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Discrimination against women in the workforce and the workplace

Recommendation 1700 (2005)

Reply from the Committee of Ministers
adopted at the 949th meeting of the Ministers' Deputies (1 December 2005)

1. The Committee of Ministers has taken note with interest of Parliamentary Assembly Recommendation 1700 (2005) on discrimination against women in the workforce and the workplace. Like the Assembly, the Committee of Ministers regrets that discrimination against women at work is still a fact of life, despite efforts to end it both by member states and at an international level.
2. The Declaration adopted at the Warsaw Summit again strongly condemned all forms of intolerance and discrimination based on gender, and the Heads of State and Government affirmed therein their determination to continue implementing equal opportunity policies in the member states and to step up efforts to achieve real equality between women and men in all spheres of our societies. The Committee of Ministers consequently welcomes this initiative by the Assembly, which recommends a number of measures to combat discrimination against women in the workplace.
3. In this field, the Committee of Ministers relies to a large extent on the work of the Steering Committee for Equality between Women and Men (CDEG), and it wishes to draw the Assembly's attention to the CDEG's comments on Recommendation 1700 (2005) (cf. Appendix 1). As those comments show, the Assembly's concerns, notably regarding the need to promote women to decision-making posts and to adopt measures to reconcile professional and private life, have largely already been taken into account in the relevant recommendations addressed by the Committee of Ministers to member states.¹ Their full implementation should effectively contribute to equal treatment for women in a work context.
4. This observation, and the results of the thematic monitoring procedure on "Equality between women and men" conducted in 2003, have led the Committee of Ministers to encourage member states to introduce or reinforce national mechanisms to promote equality, in particular in the fields of employment and balanced participation of women and men in political and public decision-making. The Committee of Ministers again calls on all member states' governments to take firm measures in this direction. It has also stressed the importance it attaches to full use by the member states of the special assistance which the Council of Europe offers with the implementation of their legislation and policies on gender equality. It reiterates the Organisation's availability in this respect.
5. Like the Assembly, the Committee of Ministers recognises the importance of the international legal instruments which safeguard women's fundamental right not to be discriminated against in employment matters, including the European Social Charter and its revised version, and therefore strongly encourages member states which have not yet done so, to sign and ratify these instruments as soon as possible. In reply to the recommendations made by the Assembly in paragraph 10.i of Recommendation 1700 (2005), the Committee of Ministers refers to the detailed opinion given by the Governmental Committee of the European Social Charter (cf. Appendix 2), with which the Committee of Ministers concurs.

¹ Recommendations of the Committee of Ministers to member states Nos. R (96) 5 on reconciliation between professional and private life and Rec(2003)3 on balanced participation of women and men in public and political decision-making.

6. As for the awareness-raising campaign which the Assembly recommends conducting (paragraph 10.ii of the recommendation), the Committee of Ministers acknowledges the interest of such an initiative in principle. The 6th European Ministerial Conference on Equality between Women and Men will be an opportunity to consider this kind of action, and others, in particular in the light of the results of similar measures already taken in the member states. On the basis of the conclusions of the conference, the Committee will examine any further action to be taken at intergovernmental level in order to combat discrimination against women in the work context.

Appendix 1 to the reply

Comments prepared by the Steering Committee for Equality between Women and Men (CDEG)

1. The CDEG thanked the Parliamentary Assembly for its Recommendation 1700 (2005) on discrimination against women in the workforce and the workplace and welcomed this initiative of the Parliamentary Assembly recommending to take the necessary measures to combat discrimination against women in the work place.

2. The CDEG recalled that in the Committee of Ministers' thematic monitoring procedure regarding the theme "Equality between women and men" in 2003, the Committee of Ministers already noted that "despite the fact that the principle of non-discrimination at work and that of equal pay for equal work are enshrined in a number of international legal treaties, including the European Social Charter, persistence of the wage gap, occupational gender segregation in the labour market, women's higher unemployment rate, less secure contracts are wide-spread indicators of the existing inequalities between women and men in the field of employment" and underlined the need to adopt proactive measures and comprehensive policies in this field.

3. The CDEG recalled that the European Social Charter (revised) provides, in particular in Article 20, the right to equal opportunities and equal treatment in the matter of employment and occupation without discrimination on the grounds of sex. Furthermore a monitoring mechanism of this international instrument already exists.

4. The CDEG also recalled that the Protocol No. 12 to the European Convention on Human Rights (ECHR), which entered into force in April 2005, is an important instrument for building equality between women and men because it secures a general prohibition on discrimination by any public authority, in particular on the grounds of sex, regarding the enjoyment of any right set forth by law and not only those rights and freedoms set forth by the ECHR.

5. Item 10.i.e. of the Parliamentary Assembly Recommendation underlined the need to promote women to decision-making posts. The CDEG recalled that Recommendation Rec(2003)3 of the Committee of Ministers to member states on balanced participation of women and men in public and political decision-making provides measures to increase the number of women in posts of responsibility and to bring this text to the knowledge of all concerned in political institutions as well as to public and private bodies, in particular (...) companies, unions, employers associations. This text also recommends that member states support programmes launched by social partners (employers and workers organisations) in order to promote the balanced participation of women and men to posts of responsibility and decision-making posts in their organisations and in the framework of collective negotiations.

6. As regards the measures on reconciliation of professional and private life as foreseen in item 10. i.g. of the Parliamentary Assembly Recommendation, the CDEG recalled the provisions of Recommendation No. R (96) 5 of the Committee of Ministers to member states on reconciliation between professional and private life as well as those of Recommendation Rec(2003)3 of the Committee of Ministers to member states on balanced participation of women and men in public and political decision-making. As a follow-up to the latter recommendation, the CDEG has recently published a study on parental leave in Council of Europe member states which contains some policy recommendations.

7. Finally, the CDEG recalls that the 6th European Ministerial Conference on Equality between Women and Men will be devoted to the theme: Human rights and economic challenges in Europe – gender equality, and will give an opportunity to European Ministers in charge of gender equality issues to examine this question and propose further action in this field.

*Appendix 2 to the reply***Opinion of the Governmental Committee of the European Social Charter**

1. At the request of the Committee of Ministers (926th meeting of the Ministers' Deputies, 11 May 2005), the Governmental Committee of the European Social Charter has examined Parliamentary Assembly Recommendation 1700 (2005). It has adopted the following opinion.
2. The Governmental Committee takes note with interest of Parliamentary Assembly Recommendation 1700 (2005) and welcomes the opportunity it has been given to comment on this document. It is pleased at the interest shown by the Parliamentary Assembly for the European Social Charter and hails this initiative.
3. The Governmental Committee also takes this opportunity to reassert the fundamental nature of social rights. The subject of Recommendation 1700 (2005), elimination of discrimination against women in employment matters, is essential to fundamental rights and part and parcel of the human rights set out in the European Social Charter.
4. The Committee has paid particular attention to the recommendations made by the Parliamentary Assembly in paragraph 10 of Recommendation 1700 (2005).
5. Paragraph 10.i.a. of the recommendation recommends entrusting an intergovernmental committee with the task of revising and devising treaties which not only prohibit discrimination in law but also provide for a positive duty to prevent discrimination and promote equality. The Governmental Committee wishes to point out that Article 1§2 of the Charter in its original version of 1961 has always been interpreted as prohibiting all forms of discrimination based on sex in employment and further that this treaty expressly guarantees the right of women and men to equal pay (Article 4§3).² Moreover, the European Social Charter in its revised version of 1996 provides for an express ban on discrimination against women in access to employment and in the workplace and obliges states to promote equal treatment and equality of opportunity (Article 20) as well as the right of workers with family responsibilities to equal treatment and opportunity (Article 27).
6. The relevant provisions are worded as follows:

Article 1§2 of the Charter

"With a view to ensuring the effective exercise of the right to work, the Parties undertake:

...

2. to protect effectively the right of the worker to earn his living in an occupation freely entered upon;"

Article 4§3

"With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:

...

3. to recognise the right of men and women workers to equal pay for work of equal value;"

Article 20 /Article 1 of the Additional Protocol³

"With a view to ensuring the effective exercise of the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex, the Parties undertake to recognise that right and to take appropriate measures to ensure or promote its application in the following fields:

- a. access to employment, protection against dismissal and occupational resettlement;
- b. vocational guidance, training, retraining and rehabilitation;
- c. terms of employment and working conditions including remuneration;
- d. career development including promotion."

² Articles 1§2 and 4§3 were retained without any change of wording in the revised version of the Charter of 1996.

³ The right of women and men to equal treatment and equality of opportunity was recognised in 1988 under the Additional Protocol to the Charter (Article 1). It was retained without any change of wording in the revised version of the Charter of 1996 (Article 20).

Article 27

"With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake:

1. to take appropriate measures:
 - a. to enable workers with family responsibilities to enter and remain in employment, as well as to re-enter employment after an absence due to those responsibilities, including measures in the field of vocational guidance and training;
 - b. to take account of their needs in terms of conditions of employment and social security;
 - c. to develop or promote services, public or private, in particular child daycare services and other childcare arrangements;
2. to provide a possibility for either parent to obtain, during a period after maternity leave, parental leave to take care of a child, the duration and conditions of which should be determined by national legislation, collective agreements or practice;
3. to ensure that family responsibilities shall not, as such, constitute a valid reason for termination of employment."

7. So far 38 of the 46 member states of the Council of Europe have ratified the Charter (21 are bound by the revised version of 1996 and 17 by the original version of 1961). In addition, six member states are preparing to ratify the revised version of the Charter.

8. These 38 states are bound by Article 1§2. The 21 states parties to the revised Charter have accepted Article 20.⁴ Eight states have also accepted Article 1 of the Additional Protocol. 32 states have accepted Article 4§3. These rights are moreover part of the *acquis communautaire* and current or potential applicants for European Union membership must align their domestic law with this.

9. Paragraph 10.i.c. of the recommendation recommends putting in place effective control mechanisms at an international level, ensuring their smooth functioning and garnering support for them, in particular among trade unions and employers' associations. The Governmental Committee points out that the honouring of commitments entered into under the Charter is already subject to the supervision of the European Committee of Social Rights (ECSR), whose role is to assess the conformity with the Charter of national law and practice. It is made up of fifteen independent, impartial members elected by the Committee of Ministers of the Council of Europe. The Governmental Committee and/or the Committee of Ministers also play a role in the control mechanisms (see below §11).

10. There are two control mechanisms: the first provided for in the Charter – examination of national reports – and the second in an optional protocol – the Protocol of 1995 providing for a system of collective complaints. Under the reporting procedure, trade unions, employers' associations and non-governmental organisations may submit observations on national situations to the ECSR. The first two are also represented on the Governmental Committee. The right to lodge collective complaints is the preserve of the same three types of bodies.

11. The Governmental Committee underlines that these control procedures are effective and that the states are making a consistent effort to bring their national situations into conformity with the Charter and the Revised Charter. The Governmental Committee follows the measures undertaken by states in order to bring the situation with the Charter and the revised Charter. It regularly examines the decisions of non conformity issued by the ECSR. Where a state provides sufficiently precise information to the Governmental Committee showing that it has taken the necessary measures or plans to do so in the near future, the Governmental Committee takes no action. If a state fails to respond to a decision of non conformity by the ECSR, the Governmental Committee may propose that the Committee of Ministers address a recommendation to the state concerned, calling on it to remedy its law or practice.

12. Through its work the ECSR has precised how the rights laid down in the Charter are to be guaranteed. The Governmental Committee notes that the majority of the steps recommended by the Parliamentary Assembly are already included in the ECSR's requirements under Articles 1§2, 4§3 and 20. To comply with those requirements:

⁴ Article 20 is among the mandatory provisions that states must accept when they ratify the Revised Charter.

- the right of women and men to occupational equality must be guaranteed by legislation. The Charter requires “states not only to provide for equal treatment but also to protect women and men from discrimination in employment and training. This means that they are obliged to enact legislation explicitly imposing equal treatment in all aspects” (reference is made here to paragraph 10.i.a. of the recommendation);
- national law must provide for appropriate and effective remedies, compensation and sanctions in the event of discrimination. Employees who seek to enforce their right to equality must be protected against any form of reprisals (reference is made here to paragraph 10.i.c. of the recommendation);
- the burden of proof before the relevant bodies must be reduced (reference is made here to paragraph 10.i.h. of the recommendation);
- a number of legal measures must be encouraged to make the right of appeal fully effective, such as setting up an independent body to promote equal treatment and provide victims with legal assistance or authorising trade unions and other organisations to take legal action in employment discrimination cases, including on behalf of individuals (reference is made here to paragraphs 10.i.c. and h. of the recommendation).

13. Furthermore, with regard to the recommendations set out in paragraphs 10.i.d., e. and f. of the recommendation, the Governmental Committee reminds the Parliamentary Assembly that “*the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact*” and that conformity with the Charter cannot be ensured solely by the operation of legislation (International Commission of Jurists against Portugal, Collective Complaint No. 1/1998, decision on the merits of 9 September 1999, §32). This means that Article 20 requires states to take tangible measures fostering equality of opportunity by removing *de facto* inequalities that impinge on the opportunities of women and men. Moreover, the appendix to Article 20 states that positive measures in favour of women are permitted.

14. The policy approach must be based on a comprehensive strategy aimed at incorporating the gender perspective in all aspects of employment policy. In that connection, account is taken of Recommendation No. R (98) 14 on gender mainstreaming which the Committee of Ministers addressed to member states on 7 October 1998.

15. Lastly, as regards paragraph 10.i.g. of the Parliamentary Assembly's recommendation, the Committee points out that Article 27 of the revised Charter requires states to take positive measures to ensure that workers with family responsibilities do not suffer *de facto* discrimination as a result and to help them remain in employment or enter or return to the employment market, particularly through vocational guidance, training and retraining. To comply with this Article and with Article 16 child day-care facilities must be developed. The ECSR ensures that these are affordable, of a good standard and sufficient in number.

16. The Governmental Committee takes this opportunity to encourage states to accept the provisions in the Charter and the Revised Charter guaranteeing the right of women and men to equality in employment.

17. In conclusion, the Governmental Committee considers that implementation of Recommendation 1700 (2005) amounts to making full implementation of the Revised Charter and that it is accordingly neither necessary nor appropriate to devise any other instrument or provide for another control mechanism.