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Forced marriages and child marriages

Recommendation 1723 (2005)

Reply from the Committee of Ministers

adopted at the 961st meeting of the Ministers' Deputies (5 April 2006)

1. The Committee of Ministers welcomes Parliamentary Assembly Recommendation 1723 (2005) on forced marriages and child marriages. It shares the concern of the Assembly about the serious consequences of such marriages. The Committee has communicated the recommendation to the governments of its member states. It has also requested and received opinions from the European Committee on Legal Co-operation (CDCJ), the European Committee on Crime Problems (CDPC) and the Steering Committee for Equality between Women and Men (CDEG) (see Appendices 1 to 3).

2. The Committee of Ministers recalls that its Recommendation Rec(2002)5 to member states on the protection of women against violence includes forced marriages in the definition of "violence against women"¹ and envisages additional measures concerning early marriages.² It notes that the Assembly recommends that the Committee instruct the appropriate intergovernmental committee to make a thorough analysis of forced marriages and child marriages and devise a strategy encouraging member states to take specific action in a number of fields. The Committee agrees with the Assembly about the need for a strategy to tackle this problem and is pleased to inform the Assembly that the CDEG, in the context of implementing and following up the above-mentioned recommendation, decided in 2004 to focus on the question of forced marriages and commissioned a study on Forced marriages in Council of Europe member states – A comparative study of legislation and political initiatives. The CDEG was concerned about the growing incidence of forced marriages in member states, whether by virtue of their own national traditions or through perpetuation of such traditions in immigrant communities, and was aware that most member states did not have the appropriate legal and political instruments to combat this phenomenon.

3. The Committee of Ministers notes that the Parliamentary Assembly's recommendations largely concur with those of the study prepared under auspices of the CDEG. The information currently available shows that while some member states are indeed ill-equipped to combat forced marriages from the legislative and political standpoint, others have bodies of legislation which, while requiring improvement, would still be fairly effective, if actually applied and stringently enforced. Whereas this partly caters for the Assembly's concerns, the Committee of Ministers notes that the study suggests that the best solution would be to introduce into member states' legislation a specific offence of forced marriage carrying genuinely dissuasive penalties and taking more or less aggravating circumstances into account.

4. The Committee of Ministers shares the Assembly's view about the need for prevention campaigns in schools, for information to persons under threat of forced marriage of practical steps to take prevent marriage and for emergency reception facilities for people liable to be forcibly married. The above-mentioned study also calls for information and prevention campaigns in primary, secondary and upper secondary schools but proposes that they be aimed not only at young people but also at their families and the public at large to strengthen the drive to prevent forced marriages. The CDEG pointed out that the issue of child marriage is already examined in its above mentioned study.

¹ Appendix, para. 1.a.

² Appendix, paras. 84 and 85.

5. The CDEG's study will be brought to the attention of the authorities in the member states and will be disseminated widely. The Committee of Ministers encourages governments to take account of the recommendations and to be guided by the political action and policy tools described or proposed. As the study could not cover all Council of Europe member states in detail, the CDEG will pursue its work.

6. The Committee of Ministers furthermore notes that Resolution (72) 29 on lowering the age of full legal capacity deals partly with the subject of forced marriages. The CDCJ points out that the Resolution is rather limited in its scope, and would, in respect of the question of the consent required for a marriage, merit closer re-consideration in order to assess whether its provisions are still appropriate. It underlines that the Explanatory Memorandum to the resolution suggests that the age at which marriage may be contracted should be left to the discretion of each state. The Committee of Ministers agrees with the CDCJ about the need to reflect upon the factual changes in Europe in respect of the minimum age to enter into marriage, the clear tendency to fix this age for both men and women at 18 years, and existing national legislation as well as other international agreements that recognise marriages abroad. This view is supported by the Committee of Ministers' Recommendation R (85) 2 on legal protection against sex discrimination, which in its Appendix, chapter I, paragraph 4, 2. a. underlines the need to give attention to "...the age for marriage..." and, in particular, its Explanatory Memorandum which favours a higher minimum age for marriage of young people. The Committee expects the CDCJ to study this issue when shortly undertaking the activity of re-examining all instruments it has elaborated in the field of family law, with the aim of identifying areas where there is a need for revision or a need to develop new instruments.

7. With regard to the need to assist potential or actual victims, the Committee of Ministers highlights the work on a draft recommendation carried out by the CDPC.³ The draft recommendation will take account, *inter alia*, of issues dealing with persons vulnerable to victimisation, especially repeat victimisation. It will also propose that specific reference be made to victims of organised crime, including trafficking in human beings, that member states be encouraged to support specialised centres to help victims of crimes such as sexual violence and domestic violence as well as to implement measures to encourage such victims to contact these centres. Finally, the draft will contain proposals regarding victim support services and the promotion of their action. The Committee notes that the next conference of European Ministers of Justice, to take place in Armenia in October 2006, will deal with the topic "Victims: place, right and assistance" and will cover both penal as well as civil aspects of the question of victims. Recommendation 1723 (2005) will be made available at the Conference.

8. With respect to the Assembly's call to punish those voluntarily participating in forced or child marriage as well as any persons who aided and abetted, the Committee of Ministers observes that, as far as children are involved, its Recommendation Rec(2001)16 on the protection of children against sexual exploitation already establishes guidance for member states. Furthermore, in compliance with the Action Plan adopted at the Third Summit of Heads of State and Government held in Warsaw on 16 and 17 May 2005, the Committee of Ministers set up the Committee of experts on the protection of children against sexual exploitation and abuse (PC-ES), to evaluate the need for an additional international instrument on the protection of children against sexual exploitation and abuse, in the perspective of criminal law and judicial procedures as well as international co-operation. In this context criminal behaviour in the framework of forced/child marriages, rape as well as other sexual crimes, will also be studied. This activity forms part of the Council of Europe Programme of Action on "Building a Europe for and with children (2006-2008)" which will be launched in Monaco on 4 and 5 April 2006 and which will deal, *inter alia*, with ways and means to prevent and combat violence against children.

Appendix 1 to the reply

Opinion of the Bureau of the European Committee on Legal Co-operation (CDCJ-BU) on Parliamentary Assembly Recommendation 1723 (2005) on forced marriages and child marriages

1. Following the adoption by the Parliamentary Assembly of Recommendation 1723 (2005) on forced marriages and child marriages, the Committee of Ministers agreed to communicate this recommendation to the European Committee on Legal Co-operation (CDCJ), for information and possible comments by 31 January 2006. Since neither the Bureau nor the Plenary of the CDCJ met prior to the deadline set, the CDCJ Bureau decided to finalise an opinion on this issue through a written consultation procedure.

³ The new recommendation will update Recommendation R (87) 21 of the Committees of Ministers to member states on assistance to crime victims and the prevention of repeat victimisation.

2. The Bureau of the CDCJ took note of the recommendation of the Parliamentary Assembly and welcomed the adoption of the text which is comprehensive and indeed covers a number of civil law areas which are of concern to the CDCJ, particularly concerning the protection of the child. As the recommendation points out, the Bureau agrees that there is a need for a strategy to tackle this phenomenon which is intolerable and may potentially conflict with the provision of Article 12 of the European Convention of Human Rights and Fundamental Freedoms, having serious consequences for its victims.

3. The recommendation covers a large array of domains, including education and general information to parties concerned, prevention measures, criminal law matters which are required to be covered. Of particular concern to the CDCJ are the elements presented in paragraphs 2.5, 2.8, 2.9 and 2.10 on which this opinion mainly focuses.

4. Resolution (72) 29 of the Committee of Ministers on lowering the age of full legal capacity deals partly with this subject. This resolution is rather limited in its scope, and it would, in respect of the question of the consent required for a marriage, merit closer re-consideration in order to assess whether its provisions are still appropriate. The Explanatory Memorandum to this resolution elaborates extensively in paragraphs 43 to 47 on this matter and suggests in paragraph 47 that the age at which marriage may be contracted should be left to the discretion of each state. The Bureau, however, is of the view that one should reflect upon the factual changes in Europe in respect of the minimum age to enter into marriage, the clear tendency to fix this age for both men and women at 18 years, and existing national legislation as well as other international agreements that recognise marriages abroad. This view is also supported in the Committee of Ministers' Recommendation R (85) 2 on legal protection against sex discrimination, which in its Appendix, chapter I, paragraph 4, 2.a. underlines the need to give attention to "...the age for marriage..." and in particular its Explanatory Memorandum which favours a higher minimum age for marriage of young people.

5. The CDCJ is presently initiating an activity which includes the re-examining of all instruments it has elaborated in the field of family law with the aim of reviewing those instruments which no longer correspond to today's situation and eventually to identify areas where there is a need for revision or to develop new instruments. The re-examination of Resolution (72) 29 and eventually Recommendation R (85) 2 falls without doubt within the scope of this activity.

6. Moreover, the Bureau stresses that the next conference of European Ministers of Justice, to take place in Armenia in October 2006 will deal with the topic "Victims: place, right and assistance" and will cover both penal as well as civil aspects of the question of victims. Recommendation 1723 (2005) will be made available at the conference.

7. Should the Council of Europe embark on work in this field, the Bureau of the CDCJ believes that such work, at least as far as civil status matters are concerned would need the assistance of the International Commission on Civil Status (CIEC) as an observer.

Appendix 2 to the reply

Opinion of the European Committee on Crime Problems (CDPC) on Parliamentary Assembly Recommendation 1723 (2005) on forced marriages and child marriages

At their 943rd meeting, the Ministers' Deputies took note of the above recommendation and agreed to communicate it to the European Committee on Crime Problems (CDPC) for information and possible comments by 31 January 2006.

Further to written consultation of the CDPC delegations, the Bureau adopted the following reply at its meeting on 30 and 31 January 2006:

1. The CDPC shares both the concerns and the needs expressed in the recommendation. In particular, the CDPC entirely agrees with the need to address those issues by conceiving a proper strategy.

2. Furthermore, the CDPC finds that paragraphs 2.4, 2.5, 2.6 and 2.7 of the aforementioned recommendation fall entirely within its competence.

3. With regard to the need to assist potential or actual victims (points 2.4 and 2.5 of the recommendation), the CDPC would highlight the work being carried out by the Group of Specialists on Assistance to Victims and Prevention of Victimisation (PC-S-AV) who will be presenting a draft recommendation (updating Recommendation R (87) 21) on assistance to crime victims and the prevention of repeat victimisation to the plenary session of the CDPC in April 2006. The draft new recommendation will take account, *inter alia*, of issues dealing with persons vulnerable to victimisation, especially repeat victimisation. It should also propose that specific reference be made to victims of organised crime, including trafficking in human beings, that member states should be encouraged to support specialised centres to help victims of crimes such as sexual violence and domestic violence as well as to implement measures to encourage such victims to contact these centres. Finally, the draft should provide that states should support victim support services and promote their action.

It is currently proposed that this draft recommendation be presented to the CDPC plenary for approval at its meeting in April 2006, prior to being sent to the Committee of Ministers for adoption.

4. As for the actions envisaged in points 2.6 and 2.7 of the recommendation, the CDPC wonders what is the meaning attached by the Parliamentary Assembly to the verb: "punish". If that verb implies that behaviours envisaged by the recommendation should be criminalised, then it is worth pointing out that, as far as children are involved, Recommendation Rec(2001)16 on the protection of children against sexual exploitation already establishes guidance for member states. Furthermore, in compliance with the Action Plan adopted at the Third Summit of Heads of State and Government of the Council of Europe, held in Warsaw on 16 and 17 May 2005, proposals are currently being submitted to the CDPC in order to set up a committee mandated to deal with the drafting of a convention on the protection of children against sexual exploitation and abuse, in the perspective of criminal law and judicial procedures as well as international co-operation. Such a draft convention should deal with – *inter alia* – criminal behaviours committed in the framework of forced/child marriages, rape and other sexual crimes.

Appendix 3 to the reply

Comments by the Steering Committee for Equality between Women and Men (CDEG) on Parliamentary Assembly Recommendation 1723 (2005) on forced marriages and child marriages

1. The CDEG thanks the Parliamentary Assembly for its Recommendation 1723 (2005): Forced marriages and child marriages and welcomes this initiative of the Assembly, together with the measures it recommends.

2. The CDEG recalled that Recommendation Rec(2002)5 of the Committee of Ministers to member states on the protection of women against violence includes forced marriages in the definition of "violence against women" (appendix, para. 1 a) and envisages additional measures concerning early marriages (appendix, paras. 84 and 85).

3. In the context of implementing and following up this recommendation, the CDEG, concerned about the growing incidence of forced marriages in the Council of Europe member states, whether by virtue of their own national traditions or through perpetuation of such traditions in immigrant communities, and aware that most member states do not have the appropriate legal and political instruments to combat this phenomenon, decided in 2004 to focus on the question of forced marriages and commissioned a study on "Forced marriages in Council of Europe member states – A comparative study of legislation and political initiatives".

4. The CDEG is pleased to observe that this step anticipated one of the Parliamentary Assembly's recommendations asking the Committee of Ministers to instruct the appropriate intergovernmental committee to make a thorough analysis of forced marriages and child marriages and devise a strategy in this field. The CDEG has also noted with satisfaction that the Parliamentary Assembly's recommendations largely concur with those of the study prepared under its auspices, and it wishes to emphasise that this broad consensus can only be of benefit to the Council of Europe's action against this kind of violence inflicted on women and men.

5. As the initial study could not cover all Council of Europe member states in detail, the CDEG wishes to pursue this work. The information currently available shows that while some member states are indeed ill-equipped to combat forced marriages from the legislative and political standpoint, others have bodies of legislation which, while requiring improvement, would still be fairly effective, if actually applied and stringently

enforced. This partly caters for the Assembly's concerns (item 2.9), but the CDEG stresses that the best solution, as the study suggests, would be to introduce into member states' legislation a specific offence of forced marriage carrying genuinely dissuasive penalties and taking more or less aggravating circumstances into account.

6. The CDEG also notes that the study, like the Assembly (para. 2.1), calls for information and prevention campaigns in primary, secondary and upper secondary schools but proposes that they be aimed not only at young people but also at their families and the public at large to strengthen the drive to prevent forced marriages.

7. The CDEG, which has adopted the study in question, wishes to disseminate it widely and, through its members, bring it to the attention of the authorities in the member states. It will then be for the governments to take account of the recommendations, which incorporate those of the Parliamentary Assembly and others, and to be guided by the political action and policy tools described or proposed.

8. The CDEG pointed out that the issue of child marriage is already examined in its above-mentioned study. Furthermore, the CDEG underlined that the Council of Europe Programme of Action on "Building a Europe for and with children (2006-2008)" will be launched in 2006 and will examine the various forms of violence against children.