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REPORT

**“EQUAL REPRESENTATION OF WOMEN AND MEN
IN THE CIVIL SERVICE -
THE SLOVENIAN EXPERIENCE”**

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Introduction

Specific actions are seen as an excellent means of achieving real, substantive gender equality and they have been the traditional task of national gender equality mechanisms since they were created. Specific actions allow addressing the main problems affecting the situation of women and are essential for removing structural gender stereotypes and differences by treating the sexes differently. They include a variety of actions in many fronts and areas of women's and men's lives. This instrument is a coherent packet of wide variety of measures, from legal reform, designing and implementing specific strategies and projects aimed specifically at correcting the position of women of a target group in one or more aspects of their social life, organising campaigns and educational activities to actions addressing the cultural negative stereotypes.

Specific actions, when performed through the use of **positive actions/special temporary measures/affirmative action** are sometimes covered by the term "positive discrimination". In relation to this term it is of the utmost importance to stress that the latter term makes no sense. Decisions of the European Court of Human Rights even though the case-law regarding discrimination on grounds of sex is rather limited, and United Nations documents, among them reports of United Nations Commission on human rights¹, provide a clear evidence that the term "positive discrimination" is a *contradiction in terminis*. The term discrimination is exclusively designated to arbitrary, unjust or illegitimate distinctions. Therefore when the distinction in question is justified and legitimate, because not arbitrary, cannot be called "discrimination". And when the distinction in question is unjustified or illegitimate, because arbitrary, should not be labelled "positive".

The concept of specific actions/ positive measures/temporary measures is generally referred in international law as "special measures". Texts of articles of human rights legal instruments do not impose an obligation to the State parties to introduce specific actions. The obligation of States parties to promote efficient realisation of the relevant rights to the maximum of their available resources is found in general comments of the committees, monitoring the implementation of the international human rights treaties. Governments are required to do much more than merely abstain from taking measures, which might have a negative impact on women or men due to their sex. This almost invariably means that to remedy or redress historical injustice (intentional or specific discrimination based on sex), reduce structural disadvantages, overcome gender stereotypes and prejudices still existing in many societies etc. additional resources will need to be made available for this purpose and that a wide range of specially tailored measures will be required.

To summarise my intervention on "positive discrimination" I would like to stress that there is no difference between positive action/special temporary measures and positive measures, as it is considered that the three terms describe the same thing. But the ambiguities inherent in the concept of positive discrimination require more attention. On the basis of already mentioned case law of the European Court of Human Rights, discrimination is necessarily illegal and so cannot really be "positive". The Court defines discrimination as differential treatment without objective and reasonable justification that is treatment which does not pursue a legitimate aim or where there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised

¹ *Final report on the concept and practice of affirmative action*, Commission on Human Rights, Economic and Social Council, United Nations, E/CN.4/Sub.2/2002/21.

Moreover, it is not coincidence that many people have spoken out against positive discrimination in pursuing gender balanced participation of women and men in decision-making or other gender equality objectives and goals, believing that it is harmful and should be prohibited. The truth is that all discrimination is prohibited, which is not to say all "differential treatment". Actually, according to the terminology of the European Court of Human Rights, we should really talk about "**positive differential treatment**" to describe the special measures, taken to compensate for or prevent inequality. I would appreciate if you would consider taking this explanation on your journey back to your capitals and promote a concept of positive action or measure in your future daily routine.

Why it is so important to devote time to address the concept of positive action/positive measures? Because they are a most efficient instrument among special gender equality actions, when favouring access by members of certain categories of people, in our particular case women, to rights which they are guaranteed, to the same extent as members of other categories, in our case men, is our specific goal. The term "action" or "measures" encompasses a wide variety of legislative, executive, administrative and other regulatory instruments, policies and practices, such as outreach or support programmes; allocation and/or reallocation of resources; preferential treatment; targeted recruitment, hiring and promotion; numerical goals connected with time frames; and quota systems.² And such instruments are integral to focusing on the issue of equal representation of women and men in the civil service.

1. Gender balanced representation/participation of women and men

What changed the most in the last fifty years in the Council of Europe member states is the position of women. What we in Europe have experienced in gender relations is the most revolutionary transformation in social relations in the history of human kind.

Women are visibly making important societal decisions. Member countries have now had female leaders in formerly inconceivable positions from Head of States, Prime Ministers to Minister of Defence. Ministerial cabinets sometimes come close to gender balance and the number of women members of national parliaments tends to increase at least in certain number of the Council of Europe member states. That this change has come about enormous efforts have been employed on the part of international organisations and unexamined number of social actions and concerted strategies on the part of women and men who think gender balanced participation is essential for democracy and a sign of its effective functioning have been crucial for the progress achieved.

However, social decision-making is not confined to the halls of parliament. The progress across Europe in bringing gender balanced participation into political and public life, including at decision making level of its institutions, has been highly uneven and not all sectors have been equally flexible in transforming to new patterns of gender equality. Political decision-making, which is the most visible sector, has been the one which has seen the most dramatic change, but the further we move from arenas of democratic control, the lower the level of gender balance in most countries. International comparison has made abundantly clear that different arenas for social decision-making are moving towards gender balance representation at different speed.

² *General recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women*

The following data are to learn how far we are from gender-balanced representation in national parliaments, central administrations, referred to also as ministries, and at highest-ranking levels of civil servants.

Representation of women in national parliaments

In 2005 the proportion of women in 46 member states of the Council of Europe was differed substantively: 10 member states had more than 30% of women members of parliament, 12 of them had parliaments, in which women share was from 20% to 28.6%, in 15, including my own country, women got from 10% to 20% seats in the parliament, and 9 member states have parliaments, in which women's representation is lower then 10%.

Table 1: Distribution of women represented in forty-six Council of Europe member states' parliaments (lower or single house)

	Member states from the highest to the lowest % of women MPs
More than 40%	Sweden (45.3%)
30% - 38%	Norway (37.9%), Finland (37.5%), Denmark (36.9%), Netherlands (36.7%), Spain (36.0%), Belgium (34.7%), Austria (33.9%), Iceland (33.3%), Germany (31.8)
20% - 28 %	Andorra (28.6%), Switzerland (25.0%), Liechtenstein (24.0%), Luxemburg (23.3%), Bulgaria (22.1%), Lithuania (22.0%), Moldova (21.8%), Croatia (21.7%), Portugal (21.3%), Latvia (21.0%), Monaco (20.8%), Poland (20.4%)
10% - 20%	United Kingdom (19.7%), Macedonia (19.2%), Estonia (18.8%), Czech Republic (17.0%), Bosnia and Herzegovina (16.7%), San Marino (16.7%), Slovakia (16.7%), Cyprus (16.1%), Ireland (13.3%), Azerbaijan (13.0%), Greece (13.0%), France (12.2%), Slovenia (12.2%), Italy (11.5%), Romania (11.2%)
4% – 10%	Russian Federation (9.8%), Georgia (9.4%), Malta (9.2%), Hungary (9.1%), Serbia and Montenegro (7.9%), Albania (7.1%), Ukraine (5.3%), Armenia (5.3%), Turkey (4.4%)

Source: Interparliamentary Union (situation at 31 December 2005)

Note: Figures correspond to the number of seats currently field in Parliament

Representation of women in national/federal governments

For an insight into data on women members of the national/federal governments the indicators of the European Commission database on women and men in decision-making, which maps progress in 25 EU member states as well as of Bulgaria, Romania, Iceland, Liechtenstein and Norway are used.

Table 2: The proportion of women in the national/federal governments (30 countries included in the EU database)

% groups	Member states from the highest to the lowest % in the % group
40% and more	Germany (44%), Spain (44%), Finland (44%), Sweden (40%)
30% - 39%	Norway (36%), Austria (33%), The Netherlands (33%)
20% - 29%	United Kingdom (29%), Denmark (26%), Belgium (25%), Iceland (25%), Bulgaria (23%), Latvia (22%), Liechtenstein (20%), Luxemburg (20%)
10% - 19%	France (19%), Estonia (14%), Portugal (14%), Romania (13%), Slovakia (12%), Ireland (11%), Hungary (10%)
less than 10%	Italy (9%), Slovenia (7%), Greece (4%)
0%	Cyprus, Czech Republic, Lithuania, Malta, Poland,

Source: Database on Women and men in decision-making, European Commission

Note: Last updated on 31 March 2005

Representation of women in the national administrations

At a first glance, one might think that representation of women in public administration would be easier reaching goal. But data on distribution of the highest-ranking women civil servants (a hierarchical level that have a major impact on decision-making in the organisation) in different fields of action in the EU member states and Bulgaria, Romania, Iceland, Liechtenstein and Norway reveal that factors, such as gender segregation in work and in education keep the majority of women at the edge of decision-making in basic functions, economy and infrastructure, while they are better represented in socio-cultural functions.

Table 3: Average proportion of women decision-makers one level below the minister and two levels below the minister in the central administration in 4 main fields of action (30 countries included in the EU database)

Field of action	% of women one level below the minister	% of women two levels below the minister
Basic functions	10	19
Economy	13	19
Infrastructure	18	22
Socio-cultural functions	22	31

Source: Database on Women and men in decision-making, European Commission

Note: Last updated on 31 March 2005

And in addition to gender segregation under representation of women in top functions and many women at the bottom is evidence that gender imbalance needs to be addressed by further efficient public management gender equality and quality improvement efforts.

Are women more successful when applying for decision-making post in national central administrations of the 30 already mentioned countries, included in the EU database on women and men in decision-making?

Table 4: The proportion of women civil servants at the highest and 2nd highest level (30 countries included in the EU database)

	% groups	Member states from the highest to the lowest % in the % group
Civil servants at the highest level	40% and more	Latvia (41%)
	30% - 39%	Sweden (37%), Slovenia (37%), Spain (33%), Liechtenstein (31%)
	20% - 29%	Finland (29%), Poland (29%), Bulgaria (27%), Slovakia (25%), Norway (22%)
	10% - 19%	Iceland (17%), United Kingdom (15%), Estonia (14%), Romania (13%), Luxemburg (12%)
	less than 10%	Greece (9%), Cyprus (8%), Czech Republic (8%), Ireland (8%), Belgium (7%), Malta (7%), The Netherlands (7%), Hungary (6%), Portugal (6%), Denmark (5%), Lithuania (5%)
	0%	Austria, Germany, France, Italy
Civil servants at the 2nd highest level	40% and more	Bulgaria (50%), Slovenia (49%), Sweden (41%)
	30% - 39%	Latvia (37%), Greece (35%), Poland (33%), Spain (30%), Norway (30%)
	20% - 29%	Iceland (29%), Slovakia (26%), Estonia (25%), Lithuania (24%), Portugal (21%), Denmark (20%), Hungary (20%)
	10% - 19%	United Kingdom (19%), Czech Republic (17%), Finland (17%), Cyprus (16%), Italy (16%), The Netherlands (16%), Romania (16%), Austria (14%), France (14%), Germany (12%), Luxemburg (12%), Malta (11%)
	less than 10%	Ireland (9%), Liechtenstein (9%), Belgium (6%)

Source: Database on Women and men in decision-making, European Commission

Note: Last updated on 31 March 2005

Public administration, which is the face of the state, is becoming a significant front line for those designing better responses to under representation of women in decision-making. Thanks to its visibility, strength and symbolic importance as a mirror of the values of a policy, increasing numbers of initiatives to improve the representation of women and men across the different levels of responsibility were recorded. There were two main targets: on the one hand the composition of publicly appointed regulatory bodies and on the other the composition of the higher-level public functions in the civil service.

State can be regulated by the public therefore it is natural that legislation has been a key instrument for bringing about quick change, especially in the composition of public bodies.

Nearly 25 years ago the Norwegian Gender Equality Act required a minimum of 40% of women and men to be represented in advisory committees at the local level. An increasing number of governments have used legislative interventions to close the gap in the representation of women and men in the publicly appointed sector. In few years the majority of Northern European democracies have adopted strong guidelines of regulations for the composition of governmental appointed bodies ranging from one-third to fifty percent.

However, imposing gender balance within state personnel has proved to be much more difficult task than it was assumed to be.

Several things are important when speaking of the state administration or civil service as a venue for gender balance efforts. The following are some of them:

First: Existence of knowledge about the position of women. Public administrations are public, therefore the transparency principle impose regular reporting of the employment situation, which in most cases includes sex segregated statistics.

Second: The need to be responsive to political directives. Determined leadership, backed up by legislative and treaty demands gradually force change. The demands also result from the increasing harmonization processes across European public administration as a result of European integration and as a result of continuous Council of Europe's vision on gender equality in which gender women's full participation in public and political life is an integral part since 80's: indeed, it is central to it.

Several Council of Europe Ministerial Conferences on Equality between women and men have adopted guidelines aiming at such participation (Strasbourg, 1986, Vienna, 1989, Istanbul, 1997) and more recently the Committee of Ministers took a stand on the matter when adopting *Recommendation Rec(2003)3 on balanced participation of women and men in political and public decision-making*. It is a very encompassing document which brings to the fore the foundations of equal participation and points to the measures that are needed, both legal, administrative and supportive measures, as well as to their necessary monitoring, in order to guarantee that progress in this area is achieved.

Third: Popularisation and circulation of news about successful stories. Sharing information on success in changing administrative balance in a number of European countries with varying administrative traditions shows the responsiveness of public administration to strongly administered political will. This makes it possible to convincingly show public officials and civil servants that change is indeed possible, and can be part of public management quality improvement efforts.

Fourth: Rules and shortage of highly skilled technical female personnel. The fact that bureaucracies are governed by laws and regulations provides both advantages and disadvantages. Agreements about functional classification schemes or promotion and recruitment procedures are inflexible in many countries. The degree of freedom in the hiring top managers, which is the level in need of greatest change, varies widely between countries. A special roadblock characteristic of this sector covering wide range of activities (from museum guards, food inspectors, schoolteachers, and bridge builders) is the demand for specific technical education where women are under-represented. The pool of potential female candidates to even up the gender balance may be limited due to gender segregation in education.

Governments' responsibility in this regard is, therefore, very clear and taking the necessary measures to face it is not optional, but a serious obligation. Wherever there is a situation of democratic deficit in regard to such participation - and such is the case in the great majority of European countries - they have to create the legal, political and social conditions to promote and ensure equal participation of women and men in political and public life.

2. The Slovenian experience

Legislative measures

The following as an account of main legislative measures aiming at increasing the number of women in decision-making and improving the quality of public policy delivery and its effectiveness and efficiency if inclusive decision-making and representation is ensured.

Slovenia adopted legislative and constitutional changes to facilitate a more balanced representation of women and men in elected bodies and public appointments. The obligation to respect the principle of gender balance representation in all appointments made by a minister or government to consultative and co-ordination bodies, working bodies, expert councils, national delegations to international organisations and fora was introduced with the adoption of the Act on Equal Opportunities for Women and Men in 2002. The Act obliges the government to respect the principle of balanced representation of women and men also when appointing or nominating government representatives in boards of state-owned enterprises and other public entities. The same obligation applies to the national parliament (National Assembly) for the composition of working bodies and delegations established in accordance with its Standing Orders.

To encourage political parties to develop strategies or special methods to increase the likelihood of women being elected the Act on Equal Opportunities for Women and Men stipulates that all registered political parties in Slovenia shall adopt, every four year, a plan for the promotion of a more balanced representation of women and men within the bodies of the party and on candidate lists for all elections. They have to adopt the first plan within one year or at their first Congress after the Act takes effect and to submit the plan to the Government Office for equal opportunities within three month following its adoption. Paying fine is a sanction for parties not complying with this provision.

A second legal incentive were the amendments to the Act on elections to European Parliament, which were adopted in March 2004. The amendment to the article on candidate list introduced the 40% representation of both sexes on a candidate list and an obligation that at least one candidate of both sexes must be placed in the upper half of the list (in Slovenia a list may have seven candidates). Lists which are not in accordance with this regulation, are not valid and they are rejected by the National electoral commission. The enactment of this so called 40% quota rule was backed up by the forthcoming adoption of an amendment to the Constitution which would oblige Parliament to pass electoral legislation providing for positive measures and by a growing sense that the image of Slovenian democracy and its success might be endangered in Europe if nothing was done to improve the representation of women in European Parliament. And in fact, this rule placed Slovenia among EU member states with the highest percentage of women MPs in newly elected European Parliament (3 out of 7 members or 42 % are women).

The next normative change aimed to tackle the under-representation of women in elected representative bodies was the adoption of already mentioned change of the Constitution. The Slovenian parliament proclaimed this change on 23 June 2004. By it a new paragraph was added to the Article 43, which confers on the law the responsibility of defining measures for the promotion of equal opportunities for women and men in standing as candidates in elections to state bodies and bodies of local communities. This novelty represents a continuation of introducing measures into electoral legislation, which would facilitate a more balanced participation of women in political decision-making.

Last year changes to operationalise the constitutional norm were introduced into Local elections Act, and this year the government is planning to submit for consideration and adoption proposal for changes to the act on elections to National Assembly (national parliament).

To make the obligation of ministers or government to respect the principle of gender balanced representation, which is defined in our gender equality act as a minimum of 40% representation of both, women and men in 2004 the Government adopted the Decree on criteria for respecting the principle of gender balanced participation of both sexes. The decree defines that this principle shall be respected:

- in the composition of consultative and coordinating bodies, other working bodies and delegations, established or appointed by the Government on the basis of Law on Government of the Republic of Slovenia and its rules of procedure
- in proposals of representatives of the government in boards of state-owned enterprises and other public entities (representing interests of the government in management bodies and supervisory boards)
- in the composition of expert councils, which minister are entitled to establish.

There are exemptions to this rule defined in the decree as well, among them when membership is function related, when the first government proposal is made for only one representative in a newly founded public entity, if a person of one or the other sex with expertise requested to adequately represent the interests of a proposer is not available when proposal is made, if a proposer would not obtain a consent of a candidate or if justifiable objective reason exist, which prevents the full respect of principle of gender balanced representation. Special procedures are also defined on how proposals are to be made, when proposers of candidates are entitled to propose only one person (they shall propose one male and one female candidate). When more persons are to be proposed the parity principle shall be respected, which means that a number of female and male candidates can only differ for one. Proposers not being able to propose candidates in conformity of such regulation are obliged to explain reasons and attach such explanation to the submitted proposal. Provisions of this government decree shall be applied also when proposal are made for the alternate representatives.

Other public and civil society bodies entitled to propose their representative in expert councils are also bound to respect the parity rule in submitting their proposals to the competent minister.

And finally the decree defines that the regulations shall be applied in existing government bodies and expert council with the first changes in membership or when mandate expires.

Supportive measures

The reported changes in the Slovenian legislation would not have happened if national organisations working for gender equality, i.e. Government Office for Equal Opportunities, women's groups within political parties, NGOs and particularly the Coalition for the promotion of gender balanced participation of women and men in public decision-making (established in February 2001 as a national movement group, which aims to support the achievement of gender balanced participation via development and adoption of legislative reform) would not have intensified their work aimed at stimulating a gender balance in political and public decision-making.

One of the permanent activities of the Office for Equal Opportunities is continuous monitoring of the position of women at all levels of public decision-making, particularly assessment and evaluation of results of national and local elections. In addition to the monitoring activities the following work was carried out:

- gathering and disseminating statistics on women and men in decision-making;
- establishment of regional networks of politically active women;
- organisation of international and national conferences, symposiums and seminars;
- implementation of projects Women can do it I, II and III aimed to capacity building for women considering entering political life, to strengthening the role of women's groups within political parties and to establish networks of women politicians, women representatives of the social partners and members of NGOs, women journalists and entrepreneurs, and young women at local levels (projects were implemented in co-operation of the Gender Task Force of the Stability Pact for South Eastern Europe and the Coalition for the promotion of gender balanced participation of women and men in public decision making);
- support to the research and studies on women's participation in and impact on decision-making and the decision making environment;
- translation, publication and dissemination of publications on gender balanced participation of women and men in public and political decision-making;
- support to and co-operation with NGOs and civil society groups tackling the issue of under-representation of women in decision-making;
- encouragement of political parties to promote gender equality and to ensure equal access to women and men to electoral mandates.

What is the potential of introduced regulatory measures?

In 2004 the proportion of women in government bodies was 36.2%. The lowest representation of women was recorded in government working bodies (11.3%), their representation was better in government councils (35.7%) and working groups established by the government (38.3%). Share of women among representatives of the Republic of Slovenia in transnational and international working bodies was 21.8%. As regard representatives of the government in public entities, public limited companies, and limited liability companies, the situation was similar – the average proportion of women was 20.2%. Almost parity representation was reached as regards the representation of the government in public institutes, where women got 48.9% of appointments, and finally women outreached male representation in social work centres and social protection institutes.