

AD HOC MEETING ON GENDER EQUALITY MAINSTREAMING IN LAW REFORM

(Strasbourg, 12 November 2019)

Report prepared by the Rapporteur of the meeting:

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On 12 November 2019 the European Committee on Legal Co-operation (CDCJ) held an ad hoc meeting on gender equality mainstreaming in law reform. The aim of the meeting was to highlight the relevance of gender equality in the process of law-making, to identify challenges in the context of gender equality and to elaborate on mechanisms to approach gender equality-related issues.

The meeting was chaired by **Ms Zuzana Fišerová** (CDCJ member, Czech Republic) and met with great interest by the attending participants. Through a number of presentations and an engaging debate between the participants and the speakers, the meeting fully met its objective to raise awareness on the subject of gender equality in law reform.

In a very useful introductory presentation, **Ms Caterina Bolognese**, Head of the Gender Equality Division in the Directorate General of Democracy in the Council of Europe an overview of the activities of the Council of Europe in this field. She noted that gender mainstreaming is a constantly growing overall important policy area and a priority topic for the organization as a whole. She pointed out that the strategy of the Gender Equality Division is to improve policy-making through a practical approach by incorporating a gender equality perspective at every stage of policy design, implementation and monitoring.

Ms Bolognese referred to the Gender Equality Strategy of the Council of Europe, which now is in its second period from 2018 to 2023, and gave an overview of the existing Council of Europe activities on gender mainstreaming, including five recommendations on the topic and various training and briefing tools on the website. With more than 50 Gender Equality Rapporteurs appointed in the various intergovernmental committees, the topic has been rolled out to all fields. According to Ms Bolognese, a true change of approach in the work of the committees can be observed („gender equality wake-up call“). As an example she quoted the way GRECO has incorporated a gender view into its perception of corruption.

On the question why gender mainstreaming matters, she pointed out existing inequalities between men and women in many different fields reaching from salary rates to access to political power and justice in so far as sexual violence is concerned. A typical problem she described was that laws may seem to be gender-neutral by their wording but in reality they are „gender-blind“ because they do not see the differences that lie behind the seemingly gender-neutral words and fail to take them into account. In order to overcome this, the legislator is called upon to actively identify and consider gender differences and turn „gender-blindness“ into „gender-sensitivity“ („challenge the gender-neutrality of policies“). To achieve this goal, as a first step facts and figures need to be collected, which then need to be analyzed with a gender perspective added to the analysis. Only then a gender-sensitive solution can be implemented in the subsequent step of policy-making. This process obviously requires not only a clear objective and commitment by the acting persons but also and above all adequate resources and capacity to carry out such research.

To sum up, Ms Bolognese encouraged CDCJ to incorporate gender mainstreaming into all its work on law reform. Participants were called upon also in their domestic work to perceive the objective to bring a gender perspective into their respective fields of work as a chance for everyone involved, rather than a burden.

In the first of two presentations from the academic point of view, **Prof. Dr. Christine Chinkin**, Director of the Centre of Women Peace & Security at the London School of Economics, first noted that issues of gender inequality do not solely apply to the traditional binary pair of male–female, a notion which was picked up by a number of speakers throughout the meeting. She then reiterated some of the points made in the introductory presentation by Ms Bolognese. Professor Chinkin introduced what she called the „paradox of feminism“: like Ms Bolognese, she criticized the approach found frequently to try to achieve gender equality by gender-neutral language assuming that as long as the language is neutral, the wording will apply to both sexes and equality has been achieved. She pointed out that, on the contrary, even though the language appears to be neutral, it can have a discriminatory effect because pre-existing inequalities have not been addressed (as confirmed in General Recommendation No. 28 (2010) of the Committee on the Elimination of Discrimination against Women (CEDAW)). Gender neutrality therefore runs the danger to perpetuate the causes of gender inequality. In order to transform society towards women’s substantive equality, rather an explicit gender-specific perspective should be pursued and specific references to women should be introduced into policies and legal texts as an institutional policy.

As methods for remedies to address „false gender neutrality“, Professor Chinkin, similar to Ms Bolognese, suggested a „gender audit“ of existing policies, practices and law and a gender impact analysis based on gender disaggregated research in advance of proposed changes. All these tools require both gender budgeting and gender sensitivity. This approach has been confirmed by the European Court of Human Rights which has ruled that substantive gender equality can only be achieved with a gender-sensitive interpretation and application of the European Convention on Human Rights that takes into account the factual inequalities between women and men and the way they impact women’s lives.

In the second academic presentation, **Dr. Alexandra Timmer**, Associate Professor at the Netherlands Institute of Human Rights, introduced a scheme of three central obligations of the State on three different levels. On the first level states are obliged to reach „formal equality“ in the sense that there is no direct or indirect gender discrimination. On a second level of „substantive equality“, the de facto position of disadvantaged groups needs to be improved. And finally on a third level of „transformative equality“, prevailing gender-based stereotypes should be addressed in order to bring about structural change. Also referring to the Council of Europe Gender Equality Strategy 2018- 2023 and other instruments and institutions inside and outside the Council of Europe (Istanbul Convention, CEDAW, EU Commission Strategic Engagement for Gender Equality), Dr Timmer pointed out that combatting gender stereotypes is high on the international and European human rights agenda.

When it comes to law reform, Dr. Timmer emphasized that the focus should be on eliminating structural gender discrimination. All kind of law reforms should always aim at gender mainstreaming. She pointed at the typical trap of „just window-dressing“. in this context. Like the previous speakers, she stressed that it should never be assumed that an area is gender neutral. Facially gender-neutral rules may be not if they are based on gender stereotypes.

In conclusion, Dr. Timmer admitted that gender mainstreaming is an on-going process and a demanding task for the lawmakers and no easy solutions are available. A good starting point can be the question whether a law reflects or reinforces gender stereotyped views about „proper“ roles of men and women whereas it should actually be used to combat and eliminate gender discrimination.

Those presentations were followed by two interventions from national perspectives by France and Croatia.

For **France**, Mr. **Alexis Reichenbach**, who is also a member of the Gender Equality Commission of the Council of Europe, gave an overview of the French government's approach on gender equality. He pointed out that gender equality is a main thrust of French politics taken into account into every field of policy-making, including the international framework. In addition to the instruments by the Council of Europe and the European Union already mentioned, he specifically referred to the UN Agenda 2030 which includes achieving gender equality in its Sustainable Development Goal no. 5. The topic also featured prominently during the French G7 Presidency with the summit of Heads of State and Government held in Biarritz in 2019. In view of law reform, Mr. Reichenbach presented the horizontal approach France has taken throughout all ministries. Each ministry has a budget road map for equality policies focusing on its particular sector, e.g. in the Ministry of Justice on better access for women to justice and in the Ministry for Foreign Affairs, on raising the quota of female ambassadors.

For **Croatia**, Mr. **Domago Frntic**, a judge, presented the national anti-discrimination package which was adopted in 2009 as well as the law on gender equality and the established institutional framework consisting of a Governmental Office for Gender Equality and an Ombudsman. He then focused on national training activities in the judicial sector, especially in the framework of an EU Twinning Gender Mainstreaming Judicial Project in 2017 with Finland and Austria. In this context, Mr. Frntic stressed the importance of training based on his own practical experiences as a judge in discrimination cases as these issues will increasingly occupy the judicial field. In his view, judges, prosecutors and lawyers in Croatia are now increasingly aware of the concept of gender equality, also in the field of criminal law and victimisation and are well prepared to tackle these questions.

In a short questions and answers session, participants unanimously stressed their interest in the topic and the high relevance of the issues addressed in the meeting for their domestic work. Further examples of national initiatives taking into account issues of gender equality were added.

In conclusion, the topic of the meeting and the presentations given were highly welcomed and received extremely well. Participants emphasized the need for awareness-raising, particularly for underlying gender inequalities behind a seemingly gender-neutral language. The need for horizontal strategies and global training for the issues at stake were reiterated several times. In this context, there was a clear wish to elaborate further on tools and techniques to approach the challenges presented in the meeting. The participants agreed that the topic should remain on the agenda of the CDCJ and follow-up work to this meeting should be developed.