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Concerted action against trafficking in human beings and the smuggling of migrants

Committee Opinion¹

Committee on Equality and Non-Discrimination

Rapporteur: Ms Isabelle RAUCH, France, Alliance of Liberals and Democrats for Europe

A. Conclusions of the committee

1. The Committee on Equality and Non-Discrimination congratulates Mr Vernon Coaker (United Kingdom, SOC), rapporteur of the Committee on Migration, Refugees and Displaced Persons, on his report aimed at reviving and strengthening the action against trafficking in human beings in Europe.
2. The committee supports the draft resolution and recommendation and shares in particular the human rights-based approach adopted by the rapporteur, as well as the strong support for the activities of the Group of Experts on Action against Trafficking in Human Beings (GRETA). The text furthermore underlines that the number of victims of trafficking is increasing throughout Europe. This situation requires awareness on the part of the authorities in all Council of Europe member States and the adoption of effective policies, including co-operation between them and with third countries.
3. The Committee on Equality and Non-Discrimination draws attention to the fact that trafficking in human beings disproportionately affects women (71% of victims are women and girls, according to a study published by the European Parliament in 2016).
4. The committee considers that the gender dimension is of central importance in the phenomenon of trafficking. This dimension must be taken into account in any analysis of the trafficking of human beings, as well as in the development and implementation of measures to prevent and combat it. It is important that the resolution to be adopted by the Assembly reflects this dimension and encourages the recipients of the text to take it into account.

B. Proposed amendments

Amendment A (to the draft resolution)

After paragraph 6, insert the following paragraph:

“The Assembly underlines that trafficking in human beings disproportionately affects women and girls, who represent the vast majority of victims. A gender perspective should be taken into account in the analysis of trafficking phenomena and in the design and implementation of any action and policy to prevent and combat this scourge.”

1. Reference to committee: [Doc. 14478](#). Reference 4365 of 16 March 2018. Reporting committee: Committee on Migration, Refugees and Displaced Persons. See [Doc. 15023](#). Opinion approved by the committee on 28 January 2020.



Amendment B (to the draft resolution)

At the end of paragraph 9, add the following sentence:

“In this respect, the Assembly underlines the relevance of the Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210, “Istanbul Convention”) and invites the member States of the Council of Europe to sign and ratify it, if they have not done so.”

Amendment C (to the draft resolution)

After paragraph 13, insert the following paragraph:

“With regard to victims of forced marriages, the Istanbul Convention requires that the intentional act of forcing an adult or a child to enter into a marriage be made a criminal offence (Article 37). As the Convention is oriented towards the protection of victims, it creates an obligation to ensure that victims can recover their residence status if they have left their country of residence for a longer period than legally permitted (without being able to return) because they have been brought to another country for the purpose of that marriage (Article 59). In addition, the Convention requires States Parties to ensure that gender-based violence can be recognised as a form of persecution within the meaning of the 1951 Convention relating to the Status of Refugees (Article 60). Finally, the Convention reiterates the obligation to respect the principle of non-refoulement, in particular with regard to victims of gender-based violence in need of protection, regardless of their status or place of residence (Article 61).”

C. Explanatory memorandum by Ms Isabelle Rauch, rapporteur for opinion

1. The Committee on Equality and Non-Discrimination, (and its predecessor, the “Committee on Equal Opportunities for Women and Men”) has repeatedly addressed the issue of trafficking in human beings because of the disproportionate impact of this scourge on women and girls, in particular because of the incidence of trafficking for the purpose of sexual exploitation, which is by far the most widespread form of trafficking and which affects women in the vast majority of cases. The report on “Prostitution, trafficking and modern slavery in Europe”² focused precisely on this form of trafficking and proposed measures to curb the demand for prostitution in order to combat trafficking.

2. As far as the disproportionate impact of trafficking on women and girls is concerned, the situation has not improved in recent years. According to the 2016 United Nations Office on Drugs and Crime (UNODC) Global Report on Trafficking in Persons,³ 71% of victims are women and girls. On the basis of data from UNODC, Eurostat and the European Police Office (Europol), the Study on the Gender Dimension of Trafficking in Human Beings, prepared for the European Parliament in 2016, 96% of victims of trafficking for sexual exploitation in Europe would be girls and women.⁴

3. In the light of the above, trafficking has often been viewed as a violation of equality between women and men or even as a form of violence against women. The report “Gender-specific measures in anti-trafficking actions” of the European Institute for Gender Equality (EIGE) of the European Union devotes its first two chapters to explaining how trafficking in human beings constitutes a form of violence against women and to presenting the similarities and links with other forms of such violence. “Trafficking for the purpose of sexual exploitation is part of the continuum of violence experienced in the life of a trafficked person, [...] being one of the most obvious manifestations of gender inequality”. The report adds that “most women and girls who are trafficked for sexual exploitation also report experiencing violence prior to their trafficking experience”, and explains that a woman, after experiencing violence, is more vulnerable to being trafficked, both because she is less confident and has low self-esteem, and because she wants to escape her violent environment.

4. The United Nations 2030 Agenda for Sustainable Development confirms the link between trafficking and gender-based violence. Sustainable development goal 5, “Achieve gender equality and empower all women and girls”, includes target 5.2: “Eliminate all forms of violence against women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation”.

2. [Doc. 13446](#) (rapporteur: Mr José Mendes Bota, Portugal, EPP/CD), 2014.

3. [Global Report on Trafficking in Persons 2016](#), ONUDC, Vienna.

4. [Study on the gender dimension of trafficking in human beings](#), European Commission, March 2016.

5. This notion of trafficking as a form of violence against women, which might appear purely theoretical or even ideological, is indeed useful. It allows for the development and implementation of effective and appropriate anti-trafficking measures and helps to better interpret obligations under international conventions. It justifies, *inter alia*, the victim protection-based approach which is common to the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197) and Convention on preventing and combating violence against women and domestic violence (CETS No. 210, "Istanbul Convention").

6. The Group of Experts on Action against Trafficking in Human Beings (GRETA) is aware of the importance of the gender perspective in its field of activity, as enshrined in the Council of Europe Convention on Action against Trafficking in Human Beings in Article 17, entitled "Gender Equality". This article states that "Each Party shall, in applying measures referred to in this chapter, aim to promote gender equality and use gender mainstreaming in the development, implementation and assessment of the measures". GRETA's 2018 progress report stresses that "The aim of Article 17 is to draw attention to the fact that women, according to existing data, are the majority of identified victims of trafficking in human beings and to the fact that discrimination against women and girls in many societies, leading to poverty and marginalisation, may increase risks of being targeted by trafficking networks. Trafficking in human beings, when it is carried out for the purposes of sexual exploitation, mainly affects women. [...] Women and girls are often targeted because they are disproportionately affected by poverty and discrimination, factors that impede their access to employment, educational opportunities and other resources."

7. Article 17 refers only to Chapter III of the convention and therefore only covers "Measures to protect and promote the rights of victims, guaranteeing gender equality". However, the interpretation of this article is broader, and the trend is towards applying a gender perspective to other aspects of the fight against trafficking. Certainly, the protection of victims and the promotion of their rights is central to the philosophy of the convention and its implementation. However, other measures must also take the gender dimension into account: in particular, preventive measures, which can also be seen as protective measures, not only of victims in the proper sense of the word, but also of potential victims.

8. The Ombudsman for Minorities of Finland, who is also in charge of combating trafficking in human beings, explained in his 2014 report⁵ that the use of a gender perspective could help identify victims in order to apply relevant international law. Understanding the dynamics of violence against women, including the elements of power and control, the gradual loss of autonomy associated with the situation of violence and the different aspects that cause vulnerability to exploitation and violence can guide the judiciary and facilitate the prosecution of those responsible. The Ombudsman's first recommendation to the Finnish Government in this report was to prepare a comprehensive action plan for the prevention of trafficking in human beings, aimed at reducing the "demand" for victims in order to reduce the "supply", and indicated that this action plan should adopt both a gender and a child perspective.

9. An example of anti-trafficking legislation and policies with a gender perspective is the "Swedish" or "Nordic" approach to the regulation of prostitution. This approach consists of criminalising those who pay for sexual services. First conceived and applied in Sweden, this type of regulation of prostitution was subsequently adopted by other Nordic countries and more recently by France. In addition to criminalising the purchase of sexual services, the French law of 13 April 2016 provides for accompanying measures to help prostitutes leave prostitution. This approach has led to a very lively debate with, among other things, a question of constitutionality raised by nine associations, including Médecins du Monde. In February 2019, the Constitutional Council decided on this issue that the standards concerned are in conformity with the French Constitution. Beyond the moral and philosophical questions that this subject leads us to ask, it seems necessary to me, four years after the introduction of "client criminalisation" in the French legal system, to carry out an assessment of the impact that this has had on the prostitution system and on trafficking in human beings. On 20 November 2019, I took part in a meeting of the Delegation for Women's Rights and Equal Opportunities for Men and Women, of which I am a member within the French National Assembly. The purpose of the meeting was for me to make a budgetary assessment of the 2016 law aimed at strengthening the fight against the prostitution system and supporting prostitutes. The findings were as follows: a slow and uneven enforcement of the law on quitting prostitution on the French territory and the need to speed up the dynamic generated by this law to provide the best possible assistance to women victims of prostitution.

5. [National Rapporteur on Trafficking in Human Beings – Report 2014](#), Office of the Ombudsman for Minorities, Helsinki, 2014.

10. The in-depth “Study on the Gender Dimension of Trafficking in Human Beings” published by the European Commission in 2016⁶ put forward a wide range of gender-sensitive recommendations. It recommended, *inter alia*:

- ensuring that specialised gender-sensitive services are provided to victims of trafficking, differentiated according to the type of trafficking they have suffered;
- ensuring funding for independent non-governmental organisations (NGOs) and gender-specific shelters to adequately meet the needs of victims;
- reducing gender inequalities in employment, making it easier for women to leave trafficking situations and to have access to a sustainable livelihood.

11. The importance of the gender perspective is unanimously recognised by all international bodies involved in the fight against trafficking, from the United Nations specialised agencies to the European Union and the Council of Europe, but also by NGOs and independent experts.

12. Mr Coaker’s report and the draft resolution refer to several subjects which are relevant to the Istanbul Convention, such as forced marriages and forced prostitution, without mentioning the Convention itself. Indeed, the issue of marriages contracted using force shows precisely the relevance of this convention to the subject dealt with in this report. It is important to recall that Article 37 of the Istanbul Convention introduces an obligation for Parties to criminalise forced marriage. Moreover, Article 32 aims at facilitating the annulment of marriages contracted by the use of force. Article 59 supplements these provisions by introducing the obligation to grant an autonomous residence permit to victims of forced marriage in the event of dissolution of the marriage.

13. The draft resolution and recommendation adopted by the Committee on Migration, Refugees and Displaced Persons represent an opportunity to remind Council of Europe member States, observer States and partners for democracy of the importance of adopting this type of approach in order to combat trafficking more effectively. I therefore consider it essential, while strongly supporting these texts, to introduce an explicit reference to the gender dimension.

14. Furthermore, it is essential that the draft resolution draw member States’ attention to the relevance and importance of the Istanbul Convention, with an appeal to sign and ratify it for those who have not done so.

15. The proposed amendments can only strengthen the texts adopted and make them more appropriate in the current context.

6. See footnote n°4.