"Are we there yet? Assessing progress, inspiring action –
the Council of Europe Gender Equality strategy 2014-2017"
Sylwia Spurek, *Promoting equal access of women to justice*

Equal access of women to justice – what does it mean?

Ensuring access to justice is ensuring access to fair, affordable, accountable and effective remedies in terms of contact with, entry to and use of the legal system. Equal access to justice implies:

- the right to an effective remedy
- the right to a fair trial
- the right to equal access to courts and the right to legal aid and legal representation which improve access to courts[1].

What are main barriers women faced in access to justice?

1. **Mix of:**

1) lack of awareness of procedures - you have to know the procedure [meaning: you need to have an access to legal aid and legal representation]
2) lack of financial resources and restrictions on the availability of legal aid – funds needed [again] for legal aid and legal representation plus further costs (for judicial fees and taxes, for transportation to courts, accommodation, and in the realities of women's lives – for childcare and the care for the dependent persons). Free legal aid depends usually on financial and social status, victims of violence against women or discrimination are not listed expressly in the provisions on free legal aid.

   Women are just the financially weaker party!

2. **Cultural barriers, fear and shame** – discriminatory attitudes, stereotypes[2] and prejudices mostly reflected in relation to civil and family law (child support, parental

[1] More information on international legal framework, obstacles faced by women in access to justice in general, challenges for women in relation to criminal law (women as victims of crime women as offenders), to civil and family law, to public law, and the issue of women in the justice sector – see Feasibility Study *Equal Access Of Women To Justice*, Gender Equality Commission, Strasbourg, 28 May 2013, http://www.coe.int/t/dghl/standardsetting/equality/03themes/access_to_justice/GEC_2013_1_en%20rev_title.pdf . See also documents and materials of the conference "Towards guaranteeing equal access to justice for women", 15 - 16 October 2015, Bern, Switzerland, including *Report* and *Compilation of good practices*, http://www.coe.int/en/web/genderequality/towards-guaranteeing-equal-access-of-women-to-justice.

[2] In the very recent report concerning Poland the Commissioner for Human Rights of CoE says: "Despite measures taken to train police, prosecutors and judges, gender stereotyping reportedly also remains entrenched in the handling of cases by police and courts, a factor which has a negative impact on women's access to justice, particularly in the fields of domestic violence, gender-based violence

responsibilities, guardianship, divorce proceedings and the division of property) – men as a breadwinners and women as better carers. It's also a true in relation to criminal law in cases of domestic violence and sexual violence – prosecutors, law enforcement officials and other actors sometimes allow stereotypes to influence investigations and trials, especially in cases of gender-based violence.

3. **Emphasis placed on using alternative dispute resolutions (ADR) such as mediation.** ADRs decrease the cost and time of litigation. In cases of gender-based discrimination and violence against women when the two parties have unequal positions mediation fails to provide a truly accessible, fair, and empowering process for all.
4. **Gender neutral legislation**
5. **The lack of gender balance and gender bias in courts and among law enforcement officials** plus training on gender equality and anti-discrimination legislation at the level of the judiciary and of law enforcement agents.

These barriers are a combination of legal, institutional, economic and cultural elements. They affect even more women from the most vulnerable groups such as those belonging to a minority, disabled or rural women, elderly women, women with disabilities, lesbian/bisexual/transgender women, trafficked women, migrants, refugees, asylum seekers and undocumented women, and women from certain ethnic or religious groups.

What are existing standards?

1. United Nations

1) the right to equality of persons before courts and tribunals and the right to fair trial:
International Covenant on Civil and Political Rights (articles 2 and 14), Universal Declaration of Human Rights (article 10), International Covenant on Economic, Social and Cultural Rights (articles 2 (2) and 3), Convention on the Elimination of Racial Discrimination (article 5(a))

2) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW Convention) – prohibition of discrimination of women through laws and ensuring of effective legal protection of women's entitlement to enjoy rights on an equal basis with men (article 2 (b) and (c), repealing of all national penal provisions which constitute discrimination against women (article 2 (g)), the principle of women's equality before the law - women's equal

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and trafficking in human beings", Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe following his visit to Poland from 9 to 12 February 2016, http://www.coe.int/en/web/commissioner/-/erosion-of-rule-of-law-threatens-human-rights-protection-in-poland.

access to courts and tribunals, as well as their equal protection of the law (article 15). Plus General Recommendation 33 (2015) on women's access to justice of CEDAW Committee and Beijing Platform for Action.

2. Council of Europe

1) European Convention on Human Rights (article 6 and 14), European Social Charter, Convention on Action against Trafficking in Human Beings (article 15)

2) Convention on Preventing and Combating Violence against Women and Domestic Violence includes numerous provisions aimed at facilitating the access of victims of violence to justice, in particular by requiring states parties: to provide adequate legal information (Article 19), to encourage reporting (Article 27), to provide victims with adequate civil remedies (Article 29), and compensation (Article 30), to criminalise or otherwise sanction a broad range of forms of violence against women (Articles 33-40), to ensure that investigations and judicial proceedings are carried out without undue delay (Article 49), that prosecutors can initiate and continue proceedings, even if the victim withdraws the complaint (Article 55), that evidence relating to the sexual history and conduct of the victim is permitted only when relevant and necessary (Article 54), that mandatory alternative dispute resolution processes or sentencing, including mediation and conciliation, are prohibited (Article 48), that victims are protected at all stages of investigations and judicial proceedings (Article 56), that they have access to legal assistance and to free legal aid (Article 57).

3. European Union – the Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (Victims' Directive). The objective of the Directive is to ensure that victims receive the support they need, that they can participate in proceedings and receive and understand relevant information, and that they are protected throughout criminal investigations and court proceedings. Authorities are obliged to determine whether and to what extent the victims would benefit from special measures in the course of criminal proceedings.

A few of the issues are of great importance:

1) access to free legal aid for women by ensuring that eligibility criteria for legal aid is formulated on the basis of gender considerations so as to take into account the diverse realities of women's lives;

2) addressing the power dynamics between men and women in alternative dispute resolution processes to ensure the rights or women are respected and their voices and concerns heard;
3) ensuring of the possibility of legal standing for NGOs to bring proceedings before the court;
4) raising awareness among law enforcement officials to eliminate the gender-based stereotypes;
5) ensuring of the resources and powers to equality bodies which could monitor and secure the equal access of women to justice;
6) taking special measures at the legal or practical level in order to address the needs of vulnerable women and enhance their access to justice.

CONCLUSIONS – WHAT TO DO?

The standards are the response for the barriers. Member States should just ensure the full implementation of international and regional human rights treaties and standards to make equal access to justice for women a reality.

Recommendation: to create a **Women's Access to Justice Index**[3].

The Women's Access to Justice Index could be a tool to:

1) promote the issue (better communication)
2) track compliance with international standards and recommendations
3) measure the issue and assess how far a given state is from reaching equal access of women to justice
4) support decision-makers in planning and implementing the strategy created in order to reach it.

[3] A first step has been already done – see "A Framework for Measuring Access to Justice Including Specific Challenges Facing Women", https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680631f55.