Parliamentary Assembly
Assemblée parlementaire
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Doc. 11641
17 June 2008

Prostitution – Which stance to take?

Reply to Recommendation[1]: Recommendation 1815 (2007)
Committee of Ministers

1. The Committee of Ministers has examined with attention Parliamentary Assembly Recommendation 1815 (2007) on prostitution – which stance to take? It has transmitted it to the governments of member states, to the European Committee on Crime Problems (CDPC), to the European Committee on Legal Co-operation (CDCJ) and to the Steering Committee for Equality between Women and Men (CDEG), for information and possible comments. The comments received from these committees are appended to this reply.

2. The Committee of Ministers refers to the Assembly's Recommendation 1815 (2007), paragraph 2, which states that all necessary measures must be taken to combat forced prostitution and trafficking in human beings. It considers that trafficking in human beings, most notably women and children, and other forms of sexual exploitation, constitute a violation of human rights and an intolerable insult to a person's dignity and integrity.

3. In line with the Parliamentary Assembly's recommendation, the Committee of Ministers calls on member states to sign and ratify the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197) as soon as possible and, in the meantime, to apply its provisions, in particular those on victim protection. The Committee is at present closely following the establishment of its monitoring mechanism, with the aim of establishing an efficient, independent body that can become operative as soon as possible. It supports the Assembly's recommendation that the European Union should ratify the convention and will raise this issue with the European Commission in the appropriate context.

4. The Committee of Ministers agrees with the statement made in the Assembly's Resolution 1579 (2007) on prostitution – which stance to take? that child prostitution can never be voluntary, as children do not have the capacity to "consent" to prostitution. As regards child prostitution, anyone under the age of 18 is to be defined as a child. Like the Assembly, the Committee of Ministers considers that child prostitution needs to be combated energetically on the basis of a zero-tolerance approach.

5. The Committee of Ministers wishes to draw particular attention to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201), which was opened for signature in October 2007 and has already been signed by 28 member states. On the occasion of the 118th Ministerial Session held in Strasbourg on 7 May 2008, the ministers called on all Council of Europe member states to ratify it rapidly. The issue of child prostitution and the concerns raised by the Parliamentary Assembly in its Resolution 1579 (2007), in particular that member states should prohibit child prostitution (that is, prostitution involving persons under the age of 18) and undertake an approach based on prevention, protection of victims and prosecution of clients, are adequately addressed by this instrument. Article 3 of the convention defines a child as any person under the age of 18 years. Article 19 on "Offences concerning child prostitution" requires parties to make certain conduct related to child prostitution a criminal offence, including the recruitment or coercion of a child to participate in prostitution and the recourse to child prostitution. The provision establishes links between demand for and supply of child prostitutes by requiring criminal sanctions for both the recruiters and those having recourse to child prostitution. In addition, the convention contains

1. Adopted by the Committee of Ministers on 11 June 2008, at the 1029th meeting of the Ministers' Deputies.

extensive provisions on preventive measures and protection of child victims and witnesses. The Committee of Ministers finally wishes to inform the Assembly that further work is being undertaken within the Organisation on children who are witnesses to or victims of crime, following the resolution adopted during the 27th Conference of European Ministers of Justice "Victims: place, rights and assistance", held in Yerevan (Armenia) on 12 and 13 October 2006.

6. As regards adult prostitution, the Parliamentary Assembly recommends that Council of Europe member states should formulate an explicit policy on prostitution and, in particular, avoid double standards and policies which criminalise and penalise prostitutes. The Committee of Ministers notes, as did the Assembly in the above-mentioned resolution, that the approaches adopted in the 47 member states of the Council of Europe vary widely in this field. For this reason, a common policy on prostitution can only be formulated with great difficulty at this stage. However, in the light of the strong human rights implications of the prostitution phenomena, which are extensively referred to by the Assembly in its resolution, the Committee instructs the CDPC to carry out a study on the feasibility of formulating such a policy.

Appendix 1 – Opinion of the European Committee on Crime Problems (CDPC) on Parliamentary Assembly Recommendation 1815 (2007)

1. Following the adoption by the Parliamentary Assembly of Recommendation 1815 (2007) on prostitution – which stance to take? 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 shared the Parliamentary Assembly's belief that all necessary measures must be taken to combat forced prostitution and trafficking in human beings, in particular by encouraging all Council of Europe member states that have not yet done so to sign and ratify the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197) as soon as possible and, in the meantime, to apply its provisions, in particular those on victim protection, to victims of trafficking who have been forced into prostitution. In this respect, the CDPC welcomed the fact that the 10th ratification of this convention had recently been received and that it would thus enter into force on 1 February 2008, and that the convention's monitoring mechanism, GRETA, would soon be able to commence its work.

3. The CDPC supported the Parliamentary Assembly's recommendation that the Committee of Ministers ask the European Union to ratify the convention as a matter of priority, in accordance with the recently signed Memorandum of Understanding between the Council of Europe and the European Union.

4. As regards the recommendation that the Committee of Ministers address child prostitution (prostitution of anyone below the age of 18) in its relevant steering committees, the CDPC wished to draw particular attention to the new Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201), which was opened for signature on 25 October 2007 on the occasion of the 28th Conference of European Ministers of Justice in Lanzarote,1 and which has been signed by 25 member states.

5. Article 3 of the convention defines a child as any person under the age of 18 years. Article 19 on "Offences concerning child prostitution" requires parties to make certain conduct related to child prostitution a criminal offence, including the recruitment or coercion of a child to participate in prostitution and the recourse to child prostitution. The provision establishes links between demand for and supply of child prostitutes by requiring criminal sanctions for both the recruiters and those having recourse to child prostitution. Finally, the convention contains extensive provisions on preventive measures and the protection of child victims and witnesses.

6. Therefore, the CDPC believed that the issue of child prostitution and the concerns raised by the Parliamentary Assembly in its Resolution 1579 (2007), in particular that member states should prohibit child prostitution (under the age of 18) and undertake an approach based on prevention, protection of victims and prosecution of clients, have already been adequately addressed by the above-mentioned Council of Europe instrument.

7. In addition, the CDPC referred to Resolution No. 2 on child-friendly justice, adopted at the 28th Conference of European Ministers of Justice, which could lead to future work of the Council of Europe in the field of protection of children. In particular, the resolution calls upon states to become parties to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, and invites the Committee of Ministers to entrust the European Committee on Crime Problems (CDPC), the European Committee on Legal Co-operation (CDCJ), the Steering Committee for Human Rights (CDDH), as well as the European Commission for the Efficiency of Justice (CEPEJ), in co-operation with other competent bodies of the Council of Europe, to prepare elements for European guidelines on child-friendly justice.

8. Regarding adult voluntary prostitution, the CDPC took note of the Parliamentary Assembly's recommendation that member states of the Council of Europe formulate an explicit policy on prostitution, in particular avoiding double standards and policies which criminalise and penalise prostitutes. The CDPC expressed its readiness to embark on any future activity to that end falling within its areas of competence.

Appendix 2 – Opinion of the European Committee on Legal Cooperation (CDCJ) on Parliamentary Assembly Recommendation 1815 (2007)

1. Following the adoption by the Parliamentary Assembly of Recommendation 1815 (2007) on prostitution – which stance to take? the Committee of Ministers decided to communicate it to the European Committee on Legal Co-operation (CDCJ), for information and possible comments by 31 December 2007.

2. The Bureau of the CDCJ took note of the recommendation of the Parliamentary Assembly and decided to comment on the following points, which fall within its area of responsibility.

3. The Bureau of the CDCJ considers that other important issues raised by the recommendation (and related resolution), such as policies concerning voluntary adult prostitution, will be dealt with by the competent steering committees of the Council of Europe, and will thus refrain from addressing those issues.

4. Concerning the recommendation made in paragraph 3 to the Committee of Ministers, "to address the issue of child prostitution […] in its relevant steering committees", attention is drawn to the work currently being carried out under the aegis of the CDCJ.

5. Children's rights have been of particular concern for the CDCJ for a number of years, and will continue to be one of the priority areas of work for the coming years, *inter alia*, as a direct follow-up to Resolution No. 2 on child-friendly justice adopted by the European Ministers of Justice.1

6. In this resolution, the Ministers of Justice invite the Committee of Ministers to entrust its relevant bodies, including the CDCJ, to examine the access and the place children have in judicial proceedings and to prepare elements for European guidelines on child-friendly justice.

7. The Bureau of the CDCJ considers that an action to consider the duties and the role of state to intervene and remove children from the authority of their parents or guardians and place them in care could be undertaken by the CDCJ.

8. The particular vulnerability of children who are victims or witnesses of crime will be considered, following up on the work carried out this year by one of the subordinate bodies of the CDCJ, the Group of Specialists on Remedies for Crime Victims (CJ-S-VICT), which was established following the adoption of Resolution No. 1 on victims of crime.2

9. The group has recently finalised its report, parts of which deal with children, victims of crime, and more specifically victims of sexual exploitation and/or trafficking in human beings. The group recalled that the best interests of children are to be given primary consideration and that children who have been harmed by crime or who have witnessed crimes are to be protected and treated fairly in courts.

10. As underlined by the group, child victims of crime are often confronted with additional difficulties, and access to justice for children should be assessed in each jurisdiction, and any existing obstacles removed. The group furthermore agreed that the question of representation in judicial proceedings should be considered when there is a clear conflict between the child's interests and those of the holders of parental responsibility (including legal guardians), and the possibility of having a special legal representative appointed in such cases should be examined.

11. Concerning child victims of trafficking, the group underlined that special measures should be accorded to them and that "unaccompanied children should be represented by legal guardians, organisations or authorities which shall act in the best interests of the victim".

12. The Bureau of the CDCJ also notes that the child's rights to privacy and the protection of personal data are of particular importance and relevance for child victims of sexual exploitation.

13. The Bureau of the CDCJ furthermore welcomes the call made to the Committee of Ministers to "encourage all Council of Europe member states which have not yet done so to sign and ratify the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197) as soon as possible" and looks forward to the entry into force of this convention on 1 February 2008, as it will provide a comprehensive framework for the protection and assistance of victims, including a particularly important, child-sensitive orientation.

14. The Bureau of the CDCJ would also wish to see this call for signature and ratification extended to the new Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201), which opened for signature in October 2007.