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Action to combat gender-based human rights violations, including abduction of women and girls

The urgent need to combat so-called “honour crimes”

Recommendations 1868 (2009) and 1881 (2009)

Reply from the Committee of Ministers

adopted at the 1081st meeting of the Ministers' Deputies (31 March 2010)

1. The Committee of Ministers has carefully examined Parliamentary Assembly Recommendations 1868 (2009) on “Action to combat gender-based human rights violations, including abduction of women and girls”, and 1881 (2009) on “The urgent need to combat so-called “honour crimes””. It has brought both recommendations to the attention of the governments of member states and has forwarded them to a number of intergovernmental bodies.¹
2. The Committee of Ministers agrees with the Assembly about the need to take action to combat gender-based human rights violations, including abduction of women and girls and so-called “honour crimes”. Recommendation 1881 (2009) refers to a strategy based on the elimination of every form of legislative justification for diminishing or removing the criminal responsibility of the perpetrators of “honour crimes”. The Committee of Ministers fully supports this approach. There can be no justification based on custom, religion, tradition or honour for acts of violence against women.
3. The Committee of Ministers is furthermore of the opinion that member states should adopt, according to their national legal systems, the necessary legislative or other measures to ensure that any form of violence committed in the name of honour is criminalised and punishable by effective, proportionate and dissuasive sanctions, taking into account its seriousness.
4. The Council of Europe's standard-setting work in this field is going ahead according to schedule. The Committee refers to its reply to Assembly Recommendation 1872 (2009) on “The rights of today's girls: the rights of tomorrow's women”, and recalls that, according to the interim report of the Ad hoc Committee on preventing and combating violence against women and domestic violence (CAHVIO), considered by the Ministers' Deputies on 1 July 2009, the focus of the future Council of Europe convention on domestic violence should be on the elimination of violence against women and should deal with domestic violence which affects women disproportionately. The convention should cover all forms of violence perpetrated against women, whether physical, psychological, sexual or economic in nature. It should cover any act of gender-based violence, which results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in the public or private sphere. This would include, but not be limited to, physical and psychological violence,

¹ Recommendation 1868 (2009): Steering committee for Equality between Women and Men (CDEG), Steering Committee for Human Rights (CDDH), Ad hoc Committee on preventing and combating violence against women and domestic violence (CAHVIO) and Executive Council of the North South Centre, for information and possible comments. Recommendation 1881 (2009): European Committee on Crime Problems (CDPC), Steering Committee for Equality between Women and Men (CDEG) and Steering Committee for Human Rights (CDDH), for information and possible comments, and Ad hoc Committee on preventing and combating violence against women and domestic violence (CAHVIO), for information.

including stalking; sexual violence, including sexual assault, rape and sexual harassment; as well as other forms of violence against women, including forced marriage, deprivation of liberty, female genital mutilation and crimes committed in the name of honour.

5. According to the interim report, the draft convention will contain a chapter on protection and support of victims, including the establishment of support services such as telephone helplines, shelters and emergency centres. Moreover, as a follow-up to Resolution No. 1 adopted at the 29th Council of Europe Conference of Ministers of Justice (18-19 June 2009, Tromsø, Norway) on preventing and responding to domestic violence, which includes crimes committed in the name of honour, the Committee of Ministers has asked the European Committee on Crime Problems (CDPC) to initiate work on the status and rights of victims in criminal proceedings with a view to granting them status in criminal cases.

6. The Committee of Ministers notes that the Assembly considers that a unified statistical data collection system for gender-based human rights violations could be a useful tool for decision makers when laying down policies to combat these phenomena. The Committee is not sure, however, that the benefits would be such as to justify the establishment of such a system in the present budgetary context. The introduction of a unified statistical collection system is currently being studied by the Ad hoc Committee on preventing and combating violence against women and domestic violence (CAHVIO).

7. As pointed out by the Assembly, the European Centre for Global Interdependence and Solidarity (North-South Centre) has an important role to play in maintaining a dialogue on gender equality and combating gender-based violence with countries of emigration and countries of immigration on gender equality issues. The Committee of Ministers refers to the appended comments made by the Executive Council of the North-South Centre and underlines that the latter reiterates its will to develop its role as a catalyst in the reinforcement of synergies among players working for the promotion of women's rights in the world, particularly in the Euro-Mediterranean and Euro-African regions.

8. The Committee of Ministers will consider how the fight against the most severe and most widespread forms of violence against women can best be included in the Council of Europe's assistance and co-operation programmes. It recalls its Declaration "Making gender equality a reality", adopted at the 119th Ministerial Session in Madrid in May 2009, in which member states are urged to "renew their commitment to achieve equality in fact and in law between women and men as an integral part of human rights and a fundamental criterion of democracy in conformity with the values defended by the Council of Europe and to provide the Council of Europe the necessary human and financial resources".

9. Finally, the Committee of Ministers refers to its reply to Parliamentary Assembly Recommendation 1798 (2007) on "Respect for the principle of gender equality in civil law", in which it stated that it does not see the need for drafting a new protocol to the European Convention on Human Rights. In this context, it draws the Assembly's attention in particular to the comments made by the Steering Committee for Human Rights (CDDH).

Appendix to the reply

Comments received from committees on Parliamentary Assembly Recommendation 1868 (2009) on "Action to combat gender-based human rights violations, including abduction of women and girls"

Comments by the Steering Committee for Equality between Women and Men (CDEG)

As regards the stepping up of the programmes of the North-South Centre on gender equality, the CDEG recalled that following the thematic debate of the Committee of Ministers on gender equality in October 2008, the latter requested the CDEG to continue and extend its action for integrating a gender perspective in Council of Europe activities. It already had the opportunity to contribute actively to the activities organised by the North-South Centre, in particular in the framework of the preparation of the White Book on Intercultural Dialogue, and on women's participation in political and public life. It therefore supports the proposal of the Parliamentary Assembly to contribute actively to the programmes of the North-South Centre by sharing its experience and its extensive knowledge in the field of equality between women and men.

As regards the drafting of a new protocol to the European Convention on Human Rights on gender equality, it recalls its comments on Recommendation 1798 (2007) of the Parliamentary Assembly – "Respect for the principle of gender equality in civil law" in which it underlined the existing instruments of the Council of Europe which already provide a legal framework to combat any form of discrimination against women.

The CDEG also added in its comments that the drawing up of a new protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, could in due time be considered by the Committee of Ministers. It has also considered that the CDEG could examine further this proposal in co-operation with the other relevant Council of Europe steering committees, in particular the European Committee on Legal Co-operation (CDCJ) and the Steering Committee for Human Rights (CDDH).

Comments by the Executive Council of the North-South Centre

1. The Executive Council of the North-South Centre welcomes the interest shown by the Parliamentary Assembly of the Council of Europe in taking action to combat gender-based human rights violations, including the abduction of women and girls.

2. The North-South Centre feels that equality between women and men is a crucial question in developing societies, as confirmed by the Euro-Mediterranean Ministerial Conference in Istanbul. Respect for women's fundamental rights endows intercultural dialogue with an eminently positive dimension and constitutes a substantial basis for all debates on cultural diversity, as pointed out by the White Paper on Intercultural Dialogue, "Living Together in Equal Dignity".

3. In line with its mission of creating platforms for North-South dialogue in order to promote respect for human rights and democratic governance as the foundation of sustainable development, the North-South Centre has been working for women's fundamental rights for many years. In particular, the issue of the role and rights of women in the Mediterranean region has been at the heart of the Trans-Mediterranean programme since its launch in 1994. The process of promoting and protecting women's rights in the Euro-Mediterranean region was started and reinforced by the North-South Centre in the conviction that women's rights are a sine qua non condition for true democratic governance and the reinforcement of citizenship and participation. In fact, a democratic society is judged by the way it treats its women. And women's place in Mediterranean societies is not dissociable from the challenge of reinforcing democracy and the demand for political, social and cultural reforms.

4. Like the Parliamentary Assembly, the Executive Council considers that the time has come to go a step further and endeavour to reinforce programmes on equality between the sexes and the fight against gender-based violence and pursue dialogue with countries of emigration and immigration on the goals equality between the sexes and civil law in particular and the fight against serious violations of human rights.

5. The conference entitled "Political status and participation: women as actors of change in Euro-Mediterranean society" organised by the North-South Centre, in partnership with the Sub-Committee on equal participation of women and men in decision making of the Parliamentary Assembly of the Council of Europe in Lisbon on 2 and 3 April 2009 fits in with this perspective. The aim of the series of conferences on women as agents of change in Euro-Mediterranean societies, that have been held since 2006, is to take stock of women's rights in certain Mediterranean countries by looking at developments in family codes or personal status. It is a question of analysing both developments and obstacles and of defining approaches and tools for fighting these obstacles.

6. Moreover, the new Chair of the Executive Council, Deborah Bergamini, has been deeply involved as representative of the Parliamentary Assembly in the Council of Europe's campaign against violence against women. In this spirit, an awareness-raising operation was organised on her initiative during the Venice Film Festival in September 2009, based on clips filmed by the national television stations of the Council of Europe as part of the campaign.

7. In light of the above, the Executive Council reiterates its will to develop the North-South Centre's role as a catalyst in the reinforcement of synergies among players working for the promotion of women's rights in the world, particularly in the Euro-Mediterranean and Euro-African regions.

Comments received from committees on Parliamentary Assembly Recommendations 1868 (2009) on “Action to combat gender-based human rights violations, including abduction of women and girls”, and 1881 (2009) on “The urgent need to combat so-called “honour crimes””

Comments by the Steering Committee for Human Rights (CDDH)

1. The Steering Committee for Human Rights (CDDH) welcomes Recommendation 1868 (2009) of the Parliamentary Assembly on “Action to combat gender-based human rights violations, including abduction of women and girls”, and Recommendation 1881 (2009) on “The urgent need to combat so-called ‘honour crimes’”, which touch upon serious problems present in all member states of the Council of Europe and of which the number of victims tends to increase. The CDDH notes that in these texts, the Assembly notably repeats its request for the drafting of a new protocol the European Convention on Human Rights devoted to equality between women and men.

2. While understanding the reasons underlying this proposition, the CDDH refers to the comments it had already formulated regarding Recommendation 1798 (2007) on “Respect for the principle of gender equality in civil law”, referred to in the aforementioned texts. It reaffirms that implementing the existing legal framework, meaning Article 14 of the Convention, Article 5 of Protocol No. 7 and Protocol No. 12 to the Convention, can solve the issues which have been raised without requiring a new binding legal instrument (convention, protocol or treaty). In this regards, it reminds that on the basis of existing dispositions, the European Court of Human Rights recently found a violation of Article 14 of the Convention, jointly with Articles 2 and 3, in a case that dealt with the authorities’ failure to protect the applicant and her mother against acts of domestic violence. The Court judged that the physical abuse inflicted on the applicant and her mother was related to their sex and that it must thus be seen as a form of discrimination against women.²

3. The CDDH draws attention to the significant drafting work of the Ad hoc committee on preventing and combating violence against women and domestic violence (CAHVIO), of a draft Convention on the prevention of violence against women and domestic violence. That said, the CDDH is convinced that legal responses, whilst essential in this field, are nevertheless not sufficient; they must be combined with educational and cultural measures likely to deter, in a long-term perspective, the phenomenon of violence against women and domestic violence. Consequently, the CDDH suggests that within the Council of Europe, a particular emphasis be put on actions in the field of human rights education and culture.

Comments received from committees on Parliamentary Assembly 1881 (2009) on “The urgent need to combat so-called “honour crimes””

Comments of the European Committee on Crime Problems (CDPC)

1. Following the adoption by the Parliamentary Assembly of Recommendation 1881 (2009) on “The urgent need to combat so-called “honour crimes””, the Committee of Ministers decided to communicate it to the European Committee on Crime Problems (CDPC) for information and/or possible comments. The CDPC examined the above recommendation and decided to contribute to the response of the Committee of Ministers by providing the following comments concerning matters within its fields of competence.

2. The CDPC welcomed the initiative of the Parliamentary Assembly for the Committee of Ministers to devise a comprehensive strategy to put a stop to so-called “honour crimes”, based on the fundamental principles of gender equality and respect for human rights, and supported the Assembly’s invitation to the Committee of Ministers to include the fight against the most severe and most widespread forms of violence against women in its assistance and co-operation programmes.

3. As regards the specific criminal law aspects, the CDPC noted that Recommendation 1881 (2009) referred to a strategy based on the elimination of every form of legislative justification for diminishing or removing the criminal responsibility of the perpetrators of “honour crimes”. The CDPC fully supported this approach, and believed that custom, religion, tradition or honour may not be considered to justify acts of violence against women.

4. Furthermore, Parliamentary Assembly Resolution 1681 (2009), to which its Recommendation 1881 (2009) refers, asked national parliaments of Council of Europe member states to pass legislation to make so-called “honour crimes” offences either by creating a specific offence or by making provision for penalties to be aggravated. The CDPC was of the opinion that member states should adopt, according to

² Opuz v. Turkey, application No. 33401/02, judgment of chamber of 9 June 2009; Abdulaziz, Cabales and Balkandali v. United Kingdom, application No’s. 9214/80, 9473/81 and 9474/81, judgment of 28 May 1985.

their national legal systems, the necessary legislative or other measures to ensure that any form of violence committed in the name of honour is criminalised and punishable by effective, proportionate and dissuasive sanctions, taking into account its seriousness.

5. In this respect, the CDPC wished to recall the on-going work of the Ad hoc committee on preventing and combating violence against women and domestic violence (CAHVIO), which is drafting a convention on the subject. According to CAHVIO's interim report adopted by the Committee of Ministers on 1 July 2009, "crimes committed in the name of honour" form part of the conduct that should be covered by the draft convention.

6. In its Resolution 1681 (2009), the Parliamentary Assembly also requested member states to protect and support victims and potential victims of "honour crimes". The CDPC recalled that the above-mentioned interim report stated that the draft convention being drawn up by CAHVIO would contain a chapter on protection and support of victims, including the establishment of support services such as telephone helplines, shelters, and emergency centres.

7. Moreover, as a follow-up to Resolution No. 1 adopted at the 29th Council of Europe Conference of Ministers of Justice (18-19 June 2009, Tromsø, Norway) on preventing and responding to domestic violence, which includes crimes committed in the name of honour, the CDPC wished to inform the Assembly that it will initiate work on the status and rights of victims in criminal proceedings with a view to granting them status in criminal cases. At its 2009 plenary meeting (12-16 October), the CDPC approved a proposal for an expert to carry out a preliminary report/study on this subject.

8. In view of the above, the CDPC was of the opinion that the standard-setting work already in progress on the subject will sufficiently address the criminal law and criminal procedural law questions within its competence which arise in relation to so-called "honour crimes".

Comments by the Steering Committee for Equality between Women and Men (CDEG)

The CDEG has noted with interest Recommendations 1881 (2009) and 1887 (2009) of the Parliamentary Assembly on, respectively, "The urgent need to combat so-called "honour crimes"" and "Rape of women, including marital rape".

The CDEG fully supports the spirit of these recommendations and refers to its action since the 1970s and right up to the present day to combat all forms of violence against women. It welcomes the fact that its efforts, combined with those of the Parliamentary Assembly, will lead to the first European human rights treaty in this area, in the form of a Council of Europe convention on preventing and combating violence against women and domestic violence.

The Ad hoc committee on preventing and combating violence against women and domestic violence (CAHVIO) has decided that the convention should cover all forms of violence against women, whether this be physical, psychological, sexual or economic. The convention should cover all forms of sexist violence that results or could result in physical, sexual or psychological suffering or harm, including the threat of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or private life.

This includes the following non-exhaustive aspects:

- physical and mental aggression, including criminal harassment;
- sexual violence, including sexual assaults, rape and sexual harassment;
- other forms of violence against women, including forced marriages, deprivation of liberty, female genital mutilation and honour crimes.

Concerning more particularly paragraph 2.3 of Recommendation 1887 (2009) requesting member states to "establish marital rape as a separate offence under their domestic law if they have not already done so, in order to avoid any hindrance of legal proceedings", some CDEG members considered that establishing marital rape as a separate offence was not necessary, rape being considered as a crime in their legislation, independently of the existing relationship between the perpetrator and the victim.

In connection with the drafting of a new protocol on equality to the European Convention on Human Rights, as advocated in Recommendation 1881 (2009) on "The urgent need to combat so-called "honour crimes"", it repeats its comments on Parliamentary Assembly Recommendation 1798 (2007) on "Respect for the principle of gender equality in civil law". In these comments, the CDEG referred to the existing Council of Europe instruments that already offered a legal basis for combating all forms of discrimination against

women and asked member states that had not already done so to sign and ratify them, particularly Protocol No. 12 of the European Convention on Human Rights, and to fully apply the provisions of these instruments.

The CDEG also notes that Recommendation CM/Rec(2007)17 on gender equality standards and mechanisms invites member states to ratify and implement the “international legal instruments on human rights in general and on women’s and girls’ full enjoyment of human rights in particular” because “they are a fundamental and authoritative basis and a framework for national policies to eliminate discrimination on the grounds of sex and promote gender equality. Their ratification is a first decisive step towards these objectives and their full implementation must be ensured and constantly monitored and evaluated.”

The CDEG added in its comments that the Committee of Ministers might envisage a new protocol to the European Convention on Human Rights in due course. It also thought that it could give this proposal more detailed consideration in conjunction with other relevant Council of Europe steering committees, in particular the European Committee on Legal Co-operation (CDCJ) and the Steering Committee for Human Rights (CDDH).

As to the proposed launch of a Council of Europe campaign against rape, including marital rape, possibly in connection with the promotion of the future Council of Europe convention, as proposed in Recommendation 1887 (2009) on the “Rape of women, including marital rape”, the CDEG would support such an idea provided that the necessary human and financial resources were made available. This point was made by the Committee of Ministers itself in its recent Declaration “Making gender equality a reality”, in which member states are urged to “renew their commitment to achieve equality in fact and in law between women and men as an integral part of human rights and a fundamental criterion of democracy in conformity with the values defended by the Council of Europe and to provide the Council of Europe the necessary human and financial resources”.