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**GENDER EQUALITY COMMISSION  
(GEC)**

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**EQUAL ACCESS FOR WOMEN AND MEN TO JUSTICE**  
**Proposal concerning a feasibility study with regard to the**  
**possibility of preparing a legal instrument**

**Decision expected by the Gender Equality Commission:**  
approve the production of a feasibility study should decide on a research plan  
and give advice on the composition of a research group.



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## Introduction

1. While it is essential in seeking to achieve equality to develop strategies for changing attitudes and to take account of the needs and interests of both women and men in legislation and policies, it is equally important to apply the law and punish gender-based discrimination. Even if women have the same rights as men, they do not always have the same access to the opportunities offered to men and their efforts to claim their rights are not always successful. *De jure* equality is not always put into practice.

2. It is therefore important for the Council of Europe, in the context of its strategy to foster balanced participation of women and men in all sectors of society, to know the number of cases women bring before a national or international, judicial or administrative court, how aware they are of their rights and the difficulties they encounter in obtaining recognition of those rights. The role of the judicial and administrative authorities and of lawyers should also be taken into account in this context: was the case brought on grounds of discrimination? What was the level of knowledge of the relevant European law? What knowledge did those involved have of European law?

### Origin of the activity

3. An initial compilation of European Court of Human Rights judgments in the field of equality between women and men, carried out by the Steering Committee for Equality between Women and Men (CDEG) in 2006<sup>1</sup>, showed that the number of judgments concerning gender equality, in which applications were lodged either by women or by women together with men was 19 out of the 48 judgments listed (from June 1979 to June 2006).

4. In 2009, in the context of its consideration of the follow-up that should be given to document CM(2008)170 – *The Council of Europe and the Rule of Law* – that had been transmitted to it by decision of the Committee of Ministers, the CDEG decided that this was an important issue for the promotion and achievement of gender equality and to propose an activity on equal access to the courts for women and men<sup>2</sup>. Initially this activity concerned cases brought before the European Court of Human Rights. The main idea was to obtain statistics on the number of cases brought before the court by women and men and to draw the attention of those working in the legal sphere to the need to promote women's access to the courts and for gender mainstreaming in the training of judges and lawyers.

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<sup>1</sup> Case law of the European Court of Human Rights in the field of Equality between Women and Men (CDEG (2006)2).

<sup>2</sup> 42nd report of the CDEG (CDEG 2009 RAP 42) item12 of the agenda.

5. Consequently, when preparing the 7th Council of Europe Conference of Ministers responsible for Equality between women and men, the theme of which was "Gender equality: bridging the gap between de jure and de facto equality", the CDEG decided to include this issue among the priorities set out in the action plan adopted by the conference and to "*develop activities to monitor the equal access to justice of both women and men at national and international levels, in particular to the European Court of Human Rights, prepare an analysis of the data collected and develop, if necessary, awareness raising activities to promote women's access to justice.*"

### **Report on cases brought before the European Court of Human Rights by women (2010)**

6. Initially, in 2010, the Secretariat prepared a quantitative study by gathering information on the number of cases brought before the European Court of Human Rights by women and the number of judgments concerning them. It was entitled *Report on cases brought before the European Court of Human Rights by women* and provided the following information:

- a. Cases (judgments and decisions) concerning Article 14 (non-discrimination) over the period between the establishment of the Court and 1 January 1979: the number of applications lodged by women on their own and by women together with men was 7 out of 65 (10.8% of applications).
- b. Breakdown by sex of the Commission's decisions on the admissibility of applications in 1995: out of 1421 applications, 207 concerned women only (14.5%), and 100 concerned both women and men (7%).
- c. Breakdown by sex of the Court's decisions concerning all of the rights protected by the Convention over the period from 1960 to 29 January 1997: out of a total of 542 judgments, only 65 specifically concerned women (12%), and 54 concerned both women and men.
- d. Breakdown by sex of the Court's decisions concerning gender-based discrimination (Article 14 of the European Convention on Human Rights) over the period from 1960 to 29 January 1997: out of a total of 10 judgments, 3 specifically concerned women (30%), whereas 2 concerned both women and men (20%).
- e. In cases found inadmissible by a chamber of 7 judges and cases which were judged on the merits by a chamber or by the Grand Chamber over the period 1 November 1998 to 1 March 2006: the number of applications lodged by women was 1 300 (16% of applications).

- f. Judgments handed down by a chamber or the Grand Chamber concerning Article 14 of the ECHR, over the period 1 January 2009 to 31 March 2010: 9 out of 32 applications (28%) were lodged by women only or by women together with men.
- g. Article 14 taken in conjunction with Article 1 of Protocol 12, over a period up to 1 April 2010: out of a total of 8 cases, no applications have to date been lodged by women.
- h. Concerning Article 1 of Protocol 12, over a period up to 1 April 2010: out of a total of 26 applications submitted, only 4 were lodged by women, and 2 by women together with men.

7. The report also concerned the complaints lodged by women and concluded that the number of applications lodged by women was lower than the number lodged by men<sup>3</sup>. The report also pointed out that it had not been easy to carry out the survey as the relevant data was sometimes difficult to obtain if not unavailable, even within the Council of Europe. It also stated that it was a pity that it was not possible to obtain gender-disaggregated data through the HUDOC system (The European Court of Human Rights search engine), particularly data concerning the number of men or women lodging applications with the Court. It is extremely difficult to obtain such information, even by using key words (for example in French the word "*requérante*" – the female version of applicant).

### **Other available data**

8. The report also reiterated the comments by Judge Françoise Tulkens<sup>4</sup> on women's access to the European Court of Human Rights, i.e.: "the relatively small number of applications lodged by women raises the question of the sometimes more limited possibility for women to lodge an application with the Court, reflecting a certain vulnerability with regard to the law. Access to the courts, which is already not easy at national level, can be even more difficult at international level". The first major obstacle is therefore apparently women's access to the national courts. It would therefore be useful to carry out national studies, for example on systems where complaints are not registered, or where the police decide not to take any further action, to gain a real idea of the scale of the obstacle.

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<sup>3</sup> Details on this can be found in the *Report on cases brought before the European Court of Human Rights by women*.

<sup>4</sup> Droits de l'homme, droits des femmes. Les requérantes devant la Cour européenne des droits de l'homme, by Françoise Tulkens Judge at the European Court of Human Rights, Professor at Louvain University, 7 March 2007.

9. Judge Tulkens also drew attention to the measures that could be taken at all stages of legal proceedings to ensure that women have genuine access to the European Court of Human Rights:

- Acceptance, in certain cases, of collective actions, which would improve the system of the European Court;
- More frequent third party interventions;
- The Court should develop its interpretation to take greater account of the particular situation of women. With regard to this point, the specific case of rape and sexual abuse are areas in respect of which women have greater difficulty in lodging a complaint.

10. All this information, although incomplete, gives an idea of the difficulties women have in obtaining access to the courts. Other reports, such as that of the EU Agency for Fundamental Rights<sup>5</sup> or that of the European Commission for the Efficiency of Justice (CEPEJ)<sup>6</sup> make no attempt to address this issue.

11. On the other hand, the UN Women 2011-2012 report "Progress of the world's women - in pursuit of justice" shows that although laws and legal systems exist, justice remains out of reach for millions of women.<sup>7</sup> This world study could also be transposed to the European level. Studies carried out on a European scale – like the one conducted by the European Commission<sup>8</sup> - could fully complement action taken at world level and focus on the specific situation in Council of Europe member States, propose solutions and put forward recommendations more closely tailored to and aimed at European countries, along the lines set out in the Ministerial Conference action plan, adopted in Baku in May 2010.

12. This action plan "Taking up the challenge of the achievement of *de jure* and *de facto* gender equality" asks the Council of Europe, under Priority III Equal participation of women and men in political, public and economic life, including in decision-making, to "develop activities to monitor the equal access to justice of both women and men at national and international levels, in particular to the European Court of Human Rights, prepare an analysis of the data collected and develop, if necessary, awareness-raising activities to promote women's access to justice."

13. Judge Tulkens concluded her talk on "Human rights, women's rights. Female applicants to the European Court of Human Rights" at Leuven University on 7 March 2007 by saying that "If this handful of analytical pointers could one day inspire other research efforts, my goal will have been attained."

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<sup>5</sup> Access to justice in Europe: an overview of challenges and opportunities, European Union Agency for Fundamental rights, 2010.

<sup>6</sup> Access to justice in Europe, CEPEJ studies No. 9, European Commission for the Efficiency of Justice, CEPEJ, Council of Europe.

<sup>7</sup> 2011-2012 - Progress of the world's women. In pursuit of justice, UN Women

<sup>8</sup> Comparative Study on access to justice in gender equality and anti-discrimination law, prepared by Milieu Ltd for DG Justice of the European Commission, February 2011



14. This task is also part of the terms of reference of the new Gender Equality Commission (GEC) ("a feasibility study is carried out on access to justice of women"), whose activities are carried out under the "Promoting equality" (Equality and diversity) programme of the Council of Europe Programme and Budget 2012-2013.

### **Feasibility study on women's access to justice**

15. At its first meeting (6-8 June 2012), the Gender Equality Commission (GEC) discussed the problems encountered by action to promote equality between women and men at national and international level. In this context, and after hearing a statement by Judge Françoise TULKENS, Vice-President of the European Court of Human Rights, who drew attention *inter alia* to the low number of applications filed by women with the European Court of Human Rights and pointed out that this might reflect the obstacles faced by women at national level, the GEC proposed carrying out a study feasibility on women's access to justice.

16. The study will be carried out by four experts, whose work will be coordinated by a consultant. Their conclusions should make it possible to decide on initiatives to take and *inter alia* to evaluate the utility of preparing guidelines on equal access of women and men to justice. Were such preparation envisaged, the work would be assigned to a group of experts proposed by the GEC and the CEPEJ and operating in line with procedures established by the Steering Committee for Human Rights (CDDH).

17. Under the authority of the Gender Equality Commission (GEC), the 5 experts would be tasked with preparing a feasibility study focusing on women's access to justice, pursuing the following objectives:

- to present a panorama of international standards as well as a number of representative legal frameworks of Council of Europe member states;
- on the basis of findings of existing studies, to identify the data that should be collected in order to draw up a detailed survey of the situation and then identify the obstacles encountered by women in accessing justice in civil, criminal and administrative proceedings, be they legal, material, cultural or of another nature;
- to present the solutions applied where these exist and
- good practices in this field;
- to make recommendations for improving the situation; and
- to make proposals for Council of Europe action in this field.

**Expert profiles:**

18. Five specialists in the field of equality between women and men and law, proposed by the GEC and the CEPEJ. Four experts/law practitioners specialising in equality will each prepare a section of the feasibility study according to their field of expertise – public law (administrative, constitutional, fiscal, public international law) and private law (civil law, commercial law, labour law). Their work will be coordinated by a consultant, tasked with supervising preparation of the study and harmonising the different sections prepared by the other four experts.

19. In this connection, the experts could benefit from the data gathered by the CEPEJ on the distribution and representation of women and men within member States' judicial systems and also those compiled by the old Steering Committee for Equality between Women and Men (CDEG).

20. The experts could also draw on the findings of reports on access to justice such as those prepared by the European Union Agency for Fundamental Rights or the European Commission for the Efficiency of Justice (CEPEJ) and in particular the findings of the United Nations report on progress of the world's women, 2011-2012, "In Pursuit of Justice". They could also use the findings of research carried out by two researchers at the Strasbourg CNRS on this topic, who might cooperate in the project.

## **Timetable**

This activity forms part of the "Promoting equality" (Equality and diversity) programme of the Council of Europe Programme and Budget 2012-2013.

As mentioned above, the members of the GEC are to select the experts tasked with preparing the study and define their terms of reference at the Commission's next meeting (14-16 November 2012).

The specialists concerned will be contacted beforehand by the Secretariat to check whether they are available to carry out the work.

The CDDH will then define their working procedures.

They could meet initially with the consultant tasked with coordinating the work, in order to exchange views and identify the main thrusts of the study.

A preliminary draft of the study could be examined at a meeting in the first half of 2013 and submitted to the members of the GEC at their first meeting in 2013.

In the meantime, the experts should dialogue on an interactive site provided for that purpose by the Council of Europe.

The text would then be submitted to the CDDH and subsequently revised by the experts along the lines indicated by the GEC and the CDDH.

A final version should be presented to the GEC before its first terms of reference expire on 31 December 2013 and approved by the CDDH.