

**Harmful traditional Practices in Europe and South Africa -  
Art 5 a CEDAW and Obstacles in Implementing Gender Equality<sup>1</sup>**

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- I Personal approach
- II Austrian Embassy Project - Pretoria 2009
- III The situation in Europe and South Africa
- IV Art 5 a CEDAW
- V What is to be done ?

I

May I introduce myself.

I am from Austria and I have been working as a judge specialised in commercial law since 1976. However, since the 1980ies I have also focussed on the implementation of human rights at the international and national level. In 1993 I was a delegate at the UN World Conference on Human Rights in Vienna . I was also member of the Austrian government delegation at the 4 th UN World Conference on Women in Beijing in 1995. In 1998 I was appointed Substitute Justice at the Austrian Constitutional Court.

II

In 2007 the Austrian Parliament celebrated the 25 th anniversary of ratification of CEDAW with an enquete to highlighten the achievements of South Africa concerning women´s rights as human rights. After that event Mr. Essop PAHAD, Minister in the South African Presidency, and Ms Barbara PRAMMER, Speaker of the Austrian National Assembly , initiated a project: Legal experts should be brought together to study and compair social ans cultural patterns . They should identify structural obstacles which possibly hinder the full enjoyment of women´s rights in both countries. They should assess the real and legal conditions with a view to achieving the elimination of prejudices and stereotyping. Together they should draft a document concerning Art 5 a CEDAW as an input to the CEDAW Committee. During the 53 rd session of the UN Commission on the Status of Women in March 2009 the femal ministers for women´s affairs of both countries confirmed their interest towards this joint venture.

In March and November 2009 I visited South Africa. I met Ms. Dr. Manto TSHABALALA-MSIMANG and many representatives of the state and of the civil

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<sup>1</sup> Relazione per il convegno internazionale "*I diritti umani per una umana esistenza delle donne*", organizzato da Giuristi Democratici e D.i.RE. Ravenna, 15.01.2010.

society. Our discussions were very fruitful: We gathered informations. We improved our knowledge about prejudices and stereotyping concerning the gender-aspect. We discussed traditions in the context of the modern South African Constitution . We spoke about CEDAW and the influence of patriarchy . I also met my good friend Justice Edwin CAMERON, judge at the South African Constitutional Court and famous activist against HIV and aids.

In April 2009 we wrote a draft for a joint report under the heading „ Approaching Harmful Traditional Practices Affecting Women and Girl Child „. Our recommendations said:

„ .....In time for next years´ s CSW ( = 54 th meeting of the Commission on the Status of Women in New York in March 2010 ) a mixed expert group representing traditional leaders, women´ s rights activists, historians, physicians, lawyers and artists should discuss aspects of culture as a socio-economic necessity, particularly in rural areas ,and should elaborate on the significance of harmful practices in their cultural context .Practices should also be analyzed according their origins , and their historic as well as their contemporary relevance.....

.....Agents of change should be identified. Possible effects of the eradication of harmful practices should be evaluated, and possible compensating measures identified. Lessons learned from protecting women´ s rights in migrant communities should be collected.

The CEDAW Committee should be alerted to the activities with the view to engaging the Committee in drafting a General Recommendation on CEDAW Art 5, addressing harmful practices beyond FGM....“

The goal is to promote transformation of the legal systems in all member states under Art 5 and to change legal and illegal practices in the global society.

### III

In Austria I identified a harmful practice of absolute lack concerning the transparency of wages between men and women. Although Austria is a member state of the EU, there still exists a wide gap between male and female wages. During women´ s active working period the difference amounts approximately 20 % - 40%, after retirement sometimes nearly 60 % ! Employers often treat female workers in a contemptuous way: On principle they offer them lower wages and seem to be sure that women will do their best like „ hard working bees „, 15 years old beginners are affected as well as senior workers. The elder often live in poverty and so do young women with children. Structural violence against women is a hidden but everyday problem. Domestic violence is a very important issue that cannot be ignored any longer.

But look at Europe:

Honor crimes happen also in Western Europe. Please remember Hatun Sürücü, a German citizen, who was killed by their brother, because she had tried to live „like a German woman“.

Roma suffer from violence in Hungary, Slovakia, Romania and Bulgaria.

Trafficking in women ( and children )from Africa and Eastern Europe to our countries is a usual harmful practice.

FGM f.i. In France, virginity testing in Turkey, enforced marriages everywhere.

Wearing the Burka-veil or similar head scarfs in the public etc. etc.

In South Africa witchcraft and magic is also a problem, especially in rural areas. In my opinion the root causes for severe human rights violations are often a distorted view of reality. And it is a sad fact that the actual physical, psychological and mental health of certain practices have been gravely aggravated by the HIV/Aids pandemic. Secondly harmful traditional practices often are not really „African“ but paternalistic.

#### IV

Art 5 a CEDAW says:

„ State Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women,with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women .....

#### V

What is to be done ?

The report „ 15 Years of the United Nations Special Rapporteur on Violence against Women – its Causes and Consequences „ in 2009 was initiated and guided by Yakin ERTÜRK. Titled „ Demystifying cultural discourses“ the report says on page 39:

„.....Cultural discourses are a significant source of diverse normative systems that shape power relations between men and women , while the common values across societies have helped develop human rights law reflecting universality and shared culture. Despite the shared values that human rights largely embody, colonial histories,deepening political and economic inequalities, and divisions

between an among nations have polarized societies, particularly in the post-September 11 times. These divisions and inequalities have coalesced with patriarchy to provide fertile ground for cultural discourses. Cultural discourses are manifested in international law, on the one hand, by resorting to cultural justification to resist women´s rights, and through references to primordial and hegemonic interpretation of culture. On the other hand, they are visible in the cultural essentialist targeting of „ traditional societies „ in the global South that are perceived as harmful to women....“.....

“The shift in the responses to cultural discourses .. is evident primarily at two levels: first , through rejection of the term „harmful traditional practices „ and instead adoption of the term „ harmful practices „ in relation to cultural practices in the family that violate women´s rights, and second , through debunking the monolithic static representations for culture ( by both cultural relativists and cultural essentialists) to call for State participation in validating alternative and non-hegemonic interpretations of culture by women and encouraging cultural negotiation.....“

The 2009 South African Report on CEDAW says to Art 5a :

„ The courts have played a critical role in transforming societal beliefs and attitudes through some of their landmark decisions that have fundamentally changed customary and religious practices that violate women´s human rights...“

My opinion as an expert is that many State Parties of CEDAW should join our bilateral project to enforcing Art 5 a CEDAW. I for myself hope that CEDAW Committee wil pass a new General Recommendation concerning harmful practices against women. I think it is much to do.

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