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

Doc. 10474

15 March 2005

Report for debate in the Standing Committee under urgent procedure.^[1]

Committee on Equal Opportunities for Women and Men

Rapporteuse: Mrs Ruth-Gaby Vermot-Mangold, Switzerland, Socialist Group

For debate in the Standing Committee — see Rule 15 of the Rules of Procedure

Summary

The Parliamentary Assembly unanimously adopted [Opinion No. 253](#). (2005) on the draft Council of Europe convention on action against trafficking in human beings on 26 January 2005, in which it advised the Committee of Ministers to make over 50 amendments it considered essential to the draft Convention.

The Opinion was duly presented to the Committee of Experts responsible for drafting the text (CAHTEH), which held its eighth and last meeting on 22-25 February 2005 in Strasbourg. 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 22 member states of the European Community. Only two of the most important amendments were integrated into the text of the draft Convention.

The Assembly should thus urgently recommend that the Committee of Ministers incorporate seven key amendments into the draft Convention before opening it for signature, ensuring effective and sufficient protection of victims.

The Committee of Ministers should furthermore reject the amendments to the draft Convention proposed by the European Community, especially those concerning the monitoring mechanism and the disconnection clause, which would create divisions and double standards and stand in the way of the effective implementation of the provisions of the draft Convention, weak as they are.

The way this Convention has been drafted within CAHTEH raises questions regarding the competences and procedures of Council of Europe treaty-making. The Assembly should thus recommend that the Committee of Ministers include an item on “the drafting of Council of Europe conventions” on the agenda of the Third 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 on this question.

I. Draft recommendation [[Link to Adopted Text](#)]

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 50 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 on 22-25 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 22 member states of the European Community. Only two of the proposed amendments (concerning Articles 12 and 14) considered the most important by the Assembly, i.e. 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 - most notably 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 which 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 thus 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 Third Summit.

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

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

i. 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 criminal offences the use of services which are the object of exploitation, with the knowledge 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 to the extent that 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);

ii. reject the amendments to the draft Convention proposed by the European Community concerning the monitoring mechanism, the Committee of Parties, as well as amendments to the Convention and the Convention's relationship with 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 Third 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 on this question.

II. Explanatory memorandum by Mrs Vermot-Mangold, rapporteuse

1. I have just attended the eighth and last meeting of the Ad hoc Committee on Action against Trafficking in Human Beings (CAHTEH) on 22-25 February 2005. The main item on the agenda was the examination of the Assembly's opinion on the draft convention, and I was thankfully given ample opportunity to present it. Unfortunately, however, my efforts were rarely crowned with success, as most decisions within CAHTEH were dictated by the Representative of the European Commission, who was negotiating on behalf of 22 member states of the European Community.

2. The Representative of the European Commission systematically refused to allow any provisions to be included in the draft convention which would be more protective of victims' rights than Community law, even in those cases when the proposed provisions only echoed rights already granted to victims under national or international law, including rights enshrined in the European Convention on Human Rights (!) and the case-law of the European Court of Human Rights. As a consequence, only two of the amendments proposed by the Assembly which went to the heart of the matter and concerned the protection of victims of trafficking in human beings and the binding nature of the convention's provisions (Articles 12 and 14), were adopted by CAHTEH. The other proposed amendments which were accepted (18 of the 51 amendments all in all) were changes more of a cosmetic nature.

3. In addition, the European Community and its member states made a blatant attempt to escape the scrutiny of the monitoring mechanism established by the draft convention, called GRETA, by proposing that the European Commission of the European Communities be responsible for monitoring their proper implementation of the convention's provisions for matters falling within the competence of the European Community. This would not only greatly reduce the effectiveness of the convention, but also create double standards and a two-speed mechanism.

4. Furthermore, the European Community and its member states would also like to appropriate for themselves the possibility to amend the convention, instead of leaving the task of amending a Council of Europe convention to the Council of Europe's Committee of Ministers. Similarly, the European Commission is proposing an all-encompassing disconnection clause which could result in the convention not being applied at all by the European Community and its member states except in so far as there is no Community or EU rule governing the particular subject concerned and applicable to the specific case.

5. You can imagine my frustration and disappointment with these developments which I judge to be:

i. prejudicial to the protection of victims of one of the most heinous crimes, trafficking in human beings,

ii. dangerous for the Council of Europe's future as a "treaty-making" body.

6. As was repeatedly pointed out even during the CAHTEH meeting itself, if the Committee of Ministers gives in to the European Commission and its demands, this convention might as well be a European Union convention open to non-member states of the Union, instead of a Council of Europe convention. Which means that there is no need to convene a Committee of Experts from 46 member states for eight torturous meetings in Strasbourg (at great cost to the Council of Europe, I may add!) if it is one person only – the Representative of the European Commission – who takes the decision for all 46 member states. In fact, in most cases when the said Representative opposed the amendments proposed by the Assembly, she did not even bother to give the reasons for her refusal! This would be the end of treaty-making in the Council of Europe as we know it, which is why the European Commission and those member states of the European Union which delegated their negotiating powers to the Commission should not be allowed to get away with it – for the sake of the victims of trafficking in human beings, and for the sake of the greater Europe of the Council of Europe.

7. This is why I have decided to propose that the Assembly launch an urgent appeal to the Committee of Ministers following a debate under urgent procedure at the Standing Committee on 18 March 2005, to:

- i. incorporate seven key amendments into the draft convention before opening it for signature;
- ii. reject the amendments to the draft convention proposed by the European Community;
- iii. include an item on “the drafting of Council of Europe conventions” on the agenda of the Third Summit.

Reporting committee: Committee on Equal Opportunities for Women and Men subject to reference to Committee.

Reference to Committee: Debate under urgent procedure, 18 March 2005.

Draft recommendation unanimously adopted by the Committee on 28 February 2005.

Members of the Committee: Mrs Minodora **Cliveti** (Chairperson), Mrs Rosmarie Zapfl-Helbling (1st Vice-Chairperson, alternate: Mrs Ruth-Gaby **Vermot-Mangold**), Mr Per Dalgaard (2nd Vice-Chairperson), Mrs Anna **Curdova** (3rd Vice-Chairperson), Mrs Manuela **Aguilar**, Mrs Edita Angyalova, Mr John Austin, Mr Oleksiy **Baburin**, Mr Denis Badré, Mrs Gülsün **Bilgehan**, Mr Brendan **Daly**, Mrs Krystyna Doktorowicz, Mrs Lydie **Err**, Mrs Catherine Fautrier, Mrs Maria Emelina **Fernández Soriano**, Mr George **Foulkes**, Mr Guiseppa **Gaburro**, Mr Pierre Goldberg, Ms Gultakin Hadjiyeva, Mrs Carina Hägg, Mrs Eleonora Katseli, Mrs Synnove Konglevoll, Mrs Monika Kryemadhi, Mrs Minna Lintonen, Mrs Danguté Mikutiene (alternate: Mrs Biruté **Vésaité**), Mrs Fausta Morganti, Mrs Hermine Naghdalyan, Mr Hilmo Neimarlija, Mrs Vera **Oskina**, Mrs Patrizia Paoletti Tangheroni (alternate: Mr Gianpietro **Scherini**), Ms Riorita Patereu, Mrs Fatma Pehlivan (alternate: MsMimount **Bousakla**), Mrs Antigoni Pericleous-Papadopoulos, Mr Leo Platvoet, Mrs Majda **Potrata**, Mr Jeffrey Pullicino Orlando, Ms Valentina Radulovic-Šcepanovic, Mrs Claudia Roth, Mrs Marlene **Rupprecht**, Mr Össur Skarphéðinsson, Mrs Svetlana Smirnova, Mrs Darinka **Stantcheva**, Ms Agnes Vadai, Mrs Gisela **Wurm**, Mr Andrej Zernovski.

N.B. The names of the members who took part in the meeting are printed **in bold**.

Secretaries of the Committee: Mrs Kleinsorge, Mrs Affholder, Ms Devaux

[1] Subject to the acceptance by the Standing Committee on 18 March 2005 of the Committee's request for urgent procedure and subject to the referral of the question to the Committee for report on that occasion.