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The Declaration of Principles on Equality and activities of the Council of Europe

Opinion¹

Committee on Equal Opportunities for Women and Men

Rapporteur: Ms Lydie ERR, Luxembourg, Socialist Group

A. Conclusions of the committee

1. The Committee on Equal Opportunities for Women and Men congratulates the rapporteur of the Committee on Legal Affairs and Human Rights, Mr Boriss Cilevičs, on his well-researched report and supports the draft resolution and draft recommendation. Although the recognition of the principles of equality and non-discrimination has made remarkable progress in the Council of Europe system and in the legal framework of its member states, the gap between the law and its implementation is still wide, including in the field of equality between women and men.

2. It is timely to relaunch the debate on equality and non-discrimination now, as the current economic and financial crisis contributes to exacerbating inequalities while progressive non-discrimination policies are pushed down in the list of priorities of European governments.

3. The committee supports the view that legislative measures are not sufficient and effective policies aimed at achieving equality and protecting disadvantaged persons from discrimination are necessary. Multiple discrimination, which severely affects women, should be taken into account when designing such policies.

B. Proposed amendments

– to the draft resolution:

Amendment A (to the draft resolution)

In the draft resolution, paragraph 6, replace the words “protecting vulnerable groups (such as national minorities, persons with disabilities or immigrants) from discriminatory practices” with the words:

“protecting disadvantaged persons (such as women, members of national minorities, persons with disabilities or immigrants) from discriminatory practices;”.

Amendment B (to the draft resolution)

In the draft resolution, replace paragraph 9.3 by the following sub-paragraph:

“promote and develop effective equality policies, in particular through the application of positive measures in favour of disadvantaged persons, when applicable, for a limited period of time;”.

1. Reference to committee: [Doc. 12022](#), Reference 3609 of 2 October 2009. Reporting committee: Committee on Legal Affairs and Human Rights. See [Doc. 12778](#). Opinion approved by the committee on 5 October 2011.



– to the draft recommendation:

Amendment C (to the draft recommendation)

In the draft recommendation, paragraph 2.2, after the words “Committee on the Elimination of Racial Discrimination”, add the words “UN Women and the Committee on the Elimination of Discrimination against Women (CEDAW)”.

C. Explanatory memorandum by Ms Err, rapporteur for opinion

1. General comments

1. I wish to congratulate Mr Cilevičs on his excellent report, dealing with an issue which is highly relevant to the current situation of human rights in Europe. As the financial crisis leads governments to cut budgets and carefully select their priorities, equality and non-discrimination policies are often given a secondary place in the political agenda. This is in contrast with the social reality of our continent, where inequalities persist and disadvantaged groups face the consequences of the economic situation disproportionately.

2. Mr Cilevičs’ report is in line with the positions consistently adopted by the Committee on Equal Opportunities for Women and Men, in particular as regards the issue of multiple discrimination, as well as the need to adopt effective anti-discrimination legislation and policies, including positive discrimination measures.

2. The principle of gender equality in the jurisprudence of the European Court of Human Rights

3. The principle of gender equality occupies a prominent position in human rights law. This certainly applies to the Council of Europe human rights protection system, as clearly expressed by the European Court of Human Rights (“the Court”) in its jurisprudence. The Court has dealt with discrimination against women on a number of occasions and has contributed significantly to shaping their rights in Europe by progressively applying the principle of equality.

4. A number of judgments rendered in the last few years are relevant to matters in which our committee and the Parliamentary Assembly have consistently been involved. In *M.C. v. Bulgaria* (2003), the Court considered that states have a positive obligation to enact criminal law provisions effectively punishing rape and to enforce them effectively through legislation and prosecution. The interest of this case also lies in the fact that general provisions such as Articles 3 (right not to be subjected to torture, inhuman or degrading treatment or punishment) and 8 (right to private life) of the European Convention on Human Rights (ETS No. 5, “the Convention”) are interpreted in such a way as to enhance the protection of women’s rights, by ensuring that issues which affect women disproportionately are covered.

5. The Court has also delivered judgments in cases of trafficking of human beings: recently, in *Rantsev v. Cyprus and Russia* (2010), it affirmed, *inter alia*, that a violation of Article 4 (prohibition of slavery and forced labour) had arisen from the failure to create an appropriate legal and administrative framework to combat trafficking. It is clear that the jurisprudence of the Court is in line with (and paves the way for) the work of the other bodies of the Council of Europe, each of them making a substantial contribution to the fight against trafficking in human beings.

6. Besides the individual cases and the principles reaffirmed in matters such as the protection of the physical integrity of women, discrimination against single mothers, the right of women to use their maiden name and other issues relating to the situation of women, the Court has increasingly underlined the crucial importance of equality between women and men as a pillar of the Council of Europe system. As early as 1985, the Court stated that “equality of sexes is one of the major goals in the Member States of the Council of Europe”.² More recently, it went even further by defining gender equality as “one of the underlying principles of the Convention”.³ In other words, while the principles of equality and non-discrimination are an essential part of the Council of Europe’s system for the protection of human rights, gender equality is one of the main aspects of these principles.

2. *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 1985.

3. *Leyla Sahin v. Turkey*, 2005.

3. Discrimination and violence: gender-based violence as a violation of equality

7. The European Court of Human Rights also recognised in a recent judgment⁴ that gender-based violence is a form of discrimination against women. In this case, arising from a situation of domestic violence, the Court found a violation of the right to life and the prohibition of torture or ill-treatment, but also a form of discrimination under Article 14, since the applicant had shown that domestic violence affected mainly women and the general and discriminatory judicial passivity contributed to the emergence of domestic violence.

8. I believe that gender-based violence is a consequence of gender inequality, as it is rooted in the unequal power relations between women and men. The relative impunity that male perpetrators have traditionally enjoyed is a sign of women's subordinate position, while violence is often intended to maintain the inequalities and reinforce gender roles.

9. The work of our Assembly has contributed to disseminating the idea that gender-based and domestic violence is a flagrant transgression of human rights. It constitutes a barrier on many women's path to personal development and it prevents them from full enjoyment of their rights. As gender-based violence affects women disproportionately, it constitutes an apparent violation of equality between women and men.

10. The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210) takes into account the link that exists between violence against women and gender inequality. Its Preamble reads: "the realisation of *de jure* and *de facto* equality between women and men is a key element in the prevention of violence against women", and "violence against women is a manifestation of historically unequal power relations between women and men, which have led to domination over, and discrimination against, women by men and to the prevention of the full advancement of women".

11. Article 1 lists among the purposes of the convention the need for it to "contribute to the elimination of all forms of discrimination against women and promote substantive equality between women and men, including by empowering women", as well as to "protect women against all forms of violence, and prevent, prosecute and eliminate violence against women and domestic violence". Under Article 4, "Fundamental rights, equality and non-discrimination", the states parties must embody in their legislation the principle of equality between women and men and prohibit discrimination against women. Finally, Article 6 on "Gender-sensitive policies" requires the parties to promote and effectively implement policies of equality between women and men.

12. In other words, if the convention is based on "the Four Ps", three of them (protection of women, prevention of violence, prosecution of perpetrators) are aimed at tackling gender-based violence, the fourth one ("policies") is aimed at fighting inequalities, which are seen as the main cause of violence.

4. Equality of opportunities for women and men and equality of outcomes

13. Mr Cilevičs' report rightly underlines that the principle of equality can be interpreted in different ways, ranging from "formal equality" to equality of opportunity and equality of outcomes. As far as women's rights are concerned, equality of opportunity has been our main objective for a long time.

14. Article 12 of the European Convention on Human Rights, its Protocol No. 14 (CETS No. 194) and the other relevant texts are not meant to create a situation where women and men are identical. Equality of opportunity ensures that people have the same chances to succeed regardless of their gender or any other ground of possible discrimination, so that no arbitrary obstacle can prevent a person from achieving those positions which correspond to their skills. At the same time, equality of opportunity safeguards the individual's qualities and ambitions, and, ultimately, personal freedom. The difference between individuals means that perfect equality of outcome is impossible.

15. However, equal opportunities have in some respects proved insufficient. Cultural resistance and deeply rooted stereotypes make it impossible for women to take advantage of the seemingly equal opportunities that they are given. For this reason, in certain areas where actual equality appears particularly difficult, such as in political representation, measures inspired by the principle of equality of outcomes may need to be considered. This is the orientation that led our committee and the Assembly to advocate for quotas in the political arena and in the top management of major public and private companies.

4. *Opuz v. Turkey*, 2009.

5. Gender equality and multiple discrimination

16. The right of all persons to equality before the law and protection against discrimination constitutes a universal human right recognised in one way or another in most human rights instruments, including the Universal Declaration of Human Rights. These human rights instruments either focus on several grounds of discrimination, such as sex, ethnic or racial origin or disability, or on one of them specifically. The underlying idea has been that people are, or may be, discriminated against mainly on the grounds of one factor at a time, and that these grounds can be treated separately in legal instruments as well as in political action.

17. Lately, light has been shed on the situation of people suffering from more than one form of discrimination. The discussion on the subject remained predominantly academic in the first half of the 1990s, after which the importance and usefulness of the concept became increasingly recognised also in different international human rights fora, both governmental and non-governmental.

18. In the past, discrimination on the grounds of sex, ethnic origin and all other grounds were understood as separate issues. In other words, human rights instruments, including the European Convention on Human Rights, focused on grounds of discrimination such as sex, ethnic or racial origin and disability, considering that victims of discrimination were likely to be victims because of one of these factors. In some cases, an international legal instrument focuses exclusively on one ground of discrimination: this is the case of the International Convention on the Elimination of All Forms of Racial Discrimination or the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

19. In fact, particular situations may involve discrimination on more than one ground at the same time, and as a consequence an individual may suffer specific or aggravated forms of discrimination. This situation is defined as “multiple discrimination”. The term was coined in the late 1980s and the concept was introduced and explored mainly by African American feminist scholars in the United States, who discovered that African American women suffered specific forms of discrimination suffered by neither African American men nor white women in general. However, this concept obviously applies also to situations which are widespread in Europe.

20. Women typically suffer from multiple discrimination. As they represent a major share of each disadvantaged group, women systematically face an intersection of discrimination on two or more different grounds.

21. A number of categories have been elaborated to describe situations in which different grounds of discrimination interact: multiple, intersectional, compound and overlapping discrimination. A distinction between multiple and intersectional, in particular, has been proposed in the following terms. Multiple discrimination would describe the phenomenon in which one person is discriminated against on several different grounds at different times. For example, a disabled woman may be discriminated against on the basis of her gender in access to highly skilled work, and on the basis of her disability in a situation in which a public office building is not accessible to persons with wheelchairs. Intersectional and compound discrimination, on the other hand, would happen when one individual is discriminated against on two or more different grounds at the same time (the case of disabled women who are forced to undergo sterilisation could constitute an example of this kind of discrimination, as this kind of discrimination is neither typical of women in general nor of disabled men).

22. In my opinion, the concept of multiple discrimination can be used as a comprehensive one that covers all the situations in which discrimination takes place on more than one ground. I believe that, as politicians committed to promote equality, we should be focused on achieving our objective rather than on theoretical details.

23. Multiple discrimination should not be underestimated because it has serious consequences. The intersection of discrimination based on race and gender, for instance, is among the most widespread, and its impact is devastating. The situation of migrant women, which the Assembly has recently focused on, is a clear example of discrimination on two, three or more grounds. Migrant women in Europe may find themselves discriminated against on the basis of gender, national or ethnic origin, race or social origin. In cases like this we have to make sure that the principles of equality and non-discrimination are effectively applied, by means of adequate legislation and policies.

6. The importance of positive measures

24. The Committee on Equal Opportunities for Women and Men has consistently supported the idea that positive measures are useful and necessary to improve the situation of women in today's society. The Assembly has advocated the adoption of positive measures, including quotas aimed at promoting access to

political life for women. I myself was rapporteur on this matter⁵ and promoted the view that gender quotas are a transitional but necessary exception to the principle of equality, as equal participation of women and men in political life is “one of the foundations of democracy and one of the goals of the Council of Europe”. Quotas create an exceptional, temporary situation which in the longer term should bring about a change in attitudes and allow for *de jure* and *de facto* gender equality.

25. Previously, the Assembly had focused on the need to achieve a gender balance in decision-making processes and had set an initial target of a critical mass of at least 40% of women in all governmental and elected bodies.⁶ On the same occasion, back in 2006, the Assembly stated that the experience of quotas could be advantageously transposed to the private sector and socio-economic domain. A number of Council of Europe member states had already introduced or were considering introducing quotas to improve the representation of women on the governing boards of major firms. In some cases, large companies had taken similar initiatives without any legal obligation.

26. We insisted on this matter and reaffirmed earlier this year that quotas reserved for women should be introduced in the private sector.⁷ Several European countries, including Iceland, Norway and Spain, have introduced quotas either in public or private major companies or both, while other countries are discussing similar proposals. The results in pioneering Norway are encouraging: between 2003 and 2010, female participation on the governing boards of almost 400 state-owned and listed companies increased from 7% to 40%.

27. The Assembly is clearly committed to positive measures even when regulating its own functioning, as shown by the objective of a minimum of 30% of representatives of the under-represented sex in Assembly national delegations, foreseen by [Resolution 1781 \(2010\)](#).

7. Explanation of the proposed amendments

Amendment A

Women must be mentioned in this resolution. It is necessary to include an explicit reference to them in a text dealing with equality and non-discrimination. However, it would be inappropriate to define them as a vulnerable group. Women can rather be defined as disadvantaged, as they suffer from multiple discrimination. In addition, the notion of group is reductive and not acceptable, since women represent more than 50% of the overall population.

Amendment B

The idea of positive measures to protect disadvantaged persons is not easily accepted by policy makers. Suggesting that the measures are temporary would make them more likely to be accepted.

Amendment C

We support the principle, enshrined in the current text of paragraph 2.2, that co-operation with relevant international organisations and specialised bodies is desirable and necessary, as it strengthens the impact of the actions taken by the different parties. In this respect, alongside other specialised agencies of the United Nations involved in the fight against discrimination, it is useful to mention explicitly the bodies dealing with the situation of women, in particular UN Women and the CEDAW Committee.

5. [Resolution 1706 and Recommendation 1899 \(2010\)](#) on increasing women’s representation in politics through the electoral system.

6. [Resolution 1489 \(2006\)](#) on mechanisms to ensure women’s participation in decision making.

7. [Resolution 1825 and Recommendation 1977 \(2011\)](#) on more women in economic and social decision-making bodies.