

SUMMARY

2013/28 Discrimination via television? (DK)

<p>The Danish Gender Equality Act prohibits discrimination on grounds of gender. This principle of non-discrimination – which concerns both direct and indirect discrimination – implements article 4 of Directive 2004/113. However, it does not imply an obligation to give the same amount of airtime to sports involving female athletes as to sports involving male athletes, according to the Danish Board of Equal Treatment.</p>

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The Danish Gender Equality Act prohibits discrimination on grounds of gender. This principle of non-discrimination – which concerns both direct and indirect discrimination – implements article 4 of Directive 2004/113. However, it does not imply an obligation to give the same amount of airtime to sports involving female athletes as to sports involving male athletes, according to the Danish Board of Equal Treatment.

Facts

A female viewer complained to the Danish Board of Equal Treatment that a public service television station was giving more airtime to sports involving male athletes than to sports involving female athletes.

The viewer argued that the television station's sports coverage discriminated against women, claiming that the unequal amount of airtime was a disincentive to women's desire to participate in sports and adversely affected women's possibilities of excelling at sports and, additionally, that the failure to show female athletes greatly affected the Danish population's gender perception. Consequently, the complainant claimed, the television station should be

ordered to give the same amount of airtime to sports involving female athletes as to sports involving male athletes. The complainant believed that since the television station was financed by governmental funds, it had a special obligation to give the same amount of airtime to male and female athletes.

The television station argued primarily that the Board of Equal Treatment was not competent to hear the complaint since the Board did not have the power to order the television station to give the same amount of airtime to female and male athletes. It is clear from the Danish Board of Equal Treatment Act that the Board can award compensation only. The television station receives its funds from the government based on a so-called public service agreement. And the television station did not believe that the Board had authority to change this agreement – which would be a necessary consequence of ordering the television station to give the same amount of airtime to both male and female athletes.

That aside, the television station argued that the complainant had not succeeded in proving the existence of circumstances giving reason to believe that the principle of equal treatment had been breached, and for that reason the Board should find in favour of the television station.

Furthermore, the television station believed that it was guilty of neither direct nor indirect discrimination, as female athletes were not placed in a particularly disadvantageous position because of the television station's sports programmes. Whether or not any difference in airtime is a disincentive for women to participate in sports is a subjective matter, but there is no proof that any such disincentive is caused by the sports coverage of this particular television station.

It should be mentioned that the Board of Equal Treatment is an administrative body with the jurisdiction to hear discrimination- related complaints. The purpose of having such a body is to ensure effective legal protection of the groups that are legally protected against discrimination. Anybody who believes that he or she has been discriminated against can file a complaint at no cost. The Board's decisions may be appealed before the civil courts.

Decision

First and foremost, the Board disallowed the television station's plea for dismissal of the complaint for lack of jurisdiction. In the Board's opinion, it has authority to decide complaints concerning the principle of non-discrimination and whether it has been breached.

The Board then decided in favour of the television station, stating that the principle of equal treatment of men and women does not imply an obligation to show equal amounts of sports

involving male and female athletes.

Accordingly, the television station did not discriminate in its sports coverage.

Commentary

Firstly, the decision shows that the Board of Equal Treatment applies a very broad interpretation of its jurisdiction *ratione materiae*. The television station had brought forward a number of reasons why the Board lacked jurisdiction in this matter, but the Board set aside all those arguments.

Secondly, the decision also shows that the principle of non-discrimination cannot serve to require television stations – and probably other electronic media as well – to make sure that sports involving female athletes are given the same coverage as sports involving male athletes. The Board does not elaborate on how it came to this conclusion, and it seems that the right conclusion would have been for the Board to state that the complainant had failed to prove the existence of circumstances giving reason to believe that the principle of equal treatment had been breached. The complainant only gave her subjective perception on the television station's sports coverage and showed no statistics to prove that the television station did in fact give more airtime to male athletes than to female athletes.

The Board's decision also indicates what some people believe to be the problem with the Board of Equal Treatment – that anybody can file a complaint without cost. This system causes unmeritorious complaints and – most importantly – complaints that shift the focus away from the real issues deriving from unequal treatment, both in and outside the labour market. There is no doubt that the Board serves an important purpose, but it may be time to reconsider the organisation of the Board when we read about complaints concerning sports coverage on TV and the different prices of female and male haircuts.

Subject: Gender discrimination

Parties: Person A - v - Television station B

Court: The Danish Board of Equal Treatment

Date: 6 March 2013

Case number: 7100312-12

Hard Copy publication: Not yet available

Internet publication: Available from info@norrboevinding.com

Creator: The Danish Board of Equal Treatment

Verdict at: 2013-03-06

Case number: 7100312-12