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Child victims: stamping out all forms of violence, exploitation and abuse

Opinion¹
Social, Health and Family Affairs Committee
Rapporteur: Mrs Carina OHLSSON, Sweden, SOC

I. Conclusions of the committee

1. The Committee congratulates the rapporteur, Mr Gardetto, on his initiative and the excellent report he has presented. While it supports the draft resolution and recommendation, the Social, Health and Family Affairs Committee would nevertheless like to propose various amendments (see section III below).

II. Explanatory memorandum

2. The Social, Health and Family Affairs Committee has done its best over the years to further children's rights.

3. As Mr Gardetto says in his report, the sexual exploitation of children, child prostitution, child pornography, violence and physical and mental abuse are issues that have been regularly addressed by the Assembly and in particular the Social, Health and Family Affairs Committee (the most recent text adopted being Recommendation 1666 (2004) on a *Europe-wide ban on corporal punishment of children*).

4. The Committee has supported the work done by Mr Pinheiro, the special representative of the Secretary General of the United Nations, whom it has met and whose study on violence against children in the world was published recently. It stands by him in his belief that "*no violence against children is justifiable and all violence against children is preventable*".

5. Mr Gardetto's report presents a draft resolution for the attention of the member states which contains some interesting proposals, some of which have already been put forward by the Social, Health and Family Affairs Committee or in other forums. It also contains a draft recommendation to the Council of Europe's member states to draft a general Convention affording children protection against all forms of violence.

6. Is it necessary for Europe to have its own convention to protect children against all forms of violence? On a worldwide scale, the UN Convention on the rights of the child dates back to 1989. True, the world has changed since then and violence against children has no doubt taken on different forms. At the same time, Europe has more demanding human rights protection standards. It stands to reason, therefore, that children's rights should be measured by the same yardstick as adults' rights. Finally, it must not be forgotten that the Council of Europe's Convention on Human Rights applies to children. Just as the revised European Social Charter protects children's social rights. In practice, however, access for children to the procedures for defending their rights remains one of the weak spots of these instruments.

¹ See report by the Committee on Legal Affairs and Human Rights (Doc. 11118).

7. The answer to the above question is yes, provided that the convention brings real added value. In order to do so, it will have to contain new binding obligations, a new implementation and monitoring system and complaints and appeals procedures. And children themselves will have to be given access to these individual and collective procedures.

8. Such a convention would have the advantage of requiring those member states willing to ratify it to foster awareness of children's rights and generally update their legislation to bring it into line with the standards laid down in a Council of Europe legal instrument.

9. Like the European Convention on Human Rights, it could be included in the requirements for membership of the Council of Europe. And children's rights would at last be explicitly and indisputably open to regular monitoring, just like human rights, in any state wishing to become a member of the Council of Europe.

10. It must not be forgotten, however, that drafting a legal instrument such as this invariably takes several years, often only to result in commitments which are disappointing in their scope. Would it not be more useful for the Council of Europe to start by elaborating a multidisciplinary European action plan to combat all forms of violence against children? The two approaches are by no means incompatible and could even go hand in hand.

11. If a convention is drafted, it will have to stress prevention, an area hitherto neglected by lawmakers and the various legal instruments already developed. Prevention is clearly the responsibility of society as a whole; governments must invest in increased awareness of the phenomenon of violence against children (for example by collecting reliable and comparable statistics, introducing the gender perspective and taking vulnerable children, minority groups and so on into account) and act on the factors that cause it.

12. The very first preventive measure is to send out a signal to society, to alert people to the problem and trigger a change of attitude towards violence against children. A ban must be imposed, the most important ban of all: a child is a human being and hitting or killing a human being is prohibited. Legislation is needed which prohibits all harming of children, all physical and mental violence against children; corporal punishment of children must be prohibited in all circumstances (at school, in sport, at work, in institutions, prisons, etc.), even in the family.

13. Another oft neglected question is the prevention of repeat offences in cases of sexual abuse and paedophilia in particular. This aspect of the question is often brushed under the carpet or minimised in the name of human rights, or more specifically the rights of offenders who have served their sentences and are therefore considered to have paid their debt to society.

14. In the past the Committee has raised such issues as the obligation to treat sex offenders, barring them from jobs that involve contact with children and so on. The United Kingdom has set an example with innovative measures that include informing single mothers whether their partners have any previous convictions for offences against children, or acknowledging the right of local residents to know if any neighbours have been convicted of such offences. The infiltration of families by paedophiles is a problem that must not be neglected.

15. Where repression is concerned, the Committee has already raised the question of adopting a "proactive" approach, i.e. leaving no offence or attempted offence unpunished. Attempted offences are not always taken into account in national laws. The non-applicability of statutory limitation to crimes against children and the possibility of prosecuting offenders for crimes committed on children abroad (extra-territoriality) have also been mentioned on a number of occasions and some states, although not yet enough, have already adopted such approaches.

16. The civic duty to report any abuse or offences committed against children must be publicised and encouraged; the future convention could contain a provision to this effect. This must definitely apply to people whose work brings them into contact with children and every case reported must be investigated. The convention must provide for the victims, offer them support and include measures affording protection against reprisals

17. One way in which a new convention could certainly make a difference lies in the manner in which children are involved in its elaboration, and in the procedures and arrangements open to them, individually and collectively, to ensure that their rights are respected. Particular mention should be made in this respect of children living in institutions. In addition to the official version, the convention should also be made available in a version that children can understand.

III. Proposed amendments

18. In the draft Recommendation

Add a paragraph 4, to read as follows:

“The Assembly asks the Committee of Ministers to instruct the relevant governmental committees to propose measures to facilitate and optimise children’s access to the appeals and complaints procedures for upholding the rights bestowed on them by the Council of Europe’s existing legal instruments, and in particular the European Convention on Human Rights and the revised European Social Charter.”

Add a paragraph 5, to read as follows:

“The Assembly invites the Committee of Ministers to make sure that the Judges of the European Court of Human Rights and the members of the European Committee of Social Rights and the other committees concerned receive special training in children’s rights issues.”

Add a paragraph 6, to read as follows:

“The Assembly invites the Committee of Ministers to find ways and means of involving children as much as possible in the work done pursuant to this Recommendation and to have any legal instrument that may be adopted translated into a version and a language children can understand.”

Reporting committee : Committee on Legal Affairs and Human Rights

Committee for opinion : Social, Health and Family Affairs Committee

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Secretariat of the Committee : Mr Mezei, Mrs Nollinger, Mrs Meunier