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Prohibiting the marketing and use of the “Mosquito” youth dispersal device

Report

Committee on Culture, Science and Education

Rapporteur: Mr Piotr WACH, Poland, Group of the European People's Party

Summary

Following an initiative by the European Youth Forum, the Assembly decided to examine thoroughly the use in some European countries of technical devices emitting high-frequency sounds to disperse young people or keep them away from certain spaces. The ability to hear high-frequency sounds is lost naturally with age; thus, sounds emitted by “Mosquito” devices can only be heard by young people, provoking severe discomfort.

The physical impact of high-frequency sounds on children and young people still lacks adequate medical research: this is of concern and the precautionary principle should therefore apply. However, the main issues raised by this kind of device are their degrading and discriminatory consequences for young people, who are driven from given places as “unwanted”.

This is neither politically acceptable nor consistent with the safeguard of fundamental human rights which the use of “Mosquito” devices clearly infringes. For these reasons, legislative measures should be taken throughout Europe against the marketing of such devices and their use in public places should be banned.



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A. Draft recommendation

1. The Parliamentary Assembly's attention was drawn to the "Mosquito" youth dispersal device by the European Youth Forum and it was asked to take a stand on its use. Its impact on the health of children and young people and discrimination against them were mentioned as problems.
2. "Mosquito" is the commercial name for the acoustic youth dispersal device currently available on the market and used in several Council of Europe member states. These include the United Kingdom, where some 3 500 devices are in use, Belgium, France, Germany, Ireland, the Netherlands and Switzerland.
3. The "Mosquito" device emits a strong, pulsating acoustic signal with a sound pressure of 75 - 95 dB and a frequency range of 16 – 18.5 kHz. This kind of noise is audible to almost all young people under the age of 20 years, but to hardly anyone over the age of 25. The noise produced by the "Mosquito" device is extremely irritating and often even painful to a majority of minors and quickly forces them to leave the area within earshot of this noise.
4. The device is used to deter undesirable adolescents from hanging around and loitering in places where they are not welcome, and where it is considered that they harm the image or the ambience of the place: outside shopping centres or in passageways and on corners where young people like to gather and spend time. It is installed and used by public administrations, shopkeepers and sometimes even by schools or individual residents. In the majority of cases, no prior warnings or information concerning the installation of these acoustic devices in a specific place are given.
5. Older people are not aware that they are being exposed to this kind of strong acoustic emission because it is outside their hearing range. Many children, in particular babies, have dramatic reactions to the sound. They often cry or shout out and cover their ears, to the surprise of their parents, who, unaware of the noise, do not know why.
6. Teenagers exposed to this kind of sound are forced to leave the zone. They feel that the "Mosquito" device is used as a weapon against them regardless of whether they are behaving or misbehaving. They feel victimised and offended and regard this treatment as clear discrimination against youngsters. They feel that they are being treated as potential troublemakers and trespassers and, consequently, their feeling of alienation deepens.
7. There may be also a health aspect to the use of the "Mosquito" device. While the sound level produced by the device does not exceed the sound level permitted by labour law regulations for short-term exposure, these regulations are not applicable to children, minors or pregnant women, who clearly should be much better protected than adult workers.
8. Research so far indicates that there is no danger of hearing loss for adults or young people as a result of exposure to the "Mosquito" sound. However, although there is no indication that other health effects might be associated with this device, further medical tests are required. It is for instance not known what impact high-frequency noise has on unborn children. The "precautionary principle" must therefore apply.
9. The Assembly considers that the use of "Mosquito" devices constitute a disproportionate interference with Article 8 of the European Convention on Human Rights (the Convention), which protects the right to respect for one's private life, including the right to respect for physical integrity. Even though such interference does not result directly from public authorities' action, states parties are bound to guarantee this right effectively and adopt, when required, adequate protective measures. The use of these devices may, depending on circumstances, interfere as well with Article 11 of the ECHR which guarantees the right to freedom of peaceful assembly.
10. For the Assembly, acoustic dispersal devices aimed at adolescents, such as the "Mosquito", are also inconsistent with the general prohibition of discrimination in the enjoyment of any right set forth by law, as provided for by article 1 of Protocol No. 12 to the Convention, and they are in breach of Article 14 of the Convention, which states that the enjoyment of rights and freedoms protected by the Convention shall be secured without discrimination on any ground such as "birth or other status". Further to a British national campaign against the discriminatory character of the "Mosquito", a new version of the device went on sale in November 2008 which allows the user to lower the frequency, therefore enabling its sound to be audible to people of any age. However, as long as the possibility exists to set the frequency at a higher level, and given the scope the device is intended for, it will remain potentially discriminatory.

11. The Assembly emphasises, in addition, that these devices, while inflicting acoustic pain on young people and treating them as if they were unwanted birds or pests, are harmful, highly offensive and may thus result in a degrading treatment prohibited by article 3 of the Convention. Under this provision, children and other vulnerable persons have the right to be protected from serious attacks against their physical and psychical integrity.

12. Moreover, the Assembly notes that the “mosquito” devices contravene the United Nations Convention on the Rights of the Child, in particular regarding health and safety. This Convention binds states parties to “ensure that the child is protected against all forms of discrimination or punishment” (Article 2.2), recognises the rights of the child to freedom of peaceful assembly (Article 15) and requires states parties to “take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse” (Article 19.1).

13. Finally, the “Mosquito” device is not a reasonable way of dealing with anti-social behaviour but merely displaces that problem (elsewhere within a neighbourhood). It is not tackling the root cause of the problem and certainly does not encourage youngsters to act responsibly but has rather the opposite effect.

14. The Assembly welcomes that a draft law is before the Belgian Senate to prohibit the manufacture, the marketing and the selling of such devices, as well as the initiatives of some local authorities which have banned the use of “Mosquito” type devices. However, the Assembly regrets that no member state of the Council of Europe has so far banned them. Furthermore, in April 2008, the European Commission also decided not to ban them.

15. Therefore, the Assembly recommends national parliaments, national governments and local authorities of the Council of Europe member states, each of them in the exercise of their roles and competencies, to introduce appropriate measures to:

15.1. ban the installation and use of sound devices which discriminate against young people, such as the “Mosquito”, in all public places;

15.2. prohibit the marketing and selling of “Mosquito” types of dispersal devices or, at least, require clear warnings and information if an owner or administrator of a non-public place should decide to use this kind of acoustic device in a place under their responsibility.

16. The Assembly recommends that the Committee of Ministers:

16.1. urge national authorities to enact legislation prohibiting all “Mosquito” types of dispersal devices, as a requirement stemming from the need to ensure the full protection of human rights of young people;

16.2. monitor closely the developments in this area and promote initiatives aimed at ensuring that, in the various aspects of the organisation of social life, minors are not treated with disregard and animosity, and considered nuisances, potential troublemakers or even hostile elements of society.

B. Explanatory memorandum by Mr Wach, rapporteur

1. Introduction

1. Young people tend to gather well away from adult supervision in popular public places, such as squares, shopping centres, passageways, etc. They consider it to be a particular way of meeting with peers and spending free time, a way to show they are different from adults. This phenomenon of young people socialising in groups is essential for learning social skills and appropriate behaviour as members of groups.

2. Quite often, this type of behaviour generates a negative reaction among older people, and in particular administrators of the places where young people meet. People see it as a kind of hostile demonstration, an obstacle to them using these places in the normal way, as well as having a negative impact on businesses. Sometimes they even consider such gatherings to be a safety hazard for regular customers or passers-by.

3. In specific situations, when these kinds of gatherings infringe normal public order or constitute a danger, police or security organisations react and the minors are asked to leave and disperse, or are forced to do so. However, more often than not, the behaviour of these youngsters is within legal norms or local regulations, and no action is taken by official law enforcement or security forces. But still many older people complain because they feel uncomfortable or even at risk.

4. As a “soft” countermeasure intended to prevent this kind of undesirable gathering of young people, a technological acoustic youth dispersal device has been developed. This device, more widely known under the commercial name of “Mosquito”, forces young people to leave the place as the noise it emits is hard to bear. The companies marketing the product describe the device as being an effective deterrent for unwanted gatherings of youth in several areas, such as outside shop entrances, school grounds, car parks, residential areas or also children’s play areas. The Parliamentary Assembly was alerted about, and seriously concerned by, these developments, and this is why its Committee on Culture, Science and Education was entrusted to prepare a report on this issue.

5. The committee decided to send a questionnaire to the governments of the member states in order to gather information about their experiences with the “Mosquito” type devices and the problems involved in the use of such devices. The questions were about legal regulations and use of the devices by police, municipalities, organisations and private individuals. Other questions concerned experiences of the “Mosquito”, its effectiveness and any complaints and protests against its use. The committee received 17 answers to this questionnaire. The most comprehensive replies came from Belgium, Ireland, the Netherlands, Spain and Switzerland. A number of states, particularly in central and eastern Europe, replied that they had no knowledge of “Mosquito” devices being used on their territory, and some even replied that they were not aware of the existence and availability of such devices. However, the majority of the answers were in favour of a ban on the installation and use of “Mosquitos”. The lack of response from the United Kingdom, the country in which the “Mosquito” was developed and is probably most widely used, hindered the preparation of this report, because the United Kingdom’s experience would have been the widest and the best substantiated.

6. The committee had an opportunity to confront with public opinion in Molina, Spain, in March 2009, on the occasion of the 42nd meeting of the European Steering Committee for Youth and the Joint Council on Youth. There was a discussion on “Mosquito” type devices, and a short questionnaire was distributed to the youth organisations participating. The questionnaire contained three questions on the possible banning of “Mosquito” type devices, the scope for their use and the necessity of introducing them. The outcome of the discussion and the ensuing responses to the written questions were unequivocal. They called for an immediate and unconditional general ban on the use of the “Mosquito” and other similar devices on the grounds of its discriminatory nature. So we should have no doubt that the position of European youth organisations concerning “Mosquito” type devices is very negative.

7. The outline report was finally presented during the consecutive meeting of the above-mentioned bodies, in Budapest, in September 2009 and was strongly supported. In particular, the conclusions concerning a ban on “Mosquito” type devices in member states were considered as the necessary outcome.

2. Main features of the youth dispersal device

8. The “Mosquito” device, and other similar devices, produces a high-pitched pulsating sound in the 16 kHz to 18.5 kHz frequency range with a sound-pressure level of up to 95 dB – audible up to a few meters from the source. It resembles a small loudspeaker and can be installed easily anywhere. The noise is audible only

to nearly all young people under 20. Perception of the noise by people over 25 is extremely rare and it is practically inaudible to older people. The device is not expensive – about €600 – and requires very little power, which can be supplied by a battery.

9. The effect of the “Mosquito” type device, which exposes young people to extreme discomfort, results from the fact that, generally, as people age, their hearing deteriorates quite rapidly. We know, and this has been medically proven, that people’s gradual loss of hearing as they age is because they can no longer hear high frequencies. This is the effect relied on by the kind of devices in question here. Only few people over 30 can hear sounds in the 16 kHz frequency and for them the “Mosquito” noise frequency, above 16 kHz, is an ultrasonic noise.

10. “Mosquito” type devices are so designed that the sound-pressure level does not exceed the level set for short-term exposure by labour law rules on maximum permissible levels. This applies to the majority of European countries, where these devices comply with legal requirements. But their effect on infants and children and on pregnant women has not been tested and labour law norms have not been set for them. Sufficient medical tests have not been carried out on the “Mosquito” device to allow us to accept the producers’ assurances that it is not harmful to the human ear. In particular its effect – physical and psychological – on children, youngsters and pregnant women is not known. Small children, who are unable to recognise the cause of their pain, are very vulnerable and may become disoriented. Often their parents are not aware of the cause of the problem and they do not leave the affected area. Concerning pregnant women, specialists believe that the high-frequency sound does not penetrate the fluids of the womb and reach the unborn child, which is therefore probably safe. However, to date there are no certainties. For the above reasons, “Mosquito” type devices are in breach of the provisions of the Convention on the Rights of the Child relating to health and safety protection (Article 3) and should be banned.

11. It is also useful to bear in mind the decibel (dB) scale of sound pressure that is used to compare the loudness of audible sounds. It is a logarithmic scale, with the reference level set at 20 dB, corresponding to the human threshold of hearing. Each additional 20 dB means the sound is 10 times louder. The following basic simplified table can be used to illustrate average human reception of sound levels (psychological acoustics):

- 20 dB – the threshold of human hearing;
- 40 dB – quiet, soft sound: raindrops;
- 60 dB – normal level of sound that people are used to: radio, TV, conversation, etc.;
- 80 dB – loud noise: busy traffic, working motors, machines;
- 100 dB – very loud noise: jet taking off, etc.;
- 120 dB – threshold of painful noise.

A level of volume higher than the 120 dB can cause hearing damage even after very short exposure times; however, the volume output of the “Mosquito” device is well beneath this level. It is therefore likely that there is no danger to hearing for adults from short-time exposures to the “Mosquito” device.

12. It is perhaps worth noting here that other more powerful and dangerous acoustic dispersal devices are available on the market. Examples of such devices, used by police and security forces in some countries, include those known as “LRAD” (Long Range Acoustic Device). They are advertised and sold as LRAD – 500 and LRAD – 1000, which denotes their range of effectiveness. Their maximum acoustic sound-pressure emission is over 150 dB, a lethal noise level, and at a distance of 300m their noise levels are 95 dB and 100 dB respectively. But they are not discriminatory devices, as they work in a range of 720Hz to 6.6 kHz, when used as loudspeakers to issue warnings, and in a range of about 5 to 6 kHz when used as deterrents. They should be used according to the law and specific regulations, but it should be noted that they can be purchased in many countries without any conditions or control.

3. Legal status of acoustic youth dispersals in Europe

13. From the information gathered it is clear that “Mosquito” type devices are easily available and are used in public as well as increasingly in private places in several western European countries, such as the United Kingdom, Ireland, Germany, the Netherlands, Switzerland, Belgium and probably others – but less frequently. The majority of them, probably more than 5 000, have been installed in the United Kingdom. There are no

formal regulations concerning the use of these devices, except in Belgium, and many of the governmental answers say that they fall under general rules and restrictions concerning exposure to noise and environmental protection.

14. The country where the introduction of “Mosquito” type devices has been most thoroughly discussed and where regulations are most advanced is Belgium, following an initiative by the federal parliament. In June 2008, the Chamber of Representatives and the Senate adopted an unambiguous resolution strongly recommending that the federal government impose a total ban on the marketing and use of the “Mosquito” device and other similar devices in the whole of the Belgian territory. The resolution clearly stated that the use of “Mosquito” devices is ethically questionable, amounts to inhuman treatment of young people, is discriminatory, is against freedom of assembly and does not solve the problem of young people’s leisure time, and finally that there is no concrete proof that it is not harmful to the ear.

15. In 2007, in the Swiss Federal Parliament, the use of “Mosquito” type devices was the subject of a question put to the Federal Council. In reply, the council decided not to introduce any federal regulations and to leave the problem to the cantons, and said that the issue at stake was the balance between freedom of assembly and freedom of trade.

16. The European Commission also examined a similar petition on a possible ban on the use of “Mosquito” devices in EU countries. In April 2008, in response to this request, the Commission decided not to introduce any general regulations on the subject and to leave the problem to be decided by the member states individually.

17. We therefore see that in those European countries where public controversy exists over the use of “Mosquito” devices, no decision to take decisive steps has been made, and the question of regulations and possible limitations has been delegated to local authorities. The resulting position is, as expressed in a few cases, that although the use of “Mosquito” type devices may in fact violate some articles of the European Convention on Human Rights, it is not an extreme violation but rather offers “soft” and practical solutions to specific problems concerning minors. This argument fails to take account of the fact that this position is a discouraging one and goes against the idea of bringing up youngsters in a positive manner, shows contempt for their basic rights and treats them instrumentally. The other reason for such an approach to this problem may be the fact that few successful court cases have been brought against the use of “Mosquito” devices in specific circumstances. It should be borne in mind that potential offenders take advantage of the fact that it is very difficult for an individual to find and describe the circumstances constituting a violation of their rights and to sue the owner of the device in court. Therefore, it is necessary to ban the “Mosquito” device before its use becomes widespread across Europe.

4. A discriminatory device in breach of fundamental rights

18. Acoustic dispersal devices are a disproportionate interference with Article 8 of the European Convention on Human Rights, which protects the right to respect for one’s private life, including the right to respect for one’s physical integrity, and it interferes as well with Article 11 of the ECHR which provides that everyone has the right to freedom of peaceful assembly.

19. The “Mosquito” device is in breach of the provisions of Article 14 of the ECHR and of Article 1 of its Protocol No. 12, which prohibits discrimination “on any ground such as ... birth or other status”. The “Mosquito” device is discriminatory because it affects all young people regardless of their behaviour and does not differentiate between those who might be trespassing, disturbing public order or breaking the law and those who are not. The acoustic dispersal treats the youngsters as the cause for anti-social behaviour but loitering and causing criminal damage may also be provoked by adults.

20. Even more important is the fact that the use of the “Mosquito” device violates Article 3 of the ECHR, which prohibits torture. Although the use of the “Mosquito” device is not in itself deliberate torture, especially as the person in question can leave the place exposed to the irritating sound, it should be noted that Article 3 of the ECHR forbids “inhuman and degrading treatment”. If used against a large group of young people gathered in a public place, then the “Mosquito” device falls into this category.

5. Conclusions

21. Taking into account all of the above, the written material gathered and the opinions heard during meetings, it should be concluded that, according to the ECHR and the Convention on the Rights of the Child, the marketing and use of “Mosquito” type devices:

- is an illegal solution under the terms of international human rights instruments;
- contains demoralising elements and could lead to possible frustration in young people;
- makes young people lack confidence in the legal system;
- could constitute a health hazard, because it targets children and young people to whom the general labour law rules on noise exposure are not applicable;
- does not solve the problem of young people’s leisure time and their tendency to congregate in their particular way, because it only has a negative and deterrent effect.

22. If the majority of the arguments presented above meet with agreement, the final conclusion should be acceptance of paragraph 15 of the draft recommendation, which contains the ban on marketing, selling and use of “Mosquito” type devices in all public places in Council of Europe member states.

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Reporting committee: Committee on Culture, Science and Education

Reference to committee: [Doc. 11681](#), Reference 3486 of 29 September 2008

Draft recommendation adopted unanimously by the committee on 10 March 2010

Members of the committee: Mr Andrew **McIntosh** (Chairperson), Mr Kent Olsson (1st Vice-Chairperson), Mrs Maria Manuela de **Melo** (2nd Vice-Chairperson), Ms Elvira **Kovács**, (3rd Vice-Chairperson), Mr Florin Serghei Anghel (alternate: Mrs Maria **Stavrositu**), Mr Lokman **Ayva**, Mr Walter Bartoš, Mrs Deborah Bergamini, Mrs Oksana Bilozir, Mrs Rossana Boldi, Mr Agostinho Branquinho, Mrs Anne Brasseur, Mr Petru Călian, Mr Joan Cartes Ivern, Lord Chidgey, Mr Miklós Csapody, Mrs Lena **Dąbkowska-Cichocka**, Mr Joseph Debono Grech, Mr Daniel Ducarme, Mr Gianni **Farina**, Mr Thomas Feist, Mr Gvozden Srečko **Flego**, Mr Dario Franceschini, Mr Hans Franken, Mrs Sophia Giannaka, Mr Martin Graf, Ms Sylvi **Graham**, Mrs Ana Gutu, Mr Oliver Heald, Mr Michael **Henrich**, Mr Andres Herkel, Mr Rafael Huseynov, Mr Fazail İbrahimli, Mr Mogens Jensen, Mr Morgan Johansson, Mrs Francine John-Calame, Mr Jón Jónsson, Ms Flora Kadriu, Mrs Liana Kanelli, Mr Jan Kaźmierczak, Miss Cecilia **Keaveney**, Mrs Svetlana Khorkina, Mr Serhii Kivalov, Mr József Kozma, Mr Jean-Pierre Kucheida, Mr Ertuğrul **Kumcuoğlu**, Ms Dalia Kuodyté, Mrs Athina Kyriakidou, Mr Markku **Laukkanen**, Mrs Milica Marković, Mrs Muriel **Marland-Militello**, Mr Patrick **Meinhardt**, Mrs Assunta Meloni, Mr Alejandro Muñoz (alternate: Mrs Blanca **Fernandez-Capel**), Ms Christine Muttonen, Mrs Miroslava Němcová, Mr Tomislav Nikolić, Mr Edward **O’Hara**, Mr Petar **Petrov**, Mrs Zatuhi Postanjyan, Mr Lluís Maria de Puig, Mrs Carmen Quintanilla, Mr Frédéric Reiss (alternate: Mrs Françoise **Hostalier**), Mrs Andreja **Rihter**, Mr Nicolae Robu, Mrs Tatiana Rosova, Mrs Anta Rugāte, Mr Leander Schädler, Mr Axel Schafter, Mr André Schneider, Mr Predrag Sekulić, Mr Nikolay Shaklein, Mr Yury Solonin, Mr Christophe Steiner, Mrs Doris Stump, Mr Valeriy **Sudarenikov**, Mr Petro Symonenko, Mr Guiorgui Targamadzé, Mr Mehmet **Tekelioğlu**, Mr Latchezar Toshev, Mr Hugo Vandenberghe, Mr Klaas De Vries, Mr Piotr **Wach**

NB: The names of the members who took part in the meeting are printed in **bold**

Secretariat of the committee: Mr Fasino, Mr Dossow, Ms Denu