

CONV 762/03

CONTRIB 339

BEGELEIDENDE NOTA

van: het Secretariaat

aan: de Conventie

Betreft: Bijdrage van de heer Lone Dybkjaer, plaatsvervangend lid van de Conventie:
"Gendergelijkheid in het Europees constitutioneel verdrag"

De secretaris-generaal van de Conventie heeft de bijgaande bijdrage ontvangen van de heer Lone Dybkjaer, plaatsvervangend lid van de Conventie.

Contribution by Mrs. Lone Dybkjær, alternate member of the Convention

Gender equality in the European Constitutional Treaty

In light of the debate on a Constitutional Treaty in the Convention so far as well as a series of meetings on gender equality and the Constitutional Treaty outside the framework of the Convention and a very large amount of requests from various ngo's representing civil society and citizens in their own right, in my opinion the following proposals with regard to gender equality are minimum requirements, which has to be incorporated in the Constitutional Treaty:

Gender Equality is a European value!

- **Equality between women and men is a common European value and must be included in Article 2, Part I.**

Article 2 should thus read: *The Union is founded on the values of respect for human dignity, liberty, democracy, **equality between women and men**, the rule of law and respect for human rights, values which are common to the Member States. Its aim is a society at peace, through the practice of tolerance, justice and solidarity*

Equality of women and men must remain a clearly stated core value of the European Union in order to eliminate gender inequality and ensure the full realisation by all women of their human rights. The Constitutional Treaty continuously refers to the values of the Union, both in the policy articles as well as in articles in Part I (see for example article 43 on criteria for membership of the Union and article 45 on suspension of membership rights).

There can be NO ROLLING BACK on the Acquis Communautaire!

- **The fight against all forms of discrimination as well as racism and xenophobia must remain an objective for the EU, and thus be included in Article 3, Part I.**

Article 3 should thus read: *The Union shall work for a Europe of sustainable development based on balanced economic growth, a high level of protection and improvement in the quality of the environment and social justice, with a free single market, and economic and monetary union, aiming at full employment and generating high levels of competitiveness and living standards to meet the needs of the present generation with respect for the rights of future generations. It shall promote economic and social cohesion, equality between women and men, and environmental and social protection and accessibility for all, and shall develop scientific and technological advance including the discovery of space. **It shall promote non-discrimination on the basis of racial or ethnic origin, religious or sexual orientation, disability and age.** It shall encourage solidarity between generations and between States, and equal opportunities for all.*

- Gender mainstreaming must remain an essential principle in the new Constitutional Treaty and thus be placed in Article 8, Part I under Fundamental Principles.

In Article 8 a new point should thus be added:

- 1. The limits and use of Union competences are governed by the principles of conferral, subsidiarity, proportionality and loyal cooperation.**
- 2. In accordance with the principle of conferral, the Union shall act within the limits of the competences conferred upon it by the Constitution to attain the objectives the Constitution sets out. Competences not conferred upon the Union by the Constitution remain with the Member States.**
- 3. In accordance with the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the intended action cannot be sufficiently achieved by the Member States, but can rather, by reason of the scale or effects of the proposed action be better achieved at Union level.**
- 4. In accordance with the principle of proportionality, the scope and form of Union action shall not exceed what is necessary to achieve the objectives of the Constitution.**
- 5. In accordance with the principle of loyal cooperation, the Union and the Member States shall, in full mutual respect, assist each other to carry out tasks which flow from the Constitution.**
- 6. The following requirement shall be integrated into the definition and implementation of the Union policies and activities referred to in this Part: elimination of inequalities and promotion of equality between women and men.**

- Equality between women and men and the fight against all forms of gender discrimination must be a shared competence of the European Union and the Member States and thus be listed in Article 12, Part I. The inclusion of gender equality in the list of areas of shared competence will ensure the creation of a specific legal basis for gender equality in Part Two of the Constitutional Treaty.

Article 12 should thus read:

- 1. The Union shall share competence with the Member States where the Constitution confers on it a competence which does not relate to the areas referred to in Article 11 and 15.**
- 2. The scope of shared competences is determined by the provisions of Part Two (or Three).**
- 3. Where the Union has not exercised or ceases to exercise its competence in an area of shared competence, the Member States may exercise theirs.**
- 4. Shared competence applies in the following principal areas:**
 - internal market**
 - area of freedom, security and justice**

- **agriculture and fisheries**
- **transport**
- **trans-European networks**
- **energy**
- **social policy**
- *gender equality*
- **economic and social cohesion**
- **environment**
- **public health, and**
- **consumer protection.**

Motivation:

Inequality between women and men remains systematic and institutionalised in all areas of life. The evidence is overwhelming that there is marked inequality between women and men in Europe in access to resources, access to decision-making, and a widespread undervaluing of women's contribution to society. Gender inequality is pervasive across all groups within society and cuts across all other forms of inequality.

It is an absolute must that the **anti-discrimination formulations** of article 13 is an objective in a European Constitutional Treaty. We should continuously work to fight racism and xenophobia as well as all forms of discrimination on the grounds of sex, race, ethnic origin, religion, disability, age or sexual orientation. If article 13 is not repeated in the first part of the Constitutional Treaty, it will present a step **backwards** for the European Union. The fight against discrimination is not simply a policy. It is a Union objective.

It is completely unacceptable if the Constitutional Treaty does not *at least* preserve the existing objectives of the Union. What sort of a signal would we send - within the current member states and not least within the coming ones - if we did not emphasise our will to fight all forms of discrimination?

The 1997 Amsterdam Treaty identified gender mainstreaming as a general competence of the European Union. The principle of equal treatment for women and men is currently a fundamental principle of Community Law, and the **gender mainstreaming article 3(2) is currently listed in Part one of the EC Treaty under "Principles"**, it would be a step **backwards**, at the very least symbolically, to not have this Article mentioned in Part I of the new Constitutional Treaty.

The European Women's Lobby (EWL) has made an analysis of the constitutions of the EU Member States and candidate countries, in order to have an overview of the existing national constitutional provisions in the area of gender equality and anti-discrimination.

The great majority of countries with a written constitution have either both a specific provision on gender equality or a provision providing for active measures by the State to promote equality of women and men. All Member States with a written constitution have an anti-discrimination clause!

These statements did not simply appear by themselves. They came about through decades of hard work by women, women's organisations and human rights activists.

In spite of the fact that the majority of these constitutional documents are very old, equality between women and men is not a fact in one single country in Europe. Women are not free to make their life choices, especially if they are mothers or wish to be mothers. This is completely different for men and fathers.

Constitutional articles are necessary but by no means sufficient preconditions to achieve gender equality. A progressive political environment is also necessary, but that is always the next step. It would indeed seem completely unacceptable that the European Union, endlessly proclaiming its attachment to democracy and human rights, does not provide in its constitution provisions of **at least the same strength on gender equality** as national constitutions.

It cannot be that this battle for equality should start again in 2003 in relation to the Constitutional Treaty. We do not want to fight battles already fought. Europe is not gender equal. It is our duty to make progress towards a gender equal European society possible.
