



Nordic Council
of Ministers



REGULATION OF GENDER-DISCRIMINATORY ADVERTISING IN THE NORDIC COUNTRIES

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Summary

This report surveys how gender-discriminatory advertising is regulated in the Nordic countries. It is the product of a Nordic project on gender equality in the media across the Nordic region. The project was initiated by Finland during its Presidency of the Nordic Council of Ministers for Gender Equality 2016, and it was based on the objectives of the Nordic gender equality ministers' cooperation program 2015–2018 "Together for Gender Equality" in which gender equality in the public sphere is a primary theme.

Due to the media's normative power to reflect daily life and to shape our understanding of gender, media plays a vital role in constructing – or deconstructing – gender equality. In modern societies, the advertising industry plays a major role in the media landscape. Advertising is a very powerful form of social communication, offering a concentrated set of images and ideas that appeal to our emotions and, thereby, shape our values, attitudes, and understanding of the world. Thus, combating gender discrimination in advertising is central to efforts to achieve gender equality.

There is no universally accepted definition for gender-discriminatory advertising. International, EU, European, and national legal standards, recommendations and guidelines provide yardsticks. Gender-discriminatory advertising is typically divided into sexist and stereotypical advertising. This is also the way the term is used in this report.

In the Nordic countries gender discriminatory advertising has been on the public agenda since the 1970s and 1980s, the time when equality legislation was adopted. However, the Nordic countries have chosen different ways of regulating gender discriminatory advertising. All the other Nordic countries, except for Sweden, consider gender-discriminatory advertisement to be under the legislation. Sweden has currently no specific legislation against gender discriminatory advertising, but regulation via a self-regulatory body.

In Denmark the regulation of gender-discriminatory advertising is mainly based on the Marketing Practices Act and a general clause on good marketing practice. Section 1 of the Act states: "Traders subject to this Act shall exercise good marketing practice with reference to consumers, other traders and public interests." Good marketing practice is not specified in the act, and there is no specific reference to gender

discrimination. Instead, the Danish Consumer Ombudsman, who fulfills the supervision of the Act, has provided guidelines on gender-related advertising that define gender discriminatory advertising. According to the guidelines, advertising is discriminatory if a gender is represented in a derogatory or contemptuous manner; if nudity or eroticism is included in a manner that appears derogatory or contemptuous to the relevant gender; the advertisement gives the impression that the role of one gender is socially, financially, or culturally subordinate to the other gender; if the advertisement gives the impression that one gender is less competent, less intelligent, or less suited to perform tasks that both genders can perform equally well physiologically; or if the advertisement gives the impression that one gender has special negative personality traits or characteristics.

In addition to the Marketing Practices Act, the Danish Gender Equality Act is applied to gender-discriminatory advertising. The Gender Equality Act prohibits both indirect and direct (Section 2) discrimination based on gender. The Danish Board of Equal Treatment is the body considering complaints on the grounds of the Gender Equality Act. However, since 2016 it has only had the competence to consider complaints if the complainant has an individual and actual interest in the concrete case (Section 1). To balance this restriction, the Danish Institute of Human Rights has been granted the right to bring a complaint to the Board of Equal Treatment. So far, the Danish Institute of Human Rights has not used its new competence to bring complaints about advertising.

The Radio and Television Board (RTB) also considers cases about gender-discriminatory advertising based on broadcasting legislation. It handles one or fewer cases on gender discriminatory advertising per year. Greenland and the Faroe Islands have a Marketing Practices Act similar to the one in Denmark. Neither includes any explicit prohibition of gender-discriminatory advertising.

In Finland, regulation of gender-discriminatory advertising is based on the Consumer Protection Act. There is a general clause that provides a definition of marketing contrary to good practices and, additionally provides for the prohibition of gender discrimination in marketing. Section 2(1)(2) of Chapter 2 of the Consumer Protection Act states: "Marketing is considered contrary to good practice, if it is clearly in conflict with generally accepted social values, and in particular if: 2) there exists discrimination based on gender, age, ethnic or national origin, nationality, language, health, disability, sexual orientation, or other personal fact". In Finland, advertising or marketing is considered to be gender discriminatory if it is clearly in contravention with

generally accepted social values, and gender is portrayed in an offensive way. Advertising may not subjugate, demean, or insult someone on the basis of gender. The supervisory authority is the Consumer Ombudsman of the Finnish Competition and Consumer Authority.

Gender discriminatory advertising is not regulated in the Finnish Equality Act and the government proposal for the Equality Act explicitly states that it does not concern advertising. The Non-discrimination Act promotes equality and prevents discrimination, excluding gender equality as it is regulated in the Equality Act, but similar to the Equality Act, discriminatory advertising is not in its purview.

In Finland there is also a self-regulatory body, the Council of Ethics in Advertising, MEN, as a complement. MEN applies the Consolidated ICC Code of Advertising and Marketing Communication Practice (ICC), which it has completed with its own principles. MEN considers whether or not marketing is appropriate, i.e., whether it is in accordance with generally accepted social values, not the lawfulness of it.

As far as the Åland Islands are concerned, consumer protection is completely under the legislative authority of the State of Finland according to the Act on the Autonomy of Åland Section 27(1)(10). Åland has an explicit provision concerning gender-discriminatory advertising, but the value of the legislation is mainly iconic due to the scope of the application of the Equality Act of Åland. According to the Equality Act of Åland, the provision does not apply to any branch of industry that is regulated by Finnish legislation.

In Norway, gender-discriminatory advertising is regulated under the Marketing Control Act, which has an explicit provision prohibiting gender-discriminatory advertising. In addition, specific guidelines concerning gender discriminatory advertising are provided by the Consumer Ombudsman which is – in addition to the Market Council – the most relevant authority on gender-discriminatory advertising in Norway. According to the Consumer Ombudsman's guidelines, advertising is considered to be gender discriminatory, if it is contrary to the equality of the sexes or if it describes one sex in a negative manner. Offensive advertising is defined as portrayals of either sex in more or less dressed situations, where women or men are represented as sex symbols or as eye-catchers without any connection or relevance to the product. A plain description of existing gender roles is not in itself deemed as contrary to Section 2 of the MCA, unless the presentations of gender stereotypes are highlighted in a particularly lopsided or in a degrading manner in stereotypical situations from which society has moved away. Gender-discriminatory advertising is not regulated in the

Gender Equality Act. However, the Consumer Ombudsman has suggested that in connection with an eventual new gender equality and anti-discrimination law, the provision could be removed from the Marketing Practices Act and included in the new law. The Equality and Anti-Discrimination Ombud has not supported this stand.

In Iceland the regulation is based on the Gender Equality Act that has an explicit Article (29) that forbids advertisements that are disrespectful or discriminatory towards either sex or run contrary to gender equality in any way. Advertisers and those who design or publish advertisements shall ensure that the advertisements are not belittling or disrespectful towards either sex and that they do not run contrary to gender equality in any way. Such advertisements may not be published in the media or any other public space. The Centre for Gender Equality supervises the law and contacts the advertisers questioning that they remove advertisements suspected to be contrary to the law. The Complaint Committee of Gender Equality has the function of examining cases and delivering rulings on whether provisions of the Equality Act have been violated. The cases of gender discriminatory advertisements handled by the Committee have been few. The Icelandic Marketing Law on Supervision of Unfair Commercial Practices and Transparency of the Market does not address gender discriminatory advertisement.

In Sweden, there is currently no specific legislation against gender-discriminatory advertising. Neither can gender discriminatory advertising be restricted by other current legislation: the Marketing Act that demands consistency with good marketing practice is not applicable because of a decision handed down by the Swedish Marketing Court in 1976. Neither marketing nor advertising is mentioned within the scope of the application of the Discrimination Act and, thus, this Act is not applicable to gender-discriminatory advertising. The topic has been on the political and public agenda since the 1970s. The latest government inquiry on the regulation of gender discriminatory advertising was completed in 2008. It included a proposition for legislation, which, however, did not proceed. Recently, the Swedish Women's Lobby has driven a major campaign for introducing legislation. The attention by the media and the relatively high number of complaints filed to the Advertising Ombudsman imply considerable public interest in the issue.

Reacting to unaccepted advertising in Sweden is currently based on self-regulation. The self-regulatory organisation is the Swedish Advertising Ombudsman set up as an independent foundation by the industry itself. The Advertising Ombudsman assesses commercial advertising aimed at the Swedish market. It also provides education and spreads information about ethical marketing to reduce unethical advertising.

According to the guidelines of the Advertising Ombudsman, advertising is not acceptable if it is: a) objectifying, that is advertising that portrays men or women as sex objects that can be considered offensive or b) stereotyping, i.e., portrays men or women in a stereotypical way in terms of gender roles and where men or women are represented in a derogatory way. These criteria have a long history and have, with some adjustments, been applied for more than twenty years.

To sum up, Denmark, Norway, Finland and Iceland have regulated gender-discriminatory advertising – either by means of general clause or explicit prohibition – in legislation. It is considered to be an issue under the marketing or consumer legislation in Denmark, Finland and Norway. In contrast, Iceland has chosen to regulate gender discriminatory advertising under equality legislation. Denmark and Finland rely in general clauses, whereas Norway and Iceland have precisely and explicitly phrased and detailed prohibition of gender discriminatory advertising in their legislation, thereby sending a clear legislative signal. The Norwegian Consumer Ombudsman has also provided quite specific guidelines on gender-discriminatory advertising. Supervision is fulfilled by public authorities depending on which legal area the provision belongs to. Sweden is an exception as it has no legislation in relation to gender-discriminatory advertising and has chosen to promote and protect gender equality in advertising by leaving the matter up to a self-regulatory body. Finland and Sweden are the only Nordic countries to have a self-regulatory body, and Finland is the only Nordic country to have both legislation (and supervisory authority to oversee gender-discriminatory advertising) and a self-regulatory body.

Whether or not gender discriminatory advertising is regulated under the Marketing Act or the Gender Equality Act is of course reflected in the scope of the regulation. Consumer legislation applies to advertising in business. Awareness campaigns, general information and business-to-business advertising are beyond the scope the legislation. It has been seen unfortunate that, for example, in Norway, there is no regulatory authority that can consider complaints about awareness campaigns, political speeches, and general information. Self-regulatory bodies both in Finland and Sweden have a wider scope and they can work flexibly.

Some differences seem to occur in the number of handled cases among the Nordic countries. The self-regulatory bodies in Sweden and Finland are able to process a large number of complaints. The Swedish Advertising Ombudsman considers all complaints filed, and it is capable of handling a large number of cases each year (for example, 139 cases in 2015). In the other Nordic countries, the statistics are considerably lower.

However, one cannot draw too many conclusions based on numbers. Precise data is lacking. Furthermore, citizens' insufficient awareness of the procedures to file a complaint concerning advertising found to be gender-discriminatory – or citizens' not even being aware that filing complaints is an option available to them – can be reflected in the numbers. The practices of different institutions can also have an effect on the numbers of complaints. Gender-discriminatory advertising is no priority to the Consumer Ombudsman (which is Finnish, Norwegian, and Danish), a standpoint that is motivated by the low number of complaints. They do not actively follow advertising but mainly rely on consumer complaints.

Legislation in Iceland, Finland, Norway, and Denmark provides the power to impose sanctions on companies that operate contrary legislation. Regardless of legislation and the fact that it is possible to issue injunctions and periodic penalty payments, and to take the matters to court, however in practice, it seldom happens. For self-regulatory bodies, a sanction is negative publicity, that is, "name and shame."

In a comparison of praxis in the Nordic countries, some evident differences can be identified. Firstly, in Denmark, the use of humour has been seen as a mitigating circumstance, as a sign that the advertising is not meant to be taken seriously. In Norway, the use of humour is not a decisive factor. In Finland and in Norway – as well as in Sweden – nudity is allowed as long as the presence of product relevance can be found and there are no other degrading elements. According to the principles applied by the Finnish Council of Ethics in Advertising, nudity as such is not reprehensible, if it does not involve a derogatory manner of representation. More permissive attitudes towards using nudity, sex, and gender roles in advertising have been found in Denmark, where the Consumer Ombudsman allows considerable leeway with regard to the use of nudity and eroticism. The findings of this report suggest that among the Nordic countries, attitudes towards gender-discriminatory advertising are the strictest in Sweden. In general, it can be said that all the Nordic states accept gender stereotypes in advertising on the condition that presentations of gender stereotypes are not highlighted in a particularly lopsided or degrading manner, in spite of the fact that they are all considered to be strongly committed to the CEDAW and its Article 5, which obligates state parties to actively work to eliminate stereotyped roles for men and women.

Women's images are much more exploited in advertising than men's and this is reflected in the complaints and in praxis. The majority of the complaints are based on discrimination against women. Among the advertisements that are assessed as gender discriminatory, the share is even higher. In addition, advertisements in which men

appear to be discriminated against are not condemned. Sweden seems to be the only Nordic country with condemnatory decisions in which the discriminated gender has been male. In Norway, the threshold for applicability of Section 2 of the Marketing Control Act is higher for men in advertising than for the use of women in advertising and the Consumer Ombudsman puts particular emphasis on how an advertisement portrays women while considering the complaints. Generally, it can be alleged that issues related to regulating gender-discriminatory advertising are for the most part dominated by the female aspect and heteronormative culture.

Gender equality in relation to advertising is intrinsically related to conversations about freedom of expression. Gender equality can be seen as a precondition for freedom of expression, that is that everyone has an equal right to enjoy freedom of expression – and vice versa. This demands specific attention to gender equality in the advertising content and the manner in which the advertising is treated and presented. On the other hand, freedom of expression is also used as a counter argument to any introduction of legislation of gender-discriminatory advertising, as in Sweden.

Legislation and self-regulation both have advantages and disadvantages. Even though the system based on self-regulation has many advantages, it can be asserted that legislation would still be needed as a normative measure used by the public authority in order to clearly express that gender-discriminatory advertising is not acceptable. Legislation is a way to provide the option of imposing, along with the suspension of non-compliant advertising and media contents, also penalty payments or other sanctions for those who implement legislation. Since it is possible to have both legislation and self-regulation, perhaps one of the best solutions would be to view legislation and self-regulation as complementary elements and to develop a combination of legislation and self-regulation.

Studies on the influence of gender-discriminatory advertising contents on its audience have shown that the ability to recognise gender discrimination in advertising directly correlates with the audiences' gender awareness and self-esteem. In general, preventive work and raising awareness would be important actions to change attitudes towards gender stereotypes and gender-discriminatory advertising.

The current situation in the Nordic countries is challenging to grasp from a general viewpoint because each country has developed opinions and procedures of its own. However, the Nordic countries share the valuation of the same principles related to gender equality, which could perhaps encourage similar outcomes in discriminatory cases. A common Nordic target could be the clarification of the legislation. It can be

questioned whether legislation should include a clearer definition of “gender-discriminatory advertising” and whether information about the procedure to report gender-discriminatory advertisements needed to be made clearer.

- Key words: gender equality, discrimination, media, advertising, stereotypes, gender roles, public sphere, freedom of speech, Nordic countries.

Abbreviations

CCGE	Complaints Committee on Gender Equality, Iceland
CEDAW	Convention on the Elimination of Discrimination Against Women
CEDAW Committee	Committee on Elimination of Discrimination against Women
CGE	Centre for Gender Equality, Iceland
CM	Committee of Ministers
CoE	Council of Europe
DIHR	Danish Institute of Human Rights
DCO	Danish Consumer Ombudsman
doc.	document
EASA	European Advertising Standards Alliance
EC	European Community
ECC	European Consumer Centre
ECJ	European Court of Justice
EEC	European Economic Community
e.g.	for example
ESC	Equal Status Council, Iceland
ETS	European Treaty Series
EU	European Union
FA	The Feminist Association, Iceland
FCCA	Finnish Competition and Consumer Authority
GEC	Gender Equality Council, Iceland
GMMP	Global Media Monitoring Project
HE	government proposal, Finland
IA	Industrial Association, Iceland
ICC	International Chamber of Commerce
ICC Code	Consolidated ICC Code of Advertising and Marketing Communication Practice
ICPEN	International Consumer Protection and Enforcement Network
i.e.	id est (in other words)

LDO	Gender Equality and Anti-Discrimination Ombud, Norway
MEN	Council of Ethics in Advertising, Finland
MR	Market Council of Norway
MT	Market Court of Finland
NGO	non-governmental organisation
No.	number
OJ	Official Journal of the European Union
p.	page
rec.	recommendation
RO	Advertising Ombudsman, Sweden
RON	RO Jury, Sweden
RTB	The Radio and Television Board, Denmark
TCI	Trade Council of Iceland
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UCPD Directive	Unfair Commercial Practices Directive (2005/29/EC)

1. Introduction

Gender equality is a fundamental value shared by the Nordic countries, and the Nordic countries are known for progressive gender equality policies that top the international rankings for gender equality.¹ Gender equality refers to the equal distribution of power and influence, in which people, irrespective of gender, enjoy the same rights, obligations and opportunities in all spheres of life. Nordic gender equality policies are founded on the notion that equal opportunities for women and men to participate in the development of policy and society are essential for a democratic society.² Through mediatization, modern societies have become saturated by the media. The media plays a crucial role in forming social attitudes, values and behaviour and offers immense potential as an instrument for social change. The media not only conveys meanings about gender but also structures and articulates these and the surrounding discourses.³ Due to its normative power to reflect daily life and to shape our understanding of gender, the media plays a vital role in constructing – or deconstructing – gender equality.⁴

In a modern commercialised society, the advertising industry plays a major part in constructing the media landscape. In the wake of commercialization of the media, lives of consumers have become saturated by marketing and advertising messages. We are constantly exposed to advertisements.⁵ As advertisements have become prevalent in the society, concern and criticism of the ethics of advertising have arisen. Sexist and stereotypical advertising has been a central concern.⁶ The use of sexual appeal and content is a common marketing strategy and the female body is often used as eye catcher. Advertisements have a tendency to offer a limited representation of social

¹ World Economic Forum 2016.

² Nordic Council of Ministers for Gender Equality 2015.

³ Hjarvard 2013.

⁴ Edström & Mølster 2014.

⁵ Malmelin 2003, p. 31-42.

⁶ See for example Paloranta 2014; Martin-Llaguno 2016 and Svensson & Edström 2014. Also Beijing Platform for Action 1995 and Council of Europe Committee of Ministers Recommendation CM/Rec(2013)1 and Parliamentary Assembly of Council of Europe Resolution 1557 (2007) and Recommendation 1799 (2007) on the "Image of women in advertising".

roles and they also create negative portrayals.⁷ Stereotypes are used in advertisements in order to simplify and make ads comprehensible for a broad public.⁸ Generalisation of this type is cut out for creating gender stereotypes and roles that are seen as obstacles to the achievement of gender equality and as a form of discrimination according to the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) adopted in 1979. Widespread, media-driven stereotypes, however, remain common – affecting people’s identities. Gender-discriminatory advertising is known to concern women, but it can just as well concern men. The stereotypical portrayal of women and men in advertising is a problem for both the individual and the society, and combatting gender-discriminatory advertising is a matter of public interest.⁹ The increasing spread and effect of the media, especially digital media, and the role it plays in our lives and particularly in the lives of young people makes it all the more essential to counteract gender-discriminatory representations and actions.

The conception of gender equality is not defined only on the national level but also through membership in international treaties. The comprehensive and farreaching gender equality principles expressed in international treaties, the CEDAW, the Treaty on European Union and, the Treaty on the Functioning of the European Union bind the state parties to securing and promoting gender equality as well as preventing gender discrimination. Further, the Nordic countries have made commitments to address gender discrimination in the media via several instruments, in particular the Beijing Platform for Action, Council of Europe and European Union instruments. These instruments call for actions to combat gender discrimination and gender stereotyping in the media, including advertising.¹⁰

The debate and research related to advertising and gender discrimination started in the Nordic countries in the 1970s when gender equality policies were established. The Nordic countries were forerunners in setting up specialised bodies such as equality councils and other bodies to promote gender equality. Since then all the Nordic countries have taken actions to counteract gender-discriminatory advertising. Despite the actions taken and the positive developments achieved, problems still persist. The

⁷ Sheehan 2014.

⁸ Grau & Zotos 2016; Dyer 1999.

⁹ Svensson & Edström 2014.

¹⁰ CEDAW, United Nations 1995; Svensson & Edström 2014.

assessment of the discriminatory nature of advertising is always tied to the specific time and place and what is considered to be gender discriminatory also changes over time.

The CEDAW Committee has expressed its concern about persistence of the use of gender stereotypes and sexist images of women in the media and advertising in the Nordic region.¹¹ Several NGOs in the Nordic countries have also expressed their concern about the use of sex and erotic imagery in the media and in advertising, which is likely to have an effect on the general view of women and men and provide detrimental role models for boys and especially for young girls. These organisations hope for stronger control by the authorities, training in equality for those in the advertising industry as well as awareness campaigns.¹²

The key role played by the media and the advertising industry in our societies motivates this report, and the conclusion is that eliminating gender-discriminatory portrayals in the media, including advertising, is a precondition for the realisation of de facto gender equality. The media is a vital constituent of democracy, and it has a particular responsibility in this field to promote respect for human dignity and to combat all forms of discrimination and inequality between genders. In constructing role models and tackling the diversity of roles, the media has the power to influence social behaviour and contribute to equality between women and men.

This report deals with the problem of gender-discriminatory advertising and efforts to combat the issue. Advertising is understood as paid communication intended to promote or sell products, services or ideas. The focus is on commercial advertising. Gender-discriminatory advertising refers here to both sexist and stereotypical advertising. The report presents the results of a survey of how gender-discriminatory advertising is regulated in the Nordic countries. The Nordic countries vary in methods used to approach the issue. They have built up institutions in different ways and have chosen different policy measures. Both legislation and self-regulatory actions by the industry itself are included in the survey. The survey was conducted as part of a project on gender equality in the media carried out during the Finnish presidency of the Nordic Council of Ministers for Gender Equality in 2016. Gender equality in the public space,

¹¹ CEDAW Committee 2016, Concluding observations Sweden, CEDAW/C/SWE/CO/8-9; CEDAW Committee 2012, Concluding observations Norway, CEDAW/C/NOR/CO/8; CEDAW Committee 2014, Concluding observations, Finland, CEDAW/C/FIN/CO/7.

¹² See for example The Swedish Women's Lobby 2016b; the Coalition of Finnish Women's Associations 2014 and Nordiskt Forum 2014.

including media and advertising, is an overarching theme and goal in the Nordic co-operation programme on gender equality 2015–2018.¹³

Through a comparative perspective, this report provides a survey of the regulative framework of the Nordic countries, including both legislation and self-regulatory systems, and the policies and praxes related to gender-discriminatory advertising in the Nordic countries. The following aspects are explored: Is there legislation against gender-discriminatory advertising? Are there self-regulatory systems in the industry for gender-discriminatory advertising? How is gender-discriminatory advertising defined? Who and what areas are covered by the regulation? Who supervises the regulation, and how is it supervised? Are there sanctions for gender-discriminatory advertising? Each country is discussed individually with a focus on the context and historical development of the regulation, current legislation and other regulatory means, relevant actors and sanctions. Praxis is discussed with reference to example cases.

The survey conducted for the report was based on previous research and reports on the topic as well on information collected from authorities and other actors in the field during spring and summer 2016. The analysis was supported with several interviews. It should be pointed that the information was collected within a limited timeframe and that systematically collected data on cases and decisions was not available. The report was written by Niina Kosunen in cooperation with Anna-Rosa Asikainen, Guðný Gústafsdóttir, Heidi Haggrén and Karolina Lång.¹⁴ A meeting of experts was organised in Helsinki in November 2016 to discuss the topic and the preliminary results of the survey. Professor Eva-Maria Svensson from the University of Gothenburg, Professor Johan Bärlund from the University of Helsinki and Adjunct Professor Annamari Vänskä from the University of Turku have offered guidance and commented the draft. In addition, following people have offered their expertise: Elisabeth Trotzig, the Swedish Advertising Ombudsman; Gunilla Welander, the Swedish Advertising Ombudsman; PhD Auri Pakarinen, National Audit Office of Finland; Secretary General Paula Paloranta, the Finnish Council of Ethics in Advertising; Kristiina Vainio, the Finnish Competition and Consumer Authority; Jussi Aaltonen, the Finnish Non-Discrimination Ombudsman; Taran Knudstad, the Norwegian Equality and Anti-Discrimination Ombudsman; Eli Baevre, the Norwegian Consumer Ombudsman; Marie Asmunssen,

¹³ Nordic Council of Ministers for Gender Equality 2015.

¹⁴ Section 3.1 on Denmark by Karolina Lång, section 3.2 on Finland and 3.4 on Norway by Niina Kosunen, Section 3.3 on Iceland by Guðný Gústafsdóttir, Section 3.5 on Sweden by Anna-Rosa Asikainen.

the Danish Consumer Ombudsman; Susanne Fischer, the Board of Equal Treatment; Maria Ventegodt Liisberg, the Danish Institute for Human Rights; Professor Caroline Heide-Jørgensen, University of Copenhagen; Kristín Ástgeirsdóttir, the Icelandic Centre for Gender Equality; Ingibjörg Elíasdóttir, the Icelandic Centre for Gender Equality; Rasmus Peter Ring Jonasen, the Greenland Consumer and Competition Authority; Rannvá Signhild Ragnarsdóttir, the Faroese Consumer Ombudsman, and Carita Peltonen, CaPe Consulting.

The report is divided into three main sections. It starts with a discussion of gender-discriminatory advertising and its regulation. This is followed by a review of the existing regulation mechanisms of gender equality and gender-discriminatory advertising in relation to each of the Nordic countries. The section discusses the context and development of the regulation, current regulatory framework and praxis, as well as possible shortcomings and problems. The report ends with a concluding discussion that highlights and analyses differences and similarities between the Nordic countries as well as perceived dilemmas and contradictions. The aim of the section is to give a general idea of policies that pertain to gender-discriminatory advertising in contemporary Nordic countries and to analyse the practices related to gender-discriminatory advertising.

Opinions and conclusions expressed in the report are those of the authors and thus do not necessarily represent those of the Nordic Council of Ministers.

“The lack of gender equality in the media is often seen as an echo of lack of gender equality overall”.¹⁵

¹⁵ Edsrtöm & Facht & Mølster 2014, p. 12.

2. Gender-discriminatory advertising

2.1 Why does advertising matter?

In modern societies the advertising industry plays a major role in the media landscape. Advertising is a huge industry, and in the Nordic region alone advertising investment amounted to over €9 billion in 2015.¹⁶ Advertising spending per capita in the Nordic region is among the highest in the world. There are, however, inter-regional differences. The size of the Norwegian advertising market is almost twice that of Finland.¹⁷ Changes in the media landscape have contributed to a shift where all media have become more and more dependent on advertising.¹⁸ In a commercialised society, advertisements have become an established part of society, creating a “visual wallpaper” that infiltrates and intrudes our lives. We are constantly exposed to advertisements in our daily lives. We may not always pay attention to them, but they, nevertheless, influence us.¹⁹ The power of advertising to influence our minds and shape our behaviour has raised concerns about and criticism of the ethics of advertising.

Advertising is a part of marketing. Advertising is paid publicity with the aim to promote or sell a product, service or an idea. Advertisements are most commonly used by companies to market their products. Also this report focuses on commercial advertising. Traditionally advertisements have been in print, radio and television, but technological development has changed the landscape radically.²⁰ Today consumers increasingly participate on the internet. According to the IRM Institute for Advertising and Media Statistics, since 2013 the internet has been the largest media category in the Nordic region with almost one in three euros going to digital media.²¹ New media technologies are rapidly transforming the media landscape and, thereby, advertising.

¹⁶ IRM 2015.

¹⁷ Ohlson 2015, 16.

¹⁸ Lewis 2016, p. 94.

¹⁹ Thornham, Bassett & Marris, 1999, p. 319; Malmelin 2003.

²⁰ Heide-Jørgensen 2013; Watson & Hill 2006, pp. 2–4; Malmelin 2003.

²¹ IRM 2013 and 2015.

Advertising is communication with the intention to persuade people. To fulfil its objective, advertising is designed to attract audience attention and influence audience behaviour. For this purpose ads not only promote the characteristics of the product or service to be sold, but they additionally sell values, ideas, fantasies and identities. Advertisements often operate with pictures and photographs that tend to be more powerful than words. Advertising is a very influential form of social communication offering a concentrated set of images and ideas. In the process, it normalises and shapes our understanding of reality, our expectations and opinions. Thus advertising is a significant agent of socialisation and identity building.²²

Advertisements often apply images and ideals that have positive connotations and that are familiar in a way that a wide range of consumers can understand them and identify with them – they trade stereotypes. Stereotyped imagery is used in commercials as one of the most popular techniques of persuasion. This method is effective by virtue of its familiarity. Stereotypes are generally accepted features and characteristics attributed to a group. As a simple presentation of complex information, they tend to make sense through generalisations. Because consumers so easily recognise traditional gender roles, they are widely used in advertising. “Gender role” refers to the expectations attached to the behaviour of women or men. By using gender stereotypes, advertising reproduces traditional gender roles in an exaggerated and idealistic way and thereby maintains gender stereotypes.²³

In addition, advertisements tend to reduce people to their gender or equate them with commodities and exaggerated gender-specific qualities. The Norwegian Equality and Anti-Discrimination Ombud have noted that widespread media-driven female stereotypes have become increasingly sexualised over the past three decades.²⁴ Ads use visual images of men and women to attract attention, to persuade. Such portrayals do not necessarily reflect social reality. Erotic images and sexualised female bodies, and, increasingly also male bodies, serve as eye-catchers. A frequently heard slogan is that “sex sells,” but it is most often women’s bodies that are used to sell things. The use of sexual appeal in advertising has been ongoing for decades. This use has become

²² Rossi 2003, Vänskä 2012.

²³ van Zoonen 2012, p. 31–34; Report on the Committee on Equal Opportunities for Women and Men, Parliamentary Assembly Doc. 12267; Magnusson 2008; Rossi 2006; Cortese 2008.

²⁴ The Norwegian Equality and Anti-Discrimination Ombud 2012.

normalised and a part of everyday life.²⁵ Research suggests that, compared to the 1970s, sexism in advertising has somewhat diminished as we have seen a pluralisation of gender roles in the media and advertising. However, it has by no means disappeared. Further, there is emerging concern over media images of women and men with an emphasis on idealised body shapes, appearance, and competitive behaviour. Together with a general sexualisation of the public sphere, ads provide girls and boys with a limited range of role models and affect the body images of children and adolescents.²⁶

By conveying a caricatured image of women and men, advertisements contribute to the legitimisation of everyday sexism and discriminatory practices, and therefore establish a barrier to gender equality.²⁷ It has been stated internationally that the continued projection of negative and degrading images of any gender in media communication – electronic, print, visual and audio – must be changed. Furthermore, it has been recognised that violent, degrading or pornographic media products also have a negative effect on women and their participation in society.²⁸ Moreover, the impact of sexist stereotypes in the media on the formation of public opinion, especially among young people, is disastrous: the stereotypes perpetuate a simplistic, immutable and caricatured image of women and men. Prejudices and stereotypes often lead to discrimination. As such, sexist stereotypes are a means of discrimination.²⁹

2.2 Gender-discriminatory advertising

Gender discrimination means discrimination based on a person's gender or sex. Due to historical power distribution, gender discrimination is often linked to women, but it encompasses any gender. The concept of gender includes the expectations held about the characteristics, aptitudes and likely behaviors of women and men (femininity and

²⁵ Karkulehto 2011; Sheehan 2014.

²⁶ Nordic Council of Ministers 2015; Fjellanger 2014; Vänskä 2012.

²⁷ Report of Committee on Equal Opportunities for Women and Men, Parliamentary Assembly Doc. 12267.

²⁸ UN 1995, p. 99–102; Council of Europe 2007, 2013, 2015, 2016.

²⁹ Report of Committee on Equal Opportunities for Women and Men, Parliamentary Assembly Doc. 12267. Gender discrimination is discrimination against a person or group on the grounds of sex or gender identity. CEDAW defines gender discrimination as follows: "Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

masculinity). Gender is a social and cultural construct that distinguishes differences in the attributes of women and men, girls and boys, and, accordingly refers to the roles and responsibilities of women and men. Gender-based roles and other attributes therefore change over time and vary with different cultural contexts.³⁰ Although gender is most often used to refer to men and women, gender is a more diverse concept than this dichotomy.

Advertising can be gender-discriminatory when it, in one way or another, debases or humiliates any gender. There is no universally accepted definition for gender-discriminatory advertising, not even on the Nordic level, but it is possible to identify certain elements that are considered as gender-discriminatory. International, EU, European, and national legal standards, recommendations and guidelines can provide yardsticks.³¹

There are some common elements that are usually included in definitions of gender-discriminatory advertising. Gender-discriminatory advertising is often divided into sexist and stereotypic advertising. This is also the way the term is used in this report. The term "sexist" refers to reducing men or women to sex objects or using people's bodies to draw attention to a commodity that has nothing to do with the human body. Nudity as such is generally not regarded as sexist. The presentation of women and men in a degrading manner, implying that one is inferior to the other, is generally regarded as discriminating. Stereotypes are harder to judge, however, as they are not automatically discriminating, but they have the potential to be discriminating. Stereotypic marketing is seen as discriminatory if it conveys allegations that one gender is socially, economically or culturally inferior to the other. From the gender equality point of view, the promotion or even strengthening of traditional gender stereotypes counteracts the notion of an equal society, and, consequently, functions as discriminating practice.³²

³⁰ Brodolini, F. G., Giomi, E., Sansonetti, S. & Tota, A. L. 2013, p. 13. UN (UN Women) defines gender as referring to the social attributes and opportunities associated with being male and female and the relationships between women and men and girls and boys, as well as the relations between women and those between men. These attributes, opportunities and relationships are socially constructed and are learned through socialization processes. They are context/ time-specific and changeable. Gender determines what is expected, allowed and valued in a woman or a man in a given context. <http://www.un.org/womenwatch/osagi/conceptsanddefinitions.htm>

³¹ Svensson 2008; Svensson & Edström 2014; Bärlund 2016; European Parliament, Committee on Women's Rights, Report on discrimination against women in advertising 1997.

³² Svensson 2008, 27-28; Bärlund 2016, 115.

The assessment of the discriminatory nature of advertising is always tied to the specific time and place and what is considered to be gender-discriminatory also changes over time. Advertising previously contrary to good marketing practice is not necessarily considered contrary to it today – and vice versa. Further, to determine whether or not an advertisement discriminates against gender depends on the media, time, audience, scope and context. For example, if the medium reaches a large audience, e.g. television or if the advertisement is directed at children and young people, more stringent requirements apply. The effectiveness of advertisements depends on their location (e.g. commercial vs. public media), on their specific characteristic (e.g. print vs. broadcast) and on the particular genre (e.g. news vs. social media).³³ A further difference can be found in whether the public is shown an individual advertisement or a series of advertisements. Finally, the way advertisements come across depends on the societal context and values.

2.3 Regulation of gender-discriminatory advertising

There are several international, European and Nordic obligations to eliminate gender discrimination. Apart from legislation that bans gender discrimination in general, some countries have adopted legislation specifically against gender discrimination in advertising. However, many states have been cautious in the regulation of gender-discriminatory advertising with reference to freedom of expression. Instead, they prefer self-regulatory actions by the industry itself.³⁴ Media self-regulation is often resorted to as a solution to a conflict between public demands for control and media freedom.³⁵

Problems in relation to gender equality and the media have been addressed in the EU and European context several times.³⁶ Over the course of years the European Parliament, the Council of Europe, and the Parliamentary Assembly of the Council of Europe have passed resolutions, for example, on how advertising affects equality between women and men, and how deeply stereotypes presented via advertising can

³³ van Zoonen 2012, p. 31–34.

³⁴ Svensson 2014, p. 99, Svensson & Edström 2014, 484–492.

³⁵ von Krogh 2016, p. 165.

³⁶ Svensson 2014, p. 100, Svensson & Edström 2014, 488–492.

be rooted.³⁷ Furthermore, each of these institutions has adopted recommendations for Member States on gender equality and the media.³⁸ As a guardian of the European Convention on Human Rights, the Parliamentary Assembly of Council of Europe has emphasised the positive role that the media can play in promoting gender equality. The Parliamentary Assembly has invited national parliaments to reinforce their legislation on combating sexist stereotypes and to penalise sexist offences. It has also stated that the media should favour a more balanced and non-stereotyped representation of women and men in the media and promote the gender equality dimension in their regulatory and self-regulatory authorities and training programmes.³⁹

There are obligations and recommendations to states – including the Nordic countries – set by international bodies and treaties that oblige the states to take measures to eliminate gender discrimination and to advance gender equality.⁴⁰ According to international treaties, states are obliged, by all appropriate and specific means, to act for the achievement of the goals set. According to Article 5 of the CEDAW, parties must take all appropriate measures, including legislation, “to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”⁴¹ It is noteworthy that gender stereotypes are, in this context, defined as gender discrimination.⁴² The CEDAW was adopted in 1979, and it has been ratified by all the EU Member States. In addition, the UN Beijing Platform for Action from 1995, although not a legal text, provides a commitment by its signatories. It calls for action against gender stereotypes in public and private life and has a separate objective (J2) concerning the promotion of a balanced and non-stereotyped portrayal

³⁷ See for example the following resolutions: The Council Resolution of 5 October 1995 on the image of women and men portrayed in advertising and the media, OJ C 296, 10.11.1995, p. 15–16; The Parliament resolution of 25 July 1997 on discrimination against women in advertising, OJ C 304, 6.10.1997, p. 60; Resolution 1557 (2007) of the Parliamentary Assembly of the Council of Europe, “Image of Women in Advertising” 26.7.2007; European Parliament resolution of 3 September 2008 on how marketing and advertising affect equality between women and men, OJ C 295E, 4.12.2009, p. 43–46.

³⁸ See all recommendations: Recommendations and Resolutions of the Parliamentary Assembly of the Council of Europe in the fields of media and information society 2015.

³⁹ Report of Committee on Equal Opportunities for Women and Men, Parliamentary Assembly Doc. 12267.

⁴⁰ For example, CEDAW is this kind of human right treaty. Read more: European Parliament 2011, s. 6.

⁴¹ This article has been used successfully by women’s organizations to challenge sexist advertising.

⁴² Svensson & Edström 2014, 484–492. Hellum & Aasen 2013, p. 588–624.

of women in the media. In addition, many EU directives have brought about the development of national regulation concerning gender equality.⁴³

The industry also regulates itself. The International Chamber of Commerce (ICC) has been a major actor in setting rules in the ever-changing landscape of modern marketing and advertising since 1937. The main advocacy focus of the ICC Commission on Marketing and Advertising is to promote effective self-regulation around the globe and to function as an instrument of self-regulation in economic and business life, with the intention of creating a high ethical standard in all advertising.⁴⁴ The ICC Advertising Code serves as a basis for self-regulatory systems around the world. Article 4 “Social Responsibility” of the Code states: “Marketing communications should respect human dignity and should not incite or condone any form of discrimination, including that based upon race, national origin, religion, gender, age, disability or sexual orientation.”⁴⁵

In Europe, the variations in the scope and content of national codes and pressure from the European Commission led in 1992 to the establishment of the European Advertising Standards Alliance (EASA), which seeks to coordinate and set standards for advertising in the form of recommendations.⁴⁶ Several European countries have a self-regulatory body that works as either the only supervisory institution or as a supplementary institution parallel to legislation.⁴⁷ However, there appear to be differences in the operation of self-regulatory bodies in different European countries.⁴⁸

⁴³ For example, as a part of the amendment of the Norwegian Market Control Act in 1997, the Committee appointed to undertake a review also considered whether the Norwegian Marketing Control Act of that time was in accordance with the Directive of the European Parliament and of the Council on the pursuit of television and radio broadcasting activities (TV Broadcasting Directive, 89/552/EEC), which contains a provision that provides authority for prohibiting TV advertising that includes any discrimination on grounds of sex. Moreover, in Finland, the UCPD Directive (2005/29/EC) was implemented by amending the Consumer Protection Act of Finland (amending act no. 561/2008). Although the UCPD Directive aims to protect only the economic interest of consumers and does not include any obligation to Member States to set rules regulating commercial practices or to address legal requirements related to taste and decency, in the Finnish Consumer Protection Act (38/1978) the scope of Chapter 2 has been extended beyond the original purview of the Directive.

⁴⁴ International Chamber of Commerce 2011, p. 2.

⁴⁵ International Chamber of Commerce (ICC) Consolidated Code of Advertising and Marketing Communication Practice (2011).

⁴⁶ European Advertising Standards Alliance.

⁴⁷ Pakarinen & Tala 2009, p. 41. Prohibitive provision of gender discriminatory advertising is adopted, for example, in Finland, Spain, Portugal and Poland.

⁴⁸ Pakarinen & Tala 2009, p. 41. Operation of self-regulatory bodies in European countries may differ, for example, in competence and extent of operation.

The Nordic countries have addressed the problem of gender-discriminatory advertising by means of legislation or have left it up to the marketing sector in the form of self-regulation. However, the Nordic countries have chosen different ways of regulating gender-discriminatory advertising, which will be discussed next.

3. Nordic countries

In the Nordic countries gender-discriminatory advertising has been on the public agenda since the 1970s, a period when the Nordic countries developed regulation related to the area. However, the way gender-discriminatory advertising is regulated differs among countries. Adopted solutions can be categorised into legal provisions for marketing, consumer protection and gender equality legislation that are either supplemented or replaced with self-regulation.⁴⁹

Although the development of regulation – both legislation and self-regulation – related to gender-discriminatory advertising has proceeded in divergent ways and has led to different solutions, in every Nordic country the starting point can be found at the time when equality legislation was adopted.⁵⁰ Since then, there has been variation in the debate on the issue among the Nordic countries in terms of the theme, tone and intensity of the discussion. The debate has evolved around the effectiveness of the regulation, the proper authority to supervise and sanction gender-discriminatory advertising, the relation between freedom of expression and gender equality and the scope of application of regulation related to gender-discriminatory advertisements (whether it is adequate to apply regulation only to business-to-consumer advertising but not to business-to-business advertising or to educational presentations). In addition, the pace of the development of regulation related to gender-discriminatory advertising has differed among the countries and, as will be shown later on, more measures are required in order to guarantee gender equality between women and men.

⁴⁹ For instance, Finland not only has legislation and a supervisory authority but also a self-regulatory body.

⁵⁰ Adoption of gender equality legislation in the Nordic region: Iceland 1976, Denmark 1978, Norway 1979, Sweden 1980, Finland 1986, the Åland Islands in 1989 with a provincial act regulating the application of the Finnish Gender Equality Act, the Faroe Islands in 1994 and Greenland in 1998/2003.

3.1 Denmark

Denmark has legislation that prohibits gender-discriminatory advertising both in the name of gender equality and good marketing practices. The regulation of gender-discriminatory advertising in Denmark is mainly based on the Marketing Practices Act (*markedsføringsloven*). In addition, the Gender Equality Act (*ligestillingsloven*) and the broadcasting legislation is applied to discriminatory advertising. The legislation is supervised by independent authorities; the supervising authorities are the Danish Consumer Ombudsman (DCO, *Forbrugerombudsmanden*), the Danish Board of Equal Treatment (*Ligebehandlingsnævnet*) which operates under the Danish National Social Appeals Board (*Ankestyrelsen*), and the Radio and Television Board (*Radio- og tv-nævnet*). Public debate takes place in the media about gender-discriminatory advertising, but this has not been reflected in national politics and the last time gender-discriminatory advertising was brought to the attention of the Danish Parliament was in 2007. The minister in charge at that time saw no need for changes to regulation.⁵¹

The Danish Marketing Practices Act does not have any special provision on gender-discriminatory advertising, but a general provision in Section 1(1) states that traders shall exercise good marketing practice with reference to consumers, other traders and public interests. The DCO oversees compliance with the provisions of the Act. Good marketing practice is further developed in the guidelines published by the Consumer Ombudsman. The guidelines on gender-related advertising outline good marketing practice in relation to gender-related advertising. In the guidelines gender-discriminatory advertising is defined as advertising in which a gender is represented in a derogatory way or is given the impression that one gender is subordinate to or less competent than the other.

The Radio and Television Board processes complaints about advertising on television and radio according to the broadcasting legislation. The Board of Equal Treatment⁵² processes complaints about gender discriminatory advertising under the Gender Equality Act, but only if the complainant has an individual and actual interest in a concrete case.

⁵¹ Ministeren for ligestilling 2007.

⁵² The Board of Equal Treatment considers complaints of differential treatment on the grounds of gender, race, color, religion or belief, political opinion, sexual orientation, age, disability, or national, social or ethnic origin. Outside the labor market, the board considers complaints and issues related to discrimination based on race, ethnic origin and/or gender.

3.1.1 *Historical development*

Awareness of consumer rights emerged in the 1970s. Denmark has had legislation on good marketing practices since 1974, and the DCO office was opened in 1975.⁵³ The current Marketing Practices Act is from 2013.⁵⁴ The latest extensive amendment is from 2005.⁵⁵ As gender-discriminatory advertising has been regulated under a general provision on good marketing practice, the guidelines issued by the DCO have been significant in defining and regulating gender-discriminatory advertising. The first guidelines on gender-related advertising were published in 1979 by the DCO. Adoption of the guidelines was linked to the women's movement and the concern over sexist and stereotypic portrayal of women in advertising.⁵⁶ These guidelines were revised in 1993 and 2012.⁵⁷

Efforts made towards the regulation of gender-discriminatory content and sexism in advertising is strongly linked to the development of gender equality in the international context. Women's rights appeared on the political agenda in Denmark in the 1960s, leading to the introduction of gender equality legislation in the 1970s. A law mandating equal pay for men and women was passed in 1976 and a law mandating equal treatment in 1978. The development of Danish gender equality legislation has been influenced by the European Community and the UN. Gender equality was also a theme for debate at the 28th Nordic lawyers' meeting in Copenhagen in 1978. Pressure from the UN International Women's Year in 1975 and Nordic examples led to the establishment of a governmental equal opportunities body, the Equal Status Council (*Ligestillingsrådet*) in 1975, which was formalised in law in 1978.⁵⁸ The Council processed all cases of gender discrimination, but there was a clear focus on gender discrimination in the labour market.⁵⁹ When the Gender Equality Act was reformed in 2000, the Equal Status Council was abolished and the Gender Equality Board (*Ligestillingsnævnet*) was

⁵³ Denmark enacted an act in 1937 called the Competition Law, which had a provision on good practices. The modern, consumer-inspired regulation dates back to the law from 1974.

⁵⁴ A new Marketing Practices Act is in the process of enactment at the moment (2016). There will still be a clause on good marketing practices.

⁵⁵ Bill for Marketing Practices Act, 2005.

⁵⁶ Hjulmand Bundgaard & Toftdal Pedersen 2010.

⁵⁷ Heide-Jørgensen 2013, p. 465.

⁵⁸ Betænkning om det fremtidige ligestillingsarbejde og dets organisering.

⁵⁹ Danmarkshistorien.dk.

founded instead.⁶⁰ The Gender Equality Board was replaced by the Danish Board of Equal Treatment in 2009 and is the current body for complaints on the grounds of discrimination.⁶¹ The goal was additionally to improve the complaint filing process for the individual citizen. At the same time, the scope of the Board was broadened to include multiple discrimination grounds.⁶²

3.1.2 Current situation

Danish legislation on gender-discriminatory advertising is mainly based on two acts: the Marketing Practices Act (*markedsføringsloven*) and the Gender Equality Act (*ligestillingsloven*). In addition to these, the executive order on advertising and sponsorship of programmes on radio, television and on-demand audiovisual media services and in partnerships (Advertising Order, *reklamebekendtgørelsen* BEK nr 801 af 21/06/2013) also regulates advertising, however, only on radio and television and their online counterparts.

Gender-discriminatory advertising is not prohibited *per se* in the Marketing Practices Act. Instead there is a general prohibition, a general provision, on breaching good marketing practices as prescribed in Section 1 of the Act as follows: “Traders subject to this Act shall exercise good marketing practice with reference to consumers, other traders and public interests.” Act applies to private business activity and to public activity to the extent that products and services are offered in the market. Good marketing practice is assessed case by case and by an assessment of the overall elements of the advertising in question. According to the Marketing Practices Act (Section 20), violations can lead to an injunction against the advertising in question, and the party breaking the law can be sanctioned to pay damages according to the principles of Danish civil law.

Good marketing practice is a legal standard evolving over time in line with trends in society. What good marketing practice is further defined in the guidelines by the DCO. The DCO is an independent public authority appointed by the Ministry of Industry, Business and Financial Affairs supervising the Marketing Practices Act. Its competence is specified in the Marketing Practices Act. The guidelines have a strong

⁶⁰ Danmarkshistorien.dk.

⁶¹ National Social Appeals Board, <https://ast.dk/>.

⁶² Blomqvist (n.d.)

normative value. The role of the guidelines is specified in the Marketing Practices Act (Section 24): “the Consumer Ombudsman will seek to influence the conduct of traders by the preparation and issue of guidelines for marketing in specified areas that must be considered important, especially in the interests of the consumer.” This is seen as a way to work preventively to avoid marketing practice that breaks the law. Gender-discriminatory advertising is defined in the Consumer Ombudsman’s guidelines on gender-related advertising of 1 April 2012 (discussed below in this section). The guidelines on gender-related advertising are intended to define clear and precise directions with a view to ensuring genuine and fair competition among traders and to ensure the protection of consumers from illegal gender-related advertising. Gender-related advertising is defined as advertising in which gender plays an important role or in which nudity or eroticism constitutes significant effects.⁶³ The guidelines were drafted in co-operation with many different organisations, such as trade associations and non-governmental organisations that work in the fields of the guidelines in question. The guidelines are to be evaluated in 2017.

The guidelines are used when interpreting whether an advertisement is gender-discriminatory or not. The assessment of whether or not a gender-related advertisement complies with good marketing practice depends on an individual assessment and includes not only consideration of the content and design but also context, effects used, target group, time and place of publication, as well as the accessibility of the advert. The DCO uses the ICC Code and includes relevant practice from the Radio and Television Board in the assessment of the legality of gender-related advertisements. According to the guidelines, commercial freedom of speech provides considerable leeway in advertising, however, it is subject to considerations of public interest, such as combatting gender discrimination in accordance with the Gender Equality Act. The guidelines refer not only to commercial freedom of speech but also to consideration of the public interest and the Danish Gender Equality Act. Freedom of speech is protected by Section 77 in the Danish Constitution. Gender-based discrimination on the other hand, is not mentioned in the Constitution, which is exceptional in the Nordic context.⁶⁴

⁶³ Guidelines on gender-related advertising of 1 April 2012 p. 2.

⁶⁴ Heide-Jørgensen 2013. Finland and Sweden explicitly mention gender-based discrimination. Norway and Iceland have a more universal prohibition of discrimination in their Constitution.

The guidelines define the following criteria for gender-discriminatory advertising (see 4.1 in the guidelines):

- The gender is represented in a derogatory or contemptuous manner.
- Nudity or eroticism is included in a manner appearing to be derogatory or contemptuous to the relevant gender.
- The advertisement gives the impression that the role of one gender is socially, financially or culturally subordinate to the other gender.
- The advertisement gives the impression that one gender is less competent, less intelligent or less suited to perform tasks that both genders can perform equally well physiologically.
- The advertisement gives the impression in a derogatory or contemptuous manner that one gender has special negative personality traits or characteristics.⁶⁵

The DCO has emphasised that what is considered appropriate changes over time and that the current state of the media provides considerable leeway for gender-related advertising.⁶⁶ Nudity and eroticism are in general permitted even if they do not have a natural relation to the advertised product or service. According to the guidelines, the general state of fashion and the media allow considerable leeway in this regard. The first guidelines from 1979 required that the use of nudity had some relevance to the advertised product, but this requirement was dropped in connection with the modernization of the guidelines in 1993. The current guidelines consider the use of nudity and eroticism also under the requirements for decency and social responsibility. The use of these elements is considered indecent if it is “unquestionably suited to cause offense.” According to the guidelines, the use of humour, satire, caricature, irony and stereotypes can signal that the advert is not to be taken seriously and thereby does contribute to gender discrimination. However, these elements can also have the opposite effect.⁶⁷

⁶⁵ Guidelines on gender-related advertising of 1 April 2012 p. 4.

⁶⁶ Guidelines on gender-related advertising of 1 April 2012. See also case descriptions by the Danish Consumer Ombudsman.

⁶⁷ Guidelines on gender-related advertising of 1 April 2012 p. 4.

Children are provided with extra protection; in the event that gender-related advertising is directed at children, more stringent requirements apply. Additionally, it is stated separately that an advertisement using men's or women's fantasies about or the possibility of sex in a work-related context as an effect may be degrading and affronting.⁶⁸ This is motivated by the public interest in combatting sexual harassment in the workplace.

Complaints regarding violation of the Marketing Practices Act are considered by the DCO. Complaints to the DCO are made using an online form available on its website. Both individuals and organisations can complain to the DCO, but it is not possible to make anonymous complaints.⁶⁹ The DCO goes through all the complaints. From the beginning of 2014 until November 2016 the DCO received around 75 complaints on matters regarding gender-discriminatory advertising, with quite a few of them about the same ads. Fifteen of the complaints were filed by the online initiative *Reklamé* where anyone can send a picture of an advertisement they find discriminating and the people behind the online initiative will write a complaint based on that. A total of 75 complaints is a fairly low number considering that the DCO receives around 6,000 complaints per year. When investigating complaints and defining focus areas, the DCO considers how many complaints it has received, the gravity of the problem for an individual consumer, and the generality of the problem. Due to the small number of complaints, the DCO has decided to not have gender-discriminatory advertising as its annual focus area.⁷⁰ The DCO strives to work in a preventive way through information campaigns and education.

If the Consumer Ombudsman sees that an ad is gender-discriminatory, she first tries to get the party responsible for the advertisement to withdraw it. The DCO is authorized by law to bring civil and criminal actions on behalf of complainants, but they may also request the police to initiate an investigation and to prosecute a trader. The DCO has the authority to issue an interim injunction in situations where it is crucial to sustain a case against a trader when waiting for a court order would otherwise result in failure of the whole purpose of bringing an injunction. Furthermore, the DCO has mandate to bring collective redress actions on behalf of groups of consumers.⁷¹ To this

⁶⁸ Ibid.

⁶⁹ Information from the website of the Danish Consumer Ombudsman.

⁷⁰ E-mail from the office of Danish Consumer Ombudsman 22 November 2016.

⁷¹ E-mail from the office of Danish Consumer Ombudsman 11 July 2016.

day, the DCO has only once taken one company to court. This took place in 1982. The DCO argued that women in the advertising were portrayed as objects and that the company had not stopped the use of the advertisement despite the request made by the DCO.⁷² The company was prohibited to use scantily clad women in the advertisement.

Greenland and the Faroe Islands have a Marketing Practices Act similar to the one in Denmark. The Faroese Marketing Act (*Løgtingslóg nr. 19 frá 8. Mai 2008 um marknaðarføring*) is supervised by the Faroese Consumer Ombudsman (*Brúkaraumboðið*).⁷³

Chapter 2 of the Danish Gender Equality Act prohibits gender discrimination and sexual harassment. The prohibition of gender discrimination includes both direct and indirect discrimination. The Gender Equality Act covers all employers, authorities, public organisations and authorities and organisations that offer goods and services to the public. This includes non-commercial actors. The Act does not explicitly refer to the media or advertising, but it has been applied to sexist advertising in Denmark.

The authority for complaints regarding gender-discriminatory advertising under the Gender Equality Act is the Board of Equal Treatment at the National Social Appeals Board. It is a quasi-judicial administrative board that covers all grounds for discrimination mentioned in the related EU directives. The Board of Equal Treatment explicitly specified in a case from 2014 that gender-discriminatory advertising is also subject to the Gender Equality Act.⁷⁴ However, the Act on the Board of Equal Treatment was amended in 2015 with effect from 1 January 2016 so that the Danish Board of Equal Treatment can only consider complaints if the complainant has an individual and actual interest in the concrete case (Section 1). This means that it is not sufficient for the complainant to belong to a group of persons who may have been discriminated against. As a consequence, the Board of Equal Treatment, as a rule, no longer has the competence to handle complaints from individual complainants about advertisements. This decision in principle was confirmed in a meeting in April 2016. This has effectively put an end to complaints since it is practically impossible to show that one has been personally affected by an advertisement. The Board of Equal Treatment rejected 12

⁷² Forbrugerombudsmanden mot Daniart Laedermobler ApS.

⁷³ E-mail from the office of the Faroese Consumer Oombudsman, 10 October and 27 December 2016; e-mail from the office of the Greenlandic Consumer and Competition Authority, 1 November 2016.

⁷⁴ Ligebehandlingsnaevnet, Case 2013-6811-42250.

complaints regarding advertising in 2016 on the grounds that the complainant did not have an individual and actual interest in the case. In total, the Board has decided on 15 cases relating to advertising in 2014–2016. In 2014, the Board issued its decision on 3 cases. None of these cases were found in favour of the complainant (see the discussion of the Board’s case law below in this section).⁷⁵

To balance this limitation, the Danish Institute of Human Rights (DIHR, *Institutt for menneskerettigheder*) was granted the right to bring a complaint to the Board as stated in Section 1 of the Act on the Board of Equal Treatment. The DIHR provides advisory services for citizens and conducts research on the implementation of human rights in Denmark and abroad. Equal treatment of women and men is within its mandate.⁷⁶ DIHR has the opportunity to file complaints to the Board of Equal Treatment of principle matters that are of importance to the public. Whenever the Board of Equal Treatment rejects a case on the basis that the complainant does not have a personal interest in the case, the Board notifies the DIHR and the complainant of the competence of the DIHR. However, if the DIHR does not bring the complaint before the Equal Treatment Board, the complainant has to file a separate complaint with the DCO instead. So far, the DIHR has used its new competence to bring two complaints to the Board, but these complaints were not about advertising.⁷⁷

Gender-discriminatory advertising is also governed by the Radio and Television Broadcasting Act. The Act is supplemented with the Advertising Order that contains more specific rules on advertising (*reklamebekendtgørelsen*). It states that all advertising should be decorous, honest, made with social responsibility and in compliance with the Marketing Practices Act. Section 9 forbids discrimination, including gender-based discrimination. The sanction for breaking the Advertising Order is penalty payments. The Radio and Television Board (RTB) is an independent regulatory authority appointed by the minister of culture and is in charge of supervising the implementation of broadcasting legislation.⁷⁸ The competence of the RTB is specified in the Radio and Television Broadcasting Act (*lov om radio- og fjernsynsviksomhed*). The Board deals with complaints, but does not monitor. through

⁷⁵ The Board of Equal Treatment, Denmark, e-mail 31 August 2016.

⁷⁶ The Danish institute of Human Rights – Mandate, <https://www.humanrights.dk/about-us/mandate>

⁷⁷ The Danish institute of Human Rights, interview 1 November 2016.

⁷⁸ Danish Agency for Culture and Palaces, <http://slks.dk/medier/radio-og-tv-naevnet/>

the RTB the complaint is addressed to the broadcasters. The RTB has in the recent years handled one or fewer cases on gender-discriminatory advertising per year.⁷⁹

3.1.3 Case examples

In this section, some cases that have attracted a lot of media attention or cases of significance will be discussed. The cases can easily be found in Danish on the webpages of the DCO and the web page of the Board of Equal Treatment. The latest case on gender-discriminatory advertising where the DCO decide to take the case to court was in 1 in 1982 (see previous section).⁸⁰

A Danish private hospital that advertised plastic surgery for breast augmentations stirred a lot of controversy in the media. The company published pictures of nude breasts on several of the buses of one of the biggest public transport companies in Denmark. The pictures were accompanied by the text: "New breasts?" or "XX (name of the city) gets more beautiful." The private hospital published these pictures on several occasions in 2014. The DCO received a number of complaints about this ad. The DCO, however, did not find the advertisement to be a breach of good marketing practice. It referred to the stand taken by the National Board of Health that the advertisement did not violate the law on marketing of medicinal products since there was a clear link between the breasts and the advertised product (breast augmentation) and it did not have sexual undertones and did not give false information.⁸¹

Case 14/0723:6

In 2014 a private hospital advertised plastic surgery by publishing pictures of nude breasts on buses and a text saying either "New breasts?" or "XX (name of the city) gets more beautiful".

Advertisements are rarely found gender discriminatory in Denmark. One of the few cases was a case from 2008 where an underwear company had four different pictures of scantily-clad women in professional environments, such as in an office and in a hospital,

⁷⁹ See yearly reports by the RTB.

⁸⁰ Forbrugerombudsmanden mot Daniart Laedermobler ApS, M 2/1982.

⁸¹ DCO, Case 14/0723:6.

smelling male underwear that appeared to have been left behind by a man. The DCO received several complaints of the ads. The DCO found that although the current state of fashion and the media provides considerable leeway for using elements of sex in advertising, the advertisements presented women in a derogatory and contemptuous manner and, thereby, violated good marketing practice. The DCO reasoned that due to the sexual posture of the women appearing together and the focus on a sexual act and underwear, the advertisements reduced women into sexual objects. In its reasoning, the DCO also took into consideration the large number of complaints about the advertisements it had received, as well as the consideration that the advertisements could potentially harm the professional groups in question and hamper the efforts to break gender barriers in society, especially in the labour market.⁸²

Case o8/02166

An underwear company published four different pictures of professional women (nun, nurse, maid and secretary) scantily dressed sniffing male underwear. The ads gave the impression that the women had just had sex with a man who had left the underwear behind him. The women were pictured in a typical working environment, that is, the nurse was lying on a hospital bed, the secretary was sitting on a printer, etc.

None of the cases considered by the Board of Equal Treatment in 2014–2016 were found in favour of the complainant. The complaints were either dismissed because they were not found to be gender discriminatory or because of lack of competence. One of the cases processed by the Board of Equal Treatment was an advertisement for an energy drink. In the advertisement, a woman posed with her back to the camera wearing only string underpants and the text: “30 grams of protein... Nice ass in sight... #vitalisthenewstrong”. The Board of Equal Treatment found that the advertisement did not violate the prohibition of gender discrimination in the Gender Equality Act. In its decision the Board referred to commercial freedom of speech and to the guidelines on gender-related advertising by the DCO. The Board concluded that the advertisement was not derogatory as it neither degraded the woman nor her position.⁸³

⁸² DCO, Case o8/02166.

⁸³ The Board of Equal Treatment, Case 2014-6811-42329.

Case 2014-6811-42329

An energy drink company published an advertisement with a picture of the backside of a woman. The woman is wearing only string underpants. The picture has the text "30 grams of protein... Nice ass in sight... #vitalisthenewstrong".

The DCO used the argument of humour and irony when it dismissed a case regarding gender discrimination in a television commercial and print ads. The commercial and ads were centered on a woman who misunderstood football terms. At the end of the commercial and ads, it said: "There is so much women don't understand." The DCO judged, based on an overall assessment, that the commercial and ads contained a considerable element of humour and irony both in text and image. According to the DCO, the clichéd slogan, lopsided text and stereotypical images of women signalled that this advertising was not meant to be taken seriously. The DCO concluded that it was not intended to contribute to gender discrimination and, therefore, did not violate good marketing practices.⁸⁴

Case 12/03319

A company ran a number of commercials on TV and advertised in print media with the slogan "There is so much women don't understand." In the advertisements, women were pictured in situations where they – unfamiliar with the football terms – misunderstood a number of football expressions because they took them literally.

The RTB processed a complaint of gender discrimination about a television commercial for a fitness company in 2014. In 2014, the RTB processed 13 complaints in total.⁸⁵ In the commercial, a woman was sawing a sofa in half with a chainsaw. The woman was sweaty and very scantily dressed in sports clothing. The RTB found that even though the woman functioned as an eye-catcher while being so scantily dressed, she nevertheless showed independence and was an active subject. The RTB concluded that

⁸⁴ DCO, Case 12/03319.

⁸⁵ RTB Årsberetning 2014.

the woman was not reduced to a sexual object and, therefore, the commercial did not violate the prohibition of gender-discriminatory advertising.⁸⁶

Case 2014-001065

A fitness centre advertised gym membership with a TV commercial where a scantily dressed, sweaty woman in sport clothes saws a sofa in half with a chainsaw. The speaker on the background urges to battle against the sofa.

3.1.4 *Discussion*

Denmark has a fragmented legal framework in the field of gender-discriminatory advertising, including both the Marketing Practices Act and the Gender Equality Act and, in addition to these, there is also separate legislation in the field of advertising on radio and television.⁸⁷ There are three authorities, the Danish Consumer Ombudsman, the Board of Equal Treatment and the RTB, that process complaints about gender-discriminatory advertising, which can be confusing for citizens.

Gender-discriminatory advertising is mainly regulated under the Marketing Practices Act. The Act has a general provision on good marketing practices. Good marketing practice is not specified in the Act, and there is no specific reference to gender discrimination. Instead, gender-discriminatory advertising is specified in the guidelines on gender-related advertising provided by the DCO. Gender discrimination is also prohibited by the Advertising Order. In addition, the Gender Equality Act applies to the regulation of gender-discriminatory advertising. The Gender Equality Act prohibits both indirect and direct (Section 2) discrimination based on gender, which gives the Act a broader scope than that of the Marketing Practices Act.

The DCO is, to this day, the main authority on matters of gender-discriminatory advertising. In addition the RTB also considers cases about gender-discriminatory advertising based on broadcasting legislation. The fact that the Danish Institute of Human Rights (DIHR) now also monitors discriminatory gender-related advertising can be seen as positive since the DIHR is very highly regarded due to its expertise in the

⁸⁶ RTB, Case 2014-001065.

⁸⁷ Such as separate legislation in the field of advertising on radio and television.

human rights perspective on gender equality matters. However, it is still too early to know what the consequences of the change in the competencies of the Board of Equal Treatment and DIHR will be. As of this writing, the DIHR has not exercised its new competence regarding gender-discriminatory advertising. At the same time, many complaints have been filed with the Board of Equal Treatment that do not fulfill the requirements for actual personal interest and thus end up being dismissed.

Complaints on gender-discriminatory advertising are rarely found in favor of the complainant in Denmark, and there have been only a few cases. The complaints usually concern advertisements with nudity or erotic content. However, the DCO allows a lot of leeway in this regard with reference to the current media atmosphere. According to the guidelines issued by the DCO, nudity and eroticism are discriminatory if displayed in a derogatory or contemptuous manner. When evaluating the decency of such ads, the DCO also considers "if the advertisement is unquestionably suited to cause offence."⁸⁸ Looking at the cases processed by the DCO, complaints are often dismissed with reference to current media and fashion imagery. This is a development also noted in the research literature.⁸⁹ This can be seen as normalizing and contributing to nudity and sexual content in advertising. In addition, humour, irony and the use of stereotypes are often interpreted to mean that the advertisement is not meant to be taken seriously and, therefore, is not intended to be gender-discriminatory. As a result, advertisements that portray one gender as less competent and in a stereotypical way can be accepted, such as the advertisement discussed earlier in this section with the slogan "There is so much women do not understand".

The current situation and the decisions by the DCO have stirred vivid public debate about what is really seen as gender-discriminatory advertising by the authorities. There is, for example, a Facebook page where pictures of advertisements that are regarded as gender discriminatory can be posted. At the same time, some NGOs that focus on women's rights try to find a balance between speaking up against gender-discriminatory advertising and not creating media attention for the advertisements they find despicable. There is a paradox in the fact that you are allowed to show naked breasts on advertisements but not breastfeed in a café.⁹⁰ The Danish Women's Society (Dansk Kvindesamfund), the oldest NGO in Denmark that works with women's rights,

⁸⁸ Guidelines on gender-related advertising of 1 April 2012, p. 5.

⁸⁹ Kristoffersen 2010, pp. 61-63; Bärnlund 2016, pp. 122, 129-130.

⁹⁰ Interview with Dansk Kvindesamfund 1 November 2016.

has also prepared pre-filled applications for complaints so that consumers can report gender-discriminatory advertising more easily.

A potential challenge to combating gender-discriminatory advertising that has not been discussed in this section is the fact that at least one major channel on Danish television is broadcast from another country and, therefore, is not within Danish jurisdiction. This problem is also found in other Nordic countries. This creates a challenging situation for consumers if discriminatory advertising occurs on the channel. The same dilemma also exists for advertisements in online On-Demand services that are outside the Danish jurisdiction.

3.2 Finland

In Finnish media, every now and then conversation related to suitable solutions and the proper supervisory authority to promote and supervise gender equality in the advertising industry arises, but, at the moment, there is no specific debate going on. Speculation on whether gender-discriminatory advertising should be regulated under the Equality Act (609/1986, *laki naisten ja miesten välisestä tasa-arvosta*) or the Consumer Protection Act (38/1978, *kuluttajansuojalaki*) has also been a part of the discussions. The current situation is that regulation concerning gender-discriminatory advertising is based on the Consumer Protection Act, and the supervisory authority is the Consumer Ombudsman (*Kuluttajansuoja-asiamies*) of the Finnish Competition and Consumer Authority (FCCA, *Kilpailu- ja kuluttajavirasto*), which supervises the lawfulness of marketing. Another important part of the Finnish regulatory framework is the self-regulatory body, the Council of Ethics in Advertising (MEN, *Mainonnan eettinen neuvosto*) that applies the Consolidated ICC Code of Advertising and Marketing Communication Practice (ICC Code) which MEN has supplemented with its own principles. In other words, in Finland the advertising industry is monitored by both a public authority and a self-regulatory body.

In Finland, advertising or marketing is considered to be gender discriminatory if it is clearly in contravention with generally accepted social values (i.e. inappropriate) and if one gender is portrayed in an offensive way.⁹¹ Just the fact that some individuals

⁹¹ Paloranta 2008, p. 185, 190.

might find the advertising offensive does not mean that the advertising is inappropriate.⁹² Therefore, the assessment of the discriminatory nature of advertising is always tied to time and place, as what is considered to be inappropriate changes from time to time. In addition, ICC rules concerning gender-discriminatory advertising are applied accordingly to relevant actor(s).⁹³

As a member of a number of international conventions, Finland is committed to following the principles set forth by these conventions regarding equality and non-discrimination, including the prohibition of discriminatory advertising and marketing.⁹⁴ Following a Nordic tradition of pro-fundamental rights development, Finland has, at times, applied stricter regulation than the international obligations have required. Gender-discriminatory advertising is a good example of this development where values have strongly affected the way Finland regulates or interprets regulation. Commercial advertising is not at the core of protection of freedom of speech (Constitution of Finland, Section 12), and, in this regard, this freedom has been circumscribed because of the public importance that discriminatory advertising has.⁹⁵

3.2.1 *Historical development*

The problem of advertisements as a great power to create, promote and maintain stereotypes was recognised when images of women began to be portrayed with an erotic tone in advertisements in the 1960s. Men were not targets of this eroticising until around the 1990s.⁹⁶ Prohibitive provisions concerning gender-discriminatory advertising were negotiated in the 1980s when drafting of equality legislation began in Finland. During the procedure for the drafting of equality legislation⁹⁷ in 1986, the power of advertising to create and maintain certain attitudes was recognised, and it was discussed whether the prohibition of gender-discriminatory advertising should be

⁹² Peltonen & Määttä 2015, p. 91.

⁹³ E.g. Council of Ethics in Advertising (MEN). MEN's role and status in Finland is discussed in more detail in the following sections of this report.

⁹⁴ It is worth mentioning that in the Finnish legal system equality is considered to apply to equality between women and men, whereas non-discrimination means equality between e.g. different age groups and nationalities. See Pakarinen & Tala 2009, p. 17.

⁹⁵ Pakarinen & Tala 2009, p. 19–20.

⁹⁶ Pakarinen & Tala 2009, p. 9.

⁹⁷ The Act on Equality between Women and Men (609/1986) entered into force on 1 January 1987. The objective of the Act is to promote equality between women and men and to improve the status of women, particularly on working life.

included in the Act on Equality between Women and Men.⁹⁸ The committee appointed to draft the Equality Act expressed in its Committee Report that the Equality Act would be a more suitable place for regulation of gender-discriminatory advertising than the Consumer Protection Act, which would have needed significant changes to its scope of application.⁹⁹ However, the prohibition of discrimination concerning advertising was not considered necessary,¹⁰⁰ and in its proposal the Government expected the advertising industry to create its own rules and recommendations to cover this issue.¹⁰¹ In order to meet those expectations, the Council of Equality (*Tasa-arvoa valvova neuvosto*) was established in 1989. From 1989 to 2001, the Council of Equality made statements concerning advertisements that private persons, authorities and/or business organizations have found gender discriminatory. In 2001, the Council of Ethics in Advertising (MEN) operating under the Central Chamber of Commerce (*Keskuskauppakamari*) was established and constructed to continue evaluating whether advertisements are unethical.

The Consumer Protection Act, which came into force in 1978, prohibited inappropriate or otherwise unfair marketing. It did not, however, explicitly state that gender-discriminatory or other unethical advertising was in its purview, which was recognised in legal literature and led the legislator to consider issues including its prohibition in the planned equality legislation.¹⁰² However, the Equality Act, which was intended to prevent discrimination based on gender and to improve the status of women – particularly in working life – did not include any provisions prohibiting gender-discriminatory advertising.¹⁰³ Regardless, in the 1990s the Market Court (MT, *Markkinaoikeus*) started to interpret the Consumer Protection Act to include gender-discriminatory advertising as prohibited marketing in its case law, thus shaping the legal system.¹⁰⁴ The legislator codified this legal situation in 2008 by amending the provisions in the Consumer Protection Act by including the prohibition of, – among

⁹⁸ The same issue was discussed also in 1990. Pakarinen & Tala 2009, p. 36.

⁹⁹ KM 1982:44.

¹⁰⁰ Pakarinen & Tala 2009, p. 36. In those days, gender discriminatory advertising was not seen as a major problem in comparison with equality in working life or equal pay. This has been interpreted to be a reason for not giving gender discriminatory advertising any kind of priority.

¹⁰¹ HE 57/1985, p. 12.

¹⁰² Pakarinen & Tala 2009, p. 25.

¹⁰³ As a side note, this was one of the main reasons for the establishment of MEN, a self-regulative organisation operating under Finland Chamber of Commerce, see Pakarinen & Tala 2009, preface and p. 35–38.

¹⁰⁴ Pakarinen & Tala 2009, p. 25–27.

others, – gender, sexual orientation, and sexual identity discriminatory advertising (amending act 561/2008).¹⁰⁵

3.2.2 Current situation

Gender-discriminatory advertising is not regulated in the Equality Act but in the Consumer Protection Act,¹⁰⁶ and the government proposal for the Equality Act explicitly states that it does not concern advertising.¹⁰⁷ The Non-discrimination Act (1325/2014, *yhdenvertaisuuslaki*) promotes equality and prevents discrimination, excluding gender equality as it is regulated in the Equality Act,¹⁰⁸ but similar to the Equality Act, discriminatory advertising is not in its purview. There are also other statutes regarding advertising to consumers and other entities, such as the Unfair Business Practices Act (1061/1978, *laki sopimattomasta menettelystä elinkeinotoiminnassa*). However, they do not have separate provisions regarding gender-discriminatory advertising.

The gender-discriminatory nature of an advertisement is evaluated on the grounds of the Consumer Protection Act. It is important to note that the Consumer Protection Act only regulates *business to consumer* marketing, which means that *business to business* as well as *political* marketing are not in its purview.¹⁰⁹ According to Chapter 2 Section 2(1)(2) of the Consumer Protection Act: "Marketing is considered contrary to good practice if it is clearly in conflict with generally accepted social values and in particular if: -- 2) there exists discrimination based on gender, age, ethnic or national origin, nationality, language, health, disability, sexual orientation, or other personal characteristic--". Advertising may not subjugate, demean, or insult someone on the basis of gender. The

¹⁰⁵ The reason for amending the Consumer Protection Act was Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market (UPCD Directive, OJ 11.6.2005 L 149/22), however, provisions regarding the ethicality of advertising are purely national.

¹⁰⁶ This division becomes understandable when we consider the background of the Equality Act. The essential reason, or perhaps more aptly the final push, for adopting the Equality Act was the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (18 December 1979, in force since 3 September 1981, United Nations, Treaty Series, vol. 1249, p. 13), which mainly focuses on equality in working life; thus, the Equality Act is also built around working life provisions.

¹⁰⁷ Government proposal 57/2002. However, see Pakarinen & Tala 2009, p. 18 and the original Committee Report No. 2002:9, p. 16, where it is stated that it could be theoretically possible that unethical advertising was in the purview of the prohibition of discrimination of Section 7 of the Equality Act.

¹⁰⁸ Paloranta 2008, p. 185, 190.

¹⁰⁹ Pakarinen & Tala 2009, p. 22.

Consumer Ombudsman has advised that presenting a naked or scantily clad person in an advertisement does not necessarily constitute sexism. However, demeaning a certain gender or presenting it in a sexist and derogatory manner is forbidden. Advertising goes against good practices when its impact relies excessively on sexuality and its presentation method is demeaning to either men or women.¹¹⁰

As far as the Åland Islands are concerned, consumer protection is completely under the legislative authority of the State of Finland according to the Act on the Autonomy of Åland (1144/1991, Ahvenanmaan itsehallintolaki) section 27(1)(10). Åland has legislative power in questions regarding sexual equality in so far as it is not regulated to be under the legislative authority of the State. Åland has explicit provision concerning gender equality discriminatory advertising in the provincial act on the application of the Equality Act in the Åland Islands (ÅFS 1989:27, *landskapslagen om tillämpning i landskapet Åland av lagen om jämställdhet mellan kvinnor och män*), but the value of the legislation is mainly iconic due to scope of the application of Equality Act of Åland. According to Equality Act of Åland, provision is not applied to the branch of industry that is regulated by Finnish legislation. In addition, the provision shall not apply to any advertising carried by the broadcast media or by cable transmission or advertisements in foreign newspapers and magazines. Therefore, the provision has been found to be ineffective because of the narrow scope of the application.

In addition to the legislation presented above, self-regulation plays a substantial role in Finland with regard to discriminatory advertising, and the Council of Ethics in Advertising (MEN)¹¹¹ is the main self-regulatory body that issues statements based on requests from individual persons and companies. Contrary to the Consumer Ombudsman, MEN can issue statements also concerning business-to-business advertising. It does not consider the *content* of political and religious advertising, but it can consider the *execution* of advertisements and issue statements on their compliance with good conduct.¹¹²

MEN operates under Finland Chamber of Commerce, which is responsible for the operations of MEN together with the Finnish Advertising Council, a non-formal co-

¹¹⁰ <http://www.kkv.fi/en/facts-and-advice/marketing-and-customer-relationships/good-marketing-practices/>

¹¹¹ The MEN includes chair, vice chair, 4–6 members and their deputy members. Finland Chamber of Commerce elects the members for three calendar years and appoints the chair and vice chair from among the elected members.

¹¹² The rules of the Council of Ethics in Advertising, Finland, as of 1 January 2017. See also MEN 17/2015 on political advertising. Available at <http://kauppakamari.fi/statement-archive/men-172015-perussuomalaiset-rpn-vaalimainos/> (accessed 2 January 2017).

operation forum of the marketing communications industrial non-governmental organisations in Finland,¹¹³ and it applies the Consolidated ICC Code of Advertising and Marketing Communication Practice which MEN has supplemented with its own principles.¹¹⁴ MEN issues statements as regards whether or not marketing is *appropriate*, i.e. if it is in accordance with generally accepted social values. Therefore, the Council does not issue statements about the lawfulness of advertising as regards, for instance, whether or not it is misleading. MEN mostly focuses on requests by private persons and cases of public significance. Organisations and authorities that handle matters related to advertising and businesses can also make requests for statements. Complaints by businesses are subject to a charge (€2,000 per advert in 2015), but for private persons the service is free.¹¹⁵ A consumer who requests a statement must give their contact details and provide reasons why they think the advertisement is against good marketing practice. MEN can also take a case on its own initiative if there is a particularly important reason.¹¹⁶ The procedure in MEN does not prevent the case from being handled by other bodies, such as the Ombudsman. MEN as a self-regulatory organisation does not have any arsenal of sanctions corresponding to those of the Consumer Authority but relies on publicity, i.e. "name and shame."

According to Chapter, 2 Section 20(1) of the Consumer Protection Act, *the Consumer Ombudsman* supervises the lawfulness of marketing. The currently Consumer Ombudsman is Päivi Hentunen (took office in 2011 for seven years), who is also the Director of the Consumer Division at the Finnish Competition and Consumer Authority (FCCA).¹¹⁷ The FCCA operates under the Ministry of Economic Affairs and Employment, but the Ministry does not have the authority to oversee the Consumer Ombudsman's

¹¹³ Members of the Finnish Advertising Council include some of the biggest media and advertising companies and organisations in Finland, such as the Finnish Newspaper Association, Screenforce Finland, RadioMedia and the Association of Finnish Advertisers.

¹¹⁴ These principles prohibit using women or men merely as eye-catchers in a derogatory way and without a connection to the advertised product. According to these principles nudity as such is not reprehensible if it does not involve derogatory manner of representation. Representations of stereotypical gender roles are also prohibited.

¹¹⁵ Koivumäki & Häkkänen 2016. Helsinki Region Chamber of Commerce, 2014. p 420–421.

¹¹⁶ All comments by the MEN are publicly available if there is not a particularly important reason for deeming them classified. Comments can be accessed on MEN's website at <http://kauppakamari.fi/lautakunnat/men/lausunnot/> (in Finnish).

¹¹⁷ The FCCA is led by Director General (Juhani Jokinen). It is important to note that, according to the Competition and Consumer Authority Act (661/2012, Laki Kilpailu- ja kuluttajavirastosta) Section 3(5), the director general of the FCCA cannot decide cases instead of the Consumer Ombudsman which fall under the Ombudsman's statutory supervising matters. The FCCA also carries out tasks for the European Consumer Centre (ECC).

supervisory activities.¹¹⁸ Finnish consumer authorities cooperate with the other Nordic consumer authorities, and, on a global scale, Finnish authorities also work within the International Consumer Protection and Enforcement Network (ICPEN).¹¹⁹

If the Consumer Ombudsman detects an unlawful action by a business, the Consumer Ombudsman has the obligation to negotiate with the business to stop the action voluntarily. If the result of the negotiations is unsatisfying, the Consumer Ombudsman has to use coercive means or, if the case is significant as regards the application of law or for some other reason, take it to the Market Court (Competition and Consumer Authority Act, section 9). If there are consistent interpretations of law the Consumer Ombudsman may impose an injunction (Competition and Consumer Authority Act, section 10(1)). The Consumer Ombudsman can also reinforce the prohibition with the threat of penalty payment (Competition and Consumer Authority Act, section 10(4)). However, as the Consumer Ombudsman is not a court of law, the business can effectively object to this prohibition within eight days, after which the Consumer Ombudsman can take the case to the Market Court (Competition and Consumer Authority Act, section 10(2)).¹²⁰ If necessary, the Ombudsman can also make a provisional prohibition, but the Consumer Ombudsman must take the provisional prohibition to the Market Court within three days or the prohibition will expire (Competition and Consumer Authority Act, section 10(3)).

The Market Court handles cases that fall under the purview of Chapter 2 of the Consumer Protection Act by petition of the Consumer Ombudsman. According to the Consumer Protection Act, the Market Court can prohibit a business from continuing or repeating illegal advertising, and this prohibition can be strengthened with a threat of a penalty payment if necessary.¹²¹ A prohibition can also be made provisional through urgent procedure. For instance, the advertising can be prohibited for the course of the actual judicial proceeding.¹²² In some cases, the prohibition can also be aimed at not only the business that has committed an illegal act but also a person working for the said entity or someone that acts on behalf of it. If the defendant business later does something that violates this prohibition, the Ombudsman can refer this to the Court,

¹¹⁸ Koivumäki & Häkkänen 2016. Helsinki Region Chamber of Commerce 2014, p. 398.

¹¹⁹ Pakarinen & Tala 2009, p. 30.

¹²⁰ Pakarinen & Tala 2009, 398–341.

¹²¹ The amount of the penalty payment varies between €50,000 and €150,000. See Pakarinen & Tala 2009, p. 403.

¹²² Pakarinen & Tala 2009, p. 403. Provisional prohibition is petitioned for quite rarely and the threshold for applying for it is high. See Pakarinen & Tala 2009, p. 405.

which then can order a penalty payment to be made and set a new threat of penalty payment. These penalty payments are paid to the State, not to the Consumer Ombudsman.¹²³ According to Chapter 7, section 4 of the Market Court Proceedings Act (100/2013, *laki oikeudenkäynnistä markkinaoikeudessa*), the decision may be appealed to the Supreme Court (*korkein oikeus*) if the court gives leave to appeal.

In addition to the actors already presented, other authorities also play a part in supervising the appropriateness of advertising. For example the Ombudsman for Equality (*tasa-arvovaltuutettu*) is consulted by the Consumer Ombudsman if needed, and it also has a long history of cooperation with MEN.¹²⁴ In 2013–2015, a total of 11 complaints concerning advertising were submitted to the Ombudsman of Equality – some of the complaints were mistakenly sent to the wrong authority and were forwarded to the Consumer Ombudsman.¹²⁵ Requests for comments mistakenly sent to the Ombudsman for Equality used to be forwarded to MEN, but today these are forwarded to the Consumer Ombudsman in accordance with the Administrative Procedure Act (434/2003, *hallintolaki*), Chapter 4, section 21.¹²⁶

3.2.3 Case examples

There have been relatively few court cases relating to gender-discriminatory advertising in Finland, which might indicate that businesses obey statements of MEN and decisions by the Consumer Ombudsman whereupon the Consumer Ombudsman does not need to take the cases to the Market Court. No exact archive of the Consumer Ombudsman's decisions divided by subject matter (e.g. gender-discriminatory advertising) is publicly available, but less than 1% of the cases are taken to court. This includes all categories, not only gender-discriminatory advertising.¹²⁷ Another reason for the low number of Market Court cases might be the usage of the self-regulative MEN: 126 complaints were filed in 2015 overall (concerning 84 different advertisements), of which 32% were about gender-discriminatory advertising.¹²⁸

¹²³ Pakarinen & Tala 2009, p. 404.

¹²⁴ Pakarinen & Tala 2009, p. 37–39, 47.

¹²⁵ Ombudsman for Equality, Finland, e-mail 14 November 2016.

¹²⁶ Pakarinen & Tala 2009, p. 55.

¹²⁷ Pakarinen & Tala 2009, p. 31.

¹²⁸ Kauppakamari: Mainonnan eettisen neuvoston (MEN) tilastot 2015, p. 4. Available at <http://kauppakamari.fi/wp-content/uploads/2016/01/men-tilastot-2015.pdf> (accessed 3.11.2016).

As mentioned above, the Market Court gradually started to interpret the Consumer Protection Act to include gender-discriminatory advertising in its purview, and one of the most important cases in this regard was MT 1994:007 Panu.¹²⁹ This case concerned a television advertising campaign for a paint brand called Panu, which included a scantily clad young woman, suggestive messages, and filming angles and pictures focused on the woman's chest and bottom. After voting the court deemed the TV-advertising demeaning to women and, thus, inappropriate. The court reasoned that, in this case, the woman was used merely as an emphasised eye-catcher without any linkage to the advertised product, and the business in question was prohibited from using such advertising under a threat of penalty payment. The fact that there was a man staring at the woman played a central role in the reasoning and making the advertisement objectifying.

MT 1994:007 Panu

Television advertising begins with a situation where a woman is painting a wall and the camera is focused on the woman's bottom. The woman is scantily clad, wearing a strapless top and shorts. After this, the woman painting the wall and an elderly man start a discussion related to a paint called Panu. The man is not dressed lightly, but his clothes are suitable for painting work as he is wearing overalls and long-sleeved shirt. The elderly man keeps staring at and peeking at the woman, especially her bottom and breasts. In addition, the lines used in the ad have some sexually suggestive double meanings.

The court came to same conclusion in another case; MT 2001:006 Masku,¹³⁰ in which furniture was advertised using a scantily clad woman. The court stated that having a scantily clad woman in advertising does not necessarily mean that it is inappropriate or otherwise unfair from the point of view of consumers, but the way in which the woman is portrayed can make an ad demeaning to women and, thus, inappropriate. Again, the court argued that the ads' focus was not on the furniture, but on the woman and her curves, as the court phrased it, which had nothing to do with the products being advertised. The woman was merely meant to serve as an eye-catcher and sex object.

¹²⁹ <http://www.finlex.fi/fi/oikeus/mao/1994/19940007>.

¹³⁰ <http://www.finlex.fi/fi/oikeus/mao/2001/20010006>.

The business was prohibited from using such advertising under a threat of a penalty payment.

MT 2001:006 Masku

TV commercial starts with the sound of a radio announcer (a woman's voice): "This ad is not suitable for children." Immediately after that, a big sign with K-18 is displayed, and a former Miss Finland, Lola, is shown resting on a bed leaning on her arm and looking towards the camera and stroking her leg – wearing only a bra and panties. The filming angles make sure that the woman's breasts are well in view. The voice of a man continues by saying: "Now a divan bed from Masku at the price of 599, including mattress, legs – but not Lola." The advertisement also included the text: "NB! Lola is not included!"

The Consumer Ombudsman as a supervisory authority of the Consumer Protection Act has also made some decisions concerning gender-discriminatory advertisements. The Consumer Ombudsman receives annually about 5,000 complaints, of which about 10 concern gender-discriminatory advertising.¹³¹ In its decision KKV/616/14.08.01.05/2015 Vannetukku.fi¹³² it stated that images in Facebook advertisements of Vannetukku.fi were contrary to the Consumer Protection Act. In advertisements of Vannetukku.fi there were persons scantily clad and striking sexist poses. In its decision the Consumer Ombudsman referred to cases from the Market Court (which are presented above) and mentioned that mere nudity or the presence of a scantily clad person in an advertisement does not mean the advertising is inappropriate. Instead, portraying people in a derogatory and demeaning way, and using them only as sex objects and eye-catchers without any relevance to the products (wheel rims and tires in this case) was against the Consumer Protection Act. The Consumer Ombudsman also took into account that the advertisements were displayed in a public sphere (Facebook) and, therefore, were easily available.

¹³¹ Interview with Vainio 11 October 2016.

¹³² <http://www.kkv.fi/ratkaisut-ja-julkaisut/ratkaisut/arkisto/2015/kuluttaja-asiamiehen-ratkaisut/hyvan-tavan-vastainen-markkinointi/>

KKV/616/14.08.01.05/2015 Vannetukku.fi

Numerous advertisements for Vannetukku.fi published on their Facebook page represented pictures where scantily clad women stood in front of cars with sexually suggestive poses. In addition, there were suggestive captions added to the images, such as "Dear Ville, this dress that I'm wearing shrank in the wash. I cannot pull it over my butt. Can I wear this even though we are now going to visit your parents for the first time?" Simultaneously the ad shows a picture of woman dressed in a miniskirt, which leaves woman's bottom naked.

It can be said that MEN plays a major role in monitoring the ethicality of advertising in Finland. Usually the statement given by MEN is enough to make advertisers stop their advertising campaigns, and it is not necessary to involve any other institution. This may account for the low number of cases in the Market Court and with the Consumer Ombudsman.

Aaltonen has explored all of MEN's statements given in 2001–2011 and noticed that MEN (as well the Consumer Ombudsman in its decisions) has highlighted the criticality of the general picture given by the advertisement. In his research Aaltonen has observed that the most important criteria used to determine and advertisement as contrary to the law and worthy of statement by MEN are, for instance, utilising women as an indicator of sexuality (advertisements usually resemble girl calendars) and "cropping" a woman's body to show only some body parts – usually lips, bottom, etc. (this cropping technique is utilised, for instance, in pornography). Nudity is not found to be reprehensible if the nudity has some relevance to the advertised product. For example, MEN considers that, due to context, pornographic magazines can be advertised by using naked women.¹³³ Major public debate has taken place related to H&M underwear advertisements where lingerie-clad women posed seductively. In one of its statements¹³⁴ concerning H&M advertisements, MEN found that the advertisement of H&M was unsuitable for displaying in the public space. MEN did not see the advertisement to be contrary to good practice in advertising due to scantily clad women because portraying women in a certain way did have a linkage to the advertised product (underwear). Instead, MEN considered the advertisement to be against good practices in advertising because the advertisement was displayed in a public space

¹³³ Aaltonen 2012, p. 53–55, 63.

¹³⁴ MEN 6/2008 (<http://kauppakamari.fi/statement-archive/men-lausunto-62008-sukupuolten-v%C3%A4linen-tasa-arvo/>)

where it was available, for example, for children to see. Thus, MEN considered this kind of sexualisation of the public space to be against good advertising practices. Since that statement, MEN has objected to advertisements by increasingly using children and the public space as grounds for justification.¹³⁵

MEN 6/2008 H&M Hennes & Mauritz Oy

The advertiser's outdoor advertising campaign consisted of a number of advertising images that featured a lingerie-clad woman. In the advertisements, the woman is lying down or sitting in different poses.

Due to the different independent supervisory institutions, the system regulating gender-discriminatory advertising may be seen scattered and even overlapping. Sometimes the same advertising is assessed by different organs, and, in one case, they did not arrive at the same conclusion about the advertisement, perhaps because of the slightly different provisions or rules applied or just different interpretations. This was the case in Consumer Ombudsman vs. the telecommunication company DNA Finland Oy, headlined (roughly translated) "Humor does not justify degrading human dignity." The television commercial series in question, which advertised a wireless network, included four young women dressed in scout uniforms and (in the Consumer Ombudsman's words) an older man, who together were having adventures in different situations. For example, in one commercial, the persons were on an outing in a forest, and after the man declared they were lost, he made a suggestion that they should use each other's body temperature to keep warm and survive. However, the young women solved the situation resourcefully by using the wireless network. The Consumer Ombudsman stated that the commercial strongly highlighted the use of sexuality for effect, and the use of behavioral models degrading to human dignity and a manner of representation that objectified women. Therefore, the commercial series was deemed inappropriate and unlawful. The business discontinued said advertising after the Consumer Ombudsman stepped in.

In contrast, the same television commercials described above were found by MEN (MEN 26/2008)¹³⁶ to be humorous as they used stylistic devices that could not be taken

¹³⁵ Aaltonen 2012, p. 65–70.

¹³⁶ MEN 26/2008 (<http://kauppakamari.fi/statement-archive/men-lausunto-262008-sukupuoelten-v%C3%A4linen-tasa-arvo-muu-hyv%C3%A4n-tavan-vastaisuus/>)

seriously. In some complaints, possible pedophilic references were highlighted. However, MEN stated that the people in the commercial were of the same age and clearly adults, although dressed in girlish and boyish ways. Neither the women nor the men were portrayed in a demeaning manner and MEN found that the advertisements were not against the ICC rules or principles of appropriate advertising as applied by MEN.

MEN 26/2008 DNA Finland Oy

The advertising campaign consisting of three television ads, in all of which there were four young women and one senior man. In one of the advertisements this group is outing in a forest. The man informs the others that they have gone astray, and suggests that the only chance to survive the night is to rely on each other's body temperature. The second advertisement is located on a deserted island. The man pushes the boat and states that they have to resort to polygamy. In the third ad, the man says he has eaten a poison mushroom, which is why he believes the girls have to give him artificial respiration. In each advertisement, the women are resourceful and manage the situation by using wireless internet connection and, thus, do not need to take his suggestions seriously. At the end of each ad, a text appears on the screen: "DNA Mokkula. Always ready to go online."

In its statement MEN 2/2016¹³⁷ MEN noted that an advertiser cannot be explicitly required to break the general perceptions of girls' and boys' favorite toys. At the same time, however, MEN takes into account that advertising shapes and upholds attitudes that can then violate gender equality. These factors, together with the changes taking place in society, mean that the advertiser may be required to work responsibly for gender equality, in particular where children are concerned. This can be seen as a turning point in the interpretations of the gender-discriminatory nature of catalogues in Finland. In its earlier statement, MEN 18/2006¹³⁸, MEN evaluated a toy catalogue, as a whole, and found that such catalogues do not reflect gender role expectations in a way that can be regarded as contrary to good marketing practice, because the advertiser cannot be forced to break the general perception of girls' and boys' favourite toys.

¹³⁷ <http://kauppakamari.fi/statement-archive/men-22016-lelujen-mainostaminen-stereotypia/>

¹³⁸ <http://kauppakamari.fi/statement-archive/men-lausunto-182006-sukupuoelten-v%fc3%a4linen-tasa-arvo/>

MEN 2/2016

In a webstore, there was the text: "Dolls are every girl's favorite toy! Girls' and boys' games are easy to distinguish early on, as girls carry baby dolls already as toddlers. We offer you the popular Barbie dolls, Baby Born dolls as well as accessories, such as a doll stroller and baby bottles. For boys, we recommend a remote-controlled car or the new Legos."

3.2.4 Discussion

In Finland advertising or marketing is considered to be gender discriminatory if it clearly contravenes with generally accepted social values and if a gender is portrayed in it in an offensive way. Therefore the assessment of the discriminatory nature of advertising is always tied to specific time and place. Presenting a naked or scantily clad person in an advertisement does not necessarily indicate sexism. However, demeaning a certain gender or presenting it in a sexist and derogatory manner is forbidden. Advertising goes against good practices when its impact relies excessively on sexuality and when its presentation method is demeaning to either men or women. In Finland, one of the biggest problems concerning gender-discriminatory advertising is the objectification of women, that is, portraying women scantily clad or otherwise as mere eye-catchers, even though, for example, H&M seems to have changed its way of portraying women since 2008 when MEN objected the H&M underwear advertisement.¹³⁹ Nudity, as such, is not considered to be a violation against legislation if there is a linkage between the nudity and the product. Looking at the cases, gender-discriminatory advertising appears to concern only women, which is something that reflects power relations and women's position in society.

Although the arrangement in which the Consumer Ombudsman handles cases related to gender-discriminatory advertising instead of the Ombudsman for Equality, which has extensive expertise in the field, might seem odd at first, it is difficult to deny that the current arrangement seems to work quite well. The authorities work in close cooperation with each other and, as described above, the Consumer Ombudsman consults the Ombudsman for Equality if necessary. Additionally, MEN and its statements seem to function as a good deterrent to advertisers who do not comply with

¹³⁹ MEN 6/2008 (<http://kauppakamari.fi/statement-archive/men-lausunto-62008-sukupuolten-v%C3%A4linen-tasa-arvo/>)

Finnish legislation and gender equality policy. Nowadays advertisers have fairly frequently asked MEN to give copy advice in advance before publishing an advertisement. Seeking copy advice at an early stage of the campaign process provides advertisers and agencies with a degree of reassurance that the advertisement complies with good marketing practice.¹⁴⁰

There are different opinions on whether there are shortcomings in the Finnish system, especially in sanctions. The Market Court imposed the threat of penalty payment in the two Market Court cases described above, but these threats were never realised as the businesses in question obeyed the decisions and never repeated the violations. Therefore, in practice, this sanction has never been applied, but under section 10(4) of the Competition and Consumer Authority Act, the Market Court has the power to do so after the Consumer Ombudsman has taken the repeated violation to the Court pursuant to Chapter 5 Section 2(1)(2) of the Market Court Proceedings Act. In other words, the legislation concerning the sanction system in Finland does exist, but, in practice, it does not work quickly and efficiently enough. Practically speaking, if advertisers stop the advertising (for example after negotiations with the Consumer Ombudsman) that violates provisions of the Consumer Protection Act, they are not sanctioned. Despite the fact that negotiations between the advertiser and the Consumer Ombudsman seem to result in the desired outcomes (the advertisement is removed), there may have been plenty of time for the general public to see the advertisement before it was removed.

According to research on gender-discriminatory advertising, most of the reprehensible advertisements are made by small businesses.¹⁴¹ The reason for this might be that bigger businesses have better knowledge of relevant legislation and they more often use professional advertising agencies that have special knowledge of the field. In addition, some companies might intentionally build their brand by using provocative advertisements even though the advertising may be against accepted rules (legislation or/and self-regulation).¹⁴² However, inappropriate advertising is, in many cases, discontinued after the advertising business has been informed about a complaint

¹⁴⁰ MEN, <http://kauppakamari.fi/en/boards/council-of-ethics-in-advertising/copy-advice> A fee for copy advice in Men is EUR 750 per request.

¹⁴¹ Pakarinen & Tala, 2009, p. 16.

¹⁴² Vänskä 2 December 2016.

and therefore even before a body such as MEN has made a decision on the case.¹⁴³ In addition, the negotiation procedure between the Consumer Ombudsman and businesses has also been successful, which is one of the main reasons why so few cases have gone to the Court.¹⁴⁴

In a study from 2009, interviewed experts held that advertising, in general, is considered to be ethical in Finland, especially compared to many other countries. This view was validated not only by the experts' own knowledge and experience, but also with the low number of admonitions and judgements given when compared to the overall number of advertisements in Finland. One respondent estimated that only 0.01% of all adverts are reprehensible.¹⁴⁵ Different reasons have been given to explain the good quality of advertising in Finland. The women's movement and gender equality have a long history in Finland, and, therefore, women and men are portrayed outside of their stereotypical gender roles in advertising. The establishment of MEN has been found to have improved the situation. Finnish people are also very law-abiding, and provisions concerning gender-discriminatory advertisement are not offended on purpose¹⁴⁶ but due to unawareness about the legislation and ignorance of prevailing social values.

Nevertheless, the low number of judgments and decisions by the Consumer Ombudsman and the Market Court may not be a sufficient indicator to represent gender equality in advertising in Finland. It can be questioned, for example, whether citizens are aware of the possibility to file complaints about gender-discriminatory advertisements. In addition, not all the decisions of the Consumer Ombudsman concerning gender-discriminatory advertising are available. Furthermore, the legislation presented above concerns only advertising from business to consumer, and, consequently, business-to-business and political advertising are beyond the scope of this examination.¹⁴⁷ Instead, business-to-business and political advertising is within

¹⁴³ Pakarinen & Tala, 2009, p. 51–52.

¹⁴⁴ Pakarinen & Tala, 2009, p. 71.

¹⁴⁵ Pakarinen & Tala, 2009, p. 15–16.

¹⁴⁶ Pakarinen & Tala, 2009, p. 16.

¹⁴⁷ For example, the Consumer Ombudsman did not have competence in a case where business-to-business advertisement reached consumers as well, but, as far it was considered to be B2B-advertising, the Consumer Ombudsman had no mandate to get involved in the situation. The advertisement was recalled when the business partners gave negative feedback about the advertisement.

MEN's competence and MEN has also given some statements concerning business-to-business and political advertising.¹⁴⁸

In the research mentioned above, experts were polarised on the current development of advertising. Some were of the opinion that the situation is getting better as a result of growing consumer awareness and activity. Others felt that the situation is actually getting worse, and that advertising imagery, on the whole, is becoming more pornographic even in mainstream media.¹⁴⁹ However, this might reflect a broader societal development towards more liberal values, which from another point of view might be interpreted as decadence.

3.3 Iceland

Topping the rankings of the Global Gender Gap Index eight years in a row, Iceland is considered a leader in gender equality.¹⁵⁰ Supporting the status and ongoing implementation of measures on gender equality is part of the legal framework of the country. The first Equality Act (78/1976, *Lög um jafnrétti kvenna og karla*) was passed in 1976, and the Constitution (33/1944, *Stjórnarskrá Íslenska Lýðveldisins*) came into force in 1944.

The Constitution of Iceland is the supreme law of the country. The original constitution secured the basic civil rights of Iceland's citizens but did not have a provision on gender equality. Furthermore, Icelandic scholars have criticised the Constitution for the male-biased language and the inequality embedded in the cultural guidelines.¹⁵¹ The Constitution is reviewed on a regular basis. In 1995 it was amended with a detailed provision, Article 65, that addresses the equality of all people with a special remark on gender equal rights:

[E]veryone shall be equal before the law and enjoy human rights irrespective of sex, religion, opinion, national origin, race, color, property, birth, or other status. Men and women shall enjoy equal rights in all respects.

¹⁴⁸ MEN 7/2004, MEN 17/2015, MEN 29/2016.

¹⁴⁹ Pakarinen & Tala, 2009, p. 16.

¹⁵⁰ World Economic Forum 2016.

¹⁵¹ See e.g. Thorarensen & Leifsson 2004.

The first Equality Act (78/1976) aimed particularly at equal wages and gender equality on the labour market. The main societal spheres considered in the Act were the job market and the educational system. Later the Act became more inclusive, intended to ensure equality between women and men in all respects:

The aim of this act is to establish and maintain equal status and equal opportunities for women and men, and thus promote gender equality in all spheres of society. All individuals shall have equal opportunities to benefit from their own enterprise and to develop their skills irrespective of gender (Gender Equality Act, 10/2008).

At the same time, the Equal Status Council (ESC, *Jafnréttisráð*) was established to administer the implementation of the Equality Act. The role of the ESC was also to make enquiries and receive and react to tip-offs on violations of the Act. If the ESC saw a reason to believe that the Equality Act had been violated, it was obliged to approach the relevant party. The Equality Act (78/1976) also laid down provisions concerning the office and managing director of the ESC.¹⁵²

3.3.1 *Historical development*

At the same time that gender-discriminatory job advertisements have been monitored and regulated by law, other gender-discriminating advertisements have not received similar attention in the Icelandic context. The lack of attention can be linked to the societal development that affects the general mindset.

Around the end of the Cold War in the late 1980s and early 1990s a transformation of Western societies from primarily state-run into market-driven societies took place, enforced by the ideology of neo-liberalism. With this a new stereotype of women as sexual objects became central to advertisers. In Iceland the implementation of neo-liberalism, which resulted in a deregulated market society and marketisation of femininity, is considered to have been pronounced.¹⁵³

In order to open new doors, and boost the market potential of Iceland and Icelandic products, the Trade Council of Iceland (TCI, *Útflutningsráð*) was founded in 1986. The TCI was a cooperation forum for the state, private companies and stakeholders. The

¹⁵² The ESC was later replaced with the Gender Equality Council.

¹⁵³ Einhorn 1993; Ólafsson 2008; Gústafsdóttir 2016.

purpose was to build up export and tourism and increase foreign exchange earnings.¹⁵⁴ Market campaigns for Icelandic products and Iceland as a tourist destination were part of the TCI objectives.¹⁵⁵

During the political and economic changes in the 1980s and 1990s, which led to extensive marketisation in Icelandic society, there was a clear shift in the structure and usage of media in Iceland as in elsewhere in the Western world. Similar to other ideological systems, neo-liberalism deploys cultural images and idealised narratives through marketisation, for example in the form of advertisements, for socio-economic realisation.¹⁵⁶

According to a recent article “Gender bias in the Media: the Case of Iceland”, which is based on Icelandic findings in a study in connection with the Global Media Monitoring Project (GMMP), women in advertising and current affairs programmes are generally younger than men and most often models, whereas men present the message communicated through the advertisement. Overall, women’s portrayals in contemporary advertisements have been recognised as increasingly stereotypical and of sexual nature.¹⁵⁷

Gender-discriminatory advertisements, as a part of the market system under construction, were covered by the Equality Act with its amendment in 1991 with Article 11.¹⁵⁸

An advertising party that designs or releases an advertisement shall ensure that the advertisement is not belittling and does not disrespect or violate the equal status and rights of the sexes in any way.

There was no major general awareness or discussion of the subject of gender-discriminatory media and advertisements as stereotypically belittling or disrespectful at the time and, accordingly, advertisements of that kind were not targeted by the public nor were they especially safeguarded by the authorities. Awareness has risen over the last few years through public promotion of gender equality. According to the Equality Act (10/2008, Article 10, Paragraph 1), a Gender Equality Forum is to be held

¹⁵⁴ Lög um Útflutningsráð Íslands nr. 114/1990.

¹⁵⁵ Alessio & Jóhannesdóttir 2011.

¹⁵⁶ Somers 2010; Gústafsdóttir 2016.

¹⁵⁷ Jóhannesdóttir & Einarsdóttir 2015.

¹⁵⁸ Article 11 of 28/1991 became article 18 of the Equality Act 96/2000.

within a year from parliamentary elections and again in two years thereafter in which a report on equality issues and selected equality matters are discussed. The Gender Equality Forum in 2015 had the title “Gendered Images – Equality in the Public Sphere” and addressed three subjects: gender and media, gender and film and gender and hate speech.¹⁵⁹

3.3.2 *Current situation*

During the 2007–2009 parliamentary term, Jóhanna Sigurðardóttir, the minister of social affairs and social security at the time, presented a bill to the Icelandic parliament that contained an amendment to Article 11 and later Article 18 of the Equality Act.¹⁶⁰

Further, the addition is proposed that it is prohibited to release an advertisement in the media or in other public place that is diminishing for either sex, shameful or violates the equal status of persons or gender equality in any way.

The bill resulted in Article 29 concerning advertisements:

Advertisers and those who design or publish advertisements shall ensure that the advertisements are not belittling or disrespectful towards either sex and that they do not run contrary to gender equality in any way. Such advertisements may not be published in the media or any other public space.

The defining terms in Article 29 are “belittling” or “disrespectful” and not the words “discrimination” or “discriminatory”. When asked about the specific wording in Article 29 and whether “discrimination” or “discriminatory” would be more effective in the case of enforcement, a lawyer specialised in the field concluded that the current wording with “belittling” and “disrespectful”, in fact, expands the possible coverage of the Act whereas “discrimination” and “discriminatory” would narrow the possible application of the Act.¹⁶¹

¹⁵⁹ The Forum was a decisive step in awaking general discussion and awareness of the gendered landscape of the media in general. Advertisements were however not addressed specifically.

¹⁶⁰ Frumvarp til laga um jafna stöðu og jafnan rétt kvenna og karla nr. 149/142.

¹⁶¹ Interview with Ingibjörg Elíasdóttir, The Centre for Gender Equality, October 2016.

The Equality Act (10/2008), Article 6 Paragraph 1, further states that individuals, enterprises, institutions, and non-governmental organisations, either in their own name or on behalf of their members who consider that they are the victims of violations of the Act, may submit their case to the Complaints Committee on Gender Equality.

During the 2015–2016 term, the Icelandic Parliament (*Alþingi*) agreed on a plan of gender equality implementation in terms of the Equality Act (10/2008). Section C, Gender and Democracy, Paragraph 11, is a strategy concerning Gender and the media. According to the strategy, the Ministry of Education, Science, and Culture is to supervise a study of the accessibility and manifestation of gender images of women and men, girls and boys in the media and work on policy formulation in this field. The project includes the following steps:

- to examine the ability of women and men to access different media material.
- to examine if and how the coverage of women and men in the media is influenced by stereotypical gender roles.
- to examine the scope of hate speech in the media.
- to work on policy formulation and increased media awareness.¹⁶²

The Media Act (38/2011, *Lög um fjölmiðla*) is constructed around the interests of the media. According to the definition of “advertisement” given in the Media Act:

A commercial communication involving a type of announcement which is relayed in return for payment, or in the media service provider’s own interests, involving the promotion of an image, product or service.

In Section V of the Media Act (38/2011) concerning the rights and duties of media service providers, Article 26 on Democratic principles addresses, although vaguely, the duty of the media to honor gender equality:

Media service providers shall, in all their activities, uphold democratic principles and guard freedom of expression. They shall respect human rights and equality and bear in mind the right to privacy. Media service providers shall take care to meet requirements regarding impartiality and accuracy in

¹⁶² Þingskýlktun um framkvæmdaáætlun í jafnréttismálum fyrir árin 2016-2019 nr. 56/145

their comments on news and news-related content and ensure that a variety of opinions are expressed, including both those of men and women.

Further, Article 27 articulates a prohibition against hate speech and incitement to criminal behaviour and states that:

Media service providers may not incite people to criminal behaviour. They shall be forbidden to encourage hatred in the media on the grounds of race, gender, sexual orientation, religious belief, nationality, opinion or cultural, economic, social or other standing in society.

The Icelandic Act on Supervision of Unfair Commercial Practices and Transparency of the Market (57/2005, *Lög um eftirlit með viðskiptaháttum og markaðssetningu*) does not address gender-discriminatory advertisement. The Consumer Agency (*Neytendastofa*) is responsible for the supervision of the Act and works according to the Consumer Purchases Act (43/2008, *Lög um neytendakaup*) which does not address consumers' rights in connection to advertisements in any way.

In addition to the state, municipalities in Iceland can act as legal entities in pursuing gender equality. The City of Reykjavík has been a leader in implementing equality policy in Iceland.¹⁶³ The Strategy plan on implementing gender equality 2011–2015 was published by the City of Reykjavík in 2011.¹⁶⁴ The plan builds on the equality policy of the City of Reykjavík, the Equality Act (10/2008) and the European treaties on gender equality. The plan aims to work against gendered stereotypes in text and imagery. There is a special task force in charge of seeing the task through, which includes:

- Work against gendered stereotyping in schools through education.
- Work in cooperation with directors and staff of companies on education and projects aimed at obliterating gendered stereotypes.
- Work on instructions about city advertisements.
- Change the gendered images of the city landscape.¹⁶⁵

¹⁶³ Thorvaldsdóttir 2012.

¹⁶⁴ Reykjavíkurborg 2011.

¹⁶⁵ Reykjavíkurborg 2011.

Actors

Gender equality work in Iceland is organised as follows: the Minister of Social Affairs is in charge of the implementation of gender equality legislation, but the Centre for Gender Equality (CGE, *Jafnréttisstofa*) is responsible for its administration. The Minister of Social Affairs also appoints a Gender Equality Council (GEC, *Jafnréttisráð*) and a Complaints Committee on Gender Equality (CCGE, *Kærunefnd jafnréttismála*). Within the Ministry of Social Affairs and Social Security, a special department is in charge of Gender Equality and Employment Affairs. The Gender Equality Council's role is to work in cooperation with the Minister of Social Affairs and the Centre for Gender Equality on gender equality strategy formulation.

The CGE, the GEC and the CCGE operate independently of each other. The CGE provides counselling and education in the field of gender equality. The CGE has been in operation since 2000 when it replaced the previous gender equality unit. The function of the CGE is to provide general counseling and education in the field of gender equality for governmental and municipal authorities, institutions, companies, individuals and NGOs.¹⁶⁶ The Centre is based in the City of Akureyri on Iceland's northern coast. This location has been criticised by arguing that it marginalises the CGE's policymaking capacity and ability to oversee the government.¹⁶⁷

The CGE also helps, when needed, with preparing complaints for the CCGE. The CCGE has been in operation since 1991 as a platform for monitoring violations of the Equality Act (10/2008). Individuals, companies, institutions, and organisations can, either in their own name or on behalf of their members, file a complaint to the CCGE in cases of possible violation on the Equality Act (10/2008).

The task of the CCGE is to examine cases and to deliver a written ruling on whether provisions of the Equality Act (10/2008) have been violated. The Committee is obliged to safeguard the right of both parties, the complainant and the accused, to voice their view on the matter of the complaint. A ruling by the Committee is free of charge to both parties. The rulings of the CCGE are binding to the parties to each case. The parties may refer the Committee's rulings to the courts.

¹⁶⁶ Equality Act (10/2008).

¹⁶⁷ Johnson et al 2013.

3-3-3 Case examples

Table 1: Complaints dealt with by the CCGE between 2000 and 2016

Type of complaint	Cases
Recruitment	68
Wage terms	23
Suspensions	14
Advertisements	4 ¹⁶⁸
Other (pension, parental leave, termination agreement etc.)	20
Total	129

The CCGE was approached with the request to evaluate whether the advertisements described below violated the Equality Act:

Case 4/2003: A market campaign administered by Icelandair between 2001 and 2003¹⁶⁹

- "Fancy a dirty Weekend in Iceland?" The advert – the slogan with pictures of bikini-clad women – was displayed in the London Underground, not only in winter 2001–2002 but also from mid-September to late-October 2002 and mid-January to mid-March 2003. The same pictures and slogan were also on Icelandair's website in the UK.
- "One Night Stand in Reykjavík". An advert displayed in the UK in 2003.
- "Free Dip every Trip". Icelandair brochure with this slogan was published and distributed in Scotland in 2002. The advert was also on vans in Scotland.
- "Tvær í takinu [two girls in a grip]". On 24 September 2002 an e-mail was sent to Icelandic web club members of Icelandair.

The ruling of the CCGE states that, according to Article 1 of Act 96/2000, the aim of the legislation is to safeguard equal rights on all levels of society. Furthermore, according to the Equality Act, advertisements should not belittle or disrespect any of the sexes or violate gender equality in any way.

According to the ruling of the Committee, the complaint was aimed at advertisements administered by Icelandair that were mostly displayed abroad and online, targeting foreign customers of Icelandair with the exception of one case. It was

¹⁶⁸ Total number of complaints attributed to advertisements received by the Committee from 2000.

¹⁶⁹ A detailed description of each case can be found under: <http://www.urskurdir.is/Felagsmala/KaerunefndJafnrettismala/>

concluded as indisputable that the advertisements were foremost displayed in the UK, Scandinavia and Scotland. The ruling also states that the implementation of the advertisements was in the hands of relevant market areas.

The CCGE concluded that the Equality Act is intended for Iceland and is valid in that country. Therefore, it was not thought to be the concern or task of the CCGE to assess the case. The advertisements and the related ethics were matters of concern and law in the targeted countries. The complaint was, therefore, dismissed.

Case 5/2003: A market campaign administered by Icelandair between 2001 and 2003¹⁷⁰

The complaint addressed the same advertisements as listed in case 4/2003: "Fancy a dirty Weekend in Iceland," "One Night Stand in Reykjavík," "Free Dip every Trip," "Hildur gets lucky in the Blue Lagoon," and "Halldór gets lucky in the Blue Lagoon." In addition, the complaint addressed computer games accessible on Icelandair's website called "Halldor gets lucky in the Blue Lagoon," and "Hildur gets lucky in the Blue Lagoon". The computer games were displayed on Icelandair websites in May 2002 and were on Icelandair's website in Scandinavia until the autumn of that year.

In a complaint dated 14 April 2003, the complainant asked the CCGE to determine whether the advertisements administered by Icelandair and launched abroad, on the company website and in mailing lists, violated the Equality Act (at the time referred to as Act 96/2000, Article 18).

The complainant argued that the advertisements and the computer games were belittling and disrespectful towards women in Iceland and designed to ruin their reputation abroad. Furthermore, the complainant argued that by illustrating half-naked women on the posters, they violated the equal status of the sexes. The complaint was dismissed with the same arguments as in case 4/2003.

Case 3/2003 A complaint against the Strip-club Óðal¹⁷¹

The advertisement was a picture of two women dressed in clothing resembling nurse uniforms with the headline "Nurse night tonight." The advertisement claims the club to be a "Gentleman's club."

¹⁷⁰ A detailed description of each case can be found under: <http://www.urskurdir.is/Felagsmala/KaerunefndJafnrettismala/>.

¹⁷¹ A detailed description of each case can be found under: <http://www.urskurdir.is/Felagsmala/KaerunefndJafnrettismala/>.

A strip club had an advertisement with women dressed like nurses and the headline “Nurse night tonight” published in the newspaper *Fréttablaðið* in March 2003.

The complainant asked the CCGE to assess whether the advertisement violated the Equality Act (96/2000). The complaint specifically addressed the discrimination towards the profession of nurses and claimed that the advertisement objectified women of that particular occupation.

According to the Equality Act, employers and unions are obliged to work systematically against gender discrimination in the labour market. A party that designs an advertisement or advertising on the labour market is obliged to work against gendered discrimination or belittlement. The Committee found it clear that the advertisement belittled and discriminated the occupation of nurses that was comprised of 99% women. According to the CCGE’s ruling, the club Óðal violated the Gender Equality Act.

Interestingly, the only advert ruled against by the CCGE was an advert that violated women’s profession. The stance can possibly be explained by the fact that the Equality Act has safeguarded gender equality in the labour market since 1976, and that general awareness of it is relatively strong.

Case 3/2005 The Centre for Gender Equality vs. confectionery Freyja and advertising agency Guðrún Anna¹⁷²

The advert pictured a lightly dressed woman and a heroic male resembling a James Bond movie.

The CGE sent a letter dated 28 September 2004 concerning a TV commercial made by the ad agency Guðrún Anna for the confectionery *Freyja*, aired in October 2003.

The ad was for a chocolate bar called “draumur” [dream] alluding to James Bond films with stereotypical gender roles – lightly dressed women and a heroic male – similar to the films. The complaint was dismissed due to expired deadline.

In 2007–2016, the CGE had six registered cases concerning gender-discriminatory advertisements. In response to a complaint, the CGE writes a letter to the advertiser notifying the complaint with a reference to Article 29 of Act 10/2008, and asks for the

¹⁷² A detailed description of each case can be found under: <http://www.urskurdir.is/Felagsmala/KaerunefndJafnrettismala/>.

removal of the advert. In the majority of cases, the procedure is successful and discriminatory advertisements are removed.

A few complaints have been filed to the CGE regarding how advertisements are verbalised and, in at least one case, the advertising party responded to the complaint by referring to freedom of expression. Freedom of expression is secured in the Constitution, Article 73. Freedom of expression is not without boundaries, however, and it is to be used responsibly. According to Article 73, freedom of expression cannot go against public interest or morality. Also, the Equality Act (10/2008) forbids the belittlement of either sex that could be interpreted as going against public interest and morality. However, it is up to a court of law to define where the line goes. According to the specialists contacted for this report, this has not yet been the case.¹⁷³

Case example 1. *Veðiportið*. In advertising displayed in their store, a bikini-clad woman was pictured squatting in a river.

According to the records of the CGE, a complaint was first sent in 2007 regarding an advertisement launched by the fishing supply shop *Veðiportið*. The advertisement in question had a picture of a bikini-clad woman squatting in a river. Despite the notification sent to the store by the Equality Centre, the advertisement ran for a while longer.¹⁷⁴

Case example 2. "Dirty Night" in the night-club *Sjallinn*. The nightclub advertised its business displaying pictures of caged, naked women.

A number of complaints were filed to the CGE in 2012 when a local nightclub, *Sjallinn*, advertised a "Dirty Night" displaying pictures of caged, naked women. The municipality got involved stating that this kind of entertainment was "undesirable." The advertisement was removed.¹⁷⁵

¹⁷³ Interview with Ingibjörg Elíasdóttir, the Centre for Gender Equality, October 2016.

¹⁷⁴ A notification from the CGE is not legally binding.

¹⁷⁵ Interview with Kristín Ásgeirsdóttir, the Gender Equality Centre, October 2016.

Public discussion

The Feminist Association (FA, *Femínistafélag Íslands*), founded in 2003, protested against a number of gender-discriminatory advertisements by, for example, publishing statements in local newspapers. From the core of the FA, several sub-groups, active within the association were formed. One example is the “Stereotype group” that fought against gendered stereotypes in society, among others, displayed in advertisements.¹⁷⁶

From 2003 onwards, especially during the first five to six years, the FA repeatedly criticised stereotypical adverts that caused public debates. One example from 2009 is from the online newspaper *mbl.is*.

Case example: “Do you want a professional or an amateur?” The picture in the ad showed a sweaty male holding a syringe over naked legs, obviously belonging to a woman.

The advertisement criticised by the FA was displayed by the Industrial Association IA (*Samtök Iðnaðarins*) in Iceland. The advertisement showed a sweaty male holding a syringe over naked legs obviously belonging to a woman. The tagline of the advertisement said “Do you want a professional or an amateur?” The FA condemned the advertisement linking it to abortions and stating: “[I]llegal abortions have fortunately not been necessary in Iceland for a long time. At times and in places where they have been necessary they have caused both physical pain and emotional anguish. The FA fiercely condemns IA’s advert.” The case made the headlines of local newspapers. Questioned about the subject of the advert and the public reaction to it, the managing director of IA claimed that he would not go so far as to label the advertisement as a mistake, but that it was clear that it “annoyed” people, and, thus, did not serve its purpose. He claimed that IA was considering withdrawing the advert but also pointed out the responsibility of the advertising company. Later the same day, the IA removed the advertisement.¹⁷⁷

As the example shows, the impact of the FA was undeniable and it has undoubtedly had an impact on the general discourse and awareness of both the public and politicians.

¹⁷⁶ Femínistafélag Íslands.

¹⁷⁷ *mbl.is* (2009).

3.3.4 Discussion

According to the World Economic Forum (2016), on a worldwide scale Iceland stands as a leading example of gender equality. With gender equality being protected by law and there being a high rate of participation of women in the labour market and academia, gender equality in Iceland is often interpreted as *de facto*. Despite this high gender equality ranking and the regulatory environment, however, gender disparities remain, as is evident in gender-discriminatory advertising.

Based on the few examples of complaints filed with the CCGE and the CGE, findings of the report suggest that the sole existence of regulation and law, such as Article 29, is not sufficient to counteract gender-discriminatory advertising. Raising awareness and media literacy through education is an important starting point for possible changes. However, explicit methods of implementation of the regulatory framework on all levels of private and public institutions would be necessary.

Supporting this stance is a study from 2010 which mainly focuses on why gender-discriminatory advertisements are produced in contemporary Iceland. The findings showed that advertising parties in general do not use Article 29 of Act 10/2008 as a guideline in their work. The advertising company employees interviewed for the research stated that they felt the need to be on the verge of what is seen as permissible in advertising in order to attract consumer attention. Despite some awareness of stereotyping as a threat to gender equality in advertising, the interviewees overall tended to lean towards the view that in their work they were adjusting themselves to social values and reflecting the society rather than actively affecting or shaping it.¹⁷⁸

Recent strategy plans launched by both the City of Reykjavik and the Icelandic Parliament are important contributions to the measurement, awareness raising and development of methods to approach and counteract gendered stereotyping in advertising. This report reveals the importance of further research and developments focused on effective methods to work against gender-discriminating advertising in contemporary Iceland.

¹⁷⁸ Guðmundsdóttir 2010.

3.4 Norway

Norway is known for its widely recognised legislation on gender equality. The Norwegian Government promotes equality in different fields such as in political participation, absence of violence, working life, and equal parenting. Despite Norway being regularly nominated as one of the most equal countries in the world, it is recognised that advertising is creating increasing pressure and force concerning body image, especially among children and young people, towards an unhealthy body ideal that very few can live up to.¹⁷⁹

In Norway, gender-discriminatory advertising is regulated under the Marketing Control Act (LOV-2009-01-09-2, MCA, *Markedsføringsloven*) which has an explicit provision prohibiting gender-discriminatory advertising. In addition, specific guidelines concerning gender-discriminatory advertising are provided by the Consumer Ombudsman (*Forbrukerombudet*) which is – in addition to the Market Council (*Marketsrådet*) – the most relevant authority on gender equality discriminatory advertising in Norway. However, it has been on the public agenda whether or not the supervision of gender-discriminatory advertising should be moved from the Consumer Ombudsman to the Equality and Anti-Discrimination Ombud (LDO, *Likestillings- og diskrimineringsombudet*). The former Consumer Ombudsman, Gry Nergård, has said that the supervision of gender-discriminatory advertising can be a useful tool in the overall effort for equality, and, thus, the current ban on gender-discriminatory advertising should be moved to the Discrimination Act (LOV-2013-06-21-60, *Diskrimineringslov*).¹⁸⁰ Although there have been discussions about whether the LDO should enforce the provision on gender-discriminatory advertising, nothing has yet come of these discussions.¹⁸¹

¹⁷⁹ Action plan of Norwegian Ministry of Children, Equality and Social Inclusion 2014, p. 16. According to the action plan, a Norwegian and an international study show that half of all girls feel too fat, even if they, objectively speaking, are not. In addition, 20% of boys aged 12–18 are at risk of developing eating disorders. According to the the Equality and Anti-Discrimination Ombud wide-spread media-driven female stereotypes have become increasingly sexualised over the last three decades. Supplementary Report to the 8th Norwegian Report to the CEDAW Committee from the Equality and Anti-Discrimination Ombud 2012, p. 5.

¹⁸⁰ <https://forbrukerombudet.no/diskriminering-forbudt-ogsa-reklame> The LDO does not support this amendment, and in the LDO's opinion the Consumer Ombudsman should be more proactive on this issue (The Norwegian Equality- and Anti-discrimination Ombud, email 6 November 2016)

¹⁸¹ According to the Norwegian LDO, there are no current efforts to make the provision known to the public.

3.4.1 Historical development

The Norwegian Government and public authorities have been cooperating with the labour market and gender equality organisations since the late 1950s. Conversations related to gender equality began with equal pay between the sexes, and as a result, the Council for Equal Pay (*Likelønnsrådet*) was established in 1959. In 1972, the Council for Gender Equality (*Likestillingsrådet*) replaced the Council of Equal Pay and continued to serve as an advisory and coordinating body in gender equality matters. As one of several results of the efforts related to women's liberation movement during the 1970s, efforts to promote gender equality have been integrated into laws since the provision against gender-discriminatory advertising was included in the Marketing Control Act in 1978. The provision on gender-discriminatory advertising was adopted by the MCA simultaneously with, and as a result of, the adoption of the Gender Equality Act (LOV-2013-06-21-59, *Likestillingsloven*), the purpose of which is to promote equality irrespective of gender. The reason for the provision concerning gender-discriminatory advertising was the wish that advertising should promote gender equality.¹⁸²

The need to amend the Marketing Control Act was recognised in 1995, and this amendment resulted in more tightened provisions on gender-discriminatory advertising in 1997.¹⁸³ The amendment was argued for by referring to the significant development in marketing forms and methods and the changed attitudes of society during those 20 years the Marketing Control Act had worked. As a result of the amendments in 1997, the terms "offensive" (*støtende*) and "exploit" (*utnyttelse*) were included in the Marketing Control Act. The amendment was intended to tighten up the earlier criterion "derogatory depiction" (*krenkende avbildning*). A certain tightening was intentional, but it was not supposed to make any radical change compared to previous phrasing. The term "offensive" is said to indicate a lower and more objective threshold for reactions than the earlier concept of "insulting" (*krenkende*) and the concept includes cases that affect a woman's or man's sense of honour or dignity in general.¹⁸⁴

In 2009, the Marketing Control Act was reformed again due to an EU directive on Unfair Commercial Practices¹⁸⁵, and the provision on gender-discriminatory advertising was maintained in the current Section 2 of the Act. The Gender Equality Act has also

¹⁸²The Norwegian Consumers Ombudsman, email 17 August 2016.

¹⁸³The Norwegian Consumers Ombudsman, email 17 August 2016.

¹⁸⁴The Consumers Ombudsman, Norway 2009, p. 2–3.

¹⁸⁵Directive 2005/29/EC.

been amended several times. In 2005, the Gender Equality Act was amended to incorporate a section from the CEDAW and, in 2009, the Gender Equality Act was amended again. The Anti-Discrimination Act from 2005 covers discrimination based on ethnicity, nationality, origin, skin color, language, religion or other faith. In 2013 the prohibition of discrimination was extended to sexual orientation, gender identity, and gender expression.¹⁸⁶

In 2014, the Norwegian Government presented the first comprehensive action plan for gender equality in twenty years. The action plan emphasises the responsibility of government ministries to promote gender equality in their fields (i.e. gender mainstreaming) and underlines the political ambitions of Norway.¹⁸⁷ According to the action plan the Norwegian Government is to combat commercial market that targets children and young people and reinforces gender stereotypes. As a solution to the issue, the former Norwegian Government wanted to enter into a dialogue with the advertising industry, the media, and the clothing and toy industries in order to break away from traditional gender stereotypes and reduce the amount of advertising that contributes to unattainable body ideals for young men and women.¹⁸⁸

3.4.2 *Current situation*

In Norway, gender discrimination is generally prohibited pursuant to the Gender Equality Act, which protects women and men from discrimination in all areas of society. In addition, the MCA regulates gender-discriminatory advertising, which is based on gender equality motives. The MCA regulates marketing practices and advertising towards consumers as well as rules that primarily affect business relations. Section 2 of the MCA contains an explicit provision on gender-discriminatory advertising. According to Section 2(2) of the MCA, “[t]he marketer or the designer of the marketing shall ensure that the marketing does not conflict with the equality of the sexes and that it does not exploit the body of one of the sexes or convey an offensive or derogatory appraisal of women or men.” In determining whether the equality of the sexes has been infringed, pursuant to Section 2(3), emphasis is to be given to whether an advertisement stands out as particularly intrusive by reason of its design, format or

¹⁸⁶ The Nordic Information on Gender, NIKK (2016).

¹⁸⁷ Action plan of Norwegian Ministry of Children, Equality and Social Inclusion 2014.

¹⁸⁸ Action plan of Norwegian Ministry of Children, Equality and Social Inclusion 2014, p. 17.

scope or other means employed. The assessment of whether a specific advertisement comes into conflict with the ban on sexist advertising, is to be based on an objective assessment, i.e. how it is perceived by average consumers.

The overriding principle in Section 2 of the MCA stipulates that advertisements shall not be contrary to the equality of the sexes. Highlighting gender roles or using female bodies as a focal point in the advertisement can be contrary to the principle. The Market Council has outlined in some cases¹⁸⁹ that the principle established in Section 2 of MCA can be seen both as an expression of the fundamental principle and the objective of the provision.

In addition to the quite detailed MCA provision, the Consumer Ombudsman has given elaborate guidelines "*Veiledning om Kjønnsdiskriminerende reklame. Markedsføringslovens § 2 annet ledd*" concerning gender-discriminatory advertising. The guidelines are not meant to be comprehensive, but they offer reasonable assurance to the advertiser who needs to evaluate whether its advertisement is in conflict with the Marketing Control Act or not. Moreover, Section 2(3) of the MCA as well the guidelines emphasise that evaluation is to be based on how intrusive (evaluated on the grounds of design, size, scope or other means) the advertising is. An intense advertising campaign is more wide-ranging and long-lasting than advertising using more modest means, and, therefore, an intense advertising campaign may be evaluated in stricter terms.¹⁹⁰

According to the Consumer Ombudsman's guidelines, advertising is considered to be gender discriminatory if it is contrary to the equality of the sexes or if it describes one sex in a negative way. Offensive advertising is defined as portrayals of either sex in more or less dressed situations, where women or men are represented as sex symbols or as eye-catchers without any connection or relevance to the product. A plain description of existing gender roles is not in itself deemed as contrary to Section 2 of the MCA, unless the presentations of gender stereotypes are highlighted in a particularly lopsided or in a degrading manner in stereotypical situations from which society has moved away.¹⁹¹

¹⁸⁹ For example, MR-2015-1272 which is described below.

¹⁹⁰ Consumer Ombudsman, Norway 2009, p. 3.

¹⁹¹ Consumer Ombudsman, Norway 2009, p. 3. For example, emphasising the man as responsible for family finances, or the woman whose self-esteem and identity are directly related to consumables, clothing, and home. See the whole guide <https://forbrukerombudet.no/lov-og-rett/veiledninger-og-retningslinjer/veiledning-kjonnisdiskriminerende-reklame>

The most relevant authorities with respect to gender equality and discriminatory advertising are the Consumer Ombudsman and the Market Council. According to the Marketing Control Act, the Consumer Ombudsman and the Market Council are to monitor compliance with the provisions of the Act. The Consumer Ombudsman is to, at their own initiative, or in response to requests¹⁹² by third parties, seek to influence traders to comply with the provisions, including by negotiating with the traders or their organisations. If the Consumer Ombudsman concludes that an act contravenes the provisions, the Ombudsman is to seek to persuade the trader to enter into a voluntary settlement to terminate the practice.¹⁹³ If no voluntary settlement is reached, the Consumer Ombudsman may submit the case to the Market Council for a decision. According to the Marketing Control Act, the Market Council is to deal with cases submitted to it by the Consumer Ombudsman. If the Consumer Ombudsman decides not to submit a case to the Market Council, the case may be submitted by a trader or a consumer who is affected by the advertisement, or by a group of traders or consumers.

In most cases, the Consumer Ombudsman enters into a dialogue with the advertiser and the matter is solved without any sanctions. If voluntary settlement does not work, pursuant to Section 39 of the Marketing Control Act, both the Consumer Ombudsman and the Market Council may either impose a prohibition, an order or an enforcement penalty if they conclude that intervention is required.

In addition, at least one of Norway's municipalities has surpassed national legislation on counteracting gender-discriminatory advertising in the public sphere. In 2016 Trondheim introduced a ban on all advertising that could contribute to negative body images. This applies to discriminatory advertising as well as advertising that communicates an "unreal" body image. Ads in which bodies have been retouched should be labelled as such. The ban applies to publicly-owned advertising spaces. The reasoning was that politicians believed it to be a serious issue if the city's advertising spaces contributed to distorted body ideals and mental health problems amongst girls and women.¹⁹⁴ It seems that resistance towards discriminatory advertising is growing among the public; discussion of a similar ban has been ongoing in the Cities of Bergen

¹⁹² The Consumer Ombudsman receives around 20 complaints a year regarding gender discriminatory advertising.

¹⁹³ In addition, there can be cases in which it is not necessary to attempt to reach a voluntary settlement. For example if the act or the contract term or condition is substantially identical to acts, or terms, or conditions that the Market Council has previously prohibited, the Ombudsman can give its own decision of which the Market Council has to be informed. The person to whom the decision is directed may appeal the decision to the Market Council.

¹⁹⁴ Lystad & Karlsen 2016.

and Oslo. A network (*Ungdom Mot Retusjert Reklame* – Youth against retouched advertisements) has been working against retouched advertisements since 2010.¹⁹⁵

3.4.3 Case examples

In 2013, there were 21 and in 2014 there were 29 complaints related to gender-discriminatory advertising. In 2015, the Consumer Ombudsman received 15 written complaints and in 2016 altogether 17 complaints.¹⁹⁶

Although in principle the rule provided in Section 2(2) of MCA is aimed at the protection of both men and women from offensive and derogatory depiction, in practice it has been applied to advertising in which women are subjected to derogatory and sexist depiction. The will to combat discrimination towards women was a key motivation for the provision in the first place. In the Market Council, it is assumed that men and women have the same protection under the provision, but what is considered discriminatory depends on the perception of the community at any given time. The categorisation of an advertisement as unlawful depends on several things: violation of equality of the sexes, derogatory appraisal of women or men, product relevance, exploitation of either women's or men's bodies, and, product relevance. In addition, an advertisement is regarded as unlawful when an image itself is not offensive, but in combination with the text advertisement has conveyed an offensive or derogatory appraisal of women or men. In addition, the use of humour in itself is not a decisive factor for whether the advertisement is legal or not.¹⁹⁷ Below is a more detailed presentation of the cases related to these criteria.

Advertising can be deemed as derogatory when advertisements ascribe characteristics of either men or women in a negative light, for example, by portraying women as impractical or men as inconsiderate. The evaluation whether the advertisement is seen as derogatory is not based on the expressed characteristics of one sex only, but on how the advertisement together with widespread perceptions of gender roles is perceived by the general public. For example, an advertisement showing a man incapable of mastering a device may be seen as a funny joke, while the same advertisement with a woman can be interpreted to mean that women are impractical

¹⁹⁵ Ungdom Mot Retusjert Reklame (n.d.)

¹⁹⁶ The Consumer Ombudsman, Norway, e-mai 15 September 2016.

¹⁹⁷ Consumer Ombudsman, Norway 2009.

and too stupid to use the device. In MR-2002-16 OBOS,¹⁹⁸ a humorous and satirical manner used in advertising did not exempt the advertiser from responsibility. The Market Council did not find the image of the advertisement derogatory, but in combination with the text the advertisement was deemed to convey a derogatory appraisal of women.

MR-2002-16 OBOS

An advertisement from OBOS showed a busty woman wearing a very low-cut top, and the advertisement had the following text above the picture: "Attractive and well-kept, with new balconies and easy access."

Portraying nudity or scant clothing is not necessarily deemed to be contrary to Section 2 of the MCA, which prohibits the exploitation of one gender's body. The advertisement is considered exploitative when the body is used to attract attention without relevance to the natural use of the product. When the presence of product relevance can be found, there is a higher threshold for establishing proof of violation of Section 2(2) of MCA. However, regardless of the presence of product relevance, the advertisement may still be assessed as offensive due to the overall impression given by the advertisement. If the product is shown in an unnatural situation and the body is emphasised over the product and its function, it is likely that the advertisement violates the provisions of the MCA. For example, in MR-2015-1272 *Tribunemannen AS*¹⁹⁹ both the Consumer Ombudsman's and the Market Council's assessment reinforced that there was not enough product relevance in the advertisement of *Tribunemannen AS*, and the image used in the ad moved beyond what is necessary to promote that product. The Consumer Ombudsman and the Market Council stated that it is possible to promote the same product with less focus on a woman's body. The Consumer Ombudsman did not find that the advertisement had an obvious humorous touch that may exempt it from liability in the specific ad. The Market Council also emphasised that it did not matter whether the image appears immediately on a website or after scrolling down the page. Marketing on the onternet is done in several steps and, even though the

¹⁹⁸ <https://forbrukerombudet.no/lov-og-rett/markedsradets-vedtak/mr-2002-16-forbrukerombudet-obos>

¹⁹⁹ <https://forbrukerombudet.no/lov-og-rett/markedsradets-vedtak/mr-sak-151272-tribunemannen>

disputed image does not appear until the consumer scrolls down the page, nevertheless the woman is used as an eye-catcher in the advertisement.

MR-2015-1272 Tribunemannen AS

The image of the company's website shows a woman with a seductive glance. A woman is depicted from behind wearing pants, short crop top, boots, and a football between her legs. On the right side of the image is the text: "For all kind of events ... and sports," "movable grandstands for rental and sale," and "Tribunemannen has now delivered over 100,000 grandstand seats! – So sit safely." Under the text there are pictures of two different grandstands.

In contrast, the Market Council has several times made reference to the fact that there is a high threshold to deeming advertising unreasonable or contrary to Section 2 of the MCA if there is a high degree of relevance between the images used and the product being advertised. In MR-2013-1116 Synsam,²⁰⁰ the Market Council agreed that the location of the female body in the Synsam advertising does not have any immediate connection with the product being marketed (sunglasses). The Market Council cannot see that the female body is depicted, is placed, or used in a speculative manner in the ad, or gives the impression of an offensive or derogatory appraisal of the woman. Although there was no ready product relevance, the Market Council still found – similar to the Consumer Ombudsman – that the image must be assessed in light of the marketed product, and that, in the ad's context, it is not unnatural that a man looks up at a scantily clad woman at poolside. This has been the situation for example, also in case MR-2001-16 Hennes & Mauritz,²⁰¹ which concerned marketing campaigns for underwear where products were advertised by showing a woman wearing (only) underwear.

²⁰⁰ <https://forbrukerombudet.no/lov-og-rett/markedsradets-vedtak/mr-sak-131116-nn-kvinnegruppera-ottar-synsam>

²⁰¹ <https://forbrukerombudet.no/lov-og-rett/markedsradets-vedtak/mr-2001-16-kvinnegruppera-ottar-mauritz-as>

MR-2001-16 Hennes & Mauritz

Hennes & Mauritz AB had a marketing campaign for lingerie in November and December 2000. The campaign depicted the famous model Claudia Schiffer wearing underwear, and it was conveyed via billboards and lightboxes at street level. The ad was also displayed in bus shelters.

MR-2013-1116 Synsam

In an advertisement, a man with sunglasses is relaxing at the edge of a swimming pool and peeking at a scantily clad woman in high-heeled shoes who is pictured from behind so that you only see her bare legs and thighs.

The Consumer Ombudsman also occasionally receives inquiries from people who react to advertising that depicts boys and girls in a gender-stereotyped way, for instance, in toy catalogues, on billboards and in advertising videos. This is advertising where the font, colours and images clearly distinguish between “boys” toys’ and “girls” toys’ or where girls are portrayed as kind, gentle and keen to play princesses while boys are active and keen to play cowboys. Although that kind of advertising may not be seen as degrading the image of either sex and, therefore, not contrary to Section 2 of MCA, such marketing is, however, unfortunate from a gender equality perspective, as it may underpin traditional prejudices and stereotypes about the sexes.²⁰²

3.4.4 Discussion

Norway explicitly prohibits gender discrimination in advertising. There is an explicit provision in the Norwegian Marketing Control Act and, in addition, some of the criteria for evaluating whether the advertisement is within the scope of the MCA or not are expressed in quite a detailed manner in the guidelines provided by the Consumer Ombudsman. According to a provision of the MCA, the guidelines of the Consumer Ombudsman, and as illustrated in the cases presented above, the point at which advertising may be regarded as discriminatory will depend on product relevance. The threshold of unlawfulness seems to be higher in those cases where it is easy to show that there is relevance between the advertised product and the portrayal of gender. For example, in the Synsam case described above there was a high threshold to deem the

²⁰² The Norwegian Consumer Ombudsman, e-mail 17 August 2016.

advertising unreasonable or contrary to Section 2 of the MCA because there was a high degree of relevance between the images used and the product being advertised.

Section 2 of the Norwegian Marketing Control Act, which regulates gender-discriminatory advertising, is regarded as having had some success. Certain kinds of portrayals of women have disappeared from Norwegian advertisements. For example, portraying women as sex objects or advertising that leans towards pornography barely exists anymore.²⁰³ There seem to be difficulties, however, in regulating other kinds of portrayals. Despite Norway being considered to be strongly committed to the CEDAW and its Article 5, which obligates state parties to modify social and cultural patterns to eliminate gender stereotypes, Norway nevertheless accepts gender stereotypes in advertising given the condition that presentations of gender stereotypes are not highlighted in a particularly lopsided or degrading manner.

The subsection on gender-discriminatory advertising is aimed, like the rest of the Marketing Control Act, at advertising in business. This means that awareness campaigns and general information fall outside the scope of the Marketing Control Act and thus outside the supervision of the Consumer Ombudsman. An illustrative example of this is the Norwegian Public Roads Administration Awareness Campaign "Youth and speed,"²⁰⁴ which was launched in autumn 2014. The Consumer Ombudsman received five complaints and numerous tips regarding this attitude campaign. Enquiries that the Ombudsman received were from youth who felt insulted by the way young boys were presented. It was further argued that the measure was in violation of the ban on gender-discriminatory advertising in Section 2(2) of the MCA, partly because it gives the impression of a derogatory assessment of the male gender. The current attitude campaign could not be regarded as marketing that was connected with business activities, and the content was, therefore, not subject to assessment based on the Marketing Control Act. It has been seen as unfortunate that there is no regulatory authority that can consider complaints from those who feel discriminated against, regardless of whether it is a matter of business or not.²⁰⁵

Although the number of complaints about gender-discriminatory advertising is not particularly high compared with complaints in other areas, the Norwegian Consumer

²⁰³ Kabel & Scheuer 2008, pp. 552.

²⁰⁴ To view the advertisement visit: <http://www.adforum.com/creative-work/ad/player/34520709/young-and-speed/youth-and-speed>

²⁰⁵ The Norwegian Consumer Ombudsman, e-mail 17 August 2016.

Ombudsman considers that due to prioritisation of supervision activities, gender equality is not a high priority in competition with all the other issues the Consumer Ombudsman supervises, and that is why gender-discriminatory advertising is not adequately safeguarded. This fact has been used as an argument in discussions about whether it is better to transfer the provision on gender-discriminatory advertising to the Discrimination Act, which would result in transferring supervisory obligations from the Consumer Ombudsman to the LDO. The Consumer Ombudsman considers that equality matters are a minor separate issue within the other marketing issues they supervise. Despite discussions, so far the matter has not been advanced.

3.5 Sweden

Sweden, like the other Nordic Countries, has led the way in gender equality. However, there is currently no specific legislation against gender-discriminatory advertising in Sweden. Neither can gender-discriminatory advertising be restricted by other current legislation: the Marketing Act that demands consistency with good marketing practice is not applicable because of a decision handed down by the Swedish Marketing Court in 1976 whereby the Discrimination Act does not cover advertising. The biggest obstacle in terms of legislation has been the argument that prohibiting gender-discriminatory advertising would conflict with freedom of expression. Both gender equality and freedom of expression are cornerstones of Swedish society, and they are provided for in the Swedish Constitution. Since the 1970s, it has been debated how these two fundamental rights should be balanced in the context of advertising. Despite the fact that the latest official report argued that freedom of expression does not conflict with legislation against gender-discriminatory advertising and suggested introducing a new law, no legislative actions were taken. Thus, controlling gender-discriminatory advertising is currently done by a self-regulatory organisation called the Advertising Ombudsman (RO, *Reklamombudsmannen*) and the RO Jury (RON).

3.5.1 Historical development

Legislation concerning gender-discriminatory advertising has been a highly controversial issue in Sweden. Possible actions against gender-discriminatory advertising have been under debate since the 1970s. There has been discussion among

the general public as well as at the official level.²⁰⁶ Recently, the most notable movement against gender-discriminatory advertising has been the campaign Ad Watch (*Reklamera*) launched by the Swedish Women's Lobby (*Sveriges Kvinnolobby*). The campaign began in 2013, and its idea is to encourage filing of complaints to the Advertising Ombudsman.²⁰⁷ The Swedish Women's Lobby calls for legislation, financial sanctions and supervision by a governmental authority.²⁰⁸ The demands presented by the Swedish Women's Lobby have raised resistance especially in the Association of Swedish Advertisers (*Sveriges Annonsörer*) that has argued that legislation would not solve the problem, and that the current system based on self-regulation is more effective than a legislation-based system would be.²⁰⁹ The debate is likely to continue.

At the official level, there have been several attempts to create regulation of gender-discriminatory advertising, and many reports and studies have been published throughout the years. The first action was taken by the Consumer Ombudsman (*Konsumentombudsmannen*) in 1975 when a memorandum on the topic was issued. Since then, several committee and delegation reports as well as governmental propositions have brought up the different aspects related to gender-discriminatory advertising. The latest official inquiry was completed in 2008.²¹⁰ Despite the problems related to gender-discriminatory advertising being widely recognised in official documents, attitudes, especially towards legislative means, have varied. In some investigations, self-regulation has been considered to be enough, whereas in other documents, legislation has been seen as the only effective way to make a difference. On the question of legislation, the most relevant and problematic issue has been the relationship between freedom of expression and gender equality – in other words balancing between the two fundamental rights. In some reports it has been argued that a constitutional change is needed in order to legislate against gender-discriminatory advertising, and that argument has been used as an obstacle to regulation. In some reports, the outcome has been the opposite, stating that legislation prohibiting gender-discriminatory advertising is possible without conflicting with freedom of expression.

²⁰⁶ Svensson & Edström 2014, p. 496.

²⁰⁷ Read more about the campaign: <http://sverigeskvinnolobby.se/en/project/ad-watch/>

²⁰⁸ The Swedish Women's Lobby 2016a, p. 14–15.

²⁰⁹ Read about the arguments of the Association of Swedish Advertisers: <http://www.annons.se/artiklar/lagstiftning-en-kontraproduktiv-losning> and <http://www.annons.se/artiklar/myt-att-lagstiftning-skulle-vara-mer-effektivt>

²¹⁰ A detailed review of the different official documents is presented in SOU 2008:5, p. 41–73.

Even though there currently is no legislation against gender-discriminatory advertising, marketing, in general, is regulated through the Marketing Act (*Marknadsföringslagen*, 2008:486), which is the main provision limiting freedom of expression in marketing activities. According to Section 1 of the Marketing Act, the purpose of the Act is to promote the interests of consumers and businesses in connection with the marketing of products and to prevent marketing that is unfair to consumers and traders. Section 5, which has been termed as the general provision of the Marketing Act, stipulates that marketing is to be consistent with good marketing practice. In the preparatory work of the Marketing Act, it was stated that good marketing practice is defined, e.g. by the guidance of the Advertising and Marketing Communication Practice from the International Chamber of Commerce (the ICC Code).²¹¹ Despite that the fact that the ICC Code prohibits gender discrimination, using the general provision for restricting gender-discriminatory advertising has not been considered possible because of a ruling handed down by the Swedish Marketing Court (*Marknadsdomstolen*, MD 1976:8) in 1976. In that case, the scope of application of the Marketing Act was interpreted in such a way that has made it impossible to restrict gender-discriminatory advertising on the basis of the Marketing Act.

The MD 1976:8 case concerned a printed advertisement for cleaning and lubricating products for cars. The advertisement consisted of a picture of a naked woman's back with the name of the product sprayed on her. There was also the text "*The mechanic's best aid.*" The Swedish Consumer Ombudsman argued that the advertisement was against the general provision of the Marketing Act of that time. Indeed the Marketing Court considered the advertisement to be gender discriminatory and, thus, against the ICC Code. However, the Marketing Court pointed out that the Marketing Act was meant to protect consumers because of their role as such, not because of their gender.²¹² In other words, the Marketing Act was interpreted so that it did not secure the integrity of women but the rights of consumers and traders. Thus, the Marketing Act was considered not to be applicable to the case, and gender-discriminatory advertising was not found to be an infringement of the Marketing Act. This judgement led to the current

²¹¹ Prop. 2007/08:115, p. 69–70. In the context of gender discriminatory advertising, Articles 1 and 4 of the ICC Code are noteworthy. The former sets out the basic principles of acceptable advertising and marketing communication practice and the latter calls for social responsibility by respecting human dignity and by prohibiting discrimination including that based upon e.g. gender or sexual orientation.

²¹² The Marketing Court did not explain why women should not be seen as consumers of the marketed product and therefore protected by the Marketing Act, see Svensson & Edström 2014, p. 496.

situation in which it is not possible to combat gender-discriminatory advertising through filing a complaint in the courts of Sweden.

The most recent official report concerning gender-discriminatory advertising was published in 2008. The conclusion of the report was that legislation against gender-discriminatory advertising is possible without conflicting with freedom of expression. Legislative actions were found to be possible without changing constitutional provisions especially on the grounds that constitutional freedom of expression does not cover commercial communication in full. The report recommended that a new, independent law be introduced.²¹³ It was proposed that gender-discriminatory advertising should be defined as follows: "Advertising shall not have a gender-discriminatory formation. As gender-discriminatory formation is seen the description of gender-related features or gender roles that are generally perceived offensive towards women or men."²¹⁴ According to the report, the task of supervision should be given to the Consumer Ombudsman and misconduct should result in sanctions, i.e. injunctions and periodic penalty payment.²¹⁵ The proposition did not lead into new legislation because the minister for gender equality of that time questioned the efficiency of legislation and stopped the process.²¹⁶

3.5.2 *Current situation*

Both gender equality and freedom of expression are cornerstones of Swedish society, and they are provided for in the Swedish Constitution. The principle of gender equality and the prohibition of gender discrimination are mentioned in several articles of the Instrument of Government (*Regeringsformen*, 1974:152). Chapter 1, Article 2 of the Instrument of Government lays down that public power shall be exercised with respect for the equal worth of all and the liberty and dignity of the individual. In addition, public institutions shall promote the opportunity for all to attain participation and equality in society as well as combat discrimination of persons on the grounds of gender.²¹⁷ What is noteworthy is that the Swedish conception of gender equality is defined not only on

²¹³ SOU 2008:5, p. 224, 236, 249–250.

²¹⁴ SOU 2008:5, p. 269–276.

²¹⁵ SOU 2008:5, p. 276–284.

²¹⁶ Svensson & Edström 2014, p. 499.

²¹⁷ In the provision also other things are mentioned, e.g. colour, national, or ethnic origin and sexual orientation.

the national level but also through its membership in the European Union and the CEDAW. The comprehensive and far-reaching gender equality principles expressed in the Treaty on European Union, the Treaty on the Functioning of the European Union and the CEDAW bind Sweden to securing and promoting gender equality as well as preventing gender discrimination.

In Sweden, gender equality and the prohibition of gender discrimination are also promoted through the Discrimination Act (*Diskrimineringslagen*, 2008:567), which entered into force in 2009. The Discrimination Act aims to prevent discrimination and to guarantee equal rights and possibilities for everybody irrespective of their gender.²¹⁸ The Act defines both direct and indirect discrimination as prohibited, e.g. in working life. Neither marketing nor advertising is mentioned within the scope of the application of the Discrimination Act and, thus, this Act is not applicable to gender-discriminatory advertising. Because of this, the Swedish Equality Ombudsman cannot act on this issue.

Like gender equality, also freedom of expression is secured in the Swedish Constitution. Provisions concerning freedom of expression can be found in three of four constitutional laws: in the Instrument of Government (*Regeringsformen*), the Freedom of the Press Act (*Tryckfrihetsförordningen*, 1949:105) and the Fundamental Law on Freedom of Expression (*Yttrandefrihetsgrundlagen*, 1991:1469). In Chapter 2, Article 1 (1) of the Instrument of Government, freedom of expression is defined as the freedom to communicate information and express thoughts, opinions and sentiments, whether orally, pictorially, in writing, or in any other way. The relationship between the three constitutional laws regulating freedom of expression is such that the general provisions of the Instrument of Government lay the main foundation for freedom of expression, which is then completed and specified in the Freedom of the Press Act and the Fundamental Law on Freedom of Expression.²¹⁹

Even though freedom of expression is a fundamental right, it is not an absolute right. As stated in Chapter 2, Article 20 of the Instrument of Government, freedom of expression can be restricted by law. The extent of limitations is provided for in Chapter 2, Articles 21 to 24 of the Instrument of Government. According to Article 22, limitations may be imposed only to satisfy a purpose acceptable in a democratic society. A limitation

²¹⁸ The Discrimination Act is not limited only to gender discrimination but covers also various types of discrimination, e.g. discrimination related to transgender identity, ethnicity, religion and sexual orientation.

²¹⁹ The Freedom of the Press Act regulates printed press whereas the Fundamental Law on Freedom of Expression covers other types of communication e.g. radio and television.

must never go beyond what is necessary regarding the purpose that occasioned it, nor may it be carried so far as to constitute a threat to the free shaping of opinion as one of the fundamentals of democracy. In addition, no limitation may be imposed solely on the grounds of a political, religious, cultural or other such opinion.

The situations that enable limitations to freedom of expression are defined in Chapter 2, Article 23 of the Instrument of Government. As regards gender-discriminatory advertising, it must be highlighted that freedom of expression may be restricted in business activities.²²⁰ Thus it can be said that the conflict between the two fundamental principles, gender equality and freedom of expression, has developed despite the fact that commercial communication does not have as extensive protection in relation to freedom of expression as communication in general. There is a common understanding that freedom of expression is intended to protect economic interests in business.²²¹

Since there is no legislation that prohibits gender-discriminatory advertising, response to unaccepted advertising is currently based on self-regulation. The self-regulatory organisation is the Swedish Advertising Ombudsman, which was founded in 2009.²²² The Advertising Ombudsman was set up as an independent foundation by the industry itself and is voluntarily funded by the industry. The Advertising Ombudsman assesses commercial advertising aimed at the Swedish market and aims to secure that the quality of advertising is kept high. The Advertising Ombudsman also provides education and spreads information about ethical marketing and the ICC Code to reduce unethical advertising. The role of the Advertising Ombudsman has grown over time.²²³

The Advertising Ombudsman assesses advertisements following complaints filed by consumers, organisations and companies. Consumers file the majority of complaints. It is

²²⁰ Despite the fact that the Marketing Court did not cover gender discriminatory advertising under the Marketing Act in the previously mentioned case MD 1976:8, it is noteworthy that the Marketing Court stated that commercial messages do not deserve as comprehensive protection as other messages in relation to freedom of expression. This statement is in harmony with the interpretations concerning the scope of application of the Freedom of the Press Act and the Fundamental Law on Freedom of Expression.

²²¹ Prop. 2007/08:115, p. 58.

²²² Before the Advertising Ombudsman, there was a self-regulatory organisation called the Trade Ethical Council against Sexism in Advertising (Näringslivets Etiska Rådet mot Könsdiskriminering) which had begun its operation in 1989 assessing sexist and gender discriminatory advertisements. Before the Advertisement Ombudsman there was also an organisation called the Council on Market Ethics (MarknadsEtiska Rådet). It focused on other aspects than sexist and gender discriminatory advertisement such as marketing to children and misleading advertising. Both organisations were replaced with the Advertising Ombudsman. Therefore, the Advertising Ombudsman not only combats gender discriminatory advertising but also advertising that in some other way is considered unethical and unacceptable.

²²³ Svensson 2014, p. 105.

also possible for the Advertising Ombudsman to take a case under consideration on its own initiative. The Advertising Ombudsman only assesses cases that concern advertising aimed at the Swedish market and can exclude advertising that is more than six months old. Political and religious communication is not within the remit since that is not commercial advertising, but business-to-business advertising is covered. Decisions are made by two bodies: the Advertising Ombudsman itself (the secretariat) takes a stand on basic cases, whereas cases that are considered complicated or cases that have features that have not been assessed before are given to the Jury of the Advertising Ombudsman (*Reklamombudsmannens opinionsnämnd*).²²⁴ A decision made by the Advertising Ombudsman can be appealed and will then be judged again by the Jury.

Since there is no legislation against gender-discriminatory advertising, there is no legal definition of gender-discriminatory advertising either. The decisions of the Advertising Ombudsman are based on the guidance of the ICC Code. In the ICC Code, gender discrimination is regulated under Article 4 headlined as social responsibility stipulating that marketing communications should respect human dignity and should not incite or condone any form of discrimination, including that based upon race, national origin, religion, gender, age, disability or sexual orientation. The Advertising Ombudsman considers advertising to be gender discriminatory according to the following criteria: (1) advertising portraying men or women as sex objects that can be considered offensive (objectifying); (2) advertising portraying men or women in a stereotypical way in terms of gender roles and where men or women are represented in a degrading way (stereotyping); and (3) advertising that is discriminating or degrading in any other way.²²⁵

The Advertising Ombudsman is capable of handling a large amount of cases each year (Table 2). It is also noteworthy that the Advertising Ombudsman is rather quick in its decisions: in 2015, in 96% of the cases a decision was handed down within four months.²²⁶ According to the statistics and information received from the Advertising Ombudsman, the reason behind the increase in the number of upheld cases is that the Jury has been stricter in its decisions over the last years, particularly regarding advertising for underwear and perfume.²²⁷

²²⁴ The Jury consists of a chairman and a vice chairman who are judges or lawyers and twenty other members representing, e.g. universities, businesses and consumers.

²²⁵ The criteria have their background especially in the work of the Swedish Consumer Ombudsman and the former Trade Ethical Council against Sexism in Advertising. About the evolution of the criteria see, e.g. SOU 2008:5, p. 27–31.

²²⁶ The Advertising Ombudsman 2015, p. 7.

²²⁷ Advertising Ombudsman, 18 November 2016.

Table 2: The number of complaints and decisions related to gender-discriminatory advertising in RO and RON in 2011–2015

Year	Complaints related to gender discrimination	Decisions related to gender discrimination	Upheld cases, %
2009	152	77	32
2010	246	122	34
2011	316	105	31
2012	194	99	32
2013	252	111	41
2014	219	143	44
2015	139	88	49

Source: The Advertising Ombudsman.

The complaints are mostly about objectifying advertising: according to the statistics received from the Advertising Ombudsman, a clear majority of complaints regarding gender discrimination have been classified as objectifying, whereas the amount of stereotyping advertising has been much smaller (Tables 3 and 4). At the same time, larger proportion of complaints regarding objectifying than stereotyping advertising is upheld. The scale of the problem related to gender discrimination in advertising in general is illustrated by the fact that 52% of all cases brought to the Advertising Ombudsman are related to gender discrimination. It is also notable that over the years the number of complaints regarding gender discrimination in advertising has declined considerably (see 2015 compared to 2011).

Table 3: Decisions by RO and RON on the grounds of objectifying advertising and the number of complaints 2009–2015

	2009	2010	2011	2012	2013	2014	2015
Not upheld	24	39	38	24	45	52	24
Not upheld (%)	57%	62%	62%	51%	57%	51%	38%
Upheld	18	24	23	23	34	50	40
Upheld (%)	43%	38%	38%	49%	43%	49%	63%
Total	42	63	61	47	79	102	64
Number of complaints	72	183	241	74	190	157	105
Of which organisation	1	8	5	6	21	53	39

Source: The Advertising Ombudsman.

Table 4: Decisions by RO and RON on the grounds of stereotyping advertising and the number of complaints 2009–2015

	2009	2010	2011	2012	2013	2014	2015
Not upheld	23	33	34	33	23	31	17
Not upheld (%)	79%	65%	77%	80%	74%	76%	65%
Upheld	6	18	10	8	8	10	9
Upheld (%)	21%	35%	23%	20%	26%	24%	35%
Total	29	51	44	41	31	41	26
Number of complaints	75	63	75	120	62	62	33
Of which organisation	1	0	0	4	0	5	1

Source: The Advertising Ombudsman.

Since the Advertising Ombudsman is not a public authority, it is not capable of determining financial sanctions. The sanction available for the Advertising Ombudsman is to attract negative publicity, which is achieved by publishing the decisions on its website (www.reklamombudsmannen.org), in newsletters and in press releases. Since all the upheld and not upheld decisions made by the Advertising Ombudsman and the Jury can be found on the website, the decision archive functions continuously as guidelines to the industry. The Advertising Ombudsman argues that, given that the Swedish population at large is critical towards gender-discriminatory advertising, “name and shame” as a sanction is effective on the advertiser. In addition, there is extensive press coverage on their decisions, and the press actively searches the website for new decisions. According to the Advertising Ombudsman, approximately 500 articles covering the decisions were published in 2015.

3.5.3 Case examples

In order to formulate a general understanding of the criteria used by the Advertising Ombudsman, some case examples are presented below. Advertising is assessed from the point of view of a target group’s average consumer. The set praxis for assessing advertising includes consideration of what kind of an influence the advertisement in question is expected to have on the audience.²²⁸ In other words, it is assessed how the

²²⁸ When it comes to the audience, if the advertisement portrays or is aimed at children or young people there is a need to be pronouncedly cautious according to Article 18 of the ICC Code.

advertisement is perceived by an average consumer, taking into account the medium used and the place where the advertisement is shown. The place has a meaning, e.g. in case 1509-148,²²⁹ which was upheld as objectifying. Among other things, the Jury took the place of the advertisement into account when assessing the acceptability of the advertisement since the underwear advertisements were placed along Stockholm's metro platforms.

RON 1509-148

The advertisement by Calvin Klein marketing underwear consisted of five large grayscale pictures that were placed next to each other at several metro platforms in Stockholm. All units were in grayscale. The pictures were accompanied by the text "The original sexy".

In the first picture a woman wearing a black lace bra was shown from just below her breasts upwards. The woman was looking into the camera and holding her hands over her breasts. The second picture showed a woman wearing a black thong and looking at the camera over her shoulder. She was shown from her bottom and upwards. In the third picture a woman photographed from her hips upwards held a hand on her waist. She was wearing a black tank top with lace details and black panties. In the fourth picture, a woman was shown from her hips upwards. She was wearing black lace panties and a black lace bra and she had crossed her arms just below her breasts. The fifth picture showed a woman wearing black lace panties and holding one arm in front of her breasts and on the opposite shoulder. The other arm was alongside her body.

Typically an advertisement is categorised as objectifying if a man or a woman is used as an eye-catcher and if, e.g. a sexualised image of a woman or a man does not have any connection to the marketed product. These factors were evaluated in case 1111-238²³⁰. In the advertising campaign in question, there were images showing women in lingerie on the webpage of Ryanair. The women in the pictures were not found to have any relation to the marketed product, and, thus, the case was upheld. The Advertising Ombudsman stated that light clothing and the physical poses made the advertisement offensive for women in general.

²²⁹ <http://www.reklamombudsmannen.org/uttalande/calvin-klein-underkladesreklam>

²³⁰ <http://www.reklamombudsmannen.org/uttalande/ryanairwebb>

RO 1111-238

The advertisement published on Ryanair's web page consisted of multiple images showing women in lingerie next to the text "Red Hot fares". Underneath there was also the text "& staff!!!" in a font that gave the impression of handwriting.

This reasoning was also used in case 1103-63,²³¹ which dealt with an advertisement by Jack & Jones that marketed men's clothes. The advertising campaign consisting of a commercial, printed posters and internet advertisements was upheld by the Jury on the basis that there was no connection between the woman wearing light clothing and standing in provocative poses and the marketed products. It was also argued that the advertisement provided a stereotypical view of gender roles that was seen as degrading for both women and men. In this case, neither humour nor irony was considered as a prominent feature of the advertising campaign and, thus, these elements did not soften the negative associations.²³²

RON 1103-63

The advertising campaign by Jack and Jones marketing men's clothes consisted of a commercial, posters and oninternet advertisements. The commercial showed a woman in a tracksuit standing in front of four men dressed in jeans and t-shirts. The woman says: "The new spring collection from Jack & Jones has turned out to have some unfortunate side effects that we did not anticipate." In the next scene a man's face with eyes closed is shown. After a moment, the viewer sees that the man is lying unconscious on a bed. Three women in underwear are standing around him. One of the women taps the man on the shoulder, but he does not react. In the next scene, there is a bedroom where a woman in lingerie is giving first aid to a shirtless man. The following scene shows a man and a woman dressed in lingerie in a car. The woman is sitting astride the man and she is shouting: "Do not leave me, do not leave me, do not go into the light." Then, the woman in the tracksuit is shown again shrugging her shoulders and saying: "Oops! That's why we at Jack & Jones are living up to our responsibility and invite you to join our Jack & Jones get in shape and ready for action online fitness club." She takes off her clothes and ends up wearing a bikini on a beach doing aerobics on all fours with the four men on the background. The commercial ends when the woman invites viewers to visit the advertiser's website.

²³¹ http://www.reklamombudsmannen.org/uttalande/jack__jones_fitness_club

²³² In case 1002-34 (http://www.reklamombudsmannen.org/uttalande/ica_cindy_kor_truck) the Jury found clear humorous features and not even then was it enough to mitigate the offensiveness. The commercial was upheld.

The posters placed in the advertiser's stores had full-scale pictures of the same woman standing on her knees and dressed in a black bikini. In the Internet advertisements, the same woman wore a bikini and stood on all fours on a beach. There were also images of the woman in a bikini and four men in different clothes. When clicking the images the woman was shown dressed in different clothes, such as a tank top that nearly covered her breasts or a black pencil skirt, a bra, and high heels.

The impact of context is demonstrated in case 1607-139.²³³ The advertisement in question was for swimsuits, and it consisted of four Facebook posts. Each post involved a picture portraying a woman wearing a swimsuit. The poses of the model were such that they could easily be interpreted as sexual. However, the advertisement was judged to be mostly acceptable. It was mentioned by the Jury, that according to practice, advertisers promoting lingerie and swimwear have considerable leeway for showing their products on models. The Jury stated that it is understandable that if a model is wearing a swimsuit or underwear, they usually are considered as the focal point and even as an eye-catcher. The Jury did not consider three of the four pictures to go over the limit of what is acceptable when advertising swimwear because there was a clear connection between the model and the product since she was wearing the swimsuit. However, one of the pictures was not acceptable because it showed only a very small part of the swimsuit, and, instead focused on the model's bottom. In the unaccepted picture the woman's pose presented her as a mere sex object in a way that could be considered offensive to women in general.²³⁴

RON 1607-139

The advertisement marketing swimsuits consisted of four posts that had been published on the Facebook page of Modekungen.se. All of the pictures showed a woman dressed in a red swimsuit with

²³³ <http://www.reklamombudsmannen.org/uttalande/modekungense>

²³⁴ The decision was not unanimous. Some members of the Jury argued that none of the pictures were acceptable. The pictures were said to go over the limit for what is acceptable when advertising swimwear. Pictures were argued to give a pornographic impression because of the poses and expressions of the model. What is interesting is that one member admitted that the woman was shown as a sex object, but that was still acceptable because there was a clear connection with the marketed product. What is also noteworthy is that one member of the Jury considered that showing the advertisement only on the advertiser's Facebook page was a mitigating factor to be taken into account.

white text “Bae watch” on the front. In addition to the pictures, each post also had some text, such as “Kenzie in Miami in her “Bae” swimsuit www.mkdn.com.”

In the first picture, the woman was shown from her thighs and up. She seems to be pulling the fabric of the swimsuit so that the tattoos on the lower parts of her stomach are visible. In the second picture, she is also pulling on the swimsuit, but the angle of the view is slightly different. The third picture shows the woman lying prone on the beach. The picture was taken from the top and it was cropped just below the woman’s bottom. The swimsuit does not cover the model’s buttocks at all, and since the swimsuit is low cut, her back is also bare. The fourth picture shows the woman from behind and from the knees up. The woman’s hair covers her back and the swimsuit can hardly be seen. Again the model’s buttocks are bare, and she seems to be pulling on the swimsuit to show even more skin.

Even total nudity can be accepted because of the context. For example, in case 1605-97²³⁵ a woman was shown singing in the shower. The woman was naked, but she was mostly behind the shower curtain, and neither full nudity nor sexual parts of her body were visible. The Jury stated that in addition to the nudity no other feature of the production created the impression of the woman as a sexual eye-catcher, and because of that, the case was not upheld.

RON 1605-97

In a commercial by Match.com, a woman is filmed in a bathroom taking a shower and singing. She seems to be using a shampoo bottle as a microphone. A female narrator says: “Is it really meant to sound like that?” Suddenly, the woman sings out of tune. The narrator says: “You are far from perfect.” In the next scene the woman reaches for her mobile phone to read a message and her naked body can be seen through a transparent shower curtain even though her body is somewhat blurred. It is shown that the woman received a message asking “Karaoke tonight?” The narrator continues: “But that’s just what he likes about you.” The woman gets happy and begins to dance and sing in the shower behind the shower curtain. Her naked body appears again blurred through the curtain. The text “There is something in you that you do not like but that someone else loves” is displayed while female and male narrator voices say the same phrase. The female voice continues by saying: “Find your date in our app. Mia did so! Match, sign up for free.” At the same time, the Match.com logo is displayed alongside a mobile phone and the text “#LoveYourImperfections” and “Register for free”.

²³⁵ <http://www.reklamombudsmannen.org/uttalande/matchcom-duschen>

Recently, a commercial by BMW raised a discussion. The case was assessed by the Advertisement Ombudsman (case 1604–76²³⁶), and the commercial was found to be gender discriminatory on the basis that the dress and the high heels the model was wearing as well as the way she was filmed made her a sex object. This interpretation was strengthened by what the narrator of the commercial said (“*Can you keep your eyes on Gigi?*”) and the fact that there was no connection to the marketed product. The complaint was filed by the Swedish Women’s Lobby, and it was questioned by some if the arguments used by the Swedish Women’s Lobby are consistent.²³⁷

RO 1604-76

The advertising campaign by BMW consisted of photos, videos and texts that were published on bmw.se and eyesongigi.com. One of the videos is described below.

In the video, BMW model M2 cars are parked next to each other. The famous model Gigi Hadid walks towards the cars wearing a red, deep V-neck, short dress with red high heels. A male narrator voice says: “Can you keep your eyes on Gigi? How about in the first ever BMW M2?” Gigi goes and sits in one of the cars. The cars pull away and while they move, they are mixed. The video ends with the cars parked next to each other and on the tarmac in front of the cars are painted numbers one to five. The narrator asks “So, which one is she in?” At the end of the film, a text appears “Take a guess at eyesongigi.com. The first-ever BMW M2” together with the BMW logo.

Despite the Swedish Women’s Lobby acting for women’s rights and the majority of cases pertaining to the discrimination of women, it is important to remember that gender equality is needed for men and sexual minorities too. In other words, gender-discriminatory advertising is not an issue for women’s rights only. In Sweden, this has been taken into account in the decisions of the Advertising Ombudsman. In case 1311-209,²³⁸ the advertisement by a night club consisted of a picture published on a Facebook page. The Advertising Ombudsman considered that allusions to categorising on the basis of abdominal muscles was disparaging and obvious gender discrimination against

²³⁶ <http://www.reklamombudsmannen.org/uttalande/bmw>

²³⁷ The motivation for these arguments was that some years ago a commercial by Volvo so was not reported to the Advertising Ombudsman by the Swedish Women’s Lobby even though it portrayed a half-naked man, see <http://www.annons.se/artiklar/vad-ar-sexism-i-reklam> and <http://www.dt.se/opinion/ledare/kvinnolobbyn-teg-infor-zlatans-nakna-hud-men-roda-klackar-ar-sexism-i-bilreklam>

²³⁸ <http://www.reklamombudsmannen.org/uttalande/harrys-i-ornskoldsvik>

men in general. The advertisement was therefore upheld. When it comes to sexual minorities, the Advertising Ombudsman has stated that as long as advertising does not present disparaging views of homosexuals or other sexual orientations, it is acceptable to display solely heterosexual relations since there is no general ethical requirement in marketing that illustrations in advertising should be representative of the entire society.²³⁹

RO 1311-209

The advertisement consisted of a picture that had been published on the Facebook page of Harry's in Örnsköldsvik. The picture showed a poster hung on a brick wall. On the poster there was an image of the bare chest and abdomen of a man. The man was physically fit. On the man's chest there was the text: "Ladies free entry and boys with a six pack before 23:00".

Regarding stereotyping advertising, portraying men or women in a stereotypical way in terms of gender roles and at the same time presenting sexes in a degrading way is not acceptable. Similarly, to the cases classified as objectifying, the overall impression is relevant. The practice of the Advertising Ombudsman is that it is not acceptable for an advertisement to preserve an anachronistic view of gender roles and in that way place genders in unequal positions in a derogatory manner. In order to be considered prohibited, an advertisement must both preserve outmoded gender roles and portray women and men in a derogatory way.

A Christmas catalogue by Toys R Us was assessed by the Jury in case 0902–30²⁴⁰.²⁴¹ Firstly, the Jury evaluated whether the catalogue preserved anachronistic gender roles. The second issue that the Jury had to determine was whether the catalogue was degrading to either sex. Most of the catalogue was categorised by gender, and only on some rare pages there were girls and boys playing with the same toys. The Jury found it unacceptable by the Jury that boys were shown in active situations whereas girls had much more passive roles playing with dolls and home-related toys. The Jury stated that

²³⁹ This reasoning was given, e.g. in the previously mentioned case, 1103-63, dealing with Jack & Jones.

²⁴⁰ http://www.reklamombudsmannen.org/uttalande/toys_r_us

²⁴¹ The Christmas catalogue of 2009 by Toys R Us was also evaluated in case 0911-251

(http://www.reklamombudsmannen.org/uttalande/toys_r_us_2009). At that time, the evaluator was the Advertising Ombudsman, not the Jury. The Advertising Ombudsman stated that the catalogue was again found gender discriminatory. The grounds for the decision were the same as in case 0902-30.

the catalogue presented children's games and selection of toys one-sidedly in spite of the fact that, in reality, various toys are played with irrespective of gender. When evaluating the degrading factors, the Jury stated that by giving a one-sided picture of girls' and boys' toys, the advertiser encouraged children to adopt the outdated roles presented in the catalogue. The Jury argued that the exclusion of boys and girls from a variety of games and toys was degrading in itself for both sexes. The catalogue was judged to be gender discriminatory.²⁴²

RON 0902-30

The Christmas Catalogue for 2008 by Toys R Us marketed toys for children. On the 58 pages, boys and girls were shown playing with the same type of toys on only 14 pages, whereas on 44 pages, boys and girls were separated and shown playing with totally different types of toys. The catalogue showed lively boys playing in an action-filled environment. Toys marketed for boys were mostly action-related or in some way technical. Girls were shown sitting or standing in rather passive poses compared to boys. Girls were shown playing in an environment representing the home, and they were mostly playing with dolls or home- and beauty-related toys.

Traditional gender roles as such do not automatically mean that an advertisement is gender discriminatory. It is the overall impression and the derogative features that are meaningful. In case 1508-140,²⁴³ pictures published on two pages of a catalogue by IKEA were assessed. The pictures show a young girl and a woman doing kitchen work, such as baking and playing in a play kitchen. The Jury stated, considering that the IKEA catalogue, as a whole, was over 300 pages showing mainly images of IKEA products with people in different places at home in different tasks, that the pictures were

²⁴² The Jury investigated also whether the catalogue was contrary to Articles 1 and 18 of the ICC Code. According to Article 1 advertising should be prepared with a due sense of social responsibility. When it comes to advertising directed at or featuring children under Article 18, second paragraph, special care should be exercised and advertising to children and adolescents should not undermine positive social behaviour, lifestyles, and attitudes. Related to Article 1, the Jury stated that it was unnecessary to examine the question whether advertising is contrary to Article 1 of the ICC Code. Article 1 of the ICC Code is a general rule, which specifies the basic principles to be followed in all advertising and marketing communications. Other articles regulate various specific aspects to be observed in advertising and other marketing. A general legal principle is that a special rule takes precedence over a general rule, and, therefore, it was enough to focus on to Articles 4 and 18. The Jury found the marketing in breach of Article 18. The Jury argued that the even though society nowadays seeks an equal partnership between men and women, the current catalogue gave a one-sided picture of gender roles and encouraged children to exercise outdated roles.

²⁴³ <http://www.reklamombudsmannen.org/uttalande/ikea-leksakskok>

acceptable. It was mentioned that the problematic pages of the catalogue should not be evaluated individually but as part of the catalogue as a whole. According to the Jury, certain pages of the catalogue conveyed stereotypical gender roles for the female gender, but in the light of the catalogue as a whole, the pages in question were not degrading to women or girls in general.

RON 1508-140

In the IKEA fall catalogue for 2015, a spread of pictures showed a young girl and a woman. On the left side of the spread, the girl was decorating a cake. The girl was surrounded by baking equipment, such as bowls, and the woman seemed to be helping the girl. On the right side of the spread, was a picture of the girl when she was playing with a toy kitchen. The woman was in the background wearing an apron and opening the oven door. In the upper right corner, there was an accompanying text: "Inspire the next generation" followed by: "Many childhood memories are created in the kitchen. In a play kitchen children can develop their abilities – and do their own dishes."

Without being objectifying or stereotyping, an advertisement can be judged to be nonacceptable because of other kinds of gender-discriminatory or degrading elements. This can be seen in case 1405-107²⁴⁴. The Jury stated that the advertisement partly alluded on the perception that it is important for parents that their daughters are virgins. In addition, the Jury interpreted that the advertisement conveyed a message saying that it is the parents' obligation to make sure that their daughter is a virgin and, moreover, suggests losing virginity would be worse than being raped. The Jury stated that advertisement was degrading and discriminatory to women in general.²⁴⁵

²⁴⁴ <http://www.reklamombudsmannen.org/uttalande/taxijakt>

²⁴⁵ In addition to being contrary to Article 4 because of gender discrimination, the advertisement was against Article 4 because the advertisement was socially irresponsible since it played on fear without a justifiable reason. Furthermore, the advertisement was found to be contrary also to Article 12 because because it was derogatory towards taxi drivers and taxi companies in general.

RON 1405-107

An advertisement by a taxi firm was published in a Swedish newspaper, and it consisted of a black background with a white text: "Your daughter is still a virgin. But if you send her in an unsafe taxi, things could go wrong..." Further down there was the text "If you would rather book a safer taxi for a cheaper, set price, you can do so at www.taxijakt.se." Next to the text was the advertiser's logo.

3-5-4 *Discussion*

Even though gender equality is highly appreciated in Swedish society, in advertising as well as in media in general, an unbalance between genders exists.²⁴⁶ Currently, the Swedish judiciary system does not prohibit gender-discriminatory advertising. Possible legislative actions against gender-discriminatory advertising have, however, been on the public and political agenda since the 1970s. The latest government inquiry was completed in 2008. It included a proposal for legislation, which, however, did not proceed. The attention by the media and the relatively high number of complaints filed to the RO imply considerable public interest. Recently, the Swedish Women's Lobby has driven a major campaign for introducing legislation.²⁴⁷ Considering the broad attention given to the issue, legislation against gender-discriminatory advertising should not be seen excessively as a matter of women's rights but as a statement by a society that appreciates values of democracy and equality. What is more, under international conventions, such as the CEDAW, Sweden is obligated to work actively against gender discrimination. It can be argued that because it is relying merely on self-regulation, the state is not active enough in its measures.²⁴⁸ The state could use legislation as a normative measure in order to signal that gender-discriminatory advertising is not accepted in Swedish society.

Currently, gender-discriminatory advertising is controlled by a self-regulatory organisation called the Advertising Ombudsman. According to the guidelines of the Advertising Ombudsman, advertising is not acceptable if it is objectifying or

²⁴⁶ See e.g. Edström & Jacobsson 2015, s 22. Men are more visible in the news.

²⁴⁷ The Swedish Women's Lobby 2016b, p. 14. The Swedish Women's Lobby has pointed out three things that are the weaknesses of the current situation: there is no legislation against gender discriminatory advertising, there is no public authority in charge of supervision, and there is no possibility to determine proper sanctions.

²⁴⁸ The CEDAW Committee has stated that Sweden should be more active in its measures to fulfill the obligations of the CEDAW, see CEDAW 2016, 3–4 and Svensson & Edström 2014, 500.

stereotyping or if it is discriminating or derogatory in any other way. The Advertising Ombudsman seems to be consistent with its decisions even though they are explained rather briefly. However, all decisions are motivated, regardless of whether the advertising is upheld, not upheld, or not within remit. The Advertising Ombudsman handles all complaints, and approximately 100–140 decisions regarding gender-discriminatory advertising are made each year.

In the praxis of the Advertising Ombudsman, a prerequisite for an advertisement to be considered discriminatory is that it describes or conveys a conception of people or their traits and characteristics in a derogatory or demeaning manner. Humour and irony can mitigate an element that would otherwise be perceived as offensive or derogatory. However, the Advertising Ombudsman seems not to be very permissive on that point. It must be highlighted that, in the decisions of the Advertising Ombudsman, the advertisement is evaluated as a whole. In other words, the overall impression is relevant. Factors that impact the assessment are the context, especially the relation to the product, the use of clothing, poses and the environment. The place where the advertisement is displayed and the audience are also meaningful factors. What is also notable is that, in Sweden, problems related to gender discrimination have not only been identified in relation to women but also in relation to men. The Advertising Ombudsman can be said to have adopted a consistently strict attitude towards gender-discriminatory advertising in its various forms.

From the legislative point of view, gender discrimination is currently allowed in advertising in Sweden even though gender discrimination is prohibited in most areas of society.²⁴⁹ On the basis of the present situation, it can be argued that the freedom to communicate commercially in business is more appreciated than gender equality.²⁵⁰ In Sweden, the situation has traditionally been interpreted as a need to find a balance between the two conflicting fundamental legal principles despite that freedom of expression, as established in the Swedish Constitution, is not intended to secure economic interests of businesses. As argued in the latest in-depth official report, the Constitution of Sweden does not prevent legislation against gender-discriminatory advertising. Gender equality can be seen as a law-based exception through which

²⁴⁹ Svensson & Edström 2014, p. 499.

²⁵⁰ Svensson & Edström 2014, p. 504. If the two different approaches to freedom of expression, market-driven freedom of expression, and democracy-driven freedom of expression, are separated, it can be said that the market-driven approach to freedom of expression has been adopted in Sweden in relation to gender discriminatory advertising.

freedom of expression can be limited, and, therefore, legislation is possible without conflicting with freedom of expression. Furthermore, restrictions on freedom are accepted when it comes to commercial communication, even though gender-discriminatory advertising has been considered as not infringing on the object of protection in the Marketing Act, i.e. the consumer/trader.²⁵¹

Instead of debating the possibility to legislate against gender-discriminatory advertising, nowadays the discussion seems to be concentrated around a question of whether legislation is needed or not and whether the problems related to gender-discriminatory advertising should be solved through legislation or through self-regulation. Arguments can be found to support each side since both legislation and self-regulation have their advantages and shortcomings.

It can be argued that even though legislation would be possible, it is not needed because self-regulation works relatively well. In order to be influential, a self-regulatory organisation has to enjoy legitimacy.²⁵² The Advertising Ombudsman has gained respect, and its decisions are in most cases taken seriously by advertisers. Despite the fact that the Advertising Ombudsman has gained acceptance and an important role, there remains a lack of power. The decisions of the Advertising Ombudsman are not binding, and because of that, they can be described as opinions or recommendations. Some advertisers have been condemned several times although for different advertisements.²⁵³ The Swedish Women's Lobby has seen this as a sign that the self-regulatory system is not enough.²⁵⁴ The Swedish Women's Lobby has actively spoken for legislation by arguing that because neither economic sanctions nor withdrawals of campaigns are possible, self-regulation is not sufficient and effective enough. The Swedish Women's Lobby argues that the existence of a self-regulatory organisation has not led to a decrease in the amount of gender-discriminatory advertising. On the

²⁵¹ It must be highlighted that both the Freedom of the Press Act and the Fundamental Law on Freedom of Expression strictly prohibit censorship (Chapter 1, Article 2 of the Freedom of the Press Act and Chapter 1, Article 30f of the Fundamental Law on Freedom of Expression). However, the provisions do not inhibit intervening commercial communication afterwards because as stated in the provisions of the Instrument of Government, freedom of expression may be limited to business activities and furthermore, commercial communication is not fully protected under the Freedom of the Press Act and the Fundamental Law on Freedom of Expression. The Marketing Act is based on this possibility.

²⁵² Svensson 2014, p. 105.

²⁵³ E.g. Hotel Tylösand has been condemned three times because of gender discriminatory advertising (cases 1101-18, 1506-104 and 1509-142).

²⁵⁴ <http://sverigeskvinnolobby.se/blog/branschen-sjalva-kommer-att-ta-mer-ansvar-om-en-lagstiftning-infors>

contrary, the sexualising of the public sphere has become more intense.²⁵⁵ On the other hand, it is noteworthy that in 2015, the Advertising Ombudsman received the lowest number of complaints related to gender-discriminatory advertising.

In addition to legitimacy, efficiency and flexibility are important factors when assessing self-regulation.²⁵⁶ The Advertising Ombudsman is effective in the sense that it is able to make more decisions than the public authorities in other Nordic countries.²⁵⁷ If and when needed, the Advertising Ombudsman is also able to respond quickly to new developments in the advertising culture and, thus, has a flexible praxis. Because of these advantages, the Association of Swedish Advertisers is in favour of self-regulation exclusively and has doubts about the efficiency of legislation.²⁵⁸ However, if the importance of the gender equality principle is underlined, it can be argued that self-regulation alone is not enough to secure gender equality and non-discriminatory manner of advertising.²⁵⁹ In other words, when it comes to prohibiting gender discrimination and choosing legislation over self-regulation, it is not a matter of efficiency but rather a matter of principle.²⁶⁰

In conclusion, it is a matter of choice whether legislation against gender-discriminatory advertising is introduced or not in Sweden. Since legislation is a strong measure that communicates the values of a society, and since it could make determining proper sanctions possible, legislation prohibiting gender-discriminatory advertising is justifiable.²⁶¹ In addition, it has been argued that prohibiting gender-discriminatory advertising through legislation could even strengthen some aspects of freedom of expression as well as democracy in general.²⁶² Thus, there are many advantages to legislation. On the other hand, the Association of Swedish Advertisers has expressed a concern that if legislation is introduced, the self-regulatory system would lose its meaning, and that would result in a more rigid system and handling of fewer cases.²⁶³ However, it is of course possible to have both legislation and self-

²⁵⁵ The Swedish Women's Lobby 2016a, p. 14–15.

²⁵⁶ Josefsson 2002, p. 206.

²⁵⁷ Svensson 2014, p. 105.

²⁵⁸ <http://www.annons.se/artiklar/lagstiftning-en-kontraproduktiv-losning> and <http://www.annons.se/artiklar/myt-att-lagstiftning-skulle-vara-mer-effektivt>

²⁵⁹ Svensson & Edström 2014, p. 499.

²⁶⁰ A comment by Eva-Maria Svensson.

²⁶¹ Svensson 2014, p. 105.

²⁶² Svensson & Edström 2014, p. 510.

²⁶³ <http://www.annons.se/artiklar/lagstiftning-en-kontraproduktiv-losning>

regulation, and if legislation is introduced, the well-functioning self-regulatory system of the Advertising Ombudsman could play a vital role as well. Perhaps the best solution would be achieved by seeing legislation and self-regulation as complementary elements and by trying to develop a combination of legislation and self-regulation.

4. Discussion

The report addressed the problem of gender-discriminatory advertising and surveyed the regulatory framework and praxis of the Nordic countries regarding gender-discriminatory advertising. As brought up before, the role of advertising as a social institution and as a source of ideological influence is noteworthy. Media not only mirrors society, but plays an active role in constructing it. It can either contribute to gender equality or enforce inequality between genders.²⁶⁴ Therefore, even more attention should be given to the conceptions that media conveys.

Summing up so far, the Nordic countries have had a persistent commitment to pursue gender equality as a goal, on all political levels. Although it is decidedly relevant to argue that there is a common Nordic approach to gender equality in advertising, nevertheless, relevant differences exist. Adopted solutions in the Nordic countries can be compacted into legal provisions on marketing, consumer protection, and gender equality legislation, which are either supplemented or replaced by self-regulation. Denmark, Norway and Finland have regulated gender-discriminatory advertising – either by means of general provision or explicit prohibition – in consumer protection or marketing legislation. In contrast, Iceland has chosen to regulate gender-discriminatory advertising under equality legislation, which explicitly provides criteria for gender-discriminatory advertising. Sweden is an exception to this rule as it has no legislation in relation to gender-discriminatory advertising and has chosen to promote and protect gender equality in advertising by leaving the matter up to a self-regulatory body. Finland and Sweden are the only Nordic countries to have a self-regulatory body, and Finland is the only Nordic country to have both legislation (and supervisory authority to oversee gender-discriminatory advertising) and a self-regulatory body.

Although legislation exists in three out of the four Nordic countries, there is variation in the forms of the legislative regulation. For instance, Denmark has a general provision in its Marketing Practices Act that prohibits violating good marketing

²⁶⁴ Edström 2011, p. 73.

practices, but it does not make any special reference to gender-discriminatory advertising.²⁶⁵ In the Finnish Consumer Protection Act, there is a general provision that provides a definition of marketing contrary to good practices and, additionally provides for the prohibition of gender discrimination in marketing. Even though there is somewhat more reference to equality of genders in the Finnish legislation applied to advertising, there are still no exact provisions in Denmark's or Finland's legislation providing a legally binding definition and criteria of what gender-discriminatory advertising is. Thus, in Denmark, the Consumer Ombudsman has developed and used its own guidelines for evaluating the discriminatory nature of advertising and for interpreting general provisions of legislation. In Finland, the Consumer Ombudsman leans on established practice, and it has been able to respond to changing values in society or new marketing mediums. For instance, since the late 1990s, the Finnish Consumer Ombudsman has paid particular attention to advertising directed at children. In other words, the Consumer Ombudsman has at least theoretical choice and authority to outline how gender-discriminatory advertising should be understood and addressed. Instead of general provisions, Norway and Iceland have a precisely and explicitly phrased and detailed prohibition of gender-discriminatory advertising in their legislation, thereby sending a clear legislative signal. The Norwegian Consumer Ombudsman has also provided elaborated and quite specific guidelines on gender-discriminatory advertising.

In Sweden, in the absence of legislation, control of gender-discriminatory advertising is carried out by a self-regulatory organisation called the Advertising Ombudsman. Self-regulation also plays a substantial role in Finland in addition to legislation, and the Council of Ethics in Advertising is the main self-regulatory body in the country. Self-regulatory bodies both in Finland and Sweden have developed explicit guidelines and can work flexibly and, in addition, they have the benefit of being able to process a large number of complaints. The Nordic countries that only have a general provision in their legislation (Finland, Denmark) or do not have legislation at all (Sweden), or have a self-regulatory body (Finland, Sweden) may have more possibilities and liberties to create guidelines promoting and protecting gender equality that can

²⁶⁵ The general provision in Danish marketing legislation is the most liberal in comparison to the Finnish general provision, for example. The general provision of Danish marketing legislation somehow reflects Denmark's liberal attitude towards gender equality issues in general. It can be questioned whether Denmark should move towards the other Nordic countries when it comes to gender equality in advertising.

more easily and quickly be changed if, for example, changes take place in values of society or marketing and advertising culture and media.

On the other hand, without any legislation or explicit and detailed provisions, supervising compliance with regulation and inflicting penalties or imposing sanctions may be challenging or not possible (e.g. in Sweden).²⁶⁶ Self-regulation does not carry the same weight as an act of law. Evidently the sanctions that self-regulatory bodies have at their disposal are not as effective as legal sanctions. The Council of Ethics in Advertising (Finland) and the Advertising Ombudsman (Sweden) do not have the means to issue financial sanctions or demand that the advertising campaign be withdrawn. However, the sanction entails negative publicity, that is, “name and shame.” Although the self-regulatory bodies in Finland and Sweden have gained legitimacy, and can be described as being active, efficient and flexible actors, their capability to issue sanctions is limited, and that can be regarded as somewhat problematic.²⁶⁷

Legislation in Iceland, Finland, Norway, and Denmark provides the opportunity to impose sanctions on companies that operate contrary to legislation. Regardless of legislation and the fact that it is possible to issue injunctions and periodic penalty payments, and to take matters to court, in practice, this seldom takes place in Finland, Norway and Denmark. For example, according to Finland’s legislation, it is possible for the Market Court to impose the threat of a penalty payment if advertising violates the Consumer Protection Act. The Market Court has imposed penalty payments in two Market Court cases described above, but these threats were never realised as the businesses in question have obeyed the decisions and never repeated the violations.²⁶⁸

In addition to various sanction systems and possibilities, also the supervisory authorities and the general public’s opportunities to report gender-discriminatory advertising vary among the Nordic countries. In Iceland, the Icelandic Centre for Gender Equality is the agency responsible for supervising the advertising field in regards to the Gender Equality Act. In Norway, the Consumer Ombudsman and the Market Council oversee Norwegian marketing legislation. The Ombudsman can both submit its own

²⁶⁶ For example, Paula Paloranta from Finnish Council of Ethics in Advertising stated that the general provision of Finnish Consumer Protection Act does not help at all when it is about evaluating whether the advertisement is against the Consumer Protection Act or not. A general provision does not give enough support for interpretation when every case is different and has different details. Paloranta 18.11.2016.

²⁶⁷ The Swedish Women’s Lobby 2016b, p. 7.

²⁶⁸ Under the sections the Competition and Consumer Authority Act, the Market Court has the power to do so after the Consumer Ombudsman has taken the repeated violation to the Court accordingly with the Market Court Proceedings Act.

reports of gender-discriminatory advertising for assessment and receive complaints from the public. In Denmark, individuals and organisations can report advertisements deemed to be sexist via a form on the Danish Consumer Ombudsman website. This has been criticised because the Danish Consumer Ombudsman has neither clear knowledge of legislation nor the ability to submit complaints via their website. There has not been any information concerning the legislation or the possibility to report advertising considered to be gender discriminating either, which has resulted in unawareness of legislation or opportunities to report advertising among the general public.²⁶⁹ In Finland, the Consumer Ombudsman has a supervisory responsibility for the Consumer Protection Act. Individuals, organisations and government agencies can report advertising they consider to be gender discriminatory.

In addition to the Nordic supervisory authorities presented above, the Finnish Council of Ethics in Advertising and the Swedish Advertising Ombudsman also issue statements and decisions based on requests and complaints from private persons and companies. Contrary to the Finnish Consumer Ombudsman, the Council of Ethics in Advertising can issue statements also concerning business-to-business advertising. In Sweden, companies, organisations and consumers can contact the Swedish Advertising Ombudsman and report advertisements deemed to be gender discriminatory. It is a notable advantage that the Swedish Advertising Ombudsman can address business-to-business advertising. Both the Advertising Ombudsman in Sweden and the Council of Ethics in Advertising in Finland have applied the Consolidated ICC Code of Advertising and Marketing Communication Practice also to societal advertising, although purely religious and political advertising is not within the remit of the Consolidated ICC Code of Advertising and Marketing Communication Practice.

Whether or not gender-discriminatory advertising is regulated under the Marketing Act or the Gender Equality Act is reflected in the scope of the regulation. It has been found unfortunate that, for example, in Norway, there is no regulatory authority that can consider complaints about awareness campaigns, political speeches or general information. According to legislation applicable to gender-discriminatory advertising in Norway, Finland and Denmark, the supervisory authorities have the competence to only address business-to-consumer advertising, which means that all other kinds of advertising fall outside the scope of the authorities' supervision. In Finland, the Council

²⁶⁹ The Swedish Women's Lobby 2016b, p. 10.

of Ethics in Advertising has the possibility to also address business-to-business advertising, for example. Another minor challenge in Denmark is the fact that, in addition to the Consumer Ombudsman, the Board of Equal Treatment also handles matters of gender-discriminatory advertising, although the Board only has competences in cases where the complainant has an individual and actual interest in the concrete case or when the case is brought up by the Danish Institute for Human Rights.²⁷⁰ To sum up, a very significant role is played when it comes to selecting whether gender-discriminatory advertising issues are regulated under legislation (and under *which* legislation) by who the supervisory authority is and what competence this authority has or whether there is a self-regulatory body that handles cases concerning advertising from a gender-discriminatory point of view.

As mentioned at the beginning of this report, there is no universally accepted definition of gender-discriminatory advertising. There is variation at the Nordic level in the way gender-discriminatory advertising is defined, although it can be argued that the core is the same. Norway is one of the few countries that expressly prohibits gender discrimination in advertising in precise wording.²⁷¹ According to Norwegian regulation, the main principle applied to criteria for gender-discriminatory advertisements is that advertising must not be contrary to the equality of the sexes. All the other criteria must be interpreted in this light. For example, an advertisement may not conflict with the criteria of not involving “exploitation” or being offensive but may still conflict with the principle of equality.

In Finland, advertising or marketing is considered to be gender discriminatory if it is clearly in contravention with generally accepted social values and gender is portrayed in an offensive way. Therefore the assessment of the discriminatory nature of advertising is always tied to the specific time and place. Presenting a naked or scantily-clad person in an advertisement does not necessarily indicate sexism. However, demeaning a certain gender or presenting it in a sexist and derogatory manner is forbidden. Advertising goes against good practices when it relies excessively on sexuality for its impact and its presentation and method are demeaning to either men or women. According to the Council of Ethics in Advertising (MEN), the most important criteria determining an advertisement as contrary to law and worthy of being

²⁷⁰ Lov om ligestillingsnaevnet chapter 1, section 1.

²⁷¹ Finland also expressly prohibits gender discrimination in marketing. The Norwegian provision is, however, more precise in its wording.

considered by MEN, are for instance, utilising women as an indicator of sexuality and “cropping” a woman’s body to show only some body parts – usually lips, bottom, and so forth. As stated already by the Council of Equality, the predecessor of MEN, nudity in itself is not reprehensible if it has some relevance to the advertised product.

There is neither a legal definition of gender-discriminatory advertising anywhere in Danish legislation, nor is gender-discriminatory advertising prescribed *per se* in the Marketing Practices Act. Instead, the guidelines published by the Danish Consumer Ombudsman concerning gender-related advertising are used when interpreting the law. The guidelines have norm-setting value although they are only guidelines. According to the guidelines on gender-related advertising by the Danish Consumer Ombudsman, an advertisement is discriminating if a gender is represented in a derogatory or contemptuous manner; if nudity or eroticism is included in a manner that appears as derogatory or contemptuous to the relevant gender; the advertisement gives the impression that the role of one gender is socially, financially, or culturally subordinate to the other gender; if the advertisement gives the impression that one gender is less competent, less intelligent, or less suited to perform tasks that both genders can perform equally well physiologically; or if the advertisement gives the impression that one gender has special negative personality traits or characteristics.

Iceland has an explicit provision of law, Article 29 of the Equality Act, that forbids advertisements that are disrespectful or discriminatory towards either sex or run contrary to gender equality in any way. In general, the Equality Act has proven to be a successful tool in implementing gender equality within the Icelandic context. The Centre for Gender Equality supervises the implementation of the Act and contacts the advertisers requesting that they remove advertisements suspected to be contrary to the law. The Complaint Committee of Gender Equality has the function of examining cases and delivering rulings on whether provisions of the Equality Act have been violated. Despite the existence of this legal tool and its implementation to effectuate Article 29 of the Equality Act and ensure an environment of non-discriminatory advertisements in Icelandic society, the cases of gender-discriminatory advertisements handled by the Committee have been few in number, and since 2000 only one advertisement of four dealt with by the Committee has been ruled as gender

discriminatory.²⁷² It is, therefore, clear that additional methods of implementation are necessary in Iceland.

In Sweden, since there is no legislation against gender-discriminatory advertising, there is no legal definition of gender-discriminatory advertising. According to the ICC Code and the guidelines set up by the self-regulatory body, the Advertising Ombudsman, advertising is not acceptable if it is: a) objectifying, that is advertising that portrays men or women as sex objects that can be considered offensive or b) stereotyping, that portrays men or women in a stereotypical way in terms of gender roles and where men or women are represented in a derogatory way. These criteria have a long history and have, with some adjustments, been applied for more than twenty years.

A praxis comparison concerning the Nordic countries shows that some evident differences can be identified. Firstly, in Denmark, the use of humour has been seen as a mitigating circumstance, as a sign that the advertising is not meant to be taken seriously. In contrast, in Norway, the use of humour is not a decisive factor for whether the advertising is legal or not.²⁷³ In Sweden, the Advertising Ombudsman has stated that "humour can mitigate unacceptable features", but based on the decisions it seems that in practice the line taken by Ombudsman has been stringent. Secondly, attitudes towards nudity differ in the Nordic countries. The most pronounced difference can be found between Sweden and Denmark. While Sweden does not have legislation against gender-discriminatory advertising, it seems that attitudes towards gender-discriminatory advertising are the strictest there among the Nordic countries.²⁷⁴ As an apt remark, it has been said: "...if you are thinking of using the same marketing campaign throughout Scandinavia, avoid sex. Sex sells – just not in Sweden."²⁷⁵ In Finland and in Norway – as well as in Sweden – nudity is approved as long as the presence of product relevance can be found and there are no other degrading elements. According to the principles applied by the Finnish Council of Ethics in Advertising, nudity as such is not reprehensible if it does not involve a derogatory manner of representation. More permissive attitudes towards using nudity, sex, and gender roles in advertising have been found in Denmark. The Consumer Ombudsman's guidelines and praxis allow a lot of leeway in the use of nudity and sex in advertising. Nudity can

²⁷² Numbers of total complaints sent to the committee were not available.

²⁷³ Forbrukerombudet 2009.

²⁷⁴ Also Kjeldstad 2001, p. 68.

²⁷⁵ Glad 2014, p. 118.

be accepted in advertisements even if it has no natural relation to the products or services being advertised.

There are also differences in attitudes towards stereotypes. In Norway, for example, the plain description of existing gender roles is not in itself deemed contrary to law, unless the presentations of gender stereotypes are highlighted in a particularly lopsided or degrading manner in stereotypical situations from which society has moved away. The Norwegian Consumer Ombudsman occasionally receives inquiries from people who have reacted to advertising that depicts boys and girls in a gender-stereotyped way, for instance, in toy catalogues. The Finnish Consumer Ombudsman accepts stereotypes as long as they are not demeaning. The Finnish Council of Ethics has recently considered advertisements that sustain stereotypical representations of gender roles as being against good marketing practice. Judging from its decisions, the Swedish Advertising Ombudsman has taken a relatively strict line towards stereotypical portrayals. In Denmark, very few complaints have been filed concerning stereotypic portrayal of women in advertising. In general, it can be said that all the Nordic states accept gender stereotypes in advertising on the condition that presentations of gender stereotypes are not highlighted in a particularly lopsided or in degrading manner, in spite of the fact that they are all considered to be strongly committed to the CEDAW and its Article 5, which obligates states parties to actively work to eliminate stereotyped roles for men and women.²⁷⁶

Furthermore, the threshold for the applicability of provisions on gender-discriminatory advertising seems to be somewhat dependent on the gender. Women's images are much more commonly exploited in advertising than men's, and this is reflected in the complaints and in praxis. The majority of the complaints are based on discrimination against women. Among the advertisements that are assessed as gender discriminatory, the share is even higher. Advertisements in which men seem to be discriminated are not condemned. Sweden seems to be the only Nordic country with condemnatory decisions in which the discriminated gender has been male. In some cases, the Swedish Advertising Ombudsman has considered that allusions to setting men in different categories on the basis of abdominal muscles is disparaging and obvious gender discrimination against men in general.²⁷⁷ This advertising has,

²⁷⁶ In addition, the UN Beijing Platform for Action 1995 calls for tackling gender stereotypes in public and private life and has a separate objective concerning the promotion of a balanced and non-stereotyped portrayal of women in the media.

²⁷⁷ For example, see case <http://www.reklamombudsmannen.org/uttalande/harrys-i-ornskoldsvik>

therefore, been condemned. In Norway, the threshold for the applicability of Section 2 of the Marketing Control Act is higher for the use of men in advertising than for the use of women in advertising. This has been explained by the Consumer Ombudsman who has stated this to be due to the fact that the aim of Section 2 of the MCA is primarily to improve the position of women, since men continue to hold a stronger position in society.²⁷⁸ Similarly, in Norway the Consumer Ombudsman bases decisions on whether the provision banning gender-discriminatory advertising has been violated on the consideration of equality between genders, with particular emphasis on how the advertisement portrays women.²⁷⁹

Generally, it can be alleged that issues related to regulating gender-discriminatory advertising are for the most part dominated by the female aspect and heteronormative culture – even though gender equality is a matter for men, sexual minorities and non-gender conforming persons, too. Society is becoming more aware of different conceptions of gender and sexuality. In all the Nordic countries, in the light of decisions by authorities, the issue of gender-discriminatory advertising, however, remains to be a problem for women.

Some differences seem to be found in the number of considered cases among the Nordic countries. The Swedish Advertising Ombudsman considers all complaints filed, and it is capable of handling a large number of cases each year (for example 139 cases in 2015). In the other Nordic countries, the figures are significantly smaller. Although the statistics in some Nordic countries may look better than the European average, the problem still exists.²⁸⁰ Numbers cannot be used to draw too many conclusions. The low number of complaints does not automatically mean that there is no discrimination. Statistical data may not be exact or statistics and reporting can be misleading. Firstly, this may result from citizens' insufficient awareness of the opportunities to file a complaint or how to request for a statement concerning advertising found to be gender discriminatory. This can also have ramifications. The practices of different institutions can also be reflected in the numbers of complaints. Gender-discriminatory advertising is no priority to any Consumer Ombudsman – Finnish, Norwegian or Danish – a standpoint that is motivated by the low number of complaints. These ombudsmen do not actively follow advertising but rely on consumer complaints. Moreover, the picture

²⁷⁸ Public International Law and Policy Group (2015), p. 11–12.

²⁷⁹ Public International Law and Policy Group (2015), p. 29.

²⁸⁰ Savolainen 2016.

based on exploring the decisions available on the website of the Finnish Ombudsman might be too rosy in comparison with reality. All the institutions appear not to include all the cases related to gender-discriminatory advertising on their websites or not to compile statistics on gender-discriminatory advertising. Due to lack of transparency, there may be a false impression that there are no challenges or problems.²⁸¹

Although there are some kinds of criteria for gender-discriminatory advertising, problems still occur due to the abstract forms of expressions frequently used in advertising. Whether or not an advertisement is discriminatory is a matter of interpretation and the line between unlawful and lawful marketing can be difficult to define and changes with time and place. Assessments are made in the light of prevailing social and cultural norms. In addition to there being different interpretations of some individual advertisements, the provisions that have been enacted in regard to gender-discriminatory advertisements are also open to various interpretations. This can be seen as a good thing as allowing conforming to the changing values of society.²⁸² Some differences can also be found by exploring generational – or even gender – differences. Some research has found that attitudes to gender roles are dependent on gender. Women tend to be more critical than men as concern gender role portrayals.²⁸³ Furthermore, the decision whether a piece of advertising is gender discriminatory is subject to the forum where the advertising is shown. The bigger the audience the advertisement can reach, the stricter the standards imposed on the ethicality of the advertising.

Gender equality in relation to advertising is intrinsically related to conversations about freedom of expression guaranteed by Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Freedom of expression and gender equality, as integral parts of human and fundamental rights, are inter-related. Gender equality can be seen as a precondition for freedom of expression, that is that everyone has an equal right to enjoy freedom of expression – and vice versa. This demands specific attention to gender equality in advertising content and the manner in which the advertising is treated and presented.²⁸⁴ On the other hand, freedom of

²⁸¹ Interview with Pakarinen 9 September 2016.

²⁸² Interview with Vainio 11 October 2016.

²⁸³ Sverdrup & Støm 1992, p. 375.

²⁸⁴ Recommendation CM/Rec(2013)1 of the Committee of Ministers to member States on gender equality and media.

expression is also used as a counterargument to regulating gender-discriminatory advertising, as is the case in Sweden.

Freedom of expression has been the focus of debate especially in Sweden. Although Sweden has a high self-image when it comes to gender equality, there are currently no legislative means to restrict gender-discriminatory advertising. Since the 1970s, there has been a debate on how the two fundamental rights, freedom of expression and gender equality, can be balanced in the context of advertising. So far, regulation of gender-discriminatory advertising has been dismissed with claims that it would violate freedom of expression. Despite the conclusion by the latest official report in 2008, which highlighted that legislation is possible without conflicting with freedom of expression since the right to communicate commercially is not as fully protected as communication in a democratic society in general, no legislative actions have been taken. None of the other Nordic countries besides Sweden have considered constitutional provisions on freedom of expression to be an obstacle to regulation concerning gender-discriminatory advertising, and the public debate seems to have been more intense in Sweden than in the other Nordic countries.²⁸⁵ In Finland, commercial advertising is not at the core of protection of freedom of speech, and in this regard the freedom has been circumscribed because of the public importance that discriminatory advertising has. A common understanding is that freedom of expression can and should be restricted based on public interest. At the same time, resistance to regulating is usually motivated by freedom of expression.

In cases in which states have been cautious to regulate, self-regulation has often been favoured and encouraged as an alternative to legislation. Choosing between self-regulation and legislation is not black or white: both systems have advantages and disadvantages. Even though the system based on self-regulation has many advantages, it can be asserted that legislation would still be needed as a normative measure used by the public authority in order to clearly express that gender-discriminatory advertising is not acceptable. Legislation is a way to provide the option of imposing, along with the suspension of non-compliant advertising and media contents, also penalty payments or other sanctions for those who implement legislation.²⁸⁶ Since it is possible to have both legislation and self-regulation, perhaps one of the best solutions would be to view legislation and self-regulation as complementary elements and to develop a combination

²⁸⁵ Svensson 2014, p. 496.

²⁸⁶ Brodolini, F. G., Giomi, E., Sansonetti, S. & Tota, A. L. (2013), p. 8.

of legislation and self-regulation.²⁸⁷ It is possible for the self-regulatory actor to demand even higher standards than what is expressed in legislation, if it so wishes. Legislation could have its legal and cultural power increased by being based on self-regulation, which could then offer a more proper and comprehensive definition of gender-based discrimination than legislation itself or detailed examples of representations that are to be considered as stereotypical or harmful to one gender's dignity.²⁸⁸

Studies on the influence of gender-discriminatory advertising contents on the audience have shown that the ability to recognise gender discrimination in advertising directly correlates with the audiences' gender awareness and self-esteem.²⁸⁹ In general, preventive work and raising awareness would be important actions to change attitudes towards gender stereotypes and gender-discriminatory advertising. This kind of preventive work is carried out by the Swedish Advertising Ombudsman through education and guidance for the industry. By disseminating examples and guidelines that media professionals can refer to, or by running awareness-raising campaigns that target the audience, media professionals and cultural institutions, the presence of gender equality aspects in advertising can be enforced.²⁹⁰ This is all the more important if we consider that it is not exclusively individual advertisements or campaigns that affect our notions and values but, fore and foremost, our overall exposure to advertising. With the introduction of ethical codes and the promotion of social responsibility, the self-regulatory bodies would be able to contribute to a change in the industry.

Rapidly changing technology and advertising pose challenges to state and regulator efforts to control advertising in general and, thereby, also gender-discriminatory advertising. The internet offers new possibilities for advertising and a tendency to circumvent good marketing practice and bend rules seems to be more common in internet advertising than in traditional media. As online personalised advertising becomes more common, it also raises questions about how to regulate and supervise gender-discriminatory advertising in this changing environment.

Another topical concern is the general sexualisation of public space, the emphasis on looks and image-processed advertising and the negative effect these have on people's body images. This development has been linked to self-esteem problems,

²⁸⁷ For example, in Finland the combination of self-regulation and legislation has been seen as a workable solution.

²⁸⁸ Brodolini, F. G., Giomi, E., Sansonetti, S. & Tota, A. L. (2013), p. 8.

²⁸⁹ Brodolini, F. G., Giomi, E., Sansonetti, S. & Tota, A. L. (2013), p. 89.

²⁹⁰ Brodolini et al. 2013, p. 8.

eating disorders and depression, especially among young people. In Norway, Trondheim has surpassed national legislation for counteracting sexist advertising in the public sphere. In 2016 it introduced a ban on "scantily clad" people in advertisements in public places. The reasoning was that politicians believed it to be a serious issue if the city's advertising spaces contributed to distorted body ideals and mental health problems amongst girls and women. The Strategy plan for implementing gender equality in 2011–2015 in Iceland is also a good example of another way to achieve an effect on attitudes and awareness. The plan builds on the equality policy of the City of Reykjavík, the Equality Act (10/2008) and the European Treaty on gender equality, and it is intended to work against gendered stereotypes in writing and imagery including, among others, instructions for the city's advertisements and changing the gendered images of its townscape.

Could a common Nordic solution be found, in the spirit of the Helsinki Treaty? This might be difficult but perhaps worth trying. The current situation in the Nordic countries is challenging to grasp from a general viewpoint because each country has developed opinions and procedures of its own. The assessment of advertising is tied to the social and cultural norms of the particular society. However, the Nordic countries all place high value on the same principles related to gender equality, which could perhaps encourage similar outcomes in discriminatory cases. A common Nordic target could be the clarification of the legislation. It can be questioned whether legislation should include a clearer definition of "gender-discriminatory advertising", whether the application of existing legislation and rules should be reviewed and whether information about the gender discriminatory advertising and the possibility to report gender-discriminatory advertisements needs to be made clearer.

Sammanfattning

Den här rapporten undersöker hur könsdiskriminerande reklam regleras i de nordiska länderna. Rapporten är resultatet av ett nordiskt projekt inom jämställdhet inom media som Finland tog initiativ till under sitt ordförandeskap i Nordiska ministerrådet under 2016. Projektet baserades på målen för de nordiska jämställdhetsministrarnas samarbetsprogram 2015–2018 "Together for Gender Equality" (Tillsammans för jämställdhet) där jämställdhet inom den offentliga sfären är ett centralt tema. På grund av medias normativa förmåga att återspegla det dagliga livet och forma vår förståelse av könsroller, spelar media en viktig roll i konstruktionen – och dekonstruktionen – av jämställdhet. I dagens samhälle spelar reklambranschen en viktig roll i medielandskapet. Reklam är en mycket kraftfull form av social kommunikation som erbjuder en serie bilder och idéer som tilltalar våra känslor och därigenom formar våra värderingar, attityder och vår förståelse av omvärlden. Att kämpa mot könsdiskriminering inom reklam är därför central för vår strävan att uppnå jämställdhet.

Det finns ingen universellt vedertagen definition av könsdiskriminerande reklam. EU:s samt internationella, europeiska och nationella lagstadgade normer, rekommendationer och riktlinjer fungerar som måttstock. Könsdiskriminerande reklam indelas normalt i sexistisk och stereotyp reklam. Det är också så begreppet används i den här rapporten.

I de nordiska länderna har könsdiskriminerande reklam funnits på den offentliga agendan sedan sjuttio- och åttiotalet då jämställdhetslagstiftningen utformades. De nordiska länderna har dock valt att reglera könsdiskriminerande reklam på olika sätt. I alla de övriga nordiska länderna, med undantag för Sverige, regleras könsdiskriminerande reklam i lagstiftningen. Sverige har för närvarande ingen specifik lagstiftning mot könsdiskriminerande reklam, utan regleringen sker via ett självreglerande organ.

I Danmark utgår regleringen av könsdiskriminerande reklam i huvudsak från marknadsföringslagen och en allmän klausul om god marknadsföringssed. I stycke 1 i lagen sägs: "Handlare som omfattas av den här lagen ska följa god marknadsföringssed

i förhållande till konsumenter, andra handlare och allmänna intressen.” God marknadsföringssed specificeras inte i lagen och det finns ingen specifik referens till könsdiskriminering. Istället har danska konsumentombudsmannen som ansvarar för tillsyn av lagen utformat riktlinjer för könsdiskriminerande reklam som definierar innebörden av könsdiskriminerande reklam. Enligt riktlinjerna är reklam diskriminerande om ett kön framställs på ett nedsättande eller föraktfullt sätt, om nakenhet eller erotik ingår på ett sätt som framstår som nedsättande eller föraktfullt för vederbörande kön, om reklamen framställer ena könets roll som socialt, ekonomiskt eller kulturellt underordnat det andra könet, om reklamen framställer ena könet som mindre kunnigt, begåvat eller mindre lämpat att utföra uppgifter som båda könen fysiologiskt kan utföra lika väl eller om reklamen ger intryck av att ena könet har särskilt negativa personlighetsdrag eller egenskaper.

Utöver marknadsföringslagen används även den danska jämställdhetslagen för könsdiskriminerande reklam. Jämställdhetslagen förbjuder både indirekt och direkt (stycke 2) diskriminering på basis av kön. Danska likabehandlingsnämnden är det organ som hanterar anmälningar beträffande jämställdhetslagen. Sedan 2016 har den dock endast haft befogenhet att behandla anmälningar om anmälaren har ett personligt och faktiskt intresse i det enskilda fallet (stycke 1). För att kompensera för denna begränsning har danska institutet för mänskliga rättigheter fått rätt att lämna anmälan till likabehandlingsnämnden. Så långt har danska institutet för mänskliga rättigheter inte utnyttjat sin nya befogenhet att lämna anmälan om reklam. Danska radio- och tevenämnden behandlar också fall av könsdiskriminerande reklam utifrån sändningslagstiftningen. Den är dock en mindre aktör i frågor som rör könsdiskriminerande reklam och har endast hanterat ett eller färre fall av könsdiskriminerande reklam per år. Grönland och Färöarna har en marknadsföringslag som liknar den danska. Ingen av lagarna innehåller ett uttryckligt förbud mot könsdiskriminerande reklam.

I Finland utgår regleringen av könsdiskriminerande reklam från konsumentskyddslagen. Det finns en allmän klausul som ger en definition av marknadsföring i motsats till god sed och dessutom möjliggör förbud av könsdiskriminering inom marknadsföring. Stycke 2(1)(2) i kapitel 2 i konsumentskyddslagen lyder: “ Marknadsföringen anses stå i strid med god sed, om den är klart oförenlig med allmänt godtagna samhälleliga värden och i synnerhet om den: 2) är förenad med diskriminering på grund av kön, ålder, etniskt eller nationellt ursprung, nationalitet, språk, hälsotillstånd, funktionshinder eller sexuell läggning

eller med annan motsvarande diskriminering på grund av person". I Finland anses reklam eller marknadsföring vara könsdiskriminerande om den tydligt bryter mot allmänt vedertagna sociala värden och om kön framställs på ett kränkande sätt. Reklam får inte vara underkuvande eller förödmjukande eller förolämpa någon på grund av kön. Den övervakande myndigheten är konsumentombudsmannen vid finska konkurrens- och konsumentmyndigheten.

Könsdiskriminerande reklam regleras inte i den finska jämställdhetslagen och regeringens förslag för jämställdhetslagen anger uttryckligen att den inte omfattar reklam. Diskrimineringslagen främjar jämlikhet och förebygger diskriminering, men omfattar inte jämställdhet eftersom den regleras i jämställdhetslagen. Men på samma sätt som jämställdhetslagen ligger diskriminerande reklam utanför dess verkningsområde.

I Finland finns även ett självreglerande organ, Reklametiska rådet (MEN), som komplement. MEN tillämpar ICC:s regler för reklam och marknadskommunikation som rådet kompletterat med sina egna principer. MEN avgör om marknadsföring är lämplig. dvs. om den sker i enlighet med allmänt vedertagna sociala värderingar, inte om den är lagenlig.

I fråga om Åland sorterar konsumentskydd helt under Finlands lagstiftande organ enligt självstyrelselagen för Åland, stycke 27(1)(10). Åland har en uttrycklig bestämmelse gällande könsdiskriminerande reklam, men värdet av lagstiftningen är huvudsakligen symbolisk på grund av tillämpningen av åländska jämställdhetslagen. Enligt åländska jämställdhetslagen gäller bestämmelsen inte någon del av branschen som regleras av finsk lagstiftning.

I Norge regleras könsdiskriminerande reklam av marknadsföringslagen som har en uttrycklig bestämmelse som förbjuder könsdiskriminerande reklam. Dessutom fastställer konsumentombudsmannen specifika riktlinjer för könsdiskriminerande reklam som – tillsammans med marknadsrådet – är den centrala myndigheten för könsdiskriminerande reklam i Norge. Enligt konsumentombudsmannens riktlinjer är reklam att betrakta som könsdiskriminerande om den motstrider jämlikhet mellan könen eller om den framställer ena könet på ett negativt sätt. Stötande reklam definieras som framställningar av endera könet i mer eller mindre avklädda situationer där kvinnor eller män avbildas som sexsymboler eller blickfång utan relevans för produkten. En ren beskrivning av befintliga könsroller anses i sig inte strida mot stycke 2 i MCA, om inte framställningen av könsstereotyper är kraftigt ensidig eller förnedrande i stereotypiska situationer som samhället har övergett. Könsdiskriminerande reklam regleras inte i jämställdhetslagen.

Konsumentombudsmannen har dock föreslagit att bestämmelsen kan tas bort ur marknadsföringslagen och läggas till i den nya lagen i samband med en ny utgåva av jämställdhets- och diskrimineringslagen. Norska jämställdhets- och diskrimineringsombudet har inte uttryckt stöd för denna ståndpunkt.

I Island baseras regleringen på jämställdhetslagen som har en uttrycklig paragraf (29) som förbjuder reklam som är respektlös eller nedvärderande gentemot något av könen eller på något sätt är i strid med jämställdhet mellan könen. Annonssörer och de som formger eller publicerar reklam ansvarar för att reklamen inte är nedvärderande eller respektlös mot endera könet och att den inte på något sätt är i strid med jämställdhet mellan könen. Sådan reklam får inte publiceras i media eller i något annat offentligt rum. Jämställdhetscentret granskar lagen och ber annonsörer ta bort reklam som misstänks vara i strid med lagen. Besvärsnämnden för jämställdhet utreder ärenden och ger utslag om huruvida bestämmelserna i jämställdhetslagen har överträtts. Nämnden har endast handlagt ett fåtal ärenden om könsdiskriminerande reklam. Isländska marknadsföringslagen om granskning av otillbörliga affärsmetoder och marknadstransparens omfattar inte könsdiskriminerande reklam.

I Sverige finns det i nuläget ingen specifik lagstiftning mot könsdiskriminerande reklam. Inte heller kan könsdiskriminerande reklam regleras av annan aktuell lagstiftning: marknadsföringslagen, som kräver att god marknadsföringssed följs, är inte tillämplig på grund av ett beslut av svenska marknadsdomstolen 1976. Varken marknadsföring eller reklam tas upp i diskrimineringslagen och den här lagen kan därför inte tillämpas på könsdiskriminerande reklam. Ämnet har funnits på den politiska och offentliga agendan sedan sjuttioalet. Den senaste utredningen om reglering av könsdiskriminerande reklam färdigställdes 2008. Den innefattade ett förslag för lagstiftning som emellertid inte trädde i kraft. Nyligen har Sveriges Kvinnolobby drivit en större kampanj för lagstiftning. Den mediala uppmärksamheten och det relativt stora antalet anmälningar som gjorts till Reklamombudsmannen antyder att det finns ett stort allmänt intresse i frågan.

Reaktioner på oacceptabel reklam baseras för närvarande på självreglering i Sverige. Det självreglerande organet är Reklamombudsmannen, som är en oberoende stiftelse som grundats av branschen själv. Reklamombudsmannen granskar reklam som vänder sig till den svenska marknaden. Ombudsmannen tillhandahåller även utbildning och sprider information om etisk marknadsföring för att begränsa oetisk reklam. Enligt Reklamombudsmannens riktlinjer är reklam oacceptabel om den är: a) objektifierande, dvs. att reklamen framställer män eller kvinnor som rena sexobjekt och

som kan anses som kränkande eller b) schabloniserande, dvs. framställer män eller kvinnor på ett stereotypiskt sätt i fråga om könsroller och där män eller kvinnor framställs på ett nedvärderande sätt. Dessa kriterier har en lång historia och har, med vissa anpassningar, tillämpats i mer än tjugo år

Sammanfattningsvis har Danmark, Norge, Finland och Island en reglering av könsdiskriminerande reklam – antingen genom en allmän klausul eller explicita förbud – i lagstiftningen. I Danmark, Finland och Norge anses detta vara en fråga för marknadsföring eller konsumentlagstiftning. Island har däremot valt att reglera könsdiskriminerande reklam inom ramen för jämställdhetslagstiftningen. Danmark och Finland tillämpar allmänna klausuler, medan Norge och Island har precisa och uttryckligt formulerade och detaljerade förbud mot könsdiskriminerande reklam i sin lagstiftning, vilket sänder en tydlig lagstiftande signal. Norska konsumentombudsmannen har också fastställt tämligen specifika riktlinjer för könsdiskriminerande reklam. Granskningen sköts av offentliga myndigheter beroende på vilket rättsligt område som bestämmelsen hör till. Sverige är ett undantag eftersom landet inte har någon lagstiftning om könsdiskriminerande reklam och har valt att främja och värna om jämställdhet inom reklam genom att överlåta frågan till ett självreglerande organ. Finland och Sverige är de enda nordiska länderna som har ett självreglerande organ, och Finland är det enda nordiska landet som både har lagstiftning (och en granskningsmyndighet som granskar könsdiskriminerande reklam) och ett självreglerande organ.

Om könsdiskriminerande reklam regleras genom marknadsföringslagen eller jämställdhetslagen eller inte avspeglas givetvis i tillämpningen av regleringen. Konsumentlagstiftning tillämpas på kommersiell reklam. Informationskampanjer, allmän information och reklam mellan företag omfattas inte av lagstiftningen. Det har ansetts vara olyckligt att t.ex. Norge inte har någon tillsynsmyndighet som kan handlägga anmälningar om informationskampanjer, politiska tal och allmän information. De självreglerande organen i både Finland och Sverige har större spelrum och kan arbeta flexibelt.

Det verkar finnas vissa skillnader i antalet handlagda ärenden mellan de nordiska länderna. De självreglerande organen i Sverige och Finland kan handlägga ett stort antal anmälningar. Svenska Reklamombudsmannen handlägger alla inkomna anmälningar och kan handlägga ett stort antal ärenden varje år (t.ex. 139 ärenden under 2015). I de övriga nordiska länderna handläggs avsevärt färre ärenden. Alltför stora slutsatser kan dock inte dras av siffrorna. Det saknas exakta data. Vidare kan medborgarnas bristande medvetenhet om rutinerna för att lämna en anmälan om

könsdiskriminerande reklam – eller fullständig avsaknad av medvetenhet om att en anmälan överhuvudtaget kan lämnas – avspeglas i siffrorna. Rutinerna hos olika instanser kan också påverka antalet anmälningar. Könsdiskriminerande reklam är inte högprioriterad för konsumentombudsmannen (dvs. i Finland, Norge och Danmark), en uppfattning som motiveras av det låga antalet anmälningar. De granskar inte aktivt reklamen utan förlitar sig främst på anmälningar från konsumenter.

Lagstiftningen i Island, Finland, Norge och Danmark har befogenhet av ålägga sanktioner mot företag som följer motstridig lagstiftning. Oberoende av lagstiftningen och det faktum att det är möjligt att utfärda ålägganden och periodiska straffavgifter och dra ärendena inför domstol, sker detta emellertid sällan i praktiken. För ett självreglerande organ är en sanktion negativ publicitet, vilket skadar dess anseende.

Vid en jämförelse av praxis i de nordiska länderna kan vissa uppenbara detaljer identifieras. I Danmark har humor betraktats som en förmildrande omständighet, som ett tecken på att reklamen inte är avsedd att tas på allvar. I Norge är humor ingen avgörande faktor. I Finland och Norge – och i Sverige – är nakenhet tillåten så länge den är relevant för produkten och om det inte finns några förödmjukande inslag. Enligt finska reklametiska rådet (MEN) är nakenhet i sig inte förkastlig, om den inte presenteras på ett nedsättande sätt. I Danmark finns mer toleranta attityder mot att använda nakenhet, sex och könsroller i reklam, där konsumentombudsmannen har gett avsevärt spelrum i fråga om användning av nakenhet och erotik. Resultaten i den här rapporten visar att attityderna gentemot könsdiskriminerande reklam i de nordiska länderna är strängast i Sverige. Generellt talat tillåter samtliga nordiska länder könsstereotyper i reklam under förutsättning att könsstereotyperna inte framställs på ett mycket vinklat eller förödmjukande sätt, trots det faktum att alla bedöms som mycket hängivna att följa Kvinnokonventionen och dess paragraf 5 som förpliktar statsinstanser att aktivt arbeta för att eliminera stereotypiska roller för män och kvinnor.

Bilden av kvinnor är mycket mer exploaterad inom reklam än bilden av män, och detta avspeglas i anmälningarna och i praxis. Merparten av anmälningarna grundas på diskriminering av kvinnor. I fråga om reklam som uppfattas som könsdiskriminerande är andelen ännu större. Vidare döms inte reklam där män tycks diskrimineras. Sverige verkar vara det enda nordiska land där det fattats beslut i fall där den diskriminerade parten är man. I Norge är tröskeln för tillämplighet för stycke 2 i marknadsföringslagen högre för män inom reklam än för användning av kvinnor i reklam, och konsumentombudsmannen lägger särskild vikt vid hur reklam framställer kvinnor vid

handläggning av anmälningar. Det kan generellt sägas att problemen inom reglering av könsdiskriminerande reklam i högsta grad domineras av den kvinnliga aspekten och den heteronormativa kulturen.

Jämställdhet inom reklam är sammanflätad med debatten om yttrandefrihet. Jämställdhet kan betraktas som en förutsättning för yttrandefrihet, dvs. att alla har samma rätt att uttrycka sig fritt, och vice versa. Detta kräver särskild uppmärksamhet på jämställdhet inom reklam och sättet reklam hanteras och presenteras. Å andra sidan används yttrandefrihet även som ett motargument mot lagstiftning om könsdiskriminerande reklam, som i Sverige.

Både lagstiftning och självreglering har styrkor och svagheter. Även om systemet som baseras på självreglering har många styrkor, kan det hävdas att lagstiftning skulle behövas som normativ åtgärd som används av den offentliga myndigheten för att tydligt visa att könsdiskriminerande reklam inte är tillåten. Lagstiftning är ett sätt att utöver suspension av reklam och medieinnehåll som bryter mot bestämmelserna även ge verkställande instanser möjlighet att ålägga straffavgifter och andra sanktioner. Eftersom det är möjligt att både ha lagstiftning och självreglering, vore kanske en av de bästa lösningarna att betrakta lagstiftning och självreglering som kompletterande och att utforma en kombination av lagstiftning och självreglering.

Studier av könsdiskriminerande reklams påverkan på åskådaren visar att förmågan att identifiera könsdiskriminering inom reklam varierar med åskådarens könsmedvetenhet och självkänsla. I allmänhet är förebyggande arbete och åtgärder för att öka medvetenheten viktiga för att ändra attityderna gentemot könsstereotyper och könsdiskriminerande reklam.

Det rådande läget i de nordiska länderna är utmanande ur en allmän synpunkt, eftersom varje land har utvecklat egna uppfattningar och rutiner. De nordiska länderna delar dock samma principer i fråga om jämställdhet, vilket kan främja snarlika resultat i fall av diskriminering. Ett gemensamt nordiskt mål kan vara att tydliggöra lagstiftningen. Det kan diskuteras om lagstiftningen borde ha en tydligare definition av "könsdiskriminerande reklam" och om information om rutinen för rapportering av könsdiskriminerande reklam borde vara tydligare.

Tiivistelmä

Tässä raportissa tarkastellaan sukupuolta syrjivän mainonnan sääntelyä Pohjoismaissa. Raportti on laadittu osana sukupuolten tasa-arvoa mediassa koskevaa pohjoismaista hanketta, jonka Suomi käynnisti Pohjoismaiden ministerineuvoston 2016 puheenjohtajana. Hanke perustui Pohjoismaiden tasa-arvoalan yhteistyöohjelmaan 2015–2018, 'Yhdessä tasa-arvon puolesta', jonka yksi pääteema on sukupuolten tasa-arvon edistäminen julkisessa tilassa. Koska medialla on valtaa vaikuttaa siihen millaisena maailma näyttäytyy ja muokata käsityksiämme sukupuolesta, sillä on tärkeä rooli sukupuolten tasa-arvon rakentamisessa tai sen murentamisessa. Moderneissa yhteiskunnissa mainonnalla on suuri rooli mediaympäristössä. Mainostaminen on erittäin voimakas sosiaalisen viestinnän keino, joka välittää keskitetysti kuvia ja ideoita, jotka vetoavat tunteisiimme, ja siten muokkaavat arvojamme, asenteitamme ja ymmärrystämme maailmasta. Siksi taistelu sukupuolta syrjivää mainontaa vastaan on keskeistä sukupuolten tasa-arvon saavuttamisyrittämiselle.

Sukupuolta syrjivälle mainonnalle ei ole olemassa yhtä yleisesti hyväksyttyä määritelmää. Kansainväliset, EU:n, eurooppalaiset sekä kansalliset säädökset, suositukset ja ohjeet tarjoavat mittapuita. Sukupuolta syrjivä mainonta jaetaan tyypillisesti sukupuolittuneeseen ja stereotyyppiseen mainontaan. Käsitettä käytetään tällä tavoin myös tässä raportissa.

Pohjoismaissa sukupuolta syrjivä mainonta on ollut julkisella agendalla 1970-80 -luvulta alkaen, jolloin tasa-arvolainsäädäntö säädettiin. Pohjoismaat ovat kuitenkin valinneet erilaisia tapoja säädellä sukupuolta syrjivää mainontaa. Ruotsia lukuun ottamatta kaikissa Pohjoismaissa sukupuolta syrjivää mainontaa säädellään lailla. Ruotsissa ei ole tällä hetkellä erityistä lainsäädäntöä sukupuolta syrjivää mainontaa vastaan, vaan sääntely tapahtuu itsesääntelyelimen kautta.

Tanskassa sukupuolta syrjivän mainonnan sääntely perustuu pääosin markkinoitilakiin ja sen yleislausekkeeseen hyvästä markkinoititavasta. Lain 1 pykälässä säädetään seuraavaa: "Tämän lain soveltamisalaan kuuluvien elinkeinonharjoittajien on noudatettava hyvää markkinoititapaa suhteessa kuluttajiin, muihin elinkeinonharjoittajiin ja julkisiin etuihin." Hyvää markkinoititapaa ei ole

täsmennetty laissa, eikä siellä ole erityisesti viitattu sukupuolisyryntään. Sen sijaan lain noudattamista valvova Tanskan kuluttaja-asiamies on laatinut sukupuoleen liittyvää mainontaa koskevat ohjeet, joissa määritellään sukupuolta syrjivä mainonta. Ohjeiden mukaan mainonta on syrjivää, jos sukupuoli esitetään alentavalla tai halventavalla tavalla; jos alastomuutta tai erotiikkaa käytetään tavalla, joka vaikuttaa alentavalta tai halventavalta asianomaisen sukupuolen kannalta; jos mainonta luo vaikutelman, että toinen sukupuoli on sosiaalisesti, taloudellisesti tai kulttuurin puolesta toiselle alisteinen; jos mainonta luo vaikutelman, että toinen sukupuoli on vähemmän pätevä, älykäs tai vähemmän soveltuva hoitamaan tehtäviä, joita molemmat sukupuolet voivat hoitaa yhtä hyvin fysiologisesti tai jos mainonta luo vaikutelman, että toisella sukupuolella on erityisen kielteisiä persoona- tai luonteenpiirteitä.

Markkinointilain lisäksi sukupuolta syrjivään mainontaan sovelletaan Tanskan tasa-arvolakia. Tasa-arvolaisissa kielletään sekä epäsuora että suora (2 pykälä) sukupuoleen perustuva syrjintä. Tanskan tasa-arvolautakunta vastaa tasa-arvolain perusteella tehtyjen valitusten tutkinnasta. Kuitenkin vuodesta 2016 lähtien sillä on ollut toimivalta tutkia valituksia ainoastaan, mikäli valittajalla on henkilökohtainen ja todellinen intressi konkreettisesti tapauksessa (1 pykälä). Tämän rajoituksen tasapainottamiseksi Tanskan ihmisoikeusinstituutille on annettu oikeus tehdä valituksia tasa-arvolautakunnalle. Toistaiseksi Tanskan ihmisoikeusinstituutti ei ole käyttänyt uutta toimivaltaansa mainontaa koskevien valitusten tekemiseksi. Myös Radio- ja televisiotoimikunta käsittelee sukupuolta syrjivää mainontaa koskevia tapauksia radio- ja televisiolähetyksiä koskevan lainsäädännön nojalla. Toimikunta on käsitellyt vain muutaman sukupuolta syrjivää mainontaa koskevan tapauksen vuodessa. Grönlannilla ja Färsaarilla on Tanskan lakia vastaava markkinointitavoista annettu laki. Kummassakaan laissa ei ole nimenomaista sukupuolisyryntämainonnan kieltoa.

Suomessa sukupuolta syrjivää mainontaa koskeva sääntely perustuu kuluttajansuojalakiin. Laissa on yleislauseke, jossa määritellään hyvän tavan vastainen markkinointi ja jossa lisäksi kielletään sukupuolisyryntä markkinoinnissa. Kuluttajansuojalain 2 luvun 2 pykälän 1(2) momentin mukaan: "Markkinointia pidetään hyvän tavan vastaisena, jos se on selvästi ristiriidassa yleisesti hyväksytyjen yhteiskunnallisten arvojen kanssa ja erityisesti jos: 2) siinä esiintyy sukupuoleen, ikään, etniseen tai kansalliseen alkuperään, kansalaisuuteen, kieleen, terveydentilaan, vammaisuuteen, seksuaaliseen suuntautumiseen tai muuhun henkilöön liittyvään seikkaan perustuvaa syrjintää". Suomessa mainontaa tai markkinointia pidetään sukupuolta syrjivänä, jos se on selvästi ristiriidassa yleisesti hyväksytyjen

yhteiskunnallisten arvojen kanssa ja jos sukupuoli esitetään loukkaavalla tavalla. Mainostamisessa ei saa alistaa, nöyryyttää tai loukata ketään sukupuolen perusteella. Valvontaelimenä on Suomen kilpailu- ja kuluttajavirastossa toimiva kuluttaja-asiamies.

Sukupuolta syrjivää mainontaa ei säädellä Suomen tasa-arvolaisissa, ja hallituksen esityksessä tasa-arvolaisiksi nimenomaisesti todetaan, ettei sitä sovelleta mainontaan. Yhdenvertaisuuslaki edistää tasa-arvoa ja ehkäisee syrjintää, pois lukien sukupuolten tasa-arvo, josta säädetään tasa-arvolaisissa, mutta kuten tasa-arvolaisissa, yhdenvertaisuuslaissa ei myöskään säädetä syrjivästä mainonnasta.

Suomessa toimii myös itsesääntelyelin Mainonnan eettinen neuvosto (MEN). MEN soveltaa Kansainvälisen kauppakamarin ICC: n markkinointisääntöjä, joita se on täydentänyt. MEN arvioi markkinoinnin asianmukaisuutta, eli onko markkinointi yleisesti hyväksytyjen yhteiskunnallisten arvojen mukaista; se ei arvioi markkinoinnin laillisuutta.

Ahvenanmaan itsehallintolain 27 pykälän 1 (10) momentissa säädetään, että kuluttajansuoja-asiat kuuluvat Suomen valtakunnan lainsäädäntövaltaan. Ahvenanmaan tasa-arvo-lakiin sisältyy nimenomainen säännös sukupuolisyryvästä mainonnasta, mutta kyseisen lainsäädännön arvo on puhtaasti symbolinen johtuen Ahvenanmaan tasa-arvolain soveltamisalasta. Ahvenanmaan tasa-arvolain mukaan säännöstä ei sovelleta mihinkään toimialaan, johon sovelletaan Suomen lainsäädäntöä.

Norjassa sukupuolisyryvää mainontaa säädelään markkinointivalvontalaisissa, jossa nimenomaisesti kielletään sukupuolisyryvä mainonta. Sen lisäksi erityisiä ohjeita sukupuolisyryvästä mainonnasta antaa kuluttaja-asiamies, joka on Norjassa markkinointineuvoston lisäksi tärkein toimija liittyen sukupuolisyryvään mainontaan. Kuluttaja-asiamiehen ohjeiden mukaan mainontaa on pidettävä sukupuolisyryvänä, jos se on sukupuolten tasa-arvon vastaista tai jos siinä kuvataan toinen sukupuoli kielteisellä tavalla. Loukkaava mainonta määritellään toisen sukupuolen esittämiseksi enemmän tai vähemmän keinotekoisissa tilanteissa, joissa naiset tai miehet esitetään seksisymboleina tai katseenvangitsijoina ilman mitään yhteyttä tai merkitystä tuotteen kannalta. Pelkkää olemassa olevien sukupuoliroolien kuvaamista ei pidetä sellaisenaan markkinointivalvontalain 2 pykälän vastaisena, ellei sukupuolistereotyyppien esittämistä tehdä erityisen toispuolisella tai alentavalla tavalla kaavamaisissa tilanteissa, joista yhteiskunta on siirtynyt eteenpäin. Sukupuolisyryvää mainontaa ei säädellä tasa-arvolaisissa. Kuitenkin kuluttaja-asiamies on ehdottanut, että mahdollisen uuden tasa-arvo- ja yhdenvertaisuuslain yhteydessä säännös voitaisiin poistaa

markkinointivalvontalaista ja sisällyttää uuteen lakiin. Tasa-arvo- ja yhdenvertaisuuslautakunta ei ole tukenut tätä kantaa.

Islannissa sääntely perustuu tasa-arvolakiin, jossa on nimenomainen pykälä (29), jossa kielletään mainonta, joka on toista sukupuolta epäkunnoittavaa tai syrjivää tai joka on muuten sukupuolten tasa-arvon vastaista jollakin tavalla. Mainostajien ja mainosten suunnittelijoiden ja julkaisijoiden tulee varmistaa, etteivät mainokset ole toista sukupuolta vähätteleviä tai epäkunnoittavia tai etteivät ne muuten ole millään tavoin sukupuolten tasa-arvon vastaisia. Tällaisia mainoksia ei saa julkaista mediassa tai missään muussa julkisessa tilassa. Sukupuolten tasa-arvon keskus valvoo lakia ja ottaa yhteyttä mainostajiin ja vaatii, että nämä poistavat mainokset, joiden epäillään olevan lain vastaisia. Sukupuolten tasa-arvon valituskomitea tutkii tapukset ja antaa ratkaisunsa siitä, onko tasa-arvolain säännöksiä rikottu. Komitea on käsitellyt vain muutaman tapauksen sukupuolisyryjivään mainontaan liittyen. Islantilainen markkinointilaki epäileilusta kauppatavoista ja markkinoiden läpinäkyvyydestä ei sovellu sukupuolisyryjivään mainontaan.

Ruotsissa ei tällä hetkellä ole erityistä sukupuolisyryjivän mainonnan kieltävää lainsäädäntöä. Sukupuolisyryjivää mainontaa ei voida myöskään rajoittaa muulla voimassa olevalla lainsäädännöllä: markkinointilakia, joka edellyttää hyvän tavan mukaista markkinointia, ei voida soveltaa Ruotsin markkina-oikeuden vuonna 1976 antaman ratkaisun vuoksi. Markkinointia tai mainontaa ei mainita yhdenvertaisuuslain soveltamisalaan kuuluvana, eikä kyseistä lakia siten voida soveltaa sukupuolisyryjivään mainontaan. Tämä aihe on ollut poliittisilla ja julkisilla asialistoilla 1970-luvulta lähtien. Viimeisin hallituksen teettämä tutkimus sukupuolisyryjivän mainonnan sääntelystä valmistui vuonna 2008. Siihen sisältyi lakiehdotus, mikä ei kuitenkaan edennyt. Äskettäin ruotsalaisten naisten edunvalvoja (Sveriges Kvinnolobby) kampanjoi merkittävästi lainsäädännön laatimiseksi. Asian mediassa saama huomio sekä suhteellisen korkea määrä mainonnan asiamiehelle tehtyjä valituksia viittaavat yleisön suureen mielenkiintoon tässä kysymyksessä.

Epättydyttävään mainontaan reagoiminen perustuu Ruotsissa tällä hetkellä itsesääntelyyn. Itsesääntelyjärjestö on ruotsalainen mainonnan asiamies, jonka toimiala itse on asettanut itsenäiseksi toimijaksi. Mainonnan asiamies arvioi kaupallista mainontaa, joka kohdistuu Ruotsin markkinoille. Se tarjoaa myös koulutusta ja levittää tietoa eettisestä markkinoinnista epäeettisen mainonnan vähentämiseksi. Mainonnan asiamiehen ohjeiden mukaan mainonta ei ole hyväksyttävää, jos se on: a) esineellistävää, toisin sanoen mainontaa, jossa miehet tai naiset esitetään

seksiobjekteina ja jota voidaan pitää loukkaavana tai b) stereotyyppisesti sukupuolirooleissa ja siinä sanoen siinä esitetään miehet tai naiset stereotyyppisesti sukupuolirooleissa ja siinä miehet tai naiset esitetään halventavalla tavalla. Näillä kriteereillä on pitkä historia, ja niitä on sovellettu muutamain muutoksin yli kaksikymmentä vuotta.

Yhteenvetona voidaan todeta, että Tanskassa, Norjassa, Suomessa ja Islannissa on säännelty sukupuolisyrvivästä mainonnasta lainsäädännössä joko yleislausekkeella tai nimenomaisella kiellolla. Sitä pidetään tärkeänä kysymyksenä Tanskan, Suomen ja Norjan markkinointia tai kuluttajaa koskevassa lainsäädännössä. Sen sijaan Islanti on päättänyt säädellä sukupuolisyrvivästä mainonnasta tasa-arvolainsäädännössä. Tanskassa ja Suomessa käytetään yleislausekkeitä, kun taas Norjan ja Islannin lainsäädännössä on määritelty ja yksilöity tarkasti ja nimenomaisesti sukupuolisyrvivän mainonnan kieltö, millä lähetetään selkeä lainsäädännöllinen signaali. Norjan kuluttaja-asiamies on myös antanut hyvin tarkat ohjeet sukupuolisyrvivästä mainonnasta. Viranomaiset hoitavat valvontaa riippuen siitä, mille oikeudenalalle säännös kuuluu. Ruotsi muodostaa poikkeuksen, koska sillä ei ole sukupuolisyrvivään mainontaan liittyvää lainsäädäntöä ja se on päättänyt edistää ja suojella sukupuolten tasa-arvoa mainonnassa jättämällä asian itsesääntelyelimelle. Suomi ja Ruotsi ovat ainoat Pohjoismaat, joissa on itsesääntelyelin, ja Suomi on ainoa Pohjoismaa, jossa on sekä lainsäädäntöä (ja sukupuolisyrvivää mainontaa valvova valvontaelin) sekä itsesääntelyelin.

Se seikka, onko sukupuolisyrvivästä mainonnasta säädetty markkinointilainsäädännössä vai tasa-arvolaisissa, heijastuu tietenkin sääntelyn soveltamisalaan. Kuluttajansuojalainsäädäntöä sovelletaan mainontaan liike-elämässä. Tietokampanjat, yleinen tiedotus ja yritykseltä yritykselle tapahtuva mainonta jäävät lainsäädännön soveltamisalan ulkopuolelle. On valitettavaa, että esimerkiksi Norjassa ei ole valvontaelintä, joka voisi käsitellä valituksia tietokampanjoista, poliittisista puheista ja yleisestä tiedotuksesta. Sekä Suomessa että Ruotsissa itsesääntelyelimillä on laajempi toimiala, ja ne voivat työskennellä joustavasti.

Pohjoismaiden välillä näyttäisi olevan joitakin eroja useissa käsitellyissä tapauksissa. Ruotsissa ja Suomessa itsesääntelyelimet voivat käsitellä suuren määrän valituksia. Ruotsissa mainonnan asiamies käsittelee kaikki tehdyt valitukset, ja se voi käsitellä suuren joukon valituksia joka vuosi (esimerkiksi 139 tapausta vuonna 2015). Muissa Pohjoismaissa tilastot ovat huomattavasti matalammat. Kuitenkaan liian pitkälle meneviä johtopäätöksiä ei voida tehdä numeroiden perusteella. Tarkat tiedot puuttuvat. Lisäksi kansalaisten riittämätön tieto menettelyistä, joita voi käyttää

valituksen tekemiseksi sukupuolisyryvästä mainonnasta tai kansalaisten täysi tietämättömyys ylipäänsä heidän käytettävissään olevista valitusmenettelyistä, voi heijastua lukuihin. Eri toimielinten käytännöillä voi myös olla vaikutus valitusmääriin. Sukupuolisyryvä mainonta ei ole kuluttaja-asiamiehen prioriteetti (Suomessa, Norjassa ja Tanskassa), ja matalat valitusmäärät vahvistavat tätä lähestymistapaa. Ne eivät seuraa mainontaa aktiivisesti, vaan nojautuvat pääasiassa kuluttajavalituksiin.

Islannin, Suomen, Norjan ja Tanskan lainsäädännössä annetaan toimivalta sanktioida sellaisia yhtiöitä, jotka toimivat lainsäädännön vastaisesti. Huolimatta lainsäädännöstä ja mahdollisuuksista antaa määräyksiä, jaksoittaisia sakkomaksuja tai viedä asia oikeuteen, näin tapahtuu käytännössä vain harvoin. Itsesääntelyelimissä pakotteena toimii negatiivinen julkisuus, toisin sanoen 'nimi ja häpeä'.

Pohjoismaiden käytäntöjen vertailusta voidaan tunnistaa joitakin selviä yksityiskohtia. Ensiksi Tanskassa huumorin käyttöä on pidetty lieventävänä olosuhteena ja merkinä siitä, ettei mainontaa ole tarkoitus ottaa vakavasti. Norjassa huumorin käyttö ei ole ratkaiseva seikka. Suomessa, Norjassa ja myös Ruotsissa alastomuus sallitaan, kunhan sen voidaan näyttää olevan relevantti tuotteen kannalta eikä asiassa ole muita alentavia seikkoja. Suomen mainonnan eettisen neuvoston soveltamien periaatteiden mukaan alastomuus sinänsä ei ole paheksuttavaa, jos siihen ei liity halventavaa esitystapaa. Suvaitsevaisempia asenteita alastomuuden, sukupuolen ja sukupuoliroolien käyttämiselle mainonnassa on havaittu Tanskassa, jossa kuluttaja-asiamies sallii huomattavan liikkumavaran alastomuuden ja erotiikan käytössä. Tämän raportin löydösten mukaan Pohjoismaiden tiukimmat asenteet sukupuolisyryvää mainontaa kohtaan löytyvät Ruotsista. Yleisesti voidaan todeta, että kaikki Pohjoismaat hyväksyvät sukupuolistereotyytiat mainonnassa sillä edellytyksellä, ettei sukupuolistereotyyppiä korosteta erityisen toispuolisella tai alentavalla tavalla, huolimatta siitä että kaikkien Pohjoismaiden katsotaan sitoutuvan vahvasti kaikkinaisen naisten syrjinnän poistamista koskevaan yleissopimukseen (CEDAW) ja sen 5 artiklaan, jossa sopimuspuolia veloitetaan toimimaan aktiivisesti naisten ja miesten kaavamaisten roolien poistamiseksi.

Naisten kuvia hyödynnetään mainonnassa paljon enemmän kuin miesten, ja tämä heijastuu valituksissa ja käytännössä. Suurin osa valituksista koskee naiseen kohdistuvaa syrjintää. Sukupuolisyryviksi arvioiduissa mainoksissa naisten osuus on vielä suurempi. Sen lisäksi sellaisia mainoksia, joissa näytettäisiin syrjittävän miehiä, ei tuomita. Ruotsi näyttää olevan Pohjoismaista ainoa, jossa on tuomitsevia päätöksiä tapauksissa, joissa syrjitty sukupuoli on ollut miespuolinen. Norjassa markkinointivalvontalain 2 pykälän

soveltamiskynnys on korkeampi miesten kuin naisten käyttämiselle mainonnassa, ja valituksia arvioidessaan kuluttaja-asiamies kiinnittää erityistä huomiota siihen, kuinka mainos esittää naisia. Yleisesti voidaan todeta, että sukupuolisyrvivään mainontaan liittyvissä kysymyksissä suurin osa koskee naisnäkökulmaa ja heteronormatiivista kulttuuria.

Sukupuolten tasa-arvo mainonnassa liittyy olennaisesti sananvapaudesta käytävään keskusteluun. Sukupuolten tasa-arvo voidaan nähdä sananvapauden edellytyksenä, toisin sanoen että jokaisella on sama oikeus nauttia sananvapaudesta – ja päin vastoin. Tämä edellyttää, että erityistä huomiota kiinnitetään sukupuolten tasa-arvoon mainonnan sisällössä ja tavoissa, joissa mainontaa kohdellaan ja esitetään. Toisaalta sananvapautta käytetään myös vasta-argumenttina lainsäädännön luomiselle sukupuolisyrvivästä mainonnasta, kuten Ruotsissa on tapahtunut.

Lainsäädännöllä ja itsesääntelyllä on kummassakin etuja ja haittoja. Vaikka itsesääntelyyn perustuvassa järjestelmässä on useita etuja, voidaan todeta, että lainsäädäntöä silti tarvitaan normatiivisena toimenä, jota viranomainen voi käyttää ilmaistakseen selvästi sen, ettei sukupuolisyrvivä mainonta ole hyväksyttävää. Moitittavan mainonnan ja mediasisällön eston lisäksi lainsäädäntö on keino tarjota lainsäädäntöä täytäntöönpaneville myös mahdollisuus määrätä sakkoja tai muita pakotteita. Koska sekä lainsäädäntö että itsesääntely ovat mahdollisia keinoja, todennäköisesti yksi parhaita ratkaisuja olisi pitää lainsäädäntöä ja itsesääntelyä toisiaan täydentävinä ja kehittää lainsäädännön ja itsesääntelyn yhdistelmä.

Sukupuolisyrvivän mainonnan sisällön vaikutuksista yleisöön tehdyistä tutkimuksista on käynyt ilmi, että kyky tunnistaa sukupuolisyrvintää mainonnassa on suoraan yhteydessä yleisön sukupuolitietoisuuteen ja itsetuntoon. Yleisesti voidaan todeta, että ennakoiva työ ja tietoisuuden lisääminen ovat tärkeitä keinoja asenteiden muuttamisessa sukupuolistereotyyppien ja sukupuolisyrvivän mainonnan osalta.

Pohjoismaiden vallitsevaa nykytilaa on haastava hahmottaa yleisellä tasolla, koska jokainen valtio on kehittänyt omat käsityksensä ja menettelynsä. Kuitenkin Pohjoismaat jakavat samat arviointiperiaatteet liittyen sukupuolten tasa-arvoon, mikä saattaa edistää samankaltaisia tuloksia syrjintätapauksissa. Yhteinen pohjoismainen päämäärä voisi olla lainsäädännön selkiyttäminen. Voidaan kysyä, pitäisikö lainsäädäntöön sisällyttää selkeämpi määritelmä 'sukupuolisyrvivästä mainonnasta' ja pitäisikö selkiyttää tietoa menettelyistä sukupuolisyrvivästä mainonnasta ilmoittamiseksi.

Samantekt

Þessi skýrsla fjallar um löggjöf tengda kynjamismunun í auglýsingum á Norðurlöndunum. Skýrslan er niðurstaða verkefnis um kynjajafnrétti í fjölmiðlum sem Finnland beitti sér fyrir þegar landið fór með formennsku í Norrænu ráðherranefndinni á sviði jafnréttismála árið 2016. Verkefnið var byggt á markmiðum samstarfsáætlunar norrænu jafnréttismálaráðherranna fyrir árin 2015–2018 um samstöðu um kynjajafnrétti (e. Together for Gender Equality) þar sem kynjajafnrétti í almannarými var meginþemað. Geta fjölmiðla til að móta staðalímyndir og hugmyndir okkar um kyn í gegnum umfjöllun um hið daglega líf gerir það að verkum að þeir gegna grundvallarhlutverki í að stuðla að – eða vinna gegn – kynjajafnrétti. Í nútímasamfélögum leikur auglýsingageirinn stórt hlutverk innan fjölmiðlalandslagsins. Auglýsingar eru einkar öflugur samskiptamiðill þar sem áhrifaríku myndmáli og hugmyndum er blandað saman til að höfða til tilfinninga okkar og um leið móta gildi okkar, viðhorf og skilning á veröldinni í kringum okkur. Af þeim sökum er barátta gegn kynjamismunun í auglýsingum einn mikilvægasti þátturinn í því að ná fram kynjajafnrétti.

Ekki er til staðar altæk skilgreining á kynjamismunun í auglýsingum. Mælikvarða er að finna í lögum, tilmælum og leiðbeiningum, bæði alþjóðlegum og innan Evrópusambandsins, Evrópu og einstakra landa. Þar er kynjamismunun í auglýsingum alla jafna skipt upp í auglýsingar sem innihalda kynjafordóma og auglýsingar sem byggja á staðalímyndum. Þetta er sú skilgreining sem stuðst er við í þessari skýrslu.

Á Norðurlöndunum hefur kynjamismunun í auglýsingum verið til umræðu frá því á áttunda áratugnum, þegar jafnréttislöggjöf var fyrst tekin upp. Aftur á móti hafa Norðurlöndin farið ólíkar leiðir við reglusetningu gegn þessari gerð kynjamismununar. Öll Norðurlöndin, utan Svíþjóðar, líta svo á að kynjamismunun í auglýsingum eigi að falla undir lög. Svíþjóð hefur ekki sett sértæk lög gegn kynjamismunun í auglýsingum en reglugerðir eru til staðar sem framfylgt er af sjálfseftirlitsstofnun.

Í Danmörku er reglusetning gegn kynjamismunun í auglýsingum í megindráttum byggð á lögum um starfshætti í markaðssetningu og almennu ákvæði um góða starfshætti í markaðssetningu. 1. grein laganna segir: „Seljendur sem falla undir þessi

lög skulu viðhafa góða starfshætti í markaðssetningu hvað við kemur neytendum, öðrum seljendum og hagsmunum almennings.“ Góðir starfshættir í markaðssetningu eru ekki útlistaðir í lögnum og þar er ekki að finna beina vísan í kynjamismunun. Þess í stað hefur umboðsmaður neytenda í Danmörku, sem sér um eftirlit tengt lögnum, gefið út leiðbeiningarreglur um notkun kyns í auglýsingum sem skilgreina kynjamismunun í auglýsingum. Samkvæmt leiðbeiningarreglunum inniheldur auglýsing kynjamismunun ef kyn er birt á niðrandi eða fyrirlitningarfullan máta; nekt eða kynferðislegar vísanir eru notaðar á þann hátt að talist geti niðrandi eða fyrirlitningarfullt gagnvart viðkomandi kyni; auglýsing gefur til kynna að hlutverk annars kynsins sé félagslega, fjárhagslega eða menningarlega undirsett gagnvart hinu kyninu; auglýsing gefur til kynna að annað kynið sé ekki jafn hæft, gáfað eða fært um að sinna verkum sem bæði kyn geta sinnt jafnt lífeðlisfræðilega; eða auglýsing gefur til kynna að annað kynið sé búið sérstökum neikvæðum persónulegum einkennum eða eiginleikum.

Auk laga um starfshætti í markaðssetningu fellur kynjamismunun í auglýsingum undir dönsku jafnréttislögin. Jafnréttislögin banna bæði óbeina og beina (2. grein) mismunun byggða á kyni. Danska jafnréttisráðið er sá aðili sem sinnir kvörtunum sem byggðar eru á jafnréttislögnum. Frá og með 2016 hefur ráðið hins vegar aðeins valdheimild til að taka til athugunar kvartanir þar sem sá sem leggur fram kvörtun hefur beina aðild að málinu (1. grein). Til að vinna gegn þessum hömlum hefur dönsku mannréttindastofnuninni verið heimilað að leggja fram kvartanir fyrir jafnréttisráðið. Hingað til hefur danska mannréttindastofnunin ekki nýtt þessa heimild til að leggja fram kvartanir vegna auglýsinga. Danska útvarps- og sjónvarpsráðið fjallar einnig um mál sem tengjast kynjamismunun í auglýsingum samkvæmt löggjöf um dreifingu útvarps- og sjónvarpsefnis. Ráðið gegnir hins vegar veigalitlu hlutverki þegar kemur að umfjöllun um kynjamismunun í auglýsingum og hefur fram til þessa að hámarki tekið fyrir eitt slíkt mál á ári.

Í Grænlandi og Færeyjum eru í gildi lög um starfshætti í markaðssetningu svipuð þeim sem gilda í Danmörku. Í hvorugu landinu innihalda viðkomandi lög beint bann við kynjamismunun í auglýsingum.

Í Finnlandi er reglusetning varðandi kynjamismunun í auglýsingum byggð á lögum um neytendavernd. Þar er að finna almennt ákvæði sem inniheldur skilgreiningu á markaðssetningu sem brýtur gegn góðum starfsháttum, auk þess sem hún bannar kynjamismunun í markaðssetningu. Í 2. grein(1)(2) 2. kafla laga um neytendavernd segir: „Markaðssetning telst brjóta gegn góðum starfsháttum þegar hún fer með

óbyggjandi hætti gegn almennum samþykktum samfélagslegum gildum, sérstaklega ef: 2) þar er að finna mismunun byggða á kyni, aldri, uppruna eða þjóðerni, ríkisfangi, tungumáli, heilsu, fötlun, kynhneigð eða öðrum persónulegum eiginleikum.“ Í Finnlandi telst auglýsing eða markaðssetning innihalda kynjamismunun ef hún fer með óbyggjandi hætti gegn almennum samþykktum samfélagslegum gildum og kyn er sett í niðrandi samhengi. Auglýsingar mega ekki undirsetja, niðra eða móðga á grunni kyns. Eftirlitsyfirvaldið er umboðsmaður neytenda hjá finnsku samkeppnis- og neytendastofnuninni.

Kynjamismunun í auglýsingum fellur ekki undir finnsku jafnréttislögin og tillaga þarlendra stjórnvalda um jafnréttislögin tekur skýrt fram að lögin nái ekki yfir auglýsingar. Lög um bann við mismunun stuðla að jafnrétti og banna mismunun, utan kynjajafnréttis, sem fellur undir jafnréttislögin. En eins og jafnréttislögin fellur mismunun í auglýsingum ekki undir þau lög.

Í Finnlandi er til viðbótar við lagasetningu einnig starfrækt sjálfseftirlitsstofnun, ráð um siðferði í auglýsingum (MEN). MEN beitir reglum Alþjóðaverslunarráðsins um samskiptahætti í auglýsingum og markaðssetningu ásamt eigin reglum. MEN fjallar um hvort markaðssetning er viðeigandi, þ.e. hvort hún sé í samræmi við almennt samþykkt samfélagsleg gildi, ekki hvort hún brjóti gegn lögum.

Neytendavernd á Álandseyjum fellur undir lögsögu Finnlands eins kveðið er á um í sjálfstjórnarlögum Álandseyja, 27. grein(1)(10). Álandseyjar eru með sértækt ákvæði um kynjamismunun í auglýsingum en gildi þeirrar lagasetningar er að mestu táknrænt vegna viðtækrar skírskotunar jafnréttislaga Álandseyja. Samkvæmt jafnréttislögum Álandseyja á ákvæðið ekki við þær atvinnugreinar sem falla undir finnska löggjöf.

Í Noregi fellur kynjamismunun í auglýsingum undir viðskiptalög. Þar er að finna sértækt ákvæði sem bannar slíka kynjamismunun. Að auki gefur umboðsmaður neytenda út sérstakar leiðbeiningarreglur tengdar kynjamismunun í auglýsingum. Umboðsmaðurinn er – ásamt markaðsráðinu – það stjórnvald sem hefur mest að segja um kynjamismunun í auglýsingum í Noregi. Samkvæmt leiðbeiningarreglum umboðsmanns neytenda eru auglýsingar taldar innihalda kynjamismunun ef þær fara gegn jafnrétti kynjanna eða lýsa öðru hvoru kyninu á neikvæðan máta. Móðgandi auglýsingar eru skilgreindar sem birting annars hvors kyns, í fötum eða fáklætt, þar sem konur eða menn eru sett fram sem kyntákn eða tálbeita án nokkurrar tengingar við vöruna. Einföld lýsing á fyrirliggjandi kynjahlutverkum er í sjálfu sér ekki talin brjóta gegn 2. grein viðskiptalaganna, nema birting kynjastaðalímynda sé verulega skekkt eða niðrandi í stöðluðum aðstæðum sem samfélagið hefur þróast frá. Kynjamismunun í

auglýsingum fellur ekki undir jafnréttislögin. Hins vegar hefur umboðsmaður neytenda lagt til að ákvæðið verði fjarlægt úr lögnum um starfshætti í markaðssetningu og sett inn í væntanleg ný lög um jafnrétti kynjanna og gegn mismunun. Skrifstofa umboðsmanns jafnréttis og gegn mismunun hefur ekki stutt þessa tillögu.

Á Íslandi er reglusetningin byggð á jafnréttislögnum sem innihalda sértæka grein (29) sem bannar auglýsingar sem hafa mismunun í för með sér, vanvirða eða mismuna öðru hvoru kyninu eða brjóta gegn kynjajafnrétti á annan máta. Auglýsendur og þeir sem hanna eða birta auglýsingar skulu tryggja að auglýsingarnar líttækki ekki eða séu á annan hátt vanvirðing við annað hvort kynið og að þær brjóti ekki gegn kynjajafnrétti með neinum hætti. Ekki má birta slíkar auglýsingar í fjölmiðlum eða öðru almannarými. Jafnréttisstofa tryggir að lögnum sé framfylgt og hefur samband við auglýsendur og fer fram á að þeir fjarlægji auglýsingar sem taldar eru brjóta gegn lögnum. Kærunefnd jafnréttismála hefur það hlutverk að rannsaka mál og leggja fram úrskurði um hvort brotið hafi verið gegn ákvæðum jafnréttislaganna. Fá mál hafa borist nefndinni vegna kynjamismununar í auglýsingum. Íslensku samkeppnislögin taka ekki á kynjamismunun í auglýsingum.

Í Svíþjóð er sem stendur engin sérstök löggjöf gegn kynjamismunun í auglýsingum. Auk þess er engar hömlur að finna gegn slíkri mismunun í öðrum lögum: viðskiptalögin, sem krefjast þess að farið sé eftir góðum starfsháttum við markaðssetningu, ná ekki til hennar eftir úrskurð sænska viðskiptadómstólsins árið 1976. Hvorki er minnst á markaðssetningu né auglýsingar í lögum gegn mismunun og af þeim sökum ná viðkomandi lög ekki yfir kynjamismunun í auglýsingum. Málefnið hefur verið til umræðu bæði á vettvangi stjórnmalanna og úti í samfélaginu frá því á áttunda áratuginum. Síðustu ítarlegu umfjöllun sænskra yfirvalda um kynjamismunun í auglýsingum lauk árið 2008. Þar var meðal annars lögð fram tillaga um löggjöf en hún náði hins vegar ekki lengra. Nýlega setti sænska kvenréttindafélagið af stað herferð til að hvetja til lagasetningar. Áhugi fjölmiðla og þó nokkur fjöldi kvartana sem sendar hafa verið til umboðsmanns auglýsingamála benda til þess að þó nokkur áhugi sé á þessu málefni á meðal almennings.

Viðbrögð við óásættanlegum auglýsingum í Svíþjóð eru eins og er byggð á sjálfseftirliti. Viðkomandi sjálfseftirlitsstofnun er umboðsmaður auglýsingamála, óháð stofnun sem sett var á stofn af aðilum innan auglýsingageirans. Umboðsmaður auglýsingamála leggur mat á auglýsingar sem ætlaðar eru fyrir sænskan markað. Hann veitir einnig fræðslu og dreifir upplýsingum um siðferðilega markaðssetningu til að koma í veg fyrir birtingu ósiðferðilegra auglýsinga. Samkvæmt leiðbeiningarreglum

umboðsmannsins eru auglýsingar óásættanlegar ef þær: a) hlutgera, það er birta menn eða konur sem kynferðisleg tákn sem túlka má sem óviðeigandi eða b) fastmóta, þ.e. birta menn eða konur sem staðalímyndir í samhengi kynhlutverka eða birta menn eða konur í niðrandi samhengi. Þessar forsendur hafa, með nokkrum breytingum, verið notaðar í yfir tuttugu ár.

Í stuttu máli hafa Danmörk, Noregur, Finnland og Ísland sett lög um kynjamismunun í auglýsingum, hvort sem er í gegnum almenn ákvæði eða sérþeka löggjöf. Í Danmörku, Finnlandi og Noregi er málefnið fellt undir löggjöf um viðskipti eða neytendamál. Aftur á móti hafa íslensk stjórnvöld valið að fella kynjamismunun í auglýsingum undir jafnréttislöggjöfina. Í Danmörku og Finnlandi er farið eftir almennum ákvæðum á meðan stjórnvöld í Noregi og á Íslandi hafa sett skýrt og ítarlegt bann við kynjamismunun í auglýsingum í sinni löggjöf og með því sent skýr skilaboð út í samfélagið. Umboðsmaður neytenda í Noregi hefur einnig gefið út mjög nákvæmar leiðbeiningarreglur um kynjamismunun í auglýsingum. Eftirlit er í höndum opinberra aðila, í samræmi við þann lagaramma sem ákvæðið tilheyrir. Svíþjóð er undantekning þar sem ekki er til staðar löggjöf um kynjamismunun í auglýsingum. Þar hefur í staðinn verið valin sú leið að eftirláta sjálfseftirlitsstofnun að vinna að og vernda kynjajafnrétti í auglýsingum. Finnland og Svíþjóð eru einu löndin á Norðurlöndum þar sem sjálfseftirlitsstofnun sinnir þessu málefni og Finnland er eina landið sem er bæði með löggjöf (og eftirlitsstofnun sem hefur eftirlit með kynjamismunun í auglýsingum) og sjálfseftirlitsstofnun.

Hvort kynjamismunun í auglýsingum fellur undir viðskiptalög eða jafnréttislög eða ekki endurspeglast að sjálfsögðu í gildissviði laganna. Neytendalöggjöf nær til auglýsinga í viðskiptum. Vitundarvakningarherferðir, almennar upplýsingar og auglýsingar fyrirtækja sem beint er til annarra fyrirtækja falla ekki undir löggjöfina. Litið hefur verið á það sem ágalla, t.d. í Noregi, að ekki sé til staðar eftirlitsyfirvald sem getur tekið við kvörtunum vegna vitundarvakningarherferða, pólitískra ræðuhalda eða almennra upplýsinga. Sjálfseftirlitsstofnanir í Svíþjóð og Finnlandi hafa aftur á móti víðtækara umboð og eru sveigjanlegri hvað þetta varðar.

Fjöldi mála af þessum toga virðist misjafn á milli Norðurlandanna. Sjálfseftirlitsstofnanirnar í Svíþjóð og Finnlandi geta sinnt miklum fjölda kvartana. Umboðsmaður auglýsingamála í Svíþjóð tekur allar innsendar kvartanir til umfjöllunar og getur sinnt mörgum málum á ári (árið 2015 voru þau t.d. 139). Á hinum Norðurlöndunum eru þessar tölur umtalsvert lægri. Aftur á móti skal fara varlega í að draga ályktanir á grunni tölfræði. Nákvæm gögn eru ekki til staðar. Enn fremur kann

tölfræðin að ráðast af ónógri þekkingu hins almenna borgara á þeim ferlum sem eru í boði til að leggja fram kvartanir vegna auglýsinga sem mismuna kynjunum – eða þá að hinn almenni borgari geri sér hreinlega ekki grein fyrir því að sá kostur sé í boði. Ferlar mismunandi stofnana kunna einnig að hafa áhrif á fjölda kvartana. Kynjamismunun í auglýsingum er ekki forgangsmálefni hjá umboðsmanni neytenda (í Finnlandi, Noregi og Danmörku), forgangsröðun sem byggð er á litlum fjölda kvartana. Umboðsmenn neytenda í þessum löndum fylgjast ekki með auglýsingum heldur treysta á kvartanir frá neytendum.

Löggjöf á Íslandi, í Finnlandi, Noregi og Danmörku býður upp á úrræði til að beita fyrirtæki viðurlögum sem brjóta gegn löggjöfinni. Staðreyndin er hins vegar sú að þrátt fyrir löggjöf, sem býður upp á að beitt sé lögbönum, fjársektum eða kærnum, er henni sjaldan beitt. Hjá sjálfseftirlitsstofnunum eru viðurlögin neikvæð athygli.

Samanburður á framkvæmd á milli Norðurlandanna dregur upp mynd af tilteknum einkennum. Í Danmörku er litið á grín sem málsbætur, merki um að ekki eigi að taka viðkomandi auglýsingu alvarlega. Í Noregi er ekki tekið tillit til gríns. Í Finnlandi og Noregi – sem og í Svíþjóð – er nekt leyfð svo lengi sem hægt er að tengja hana beint við vöruna og hún sé ekki niðrandi á neinn hátt. Samkvæmt meginreglum sem finnska ráðið um siðferði í auglýsingum vinnur eftir er nekt ekki ámælisverð, svo lengi sem hún er ekki birt á niðrandi máta. Í Danmörku er meira leyfilegt þegar kemur að nekt, kynlífi og kynhlutverkum í auglýsingum þar sem umboðsmaður neytenda leyfir mun meira svigrúm þegar kemur að notkun nektar og kynferðislegra vísana. Niðurstöður þessarar skýrslu benda til þess að innan Norðurlandanna séu viðhorf til kynjamismununar í auglýsingum einna ströngust í Svíþjóð. Almennt séð er þó hægt að draga þá ályktun að á Norðurlöndunum sé notkun staðalímýnda kynjanna í auglýsingum samþykkt svo lengi sem birting þeirra er ekki verulega skekkt eða niðrandi. Þetta er þrátt fyrir að öll Norðurlöndin leggi mikla áherslu á að fylgja samningi um afnám allrar mismununar gagnvart konum og 5. grein þess samnings, sem leggur þær kvaðir á stjórnvöld aðildarlanda að stuðla að útrýmingu staðalímýnda af hlutverkum karlmannna og kvenna.

Misnotkun myndefnis af konum er mun algengari í auglýsingum en misnotkun á myndefni af karlmönnum og endurspeglast það í kvörtunum og framkvæmd. Meirihluti kvartana fjallar um mismunun gagnvart konum. Í þeim auglýsingum sem úrskurðað er að innihaldi kynjamismunun er hlutfallið jafnvel enn hærra. Ofan á þetta bætist að auglýsingar sem virðast mismuna karlmönnum eru ekki fordæmdar. Svíþjóð virðist vera eina landið af Norðurlöndunum þar sem felldir hafa verið úrskurðir um kynjamismunun gagnvart karlmönnum. Í Noregi eru viðmiðin fyrir gildissviði 2. greinar viðskiptalaganna

hærri fyrir karlmenn í auglýsingum en fyrir konur í auglýsingum og umboðsmaður neytenda leggur sérstaka áherslu á hvernig auglýsingar sýna konur í umfjöllun um kvartanir. Almennt séð er hægt að draga þá ályktun að löggjöf um kynjamismunun í auglýsingum miðist að mestu leyti við konur og gagnkynhneigða menningu.

Kynjajafnrétti í tengslum við auglýsingar tengist beint inn í umræðu um tjáningarfrelsið. Hægt er að líta á jafnrétti kynjanna sem forsendu tjáningarfrelsis, það er að allir hafi jafnan rétt til tjáningarfrelsis – og öfugt. Þetta krefst sérstakrar áherslu á kynjajafnrétti í auglýsingaefni og hvernig auglýsingar eru unnar og settar fram. Aftur móti er tjáningarfrelsið einnig notað sem rök gegn löggjöf um kynjamismunun í auglýsingum, t.d. í Svíþjóð.

Löggjöf og sjálfseftirlit hafa bæði sína kosti og galla. Jafnvel þótt kerfi sem byggir á sjálfseftirliti hafi marga kosti er hægt að fullyrða að einnig sé þörf á löggjöf til að tryggja opinberum yfirvöldum stöðluð úrræði sem senda skýr skilaboð um að kynjamismunun í auglýsingum sé ekki samþykkt. Löggjöf býður eftirlitsaðilum upp á álagningu sekta, auk banns við birtingu auglýsinga sem brjóta gegn löggjöfinni, eða önnur viðurlög. Þar sem löggjöf og sjálfseftirlit geta farið saman er besta lausnin líklega sú að líta á löggjöf og sjálfseftirlit sem samverkandi þætti og þróa kerfi út frá því.

Rannsóknir um áhrif kynjamismununar í auglýsingum á áhorfendur hafa sýnt fram á að geta áhorfendanna til að greina kynjamismunun í auglýsingum sé í beinu samhengi við kynvitund og sjálfsálit þeirra sjálfra. Almennt séð eru forvarnarstarf og fræðsla mikilvægir þættir í því að breyta viðhorfum gagnvart staðalímyndum kynjanna og kynjamismunun í auglýsingum.

Á heildina litið er staðan á Norðurlöndunum í dag snúin þar sem hvert og eitt land hefur þróað sín eigin viðhorf og verklag. Aftur á móti deila Norðurlöndin sömu meginreglum gagnvart kynjajafnrétti, sem gæti mögulega skilað sér í svipaðri niðurstöðu í málum sem tengjast mismunun. Sameiginlegt markmið Norðurlandanna gæti verið nánari útlistun löggjafar. Ræða þarf hvort löggjöf ætti að innihalda skýrari skilgreiningu á „kynjamismunun í auglýsingum“ og hvort upplýsingar um ferli fyrir tilkynningar um kynjamismunun í auglýsingum þurfi að vera skýrari.

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Regulation of Gender-Discriminatory Advertising in the Nordic Countries

Due to the media's normative power to reflect daily life and to shape our understanding of gender, media plays a vital role in constructing – or deconstructing – gender equality. In modern societies, the advertising industry plays a major role in the media landscape. In the Nordic countries gender discriminatory advertising has been on the public agenda since the 1970s and 1980s, the time when gender equality legislation was adopted. However, the Nordic countries have chosen different ways of combating and regulating gender discriminatory advertising. This report presents results of a survey on how gender-discriminatory advertising is regulated in the Nordic countries. The survey was conducted as part of a project on gender equality in the media carried out during the Finnish presidency of the Nordic Council of Ministers in 2016.



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