



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME



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POSITIONS ON WOMEN'S RIGHTS

This is a collection of Positions on women's rights from the Council of Europe Commissioner for Human Rights. It is a short summary of the findings of the Commissioner based on his country-monitoring and thematic reports, issue papers, recommendations, opinions and viewpoints. By collating these findings drawn from the different components of his work, the Commissioner presents a summary of his conclusions and recommendations concerning the human rights of women. The Positions will be continuously updated in the light of the Commissioner's ongoing work.

There are widespread and serious violations of the rights of women across Europe. Despite progress in the awareness and legal protection of women's rights, discrimination against women persists in key fields of life, such as employment, education and political participation.

Many women are still not free to control their sexual and reproductive life and health. Furthermore, violence against women remains a significant yet under-recognised problem. Taboos, ignorance and complacency still surround the issue of domestic violence, contributing to its persistence.

Women in all parts of Europe continue to be victims of sexual exploitation and forced prostitution, yet states are still not taking sufficiently strong measures to address this alarming problem.

Minority and migrant women are particularly vulnerable to different forms of abuse and violations of their rights.

Women's rights are human rights and it is high time that European countries take effective actions to counter the many violations women experience as well as the patriarchal stereotypes that feed and legitimise them.

Promoting equality and non-discrimination in key sectors

It is crucial that authorities persevere in their efforts to promote gender equality in all key sectors of life. These efforts should be anchored by a comprehensive and effective legal framework, for instance by including gender within anti-discrimination legislation and adopting specific gender equality legislation.

States should also ratify key international instruments providing for rights protection in this area, such as the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women. This Protocol allows individual women, or groups of women, to submit claims of violations of rights protected under the Convention to the Committee monitoring the Convention's application. Ratification of Protocol 12 to the European Convention on Human Rights, providing an independent non-discrimination guarantee, is also an important step.

The development of clear and action-oriented policy frameworks in this area, such as a national action plan on gender equality, is another important approach that should be developed. Structural and targeted policy measures are needed, including positive measures for improving gender equality.

With respect to women's equality in the employment sector, there is a strong need to take steps to ensure that women have equal opportunities in the labour market at all levels, including senior and managerial-level positions, and that the principle of "equal pay for equal work" becomes a reality. The state should take the lead in the public sector.

An important step involves ensuring enhanced transparency and standardisation of public recruitment procedures for improving the comparability of the merits of different applicants. Increased transparency would also promote public confidence and encourage qualified applicants to seek government jobs. Authorities should furthermore review training and recruitment criteria as well as promotion procedures to ensure that they do not discriminate, directly or indirectly, against women candidates.

Wages in the private sector are often governed by collective agreements between social partners, without much room for state intervention. However, governments should step in and define the frameworks within which negotiations are possible. In order to ensure gender neutral job evaluation and grading systems, they can, for instance, specify the rules for applying the principle of equal pay for equal work between different sectors of employment. Authorities could also make use of awareness raising measures in the private sector, such as providing information to employers, employees and the public about their rights and duties.

Collective claims or class actions can play a key role in this area as groups of plaintiffs can challenge sector-related wage differences more easily than individual employees. The right to such collective claims or class actions should be introduced in states where this right does not exist today. This possibility is important even in contexts where trade unions may challenge collective agreements, as they may refrain from doing so. States should also join the collective complaints mechanism of the European Social Charter, which allows organisations of employers and trade unions as well as certain NGOs to make submissions to the European Committee of Social Rights¹.

With respect to the education sector, taking steps to bring about equal access and the participation of girls at all levels of the education system is of utmost importance. This is fundamental to women's empowerment and breaking the cycle of gender inequality.

Women's political participation must be encouraged at all levels. Gender-sensitive issues are often set aside in the political agenda or given inadequate funding as a result of women being grossly underrepresented in elective functions and higher administrative bodies. Proactive steps, including positive measures, should be taken to improve the representation and participation of women in politics.

Sexual and reproductive rights

States should take measures to empower women to control their sexual and reproductive life. Adequate sexual health and rights education for both boys and girls at all levels of schooling is one important tool to make this possible. Course materials should be accurate and inspected on a regular basis. They should also promote an adequate knowledge of reproductive health, thereby decreasing women's vulnerability to HIV/AIDS and other sexually transmitted diseases.

Abortion remains a contentious issue in a number of European countries. Women face very serious difficulties in countries where abortion is criminalised or legal possibilities for receiving abortions are limited. In such circumstances, women may be forced to have recourse to illegal abortions or go abroad for treatment. Such steps carry the stigma of illegality and women may be placed in difficult circumstances, not least if there are any medical complications after a performed abortion. Illegal abortions also often engender risks to women's health and even life. Furthermore, vulnerable women, such as young and migrant women, may have particular difficulties in accessing abortion services abroad.

Legal possibilities for women to receive abortions should be effectively realised in practice, as stated by the judgement of the European Court of Human Rights in the case of *Tysiac v. Poland* (2005)². The Court ruled that once the legislature decides to allow a termination of pregnancy, it must not structure its legal framework in such a way as to limit the use of that possibility. The Court furthermore noted that there is an obligation for authorities to ensure that there is some form of procedure before an independent and competent body, which after having had the opportunity to hear the pregnant woman in person, issues prompt, written grounds for its decision.

¹ See: http://www.coe.int/t/dghl/monitoring/socialcharter/Complaints/Complaints_en.asp

² *Tysiac v. Poland*, application no. 541003, 20 March 2007.

States should have a comprehensive approach to reproductive rights, including family planning services, appropriate sexual and reproductive health education, and should also ensure access to affordable contraception.

In cases where there are allegations by women of having undergone forced sterilisation, states should ensure that there is a thorough and independent investigation into such claims. Where allegations are confirmed, a speedy, fair, efficient and just redress, including compensation and an apology, must be executed. Furthermore, states should ensure that their legal framework sufficiently specifies the requirement of free and informed consent for medical acts, including sterilisation.

Violence against women

Violence against women is a manifestation of unequal status between men and women in society. Therefore, violence against women must be addressed in the context of seeking to end all forms of discrimination, to advance gender equality and to empower women.³

Ignorance, taboo and acceptance – legal and social – have long surrounded the issue of violence against women. A first step in combating the widespread violence women experience is actually recognising the problem.

Research, education and information campaigns are crucial to raising awareness that this is a human rights issue, and that there must be zero tolerance concerning violence against women. Authorities should initiate such campaigns as well as support civil society groups active in this field. Creating genuine awareness in society at large is essential.

There also needs to be the political will to take the necessary steps to address this widespread problem. Violence against women can be viewed as an extreme manifestation of discrimination, which reflects unbalanced power structures and results in the suppression and humiliation of women.

There should be precise and strict legislation. The legal framework is important and must provide for a wide definition of violence against women, including psychological forms. It must cover preventive and educational measures, as well as protection and assistance for victims and measures against perpetrators.

A good law is the result of a broad consultative process involving women's groups and experts, including victims, and taking into account the opinions of civil society. Adequate and specific sanctions are necessary to deter perpetrators. Moreover, it is essential that such laws and sanctions be enforced in practice. Detailed guidelines or protocols to establish clear standards are necessary, for example for the police to follow when dealing with violence against women. In addition, judges specialising in family issues should be available at local courts.

No excuses should be made in the law or its enforcement regarding "private family matters", and there should be no room for complacency towards "family honour" crimes or genital mutilation. All legislation should include specific provisions regarding spousal rape.

It is crucial that the response to such abuses be professional and gender sensitive. The rights of the victims to privacy, dignity and full autonomy should be fully respected at all stages and by all actors. Education of police, social workers, health workers, teachers and the judiciary must include training on how to recognise and deal with violence against women.

³ Commissioner Thomas Hammarberg's keynote address at the Conference on the Council of Europe Campaign to Combat Violence against Women, including Domestic Violence, Madrid, 27 November 2006, CommDH/Speech(2006)25.

There should be a specific strategy and action plan covering both national and local levels. A victim-centred approach needs to be at the heart of responses. A well-funded and well-staffed network of support services aimed at prevention, protection and prosecution is a necessary component, as is rehabilitation. The victim must be supported in overcoming all the various difficulties and consequences caused by the violence. Help-lines, shelters and socio-psychological rehabilitation programmes, run by NGOs, local communities or governments, need to be developed in sufficient number, and should be eligible for public subsidies. A permanent police protection of shelters against unwanted visitors is also essential.

In addition, laws should prevent contact between the perpetrator and the victim, for instance through restraining orders. It is unfair that the victim may have to flee and hide away from her home, while the perpetrator is allowed to remain. Provisions allowing for the removal of the perpetrator from the family home are therefore generally preferable and must be considered. When a conflict arises between the right of a father to visit his children on a regular basis, and the right of the mother to avoid any contact with her abusive partner, adequate solutions should be set up for the father to meet his children without disclosing the mother's address and whereabouts.

There is a strong need to pay special attention to those most at risk, such as migrant women. If a migrant woman's residence status is dependant on that of her husband, she is unlikely to report domestic violence to the police for fear of losing her residence status. In order to address such concerns, policies that allow women to retain residency rights in cases of abuse by their spouse are necessary. In general, it is preferable that residency rights be granted on an individual basis, and not made dependent solely on the person's marital status. It is also essential that migrant women be able to access information about their rights and available support services.

A number of women in European countries are threatened with genital mutilation, either carried out in secret or during vacations to countries where such practices are common. Authorities must take speedy and appropriate measures against such practices and send out the unequivocal message that female genital mutilation is an attack on the integrity of the human body and as such a violation of women's human rights. Furthermore, in order to address mutilations carried out overseas, authorities should seriously consider laws similar to those targeting sexual tourism abroad.

Sexual exploitation and forced prostitution

Forced prostitution and sexual exploitation exist across Europe. This problem is tightly linked with trafficking, although vulnerable women may also be forced into prostitution in other circumstances.

There must be no complacency towards the issue of forced prostitution. Thorough investigations should be carried out against employers, pimps and traffickers suspected of involvement in forced prostitution and perpetrators tried and sentenced. In such cases, adequate victim and witness protection measures should be put in place. In countries where prostitution is lawful or tolerated, authorities must take steps to ensure that legal prostitution in no way opens the door for illegal exploitation and trafficking. Steps such as strict licensing legislation and regular monitoring of licensed establishments are essential.

In order to better safeguard the rights of sex workers, information campaigns regarding the availability of health support and social services should be directed towards them, and rehabilitation programmes made available to those wanting to leave prostitution.

KEY RECOMMENDATIONS

States should ratify key international instruments providing protection of women's rights, adopt specific gender equality legislation and develop an action plan on gender equality including the necessary positive measures.

Promote equal access of women to the workplace by reviewing training, recruitment and promotion criteria in order to eliminate any discrimination. Promote gender-neutral job evaluation and grading systems in collective agreements between social partners and introduce the right to collective claims in this area.

Take proactive steps to improve the political participation and representation of women, and to improve the participation of girls at all levels of the education system.

Sexual and reproductive health should be taught at school in an appropriate manner, and women should have access to adequate family planning services and affordable contraception. Steps should be taken to ensure that legal possibilities for abortions may be effectively realised in practice.

Ensure that the legal framework sufficiently specifies the requirement of free and informed consent for medical acts, including sterilisation.

Take speedy and appropriate measures against female genital mutilation and send out the unequivocal message that female genital mutilation is an attack on the integrity of the human body and as such a violation of women's human rights.

Set up comprehensive strategies to fight violence and abuse against women. These strategies should consist of: reporting and monitoring the extent of the phenomenon and the progress made; adopting and implementing detailed legislation and specific sanctions for domestic violence, including psychological abuse; providing support to the victims through integrated services and rehabilitation programs; and awareness raising measures aimed at officials likely to be in contact with victims as well as the general public.

Adequately funded and staffed shelters for women who are victims of violence should exist in sufficient number, and be given police protection when needed.

Special attention should be paid to particularly vulnerable women, such as migrants. Information should be targeted to migrant women to inform them about their rights and available services; when they are separated from a violent partner, they should be able to retain residency status through a reasonably rapid procedure.

Forced prostitution should be addressed through a combination of vigorous law enforcement and witness and victim protection and support. Sex workers' rights should also be better safeguarded through information campaigns regarding the availability of health support and social services, as well as rehabilitation programs.