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Disappearance of newborn babies for illegal adoption in Europe

Reply to Recommendation[1]: Recommendation 1828 (2008)
Committee of Ministers

1. The Committee of Ministers has taken very careful note of Parliamentary Assembly Recommendation 1828 (2008) on the disappearance of newborn babies for illegal adoption in Europe. It has drawn the recommendation to the attention of the member states and forwarded it for information and possible comments to the European Committee on Crime Problems (CDPC), the European Health Committee (CDSP) and the European Committee on Legal Co-operation (CDCJ). The opinions received are appended hereto.

2. Like the Parliamentary Assembly, the Committee of Ministers is concerned about the problems raised in the recommendation and firmly condemns all practices aimed at selling or stealing newborn babies, and more generally all forms of trafficking in children and human beings. It acknowledges, moreover, that the lack of coherence in laws relating to adoption and a lack of rigour in registering births are major obstacles to the prevention of trafficking in children.

3. The Committee of Ministers recalls that, at its ministerial session on 7 May 2008, it adopted the European Convention on the Adoption of Children (revised) (CETS No. 202) and decided to open it for signature on the occasion of the handover of the chairmanship from Sweden to Spain in November 2008. It also recalls that although the convention does not formally address international adoption, it will undoubtedly have an important influence on international adoption as it aims to harmonise substantive law in the member states by laying down minimum rules on adoption based on the principle of the child's best interests. At the 118th Ministerial Session, the Committee of Ministers also called on member states to consider signing and ratifying both this convention and the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197), which came into force on 1 February 2008, in order to reinforce the prevention of trafficking, effectively prosecute those responsible and better protect children's rights.

4. In line with the Assembly's request, the Committee of Ministers also calls on the governments of member states to sign and ratify the United Nations Convention against Transnational Organised Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201), and the Convention on Cybercrime (ETS No. 185). Lastly, the Committee of Ministers notes the proposed revision of the 1993 Convention on Protection of Children and Co-operation in respect of Intercountry Adoption (paragraph 8.3 of the recommendation) and stresses the complementarity between the latter and the revised Council of Europe convention on adoption.

5. Regarding more specifically the lack of rigour in registering births, which facilitates the disappearance of newborn babies, the Committee of Ministers points out that the CDCJ[2], in its work on the European Convention on Nationality (ETS No. 166) and Recommendation No. R (99) 18 of the Committee of Ministers on the avoidance and reduction of statelessness, will consider, among other things, the implications of the

1. Adopted by the Committee of Ministers on 9 July 2008, at the 1032nd meeting of the Ministers' Deputies.
2. Its Group of Specialists on Nationality (CJ-S-NAT).

failure to declare births for children's acquisition of nationality. As requested by the Parliamentary Assembly in its Recommendation 1443 (2000) on international adoption: respecting children's rights, it will also be considering the question of the acquisition of nationality by foreign children when an international adoption procedure is unsuccessful, particularly where this entails a risk of statelessness.

6. To guarantee patient safety, the Committee of Ministers invites member states to pay particular attention to the safety of mothers and young children in health systems and service delivery processes. Recommendation Rec(2006)7 of the Committee of Ministers on management of patient safety and prevention of adverse events in health care offers guidance in this matter. In addition, principles of good governance in health care systems are currently been drawn up under the authority of the CDSP[3].

7. Lastly, the Committee of Ministers supports the Parliamentary Assembly's recommendation urging the law enforcement authorities in the countries concerned to show initiative and conduct full and effective investigations into cases of disappearance of newborn babies, with due regard to the seriousness of this criminal activity.

3. By the new Committee of Experts on Good Governance in Health Care (SP-GHC).

Appendix 1 – Opinion of the European Health Committee (CDSP)

The European Health Committee (CDSP) examined (by correspondence) Recommendation 1828 (2008) on the disappearance of newborn babies for illegal adoption in Europe of the Parliamentary Assembly of the Council of Europe and submits the following comments:

The CDSP broadly agrees with the text of the recommendation. It emphasises, in particular, the need for utmost vigilance and strict adherence to hospital protocol in the protection of its patients, which in this case covers both the mothers and their newborn infants.

The CDSP points out that in the framework of legislative and other measures to be adopted by the states to guarantee the safety of patients, member states should pay special attention to the safety of mothers and infants in the health care system and services delivery processes. The Recommendation Rec(2006)7 on management of patient safety and prevention of adverse events in health care offers guidance in this matter. The need to protect vulnerable groups has been an important consideration for the CDSP, especially in Committee of Ministers' Recommendation Rec(2001)12 on the adaptation of health care services to the demand for health care and health care services of people in marginal situations. Principles of good governance in health care systems, which the CDSP as steering committee is overseeing, are currently being developed in the European context by the Expert Committee on Good Governance in Health Care (SP-GHC). These, alongside clear-cut rules, regulations and guidelines in the area of adoption will all help to provide a positive foundation on which to base legal adoption procedures.

Appendix 2 – Opinion of the Bureau of the European Committee on Legal Co-operation (CDCJ-BU)

1. The Bureau of the CDCJ took note of the recommendation – which refers to Recommendation 1443 (2000) on international adoption: respecting children's rights – and decided to comment in the present opinion on paragraphs 4, 7, 8.2, 8.3, 8.6, 8.7, 8.8, 9.2 and 9.4 of the recommendation.

2. The Bureau of the CDCJ welcomed the recommendation made in paragraph 8.2 to the Committee of Ministers to invite the member states to sign and ratify the European Convention on the Adoption of Children (revised) (hereafter "the convention"). The Ministers' Deputies approved the convention at their 1022nd meeting on 26 March 2008 and agreed to submit it to the Committee of Ministers for adoption on the occasion of the 118th Ministerial Session on 7 May 2008. It is expected that the convention will soon be opened for signature and ratification.

3. With reference to paragraph 7 of the recommendation, the Bureau of the CDCJ recalled that, although the convention does not formally address international adoption, it will undoubtedly have an important influence on international adoptions as it aims at harmonising the substantive law of the member states by setting minimum rules on adoption based on the core principle of the best interests of the child. It also recalled that the convention, in its preamble, refers to Recommendation 1443 (2000) of the Parliamentary Assembly.

4. The Bureau of the CDCJ noted and decided to support the proposal (in paragraph 8.3) to revise the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption which goes along the same line as the revised convention.

5. The Bureau of the CDCJ highlighted that, in connection with paragraph 8.6 of the recommendation, the convention stresses the importance of preliminary enquiries relating to the suitability to adopt and the eligibility of the adopter (Article 10) and of post-adoption services (Article 20).

6. The Bureau of the CDCJ further noted that the convention, in relation to paragraph 8.7 of the recommendation, takes into account the fact that in most states adoptions can be made through various public or private agencies, and therefore considers it as essential for the state to ensure adequate counselling and supervision (Articles 20 and 21).

7. Concerning the recommendation made in paragraph 8.8, the Bureau of the CDCJ underlined that, while laying down the principle of the right of the adopted child to know his or her origin, the revised convention also establishes that this is not an absolute right and leaves the task of striking a balance with the rights of the parents of origin to protect their identity to a competent authority (Article 22.3). This is in line with the case law of the European Court of Human Rights as well as with the position of the Committee of Ministers as already expressed in its reply to Recommendation 1443 (2000) of the Parliamentary Assembly.

8. As regards paragraph 9.4, the Bureau of the CDCJ recalled that the mother's consent to the adoption of her child cannot be valid less than six weeks after the birth of the child (Article 5 of the convention). In addition, the convention lays down the principle that the revocation and annulment of an adoption can be pronounced only by decision of the competent authority and that the best interests of the child shall be the paramount consideration. However, in order to prevent the granting of an annulment under too broad conditions, the convention lays down a strict condition regarding the application for an annulment, which must be filed within the time limits prescribed by law (Article 14).

9. As soon as the revised convention is adopted, the CDCJ will encourage its wide signature and ratification by the member states in order to ensure its rapid entry into force and effective implementation.

10. Furthermore, the Bureau of the CDCJ will bring Recommendation 1828 (2008) to the attention of the Committee of Experts on Family Law (CJ-FA). The organisation, in 2009, of a conference on adoption with a view to encouraging further signatures and ratifications of the revised convention has been proposed in the draft budget for 2009.

11. In addition, in paragraphs 4 and 9.2 of the recommendation, the Parliamentary Assembly refers to absence of birth registration which facilitates the disappearance of newborn babies. According to Article 7, paragraph 1, of the United Nations Convention on the Rights of the Child, states parties are obliged to ensure that children are registered immediately after birth. The Group of Specialists on Nationality (CJ-S-NAT), under the authority of the CDCJ, will examine, *inter alia*, the effects of the absence of birth registration on the acquisition of nationality by children when working towards the reinforcement of the existing instruments of the Council of Europe in the field of nationality, namely the European Convention on Nationality (ETS No. 166) and Recommendation No. R (99) 18 of the Committee of Ministers on the avoidance and reduction of statelessness. The CJ-S-NAT will also examine the acquisition of nationality by foreign children in the event of

their international adoption falling through or the adoption procedure breaking down, in particular when there is a risk of their being stateless, as requested by the Parliamentary Assembly in Recommendation 1443 (2000).

12. The Bureau of the CDCJ decided to bring Recommendation 1828 (2008) to the attention of the CJ-S-NAT.

Appendix 3 – Opinion of the European Committee on Crime Problems (CDPC)

1. Following the adoption by the Parliamentary Assembly of Recommendation 1828 (2008) on the disappearance of newborn babies for illegal adoption in Europe, the Committee of Ministers decided to communicate it to the European Committee on Crime Problems (CDPC) for information and 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 joined the Parliamentary Assembly in its concerns about the growing international "marketplace" for children and shared its condemnation of all practices designed to sell or steal newborn babies as well as all other forms of trafficking of children in general.

3. The CDPC acknowledged that the lack of coherence in laws relating to adoption and lack of strict rules on birth registration are serious obstacles to the prevention of trafficking in children. For this reason, the CDPC particularly supported the Parliamentary Assembly's recommendation that the Committee of Ministers ask the governments of member states to sign and ratify the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197) and, once it is adopted and opened for signature and ratification, the future Council of Europe Convention on Adoption (revised).

4. For the prevention and punishment of criminal offences related to organised crime, trafficking of children, illegal adoption and child sexual exploitation, the CDPC supported the Parliamentary Assembly's recommendation that the Committee of Ministers ask the governments of member states to sign and ratify the United Nations Convention against Transnational Organised Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201) and the Convention on Cybercrime (ETS No. 185).

5. In respect of the recommendation that member states should use all available means to step up their co-operation to combat the trafficking of children and to eradicate organised criminal or other illicit networks, the CDPC welcomed the fact that the Council of Europe Convention on Action against Trafficking in Human Beings had entered into force on 1 February 2008 and as a result its monitoring mechanism, GRETA, had started to function.

6. Finally, the CDPC supported the Parliamentary Assembly's recommendation that the law enforcement agencies of the countries concerned should be urged to be proactive in conducting full and effective investigations into the cases of disappearance of newborn babies, in view of the serious nature of the criminal activity and the potential danger to the life and health of the newborn babies involved.

7. The CDPC expressed its readiness to embark on any possible future activity related to its field of competence.