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The protection of the family

Reply to Written question[1]: Written question No. 560 (Doc. 11813)
Committee of Ministers

1. In reply to the question from the Honourable Parliamentarian, the Committee of Ministers would like first to recall its long-standing standard-setting activities aiming at protecting the family and its members. Furthermore, Article 8 of the European Convention on Human Rights guarantees the right to respect for private and family life, while Part 1 of the European Social Charter recognises the right of the family to social, legal and economic protection.

2. Standard-setting work concerning the legal protection of the family in the field of private law is carried out by the Committee of Experts on Family Law (CJ-FA), under the authority of the European Committee on Legal Co-operation (CDCJ). In the preparation of legal instruments, the CJ-FA has always sought to protect the family and in particular the interests of the child. Recent Council of Europe achievements in this respect include the European Convention on the Adoption of Children (Revised) (CETS No. 202), opened for signature on 27 November 2008, and Recommendation CM/Rec(2009)13 of the Committee of Ministers to member states on the nationality of children, adopted on 9 December 2009. The CJ-FA is currently drafting a recommendation on the rights and legal status of children and parental responsibilities. The Committee also refers to its reply to Parliamentary Assembly Recommendation 1723 (2005) on "Forced marriages and child marriages", adopted on 5 April 2006 at the 961st meeting of the Ministers' Deputies.

3. In February 2009, the Committee of Ministers also requested a group of specialists to prepare European guidelines on child-friendly justice which, building on existing standards, would aim to ensure effective access to justice for children. These guidelines were adopted by the Committee of Ministers on 17 November 2010.

4. Other relevant ongoing intergovernmental work includes the activities of the Ad hoc Committee on preventing and combating violence against women and domestic violence (CAHVIO), which has prepared a Convention on preventing and combating violence against women and domestic violence, just adopted by the Committee of Ministers, as well as the activities of the European Committee for Social Cohesion (CDCS), which has recently developed a European database on family policy in 40 countries.

5. The Committee of Ministers would also like to recall its Recommendation CM/Rec(2007)8 to member states on legal solutions to debt problems, adopted on 20 June 2007, which provides for a set of measures aiming at preventing and controlling over-indebtedness, which itself runs the risk of social exclusion of families.

6. In its action to protect the family, the Committee of Ministers takes due account, in its intergovernmental standard-setting activities, of the various existing marital and non-marital forms of family recognised by member states through legislation and practice.

7. The Committee of Ministers recalls that, in its most recent judgment to date on the subject, the European Court of Human Rights noted that there is no European consensus regarding same-sex marriage. At present, no more than six out of 47 States Party to the Convention allow same-sex marriage.[2] In this

1. adopted at the 1111th meeting of the Ministers' Deputies (6 April 2011)

judgment, the Court held that with regard to Article 9 of the Charter of Fundamental Rights of the European Union, it "would no longer consider that the right to marry enshrined in Article 12 must in all circumstances be limited to marriage between two persons of the opposite sex".[3] The Court further held that, as matters stand, the question whether or not to allow same-sex marriage is left to regulation by the national law of the member state and that the Convention does not impose an obligation on Contracting States to grant same-sex couples access to marriage, neither in the context of Article 12 (Right to marry) nor Articles 14 (Prohibition of discrimination) and Article 8 (Right to respect for private and family life) of the Convention. In this connection, the Court observed that "marriage has deep-rooted social and cultural connotations which may differ largely from one society to another" and reiterated that "it must not rush to substitute its own judgment in place of that of the national authorities, who are best placed to assess and respond to the needs of society".[4] In the same judgment, the Court also considered it artificial to maintain the view that, in contrast to a different-sex couple, a same-sex couple cannot enjoy "family life" for the purposes of Article 8. Consequently, in the opinion of the Court, "a cohabiting same-sex couple living in stable de facto partnership falls within the notion of "family life", just as the relationship of a different-sex couple in the same situation would".[5]

8. The Committee of Ministers also recalls its Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity.

9. The Committee of Ministers notes that concepts of "family" and "marriage" differ in Council of Europe member states. It notes also that divorce, single-parent households, step-families, unmarried households have become more and more frequent in European societies and families of LGBT persons have become a reality in a number of member states. Finally, it notes that, according to the practice of the ECHR, the fixing of conditions surrounding the exercise of the right to marry, including the setting of a minimum marriageable age or the possibility to extend marriage to same-sex couples, falls within the competence of the member states but "the limitations thereby introduced must not restrict or reduce the right in such a way or to such an extent that the very essence of the right is impaired".[6]

2. ECHR, 24 June 2010, *Schalk and Kopf v. Austria*, paragraph 58.
3. Idem, paragraph 61.
4. Idem, paragraph 62.
5. Idem, paragraph 94.
6. ECHR, 18 December 1987, F. v. Switzerland, paragraph 32.