

# **The Gender Issue, a Question of Non-Discrimination<sup>1</sup>**

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## **SUMMARY**

This contribution written from the perspective of a Luxembourg politician with considerable national and international experience explores the question of what is needed to accept and respect being different. The contribution emphasizes that – as the history of the 20th century pointedly shows – in democratic nations legal provisions alone, despite their undisputed necessity, are not sufficient to prevent discrimination, but that a humanistically constituted public spirit is needed which objects and revolts when human beings continue to be subjected to discrimination on the grounds of supposed deviations from the norm.

## **THE SEX/GENDER ISSUE AND NON-DISCRIMINATION**

First of all I would like to remark that I feel somewhat insecure among this academic community. Due to my farming background I may not be able to muster the necessary sensitivity in dealing with the subject of your colloquium. For this reason I would instead prefer to endorse here what has already been said before. As a non-member of your scientific community, but as a member of the European parliament, I would like to share with you my convictions regarding this subject.

I thought I would be able to do this with a little understanding and a little empathy. Moreover, I have also accustomed myself to not attaching excessive value to polls. When, for instance, a survey indicates that only a small minority of five percent of the population regard themselves as openly racist, this is for me no reason not to be worried. In Luxembourg five percent equal

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**1** | Original version in French.

25 000 people. Very much in contrast to a purely quantitatively-oriented statistical evaluation, this for me means that we have 25 000 reasons to be worried.

I can image this is not much different regarding the trans issue. There is no lack of paragraphs and legislation against discrimination on the grounds of race or invalidity, or, as in this case, against discrimination on the grounds of sex and gender. What we need is an acceptance of otherness and the respect towards others. One of the most significant texts in this regard are the recommendations of the Council of Europe of 2010 already mentioned by Jean-Paul Lehnert.<sup>2</sup> Let us also not forget the Charter of Fundamental Rights of the European Union and the EU treaty which secure the principle of non-discrimination. This raises the question with which tools we can engage ourselves in the most efficient way for an acceptance of otherness and against discrimination. In my view there are two different possibilities: First of all, discrimination has to be fought with legal steps, i.e. on the basis of pertinent legislation that, if necessary, has to provide for punitive measures. In this sense both the work of the Council of Europe as well as that of the European Union is contributing in creating a very valuable judicial area for people, a judicial area we can now enjoy.

Even if non-discrimination today represents one of the most significant achievements of the European Union we should not forget that in some countries that have meanwhile joined the EU homosexuality was considered an indictable offence until the end of the 1990s. This absurdity could even go as far as combatting homosexuality with medication. Since then we have made considerable progress in the respect of fundamental rights. I wish to emphasize that without the particular influence of the Copenhagen criteria that make the principle of non-discrimination a condition for EU membership this would not have been possible. It has to be noted here that some of the fundamental rights laid down in the European Human Rights Convention had been a dead letter before their inclusion in the Copenhagen criteria. A similar case is the abolition of the death sentence in Turkey. In the light of the currently existing legislation and practices persons who violate the principle of non-discrimination cannot plead attenuating circumstances, even though there continues to be room for improvement, as Professor Lehnert has so eloquently shown. Nevertheless we could be tempted to assume that everything seems to be in perfect order.

But are we really immune against regressions in the area of non-discrimination? In my view we must not let down our shields. The applicable law only remains in force until it is changed. Far from wishing to trivialize this idea, the reality of the 20th century, in particular the 1930s, reminds us over and over

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<sup>2</sup> | See the article from Jean-Paul Lehnert in this publication.

again that the most serious attacks against civil liberties can be launched from the legislative organs themselves. For this reason attitudes that counteract the spirit and the contents of applicable legislative provisions have to be dealt with from the outset. The dehumanization process Europe's authoritarian regimes gradually led their citizens into should stir us to heightened vigilance. Numerous voices remind us that this dehumanization, characteristic for the 1930s and 1940s, did not come about overnight, but rather through an insidious process of successive curtailing of civil liberties und fundamental rights. As we know, not only Jews were murdered in Auschwitz but also thousands of individuals who had become victims of discrimination on the grounds of their sex and gender.

With my second point I would like to emphatically remind ourselves that it is not sufficient to take a formal legalistic stance in these matters. If such a stance is understood as acting in accordance with the law then the question arises whether the law actually carries values of tolerance and respect towards minorities. In a society where the number of legal regulations, regimentations, rules and guidelines is on a continuous increase the conformity to the legal regime is less significant than its actual contents. This means that a society based on these fundamental values such as ours should be able to always stand up in protest and revolt whenever these legal foundations are called into question.

Civil disobedience then means opposing such laws if they go against ethical principles. The crimes committed against humanity in the recent past have underscored the vulnerability of our societies. The crucial question here is how normal people behave in unusual situations. When drawing lessons from the history of the 20th century we also have to discuss how it was possible that a climate of tolerance and respect of human dignity came to be destroyed. In other words: "We have to nip these sort of things in the bud". Seen this way, a vigilant civil society is more essential for the protection of our fundamental rights than opportunistic protest movements.

Europe possesses guidelines for the respect of fundamental rights as well as a strong will to use these as a fundamental principle for action. The European system, far from perfect, is nevertheless making progress. Let us therefore ask by which means already accomplished achievements can be secured permanently.

There are many, such as the French historian Georges Bensoussan, who assume that the major crimes against humanity and in particular the Shoah were favoured by several interwoven factors; factors that also strongly mark our period. A totally organized state, a collective conformism reinforced through mass media, the fragmentation of responsibilities and assignment of disjointed task ar-

eas to individuals who were unaware of the impact of their limited perspective on the rest of society, have led to the most horrific crimes in the history of mankind. The continuing technological advances of the 21st century and the special role of social networks cannot provide absolute protection of our rights and liberties. There is no alternative to a critical public spirit. A society that has committed itself in its entirety to humanism and is capable of rising in protest when a group of citizens is stigmatized remains the best bastion against discrimination.