Written Submission to the CEDAW Committee for the General Discussion on Women’s Access to Justice (18 February 2013)

The Greek National Commission for Human Rights (NCHR), which was established and is operating under the UN Paris Principles\(^1\) as an independent advisory body to the Greek State for the protection of Human Rights, has the honour to present to the CEDAW Committee this contribution to the General Discussion on Women’s Access to Justice. Our observations are based on our numerous submissions to Greek authorities and international and European treaty bodies, including recommendations, declarations and comments regarding legislative action and administrative practices, where the NCHR is constantly stressing the importance of effective judicial or legal protection as a universal fundamental right and putting forward concrete proposals for the guarantee of this right.

1. General observations

The NCHR highly welcomes the Committee’s decision to elaborate a General Recommendation on women’s access to justice and to hold a general discussion with interested stakeholders on this very important issue. The NCHR also welcomes the Committee’s Concept Note, which sets out fundamental aspects of this issue and prepares the ground for the discussion. It is indeed crucial to have a Recommendation which will be “a practical and action oriented tool issuing clear and precise guidelines for State parties” and “will touch upon the obstacles and barriers faced by women in accessing justice in the successive stages of the justice chain”, as the Concept Note very pertinently underlines. It is within this framework that we would like to draw attention to the following:

2. The right to effective judicial or legal protection of women’s rights

The right to effective judicial or legal protection is inherent in every human right, including women’s rights. The CEDAW guarantees women’s rights against all forms of discrimination, in all fields. Moreover it imposes the promotion of *de facto* – substantive – gender equality in all fields, which can only be achieved by adequate and effective positive or affirmative measures in favour of women. Such measures do not constitute exceptions or derogations from gender equality – they must not be considered discrimination –, but necessary means to

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accelerate *de facto* equality (Article 4(1) CEDAW). Consequently, the term “positive discrimination” used by some legal authors is inexact and misleading – indeed, harmful to women’s rights and gender equality. This should be constantly stressed.²

Effective judicial or legal protection includes effective access to justice, a fair trial, effective sanctions (adequate in relation to the damage sustained and capable to have a deterrent effect on the perpetrator of the discrimination) and effective implementation of judicial decisions. These are the essential “stages of the justice chain”. Moreover, judicial remedies should be coupled with effective non-judicial remedies, including recourses to independent equality bodies and competent government authorities, such as the labour inspectorate, which should include stages and guarantees corresponding to the above.

The above remedies should address gender discrimination of all forms, in all fields. Moreover, as the principle of gender equality is a proactive principle, which goes further than the prohibition of gender discrimination, the above remedies should also lead to a thorough review of the adequacy and effectiveness, in law and in practice, of existing positive measures, to the annulment of the withdrawal of useful positive measures, and to an injunction to adopt further adequate and effective measures in areas where this is needed.

3. Barriers to access to court and to effective judicial protection and means to overcome them

It is well known that women are reluctant to claim their rights before the courts or other competent authorities, due to the fear of being victimized or labelled troublemakers and due to lack of evidence. This reluctance is increasing with the economic and financial crisis and the ensuing austerity measures, such as the deregulation of labour relationships, the cuts in salaries and pensions as well as in social benefits, the diminution and even abolishment of social infrastructures, including those providing care for children and other dependent family members, the raising of taxes. Such measures, coupled with growing unemployment, affect women and their families very heavily and are leading women to humiliating compromises. Moreover, gender stereotypes are strengthened in such situations.

There are procedural rules in EU gender equality directives which require that trade unions and other organizations have standing to pursue the claims of victims of discrimination before the courts and other competent authorities, even in cases where these victims are not their members, and that the burden of proof of discrimination be shifted, in certain circumstances, to the respondent. These rules aim to encourage the pursuance of claims of victims of discrimination and protect them from victimization due to their recourse to the courts or other authorities. However, they are not adequately and correctly transposed and/or applied in all EU Member States and they are not widely known to judges and lawyers. This problem should be effectively addressed in EU Member States, while these rules should be also adopted in States which are not EU members, as a very important means to achieve judicial protection and quasi-judicial protection of CEDAW rights.

Furthermore, access to justice is impeded by high litigation costs and inadequate legal aid. In times of economic crisis and where there are considerable delays in judicial procedures, States tend to raise litigation costs in order to limit litigation and for budgetary reasons, while the conditions of legal aid are so strict that very few people can benefit from such aid. In particular, the payment of high amounts is required as a condition of the admissibility of a claim, so that the door of justice is shut to people with low income and justice becomes the privilege of the rich. As women are heavily stricken by poverty, in particular in times of economic crisis, they are particularly affected by such situations and measures, which constitute gross violations of the CEDAW.

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