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The state of human rights in Europe: the need to eradicate impunity

Committee Opinion¹

Committee on Equal Opportunities for Women and Men
Rapporteur: Ms Anna ČURDOVÁ, Czech Republic

A. Conclusions of the committee

The Committee on Equal Opportunities for Women and Men fully supports the draft resolution and the draft recommendation tabled by the Committee on Legal Affairs and Human Rights. However, it would like to present a number of amendments to underline that there is widespread impunity for gender-based violence (for example, domestic violence against women, rape (including marital rape), forced marriages, so-called “honour crimes” and female genital mutilation) in many, if not all, Council of Europe member states, and that the fight against such impunity must involve the whole society, and be led by parliamentarians, to be effective.

B. Proposed amendments to the draft resolution and to the draft recommendation

Amendment A (to the draft resolution)

In the draft resolution, in sub-paragraph 5.4, add the following words after “motivated by”:

“a disregard for women’s fundamental human rights,”.

Amendment B (to the draft resolution)

In the draft resolution, replace sub-paragraph 5.4.5 and move it up to become sub-paragraph 5.4.1, as follows:

“Violence against women and girls – including domestic violence, rape, forced marriages, so-called ‘honour crimes’ and female genital mutilation – are often not prosecuted with the required severity, if they are prosecuted at all, because of a general disregard for women’s fundamental human rights and a lack of gender equality, as well as because of sexist attitudes that can be found among the police, prosecutors or judges, or because of archaic cultural attitudes that place the ‘honour’ of the family above the right to individual liberty, bodily integrity or even the right to life.”

Amendment C (to the draft resolution)

In the draft resolution, add at the end of sub-paragraph 9.2: “including through *ex officio* prosecution”.

Amendment D (to the draft resolution)

In the draft resolution, in sub-paragraph 9.3, replace “honour crimes” with: “so-called ‘honour crimes’”.

1. See [Doc. 11934](#), presented by the Committee on Legal Affairs and Human Rights.



Amendment E (to the draft resolution)

In the draft resolution, add a new paragraph after paragraph 11, worded as follows:

“The Assembly calls on the parliaments of the member and observer states of the Council of Europe, as well as their individual members, to take a leading role in the fight against impunity, by ensuring that appropriate laws are on the statute books, monitoring their implementation and using their closeness to the electorate, and thus their capacity for awareness-raising and leadership, to change the underlying attitudes in society which make impunity for crimes and human rights violations possible in the first place.”

Amendment F (to the draft recommendation)

In the draft recommendation, add a new paragraph before paragraph 3, worded as follows:

“The Assembly calls on the Committee of Ministers to instruct the Ad hoc Committee on Preventing and Combating Violence against Women and Domestic Violence (CAHVIO) to ensure that the future Council of Europe convention effectively combats impunity for gender-based violence by including the severest and most widespread forms of violence against women, including domestic violence and so-called ‘honour crimes’ in the convention.”

C. Explanatory memorandum, by Ms Čurďová, rapporteur

1. Introduction

1. The fight against impunity is a fight central to the Council of Europe's mission to ensure that human rights and the rule of law are upheld in its member states. The Committee on Legal Affairs and Human Rights deserves to be commended for having proposed this theme for the Assembly's annual debate on the state of human rights in Europe. The rapporteur (and chairperson) of the committee, Ms Herta Däubler-Gmelin, has presented an interesting and detailed report on the different types of impunity in Europe today.

2. However, the legal focus of the report, which is based – to a great extent – on the judgments of the European Court of Human Rights, leads to a certain neglect of other factors which are responsible for impunity in Europe today. In fact, the most widespread problem is that, in many member states, it still has to be recognised by the whole society that violence against women is no less serious than other forms of violence, and needs to be treated as a crime – by lawmakers, the police, prosecutors, judges, jury members, etc. Without a culture/mentality change in the whole of society, which parliamentarians are uniquely well placed to influence (through their law-making capacity, their possibility to monitor the implementation of laws, but also their closeness to the electorate, and thus their capacity for awareness-raising and leadership), impunity will not be eradicated from Europe, far from it.

3. Thus it is only a recent development, for example, that marital rape is legally recognised as a form of rape in Council of Europe member states. Similarly, it took a Spanish Prime Minister willing to put the combating of violence against women at the top of his government's priority list (above the war in Iraq) to stem the tide of gender-based violence in the country via the unanimous adoption by parliament of the Organic Act 1/2004 on Measures for Comprehensive Protection against Gender Violence. It is estimated that about 12% to 15% of all women have been in a relationship of domestic abuse after the age of 16.² This means that 80 million women Europe-wide could be concerned by domestic violence.³ Where are the 80 million judgments condemning the – almost exclusively male – perpetrators of that violence? This widespread impunity should be recognised, and condemned in stronger terms than it is in the report and draft resolution and recommendation tabled by the Committee on Legal Affairs and Human Rights.

2. CDEG(2006)3, “Stocktaking study on the measures and actions taken in Council of Europe member states”, Dr Carol Hagemann-White, University of Osnabrück, Germany, Directorate General of Human Rights, Strasbourg, 2006, p. 8.

3. [Resolution 1635 \(2008\)](#) on combating violence against women: towards a Council of Europe convention.

2. Gender-based violence – one of the most serious and widespread forms of impunity in Europe

2.1. Domestic violence against women

4. Only a few days ago, on 9 June 2009, the European Court of Human Rights issued a landmark judgment⁴ on impunity and gender-based violence, in *Opuz v. Turkey* (Application No. 33401/02) concerning the Turkish authorities' failure to protect the applicant and her mother from domestic violence. The Court held unanimously that:

- there had been a violation of Article 2 (right to life) of the European Convention on Human Rights in respect of the applicant's mother who was killed by the applicant's ex-husband despite the fact that the domestic authorities had been repeatedly alerted about his violent behaviour;
- there had been a violation of Article 3 (prohibition of torture and of inhuman and degrading treatment) on account of the authorities' failure to protect the applicant against her ex-husband's violent and abusive behaviour;
- there had been a violation of Article 14 (prohibition of discrimination) read in conjunction with Articles 2 and 3 on account of the violence suffered by the applicant and her mother having been gender-based, which amounted to a form of discrimination against women, especially bearing in mind that, in cases of domestic violence in Turkey, the general passivity of the judicial system and impunity enjoyed by aggressors mainly affected women.

5. Despite the fact that Nahide Opuz won her case, she unfortunately still lives in fear for her life. Her violent ex-husband, though convicted for the murder of his mother-in-law, is free (pending an appeal), and continues to threaten her. According to press reports, Ms Opuz was granted police protection only for one week during her ordeal over several years, and currently lives in hiding – and separated from her children, afraid that her ex-husband would be willing to harm the children to get at her. It appears that, last week, following the Court's judgment, she was offered police protection at last. But is that enough?

6. Ms Opuz is a Turkish national. However, she could have been of almost any other European nationality. Two days ago, for example, a report by the Northamptonshire Domestic Abuse Forum (in the United Kingdom) found that the authorities "failed in their duty" to protect a woman killed in a house fire started by her son-in-law on 1 January 2008.⁵ Mrs Susan Barber, often terrified and in fear for her life, called Northamptonshire police on at least 20 occasions to report domestic abuse, harassment, damage and threats involving her estranged husband, said the report. Friends and family phoned another 12 times. But the calls often failed to result in the "desperately needed" deployment of officers, the probe found. Assistant Chief Constable Alan Featherstone reacted to the report by giving the family an unreserved apology: "We failed them and we failed ourselves in the standards we met, or didn't meet, in the investigation".⁶

2.2. Rape

7. This committee is currently preparing a report on rape, including marital rape, which the rapporteur – Ms Rupprecht (Germany, SOC) – hopes to present to the Assembly during the September/October 2009 part-session of the Assembly. Ms Rupprecht's introductory memorandum⁷ starts as follows: "Every year, millions of women are raped: by their husbands, partners or ex-partners, male relatives or acquaintances, or complete strangers. However, most of these rapes are not reported and the perpetrators go unpunished."⁸ Many women feel that they will not be believed if they report having been raped, because of the pervasiveness of certain myths on rape which serve to minimise the seriousness of rape and shift the blame away from those who commit the crime. The common myths cited by Ms Damanaki in her 2007 report on sexual assaults linked to "date-rape drugs"⁹ include: only certain types of women get raped (those who are promiscuous or have poor judgment); women provoke rapes by the way they dress or the way they flirt; men rape women because they are sexually aroused or have been sexually deprived (in fact, men rape women to exert control and humiliate).¹⁰ Even if women find the courage to report the crime of rape, more often than not, the rapists enjoy impunity – and not only in times of armed conflict.¹¹

4. The judgment will become final three months after delivery unless the Grand Chamber of the Court is seized.

5. www.policeoracle.com/news/Report-Says-Force-Failed-To-Protect-Woman_19461.html.

6. Ibid.

7. AS/Ega(2009)12, dated 19 March 2009.

8. Ibid., paragraph 1.

9. Parliamentary Assembly Doc. 11038.

10. Ibid., explanatory memorandum, paragraph 2.

8. The preliminary conclusion of a vast study on rape entitled “Different systems, similar outcomes? Tracking attrition¹² in reported rape cases in eleven countries” by Professor Liz Kelly of the London Metropolitan University, as presented on 28 April 2009, reads as follows: “The majority of women reporting rape across Europe do not see justice done This is the outcome of the continued influence of stereotypes of rape, rape victims and rapists at all stages of the legal process, and a failure to modernise investigation and prosecution practices.”¹³ Professor Kelly reports that conviction rates for rape are generally very low: ranging from 6.5% of reported rapes in England and Wales (2007) to 25% in France (2005). Attrition in the early stages of the investigation is as high as 82%, and these high rates are most common in countries with the lowest conviction rates – raising “serious questions about the professionalism of the investigation”. The percentage of cases designated as false allegations is described as “extremely low” by Professor Kelly (ranging from 2% to 9%), leading her to conclude that “This is extremely strong evidence that the extent of false allegations is exaggerated by professionals, but this over-estimation creates a culture of scepticism.”

2.3. Forced marriages

9. One of the gender-based crimes which, though on the rise (with tens of thousands of victims in Europe a year), is hardly ever reported, let alone prosecuted, is forced marriage, as the case of Humayra Abedin illustrates, whom the committee had an exchange of views with during the April 2009 part-session. Ms Abedin, a 33-year-old doctor from Bangladesh, had been living in the United Kingdom for the past six years and practising medicine in East London for five years. In August 2008, she travelled to Bangladesh for the purposes of visiting her mother, who she had been told was very ill; she initially intended to stay only three days in her country of origin. As soon as she arrived, her family locked her up with a view to marrying her by force; they confiscated her passport, her identity documents and her return ticket. Despite being closely guarded, Humayra Abedin managed to send an e-mail asking some British friends for help. They found her a lawyer, Anne-Marie Hutchinson, who had worked for the Home Office working group on forced marriages, and who set in motion a procedure requesting her repatriation, pursuant to the new British legislation that came into force in November 2008.

10. Dr Abedin’s family forcibly admitted her to a psychiatric hospital in Dakha, without any precise diagnosis of her mental health. On 5 November, she left the hospital and was taken against her will to Jessore in south-west Bangladesh where she was married by force on 14 November. Her cousin, Dr Shipra Chaudhury, filed a petition in the High Court of Bangladesh alleging that she had been detained against her will. Humayra Abedin was summoned to appear before the Dakha family court but her parents managed to avoid this summons by moving her to different states in Bangladesh. Dr Abedin’s case was only heard by the Supreme Court of Bangladesh a month later, on 15 December 2008. In its judgment, it ordered her immediate return to the United Kingdom, pursuant to the injunction issued to her family by the British courts.

11. The United Kingdom Foreign Office department in charge of such matters identified 1 500 cases of forced marriages in 2008 in the United Kingdom alone. However, even when the victims manage to escape from the forced marriage, they are often reluctant to see their parents prosecuted – like Dr Abedin, who explained during the committee meeting that she was reluctant to see her parents suffer, as she was their only child. In some countries, the necessary legislation to effectively prosecute this crime is not even in place. Forcing a young woman (or girl – many victims are under-age) into marriage is thus a crime which can be perpetrated in almost complete impunity.

2.4. So-called “honour crimes”

12. The committee is presenting a report by Mr Austin (United Kingdom, SOC) on so-called “honour crimes” to the Assembly during this June 2009 part-session.¹⁴ The report considers all forms of violence against women and girls in the name of traditional codes of honour to be so-called “honour crimes”: “honour killing”, assault, torture, restrictions on free association, captivity or imprisonment, and interference in the choice of a spouse or partner. The committee considers that all of these crimes constitute a serious violation of fundamental human rights, for which no tradition or culture can invoke any kind of honour to violate women’s

11. See [Resolution 1670](#) and [Recommendation 1873 \(2009\)](#) on sexual violence against women in armed conflict, adopted on 29 May 2009 on the basis of a report by Ms Smet, [Doc. 11916](#).

12. Attrition is defined by the authors as the process by which the majority of reported rape cases fail to reach trial.

13. www.epacvaw.org/IMG/pdf/Summary_Findings.pdf. The full report is expected to be published at the end of June 2009.

14. Assembly [Doc. 11943](#) of 8 June 2009.

fundamental rights. Over the last twenty years, so-called “honour crimes” have become increasingly common in Europe, particularly in France, Sweden, the Netherlands, Germany, the United Kingdom, and Turkey – and impunity is one of the main problems with these crimes.

13. In the majority of cases, so-called “honour crimes” are perpetrated by the husband, father or brother of the woman or the girl regarded as “culpable” by the family of having violated a traditional code of “honour” – to punish a real or supposed relationship of which the family disapprove and/or “immoral conduct”, such as a mere exchange of words with a male neighbour or friend. Brothers often proclaim themselves to be the guardians of their sister’s honour. Frequently, the youngest brother, if possible a minor, is chosen to carry out the crime, so that he will not be judged too severely by the courts.¹⁵ Many crimes go unreported, even the most serious – “honour killings”, as many such killings are successfully disguised as suicides by the families.

2.5. Female genital mutilation

14. Female genital mutilation is one of the rare cases of gender-based violence in which the majority of the perpetrators tend to be women – both the “cutters” who actually mutilate the women and girls, and their mothers who take the latter to them to undergo the dreadful procedure. Nevertheless, female genital mutilation is the result of a traditional, male-dominated, patriarchal society which finds it necessary to control women’s bodies (as well as their virginity) to maintain established power relationships – keeping women and girls in an inferior position. Though the practice is not as widespread in Europe as other types of gender-based violence, female genital mutilation is an extremely serious crime, as it constitutes grievous bodily harm, and sometimes even leads to the death of the victim. According to the European Parliament, 180 000 female emigrants in Europe undergo, or are in danger of undergoing, female genital mutilation¹⁶ (with 500 000 who have already undergone the procedure).¹⁷

15. Impunity for this crime is widespread, since it is often carried out outside the jurisdiction of the member state: many victims are taken to their country of origin by their parents, and are forced to undergo the procedure there. Few states have made it possible so far to prosecute the crime in these circumstances, which is why the European Parliament, in its recent resolution on the matter, called on European Union member states to “pursue, prosecute and punish any resident who has committed the crime of FGM, even if the offence was committed outside their borders (extraterritoriality)”.¹⁸ But even when female genital mutilation is practised in Europe, there is a low reporting rate, and it is difficult to find evidence and testimonies.¹⁹ For this reason, the European Parliament also called on the EU member states to “adopt legislative measures to allow judges or public prosecutors to take precautionary and preventive measures if they are aware of cases of women or girls at risk of being mutilated”.²⁰

3. Conclusion: the need to fight impunity for gender-based violence in Europe

16. Society should not accept these types of gender-based violence, but, unfortunately, it does to a great extent in many countries. Studies have shown that between 10% and 33% of respondents consider that men have the right to use violence against their partners, or that so-called “honour killings” can be justified, depending on the country and the cultural context.²¹

17. Thus, not only is there more gender-based violence, but it is more accepted as “normal” by society. When parliamentarians take a long time to modify laws to ensure that gender-based violence is treated as seriously as other forms of violence (by, for example, foreseeing *ex officio* prosecution for such crimes), when prosecutors hesitate to bring prosecutions for rape, when judges find mitigating circumstances in so-called

15. Ibid., explanatory memorandum, paragraphs 1-13.

16. European Parliament resolution of 24 March 2009 on combating female genital mutilation in the EU (2008/2071(INI)), paragraph B.

17. Ibid., paragraph H.

18. Ibid., paragraph 28.

19. Ibid., paragraph 6.

20. Ibid., paragraph 28.

21. One in 10 young British Asians believes so-called “honour killings” can be justified, according to a British study quoted by the BBC. See http://news.bbc.co.uk/2/hi/uk_news/5311244.stm. A third of respondents in a Turkish study quoted on eurasianet on “Radicalism and Extremism” published late this May said they thought wife-beating was “permissible”. Of 12 800 women interviewed in 2008 by researchers working for Turkey’s Directorate on Women’s Status, 41% said they had experienced physical or sexual violence at the hands of their partners. See www.eurasianet.org/departments/insightb/articles/eav061709a.shtml.

“crimes of passion” or crimes committed in the name of so-called “honour” – they are simply reflecting the attitude, the mentality, and the culture of the society they are a part of. This is why it is so important to get the whole society on board to fight gender-based violence, and the impunity that so often accompanies it.

18. Indeed, this is also the added value of the convention currently being drafted by the Council of Europe, which the Assembly – and this committee – hopes will focus on combating the most serious and widespread forms of violence against women,²² and will thus give a strong signal that gender-based violence must be eradicated, and that impunity for these crimes must end.

19. I believe that the draft resolution and the draft recommendation tabled by the Committee on Legal Affairs and Human Rights deserve the full support of this committee. However, I would like to present a number of amendments to underline that there is widespread impunity for gender-based violence (for example, domestic violence against women, rape (including marital rape), forced marriages, so-called “honour crimes” and female genital mutilation) in many, if not all, Council of Europe member states, and that the fight against this impunity must involve the whole society, and be lead by parliamentarians, to be effective.

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22. See [Resolution 1635](#) and [Recommendation 1847 \(2008\)](#) on combating violence against women: towards a Council of Europe convention.