by Articles 3(2)(c) and 5(2)(c) means provisions aimed at protecting women by excluding them from certain jobs or authorizing special working conditions for them.

Such legislation is contrary to the principle of equal treatment. The Directive takes account of the fact that, since the adoption of such legislation, technological and social changes have made it possible to contemplate revising or even abolishing it.

Consequently, the Directive provides for the abolition of such legislation when the concern for protection which originally inspired it is no longer well-founded; similarly, labour and management must be requested to undertake the desired revision.

It is for the Commission to examine whether the concern for protection is no longer well-founded in the terms of the Directive.

Article 11 of Law no 1414/84 amended a number of provisions in a series of protective measures; the amendments applied from the date when the law in question entered into force.

1. Changes made

1. The first sub-paragraph of Article 33 of Royal Decree No 14 of 26 August 1913 implementing the Law 4029 (Official Gazette No 165, First part) is replaced by the following: "People under 18 may not be employed on the maintenance and lubrication of drive shafts, mechanisms for the transmission of motive power and machines which are in operation, or the servicing of boilers in factories".
2. The introductory paragraph of Article 36 of Royal Decree No 14 of 26 August 1913 implementing Law 4029 is amended as follows: "In accordance with Article 17 of Law No 4029, jobs in the following industrial sectors shall be considered dangerous for the physical well-being of persons under 16, who shall be denied access to them: ...".
3. The introductory paragraph of Article 37 of Royal Decree No 14 of 26 August 1913 implementing Law 4029 is amended as follows: "In accordance with Article 17 of Law 4029, the following jobs in the industries listed below shall be considered dangerous for the health and physical well-being of persons under 16, who shall consequently be denied access to them: ...".

4. Article 21 of the Royal Decree of 16 March 1923 governing hygiene and cleanliness in dried grape warehouses (Official Gazette No 91, First part), is amended as follows: "Persons assigned to the operation of machines shall be examined beforehand by the appropriate foreman to ascertain their fitness for work. No one shall be allowed to carry out an activity for which they are not qualified. Any infringement of this rule shall lead to dismissal".
5. The first two paragraphs of the sole article of Presidential Decree No 18 of 23.12.1926 on the employment of women and minors in the tobacco industry (Official Gazette No 437, First part) are amended as follows: "The employment of young people under the age of 15 is prohibited in the tobacco industry. This ban covers the following activities: opening of bales and selection of leaves, fermentation and inspection of bundles after fermentation, drying in enclosed areas, manufacture of the tobacco, cutting and packaging of cigarettes".
6. The sole article of Presidential Decree No 11 of 17.10.1932 on the employment of women and minors in boiler-making works (Official Gazette No 371, First part) is amended as follows: "Young people under the age of 18 may not be employed in copper mines".
7. Article 4 of the Royal Decree of 10.9.1937 on the safety of workers and craftsmen working in joinery workshops (Official Gazette No 405, First part) is amended as follows: "Young people under the age of 18 may not be employed on the operation of woodworking machines".
8. Point 3 of Article 11 of emergency Law No 1204 of 1938 (Official Gazette No 177, First part) is amended as follows:
"3. Persons under the age of 18 may not be employed on such activities.

It is also prohibited to employ workers under 18 to sweep and, in general, clean workshops and workplaces.

Persons responsible for cleaning must wear face masks throughout the operation.

Persons between the ages of 15 and 18 may be taken on as apprentices in order to receive vocational training in the preparation and use of lead-based paints for a maximum of four hours each day".

9. Article 15 of Royal Decree No 464 of 1968 on health and safety rules for workers in printing works, graphic arts workshops in general and paper processing undertakings throughout the country (Official Gazette No 153, First part) is amended as follows: "Young people under the age of 18 may not be granted access to typesetting, stereotype and linotype workshops, ...".
10. Article 22 of Royal Decree No 590 of 1968 on health and safety measures for workers in workshops and factories manufacturing lead accumulators (Official Gazette No 199, First part) is amended as follows: "Workers or apprentices under the age of 16 and women who are pregnant or breastfeeding may not be employed in workshops or factories manufacturing lead accumulators".

The Commission notes that the Greek Government acknowledges that most of the protective legislation reflects the considerations of a bygone age.

Although some of these laws have recently been amended, the Commission notes that others have not been amended in any way by Law No 1414/84. For this reason, the Commission would like the Greek Government's opinion on the existence of the following legislation, the list of which it received from the Greek authorities. It is necessary to establish not only whether these provisions are still in force but also whether the differences in treatment embodied in them are still justified on objective grounds.

2. Existing discrimination

DISCRIMINATION BETWEEN MEN AND WOMEN AS REGARDS ACCESS TO EMPLOYMENT AND WORKING CONDITIONS

Law 4029 on the employment of women and minors (Articles 5, 12, 13, 15, 16).

- Royal Decree No 14 of 26 August 1913, implementing Law 4029 (Articles 7, 25, 27, 29, 30).
- Royal Decree of 25 September 1913 on nightwork by women in fish canning factories (Articles 3, 4).
- Law 602/1915 on cooperatives, as amended by Decree-Law of 28 November 1925 and Law 5289 of 1931 (Articles 13, 43).
- Royal Decree of 10 February 1916 fixing the lunch break, during the winter months, in firms working magnesium ores (Articles 1, 2).
- Law 2274/1920 ratifying the International Convention concerning the employment of women before and after childbirth (Article 3).
- Law 2294/1922 ratifying the International Convention of the international conference in Geneva on the use of white lead in paint (Articles 3(1)).
- Law 6011/1934, amended by the Royal Decree of 7 January 1937 and the emergency Law 204/1938 (Article 11(3)).
- Emergency law of 30 October 1935 on the employment of women and underground work in mines of all kinds (Articles 2,3).
- Decision 117756/1966 of the Ministry of Labour and the Ministry of Merchant Shipping.

- Decision of the Ministry for Industry No 115958/7870/23012/1970 amending and supplementing No 19406/2376/850 of 25 February 1969 on the issue of licences for loader/shotfirer/shot-hole driller/shot clearance experts (Article 3(2)).
- Law 61/1975 on the protection of workers against the risks associated with the use of benzol or products containing benzol (Article 6).

DISCRIMINATION BETWEEN MEN AND WOMEN AS REGARDS NIGHTWORK

- Law 4029/1912 on the employment of women and minors (Article 6).
- Royal Decree of 14 August 1913 implementing the Law 4029/1912 (Article 8).
- Royal Decree of 25 September 1913 on nightwork by women in fish canning plants and factories (Article 1).
- Royal Decree of 10 February 1916 fixing the length of the lunch break in firms working magnesium during the winter months (Article 3).
- Presidential Decree of 4 July 1925 on nightwork by women over 18 in dairies (Article 15).
- Presidential Decree of 30 August 1927 on nightwork by women in plants and factories packaging dry and fresh figs (Articles 1, 2).
- Presidential Decree of 28 April 1937 extending the 8 hour day to spinning and weaving (wool, cotton, silk, etc.), rope-makers, the hosiery trade and the flannel and knitted goods industry (Article 2(2)).
- Law 3239/1955 laying down procedures for the settlement of collective labour disputes and setting up a national advisory council on social policy.

- Law 3294/1959 ratifying International Convention No 89 concerning night-work of women employed in industry (Articles 3, 5,8).
- Decision No 36757/8288/1972 of the Minister for Economic Affairs governing work in mines and quarries, as amended by Decision No 38923/7631/1712/1973 (Article 43).

Law 1414/84 makes no changes to the legislation on working in mines or night-work. The Greek Government points out that it has ratified the ILO Conventions Nos 45 and 89 which cannot be denounced until 1987 and 1991 respectively.

It should not, however, be forgotten that due consideration must be given to Article 234 of the Treaty establishing the European Economic Community, which states that to the extent that agreements concluded before the entry into force of the Treaty "are not compatible with this Treaty, the Member State or States concerned shall take all appropriate steps to eliminate the incompatibilities established".

Moreover, an examination of Article 11 of the Law, which is founded on a desire to harmonize the age of access to certain jobs which are deemed to be dangerous, reveals a certain hesitancy.

Whereas the minimum age for certain jobs was fixed at 14 for boys and 16 for girls, the law adopts a middle course in fixing the minimum age limit at 15 (Article 11, 5). Article 11.10 lowers the threshold to 16 instead of 18.

Provisions of this kind¹ are incompatible with indications given Article 117 of the EEC Treaty under which "Member States agree upon the need to promote improved working conditions and an improved standard of living for workers, so as to make possible their harmonization while the improvement is being maintained" and the preamble to Directive 76/207/EEC.

Furthermore, such provisions are incompatible with Article 3(1) of ILO Convention No 138 (ratified on 24 July 1981, Official Gazette A, No 193).

¹cf. the lengthy deliberations in the Greek Parliament, session of 9 January 1984, preparations, p. 2775.

The aim of revising protective legislation is not to harmonize access to dangerous jobs for men and women by lowering the age limit for carrying out such work.

LEGAL REMEDIES, PENALTIES

"Member States shall introduce into their national legal systems such measures as are necessary to enable all persons who consider themselves wronged by failure to apply to them the principle of equal treatment within the meaning of Articles 3, 4 and 5 to pursue their claims by judicial process after possible recourse to other competent authorities".

As regards discrimination on ground of sex in the private sector, actions may be brought before civil courts in accordance with Article 663 of the Code of Civil Procedure. Actions to set aside arbitrators' decisions and Ministerial Decisions approving collective agreements are brought before the Council of State.

As regards the public sector, actions must be brought before the administrative courts in accordance with the provisions of Presidential Decree 611/1977. Civil actions to obtain damages are brought before the civil courts in accordance with the normal procedure.

Actions may be brought either by the injured party in person, or by the professional body (trade union, chamber of commerce) - in accordance with the procedure under Article 663 of the Code of Civil Procedure - to which the injured person belongs.

The Government has no statistics on the number of actions which have been brought using these procedures.

The burden of proof is normally borne by the applicant.

The penalties provided for in Law N° 1414/84 are administrative. Article 12 lays down that "any employer who contravenes the provisions of this law shall be liable to a fine of between 20.000 and 300.000 drachmas. The fine, which is imposed by reasoned decision of the competent labour inspector, shall be collected for the benefit of the Workers' Centre in accordance with the provisions of the Revenue Code (KEDE). This provision shall be without prejudice to penal measures laid down by other laws".

Employers who have incurred fines have "the right of first and further appeal before the ordinary administrative courts" (Article 12, 2).

Such a provision is only partially effective in penalizing persons who have infringed Law 1414/84. From the wording of this article, it appears that only the employer is liable to the penalties laid down. There are many other parties involved in the employment market, particularly as regards job offers, who are not covered.

As this is not a criminal law measure, there is, moreover, no chance of bringing a complaint against a newspaper which publishes discriminatory advertisements. Consequently, the general ban "may not be published" contained in Article 2 (2) of Law 1414/84 is limited by the provisions of Article 12 which relates solely to the employer.

Only if this had been an instrument of criminal law could one have hopes for an effective ban on the publication of discriminatory advertisements, unless the press agrees to observe the law and give effect to it without worrying about whether or not penalties exist.

PROTECTION AGAINST DISMISSAL

Article 7

"Member States shall take the necessary measures to protect employee against dismissal by the employer as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with the principle of equal treatment."

If the judicial processes were used, there is no doubt that the extent of protection against dismissal as a reaction to a complaint would constitute an important part of the system introduced.

Under Article 6 of Law N° 1414/84, "a worker may not be dismissed on grounds of sex or as a reaction by the employer to legal proceedings or any other action by the worker to enforce compliance with the principle of equal treatment at work".

The scope of Article 6 of the Greek law therefore appears to be broader than the Community provision in Article 7 of Directive 76/207/EEC.

Before the Law 1414/84 was adopted, the only protection against dismissal was action based on Articles 200 and 281 of the Civil Code. Now, dismissal is null and void if the grounds are contrary to the law.

Notwithstanding the provisions of the Civil Code relating to unlawful acts, the employer is obliged to pay the wages due.

INFORMING WORKERS

Article 8

Member States shall take care that provisions adopted pursuant to this Directive, together with the relevant provisions already in force, are brought to the attention of employees by all appropriate means, for example at their place of employment.

As regards the employees' rights to information, Law N° 1264 of 1982 on the democratization of the trade union movement and the consolidation of the trade union rights of employees lays down (Article 16) that the trade unions have the right to use notice boards at the place of work to carry out their tasks, one of which is to inform employees on matters relating to equal treatment.

Article 7 of Law N° 1414/84 on the provision of information for employees lays down :

"1. Trade unions have the right to inform employees of the content of this law and the measures to be taken to enforce it and ensure compliance with the principles of equal pay and equal treatment for men and women.

2. Employees shall facilitate the provision of information to employees by the trade unions; such information may be provided in writing, with the aid of notices posted within the undertaking, orally, with the aid of circulars distributed at the work place and outside working hours or in any other way deemed appropriate.

3. The departments of the Ministry of Labour shall provide the trade unions and individual employees with any information relating to the matters governed by this law."

Moreover, Article 8 of the Law 1414/84 lays down that the equal treatment department, set up by the Ministry of Labour, is responsible for informing employers, employees, trade unions and women's organisations regarding the measures taken to promote equal treatment of men and women at work."

BODIES RESPONSIBLE FOR MONITORING EQUAL TREATMENT

There is no official body with sole authority to ensure compliance with the principle of equal treatment. Under labour law, it is for the labour inspectors to monitor compliance with labour legislation. Similarly, Law 1414/84 simply empowers the officials in question to impose fines on employers who fail to comply with its provisions.

Mention should also be made of a complete administrative structure introduced by Law 1414/84 and the establishment of a "Council for the equal treatment of men and women" under Article 6 of Law N° 1288/82 (1).

1. An equal treatment office is attached to each department of the Labour inspectorate. This office is responsible for the following :
 - (a) following up the implementation of the provisions of this law, recording cases of discrimination and at the same time informing the equal treatment department (see below);
 - (b) cooperating with and informing the regional equal treatment committees;
 - (c) drawing up and presenting, in January and July of each year, a report on activities in the previous half-year - and problems encountered in implementing the provisions on equality, containing proposed solutions to these problems (Article 8 (2)).

2. An equal treatment department in the "working conditions" directorate of the central administration of the Ministry of Labour, which has the following objectives :
 - (a) collecting data and statistics on the situation of female workers employees in Greece and monitoring the application of special measures to promote equal opportunities for men and women and the removal of inequalities at work;

(1) Official Gazette, 1092, 1, N° 120

- (b) informing employers, workers, trade unions and women's organizations of the measures taken to promote equality of men and women at work;
- (c) cooperating with the Council of equal treatment of men and women and drawing up draft laws and administrative instruments on equality at work (Article 8 (1)).

3. An equal treatment department in the National Labour Council of the central administration of the Ministry of Labour.

The task of this department is to give an opinion on draft laws, administrative instruments and, in general way, all questions relating to equality at work submitted to it by the competent departments. It comprises the secretary-general from the Ministry of Labour, who acts as chairman, a representative of the Council for equal treatment for men and women, a senior official in the "working conditions" directorate in the Ministry of Labour, a worker's representative and a representative of the employers.

The rapporteur is the official in the central administration of the Ministry of Labour who is competent in such matters.

The members of the department and their alternates are appointed by the Minister for Labour. At least three members are women (Article 9).

4. The Council for equal treatment of men and women

Set up in 1982, this is a State body which is financed from the Cabinet Ministry's budget but is under the direct control of the Prime Minister. The Council has a chairman and eight members, although this number is not fixed; by law, it must always be chaired by a woman.

It is an advisory body set up to promote and achieve de jure and de facto equality between the sexes. Its job is to propose appropriate measures that the States or the local authorities, as well as the two sides of industry, should take to achieve the objectives for which the Council was set up and to monitor the application of these measures.

The Commission of the European Communities welcomes the existence of these bodies and hopes that legal equality can be achieved in practice without great difficulty.

It does, however, have one observation to make in connection with the tasks of the department set up by the National Labour Council.

It is stipulated that the body in question gives its opinion only if the competent departments request it. Accordingly, the Commission would like to know the precise interpretation of this text : is the opinion of this department a procedural but nonetheless essential requirement before the adoption of a legal measure which could lead to action before the Council of State if not observed, or does the authority in question have the power to decide whether or not to seek its opinion ?

CONCLUSIONS

Although there can be no question that progress has been achieved in Greece on equal treatment, it must be recognized that equality is still not fully guaranteed within the meaning of Directive 76/207/EEC by the existing legal instruments.

Admittedly, the recent changes to family law and the rules of private international law in Greece will promote equality between men and women. However, the rules in question apply to relations between couples, which should not be confused with the equal treatment of men and women, whether or not they are married, in the working world.

Moreover, although the constitution lays down the principle of equality of the sexes (Article 4 (2)), it authorizes exceptions which are established by law.

The question of protective legislation is, then, an illustration of the fact that this constitutional rule, although important, is not sufficient in itself.

The Commission is aware that because of the peculiarities of the Greek legal systems as regards ministerial powers, the draft law drawn up by the Ministry of Labour could not cover the public sector.

As regards the deliberate omission of the self-employed, (apart liberal professions) from the scope of the law, the debate in Parliament shows that it was essentially a matter of solving questions of legal interpretation.

However, neither the duality of powers nor difficulties concerning legal interpretation can justify failure to implement Directive 76/207/EEC fully in practice.

Moreover, although it is natural to assume that the constitutional principle of equality underlies the provisions on public servants, the Commission notes that the "Special High Court" set up by Article 100 of the Constitution, which is responsible at the highest level for settling, without appeal, disputes on substantive unconstitutionality or the meaning of the provisions of a formal law which have been the subject of conflicting decisions by the Council of State, the Court of Cassation and the Court of Auditors, has recently ruled, in a case relating to equal pay and involving Article 22 of the Constitution, that the rule in question does not apply to persons whose contract of employment is governed by public law (Decision N° 16/1983, Labour Law Review 1983, page 248).

For this reason, the Commission calls for the principle of equal treatment in the public sector to be expressly laid down by law.

As regards job advertisements, the Commission notes that they continue to be worded in a discriminatory way and expresses its concern at the fact that a number of advertisements originating from State bodies adopt family status as a criterion for access to a job (Annex). The continuing and systematic infringement of a law, which even provides for substantial administrative fines, would call into question the machinery introduced by the Directive which is aimed at guaranteeing the application of the principle of equal treatment in practice.

Vocational training should be open to everyone, in all sectors of the economy, without discrimination on grounds of sex or family status. The Commission would like an assurance that the Female Workers' Welfare Centre and other schools providing vocational training, whatever its nature, are now open to everyone.

As regards the revision of protective legislation, the Commission fears that certain amendments have lost sight of Article 117 of the Treaty and the preamble to Directive 76/207/EEC which calls for "the harmonization of the living and working conditions of workers while maintaining their improvement".