Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Recommendation 1695 (2005)[1]

Draft Council of Europe Convention on action against trafficking in human beings

Parliamentary Assembly

1. On 26 January 2005, the Parliamentary Assembly of the Council of Europe unanimously adopted Opinion No. 253 (2005) on the draft Council of Europe convention on action against trafficking in human beings, in which it advised the Committee of Ministers to make over fifty amendments it considered essential to the draft convention;

2. The committee of experts responsible for drafting the text (CAHTEH) held its eighth and last meeting from 22 to 25 February 2005 in Strasbourg. The main item on the agenda was the examination of the Assembly's opinion and the representative of the Assembly was given ample opportunity to present it.

3. Unfortunately, two thirds of the amendments proposed by the Assembly were rejected by CAHTEH, mostly at the initiative of the European Commission, which was negotiating on behalf of twenty-two member states of the European Community. Only two of the proposed amendments (concerning Articles 12 and 14) considered the most important by the Assembly, namely those concerning the protection of victims of trafficking in human beings and insisting on the binding nature of the convention's provisions, were accepted by CAHTEH and thus integrated into the text of the draft convention.

4. The Assembly considers that the draft convention should include provisions which are more protective of victims' rights than European Community law, especially when these provisions echo rights already granted to victims under national or international law, in particular those rights enshrined in the European Convention on Human Rights and the case-law of the European Court of Human Rights. The Assembly therefore profoundly regrets that the European Commission, during the negotiations within CAHTEH, systematically refused to allow any such provisions to be included in the draft convention.

5. As a result, the current wording of the draft remains far from guaranteeing effective and sufficient protection of victims, contrary to the objective pursued by the Committee of Ministers when it mandated CAHTEH to draft a convention that would have the added value of protecting the human rights of victims.

6. Since, within CAHTEH, there was no majority to be had against the position of the European Commission, the Council of Europe will be forced to lower its standards to the lowest common denominator of Community law, unless the Committee of Ministers of the Council of Europe takes decisive action and agrees to amend some of the key provisions of the draft convention before it is opened for signature on the occasion of the 3rd Summit of Heads of State and Government of the Council of Europe.

7. Such decisive action by the Committee of Ministers is made all the more necessary by the open attempt of the European Community and its member states to escape the scrutiny of the monitoring mechanism established by the draft convention for matters falling within the competence of the European Community. The Assembly strongly warns against creating a Europe which allows itself to be divided, indulges in double standards and does not even attempt to promote the effective implementation of the provisions of the draft convention, weak as they are. Europe should instead stand united in the fight against the inhuman scourge of

1. Text adopted by the Standing Committee, acting on behalf of the Assembly, on 18 March 2005 see Doc. 10474, report of the Committee on Equal Opportunities for Women and Men, rapporteur: Ms Vermot-Mangold).

trafficking in human beings and protect its victims. Otherwise, the winners will be neither the European Community nor the Council of Europe, but the modern slave-traders, the traffickers in human beings, while the losers will be their hapless victims, whom this draft convention originally set out to protect.

8. The Parliamentary Assembly thus recommends that the Committee of Ministers urgently :

incorporate the following key amendments into the draft convention before opening it for signature, ensuring that each party to the convention :

a. grants the right to appeal to an independent and impartial body against the decision not to identify a person as a victim of trafficking in human beings (Article 10) ;

b. satisfies the safety and protection needs of victims and, if necessary, of their family members (Article 12) ;

c. grants all victims access to necessary medical care, not only emergency medical treatment (Article 12) ;

d. grants victims a recovery and reflection period of at least thirty days (Article 13) ;

e. establishes as a criminal offence the use of services that involve exploitation, where it is known that the person is a victim of trafficking in human beings (Article 19) ;

f. refrains from detaining, charging or prosecuting victims of trafficking in human beings on the grounds that they have unlawfully entered or are illegally resident in countries of transit and destination, or for their involvement in unlawful activities of any kind, when such involvement is a direct consequence of their situation as victims of trafficking (Article 26) ;

g. exercises its jurisdiction over anyone placed under its authority or effective control, or situated in a territory over which it exercises authority or effective control (Article 31) ;

reject the amendments to the draft convention proposed by the European Community concerning the monitoring mechanism; the Committee of Parties; amendments to the convention; and the convention's relationship to other international instruments.

9. The Assembly considers that the way in which this convention has been drafted within CAHTEH raises questions regarding the competences and procedures of Council of Europe treaty-making. The Assembly thus recommends that the Committee of Ministers include an item on "the drafting of Council of Europe conventions" on the agenda of the 3rd Summit when dealing with the subject of the relations between the Council of Europe and the European Union, in order to engage the European Community and its member states in this matter.