Parliamentary **Assembly**
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Respect for the principle of gender equality in civil law

Report
Committee on Equal Opportunities for Women and Men
Rapporteur: Ms Svetlana Smirnova, Russia, European Democrat Group

Summary

Even though the Assembly welcomes recent developments in many member states of the Council of Europe securing more respect for the principle of gender equality in civil law, it remains concerned, however, that in some areas of law and in some jurisdictions – even in Europe –, women continue to suffer discrimination.

This discrimination is especially frequent in terms of women's personal status and in family law, in both private relations governed by national law and in private international relations.

The Assembly is convinced that only a new Protocol to the European Convention on Human Rights enshrining gender equality as a human right can ensure that remaining discrimination against women in civil law, both in domestic legislation of Council of Europe member states and in private international law, is finally eliminated.

Thus, it recommends that the Committee of Ministers draw up a new Protocol to the European Convention on Human Rights enshrining gender equality as a human right with priority over any provision deriving from, or applicable under private international law agreements or conventions. In the meantime, it also invites member states to ensure that they protect gender equality in all areas of civil law.

A. Draft recommendation

1. The Assembly welcomes recent developments in many member states of the Council of Europe securing more respect for the principle of gender equality in civil law. It remains concerned, however, that in some areas of law and in some jurisdictions – even in Europe – women continue to suffer discrimination.

2. Two studies of Europe's legal systems commissioned by the Assembly's Committee on Equal Opportunities for Women and Men have revealed that this discrimination is especially frequent in terms of women's personal status and in family law, in both domestic and international law. In practice, in some cases, discrimination against men also occurs, in particular concerning the exercise of parental rights.

3. Regarding discrimination against women in private relations governed by national law, a certain lack of equality within couples (inequality in matters of marriage and in the event of divorce) can be cited, as well as discrimination against mothers in establishing relationships by descent and the legal consequences thereof (including the passing on of the mother's surname to her children). Regarding the principle of gender equality in private international relations, rules of private international law providing for attachment to the husband's or father's national law are especially worrisome, as is the inequality resulting from the application of discriminatory rules of foreign law.

4. The Assembly recalls its Recommendations 1271 (1995) and 1362 (1998) on "Discrimination between women and men in the choice of a surname and in the passing on of parents' surnames to children". While most Council of Europe member states have in the meantime made it legal for a woman to retain her maiden name upon marriage, few have made it possible for a woman to pass on her name to her children. Forcing a woman to take her husband's name can be seen as a form of "depersonalisation" of the woman, reducing her to a "part" of the husband's family, and violating her private life in revealing her marital status and sometimes even her marital problems to complete strangers. Similarly, the inability of women in many jurisdictions to pass on their surname – and thus part of their identity – to their children can be seen as a form of discrimination against women. It is high time that all Council of Europe member states modify their legislation in both these areas without further delay in accordance with the Assembly's recommendations.

5. Discrimination against women also occurs in the sphere of private international relations, for instance where a conflict-of-law rule provides for a woman's attachment to the national law of residence of her husband or father. The same is true where such a rule results in the application of a discriminatory provision of foreign law. A typical example is legislation based on the traditional principles of Muslim law, which treat women as fundamentally unequal in status. When confronted with such legislation, European courts usually resort to the international public policy (*ordre public*) argument, which enables them to exclude the application of a rule of foreign law incompatible with the principle of equality.

6. However, the difficulties arising from acceptance of such foreign laws are greater where their application is an outcome of international treaties to which Council of Europe member states are party, as the European Convention on Human Rights does not automatically take precedence over other international instruments or provisions of foreign law designated by an international treaty.

7. The Assembly is convinced that only a new protocol to the European Convention on Human Rights enshrining gender equality as a human right can ensure that remaining discrimination against women in civil law, both in the domestic legislation of Council of Europe member states and in private international law, is finally eliminated.

8. This solution – going further than the existing rules of non-discrimination enshrined in Article 14 of the European Convention on Human Rights and Protocol No. 12 to the Convention – would have the advantage of ensuring legal certainty by expressly providing for the pre-eminence of the principle of gender equality over any provision deriving from, or applicable under, an international agreement or convention. This pre-eminence would, of course, still be subject to the need to make an actual assessment of the question of equality in the case at hand.

9. The Assembly thus recommends that the Committee of Ministers:

9.1. draw up a new protocol to the European Convention on Human Rights enshrining gender equality as a human right with pre-eminence over any provision deriving from, or applicable under, private international law agreements or conventions;

9.2. invite member states, in the meantime, to ensure that they protect gender equality in civil law by:

9.2.1. reviewing and, if necessary, amending their own domestic legislation, especially in family law (including women's personal status, marriage and divorce law, and the rules governing the passing on of mothers' surnames to their children);

9.2.2. reviewing and, if necessary, renegotiating or rejecting any provisions in bilateral or multilateral treaties which could lead to the acceptance or application of discriminatory rules of foreign law.

B. Explanatory memorandum by the Rapporteur, Ms Smirnova

I. Preparation of the report

1. At my request, the Committee on Equal Opportunities for Women and Men (the Committee) successively appointed two experts to help prepare this report. The experts have now submitted the results of their investigations, namely the revised expert paper by Ms Stéphanie Billaud (France)[1] and the expert note prepared by Ms Svetlana Polenina (Russia)[2] on the basis of a questionnaire sent to all the national delegations to the Assembly[3]. The expert papers are available from the Committee Secretariat.

2. After the submission of their reports, separate hearings of these experts were organised, on 9 March 2006 and 15 January 2007.

3. I am wholly satisfied with these reports, and have taken on board most of the analyses and proposals they set forth, making explicit reference to them in this memorandum. Since this subject raises technical legal problems, I would stress the importance of the explanations provided by the experts, and draw the reader's attention to the technical nature of the ensuing explanatory memorandum.

4. Furthermore, on 20 October 2006 the Committee organised a Parliamentary Seminar on "respect for the principle of equality between women and men in civil law, including in family codes" in partnership with the Council of Europe North-South Centre. Parliamentarians from Algeria, Morocco and Tunisia and the Committee members were invited to this seminar, which was extremely interesting because it facilitated exchanges on legislative progress in European and Maghrebi countries and persisting lacunae vis-à-vis gender equality in the legislation of these countries.

II. The main sources of inequality in civil law to the detriment of women

5. Although Ms Polenina drew attention to a number of residual inequalities to the detriment of men, such as the fact that custody of the children is usually granted to the mother in cases of marital separation, I note that most of the legal inequalities in civil legislation actually penalise women. I would propose examining the reasons for such inequalities and their persistence both in European legislation and in such foreign legislation as may apply to European nationals in the context of international private law. In view of the extent of the inequalities noted by both experts, I shall concentrate on those inequalities which have been most frequently highlighted.

i. Inequality stemming from the domestic legislation of Council of Europe member states

6. I note from the expert papers drawn up by Ms Billaud and Ms Polenina that the civil legislation of Council of Europe member states still contains discriminatory rules on personal status. It is vital that such rules be abolished.

7. Various institutions implement rules that discriminate against mothers, in the fields of both marital relations and descent.

a. Inequalities in matters of marriage

8. The experts have noted inequalities vis-à-vis the minimum age of marriage. In this connection I would refer to Assembly Resolution 1468 (205) on forced marriages and child marriages, which requests the national parliaments of the member states of the Council of Europe to "fix at or raise to 18 years the minimum statutory age of marriage for women and men".

9. Moreover, discriminatory rules are often imposed on women where the personal effects of marriage are concerned.

[1] See Document AS/Ega (2006) 1 rev.
[2] See Document AS/Ega (2007) 2.
[3] See Document AS/Ega (2006) 24 rev.

10. In connection with personal effects, many women still bear their husbands' surnames. Under some legal systems married women go solely by their husband's surname. This may be merely customary, the outcome of legislation, automatic or failing the spouses' decision to the contrary. Under other legal systems women may retain their maiden name, subject to combining it with the husband's surname. Lastly, some countries leave it up to the wife to choose which surname to use during the marriage, but the fact remains that a man never has to ask himself whether the mere act of marrying may entail a change of surname.

11. Adopting the husband's surname has the obvious practical advantage of enabling the mother to go by the same surname as her children. In my view, however, the price paid by the woman is a form of genuine depersonalisation, as she becomes first and foremost part of her husband's family. Bearing the husband's name can also prove harmful in the event of divorce, if the wife is obliged to change her surname. Such changes of surname divulge the woman's marital problems to her colleagues, business relations or other third parties, whereas men, who can divorce and (re)marry without the fact being broadcast, do not suffer any such breach of privacy. Furthermore, I feel that the solution of retaining the husband's surname, either systematically or by decision of the former wife, who may be obliged to request permission, is scarcely more satisfactory because it forces the woman to live under the name of someone who is no longer of any significance to her.

12. In connection with the effects of marriage on property rights, some states implement discriminatory rules governing the ownership of marital property. I would refer here to the examples provided by Ms Billaud: Austria applies the dowry system, whereby under the terms of a marriage settlement the woman or a third party transfers or guarantees property to the husband to help cover the household's expenditure. However, it is the husband who benefits from the proceeds of the transferred property or any increase in its value. In the United Kingdom, the Married Women's Property Act of 1964 provides that, where a husband pays a housekeeping allowance to his wife, any money remaining from the allowance or assets acquired with it must belong to both spouses in equal shares. However, the same does not apply where a woman pays an allowance to her husband, with the result that it can be concluded that any savings or acquisitions made with the allowance belong to the husband alone. Lastly, as regards maintenance obligations, the law of the Principality of Monaco provides that a son-in-law or daughter-in-law shall have an obligation to maintain his or her father-in-law or mother-in-law in need, but that the obligation shall cease should the mother-in-law remarry.

b. Inequality in the event of divorce

13. I note that some states treat women and men differently in connection with the grounds for divorce, preventing the two spouses from acting on an equal footing. This imbalance is indicative not only of inequality in the spouses' rights in the divorce field but also of a distortion in marital rights and obligations to the detriment of the wife.

14. In Cyprus, for instance, the grounds for divorce vary according to whether the petitioner is the husband or the wife. For example, the marital relationship can be deemed to have broken down if a wife stays away from home overnight (not including at a relative's house) without giving her husband any explanation, inasmuch as there are other grounds for suspicion leading to distrust within the couple.

15. Women also sometimes continue to suffer inequalities regarding the financial consequences of divorce. Mention can be made here of the "one-third ratio" rule in UK law, whereby the wife receives a divorce settlement equivalent to one-third of the couple's total assets. The wife may even be entitled to less than one-third if the husband is wealthy, if the wife's conduct can be qualified as shocking or if the husband's available assets are modest.

c. Discriminatory rules on establishing relationships by descent on the mother's side, and the effects of such descent

16. I note that in some states, for example, a woman cannot bring an action to challenge her husband's legal paternity, since it is solely the husband of the child's mother who is entitled to disclaim paternity of the child in question. As a consequence of the mother's disentitlement to bring proceedings to challenge her husband's paternity, any action to establish the identity of the natural father, with a view to proving that the child is the issue of another man, is very often inadmissible. I regret the persistence of discriminatory rules governing the effects of descent. This very often prevents mothers from passing on their surnames to their children.

17. Children born in wedlock more often than not bear the father's surname, whereby this rule applies without exception, as in Luxembourg, Lithuania, the Netherlands and Belgium, or else it applies failing the spouses' decision to the contrary, as in Poland, Austria, Italy, Hungary and Switzerland.

18. This is also the case of some children born out of wedlock, either without exception, as in Luxembourg and Austria, or in the event of simultaneous establishment of paternal and maternal descent, as in Monaco, the Netherlands and Italy, or else sometimes, as in Poland, failing any other agreement between the parents.

19. The Spanish rule is that although a child is required to bear the surnames of both parents, the father is nonetheless guaranteed precedence, since his surname must always precede the mother's.

20. I would therefore suggest, in order to ensure respect for the principle of equality between the sexes where surnames are concerned, giving parents the option of choosing which surname to attribute to their child, whereby such surname can be that of either parent or a combination of both. I would recall Assembly Recommendations 1271 (1995) and 1362 (1998) on *discrimination between men and women on discrimination between men and women in the choice of a surname and in the passing on of parents' surnames to children,* and urge states to implement them, ten years after their adoption.

21. I would therefore stress that Article 14 of the European Convention on Human Rights has no independent existence and that Article 5 of Protocol No. 7 only partly resolves the difficulty because it only guarantees equality of rights and responsibilities of a private law character between spouses in respect of their children. I accordingly advocate laying down the positive principle of equality between women and men under a provision of an Additional Protocol to this Convention (see paras. 42 to 48 below for an explanation).

ii. Inequality resulting from the application of a discriminatory foreign law in the context of international private relations

22. In this connection, I wholeheartedly commend the second part of Ms Billaud's expert paper on the application of private international-law rules, and refer the reader to it for more detailed information, particularly on the application of Family Codes. There are two potential situations here. The first is where a Family Code may recognise jurisdiction on the part of foreign legislations for various legal situations in Europe. This is the case, for instance, where a European court is required to adjudicate on the validity of a polygamous marriage. The second is where a judicial decision has been given abroad and is to be enforced in Europe. This hypothesis occurs, for example, when a foreign court dissolves a marriage and the question arises whether this decision should be recognised or enforced in Europe. These two situations correspond to two aspects of private international law, conflicts of law and conflicts of jurisdiction.

23. However, conflict-of-law rules may assign jurisdiction to the Family Codes and therefore, possibly, to legal rules that discriminate against women. Conflict-of-jurisdiction rules may result in the recognition of the effects in Europe of foreign decisions given in pursuance of Family Codes, notably provisions enshrining inequality between the sexes.

24. I would specify that the principles of French private international law referred to by the expert can be applicable in the legal systems of all European states, given that they share the same private international law methods, namely the same conflict-of-law and conflict-of-jurisdiction rules.

a. Conflict-of-law rules governing the application of Family Codes

25. The conflict-of-law rule facilitates designation of the national legislation capable of responding to the point at issue.

26. The conflict-of-law rule designates the applicable legislation on the basis of a connection criterion. This criterion may, for example, be nationality, place of temporary or permanent residence or place of location of a property. Furthermore, in some case the persons concerned may opt for the legislation applicable to their legal situation.

27. In Europe, two criteria are prioritised in designating the legislation applicable to family relations, namely nationality and temporary or permanent residence. For instance, French private international law stipulates that family relations must primarily be governed by the national legislation of the persons in

question. In the United Kingdom, on the other hand, such relations are governed by the legislation in force in the place of residence.

28. In France, the basic conditions for marriage, such as marriageable age, are governed by the national legislation of the future spouses. The effects of marriage are also subject to the spouses' national legislation, or to be more exact the spouses' joint national legislation. However, this first connection is joined by a second one, because where there is no common nationality, the effects of marriage are subject to the legislation in force in the spouses' common place of residence.

29. Lastly, the foregoing comments should be qualified in that some domestic regulations known as public-order laws or immediately enforceable laws are directly applicable without designation by a conflict-of-law rule. For instance, Articles 212 ff of the French Civil Code are public-order regulations applicable to all married persons whatever their nationality. These articles provide for equal rights on the part of each spouse vis-à-vis the family home, equal contributions to household expenses, the right of each spouse to banking independence, and the moral and material management of the family by both spouses. Such provisions override any texts assigning exclusive marital authority to the husband, for instance.

30. The fact that family relations can sometimes be governed by foreign legal rules inevitably begs the question of accepting a legal rule which discriminates against women. The institution of polygamy raises problems in this connection. It may also be noted that the administrative practice in matters of family reunification is to exclude wives of polygamous marriages from the measure. In such cases the mechanism used to thwart specified foreign provisions deemed discriminatory is the international public policy (*ordre public*) argument. This mechanism facilitates exclusion of the application of a foreign law which has been recognised as competent by the applicable conflict-of-law rule on the grounds that it is fundamentally incompatible with the principles in force in the legal system of the requested State: where the foreign legislation designated by the conflict-of-law rule adopts a solution which clashes with the values of the State in which it would be applied, the court must refuse to implement it. One of the main advantages of the international public policy argument is its flexibility. For example, the issue at stake in polygamy is the fate awaiting a polygamist's spouses in Europe, where the marriages were contracted legally abroad.

31. I would make two further comments in the light of the real-life situations of such women.

32. First of all, while polygamy is indisputably discriminatory, denying it any kind of effect in Europe creates "lopsided" situations, as the marriage is valid outside Europe but non-existent inside Europe. In cases of polygamous marriage, for instance, the second wedding is valid and those concerned well and truly married outside Europe; but on the other hand, they become mere cohabitees as soon as they cross the border into Europe. This may be compounded by another inequality, ie between a spouse who has stayed outside Europe and is therefore validly married, and another whose marriage is not recognised.

33. This is further complicated by the fact that such situations sometimes have an impact abroad, and that denying them any validity in Europe undermines the plans of the persons concerned and infringes legal certainty, another major imperative of private international law. The legal certainty principle requires the authorities to ensure, as far as possible, that the legal situation of individuals is not endangered by the mere fact of their crossing a border. This requirement is particularly important in the sphere of family relations.

34. It will be recalled that some foreign legislations do not recognise natural descent. Consequently, challenging the validity of a marriage also involves challenging any corresponding relationship by descent.

35. I would also stress that hostility to polygamy is meaningless unless it is geared to protecting women and their actual interests.

36. Therefore, the first wife and all subsequent wives have an equal legitimate right to a specific level of legal protection.

37. However, this right to protection is not necessarily compatible with outright condemnation in the name of equality, a concept which a non-egalitarian institution will understand in a purely abstract manner. Refusing to recognise a polygamous marriage means denying the wife in question the protection of such marital rules as equal rights with the husband vis-à-vis the family home and the right to aid and assistance.

38. It would therefore be appropriate to ensure that polygamous marriages have some legal effects in Europe. The approach generally adopted is that of attenuation of the impact of international public policy (*ordre public*) so as not to preclude respect for rights acquired abroad in an non-fraudulent manner and in accordance with foreign law, even where that law is contrary to the fundamental principles of the host State.

39. This means that a foreign institution will be tolerated to a greater or lesser degree depending on the strength of the links maintained between the legal situation in question and the legal system used by the requested court.

40. Attenuating the effects of international public policy does not, however, solve all the difficulties, because the advantage of the flexibility of the public policy argument is offset by a major disadvantage, namely a "multi-speed" type of equality that varies depending on the European State in which the situation is apprehended, given that each country has its own specific conception of international public policy, and depending on the links between the situation and the State of the requested court, rather than another European State.

41. This variable conception of equality does, however, reinstate various forms of discrimination.

42. In order to tackle these problems, I would propose a European definition of gender equality which would be incorporated into public policy and be implemented as a function of the links between the said situation and not only the State of the requested judge but also the whole European Area.

43. In the current state of legislation, the right to equality between women and men is not completely enshrined in the Council of Europe. Although Article 14 of the European Convention on Human Rights prohibits discrimination based on sex, it is not autonomous vis-à-vis the other articles of the Convention, which means that discrimination can only be condemned if it infringes another right or freedom secured under the Convention.

44. This lack of autonomy leads to uncertainties and lacunae in the system of protection against discrimination.

45. For instance, are there any grounds for hesitation where a rule on the capacity to inherit limits the rights of daughters? Is this a question of property rights or the right to respect for private and family life?

46. Where surnames are concerned, while the fact of a married woman being debarred from retaining her maiden name has been condemned under Article 8 of the Convention, it is by no means certain that a woman's right to pass on her surname to her children is protected.

47. Article 5 of Additional Protocol No. 7 to the Convention only partially resolves the difficulty because it only concerns married couples, safeguarding as it does the equality of rights and responsibilities of a private law character of spouses, between them and in their relations with their children.

48. Consequently, I advocate establishing the principle of equality between women and men as a fundamental human right independent from the other rights and freedoms safeguarded by the Convention. Such a right would be invoked whenever a link was ascertained between the situation in question and the European Area, through the intermediary of the international public policy argument.

b. Conflict-of-jurisdiction rules governing the applicability of Family Codes

49. The issue of which legal effects of foreign judicial decisions should be recognised involves two sets of considerations which must be reconciled. Any recognition of foreign judgments must be accompanied by measures to control their effects. So it is a case not of recommencing proceedings but merely of checking whether the decision was given under acceptable conditions and whether it proposes an acceptable solution, albeit possibly one different from that which a European court dealing with the case would have given. The requested court in Europe will ascertain whether the foreign decision was given by a competent court and the proceedings were lawful, which law was applied, whether fraud was involved and whether the decision complied with international public policy.

50. I would like to quote the example of repudiation, an institution which clashes head-on with the principle of equality between women and men, primarily because it is a mode of dissolution of the marriage which is left solely to the husband's discretion. The problem of repudiation arises when the point

at issue is whether such a decision taken in a Council of Europe non-member State can be recognised in a member State. France has settled this problem by unreservedly condemning repudiation, in the name of international public policy, in five judgments handed down by the Court of Cassation on 17 February 2004 on the basis of Article 5 of Additional Protocol No. 7 to the European Convention on Human Rights, as integrated into international public policy. This means that repudiations pronounced abroad have no legal effects in France.

51. Taking account of international public policy considerations in decisions on foreign judgments gives rise to exactly the same difficulties as in the field of conflicts of law. Furthermore, an overly rigid reading of the fundamental right to equality where the marriage has irrevocably broken down requires the "protected" wife to commence divorce proceedings or to file an action to secure a contribution to household expenses, thus running the risk of facing the conditions for initiating litigation in the State of the requested court, while the husband is free to remarry in a country where repudiation is completely valid.

52. The fact is that efforts to preserve conjugal equality should not work to the detriment of wives residing in a Council of Europe member State, and it seems that such women would sometimes be better protected if the principle of the break-up of the marriage was accepted, even if this means reserving the right to file suit in order to secure the effects of the dissolution of marriage in accordance with egalitarian law.

53. However, no such solution is on offer under French positive law, because the rule on the effects of foreign judgments is "all or nothing": either the decision is recognised in its entirety or it is not recognised at all. Therefore, it cannot be split up so as to implement only some of its effects.

54. The problem of European states accepting foreign decisions which may be based on discriminatory rules is exacerbated where Council of Europe member states have concluded bilateral or multilateral international conventions geared to relaxing the conditions for recognising foreign decisions, or indeed requiring such recognition. For example, Article 13 of the Franco-Moroccan Convention of 10 August 1981 provides for French validation of repudiations pronounced in Morocco even where the spouses are resident in Morocco. Similarly, in the past the Franco-Algerian Convention of 27 August 1964 authorised the recognition of repudiations in France.

55. This brings us to the problems of conflicts not of law or jurisdiction but of conventions concluded by Council of Europe member states, alongside the European Convention on Human Rights and its protocols. Which of these instruments should take precedence?

56. A consensus would seem to have emerged on affirming the supremacy of the European Convention on Human Rights over any bilateral or multilateral conventions concluded by member states. However, this "pious hope" only partly solves the problem because such supremacy can only be guaranteed if it is based on an undisputed foundation, which is unfortunately not the case here. The guidelines on conflicts of conventions are not such as to ensure that the European Convention on Human Rights will always take precedence. Consequently, any State which fails to honour its bilateral commitments is liable to face international strictures, whereas in fact it excluded the application of the treaty exclusively in order to comply with the provisions of the European Convention on Human Rights.

57. Nevertheless, some international conventions comprise public policy clauses providing for excluding the application of legal rules which are incompatible with European values.

58. For instance, Article 1 of the Franco-Algerian Convention of 27 August 1964 comprises just such a clause, stipulating that contentious and non-contentious decisions given by courts sitting in Algeria *ipso jure* constitute *res judicata*, unless they comprise an element incompatible with public policy.

59. In a judgment handed down on 10 May 2006, the French Court of Cassation drew on this provision to rely on the equality of rights and responsibilities of spouses in the dissolution of marriage as provided for in Article 5 of Protocol No. 7 to the European Convention on Human Rights.

60. If European states were to systematically include such clauses in agreements concluded outside the Council of Europe, the principle of gender equality for married couples could prevail, as guaranteed by the European Convention on Human Rights.

61. Furthermore, recent bilateral instruments now include "compatibility clauses" stipulating that their provisions override those of all other conventions.

62. The European Convention on Human Rights does not, however, proclaim the supremacy of its provisions over other treaties, nor does it explicitly set out the mode of settlement of any conflicts with other conventions. In fact, Protocol No. 12 providing for general prohibition of discrimination only applies where such a right is recognised and the discrimination in question is proved. I would therefore advocate the establishment of a positive principle of equality between women and men. In this connection, I would cite the example of the German Constitution, Article 3 of which has, since 1949, provided that, in addition to the principle of non-discrimination on grounds of sex, that "Men and women are equal in rights". The State supports the effective realisation of equality of women and men and works towards abolishing present disadvantages". I would also refer to Opinion No. 216 (2000) on draft Protocol No. 12 to the European Convention on Human Rights, in which the Assembly requested the inclusion of the principle of equality of rights between women and men as a fundamental human right. I regret that no action has been taken on this Opinion, and forcefully repeat this request, which has lost none of its relevance.

63. In conclusion, I propose creating an express provision on the supremacy of the principle of equality between women and men over any provision deriving from or applicable under a private international law agreement or convention, subject to the need for an actual assessment of the question of equality in the case at hand, through the drafting of a new Additional Protocol to the European Convention on Human Rights. I propose to submit the enclosed draft Recommendation to the Assembly for adoption.

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Reporting committee: Committee on Equal Opportunities for Women and Men

Reference to Committee: Doc 10344, reference N°3026 of 23 November 2004, extension until 26 January 2007

Draft recommendation adopted by the Committee with 5 votes in favour, 1 against and 4 abstentions on 25 January 2007

Members of the Committee: Mrs Gülsün **Bilgehan** (Chairperson), Mrs Anna **Čurdová** (1st Vice-Chairperson), Mrs Svetlana **Smirnova** (2nd Vice-Chairperson), Mr José **Mendes Bota** (3rd Vice-Chairperson), Ms Elmira Akhundova, Mrs Željka Antunović, Mrs Aneliya Atanasova, Mr John Austin, Mr Denis Badré, Ms Marieluise Beck, Mrs Oksana Bilozir (alternate : Ms Olha **Herasym'yuk**), Mrs Raisa Bohatyryova (alternate : Mr Ivan **Popescu**), Mrs Olena **Bondarenko**, Mrs Mimount Bousakla, Mr Paul Bradford, Ms Sanja Čeković, Mrs Ingrīda **Circene**, Mr James Clappison, Mrs Minodora Cliveti, Mr Cosidó Gutiérrez, Ms Diana Çuli, Mr Ivica Dačić, Mr Marcello Dell'utri, Mr José Luiz Del Roio, Mrs Lydie Err, Mrs Catherine **Fautrier**, Mrs Maria Emelina Fernández Soriano, Ms Sonia Fertuzinhos, Mrs Margrét Frímannsdóttir, Mr Piotr Gadzinowksi, Mr Pierre Goldberg, Mrs Claude Greff, Mr Attila Gruber, Mrs Carina **Hägg**, Mr Poul-Henrik Hedeboe, Mr Ilie **Ilaşcu**, Mrs Halide Incekara, Mrs Eleonora Katseli, Mr Marek Kawa, Mrs Angela Leahu, Mrs Minna Lintonen (alternate : Ms Kaarina **Dromberg**), Mr Dariusz Lipinski, Ms Assunta Meloni, Mrs Danguté Mikutienė, Mrs Ilinka Mitreva, Mr Burkhardt Müller-Sönksen, Mrs Christine Muttonen, Mrs Hermine Naghdalyan, Mr Kent **Olsson**, Mrs Vera **Oskina**, Mr Ibrahim Özal, Ms Elsa Papadimitriou, Mr Jaroslav **Paška**, Mrs Fatma Pehlivan, Mrs Maria Agostina Pellegatta, Mrs Antigoni Pericleous-Papadopoulos, Mr Leo Platvoet, Mrs Majda Potrata, Mr Jeffrey Pullicino Orlando, Mrs Marlene Rupprecht, Mrs Klára Sándor, Mr Giannicola Sinisi, Mrs Rodica-Mihaela **Stănoiu**, Mrs Darinka Stantcheva, Mrs Ruth-Gaby **Vermot-Mangold**, Mrs Betty Williams, Mrs Jenny Willott, Mr Gert Winkelmeier, Ms Karin S. **Woldseth**, Mrs Gisela **Wurm**, Mrs Rosmarie **Zapfl-Helbling**.

N.B. The names of the members who took part in the meeting are printed in bold

Secretariat of the Committee: Ms Kleinsorge, Ms Affholder, Ms Devaux