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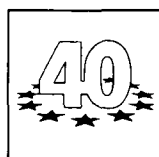
COUNCIL  
OF EUROPE

CONSEIL  
DE L'EUROPE

EQUALITY BETWEEN WOMEN AND MEN

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The Council of Europe's standard-setting activities  
relating to equality of the sexes



Forty years  
Council of Europe

Strasbourg 1989

THE COUNCIL OF EUROPE'S STANDARD-SETTING ACTIVITIES  
RELATING TO EQUALITY OF THE SEXES

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EUROPEAN COMMITTEE FOR EQUALITY BETWEEN WOMEN AND MEN

STRASBOURG

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## INTRODUCTION

The Council of Europe's activities in the field of equality of the sexes are a natural consequence of the commitment of its 22 member states (1) to defend human rights and freedoms (based on human dignity and equality of each individual), and their attachment to democratic principles, which require women's participation in political, economic, social and cultural life on an equal footing with men.

Prohibition of discrimination on grounds of sex with regard to those rights and freedoms provided for in the 1950 European Convention on Human Rights has underlain the Council of Europe's activities from its inception in 1949, and indeed was made explicit in Article 14 of the Convention.

The marked development, in the past decade, of the promotion of equality between women and men has culminated in its inclusion as a multi-disciplinary objective in the Council of Europe's Third Medium Term Plan (1987-1991) entitled "Democratic Europe - Humanism, Diversity, Universality".

A forum for discussion and proposals was required to carry out these activities, leading to the establishment, in 1979, of the Committee on the Status of Women, which in 1981 became the Committee for Equality between Women and Men and, in 1987, the European Committee for Equality between Women and Men.

The committee's current tasks are:

- to examine the situation as regards equality between women and men in European society and consider its progress
- to promote European co-operation between member states with a view to achieving real equality between women and men and to stimulate actions both at national and Council of Europe level.
- to prepare the European ministerial conference on equality between women and men and ensure the follow-up thereto.

The committee has the major responsibility for implementing the objective of achieving real equality between women and men.

The Council's activities in this field are not exclusively standard-setting ones; other working methods include seminars and colloquies, and studies commissioned by the Organisation. However, conventions and Committee of Ministers recommendations to member states do represent the main vehicles for this area of activity.

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(1) Currently: Austria, Belgium, Cyprus, Denmark, France, Federal Republic of Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Netherlands, Norway, Portugal, San Marino, Spain, Sweden, Switzerland, Turkey, United Kingdom.

The Council's deliberative body, the Parliamentary Assembly, (1) makes a significant contribution to this standard-setting activity through its recommendations to the Organisation's decision-making body, the Committee of Ministers.

Finally, the conferences of specialised ministers (in this case the European Ministerial Conference on Equality between Women and Men), with which the Council of Europe maintains special working relationships, contribute to the Organisation's activities in areas of immediate interest to the member states.

The aim of this report is to set out the activities already undertaken by the Council of Europe to achieve equality between men and women as European citizens. The following structure has been adopted for the sake of clarity:

- I. Equality in private and family matters
- II. Equality in the political process
- III. Social equality
- IV. Specific situations

#### I. EQUALITY IN PRIVATE AND FAMILY MATTERS

Family structure has a major influence on women's role in society. In response to changing ideas and values, the Council of Europe has introduced a series of standards aimed at achieving equality between spouses, or partners, within the family, both in their personal and property relations and in their relations with their children.

##### A. Personal matters concerning the spouses

1. Considerable debate arose over one initial issue, that of the spouses' nationality in mixed marriages.

An individual's nationality is not simply a matter of administrative concern; it is also an important aspect of personal dignity and cultural identity.

The increase in the number of mixed marriages in Europe has created an urgent need for uniform regulations governing the acquisition of nationality through marriage in the different member states of the Council of Europe.

On 27 May 1977, following a number of recommendations from the Consultative Assembly of the Council of Europe (2), the Committee of Ministers adopted a resolution on the nationality of spouses of

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- (1) As from 3 July 1974, the consultative Assembly changed its name to Parliamentary Assembly.
  - (2) Rec. 519 (1968) on the nationality of married women, adopted on 2 February 1968.  
Rec. 696 (1973) on certain aspects of the acquisition of nationality, adopted on 24 January 1973.

different nationalities (1). The resolution, "considering that the unity of nationalities within the same family renders it desirable that spouses who so wish should be able to achieve this", recommended that the governments of member states should:

- i. "move towards eliminating distinctions in the conditions under which their nationality may be acquired by the foreign husbands of their nationals, as compared with the foreign wives;
- ii. proceed, from now on, to the arrangements necessary at the internal level to accord to the foreign husband of their nationals, for the acquisition of nationality, a treatment as close as possible to that granted to the foreign wives of their nationals;
- iii. not require, for the acquisition of their nationality by the foreign spouse of a national, more than five years' residence on their territory including not more than three years' residence after the marriage".

However, the Parliamentary Assembly has recently adopted (30 June 1988) the recommendation on "problems of nationality in mixed marriages" (2), presented by its Legal Affairs Committee.

The recommendation states that each spouse should have the right to acquire the nationality of the other without losing his or her own nationality of origin. The principle that one person can have several nationalities should be generally accepted. It therefore recommends an amendment to the Council of Europe Convention on reduction of cases of multiple nationality or the conclusion of another binding legal instrument which would bring together the nationality laws of the different member states.

## 2. Family name of spouses

In Resolution (78) 37 on equality of spouses in civil law (3), the Committee of Ministers recommended that member states regulate matters concerning the family name of the spouses to ensure that a spouse was not required by law to change his family name in order to adopt the family name of the other spouse. It also recommended states to take steps with a view to giving both spouses equal rights as to the family name to be given to their children.

The need to avoid all discrimination with regard to acquiring and passing on the family name was recognised by the European Ministers of Justice at their 13th Conference in Athens in 1982.

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(1) Resolution (77) 12 adopted on 27 May 1977.

(2) Recommendation 1081 (1988) of the Parliamentary Assembly on problems of nationality in mixed marriages, adopted on 30 June 1988 and Doc. 5901.

(3) Resolution (78) 37 on equality of spouses in civil law, adopted by the Committee of Ministers on 27 September 1978.

In the majority of states it may be difficult to achieve complete equality in this respect, bearing in mind such issues as the importance of the name as a means of identifying families, the choice of a family name when there is no agreement between spouses, and the name to be taken by the children.

Nevertheless, in its Recommendation of 5 February 1985 (1) on legal protection against sex discrimination, the Committee of Ministers said that the principle of equality between men and women should apply to the family name.

Does this imply that the family should have a double name and that this double name should be passed on?

This is the solution adopted by numerous European countries. It appears to be essential if the debate on equality between spouses is to be taken to its logical conclusion.

### 3. Choice of family residence

Following its Resolution on the standardisation of the legal concepts of "domicile" and "residence" (2), in 1978 the Committee of Ministers adopted a Resolution on equality of spouses in civil law (3) which recommended governments of member states "to ensure that both spouses have equal rights to choose the common residence of the family and that each spouse has an equal right to a residence separate to that of the other spouse, in cases where such a right is granted".

A further recommendation on the rights of spouses relating to the occupation of the family home and the use of the household contents (4) was adopted in 1981.

Although legal and de facto equality between the sexes was being progressively achieved in the member states of the Council of Europe, it seemed desirable to improve spouses' legal situation with regard to the family home.

The Committee of Ministers therefore recommended the adoption of systems of co-ownership and co-leases as one of the means for strengthening the right of occupation of the family home.

"Any legal act by one spouse which might directly prejudice the right of the other spouse to occupy the family home must be carried out with the consent of the latter".

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(1) Rec. No R (85) 2, on legal protection against sex discrimination. Principle 4.

(2) Resolution (72) 1, adopted on 18 January 1972.

(3) Resolution (78) 37, on equality of spouses in civil law, adopted on 27 September 1978.

(4) Recommendation No. (81) 15 of the Committee of Ministers, adopted on 16 October 1981.

Finally, in its Recommendation on legal protection against sex discrimination (1) the Committee of Ministers adopted on 5 February 1985 a principle which would give both men and women equal rights and duties with regard to the domicile and residence of each spouse. This recognised the possibility of each spouse having his or her own domicile.

B. Property and financial relations of spouses

1. Household expenses and maintenance

Household expenses must be borne jointly by both spouses according to the means of each spouse, work in the house by one spouse being considered as a contribution to household expenses.

Each spouse has equal obligations and rights in respect of maintenance and assistance from the other spouse during the marriage, or of maintenance after the dissolution of the marriage (2).

2. Acquisition, administration and division of family property - marriage contracts

In the majority of states there are very few differences between men and women with regard to the right to administer and own family property. In some, however, the matrimonial regime still gives the husband sole rights to administer common property and even that belonging to the wife.

In the Resolution referred to above, and in its Recommendation on legal protection against sex discrimination, the Committee of Ministers calls for:

- the removal of all presumptions relating to property based on the sex of either spouse,
- equal rights and obligations of both spouses concerning their common property where the operation of law provides for a matrimonial property regime of community of goods.

3. Both spouses in paid employment

Each partner should have an equal right to undertake paid employment. The law should not therefore require women to seek their husband's permission to work outside the home.

In 1974, a Recommendation of the Parliamentary Assembly of the Council of Europe (3) pointed out that "with regard to social security for non-gainfully-employed women, work in the home must be considered as an economic activity giving immediate entitlement to social security benefits".

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(1) Recommendation No. R (85) 2 on legal protection against sex discrimination.

(2) Resolution (78) 37 of the Committee of Ministers

(3) Rec. 741 (1974) on the legal position of women, adopted on 30 September 1974.



For its part, in 1985 the Committee of Ministers asserted the principle of equal rights with regard to the exercise of a gainful occupation by each spouse (1).

4. Help for each spouse to become economically independent and self-supporting, after divorce, is the aim of a Recommendation of the Committee of Ministers to member states on "contributions following divorce", drawn up by the Committee of Experts on Family Law (2).

The aim of the nine principles set out in the recommendation is to improve the legal systems relating to financial contributions following divorce, in order:

- to help each party to become self-supporting by appropriate rules relating to matrimonial property regimes and old age insurance schemes, or the payment by one party to the other of a capital sum or periodical payments for a limited period,
- to ensure the provision of adequate financial contributions by the other party or by the public authorities in those cases where a party is not able to become self-supporting.

C. Matters concerning spouses and their children

1. The children's nationality

The principle of the equality of a father's and a mother's rights concerning their joint children born in wedlock should entail in favour of such children the recognition of an equal right to acquire the nationality of their mother as well as that of their father.

In their Resolution on the nationality of children born in wedlock (3), the Committee of Ministers were already recommending that member states grant their nationality at birth to children born in wedlock if their father or their mother possessed such nationality. However, it also recommended that dual nationality be avoided by the requirement that a choice be made between them after a certain age.

The Recommendation presented by the Legal Affairs Committee on problems of nationality in mixed marriages (4) considers that children born of mixed marriages should also be entitled to acquire and keep the nationality of both of their parents. It therefore recommends a thorough examination of the question of multiple nationality in mixed marriages, including the children born of such marriages, with a view to amending the Council of Europe Convention on reduction of cases of multiple nationality.

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- (1) Rec. No. R (85) 2 on legal protection against sex discrimination.
  - (2) Recommendation No. R (89) 1 on Contributions following divorce, adopted on 18 January 1989.
  - (3) Resolution (77) 13, adopted on 27 May 1977.
  - (4) Recommendation 1081 (1988) of the Parliamentary Assembly adopted on 30 June 1988, and Doc. 5901.

2. The family name to be given to children

Both spouses must have equal rights as to the family name to be given to the children of their marriage, or the children adopted by them, by making use, for instance, of one of the following systems:

- when the parents do not have a common family name,
  - . to allow the child to take the family name of the parent whose name he was not granted by law,
  - . to allow the family name of the children to be chosen by the common agreement of the parents;
- when the parents have, by the addition of their family names, a common family name, the omission of part of this family name when it is passed on should not lead to discrimination concerning the mother's part of the family name (1).

In France, full equality has not been achieved under the Act of 23 December 1985 since although it allows both parents' names to be used, only the father's name can be passed on.

3. The exercise of parental responsibilities towards children and their property.

a. The united family

In its Recommendation of 1974 on the legal position of women (2), the Parliamentary Assembly considered that both parents should have equal rights and obligations towards their under-age children, and that they should exercise these rights and perform their obligations jointly and exclusively in the interests of the children.

The Resolution on equality of spouses in civil law (3) and the Recommendation on equal protection against sex discrimination (4) also stress equality of rights with regard to "the exercise of parental responsibilities insofar as it is not contrary to the interests of the child" (paragraph 4 b of Principle I of the Recommendation).

In the majority of countries, parents exercise joint responsibilities for a child born within the marriage.

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- (1) Resolution 78 (37) on equality of spouses in civil law, adopted by the Committee of Ministers on 27 September 1978 (paragraph 17). Recommendation No. R (85) 2 on legal protection against sex discrimination - Principle 4).
  - (2) Recommendation 741 (1974) on the legal position of women, adopted on 30 September 1974.
  - (3) Resolution (78) 37 op. cit.
  - (4) Recommendation No. R (85) 2 adopted by the Committee of Ministers on 5 February 1985.

However, in certain states the father has sole parental authority. In the case of a child born outside of marriage reference is still made to paternal authority: in many countries it is considered to be in the child's interest for the mother to exercise these responsibilities. Some countries (Norway, Sweden and, recently, France) provide for non-married couples to exercise joint parental responsibilities for their children if they so wish. If equality between both partners is to be advocated and demanded, it would appear logical for all the member states of the Council of Europe to adopt this solution.

**b. The disunited family: separation of the parents and divorce**

**\* Parental authority over a child after divorce**

In its 1978 Resolution on equality of spouses in civil law, the Committee of Ministers recommended that all necessary steps be taken to ensure that, in the case of separation and after the dissolution of the marriage, the rights and obligations granted to spouses or former spouses concerning their common children should be given without any discrimination based on the sex of the parents.

In 1984, in a Recommendation on parental responsibilities (1), the Committee of Ministers envisaged the joint exercise of responsibilities after divorce: "... the competent authority ... should accordingly take any appropriate measures, for example by dividing the exercise of the responsibilities between the two parents or, where the parents consent, by providing that the responsibilities should be exercised jointly. In taking its decision, the authority should take account of any agreement concluded between the parents provided it is not contrary to the interests of the children".

This was accepted in France in 1987, the Nordic countries having already done so.

**\* Benefits payable after divorce**

In order to compensate for the negligence of debtor parents, in 1979 the Parliamentary Assembly adopted certain principles governing payment by the state of advances on child maintenance (2).

Following this Recommendation, in 1982 the Committee of Ministers also adopted a text on the same subject (3):

"The age of the child up to which payments will be made will be fixed by each state. In any event, the advance payment will be made until the end of the period of compulsory schooling.

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(1) Recommendation No. R (84) 4 of the Committee of Ministers on parental responsibilities, adopted on 28 February 1984.

(2) Recommendation 869 (1979) on payment by the state of advances on child maintenance.

(3) Recommendation No. R (82) 2, on payment by the state of advances on child maintenance, adopted on 4 February 1982.

Public authorities may recover advance payments from the debtor ... They may also recover, on behalf of the maintenance creditor, the full sum required by a legal obligation which has become enforceable by compulsory process. Except in cases of double payment, the failure to recover from the debtor all or part of the advanced payments will not give a right to recover these advances from the child."

## II. EQUALITY IN CIVIC AND POLITICAL AFFAIRS

In the political field, practically all legal discrimination against women has disappeared.

Almost everywhere in the member states, women enjoy the same voting and eligibility rights as men.

Until recently, Liechtenstein was an important exception. Before 1984, men had always refused to give women the vote at national level and, to some extent, at local level.

When women's right to vote and be elected was introduced into the Swiss Federal Constitution in 1971, the Swiss electorate reserved the cantons' autonomous rights in this matter (Article 74 of the Federal Constitution).

Today, the two half-cantons of Appenzell - Inner Rhodes and Outer Rhodes - are the only parts of Switzerland where women do not enjoy electoral rights at cantonal, and to some extent at municipal, level. However, several motions aimed at ending this discrimination have been tabled in the federal parliament.

Although the legislation in member states has abolished practically all discrimination with regard to women's political rights, they are still poorly represented in elective bodies.

This results from a variety of social, cultural, educational, psychological and religious factors.

An increase in the number of women in political bodies is desirable, but not at any price. To choose someone just because she was a woman would simply be another form of discrimination.

In 1985, the Parliamentary Assembly of the Council of Europe therefore adopted a Recommendation on women in politics (1).

"Believing that women, who are better aware of such discrimination, are not represented in national parliaments as they should be because they are not yet adequately represented in political parties, trade unions and government offices;

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(1) Recommendation 1008 (1985) on women in politics, adopted on 26 April 1985.

Affirming that it is the Council of Europe's duty to continue its action for the development and progress of democratic institutions;

Inviting political parties and trade unions to ensure that women are represented in their leadership and decision-making bodies at least in proportion to their membership",

The Committee of Ministers invited the governments of member states:

"to take steps to ensure that women are adequately represented in all public, appointed bodies and, for this purpose, to adopt programmes for increasing women's representation ....".

This was followed by the first European Ministerial Conference on Equality between Women and Men held in Strasbourg on 4 March 1986 on the theme "Equality between women and men in political life - policy and strategies to achieve equality in decision making".

At the end of the meeting, the Conference adopted:

- a Resolution on policy and strategies for achieving equality in political life and in the decision-making process, and
- a Declaration on equality between women and men in political and public life.

"Taking the view that de facto equality between women and men in the world of work, in the family and in other areas of life, will not come about without the full sharing between women and men of the duties and responsibilities that democratic citizenship implies";

The Ministers:

"Urge the member states, in the implementation of such policies and strategies, to co-operate with all appropriate opinion-makers, including the media, women's organisations and other interest groups, with a view to promoting and making public opinion aware of the principles of equality".

A few months later (10-12 September 1986), a conference on "Women in local and regional life", organised by the Standing Conference of Local and Regional Authorities of Europe and the European Committee for Equality between Women and Men of the Council of Europe was held in Athens at the invitation of the Greek government.

The conclusion, the "Athens message", called for:

- an amendment to Article 2 (b) of the Charter of the Standing Conference of Local and Regional Authorities of Europe, which would add a supplementary criterion to provide for "a balanced representation of delegates between women and men",
- the creation of conditions making it possible for women and men in the Council of Europe member states, to participate in local elections in the communities of the member states where they reside.

The Athens message also invited Local and Regional Authorities "to launch campaigns aimed at once at making the public - both women and men - aware of the necessity of voting for women on all occasions when elections are held for assemblies and decision-making bodies at every level, and encouraging the education and training of girls and women for political life at local and regional levels".

It asked political parties and management and labour organisations to use selection methods which ensured a balanced distribution of candidates as between women and men and their places on electoral lists, impartial selection committees and procedures and the setting up of women's branches.

It also appealed to women's organisations, non-governmental organisations and those in charge of the media. The last named should ensure that the impartial political news which they conveyed was aimed as much as women as at men, by eliminating sexist stereotypes and by giving wide coverage to initiatives taken by women candidates.

Following the Athens meeting, the Standing Conference of Local and Regional Authorities of Europe adopted a Resolution on women's participation in local and regional democratic life (1).

Paragraph 11 of the Resolution recommended that local and regional authorities:

- "be aware that the local and regional levels constitute the first stage towards women's full participation in public life and towards translating the theory of equal opportunity in everyday life into practice,
- appoint more women elected representatives than in the past to national delegations to the Standing Conference of Local and Regional Authorities of Europe".

As a result, on 25 June 1987, the Committee of Ministers of the Council of Europe adopted a Resolution amending the Charter of the Standing Conference of Local and Regional Authorities of Europe (2). Following the introduction of a new sub-paragraph (iv), of Article 2 b of the Charter now reads:

".. the membership of each member state's delegation should be such as to ensure:

...

(iv) equitable representation between the women and men belonging to the elected bodies of the Local and Regional Authorities of the member state".

An information document (3) prepared by the Directorate of Social and Economic Affairs, on the distribution of seats between men and women in national parliaments of the member states of the Council of Europe and in the Parliamentary Assembly of the Council of Europe, was published on 29 December 1987.

The following table is based on the document.

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- (1) Resolution 179 (1986) on women's participation in local and regional life, adopted on 16 October 1986.
  - (2) Resolution (87) 5 of the Committee of Ministers amending the Charter of the Standing Conference of Local and Regional Authorities of Europe, adopted on 25 June 1987.
  - (3) Doc. CEEG (87) 11.

COUNTRY	Acquisition by women of right to vote	Female representation			
		Federal Council	National Council	Senate/ Upper House	House of Representatives/ Lower House
AUSTRIA	20 December 1918	25.4%	10.9%		
BELGIUM	27 March 1948			12%	7.5%
CYPRUS	1960				1.2%
DENMARK	June 1915			29%	
FRANCE	21 April 1944			2.8%	6.4%
FED. REP. OF GERMANY	1919	10.2%			15.4%
GREECE	1 January 1952				4.3%
ICELAND	1915			20.6%	
ITALY	1 February 1945			6.1%	12.8%
IRELAND	1918			10%	8.4%
LIECHTENSTEIN	24 August 1984			6.6%	
LUXEMBOURG	15 May 1919			14.6%	
MALTA	5 September 1947			2.9%	
NETHERLANDS	1919			22.6%	20%
NORWAY	1913			34.4%	
PORTUGAL	5 May 1931*			7.6%	
SPAIN	1931/Cortes: June 1977			5.9%	6.4%
SWEDEN	Parliament: 1969 Other bodies: 1921			30.9%	

COUNTRY	Acquisition by women of right to vote	Female representation			
		Federal Council	National Council	Senate/ Upper House	House of Representatives/ Lower House
SWITZERLAND	7 February 1971			10.8%	14%
TURKEY	1934 Grand National Assembly : 1983			3%	
UNITED KINGDOM	1918 : women over 30 1928 : women over 21			6.3%	

1931 : in order to vote, it was necessary for women to have completed secondary or higher studies while men only had to know how to read and write.

In 1968, Act no 2137 established equal political rights for men and women but maintained some restrictions on elections to certain local administrative bodies. Total equality was only achieved in the Constitution of 1976.



Finally, a questionnaire on adapting the status and conditions attaching to political posts with a view to promoting increased participation of women in the Local and Regional Authorities of Council of Europe member states (1) has been sent out by the Committee on Cultural and Social Affairs of the Standing Conference of Local and Regional Authorities of Europe.

The questionnaire comprises 6 headings:

- measures relating to adaptation of the status of political posts.
- measures relating to the material conditions of office.
- measures to protect the professional life of elected representatives.
- social measures in favour of elected representatives.
- financial measures during the term of office
- other measures proposed with a view to increasing the participation of women.

A first examination of the replies (300) (2) from the elected representatives consulted (3,000) in the member states confirms the wish for "positive discriminatory measures" in favour of women.

As France prepares to celebrate the bicentenary of the French Revolution, recognition in European law of the need for effective representation of half the population would have symbolic value.

### III. EQUALITY IN SOCIETY

#### A. Equality in education

##### 1. Equality in education

To date, education and equality of the sexes has been treated in the Council of Europe's intergovernmental programme as one aspect of other issues, rather than as a specific topic in its own right.

In a Resolution of 27 March 1974 on work by women, particularly in the light of technological progress, including automation (3), the Committee of Ministers of the Council of Europe recommended that governments comply, among other things, with the following principles:

- economic and social prejudices which restrict basic general education, vocational training and the employment of women, as well as the employment open to them, should be dispelled by all possible means, including the use of the mass media, and by encouraging employers to adopt a more positive attitude to work by women;
- a general education, broadly based and not directed towards specific activities, should be made available to all young women to enable them to adapt to different kinds of employment; this general education should also offer them maximum opportunities for personal fulfilment in their working and social life.

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- (1) Doc. CPL/Cult (23) 5: Strasbourg 25 April 1988. Questionnaire prepared by Jean-Luc CUVELIER (France), consultant.
- (2) Doc. CPL/Cult (24) 5, Strasbourg, 8 March 1989. Draft report prepared by Jean-Luc CUVELIER (France), Consultant.
- (3) Resolution AP (74) 2, adopted by the Committee of Ministers on 27 March 1974.

In another Resolution on women's employment (1) the Committee of Ministers again attempted to identify the causes of the difficulties encountered by women in employment and family life. Although much progress has been achieved, many prejudices remain and the idea that a woman needs a husband rather than a job is by no means as outmoded as one would like to think.

In organising society, public authorities still too often follow the ideas of Montherlant, by preparing "men for life" and "women for men". Equality between women and men will only become effective when it is achieved by education rather than as a reaction.

The Committee of Ministers therefore recommended that the governments of member states "intensify their efforts to ensure men and women equal access de facto as well as de jure to all levels of education and training and at all levels of qualification and responsibility in employment". Education, "whose aim is to provide every human being with the means to achieve autonomy by developing personality and achieving vocational aspirations", is as important for women as it is for men.

Finally, a recommendation on adult education policy (2) noted that "adult education is also one of the means of responding to the increasing demand for access to knowledge and to the cultural heritage a fundamental factor of equality of educational opportunity and [is] therefore of particular importance for ensuring the promotion of equal status for women and men".

An important event took place in June 1979 when the Standing Conference of European Ministers of Education, for which the Council of Europe provides the secretariat, devoted a complete session to the subject of "education and equality of opportunity for girls and women" (3).

In the Statement which they adopted, the Ministers recognised that formal equality of the sexes in education, where it existed, had not been sufficient to achieve factual equality of the sexes and that education policy should aim to provide genuinely equal access, ie practical equality of access to equally valuable educational provision.

This presupposes that girls and boys are given the same educational choices and that new attitudes to educational, social and family responsibilities are encouraged.

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- (1) Resolution (77) 1 adopted by the Committee of Ministers of the Council of Europe on 11 January 1977.
  - (2) Recommendation No. R (81) 17 of the Committee of Ministers of the Council of Europe to member states on adult education policy, adopted on 6 November 1981.
  - (3) Eleventh session, The Hague, June 1979.

The Statement goes on to propose a series of measures to implement an equal opportunities policy in education, eg research into factors acting as barriers to equal participation such as educational and career guidance.

The Ministers committed themselves to breaking down the relevant national statistics by sex to allow for thorough and detailed analysis of educational participation and levels of achievement by the two sexes.

The Statement also set out measures for helping women and men who wished to choose subjects which were not traditionally considered appropriate for their sex. It is not possible to envisage national legislation in every country banning all formal discrimination and authorising all forms of positive discrimination. This was recognised by the Standing Conference of European Ministers of Education, but it nevertheless went on to encourage non-traditional choices with the help of measures ranging from information and guidance to remedial programmes.

The Statement concluded by inviting the various organisations taking part in the conference (UNESCO, OECD, the European Communities, the Nordic Council of Ministers and the Council of Europe) to give this issue priority in their future programmes.

In a second Statement, adopted at its XIVth session in Brussels, from 7 to 9 May 1985, the Standing Conference recommended that member states continue their efforts in this regard and undertook to re-examine at one of its forthcoming sessions the further implementation of the statement, paying particular attention to special groups mentioned in it (migrant girls, girls seeking their first employment and women who had stopped working for some time and wanted to take up employment again) (1).

## 2. Equality in sport

One of the main themes discussed at the second Conference of European Ministers responsible for Sport was the greater participation of women in sport.

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- (1) The COLOMBO Commission, named after its Chairman Mr Emilio Colombo, was set up in accordance with Recommendation 994 adopted by the Parliamentary Assembly of the Council of Europe on 3 October 1984, with instructions to "present bold and realistic suggestions, encompassing the main areas of the lives of European nationals, that might contribute towards the creation of a fully united Europe". In its Report, presented in 1986, the Commission considered the question of equality between the sexes and recommended in particular: "consideration of appropriate measures regarding working life in the public and private sectors intended to encourage and increase, from the stage of education and training onwards, women's presence in all sectors and at all levels".

At the instigation of the Ministers for Sport, the Council of Europe's Committee for the Development of Sport has launched a project on the the participation of women in sporting activities at all levels and in sports administration.

A seminar was held in Dublin from 30 September - 3 October 1980 on the theme "The greater involvement of women in sport".

Participants at this seminar rejected the notion of developing sporting activities exclusively for women. They recommended that the Committee for the Development of Sport would ensure "that, as a first step, in those countries where women do not have equal access to all sports clubs and facilities, (either public or private), this right should be secured by law".

One year later, at the 3rd Conference of European Ministers responsible for Sport (1), a further resolution on the greater involvement of women in sport recognised that "the present unequal rate of participation of the sexes is the result of sociological patterns and traditional attitudes, rather than physiological factors". It requested the Committee of Ministers of the Council of Europe to instruct its Committee for the Development of Sport to study as a priority "arrangements for removing sex discrimination as regards membership of public and private sports clubs". It called upon the international sports federations to issue policy statements concerning the provision of resources for those sports in which women wished to participate and to consider the urgent need to ensure that women were represented on their policy-making bodies.

#### B. Equality in employment

According to OECD statistics, participation rates (full-time or part-time) among women vary from more than 75% in Sweden to a little under 35% in Spain. (2)

In every country, however, the number of women in paid employment has grown continuously over the last 20 years.

Women everywhere share the same desire to have a proper job in their own right.

The notion of a secondary income is now a thing of the past.

This level of participation in the labour force appears to be irreversible and has not been affected by the economic crisis. However, in the private sector the division of jobs and responsibilities remains very unequal.

A survey undertaken in 1981 by CREDOC (3) shows that more than 60% of Frenchmen think that all household and childcare tasks can be carried out equally by men and women. Tasks are shared out more equally among couples when both are working full-time.

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(1) 3rd Conference of European Ministers responsible for sport, Palma de Majorca, 8-10 April, 1981.

(2) The Integration of Women into the Economy, OECD 1985.

(3) Survey carried out in France in 1981 by CREDOC (Research Centre for the Study and Observation of Social Conditions).

A report presented by the Steering Committee for Employment and Labour (1) sets out the current employment situation for women and looks at future prospects.

With regard to the current situation, in all countries the proportion of women in the service sector has steadily risen and exceeds the proportion of men.

Overall, since 1973, employment in the industrial sector has diminished. In Belgium, Denmark, Spain and the United Kingdom employment in industry has declined for both sexes, but more so for women.

The demand for female labour has remained steady owing to the growth of the public sector. The latter employs a high proportion of women; for example, in the Scandinavian countries 7 out of 10 such jobs are held by women.

The public sector is tending to employ more and more women in the other European countries. In France, for instance, about half of the net number of jobs created between 1974 and 1980 were in this sector.

Moreover, women have gained most from the establishment of new forms of employment.

In most countries, the 35-hour week is the threshold below which a person is counted as a part-time worker.

In the EEC countries, about one-third of employed women work part-time; the proportion is over 50% in Norway and the Netherlands. In Belgium, Denmark, France, Federal Republic of Germany, Sweden and the United Kingdom between 80% and 90% of part-time workers are women.

1. Female employment raises two particular problems:

a. **Segregation in recruitment**

Generally speaking, in all countries the degree of segregation has remained high despite the policies pursued in many areas designed to move towards greater equality of opportunity and treatment for women.

Several possible reasons can be put forward for the higher level of unemployment among women than among men:

- lack of mobility

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(1) Draft report: "The employment of women in West European countries: current problems", April 1988.

- skill levels: the major barriers to women's integration into working life would appear to be the types of education and training they receive, which lead them to seek traditional, unskilled jobs.
- the frequency of spells on the labour market: the proportion of women seeking a first job and/or wishing to resume employment after a break is higher than that of men in the same position.

A breakdown by age shows that in most European countries, unemployment rates among young women up to the age of 25 are higher than those for men in the same age group. Young women in France and the Federal Republic of Germany are particularly affected by this.

**b. Equal pay**

In many countries direct discrimination is on the wane. This is certainly one outcome of the influence on national legislation of texts adopted at international (1) and European levels.

Most collective agreements have ceased to incorporate wage rate differentials according to sex, although instances of discrimination still occur.

In Switzerland, for instance, some collective agreements provide for different minimum wages for women and men, particularly in the foodstuffs, leather and textiles industries.

However, while direct discrimination has been gradually removed, less overt forms of discrimination remain, particularly with regard to job classification and evaluation.

Pay disparities between men and women are greater at senior management level than among other categories of workers. Since 1982, however, these differentials have continued to shrink:

31% in 1986 compared with 33% in 1982 for senior managers,  
19% compared to 21% for middle managers,  
18% compared to 19% for other white collar workers and  
24% compared to 25% for manual workers.

**2. How has the Council of Europe attempted to give legal redress against such discrimination?**

The European Social Charter, signed on 18 October 1961, contains at least two key provisions relating to equality between men and women in employment: Article 1, paragraph 2 and Article 4, paragraph 3.

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(1) Cf. in particular Convention No. 100 and Recommendation No. 90 concerning equal remuneration, adopted by the International Labour Conference in 1951.

\* Article 1, paragraph 2 gives the worker the right to earn his living in an occupation freely entered upon. It does not refer explicitly to non-discrimination between men and women.

The paragraph is worded in very broad terms. With a view to ensuring the effective exercise of the right to work, states which have accepted it must protect effectively the right of the worker to earn his living in an occupation freely entered upon. From the very outset, the Committee of Independent Experts considered that acceptance of paragraph 2 placed the Contracting States under an obligation, *inter alia*, to provide appropriate education and training to ensure the full exercise of the right to non-discrimination and that it required, not only that the state remove all legal obstacles to admission to certain types of employment, but also that positive, practical steps be taken to create a situation which really ensured complete equality of treatment in this respect.

Article 1, paragraph 2, has been accepted by all the states which have ratified the Charter, and in the period under consideration numerous legal and administrative measures have been introduced in the different states in order to eliminate all forms of discrimination in employment. The experts have reached positive conclusions with regard to Austria and Cyprus. However, the committee is still concerned by the situation in the Federal Republic of Germany. The independent experts have drawn attention to the judgment delivered by the Court of Justice of the Communities on 21 May 1985 concerning certain job vacancies for which a particular sex is specified.

The Court decided that if national legislation permitted such a practice, the posts to which it applied had to be listed in detail in order to enable the Commission of the European Communities to establish whether the state in question was acting in conformity with Directive 76/207 (1). In view of the judgment, the Committee of Independent Experts wished to be informed of measures taken to remedy this situation.

Article 4 paragraph 3: Non-discrimination over pay for men and women workers.

This paragraph establishes the principle of the right of men and women workers to equal pay for work of equal value.

According to the Danish report, as a result of a legislative reform introduced in 1986, provision is now made for equal remuneration between men and women not only for "the same work", but also for "work of equal value".

The Greek report states that Act No. 1414/84 implementing the principle of equality between the sexes in employment came into force on 30 January 1984.

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- (1) Directive 76/207 of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ No. L 39/40 of 14 February 1976).

Under Section 4 of the Act, men and women are entitled to equal remuneration for work of equal value.

In Iceland, the Equal Status and Rights of Men and Women Act of 19 June 1985 provides that men and women are entitled to equal pay for work of equal value and states that sex discrimination in matters of pay is unlawful (Sections 4 and 5).

In the Netherlands, as a result of the adoption of a new Act on equal treatment resulting from a merger of the 1975 Equal Pay Act and the 1980 Equal Treatment of Men and Women (Public Service) Act, the provision invalidating the dismissal of a worker for the sole reason that he has claimed equal treatment will be extended to cases where dismissal is due to the fact that the worker has asked for equal pay.

The situation in the Federal Republic of Germany and Spain in this regard was also judged satisfactory.

The Swedish report states that a nationwide and a local consensus exists among employers and trade unions in the public and private sectors about the need to achieve greater equality between the sexes in practice by means of specific agreements.

In Norway, by contrast, the Committee of Independent Experts noted that, apart from protection against dismissal, there were apparently no particular provisions on retaliatory measures which could be taken against workers claiming equal pay. It wished to know whether a worker against whom a retaliatory measure had been taken could apply to the supervisory bodies provided for under the 1978 Equal Status Act.

In Italy, the Independent Experts have suggested that existing legislation on equal remuneration be supplemented by a legislative measure declaring discriminatory pay clauses in collective agreements and individual contracts null and void.

The Social and Health Affairs Committee of the Parliamentary Assembly of the Council of Europe also endorsed these conclusions. However, it thought that the complete implementation of the principle of non-discrimination with regard to remuneration was a long-term endeavour which required a constant and determined effort if it was to be fully achieved. It noted with concern that in France, Ireland and Italy legislation was still in existence which, if applied, could amount to a violation of Article 1, paragraph 2 of the Charter. It therefore proposed that the Parliamentary Assembly should call on the Committee of Ministers of the Council of Europe to make the "necessary recommendations" within the meaning of Article 29 of the Charter to these three states (1).

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- (1) Following this proposal the Parliamentary Assembly of the Council of Europe, which is involved in the supervision of the application of the Charter, adopted Opinion No. 137 (1988) on the second stage of the 9th supervision cycle of the application of the Charter, recommending that the Committee of Ministers "draw the attention to the special importance which should be attached to the observance of undertakings given under the European Social Charter, in particular as regards the abolition of all discrimination between men and women at work (Article 1, paragraph 2, and Article 4, paragraph 3), and to call on them to remove all deficiencies noted in the application of these provisions;".



Cyprus has not accepted this Article of the Charter.

The European Social Charter was supplemented by an additional protocol signed in Strasbourg on 5 May 1988. This provided, in particular, for the "right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex" (Part II, Article 1).

The parties undertake to recognise that right and to take appropriate measures to ensure or promote its application in the following fields:

- access to employment, protection against dismissal and occupational resettlement;
- vocational guidance, training, retraining and rehabilitation;
- terms of employment and working conditions including remuneration;
- career development including promotion.

However, paragraph 4 of the Article states that:

"Occupational activities which, by reason of their nature or the context in which they are carried out, can be entrusted only to persons of a particular sex may be excluded from the scope of this Article or some of its provisions."

It is to be hoped that all the member states of the Council of Europe will ratify this protocol. It will not come into force until its third ratification.

It is perhaps unfortunate that supervision of compliance with the undertakings given is the same as that relating to the Charter, ie the presentation of reports on the implementation of provisions which have been accepted.

Such supervision does not appear to be sufficiently effective (1).

In January 1977, prior to this protocol, the Committee of Ministers of the Council of Europe had adopted a Recommendation (2) in which they recommended the governments of member states to take account of the following objective with regard to access to work:

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(1) In Opinion No 137 (1988), referred to above, the Parliamentary Assembly recommended that the Council of Ministers "ask those member states which have not yet ratified the European Social Charter (Belgium, Liechtenstein, Luxembourg, Malta, Portugal, Switzerland and Turkey) to submit a report to the Committee of Ministers before the end of 1988 stating the difficulties which prevent or delay ratification", and "draw the attention of all Contracting States to the fact that, for an effective supervision of the application of the Charter, it is necessary that the biennial reports are submitted in time, and that they contain all relevant information, including the additional information requested during the previous supervision cycle;".

(2) Resolution (77) 1 on women's employment, adopted on 11 January 1977.

"Recruitment of workers should be determined by their qualifications and not by their sex, and any discriminatory practices should be discouraged."

The Council of the European Communities had itself adopted a directive (1) aimed at combatting discrimination in recruitment, Article 3 of which stated that:

"Application of the principle of equal treatment means that there shall be no discrimination whatsoever on grounds of sex in the conditions, including selection criteria, for access to all jobs or posts, whatever the sector or branch of activity, and to all levels of the occupational hierarchy."

All the countries of the European Economic Community have introduced legislation implementing this directive.

A proposed EC Council Directive (2) on the burden of proof in the area of equal pay and equal treatment for women and men would require the burden of proof of discrimination to be shared.

Henceforth, the complainant would be required to establish a simple presumption of discrimination. At this point, the evidential burden would shift and the respondent would be required to rebut the presumption by proving that the discrimination shown did not take place or was lawful, either by producing evidence of a legitimate, non-sex based reason, or by showing that the principle of equality did not apply.

Consideration is also being given by the ILO to a review of Conventions Nos.1 (1919) (hours of work - industry) and 30 (1930) (duration of working hours in industry and trade), and 89 (1948) (night work for women), which now seem outdated in certain respects (3).

Although most countries have ratified ILO Convention No.89, systems of national legislation on the subject vary widely.

Night work for women is generally prohibited in several countries: Austria, Belgium, Spain, Finland (except domestic staff, home workers and family businesses), Greece, Portugal, Switzerland and Turkey (except in fishing and agriculture).

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- (1) Directive 76/207 of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ No. L 39/40 of 14 February 1976).
  - (2) Proposed EC Council Directive, 24 May 1988
  - (3) Document of the Committee of Experts on the reduction and reorganisation of working time. March 1988.

The scope for exemption from this general prohibition also varies and applies mainly to care and health establishments, hotels, restaurants and cafes, places of entertainment, broadcasting, public administration etc.

In other countries such as Ireland, Italy, Luxembourg and Portugal, the prohibition is restricted to industry.

There is a third category of countries in which the prohibition relating to industry is supplemented by prohibitions applying to other sectors. In France, for example, it applies among other things to public offices and ministries, professional, company and trade union premises, and all voluntary organisations.

Finally, in certain Scandinavian countries (Denmark, Norway, Sweden) the prohibitions and exceptions apply equally to men and women.

The prohibition is generally applicable to all women. However, in the Federal Republic of Germany it is restricted to women in manual occupations, while in France an Act of 2 January 1975 authorises night work for women in managerial posts or technical posts with managerial responsibility, and those who work in health and welfare services and do not normally undertake manual work (1).

In the Netherlands, women are not allowed to work at night in factories. However, legislation on equality of the sexes is to be amended, with the introduction of a system of exceptions to enable women to work at night.

Some legislation authorises reductions in certain circumstances in the hours during which night work for women is prohibited and/or the length of the compulsory night time rest period.

These partial exceptions usually apply to undertakings affected by seasonal factors or when required by exceptional circumstances (Austria, Luxembourg) or for activities which, by their very nature or because they are carried out on a shift basis, cannot be interrupted (Belgium, Federal Republic of Germany).

Employment legislation may also provide for total exceptions to prohibitions on night work for women;

- to prevent accidents or effect repairs, or in cases of emergency or force majeure, in exceptional circumstances or when required by the national interest (Austria, Belgium, Finland, France, Luxembourg, Portugal, Spain, Switzerland).
- in the case of work with raw materials or perishable materials when night work is necessary to prevent the inevitable loss of these materials (Austria, France, Greece, Luxembourg, Portugal, Spain, United Kingdom).

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(1) Law of 19 June 1987, No. 87-423, J.O. of 20 June 1987.

This reassessment of the general prohibition of night work for women is very opportune since it could serve as a pretext for discrimination at the time of recruitment.

C. Equality in the field of social protection

1. One of the main aims of the Council of Europe's social programme is to encourage all members to develop further their social security systems.

The evolution of social security tends towards providing the whole population with protection against the fundamental risks, notably sickness, invalidity, old age and death of the breadwinner, regardless of whether or not they exercise an occupational activity.

Despite the progress already made, women at home still do not receive sufficient social protection against the fundamental risks in all member states of the Council of Europe and need to be provided with protection similar to that enjoyed by gainfully employed persons.

In 1975, the Committee of Ministers therefore recommended (1) that the governments of member states should take the following measures with regard to women at home:

- in case of pregnancy or confinement, guarantee medical assistance no less favourable than that enjoyed by gainfully employed persons;
- for those whose capacity for work has been substantially impaired by prolonged disablement due to sickness or accident, guarantee benefits in kind and rehabilitation services not less favourable than those enjoyed by persons who are, or who have been, gainfully employed;
- guarantee old age benefits once pensionable age is reached, as prescribed in the general scheme applying to persons who have been gainfully employed;
- compensate justly for the temporary or permanent loss of support suffered when the breadwinner dies, and ensure that these widows continue to be covered by social security.

The Parliamentary Assembly (2) followed up this resolution by proposing that member governments "... credit, without prejudice to other rights acquired or in course of acquisition, the social security contributions ... of any parent wholly occupied in the home for so long as he or she has the full-time care of a young child or children, provided where there are two parents only one may at any given time benefit from this provision".

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- (1) Resolution (75) 28 on social security for women at home, adopted on 12 November 1975.
  - (2) Council of Europe Parliamentary Assembly. Recommendation 751 (1975) on the position and responsibility of parents in the modern family and their support by society, adopted on 24 January 1975.

At the same time, the Council of the European Communities adopted an initial Directive (1) on the progressive implementation of the principle of equal rights to social security.

Eight years later, the first directive, which applied only to statutory schemes, was supplemented by another directive (2). This applies to all occupational schemes and provides for equal treatment of the sexes. It applies to all social benefits, whether in cash or in kind; however, compulsory application may be deferred in the case of a pension awarded to the surviving spouse.

All the member states must take all measures necessary to ensure that provisions contrary to the principle of equal treatment are nullified or amended. The deadline for application is three years from 30 July 1986.

In March 1988, the Social and Health Affairs Committee of the Parliamentary Assembly unanimously adopted a draft Recommendation on family policy (3).

The draft was debated and adopted by the Parliamentary Assembly on the 3 May 1988 (4).

It recommended that the Committee of Ministers invite the governments of the member states to "recognise the principle of placing a value on housework and education by persons who stay at home for the particular purpose of raising their children", and also "to examine the possibility of crediting the period spent on bringing up children or caring for other dependents... to periods of insurance for the purpose of acquiring old-age and sickness benefits, and for calculating the amounts of such benefits".

2. The concurrent drawing of benefits under the same scheme by different members of the same family

One particular problem is the concurrent drawing of pensions (old age or invalidity) by the husband, wife and children.

Where rules exist to cover this situation, it is not on the basis of previous earnings but because in the social security systems concerned benefit levels vary according to whether recipients live alone or as part of a family. In the latter case, it could be said that the system was protecting the family rather than the individual.

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(1) EC Directive 79/7 of 19 December 1978.

(2) EC Directive 86/378 of 30 July 1986.

(3) Document 5870: report of the Social and Health Affairs Committee (Rapporteur: Mr Pini).

(4) Parliamentary Assembly Recommendation 1074 (1988) on family policy.

Several countries have decided to pay benefits on an individual basis, which means that the recipient's family circumstances have no effect on the benefit level and that there are no limitations on the number of benefits payable to different members of the family. This is the situation in Turkey, Luxembourg and Spain.

Other countries, in contrast, restrict benefits paid concurrently to several members of a family. In some cases, supplementary allowances for dependents (spouse and children) are limited or withdrawn if they receive their own pension: this happens, for example, in Norway and Cyprus.

Elsewhere, for example in the Netherlands and Belgium, when individual pensions are paid to both spouses they must each be based on the relevant "individual", rather than "household", rate.

In the United Kingdom, a married woman may be entitled to a retirement pension in her own right, or indirectly through her husband. If her own entitlement is less than that which she would receive through her husband she may combine the two contribution records so that her own pension can equal that payable under her indirect entitlement.

In this regard, the Parliamentary Assembly, in its Recommendation 1074 (1988) on family policy, calls for the establishment of "a system of individual rights rather than indirect rights because of the increased risk of family breakup".

The recent Parliamentary Assembly opinion (1) on the draft revised European Code of Social Security recommends that the Committee of Ministers incorporate in the revised code:

- "the prohibition of sexual discrimination .... with regard to the personal scope, benefits and financing of social security systems";
- "clauses under which ... the amounts credited during marriage to one or the other of the spouses and serving as the basis for determining their rights to benefit shall be partially transferred to the credit of the other spouse, to the extent necessary to ensure an equal division between the spouses".

#### D. Equality in the field of health care

The situation in the different member states of the Council of Europe may be described as follows:

- Many states have placed protection on a universal and individual basis, sometimes by establishing a national health service. In such cases all residents automatically receive individual cover. This applies to Denmark, Ireland, Iceland, Italy, Liechtenstein, Malta, Netherlands, Norway, Sweden and the United Kingdom.

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(1) Opinion No. 141 (1988) on the draft revised European Code of Social Security.

- Some states effectively guarantee protection to the entire population but without recognising individual rights for everyone. These states, which recognise indirect entitlement on a large scale, have taken steps to mitigate most of the problems caused by the ending of a beneficiary's relationship with an insured person, the basis on which state protection was originally provided. States have sometimes established residual voluntary insurance schemes for people who do not fall, or who no longer fall, into the above categories, with protection extended to their dependents through recognition of their indirect (derived) rights. This enables the following states to provide more or less universal protection: Austria, Belgium, France, Luxembourg, Portugal, Federal Republic of Germany.
- In other states, indirect rights are recognised by the application of criteria of varying degrees of strictness to the "dependents" of those with direct entitlement. In Greece, for example, one partner must be living with the other and be financially dependent on him or her in order to have an indirect entitlement.

In Turkey, a husband can only receive medical care on the basis of his wife's entitlement if he is at least 55 years old or is recognised as disabled or unable to work.

In Spain, to benefit from an indirect right one partner must be dependent on the other, have no paid employment and not be in receipt of a pension above a certain level.

In its Recommendation on making medical care universally available (1) the Committee of Ministers of the Council of Europe, with reference to Articles 11, 12 and 13 of the European Social Charter and its belief that the financial difficulties resulting from the economic climate should not lead to a reduction in the quality of services, recommended that the governments of member states should:

- extend the right to medical care aimed at prevention, cure and rehabilitation to all residents;
- make necessary medical care financially accessible.

These measures were to apply to everyone, irrespective of sex.

As has already been stated, most states do recognise the indirect right of an insured person's spouse, irrespective of sex, to medical care.

E. Protection under the criminal law and the principle of non-discrimination based on sex

1. Violence within the family

For many years, certain societies' laws have tolerated assaults against women and children. Until the 19th century, they were considered to be their husbands' and fathers' property, and to be completely subject to their authority.

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(1) Recommendation No. R (86) 5, adopted on 17 February 1986.

Although legal systems have evolved, custom and usage in some countries still reflects past practices.

Violence is still tolerated today. In some families it takes a clandestine form, with women the victims of ill-treatment or sexual abuse by men. As these acts of violence usually occur within the confines of the home, it is difficult, in the absence of proof, to take action against the offenders.

Moreover, the victims are often unable to seek justice.

Governments should review their legislation, regulations and practices in this field to bring them into line with the principles of individual equality.

They should proceed on the basis of the following principles:

- men have no legal or moral right to use physical violence or other types of force, in order to dictate how women should behave;
- legislation on sexual assault should be amended to avoid pointless questioning of women about their sexual past and to do away with prejudicial remarks about the victim's delay in making a complaint.

A recommendation of the Committee of Ministers (1) on assistance to victims and the prevention of victimisation, which referred to its Recommendation on violence in the family (2), stressed the need for medical, psychological, social and material help for victims and for crime prevention through the provision of information and advice.

Although physical violence is treated as an offence in every country, and psychological violence in nearly all of them, the equivalent forms of assault within the family and ill-treatment inflicted on a spouse are rarely treated as straightforward offences.

In some countries, action is only taken in particular circumstances: the use of a weapon, serious injuries or death threats.

Punishments include imprisonment, probation, the payment of a fine or a requirement to undergo some form of therapy.

Very few states have legislated on rape within marriage. It is not recognised in Swiss criminal law.

In Luxembourg the courts have always refused to consider assaults committed by a husband on his wife as rape, since "sexual relations are not unlawful when in accordance with the normal purposes of marriage".

In Belgium, both legislation and case law reject the possibility of rape between husband and wife.

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(1) Recommendation No.R (87) 21, adopted 17 September 1987.

(2) Recommendation No.R (85) 4, adopted on 26 March 1985.



In France, Portugal and Austria, however, it is punishable.

The Council of Europe organised a colloquy from 25 to 27 November 1987 on the theme "Violence within the family".

In her report on the psychological and social aspects of violence against women, Mrs Geneviève Devèze stated:

"... despite recent improvements, the economic status of women is still inferior to men's. Women are for the most part dependent on their partners.

The private sphere falls outside the scope of legislation aimed at establishing equality between men and women."

## 2. Violence at the workplace or in society

The European Parliament adopted a resolution on violence against women, on 11 June 1986. This states that, despite the existence of a fundamental right to the inviolability of the human person, "women and girls are subject to various specific forms of violence that are an infringement of their individual freedom, dignity and self-determination".

It goes on to state that: "the quest for a policy to combat violence against women and girls is part of an emancipation policy aimed at eliminating inequality and achieving equality between the sexes".

The European Parliament has recognised sexual harassment as an attack on women's dignity and rights at work (1).

However, none of the EEC countries currently offers adequate protection against sexual harassment. In so far as it constitutes discrimination based on sex it is covered by the prohibition of discrimination in working conditions, set out in Article 5.1 of Directive 76/207 on equal treatment for men and women. All the member states have incorporated the provisions of this directive into their national legislation, thus outlawing discrimination based on sex in the fields of recruitment, promotion and working conditions.

It therefore follows that, in principle, current legislation on equality of treatment in the member states can be interpreted as prohibiting sexual harassment at the workplace.

However, only in Ireland and the United Kingdom have the courts accepted in a relatively unambiguous fashion that proven sexual harassment represents a form of illegal discrimination based on sex. In the other countries, the use of legislation on equality of treatment as a remedy against sexual harassment remains purely hypothetical.

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(1) Michael RUBENSTEIN: the Dignity of Women at Work; report on the problem of sexual harassment in the member states of the European Communities. October 1987, V/412/1/87.

F. The media and equality between men and women

Cultural factors are particularly likely to impede women's ability to overcome social exclusion in its different forms.

The media could play a major part in eliminating traditional male and female stereotypes.

As part of its action programme for the promotion of equality between the sexes to be implemented in the context of the Second Medium-Term Plan (1981-1986), the Council of Europe adopted a recommendation (1) which, while respecting the principle of media self-government and independence, asked member governments to take appropriate steps to ensure that the dignity of women was safeguarded and a positive image of them projected, that the factual reality of relationships between women and men was reflected without any sexual stereotyping, and that any exploitation of the bodies of women and men to draw attention to goods or services was barred.

In a previous recommendation (2) the Committee of Ministers had stated the principle that: "advertisements should be prepared with a sense of responsibility towards society, and give particular attention to the moral values which form the basis of every democratic society ... such as individual liberty, tolerance and respect for the dignity and equality of all human beings."

Also, with reference to respect for the rights of all individuals, the European Ministerial Conference on Mass Media Policy, held in Vienna on 9-10 December 1986, resolved to "safeguard ... the interest of the public to receive a full range, high quality television service which contributes as a whole to the free formation of opinion and the development of culture".

A year later, the Parliamentary Assembly of the Council of Europe, following an opinion (3) approved unanimously by its Legal Affairs Committee on 5 October 1987, adopted a recommendation (4) designed to:

- "encourage increased participation by women in broadcasting (especially in the fields of production and programming);"

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(1) Recommendation No. (84) 17 of the Committee of Ministers on equality between women and men in the media, adopted on 25 September 1984.

(2) Recommendation No.R (84) 3 on principles on television advertising, adopted by the Committee of Ministers on 23 February 1984.

(3) Opinion on the cultural dimension of the audiovisual media in Europe: Doc. 5800.

(4) Recommendation 1067 (1987) on the cultural dimension of broadcasting in Europe, adopted on 8 October 1987.

- "promote the use of the mass media in education and in particular in line with the objectives of the Council of Europe in such fields as human rights, tolerance and equality between the sexes".

At the meeting of the European Committee for Equality between Women and Men (CEEG) held in April 1988 (1), the hope was expressed that the committee would be informed of action taken on the proposals for amendments to the draft European Convention on Transfrontier Television. The proposals had been put forward by the Bureau of the CEEG at its third meeting (2) and were as follows: that reference be made, in particular in the Preamble, to Recommendation R (84) 17 of the Committee of Ministers on equality between women and men in the media; that incitement to sexual discrimination be expressly banned from the content of programmes on the same terms as incitement to racial hatred; and that advertisements should not be allowed to convey sexual stereotypes.

A number of suggestions were put forward at the April meeting by Mrs Clara Abatecola (Italy):

- Set up a media monitoring service in order to monitor the discrimination observable in radio and television programmes à propos of the bodies and dignity of women;
- Promote advertising that is no longer inspired by the representation of women only in the role of a housewife and, more generally, by the representation of the image of a woman who is psychologically, physically and intellectually inferior;
- Encourage programmes designed to inform women of the progress made in research and women's rights;
- Highlight the professionalism of women working in the media and, in particular, in radio and television companies.

#### IV. SPECIFIC SITUATIONS

##### A. Migrant women

The migration of women is not a self-contained, isolated phenomenon. It must be considered as one aspect of a more general movement of migrants from less developed to heavily industrialised countries over the last few decades.

Most migrant women emigrate as wives, either as part of a family moving together or, sometimes with children, to rejoin husbands already settled in the host country. The second category was the

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(1) Strasbourg 27-29 April 1988.

(2) Strasbourg 3-4 February 1988.

subject of a Committee of Ministers' resolution on the reunion of families of migrant workers in Council of Europe member states (1). This recommended that the governments of member states should "allow migrant workers to be joined by their spouse and dependent minor children ..." and that the waiting period for admission be reduced to a minimum, and should not exceed 12 months.

#### 1. Migrant women and work

International statistics show that during the years 1960-70 migrant women in most countries had higher participation rates on the labour market than national women. This is not surprising given the economic factors underlying most migration in Europe during recent decades. Migrant women often fill a need in those sectors of the employment market, for example heavy work, cleaning and jobs with irregular working hours, where female nationals are not prepared to take on employment. However, more recent figures indicate that the recent participation rates of migrant women are going down. There are several reasons for this:

- migrant women now include a larger proportion of women with many children,
- the more recent arrivals do not have work permits,
- the number of refugee women has increased and they may have less motivation to work,
- growing unemployment in the host country makes it more difficult for migrant women to find work.

Non-working migrant women are sometimes treated as a particularly disadvantaged group. If they live in the same area as other migrants of the same origin, they may establish and sustain quite rewarding social networks. These networks do not, however, prevent isolation from the host society, which may become even more exaggerated when immigrant women live only within a group of other migrants of the same origin. However, a migrant woman's interest in integrating into a broader society is certainly intimately linked to her conception of the migration project as such and her part in it.

In its Recommendation concerning women migrants (2), and having regard to the European Convention on the Legal Status of Migrant Workers and to Resolutions (74) 15 and (76) 11 on the equality of treatment of national and migrant workers, the Committee of Ministers of the Council of Europe asked states:

- to ensure effective equality of opportunity and treatment between migrant and national women workers in practice by efficient and systematic monitoring of the implementation of national legislation;

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(1) Resolution (78) 33 on the reunion of families of migrant workers in Council of Europe member states, adopted by the Committee of Ministers on 8 June 1978 and the relevant document setting out the "situation in the member states".

(2) Recommendation No. R (79) 10, adopted on 29 May 1979.

- develop close collaboration between the sending and receiving countries so as to provide women migrants before departure and during residence with any necessary information about living and working conditions in the receiving country;
- see to it that this information was provided in a language which they could understand;
- help them adapt their working environment by giving them information about their specific rights and obligations, about services available to them and the opportunities for vocational training.

Migrant women and girls do not take much part in general education courses. There are several reasons for this:

- there are some training courses in which only women who have been regularly and legally employed in the past or who are currently registered as unemployed can take part;
- in order to derive full advantage from a training course migrant women often need language classes or other specific courses. The availability of these is limited and in allocating places priority is often given to a country's own nationals;
- information about available courses is often not sent to members of migrant communities, who use their own channels of communication;
- finally, migrant women cannot really afford to undergo training if they are not paid during the course. Moreover, it is then essential to provide child care facilities while they are on the course.

Specific pre-training courses have been established to overcome these obstacles. Using methods which have been suitably adapted, these programmes set out to counter the negative cultural stereotypes which are often due to teachers, examiners and future employers.

## 2. Education and language skills

Some practical knowledge of the language and lifestyle of the host country is clearly of critical importance in coping with essentials of everyday life. Migrant men are often better versed in the language than migrant women, because they have much more contact with it in a range of contexts.

In its Recommendation on migrant women (1) the Parliamentary Assembly of the Council of Europe drew attention to "the situation of young migrant women of the second generation" and the need "to give these women a real choice in education and in employment while respecting and guaranteeing the free expression of their ethnic and cultural heritage".

It also referred to the need "to promote intercultural activities, and to increase their efforts in education with special attention to language courses.... including the provision of migrant children with education from the pre-school stage right up to the highest level".

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(1) Recommendation 956 (1982), adopted 9 November 1982.

In 1986, the Council of Europe's Council for Cultural Co-operation published a study on intercultural education and migrant women (1). Intercultural education is presented as a major theme: an approach which involves, and calls for solidarity between, both countries of origin and host countries; while "communication between the school, families and the social environment in which the children and the whole community - migrant and indigenous - live, is a prerequisite to learning".

This is all the more important as some immigrant women come from countries or areas where little importance is attached to women's education. This mentality can only have a disastrous effect on girls of the second generation; in some cases the parents' conservative view of their daughters' future as housewives and wage-earners restricts the options available to girls in the sphere of education in general and language learning in particular. This relegation of girls takes on tragic aspects when they are withdrawn from school in order to get married, often to someone whom they have not themselves chosen.

Immigrant women's ignorance of the host country's language prevents them from helping out with the difficulties encountered at school and during training by their children, who are themselves usually handicapped by a comparatively poor knowledge of the local language.

Host countries should give priority assistance to immigrant organisations, to help them develop and participate more in community affairs (2).

### 3. Social protection of migrant women

In its Recommendation on the social protection of migrant workers and their families (3), the Parliamentary Assembly of the Council of Europe recommended that the Council of Ministers "embark upon [the harmonisation of] the social security systems in the member states ... in order to lessen the existing differences and ensure a number of minimum benefits to all migrant workers of whatever origin".

The situation is particularly worrying in the case of migrant workers from states which are not members of the Council of Europe and have no agreement with a host country. Social benefits are being cut back further and further and conditions of entitlement are increasingly restrictive.

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- (1) Intercultural education and migrant women. Report prepared by Mrs Maria Ausilia Cerri Negrini. CDCC Project No.7: The education and cultural development of migrants, DECS/EGT (85) 43.
  - (2) Third Conference of European Ministers responsible for migration affairs, Porto, 13-15 May 1987. Migrants in Western Europe: present situation and future prospects - Immigrant women. Doc. MMG-3 (87)3, Council of Europe.
  - (3) Recommendation 1066 (1987) of the Parliamentary Assembly of the Council of Europe on the social protection of migrant workers and their families, adopted on 7 October 1987.

Whatever the situation, women must be informed about their rights with regard to social security, and about other forms of financial assistance to which they and their family are entitled.

Various administrative measures for receiving migrants have been set up in countries such as France, the Federal Republic of Germany, the Netherlands, Sweden, Switzerland and the United Kingdom.

France has a national network of 160 reception centres. They are run by the national immigration service, the migrant welfare service and non-governmental organisations.

In the Netherlands, charitable bodies actively co-operate in migrant welfare work with the Netherlands Centre for Foreign Residents. In Sweden, in addition to the work of the National Council for Immigration, which is a central government body, local authorities have set up special information centres for immigrants. As well as a Federal Consultative Committee on foreigners' problems, Switzerland has a whole new network of specialist cantonal, regional and municipal bodies. Voluntary organisations play a significant role in the United Kingdom.

\* Medical centres face considerable difficulties in providing health care to migrant women. If they do not understand the language properly they have to be assisted by a competent interpreter, but it is equally essential for the doctors to put them at their ease. This is not facilitated by cultural and emotional barriers which affect contacts between doctors from the host country and migrant women. The doctor must have an adequate knowledge of his or her patients' social circumstances and general cultural background in order to give the appropriate help. There is certainly scope here for a range of experimental activities of an educational nature which would focus both on health employees and patients.

In order to deal with these inadequacies, consideration might be given to drawing up, under the auspices of the Council of Europe, an international legal instrument which would specifically guarantee migrant workers from non-member states of the Council of Europe adequate social protection.

4. Finally it should be noted that in migrant workers' families, women's demands for equality often result in the breakdown of the marriage. With divorce comes a reduction in women's rights, or even their complete loss when, for example, a residence permit is withdrawn. The Parliamentary Assembly of the Council of Europe took this problem into consideration when it adopted its recommendation on the right of permanent residence for migrant workers and members of their families (1).

A case of this sort is currently before the organs of the European Convention on Human Rights. The need to treat women as individuals and not as their husband's chattels is becoming urgent.

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(1) Recommendation 1082 (1988) of the Parliamentary Assembly on the right of permanent residence for migrant workers and members of their families, adopted on 30 June 1988.

## B. Women in rural areas

### 1. The search for a legal status

Two groups of women are a particular focus of attention:

- . women farm heads, who enjoy personal rights
- . women farm helpers or helping wives who are dependent on their husband for their rights.

In agriculture, the family concept of farm management is still predominant. It follows that, in the majority of cases, there can only be one farm head on a holding, generally the husband, with all the attendant powers and prerogatives. The farmer's wife is his dependent. It is only in the event of separation, divorce or widowhood that the inequality of the situation is revealed: the farmer's wife, having no personal rights, finds herself without the elementary rights needed to carry on her occupation.

The position of spouses after divorce depends on the rights which they derive from their marriage regime. In separatist regimes the division of the couple's property is facilitated by the separation of the property belonging to each of them; in community regimes, the division of the common property raises more problems. Community of property implies an evaluation and compensation for the spouse not remaining on the farm. It is important to include clauses in the marriage contract which establish clearly how the common property is to be divided.

In the case of widowhood, one point worth noting is that agreements (gift inter vivos, will) in favour of the wife and co-ownership of the tenancy give widows clearer rights to inherit and continue working. As these practices are optional and not well known, many women find themselves in a difficult situation at a distressing time in their lives.

### 2. Social rights

Most of these rights may be provided under a general social protection system (covering all socio-occupational categories) or under a specific agricultural scheme designed for farmers and those in ancillary occupations.

Social cover depends on a country's political choice and varies considerably from one country to another (1):

- women farm heads have the same social rights as their male counterparts (sickness, invalidity and old-age insurance, family allowances) and receive a widow's pension;

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(1) Legal and Social Situation of Women in Agriculture in the Member States of the Council of Europe - report by Marie-Catherine Becouarn and Laurence Couturier for the European Symposium on Women in rural areas, St. Martin, Rhineland-Palatinate, 21-23 June 1988.



- farm heads' wives are dependants of their husbands for social rights in general; they have the least protection. For example, in France they are not entitled to an invalidity pension as a result of illness. In Greece, the helping wife is not entitled to invalidity insurance, old-age insurance, a widow's pension or family allowances.

With regard to this, Article 6 of the Directive of the Council of the European Communities on the application of the principle of equal treatment between men and women in self-employment states that "where a contributory social security system for self-employed workers exist in a Member State, that Member State shall take the necessary measures to enable ... spouses ... who are not protected under the self-employed worker's social security scheme to join a contributory social security scheme voluntarily." (1)

### 3. Economic rights: limited financial independence

Economic rights vary from one country to another and depend on farm installation and development policy.

Some countries give the helping wife the right to be paid for her work or to share the profits: this applies to Finland, the Federal Republic of Germany, Portugal, the United Kingdom, Denmark, Belgium and Ireland. In Norway, even if the helping wife does not receive any pay, her part of the work is considered as a contribution to boosting the economic results of the farm. The lack of economic rights in other countries deprives the helping wife of the financial autonomy which would allow her to carry out her occupational activities with a minimum of independence and penalises her when the farm run by the couple ceases operation and the property is shared out (2). The different forms of agricultural partnership (non-commercial or commercial) solve the problem of inequality and should be developed.

### 4. Education and further training for women in rural areas

The relative remoteness, low population density and isolation of rural areas can have negative effects on children's and young people's education. At the pre school level, inadequate interaction with other children and adults limits language development and makes the parents' task more difficult. Young people leaving school experience great difficulty in going on to further and vocational education. However, it is not only environmental characteristics which should be considered; social factors are probably equally important. Relative isolation and inadequate transport make it difficult for mothers and their children to get access to "compensatory" facilities such as play areas and nursery schools. In some regions there is a shortage, not

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- (1) Council Directive of 11 December 1986 (86/613/EEC) on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood.
  - (2) The Council Directive of 11 December 1986 (86/613/EEC) also states, in Article 7, that "member states shall undertake to examine under what conditions recognition of the work of the spouses .... may be encouraged and, in the light of such examination, consider any appropriate steps for encouraging such recognition."

only of elementary schools, but also of adult education establishments and services. The first concern must therefore be to adapt education to the needs of the rural population.

In some countries, women can enter into further education to obtain the necessary diplomas for becoming established and working as a farmer.

It is to be hoped that the training will focus on such areas as management, development planning, the establishment of a farm and the diversification of activities.

In this field, husband and wife must be able to enjoy complete equality of status.

To achieve this, governments must finance adult education programmes for women who have never completed their studies or who have had to interrupt them for family or financial reasons. The Parliamentary Assembly of the Council of Europe took this problem into consideration when it adopted its recommendation on the European Campaign for the Countryside - A new management approach for rural areas (1).

It is also to be hoped that women in rural areas will take part in trade unions and other organisations in order to play a dynamic part in disseminating information about womens' rights in the agricultural sector.

#### CONCLUSIONS

Womens' circumstances have undergone major changes in the transition from matriarchy, through Greek and Roman tutelage and the total slavery practised, for example, in the Arab world, to equality of rights between men and women.

Let us not forget that in the 17th century, the contemporaries of Henri IV had power of life and death over their fickle wives; that in the 19th century, in Carinthia, a woman and an ox were harnessed together to the plough. It will be a long time before laws which recognise the principle of equality between women and men are introduced throughout the world. The disappearance of all discrimination between the sexes is not yet complete. Evidence of this is provided by the Council of Europe's strategy to combat discrimination in its Second Medium Term Plan (1981-1986) which has been continued in the third Plan (1987-1991). The latter, which is currently being implemented, puts equality of the sexes in the context of the defence and strengthening of democracy. It is generally accepted that true democracy presupposes the full and complete integration and participation of all citizens - men and women.

The involvement of women in social, political, economic and cultural life is not simply a matter of justice, goodwill or fashion; it is a political issue, since it is at one and the same time a precondition and a consequence of the democracy on which European unity and the defence of individual human rights is based.

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- (1) Recommendation 1091 (1988) of the Parliamentary Assembly on the European Campaign for the Countryside - A new management approach for rural areas, adopted on 17 November 1988.

The principle of non-discrimination and equality is based on the dignity of the human person, acknowledged in the 1948 Universal Declaration.

However, continuing ignorance has resulted in the widespread notion that some human beings are essentially inferior.

It was Montesquieu who said that if men and women had the same upbringing there would also be equality of strength. Put to the test, he said, those female abilities which upbringing has not blunted and then see how strong men really are.

Michelet also had no hesitation in stating that there could be no definitive knowledge until women had had their say.

In the 20th century the desire for mutual understanding is at last going to be satisfied. However, it presupposes access to culture, which brings greater tolerance.

When women everywhere receive the same education as men and are freed from the burden of their daily tasks, and when laws passed on their behalf are universally enforced, it will then be time for them to acknowledge all their rights and duties and to take full responsibility for the freedom they have been given.

Men who have heard the rustle caused by this process of social change have already understood that women must be given their opportunity, not only in theory but also in practice.

Public awareness of women's contribution to human history (in art, science, social campaigns and reforms, national freedom struggles etc) would be an important element in the recognition process.

The declaration on equality of women and men, initiated and proposed by the European Committee for Equality between Women and Men, was adopted by the Committee of Ministers on 16 November 1988. This was a major event which must inspire everyone who seeks to work for a fairer and juster society.

It must be stressed that the majority of texts adopted by the Council of Europe and referred to in this report are only resolutions or recommendations.

There is, of course, Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which prohibits all forms of discrimination; but that article relates only to rights recognised in the Convention, that is civil and political rights.

However, Article 5 of Protocol No.7, signed on 22 November 1984, provides for equality of rights and responsibilities between spouses in marriage. After ratification by seven member states (Austria, Denmark, France, Greece, Iceland, Sweden and Switzerland) the protocol came into force in these countries on 1 November 1988.

The economic, social and cultural rights recognised in the European Social Charter are very poorly enforced. This is the area above all where improvement should be sought.

Consideration might be given to a European Convention which would draw together all the implications of the principle of equality of the sexes set in Council of Europe texts and would be an additional foundation for the construction of genuine democracy.

