

Opinion 280 (2011)¹
Final version

Opinion on the draft Council of Europe Convention on preventing and combating violence against women and domestic violence

Parliamentary Assembly

1. The Parliamentary Assembly has consistently, repeatedly and forcefully condemned violence against women as one of the most serious violations of human rights in Europe, finding its roots in unequal power relations between women and men and discrimination against women. The Assembly, therefore, warmly welcomes the draft Council of Europe convention on preventing and combating violence against women and domestic violence, as the first international binding instrument specifically devoted to this issue and as an important step forward in the promotion of substantive equality between women and men.

2. The Assembly welcomes the comprehensive and holistic approach of the draft convention, which encompasses simultaneously the prevention of violence against women, the protection of victims, the prosecution of perpetrators and integrated policies.

3. It also commends the strong monitoring mechanism foreseen by the draft convention, as well as the innovative provisions setting out a specific role for national parliaments and the Assembly in the context of monitoring the implementation of the convention.

4. Having had the opportunity to take part in the entire negotiation process in the Ad hoc Committee on Preventing and Combating Violence against Women and Domestic Violence (CAHVIO), the Assembly is aware that the text of the draft convention is the result of a delicate compromise between diverging views, interests and concerns.

5. The Assembly notes that the scope of the draft convention itself is the result of a compromise as it primarily covers all forms of violence against women, including domestic violence, which affects women disproportionately, while the states parties are encouraged to apply the convention also to other victims of domestic violence.

6. Although such a wide scope goes beyond the mandate of the Council of Europe campaign "Stop domestic violence against women", and was not clearly defined in the terms of reference of the CAHVIO, the

Assembly does not think it appropriate, at this stage, to call it into question, because of the risk of altering a balance which has been very carefully negotiated.

7. The Assembly, however, wishes to propose amendments, with a view to strengthening the standards set out in the draft convention.

8. In particular, the Assembly expresses its concern with regard to the inadequate protection of some specific vulnerable groups, such as children, elderly people and migrant women without a legal residence status. These women are mentioned only in the case of their losing their residence status as a result of the dissolution of a relationship with a spouse or partner as a consequence of their being victims of violence.

9. In addition, the Assembly points out that, in the field of prosecution, too much flexibility is left to the states parties on how to sanction some of the forms of violence covered by the draft convention, whether through administrative, civil or criminal law. The Assembly would have preferred a much stronger emphasis on the obligation to criminalise certain acts of violence, even if this created the need for some member states to make additional efforts to adapt their domestic law to the draft convention.

10. It is likewise regrettable that exceedingly broad latitude to make reservations is left to the states parties, with the result that a considerable proportion of the convention could be made inoperative. This is all the more worrying considering that reservations could be made to important provisions such as those concerning the victims' right to compensation, the exercise of jurisdiction, the statute of limitations, residence status or the obligation to provide for criminal sanctions for certain acts, as opposed to non-criminal sanctions.

11. In the light of the above, the Assembly recommends to the Committee of Ministers that the draft convention be amended so as to replace the expression "gender-based violence against women" with "gender-based violence" in Article 3.d, Article 14, paragraph 1, and Article 60, paragraph 1.

12. In addition, with a view to addressing the situation and needs of specific vulnerable groups, the Assembly invites the Committee of Ministers to consider drafting three additional protocols to the draft convention, respectively on children, disabled people and elderly people. It also recommends the following amendments to the draft convention:

12.1. in Article 15, paragraph 2, replace "encourage" with "ensure";

12.2. in Article 22, at the end of paragraph 2, add the following words: "taking into account their specific needs".

13. Moreover, in order to make it explicit that the convention applies also to migrant women without a regular residence status and to reinforce measures aimed at protecting them and encouraging them to

1. Text adopted by the Standing Committee, acting on behalf of the Assembly, on 11 March 2011 (see [Doc. 12530](#), report of the Committee on Equal Opportunities for Women and Men, rapporteur: Mr Mendes Bota). See [Doc. 12472](#) and Addendum.

report violence to the relevant authorities, the Assembly recommends to the Committee of Ministers that the draft convention be amended as follows:

13.1. in Article 4, paragraph 3, after the words "migrant or refugee status" add the words ", absence of legal residence status";

13.2. in Article 18, paragraph 1, after the word "victims" add ", irrespective of their legal status,";

13.3. in Article 59, paragraph 1, delete the words "in the event of particularly difficult circumstances";

13.4. after Article 59, add the following new article:

"Irregular migrant status

1. Parties shall take the necessary legislative or other measures to ensure that victims without regular residence status are granted a residence permit in the following cases:

a. where the competent authority considers that their stay is necessary owing to their personal situation;

b. where the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in an investigation or criminal proceedings.

2. Parties shall apply all the provisions of the present Convention to victims without regular residence status, without discrimination."

14. With a view to reinforcing substantive law provisions and protection measures, the Assembly recommends to the Committee of Ministers the following amendments:

14.1. in Article 34, replace the words "repeatedly engaging in threatening conduct directed at" with "following, harassing or threatening";

14.2. in Article 36, paragraph 3, delete the words "as recognised by internal law";

14.3. in Article 40, delete the words "or other legal";

14.4. in Article 46, paragraph 1.a, delete the words "as recognised by internal law";

14.5. reword Article 53 as follows:

"1. Parties shall take the necessary legislative or other measures to ensure that appropriate restraining and protection orders are available to the police and to the victims of all forms of violence covered by the scope of this Convention.

2. Parties shall take the necessary legislative or other measures to ensure that the restraining and protection orders referred to in paragraph 1 are:

- available for immediate protection and without undue financial or administrative burdens placed on the victim;*
- issued for a specified period or until modified or discharged;*
- where necessary, issued on an ex parte basis which has immediate effect;*
- where necessary, issued ex officio;*
- available irrespective of, and in addition to, other legal proceedings;*
- allowed to be introduced in subsequent legal proceedings.";*

14.6. in Article 56, paragraph 1.f, replace the words "may be" with "are".

15. With a view to further reinforcing the monitoring mechanism foreseen by the draft convention, and involving more closely specialised non-governmental structures, national parliaments and the Assembly, the Assembly recommends to the Committee of Ministers that the draft convention be amended as follows:

15.1. reword Article 68, paragraph 5, as follows:

"GREVIO may receive information on the implementation of the Convention from national human rights institutions and equality bodies, civil society and non-governmental organisations, especially women's organisations.";

15.2. in Article 70, after paragraph 2, add a new paragraph worded as follows:

"Parties shall consult their national parliaments when drafting the comments to be submitted to GREVIO in accordance with Article 68 of the Convention.";

15.3. in Article 70, after paragraph 3, add a new paragraph worded as follows:

"The Parliamentary Assembly shall be entitled to participate in the meetings of GREVIO and the Committee of the Parties as an observer."

16. With a view to reducing the current exceedingly broad latitude for the states parties to enter reservations, the Assembly recommends the following amendments:

16.1. in Article 78, rephrase paragraph 2 as follows:

"Any state or the European Union may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to apply or to apply only in specific cases or conditions the provisions laid down in Article 44, paragraph 1.e.";

16.2. in Article 78, delete paragraph 3.

17. Finally, the Assembly recommends to the Committee of Ministers the following amendments to the draft convention:

17.1. in Article 1, reword sub-paragraph b as follows:

"Contribute to the elimination of all forms of discrimination against women and promote equal dignity for all women and substantive equality between women and men, including by empowering women;"

17.2. in Article 10, paragraph 1, after the words "one or more official bodies", add "involving all decision-making levels (governments, parliaments and local and regional authorities)";

17.3. in Article 11 paragraph 1.a, replace the words "disaggregated relevant statistical data at regular intervals" with "disaggregated, relevant, harmonised and up-to-date statistical data on an annual basis";

17.4. in Article 12, paragraph 1, replace the word "inferiority" with "subordinate position";

17.5. in Article 12, after paragraph 6, add a new paragraph worded as follows:

"Parties shall promote the activities of non-governmental organisations aimed at providing advice and assistance to victims, including on a cross-country basis.";

17.6. in Article 13, paragraph 1, after "increase awareness and understanding among the general public of", insert the words "the dignity and value of women and";

17.7. reword Article 20, paragraph 1, as follows:

"Parties shall take the necessary legislative or other measures to ensure that victims have access to services facilitating their recovery from violence. These measures should include, where appropriate, services such as legal and psychological counselling, financial assistance, housing, education, training and assistance in finding employment or

setting up a business. The Parties are encouraged to set up special measures to facilitate the victims' access to employment.";

17.8. in Article 29, paragraph 2, replace "state authorities" with "public authorities".

18. The Assembly also invites the Committee of Ministers to establish a close dialogue with the European Union on the issue of violence against women, with a view to avoiding double standards or contradictions between the draft Council of Europe convention and European Union legislation in this field, and encouraging European Union accession to the convention.

19. In the light of the urgency of effective legal standards to prevent and combat violence against women and domestic violence, the Assembly calls on member states:

19.1. not to hinder the process leading to the opening for signature of the convention as soon as possible, giving a strong political signal of their commitment to eradicating violence against women;

19.2. to sign and ratify the convention as soon as possible;

19.3. to ensure the application of the convention "to all victims of domestic violence", as they are encouraged to do under Article 2, paragraph 2, of the draft convention;

19.4. to refrain from entering reservations and, in any case, not to renew them after a period of five years from the entry into force of the convention in respect of the state party concerned.

20. Recalling the activities conducted from 2006 to 2008 when embodying the parliamentary dimension of the Campaign entitled "Stop domestic violence against women", the Assembly affirms its commitment, through its network of the contact parliamentarians of the Parliamentary Assembly committed to combating violence against women, to conducting campaigning and awareness-raising activities in support of the promotion of the signature and ratification of the convention.