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The gender issue in the international and European law

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Abstract. A historical-regulatory overview: the principle of “non-discrimination” in the UN “Convention on the elimination of all forms of discrimination against women” aimed at improving equality between the sexes. This objective is still far from being achieved: in poor Countries women are victims of sexual exploitation and lack of opportunities. In 1999 the UN reviewed the Convention focusing on three fundamental rights: education, access to labour and employment. Further actions were taken at international level by the ILO (conventions n° 100,111 and 156), the Council of Europe (European Social Charter 1961, revised in 1996) and the EU. There are many European regulations which deal with women’s social rights (e.g. Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women, the Communication of 1/6/2005 on “a framework strategy to promote non-discrimination and equal opportunities for all” and various articles in Treaty of Lisbon). The rights that women must enjoy in socio-political life should include: health, education and nutrition. To come out from their dependence, women also need being supported by economic measures as microcredit. Security Council Resolution 1325/2000 and the third Millennium Development Goal recognize that women’s employment is a resource for the whole society.

Keywords. Legislation – Agreements – Convention – Regulation – Micro-finance/credit – European Union.

L’intégration du genre dans la législation internationale et européenne

Résumé. *Un aperçu historique et réglementaire : Le principe de la “non-discrimination” dans la convention des Nations Unies sur “l’élimination de toutes les formes de discrimination à l’égard des femmes” visait à promouvoir l’égalité des sexes. Cet objectif est loin d’être atteint : dans les pays pauvres, les femmes sont les victimes de l’exploitation sexuelle et de l’insuffisance de ressources. En 1999, les Nations Unies ont révisé la Convention en mettant l’accent sur trois droits fondamentaux : l’éducation, l’accès au travail et à l’emploi. D’autres actions ont été adoptées à l’échelle internationale par l’OIT (conventions n° 100,111 and 156), le Conseil de l’Europe (Charte Sociale Européenne de 1961, révisée en 1996) et l’UE. Il existe de nombreux documents européens qui sanctionnent les droits sociaux des femmes (par exemple, la Directive du Conseil 76/207/CEE relative à la mise en œuvre du principe de l’égalité de traitement entre hommes et femmes, la Communication du 1/6/2005 sur “la stratégie cadre pour promouvoir la non-discrimination et l’égalité des chances pour tous ” et différents articles du Traité de Lisbonne. Les droits reconnus aux femmes au niveau socio-politique incluent la santé, l’éducation et l’alimentation. Pour sortir de leur dépendance, les femmes nécessitent aussi des mesures économiques de support comme le microcrédit. La Résolution 1325/2000 du Conseil de Sécurité et le Troisième Objectif du Millénaire pour le Développement reconnaissent que l’emploi des femmes est une ressource pour la société tout entière.*

Mots-clés. *Législation – Accords – Convention – Règlementation – Micro-crédit – Union Européenne.*

The treatment of the theme I have been asked to cover would require a lot of time, as it involves different and complex problems concerning the role of women in the contemporary world.

I will try to summarize as more as possible the principles and the rules that govern women’s rights in the general area of human rights at the international and European levels.

The first principle is “non-discrimination”, as better defined in the universal Declaration of 1948 and in the UN international conventions on human rights, including the “Convention on the elimination of all forms of discrimination against women” of 18 December 1979 to which I will refer in my presentation.

A thorough reading of this Convention is helpful to understand that the expression “discrimination against women” concerns “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women... on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field (articleLike any agreement, the Convention of 1979 is addressed to the States called to implement and observe women’s rights through a real application in their internal regulations of the provisions or rules that govern the so-called “equality between man and woman” in the enjoyment of civil, political, social, economic and cultural rights in their interdependence for woman’s fulfilment not only in her natural role of mother but also in many different working sectors.

The Convention, viewed as the international discipline that has actually laid the legal bases for a serious evolution of woman’s status and, above all, for the recognition of her rights, has been signed and ratified by most of the States of the international Community, just to witness the will to aid improving the conditions of the woman, considered, above all in past centuries, a person unable to express herself outside her home context or, even worse, as an object to exploit and abuse.

Certainly the woman-object still exists in today’s world in which the trafficking favours the sexual exploitation and the sale of young women and girls, as well as the hidden domestic violence and rape.

These conditions do exist especially in the States in which poverty induces women to illegal immigration towards more developed States ignoring completely or overlooking the consequences to which they expose themselves with their children.

This is the scenario the International Community has experienced in the last century and is still experiencing; a scenario that deserves great attention and needs a solution or a possible remedial action that might enable the woman, either mother or daughter, major of age or minor, to be the leading player in her family world but, above all, in the society in which she intends to live and work.

This is the woman to whom the member States of the UN, the ILO, the EU and the Council of Europe (to mention just the main International organizations involved in woman’s rights) are addressed.

It is the principle of non-discrimination, but today also the “principle of equality between man and woman” that induces the States to remove any obstacle that hinders, in particular, the fulfilment of women’s rights.

The Convention of 1979 refers explicitly to these rights in its arrangements explicitly reminding the contracting States to adopt any instrument and procedure to achieve and ensure these rights, has established the “Committee on the abolition of discrimination against women”, which is charged to review the national reports submitted by the States on the Convention’s implementation in the national legislation.

By the Protocol of 6 October 1999, twenty years after the Convention’s adoption, the Committee, as expert body, is called to review the communications submitted by individuals or groups of individuals for infringements of the rights covered by the Convention expressing, at the end of the communications, an assenting opinion with the conventional regulations.

The Convention focuses on many woman’s rights, which are all fundamental. The themes of this Meeting, however, call for the analysis of the provisions on the right to education, access to labour and employment in its multiple aspects, that will be covered in next reports in relation to different States.

With reference to education, article 10 of the Convention of 1979 recalls the States to take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of “education”, expressed in various forms and degrees, in particular to ensure to the women the same conditions for career and vocational guidance, for access to studies and for the achievement of general and technical higher professional diplomas in rural as well as in urban areas.

The right to education determines the woman’s preparation helping her to play her role of family teacher as educated and informed person who should, however, continue to get informed to ensure an appropriate life quality to herself and her family and to have access to work, prior an appropriate vocational training.

Vocational training, therefore, is necessary so that the woman can exert her right to employment, as specified in art. 11 of the said Convention of 1979, the right to free choice of profession and employment, to job security and all benefits and conditions of service, to equal remuneration and to equal treatment in respect of work and equal value, the right to protection, including the safeguarding of the function of reproduction.

These rights have also been regulated by the ILO in two different Conventions: the Equal Remuneration Convention of 1951 (N°100) and the Discrimination (Employment and Occupation) Convention of 1958 (N° 111) that have anticipated, through specific rules, the UN Convention of 1979 and Convention 156 on equal possibility and treatment for workers with family responsibilities, of 1981.

As social and cultural rights, the rights to education and employment have been regulated, by will of the member States of the Council of Europe, in the European Social Charter of 1961 and in the Revised European Social Charter of 1996 that re-assert the principle of non-discrimination between men and women for social rights, emphasized in the views adopted by the European Committee of Social Rights, the body responsible for monitoring the implementation of the Charter in States Parties, after reviewing the national reports and the joint communications.

I cannot overlook the Recommendation (2007) 17 on gender equality standards and mechanisms of 21 November 2007, adopted by the Committee of Ministers and focused both on the States’ duty to fulfil these rights and on the principles and standards to be satisfied to comply with democracy, good governance and social justice.

The theme of the enjoyment of woman’s rights is included in the Community regulations, notably in the Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and the working conditions, also mentioned in the Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

More recently the European Commission has adopted the Green Paper on “Equality and non-discrimination in an enlarged European Union” of 28 May 2004 and the Communication of 1 June 2005 on “a framework strategy to promote non-discrimination and equal opportunities for all”.

Such a strategy has its legal embodiment in Lisbon Treaty of 2007 in articles 8, 9 and 10 and in the application of the principle of non-discrimination to eliminate all inequalities and promote equality between men and women, to combat social exclusion while ensuring education and training, health and a high level of employment.

These fundamental core rights, “health and education” should also include the “right to nutrition”: all the three are necessary for women to enjoy their freedom and participate in the socio-political life of the State in which they intend to stay and work, without any distinction based on the racial or ethnic group, religion or belief, disability, age or sexual orientation.

The international agreements and acts, examined so far, have focused on the disadvantage of women in our society, in particular if they do not have an educational and independence level that can provide the same opportunities as men in the field of private and public work.

These legal tools are addressed to all the States of the international Community, also the so-called developed States in which women have not always obtained the same recognitions as men, due to political choices that have caused legislative shortcomings and have set women in a state of dependence on the grounds that that they are not able to reconcile private and public life or that they have not an appropriate vocational guidance to have access to some working positions or even more for religious beliefs that prevent women from coming out from their "family shell".

This consideration is even more painful if referred to the women in developing countries, where conflicts or humanitarian emergencies exclude the fulfilment of women's rights due to structural shortcomings of the State, or to unaccepted or inadequate cooperation for development.

The humanitarian emergencies, currently existing in some countries, recall the developed States to intervene in specific sectors, for example where children's or mothers' health necessitates substantial and targeted aid or where hunger kills or poverty prevents any possible solution.

In this context the role of woman seems essential to lay the bases to create job opportunities and educational opportunities for her children.

A role of woman re-considered by those who are involved in cooperation for development and fund projects in the States so as to allow women to have access to education and start up a working activity that can ensure an acceptable life quality.

This aspect has been specifically addressed by the Nobel Prize Yunus who developed the notion of "micro-credit", through the so-called bank for the poor, which has different rules from traditional banks: it has inclusive financial systems and supporting legal and regulatory frameworks, that is to say loans that are repaid on fixed term by small amounts obtained from the sale of women-made products.

This system - applied successfully in Bangladesh despite the attempts of conventional banks to interfere - allows women to get independent within the family practising handicraft or rural activities that, in turn, give them the means of subsistence for themselves and their children to whom they can offer educational opportunities, thus triggering a social, economic and cultural development process, as stated in the international instruments on human rights.

The current challenge of the international Community is indeed "the decent job for women is not only a right for them but also an advantage for all" because women's work is a pre-condition for economic development, in the same way as men's work.

The existing political, economic and social difficulties in developed States where the woman often decides to remain at home, affect even more developing States, where remaining at home seems a duty for the woman who cannot access the labour market and is inactive for society: the reasons are the lack of specific rules in the field and the persistent cultural stereotypes that, as mentioned in all the relevant resolutions of the UN General Assembly, are the "root cause" of the so-called "gender inequality".

A recent study of the ILO of March 2008 has pointed out a slow progress of women in the access to labour market in less developed countries, in particular in agriculture or in the service sector.

Statistics, however, show some progress in some areas of Asia and Latin America and in the Caribbean and a decline in sub-Saharan and North Africa where the man-woman gap is deep, in the economic, decision-making and political processes. In this regard I remember, by the way, that the Security Council adopted a Resolution still relevant and effective, the 1325/2000, dedicated

to the “women empowerment” (established following the Beijing Conference of 1995 and the 23rd special session of AG 2000 devoted to women).

I have reviewed some important legal instruments adopted by States – at the global and regional levels – being aware that what is written and provided for is not always fully implemented by the States.

The objective “promoting man-woman equality”, the third Millennium Development Goal of the UN, that is expected to be achieved by 2015, can be actually fulfilled only through the States’ will to translate in legal or regulatory tools the duties subsequent to international or European regulations, starting up the synergic processes of economic, social and cultural development with the actual fulfilment of civil and political rights, the latter being essential for the economic, social and cultural rights to be protected and ensured by the States.

I cannot forget that today we speak about the right to development, or rather of access to development for the people of less developed countries, a right of access that considers woman, called to be leading player for herself, her family and the society to actively participate in the job market where her labour or her knowledge can be an added value for economic development.

