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30 March 2007

State of human rights and democracy in Europe

Opinion¹

Committee on Equal Opportunities for Women and Men

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A. Background

1. This paper is a contribution to the one-day debate on the state of human rights and democracy in Europe to be held during the April 2007 part-session of the Assembly. The debate will hinge on three main reports: a report on the situation of human rights in Europe, prepared by the Committee on Legal Affairs and Human Rights, a report on the situation of democracy in Europe, prepared by the Political Affairs Committee, and an activity report by the Monitoring Committee. The Assembly's other committees will be consulted for opinions within their respective spheres of competence.

2. In this context, the Committee on Equal Opportunities for Women and Men agreed to highlight the following themes: parity in democracy and the violation of women's rights – in particular domestic violence, trafficking in human beings and forced marriages. It hoped that these proposals would be reflected in the reports concerned.

B. Explanatory memorandum

I. Parity democracy

3. I would like to stress the fact that equal opportunities for women and men are a fundamental value in a democracy. In this context, political participation by women is a key component of democracy in Europe, which requires that women should have a fair chance both to elect the candidate of their choice and to stand for election. As a starting point, I recall that women make up half the population and should not be treated as a minority. Accordingly, I consider that member states should not only incorporate the principle of equality into their Constitutions, but also provide in their Constitution for the possibility of taking special measures to promote equality between women and men. Measures designed to close the gap and remedy the constant under-representation of women in political and economic decision making, which reflects a fundamental democratic deficit in the countries of Europe, are necessary.

i Improving access to elected office for women

4. The under-representation of women in elected office hinders the full development of democracy in most of the Council of Europe's member states. I recall that the Assembly has invited the member states to set a target of 40% as the minimum level of representation of women in parliament and other elected assemblies by the year 2020. At present, only Sweden has reached that

¹ See Doc. 11203 tabled by the Political Affairs Committee and Doc. 11202 tabled by the Committee on Legal Affairs and Human Rights.

critical mass of 40% of women in parliament.² There are 22 countries with between 20% and 40% of women in parliament (Finland, Norway, Denmark, the Netherlands, Spain, Belgium, Iceland, Austria and Germany have more than 30% of women MPs), 16 countries have between 10 and 20% and 7 Council of Europe member states have fewer than 10% of women in their parliaments.³

5. Furthermore, women do not have equal access to decision-making posts, in the professional, public or economic spheres. I underline the need to promote access to political and public decision-making posts and recall the Assembly's recent work on mechanisms to ensure women's participation in decision-making (Resolution 1489 (2006)), the need to reconcile work and family life (Recommendation 1769 (2006)) and the under-representation of women in the Council of Europe's own bodies.⁴

6. Positive developments have helped to improve access to elected office for women. Electoral reforms and the introduction of quotas are an example. In 2000, France introduced a "zip" system to guarantee the alternation of male and female candidates on proportional election lists, particularly in regional elections and in local elections in towns with more than 3 500 inhabitants.⁵ Belgium has introduced a "double quota" system: since 1999 a quota guarantees that 33% of candidates on electoral lists are women (if a party fails to respect that quota, the seats which should have been occupied by women must be left vacant). Since a law passed in 2002, the top three names on election lists must include candidates of both sexes.⁶

7. The institution of a mediator or ombudsman on equality or dealing with equality-related complaints and issues is another sign of progress. The Ombudsman, a traditional institution in the Nordic countries, is spreading to countries in central and eastern Europe, such as Lithuania, Croatia, Romania, Slovenia and Estonia. Other countries have developed mediation in specific equality-related areas like employment (the equality court in Ireland, the Gender Equality Complaints Committee in Iceland, the equal opportunity Watchdog in Slovenia, etc.).⁷

8. In spite of these advances, participation by women in decision making remains limited. I reiterate the appeal to member states to make it a priority to implement Committee of Ministers Recommendation Rec(2003)3 on balanced participation of women and men in political and public decision-making⁸, which could be encouraged by a Council of Europe "Charter for electoral equality", a proposal of the Assembly⁹ that was well received by the Venice Commission.

9. Finally, I recall the responsibility of political parties to promote access for women to elected office. The role of political parties is essential in allowing women to stand for election in constituencies that can be won, particularly single-member constituencies. The Committee has highlighted this responsibility in previous reports and will propose setting up an "equality prize" to reward political parties for helping to 1) increase the percentage of women elected to political office or decision-making posts in political parties through original awareness-raising schemes and transparent mechanisms with lasting effects, and 2) change thinking in political parties. This will help to reward efforts made towards achieving parity.

ii Against the practice of family voting

10. In several Council of Europe member states women continue to be deprived of the individual right to vote, because of the practice of family voting. Family voting can take any of three forms: group voting, where a male family member accompanies one or more women relatives into a polling booth;

² Doc. 10202 and Recommendation 1676 (2004).

³ Namely Russia 9.8%, Georgia 9.4%, Malta 9.2%, Ukraine 8.7%, Albania 7.1%, Armenia 5.3% and Turkey 4.4%. Source: www.ipu.org, 14 February 2007.

⁴ See Resolution 1348 (2003) on gender-balanced representation in the Parliamentary Assembly and Resolutions 1366 (2004) and 1426 (2005) on Candidates for the European Court of Human Rights.

⁵ "Parity" Act of 6 June 2000, supplemented by the Law of 31 January 2007 on equal access for men and women to elected office.

⁶ Doc. 10202, paragraph 48.

⁷ Doc. 10743, paragraph 55.

⁸ Recommendation 1676 (2004) on Women's participation in elections and paragraph 6.2 of Resolution 1489 (2006) on mechanisms to ensure women's participation in decision-making.

⁹ Paragraph 6.9 of Resolution 1489 (2006) on mechanisms to ensure women's participation in decision-making.

open voting, when family groups vote together in the open; or proxy voting, where a male family member collects ballot papers belonging to one or more women relatives and marks those papers as he sees fit. Family voting is undemocratic. It deprives women of their voting rights and should not be tolerated¹⁰.

11. I note with satisfaction the progress the Council of Europe has made on this issue, in particular the Declaration adopted by the Venice Commission on participation by women in elections, laying down a code of good practice in electoral matters.¹¹

12. The election observation reports of the Council of Europe and/or the OSCE show that family voting continues to be practised in certain cases and to varying degrees in several Council of Europe member states. In the last two years alone the practice has been observed in Albania,¹² Azerbaijan,¹³ Bosnia and Herzegovina,¹⁴ Georgia,¹⁵ Latvia,¹⁶ Serbia,¹⁷ "The former Yugoslav Republic of Macedonia"¹⁸ and Montenegro.¹⁹

13. Today, electronic voting and postal voting have made it easier for citizens to take part in elections. At the same time these new practices can deprive voters, particularly women, of their right to vote individually, freely and in secret. It is for the Council of Europe's member states to make sure these new voting methods are not detrimental to women's participation in elections. In this regard I salute the work being done in the United Kingdom, for example.²⁰

14. I consider that all the member states should fully guarantee the individual right to a free and secret vote, without restrictions on grounds of religion, custom, tradition or women's illiteracy.

II. Violations of women's rights

i. Domestic violence

15. The term "violence against women" is to be understood as any act of gender-based violence, which results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or private life. This includes violence occurring in the family or domestic unit, including, *inter alia*, physical and mental aggression, emotional and psychological abuse, rape and sexual abuse, incest, rape between spouses, regular or occasional partners and cohabitants, crimes committed in the name of honour, female genital and sexual mutilation and other traditional practices harmful to women, such as forced marriages.²¹

¹⁰ Paragraph 3 of Recommendation 1676 (2004) on Women's Participation in Elections.

¹¹ Paragraph 2b of the Declaration on Women's Participation in Elections, adopted by the Venice Commission at its 67th plenary session (Venice, 9 and 10 June 2006): "Suffrage should be individual and secret, which excludes any form of "family voting", whether committed in the form of group voting (where a [male] family member accompanies one or more [women] relatives into a polling booth), in the form of open voting (when family groups vote together in the open), or in the form of proxy voting (where a [male] family member collects ballot papers belonging to one or more [women] relatives and marks those papers as he sees fit)."

¹² See paragraph 42 of Doc. 10664 Observation of the parliamentary elections in Albania (3 July 2005).

¹³ Parliamentary elections of 6 November 2005 (http://www.osce.org/documents/odihr/2005/11/16889_en.pdf).

¹⁴ General elections of 1 October 2006 (see http://www.osce.org/documents/odihr/2006/10/20826_en.pdf).

¹⁵ Municipal elections of 5 October 2006 (see http://www.osce.org/documents/odihr/2006/12/22806_en.pdf).

¹⁶ Parliamentary elections of 7 October 2006 (see http://www.osce.org/documents/odihr/2006/10/21249_en.pdf); see comments of the Central Electoral Committee on page 6 of the needs assessment mission report published by the OSCE/ODHIR (http://www.osce.org/documents/odihr/2006/09/20304_en.pdf).

¹⁷ Parliamentary elections of 21 January 2007 (see http://www.osce.org/documents/odihr/2007/01/23043_en.pdf).

¹⁸ Local elections on 13 and 27 March and 10 April 2005 (see CG/BUR (11) 122); Parliamentary elections of 5 July 2006 (see http://www1.osce.org/documents/odihr/2006/07/19801_en.pdf).

¹⁹ Parliamentary elections of 10 September 2006 (see http://www.osce.org/documents/odihr/2006/12/22841_en.pdf).

²⁰ See the report on "Implementation of electronic voting in the UK" (2002), <http://www.dca.gov.uk/elections/e-voting/pdf/e-voting.pdf>.

²¹ Appendix to Recommendation Rec(2002)5 of the Committee of Ministers to the member states on the protection of women against violence.

16. The Assembly considers that domestic violence against women is one of the most widespread violations of human dignity. A look at the situation worldwide shows that in every country between a fifth and a quarter of all women have been subjected to physical violence at least once in their adult lives and over 10% of women have suffered sexual violence with the use of force. Most acts of violence are committed by men in their immediate environment, generally partners or former partners.²² This violence knows no geographical boundaries, no age limit; it is not confined to any particular culture, group or social class. It is a political and a public problem, which must be addressed in every Council of Europe member state.

17. I recall the Assembly's strong commitment to the launching and implementation of a campaign to combat domestic violence against women²³ and its satisfaction at the decision of the Heads of State and Government to include the campaign in the Action Plan of the Third Summit (Warsaw, 16 and 17 May 2005). I welcome the involvement of the parliaments of the member states and those with observer status in the Assembly, the European Parliament and the Nordic Council in the implementation of the parliamentary dimension of the Campaign (2006-2008), by appointing contact parliamentarians and taking action to denounce, combat and prevent domestic violence against women.²⁴

18. In this context I invite the member states to continue and step up their efforts to implement the Campaign programme, alert public opinion and pass laws to stop domestic violence against women. In particular every appropriate legislative, judicial and budgetary measure should be taken and national plans adopted to put a stop to domestic violence against women, including the criminalisation and punishment of rape between spouses in the same way as other rape, and the removal of the violent spouse from the couple's home, where such measures do not already exist.

19. In this respect I wish to highlight the measures taken by Austria, Bulgaria, France, Luxembourg and Spain, the country which hosted the conference to launch the campaign, which, in passing an integral law against gender violence, demonstrated the fundamental role of elected representatives, particularly parliamentarians, in setting in place an exemplary system of protection and assistance for victims.

20. By way of an example, the Federal Law on Protection against Violence in the Family adopted by Austria on 1 May 1997 and amended in 2003 allows the police to remove a person who is threatening other persons in the home, whatever their relations with the victim or their ownership rights to the residence, for a period of ten days which can be extended at the request of the victim. The police check in on the victim within 24 hours and transmit the case to the proper authorities in the province concerned, which then contacts the victim with free advice on how to make sure their rights are respected and provide free legal assistance during the judicial proceedings.²⁵

21. In Turkey Article 14 of the Municipalities Act, which came into force on 24 December 2004, requires large towns and cities with populations in excess of 50 000 to open shelters for women and children. Standards have been developed for these shelters and submitted to the cities concerned.²⁶

ii. Trafficking in human beings

22. Trafficking in human beings is the modern-day form of the slave trade. Human beings are treated as merchandise to be bought and sold, forced to work, more often than not in the sex industry, but also, for example, on farms or in workshops, for a pittance if indeed they are paid at all. The many forms this type of crime takes and the secrecy surrounding it make it very difficult to know how many victims fall prey to trafficking in Europe. Three things are clear, however: the main victims of trafficking

²² CDEG (2006) 3. Study of the results of measures and action taken to combat violence against women in the Council of Europe member states, Prof. Carol Hagemann-White, University of Osnabrück, Germany, Directorate General of Human Rights, Strasbourg, 2006, p. 7-8.

²³ See Resolution 1512 (2006) and Recommendation 1759 (2006) on Parliaments united in combating domestic violence against women, and Recommendation 1681 (2004) on the campaign to combat domestic violence against women in Europe.

²⁴ See www.coe.int/stopviolence/assembly.

²⁵ Parliaments united in combating domestic violence: Handbook for the use of Parliamentarians, PACE, 2006, p. 31.

²⁶ *Idem*.

are women and children, especially young girls; trafficking is steadily increasing; and no country is spared by this phenomenon, be it as a country of origin, of transit or of destination. Trafficking in human beings goes on inside individual countries and also across borders. The international dimension is not always present. For example, the Council of Europe's Commissioner for Human Rights expressed grave concern about internal human trafficking in Estonia.²⁷

23. I consider trafficking in human beings as a direct violation of the values on which the Council of Europe has founded its existence, and accordingly that every country should make sure this violation of human rights stops. The Committee was involved from the outset both in the drafting of the new Council of Europe Convention on Action against Trafficking in Human Beings ("the convention") and in the Council of Europe Campaign to Combat Human Trafficking, which is intended to raise public awareness and encourage the signature and ratification of the convention. I would like to see this effective instrument come into force as soon as possible, in order to protect the victims. So far, however, although the convention has been signed by 30 Council of Europe member states and Montenegro, only four have ratified it: Moldova, Romania, Austria and, just recently, Albania. To enter into force, it needs ten ratifications, including eight by Council of Europe member states.

24. The Committee has also formed a sub-committee on trafficking in human beings, which is actively involved in the campaign, particularly in promoting the signature and ratification of the convention.²⁸ The sub-committee has produced a handbook on the convention for parliamentarians.²⁹ It is a practical tool, not only for parliamentarians but for anyone interested in encouraging the signature and/or ratification of the convention. It contains an overview of the trafficking phenomenon and presents the main provisions of the convention concerning prevention, the protection of victims and the prosecution of those responsible, together with a series of questions and answers.

25. I also note the reluctance of the European Community to accede to the convention, in spite of the influence it exerted all through the negotiation of the convention. I therefore urge those Council of Europe member states which have not yet done so, and the European Community, to sign and ratify the convention at the earliest opportunity.³⁰ I welcome the fact that certain Council of Europe member states have already taken steps to protect victims. Italy, for example, has a well-tailored legal arsenal to protect victims and punish members of trafficking networks, some of which go beyond the minimum European requirements. Italy also takes preventive action, organising awareness campaigns with other governments and NGOs, on its own territory and in the countries of origin.³¹

iii. Forced marriages and child marriages

26. I stress the need, in a Europe which shows respect for human rights, for women and men to be able to choose of their own free will as to whether or not they get married, whether they do it officially or otherwise, and to whom. The problem arises mainly in immigrant communities, in France, Belgium and the United Kingdom, for example, and mainly affects young women and girls. Everyone should be free to make their own choices for their lives and their bodies. I point out that forced marriage is neither more nor less than marital rape. Based on the work of the rapporteur on "Forced marriages and child marriages", Ms Zapfl-Helbling, I see no possible exception or justification. Ms Zapfl-Helbling and I deplore that, under the pretext of showing respect for immigrant communities' cultures and traditions, the authorities tolerate forced marriages and child marriages even though such practices violate the fundamental rights of each and every victim.

27. I also recall that in her report on "The situation of women in the South Caucasus" Ms Oskina pointed out that certain traditions still violate women's rights and dignity in these countries, even if it has often been argued that this is a residual problem often confined to the regions. In Georgia and

²⁷ CommDH(2004)5, Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to Estonia, 27-30 October 2003, paragraph 45.

²⁸ See also written declaration No. 376 on "on ending all forms of human trafficking", in which 102 Assembly members undertake "to call upon our governments to sign the convention, if they have not already done so, to call upon our national parliaments to ratify it, and to call on the European Community to accede to it, to ensure that it enters into force at the earliest opportunity".

²⁹ See <http://assembly.coe.int/trafficking>.

³⁰ As did the Assembly in its Resolution 1494 (2006) "stopping trafficking in women before the FIFA World Cup".

³¹ CommDH(2005)9, Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to Italy, 10 - 17 June 2005, paragraphs 218 to 223.

Azerbaijan, for example, it is traditional to kidnap the bride before the wedding, as are forced marriages. One ONG mentioned that this exists in the Martouni region in Armenia. In Armenia eight cases of marriages with girls under 17 years of age were officially recorded in 1998, and again in 2000. Child marriages are increasing in comparison with the Soviet era in rural areas because young people have less access to education. The girls may be 14 or 15, even younger in certain minorities, and the boys 17 or 18. There are no exact figures because traditional marriages are not registered. Women whose marriage is not registered have no rights. It has been said that economic conditions lead very poor families in southern Azerbaijan to accept that young girls marry Iranians, who buy them. The girls often subsequently return to their villages where they have to bring up their children alone. In the South Caucasus child marriages are certainly linked to the mentality but also to the situation of economic dependence women find themselves in. Some NGOs are apparently working on the problem, but nothing is being done at the national level.³²

28. Where children are concerned, particularly girls, sometimes very young girls, I am dismayed that some national legislation permits the marriage of minors, sometimes in a discriminatory fashion with gender-based differences in minimum ages. Such marriages have no place in our societies where human rights and children's rights are supposed to be protected. In Resolution 1468 (2005) "Forced marriages and child marriages" the Assembly endorses the considerations of the 1962 United Nations Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, which reaffirmed that "all States [...] should take all appropriate measures with a view to abolishing such customs, ancient laws and practices by ensuring, *inter alia*, complete freedom in the choice of a spouse, eliminating completely child marriages and the betrothal of young girls before the age of puberty, establishing appropriate penalties where necessary and establishing a civil or other register in which all marriages will be recorded".

29. To put a stop to forced marriages, including child marriages, I repeat the Assembly's appeal to national parliaments to adapt their legislation to fix at or raise to 18 years the minimum statutory age of marriage for women and men, to facilitate the prevention, detection and annulment of forced marriages and child marriages, and to prosecute individuals guilty of rape within such marriages and those who help to organise them. I also think the Assembly should recommend that the Committee of Ministers of the Council of Europe instruct the relevant intergovernmental committee to continue and finalise its analysis of forced marriages, including child marriages, and to develop a strategy to encourage the member states to take certain appropriate practical measures.

30. Moreover, some victims are taken back to their countries of origin or citizenship, to be married by force or after being married by force in the host country. To account for such situations, I propose that, for a minimum period of one year, host countries guarantee victims the unconditional right to come back.

C. Suggestions for paragraphs to be included in the report on the state of human rights and democracy in Europe

I. The Committee requests that the following paragraphs be included in the preliminary draft resolution:

i. Parity democracy

31. "The Assembly asks the member states:

31.1 to take all the necessary measures to outlaw and eliminate family voting;

31.2 to set the objective of achieving a gender balance in decision-making processes, with the initial target of a critical mass of at least 40% of women in all bodies, be they local, regional, parliamentary or governmental, by 2020;

³² See Doc. 11178, paragraph 3 of the explanatory memorandum of the rapporteur on "the situation of women in the South Caucasus", adopted by the Committee on Equal Opportunities for Women and Men on 15 January 2007.

31.3 to strengthen national and international mechanisms for promoting the balanced participation of women and men in decision-making.”

ii. Domestic violence

32. “The Assembly invites the member states to continue and step up their efforts to implement the Council of Europe Campaign to Combat Violence against Women, including Domestic Violence, to alert public opinion and to pass laws prohibiting domestic violence against women. Member states should in particular take every appropriate legislative, judicial and budgetary measure and adopt national plans to put a stop to domestic violence against women, including the criminalisation and punishment of rape between spouses in the same way as other rape, and the removal of the violent spouse from the marital home, where such measures do not already exist.”

iii. Trafficking

33. “The Assembly urges those Council of Europe member states which have not already done so:

33.1 to sign and/or ratify the Council of Europe Convention on Action against Trafficking in Human Beings without delay, so that it enters into force as soon as possible and has the broadest possible impact;

33.2 in any event, to apply forthwith the most important provisions of the convention, such as the victim identification process and the 30-day period of recovery and reflection for victims, paying particular attention to presumed victims in the process of being identified.”

34. “It calls on the European Community to sign and ratify this convention as soon as possible. It urges the European Commission to set in motion without delay the internal process enabling the European Community to sign and ratify this convention.”

iv. Forced marriages and child marriages

35. “The Assembly urges the national parliaments of the Council of Europe’s member states:

35.1 to fix at or raise to 18 years the minimum statutory age of marriage for women and men;

35.2 to consider as rape sexual relations forced on victims of forced marriages and child marriages, to facilitate the annulment of forced marriages, or automatically annul them, and to fix a maximum period of one year, as far as possible, for hearing and ruling on applications for the annulment of forced marriages and child marriages;

35.3 to guarantee to victims of forced marriages the possibility of returning to the host country for a period of one year. »

II. The Committee requests that the following paragraphs be included in the preliminary draft recommendation:

i. Parity democracy

36. “The Assembly urges the Committee of Ministers, at the earliest opportunity, to draft a Charter for electoral equality to foster balanced participation of women and men in decision making. In this context, it is important that the Committee of Ministers invites member states to foresee in their Constitution, in accordance with the principle of equality, the possibility to take special measures to promote equal access for women and men in decision-making. »

ii. Forced marriages and child marriages

37. “The Assembly invites the Committee of Ministers to instruct the relevant intergovernmental committee to continue its analysis of forced marriages in the Council of Europe member states, including child marriages, and to develop a strategy to encourage the member states in particular to

implement prevention campaigns in primary and secondary schools, tailored to the ages of the children concerned, to inform them of their rights, in particular the right to reach their own decisions in matters of marriage.”

38. “The Assembly invites the Committee of Ministers to instruct the relevant intergovernmental committee to follow the Assembly’s recommendations on forced marriages and child marriages when reviewing all the legal instruments elaborated by the Council of Europe in the field of family law, in order to identify those instruments which require revision or any new instruments that may be needed.”

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Reporting committees: Political Affairs Committee and Committee on Legal Affairs and Human Rights

Committee seized for opinion: Committee on Equal Opportunities for Women and Men

Reference to Committee: reference No. 3283 of 6 October 2006 and reference No. 3217 of 29 May 2006

Opinion unanimously adopted by the Committee on 26 February 2007

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