Human rights, rights of women
Female applicants to the European Court of Human Rights

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At a time when women are rightly enjoying greater prominence on the legal stage (in many law faculties over half of all students are female), it is important to give thought to where women stand in relation to fundamental rights, or more precisely how fundamental rights stand in relation to women.

"We are no longer like our partisan elders; by and large we have won the game." As F. Collin points out, this optimistic finding is not that of a woman in 2006; it is that of Simone de Beauvoir, writing sixty years ago in 1946[1]. It prompts two questions.

Firstly, what are the challenges facing feminism today? It is true that women have secured rights and freedoms that were unthinkable earlier; but they have done so in a society which remains structurally male, nationally, internationally and globally. In a recent book, "Gender and Human Rights", S. Baer, an advocate of citizenship in Europe and the European Union's Charter of Fundamental Rights, gives a significant example of this. The Charter of Fundamental Rights is a highly symbolic text which states that the role of human rights is quintessential, in that any exercise of power not built on respect for fundamental rights is nowadays inconceivable. But the photo marking formal proclamation of the Charter at the European Council in Nice on 8 December 2000 speaks volumes: the assembled dignitaries are, with just two exceptions, all men[2] (see Appendix below, p. 31); and of the sixty-two members of the Convention who drafted the text, only nine were women.[3]

Over and above equality and non-discrimination which, formally at least, appear to be gaining acceptance, I share the view that the challenge for feminism may lie in "a radical reshaping of relationships between the sexes, involving both sexes, that is to say a redefining of the *shared world*".[4] What input can one have, what part can one play? Fundamental rights may perhaps demonstrate their relevance here, playing an essential part not as theoretical discourse (*logos*) but as a practical application (*praxis*).

When we look at this in a historical perspective, we realise that the gains made are always fragile, because it is very easy to lose what has been won. Just as fundamental rights constantly have to be built, carefully, meticulously, the building of this "shared world" requires a constant and ongoing effort of individual and collective vigilance.

I have not been a pioneer of women's rights: I am a beneficiary, so I have a debt to repay. I seek to do so by acknowledging this debt and working to repay it in the area I currently occupy, that of the rights and freedoms guaranteed by the European

[1] See End Notes at the end of the document

Convention on Human Rights, which I am privileged to serve as a judge at the Court. “If it is not to become a dead letter, this inheritance must be translated into new language, cementing and consolidating a tradition”.[5]

In the first part of this paper I should like to touch on the body of feminist writings on human rights **(I)**. At the heart of these we find a whole raft of questions concerning the place of women in international human rights legislation and, more especially, in the European Convention on Human Rights. In part two I shall look more closely at the place of women in the area covered by the European Convention on Human Rights and the case-law of the Court, confining myself of course to a number of the Convention’s articles **(II)**.

My hypothesis is that account is still not taken of the female perspective in human rights matters and that such instruments as do exist are resources which women need to use to greater and better advantage.

I. FEMINIST WRITINGS ON HUMAN RIGHTS

The literature on this subject is increasing, in terms of both quantity and quality.[6] I have picked out a number of sources to illustrate the main thrust of these writings, making no claim as to originality or comprehensiveness.[7] “Human rights are not what they claim to be”: this is essentially the feminist critique of human rights.[8] “They are a product of the dominant male half of the world, framed in their language, reflecting their needs and aspirations. Today's ‘universal human rights’ still overlook [women] as a matter of fact.”[9]

There are, however, relatively different lines of feminist thought, each of which, in its own way, explores the issue of fundamental rights (A). Generally speaking, we can try to summarise the contribution which each of these trends makes to the way in which these rights are perceived and implemented.

A. The different lines of thought

1) Liberal feminists

Most at ease in the present human rights system are the *liberal feminists*. Their main concern, equal treatment of men and women, underlies the provisions of most international treaties (universal and regional) on fundamental rights and non-discrimination.[10] In the 1960s one found references to “egalitarian feminists”.

Thus, for example, the United Nations International Covenant on Civil and Political Rights of 16 December 1966 (which came into force on 23 March 1976) contains two noteworthy provisions. One is Article 3 which recognises “the equal right of men and women to the enjoyment of all civil and political rights”. The other is Article 26 which says that “all persons are equal before the law and are entitled without any discrimination to the equal protection of the law“.

These feminists stay within the existing human rights framework, using its language and logic to argue for an increased concern for women's needs, as reflected in the demands made. Some decry situations where they consider women's rights to be violated under specific existing human rights provisions, whilst others focus on the need to improve the present institutional structure so that the human rights of women can be better enforced.

Liberal feminists want, in a manner of speaking, a real inclusion of women's rights in the human rights system. Ultimately, human rights would thus be gender-neutral.

By guaranteeing that "enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination", Article 14 of the European Convention on Human Rights is of course consistent with that view and the Court's judgment of principle of 28 May 1985 in *Abdulaziz, Cabales and Balkandali v. The United Kingdom* is the best illustration of it.[11] The three applicants, of Indian and other Asian origin, objected under Article 14 of the Convention taken in conjunction with Article 8 that their respective husbands were not permitted to remain with or join them in the United Kingdom where they were lawfully settled, whereas the wives could have lived in the husbands' countries. Finding that the Convention had been breached, the Court ruled that "advancement of the equality of the sexes is today a major goal in the member States of the Council of Europe" so that "very weighty reasons would have to be advanced before a difference of treatment on the ground of sex could be regarded as compatible with the Convention".[12] But as M.-B. Dembour tartly comments, the outcome was only half a result: the government rectified the situation by making the conditions for entry to the United Kingdom equally difficult for spouses of both sexes.

Nowadays one must also mention Protocol No. 12 to the Convention signed in Rome on 4 November 2000, which came into force on 1 April 2005 (for those states which have ratified it – sadly not Belgium as yet): Article 1 contains a general prohibition of discrimination in "the enjoyment of any right set forth by law" and in "acts by any public authority".[13] It will be interesting to see in future years how the Court's case-law evolves in response to this new text, and interesting too to see how it rules on new issues such as *indirect discrimination*, something that has scarcely been addressed as yet but seems to me the most significant new development.

It should be noted here that the Court is currently dealing with indirect discrimination not against women but against ethnic minorities, in the event the Roma/Sinti. This is the case of *D.H. and Others v. Czech Republic*, which was the subject of a chamber judgment on 7 February 2006 and was referred under Art. 43 ECHR to the Grand Chamber, where it is currently pending. This case raises the question of the practice, widespread in the countries of central and south-eastern Europe, of routinely placing Sinti children in schools for mentally handicapped children, regardless of their intellectual capacities.

There is, however, one case of indirect discrimination against a woman, which prompted the decision of 6 January 2005 in *Hoogendijk v. The Netherlands*. The case concerned Dutch legislation under which eligibility for a social security benefit (in this case disability benefit) was means-tested, and it directly raised the question of discrimination between the sexes: this income requirement impacted on women more than on men because at the time in question, the 1960s and 1970s, few women were in paid employment. There was thus an indirect discriminatory effect on women because their position in regard to employment was more vulnerable at that time. So a measure which appeared to be gender-neutral had more serious implications for one particular section of the population. The applicant thus alleged a breach of Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1. But what proof is there that this provision affects women more than men? I find the decision interesting on this point. In its earlier case-law on Article 14 the Court had not regarded production of statistical evidence to be a determining factor, but in this case it took a different line. It accepted in principle that indirect discrimination

could be proved by statistical means and, on that basis, it also accepted that the burden of proof shifted to the state: once it could be established from figures that a measure affected women more than men, the burden of proof transferred to the state concerned which had to prove that there was no discrimination. Without that transfer it would in practice be very hard to prove discrimination. This reflects the reasoning applied by the Court of Justice of the European Communities in matters of gender equality. On the merits, however, the Court found that the social policy argument put forward by the respondent state was objective and reasonable and it thus declared the application to be inadmissible. But this decision is open to the criticism that "the Court is departing from its own case-law which holds that discrimination on grounds of gender can only be outweighed by extremely powerful considerations, very difficult to reconcile in this instance with the idea that the Court 'cannot find [the decision of the Dutch authorities] unreasonable.'"[14]

2) Cultural feminists

But many feminists regard this liberal approach as inadequate or, more precisely, inappropriate to the situation of women since, in a way, it simply adds concern for women into the human rights mix ("add women and stir"). Originality, specificity: this is the dominant theme of *cultural feminists.* Whilst liberal feminists emphasise equality, cultural feminists emphasis difference and seek to exploit it to best effect: *women's "different voice"*. For this reason people talked in the 1970s of differentialist feminists.

When it came to demands, some rejected the law itself as a patriarchal institution with little to offer women because of its individualistic, abstract and adversarial nature, whilst others took the view that there was no way round the "solid front" of the law. Their position is that real inclusion of women in human rights and systems for safeguarding those rights requires a re-ordering and reshaping of human rights.

So more attention needs to be given to an ethic of care rather than an ethic of rights. Likewise, the catalogue of rights would need to be revised with an eye to the differences specific to women, which means recognition of new rights (right to reproduction, sexual autonomy, etc) and the "individualisation" of existing rights. *Women's rights are human rights*.

To some critics, the judgment of 18 January 2001 in *Chapman v. The United Kingdom* can be regarded as an example of how *not* to deal with the position of women. The applicants in this case were women from the Gypsy community who sought to maintain their way of life but wanted, in order to ensure that their children attended school, to park their caravans permanently on land that belonged to them but was located in the "green belt" around London. The dispute here was over environmental imperatives, and these took precedence in the Court's judgment over the right to family life: the applicant was treated just like any other person and the family aspect of her complaint was "forgotten".[15]

In the case more particularly of the right to reproduction which, as we have just seen, is one of the main feminist demands in the area of fundamental rights, it remains to be seen how the Grand Chamber will rule in *Evans v. The United Kingdom,* on which a chamber judgment was delivered on 7 March 2006. This case concerns a couple who underwent infertility treatment but subsequently separated. The man has since refused consent for the embryo to be implanted in his ex-partner. She argues before the Court

that her personal circumstances mean that this implantation represents her last chance of motherhood.

3) Radical feminists

Radical feminists, for their part, think that theories based on equality or difference are all informed by the same error – they apply an essentially male criterion of reference, obscuring the basic and unchanging factor that women are oppressed by men. They are often referred to as determinists and essentialists: determinist because the key to understanding the position of women is supposedly that of (sexual) domination; essentialist because their underlying premise assumes a single model of womanhood.

Although they criticise justice and the law as instruments of reproducing male domination, radical feminists do not formally and expressly reject human rights as such. Like the cultural feminists, they recognise their strategic value. Creation of new fundamental rights for women ("women's human rights") and the re-ordering of existing rights are some suggested ways of identifying situations of female subordination and violence against women, all of which are breaches of fundamental rights. Rape, prostitution, pornography and sexual violence are the priority areas in which action is demanded. As we shall see, a number of recent Court judgments on rape and sexual abuse might be looked at and understood along these lines, for example the judgment of 4 December 2003 in *M.C. v. Bulgaria*.

It is perhaps interesting to look here at humanitarian law and specifically the Rome Statute of 18 July 1998 establishing the International Criminal Court and its jurisdiction with respect to "the most serious crimes of concern to the international community as a whole" (Article 5). These, as things stand at present, are genocide, crimes against humanity and war crimes. In each of these categories one can identify criminal acts which directly or indirectly affect women. Thus the Statute defines *genocide* as "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such": including "measures intended to prevent births within the group" (Article 6). Elsewhere, *crimes against humanity*, "committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack", include "rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence of comparable gravity" (Article 7.1.g of the Statute). Finally, the Statute defines *war crimes* as "serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely: [...] rape, sexual slavery, enforced prostitution, forced pregnancy [...], enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions" (Article 8.2.b.xxii).

By way of regional instruments for safeguarding fundamental rights one might mention the *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women* ("Convention of Bélem do Pará") which was adopted on 9 June 1994 and came into force on 5 March 1995). A *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* was adopted on 11 July 2003 and came into force on 25 November 2005. This text contains a definition of violence against women which to my mind is the broadest and most comprehensive one found in international texts at present. The Protocol defines "violence against women" as "all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts; or to

undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflicts or of war" (Article 1 j).

4) Post-modern feminists

Post-modern feminists emphasise the infinite variety of concerns and/or situations relating to women, and the complexity of social life. One must therefore resist any attempt to define a single strategy to address all problems encountered by all women. Keen to deconstruct the category of women or gender and to give consideration to "the other", post-modern feminists are constantly enquiring and probing and are wary of conceptual and theoretical generalisations.

The decision of inadmissibility (15 February 2001) in *Dahlab v. Switzerland*, which concerned the wearing of the Islamic headscarf by a nursery school teacher, might be seen as proof that all too often the Court does not take account of the different circumstances of women themselves[16]. Likewise its judgment of 10 November 2005 in *Leyla Şahin v. Turkey* concerning the wearing of the Islamic headscarf by a university student: the university authorities had banned the wearing of the headscarf on university premises, and when the student insisted on wearing it, she was excluded from the university. The Court found that there had been no breach of Article 9 of the Convention on freedom of conscience and religion, or of Protocol No. 1, Article 2 on the right to education, holding the measure to have been necessary on grounds of equality and secularism.[17] In this case the Court refers to the general principles of tolerance, non-discrimination and democracy but does not look at what these principles mean in practice, thereby showing a degree of indifference to, not to say ignorance of, the complex reality of the Islamic headscarf and the various implications which the wearing of it can have.

B. Contribution of each feminist trend

1) A contextualised input

Notwithstanding the nuances between the trends I have just described, E. Brems demonstrates the effect or impact of feminist human rights writings in terms of what one might call a methodology of those rights.[18] The common factor would be a wish to reshape the letter and the spirit of fundamental rights to reflect the specific experiences of women and at the same time remain universal. *Mutatis mutandis* this would in a way be applying the concept of "inclusive universality", account being taken of the specific nature of certain groups which do not fit the dominant pattern.[19]

Feminist analysts share a *contextualised* approach to human rights, in that they seek to take account of women's experience and situations in their various contexts. They prefer a "complex internal point of view" to a "simplified external point of view" and are thus careful to introduce the *concrete* element into fundamental rights. The fact that these rights are universal, for all human beings, does not mean that they have to be abstract. On the contrary: if fundamental rights are conceived and understood as being for abstract human beings ("generalised others"), there will be difficulties when they have to apply to real people ("concrete others"). In the implementation of fundamental rights, interpretation can and must be the special place where abstract and concrete meet.

Whilst the language of rights is general, judges have to apply these rights with due consideration of all the factors, including the specific situation of women.

2) Overcoming the public-private distinction

Feminist approaches also help to overcome the *public-private distinction or dichotomy* which dominates human rights and which appears, in many regards, to be an artificial, purely male construct. Fundamental rights, for example those guaranteed by the European Convention on Human Rights, are designed to safeguard the individual in his or her dealings with the state, but female oppression happens for the most part in the private sphere – not just in the private sphere par excellence of house and home, but also in the cultural practices and traditions that are deeply rooted in our societies. So there is a strong call for horizontal application of fundamental rights.[20]

3) Developing economic and social rights

Here, feminist writings advocate greater recognition of *economic, social and cultural rights*. Whilst politics is seen as an area associated more with men, socioeconomic concerns are more central or more essential to women's thinking and aspirations.[21]

The priority given to civil and political rights is to some degree under threat, together with the secondary importance (too) often given to the status of these category-two rights, for example the right to food, clothing, health, housing and education. Feminists very properly affirm that human rights are interdependent and indivisible.

It is interesting to note here that the Convention on the elimination of all forms of discrimination against women of 18 December 1979 broadened the definition of discrimination in Article 1 to include the "political, economic, social, cultural, civil or any other field".

The judgment of 9 June 2005 in *Fadeyeva v. Russia* is perhaps of interest here, as it concerns an infringement of the applicant's right to respect for her private life and home (Article 8) due to industrial pollution from the nearby Severstal plant. The judgment explores at length the positive obligations which arise in regard to the environment. The requirements under the Convention relate to the general statutory and regulatory framework governing the process of taking decisions to set up sanitary security zones around "dirty" plants; the public's right of scrutiny over this process and domestic avenues of redress open to the public; close monitoring of polluters' compliance with national environmental standards, and possible measures to ensure that compliance.

4) Challenging the concept of individual autonomy

Feminists also challenge the *liberal concept of individual autonomy* which underlies human rights and the European Convention on Human Rights in particular.[22] Women typically see themselves not so much as individuals focusing on their own individuality but more as group- or community-oriented people (focused especially on the family).

Thus, for example, certain cultural aspects related to lifestyle or way of life might be factors in the right to privacy. Greater attention should also be paid to third-generation human rights – notably the right to peace, development, a healthy environment – and, notably, to collective rights.

Feminists want fundamental rights, affirmed as universal, to be the prerogative of all human beings, without being sex- and gender-blind. Universal does not mean uniform and certainly not gender-neutral. Universal means that all human beings must be included in the concept of fundamental rights. These rights must be of benefit to all because, as J. Kwaschin so eloquently puts it, the challenge for feminism is "to set us all free".[23]

II. WOMEN AND THE EUROPEAN CONVENTION ON HUMAN RIGHTS

I will not list all the universal and regional instruments which exist internationally to safeguard human rights[24], but shall confine myself to the European Convention on Human Rights, focusing this time on just the one issue of women who bring cases before the Court.[25] I have taken the case-law of the new European Court of Human Rights as my reference material in determining where women stand in disputes over rights guaranteed by the Convention.

Do women use the legal remedy of an application to the European Court of Human Rights? Which of the Convention's articles are most often relied on by women? In what manner of circumstances? When the applicant is a woman, does the Court take account of her personal experience?

Faced with the volume of material available and the constraints of this paper, I have had to make choices. In the event I shall first explore a number of issues pertaining to women's access to the Court (A) and shall then look at the position of female applicants in relation to certain provisions of the Convention, namely those dealing with three inalienable rights (Articles 2, 3 and 4) (B).

To start the debate, we definitely need a few *figures*. Of all the applications lodged before the Court, how many are lodged by women? The answers to two questions – how many applications are currently pending before the Court (stock) and how many cases are brought each year (flow) – should give an idea of the degree to which women make use of the Court and allow comparison with the figures for men. To my mind a scientific study using rigorous statistical tools would be both necessary and illuminating. Taking only cases ruled inadmissible by a chamber of seven judges (so disregarding the very large number of cases declared inadmissible *de plano* by a committee of three judges: this number is 85-90% of all applications), and cases where a judgment on the merits was delivered either by a chamber or by the Grand Chamber (17 judges), the number of applications lodged by women – between 1 November 1998 and 1 March 2006 – was approximately 1 300 in absolute figures, equivalent to roughly 16% of all applications.

The need for an in-depth quantitative examination does not exist in isolation. It ties in with a point which must be made at the outset and which is self-evident: the Court can only deal with cases that are referred to it. This at once raises the question of women's access to review by the European Court.

A. Access to the Court

1) Not an easy step

In law, of course, member states "shall secure to *everyone* within their jurisdiction the rights and freedoms" defined in the Convention (Article 1). In reality, the relatively small number of applications lodged by women raises the question of whether it is sometimes harder for women, specifically, to bring a case before the Court, which implies a degree of vulnerability in regard to justice.

Access to justice is already no easy matter in one's own country; it is harder still internationally. As Maud Buquicchio-de Boer commented in 1995 to the European Court of Human Rights, use of the right to lodge an individual application requires a degree of emancipation which perhaps not all women in Europe have yet attained.[26] Is this still the case today? To what extent? It would be interesting to know exactly. One useful indicator might be the use made of the Convention's Article 14 on the prohibition of discrimination. This article might be a good resource for data on women. In reality, most applications lodged on the basis of this article are lodged by men, with regard to their situation in areas such as homosexuality[27] or access to social benefits.[28] In the case-law of the Court, and with no pretence at an exhaustive list, applications lodged by women under Article 14 are chiefly concerned with parent-child relationships[29], the right to a name[30], sexual life[31], social benefits[32] and, more recently, sexual orientation.[33]

Now that the Court is directly accessible to all applicants (provided, of course, that their applications are ruled admissible), I think one needs to look at measures which could be taken at all stages of the judicial process to ensure that women have *real* access to European justice (acceptance in certain cases of a group application, wider use of third-party intervention, and development by the Court of an interpretation that enables the specific situation of women to be taken into account).)

On this matter of women's access to the Court I should like to mention a number of decisions concerning, firstly, Article 34, which states who may submit applications to the Court and represents the point of entry into the system, and secondly, Article 35, which lays down the admissibility criteria.

2) Referral to the Court

The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation of the Convention (Article 34).

The concept of a victim, an independent concept within the meaning of the Convention, is central here. Victims are currently defined as persons or groups who are immediately affected by the alleged violation. From that, however, the idea of a victim may be extended to include not only direct victims but also indirect victims; not only current victims but also potential victims.

The point to be noted here is that in many of the applications lodged by women, their claim concerns a situation being experienced by a family member. How does the Court deal with these *indirect victims*?

First of all, *what rights can be invoked?* The judgment of 2 February 2006 in *Bic and Others v. Turkey* provides a good example. The applicant is the wife of a man who died in hospital while being held on remand. As an indirect victim she is objecting to the length of time for which her husband was detained on remand. The Court says that the next-of-kin of a person who has died in circumstances that may give rise to a breach of Article 2 of the Convention, which guarantees the right to life, may make an application in their own right – and we shall see numerous examples of this later on. Applications based on Article 5 or 6 of the Convention do not fall into this category, however. The rights guaranteed by Article 5 are not transferable, so the next-of-kin of a deceased person would not count as victims in the case of a claim relating to length of detention.[34] Given that the criminal proceedings against the applicant's husband were closely linked to his person, there is no evidence in the file to suggest that the impugned period of detention or the length of the criminal proceedings against him actually affected the applicant. The Court thus found that she did not have the status required by Article 34 of the Convention and that the application was to be rejected as incompatible *ratione personae* with the provisions of the Convention.[35]

It its decision of 8 March 2005 in *Fairfield and Others v. The United Kingdom* the Court took the same position in a different context, that of Article 9 and 10 of the Convention. It said that Article 34 "does not institute for individuals a kind of *actio popularis* for the interpretation of the Convention".

It is necessary for there to be a victim, that is to say an individual personally affected by the alleged violation of a guaranteed right, in order for the safeguard mechanism envisaged for this situation to apply[36], though this criterion cannot be applied rigidly, automatically and inflexibly throughout the proceedings. Whilst it is true that the next-of-kin of persons who have died in circumstances giving rise to issues under Article 2 of the Convention may apply as applicants in their own right, this is a particular situation governed by the nature of the violation alleged and considerations of the effective implementation of one of the most fundamental provisions in the Convention system. This was not the case here.

The decision of 11 January 2000 in *Caraher v. United Kingdom* addresses another aspect of the issue, namely the *loss of victim status*. The applicant's husband had been killed by British troops in Northern Ireland and, after legal proceedings in the United Kingdom, she was awarded compensation.

The Court took the view that in suing for damages for her husband's death and in accepting and receiving compensation, the applicant had effectively renounced the use of a remedy under Article 2 of the Convention. She could no longer claim to be the victim of a violation of Article 2. The applicant no doubt needed financial compensation in order to survive, but can one necessarily infer from this that she was renouncing her right to have the state uphold her right to life?

3) Admissibility criteria

a) Exhaustion of all domestic remedies

Regarding the admissibility criteria, the Court can only deal with a case *after all domestic remedies have been exhausted* (Article 35 § 1). But this requirement, which is central to the philosophy of the Convention's system of legal safeguards, must be applied, as the

Court often reminds us, “with some degree of flexibility and without excessive formalism”.

It would be interesting to look in fine detail, for the context as a whole, at how rigorously this requirement is enforced in the case of female applicants. Thus, for example, the case of *Epözdemir v. Turkey* was declared inadmissible on 31 January 2002, because the applicant had failed to appeal against the prosecutor’s decision not to prosecute the village guards responsible for her husband’s death. Whilst the decision not to prosecute suggests that the prosecutor did not abide by the terms of the Criminal Code, the Court held that the applicant could have taken her case to the appeal judge, thereby considerably increasing her chances of success, because the futility of such action was not established. As a result she could not be considered to have met the requirement to exhaust all domestic remedies.[37]

The decision of 22 June 2004 in *Thibaud v. France* addresses the same question but from the standpoint of an applicant claiming to be a direct victim. After adopting a child in Haiti she applied for full adoption status (*adoption plénière*) for her son. The French courts dismissed her application, ruling that the legal requirements for full adoption were not met. They granted simple adoption. Relying on Article 8 and 14 of the Convention, the applicant claimed that her right to respect for private and family life had been infringed. The Court said that, in order to meet the requirement of exhausting all domestic remedies, the applicant should previously have brought before the domestic authorities the claims she intended to pursue before the European Court “at least in substance”. In the event the Court noted that it was not apparent, either from the appeal findings or the grounds of appeal on points of law, that the applicant had asked these courts to deal with her claim based on a breach of Article 8 in conjunction with Article 14 of the Convention. She had merely laid before the domestic courts arguments in support of the facts concerning consent to her son’s adoption and the benefits to the child of having full adoption status. Consequently she had not, even in substance, brought claims of the kind currently laid before the Court, so she had not exhausted all domestic remedies.

The decision of inadmissibility of 5 July 2006 in *D. v. Ireland* is undoubtedly the most significant or the most debatable as regards the exhaustion of all domestic remedies. The applicant is an Irish national. She already had two children and was pregnant with twins. Amniocentesis revealed, however, that one of the foetuses had died in the womb and the other had a chromosomal abnormality. The applicant then went to the United Kingdom for a termination, without seeking legal advice as to whether she could legally have one in Ireland. At the time, the only exemption from the abortion ban which the Constitution permitted was where there was a real and substantial risk to the life *of the mother*. Before the Court the applicant complained that in Ireland there was no possibility of abortion due to a foetal abnormality, a situation made more difficult by the Regulation of Information (Services outside the State for Termination of Pregnancies) Act 1995. She relied on Article 3, Article 8 on the right to respect for private and family life, and on Article 13, the right to an effective remedy. In this case the Government claimed that at the time of the events in question the applicant could in principle have sought permission under the Constitution for a legal termination in Ireland. The Court held that it was important that the constitutional courts had the opportunity to develop the protection of individual rights by way of interpretation: this was particularly the case when the central issue was a novel one, requiring a complex and sensitive balancing of

equal rights to life and demanding a delicate analysis of country-specific values and morals.

The Court did not accept the argument that no legal remedy was open to the applicant or that she would have been unable to find a lawyer to represent her. It found that the applicant did have a constitutional remedy, even if a number of pertinent issues remained uncertain due to the novelty of the matter in question: the chances of such a remedy succeeding, the short time left for completion of the proceedings (she had only six weeks before expiry of the 24-week period during which abortion is normally available in the United Kingdom), and the guarantee that her anonymity would be protected. The Court ruled that the applicant had not met the requirement to exhaust all domestic remedies in regard to the possibility of obtaining an abortion in Ireland on grounds of a foetal abnormality.

b) The six-month period

The decision of 1 February 2005 in *Yavuz and Others v. Turkey* raises another issue, namely whether or not the applicant was aware of a judicial procedure and of a judgment by the Court of Cassation which marked the starting point of the six-month period which is a criterion in decisions on the admissibility of an application.

The applicant's husband had been found shot to death. The criminal proceedings in which she appeared as an "intervening party" ended in a judgment of the Court of Cassation which was not, however, notified to the parties. Finding that the applicant had applied to the Court more than six months after the date on which the judgment had been received by the registry, the Court held that this delay was due to the applicant's own negligence and that the application had thus been lodged too late.

c) Manifestly ill-founded application

The judgment of 2 March 2006 in *Devrim Turan v. Turkey* is significant here. The applicant had been taken into police custody on suspicion of belonging to an illegal organisation. One of her claims was that she was taken to hospital for gynaecological examinations and a rectal examination on the first and last days of her detention to prevent her from making any accusation of sexual harassment against police officers. On arrival at the hospital the applicant refused to undergo the examinations and the doctors did not perform them. The Government contended that the applicant did not have victim status. The Court did not address the matter of incompatibility *ratione materiae* but declared the application inadmissible as *manifestly ill-founded* (Article 35 § 3). It conceded that the fact of taking the applicant to hospital for gynaecological examinations may have caused her distress.

Nevertheless, it found that this situation was not bad enough to constitute degrading treatment within the meaning of Article 3 of the Convention, a finding very properly disputed by some of the judges.[38]

In winding up, for the time being, this issue of female applicants' access to the Court, I think we must simply say that it raises a huge number of questions. Is it simply women's more precarious socioeconomic status that prevents them from making an application to the Court? Are they sufficiently well informed? Do they encounter obstacles in bringing their cases before an international court? But, more fundamentally, are they really keen

to go to law at all? Or again, are the rights guaranteed by the Convention really relevant to them? In order to go further and find answers to these questions, I think we need a *qualitative* study, conducted on the basis of interviews, for example. This, too, is a field offering plenty of scope for research and one which might yield much enlightenment, bearing in mind the conclusion of S. Palmer that: "The 'sameness' model adopted by [the Court] renders systemic disadvantage invisible and is unlikely to bring to the forefront women's particular concerns."[39]

B. The rights guaranteed

Due to time and space constraints I will confine myself here to just one or two provisions of the Convention, those which guarantee inalienable rights, under which applications to the Court are made by women.

1) The right to life (Article 2 ECHR)

So many cases invoke this right that it is worth making one point straight away: in the great majority of cases, female applicants are the mothers, wives, partners or daughters of persons who have died. They are thus, as we have seen, what the Court refers to as *indirect victims*. The right to life guaranteed by Article 2 of the Convention is used by women to obtain justice and compensation for the death of their next-of-kin. By contrast, during the period under review (1 November 1998 – 1 March 2006) I found only three instances "the other way round", where a male applicant cited Article 2 in regard to the death of his mother, wife and daughter.[40]

a) Indirect victims

In this group of applications by women as indirect victims, the overwhelming majority concerned interference with the right to life (death, murder, assassination, disappearance) related to political unrest, armed conflict or military operations.[41] The Court's usual practice has been to find, in some cases, that there has been a material breach of Article 2 (responsibility of the state for infringement of the right to life or inadequate explanation of death) or, in other cases, a procedural breach (failure to investigate properly).

Other applications, more specifically, have concerned deaths in the course of police operations[42], whilst a person was in police custody[43], in prison[44], in an administrative detention centre[45] or on home leave from prison.[46]

Some applications concerned the suicide or death of a person who was mentally ill or suffered from some other medical condition[47]: a handicapped son[48], and a person in the armed forces[49], where a lack of care was (unsuccessfully) alleged.

ECtHR (GC), judgment in *Salman v. Turkey* (27 June 2000); ECtHR, judgment in *Akkoç v. Turkey* (10 October 2000); ECtHR, judgment in *Tanribilir v. Turkey* (16 November 2000); ECtHR, judgment in *Demiray v. Turkey* (21 November 2000); ECtHR, judgment in *Çiçek v. Turkey* (27 February 2001); ECtHR, judgment in *Shanagan v. United Kingdom* (4 May 2001); ECtHR, judgment in *Sabuktekin v. Turkey* (19 March 2002); ECtHR, judgment in *Şemse Önen v. Turkey* (14 May 2002); ECtHR, judgment in *McShane v. United Kingdom* (28 May 2002); ECtHR, judgment in *Ülkü Ekinci v. Turkey* (16 July 2002); ECtHR, judgment in *N.Ö. v. Turkey* (17 October 2002); ECtHR, judgments in

Adali v. Turkey, *Şazimet Yalçin v. Turkey* and *Filiyet Şen v. Turkey* (12 December 2002); ECtHR, judgment in *Macir v. Turkey* (22 April 2003); ECtHR, judgment in *Güler and Others v*. *Turkey* (22 April 2003); ECtHR, judgment in *Finucane v*. *United Kingdom* (1 July 2003); ECtHR, judgment in *Hanim Tosun v. Turkey* (6 November 2003); ECtHR, judgment in *Tekdağ v. Turkey* (15 January 2004); ECtHR, judgment in *Nuray Sen v. Turkey* (30 March 2004); ECtHR, decision (inadmissible) in *Evcil v. Turkey* (6 April 2004); ECtHR, judgment in *E.O v*. *Turkey* (15 July 2004); ECtHR, judgment in *Zengin v*. *Turkey* (28 October 2004); ECtHR, judgment in *Isayeva, Yusupova and Bazayeva v*. *Russia* (24 February 2005); ECtHR, judgment in *Isayeva v. Russia* (24 February 2005); ECtHR, judgment in *Türkoğlu v. Turkey* (17 March 2005); ECtHR, judgment in *Adali v. Turkey* (31 March 2005); ECtHR, judgment in *Süheyla Aydin v*. *Turkey* (24 May 2005); ECtHR, judgment in *Akdeniz c*. *Turkey* (31 May 2005); ECtHR, judgment in *Fatma Kaçar v*. *Turkey* (15 July 2005); ECtHR, judgment *Özgen and Others v. Turkey* of 20 September 2005; ECtHR, judgment in *Nesibe Haran v*. *Turkey* (6 October 2005); ECtHR, judgment in *Gongadzé v. Ukraine* (8 November 2005); ECtHR, judgment in *Kakoulli v. Turkey* (22 November 2006); ECtHR, judgment in *Bişkin v. Turkey* (10 January 2006); ECtHR, judgment in *Dürdane Aslan and Selvihan Aslan v. Turkey* (10 January 2006).

a) Direct victims

What kind of applications are lodged by women themselves, in their own right, as *direct victims*? We must of course mention here two important judgments, one concerning the end of life and the other its beginning.

The first is the judgment of 29 April 2002 in *Pretty v. The United Kingdom* where the applicant, severely disabled and unable to commit suicide without help, claimed that the British authorities' refusal to give an undertaking that her husband would not be prosecuted if he helped her to kill herself was an infringement of the right to life guaranteed by Article 2. As is well known, the Court found that there had been no infringement here, holding that Article 2 of the Convention "cannot, without a distortion of language, be interpreted as conferring a right to die; nor can it create a right to self-determination in the sense of conferring on an individual the entitlement to choose death rather than life."

The Court accordingly found that no right to die, whether at the hands of a third person or with the assistance of a public authority, can be derived from Article 2 of the Convention.

In the case of *Vo v. France* in which the Grand Chamber gave judgment on 8 July 2004, the applicant had been obliged to undergo a therapeutic abortion following a medical error, and she alleged that the lack of any remedy in French criminal law to punish the involuntary homicide of a foetus constituted an infringement of the right to life. Without ruling on whether the unborn child was a "person" within the meaning of Article 2, the Court considered the application in terms of the adequacy or otherwise of existing legal remedies. Since this had been an involuntary infringement of the right to physical integrity, the positive obligation deriving from Article 2 did not necessarily call for a criminal prosecution. Since the remedy of an action for damages was available to the applicant, with a very good chance of success, the Court found that there had been no breach of the Convention.[50]

2) Prohibition of torture or inhuman or degrading treatment or punishment (Article 3)

Based on the material collected over the same period, my finding is that applications lodged by women have four main focuses.

a) Living conditions

The first of these is what we might call *living conditions*. In *Dulas v. Turkey* (judgment of 30 January 2001), the applicant was aged over 70 at the time of the alleged facts, and after seeing her home and all her possessions destroyed before her very eyes she had no roof over her head and no means of subsistence. This also meant she had to leave the community she had lived in her whole life. Given the circumstances surrounding these events and a number of elements concerning the applicant herself, the Court's view was that she must have suffered distress serious enough for the impugned acts to qualify as inhuman treatment.[51]

By contrast, the application *Larioshina v. Russia* was declared inadmissible on 23 April 2002: the applicant complained about the amount of her old age pension, but there was no indication that the amount of the applicant's pension had caused damage to her physical or mental health capable of attaining the minimum level of severity falling within the ambit of Article 3. The Court held, however, that a complaint about a wholly insufficient amount of pension and the other social benefits could, in principle, give rise to an issue under Article 3, and it is important to point this out.[52] More generally, I think that the issue of poverty and extreme poverty, which is far more of a problem for women and can lead to numerous forms of violence against them, will one day be raised under the terms of Article 3 of the Convention. At a hearing on the feminisation of poverty held on 10 March 2006 by the Council of Europe Parliamentary Assembly's Committee on Equal Opportunities for Women and Men, the rapporteur, G. Vermot Mangold said: "women irrefutably represent a larger proportion than men of the population in poverty. Being female is a risk in itself."

b) Violence

The second focus of women's applications to the Court is *violence, notably sexual violence, and rape*. The judgment of 26 November 2002 in *E. and Others v. The United Kingdom*, where the applicants were three sisters and a brother claiming to have been physically and sexually abused by their mother's partner over many years, is a good example of the development of positive obligations and the horizontal application of the Convention. Given that states have a duty to ensure, through adequate legislative, administrative or judicial provisions, that breaches of the Convention do not occur, up to and including in the area of personal relationships, the Court held that the failure of social services to take measures which they might reasonably have been expected to take and which could have had a real prospect of altering the outcome or mitigating the harm done to the children was sufficient to engage the responsibility of the state.

The judgment of 29 July 2003 in *Z.W. v. The United Kingdom* raises a similar issue: the applicant was held in a high-security psychiatric hospital and complained that the local authority had failed in its duty to protect her welfare when she had been placed, as a child, with a foster family. An amicable settlement was reached in this case.

Rape cases, clearly, are especially delicate. The application *J.M. v. The United Kingdom* was lodged by a young woman who had been raped several times by a man subsequently sentenced to life imprisonment. She complained that she had been questioned and cross-questioned by him for six hours in the course of the proceedings. Furthermore, the perpetrator had been given access to her medical records and other private information and had used these to question her not only about the rapes but also about her personal relations in general. The case was struck off the list by a decision of 28 September 2000. The Court noted that legislation had been adopted which restricted a defendant's ability to cross-examine a victim of an alleged crime personally.

The judgment of 4 December 2003 in *M.C. v. Bulgaria* is concerned in essence with the inadequacy of the protection afforded by domestic law to an alleged rape victim. The investigation focused almost exclusively on the lack of direct proof of the rape and especially on the lack of resistance on the applicant's part, resistance being considered as a constituent element of the offence. The Court held, consistently with international and comparative law, that the state had a duty, under the positive obligations conferred by Articles 3 and 8 of the Convention, to prosecute the perpetrator of any act of non-consensual sex, even if the victim had offered no physical resistance. It should be noted that here, for the first time, the Court considered the question of rape not only in terms of inhuman and degrading treatment (Article 3 of the Convention), but also in terms of Article 8.

Lastly, the judgment of 20 September 2005 in *Frik v. Turkey* raises another question, that of proof.

The applicant alleged that she had been sexually abused and raped during her time in police custody. The Court stated that allegations of abuse had to be duly substantiated and that, in establishing the truth of the facts alleged, it applied the criterion of proof "beyond all reasonable doubt". Whilst conceding that it might be hard for a women to obtain proof of a rape allegedly committed while she was in police custody, given the vulnerability of her situation, the Court held that it was not apparent from the file that the applicant had communicated her allegations of rape to the authorities or doctors in the prison where she was held. This would have prompted psychological interviews or gynaecological examinations which would have corroborated her story. Furthermore, she had waited almost four years after the alleged facts before bringing proceedings against the police officers in whose custody she had been. The Court thus held that it had not been able to establish "beyond all reasonable doubt" that the applicant had been subjected to treatment prohibited under Article 3 of the Convention.[53] Since, as we know, it takes courage for women to report rape and sexual abuse, this is undoubtedly one instance where greater account could have been taken of the applicant's specific circumstances.

c) Migrant women

The third focus of women's applications to the Court concerns the situation of *female migrants*, asylum seekers or refugees. In my view – not only in the context of Articles 2 and 3 of the Convention but also under its other provisions – cases before the Court involving migrant women should be followed very attentively, given that, under the dominant model, immigration is often portrayed as an essentially male or, at the very least, gender-neutral issue. But it is clear that the situation of immigrant women raises specific questions which need to be recognised as such.[54]

The judgment of 11 July 2000 in *Jabari v. Turkey* concerns the deportation to Iran of an applicant who claimed that if she went back she risked being stoned for adultery. Having ascertained that the applicant faced a real risk of being subjected to treatment contrary to Article 3 if she were returned to Iran, the Court found that deporting her would constitute a violation of Article 3. It added that, procedurally speaking, the automatic application of an extremely short time-limit for submitting an asylum application (five days) had to be considered as being at variance with protection of the fundamental value embodied in Article 3 of the Convention.

In other applications declared inadmissible, however, the woman's voice seems hardly to have been heard. Thus, in its decision of 28 October 1999 in *Pancenko v. Latvia*, concerning the precarious economic and social situation of a national of the former USSR due to the refusal to give her a residence permit, the Court referred to its case-law which shows that the Convention does not guarantee socioeconomic rights as such, "including the right to charge-free dwelling, the right to work, the right to free medical assistance, or the right to claim financial assistance from a State to maintain a certain level of living." In its decision of 7 October 2004 in *Dragan and Others v. Germany*, concerning the decision to deport to another Contracting State a mother whose state of health was a matter for concern and whose threats of suicide seemed credible, the Court ruled that such threats must not prevent the authorities from carrying out the deportation and that none of the evidence submitted suggested that the authorities would not take the necessary precautions. It also held that the fact that facilities in Romania for treating the applicant's medical conditions were less good than those available to her in Germany was not a deciding factor. So the threshold set by Article 3 is not reached, particularly where the case does not concern the direct responsibility of the Contracting state for the infliction of harm.[55]

In other cases, what is lacking is proof. In its decision of 5 February 2004 in *Ndona v. Germany*, the Court said that the applicant had justified her fears by describing the political and economic situation in the country she was being removed to and the dangers of rape and sexual violence she would be exposed to there as a woman. Without going into further detail the Court held that the general situation in the country did not, without evidence to suggest that the applicant was at serious risk of personal persecution, provide enough of a reason to infer a potential breach of Article 3 of the Convention. The outcome was the same in *Bello v. Sweden* (decision of 17 January 2006), where the applicant described the risks to which she would be exposed due to the situation of women in Nigeria.

d) Police and prison

Lastly, and this bring us to the fourth focus of women's applications to the Court, many of these concern the unacceptable treatment they have or have allegedly received *in their dealings with police or prison authorities.* In some cases the issue is police violence during arrest[56] or whilst the woman was in police custody[57], sometimes with allegations of rape which once again raise the question of proof.[58]

In its judgment of 10 January 2006 in *Yavuz v. Turkey* the Court found that there had been a breach of Article 3 of the Convention overall, but it did not see fit to examine the allegations of sexual and psychological harassment, given the difficulty of proving that such treatment had in fact taken place.[59] By contrast, the judgment of 9 March 2006 in *Menesheva v. Russia* is perhaps one where the specific vulnerability of a young woman

by reason of her age (19), but also by reason of her female sex, was expressly taken into account by the Court in its assessment of the unacceptable treatment she suffered at the hands of the police, treatment which the judgment described as torture.[60]

On the matter of detention, in its judgment of 10 July 2001 in *Price v. The United Kingdom* the Court found that the conditions under which a woman, a four-limb deficient as a result of thalidomide, had been held in custody were in breach of Article 3. The Court's judgment in *McGlinchey and Others v. United Kingdom* likewise found a breach of Article 3 of the Convention due to the inadequacy of the care given by the prison authorities to the detainee, who was patently suffering withdrawal symptoms from her drug addiction. It should be noted here that the application had been lodged by the mother and two children of this female heroin addict who died whilst serving a prison sentence for theft. By contrast, the application in *Reggiani Martinelli v. Italy* was deemed inadmissible in a decision of 16 June 2005. The applicant argued that keeping her in prison caused her particularly acute physical and emotional distress due to the brain condition she had been suffering from since the removal of a brain tumour prior to her incarceration. On the matter of whether it was appropriate to keep the applicant in prison despite the progressive deterioration of her health, the Court noted that no one had ever expressed the opinion that her condition was incompatible with detention, even if the experts' findings were not totally consistent. Furthermore, the national authorities had fulfilled their obligation to safeguard the applicant's physical integrity, in particular by providing her with appropriate medical care.

3) Prohibition of slavery and forced labour (Article 4 ECHR)

Strange as it may seem, the judgment of 26 July 2005 in *Siliadin v. France* is the first case involving the application of Article 4 in a situation described as domestic slavery.[61] In the context of women's rights, one of the interesting points of this judgment is that it takes domestic work out of the informal private sphere. Are women moving from being passive victims to active players?

The applicant, originally from Togo, came to France at age 15 and for many years did unpaid domestic work for a Parisian couple. Her conditions of work and accommodation were incompatible with human dignity (fifteen hours of work a day, unpaid, no official documents). She claimed that the provisions of French criminal law had not afforded her real and sufficient protection. Initially the Court upheld the positive obligations deriving from Article 4 of the Convention: "limiting compliance with Article 4 of the Convention only to direct action by the State authorities would be inconsistent with the international instruments specifically concerned with this issue and would amount to rendering it ineffective. Accordingly, it necessarily follows from this provision that States have positive obligations, in the same way as under Article 3 for example, to adopt criminal-law provisions which penalise the practices referred to in Article 4 and to apply them in practice".[62] Later on, on the matter of a breach of Article 4 of the Convention, after stating that "Article 4 enshrines one of the fundamental values of democratic societies" and "makes no provision for exceptions"[63], the Court took the view that the applicant had been subjected to "forced labour" and had also been held "in servitude".[64] Having "previously stated on many occasions that children and other vulnerable individuals are entitled to State protection, in the form of effective deterrence, against such serious breaches of personal integrity," the Court ruled that "the criminal-law legislation in force at the material time did not afford the applicant, a minor, practical and effective protection against the actions of which she was a victim."[65]

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It is hard to conclude a presentation that sketches only the broad lines of a study which might usefully be expanded and pursued in greater depth with regard to the other provisions of the Convention, notably Article 5 (there are a surprising number of female applicants in situations where mental health is an issue), Article 8 (where action in family disputes seems more often to be taken by men), Articles 9 and 10 (very few female applicants) and, of course, Article 14. If these few facts and figures lead one day to further research, the goal I have set myself will have been reached.

But in tackling this subject today I am not really doing anything new. In 1789, Olympe de Gouges issued her *Declaration of the Rights of Woman and the Female Citizen*: “Woman is born free and remains equal to man in rights ... All citizens including women are equally admissible to all public dignities, offices and employments, according to their capacity, and with no other distinction than that of their virtues and talents”. This Declaration was of course never adopted and Olympe de Gouges was very promptly treated as a hysteric, accused of wanting to become a statesman and forgetting “the virtues proper to her sex”. She was guillotined on 3 November 1793. Like a man...

END NOTES

1. F. COLLIN, « Le féminisme pour quoi faire ? Genèse et formes d'un mouvement », *La Revue nouvelle* (Belgique), 2004-XI, p. 9.
2. *Ibid.*, p. 14. Voir S. BAER, « Citizenship in Europe and the Construction of Gender by Law in the European Charter of Fundamental Rights », *in* K. KNOP (éd.), *Gender and Human Rights*, Oxford, Oxford University Press, 2004, p. 88.
3. S. BAER, « Citizenship in Europe and the Construction of Gender by Law in the European Charter of Fundamental Rights », *op. cit.*, p. 107.
4. F. COLLIN, « Le féminisme pour quoi faire ? Genèse et formes d'un mouvement », *op. cit.*, p. 14.
5. *Ibid.*, p. 24.
6. Voir K. KNOP, « Introduction », *in* KNOP (éd.), *Gender and Human Rights*, *op. cit.*, p. 1.
7. E. BREMS, « Enemies or Allies? Feminism and Cultural Relativism as Dissident Voices in Human Rights Discourse », *Human Rights Quarterly*, vol. 19, 1997, pp. 134 et s. ; N. LACEY, « Feminist Legal Theory and the Rights of Women », *in* KNOP (éd.), *Gender and Human Rights*, Oxford, Oxford University Press, 2004, pp. 12 et s. ; M.-B. DEMBOUR, *Who Believes in Human Rights? Reflections on the European Convention*, Cambridge, Cambridge University Press, 2006, spécialement Chapitre 7, « The Convention in a Feminist Light », pp. 188-231.
8. E. BREMS, « Enemies or Allies? Feminism and Cultural Relativism as Dissident Voices in Human Rights Discourse », *op. cit.*, p. 137.
9. L'exemple classique est celui du suffrage universel, fondement de la démocratie, dont pendant des années la moitié de la population a été exclue.
10. Voir A. JAUBERT, *Le droit international public et la femme*, thèse de doctorat, Université de Nice, 1999.
11. Cf. M. BUQUICCHIO-DE BOER, « Sexual Discrimination and the European Convention on Human Rights », *Human Rights Law Journal*, vol. 6, 1985, pp. 1 et s. ; P. TITIUN, « Le principe de l'égalité de traitement selon la Convention européenne des droits de l'homme », *in* G. Vonfelt (dir.), *L'égalité de traitement entre hommes et femmes*, Maastricht, Institut européen d'administration publique, 2000, pp. 1 et s.
12. CourEDH, arrêt *Abdulaziz, Cabales et Balkandali c*. *Royaume-Uni* du 28 mai 1985, § 78.
13. *La non-discrimination : un droit fondamental. Actes du Séminaire marquant l'entrée en vigueur du Protocole n° 12 à la Convention européenne des Droits de l'Homme (Strasbourg, octobre 2005)*, Strasbourg, Editions du Conseil de l'Europe, 2006.
14. D. MARTIN, « Strasbourg, Luxembourg et la discrimination : influences croisées ou jurisprudences sous influence ? », *Rev. trim. dr. h.*, 2007, p. 119.
15 . CourEDH (GC), arrêt *Chapman c*. *Royaume-Uni* du 18 janvier 2001 ; M.-B. DEMBOUR, *Who Believes in Human Rights? Reflections on the European Convention*, *op. cit*., pp. 197-201.
16. CourEDH, décision (irrecevabilité) *Dahlab c. Turquie* du 15 février 2001 ; M.-B. DEMBOUR, *Who Believes in Human Rights? Reflections on the European Convention*, *op. cit*., pp. 212-213.
17. CourEDH (GC), arrêt *Leyla Şahin c*. *Turquie* du 10 novembre 2005.
18. E. BREMS, « Enemies or Allies? Feminism and Cultural Relativism as Dissident Voices in Human Rights Discourse », *op. cit.*, p. 141. Voir aussi E. BREMS, « Protecting the Human Rights of Women », *in* G. M. LYONS et J. MAYALL (éd.),*International Human Rights in the 21st Century*, Lanham/Boulder/New York-Oxford, Rowman & Littlefield Publishers, 2003, p. 125.
19. E. BREMS, *Human Rights: Universality and Diversity*, La Haye/Boston/Londres, Martinus Nijhoff, 2001, p. 295.
20. C. ROMANY, « Women as Aliens: a Feminist Critic of the Public / Private Distinction in International Human Rights Law », *Harvard Human Rights Journal*, vol. 6, 1993, p. 87.
21. Voir A. TOURAINE, *Le monde des femmes*, Paris, Fayard, 2006, pp. 146 et s.
22. S. BAER, « Citizenship in Europe and the Construction of Gender by Law in the European Charter of Fundamental Rights », *op. cit.*, pp. 104 et 105.
23. J. KWASCHIN, « De quelques idées reçues sur le féminisme », *La Revue nouvelle*, 2000-II, p. 6.
24. Fr. TULKENS, « Droits de l'homme et droits des femmes. Des ressources à mobiliser », in *Droits de l'homme. Crime et politique criminelle. Etudes en hommage à A. Yotopoulos-Marangopoulos*, Bruxelles, Bruylant, 2003, pp. 1423 et s.
25. En ce qui concerne la présence des femmes comme juges au sein de la Cour européenne des droits de l'homme, *ibid.*, pp. 1435-1436. Voir aussi M.-B. DEMBOUR, *Who Believes in Human Rights? Reflections on the European Convention*, *op. cit*., pp. 196-197 et les références qu'elle cite, notamment, B. HALE, « Equality and the Judiciary: Why Should We Want More Women Judges ? », *Public Law*, vol. 46, 2001, pp. 489 et s.

26. M. BUQUICCHIO-DE BOER, *L'égalité entre les sexes et la Convention européenne des droits de l'homme. Aperçu de la jurisprudence strasbourgeoise*, Dossiers sur les droits de l'homme n° 14, Strasbourg, Editions du Conseil de l'Europe, 1995, p. 56.
27. CourEDH, arrêt *Salgueiro da Silva Mouta c*. *Portugal* du 21 décembre 1999 ; CourEDH, arrêt *Lustig-Prean et Beckett c*. *Royaume-Uni* du 27 septembre 1999.
28. CourEDH, arrêt *Crossland c*. *Royaume-Uni* du 9 novembre 1999 ; CourEDH, arrêts *Cornwell c*. *Royaume-Uni* et *Leary c*. *Royaume-Uni* du 25 avril 2000 ; CourEDH, arrêt *Willis c*. *Royaume-Uni* du 11 juin 2002 ; CourEDH, arrêt *Michael Matthews c*. *Royaume-Uni* du 15 juillet 2002.
29. CourEDH, arrêt *Marckx c. Belgique* du 13 juin 1979 (concernant l'établissement d'une filiation maternelle entre une mère célibataire et son enfant) ; Comm. eur. D.H., rapport (règlement amiable) *L. De Mot et autres c. Belgique* du 8 octobre 1987 ; CourEDH, arrêt *Hoffmann c. Autriche* du 23 juin 1993.
30. CourEDH, arrêt *Burghartz c. Suisse,* arrêt du 22 février 1994.
31. CourEDH, arrêt *X et Y c. Pays-Bas* du 26 mars 1985.
32. CourEDH, arrêt *Schuler-Zgraggen c. Suisse* du 24 juin 1993.
33. CourEDH, arrêt *Smith et Grady c. le Royaume-Uni* du 27 septembre 1999.
34 . CourEDH, arrêt *Bic et autres c. Turquie* du 2 février 2006, § 22.
35. *Ibid*, § 24.
36. Cf. CourEDH, décision (irrecevabilité) *Sanles Sanles c. Espagne* du 26 octobre 2000. La requête était présentée par la belle-soeur de M. Sampedro qui mit fin à ses jours à l'aide de tiers alors que son recours tendant à la reconnaissance de son droit à une mort digne était pendant. La Cour a estimé que la requérante n'était pas directement affectée par les violations alléguées de la Convention et ne pouvait donc se prétendre victime de ces violations (incompatibilité *ratione personae*).
37. Voir aussi CourEDH, décision (irrecevabilité) *Ben Salah Adraqui et autres c*. *Espagne* du 27 avril 2000, (recours d'*amparo* rejeté pour tardiveté). Cf. en revanche CourEDH, arrêt du 30 janvier 2001, *Dulaş c*. *Turquie*, § 47 : « The insecurity and vulnerability of the applicant following the destruction of her home is also of some relevance in this context. »
38 . CourEDH, arrêt *Devrim Turan c*. *Turquie* du 2 mars 2006, §§ 20 et 21 et l'opinion partiellement dissidente du juge Hedigan à laquelle se rallie le juge Björgvinsson.
39 . S. PALMER, « Critical Perspectives on Women's Rights: the European Convention on Human Rights and Fundamental Freedoms », *in* A. BOTTOMLEY (éd.), *Feminist Perspectives on the Foundational Subjects of Law*, Londres, Cavendish, 1996, pp. 241-242.
40. CourEDH, décision (irrecevabilité) *Erikson c*. *Italie* du 26 octobre 1999 ; CourEDH, arrêt *Siddik Yaşa c*. *Turquie* du 27 juin 2002 ; CourEDH, arrêt *Aydin Eren et autres* c. *Turquie* du 21 février 2006.
41. CourEDH (GC), arrêt *Ogür c*. *Turquie* du 20 mai 1999 ; CourEDH (GC), arrêt *Tanrikulu c*. *Turquie* du 8 juillet 1999 ;
42. CourEDH, arrêt du 17 mars 2005, *Bubbins* c. *Royaume-Uni* ; CourEDH, arrêt du 6 juillet 2005 (Grande Chambre), *Natchova et autres* c. *Bulgarie*.
43. CourEDH, arrêt du 13 juin 2002, *Anguelova* c. *Bulgarie* ; CEDH, arrêt du 16 mai 2000, *Velikova* c. *Bulgarie* ; CourEDH, arrêt du 23 février 2006, *Ognianova et Tchoban* c. *Bulgarie*.
44. CourEDH, arrêt du 3 avril 2001, *Keenan* c. *Royaume-Uni* ; CourEDH, décision (irrecevabilité) du 7 janvier 2003, *Younger* c. *Royaume-Uni*.
45. CourEDH, arrêt du 27 juillet 2004, *Slimani* c. *France*.
46. CourEDH, décision du 23 novembre 1999, *Bromiley* c. *Royaume-Uni*.
47. CourEDH, décision (irrecevabilité) du 31 août 1999, *Valesano* c. *Italie* ; CourEDH, décision (irrecevabilité) du 8 avril 2003, *Francis* c. *Royaume-Uni*.
48. CourEDH, décision (irrecevabilité) du 22 février 2005, *Rowley* c. *Royaume-Uni*.
49. CourEDH, décision (irrecevabilité) du 3 juillet 2001, *Alvarez Ramón* c. *Espagne*.
50. Dans le même sens, CourEDH, décision (irrecevabilité) du 13 janvier 2005, *Christodoulou* c. *Grèce*.
51. CourEDH, arrêt du 30 janvier 2001, *Dulaş* c. *Turquie*, § 55.
52. CourEDH, décision (irrecevabilité) du 23 avril 2002, *Larioshina* c. *Russie*, p. 4.
53. CourEDH, arrêt du 20 septembre 2005, *Frik* c. *Turquie*, §§ 28-31.
54. Cf. les travaux envisagés en 2006 de la Commission de la condition de la femme de l'Assemblée générale des Nations Unies sur le thème « Aspects sexospécifiques des migrations internationales ».
55. Voir aussi, mais s'agissant d'allégations générales de risques de mauvais traitements en cas d'expulsion et de la preuve de ceux-ci, CourEDH, décision (irrecevabilité) du 28 février 2002, *Zubeyde* c. *Norvège* ; CourEDH, décision (irrecevabilité) du 22 septembre 2005, *Kaldik* c. *Allemagne*.
56. CourEDH, arrêt du 30 octobre 2001, *Saki* c. *Turquie* ; CourEDH, arrêt du 9 avril 2002, *Z.Y.* c. *Turquie* ; CourEDH, arrêt du 19 mai 2004, *Toteva* c. *Bulgarie* ; CourEDH, arrêt du 7 juin 2005, *Dalan* c. *Turquie* ; CourEDH, arrêt du 2 mars 2006, *Devrim Turan* c. *Turquie*.
57. CourEDH, arrêt du 16 juillet 2002, *Yildiz* c. *Turquie* ; CourEDH, arrêt du 22 octobre 2002, *Algür c. Turquie* ; CourEDH, arrêt du 4 mars 2003, *Özkur et Göksungur* c. *Turquie* ; CourEDH, arrêt du 22 juillet 2003, *Ayşe Tepe* c. *Turquie* ; CourEDH, arrêt du 22 juillet 2003, *Esen* c. *Turquie*.

58. CourEDH, arrêt du 11 avril 2000, *Veznedaroglu* c. *Turquie* ; CourEDH, arrêt du 20 septembre 2005, *Baltaş* c. *Turquie*.
59. CourEDH, arrêt du 10 janvier 2006, *Yavuz* c. *Turquie*, § 39.
60. CourEDH, arrêt du 9 mars 2006, *Menesheva* c. *Russie*, §§ 58 et 59.
61 . Voir « CEDH, 26 juillet 2005, n° 73316/01, Siliadin c. France », *Juris-classeur périodique* G 2005, II, 10142, note F.
Sudre. Cf. aussi la Recommandation 1663(2004), « Esclavage domestique: servitude, personnes au pair et "épouses
achetées par correspondance" » de l'Assemblée parlementaire du Conseil de l'Europe du 22 juin 2004, § 2.
62 . CourEDH, arrêt *Siliadin* c. *France* du 26 juillet 2005, § 89.
63 . *Ibid.*, § 112.
64. *Ibid.*, § 129.
65. *Ibid.*, § 148.