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The impact of the Lisbon Treaty on the Council of Europe

Opinion[1]
Committee on Equal Opportunities for Women and Men
Rapporteur: Mr José MENDES BOTA, Portugal, Group of the European People's Party

A. Conclusions of the committee

1. The Committee on Equal Opportunities for Women and Men congratulates the rapporteur of the Political Affairs Committee, Ms Kerstin Lundgren, on a thorough and comprehensive report.

2. It would be wishful thinking to argue that the European Union should abstain from entering the field of democracy, human rights and the rule of law. This is unrealistic, given the current degree of development of the process of European integration. However, it would be inadmissible if, in Europe, there were two sets of values, two sets of standards, and several monitoring bodies duplicating each other's work.

3. The Committee on Equal Opportunities for Women and Men supports the recommendations put forward by the Political Affairs Committee, which are made with a view to "further pursuing the building of a common space for human rights protection at pan-European level", and ensuring coherence of standards and their monitoring, while avoiding duplication and monitoring fatigue. These objectives should also be pursued in the area of equality between women and men and women's rights.

B. Amendment to the draft resolution

Amendment A (to the draft resolution)

In paragraph 8.3, after the words "co-ordinate with the Council of Europe in the areas of", insert the words:

"trafficking in human beings, violence against women as well as"

C. Explanatory memorandum by Mr Mendes Bota, rapporteur for opinion

1. Introduction

1. The rapporteur of the Political Affairs Committee, Ms Lundgren, has drafted a thorough and comprehensive report explaining the consequences of the Lisbon Treaty on relations between the Council of Europe and the European Union and on the Council of Europe's work.

1. Reference to committee: Doc. 12114, Reference 3640 of 29 January 2010.

2. The report welcomes the constructive spirit in which the accession of the European Union to the European Convention on Human Rights (ETS No. 5) has been negotiated and encourages the European Union to accede to other key Council of Europe conventions and to join Council of Europe monitoring mechanisms and bodies. It also encourages strengthening co-ordination and co-operation between the two organisations in areas such as asylum, migration and external relations.

3. These recommendations are made with a view to "further pursuing the building of a common space for human rights protection at pan-European level" and ensuring coherence of standards and their monitoring, while avoiding duplication and monitoring fatigue.

4. These objectives should also be pursued in the area of equality between women and men and women's rights.

2. The impact of the Lisbon Treaty on the European Union's activities in the field of gender equality and women's rights

5. The Lisbon Treaty has not led to radical changes to the European Union's approach to gender equality and women's rights. However, some changes introduced by the Treaty will have an impact on activities in this area, namely:

2.1. The capacity of the European Union to accede to human rights instruments.

6. The Treaty has already led to the European Union's accession to the United Nations Convention on Persons with Disabilities;[2] hopefully, it will soon lead to accession to the European Convention on Human Rights, and might lead in the future to EU accession to other international and Council of Europe human rights instruments.

2.2. The enlargement of the competencies of the European Union in the criminal justice field

7. Following the entryinto force of the Lisbon Treaty, the competences of the European Union in the area of justice have been extended. In particular, theEuropean Union now has competence to introduce minimum rules concerning the definition of criminal offences and sanctions in the area of particularly serious crime with a cross-border dimension, in particular trafficking in human beings and sexual exploitation of women and children.

2.3. The new legally binding nature of the Charter of Fundamental Rights of the European Union

8. According to Article 6 of the Treaty of the European Union, the Charter has become part of EU primary law, with the result that the EU Court of Justice will exercise judicial oversight of EU institutions' and member states' compliance with its provisions. It should be noted that Article 23 of the Charter, devoted to gender equality, reads: "Equality between men and women must be ensured in all areas, including employment, work and pay. The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex."

2.4. The inclusion of a human rights dimension in the external relations of the European Union

9. The Lisbon Treaty has broadened the scope of co-operation between the European Union and its neighbouring countries to cover a full range of issues in an integrated way, including human rights, democracy and the rule of law. Following the entry into force of the Treaty, the European Commission and the High Representative of the European Union for Foreign Affairs and Security Policy have issued two communications setting out the framework for the EU policy, focusing on the EU Neighbourhood Policy (ENP) and the Southern Mediterranean.[3]

2. Date of accession: 23 December 2010.
3. See COM(2011)200 of 8 March 2011 and COM(2011)303 of 25 May 2011.

3. Areas for strengthened co-operation

10. In the light of the changes introduced by the Lisbon Treaty, I have identified a few key areas within the general domain of gender equality and women's rights, in which strengthened co-operation between the Council of Europe and the European Union is necessary to ensure a common space for human rights protection at pan-European level, while avoiding duplication of standards and monitoring mechanisms.

3.1. Violence against women, including domestic violence

11. In recent years, the eradication of violence against women, including domestic violence, has become a priority for the Council of Europe. This engagement, which is strongly supported by the Parliamentary Assembly, has led to the opening for signature and ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210), an instrument which is unique in the world and unprecedented in many respects.[4]

12. The European Union took part in the negotiations of the Convention and had a strong influence on the entire process, not only because it intervened in its own right but also because the 27 European Union member states took a single co-ordinated position on a number of provisions, to ensure consistency between the Council of Europe instrument and EU law.

13. Violence against women is also a prominent issue in the EU agenda. At policy level, the two main documents setting out the priorities for the European Union's work in the field of gender equality in the future emphasise the need to ensure the dignity and integrity of women and to put an end to gender-based violence.[5] In addition, the European Union is elaborating the first comprehensive EU strategy on violence against women and men, a development which is strongly encouraged by the European Parliament.

14. As regards legislation, the negotiation of a number of instruments is under way, including:

– a draft directive on protection orders for victims of domestic violence, which will create mechanisms for the mutual recognition of protection orders issued by EU member states' authorities;[6]

– a victims protection package which, although not specifically directed to women, is applicable to all victims of crime. The European Commission's proposal has received substantial political support and should be adopted by the beginning of 2012.[7]

15. The Assembly should recommend the following measures in order to promote coherence in this important area of work common to the two organisations:

– after the process of the EU accession to the European Convention on Human Rights has been completed as a test case, the European Union should accede to the Council of Europe Convention on preventing and combating violence against women and domestic violence and participate in the monitoring mechanism set up by the convention;

– irrespective of its accession, the European Union should ensure that future EU legislation in the field of violence against women is fully in line with Council of Europe standards as set out in the convention;

– at a political level, there should be more interaction between the Assembly and the European Parliament in this area, with the organisation of joint events and campaigns.

16. In my capacity as rapporteur for opinion on the Council of Europe Convention on preventing and combating violence against women and domestic violence, I have had the opportunity to participate in a number of exchanges of views with the Committee on Gender Equality and Women's Rights of the European Parliament on this matter. I can say that, on these occasions, members of the European Parliament have shown great interest in the convention and its accession by the European Union, and they are willing to establish further synergies.

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4. See Assembly Opinion 280 (2011) on the draft Council of Europe Convention on preventing and combating violence against women and domestic violence.

5. Council Conclusions for the European Pact for gender equality for the period 2011-2020, 7 March 2011, and Com(2010)491 final, Brussels, 21 September 2010.

6. "EU closer to agreement on European Protection Order", European Voice, 15 May 2011.

7. Proposal for a Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime, COM(2011)275 final of 18 May 2011.

3.2. Trafficking in human beings

17. The Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197) entered into force in 2008 and, as of 1 September 2011, has been ratified by 34 Council of Europe member states, of which 20 are also EU member states. The European Union as such could accede to the convention.

18. This Convention reflects the highest standards in the field of prevention of trafficking, prosecution of the offenders and protection of the victims and is based on a human rights approach putting the victim at its centre. It establishes an independent monitoring body, GRETA, which will soon make public its first evaluation reports on 10 states parties to the convention.[8]

19. During the Conference on "Parliaments united against human trafficking", which was organised by the Committee on Equal Opportunities for Women and Men in Paris in December 2010, it clearly emerged that one of the elements which was holding back some states from ratifying the convention was their concern to ensure consistency between their prospective obligations under the Convention and the national legislation implementing EU law in this field.[9]

20. Indeed, in 2002 the Council of the European Union adopted a Framework decision on trafficking in human beings,[10] which was replaced by a directive only in April 2011.[11] Amongst other things, this directive asks EU member states to establish national rapporteurs with the task of carrying out assessments of trends in trafficking in human beings, measuring results of anti-trafficking actions and reporting.[12] The national co-ordinators should also facilitate the work of the EU Anti-Trafficking Co-ordinator,[13] and are linked in an informal Network which held its latest meeting in July 2011.

21. As regards substantive law in the field of trafficking, I believe that the Assembly should make the following recommendations:

– after the process of the EU accession to the European Convention on Human Rights has been completed as a test case, the European Union should accede to the Council of Europe Convention on Action against Trafficking in Human Beings and participate in the monitoring mechanism set up by the convention;

– as the new EU directive on trafficking has been adopted, EU member states should now be able to overcome remaining difficulties and conclude the ratification process of the Convention on Action against Trafficking;

– in adopting legislation to give effect to the EU directive, EU member states should keep in mind that the EU Directive only sets a minimum standard, and that they remain free to introduce more protective measures.

22. In addition, the existence of multiple monitoring mechanisms on trafficking in Europe (the national rapporteurs, the EU Anti-Trafficking Co-ordinator and GRETA) requires further co-ordination to ensure consistency and avoid monitoring fatigue on the part of member states.

3.3. Gender equality in the external dimension

23. Recent events on the southern shores of the Mediterranean have opened up new prospects of co-operation between these countries and the Council of Europe, as an organisation with a specific expertise in the development and consolidation of democratic political systems, respectful of human rights and the rule of law.

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8. www.coe.int/t/dghl/monitoring/trafficking/default_EN.asp.
9. Background paper, "National parliaments: contributing to ratification, implementation and monitoring of the Convention on Action against Trafficking in Human Beings", AS/Ega/Inf (2010) 35.
10. Council Framework Decision 2002/629/JHA.
11. Directive 2011/36/EU of the European Parliament and the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims.
12. Ibid., Article 19.
13. Since December 2010, Ms Myria Vassiliadou, from Cyprus, former Secretary General for the European Women's Lobby.

24. While increasing contacts are taking place between intergovernmental structures of the Council of Europe and the governments and administrations of the countries concerned, the Parliamentary Assembly has granted, for the first time, the status of Partner for Democracy to the Parliament of Morocco,[14] and other parliaments from the region might follow.[15] The procedure for granting the status attaches great importance to the applicant's commitment to achieve gender equality and parity-based democracy.

25. The European Union has also taken up the challenge of helping North African countries in their process of democratic transition, having a strategic and economic interest in "a democratic, stable, prosperous and peaceful Southern Mediterranean".[16] As a result, it has deployed considerable financial means to support humanitarian aid and promote economic development and institution building in the region, while maintaining a country-specific approach.

26. In my opinion, what is important in relation to this common neighbourhood is to ensure that, irrespective of their different means and vocations, the two organisations convey the same political message: gender equality and parity-based democracy are essential elements in the process of democratic transition, and women should not be set aside, neither now nor in the future.

14. Assembly Resolution 1818 (2011) on the request for Partner for Democracy status with the Parliamentary Assembly submitted by the Parliament of Morocco.
15. On 4 October 2011, the Assembly granted this status to the Palestinian National Council (Resolution 1830 (2011)).
16. COM(2011)200 of 8 March 2011.