

Gender-impact evolution

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Catalan Institute for Women

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Publisher **Catalan Institute for Women**
First Edition **Barcelona, June 2005**
Design **Xeixa Rosa**
Printer **Artyplan**

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During the 49th session of the CSW (Commission on the Status of Women), which took place in New York between February 28th and March 11th 2005, representatives of more than 100 countries debated the advancement in the situation of women and noted the slow march towards equality of opportunity between women and men in the 21st century.

Thus, out of every 10 poor people, 7 are women, and they are poor because of labour discrimination, salary differences and inequality in access to resources; 75% of the world's illiterates are women; feminine health needs are not covered; women make up 47% of people infected with AIDS; in Sub-Saharan Africa, 9 out of 12 young people infected are women; in 1995 there were 12 female heads of state or heads of government and 11.3% of parliamentarians throughout the world were women; currently women's political participation has reached 15.7%, but the number of heads of state has fallen to 8.

In Europe, the 2004 Report on Equality between Women and Men produced by the European Commission, reveals the persistence of inequalities between the sexes in the majority of strategic areas and shows that the slowness of progress threatens to obstruct European productivity according to the objectives formulated in Lisbon. The Commission invites the member states to redouble its efforts to promote equality of opportunity between women and men in all spheres of society, by integrating the dimension of gender in the various policies.

Catalonia has shown an explicit commitment to equality of opportunity between women and men and therefore was able to formulate the adoption of the first gender mainstreaming law in Spain, Law 4/2001, of April 9th, by modifying section 2 of article 63 of Law 12/1989 on the organisation, procedures and juridical system of the public services of the Government of Catalonia. This Law is an important technical instrument, promoted by the 1995 Beijing Conference and driven by the European Commission with the aim of furthering the participation of women in all social, cultural, political and economic spheres. To achieve it, the Law establishes the necessity for the principles of gender mainstreaming to impregnate all the policies and general measures, and the impact it has on men and women should be taken into account at the moment of all policy planning.

Gender mainstreaming involves rethinking concepts, and ways of thinking about the world; thinking that uses a different paradigm which systematically considers the differences between the respective conditions, situations and necessities of women and men, and by incorporating the specific contributions and knowledge of women, from the recognition of and respect for diversity, and equality of opportunity based on difference.

In line with that already mentioned, the Action and Development Plan for Women's Policy in Catalonia (2005-2007), passed by Government Agreement on March 22nd 2005, born with the firm intention of ensuring that the gender mainstreaming of policies by women and for women becomes the front line of strategic activity of the Government of Catalonia, in order to make equality of opportunity a reality in our society.

With this material that we present, we hope to provide a valid instrument of support to management staff and public servants; one which shows, in a practical way, how to integrate the gender perspective in policy planning and management in order to progress towards a fairer, more equal public administration for everyone.

Marta Selva i Masoliver

President of the Catalan Institute for Women

1. Introduction

Inequalities are, without a doubt, the universal fact of humanity which has most affected our evolution and therefore the struggle for equality of opportunity has always been a motor for change.

The principle of equality has undergone an important juridical evolution. Therefore, in the beginning, this principle was configured as formal legal equality, that is to say, all people are equal before the law and all types of discrimination on the basis of sex was prohibited.

Although this brought an important advance compared to the previous situation of women's inequality before the law – one must remember that since the Napoleonic legislation, women had been explicitly excluded from the laws and were treated in a similar way to minors and the incapable – this configuration of formal equality has been shown to be insufficient, given that it has no impact on social inequality, which is perpetuated under the appearance of legal equality.

Furthermore, one must reveal another deficiency of this principle of equality that derives from considering, to a greater or lesser degree, the situation of men as implicitly the object model of comparison, as the desirable situation to which women should mould themselves, renouncing their own values, desires and aspirations. Therefore, the law does not respond to the real needs of women, but to the needs that men consider women to have.

The principle of gender mainstreaming represents an important advance in the recognition of women's rights for two fundamental reasons:

1. The explicit recognition of the principle of gender mainstreaming implies the implicit recognition of the masculinity of the legal system, which justifies a critical revision.
2. The principle of gender mainstreaming lays the foundation for a global revision of law, based on the concept of gender.

Thus, since the Second World war, the principle of equality has been evolving as equality of opportunity in society and specific institutions like positive action and indirect discrimination have appeared, considering that political decisions that seem non-sexist may have a different impact on women than on men, although this consequence may not have been foreseen or desired.

The impact is evaluated according to gender in order to avoid unintentional negative consequences and to improve the quality and effectiveness of the policies.

The most recent European Union strategy in the policy of equality between women and men is known as gender mainstreaming, or 'mainstreaming'. We can state that mainstreaming and equality of opportunity between women and men has become one of the priorities of the European agenda.

In our country, within the framework of the Agreement for a pro-Catalan, left-wing Government of Catalonia, signed on December 14th 2003, the government demonstrated its commitment to equality of opportunity and to women's rights, adapting the organisational structure of the government's public services and assigning personal and material resources to apply mainstreaming and specific gender policies in its actions, both in its different departments as well as territorially.

Gender mainstreaming was taken on explicitly by the Action Platform approved by the Fourth World Conference on Women that took place in Beijing in 1995, where governments and other agents were invited to incorporate the gender perspective in all policies and programmes in order to analyse its consequences for women and men, respectively, before taking decisions. The evaluation of that impact according to gender is an instrument for this.

Later, in February 1996, the European Commission approved a communication on mainstreaming as the first step towards the carrying out of the commitment of the European Union to incorporate the gender perspective throughout community policies.

The most complete, detailed and updated version of mainstreaming comes to us from the experts group of the European Council: "Gender mainstreaming is the organisation, improvement, development and evaluation of policy processes, so that the actors normally involved in policy-making incorporate a gender equality perspective in all policies at all levels and at all stages."

This inclusion signifies a change of model in equal opportunity policies, with the assumption of a double focus of action and management, which brings together the incorporation of the gender perspective to the general policies and the specific measures aimed at women in order to advance towards an effective, full equivalence of rights and conditions of women and men, establishing the principle of equality as a central value of democratic societies, and takes on the challenge of overcoming the imbalance between the situations of men and women based on corresponsibility and fairness.

2. Gender mainstreaming in Catalonia

While the principle of mainstreaming is recognised in European community law at the highest normative levels – articles 2 and 3 of the Treaty of Amsterdam – it was not recognised in Spanish law, neither in the formulation nor the application. This situation changed when Catalonia passed Law 4/2001, of April 9th, thus becoming the pioneer in adopting a law on mainstreaming.

Thus, in line with the Beijing Conference, the Parliament of Catalonia passed, as an instrument of the application for incorporating the gender dimension, Law 4/2001, of April 9th, the modification of section 2 of article 63 of Law 13/1989, of December 14th, of the organisation, procedure and legal system of the public services of the Government of Catalonia, which was passed with the votes in favour of all parliamentary groups and published in the Official Gazette of the Government of Catalonia on April 19th 2001, DOGC number 3371.

Thus, the modification of article 63 of the Law 13/1989, leaves the text reading as follows:

“Article 63

- 1.** The elaboration of general regulations is initiated by the relevant directing centre.
- 2.** The regulatory proposal must be accompanied by a memorandum, which has, first of all, to state the normative framework in which the proposal is inserted; must justify the opporteness and suitability of the measures proposed to the ends being sought, must evaluate the perspective of gender equality and must refer to any consultations which may have been formulated and to other relevant details in order to understand the process of creating the regulation. The regulatory proposal must also be accompanied by:
 - a)** A cost-benefit economic study.
 - b)** A list of regulations affected by the new proposal.
 - c)** The validity chart of the previous regulations on the same matters, which must expressly state those which have to be totally or partially abolished.
 - d)** An interdepartmental report on the impact of gender on the measures established in the regulations.”

By the Agreement of the Executive Council of the Government on May 15th, 2001, The Catalan Institute for Women (CIW), an autonomous body assigned to the Presidency Department, was given the task of producing an interdepartmental report on the impact of gender as referred to in section 2.d of article 63 of Law 13/1989, within 10 working days from the arrival at the CIW of the draft provisions being promoted.

The interdepartmental report on gender is a juridical report which represents a method of evaluation 'ex ante' the regulations and is of a preceptive rather than a binding nature.

The generic aim of this Law 4/2001, of April 9th, as made explicit in the preamble, is "to guide all the actions of the government in the sense of introducing the viewpoint of equality in all measures adopted, in order to promote women's participation in all spheres, especially in the productive economy, at the heart of decision making, in the scientific and cultural world; in fact, in all walks of society. To create equality it is necessary for the mainstreaming principles to impregnate all policies and general measures and that the impact on men and women must be taken into account at the moment of their planning".

3. Meaning and extent of the evaluation of regulations

Since the passing of the Statute of Autonomy in 1979 there has been a long process of structural reforms which have brought a new concept of the functioning of the institutions, legal orders and relations between the different public services.

The Administration has had to adapt itself to a new model of nation that requires quality and effectiveness, where its actions are justified by the degree to which they satisfy the citizens' needs.

Currently, in Europe, the idea that its legislative organs and public administrations have to contribute, via the regulations, to the sustainability of progress, has taken hold and is being developed. Therefore this requires an appropriate drawing up of the regulations in all sectors of development of people's economic and industrial activity, as well as in the regulations that affect the social and occupational policies and all the services that constitute them.

The evaluation of the regulations and of public policy has to allow both ministers, when passing regulatory provisions bills, and parliamentarians, when debating them, to be able to know the true situations that have to be transformed into legal rules, and in a consistent and informed manner.

In relation with the constitutional bases of regulatory evaluation, we find that the 1978 Constitution tries and imposes the necessary rationality on all procedures and demands not only coherency of contents, but also specialisation in the regulations, both in internal administrative proceedings and in parliamentary procedures.

Article 31.2 of the Constitution imposes the criteria of efficiency and economy in the equitable distribution of public resources, in their programming and their execution. The principle of budgetary periodicity collaborates in justifying the prior constitutional demands in the regulations.

In a higher register, and with respect to the principles of conduct of the official authorities, article 9.1 of the Constitution proclaims the principle of legality in establishing that these authorities are subject to the Constitution and to the rest of the legal system. Specifically, for the Administration, this precept finds its correlative in the mandate of article 103.1 of the basic regulations, which advises the public administrations that apart from serving the general interests objectively, they have to proceed under full submission to the rule of law.

Furthermore, article 9.2 of the Constitution and article 8.2 of the Statute assign to the official authorities, including the Administration, the duty to foster the condi-

tions in which the freedom and equality of individuals, and groups of these individuals, are real and effective. This means fostering the conditions so that formal equality can be transformed into material equality. Obviously, this transformation can only take place if the rules, mandates or prohibitions through which the Administration fosters the conditions of equality between people are effective, feasible, and capable of being carried out in terms of the regulation itself, both in legal and economic terms, irrespective of the material regulating them.

The rule of law requires a constitutional judgement on the rationality of the laws, which involves the achievement or management of the regulation moving towards the principle of equality of treatment and of opportunity. The evaluation of the regulations leads us to consider their effectiveness, efficiency, and economic costs.

One of the questions that we could ask ourselves is what cause-effect relationship there is between the techniques of deliberation of the effectiveness of the regulations and the exercise of fundamental rights, considering that, from the legal perspective, the regulatory sources of fundamental rights have not only a regional or national nature, but also a universal one.

The perspective of fundamental rights is measured by the existence of rights of participation, social rights, political rights, environmental rights and so on. Both the principle of legality and the democratic principle demand that there is no interference between the dictates of the regulations and the standard of execution of fundamental rights. Only well carried-out legislative work can suffice to protect fundamental rights in an ideal way. In the same way that only well-carried out legislation can suffice to represent a principle of legality that bears in mind the body of fundamental rights contained in the Universal Declaration of Human Rights, adopted by the United Nations on December 10th 1948; in the International Covenant of Civil and Political Rights, of December 16th 1966; and the International Covenant of Social and Cultural Rights, of December 19th 1966.

Fundamental rights need, to some extent, the direct or indirect influence of the legislative power in order to be able to release the contents more potently. For this reason, the evaluation of the regulations are the pillars that safeguard all the conditions surrounding the exercise of fundamental rights, protecting some of them directly, or others indirectly, via the adoption of positive or negative measures, mandates or prohibitions that have to be imposed on specific activities.

Defective legal rules induce administrative inactivity in the execution of the regulations. This is where emerges the linking of legislative power and the linking of the regulations which should be borne in mind by future generations, not only as a gesture of solidarity, but also on the bases of the same constitutional and statutory texts themselves.

Several precepts of the constitutional text justify the demand for quality in the legislation and the evaluation of the regulations, above all in the ambits which affect the historical heritage, urban planning ordinances and, especially, the environment. Thus, articles 45, 46 and 47 of the Constitution are the ones which will carry sustainability from the present to the future generations; the current law has to bear in mind the possibilities of future generations.

The legislative body of the democratic state has to fix the framework conditions to guide the Administration towards exercising its functions in accordance with a

mandate of optimisation. The Constitution and the Statute proclaim ends, mandates and programmes which mark the direction of administrative conduct, but the ideal legal framework has to be that which eases the task of carrying out the mandate of optimisation in every specific case.

The techniques and methods of evaluation of the regulations seek to measure the economy, effectiveness and efficiency of the regulations and to suggest qualitative improvements in their texts. Evaluating regulations is an efficient instrument for ministries and parliaments and a means of analysing the prospective and retrospective effects of the regulations. Prospective evaluation requires an analysis of the possible effects of planned legislative action, and in many cases calls for retrospective evaluation of the current regulations in order to prepare future and definitive legislative or regulatory modifications.

4. Juridical evolution of the principle of equality

For some years now we have been talking constantly about globalisation as a situation that affects our everyday life. This globalisation is not only political or economic, but impacts very directly on the law and on the classic sources of domestic law, especially on everything related to human rights.

This juridical globalisation makes it necessary to know and call on, apart from the domestic regulations, those that come from community and international origins. In this sense, one must take into account the close relationship between our source material of domestic law (Parliament and Government) and other competent community and international origins to which we have given our consent and have limited our jurisdiction.

4.1. Equality of rights in the international sphere

In the international setting, international law prohibits discrimination based on sex and has taken up its defence since the adoption of the United Nations Charter, signed in San Francisco on June 26th 1945, in positioning this principle of equality of opportunity and non-discrimination in the sphere of human rights.

The preamble to the San Francisco Charter, whose objective is to preserve peace and justice and to promote social progress, proclaims the determination

“to reaffirm faith in human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small”.

The United Nations Organisation completed its catalogue of rights, juridically binding on all member states, through the approval by the Human Rights Commission of the text that has become known as the International Charter or Declaration of Human Rights, consisting of: 1) The San Francisco Charter of 1945, mentioned above; 2) The Universal Declaration of Human Rights, passed on December 10th 1948; 3) The International Covenant of Economic, Social and Cultural Rights, and 4) The International Covenant of Civil and Political Rights, both passed on December 16th, 1966, texts which fashion the principle of non-discrimination as a genuinely structural principle.

More important is the United Nations Convention on the elimination of all types of discrimination against women, of December 18th 1979, ratified by Spain in 1983 and published in the Official State Gazette in 1984, and its facultative Protocol, ratified and in power since the year 2001, which establishes that:

“the states have to take appropriate measures, including those of a legislative nature, to ensure the full development and progress of women in all ambits”,

and adds

“it is not considered discriminatory to adopt special temporary measures to accelerate de facto equality between men and women”.

Furthermore, together with this generic obligation, the Convention widens women's rights in several ambits, such as political rights, and in employment, education, health and economy. Under the protection of this Convention, was born the Committee for the Elimination of Discrimination against Women, a body with the aim of safeguarding rights and ensuring non-discrimination on grounds of sex.

It is also worth pointing out the United Nations Vienna Conference of 1993 which, once again, stressed the idea that

“the human rights of all women and girls as an inalienable, integral and indivisible part of human rights”,

and urged not only governments and governmental institutions, but also non-governmental institutions

“to intensify efforts to protect and promote women's human rights”.

This idea turns up again in the Fourth United Nations World Conference on Women which took place in Beijing in 1995. The Conference had enormous importance by demonstrating the consensus on the universality and globality of women's problems, and underlined the importance of equality and non-discrimination on grounds of sex as an inevitable factor in the construction of twenty-first century societies. In short, there is an important space for equal opportunities between the sexes and women's autonomy among the development objectives of the United Nations for the millennium.

Finally, *the principle of equality and non-discrimination on grounds of sex is an obligation of general international law, which binds all nations*, and which is, considering its principal nature, forever established as a principle which must inspire the remaining human rights.

4.2. Equality of rights in the European Union

a. After the Treaty of Rome

The European Community established for the first time in article 114 (previously article 119) of the Treaty of Rome the principle of equal treatment between women and men, such as the right to equal pay for the same work or work of equal value. Although its scope is limited, this provision has provided a space, since 1975, for numerous community instruments, and has clarified and developed this principle of community law:

- Directive 75/117/EEC, of the Council, of February 10th, 1975, on the approximation of the legislation of the member states which refer to the applica-

tion of the principle of equal pay between male and female workers, which complements article 141 and demands equal pay for “work considered to be of equal value”.

- Directive 76/207/EEC, of the Council, of February 9th, 1976, on the application of the principle of equal treatment between men and women with relation to access to work, training and professional promotion, and to working conditions, which widens the ambit of application of article 141, establishes the principle of equal treatment in employment, and offers an opportunity to adopt positive action measures.
- Directive 79/7/EEC, of the Council, of December 19th, 1978, on the progressive application of the principle of equal treatment between men and women relating to social security, which progressively applies the principle of equality of treatment related to the obligatory social security system.
- Directive 86/376/EEC, of the Council, of July 24th, 1986, on the application of the principle of equal treatment between men and women in the professionals section of the social security system, modified by Directive 96/97/CE of the Council, of December 20th, 1996, which applies the principle of equal treatment in the professionals section of the social security system.
- Directive 86/613/EEC, of the Council, of December 11th, 1986, on the application of the principle of equal treatment between self-employed men and women, including agricultural activity as well as maternity cover, which applies the principle of equal treatment between self-employed men and women, including agricultural activity.
- Directive 92/85/EEC, of the Council, of October 19th, 1992, on the application of measures to promote improvements in health and safety at work for pregnant women, for women who have just given birth, or are breast-feeding (tenth specific Directive in accordance with section 1 of article 16 of Directive 89/391/EEC), directed towards the improvements in health and safety of pregnant workers, or for women who have recently given birth.
- Directive 96/34/EC, of the Council, of June 3rd, 1996, on the framework agreement on parental leave, directed at reconciling family life and working life. This was the first applicative regulation of a framework agreement held by social interlocutors at the community level to be applied.
- Directive 97/75/EC, of the Council, of December 15th, 1997, which modifies and extends Directive 96/34/CE to the United Kingdom of Great Britain and Northern Ireland, related to the framework agreement on parental leave.
- Directive 97/80/EC, of the Council, of December 15th, 1997, which reports on the burden of proof in cases of sex discrimination, according to which it falls to people sued for discrimination at work to demonstrate that the principle of equal treatment has not been violated.
- Directive 97/81/EC, of the Council, of December 15th, 1997, reports on the framework agreement on part-time working, which aims to reconcile family life and working life, as well as applying a framework agreement held by social interlocutors at the community level.

b. After the Treaty of Amsterdam

The coming into force of the Treaty of Amsterdam, on May 1st 1999, reinforced the European commitment to gender equality. The Treaty of Amsterdam is especially important for the promotion of equality between women and men throughout the EU, as well as constituting an important step forward in equal treatment between male and female workers.

- Article 2 of the EC Treaty proclaims the fostering of equality between women and men as a fundamental task of the Community.
- Section 2 of article 3 contemplates the elimination of inequalities between women and men in the objectives, strategies and actions of the Community, especially in the 21 specific activities enumerated in section 1 of article 3; the Community has to aspire to eliminate inequality and foster equality between women and men. Thus the principle of the integration of the gender perspective in the entirety of the policies is established in the EC Treaty.
- Section 1 of article 141 establishes that equal pay must apply not only to the same work, but also to work of equal value.
- Section 1 of article 137 establishes that the Community will give support to actions of member states which tend to foster "equality between women and men in relation to opportunities in the labour market and treatment at work".
- Section 3 of article 141 applies equality of opportunity and treatment in the ambit of work and employment, including the principle of equal pay for the same work, or for work of equal value. This article 141 is the juridical basis of community measures related to equal opportunity and treatment between women and men in relation to employment.
- Section 4 of article 141 contemplates the adoption of measures which offer specific advantages aimed at helping members of the less-represented sex to exercise their professional activities or to avoid or compensate for disadvantages in their professional careers.
- Article 13 expressly orders the fighting of discrimination on the grounds of sex, among others.

Based on the Treaty of Amsterdam, the following juridical acts in the ambit of equality between men and women have been adopted:

- Directive 2002/73/EC of the European Parliament and the Council, of September 23rd, 2002, which modifies Directive 76/207/CEE of the Council on the application of the principle of equal treatment between women and men in relation to access to work, training, professional promotion and working conditions. It is expected to come into force by October 5th, 2005, at the latest.
- Regulation 806/2004/EC of the European Parliament and the Council, related to the fostering of equality between women and men in development cooperation, adopted on April 21st 2004 in conformity with article 179 of the EC Treaty (policy on development cooperation). This regulation aims to apply the principle of integrating a gender perspective in all policies.

- Council Directive 2004/113/EC, of December 13th, 2004, which applies the principle of equal treatment between men and women in access to goods and services and their provision.

Taking into account that the application of the laws is insufficient in itself, in order to foster real equality, community-wide efforts have been made to favour measures especially designed to foster equality between women and men through successive, multi-year action programmes.

- Council Decision, of December 20th 2000, establishes a programme on community framework strategy related to equality between women and men (2001-2005), adopted by the Council after consulting the European Parliament, in conformity with article 13 of the EC Treaty. This decision establishes the 5th Community Action Programme for equal opportunities, with the aim of fostering and extending values and practices which point out gender inequalities, to improve understanding of this material, to develop agents' capacities at the moment of efficiently promoting equality and facilitating the application of the community framework strategy relating to equality between women and men.
- Decision 803/2004/EC of the European Parliament and the Council, which approves a programme of community action (2004-2008) to prevent and combat violence against children, young people and women and to protect the victims and at-risk groups (the Daphne II programme), recently adopted in conformity with article 152 of the EC Treaty (public health policy). This Decision contributes decisively to the development of a EU policy dedicated to combating violence and incorporates all the experience gained since 1999 during the first phase of this action programme.

c. After the Nice Treaty

The Treaty of Nice barely touches the matter of gender inequality and does not extend the legal bases of this inequality much beyond the field of employment. Notwithstanding this, a new section has been introduced in article 13 EC, according to which the Council may make use of the procedure of co-decision established in article 251 of the EC Treaty to adopt, by a qualified majority, incentivating community measures in support of measures against discrimination adopted by member states. In this sense, April 29th 2004 saw the approval of new Decision 848/2004/EC of the European Parliament and the Council, in conformity with section 2 of article 13 of the EC Treaty, which established a community action programme to promote organisations which work at the European level in the field of equality between men and women.

d. Equal rights in the Treaty which establishes a Constitution for Europe.

The Treaty which establishes a Constitution for Europe, agreed by the European Council in Brussels on July 18th 2004 refers to gender equality in the following terms:

- The insertion of the prohibition of discrimination on the grounds of sex, and equality of opportunity between women and men in articles 21 and 23 of the Charter of Fundamental Rights of the European Union reinforces the position of equality and non-discrimination as a fundamental right.

- The inclusion of equality between women and men as a value of the Union in article 2 of part I.
- The recognition, in article 3 of part I, of the fostering of equality between women and men, among the objectives of the Union.
- The application of the principle of integration of the gender perspective in all policies in part III (articles III-2 and III-3), which signifies that the principles of the elimination of inequalities and the fostering of equality between women and men must be applied in all EU policies.
- The inclusion of measures designed to avoid and combat the treatment of women and children in the ambits of freedom, security and justice.
- The adoption of a declaration on domestic violence, which must be incorporated in the final Act, in which it is agreed that the Union's objective will be to fight against all types of domestic violence in the different policies.

Despite all the above, the constitutional Treaty did not satisfy all the aspirations on equality of opportunity and women's rights:

- There is no inclusion of a new article with the direct effect of prohibiting gender discrimination and guaranteeing the same rights to women and men, nor with a view to adopting positive actions to eliminate inequalities in this field (as in the case of article 12 of the EC Treaty on nationality). In contrast, the measures for combating discrimination will have to be adopted unanimously by the Council, with the judgement of the European Parliament (article III-8, former article 13 of the EC Treaty).
- Equality between women and men as a shared competence of the EU is not included.
- Not included in an article in part III (institutional chapter) is a balanced representation between women and men in the decision-making process, especially in the EU institutions.
- Despite the mentioned declaration on domestic violence, which has no juridical value, there is no inclusion of any juridical foundation appropriate to combating all forms of violence against women.

On its part, the jurisprudence of the European Community Court of Justice has consolidated an important community volume of material on equality of opportunity between men and women, which must be configured as a fundamental right and as the legal backbone of all community policies.

As already mentioned, one must remember and underline that the Community and its member states signed the Declaration and the Action Platform which were approved at the Fourth World Conference on Women, mentioned above, which underlined the necessity to stand up to the obstacles to effective equality between man and woman in the world, via the integration of a gender perspective as a strategic measure which allows the promotion of gender equality through the combination of measures, legislative instruments and specific actions which are mutually reinforcing.

The importance of all these texts lies in the fact that article 27.3 of the Statute of Autonomy of Catalonia stipulates that the Government of Catalonia has to execute the treaties that affect their competences (and the promotion of women is one of them), and in article 96 of the Spanish constitution which grants direct normative value to international treaties validly held by the state, starting from the publication in the Official Spanish Gazette, and they become part of our domestic legal system. Furthermore, article 10.2 of the constitutional text gives interpretive value to ratified treaties which have not yet been published, and obliges the state and autonomous legal regulations to be interpreted in conformity with these treaties.

Finally, one must point out the European Commission's initiative in deciding to make the year 2007 the "European Year of Equal Opportunity for All" (Draft Decision of the European Parliament and Council, on the European Year of Equal Opportunity for All (2007) "Towards a Just Society" COM (2005) 225 final).

The four core themes of the European Year proposed by the Commission are:

Rights: raising awareness of the right to equality and non-discrimination

Representation: stimulating a debate on ways to increase the participation of under-represented groups in society

Recognition: celebrating and accommodating diversity

Respect and tolerance: promoting a more cohesive society

The non-discrimination strategy established in the European Year 2007 does not ignore the man-woman dimension. Thus the initiatives to be taken in this strategy will complement the specific efforts carried out by the European Union to ensure equality between women and men and its struggle against sex-based discrimination. Among the initiatives are the proposal to create a European Institute for Equality between men and women, and the Communication on Equality between men and women, forecast for the year 2006.

4.3. Equality of domestic rights

In the domestic setting, both the Spanish Constitution of 1978 (articles 14 and 9.2) and the Catalan Statute of Autonomy of 1979 (article 8), proclaim the principle of equality and non-discrimination and urge the official authorities to foster the conditions for freedom and equality to become real and effective, and to remove the obstacles impeding or hindering them, and facilitating the participation of all citizens in political, economic, cultural and social life.

5. The principle of equality and its relationship to positive action

As shown earlier, the principle of equality is one of the basic pillars of modern democratic societies. Nevertheless, the recognition of this principle, in the legal doctrine, does not necessarily imply that all discrimination will disappear. And it is precisely the evidence of insufficient results achieved via the application of the principle of equality which widely justifies and legitimates the necessity of incorporating differential treatment which makes equality of opportunity between women and men truly possible.

Formal equality does not mean being identical. Two realities are identical if each and every one of the characteristics defining them are equal and there is nothing exclusive to one. Differential treatment does not have to be necessarily a priori illegitimate if the people to whom it applies are not in the same position regarding a particular characteristic.

Equal opportunity policies presently being developed include two key elements:

- gender mainstreaming as a strategy, and
- positive action, as an instrument.

As we will explain later in more detail, gender mainstreaming implies including a gender perspective in all policies and activities, before decision-making, such as analysis, methodology, planning and evaluation of all areas of participation: economic, legal, environmental, cultural, etc. That is to say, in every phase of the policies and participation in general.

Positive action, or positive discrimination, specifically recognised in the community legal system, may be defined as an drive measure, aimed at achieving equality between women and men, and correcting or eliminating direct or indirect discrimination, which can be identified through gender mainstreaming. They are actions which seek to eliminate obstacles, difficulties and barriers inherent to stereotypes and gender roles. They balance the opportunities of women and men between family and professional responsibilities and the different forms of social participation, such as those relating to work timetables, transport policy, tax benefits, etcetera.

They are one of the most important instruments in the fight against discrimination against women in relation to access to work, promotion and professional development. They should not be considered as a privilege for the women's collective to which they are directed; they are measures which tend to counteract the historical discrimination affecting women and help to put true equality of opportunity into effect.

Therefore, positive actions are accepted and considered necessary in any democratic system; they do not contradict the principle of equality, but rather form a part of it, both in community law and in domestic law. In the work ambit, positive actions represent a set of measures that may be applied in order to facilitate women's access to professional training, to workplaces, to reducing promotion difficulties at work, to securing equal pay, or those whose aim is reconciling working and family responsibilities, among others.

These measures may be adopted by companies themselves in their human resources policies or by the Administration.

Positive actions are endorsed and legitimated by a number of regulations, among which we draw attention to the following:

1. In the European Union:

- Directive 76/207: article 2.4 modified by Directive 2002/73.
- Recommendation 84/635/EEC, of December 12th 1984, on the promotion of positive actions in favour of women.
- Treaty of Amsterdam: article 141.4.
- Charter of Fundamental Rights of the EU: article 23.
- Communication of the Commission COM (96) 88 final, of March 27th 1996, on the interpretation of the Kalanke sentence.

2. In Spain:

- Spanish Constitution of 1978: article 14, related to article 9.2.
- Statute of workers: article 17.3.
- Autonomic Statute of Catalonia: article 8.

3. Jurisprudence of the Spanish Constitutional Court and the Court of Justice of the European Communities:

3.1. The Constitutional Court has stated many times that positive actions, considering that regulations have been established whereby formal inequality is justifiable in the promotion of material equality (SSTC [Court Two of the Constitutional Court] 189/1987 and 98/1985, among others), and cannot be considered as discriminatory, with effect to article 14.2 EC, regarding the measures for temporarily granting differential treatment, and to redressing pre-existing social discrimination.

3.2. The sentences of the European Communities Court of Justice regarding positive action. The European Court has made four pronouncements on the legitimacy of positive action measures in community law:

- Kalanke sentence, October 17th 1995, case C-450/93.
- Marschall sentence, November 11th 1997, case C-409/95.
- Badeck sentence, March 28th 2000, case C-158/97.
- Abrahamsson sentence, July 6th 2000, case C-407/98.

The question of positive action has been the best-known matter in the existing debate related to the jurisprudence of the Court of Justice on equality between men and women, specifically with regard to whether community law allows the breaking of the principle of equality of treatment when, in order to achieve real equality, certain advantages are given with the intention of achieving a more balanced representation between men and women in terms of professional promotion.

The controversy centres around the Kalanke and Marschall cases, because of the different appraisal made by the Court in each specific case, although, in fact, the general interpretation criteria used by the Court were the same in both cases.

The Court had already established jurisprudence on the principle of equal treatment, based on the following points:

- The general principle is one of equal treatment, a principle that by its very nature, cannot have an absolute character and, consequently, may exceptionally admit the existence of differential treatment, whenever justified by the criteria of objectivity and proportionality.
- The exceptions to the principle of equal treatment, by the fact that they constitute an exception to the general rule, may not be interpreted extensively, but rather in a restrictive sense.

When the Court of Justice applied these criteria to positive actions, even in the controversial Kalanke case, it considered that positive action measures are an exception to the general principle of treatment and, therefore, had to be justified by the criteria of objectivity and proportionality and had to be applied strictly to the specific case. The Marschall case consolidated the favourable interpretation of these measures but, before the lack of explicit support in the community treaties and to avoid contradictory jurisprudence, at the Amsterdam Summit an agreement was made to also include in the reform of the Treaty an article allowing these positive action measures to be considered as measures which, despite granting differential treatment, were neither discriminatory nor as vulnerating the right to equality. From here we arrive at the provisions of the Treaty of Amsterdam on positive actions. Posterior to the incorporation of positive actions in article 141.4 EC Treaty, the Court has directly dealt with how they should be structured in order to be covered by the treaties, singularly those which are addressed to promoting the sex less represented in the work field, in training and in professional promotion.

Mention must be made of the Sentence of the EC Court of November 11th 1997, case C-409/95 (Equal treatment of men and women; Equally qualified male and female candidates; Priority for female candidates; Saving clause). In this important sentence the Court declared that sections 1 and 4 of article 3 of Directive 76/207/EEC of the Council, of February 9th 1976, on the application of the equality of treatment between men and women in connection with access to work, vocational training and professional promotion and to working conditions, do not oppose a national norm that, in the case of equally qualified candidates of different sexes, from the point of view of their suitability, competence and professional performance, obliges priority to be given to female candidates which, at the level of the relevant post in a sector of activity of the public service, have a lower number of women than men.

Therefore, positive actions in favour of women, above all in access to and promotion in professional life, are clearly inserted into community jurisprudential law and thus have become incorporated in the community norms. This has not come about in just any manner, but through its incorporation in community regulations at the highest levels, namely community treaties which originate in community law with all its consequences: article 141, section 4, of the Treaty of Amsterdam.

Positive action or positive discrimination finds juridical support as much in the international sphere as in the community and domestic ones, implying that the

principle of equal treatment between women and men does not impede the adoption of measures designed to promote equality of opportunity between women and men, especially to correct real inequalities that affect women's opportunities.

Legislative activity consists precisely in classifying, to create norms which identify and limit real situations that call for specific treatment. Unequal rights is not, therefore, the exception, but the rule, and it can be said without exaggeration that the nature of the law is to establish differences.

The ordering of the promotion of real and effective equality of article 9.2 EC and article 8 EAC does not derogate the formal principle of equality but enriches it. The application of the formal principle of equality allows one to take into consideration the practical results produced in this applicative process. Furthermore, the autonomous principle of material equality contained in the articles mentioned obliges one to bear in mind the differences which characterise each group of human beings compared to others, with the final objective of giving them equal opportunities and, therefore, necessitates the putting into action of these positive action measures, respecting, in all events, the principle of legality.

6. Configuration of gender mainstreaming

Without doubt, the Statute of Autonomy of Catalonia has brought an authentic redefinition of the juridical treatment of women, as it has in other aspects of national life, both in the sphere of public relations and in private life, and has imposed the bases over the same level of rights.

Beyond the generic affirmation of the principle of equality in its juridical dimension and in the application of the law, this principle has evolved towards the demands for real equality of opportunity in all ambits of life, which has made it necessary to introduce corrective measures against structural inequality, which originate the appearance of a new juridical dogma around the rights of women as elements which generate a higher degree of legitimacy and of social integration and cohesion in democratic systems.

Gender mainstreaming involves affirming that no aspect of the economic, social, cultural or political reality is foreign to women, therefore the analysis of this reality, in its entirety, has also to be considered from the perspective or lens used to know the women's situation, needs, contributions and specific knowledge.

Full integration of women in today's society has to be carried out from an identity constructed over the awareness of belonging to the female sex, in the recognition and respect for diversity and equality of opportunity through difference. An authentic democracy should be ruled by principles such as equality and universality in the application of its norms, which recognise, integrate and respect the plurality and diversity which makes up the citizenry, the population in its entirety and the citizens, male and female, as individuals.

The female condition allows a juridical evaluation of the differences. It is based on a double system which, on the one hand, recognises the principle of equality of opportunity and, on the other, regulates a system of guarantees to ensure real effectiveness. This system focuses on the rights of citizens, both male and female, who are socially less strong, and recognises and values the plurality of these differences and the contributions of women and men. Thus one tries to safeguard the identity of each individual as a human being who is different from all the others, and recognises all individuals as equal to all other individuals in terms of the right to the same opportunities. If a difference such as sex is, in fact, ignored, 'equality of opportunity' is a bankrupt expression.

All the policies carried out by the institutions and the different public services in Catalonia, bearing in mind that they are not neutral, must be constructed through an understanding of the real situation of women and men of Catalonia, and must include relevant objectives and actions which, from a women's perspective, are directed at achieving true equality of opportunity.

The women's perspective in a non-discriminatory legislation, in order to set themselves in the framework of transversal equality orders established by community treaties, requires gender mainstreaming to be adapted to the special characteristics of juridical science.

Despite the concepts that affirm the neutrality of law in relation to sex and which, therefore, consider that with the general clauses of formal equality inserted throughout the legal system, equality of opportunity between men and women is already guaranteed, current legal studies, especially community law, show that there is no neutrality and, consequently, there is a rise in real inequality if the norms that regulate the institutions and policies do not pay sufficient attention to the women's perspective.

From this focus, the recognition of women's contributions, and the particular way that women do things, is a cultural value that, in the same way as social, economic, historical or ideological values, underlies the contents of every legal norm. This obliges us to consider the sexual difference in the making, the interpretation and application of the norms. Thus it is necessary to organise the form in which this integration must be carried out, that is to say, gender mainstreaming must be worked into all policies and activities.

Gender mainstreaming thus consists of bearing the women's perspective in mind in any analysis aimed at advancing real equality of opportunity between women and men, starting from the recognition of different knowledge, experiences and values of women and men. We will have to value the participation and specific contributions that women have made in all spheres of society.

Mainstreaming the women's perspective obliges the carrying out of this analysis of the different effects that a regulation may produce for women and men, from the planning stage to the specific application.

Finally, it brings the need to rethink concepts, ways of thinking about the world, thinking from another paradigm which systematically considers the differences between the respective conditions, situations and needs of women and men.

6.1. Basic concepts

Several concepts form the nucleus of the strategy of incorporating the gender perspective:

- **Sex and gender.** Sex is a word which refers to the biological characteristics which distinguish men and women; gender represents the socially-constructed differences between women and men; they have been learned, they change over time and show great variations both between different cultures and within the same culture. Gender constitutes the base for showing that the inequalities have been constructed, over centuries, by a patriarchal social order, and are not naturally determined. Sex in itself is not the cause of inequality or discrimination against women; rather it is the gender position in which women have been placed socially which has caused this situation of inequality. Therefore, gender relations are one of the main instruments of analysis of the conditions in which women and men live in all types of society.

Example: While only women can give birth (biologically-determined difference), biology does not dictate who will care for the children (socially-determined behaviour).

- **Gender roles and stereotypes.** These represent the beliefs that society maintains and transmits about how men and women are and how they should behave; and what women and men can do and are capable of doing. Gender roles and stereotypes are the pillars of gender socialisation which are consistent with an apprenticeship by which men and women become integrated in a model of a specific woman and man, starting with the norms, functions, expectations and social spaces assigned to them as their own.
- **Equality of opportunity** between men and women. A situation in which all human beings are free to develop their own personal capabilities and to take decisions without limits imposed by traditional roles; one which takes into account, values and strengthens the different conducts, aspirations and needs of men and women in an equal way. Formal equality is the first stage to real equality. Unequal treatment and specific incentivating measures, such as positive action, may be necessary to compensate for past and present discrimination. Therefore, equality of opportunity acquires an instrumental character and seeks to overcome the unequal gender relationships established by patriarchal society.

Differences between men and women may be influenced by other structural differences, such as race, ethnicity and social class. These dimensions (and others such as age, handicap, marital status or sexual orientation) may also be useful for our evaluation.

The dimensions of equality and of gender have to be taken into account in all actions and activities, from the planning phase, and their effects on the respective situations of men and women in the application, supervision and evaluation of every action and activity must be studied.

- **Direct or voluntary discrimination.** A situation in which a person is treated less favourably on the grounds of sex, that is to say, it directly defines the people to whom it is aimed at.

An example of direct discrimination is not allowing women, or black people, to enter an establishment. It can be said that practically the majority of present discrimination is indirect, as will be shown below.

- **Indirect or involuntary discrimination.** Born in the United States in the 1970s, it represents a widening of the prohibition against discrimination of apparently neutral acts which, in practice, have an adverse effect on women without any justification beyond that of their sex. Therefore it can be defined as a situation which is produced when a law, regulation, policy or practice which is apparently neutral has a disproportional effect on people of one sex or another.

An example of indirect discrimination is the current regulations of part-time work. Although this is not formulated explicitly, it is a type of contract characterised by job insecurity, given that it is linked to the lack of security in work, its temporary nature (55% of all part-time contracts are temporary) and reduction of social security rights, working conditions, salaries and

qualifications. Coincidentally, according to the year 2004 figures of the Economic and Social Council, 82.4% of wage-earning part-time workers are women. Furthermore, the growth in part-time work has not meant the incorporation of women in new spheres, but quite the opposite; it has intensified the segregation of women workers in the service sector where the levels of pay and qualifications are reduced (waitresses, sales staff, domestic service workers).

- **Gender equity and equality.** Gender equity is the way of ensuring that men and women benefit equally from a project or programme.

Gender equality means that people from each sex have to have the opportunity to realise their full potential as a human being.

- **Gender relevance.** Verification of the extent of the measures to be adopted in relation to its target audience, bearing in mind the way they work with respect to men and women. A detailed study may reveal that seemingly non-sexist policies affect women and men differently because there are substantial differences in their lives, in the majority of areas, differences that may explain the fact that apparently non-discriminatory policies effect women and men differently, and reinforce existing inequality.
- **Gender auditing.** Analysis and evaluation of policies, programmes and institutions with respect to how gender-related criteria are applied.
- **Gender mainstreaming.** Organisation (reorganisation), improvement, development and evaluation of political processes, in such a way that the agents normally involved in adopting political measures incorporate a perspective of gender equality in all policies, at all levels and at all stages.

The intention behind mainstreaming is that the agents involved in policy-making incorporate a perspective of gender equality in all policies, at all levels and at all stages, in order to promote fairer relations between women and men.

- **Evaluating the impact of gender.** An examination of political proposals, in order to analyse if they will effect women and men differently, to adapt them in order to neutralise discriminatory effects and to foster equality between men and women. It is, therefore, a matter of a set of actions addressed at identifying and qualitatively and quantitatively evaluating the development of the measures which aim to achieve full effectiveness in the equality of opportunity in order to obtain effective equality between women and men.

Evaluating the impact according to gender means using gender relevant criteria to compare and assess the current situation and trends with the expected results of the proposed policy.

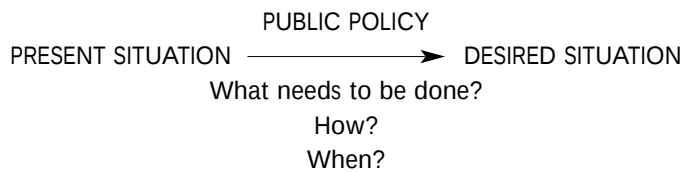
6.2. How to evaluate gender impact.

The methodology necessary to integrate the gender perspective in professional practice is not necessarily new. The majority of experts working in the planning of social intervention projects know that they have to structure a process which, as a minimum, involves:

- knowing what there is
- knowing where one is
- anticipating where one wants to get to
- planning what one wants in order to intervene in this situation
- evaluating what has been obtained according to the anticipated actions

The evaluation of the norms, from the gender perspective, involves adapting the framework of the techniques of analysis of the public policies by applying the variable of gender.

The concept of public policy is characterised by three elements:



This process, which includes the carrying out of the answer to the problematic situation up to the evaluation of the foreseen and unforeseen effects of the specific policy; this is what is called public policy analysis.

This analysis is composed of four inter-connected major phases:

1. Defining the problem
2. Decision-making
3. Putting the decision into practice
4. Evaluating: a process that aims to determine to what extent the previously established objectives have been achieved.

In gender analysis we try to find answers to some key always sex-disaggregated, questions, in order to see:

- Who does what?
- Who has access to what?
- Who has control over what?
- What differences are there and why?
- What are the key factors which influence gender effects?

These are the so-called gender indicators, defined as instruments that allow one to measure and understand the situation of women with respect to gender relations, starting with the identification of the fundamental elements which sustain and justify situations of inequality between women and men. They allow an understanding of the factors of inequality, consciousness-raising and behaviour regarding these factors in order to modify them.

7. Structure of interdepartmental gender-impact reports

As shown earlier, the gender-impact reports established by Law 4/2001 are of a perceptive, non-binding nature, and represent a method of prospective evaluation of the norms, i.e. an ex ante study and analysis of the normative project being promoted. This is done in order to verify that at the moment of planning the measures contained in the order, the effects they will have on men and women have been taken into account, advising whoever will adopt them on what the desired and undesired consequences may be and, if necessary, proposing their modification. It could be defined as a mechanism for searching for real equality and results. It is a matter, finally, of a subjective improvement in the quality of normative production.

The key question of Law 4/2001 is how to make a gender-impact report. This Law offers no clues to follow and, furthermore, has not yet been developed in a regulatory way. Therefore the Catalan Institute for Women have followed the guidelines set out by the European Union Commission, which produced a guide called "Incorporating equal opportunities for women and men into all Community policies and activities" [COM (96) 67 final, February 21st, 1996]. Based on the indications included in this guide, limited, as the name indicates, to the adoption of community policies, and the recommendations and good practices carried out by the Council of Europe Expert Group, the CIW has structured the gender report in two parts:

- Revision of the language used in the proposal
- Revision of the regulatory part of the proposal

7.1. Revision of the language used by the proposal.

In accordance with the rules and regulations established by resolutions 14.1 of 1987 and 109 of 1989 of the Unesco General Conference, Recommendation R(90) 4 of 1990, passed by the Committee of Ministers of the European Council, the Order of March 22nd 1995 of the Ministry of Education and Science, Decree 162/2002, of May 28th, the modification of Decree 107/1987, of March 13th, which regulates the use of official languages on the part of the Administration of the Government of Catalonia, with the aim of promoting the use of simplified and non-discriminatory language and of normalised Catalan terminology, related to the non-androcentric use of language and the use of terms that do not produce gender-based discrimination and violate the principle of equality of opportunity. The CIW revises the language used throughout the text of the proposed normative order and proposes, if necessary, the modification of discriminatory expressions and the language that must be used to

eradicate sexist language from the language of the public service, both internally and in dealings with the citizens, and has made manifest the presence of women in the discourse of administrative language without transgressing grammatical norms, thus making the personnel of the Government of Catalonia more familiar with and sensitive to the strategies of using non-sexist elements contained in the Catalan language.

Language has a fundamental part to play in the formation of people's social identity and is the most influential element in the formation of thought in society. One of the most notable demonstrations of inequality between women and men is invisibilisation - language which conceals women - and the way they are represented in sexist or discriminatory images.

Sexist uses of language make women invisible and prevent us from seeing what is hidden behind the words.

For its part, androcentrism, i.e. considering the male human being as the centre of the universe, as the standard of all things, is an impediment to the process of establishing equality between men and women, because it hides the existence of women, who make up half of humanity. If we fight solely against this demonstration of sexism, we will clearly not solve nor change the origin of the problem, i.e. society itself. However, as long as language is an instrument through which all humans codify and transmit thoughts and communication, it is possible to take some steps towards alternatives which can move forward to a use of language which represents the egalitarian reality which we want to create.

Catalan, like other Romanic languages, allows the adoption of the masculine or feminine gender which corresponds in each case and, furthermore, has a wide and rich range of expressions which are really generic.

7.2. Revision of the regulatory part of the proposal

The revision of the contents of the proposal being promoted means distinguishing three phases:

- a)** Preliminary phase: Analysis and diagnosis of the situation of women and men in the ambit regulated by the proposal.
- b)** Intermediate phase: Verification of gender relevancy.
- c)** Final phase: Juridical representation and resolution of the basic planning tools, in accordance with the criteria of rationalisation and simplicity that characterise the aim of the normative method.

Preliminary phase: Analysis and diagnosis of the situation

Before the proposed regulation, it is necessary to ask ourselves two questions:

- 1.** Will the proposal affect the everyday life of one or more parts of the population?
- 2.** Are there differences between women and men in this particular sphere regulated by the norm?

In the case of an affirmative answer to either of the two questions, one must go ahead with gender evaluation. One must, therefore, identify the situation of women and the gender relations in the specific sphere regulated by the project, that is to say, visibilising the reality of women and men in a particular ambit. Therefore one needs to use the so-called gender indicators which are instruments which allow us to measure and understand the situation of women in gender relations, starting with the identification of the fundamental elements which sustain and justify situations of inequality between women and men. They allow understanding of the factors of inequality, consciousness-raising, and the behaviour of these factors in order to be able to modify them.

The understanding brought by these indicators means reducing the differences in the situation and the presence of women and men, as well as the impact of certain factors which explain differences of behaviour, attitudes and values, between one group and the other.

It is a matter of making an expert social appraisal based on these indicators, among which we highlight the following:

a) Quantitative investigation: descriptive data on the situation of men and women in the regulated ambit must be made available. That is to say, to offer reliable, basic statistical data, updated and itemised by sex.

b) Qualitative investigation: includes the preliminary analysis of women's specific problems. An expert social appraisal, which allows the laying of the foundation for the decisions and aspirations proposed in the gender report, must be carried out. This social appraisal will refer in each case to questions related to the social reality, and will surround itself with social aspects relevant to the specific object the norm, valuing the concurrent social factors or variables and the impact (positive or negative) that they have on the norm. This qualitative investigation, according to the cases and to the accuracy which the object of the report demands, will be able to collect the analysis and evaluation of the following aspects:

- Family aspects: details of identification, family relations and the dynamic between them, among others.
- Aspects related to the social setting: neighbourhood relations, social relations and socialisation processes.
- Educational aspects: instruction levels, schooling provision, absenteeism, training, finished studies, etcetera.
- Economic aspects: individual and family monthly income, organisation, economico-domestic distribution, source of income (contributive and non-contributive pensions, retirement pensions, invalidity pensions, family support), expenses (bank loans, credit), etcetera.
- Employment aspects: employment situation, type of contractual relationship, periods of unemployment and payments, skills, trades, profession, occupation, work in the hidden economy, perspectives of the future, etcetera.
- Health aspects: illnesses, handicaps -and degree of handicap-, health coverage, medical treatment, surgical operations, involvement in health programmes, etcetera.

- **Housing Aspects:** description of surrounding housing, neighbourhood, zone, services (schools, green areas, health centres, shopping, transport, etcetera), type of housing, conditions, characteristics (space, ventilation, lighting, and other aspects related to conditions of habitability), type of occupancy (owned, rented, precarious, usufruct, etcetera).
- **Sociocultural aspects:** links to cultural life, interests, hobbies, leisure and free time, assistance at celebrations, aptitudes, membership of groups or associations (cultural, sporting, religious, etcetera), relationship with or dependency on social services, etcetera.
- **Looking into the use of resources by each sex:** one must study the distribution between women and men of the important resources, such as time, space, information, money, political and economic power, education and training, work and professional career, new technologies, health services, modes of transport, leisure etc.
- **Determining the percentage of participation or representation of women and men in the area where gender mainstreaming must be applied;** the group or groups affected by the evaluation must be itemised by sex, especially the representation of women and men in decision-making, at all levels. One must, therefore, have access to earlier studies on the percentage of participation itemised by sex and entity, group or body affected by the evaluation.
- **Studying the formation of social and professional roles in both sexes,** with the aim of finding out their degree of impact in the real situation of both sexes in the policy to be developed: one must determine what the established, traditional roles are, or the division of labour according to sex, the attitudes and behaviour of women and men in relation to a particular situation, etcetera.
- **Analysing the existing norms in order to determine whether they have an influence on the real situation of men and women:** one must be aware of the laws that the legal system (international – ratified international treaties – and community – treaties, regulations, directives, recommendations, resolutions, action plans and programmes) offer to face up to direct or indirect discrimination.
- **Constructing the ideal model of real equality of opportunity in order to make a follow-up study of the actions taken to achieve it and to evaluate the success level of the experience.**

Finally, this social study has to allow us to have technico-scientific knowledge of the social reality that the norm seeks to regulate, considering that it makes possible the understanding, evaluation, analysis and interpretation of the social situations that women and men find themselves immersed in, and it must, in the final phase, allow posterior intervention through the shaping of the regulations with the aim of overcoming the difficulties identified.

Intermediate phase: Verification of gender relevancy.

Considering a determined social reality, the gender-relevance of a programme or policy will have to answer the following question: to what degree are the objec-

tives of the intervention suitable for achieving the objective of equal opportunity between women and men?

A detailed study may reveal that policies that seem non-sexist affect women and men in a different way, and reinforce existing inequalities. By legal imperative, the normative proposal has to respond to the following criteria:

- Efficiency. To the basic question: are the resources transformed into realisations and results?; incorporating the gender perspective includes the following reflection: are these realisations measured according to the different necessities of women and men?
- Efficacy. Have the objectives which tend to eliminate structural inequality between genders been anticipated when quantifying these objectives?
- Usefulness. Has consideration been made to the different needs and demands presented by women with a view to making the most of the usefulness of the predicted resources?
- Durability. Have measures been foreseen which ensure that the changes or benefits of the programme in the quality of life of women are maintained in the medium- and long-term?

All these considerations imply:

1. Determining if the normative project has clear, specific and measurable objectives, considering that otherwise it would be impossible to determine the impact it will produce with any accuracy.
2. Examining if it specifically indicates the progression over time of the impact in the short-, medium- and long-term and, if possible, annually quantifying the expectation of the results.
3. Evaluating the social impact which the norm or policy under question may have.
4. Being aware if the authorities and/or organisms responsible for carrying it out are included in it.
5. Establishing the inclusion, or otherwise, of the budgetary requirements necessary to ensure the efficacy of the norm or regulation.

Final phase; Modification proposals

In this phase one must work the previously obtained results into the regulatory project with the aim of improving the adapted norm which responds to the preoccupations and needs of women and men. It is a matter of being able to remedy possible negative effects before making the decision.

In the first place, one must make a revision and statement of the relevant existing norms, as well as the international, European and national recommendations, which although they may not be binding they do have an orientative and legitimising value.

In this third phase of proposals to include in the text of the order, an important part is played by the Action and Development Plan for Women's Policies in Catalo-

nia (2005-2007), passed by the Government Agreement of March 22nd 2005. This Plan brings together basic outlines and interventory instruments of the Catalan public services related to the promotion of equal opportunities between women and men in women's policies and in all spheres of life. It contains 519 measures and 961 agreed actions by all departments of the Government of Catalonia. The gender reports raise the range of actuaciones and the measures contained in this plan, which may be of different types:

- a.** Positive actions, understood as temporary actions or measures which favour the collective suffering discrimination. The aim is to guarantee access to resources in equal conditions. They serve to remove barriers, but do not necessarily guarantee results. Examples of positive action are making formative or other action especially for women with the aim of compensating for different levels of knowledge or unequal qualifications: also awareness campaigns for the business world.
- b.** Positive discrimination: a mode of positive action which acts on the arrival point and guarantees the desired result. The aim is to make the situation of women and men more equal. For example, selecting or promoting a woman in a situation of theoretical equality with a man is positive discrimination.

Within the generic category of positive action measures, there may be very different specific forms:

- Measures of consciousness raising and measures of promotion: these are the least forceful measures, they are training or publicity measures which seek to create a state of opinion or sensitivity to the problem, and which may guide, for example, all the workforce of a particular company, or especially someone in that company authorised to take decisions about the policies of contracting and promoting. These measures are essential for achieving the success of other measures, which are more weighty and clearly differentiated in favour of members of a collective which has traditionally suffered discrimination.
- Facilitating measures, of push or promotion: these measures aim to eliminate discrimination and achieve higher levels of real equality. They also encapsulate many categories, oriented in part towards correcting the defects of selection systems based traditionally on merit, but which frequently contain prejudices and apparently neutral practices which reduce the possibilities of particular collectives which have traditionally suffered discrimination obtaining the benefits to which they aspire.
- Measures of incentives and measures of discrimination in a wide sense: the former are directed generically to increasing the competitive opportunities of people traditionally marginalised by their membership of disadvantaged collectives. They include, for example, guaranteeing members of these collectives (women, for example) sufficient information about job offers and encouraging them to apply for job offers (above all in the case of women, when dealing with work traditionally considered to be men's work). It could be a matter of publishing slogans urging women to apply for the job on offer, including women in personnel selection teams and favouring access of women to training courses, especially in the sectors where they are under-represented, and to management development seminars. Also in the category of incentivating measures are those oriented towards increasing the economic means of members of traditionally

marginalised collectives. Among these, the awarding of grants or subsidies, the payment of supplementary expenses caused by the contracting of female personnel, or by creating incentives for companies which can show that their internal promotion policies have increased the numbers of women working in tasks or levels in which they were under-represented. Also included in this category are all the measures designed to facilitate and reconcile the development of professional life and family responsibility, and simultaneously to establish measures of other kinds directed at achieving a situation where these family and domestic responsibilities are no longer considered exclusively or principally women's work.

- Measures of deciding between equally qualified candidates, and of reverse discrimination in a strict sense: These are measures which grant, more or less automatically, the limited goods to a person of a discriminated collective, always assuming that their level of qualification is identical to the other candidates seeking that benefit. Another group of measures does not necessarily require discriminated members to have the same qualifications as others, but rather gives automatic preference to the contracting and promotion of members of the under-represented collective, despite their qualifications being inferior, i.e. those who benefit from reverse discrimination would not have access to the benefits if the measures were not in force.
- Quotas and numerical objectives: the quota is a technique that can be used to fix the proportion of people who are beneficiaries of reverse discrimination measures. There are two types of quotas, flexible and rigid. Flexible quotas are the measures of reverse discrimination in a wide sense that do not automatically give advantage to members of marginalised collectives, but rather by means of a saving clause which allows one to value, in an individualised way, the circumstances of the person competing for the post, up to the point of allowing that person the advantage, if these circumstances warrant it. Rigid quotas, in contrast, are used in the supposition that advantage is given automatically to members of a marginalised collective solely based on their membership of that collective, without evaluating the circumstances of the other aspirants with the goal of obtaining those limited goods. Another possibility is fixing a numerical objective which indicates the proportion of women which it is desirable to have in a certain level in a certain period of time, without predetermining the means necessary to satisfy it.

In this last phase of the gender reports one must bring together the gender mainstreaming technique and the incorporation of actions and positive action measures and the normative method which demands that the making of dispositions of a general nature is carried out in accordance with the principle of juridical security, which obliges the norm to follow juridical clarity, in such a way that legal operators and the citizens know what rules they must abide by in this matter.

8. Examples of gender-impact evaluation

- In a study of an apparently neutral sector, that of transport, a close examination shows the clear substantial differences between women and men in the use of and access to means of public and private transport. Women have access to a car less frequently than do men, and use public transport more. Consequently, women have more to gain from improvements in accessibility and the cost of public transport. These inequalities have implications for the participation of women and men, respectively, between the different groups which are objects of the transport sector, and are seen to be influenced by the existing inequality between men and women in the levels of responsibility of this sector. These inequalities reflect differences between the two sexes in the distribution of resources, for example, a private car, and reinforce existing inequalities in the difficulty concerning time (in the sense that a private car represents a saving of time). The process of family decision-making about the use of a limited resource, such as the family car, may be influenced by social norms and values affected by the relative importance given to the necessities of the man and the woman, respectively.
- From the study of non-remunerated working time, on housework, it turns out that women dedicate more hours than men in these unpaid activities. Several studies show that an average of 53.8 hours a week are spent on housework, or domestic production. Of these 53.8 hours, 45.81 are spent by women and only 6.23 hours by men. As a result of this study one may deduce that the traditional roles attributed to men and women produce real inequality in the number of hours that men and women give to these activities. These are differences which also affect the participation of men and women (economic activity level) and the distribution of resources (time, income, professional career).

9. Objectives to be obtained through gender-impact evaluation

The evaluation of gender-impact is an instrument which makes it possible for policies which take account of gender differences to be carried out.

This evaluation allows us to know the level of gender inequality present in the normative disposition projects which have been passed in Catalonia, that is to say, the degree of the tendency to equality, understood to be the equality of opportunity for women and men.

The fundamental aim is the promotion of freedom, equal rights and non-discrimination and the real difference between men and women, such as women's participation in social, cultural, economic and political life, in accordance with the Action and Development Plan for Women's Policies in Catalonia (2005-2007), mentioned above: measures of promoting equality of opportunity between women and men, in family and private life, in health matters, in social and community services, in education and research, in working life and at work, in the communication society, in parity of representation and participation of women and men in decision-taking, in equality of human rights and in cooperation for development, measures of equality protection before the challenges of the information society and sustainable development, etcetera.

As a minimum, this evaluation seeks to ensure that rules and regulations do not have a negative effect on women, and that intervention benefits women as much as men. The use of gender analysis allows us to obtain information and prepare fairer and more appropriate policies and programmes.

10. Elements required for gender mainstreaming

- 1. Political will and the commitment to introduce change.** Mainstreaming is not developed uniquely and exclusively with technical will. It needs clear political will to make the core of equal opportunity into a political priority. That is to say, the competence for gender is included as an everyday requirement for decision makers.
- 2. The inclusion and the participation** of women in the institutions and in the processes of decision making. In this sense, there are numerous declarations and political commitments carried out at the national, European and international levels with the goal of promoting the participation of women in all policies and commissions. We mention, among others, the Council Recommendation of December 2nd, 1996 and the Resolution of the European Parliament, passed in the plenary session at the end of the year 2000, where the promotion of women to decision-making processes before the mentioned recommendation was examined. With a clear will to set an example, the European Commission issued Decision 200/407/EC, of June 19th 2000, on the relative balance between men and women in the committees and expert groups created by the Commission. Via this Decision, the Commission promised to achieve a balanced representation of women and men in expert groups, with the intention of obtaining a minimum of 40% of representatives of both sexes in all committees and expert person groups. The promotion of women to the decision-making bodies is not only related to justice or democracy; it is also a necessary condition for women's interests to be taken into account, to deal with their preoccupations and to get to know their experiences and knowledge.
- 3. Resources.** The focus on gender will not gain ground if there is no granting of the necessary and differentiated technical and budgetary resources of the resolutions destined to integrating equality measures in the general policies. In this sense, in July 2003 the European Parliament, through the initiative of the Committee of Women Rights and Equal Opportunities, passed the Resolution of the European Parliament on gender budgeting (incorporating gender mainstreaming in the budget) – making public budgets from a gender perspective (2002/2198(INI)). Gender budgets are an initiative which the United Nations started to work with in 1996. Parliament underlines the fact that, in defining and applying budgetary policies, the public authorities adopt specific political decisions which influence society and the economy, and considers that public budgets are not simple financial and economic tools, but are also the basic framework which shapes the model of socio-economic development, establishes the criteria of redistribution of income and gives priorities to political objectives.

- 4. Information and data.** It is absolutely necessary to have sex-itemised data available, and to set up qualitative and quantitative studies and investigations which provide an understanding of the reality.
- 5. Technical training.** It is essential to know and use basic concepts of gender focussing which allows the interpretation of the reality based on the sex-itemised data obtained.
- 6. Methods, techniques and tools** to incorporate the gender dimension. The need to disseminate experiences and good practices that serve as models for advancing in the introduction of the gender focus.
- 7. Sensitisation** of all juridical operators, lawyers, judges, in the international norms of human rights and women's rights, encouraging them to use them increasingly in national law.
- 8. Spreading the information** about the existence and the possibilities of treaties and international procedures to defend women's rights.

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