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COUNCIL OF EUROPE ACHIEVEMENTS
IN THE FIELD OF LAW

FAMILY LAW
AND THE PROTECTION OF CHILDREN

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PART I:

**ACTIVITIES OF THE COUNCIL OF EUROPE
IN THE FIELD OF FAMILY LAW**

Introduction

The Council of Europe has been working for over 40 years to harmonise policies and adopt common standards and practices in its member states in the field of family law. The Council has contributed in a decisive manner to the strengthening of the legal protection of the family, in particular the protection of the interests of children and has, notably, drawn up a large number of international instruments (Conventions and Recommendations) on this subject.

These standards have been used both to improve the legal systems of member states and as a basis on which to make proposals to individual States seeking to reform their systems of family law. At the request of the States concerned the Council of Europe has provided technical assistance to numerous States to assist them with their reforms concerning family law.

The international instruments which take the form of recommendations deal with matters such as: the equality of spouses, the rights of spouses concerning the family home, payment by the State of advances on child maintenance, parental responsibilities, foster families, validity of contracts and testamentary dispositions of unmarried couples, contributions following divorce, emergency measures in family matters, family mediation, legal protection of incapable adults.

These recommendations contain standards which governments of member states are recommended to adopt. Although such standards are not binding they normally apply to all member states immediately once the Recommendation has been adopted by the Committee of Ministers.

The international instruments which take the form of Conventions deal with matters such as adoption of children, registration of wills, children born out of wedlock, custody of children, exercise of children's rights and contact concerning children. These Conventions which are binding on States which have accepted to be bound by their provisions, contain not only standards but in some cases provision for further co-operation between States e.g. in the field of custody, the Convention Committee on the Custody Convention (T-CC) and in the field of the exercise of children's rights, the Standing Committee of the European Convention on the Exercise of children's rights (T-ED).

Of particular importance are the provisions of the European Convention on human rights and the case law of the European Court of Human Rights which may be used to protect the rights of children and the family. Much progress has been made in the field of family law in member states of the Council of Europe owing to the many judgments of the Court (in particular concerning Article 8 on the right to respect for private and family life and Article 12 on the right to marry).

In the preparation of its international instruments the Council of Europe has always endeavoured to use suitable expressions for this purpose. For this reason it has, for instance, considered that the notion of parental authority should be replaced by the notion "parental responsibilities" as these words better describe "the modern concept according to which parents are, on a basis of equality between the parents and in

consultation with their children, given the task to educate, legally represent, maintain etc, their children. In order to do so they exercise powers to carry out duties in the interests of the child and not because of an authority which is conferred on them in their own interests". Similarly, the Council uses the words "children born out of wedlock" instead of the words "illegitimate children" and more recently the notion of "access" has been replaced by the notion of "contact".

More recently the programme "Building a Europe for and with children" is being implemented further to the Third Summit of Heads of State and Government of the Council of Europe (Warsaw 2005). It is also a response to the Organisation's mandate to guarantee an integrated approach to promoting children's rights and the decision to launch a three-year programme covering the social, legal, educational and health dimensions relevant to protecting children from various forms of violence. The programme comprises two closely related stands: the promotion of children's rights and the protection of children from violence. The programme's main objective is to help all decision-makers and players concerned to design and implement national strategies for the protection of children's rights and the prevention of violence against children.

* * *

This document contains information concerning the most pertinent work in the field of family law carried out by or linked to the work of the former Directorate General of Legal Affairs (DGI), now known as the Directorate General of Human Rights and Legal Affairs (DG-HL). You will find the following texts and information:

- the Resolutions and Recommendations to the Committee of Ministers of the Council of Europe by the European Ministers of Justice and by the Parliamentary Assembly of the Council of Europe (these recommendations have often led to the preparation of international instruments by the Committee of Ministers);
- the international instruments prepared by the Committee of Ministers;
- work on family law under the Committee of Experts on family law (CJ-FA).

I. RECOMMENDATIONS TO THE COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE BY THE EUROPEAN MINISTERS OF JUSTICE AND THE PARLIAMENTARY ASSEMBLY

A. EUROPEAN MINISTERS OF JUSTICE

The Conferences of European Ministers of Justice have examined numerous matters relating to the family e.g. co-operation in regard to the legal representation and custody of children (Resolution No 1 - 7th Conference 1972, Basle); harmonisation and reform of family law (Resolution No 1 - 10th Conference 1976, Brussels); acquisition of the surname (Resolution No 2 - 13th Conference 1982, Athens); the supremacy of the interests of the child in the field of private law (Resolution No 2 - 16th Conference 1988, Lisbon); sexual exploitation, pornography and prostitution of and trafficking in children and young women (Resolution No 3 - 16th Conference 1988, Lisbon); victims of crime (Resolution No 1 – 27th Conference 2006, Yerevan).

At their 1976 Conference in Brussels, the European Ministers of Justice recommended the Committee of Ministers of the Council of Europe to study "the steps which should and could be taken towards the harmonisation of family law at a European level, in view *inter alia* of the importance of the family as a basic unit of society".

At their 1988 Conference in Lisbon, the European Ministers of Justice examined the question of the interests of the child. They did not adopt criteria for these interests as they considered that each case was different. In their Resolution No. 2 on the supremacy of the interests of the child in the field of private law, the Ministers recommended the Committee of Ministers of the Council of Europe to invite member states to ratify conventions which protect the interests of the child. The Committee of Ministers was also recommended to instruct the European Committee on legal co-operation (CDCJ), which is responsible for the work of the Committee of experts on family law (CJ-FA), to pay special attention to the following matters:

- improving and accelerating general court procedures where the interests of the child are at stake;
- the setting up of family courts, or specialised chambers in general courts, and other similar bodies to protect the best interests of the child;
- the hearing of the child and the proper representation of the child;
- the right of the child to have access to both parents after their separation or divorce;
- the use of the friendly settlement procedure (conciliation) to protect the best interests of the child;
- adopting a multidisciplinary approach to solve problems relating to the interests of the child.

Following this Conference the Committee of Ministers of the Council of Europe recommended the governments of member states to ratify Conventions and Agreements concluded within the field of private law, notably Conventions which protect the interests of the child [Recommendation No. R (88) 16]. Furthermore, as a result of the resolutions of this Conference several international legal instruments including the European Convention on the exercise of children's rights [ETS No. 160] and Recommendation No. R(98)1 on family mediation were prepared. Over the following years the work in the field of family law continued producing several further legal instruments.

At its 27th European Conference in Yerevan (2006) on the subject of "Victims: place, rights and assistance", the Ministers of Justice adopted a resolution on "victims of crime" whereby the Committee of Ministers entrusted the European Committee on Legal Co-operation (CDCJ) with studying the question of civil, administrative and other remedies to be made available to victims of crime. Its ultimate aim is to reduce the risk of secondary victimisation and contribute to the rehabilitation of victims of crime including the provision of adequate compensation for damage sustained. To this end the existing best practices will be identified concerning in particular:

"..... civil and administrative or other remedies, designed to protect the interests of victims, in particular provision of information on procedures, simplified procedures, legal aid and advice before, during and after the completion of criminal, civil administrative or other procedures bearing in mind the needs of categories of particularly vulnerable victims (for example, children, the elderly, disabled persons);".

The 28th Conference of European Ministers of Justice held in Lanzarote (25 and 26 October 2007) covered the topic of “Emerging issues of access to justice for vulnerable groups”, in particular:

- migrants and asylum seekers (Resolution No. 1 on access to justice for migrants and asylum seekers);
- children, including children perpetrators of crime (Resolution No. 2 on child-friendly justice).

In Resolution No. 1 adopted at the end of the Conference, ministers asked the Council to examine ways of improving the manner in which authorities provide information to children on their rights and access to justice, including the European Court of Human Rights, and how the views of children can be taken into account during judicial proceedings.

The Resolution highlights the need to establish measures and safeguards to reduce the negative impact on children who come into contact with the judicial system and to prevent children from suffering any harm when this happens. It also underlines the need to create a secure and friendly environment for children involved with the justice system, and the need for specially trained persons and efficient procedures.

In Resolution No. 2, the ministers requested the Council of Europe to examine access to justice for migrants and asylum seekers by identifying means and measures with a view to facilitating their access to justice, including the provision of legal aid and assistance. They also requested the Council to examine the specific issue of access to justice, legal representation, age assessment and deprivation or limitation of liberty of unaccompanied and separated children.

B. PARLIAMENTARY ASSEMBLY

The texts adopted by the Parliamentary Assembly - recommendations, resolutions and opinions - serve as guidelines for the Committee of Ministers, national governments, parliaments and political parties. Eventually, through legislation and practice, these texts influence and improve Europeans' lives.

As far back as 1979 the Parliamentary Assembly recommended the Committee of Ministers to take steps to create a European Charter on the rights of the child and referred in particular to the legal position of the child (rights of children in their environment, children's legal status in the family and in institutions, the new concept of "parental responsibilities", children's rights as individual family members, children's legally defined rights to their own legal voice, protection of children in time of war), child abuse, prostitution and pornography, child labour, social and medical protection and sports.

In the field of family law important recommendations cover the following topics:

- payment by the State of advances on child maintenance: Recommendation 869 (1979);
- adoption: Recommendation 1443 (2000);
- rights of children: Recommendation 1551 (2002), Recommendation 1460 (2000),

- Recommendation 1286 (1996) and Recommendation 1121 (1990);
- building a 21st century society with and for children: Recommendation 1551 (2002), Recommendation 1286 (1996);
- abuse of children: Resolution 1530 (2007), Resolution 1307 (2002), Recommendation 1371 (1998), Recommendation 1336 (1997), Resolution 1099 (1996), Recommendation 1065 (1987);
- international abduction of children by one of the parents: Resolution 1291 (2002);
- domestic violence against women: Resolution 1512 (2006), Recommendation 1681 (2004), Recommendation 1582 (2002);
- family mediation and gender equality, Recommendation 1639 (2003)
- the rights of children in institutions: Recommendation 1698 (2005), Recommendation 1601 (2003), Recommendation 1071 (1988)
- child victims: stamping out all forms of violence, exploitation and abuse, Recommendation 1778 (2007), Resolution 1307 (2002), Recommendation 1065 (1987);
- child migrants: Recommendation 1596(2003), Recommendation 1703 (2005);

These Parliamentary Assembly Recommendations pave the way for the ongoing work by the various Committees of experts dealing with questions relating to the family. A particularly important achievement by the Council of Europe in this field is the European Convention on the exercise of children's rights (see IV,B below).

II. EUROPEAN CONFERENCES ON FAMILY LAW

In 1977 the 1st European Conference on family law was held in Vienna. The four topics of the Conference were:

- measures to integrate children in a new family,
- duties of parents towards their children,
- powers of spouses over property for their common use and property rights of the surviving spouse,
- grounds for and consequences of divorce.

As a result of the proposals made by the European Conference a number of items concerning family law were integrated into the work programme of the Council.

The 2nd European Conference on family law was held in Budapest in 1992 dealing with the following matters:

- the work of the Ombudsmen and other similar bodies to protect children and promote their rights,
- parental separation and remarriage: the attribution of parental responsibilities,
- legal provisions to prevent and reduce disputes in divorce cases,
- alternative methods of solving family disputes.

The 3rd European Conference on family law was held in April 1995 in Cadiz. It dealt with family law in the future, in particular the law reform in the field of family law relating to children and to adults. It addressed in particular the question of the protection of incapable and other vulnerable adults.

Following the proposals of this Conference, the Group of Specialists on Incapable Adults (CJ-S-MI) was set up in order to examine the desirability of drafting a European instrument to protect incapable adults, guaranteeing their integrity and rights and, wherever possible, their independence. The CJ-S-MI subsequently drafted Recommendation No. R(99)4 (see IV, A) on principles concerning the legal protection of incapable adults. The Committee of experts on family law (CJ-FA) has incorporated the topic of the legal protection of incapable adults into its terms of reference for 2007. A working party (CJ-FA-GT2) is currently undertaking an examination of the 1999 Recommendation with a view to producing a new legal instrument.

The topic of family mediation was debated at the 4th European Conference on family law which was held in Strasbourg in October 1998. The Conference was the first follow-up action to the adoption (21 January 1998) of Recommendation No. R (98)1 on family mediation (see IV, A below). The Conference proposed that the Council of Europe should continue to actively promote family mediation and, where necessary, assist States to adopt rules, concerning this alternative process of resolution of family disputes, which help to avoid or reduce these family disputes.

The 5th European Conference on family law was held in The Hague on 15 and 16 March 1999 and provided very useful and practical information for States on “Civil law aspects of emerging forms of registered partnerships”. The Conference recognised that the question of the extent to which States chose to regulate non-marital co-habitation, including the question of registered partnerships, depends very much upon their different customs and traditions and agreed that there was a need for a more detailed consideration of this topic at an international level.

The 6th Conference on Family Law took place in Strasbourg on 14 and 15 October 2002 on the theme of “The legal protection of the family in matters of succession”. The following topics were considered:

- the legal protection of the family in matters of succession – a comparative approach,
- the effect of European laws on matrimonial property regimes on the legal protection of the family in matters of succession;
- advantages of closer co-operation in Europe in order to promote and improve the legal protection of the family in matters of succession.

The legal protection of the property rights of the different members of the family, in particular concerning succession and matrimonial property regimes, is of importance especially in light of recent reforms undertaken by States in their laws on succession. The topic is also of importance in light of the reservation made by States to Article 9 concerning succession of the European Convention on the legal status of children born out of wedlock [ETS No. 85], showing that problems still remain in this field.

A Multilateral Seminar on medical liability in Europe is planned for 2-3 June 2008. It is to be organised by the CDCJ in cooperation with the Steering Committee on Bioethics (CDBI) and the European Health Committee (CDSP). The agenda will be divided into

the following sessions:

- overview of the factual situation of medical liability in the member states of the Council of Europe;
- legal approach to medical liability issues;
- remedies: compensation and evaluation of the systems in different countries;
- the role and responsibility of the Insurance industry.

III. COLLOQUIES ON EUROPEAN LAW CONCERNING FAMILY LAW

One of the Council of Europe's main tasks is to study legal problems arising in contemporary society. To investigate the present situation and the trends emerging in relation to certain specific questions, the Council of Europe has been holding colloquies on European Law since 1969.

In 1974, the IVth Colloquy on European Law was held in Vienna on the subject of "Legal representation and custody of minors". The Colloquy was devoted to examining the meaning of the terms "legal representation and custody" and to identifying the practical problems connected with these issues and the legal notions used in order to solve them. One of the main findings was that the minor, traditionally considered as an object from a legal point of view, tends to be considered as a real subject of law.

The XIth Colloquy on European Law on "Legal problems concerning unmarried couples" was held in Messina in 1981. This Colloquy dealt with the demographic and socio-legal aspects of the subject, as well as with the legislation and case-law relating to unmarried couples.

The XXIIIth Colloquy on European Law on "Transsexualism, medicine and law" was held in Amsterdam in 1993. The following questions were examined at the Colloquy:

- psychiatric and psychological aspects of transsexualism,
- legal conditions of sex reassignment by medical intervention,
- legal consequences of sex reassignment in comparative law.

The XXVIIth Colloquy on European Law on "Legal problems relating to parentage" took place in Malta in September 1997. The four topics of the Colloquy were:

- parentage and human rights,
- parentage and bioethics,
- parentage and civil status matters,
- establishment and consequences of maternal and paternal affiliation.

The participants in the Colloquy recognised that matters relating to parentage are one of the main issues which arise when dealing with the legal status of children. The Committee of experts on family law therefore decided to instruct its Working Party N°2 (CJ-FA-GT2) on the legal status of children to deal with questions concerning the parentage of children and draw up a report containing principles relating to the establishment and legal consequence of parentage in order to provide guidelines to States. The Committee of experts on family law underlined that some or all of these principles

relating to the establishment and legal consequences of parentage could be considered as possible models which could be used by national legislatures when elaborating or revising their internal laws concerning these issues at present or in the future.

IV. INTERNATIONAL INSTRUMENTS PREPARED BY THE COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE

A. RECOMMENDATIONS AND RESOLUTIONS¹

CONCERNING CHILDREN

1. The age of full legal capacity [Resolution (72) 29]

As a result of a Resolution in 1972, when it was felt that the age of majority of 21 was too high as children were capable of exercising certain rights at an earlier age than in the past, States have lowered the age of majority. Most States have thus followed the Resolution and adopted the age of 18 as the age of majority. The Resolution does however recognise that a child is able to carry out certain everyday transactions even before this age. In other cases a child although 18 will not be fully independent and may require certain assistance (especially children who remain financially dependent on their parents).

2. The nationality of children [Resolution (77) 13]

In order to implement the principle of equality between the sexes, the Council of Europe has recommended States to ensure that children may acquire the nationality of either parent.

3. Placement of children and their rights, foster families [Resolution (77) 33 and Recommendations No. R (87) 6 and Rec (2005)5]

Placement is recognised as a last resort and, where it is unavoidable, it should be carried out with due respect for children and their best interests should be protected (decision to be taken on the advice of a multi-disciplinary team and periodic reviews of the child's situation). The Resolution on placement considers that support for families could avoid the need for placement.

The aim of the 2005 Recommendation is to establish the overall guiding principles to be applied whenever a child is placed outside the family, particularly in a residential institution. Such placement is justified only when the child is in such danger that it is impossible for him or her to remain in the family environment.

This Recommendation particularly concerns residential institutions and the reforms they may need to undertake to assure the children of the best possible development and future. It should be stressed that residential institutions continue to play an important role both in countries with a wide variety of forms of placement and

¹ Called Recommendations from 1979 onwards.

in those where the choice of services and the resources allocated to them are more limited.

The aim of the Recommendation on foster families is to improve the legal systems relating to the fostering of children in order to promote the development of the personality of the child and to protect the person of the child and his or her moral and material interests.

The Recommendation recognises that, whenever possible, a child should remain with his or her own family. When fostering is necessary, the child should be protected as far as possible and governments are recommended to include in their legislation rules on foster families based on the eight principles set out in the appendix to the Recommendation.

These principles stipulate that, where children have been entrusted to foster parents, States should provide a system of supervision and support for them and that they should be allowed to maintain personal relationships with their families of origin. The principles also deal with the relationship between parents and foster parents as well as with the question of the return of children, especially in cases where they have become integrated into foster families.

4. Protection of children against ill-treatment or violence [Recommendations No. R (79) 17 and No. R (85) 4] and against sexual exploitation [Recommendations No. R (99)11 and Rec (2001) 16]

States are recommended to take all necessary measures to ensure the safety of abused children by:

- promoting a better awareness of the problem,
- improving the organisation of the child welfare and protection systems,
- taking into account certain principles and suggestions (relating to prevention, detention, management, training of personnel),
- facilitating a multidisciplinary approach,
- promoting research and reviewing child protection legislation.

With regard to violence in the family the Recommendations deal with the prevention of such violence, the reporting of acts of violence within the family and measures to be taken following these acts.

In replacing the Recommendation No.R (99)11, the main aim of the latest Recommendation against the sexual abuse of children Rec(2001)16 is to prevent sexual exploitation from taking place and thereby eliminating sex trade in children. Preventive, as well as repressive, action must be taken to achieve this. A first step is to reduce consumer demands for child pornography, child prostitutes, and children who are trafficked for the purpose of sexual exploitation.

In proceedings it is important to allow the views, needs and concerns of child victims to be presented and considered where their personal interests are affected, in a manner consistent with the procedural rules of national law. Informing the child victims of

their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases is also of importance.

5. Payment by the State of advances on child maintenance [Recommendation No. R(82) 2]

There are numerous cases where children do not receive sufficient maintenance because a parent has failed to fulfil his or her obligations to pay maintenance. As in such cases a child needs immediate financial assistance, the Committee of Ministers of the Council of Europe, following proposals from the Parliamentary Assembly, has adopted a Recommendation on this subject. The text recommends States to institute a system of advances or, where necessary, adapt existing systems, in particular social assistance systems dealing with child maintenance. Such systems will ensure that children receive rapid financial support. The advance may be made either by a State body (such as a Ministry or local authority) or by any other appropriate body (such as an autonomous fund or social benefits body). States making an advance payment may be able to recover the advances from the person from whom maintenance was due.

6. Parental responsibilities [Recommendation No. R (84) 4] and support of positive parenting [Recommendation Rec (2006) 19]

Recommendation N^o. R(84)4 defines such responsibilities "as a collection of duties and powers which aim at ensuring the moral and material welfare of the child, in particular by taking care of the person of the child, by maintaining personal relationships with him and by providing for his education, his maintenance, his legal representation and the administration of his property".

The Recommendation does not stipulate a maximum age of the child until which parental responsibilities may be exercised as situations vary greatly in the law of member States. Parental responsibilities normally cease when the child reaches full age, but some responsibilities may continue to exist in specified cases (for example the duty to maintain a child of full age may last until completion of the child's education). Conversely, account must be taken of cases in which children, who have not yet come of age, may validly perform certain legal acts without their parents' authorisation.

This Recommendation takes account of the views of children and provides that, when the competent authority is required to take a decision relating to the attribution or exercise of parental responsibilities and affecting the essential interests of the children, the children "should be consulted if their degree of maturity with regard to the decision so permits".

The Recommendation on policy to support positive parenting recommends that the governments of member states acknowledge the essential nature of families and of the parental role and create the necessary conditions for positive parenting in the best interests of the child and take all appropriate legislative, administrative, financial and other measures to this effect.

The goal of policy and measures should be the harmonious development (in all its dimensions) and proper treatment of children, with due regard for their

fundamental rights and dignity. As a priority, measures should be taken to eliminate all child neglect and abuse and physical or psychological violence (including humiliation, degrading treatment and corporal punishment).

Public policies on support for parenting should incorporate childhood-related issues, acknowledging the needs and interests of all children and paying attention to their varying needs depending on their age, capacity, and level of maturity.

7. Protection of children in the case of juvenile delinquency [Recommendations No. R (87) 20, No. R (88) 6 and Rec (2003) 20]

In order to provide children with greater protection during criminal proceedings governments are recommended, *inter alia*:

- to ensure that children are tried more rapidly,
- to avoid where possible committing children to adult courts or keeping them in police custody or remanding them in custody,
- to reinforce the legal protection of children throughout the proceedings (e.g. presumption of innocence, assistance of a lawyer, possibility to give their views or have assistance, right of appeal).

The rationale underpinning the 2003 Recommendation is that the rise in juvenile crime, anti-social and violent behaviour requires new measures and in particular a reappraisal of the role of the juvenile justice system.

This Recommendation identifies a number of new principles emerging in Europe, which build on those identified in Recommendation No. R (87) 20, but are seen to be of equal if not greater importance today. They include:

- that the response to juvenile offending should be swift, early and consistent;
- that the responsibility for offending behaviour be widened to include a young offender's parent(s);
- that, as far as possible and where appropriate, interventions with young offenders should include reparation to victims and their communities;
- that interventions should directly address offending behaviour and be informed, as far as possible, by scientific evidence on effectiveness.

8. Application of the European Convention on recognition and enforcement of decisions concerning custody of children and on restoration of custody of children [Recommendation No. R (95) 6 and Recommendation No. R (99) 7]

The starting point of Recommendation N°R(95)6 is that one of the major problems with regard to the implementation of this Convention concerns the delay in the repatriation of a child when neither parent is able or willing to pay for the costs of repatriation. States are therefore requested to take the necessary measures to secure the rapid return of a child. Besides, the text encourages States to improve the operation of transfrontier access to children.

Recommendation No. R (99) 7 aims to deal in particular with:

- the problem of the existence of a large number of reservations allowing numerous grounds for refusing the recognition and enforcement of decisions concerning custody which is a major problem for the implementation of the Custody Convention. Therefore it is recommended to withdraw all reservations;
 - the problems of the time limits to make a decision concerning custody and access. It is recommended to make the decision within a period of six weeks from the date of commencement of the proceedings before the judicial authority;
 - the problems of the costs incurred in the application of the Custody Convention. Under the Custody Convention, an applicant, whether or not entitled to legal aid, should not have to pay any costs, including the costs incurred by the assistance of a lawyer. The only exception to the payment of the costs by the applicant, are the costs directly linked to the repatriation of the child. The Recommendation therefore recommends that all costs, in particular costs of appeals, with the exception of the costs directly linked with the repatriation of the child, shall be borne by the State addressed.
9. Child migrants: [Recommendation CM/Rec(2007)9 to member states on life projects for unaccompanied migrant minors]

The overall purpose of this recommendation is to promote respect for the human rights and dignity of unaccompanied children who find themselves alone and vulnerable, far from their family environment and separated from their parents or guardians. The recommendation seeks to achieve this objective in two ways. Firstly, the recommendation offers advice to governments of both member and non-member states of the Council of Europe on how they could improve their policy and practice in relation to the migration management of unaccompanied minors, particularly by strengthening the international co-operation between them. Secondly, and most importantly, the recommendation provides detailed advice on how relevant authorities can, through the development of life projects, contribute to improving the welfare of these children.

CONCERNING ADULTS

1. The nationality of spouses of different nationalities [Resolution (77) 12]

As the legal relationship between married couples should evolve towards absolute equality a Resolution on the nationality of spouses of different nationalities recommends giving the foreign husband or wife the possibility of acquiring the nationality of his or her spouse on more favourable conditions than those required of other aliens.

The Resolution also invites the governments of member states to take steps to ensure that the conditions under which foreign husbands of their nationals may acquire their nationality are as close as possible to the more favourable treatment generally granted to foreign wives.

2. The equality of spouses in civil law [Resolution (78) 37]

The Resolution on this subject seeks to encourage each State to choose the non-discriminatory solutions which are best suited to national traditions. These proposals recommend, for example, that steps be taken:

- to ensure that the civil law² does not contain provisions whereby one spouse is put in a more advantageous position than the other by being designated head of the family or by being given the sole right either to take decisions concerning the other spouse, or to represent this spouse;
- to ensure that both spouses have equal rights to freedom of movement, to choose a profession and the family residence;
- to secure equality with regard to the choice of a family name;
- to ensure that spouses contribute equally to household expenses;
- to ensure equal rights and duties in respect of maintenance;
- to ensure equal responsibilities towards their children, in particular with regard to their property, the choice of their name and their legal representation.

3. The rights of spouses relating to the occupation of the family home and the use of the household contents [Recommendation No. R (81) 15]

Under the principles contained in the Recommendation on this subject any act by one spouse that prejudices the right to occupy the family home or use the household contents, without the consent of the other spouse, may be set aside or made subject to an appropriate sanction. Nevertheless, in certain circumstances, in the event of separation or divorce, these rights may be assigned exclusively to one of the spouses. The surviving spouse should also be entitled, in appropriate cases, to continue to occupy the family home and to be granted the whole or part of the household contents.

4. Assistance to members of the family of certain foreign officials who wish to engage in a gainful occupation [Recommendation No. R (87) 2]

Many spouses of members of diplomatic missions or consular posts may be unable to work abroad as they may have certain civil, administrative and criminal immunities which may not be compatible with the exercise of a gainful occupation. Furthermore the access of foreigners to gainful employment may be restricted.

The Recommendation contains a model agreement which may be used and, if necessary, adapted by States when concluding bilateral agreements to permit the members of the family of a member of a diplomatic mission or consular post to work in the receiving State. Bilateral agreements are considered to be more appropriate in this field as they enable account to be taken of the different requirements of individual States.

² Article 5 of Protocol No. 7 of the European Convention on Human Rights establishes equality of rights and responsibilities of a private law character between spouses and in their relations with their children as to marriage, during marriage and in the event of its dissolution.

5. Validity of contracts concluded between persons living together as an unmarried couple and their testamentary disposition [Recommendation No. R (88) 3]

Following the XIth Colloquy on European Law 1981 on "legal problems concerning unmarried couples" the Council of Europe noted that persons living together as an unmarried couple were confronted with certain difficulties relating to property which might be resolved by contracts concluded between them or by testamentary dispositions made by one in favour of the other. As such contracts or testamentary dispositions might be considered in certain States to be contrary to public policy or morality the Council of Europe invited governments of member states:

- to ensure that contracts relating to property between persons living together as an unmarried couple, or which regulate matters concerning their property either during their relationship or when their relationship has ceased, should not be considered to be invalid, solely because they have been concluded under these conditions;
- to apply the same principle to testamentary dispositions.

6. Contributions following divorce [Recommendation No. R (89) 1]

In order to improve the legal system relating to contributions following divorce the Council of Europe has recommended States:

- i. to help each party to become self-supporting.

Help to become economically independent and self-supporting may be given by:

- a. appropriate rules relating to matrimonial property regimes and old age insurance schemes,
 - b. the payment by one party to the other of a capital sum or periodical payments for a limited period;
- ii. to ensure, in those cases where a party is not able to become self-supporting, the provision of adequate contributions by the other party or by the public authorities.

7. Principles concerning the legal protection of incapable adults [Recommendation No.R (99) 4] and the Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society [Recommendation Rec (2006)5]

Demographic and medical changes have resulted in an increased number of people who, although of full age, are incapable of protecting their interests by reason of an impairment or insufficiency of their person faculties. Social changes have resulted in an increased need for adequate legislation to ensure the protection of such persons.

Following the 3rd European Conference on Family Law on the subject "Family law in the future" (Cadiz, 1995) the Group of Specialists on Incapable Adults (CJ-S-MI) was created and instructed "to study and prepare draft principles concerning the legal aspects of acts of incapable adults; to study and prepare draft principles concerning the role and

duties of representatives, carers, judicial and administrative authorities to assist and protect such persons”.

The object of this Recommendation, prepared by the CJ-S-MI is therefore to establish a set of legal principles in order to assist national legislatures in introducing or reinforcing laws on measures necessary to protect, by representation or assistance, incapable adults.

The Council of Europe Disability Action Plan 2006-2015 seeks to translate the aims of the Council of Europe with regard to human rights, non-discrimination, equal opportunities, full citizenship and participation of people with disabilities into a European policy framework on disability for the next decade.

The fundamental principles which govern this Action Plan are:

- non-discrimination;
- equality of opportunities;
- full participation in society of all persons with disabilities;
- respect for difference and acceptance of disability as part of human diversity;
- dignity and individual autonomy including the freedom to make one’s own choices;
- equality between women and men;
- participation of disabled people in all decisions affecting their lives, both at individual level and at society level through their representative organisations.

People with disabilities should have access to the legal system on the same basis as other citizens. Legal protection entails taking appropriate measures to eliminate discrimination against people with disabilities. An adequate legal and administrative framework is necessary to prevent and combat discrimination.

8. Protection of women against violence [Recommendation Rec (2002)5]

Violence against women is a topic that has still not been adequately explored. The emergence of these questions and social responses to them vary, moreover, across the Council of Europe’s member states. Some countries are just embarking on the process whereas others have over two decades of experience in attempting to develop new ways of combating violence. There are also differences between countries in terms of which particular forms of violence have been the focus of legal reform, assistance and media interest.

Violence against women occurs in all countries and all sections of society. It affects people of all ages, ethnic origins and religions, irrespective of their professional background or personal circumstances, or whether they belong to a particular national minority.

Furthermore, violence can take different forms: verbal, physical, sexual, psychological, economic or emotional. It can be perpetrated within the family or domestic unit, or in the wider community. Certain economic problems (causing unemployment or poverty), political crises and armed conflicts (triggering large-scale

migration) can have an aggravating effect, in that women, who often find themselves in precarious situations, become prime targets.

It is the responsibility and in the interest of states as well as a priority of national policies to safeguard the right of women not to be subjected to violence of any kind or by any person. To this end, states may not invoke custom, religion or tradition as a means of evading this obligation.

The Recommendation calls for member states to introduce, develop and/or improve where necessary, national policies against violence based on:

- a.* maximum safety and protection of victims;
- b.* empowerment of victimised women by optimal support and assistance structures which avoid secondary victimisation;
- c.* adjustment of the criminal and civil law including the judicial procedure;
- d.* raising of public awareness and education of children and young persons;
- e.* ensuring special training for professionals confronted with violence against women;
- f.* prevention in all respective fields.

CONCERNING ADULTS AND CHILDREN

1. Emergency measures in family matters [Recommendation No. R (91) 9]

This Recommendation contains 4 principles providing for emergency measures where the interests of children and other persons in need of special assistance and protection are in serious danger. The aim of the text is to cover a variety of types of cases relating to the family, to inform persons in need of the available powers and resources and to help them to obtain the necessary remedies.

In addition to providing protection and assistance where there is a serious danger, the existence of these emergency procedures may avoid or greatly reduce further proceedings by:

- deterring action which is likely to cause harm to the family,
- discouraging a party from making use of delaying tactics to prevent a court order being made,
- preventing disastrous irreversible consequences.

2. Family mediation [Recommendation No.R (98) 1]

Following the proposals of the 3rd Conference on family law on the topic "Family Law in the future" (Cadiz, 1995) the Working Party on Mediation and Other Processes to Resolve Family Disputes (CJ-FA-GT2) was set up in order to prepare an international instrument containing principles on mediation or other processes to resolve family disputes. The resulting Recommendation on family mediation aims to encourage, in member states, the introduction, promotion or strengthening of family mediation, a process to resolve family disputes in a consensual manner, seeking to reduce conflict in the interest of all the members of the family.

3. Children's participation in family and social life [Recommendation No. R (98) 8]

The Recommendation sets out the principles for building policies that favour children's participation – by listening, discussing issues with them, accepting their views, and explaining when their views cannot be accepted. It underlines the need for children of every age, background and ability to have the chance to be heard by parents, schools and institutions. It also stresses the need for non-discrimination, non violence and tolerance to underpin policies for children.

4. Avoidance and reduction of statelessness [Recommendation No. R (99) 18]

The aim of this Recommendation is to help governments implement the provisions of the 1997 European Convention on Nationality (see IV,B 8.). According to this Recommendation each State should provide for its nationality to be acquired *ex lege* by children one of whose parents possess, at the time of birth, its nationality. Furthermore, it urges each State to ensure that children born on its territory acquire its nationality if they would otherwise be stateless.

5. Legal status of persons admitted for family reunification [Resolution (78) 33 and Recommendation Rec (2002)4]

The Recommendation recommends to governments to apply in their legislation and administrative practice principles on the following points:

- Residence status of family members;
- Autonomy of the family member's residence status in relation to that of the principal right holder;
- Effective protection against expulsion of family members;
- Equal access to the labour market, to education and to social rights for family members;
- Free movement;
- Political participation of persons admitted for family reunification;
- Acquisition of nationality.

B. CONVENTIONS

1. Convention for the protection of human rights and fundamental freedoms [ETS No. 5, Rome, 04.11.1950] and Protocols to the said Convention

This Convention protects fundamental rights and freedoms and sets up a mechanism, the European Court of Human Rights, capable of guaranteeing their respect.

A number of provisions are of particular relevance to the family and children, such as the right to respect for private and family life (Article 8 of the Convention), the right to marry and to found a family (Article 12 of the Convention), the right of access to the courts (Article 6, paragraph 1), the right of parents to ensure the education and teaching of their children in conformity with their own convictions (Article 2 of Protocol N°1). A

large number of the cases dealt with under the European Convention on Human Rights concern family matters (e.g. children born out wedlock, parentage, adoption, custody and access, children in institutions, legal aid in family matters, etc.), and as States are bound to give effect to the decisions of the Court of Human Rights, this has resulted in the improvement of the legal protection of the family, especially children, in member states of the Council of Europe. On the other hand, not only do the relevant provisions of this Convention cover children but also they may even bring proceedings themselves under the Convention.

2. The European Social Charter (Revised) [ETS No. 163 - Strasbourg 03.05.1996]

The European Social Charter [ETS 35 – Turin 18.10.1961] aims to protect social and economic rights. This Charter was revised in 1996 and the revised Charter entered into force on 1 July 1999. It now contains in a single instrument the rights of the 1961 Charter with a certain number of amendments, the rights of the Additional Protocol of 1988 as well as additional rights.

The European Social Charter contains numerous articles which provide social protection for the family [see in particular Article 7 (the right of children and young persons to protection), Article 8 (the rights of employed women to protection of maternity), Article 16 (the right of the family to social, legal and economic protection) and Article 17 (the right of children and young persons to social, legal and economic protection)].

3. The European Convention on the adoption of children [ETS No. 58 - Strasbourg 24.04.1967] and the Revised European Convention on the adoption of children (under preparation)

The aim of this Convention is to update and harmonise the laws of member states and to avoid conflict of laws where the adoption involves a transfer of the child from one State to another.

Under this Convention only a judicial or administrative authority can grant an adoption.

The Convention safeguards the child's interests by providing that the competent authority "shall not grant an adoption unless it is satisfied that the adoption will be in the interests of the child". The Convention also ensures that the parent or parents of the child freely consent(s) to the adoption.

The Convention deals with the conditions for adoption and the type of adoption. It contains provisions concerning the child's family name and nationality and deals with questions relating to succession and the disclosure of the identity of the child to other persons.

After adoption children are considered to be the legitimate children of their adopters and their ties with their natural parents are, in principle, broken.

However, due to the social and legal changes which have occurred in Europe

since the late 1960s, many member states of the Council of Europe have revised their laws on adoption with the consequence that certain provisions of the Convention became outdated over the years.

While the 1967 Convention is the main instrument of the Council of Europe in the field of adoption, there is a more recent, although legally non-binding instrument, which is the Parliamentary Assembly Recommendation 1443 (2000) on international adoption: respecting children's rights.

Albeit not as recent as the above, the European Convention on the Legal Status of Children born out of Wedlock (1975, ETS No. 85), which aims to assimilate the legal status of children born out of wedlock with that of children born in wedlock, supports the view that the 1967 Convention needs to be updated.

Furthermore, it was also important to reconsider the standards of the 1967 Convention in order to complement usefully the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption of 1993. The latter establishes safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for the child's fundamental rights as recognised in international law.

In view of the above a Working Party was established under the aegis of the Committee of experts on family law (CJ-FA) in order first of all to assess the feasibility of revising the 1967 Convention and later to prepare a revised text. The revised convention was completed in 2006 and has now been submitted to the Committee of Ministers for adoption.

4. The European Convention on the legal status of children born out of wedlock [ETS No. 85 - Strasbourg 15.10.1975]

This Convention seeks to assimilate the status of children born out of wedlock with that of children born in wedlock and also seeks to contribute to the harmonisation of the laws of States in this field. However, as not all Parties are able to achieve this objective immediately, the Convention provides for a system of reservations enabling Parties to work towards it gradually.

The Convention's main provisions relate to paternal and maternal affiliation, recognition, denial and contesting of paternity, the assignment of parental responsibilities and the children's succession rights.

Under this Convention both parents have the same obligation to maintain their children as if these children were born in wedlock. Children have the same right of succession in the estate of their parents and a member of their parent's family as if they had been born in wedlock.

5. The European Convention on recognition and enforcement of decisions concerning custody of children and on restoration of custody of children (the Custody Convention) [ETS No. 105 - Luxembourg 20.05.1980]

As child custody disputes between parents living in different European States have given rise to an increasing number of difficulties the Council of Europe has sought to provide a remedy by preparing a Convention dealing with the custody of children. The Convention recognises in its Preamble that the welfare of the child is of overriding importance in reaching decisions concerning custody.

The Custody Convention, which applies to children under the age of 16, will ensure:

- i. the recognition and enforcement of decisions relating to the custody of and access to children, and
- ii. the restoration of custody in the case of an improper removal of the child to another State.

An application may be made either directly to the Court or to the central authority of any contracting State.

According to the provisions of the Convention, each contracting State must appoint a central authority which will have, *inter alia*, the task:

- to receive applications and assist the applicant,
- to discover the whereabouts of the child,
- to transmit requests for information and to co-operate with other authorities.

These duties are carried out free of charge (including the legal representation of the applicant).

It should however be noted that the entering into force of the Brussels II Bis Regulation has caused that the number of cases resolved on the basis of the Custody Convention to decrease significantly in all member States of the European Union. The Custody Convention will nevertheless continue to be applicable in these States during a transitional period, but would with time eventually cease to have any relevance.

With a view to facilitating and harmonising the working of the Convention between States, the Convention provides that representatives of the central authorities appointed by the Contracting States should be invited to meet periodically within the Convention Committee on the Custody Convention (T-CC) in order to consider the application of the Convention.

6. The European Convention on the exercise of children's rights [ETS No. 160 - Strasbourg, 25.01.1996]

The Convention, which entered into force on 1 July 2000, aims at the protection of

the best interests of children. It contains a number of procedural measures designed to ensure that children's rights are respected and sets up a Standing Committee on the European Convention on the Exercise of Children's Rights (T-ED) to deal with matters arising from the Convention.

The text lists measures to promote children's rights in family proceedings before a court. The court of any person appointed to act on their behalf is given a number of duties to facilitate the exercise of children's rights. Children may exercise their rights - for example to be informed and to express their views, - either themselves or through other persons or bodies.

Family proceedings affecting children include custody, residence, access, questions of parentage, legitimacy, adoption, legal guardianship, administration of property of children, care procedures, removal or restriction or parental responsibilities, protection from cruel and degrading treatment, medical treatment. Each State must specify at least 3 categories of family cases to which the Convention will apply.

This legal instrument will furthermore help States to implement the provisions of the United Nations Convention on the rights of the child.³

7. The Convention for the protection of human rights and dignity of the human being with regard to the application of biology and medicine: Convention on Human Rights and Biomedicine [ETS No. 164 - Oviedo, 04.04.1997]

The Convention is the first international binding legal text aimed at protecting human beings against the possible misuse of new biological and medical techniques. Its basic aim is to safeguard fundamental rights and freedoms and the dignity and identity of the human person in this field.

It sets out a great number of major principles and rules which signatory states must undertake to recognise and incorporate into their domestic law. These principles concern the individual, the community and the human species. The text stipulates from the outset that the interest and well-being of humans must take precedence over the interest of society or science.

The Convention sets out, *inter alia*, the following major principles:

- individuals are provided with a strong protection in relation to research and during organ tissue removal for transplantation purposes; in particular, through very strict provisions, the Convention offers significant protect to persons not able to give their consent (such as children, persons in a coma or suffering from a mental disorder);
- interventions on the human genome are permitted only for preventive, diagnostic or therapeutic purposes. Such interventions must never be carried out with a view to modifying genetic characteristics capable of being passed on to descendants;

³Article 4 of the United Nations Convention on the rights of the child requires States Parties to undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the said Convention.

- the use of medically assisted procreation is prohibited in the choice of a child to be born except in the case of avoiding a serious gender-related hereditary illness;
- the creation of human embryos for research purposes is prohibited. When states permit research on embryos "in vitro", they must ensure adequate protection for the embryo.

The principles contained in this Convention, which entered into force on 1 December 1999, have been developed with the Additional Protocol on the prohibition of cloning human beings (ETS 168). This protocol was opened for signature on 12 January 1998 and has not yet entered into force. The Steering Committee on Bioethics (CDBI) is carrying out work in other specific fields such as the protection of embryo and human foetus, organ transplants, genetics and biomedical research.

In 2000, the Working Party on psychiatry and human rights (CDBI-PH), which also comes under the aegis of the CDBI, published a white paper for public consultation on the protection of the human rights and dignity of people suffering from mental disorder, especially those placed as involuntary patients in a psychiatric establishment. In the light of this white paper the group is currently preparing Guidelines to be incorporated into a preliminary draft Recommendation of the Committee of Ministers to member states to ensure the protection of the human rights and dignity of people suffering from mental disorder, especially those placed as involuntary patients in a psychiatric establishment

8. The European Convention on nationality [ETS No. 166 - Strasbourg, 06.11.1997]

The Convention embodies principles and rules applying to all aspects of nationality. It is designed to make acquisition of a new nationality and recovery of a former one easier, to ensure that nationality is lost only for good reason and cannot be arbitrarily withdrawn, to guarantee that the procedures governing applications for nationality are just, fair and open to appeal, and to regulate the situation of persons in danger of being left stateless as a result of state succession. It also covers multiple nationality, military obligations and co-operation between States parties.

The Council's new text represents a synthesis of recent thinking on this question in national and international law and is the first international text to do so. It reflects the demographic and democratic changes (in particular migration and state succession which have occurred in central and eastern Europe since 1989). It entered into force on 1 March 2000.

Some of the essential principles behind the text are:

- prevention of statelessness;
- non-discrimination: in regulating questions of nationality, states must avoid all discrimination on grounds of sex, religion, race, colour, national or ethnic origin, etc.;
- respect for the rights of persons habitually resident on the territories concerned.

9. The Convention on cybercrime [CETS No. 185 – Budapest, 23.11.2001]

The Convention is the first international treaty on crimes committed via the Internet and other computer networks, dealing particularly with infringements of copyright, computer-related fraud, child pornography and violations of network security. It also contains a series of powers and procedures such as the search of computer networks and interception.

Its main objective, set out in the preamble, is to pursue a common criminal policy aimed at the protection of society against cybercrime, especially by adopting appropriate legislation and fostering international co-operation.

Article 9 of the Convention on child pornography seeks to strengthen protective measures for children, including their protection against sexual exploitation, by modernising criminal law provisions to more effectively circumscribe the use of computer systems in the commission of sexual offences against children.

10. The Convention on contact concerning children [CETS No. 192 – Strasbourg, 15.05.2003]

Contact with children and the possible restrictions thereto, when these are considered necessary in the best interests of the child, are a major concern for the member states of the Council of Europe.

The inherent problems with respect to the exercise of contact give rise to significant disputes in many countries. Some parents are reluctant to grant contact while others are deprived of the possibility of obtaining or of maintaining any type of contact at all with their child. Disputes relating to contact are often long and painful for the parties concerned and raise problems as regards making, modifying and enforcing court orders relating to contact. Furthermore, the internationalisation of family relations and the difficulties created by geographical separation, which brings with it the application of different legal systems, different languages as well as cultural differences, illustrate just some of the problems encountered in transfrontier contact.

However, according to the case-law of the European Court of Human Rights "'respect' for a family life (...) implies an obligation for the State to act in a manner calculated to allow these ties to develop normally." (Eur. Court HR, Scozzari and Giunta v. Italie of 13 July 2000, A, par. 221).

The aim of the Convention is to improve certain aspects of the right of national and transfrontier contact and, in particular, to specify and reinforce the basic right of children and their parents to maintain contact on a regular basis. This right may be extended, if necessary, to include contact between a child and other persons than his or her parents, in particular when the child has family ties with such a person.

In this respect, the object of the Convention is to determine the general principles to be applied to contact orders, as well as to fix appropriate safeguards and guarantees to ensure the proper exercise of such contact and the immediate return of children at the end of the period of contact. It establishes co-operation between all the bodies and

authorities concerned with contact orders and reinforces the implementation of relevant existing international legal instruments in this field.

Non-member states of the Council of Europe may be invited by the Committee of Ministers to accede to this Convention.

11. Council of Europe Convention on the avoidance of statelessness in relation to State succession [CETS No. 200 – Strasbourg, 19.05.2006]

State succession can lead to the emergence of a large number of stateless persons. The treaty therefore builds upon the European Convention on Nationality (ETS No. 166) by developing more detailed rules to be applied by States with a view to preventing, or at least reducing to the extent possible, cases of statelessness arising from State succession.

In particular the convention advocates the avoidance of statelessness at birth and that its application is based on the principle of non-discrimination.

12. Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse [CETS No. 201- Lanzarote, 25.10.2007]

The Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse represents a major advance in the field of child protection.

This new Convention is the first instrument to establish the various forms of sexual abuse of children as criminal offences, including such abuse committed in the home or family, with the use of force, coercion or threats.

In addition to the offences traditionally committed in this field – sexual abuse, child prostitution, child pornography, children’s forced participation in pornographic performances - the text also addresses the issue of “grooming” of children for sexual purposes and “sex tourism”.

The Convention was opened for signature at the 28th Conference of European Ministers of Justice in Lanzarote on 25 and 26 October 2007.

V. CURRENT WORK ON FAMILY LAW UNDER THE COMMITTEE OF EXPERTS ON FAMILY LAW (CJ-FA)

Introduction

Much of the work which has been carried out on family law within the Council of Europe has been prepared by the Committee of experts on family law (CJ-FA). Regrettably the work of the CJ-FA was interrupted from 2003 until 2006 for budgetary reasons. However the Action Plan adopted at the Third Summit of Heads of State and Government held in Warsaw in May 2005 had identified family law and, in particular, the protection of children, as priority areas for the future work of the Council of Europe. For this reason resources were allocated for the CJ-FA to restart its work bearing in mind the Council of Europe’s new priorities.

Under the authority of the European committee on legal co-operation (CDCJ), the Committee of experts on family law (CJ-FA) is instructed to strengthen the legal protection of children and to promote an area of common legal standards in the field of family law throughout Europe.

The CJ-FA has already prepared an important number of international legal instruments (conventions or recommendations) concerning family law, especially relating to the protection of children.

In addition, the Convention Committee on the Custody Convention (T-CC) and the Standing Committee of the European Convention on the exercise of children's rights (T-ED) hold regular meetings to deal with their specific fields and in particular the implementation of their respective conventions in member states.

A. CURRENT WORK

At the present time the CJ-FA is entrusted with the following tasks taking into account the Action Plan of the Third Summit of the Heads of State and Governments, in particular Chapter III, item 2 concerning the need for "Building a Europe for Children":

- i. draw up a recommendation with an explanatory memorandum on the topic of missing persons and the presumption of death;
- ii. draw up a recommendation with an explanatory memorandum on the topic of incapable adults and self-determination;
- iii. prepare a feasibility study concerning the preparation of a recommendation on the rights and legal status of children being brought up in various forms of marital or non-marital partnership and co-habitation and make proposals concerning the possible follow-up to be given to the study;
- iv. prepare, in connection with the plenary session of the CJ-FA in 2009, a European Conference on Family Law to discuss inter alia the topic addressed under iii and family law matters related to child-friendly justice;
- v. encourage the implementation of recommendations and the signature and ratification of conventions in the field of family law.

The tasks under i. and ii. are currently being carried out by two working parties: the Working Party on missing persons (CJ-FA-GT1) and the Working Party on the legal protection of incapable adults (CJ-FA-GT2).

Furthermore a European seminar on the protection and promotion of children's rights took place on 6 and 7 December 2007. This seminar, which took place in Kiev (Ukraine), aimed to raise awareness of the international standards regarding the protection and exercise of children's rights, exchange best practices concerning their implementation and identify needs for expertise in the accession/implementation

process.

On the occasion of the Swedish chairmanship of the Committee of Ministers and with the support of the Nordic Council of Ministers, the Council of Europe and the Swedish Government is jointly organising a conference, in Stockholm, to be held from 8-10 September 2008 on the theme of "Building a Europe for and with children – Towards a Strategy for 2009-2011". The conference is gathering representatives from governments, international organisations and institutions, NGOs and professional networks, parliamentarians, local authorities, ombudspersons, judges and children's lawyers as well as young people. Three technical seminars are being held on the first day followed by high level plenary sessions on days two and three.

The objectives of Seminar No. 3 – Towards European guidelines on child-friendly justice, co-organised by the Directorate General of Human Rights and Legal Affairs of the Council of Europe and the Swedish Ministry of Justice, are to:

- share the reports prepared by CoE consultants on child friendly justice;
- discuss the implementation of standards related to children and justice;
- exchange experiences and showcase best practices.

This will pave the way towards the future drafting of comprehensive Guidelines on child-friendly justice, which assist member states in ensuring that children have child-friendly access to justice.

B. RECENT WORK

As far back as 1977, during the first European Conference on family law, which took place in Vienna, the topic of adoption was already discussed under: "Measures to integrate children in a new family (legitimation, affiliation, adoption, fostering of children, etc)". In the conclusions of this Conference, it was stated that "The Conference proposed that the Council of Europe should consider: i. the re-examination (whether in the context of the European Convention on the Adoption of Children or otherwise) of certain topics, notably: - the consent of parents, - the revocability of adoption, - the alternatives to "adoption plénière", and adoption after death...".

Furthermore, the social and legal changes that have occurred since the 1960s as well as the newly available medical techniques have contributed to European States revising their existing laws and drafting new ones in order to meet the needs of a changing society.

For instance Sweden denounced the *European Convention on the adoption of children* in July 2002 owing to a Swedish law which allows homosexual couples living within the framework of a registered partnership to be considered for the purposes of a possible adoption.

At its 35th meeting in 2002 the CJ-FA proposed that the CDCJ entrust it with examining the 1967 European Convention on the Adoption of Children (ETS No. 58) with a view to reviewing and updating this Convention as many of its provisions were outdated and contradictory to the case-law of the European Court of Human Rights. Following the approval of the CDCJ, the CJ-FA established a Working Party in early

2003 with the task of producing a report containing detailed proposals for the revision of the 1967 Convention in the light of the replies received from 23 member states and from the International Social Service (ISS) to its questionnaire on adoption. This final activity report was presented to the CDCJ in 2004 which invited the Working Party to continue its work and start the drafting of a revised Convention on the adoption of children on the basis of the proposals contained in the report. However due to budgetary restraints the meetings of the Working Party were temporarily postponed.

At its plenary meeting in March 2006, in accordance with the Action Plan of the Third Summit of Heads of State and Government, the CDCJ stated that funds were now available for the work of the CJ-FA and the Working Party to continue and underlined that the Committee of Ministers also supported this work. The CDCJ stressed that the revision of the Convention on Adoption of Children was a priority, recommending adoption of this revised Convention in 2007.

The Working Party on adoption thus met twice in 2006 when it drafted the revised text of the Convention and its explanatory report on the basis of the final activity report.

The aim of the revised Convention, which is complementary to the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption of 1993, is to harmonise the substantive law of the member states by setting minimum rules on adoption. The Contracting Parties are of course free to go further by providing more favourable conditions than those set out in the revised Convention. The standards laid down in the proposed text of the new Convention go further than those contained in the 1967 Convention as they meet the requirements of modernity and are in line with the case-law of the European Court of Human Rights.

The paramount consideration of the Convention is the principle of the best interests of the child.

The draft Convention on the adoption of children (revised) was approved by the CDCJ in February 2007 and adopted by the Committee of Ministers in May 2008. The convention will be opened for signature in November 2008, in Strasbourg, on the occasion of the handover of the Swedish chairmanship of the Committee of Ministers to Spain. Several member states have already welcomed this development and expressed their readiness to ratify the convention in the near future.

In its 2006 meeting the CDCJ expressed the view that the area of family law was an appropriate sphere for initiating the evaluation and monitoring process due to many changes in legislation and practice of member states that took place in this field over the last 20 years. The Committee underlined that the development of the case-law of the European Court of Human Rights makes the need to review some of the legal instruments of the Council of Europe in family law even more evident.

The CDCJ decided that an independent expert should be engaged to evaluate the existing Council of Europe instruments in the field of family law with a view to presenting the result of this study for examination to the CJ-FA in November 2006.

Professor Nigel Lowe was commissioned to prepare a report containing an evaluation of the Council of Europe legal instruments in the field of family law. The report explores the Council's role in the field of family law and in particular how its work relates to that of other international bodies; the different types and purpose of the instruments produced and the question of ratifications and accessions of the Council's instruments. It also presented an evaluation of the Council's existing family law instruments and the relevant case-law of the European Court of Human Rights and its possible impact on the Council's future work.

Publication of this report has been authorised and the CDCJ has invited the Bureau to examine Professor Lowe's report and express its opinion as regards the results of this monitoring exercise with a view to enable a reflection about this and other possible methods the CDCJ could apply when monitoring the implementation of legal instruments within its fields of competence.

The last meeting of the Convention committee on the Custody Convention (T-CC) took place on 6-7 June 2006. The Committee is composed of the representatives of the Central Authorities appointed by the Contracting States who meet in order to study and facilitate the functioning of the Convention. The Committee has in the past met nine times, the previous meeting having taken place in February 2000.

At this meeting, the T-CC began to review the implementation of the Custody Convention on the basis of the replies to a questionnaire distributed to Central Authority representatives and the representatives from non-Contracting States. In particular it examined the issue of reservations in respect of the Custody Convention, in order to consider the grounds for maintaining existing reservations and the difficulties which might arise with regard to national law in Contracting States if they were to withdraw these reservations. The T-CC will also prepare an updated version of the information document for the attention of the Central Authorities which contains, in particular, details on internal procedures of Contracting States for implementing the Convention.

The first meeting of the Standing Committee on the European Convention on the Exercise of Children's Rights (T-ED) took place on 8-9 June 2006. The T-ED was set up under the provisions of the European Convention on the Exercise of Children's Rights (ETS. No.160) which entered into force on 1st July 2000. The Standing Committee is composed of the representatives of the Central Authorities appointed by the Contracting States who meet in order to study and facilitate the functioning of the Convention.

At this meeting the T-ED fulfilled its task of reviewing the problems relating to the Convention in accordance with Article 16 by holding an exchange of views on the developments in the field of exercising rights of children. The T-ED recognised that it was premature at its first meeting to consider possible amendments to the Convention in accordance with its Article 20.

C. FUTURE WORK

The CJ-FA will focus, for the years 2008-2010, on modern challenges such as problems of incapacity, missing persons, the elderly, the legal status of the child, forms of marital and non-marital partnerships and problems of other vulnerable groups.

The European Union has in the field of family law produced a number of instruments and links are being established in order to ensure complementarity of the work of the two organisations.

It is planned that a plenary meeting of the Committee of Experts on Family Law (CJ-FA) will take place in the first half of 2009 with a view to adopting the work achieved in 2008, and to identify future work for 2009-2010. In connection with the plenary meeting, a European Conference on Family Law will be prepared to discuss *inter alia* family law matters related to child-friendly justice and the legal status of children in today's families.

Furthermore, the new European Convention on the Adoption of Children (revised), will be promoted.

The rights of children although being protected by a number of international instruments should be promoted and their exercise facilitated. Practical obstacles often prevent access to justice or increase children's vulnerability as judicial mechanisms are not adapted to their specific needs. Provisions of the European Convention on the Exercise of Children's Rights (ETS No. 160) should serve as basis and be taken further. The aim for the future is the drafting of a legal instrument proposing solutions with a view to assisting member states in setting up child-friendly judicial systems, thus enhancing access to justice for children.

The exclusive work of the Council of Europe, at international level, in the field of nationality will continue. Focus will be put on the issue of statelessness, in particular in order to reinforce the legal provisions with respect to statelessness of children.

PART II:

**COLLECTION OF TEXTS
OF THE COUNCIL OF EUROPE
IN THE FIELD OF FAMILY LAW**

I - The Parliamentary Assembly of the Council of Europe

RECOMMENDATION 869 (1979)¹
on payment by the state of advances on child maintenance

The Assembly,

1. Bearing in mind that the year 1979 was declared the "International Year of the Child" by the United Nations ;
2. Acknowledging, on the one hand, that in recent years the member states of the Council of Europe have made considerable efforts to improve the situation of children born out of wedlock and to alleviate the difficulties which illegitimacy can entail ;
3. Aware, on the other hand, that in many cases under-age children are brought up by one parent, whether because they were born out of wedlock or because their parents are separated or divorced, and that in such cases the persons liable for their maintenance often do not live under the same roof as they do ;
4. Aware also that special protection is needed for children whose situation is aggravated by the attempts frequently made by such persons to evade their maintenance obligations ;
5. Noting that the remedies provided for by law in those cases often prove ineffectual, and that even attachment is not always a guarantee that the full amount of the maintenance will be recovered, and that it will be paid on the due date ;
6. Having regard to the fact that one of the parents must consequently not only assume sole responsibility for the child's maintenance, but also for its education, which is an unbearable burden ;
7. Believing it to be desirable, therefore, that the state should pay advances on maintenance due, so that, if the full amount of maintenance owing in respect of a minor child cannot be recovered on the due date, the state will guarantee its subsistence and then recover the sums advanced from the debtor ;
8. Recalling that the European Conference on Family Law, held in Vienna in September 1977, proposed that the Council of Europe should recommend states to take action with a view to intervention, by way of an advance payment or on any other basis when the father or mother or one of them fail to discharge their maintenance obligations, and that a committee of experts of the European Committee on Legal Co-operation has been instructed to examine this question,
9. Recommends that the Committee of Ministers should call on those governments of member states which have not already done so to bring their legislation into line with the principles approved by the Assembly and defined in the Appendix to this recommendation.

Appendix

Principles governing payment by the state of advances on child maintenance

1. Advances on maintenance due are normally payable in respect of any under -age child habitually resident in the country paying them.
2. Advances on maintenance are payable :
 - a. if an action to recover maintenance, instituted during the three months preceding the application for an advance and based on a writ of execution (judgment or agreement approved by the guardian), has failed, or
 - b. if a writ of execution cannot be obtained within three months of the instituting of proceedings to assert the child's right to maintenance, or
 - c. if the place of residence of the debtor is not known.
3. In the case of children born out of wedlock, advances may be paid without a writ of execution having been produced or before proceedings have been instituted to assert the child's right to maintenance.
4. The amount of the advance paid may not exceed the sum decided on in the writ of execution, and shall at least be equal to the subsistence level laid down in the national legislation.
5. The application for an advance may be filed by the child's legal representative, by the person who has custody of the child, or by the child himself.
6. The child's legal representative and the person who has custody of the child should, as soon as they have knowledge of it, inform the state of any new ground for reducing the advances or ceasing payment thereof ; anyone who fails to respect this rule may be required to refund any advance paid needlessly.
7. The grant of advances does not release the maintenance debtor from his obligations under family law.
8. The advances are conditional on surrender to the state of the equivalent amount from the child's estate.

[1]. *Text adopted by the Standing Committee, acting on behalf of the Assembly, on 28 June 1979.*

See Doc. 4321, report of the Legal Affairs Committee.

**RECOMMENDATION 874 (1979)¹
on a European Charter on the Rights of the Child**

The Assembly,

1. Taking into account the reports of its Committee on Social and Health Questions on the legal position of the child and commercial exploitation, on child labour and medical care and on child abuse (Docs. 4376 and 4387) ;
2. Recalling its Recommendation 561 of 1969 on the protection of minors against ill-treatment and noting with satisfaction that the Committee of Ministers has borne in mind the guidelines set out in that recommendation in the intergovernmental work of the Council of Europe ;
3. Recalling the European Convention on Human Rights and the European Social Charter ;
4. Bearing in mind the United Nations Declaration on the Rights of the Child, of 20 November 1959;
5. Welcoming the decision of the United Nations to proclaim 1979 the International Year of the Child (IYC) and noting with appreciation the programmes initiated in developing countries by specialised United Nations agencies such as UNICEF ;
6. Expressing the earnest hope that IYC and the subsequent efforts will promote the legal protection of children, enhance awareness of their problems and needs and improve their living conditions in all regions of the world ;
7. Emphasising that a society's vitality depends on the possibilities it offers the younger generations for growth and development in safety, self-realisation, solidarity and peace ;
8. Aware of the fact that the vast majority of children are loved and cared for and also aware of the fact that the children in member states of the Council of Europe enjoy a better fate than those in developing countries, whose problems for daily survival, food and shelter are still acute ;
9. Convinced that there is still need for improvement of the children's situation also in Western Europe, in particular where there is poverty and social injustice ;
10. Convinced that it must stress once again, on the occasion of the International Year of the Child, the importance of safeguarding children against abuse ;
11. Considering that physical and psychological maltreatment of children is one of the most abhorrent abuses which takes place in any country ;
12. Considering that abuse should not be taken as solely physical punishment inflicted upon children by parents, guardians or custodians but as a wider problem covering all physical and emotional ill-treatment, neglect and also denial of love and affection ;

13. Considering that all member governments should give priority to legislation safeguarding children against abuse from parents or legal guardians, including the possibility in severe cases of removing the abused child from the custody of the abuser ;

14. Bearing in mind the exposed situation in general of children, the existing exploitation of children and the sharp increase in the hard pornography industry, and taking into account that this industry represents a particularly vile way of profit-making ;

15. Convinced that the public display of violence, criminality and terrorism in the mass media constitutes a permanent danger for youth ;

16. Considering that there are in Europe too many families living in a state of extreme poverty, and that children of the fourth world more than others suffer from the lack of food, medical care, social provision and the inadequacy of the education system,

17. Recommends that the Committee of Ministers take without delay appropriate steps for the creation of a European Charter on the Rights of the Child which should be designed to give the maximum assistance to parents to fulfil their grave responsibilities, and take into account, *inter alia*, the following principles and guidelines :

I. General principles

a. Children must no longer be considered as parents' property, but must be recognised as individuals with their own rights and needs ;

b. Government policies and programmes in member countries must take into account the importance for children of love and affection as much as their need for material assistance ;

c. By ensuring the schooling of all children, and in particular of the most deprived children, educational programmes and upbringing in general in member countries should aim at :

- international solidarity and peace,
- education for democracy,
- co-operation and equality,
- equality of rights and of opportunities between sexes.

II. The legal position of the child

a. The rights of children in their environment should be safeguarded by creating for this purpose an official authority at community level ;

b. The children's legal status in family and institutions ought to be co-ordinated and better unified ;

c. The concept of "parental authority" must be superseded by "parental responsibility", and by a clear description of children's rights as individual family members ;

d. The children's legally defined rights to their own legal voice (official advocate) in cases of conflicts between parents, such as divorce and separation proceedings, must be improved, and based upon the principle that the interests of the child shall be regarded as paramount ;

e. It should be confirmed that children, in time of war, should be given appropriate protection as provided by the Geneva Conventions of 1949 for the protection of victims of war.

III. *Child abuse*

a. Education for parenthood should be given during the last years at school both for boys and girls ;

b. Consideration should be given to the needs of children whose mothers go out to work ; where economic conditions force a mother to work to support her family, subsidised help should be available, such as local authority day care centres ; and society should offer assistance so that one of the parents, when he or she so wishes, can devote himself or herself exclusively to the care and upbringing of the children without being subject to economic constraints ;

c. Teachers and others in regular contact with children who often recognise that the family is going through stress should alert social services ;

d. Legal provisions should encourage professionals connected with child care to contact social authorities when suspicion of abuse against children arises, and also encourage others to contact welfare authorities in such cases ;

e. Steps should be taken in order to improve the co-operation between officials of all groups connected with child care, such as school teachers, nursery school teachers, psychologists, social workers, lawyers and police officers with regard to child abuse ;

f. In the light of the importance of early diagnosis, existing knowledge on child abuse should be included as a compulsory part of the training for all groups of personnel dealing with children in all member countries.

IV. *Prostitution and pornography*

a. The fostering of healthy and responsible attitudes to sexual behaviour by providing objective information on family, contraception and venereal diseases should be encouraged ;

b. Particular attention should be paid to any connections between child prostitution and organised crime and narcotics, and to the fact that a liberal attitude towards the so-called "soft" drugs may have heavy negative consequences (see Recommendation 609

of the Assembly) ;

c. Strict laws and regulations should be adopted to abolish child pornography, and such laws and regulations should be harmonised among member states.

V. Child labour

Child labour, which is on the increase despite the persisting unemployment in member countries, must be regulated in a manner that protects the child against exploitation, against dangers to health and against practices which restrict its proper education and its physical, moral and mental development, by adopting in particular the following legal criteria :

a. Prohibition of full-time work under the age of 16 must become the objective in all member states and achieved within the next four years, and in the meantime all member states should accept and implement Article 7 of the European Social Charter fixing the minimum age for admission to employment ;

b. The so -called "occasional work" or work in family businesses must be strictly regulated and must not interfere with the normal schooling and normal development of the child ;

c. European standards for child labour minimum age requirements should also apply to European companies functioning abroad ;

d. As parents are primarily responsible for child labour, the competent public authorities should inform the parents regularly of the existing legislation, risk and consequences of child labour.

VI. Social and medical protection

a. The rights of every child to life from the moment of conception, to shelter, adequate food and congenial environment should be recognised, and national governments should accept as an obligation the task of providing for full realisation of such rights ;

b. The right to adequate care, including effective measures against disease and accidents, and adequate medical attention should be ensured ;

c. All member governments should establish systems of obligatory free medical examination of children ;

d. Due attention should be paid to protection against abuse of drugs, smoking and alcohol, and advertising for these products in broadcasting ;

e. The right of handicapped children to be properly looked after and to be given adequate training and education should be guaranteed ; urgent attention should be given to the problem of the child kept in long-stay hospitals ; the organisation of voluntary visiting schemes should be considered, using media publicity and other methods.

VII. *Sports*

a. It should be ensured that high performance sports remain a voluntary undertaking, that no coercion of any sort be indulged in and that human dignity be respected at all times ;

b. To reduce health hazards and educational disadvantages, regulations should be introduced in training methods and training periods ;

c. Supervision should be exercised on the use of certain drugs which can prematurely stop growth or affect sexual development ; drug detection tests during competitions ought to be increased ;

d. The possibility for handicapped children to participate in sporting activities should be improved ;

18. Further recommends that the Committee of Ministers consult the Parliamentary Assembly on the content of the proposed European Charter on the Rights of the Child.

[1]. *Assembly debate* on 3 and 4 October (9th and 10th Sittings) (see Doc. 4376, report of the Committee on Social and Health Questions).

Text adopted by the Assembly on 4 October 1979 (10th Sitting).

RECOMMENDATION 1065 (1987)¹
on the traffic in children and other forms of child exploitation

The Assembly,

1. Considering that children have the right to be brought up in a secure and humane way, and that society has an obligation to protect them and look after their interests ;
2. Appalled by the international trade in children for such purposes as prostitution, pornography, slavery, illegal adoption, etc. ;
3. Referring to its Recommendation 1044 (1986) on international crime, in which it recommends that the Committee of Ministers invite the governments of member states to co-operate in a study of and action against the trade in children ;
4. Considering that children have the same right as all human beings to enjoy an environment which affords them security, health and physical integrity, and that they must be treated humanely, that society has a duty to provide them with protection, to monitor observance of their rights and to afford them equality of opportunity ;
5. Bearing in mind its Recommendation 874 (1979) on a European Charter on the Rights of the Child, covering a number of aspects ranging from legal status to medical and social protection ;
6. Considering that it is essential that member states, as a matter of urgency, take the following measures :
 - a. sign and ratify, insofar as they have not yet done so, the following conventions :
 - i. the Convention for the suppression of the traffic in persons and the exploitation of the prostitution of others (United Nations Treaty Series No. 1342, opened for signature at Lake Success, New York, on 21 March 1950) ;
 - ii. the European Convention on the Adoption of Children (1967) ;
 - iii. the Hague Convention on jurisdiction, applicable law and recognition of decrees relating to adoption ;
 - iv. Convention No. 138 of the International Labour Organisation, on the minimum age for employment ;
 - v. the European Social Charter, with particular reference to Article 7 concerning the right of children and adolescents to protection ;
 - b. support in the United Nations General Assembly the draft declaration on social and legal principles relating to the protection and welfare of children, with special reference to foster placement and adoption, nationally and internationally ;

c. seek safeguards and improve all practices in the case of international adoptions, *inter alia* :

i. by the elaboration of a code of conduct and guidelines for individuals and agencies proposing to undertake the interstate movement of unaccompanied minors ;

ii. by regulating that, in interstate adoption, placements should be made through competent authorities or agencies, with the application of safeguards and standards equivalent to those existing in respect of national adoption ;

iii. by regulating that in no case should the placement result in improper financial gain for those involved ;

d. promote and encourage a wide-ranging campaign of public information concerning the sale of and traffic in children, and the exploitation of child labour ;

e. inform educators and youth of the rights of the child, and incorporate human rights education in school curricula at all levels ;

f. promote the undertaking of judicious research programmes at national and international levels to analyse the forms, conditions and structures of the sale and traffic of children ;

g. enact strict laws and regulations to combat child pornography and harmonise member states' relevant legislation ;

h. promote and pursue a policy directed at meeting the needs of abandoned and street children ;

i. condemn any policy of commercial and industrial competition based on exploitation of child labour, and ensure that the activities of national and international agencies working in the field of development are designed in such a way as to have a positive effect on the rights and interests of children throughout the world ;

j. take measures to guarantee children working in conformity with Article 7 of the European Social Charter decent living and working conditions ;

k. increase public surveillance of such children, for instance by improving the labour inspectorate, appointing *ombudsmen* to protect their rights, providing for education and training in the workplace, and introducing additional welfare measures concerning their health and diet,

7. Recommends that the Committee of Ministers instruct the European Committee on Crime Problems (CDPC) to study the traffic in children and other forms of exploitation of children as a priority matter in the light of the proposals made above.

[1] *Assembly debate* on 6 October 1987 (15th Sitting) (see Doc. 5777, report of the Legal Affairs Committee).
Text adopted by the Assembly on 6 October 1987 (15th Sitting).

RECOMMENDATION 1071 (1988)¹

on child welfare - Providing institutional care for infants and children

The Assembly,

1. Considering that, having regard to that part of the European Social Charter concerning children's environment, all children should have the right to care provisions which complement the care they receive in their own families ;
2. Having noted the development of alarming family trends, namely the rise in the number of illegitimate children, single-parent families and divorces ;
3. Noting that inadequate provision of institutional child care is partly responsible for the increase in juvenile delinquency, and that the risks of a breakdown in the social relations between parents and children are now very great ;
4. Considering that the principles of equal opportunities cannot be respected while excessive disparities in the material conditions of child care persist ;
5. Wishing to see recognition given to the enormous efforts made by those professionally involved in the care of young children to encourage development of their full potential ;
6. Noting that physical and mental well-being is essential for satisfactory child development ;
7. Drawing attention to the cost to society of inadequately providing for the care of young children ;
8. Recognising the right of all children to care provisions which complement those made by their own families, the duration of such additional care to be assessed in relation to the specific needs of the children,
9. Recommends that the Committee of Ministers invite the governments of member states :
 - a. to set up, in the context of European co-operation, a permanent body to :
 - i. assess and monitor progress with the decompartmentalisation of services and government departments dealing with child welfare ;
 - ii. promote the introduction in every country of a specific policy for child care in and outside the family ;
 - iii. speed up consultations with a view to preparing a charter of children's rights ;
 - b. to make plans to set up administrations (ministries or departments) which could one day propose guidelines for common action on the care of young children, the training

of child-care staff and the harmonisation of their status in order to provide conditions that enable families to raise their children properly ;

c. to draw up a list of requirements to be met, depending on the number of children born each year, the number of children receiving institutional forms of care complementing family care and the number of different modes of care and requirements within the family-supporting measures existing in Europe ;

d. to increase the sums devoted by each government to research on early childhood, and to all public campaigns about children organised by official associations which have undertaken the task to protect children's rights in society ;

e. to set up one or more European pilot projects on the care of children under 3, based on management by child-care staff and parents ;

f. to urge local, regional and national authorities to reconsider budgetary priorities, in order to lay down guidelines for a policy on the care of young children at their respective levels ;

g. to assess local policies regularly ;

h. to guarantee all children the right to education regardless of the resources of their families, for example through free education or education allowances ;

i. to break down barriers between the various local, regional or national services or administrations responsible for particular aspects of child welfare (health, environment, architecture, care provisions, protection of mothers, etc.) ;

j. to support financially innovative forms of child care which take account of children's specific physical and psychological needs ;

k. to set up an information programme for parents and child-care staff on children's specific needs and the appropriate care conditions for the development of their full potential, the aim of which would be to publicise innovations made by certain families and the type of resources made available to them by local authorities ;

l. to hold, at the Council of Europe's initiative, a European conference on children, to be attended by the various specialists involved in child care (parents, teachers, representatives of innovatory bodies and government departments, lawyers, etc.), with a view to defining society's aspirations with regard to child care, children's rights and the financing of children's specific needs.

[1] *Text adopted by the Standing Committee, acting on behalf of the Assembly, on 23 March 1988.*
See Doc. 5854, report of the Social and Health Affairs Committee.

RECOMMENDATION 1074 (1988)¹
on family policy

The Assembly,

1. Noting the profound changes which have occurred in family structures over recent decades, characterised by greater life expectancy, a sharp drop in the birth-rate, a decrease in the number of marriages and remarriages, an increase in the divorce rate, a proliferation of singleparent families, an increase in other forms of communal life such as cohabitation, and the evolution of the role of women ;
2. Observing that other factors, such as alterations in working conditions, the persistence of pockets of structural poverty, the increase in unemployment, illicit drug use, violence and delinquency, and economic migration, have increased tensions within the family ;
3. Emphasising none the less that the family has stood up better than other institutions to economic, social and demographic upheavals and, in spite of everything, remains popular for millions of young people ;
4. Recognising that the changes which have occurred also have positive aspects such as the replacement of the former marriage-alliance by the marriage-partnership with an improved social, economic and intellectual balance between the partners and, consequently, give hope for the future ;
5. Believing that the family is still the place where human relationships are most intense and rich, and the best place for bringing up children and providing care for its elderly, lonely or sick members ;
6. Considering that the family with its daily problems and needs is essentially a concrete reality, that it shares in society's economic and cultural life, adapts and evolves with society and that, consequently, any concept of the family as frozen in time would be unrealistic ;
7. Convinced, similarly, that the role of the state with regard to family policy is not to give hard and fast replies based on ideology, but to create the circumstances necessary for the establishment of a family unit in which the individual can develop in safety, solidarity and respect for fundamental rights ;
8. Recalling that, in this respect, both the European Commission and the European Court of Human Rights have repeatedly held that, under the European Convention on Human Rights, the family life of both "legitimate" and "*de facto*" families has to be respected ;
9. Realising that any family policy today must face the new situation resulting from the emancipation of women and its impact on maternity, and must bear in mind two principles : first, the democratisation of the family which implies equality among its members and respect for the rights of each and, secondly, the exercise of free choice by the partners ;

10. Believing strongly that the integration of women in economic and professional life and the creation of a climate favourable for child-bearing and bringing up children are not irreconcilable objectives, provided that the value of housework and child-rearing is recognised ;

11. Convinced that, to be effective and coherent, specific family policy measures must be coordinated and complemented, particularly on the broader scene of social, fiscal and employment policies ;

12. Noting that certain sectors of modern life such as social security are in some cases based on an outmoded concept which seems unaware of women's new status, excludes divorce and perpetuates "indirect rights", while tax legislation in many countries continues to discriminate against married couples ;

13. Drawing attention in this context to its earlier work, particularly Recommendation 751 (1975) on the position and responsibility of parents in the modern family and their support by society, Recommendation 915 (1981) on the situation of migrant workers in the host countries, Recommendation 1051 (1987) on labour market flexibility in a changing economy, and Recommendation 1071 (1988) on child welfare—Providing institutional care for infants and children ;

14. Referring to the position adopted on the role of the family in the report by the Colombo Commission and by the Secretary General of the Council of Europe in his report on social cohesion ;

15. Noting the results of the 20th Conference of European Ministers responsible for Family Affairs, held in May 1987, endorsing one of its proposals, for a study on the causes of divorce and its effects on children, but regretting that the conference does not wish to co-operate with the Assembly ;

16. Welcoming the fact that the Council of Europe medium-term plan of activities includes several topics on the family, distributed among various sectors such as social, legal and cultural,

17. Recommends that the Committee of Ministers invite the governments of the member states to base their preparation of family policy on the following proposals :

A. Legislation

i. To affirm the pressing need for a general coherent family policy for all families, and to enact laws to ensure its application ;

ii. To bring into force national and international legal instruments to consolidate equality between the sexes in the family and the protection of children's rights and, for the latter, particularly by speeding up preparation of the United Nations draft convention ;

iii. To pay particular attention to the problems of spouses of different nationalities, such as transmission of nationality, residence permits, divorce and the custody of the

children ;

iv. To deliberate on questions such as adoption, artificial insemination and surrogate motherhood as they affect family life and particularly the interests of the child and, if appropriate, to prohibit certain practices ;

v. To revise criminal and civil legislation concerning violence in the family, and to encourage psychological and other measures of assistance to the victims and perpetrators of violence, without prejudice to the legal procedures concerning the latter ;

B. Working life

i. To strike a better balance between professional activities and family life, particularly by introducing greater flexibility for working time, part-time work and the age of retirement ;

ii. To ensure that "parental leave", which is widely accepted in principle, becomes a reality ;

C. Taxation

i. To abolish laws and regulations on the aggregation of family incomes, and to accept the principle of separate taxation for spouses ;

ii. To introduce a flat-rate child allowance for all children instead of tax reductions ;

iii. To introduce tax deduction for costs related to the care of children until they reach school age ;

D. Social security

i. To recognise the principle of placing a value on housework and education by persons who stay at home for the particular purpose of raising their children ;

ii. To examine the possibility of introducing a minimum guaranteed income to assist families in need ;

iii. To set up a system of individual rights rather than indirect rights because of the increased risk of family breakup ;

iv. To examine the possibility of crediting the periods spent on bringing up children or caring for other dependants (the elderly, the handicapped, etc.) to periods of insurance for the purpose of acquiring old-age and sickness benefits, and for calculating the amounts of such benefits ;

v. To ratify the European Convention on Social Security, if they have not already done so, and to ratify the revised European Code of Social Security as soon as it is adopted by the Committee of Ministers, since certain provisions of these instruments have an

impact on family welfare ;

E. Housing and urbanisation

i. To take into account the needs of young families with limited means, and to aim at improving the financing of housing for large families ;

ii. To enable children to develop in favourable housing conditions and a favourable environment, through a different approach to urbanisation with the aim of adapting the infrastructure oftowns to the needs of people ;

iii. To enable generations to live together if they so wish ; the return to the family of elderly persons would of course require social infrastructure in order to alleviate the tasks of families for daily needs ;

F. Education

i. To recognise that the prime responsibility for the upbringing of the child lies with his family ; this presupposes a permanent, constructive dialogue between parents and the education authorities ;

ii. To guarantee equality of opportunity for children, specifically through special measures for children from economically deprived homes, handicapped children, children of migrant workers, children from ethnic minorities and gifted children ;

iii. To set up a system, separate from fostering and adoption, which might be called educational sponsoring, to assist single persons in difficulty to bring up their children, and to facilitate adoption across borders ;

iv. To improve care structures for young children, and to adapt them to the needs of families, including particular categories who work at night ;

G. Consumption and information

To improve opportunities for family associations to express themselves as a group and as users of goods and services, by establishing local, regional and national consultation machinery ;

H. *Migration*

To grant migrant workers, by legislation and in administrative procedures, the right to have their families (wives and children) join them in the host country, for example by abolishing visa requirements for spouses and children who are minors.

[1] *Assembly debate* on 3 May 1988 (3rd Sitting) (see Doc. 5870, report of the Social and Health Affairs Committee, Rapporteur : Mr Pini).
Text adopted by the Assembly on 3 May 1988 (3rd Sitting).

RECOMMENDATION 1271 (1995)¹

on discrimination between men and women in the choice of a surname and in the passing on of parents' surnames to children

1.The Assembly recalls that a name is an element which determines the identity of individuals and that, for this reason, the choice of name is a matter of considerable importance. Continued discrimination between men and women in this area is therefore unacceptable.

2.Many countries have introduced legislative reforms in recent decades with the aim of gradually achieving equality between the sexes in respect of the legal system governing surnames. Other countries have, however, retained the traditional legal systems based on criteria which are often doubly discriminatory: discriminatory between mother and father and discriminatory in terms of whether the child is born in or out of wedlock. Accordingly, a determined effort needs to be made to ensure that the legislation of all Council of Europe member states is quickly brought into line with the major principles of equality.

3.The Assembly points out that the Committee of Ministers of the Council of Europe adopted a very explicit resolution in 1978 (Resolution (78) 37), which recommended, *inter alia*, that member states should eliminate all discrimination between men and women in the legal system governing surnames. It further points out that many Council of Europe member states have ratified the United Nations convention of 18 December 1979, Article 16 of which stipulates that all signatory states should take the necessary measures to eliminate all sexist provisions in respect of the right to choose a family name.

4.The Assembly is therefore surprised that no follow-up action has been taken by some Council of Europe member states on the Committee of Ministers' 1978 resolution. It is also surprised that those member states which are signatories to the international convention initiated by the United Nations in 1979 have not fulfilled their commitments.

5.Consequently, the Assembly recommends that the Committee of Ministers of the Council of Europe identify those member states which retain sexist discrimination and ask them to take the appropriate measures to:

i.implement strict equality between mother and father in the passing on of a surname to their children;

ii.ensure strict equality in the event of marriage with regard to the choice of a common surname for both marriage partners;

iii.eliminate all discrimination in the legal system for conferring a surname between children born in and out of wedlock.

6.The Assembly also recommends that the Committee of Ministers ask each member state which is a signatory to the 1979 United Nations convention and which has not

brought its legislation into line to specify whether it plans to do so, and if so, when and how.

1. Assembly debate on 28 April 1995 (16th Sitting) (see Doc. 7259, report of the Committee on Legal Affairs and Human Rights, rapporteurs: Mrs Err and Mr Masson).
Text adopted by the Assembly on 28 April 1995 (16th Sitting).

RESOLUTION 1099 (1996)¹
on the sexual exploitation of children

1. Viewing with profound indignation and sadness the crimes committed against children recently in Belgium, but also in several other European countries, the Assembly recalls that the sexual exploitation of children is an unacceptable violation of human rights.

2. These events, which have revealed the existence and development of organised paedophile networks involving young children and the horror of trafficking in children in Europe, have disclosed shortcomings and deficiencies in judicial and police co-operation in Europe.

3. The Assembly has issued constant reminders that children are vulnerable and "are in need of special assistance, care and protection" (Recommendation 1121 (1990)).

4. The Assembly recalls its Recommendation 1065 (1987) on the traffic in children and other forms of child exploitation, in which it urged the enactment of "strict laws and regulations to combat child pornography and harmonise member states' relevant legislation", and strongly calls on member states to combat child pornography in whatever form (publications, video, Internet).

5. The Assembly calls upon the member states of the Council of Europe to unite their efforts and their resources to combat child prostitution, trafficking and pornography, in order that the sexual exploitation of children may cease, and calls for increased international co-operation.

6. The Assembly welcomes the efforts currently being made to promote the cause of children and fully subscribes to the conclusions and agenda for action of the World Congress against commercial sexual exploitation of children, held in Stockholm from 27 to 31 August 1996.

7. The Assembly recalls that in its Recommendation 1286 (1996), it recommended to the Committee of Ministers that the work concerning child protection and children's rights be given absolute priority, and that a permanent multidisciplinary structure be set up, able to deal with all issues relating to children.

8. The Assembly recalls that in its Recommendation 1121 (1990) and its Opinion No. 186 (1995), it requested the Committee of Ministers to draft an additional protocol to the European Convention on Human Rights, on children's rights, in order to make them legally enforceable.

9. The Assembly asks the member states to support work on the drafting of an optional protocol to the United Nations' International Convention on the Rights of the Child, on child trafficking, prostitution and pornography.

10. The Assembly calls upon the member states not yet having done so:

i. to sign, ratify and implement the 1989 International Convention on the Rights of the

Child and the European Convention on the Exercise of Children's Rights;

ii. to sign, ratify and implement the relevant Council of Europe criminal law conventions (European Convention on Extradition and its protocols, European Convention on Mutual Assistance in Criminal Matters, etc.).

11. The Assembly recalls the need, stated in its Recommendations 1121 (1990) and 1286 (1996), to develop information programmes and preventive measures, and in particular:

i. to appoint a commissioner for children (ombudsman) or to create an appropriate structure in every country, at local or national level, to inform children their rights, counsel them and intervene on their behalf;

ii. to promote information campaigns for children and their parents, and also provide educational and psychological care for children who are victims of sexual exploitation.

12. The Assembly encourages the member states to reinforce punitive measures at national level and adopt criminal legislation on child prostitution without delay. It underlines especially the need:

i. to include in their criminal legislation the principle of extraterritorial prosecution and conviction for offences;

ii. to foresee a sufficiently long statutory limitation for the prosecution of offences against minors (at least twenty years, and a time-limit for starting proceedings that extends at least five years beyond the age of majority);

iii. to create the following new criminal offences, punishable by deterrent sentences:

a. the possession of pornographic material, such as videos, documents or photographs involving children;

b. the manufacture, transport and distribution of pornographic material showing minors;

c. the broadcasting and recording of pornographic images of minors;

iv. to enact legislation providing that all sexual offences involving children should be classified as serious offences; such offences should under no circumstances be included in a category of less-serious offences;

v. to harmonise, as far as possible throughout Europe, the treatment of sexual offenders, in particular concerning release on parole, psychological treatment and social monitoring;

vi. to incorporate into their legislation the principle that a minor under the age of 15 years cannot give her or his consent to sexual relations with an adult;

vii. to allow child protection associations and non-governmental organisations (NGOs)

to act as complainants in cases of sexual abuse of children.

13. The Assembly asks member states to take concrete measures to put an end to sex tourism, in particular to enable criminal and administrative measures to be brought against travel agencies and tour operators (withdrawal of licence, fines, etc.), and to deter those wishing to engage in sex tourism, through the screening of films on aircraft flying to the countries at risk, illustrating the serious harm caused to the psycho-social and physical development of sexually abused young people, and the handing-out of leaflets on the sexual exploitation of children to tourists as they leave their aircraft.

14. The Assembly also calls on member states to work in close co-operation with countries whose children and young people suffer sexual exploitation by nationals of the member states in order to combat sex tourism abroad.

15. Furthermore, the Assembly advocates that programmes of specific training for professionals working with children (teachers, judges, lawyers, etc.) be introduced in member states, and that specially trained units be set up by the police and in the courts to take care of minors who are victims of sexual abuse.

16. The Assembly asks member states:

i. to include in school curricula information on the potential risks facing children and the ways in which they may protect themselves;

ii. to call upon the media to help increase general awareness and to adopt appropriate ethical rules.

17. The Assembly observes that national action is limited and cannot be effective in combating exploitation and trafficking in organised networks, and calls upon the member states to reinforce transfrontier judicial and police co-operation in Europe; it fully supports the initiatives aimed at improving the Europol system.

18. The Assembly pays tribute to NGOs and organisations such as Unicef, End Child Prostitution in Asian Tourism (ECPAT), the National Children's Bureau (London), etc., who work to inform children and young people and to protect them from sexual exploitation, and fully pledges its commitment to co-operate and work with them.

19. Finally, the Assembly renews its proposal to create a European children's ombudsman, in the framework of the Council of Europe.

[1] Assembly debate on 25 September 1996 (28th Sitting) (see Doc. 7659, report by the Committee on Legal Affairs and Human Rights, rapporteur: Mrs Err).

Text adopted by the Assembly on 25 September 1996 (28th Sitting).

**RECOMMENDATION 1286 (1996)¹
on a European strategy for children**

1. In its Resolution 1011 (1993) on the situation of women and children in the former Yugoslavia, the Assembly urged all the states grouped together in the Council of Europe to subscribe to the principle of "first call for children", to recognise children's rights, their universality and indivisibility and to provide for their essential needs both in Europe and in the rest of the world.

2. The Assembly decided in Order No. 491 (1993) to develop, in co-operation with Unicef, a strategy for children up to the age of eighteen which at European level could serve as inspiration and guidance for policy-makers and all those who actively support children's causes in their respective activities. It would like to pay particular tribute to Unicef, without whose experience and expertise such a strategy would not have been possible.

3. The Assembly notes that the rights of the child are still far from being a reality in our own rich and developed continent of Europe and that children are often the first victims of armed conflicts, economic recession, poverty, and in particular budgetary constraints.

4. Accordingly, it is important for the Assembly that states should be helped to give effect, within their own national situation, to the commitments entered into under the United Nations Convention on the Rights of the Child, to promote a change in the way children, as individuals with rights, are viewed and also to encourage their active and responsible participation within the family and society.

5. Children are citizens of the society of today and tomorrow. Society has a long-term responsibility to support children and has to acknowledge the rights of the family in the interest of the child. Responding to children's rights, interests and needs must be a political priority. The Assembly is convinced that respect for children's rights and greater equality between children and adults will help preserve the pact between generations and will contribute towards democracy.

6. The Assembly recommends that the Committee of Ministers urge the member states of the Council of Europe:

i. to ratify the United Nations Convention on the Rights of the Child if they have not already done so, to withdraw any reservations made and to implement the convention in the letter and the spirit by reviewing and adapting their legislative and regulatory provisions;

ii. to ratify all the relevant Council of Europe conventions on the rights and protection of the child, in particular the recent European Convention on the Exercise of Children's Rights.

7. The Assembly also recommends that the Committee of Ministers invite the states grouped together in the Council of Europe to make children's rights a political priority by:

- i. adopting at national and local level a proactive childhood policy which seeks full implementation of the Convention on the Rights of the Child, which will consider the best interests of the child as a guiding principle of all action and which will anticipate situations instead of trying to deal with emergencies or problems that have already arisen;
- ii. making children more visible through the systematic collection of information, in particular reliable, detailed (by age and gender), comparable statistics which will make it possible to identify their needs and the issues which require priority political action;
- iii. adopting a comprehensive, consistent and co-ordinated approach to childhood policy, which will encourage multidisciplinary structures to be put in place at all deliberation and decisionmaking levels, in particular at ministerial level, and foster the creation of national coalitions of all relevant partners;
- iv. appointing a commissioner (ombudsman) for children or another structure offering guarantees of independence, and the responsibilities required to improve children's lives, and accessible to the public through such means as local offices;
- v. ensuring, especially at policy-making level, that the interests and needs of children are always duly considered and taken into account, for example by introducing practices such as the "child impact statement" which offers a way of determining the probable impact on children of any proposed legislative, regulatory or other measures in whatever field, for example, in the field of legal aid;
- vi. investing in children and giving them budgetary priority by allocating adequate and fair resources in relation to spending on the needs of the other sections of the population at all levels (national, regional, local);
- vii. guaranteeing the present level of their contributions and subsidies to the various national and international organisations involved in child care.

8. The Committee of Ministers should strongly urge these states:

- i. to guarantee, through explicit recognition in their constitutional texts or domestic law, children's civil and political rights, as well as their economic, social and cultural rights, as enshrined in the United Nations Convention on the Rights of the Child;
- ii. to guarantee to all children the right to free and high quality education for pre-school, primary and secondary education;
- iii. to inform children and also their parents of their rights by widely publicising and disseminating the text of the Convention on the Rights of the Child, by all possible means, including the use of the media and by introducing education on children's rights and responsibilities into the school curriculum from primary level onwards;
- iv. to encourage the media, notably visual, to promote children's right to a healthy and balanced development, and in particular in products intended for children, to

eliminate violence and to illustrate positive social values;

v. to inform children about the means and remedies available to them in the event of violation of their fundamental rights and, for example, to extend the provision of free help-lines, specialist advocates and child friendly judicial and administrative systems which recognise the claims of individual children for protection against all forms of abuse;

vi. to provide specific training in children's rights for all professionals who come into contact with children, including teachers, the various members of the judicial authorities, social workers, etc.;

vii. to enable the views of children to be heard in all decision-making which affects them, and to enable them to participate actively, responsibly and in a manner appropriate to their capacity, at all levels of society - in the family, in local communities, in schools and other institutions, in judicial hearings and in national government;

viii. to teach children how to act as responsible citizens, to encourage them to take an interest in public affairs and to reconsider the age at which young people can vote;

ix. to promote education for the prevention of racism, political and religious intolerance and violence and for the learning of tolerance and peaceful resolution of conflict;

x. to pay particular attention to the situation and the specific needs of immigrant and refugee children and minority and marginalised children;

xi. to emphasise to parents, families, teachers and all those involved directly or indirectly with children, as they develop into adulthood, that in a civilised society responsibilities and obligations go hand in hand with rights and privileges.

9. The Assembly also recommends that the Committee of Ministers invite these states to give credibility and consistency to the debate on children's rights by making it a reality outside

Europe by:

i. making a commitment to work towards ensuring that the provisions of the Convention on the Rights of the Child are upheld throughout the world, via all appropriate unilateral or multilateral measures to combat the exploitation of children and to protect them from the effects of armed conflicts;

ii. promoting international co-operation and in particular by increasing their aid to the developing countries to at least 0,7% of GNP and devoting at least 20% of their aid to basic social services which are indispensable for human development;

iii. adopting a more understanding common attitude to the repayment by these countries of the debt incurred with the international development aid organisations.

10. Finally, the Assembly recommends that the Committee of Ministers:

- i. set up, within the Council of Europe, a permanent multidisciplinary intergovernmental structure able to deal with all issues relating to children;
- ii. instruct it, as part of its terms of reference, to draw up an annual report on the state of Europe's children, giving a comprehensive account of the situation and an outline of positive achievements and serving as a measure of what else needs to be done to satisfy the requirements of the Convention on the Rights of the Child, and to submit this report to the Parliamentary Assembly; this report will be the subject of an annual discussion within the relevant Parliamentary Assembly committee;
- iii. involve other competent international organisations, in particular the United Nations Committee on the Rights of the Child, the European Parliament, Unicef, the various relevant non-governmental organisations, and indeed children themselves in the activities of this structure in the appropriate forms;
- iv. transmit the present recommendation to states grouped in the Council of Europe, to the aforementioned organisations and to the closing conference of the Multidisciplinary Project on Childhood Policies to be held in Leipzig in spring 1996.

[1] Assembly debate on 24 January 1996 (4th Sitting) (see Doc. 7436, report of the Social, Health and Family Affairs Committee, rapporteur: Mr Cox; and Doc. 7473, opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mrs Err).

Text adopted by the Assembly on 24 January 1996 (4th Sitting).

RESOLUTION 1121 (1997)¹

on instruments of citizen participation in representative democracy

1. A truly living democracy depends on the active contribution of all citizens. Their participation in political life and their co-operation within political institutions are thus a decisive factor for the smooth functioning of democratic institutions.

2. The poor rate of participation in legislative elections, as well as in referendums held in member states and, in general, citizen dissatisfaction with the functioning of pluralist democracies call for a debate on the phenomenon, which is hardly surprising since democracy is a permanent quest demanded by new circumstances and changing attitudes.

3. The causes of this phenomenon are many: the contrast between the complexity of political terminology and the simplification and dramatisation of media presentations of the issues at stake; the fact that information can be communicated instantly while politicians are assumed to be slow in reaching decisions; the fact that people do not understand the complexity of the problem and expect quick, apt solutions; the discrepancy between election promises and their implementation.

4. The anxiety generated by this state of affairs creates a need among citizens to participate more in political decision making with a view either to preventing a deterioration in their situation or to improving it.

5. The Assembly therefore considers that the opportunities for direct citizen participation in political life offered by the representative system must be enhanced to correspond more closely to citizens' aspirations.

6. A prior observation is necessary to prevent a misunderstanding, with potentially weighty implications, and which tends to set direct democracy against representative democracy. The harmonisation of mostly contradictory and conflicting needs of citizens or groups of citizens, dictated by the general interest, can be achieved only through parliamentary deliberations. The use of direct democracy must be regarded as a complement. Even in Switzerland, an exemplary country in the area of direct democracy, 95% of decisions are taken by parliament.

7. However, before developing forms of direct democracy - for example, interactive communication facilities on information networks and referendums - we must consider their viability and possible adverse effects.

8. Information facilities, however sophisticated, would not be able - at least not in the foreseeable future - to extend the bilateral dialogue between one elected representative and one citizen to a dialogue between one elected representative and a number of citizens; the electronic forum is not yet fully tried and tested.

9. The national referendum is written into the constitutions of representative democracies but varies from one country to another in terms of its objectives, its

subjects and its means of implementation. Referendums run the risk of becoming plebiscites when they are used by the executive to reinforce its own power.

10. This risk exists in democracies consolidated over time, particularly in those countries with large populations which are therefore more difficult to govern than small countries. The risk is even greater in new democracies which are therefore more fragile.

11. Implemented in relatively small communities for practical issues, regional and local referendums cause less concern and are recommended.

12. Nevertheless, the Assembly realises not only the drawbacks but also the positive aspects of consulting the electorate directly, such as the fact that it enables a minority of citizens to express their opinion and be heard by government and can stimulate a democratic debate either legitimising a decision taken by the government or approving a decision rejected by the government.

13. Abuse of referendums must not obscure their real aim which is to render representative democracy more participative and in so doing to consolidate it and to serve as an antidote to the current malaise undermining it.

14. The Assembly therefore believes that it is important to lay down parameters for referendums to ensure that, where they are held, they conform as far as possible to best practice and strengthen democracy and civil society.

15. Consequently, the Assembly invites the member states:

i. to improve their system of representative democracy by striking a balance between the exercise of responsibility of political power and the role of citizens in the decision-making process. Without such a balance, we will be unable to prevent either the erosion of confidence in the representative system or the rash use of frequent referendums which would make any long-term policy based on fundamental options random, ineffective or even impossible;

ii. to regard all subjects as suitable for being submitted to a referendum, with the exception of those which call in question universal and intangible values such as the human rights defined in the Universal Declaration of Human Rights and the European Convention of Human Rights, and the basic values of democracy in general and parliamentary democracy in particular;

iii. to take account in their thinking of the distinctions to be made between the subjects suitable for a referendum, the result of which is binding, and the subjects suitable for a consultative referendum, the result of which enables political leaders to improve their programmes and decisions;

iv. to make provision for referendums designed to repeal existing laws as well as for referendums offering the choice between various options;

v. to envisage rules to ensure that citizens are properly informed about all the issues

involved in the referendum and that questions and proposals are worded completely unambiguously;

vi. to limit the number of subjects per referendum to be held the same day in order to clarify the debates on the documents subjected to a vote and to help citizens to reach a decision;

vii. where appropriate, to create organs responsible for applying these rules and guarantee the independence of such organs;

viii. to lay down rules and guiding principles which, in order to prevent any misuse of the referendum:

a. enable a referendum to be set in motion by citizens, whereby the number of signatories should be fixed by each state in accordance with a threshold considered to be significant compared with the total electorate;

b. ensure that the referendum is preceded by a debate in parliament;

c. fix a quota for participation in the ballot which discourages abstentionism while guaranteeing a minimum rate of participation enabling the result obtained to be regarded as representative and valid;

d. enable the parliament to present its own alternative to any proposal by the citizens.

[1] Assembly debate on 22 April 1997 (11th Sitting) (see Doc. 7781, report of the Committee on Parliamentary and Public Relations, rapporteur: Mr Columberg).
Text adopted by the Assembly on 22 April 1997 (11th Sitting).

RECOMMENDATION 1336 (1997)¹

on combating child labour exploitation as a matter of priority

1. The Assembly notes the growing global concern over the economic exploitation of children. Such exploitation, though more prevalent and severe in many countries of Asia, Africa and Latin America, is also an important social problem throughout Europe.

2. The Assembly further notes the complexity of this issue, and the importance of taking this complexity into account when framing policy responses. Types of child work occupy a spectrum which runs from activities wholly beneficial to a child's health and development at one extreme, to gross exploitation at the other. Priority should be given to put an immediate end to the most intolerable forms of child labour - slavery and slave-like practices, forced or compulsory labour, including debt-bondage and serfdom, the use of children in prostitution, pornography and the drug trade, and their employment in any type of work that is likely to jeopardise their health, safety, or morals. There must be a special protection for girls and a total prohibition of work by the very young.

3. In developing countries and in certain European countries, poverty and social exclusion are among the main causes of child labour. Patterns of poverty and the strategies adopted by the poor to cope with poverty vary considerably between countries. There is a corresponding need for a countryspecific approach in order to address these problems effectively. There is a need to endorse explicitly the objectives of the International Labour Organisation (ILO) Convention No. 138 of 1973 concerning the Minimum Age for Admission to Employment, in order to abolish effectively child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the full physical and mental development of young persons. The minimum age for admission to employment should not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years.

4. Education has an important role in both the promotion and the prevention of child labour. Inaccessible or inappropriate education may push children into the workplace prematurely. Conversely, education which provides skills for future employment will encourage children to remain in school and so reduce more severe forms of exploitation. Many children combine school and work in spite of the difficulties involved. There is a need to provide relevant and flexible education for these working children. All children should benefit from free and appropriate education which, inter alia, would enable them to gain productive employment later in life.

5. Social advocacy has a crucial long-term role to play in raising awareness about child labour. The problem is often hidden and unrecognised, to the extent that the public may believe that the problem no longer exists. Trade unions, the media and non-governmental organisations have an important function in identifying and bringing to the public's attention problems of child exploitation. In this way political will for action can be strengthened.

6. Child labour is a pan-European issue. In European countries existing forms of

intolerable child labour include commercial sexual exploitation, sexual and physical abuse of child workers, exploitation of young domestic workers, child trafficking, employment of children for work under hazardous conditions, and problems of street children.

7. Roma/Gypsy minorities, legal or illegal immigrants and refugees suffer from particularly high levels of poverty and child labour. In the countries of central and eastern Europe in particular, the transition to a market economy, increasing poverty, and the restructuring of the welfare system have made economic exploitation of children more likely, and cases have been reported in many of these countries.

8. Child labour in Europe is inadequately documented. A first step must be to properly define the priority issues of child labour in each European country and to identify the priority problems for action through proper appraisal. The ILO offers expertise in rapid appraisal methodology for such assessments, which could form the first step in dealing with child labour within the European strategy for children, as proposed by the Assembly in its Recommendation 1286 (1996).

9. Where intolerable categories of child labour have been identified, plans of action to eliminate them are needed, through an integrated strategy of prevention, regulation and rehabilitation. Through its work on child survival and child rights, Unicef has acquired the necessary experience and the capacity to intervene at European level thanks to its network of national committees and its assistance programmes.

10. Policies towards child labour should be consistent with the principle of the best interests of the child. The regulation of child work, through legislation and inspection, is important in many countries in order to set standards for employers and underpin ways to monitor and promote adherence to these standards.

11. As far as international trade sanctions are concerned, the Assembly recognises the paramount importance of such fundamental human rights embodied in ILO conventions on child labour: it calls on the ILO to provide the necessary guidance on practical application, especially through technical co-operation and other appropriate measures. The Assembly, therefore, endorses the ILO proposal for the adoption by all states of a declaration advocating universally acknowledged principles and fundamental rights, which should be binding for all member states, irrespective of whether or not they have ratified these conventions.

12. Trade sanctions are effective only as a last resort in the struggle against exploitative child work, provided they are implemented on a multilateral (rather than unilateral) level and combined with other measures.

13. If properly designed and monitored, codes of conduct can be a useful way of improving employment practice without harming the interests of the children involved. European countries can best combat child labour outside Europe through international co-operation programmes which aim to help exploited children through well-designed programmes for rehabilitation and reform.

14. Accordingly the Assembly recommends that the Committee of Ministers call on all

member states to firmly combat the economic exploitation of children in Europe by:

- i. adopting a clear national policy and time-bound programme of action for that purpose, which should be comprehensive, coherent and co-ordinated, interdisciplinary and preventive, and by allocating the necessary resources to it;
- ii. undertaking systematic and action-oriented research on all areas regarding child labour;
- iii. reviewing national legislation to better enforce the protection of children and in particular to comply with the social standards set by the Council of Europe, the United Nations Convention on the Rights of the Child and the relevant ILO conventions, particularly the ILO Minimum Age Convention;
- iv. improving the efficiency of labour and school inspection services;
- v. a closer involvement and consultation of all interested partners, such as trade unions, employers, non-governmental organisations, the children themselves and their parents;
- vi. raising awareness in society as a whole of the impact of premature child work and by educating consumers to consider basic labour rights when buying products.

15. The Assembly also invites the Committee of Ministers to demonstrate at European level its political will to combat the economic exploitation of children:

- i. as a follow-up to the European strategy for children, by giving priority to:
 - a. an appraisal in each member state of the situation of child labour, in order to identify its most intolerable forms, analyse the causes and define proposals for ways in which these forms of exploitation might best be controlled;
 - b. the definition of a comprehensive European policy on child labour, taking account of social standards set by the Council of Europe and in order to comply therewith, in co-operation with the ILO, Unicef, relevant non-governmental organisations and the social partners, and in consultation with working children in order to ensure that their views are given due consideration;
- ii. by developing programmes of technical co-operation and aid, in particular for central and eastern European member states, in order to draft and improve national legislation and policy and organise or strengthen the labour inspection system;
- iii. by regularly asking those states concerned to review their legislation in order to ratify the European Social Charter and the revised Charter of the Council of Europe as well as the Additional Protocol providing for a system of collective complaints, in order to give the right to petition to nongovernmental organisations and associations for the protection of children in case of noncompliance.

16. Concerning child labour outside Europe, the Assembly calls on the Committee of

Ministers to recommend to member states:

- i. to apply multilateral trade sanctions only as a last resort against countries, in response to intolerable child labour practices;
- ii. to support, unilaterally or through international co-operation, integrated programmes to combat the most intolerable forms of child labour in the developing world, for example by member states of the Council of Europe providing increased resources to the ILO 's International Programme on the Elimination of Child Labour (IPEC);
- iii. to define and include in World Trade Organisation agreements social measures with positive incentives to encourage developing countries to ensure compliance with certain fundamental ILO conventions on minimum standards, such as elimination of forced labour and the minimum age for employment of children.

17. The Assembly also invites the Committee of Ministers to ask member states to participate actively in the elaboration and the implementation of the new ILO convention against the most intolerable forms of child labour.

1. Assembly debate on 26 June 1997 (22nd Sitting) (see Doc. 7840, report of the Social, Health and Family Affairs Committee, rapporteur: Mrs Belohorská).
Text adopted by the Assembly on 26 June 1997 (22nd Sitting).

Recommendation 1362 (1998)¹

Discrimination between women and men in the choice of a surname and the passing on of parents' surnames to children

1. The Assembly recalls Recommendation 1271 (1995), which condemns the maintenance by certain states of discrimination between men and women in the choice of a surname and the passing on of parents' surnames to children.

2. In its reply to this recommendation, the Committee of Ministers accepts that each country has its own legal system in this area, depending on "local customs and traditions", but stresses that these legal systems should not include any discriminatory provisions. In conclusion, however, the Committee of Ministers merely states that: "the maintenance of provisions discriminating between women and men with regard to the choice of a family name is not compatible with the principle of equality upheld by the Council of Europe. It is with this in mind that Parliamentary Assembly Recommendation 1271 (1995) has been transmitted to the governments of the Council of Europe member states."

3. The Assembly is therefore pleased to note the position clearly stated by the Committee of Ministers. It nevertheless takes the view that action must be taken on the basis of this position: it is not enough for the Committee of Ministers merely to transmit the recommendation to Council of Europe member states.

4. Notwithstanding the time which has passed, especially since the adoption, on 27 September 1978, of the resolution of the Committee of Ministers of the Council of Europe on equality of spouses in civil law, and of the United Nations Convention on the Elimination of All Forms of Discrimination against Women on 18 December 1979, some states have not even begun to move towards change in this area.

5. The Assembly therefore recommends that the Committee of Ministers ask each member state to advise it of the period within which it undertakes to comply with the principles of non-discrimination referred to above.

6. As in Recommendation 1271 (1995), the Assembly also recommends that the Committee of Ministers of the Council of Europe identify those member states which retain sexist discrimination and ask them to take appropriate measures:

i. to implement strict equality between mother and father in the passing on of a surname to their children;

ii. to ensure strict equality in the event of marriage with regard to the choice of a common surname for both marriage partners;

iii. to eliminate all discrimination between children born in and out of wedlock within the legal system with regard to the conferring of a surname.

1. Text adopted by the Standing Committee, acting on behalf of the Assembly, on 18 March 1998. See Doc. 7885, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mrs Err.

Recommendation 1371 (1998)¹
Abuse and neglect of children

1. The Council of Europe's purpose is to promote the rule of law and to protect the rights of individuals, as understood throughout the continent. A fundamental principle of this "European model" is the effective protection of the weakest members of society and, in particular, of children.

2. The Parliamentary Assembly draws attention to the considerable amount of work it has already carried out to strengthen the legal and social protection of children, and in particular to its Recommendation 1065 (1987) on the traffic in children and other forms of child exploitation, its Recommendation 1121 (1990) on the rights of children, and its Opinion No. 186 (1995) on the draft European convention on the exercise of children's rights.

3. The discovery of serious crimes committed against children and the existence of paedophile networks in Europe prompted a painful awareness of this problem and led the Assembly to hold an emergency debate in September 1996 and to adopt Resolution 1099 (1996) on the sexual exploitation of children.

4. However, dramatic new events lead the Assembly to propose strengthening the protection of children from serious and, it would seem, increasingly frequent abuse of their rights and of their physical and psychological integrity.

5. Sexual exploitation and abuse of children know no borders, be they geographical, cultural or social, and are afflictions requiring resolute action and genuine consultation and co-operation at European level.

6. It has to be said that the European Convention on Human Rights does not specifically protect the rights of children except where the courts have upheld them on grounds of the protection of family life. Similarly, the European Convention on the Exercise of Children's Rights, opened to signature on 25 January 1996, governs minors' access to the courts and judicial representation but contains no provisions on the substantive rights which might be granted children and legally safeguarded.

7. Europe still needs to develop a genuine culture of children's rights: children need specific protection because of their vulnerability and their less developed capacity to judge various risks which adults are able to assess, such as sexual abuse, rape, prostitution, pornography, incest or ill-treatment.

8. The horror provoked by various recent instances of sexual violence against children should not distract our attention from violence and ill-treatment within the family circle, from which tens of thousands of children suffer even from the earliest age.

9. The Assembly calls upon member states to incorporate the necessary protection against the specific dangers facing children into their national legislation. In particular, it believes that children must be afforded legal and social protection against:

a. paedophilia;

- b. exploitation for pornography;
- c. prostitution;
- d. incest;
- e. inappropriate criminal proceedings;
- f. repetition of offences of sexual violence against minors;
- g. abusive sterilisation;
- h. violence and mutilations of girls;
- i. abuse, including abuse within the family;
- j. refusal of necessary care;
- k. fraudulent actions with a view to adoption.

10. The Assembly, emphasising that the ill-treatment of children and especially ill-treatment of a sexual nature, is characterised by a high rate of recidivism, points out that, under the law of almost all Council of Europe member states, offenders are only considered as recidivists if the offences are committed on the territory of the same state; and that therefore persons who have been convicted in one state are not regarded as re-offenders if, after serving their sentence, they commit the same offence on the territory of another state, and thus are not subject to the more severe sentences imposed upon recidivists.

11. It also notes that many sexual offenders indulge in sexual abuse of minors abroad, thereby all too frequently escaping any judicial proceedings or convictions both in the country where such offences are committed and in the state of which they are nationals.

12. For all of the above reasons, there is a need to draw up a Council of Europe convention providing for the exchange of relevant information and making provision for previous convictions in one or more member states of the Organisation to be taken into account by national courts.

13. The Assembly therefore recommends that the Committee of Ministers ask the member states of the Council of Europe:

- a. to step up the fight against paedophilia:
 - i. by improving prevention, which presupposes special training for those professionally in contact with children. Persons convicted of paedophilia should be systematically excluded from such contact;
 - ii. by setting up a national file or register of final convictions for paedophile acts, which is accessible to national and foreign authorities;
 - iii. by arranging suitable medical and psychological treatment for offenders both during imprisonment and during whatever period is deemed necessary after release to prevent recidivism; this follow-up should include judicial supervision;
 - iv. by establishing effective legal co-operation throughout all Council of Europe member states, in particular by standardising the legal definition of paedophile offences in order to ensure punishment not just of rape but of all the physical and

psychological offences known to have a devastating effect on the equilibrium of children;

v. lastly, by establishing necessary procedures making punishment of this behaviour possible in cases where it is perpetrated in "closed communities" or sects, in some cases with the family's consent;

b. to combat the exploitation of children in pornography:

i. by following the same recommendations as those set out above for paedophilia, in particular in respect of magazines, films, cassettes and Internet sites;

ii. by establishing and incorporating into their domestic legislation a legal definition of this type of criminal behaviour which takes full account of the existence of the inalienable rights of minors to respect for their privacy and their image, including in relations with their family since the latter is not entitled to determine the enjoyment of this right;

iii. by refusing to draw a distinction between the private possession of pornographic pictures and trading in such pictures, since both kinds of behaviour entail denial of children's right to respect for their privacy and image. At most, this distinction may be reflected in a scale of penalties;

c. to combat child prostitution:

i. by stating unequivocally that prostitution of minors of under 15 years always constitutes rape or sexual abuse and that, even where money has been handed over, there is a presumption of violence since a child cannot be regarded as a consenting party;

ii. by organising conferences with the host countries of "sex tourism" so as to create a more general awareness that a growth in profits from this sector will result in the short and medium term in disastrous human and social costs, including the spread of Aids, the social exclusion of tens of thousands of young people and the growth of crime centred on procuring, etc.;

iii. by running training programmes for the social services, the police and the courts so that they can provide assistance and physical, psychological and occupational rehabilitation of the young victim;

iv. by limiting punishment to the clients and all those (brothel-keepers, travel agents and others) who promote child prostitution, make money from it and should accordingly be prosecuted, including within their own country, for aggravated procuring and complicity in rape;

v. by taking poverty into account as a factor in child prostitution, and therefore giving high priority in national aid budgets to improving education and care provision for children, especially girls who are traditionally subject to social discrimination, and devoting a higher proportion of GNP year by year to meet the United Nations targets for international aid, and within such aid giving high priority to education and care for

children;

vi. by recognising the extent of the growth of child prostitution in states which have recently converted to the market economy – since for children prostitution is merely a miserable means of survival, which damages their physical health and jeopardises their psychological equilibrium;

vii. by organising international judicial and police co-operation against child prostitution networks, in particular by promoting the exchange of information;

d. to reinforce the prevention and punishment of abuse, including within the family circle:

i. by concentrating primarily on prevention, establishing care and therapy for abusive families and providing medical and social follow-up for the child and his or her family;

ii. by helping to restore the self-image of mistreated children so that they do not in turn become abusive parents;

iii. by complementing the sexual education given at school with information about the responsibilities and constraints of very young parents involved in caring for new-born children and their needs;

iv. by arranging for a parent or family member suspected of abuse to be removed from the family home, pending the outcome of any investigations, rather than the child, or, in the interest of the child, by arranging for children who have been taken away from abusive families to be adopted by foster families rather than institutions and, in particular, encouraging the accommodation of siblings together in stable "children's villages", provided that none of the siblings is personally guilty of abusive conduct;

v. by training all professionals who work with children, as well as doctors and health care professionals, to detect abuse and any signs that may lead to a suspicion of physical or psychological violence;

vi. by establishing medical and social services in co-operation with schools so as to provide children both with an easily accessible ear and an initial place in which any physical traces can be detected;

vii. by making a single, free phone number generally available and making schoolchildren aware of this, so that they can contact qualified doctors or psychologists who would be authorised, where appropriate, to launch a medical and social procedure or even a judicial investigation;

e. to legislate against incest:

i. by giving a legal definition of sexual abuse within the family to make it possible to punish an offence whose seriousness has been ignored for too long;

ii. by organising appropriate staff training for the social services, the police and courts which takes account of the ambivalence which often surrounds such offences, by working to restore young victims' self-image;

iii. by promoting the exchange of experiences of family therapy;

f. to arrange for non-traumatising criminal proceedings, and appropriate time-limits for bringing legal proceedings:

i. by establishing procedures restricting questioning of young victims to the absolute minimum and by arranging for such questioning to take place in conditions which reassure children and do not on any account induce in them feelings of guilt;

ii. by ensuring that periods of statutory limitation for reporting any offence by the victims should be long enough to enable victims to take legal action after reaching the age of majority;

iii. by allowing child protection organisations to bring an action in all cases of sexual offences against minors;

g. to prevent abusive sterilisation:

i. by encouraging persons with parental authority and persons working in institutions providing care and accommodation to have recourse – where the state of physical or mental health of a minor causes concern lest reproduction entail a serious risk to their health and/or for their descendants – to reversible methods of contraception;

ii. by resorting to sterilisation only in exceptional cases, when reproduction entails particularly serious risks for the minor and/or the minor's descendants, and in these cases to secure the prior authorisation of a judge with jurisdiction over family matters and/or the protection of individual rights, in addition to the agreement of the minor's legal representatives and a panel of three doctors, including at least one independent medical expert;

h. to eliminate mutilation and discriminatory practices affecting girls:

i. by making a distinction between, on the one hand, the necessary degree of tolerance or protection of minority cultures and, on the other, blindness to customs which amount to torture and inhuman and barbaric treatment which the Council of Europe is committed to eradicating;

ii. by proclaiming the pre-eminence of the universal principles of respect for the individual and the individual's inalienable right to self-determination as well as complete equality between men and women;

iii. by adopting the position of the World Health Organisation, Unicef, the Office of the United Nations High Commissioner for Refugees and the United Nations Commission on Human Rights which now treat genital mutilations as torture and call for their prohibition as well as the prosecution of those who carry them out, in accordance with

the 1989 United Nations Convention on the Rights of the Child aimed at protecting children from sexual violence, and the conclusions of the United Nations conferences in Cairo in 1994 and Beijing in 1995;

iv. by declaring contrary to human rights the genital sexual mutilation of young girls, the practices aimed at controlling virginity of young girls, as well as the customary marriage of under-age girls, polygamy and repudiation;

v. by systematically informing people arriving in any member state of the Council of Europe from countries where this mutilation of young girls still exists that these practices are prohibited, whether they benefit from family reunion, are asylum seekers or refugees;

vi. by arranging, on the basis of an offence of violence resulting in mutilation or a specific offence, for the punishment of these acts by prosecuting offenders and their accomplices, including the parents;

vii. by arranging for special time-limits enabling victims to bring actions after they have reached their majority as well as entitling child protection organisations to bring actions;

i. to overcome refusal to provide vital care:

i. by passing legislation enabling doctors to decide to hospitalise children and determine their treatment whenever their health would be endangered by failure or refusal on the part of the persons exercising parental authority;

ii. by establishing an offence of non-assistance to a person in danger in order to make it an offence for persons exercising parental authority to forgo or refuse care, whenever doing so puts the child's health at risk;

j. to introduce international sanctions for abduction with a view to adoption:

i. by uncovering mafia networks which organise trafficking in new-born babies or young children to supply the international adoption market and which have no compunction in taking children away from families in the poorest regions of developing countries;

ii. by improving transfrontier police and judicial co-operation to deal with such networks, which also operate across borders;

iii. by calling on all Council of Europe member states to ratify the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption, opened for signature on 29 May 1993, which to date has been signed by only thirty-two countries and ratified by only seventeen of the member states of the Hague Conference on International Private Law;

iv. by subscribing in this way to provisions which will guarantee children the right to grow up within their natural family provided that no court has ruled that the latter is not in a position to fulfil this role and has permanently withdrawn parental rights, and

provided that the family has not given its explicit and informed consent for the child to be legally adopted in his or her best interests.

14. The Assembly invites the Committee of Ministers:

a. to exert its influence on the environment which nurtures this criminal behaviour by drawing up a Council of Europe convention open for signature by non-member states, aimed at:

i. prohibiting the dissemination of paedophile pictures and messages both in the written press and via new communication and information technologies, particularly on the Internet;

ii. harmonising the definition of criminal use of pornographic pictures of minors, so that possession of, and trade in, such images can be punished;

iii. co-operating with a view to monitoring and tracking down the international dissemination of such pictures, whatever the media or technology used and including encoded communications between private persons;

iv. making provision to ensure that the encoding of messages between private persons cannot be designed to hamper checks carried out by the national authorities responsible for law and order and the application of criminal law;

b. to organise judicial co-operation between Council of Europe member states in order to punish recidivist sex offenders, by drawing up, in conjunction with the Parliamentary Assembly, a Council of Europe convention setting up a register of convictions for offences against minors:

i. by providing for this register to be placed under the authority of the President of the European Court of Human Rights in Strasbourg;

ii. by giving the President of the European Court of Human Rights authority to monitor compliance with the convention, in particular as regards confidentiality, the validity of requests for consultation and application of rules on amnesty;

iii. by providing that, for the purpose of compiling the above-mentioned register, the President of the European Court of Human Rights shall be notified by the criminal courts of signatory states of all final convictions carrying a sentence for an offence against a minor as well as ancillary penalties, depending upon the definition, procedural rules and sentences in force in the state in which the offender is convicted; and providing also for notification of amnesties and cancellations of convictions occurring after notification of the original judgment;

iv. by defining the rules for access to data held in this register, which may be requested only by:

– a court trying an offence or crime against a minor;

– any person requesting a certificate to the effect that his/her name is not listed in the register, where such a certificate is required in order to apply for a job entailing direct contact with children;

v. lastly, by providing for the application of the rules on amnesty to convictions which have been notified and the subsequent cancellation of entries in the register set up under the convention, in accordance with the provisions of the criminal law of the state in which the judgment notified was passed.

15. Finally, the Assembly asks the Committee of Ministers to transmit this recommendation immediately to the Follow-up Conference to the Stockholm World Congress against Commercial Exploitation of Children, to be held on 28 and 29 April 1998 in Strasbourg.

[1] Assembly debate on 23 April 1998 (15th Sitting) (see Doc. 8041, report of the Social, Health and Family Affairs Committee, rapporteur: Mr About; and Doc. 8076, opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mrs Plechatá).

Text adopted by the Assembly on 23 April 1998 (15th Sitting).

Resolution 1215 (2000)¹

Campaign against the enlistment of child soldiers and their participation in armed conflicts

1. The Assembly supports the action carried out for many years by its Social, Health and Family Affairs Committee to defend and promote children's rights; it confirms its strong commitment to further their cause, be they children from within or outside Europe, as already stated in its Recommendation 1286 (1996) on a European strategy for children.

2. In the modern world, children are involved in armed conflicts in about fifty countries; they are most often victims of them and sometimes also combatants enlisted or conscripted in contempt of their rights, their physical integrity and their lives. 300 000 child soldiers of under 18 years of age, girls and boys, are thought to be taking part in armed conflicts all over the world. The recent conflicts in Europe, in Bosnia and Kosovo yesterday and Chechnya today, provide evidence of this.

3. The phenomenon is growing as a result of changes in the nature of conflicts, most of which are lengthy civil wars, or wars between adjoining regions, fought with inexpensive, light firearms. Once enlisted, children become instruments of war. The legal rules governing armed conflicts are not observed and even states with a longstanding democratic tradition do not protect children's rights as they should.

4. It is the duty of the Council of Europe member states to react if they do not wish to see barbarism invade their societies and lose their common fundamental values. The international community cannot wait for a hypothetical consensus to end the arms trade; it must reply by declaring the forced enlistment of child soldiers of under 18 to be illegal, in the same way that anti-personnel mines were banned.

5. The Assembly therefore calls upon the member states of the Council of Europe and states enjoying observer status with the Council of Europe:

i. to undertake to end permanently in their own countries the enlistment and participation of children under 18 years of age, both girls and boys, in armed forces and in armed conflicts, by modifying their legislation and current practice if necessary;

ii. to express this undertaking at international level by ratifying:

a. International Labour Organisation Convention No. 182 (1999) on the Worst Forms of Child Labour, which forbids, alongside slavery, the sale of children, serfdom etc., the forced or compulsory enlistment of children for use in armed conflicts;

b. the Optional Protocol to the United Nations Convention on the Rights of the Child that would forbid the recruitment and participation in armed conflict of all children below the age of 18;

c. the Rome Statute (1998) setting up the International Criminal Court to judge war crimes and crimes against humanity;

d. the two additional protocols to the 1949 Geneva Conventions relating to the protection of victims of armed conflict;

e. the 1951 Geneva Convention relating to the Status of Refugees and the 1967 Protocol thereto.

6. The Assembly invites the United States of America to immediately ratify the 1989 United Nations Convention on the Rights of the Child.

7. The Assembly calls upon states that have signed and ratified the 1989 United Nations Convention on the Rights of the Child and especially Council of Europe member states, to support, in particular through voluntary contributions, the Special Representative for Children in Armed Conflict appointed by the Secretary General of the UN as one of his initiatives and actions to eradicate this phenomenon.

8. The Assembly also urges Council of Europe member states and states enjoying Observer status with the Council of Europe:

i. to allow and foster, everywhere and at all times, access to humanitarian aid for the civilian population in the event of armed conflict, taking particular account of children's needs;

ii. to give priority to the protection of children in processes to restore peace and in post-war cooperation programmes, whether bilateral or multilateral or conducted by international organisations.

9. The Assembly calls upon states that have signed and ratified the 1989 United Nations Convention on the Rights of the Child to draw up policies to aid development in countries where there is conflict, in order to:

i. stop the recruitment of child soldiers and demobilise those who have already been enlisted;

ii. ensure that measures are taken for these children's physical, psychological and social rehabilitation;

iii. foster their reintegration into civilian life and, in particular, into a suitable education system.

10. Finally, the Assembly urges states that have signed and ratified the 1989 United Nations Convention on the Rights of the Child to promote education for peace and tolerance through awareness-raising campaigns, particularly in countries where the risk of conflict is high.

11. The Assembly invites the member states of the Council of Europe and states enjoying Observer status within the Council of Europe to implement the decision by the UN Secretary General to set the minimum age of recruits in national units participating in United Nations peacekeeping forces at 18 years.

12. The Assembly also invites governments of member states and states enjoying Observer status within the Council of Europe implementing the debt relief agreements concluded by creditor countries at a multilateral level to make cancellation of a country's foreign debt conditional on its undertaking to:

i. ratify the protocol to the United Nations Convention on the Rights of the Child and effectively apply the ban on enlistment of under-eighteens and their participation in armed conflicts;

ii. employ in civilian activities any children or young people below the age of 18 who have already been recruited.

[1] *Assembly debate* on 7 April 2000 (16th Sitting) (see Doc. 8676, report of the Social, Health and Family Affairs Committee, rapporteur: Mrs Pozza Tasca; and Doc. 8696, opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Tabajdi).
Text adopted by the Assembly on 7 April 2000 (16th Sitting).

Recommendation 1443 (2000)¹

International adoption: respecting children's rights

1. The Assembly affirms that all children have rights, as set out in the United Nations Convention on the Rights of the Child, and, in particular, the right to know and be brought up by their parents in so far as this is possible. The purpose of international adoption must be to provide children with a mother and a father in a way that respects their rights, not to enable foreign parents to satisfy their wish for a child at any price; there can be no right to a child.

2. The Assembly therefore fiercely opposes the current transformation of international adoption into nothing short of a market regulated by the capitalist laws of supply and demand, and characterised by a one-way flow of children from poor states or states in transition to developed countries. It roundly condemns all crimes committed in order to facilitate adoption, as well as the commercial tendencies and practices that include the use of psychological or financial pressure on vulnerable families, the arranging of adoptions directly with families, the conceiving of children for adoption, the falsification of paternity documents and adoption via the Internet.

3. It wishes to alert European public opinion to the fact that, sadly, international adoption can lead to the disregard of children's rights and that it does not necessarily serve their best interests. In many cases, receiving countries perpetuate misleading notions about children's circumstances in their countries of origin and a stubbornly prejudiced belief in the advantages for a foreign child of being adopted and living in a rich country. The present tendencies of international adoption go against the UN Convention on the Rights of the Child, which stipulates that if a child is deprived of his or her family the alternative solutions considered must pay due regard to the desirability of continuity in the child's upbringing and to his or her ethnic, religious, cultural and linguistic background.

4. In 1993, the international community adopted a set of ethical standards and rules in the form of the Hague Convention on Adoption, in which the guiding principle is that of subsidiarity, that is to say international adoption may be considered only if domestic solutions are not available. The Assembly is forced to recognise that there is insufficient awareness of the scope of this convention and that few of the member states have ratified it.

5. The Assembly therefore calls on the Committee of Ministers of the Council of Europe to give a clear indication of its political will to ensure that children's rights are respected, by immediately inviting the member states to:

i. ratify the Hague Convention on Adoption if they have not already done so, and undertake to observe its principles and rules even when dealing with countries that have not themselves ratified it;

ii. conduct information campaigns to give professionals and couples contemplating international adoption a full understanding of the commitments entailed in the Hague Convention and their implications;

iii. develop the bilateral and multilateral co-operation essential for the convention's effective application;

iv. help those countries from which foreign children come to develop their own adoption laws and to train the relevant personnel in public authorities and properly accredited agencies and all other professionals involved in adoption;

v. ensure that prospective adoptive parents are eligible and suited to adopt, provide them with compulsory, in-depth preparation for international adoption and ensure that the situation, and particularly the psychological well-being, of foreign adopted children is monitored;

vi. ensure that in an event such as the divorce of the adoptive parents, the desertion of the foreign child or the emergence of difficulties with the adoption procedure, the child's fundamental rights, such as the right to a name and to citizenship, will be respected;

vii. ensure the right of adopted children to learn of their origins at the latest on their majority and to eliminate from national legislation any clauses to the contrary.

6. The Assembly also calls on the Committee of Ministers to invite the member states to cooperate more closely by every possible means, and notably through Europol, in order to combat trafficking in children and eliminate mafia -type or other criminal networks, and to ensure that in the field of international adoption no abuses, however minor, go unpunished.

7. Moreover, the Assembly asks the Committee of Ministers to:

i. assert more firmly the Council of Europe's necessary role, as a guarantor of human rights, in the protection and promotion of children's rights;

ii. pursue that role in the arena of inter-governmental co-operation - particularly in relation to the new member states - by developing child-friendly social and family policies designed to prevent children being abandoned and to keep them in their families of origin, and, failing that, to develop family -based alternatives and to promote domestic adoption in preference to placement in institutions;

iii. revise the European Convention on Nationality of 6 November 1997 in order to make it easier for foreign children to acquire the nationality of the receiving country in the event of the adoption falling through or the adoption procedure breaking down.

[1] Assembly debate on 26 January 2000 (5th Sitting) (see Doc. 8592, report of the Social, Health and Family Affairs Committee, rapporteur: Mr About; Doc. 8626, opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mrs Wohlwend; and Doc. 8600, opinion of the Committee on Migration, Refugees and Demography, rapporteur: Mrs Vermot-Mangold).
Text adopted by the Assembly on 26 January 2000 (5th Sitting).

Recommendation 1460 (2000)¹

Setting up a European ombudsman for children

1. The Council of Europe recently celebrated fifty years of existence and work, in particular in the field of standard setting. Many of its conventions, resolutions and recommendations, whether of the Committee of Ministers or the Assembly, have been concerned exclusively or in part with children and their rights. There is also the United Nations Convention on the Rights of the Child, now ten years old. What stage has its implementation reached?

2. It is clear to the Assembly that there is still a gulf between declared principles and reality. For many children in Europe, everyday life consists of prostitution, labour and poverty, while others are cooped up - undernourished and deprived of education - in refugee camps or disabled for life by landmines.

3. This is a state of affairs we must try to do something about. New means must be found of translating countries' commitments into national reality. Children have rights and they should have some way of making their voice heard if those rights are denied them, which implies legislation, initially at national level, that effectively protects children.

4. Some states - as yet too few - have accordingly created the post of children's ombudsman and are clearly making progress with regard to protection of minors. Parliamentary Assembly Recommendation 1286 (1996) on a European strategy for children strongly urged that such posts be created at national level, with guarantees of the independence and professionalism necessary to effect a real improvement in children's circumstances.

5. The task of those working on behalf of children is complicated by globalisation, by the complexity of relations between states and by the use being made of new technologies. A European network linking the small number of children's mediators already appointed is attempting to respond to the challenges through exchange of information and co-operation.

6. In 1996, following the Dutroux case (see Resolution 1099 (1996) on the sexual exploitation of children), the Assembly drew attention to the need apparent at that time for European-level coordination and, echoing the European Parliament, advocated creating the office of European Children's Ombudsman. The Council of Europe, whose mission is to protect human rights, is the most appropriate organisation to accommodate such an institution, which must be independent and must have powers of initiative.

7. The tasks of the ombudsman's office would be to promote awareness and implementation of the various conventions on children's rights, to advise and support all involved in policies for children, to assess the impact on children of different policy options and to devise specific strategies, particularly for the promotion of education for peace and non-violence.

8. The Assembly therefore recommends that the Committee of Ministers:

- i. ask those member states that have not yet done so to appoint a national children's ombudsman;
- ii. create within the Council of Europe, under arrangements to be specified, the post of European Children's Ombudsman, to be filled by a person of European standing whose task it would be to champion the cause of children.

[1] *Assembly debate* on 7 April 2000 (16th Sitting) (see Doc. 8552, report of the Social, Health and Family Affairs Committee, rapporteur: Mrs Pozza Tasca).

Text adopted by the Assembly on 7 April 2000 (16th Sitting).

Recommendation 1532 (2001)¹

A dynamic social policy for children and adolescents in towns and cities

1. The Parliamentary Assembly is concerned that young people in towns and cities are becoming increasingly anti-social and is worried about the many social ills connected with urban life and the emergence of suburban “ghettos”.
2. Deprived urban areas across Europe are repeatedly highlighted by national media reporting cases of child violence; juvenile delinquency, sometimes involving very young children; possession of weapons and drugs, in particular in educational establishments; and the severe living conditions of street children.
3. However, the phenomena linked to urban youth malaise have to be seen in a wider context of rapid social and economic change, which has imposed the consequences of acute poverty on many families and children in Europe, both in the well-established democracies and in the new Council of Europe member states.
4. Unemployment, poverty, family break-up, adult violence, the weakening of social welfare and other public infrastructure and the lack of adequate community spirit and support all influence the life experience and behaviour of children and adolescents in towns and cities.
5. Youth violence does not always aim at misappropriation but most often is a means of protest and self-assertion. It takes different forms: against oneself (suicide, drug use), within groups (bullying at school, youth gangs in ghettos), or against society at large in the form of “hatecrime”.
6. Furthermore, statistics show that children and young people are more often the victims than the perpetrators of violence.
7. Youth violence is therefore not a phenomenon to be considered in isolation but instead as a strong indicator of adult malaise, intolerance, fear and violence.
8. There is a growing recognition that juvenile justice or criminal justice agencies will not of themselves resolve the problems posed or experienced by children and adolescents who offend.
9. In this respect, the Parliamentary Assembly is concerned by the development of lawenforcement policies that are in breach of the United Nations Convention on the Rights of the Child, which every member state of the Council of Europe has ratified, and more specifically by the situation of children in prison, especially when awaiting trial. Internationally recognised non-judicial measures and community-based alternatives to custody for children ought to be introduced.
10. The Parliamentary Assembly believes that the response to youth violence needs to be based on prevention rather than repression or punishment, addressing at the earliest possible stage the situation of children facing disadvantage and risk.
11. Moreover, a dynamic social policy for children and adolescents should not only

focus on children who offend, who have been abused or who experience poverty, but equally on preventive measures for all children at risk (targeting violent households, poor parental support, negative early life experiences, etc.). Such measures should also address the specific situation and experiences of girls in the family, community and society in general.

12. A shift in political will is needed to focus resources on the introduction of multidisciplinary measures at an early stage, providing children and young people with positive life experiences, restoring democratic and civil values, fostering creativity, solidarity, and positive community participation.

13. In this connection, the Parliamentary Assembly commends the work undertaken by the intergovernmental sector of the Council of Europe, in particular with regard to education, culture, youth activities, social cohesion and the prevention of crime and drug misuse.

14. Crime and urban security have also been addressed by the Congress of Local and Regional Authorities of Europe (CLRAE), which recently adopted a manual on local government policies aimed at reducing crime.

15. The Parliamentary Assembly is convinced that appropriate responses to urban youth malaise can only be found through the concerted action of different partners at local and national levels, further assisted by the exchange of experience and guidelines established at European level.

16. While also recalling the issues raised in Recommendation 1286 (1996) on a European strategy for children and Recommendation 1460 (2000) on setting up a European ombudsman for children, the Parliamentary Assembly recommends that the Committee of Ministers:

i. give suitable priority to social policy for children and adolescents in towns and cities and instruct the appropriate body to develop guidelines in this policy area on the basis of pan-European information regarding the lives and experiences of children;

ii. urge the member states of the Council of Europe:

a. to guarantee, through explicit recognition in their constitutional texts or domestic laws, children's civil and political rights, as well as their economic, social and cultural rights, as enshrined in the United Nations Convention on the Rights of the Child;

b. to ratify all relevant Council of Europe conventions on the rights and protection of the child, in particular the European Convention on the Exercise of Children's Rights;

c. to engage in an exchange of experience at European level involving both national and local authorities (European crime prevention network, European observatory on urban security, etc.);

d. to develop a dynamic social policy for children and adolescents in towns and cities

based on the following elements:

- measures and programmes which support parents and families in their parenting role;
- welfare and benefit schemes to support parents and families;
- measures and policies based on the partnership and involvement of all sectors – local and national, public and private;
- measures to address the whole range of risks faced by children and adolescents in the social and physical environment in which they live;
- the development, for children who offend, of alternative forms of dispute resolution: alternatives to judicial processes; alternatives to custody; and community-based measures in line with internationally recognised standards for children in the justice system;
- harmonised standards and practices (for example, specialised courts for minors) in all the Council of Europe member states with regard to children who commit, or who are victims of, offences (for example, family violence, sexual abuse);
- promoting the role of formal and non-formal education in preparing children for adulthood and their role in civic and political society, in promoting values of tolerance and respect for others, and in addressing inequalities based on disadvantage and gender;
- assistance in the transition from school to employment, providing children and adolescents with skills necessary for the labour market;
- leisure pursuits (culture, sports, etc.) for children and adolescents;
- programmes and projects which assist children and young people to address the negative effects of social exclusion and marginalisation;
- mechanisms by which policies affecting all areas of social and political life – employment, housing, crime, health, education, etc. – can be “child-proofed”;
- the establishment of a national children’s ombudsman for promotion and monitoring of the rights of the child;
- the positive values of the Internet, the World Wide Web and the new information and communications technologies in providing information for children and young people and in providing a mechanism for co-ordination of their activities;
- the participation of children and adolescents in decision making and policy development;
- fostering of the supporting role of extended families and the local community;
- taking into account gender-based issues and family planning;
- measures to improve the situation of street children.

[1] *Assembly debate* on 24 September 2001 (25th Sitting) (see Doc. 9192, report of the Social, Health and Family Affairs Committee, rapporteur: Mrs Gatterer).

Text adopted by the Assembly on 24 September 2001 (25th Sitting).

Recommendation 1551 (2002)¹

Building a twenty-first century society with and for children: follow-up to the European strategy for children (Recommendation 1286 (1996))

1. The Assembly salutes the Unicef initiative to hold a special session of the United Nations General Assembly in September 2001 devoted entirely to defining a world fit for children to live in, a concern it willingly shares and endorses.

2. Since 1989 the rights of children have been recognised and enshrined in a single document, the United Nations Convention on the Rights of the Child, a landmark instrument that has been ratified almost universally, with the notable exception of the United States. To what extent are its provisions applied in practice, however? Much remains to be done to close the gap between principles and practice.

3. Lip service and declarations of intent are not enough: the commitments entered into must be put into practice. What is needed is an action plan, a plan for building a society in twenty-first-century Europe, with and for children, that is fair and fit to live in. The plan must be a worldwide one consistent with the United Nations convention – not a list of pious aspirations, but a document binding on the members of the Council of Europe.

4. The Assembly therefore invites the Committee of Ministers of the Council of Europe to adopt a legal instrument that is binding on the Organisation's member states and asks them to endorse and honour the following commitments:

i. revise all their domestic legislation and make sure it is compatible with the provisions of the United Nations Convention on the Rights of the Child;

ii. adopt a comprehensive, coherent, long-term national policy on children's rights with a view to fully applying the provisions of the United Nations Convention on the Rights of the Child;

iii. appoint a national minister of children's rights, with the aim of fostering an integrated approach to children's rights in every area of government policy;

iv. ensure that children's rights, interests and needs are taken into consideration, particularly at the political decision-making level, at all times, by making it standard practice, for example, to draw up "child impact evaluations";

v. give a higher profile and greater priority to children in budget presentations and through the fair and appropriate allocation of resources;

vi. set up a permanent interministerial body at national level with authority to deal with all matters relating to children's rights. Its function would be to foster a co-ordinated national policy on children's rights, and it would produce an annual report on such a policy for discussion in parliament;

vii. establish a national ombudsman for children (or a similar independent institution)

to foster children's rights and supervise their application;

viii. set up a national children's observatory to collect and disseminate to interested parties all information and data, including statistical data, on children, their needs and their rights;

ix. foster education in children's rights and related vocational training;

x. encourage maximum participation by children at every level of policy decision-making in every sector;

xi. make special, priority provision for children in their policies giving aid to developing countries and include respect for children's rights in the requirements for receiving technical and financial assistance.

5. The Assembly also invites the Committee of Ministers to assert increasingly the Council of Europe's role, as a champion of human rights, in defending and promoting the rights of the child, and to do so in particular by:

i. instituting, preferably within the Organisation, an independent European children's ombudsman with powers of initiative;

ii. giving the Forum for Children and Families the power to deal with all matters relating to children, draw up the broad lines of a co-ordinated European policy on children's rights and put forward a concerted development policy for children's rights outside Europe;

iii. including in the forum's terms of reference the task of being a European children's observatory and preparing an annual report on the situation of children in Europe.

6. The Assembly asks the Committee of Ministers to give further consideration to drafting a European convention on children's rights attuned to European realities, and to including children's rights in the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms.

7. The Assembly urges the Committee of Ministers, in co-operation with the European Union, to agree on arrangements for setting up a computerised European data centre on missing children, to centralise information on disappearances and provide the police, families and voluntary organisations, and so on, with the necessary information and assistance for their location and recovery.

8. Lastly, the Assembly requests the Committee of Ministers to take appropriate action on this recommendation and forward it to the governments of member states, the European Union institutions, Unicef and all non-governmental organisations working to protect children's rights.

1. *Text adopted by the Standing Committee, acting on behalf of the Assembly, on 26 March 2002 (see Doc. 9188, report of the Social, Health and Family Affairs Committee, rapporteur: Mr Cox).*

Recommendation 1561 (2002)¹

Social measures for children of war in South-eastern Europe

1. The decade-long conflict on the territory of the former Yugoslavia has severely affected children, leaving up to 20 000 children dead (16 000 in Bosnia and Herzegovina alone) and many more without one or both parents. A regional refugee problem of massive proportions continues with more than 2 million refugees and internally displaced persons. The return and integration of displaced families, in particular those belonging to ethnic minorities, continue to be impeded by limited financial resources for the reconstruction of housing and alternative accommodation, by problems of recovery of property and dwellings, by the complexity of administrative procedures and by the uncertainties of welfare systems, which contribute to sustaining discriminatory practices in certain areas.

2. The most recent outbreak of violence in “the former Yugoslav Republic of Macedonia” uprooted over 140 000 persons from their homes. A humanitarian disaster was only narrowly averted following the Framework Agreement of August 2001. Around 100 000 people have returned since, but the situation remains extremely fragile.

3. Those tragic events have had a direct and acute impact on children’s rights as defined in the United Nations Convention on the Rights of the Child, including the rights to life; to shelter; to nondiscrimination; to nationality; to non-separation from parents against the child’s will; to freedom of thought, conscience and religion; to protection against unlawful attacks on family privacy; to access to free healthcare; to access to education respectful of human rights; and to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development. Moreover, the children of war appear to be particularly exposed to trafficking and exploitation, notably sexual exploitation, and of deviant behaviour, such as drug addiction and delinquency.

4. Although the countries in the region have signed and ratified the United Nations Convention on the Rights of the Child, the extent to which each country has established mechanisms for promoting the rights of the child varies in terms of the content of their national action plans, the appropriate structures and mechanisms set up to implement the plan, and the extent to which dialogue has been established with interested parties. Implementing the convention should be an opportunity to develop a new, community-based and child-focused approach in national policies.

5. The creation of ombudsman’s offices in Croatia and Bosnia and Herzegovina has shown results in both bringing the acute problems of violation of the rights of the child to the attention of relevant political and administrative bodies as well as helping to resolve problems on a case-by-case basis. The National Council for Children, an advisory body to the Government of Croatia, has also been a successful example of co-ordination and dialogue between various state agencies, non-governmental organisations and experts, in view of resolving many acute problems faced by children.

6. The impact of war on services for the protection of children and their rights has been complex. Provision of adequate schooling, healthcare, day-care service, social welfare

for families, and all other factors contributing to a healthy childhood, have been seriously affected. Refugee or displaced children belonging to ethnic minorities, including Roma communities, seem particularly vulnerable in this respect. In general terms, services have been fundamentally reduced and stretched, also affecting the quality of service provided.

7. The standard of family allowances designed to offset the risk of social exclusion has generally deteriorated. For example, in some parts of Bosnia and Herzegovina, child benefits for some 100 000 children are less than €2 per month.

8. While children have a legal right to free healthcare, this right is often limited in practice. This is due partly to the complexity of the insurance schemes, but from a medical point of view it results primarily from the absence of proper facilities, equipment and medication, as well as from a lack of essential funds.

9. Psycho-social assistance to children traumatised by the war was provided on an emergency basis. While many non-governmental organisations and state agencies have gathered diverse experience in this field, there has been no evaluation of the results achieved or any systematic follow up. It now remains to continue this work with a more holistic approach to mental health and to provide longterm support and assistance for more than 1 million children and young people who suffer the consequences of war.

10. The Assembly expresses concern about the continuing social and ethnic tensions, which are particularly evident in the functioning of education systems. Peace education and education for citizenship are still more present in NGO-led non-formal education than in mainstream education. The introduction of such approaches highlights the need for a wider reform of curricula in schools, in terms of both the content and process of teaching and learning.

11. The Assembly believes that marginalisation and social exclusion of children and adolescents represent serious risks, which it is important to counter by means of a dynamic prevention policy. Special attention must be paid to lone mothers and children and lone adolescents.

12. The Assembly recognises the crucial role of non-governmental organisations involved in social initiatives related to children and youth, health care, humanitarian aid, human rights and those involved in community-based initiatives (advocacy, solidarity, self-help, etc.).

13. The Assembly therefore recommends that the Committee of Ministers:

i. support the activities undertaken by the Governments of Bosnia and Herzegovina, Croatia, "the former Yugoslav Republic of Macedonia" and the Federal Republic of Yugoslavia in order to :

a. give the rights of the child a political priority and to fully implement the Convention on the Rights of the Child;

- b.* institute an office of ombudsman for children in co-operation with the European Network of Ombudsmen for Children (ENOC) and implement the recommendations made by this institution;
- c.* undertake reforms to rationalise the welfare system without jeopardising access to basic social rights as enshrined in the Council of Europe's social protection instruments;
- d.* support the role of non-governmental organisations and establish clear national legislation defining the prerogatives and responsibilities of non-governmental organisations and mechanisms of co-operation, while maintaining the responsibility of the state to provide for social welfare and to ensure the effective implementation of the rights of the child;
- e.* strive to ensure access to adequate shelter, wholesome food and clothing for every child;
- f.* strive to ensure access to free healthcare for every child;
- g.* strive to ensure that welfare services for children are equitable throughout each country;
- h.* establish or recognise identity papers for every child;
- i.* strive to ensure the application of anti-discrimination measures in education, health, social policy and more widely, and strengthen the corresponding inspectorates;
- j.* develop a more holistic approach to mental health and provide facilities for systematic and longer term psycho-social counselling of children and their families who suffer the consequences of war;
- k.* encourage non-formal education to respond to the specific needs of children affected by war – such as reintegration through remedial classes and psycho-social assistance – and develop links to mainstream education whenever possible;
- l.* initiate far -reaching reforms with a view to the modernisation of education systems founded on tolerance and cultural diversity, so as to ensure that education fulfils its role of fostering integration and children's development, and include vocational education in the scope of these reforms;
- ii. recommend to the Governments of Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and "the former Yugoslav Republic of Macedonia" that, in co-operation with the relevant international organisations and non-governmental organisations, they step up their efforts to combat trafficking and exploitation of children and criminal activities affecting them (prostitution, drugs, delinquency, etc.);
- iii. urge the Governments of Bosnia and Herzegovina and the Federal Republic of Yugoslavia, to follow the initiatives of Croatia and "the former Yugoslav Republic of Macedonia" in requesting technical assistance from the Council of Europe with a view

to developing their social protection systems in line with Council of Europe principles and standards;

iv. regarding the activities of the Council of Europe :

a. strengthen longer term support for the activities of the intergovernmental sector with a view to reaffirming principles of democracy, civil society, tolerance, respect for law and human rights in South-eastern Europe, by means of education, local democracy initiatives, child-related, youth and NGO activities as well as through the recently established framework for co-operation in the field of social cohesion;

b. use the work on promoting children's policy in the Council of Europe as a basis for constructing a children's agenda in South-eastern Europe in co-operation with the countries concerned, the European Union and Unicef;

c. instruct the Pompidou Group to extend informal contacts with "the former Yugoslav Republic of Macedonia", Bosnia and Herzegovina and the Federal Republic of Yugoslavia in order to assist them in creating effective drug policies;

v. regarding the Stability Pact for South Eastern Europe, make efforts to :

a. ensure that children's rights are made an integral part of its work, with special emphasis on modernisation of school systems;

b. provide funding for the co-ordination of social security schemes within the Social Cohesion Initiative of the Stability Pact Working Table II.

14. The Assembly encourages member states and non-member countries having legal access to the Council of Europe Development Bank to make use of this instrument with a view to improving conditions for the return and integration of refugees and displaced persons in South-eastern Europe.

15. The Assembly invites the international community and individual donor countries to step up their support for reconstruction and humanitarian aid in the regions of South-eastern Europe most severely affected by war, ensuring, in particular, that their activities benefit all the communities on an equal footing.

16. The Assembly welcomes the co-ordination work of the European Union and the World Bank to steer the financial support for the region of South-eastern Europe and recommends that international organisations ensure that the specific needs of children are addressed in their activities.

1 Text adopted by the Standing Committee, acting on behalf of the Assembly, on 29 May 2002 (see Doc. 9454, report of the Social, Health and Family Affairs Committee, rapporteur: Mrs Biga- Friganovic, and Doc. 9457, opinion of the Committee on Migration, Refugees and Demography, rapporteur: Mrs Vermot-Mangold).

Recommendation 1562 (2002)¹

Controlling the diagnosis and treatment of hyperactive children in Europe

1. The Parliamentary Assembly is concerned that increasing numbers of children in certain Council of Europe member states are being diagnosed as suffering from “attention deficit/hyperactivity disorder” (ADHD), “hyperkinetic disorder” or related behavioural conditions and treated by means of central nervous system stimulants, such as amphetamines or methylphenidate, which are controlled drugs listed in Schedule II of the 1971 United Nations Convention on Psychotropic Substances because they have been judged by the World Health Organisation to be liable to abuse, to constitute a substantial risk to public health, and to have little to moderate therapeutic usefulness.

2. This issue is of particular concern to the Council of Europe as a human rights organisation which aims, among other things, to protect the rights of children and to seek European responses to social and health problems including drug use. The Parliamentary Assembly underlines, in accordance with the United Nations Convention on the Rights of the Child, that in all actions concerning children the best interests of the child must be a primary consideration. Moreover, children have the right to the highest standard of health and medical care attainable, and to protection from the illicit use of drugs.

3. Although their precise causes are unknown, the validity of ADHD and hyperkinetic disorders, defined in terms of persistent and severe behavioural symptoms centred on inattention, hyperactivity and impulsiveness, and resulting in functional impairment, is widely recognised by professional medical, psychological and scientific organisations, including the World Health Organisation. However, the Assembly is concerned that two different sets of criteria are applied in diagnosing these disorders: one adopted by the American Psychiatric Association and used worldwide, the other, more stringent, by the World Health Organisation. The Assembly considers that the basis for these different standards should be examined with a view to clarifying and harmonising the criteria governing diagnosis and treatment.

4. The consensus view is that these behaviourally defined disorders can significantly impair the social, educational and psychological development of some children, resulting in poor self-esteem and emotional and social problems, and severely hampering attainment of their educational potential. The symptoms of ADHD may continue into adolescence and adulthood, and may be accompanied by continuing emotional and social problems, resulting in unemployment, criminality and substance abuse. The toll on those suffering from these disorders, as well as on their families and on society cannot be measured precisely, but may be considerable.

5. Controversy surrounding ADHD hinges not only on whether it may validly be described as an abnormality or disease, but above all on whether it is justified to treat such cases with central nervous system stimulants, which some psychiatric studies have shown to be effective in reducing the symptoms of those diagnosed, allowing them to focus more on what they are doing and reducing their hyperactivity, but whose long-term effects are uncertain and which cannot effect a cure.

6. The Parliamentary Assembly, emphasising that the precautionary principle should prevail where doubt exists in regard to the long-term effects of medicaments and aware that behavioural disorders of childhood and adolescence, like all mental and behavioural disorders, are known to stem from a complex interaction of biological, psychological and social factors, believes that stricter control should be exercised over the diagnosis and treatment of these disorders. The Assembly also considers that more research should be conducted into the impact of proper tutoring and educational solutions for children exhibiting ADHD symptoms, into the behavioural effects of such medical problems as allergies or toxic reactions, and into alternative forms of treatment such as diet.

7. The Parliamentary Assembly has been disappointed that to date the pharmaceutical industry has not always acted in a way which takes into account the values and principles of the Council of Europe; it wishes to ensure that in future the medical and scientific community and the pharmaceutical industry act in the best interests of society in general, and urges the Committee of Ministers to monitor the situation.

8. Therefore, the Parliamentary Assembly recommends that the Committee of Ministers:

i. instruct the European Health Committee, in consultation with the Pompidou Group, the European Committee for Social Cohesion, the Steering Committee on Bioethics and the Steering Committee on Education, and in close co-operation with the appropriate international organisations:

a. to make a study of the diagnosis and treatment in Europe of children showing symptoms of attention deficit/hyperactivity and similar disorders;

b. to identify best practice fully reflecting the rights and interests of such children; and

c. to draft a recommendation to the governments of the member states designed to review the diagnosis and treatment of children showing symptoms of attention deficit/hyperactivity and similar disorders based on the precautionary principle and on the ethical standards corresponding to the values and principles of the Council of Europe;

ii. invite the Pompidou Group, in co-operation with the appropriate international organisations, to strengthen guidelines on the promotion of psychotropic drugs;

iii. invite the governments of the member states:

a. to monitor more closely the diagnosis and treatment of children showing symptoms of attention deficit/hyperactivity and similar disorders;

b. to co-ordinate and step up research into the prevalence, causes, diagnosis and treatment (in particular alternative treatments, such as diet) of these disorders, and in particular into the long-term effects of the psychostimulants prescribed for treatment as well as into the possible social, educational and cultural factors involved;

- c. to produce information material designed for parents of hyperactive children explaining what possibilities exist for improving their condition;
- iv. invite the World Health Organisation, in co-operation with the American Psychiatric Association, to re-examine the basis of their diagnostic criteria respectively for hyperkinetic disorder and ADHD with a view to clarifying and harmonising the criteria governing diagnosis and treatment.

1. *Text adopted by the Standing Committee, acting on behalf of the Assembly, on 29 May 2002 (see Doc 9456, report of the Social, Health and Family Affairs Committee, rapporteur: Mr Brînzan).*

Resolution 1291 (2002)¹

International abduction of children by one of their parents

1. The Assembly notes with concern the growing number of abductions of children by one of their parents in cases of dispute between, or separation of, couples of different nationalities and the difficulties and obstacles of every kind encountered by parents and the competent institutions in tracing these children and ensuring their return.

2. It points out that, under the United Nations Convention on the Rights of the Child all children have the right to maintain regular personal relations with both parents; abduction by a parent is a denial of the child's rights; abducted children are deprived of one of their parents and their wider family; they are often cut off from their mother tongue and part of their cultural background; parents are helpless when faced with complex formalities, different procedures and the cost of action on their part, and so forth. Even if children are returned, they are marked by the abduction for the rest of their lives.

3. The Assembly believes that the member states, united within the Council of Europe by their attachment to the same values, ought to be able to overcome their legal, cultural and other differences, recognise the same concept of the best interests of the child and state that situations in which children are denied their rights cannot be allowed to continue.

4. The Assembly therefore urges member states to demonstrate their political resolve to address this difficult issue:

i. by ratifying such relevant legal instruments as they have not yet ratified: first and foremost the 1980 Hague Convention on the Civil Aspects of International Child Abduction and the various Council of Europe conventions on the rights of children;

ii. by speeding up adoption and ratification of the convention on contact concerning children, which seeks to prevent the improper removal of children and which is in the final stages of preparation by the Council of Europe.

iii. by using on a wider scale the signing and ratification of bilateral intergovernmental agreements contributing to the resolution of cases of abduction of children by one of their parents.

5. It urges each Council of Europe member state to:

i. make abduction by a parent of a child under 16 years of age a crime and punish it as such;

ii. provide appropriate training for all people working in this field (police, lawyers, judges) and in particular for specialists investigating the disappearance of children;

iii. promote family mediation as a means of preventing parental child abduction and helping to resolve family conflicts;

iv. at national level, give only a small number of specialised courts, and perhaps only one, jurisdiction to deal with cases of parental child abduction in order to ensure that such cases are concentrated and dealt with more rapidly by well-informed judges and that decisions are consistent;

v. ensure that parents and families have access to free legal aid to help them meet the high procedural costs;

vi. provide prospective marriage or common-law partners of different nationalities with information about their rights and obligations with regard to their children under their respective family law regimes;

vii. recognise the importance of the role played by non-governmental organisations in parental support and in their information and prevention efforts, and give them the financial assistance needed to achieve these objectives.

6. The Assembly also recommends that member states set up centres for missing children, at both national and European levels, to keep in close contact with the judicial authorities and the police. These centres should have modern research facilities and the requisite international contact with similar services within and outside Europe.

7. Within the framework of their bilateral relations and also with the non-Council of Europe countries concerned, member states should set up mediation boards or other similar bodies to deal with all pending cases of conflict involving parental child abduction as rapidly as possible and propose solutions in the objective interests of the children concerned.

8. Finally, the Assembly urges member states to endeavour to increase the European Union mediator's powers and material possibilities of action and examine the necessity of establishing a Council of Europe mediator to deal with these child custody issues in greater Europe.

1. *Assembly debate* on 26 June 2002 (21st Sitting) (see Doc. 9476, report of the Social, Health and Family Affairs Committee, rapporteur: Mr Hancock).

Text adopted by the Assembly on 26 June 2002 (21st Sitting).

Recommendation 1582 (2002)¹

Domestic violence against women

1. Domestic violence is the most common form of violence against women and its consequences affect many areas of the lives of victims — housing, health, education and the freedom to live their lives without fear and in the way they wish. This widespread phenomenon is common to all European countries and is not limited to any particular social group or class. Domestic violence can take a number of forms such as physical assault, sexual abuse and rape, threats and intimidation and should be recognised as a crime.

2. However, violence committed within the family is still considered to be a private matter. Statistics shows that for women between 16 and 44 years of age, domestic violence is thought to be the major cause of death and invalidity, ahead of cancer, road accidents and even war. Therefore, domestic violence should be treated as a political and public problem, and a violation of human rights.

3. The Parliamentary Assembly recalls the final declaration adopted at the 2nd Summit of the

Council of Europe, Strasbourg, 1997, Assembly Recommendation 1450 (2000) on violence against women in Europe and Committee of Ministers Recommendation Rec(2002)5 to member states on the protection of women against violence, in which all forms of such violence have been condemned as being a general violation of their rights as human beings.

4. The Assembly considers acts of domestic violence to be criminal acts and calls on the member states to recognise that they have an obligation to prevent, investigate and punish all acts of domestic violence and to provide protection to its victims.

5. Taking into account the hidden nature of domestic violence, the Assembly urges governments to introduce effective awareness-raising policies and campaigns to inform and educate citizens on this problem. Each government should obtain objective information and data on the dimension of these crimes.

6. The Assembly recognises the importance of the development of community intervention strategies at local levels, aimed at the co-ordination of inter-agency co-operation and the mobilisation of financial and human resources in the fight against domestic violence, calling on people to take more responsibility with a view to changing attitudes in the places where they live and work.

7. Therefore the Assembly calls on the member states of the Council of Europe:

Measures to be taken regarding victims of domestic violence

i. to provide victims of domestic violence with free legal advice and assistance before taking legal action;

ii. to help victims of domestic violence by opening residential centres where women can receive psychological support and by giving financial support to welfare

associations and emergency services;

iii. to ensure effective protection for victims of violence after the incident and during the whole legal procedure;

iv. to give special financial support to non-governmental organisations as well as to women's associations working with victims of domestic violence;

v. to adopt or reinforce social protection measures so that injuries caused to women and children by violent acts are provided for under social protection schemes;

vi. to promote the training of professionals working with young people, as well as health personnel, to identify children and adolescents growing up in violent homes and to take the necessary measures to assist them;

vii. to ensure the training of medical personnel to enable them to identify victims of violence;

viii. to grant immigrant women who have been or who are victims of domestic violence an independent right of residence.

Measures to be taken regarding the prevention of domestic violence

i. to improve statistics on domestic violence, and with this in mind to develop a clear picture of its nature and prevalence, to permit the identification of resources earmarked for this problem and the evaluation of initiatives to tackle it;

ii. to develop a partnership between the authorities responsible for the protection of women's rights and regional and local authorities in order to increase the number of rehabilitation centres and shelters for women victims of domestic violence;

iii. to promote continuing co-operation and understanding between the police, government departments and non-governmental organisations in the fight against the problems and dangers associated with domestic violence;

iv. to develop action plans in co-operation with women's non-governmental organisations in order to create a general climate where domestic violence is rejected;

v. to launch, through the media, national awareness campaigns against domestic violence;

vi. to organise adequate training for people who deal with victims of domestic violence: health care staff, police and social workers;

vii. to start education on gender equality and non-violent behaviour at a very early stage and to ensure adequate training for teachers on the issue of domestic violence and gender equality;

viii. to encourage citizens, through educational programmes, to accept their

responsibilities, and take positive steps to reduce and prevent domestic violence in society;

ix. to increase state funding to support the social services dealing with the problem of domestic violence;

x. to encourage the media to cover in a regular, objective and non-biased manner the problem of domestic violence; the mass media should also try to educate the public about the causes and consequences of this kind of violence;

xi. to encourage women to learn self-defence techniques;

xii. to elaborate training programmes specifically for the perpetrators of acts of violence against women;

xiii. to develop special information programmes for men with the aim of preventing acts of domestic violence.

Legal measures to be taken

i. national legislation should prohibit all forms of domestic violence and introduce effective legal provisions, including the immediate removal of the violent partner from the common household and the environment of the woman and her children, without prior evidence of violence, and on the first complaint without waiting for the court order;

ii. the concept of domestic violence should be defined in national legislation in such a way that it is treated as a serious criminal offence, whatever its form;

iii. in view of the legal and institutional reform aimed at establishing more effective systems for protecting women against domestic violence, a review of existing national laws and comprehensive research are necessary;

iv. conjugal rape should be made a criminal offence;

v. access to justice and the different procedures should be more flexible: hearings should preferably be held in private, there should be a reduced burden of proof, and so on;

vi. the police and law enforcement agencies should be granted the authority to carry out investigations and obtain evidence, and to lodge complaints on behalf of victims of domestic violence.

8. The Assembly invites the Committee of Ministers to launch a European year against domestic violence, which would highlight this problem at European level and encourage European governments to undertake concrete action to combat domestic violence.

[1]. *Assembly debate* on 27 September 2002 (32nd Sitting) (see Doc. 9525, report of the Committee on Equal Opportunities for Women and Men, rapporteur: Ms Keltošová; and Doc. 9563, opinion of the Social, Health and Family Affairs Committee, rapporteur: Mr Hancock).

Text adopted by the Assembly on 27 September 2002 (32nd Sitting).

Resolution 1307 (2002)¹

Sexual exploitation of children: zero tolerance

1. Since 1996 in particular, the international community has been taking action to combat the sexual exploitation of children. The Parliamentary Assembly wishes to recall the importance of the 1989 United Nations Convention on the Rights of the Child, ratified by all member states of the Council of Europe, in the struggle for the right of children to grow up in a world without exploitation. All the international governmental and non-governmental organisations concerned have been striving to devise an arsenal of measures and proposals to eradicate this scourge.

2. The Assembly nevertheless has to note that the sexual exploitation of minors – through trafficking, prostitution and child pornography – is unremitting and knows no borders, whether geographical, cultural or social, and that we are a long way from halting its expansion. Child pornography in itself represents sexual abuse of children and encourages further such abuse.

3. The problem of sexual abuse of children is aggravated when the Internet is used as a medium, because of the increasing number of users, its anonymity and ease of use, and the contacts it permits.

4. The Assembly believes that it would be futile to create new legal instruments. The member

states of the Council of Europe have yet to subscribe to – and to apply – those that already exist, particularly a recent Committee of Ministers recommendation, namely Recommendation Rec (2001) 16 on the protection of children against sexual exploitation. We must move on from words to deeds and make clear our determination to reject the sexual exploitation of children in any form.

5. The Assembly therefore invites all Council of Europe member states:

i. to adopt legislation which is, at the very least, in line with the principles set out in Committee of Ministers Recommendation Rec (2001) 16 and, in order to achieve this, to request the assistance of the Group of Specialists on the Protection of Children against Sexual Exploitation (PC-S-ES), set up at the Council of Europe;

ii. to declare the combating of sexual exploitation in any form as a national objective, and, should priorities have to be decided in this context, to give precedence to eradicating the dangers posed to children by the Internet, in the light of its present and future impact;

iii. to ratify the Council of Europe's recent Convention on Cybercrime, which is aimed particularly at child pornography on the Internet.

6. The Assembly calls on states to take a zero tolerance approach to crimes committed against children in adopting a proactive policy:

i. which allows no crime or attempted crime to go unpunished;

ii. which gives priority attention to the rights and views of child victims, and which strives actively to find and identify victims so that they may be rehabilitated and fairly compensated;

iii. which aims to arrest criminals without giving them the slightest possibility – especially on procedural or geographical grounds – of eluding justice, and which applies penalties severe enough to fit the crime committed;

iv. which uses every means to prevent further offences, including compulsory treatment for offenders and the banning of convicted criminals from certain occupations which bring them into contact with children.

7. The Assembly asks member states to develop information and prevention classes in schools to inform pupils about the sexual exploitation of children.

8. The Assembly urges member states to tackle the problem of sexual abuse by people in positions of trust, such as parents, caregivers, teachers, police or the clergy, through the appropriate bodies. Attention should also be paid to the problem of defamation that may arise from vindictive accusations or press hysteria.

9. The Assembly asks every member state to acquire the means to combat computer crime, especially child pornography, and, to this end, to set up a special sufficiently staffed and equipped police unit comprising members trained in children's rights and new technologies. At the same time, co-operation with Internet professionals at national and international level should be improved in order to develop the appropriate technical and legislative means for the protection of children against illicit and harmful content related to sexual exploitation.

10. The Assembly invites member states to shake out of its indifference a society which needs to be called on as a whole to take action against this scourge, and also to:

i. encourage and draw attention to the duty of ordinary people to report sexual crimes and abuses against children;

ii. make emergency hotlines available free of charge; and

iii. provide assistance, especially of a financial nature, to those non-governmental organisations which are already active in this field to help them to provide their information and prevention service to children and their parents, particularly in respect of the use of new technologies, such as the Internet.

11. The Assembly calls on states to set up national "observatories" of sexual crimes and abuses against children, with responsibility, *inter alia*, for developing and improving data compilation and initiating research, so as to ascertain, among other things, the numbers and origins of child victims and the causes of this scourge, in order to prepare appropriate responses, and also so as to follow up victims' cases and find suitable ways of preventing further offences.

12. The Assembly also draws attention to its repeated invitation to member states to

appoint, as a matter of necessity, at every national level, an official to defend children's rights (an ombudsman or children's rights commissioner).

13. The Assembly calls on members and future members of the European Union to take the opportunity offered by the Convention on the future of Europe, set up to revise the EU institutions, to propose ways of remedying the deficiencies in, and advancing the cause of, children's rights.

14. The Assembly asks the member states of the Council of Europe to increase the regulation of children's homes.

15. The Assembly asks the member states of Europol to:

i. support Europol in its task of combating trafficking in human beings, including child pornography;

ii. support and invest in the Europol information service specifically dealing with child abuse, including the registration of names of those convicted of such crimes.

16. Lastly, the Assembly urges the European Union to open the Europol Convention, by amendment of the convention, to states outside the EU, in relation to the specific questions of trafficking in human beings and child pornography and, regardless of the outcome of this request, urges the Council of Europe member states to co-operate fully with Europol on these issues.

[1]. *Assembly debate* on 27 September 2002 (32nd Sitting) (see Doc. 9535, report of the Social, Health and Family Affairs Committee, rapporteur: Mr Provera; Doc. 9573, opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Piscitello; and Doc. 9575, opinion of the Committee on Culture, Science and Education, rapporteur: Baroness Hooper). *Text adopted by the Assembly* on 27 September 2002 (32nd Sitting).

Recommendation 1596 (2003)¹

Situation of young migrants in Europe

1. Young migrants represent a varied and heterogeneous group. They include children, young women and young men who have fallen prey to human traffickers or who have been smuggled into a country in the hope of escaping poverty, persecution or a situation of generalised violence; young people who have entered European countries through legal channels for study, work or family reunion; and second-generation migrants who are born in the host country. Many of them come from non-European countries; but many others are Europeans who move, legally or illegally, from one member state to another. They are immigrants for some states and emigrants, or returning emigrants, for others.

2. Bearing in mind the activities of the Council of Europe in the field of migration, as well as the numerous activities addressing the situation of youth in Europe, and namely those conducted by the Directorate for Youth and Sport, the Parliamentary Assembly recalls the works of the Hearing on the Specific Situation of Young Migrants (held at the European Youth Centre in Budapest, on 15 and 16 November 2001), where thirty young people from twentyseven European countries shared their experience of migration with members of the Sub-Committee on Migration of the Committee on Migration, Refugees and Demography, and voiced their unease and concern at current policies, or absence of policies, applying to their situation.

3. The Assembly is convinced that the situation of young migrants in Europe requires urgent action on the part of the Council of Europe, in co-operation with the relevant international organisations, to address the reasons why young people want to, or are forced to, emigrate, their rights and living conditions as immigrants, and finally their rights and needs when, and if, they return to their countries of origin.

4. The Assembly therefore recommends that the Committee of Ministers:

i. in consultation with relevant international agencies such as Unicef, the International Organisation for Migration (IOM) and the Office of the United Nations High Commissioner for Refugees (UNHCR) – and in compliance with the mandate of these agencies –initiate a long-term multidisciplinary programme for young migrants in Europe, with the aim of fostering social cohesion and the participation of young migrants through the improvement of their legal status, the support of appropriate integration and reintegration projects, the development of educational materials and programmes and the organisation of various initiatives designed to meet the needs of young migrants and highlighting their positive contribution to the strengthening of democratic society;

ii. include in the work programme of the General Directorate on Education, Culture and Heritage, Youth and Sport regular meetings – in the form of seminars, hearings, conferences and others – on the topic of young migrants, with the participation of young migrants;

iii. encourage member states to submit projects to the Council of Europe Development Bank, with a view to funding or co -funding integration projects for young migrants in

host countries, as well as reintegration projects for young migrants returning to their countries of origin, in particular young victims of trafficking;

iv. initiate a study to review the implementation of Committee of Ministers Recommendation Rec(2000)15 of the concerning the security of residence of long-term migrants and Recommendation Rec(2002)4 on the legal status of persons admitted for family reunification, with special regard to protection against expulsion of migrants who were born or raised in Council of Europe member states or who are minors;

v. with reference to the current preparation of a report on conditions for the acquisition and loss of nationality by its Committee of Experts on Nationality (CJ-NA), ask its relevant committees to initiate a study on the use of nationality law as an instrument to foster social cohesion and the integration of young migrants and include this issue among those to be addressed during the next European Conference on Nationality;

vi. initiate a feasibility study on the harmonisation of national laws on legal guardianship of separated children, as defined in sub-paragraph 7.iv of the present recommendation, with a view to the elaboration of an international binding instrument including the following guidelines:

a. all Council of Europe member states should adopt a legal framework for the appointment of a legal guardian for separated children who are under their jurisdiction, irrespective of whether they apply for asylum or not;

b. the legal guardian should look after the child individually, and be chosen among people or institutions of proven reliability, and have an understanding of the special and cultural needs of separated children as well as of the institutions of the host country;

c. the appointment of the legal guardian should take place as a matter of urgency, and in any case within two weeks of the presence of the child on national territory coming to the knowledge of the authorities;

d. the legal guardian should ensure that all decisions affecting the child are taken in his or her best interests, that the child has suitable legal representation to deal with his or her legal status and that she or he receives suitable care, accommodation, education, language support and health care;

e. the legal guardian should also act as a link between the child and various service providers and advocate on behalf of the child where necessary.

5. Furthermore, with a view to fostering participation and social cohesion, the Assembly recommends that the Committee of Minister elaborate measures aiming to assist member states to:

i. grant the right to vote and stand in local elections to migrants having settled legally on their territories and having resided there for at least three years;

ii. adopt appropriate legislation to facilitate the acquisition of nationality for migrants

having resided legally in the country on a long-term basis;

iii. facilitate the acquisition of nationality for children born on their territories to legally residing foreign parents;

iv. establish, or promote the establishment of, integration programmes according to, the following guidelines:

a. states should use all the available instruments at their disposal to fund, or support the funding of, integration programmes, and in particular the loans of the Council of Europe Development Bank and other international agencies;

b. states and local authorities should:

- mobilise resources to employ sufficient staff for the implementation of integration programmes and provide them with adequate training;
- monitor the implementation of integration programmes and conduct periodical evaluation studies;
- ensure the participation of migrants in the elaboration, implementation and evaluation of integration programmes;
- establish special integration programmes addressed to young migrants, not only those who have newly arrived;

c. participation in integration programmes should be voluntary, but states and local authorities could provide financial inducements to ensure wider attendance;

d. integration programmes should include language tuition and vocational guidance and/or training;

e. integration programmes should be based on an assessment of the integration needs of each beneficiary;

f. in the absence of specific integration programmes devoted to them, young migrants with dependants, especially women, should have priority of access to ordinary integration programmes;

g. integration programmes should aim at the personal development of beneficiaries, providing them with instruments to participate in all aspects of society, while preserving their language, culture and national identity, in accordance with the European Convention on Human Rights.

6. With a view to using education effectively as an instrument to foster equality, multiculturalism and mutual understanding, the Assembly also recommends that the Committee of Ministers elaborate measures addressed to member states, and aiming at:

i. ensuring unimpeded access to compulsory education for migrant children, irrespective of their own or their parents' legal status;

ii. ensuring access to compulsory education for migrants aged under 18 and who have not completed compulsory education in other countries, irrespective of their legal

status or the legal status of their parents;

iii. responding to the special needs of migrant students integrating the ordinary curriculum with additional classes, focusing on tuition in the language of the host country and the study of its society and culture;

iv. investing additional resources in the employment in educational institutions of specialised staff, such as psychologists, pedagogues, social workers and cultural mediators and provide them, as well as teachers, with appropriate training to deal with young migrants;

v. ensuring that the content of school programmes and textbooks does not contain any national or ethnic prejudices and does not convey any discriminatory or racist interpretation of the history, culture and society of foreign countries or communities;

vi. funding and supporting extracurricular activities aimed at highlighting the value of the culture and civilisation of migrants' communities and their countries of origin;

vii. supporting initiatives taken at local level to foster contacts between immigrant parents, the school and the community.

7. The Assembly further recommends that the Committee of Ministers include in its working programme activities aimed at assisting member states to:

i. introduce in all domestic laws or policy measures affecting children a specific mention of the situation of migrant children;

ii. give primacy and binding character to the principle of the best interests of the child, making this explicit in all laws, regulations or administrative guidelines concerning migration and/or asylum;

iii. refrain from detaining minors exclusively on immigration grounds, and consequently provide for alternative and adequate accommodation;

iv. introduce in domestic law and policy the definition of "separated children" as "children under 18 years of age who are outside their country of origin and separated from both parents or their legal/customary primary caregivers", and afford them an effective system of care and protection, consistent with the present recommendation as well as the recommendations of the Separated Children in Europe Programme established by the UNHCR and members of the International Save the Children Alliance;

v. ensure that the definition of separated children, and the special care and protection to which they are entitled, are interpreted and applied in a uniform manner throughout their territories, even when the competence in this matter falls within the remit of federate, regional or local authorities;

vi. introduce legal provisions to allow the placement of separated children, including those who do not apply for asylum, in reception centres or care institutions

appropriate to their needs, invest in the creation of such centres and institutions where necessary and ensure that separated children benefit from the same level of assistance and protection as is available for children with the nationality of the host country;

vii. facilitate the family reunification of separated children with their parents in other member states, even when parents do not have permanent residence status or are asylum seekers, in compliance with the principle of the best interests of the child;

viii. consider favourably requests for family reunification between separated children and family members other than parents who have a legal title to reside in a member state, are over 18 years of age and are willing and able to support them;

ix. facilitate the family reunification of separated young people with mental or physical disabilities, including those who are over 18 years of age, with their parents or other adult family members upon whom they were dependant in the country of origin or the country of habitual residence and who are legally residing in another member state;

x. in any ordinary or accelerated procedure implying the return of separated children to their countries of origin or any other country, including procedures of non-admission at the border, comply with the following guidelines:

a. states should make sure that return is not in breach of their international obligations under the 1951 Geneva Convention relating to the Status of Refugees and its 1967 Protocol, or the European Convention on Human Rights and other relevant instruments;

b. return should not be possible before a legal guardian for the child has been appointed;

c. before taking the decision to return a separated child, states should demand and take into consideration the opinion of the child's legal guardian as to whether return would be in the best interests of the child;

d. return should be conditional upon the findings of a careful assessment of the family situation that the child would find upon return, and of whether the child's family would be able to provide appropriate care. In the absence of parents or other family members, the suitability of childcare agencies in the country of return should be investigated. The assessment should be conducted by a professional and independent organisation or person and should be objective, non-political and aimed at ensuring the respect of the principle of the best interests of the child;

e. prior to return, states should obtain an explicit and formal undertaking from the child's parents, relatives, other adult carer or any existing childcare agency in the country of return that they will provide immediate and long-term care upon the child's arrival;

f. the decision to return a separated child should be reasoned and notified to the child and his/her legal guardian in writing, together with information on how to appeal against it;

g. the child and/or his or her legal guardian should have the right to lodge an appeal before a court against the decision to return. Such an appeal should have suspensive effect and be extended to the lawfulness and the merits of the decision;

h. during return, the child should be accompanied and treated in a manner in keeping with his or her age;

i. the well-being of the child following return should be monitored by appropriate authorities or agencies on the spot, who should liaise with, and report to, the authorities of the country from which the child has been returned;

j. migrants who arrived in a host country as separated children but who have reached the age of 18 at the time of return should be treated as vulnerable cases and consulted on the conditions required for successful reintegration into their country of origin.

8. As regards the issue of trafficking in children and young people, the Assembly recommends that the Committee of Ministers include in its working programme activities aimed at assisting member states:

i. to sign and ratify the United Nations instruments applicable to this matter, and in particular the Additional Protocol to the Convention against Transnational Organised Crime to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, , the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, and International Labour Organization Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour;

ii. to establish effective protection regimes for children and young people who are victims of trafficking, and ensure the availability of psychological counselling and assistance upon demand of the victims, their legal guardians or care institutions;

iii. to devise and implement appropriate programmes to meet the care and assistance needs of traumatised children and young people who are victims of trafficking in host countries;

iv. to devise and implement appropriate reintegration programmes for young victims of trafficking returning to their countries of origin;

v. to allocate additional financial resources to the prevention of trafficking in children and young people in the countries of origin and support or conduct information campaigns in schools and other places of socialisation or care, including orphanages, especially in areas at risk;

vi. support the initiatives of the IOM, the UNHCR and other agencies – within the limits of their mandates – to train police officers, border police and immigration officials on the international legal framework applying to trafficking, with particular attention to the assistance and protection needs of children and young people who are victims.

9. Finally, also recalling Assembly Recommendation 1547 (2002) on expulsion procedures in conformity with human rights and enforced with respect for safety and dignity, the Assembly asks the Commissioner for Human Rights to conduct an investigation on the situation of separated children in Council of Europe member states and report to the Assembly and the Committee of Ministers.

[1]. *Assembly debate* on 31 January 2003 (8th Sitting) (see Doc. 9645, report of the Committee on Migration, Refugees and Demography, rapporteur: Mr Yáñez-Barnuevo).
Text adopted by the Assembly on 31 January 2003 (8th Sitting).

Recommendation 1601 (2003)¹

Improving the lot of abandoned children in institutions

1. The Parliamentary Assembly draws attention to the fact that the United Nations Convention on the Rights of the Child, the landmark text on child protection, recognises that children are entitled to grow up in a family environment; they should therefore only be placed in institutions as a last resort, where absolutely necessary. In some countries, which are now Council of Europe member states, abandoning children – usually children with disabilities and “economic orphans” – and placing them in institutions used to be accepted as standard practice or on the grounds that it was the only possible solution.

2. The Assembly notes that this type of practice continues on account of the pressures – often financial – on families, the economic interests which hinder change, and attitudes, which are very slow to evolve.

3. Overcoming this legacy is a daunting task; the extent of the reforms required should not be underestimated and it is fortunate that many of these reforms have already been initiated in the states concerned. They will, however, require a great deal of time, the involvement of all sectors of the community, greater international co-operation and vast financial resources.

4. The Assembly therefore recommends that the Committee of Ministers of the Council of Europe urge the member states concerned:

i. to prepare and publish a map of children's institutions which must be closed down (especially those which are too big, isolated or dilapidated) and draw up a timetable for their closure;

ii. to promote, in co-operation with civil society, an active policy for removing children from institutions and restoring family ties by introducing alternative arrangements, and especially by returning children to their own families, placing them in foster families or family-type homes, setting up day centres, and so on, and promoting adoption within their own country;

iii. to systematically improve the training of staff in children's institutions to ensure that they are properly qualified, where necessary by means of foreign partnerships;

iv. to introduce policies to provide assistance to families in difficulty or those which have a child with a disability, to prevent the abandonment of children.

5. The Assembly recommends that the Committee of Ministers ask the member states concerned to ensure that:

i. the diagnosis of children's disabilities and the decision to place them in institutions are accompanied by full safeguards for the fundamental rights of children and involve regular re- assessment, and that there are appeal procedures;

ii. children living in institutions have access to appropriate health care and are given

the education and training they require to make up for inadequate schooling and social marginalisation, so as to ensure that, as young adults leaving the institution on coming of age, they have other prospects than life in the street or a psychiatric hospital;

iii. abandoned children living in institutions have access to effective representation (ombudsmen, specialist judges, NGOs, etc.), independent of the executive;

iv. they establish, in accordance with their legal system, the post of a special ombudsman for children to provide an effective protection of children's rights, including the rights of abandoned children.

6. The Assembly recommends that the Committee of Ministers set up intergovernmental activities programmes in its newest member states in support of children living in institutions, in co-operation with the European Union, Unicef and the World Bank, *inter alia*, in order to avoid duplication of work, prevent efforts from being made in a piecemeal fashion and ensure maximum efficiency in the shortest possible time.

7. The Assembly asks the Committee of Ministers to urge member states:

i. to take an active part in Council of Europe activities on behalf of people with disabilities, for example, the Partial Agreement in the Social and Public Health Field;

ii. to make use of Council of Europe Development Bank loans to improve the conditions in which children are cared for in institutions;

iii. to take advantage of 2003, European Year of People with Disabilities, to launch major national information campaigns to make people aware of the rights of children with disabilities in an endeavour to change attitudes and the way in which they and their place in society are perceived.

8. Finally, the Assembly invites the various Council of Europe bodies responsible for monitoring the honouring of commitments that must be entered into by states on joining the Council of Europe to consider respect for the rights of all children and a de-institutionalisation policy a binding obligation.

1. *Assembly debate* on 2 April 2003 (13th Sitting) (see Doc. 9692, report of the Social, Health and Family Affairs Committee, rapporteur: Mr Hancock).

Text adopted by the Assembly on 2 April 2003 (13th Sitting).

Recommendation 1639 (2003)¹

Family mediation and gender equality

1. Family mediation is a life-building and life-management process between family members in the presence of an independent and impartial third party known as the mediator. It is most often used in the context of a couple's separation, but also to settle questions relating to education, child custody and access, the determination of an appropriate contribution to the upbringing and maintenance of children, the division of an estate, inheritance, etc. The mediator's task is to support the mediated partners in their progress towards a previously agreed goal. The aim of mediation is to seek a conclusion that is acceptable for the mediated partners, without discussion of blame or responsibility.

The agreement reached is intended to lead to appeasement and long-term improvement of the mediated partners' relations.

2. The use of mediation is becoming more widespread across Council of Europe member and Observer states, especially in western Europe, Canada and the United States of America. The Assembly welcomes Recommendation No. R (98) 1 of the Committee of Ministers on family mediation. This recommendation promotes the use of family mediation as an appropriate means of resolving family disputes and sets out certain principles to be respected concerning the scope, organisation and process of mediation, as well as the status of mediated agreements, the relationship between mediation and proceedings before the judicial or other competent authority, and the promotion of and access to mediation.

3. In general, family mediation is valued as an alternative method of resolving family disputes as it has the advantage of promoting methods of friendly settlement and reducing the economic and social costs of separation and divorce for families, the state and society. For family mediation to be successful, however, the main principles of mediation must be respected, in particular the independence and impartiality of the mediator - who must be specially trained - and the confidentiality of the process.

4. Family mediation is not a universal remedy that will solve all family problems while avoiding congestion of the courts with jurisdiction over family issues (divorce, child custody and access, maintenance, division of estates, inheritance, etc.). Researchers and practitioners in the mediation field analyse the practice of mediation with reference to its underlying principles, with the emphasis on theoretical and practical consistency. Their concern is to ensure that court-ordered mediation does not become a less expensive, fast-track option reserved for those who cannot afford traditional judicial procedures. Court-ordered mediation must not become "poor man's justice". They also mention the difficulties faced by mediators in identifying or redressing power imbalances between the parties, especially when domestic violence or another type of spousal abuse is involved.

5. Gender equality must be guaranteed in family mediation as in family justice systems in general. Individual rights must not be sacrificed to cost-effectiveness or the trend towards alternative conflict resolution methods. Neither sex should be disadvantaged in family mediation because of a power imbalance, whether this is a result of one party

having suffered abuse, being unable to fully present his or her point of view (e.g. because of drug/alcohol dependency or mental health issues), or being emotionally or financially at a disadvantage (e.g. because one party has looked after the children and not worked outside the home). When patently unfair agreements are reached during family mediation as a result of such a power imbalance, they must not be endorsed by the mediator or approved by a judge.

6. It is essential to ensure that mediation does not lead to an agreement that satisfies the wishes of one party if this party dominates the other in any way whatsoever. When the bone of contention is the child, he or she should also be heard in the mediation process because he or she is recognised as having rights. Children should be allowed their say if a solution is to be found that is genuinely in their best interests.

7. The primary aim of mediation is not to reduce congestion of the courts but to repair a breakdown in communication between the parties, with the help of a professional trained in mediation. Judicial proceedings cannot be appropriately replaced by the mediation process unless the constituent elements of mediation are present, namely:

i. as freedom of choice for the parties is the key to all mediation, mandatory referral to mediation must be prohibited;

ii. the independence and impartiality of the mediator must be guaranteed from both the institutional and the professional standpoint;

iii. the confidentiality of the process must be guaranteed, even in court-ordered mediation, as regards both the judge and the mediated parties;

iv. the obligation to speedily confirm mediation agreements would guarantee that they are lawful and respect the individual rights of each person covered by them;

v. the balance of power between the mediated parties must be guaranteed. This is the responsibility of the mediator, who must be specially educated and trained for this purpose in order to be able to establish that this essential requirement is met;

vi. as a mediator's competence depends on his or her qualifications, particular attention must be paid to the mediator's training and the official authorisation and supervision of his or her work.

8. The Parliamentary Assembly thus calls on Council of Europe member and Observer states to implement the principles for the promotion and use of family mediation as laid out in Recommendation No. R (98) 1 of the Committee of Ministers and to introduce or strengthen the following measures with a view to ensuring:

i. freedom of choice for the mediated parties, which means ruling out mandatory referral to mediation;

ii. the existence of equal power between the mediated parties both in theory and in practice;

iii. the development of standardised screening tools based on a thorough knowledge of power relationships or violence in couples or families in order to correctly identify cases lending themselves to family mediation;

iv. the inclusion of family mediation in the legal aid system;

v. review of the lawfulness and fairness of mediation agreements through their approval by the competent courts;

vi. the confirmation of mediation agreements by the competent courts;

vii. the existence of a formal complaints system within every mediation service.

9. In view of the experience accumulated by member states during the last five years, the Assembly recommends that the Committee of Ministers:

i. consider revising its guidelines set out in Recommendation No. R (98) 1 in order to reflect the aforementioned concerns and solutions as well as those arising from the need to hear children's views and guarantee their rights;

ii. enlist the help of experts and experienced practitioners for this purpose.

1. *Text adopted by the Standing Committee, acting on behalf of the Assembly, on 25 November 2003 (see Doc. 9983, report of the Committee on Equal Opportunities for Women and Men, rapporteur: Ms Err; and Doc. 10002, opinion of the Social, Health and Family Affairs Committee, rapporteur: Ms Milotnova).*

Recommendation 1654 (2004)¹

Nationality rights and equal opportunities

1. Traditionally, each state determines under its own law who are its nationals, although many states have accepted to be bound by international instruments relating to citizenship, multiple nationality and statelessness.

2. In matters of nationality, account must be taken both of the legitimate interests of states and those of individuals. One of the most important legitimate interests of individuals is not to be discriminated against – in particular, on the grounds of gender. However, while this principle has, today, been recognised by most states in theory, in practice discrimination has occurred in the past and may still occur in some cases.

3. Unfortunately, no in-depth comparative study of legislation on nationality focusing on equal opportunities between women and men in Council of Europe member and Observer states has so far been undertaken. The Parliamentary Assembly thus has to base its evaluation of the situation on a survey conducted by its Committee on Equal Opportunities for Women and Men, to which replies from thirty-two member and three Observer states were received.

4. The Assembly congratulates those countries which have removed discrimination based on gender from their legislation. In particular, it welcomes the elimination of discrimination against women in several Council of Europe member states (where citizenship used to be passed down the male line, or women lost their citizenship upon marriage to a foreigner), as well as the elimination of discrimination against men (who were not always allowed to pass down their nationality to illegitimate children, especially those born abroad). Nearly all of the laws in question have full retroactive effect, which is of paramount importance in the area of nationality rights.

5. Some work remains to be carried out, however. Men continue to face obstacles in passing down their nationality to children born out of wedlock to a foreign mother in Denmark, Iceland, Malta and Switzerland. Some discrimination against women also subsists in Switzerland and Turkey, which are about to revise their legislation to eliminate this. Some provisions applied to the dependants of Vatican citizens could be revised to ensure equal treatment of men and women.

6. The Assembly also points out that the situation in the thirteen member and two Observer states which it was not able to study might give rise to legitimate concern. Some countries' provisions on naturalisation requirements may also lead to unintentional discrimination against foreign women as regards, for example, income, social integration or knowledge of language, although some countries have taken measures to counterbalance this effect.

7. The Assembly thus recommends that the Committee of Ministers:

i. conduct an in-depth comparative study of the legislation on nationality in all Council of Europe member and Observer states focusing on equal opportunities between women and men, which would uncover any distinctions being made on grounds of gender (be they intentional or unintentional, or due to the lack of retroactivity of

legislation intended to eliminate discrimination), would highlight best practices and would make concrete proposals to remedy any shortcomings;

ii. call on the governments and parliaments of member and Observer states to eliminate any possibility of discrimination on the grounds of gender in their legislation on nationality, if they have not done so already, and to ensure that such legislation is doted with full retroactive effect and is applied in a gender -neutral manner.

1. *Text adopted by the Standing Committee, on behalf of the Assembly, on 2 March 2004 (see Doc.10070, report of the Committee on Equal Opportunities for Women and Men, rapporteur: Ms Aguiar).*

Recommendation 1681 (2004)¹

Campaign to combat domestic violence against women in Europe

1. The Parliamentary Assembly is extremely concerned about the extent and escalation of domestic violence against women and notes that this serious problem extends to all Council of Europe member states.
2. The acute nature of this problem must force Council of Europe member states to regard domestic violence as a national political priority and to deal with it in a broader political framework, with government, parliament and civil society involvement. Member states have an obligation under international law to act with due diligence to take effective steps to end violence against women, including domestic violence, and to protect its victims/survivors. If they do not themselves want to be held responsible, states must take effective measures to prevent and punish such acts by individuals and to protect the victims/survivors.
3. In Recommendation 1582 (2002) on domestic violence against women, the Assembly proposed various measures to combat such violence. It advocated that acts of domestic violence be made a criminal offence, that victims be afforded better judicial, psychological and financial protection and that a European year against domestic violence be held to ensure that such violence is no longer a taboo subject.
4. The Assembly notes that, when states conduct national awareness-raising campaigns and adopt appropriate legislative, judicial and financial measures, progress is achieved in the fight against domestic violence, for victims are better informed of their rights and members of the public are more aware of the seriousness of the problem. Hence it can but regret the failure of the Committee of Ministers, in its reply to Recommendation 1582 (2002), to take action on the call for a European campaign to be launched against domestic violence.
5. It remains convinced that the organisation of a pan-European campaign against domestic violence will encourage member states to take the urgent measures which are needed. Such a campaign, which could be conducted in close co-operation with the European Commission, the European Parliament and non-governmental organisations (NGOs), should centre on three main lines: prevention, assistance for victims and the provision of information to the public.
6. The Assembly welcomes the various current initiatives in several national parliaments and declares that it is ready to take the necessary measures to contribute to their success. It also resolves to engage itself in the organisation and implementation of a pan-European campaign against domestic violence in 2006.
7. The Assembly therefore recommends that the Committee of Ministers:
 - i. deal with the issue of domestic violence at the 3rd Summit of Heads of State and Government of the Council of Europe;
 - ii. undertake to conduct a pan-European campaign against domestic violence in 2006, in co-operation with European and national players such as the European Commission,

the European Parliament, associations and NGOs;

iii. set up at the Council of Europe an ad hoc group with the following tasks:

a. to define and harmonising the various parameters for this pan-European campaign;

b. to set up follow-up machinery to evaluate states' progress;

c. to establish instruments for quantifying developments in domestic violence at pan-European level;

d. to draw up proposals for action for each member state, at national level, by:

- running a national awareness-raising campaign at the level of ministries and the general public, in close co-operation with national parliaments, local players, associations and NGOs;
- stepping up protection and victim assistance measures, *inter alia*, offering victims emergency assistance in the legal, medical, psychological and financial spheres, and providing appropriate training to the police and members of the justice system, and support to NGOs working with victims of domestic violence;
- adopting criminal penalties for the perpetrators of acts of domestic violence, including marital rape, and provide for psychological support to prevent reoffending;
- drawing on the good practice of other member states, such as Austria, where the federal law of 1997, *inter alia*, allows the police to prohibit the perpetrator of an act of violence from entering the family home and automatically provides protection and support for victims;
- developing instruments for measuring, in quantitative and qualitative terms, developments in such violence and the effectiveness of measures to prevent and combat it;
- reporting regularly to international human rights bodies on developments in domestic violence against women and measures taken to prevent and combat it.

1. *Assembly debate* on 8 October 2004 (32nd Sitting) (see [Doc. 10273](#), report of the Committee on Equal Opportunities for Women and Men, rapporteur: Mr Branger).

Text adopted by the Assembly on 8 October 2004 (32nd Sitting).

Recommendation 1686 (2004)¹

Human mobility and the right to family reunion

1. The right to respect for family life is a fundamental right belonging to everyone and one which is secured by a number of international legal instruments, such as the Universal Declaration of Human Rights (Article 16) and the European Convention on Human Rights (Article 8).
2. Family reunion is the term used to describe a situation in which members of a family come to join one of its members (the “sponsor”), who is lawfully resident in another country.
3. Several Council of Europe conventions, such as the European Social Charter (1961), the revised European Social Charter (1996) and the European Convention on the Legal Status of Migrant Workers (1977), as well as the United Nations Convention on the Rights of the Child (1989), encourage member states to promote the right to family reunion.
4. The right to family reunion in the European Union is one which applies to nationals of non-European Union member states and may be exercised, in principle, by migrants lawfully resident in a member state, persons having obtained refugee status according to the 1951 Geneva Convention relating to the Status of Refugees, as well as persons having been granted complementary or subsidiary protection.
5. The Parliamentary Assembly and also the Committee of Ministers in its recent recommendation on the legal status of persons admitted for family reunification (Rec(2002)4), reiterate their view that any immigration policy has a duty, in accordance with the principles declared at the Tampere European Council (1999), to uphold the principles of equal treatment between nationals of non-EU member states having legal status and citizens of the European Union and must consequently seek to ensure treatment on an equal footing with nationals.
6. The reconstitution of the families of lawfully resident migrants and refugees by means of family reunion strengthens the policy of integration into the host society and is in the interests of social cohesion.
7. However, the concept of “family” underlying that of family reunion has not been defined at European level and varies in particular according to the value and importance attached to the principle of dependence.
8. In its Recommendation 1327 (1997) on the protection and reinforcement of the human rights of refugees and asylum seekers in Europe, the Assembly urged member states to interpret the concept of asylum seekers’ families as including *de facto* family members (natural family), for example an asylum seeker’s partner or natural children as well as elderly, infirm or otherwise dependent relations.
9. The Assembly notes with some concern that certain member states have shown a tendency to revise their immigration policy and impose tighter restrictions on the right to family reunion.

10. While welcoming the preferential treatment granted to refugees in the recent European Union Council Directive on the right to family reunification (2003/86/EC), the Assembly expresses its regret that it does not recognise the right to family reunion for persons granted subsidiary protection, nor does it lay down harmonised provisions with regard to the conditions, procedures and timeframes for granting resident status and associated rights.

11. The Assembly also believes that certain provisions allowing for derogations that enable states to make applications subject to financial and housing-related conditions, integration criteria or age limits could, if applied strictly, pose a threat to the right to respect for family life, particularly the rights granted to children, and reinforce the risk of social exclusion of certain nationals of non-EU member states.

12. Consequently, the Assembly recommends that the Committee of Ministers:

i. increase its monitoring of compliance by member states with international legal instruments regarding family reunion, particularly compliance with the European Convention on Human Rights and the relevant recommendations of the Committee of Ministers in this field;

ii. draw up proposals for the harmonisation and implementation of family reunion policies in member states and lay down a common definition of the family unit and rules regarding specific circumstances based on the recommendations set out in sub-paragraph 12.iii;

iii. address, in the meantime, a recommendation to member states, urging them:

a. to apply, where possible and appropriate, a broad interpretation of the concept of family and include in particular in that definition members of the natural family, nonmarried partners, including same-sex partners, children born out of wedlock, children in joint custody, dependent adult children and dependent parents;

b. to grant the right to family reunion to persons benefiting from subsidiary protection;

c. to lay down that reasons must be given for any refusal to grant an application for family reunion and ensure that such a decision can be appealed before an independent body;

d. to impose less strict conditions for applicants in respect of financial guarantees, health insurance and housing and, in particular, to avoid any discrimination against women migrants and refugees which could result from their imposition;

e. to make administrative procedures as straightforward and transparent as possible and to harmonise at European level waiting periods, limiting them to a maximum of twelve months, and not to consider as grounds for rejecting the application the failure to provide certain documents that are not instrumental in the fulfilment of the conditions for family reunification;

f. to consider applications in a positive and humane spirit, providing necessary support for all vulnerable groups and applying appropriate assistance measures to refugees in the light of any economic difficulties they may be experiencing;

g. to facilitate family reunion, referring to Parliamentary Assembly Recommendation 1596 (2003) on the situation of young migrants in Europe, before the completion of the sometimes very lengthy procedure for determining refugee status, in exceptional cases and for humanitarian reasons;

h. not to return, in conformity with the case-law of the European Court of Human Rights and referring to Article 8 of the European Convention on Human Rights, illegal immigrants or asylum seekers whose application has been rejected if such a move could threaten the unity of their family, but rather to seek to solve the problem by bringing their situation into conformity with the law for humanitarian reasons;

i. not to return lawfully resident migrants and refugees to their countries of origin after they have served sentences for criminal behaviour, provided their main family ties are in the host country, and not to reject applications for family reunion solely on the grounds that the applicant (be it the “sponsor ” or the “sponsored”) has a criminal record;

j. to grant members of a reunited family legal status enabling them to integrate fully into the host society and to encourage the issuing of an autonomous residence permit to the spouse, non-married partner and children who reach the age of majority in order to afford them protection in the event of deportation, divorce, separation or the death of the principal right-holder;

k. to ensure that cases of abusive relationships within reunited families are detected and dealt with in a fair and humane manner, and that, in particular, women who are victims of domestic violence or forced marriage are not sent back to their countries of origin against their will;

l. to authorise members of the family of a non-national living lawfully in a member state to work in an employed or a self-employed capacity as soon as they are issued with a residence permit;

m. to introduce special programmes for the integration of families that have been reunited.

1. *Text adopted by the Standing Committee* , acting on behalf of the Assembly, on 23 November 2004 (see Doc.10123, report of the Committee on Migration, Refugees and Population, rapporteur: Ms Zapfl-Helbling; and Doc.10179, opinion of the Committee on Equal Opportunities for Women and Men, rapporteur: Mr Gaburro).

Resolution 1468 (2005)¹

Forced marriages and child marriages

1. The Parliamentary Assembly is deeply concerned about the serious and recurrent violations of human rights and the rights of the child which are constituted by forced marriages and child marriages.
2. The Assembly observes that the problem arises chiefly in migrant communities and primarily affects young women and girls.
3. It is outraged by the fact that, under the cloak of respect for the culture and traditions of migrant communities, there are authorities which tolerate forced marriages and child marriages although they violate the fundamental rights of each and every victim.
4. The Assembly defines forced marriage as the union of two persons at least one of whom has not given their full and free consent to the marriage.
5. Since it infringes the fundamental human rights of the individual, forced marriage can in no way be justified.
6. The Assembly stresses the relevance of United Nations General Assembly Resolution 843 (IX) of 17 December 1954 declaring certain customs, ancient laws and practices relating to marriage and the family to be inconsistent with the principles set forth in the Charter of the United Nations and in the Universal Declaration of Human Rights.
7. The Assembly defines child marriage as the union of two persons at least one of whom is under 18 years of age.
8. The Assembly deplores the drastic effects of marriage on married children. Child marriage in itself infringes their rights as children. It is prejudicial to their physical and psychological welfare. Often an obstacle to school attendance, child marriages may be prejudicial to children's access to education and their intellectual and social development, in that they restrict their horizon to the family circle.
9. The Assembly is appalled to find that some national legislation permits the marriage of minors, sometimes in a discriminatory fashion with gender-based differences in minimum ages.
10. Such marriages should, in fact, no longer take place in our societies, which uphold human rights and the rights of the child. In that respect, the Assembly concurs with the considerations set out in the 1962 United Nations Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages which reaffirms "that all States, including those which have or assume responsibility for the administration of Non-Self-Governing and Trust Territories until their achievement of independence, should take all appropriate measures with a view to abolishing such customs, ancient laws and practices by ensuring, *inter alia*, complete freedom in the choice of a spouse, eliminating completely child marriages and the betrothal of young girls before the age of puberty, establishing appropriate penalties where necessary and establishing a civil

or other register in which all marriages will be recorded”.

11. The right to marry is recognised in Article 12 of the European Convention on Human Rights. The Assembly nevertheless recalls the further provision in this article for the exercise of this right to be governed by national laws.

12. It therefore stresses the need to take the requisite legislative measures to prohibit child marriage by making 18 years the minimum marriageable age. Thus, persons not having reached this age would not be able to lawfully contract marriage.

13. The Assembly therefore recommends that Council of Europe member states take the following legal measures regulating the right to marry:

13.1. ratify the 1962 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, if they have not yet done so;

13.2. ratify the 1979 Convention on the Elimination of All Forms of Discrimination against Women and the amendment and protocol thereto, if they have not yet done so;

13.3. ensure their compliance with Council of Europe Committee of Ministers' Recommendation Rec(2002)5 on the protection of women against violence.

14. The Assembly urges the national parliaments of the Council of Europe member states to:

14.1. renegotiate, discard or denounce any sections of international agreements and rules of international private law contrary to the fundamental principles of human rights, particularly as regards personal status;

14.2. adapt their domestic legislation, if appropriate, so as to:

14.2.1. fix at or raise to 18 years the minimum statutory age of marriage for women and men;

14.2.2. make it compulsory for every marriage to be declared and entered by the competent authority in an official register;

14.2.3. institute an interview between the registrar and the bride and groom prior to the celebration of the marriage and allow a registrar who has doubts about the free and full consent of either or both parties to summon either or both of them separately to another meeting;

14.2.4. refrain from recognising forced marriages and child marriages contracted abroad except where recognition would be in the victims' best interests with regard to the effects of the marriage, particularly for the purpose of securing rights which they could not claim otherwise;

14.2.5. facilitate the annulment of forced marriages and possibly automatically annul

such marriages;

14.2.6. lay down a maximum period of one year, in so far as practicable, to investigate and rule on an application for annulment of a forced marriage or a child marriage;

14.3. regard coercive sexual relations victims are subjected to within forced marriages and child marriages as rape;

14.4. consider the possibility of dealing with acts of forced marriage as an independent criminal offence, including aiding and abetting the contracting of such a marriage.

1. *Assembly debate* on 5 October 2005 (29th Sitting) (see Doc. 10590, report of the Committee on Equal Opportunities for Women and Men, rapporteur: Mrs Zapfl-Helbling; and Doc. 10678, opinion of the Social, Health and Family Affairs Committee, rapporteur: Mrs Bargholtz).

Text adopted by the Assembly on 5 October 2005 (29th Sitting).

Recommendation 1698 (2005)¹

The rights of children in institutions: follow-up to Recommendation 1601 (2003) of the Parliamentary Assembly

1. The Parliamentary Assembly draws attention to the content of its previous Recommendation 1601 (2003) on improving the lot of abandoned children in institutions, adopted in April 2003, and reaffirms the relevance and current validity of the various recommendations and proposals to member states and to the Committee of Ministers of the Council of Europe contained in that text.

2. The Assembly notes with satisfaction the reply to its proposals by the Committee of Ministers of the Council of Europe (Doc. 9939), which is currently preparing a recommendation to the member states on this matter. It sees this as the expression of the political will to give the rights of children living in institutions appropriate weight and priority. It also takes note of the various forms of financial support provided by the Council of Europe Development Bank to member states which are de-institutionalising abandoned children and setting up alternative forms of care for them.

3. It points out that the highest priority must be given to ensuring that progress is made in improving the quality of education and care provided in institutions and of closing pedagogically unsuitable, unsanitary and dilapidated institutions. When children are placed in families, it must be ensured that this constitutes a better alternative to placement in an institution. Placement in living groups and Children's Villages must also be taken into consideration as further possibilities. The top priority when making this choice must be the best interests of the child. Deinstitutionalisation must be complemented by welfare measures and benefits to help children to reintegrate families and by alternatives to institutions. The aim is not to empty institutions at all costs, however, since some children will always need institutional care.

4. It stresses that the problem of children living in institutions is common to all member states of the Council of Europe and that no member state can claim to be beyond criticism in this field. However, one cannot fail to notice that in some member states, and especially in the recent post-communist democracies, the situation of such children is still particularly disturbing and necessitates further substantial progress.

5. In these countries, despite undeniable progress, the abandonment and placement of children in institutions, particularly those with disabilities, still continues due to the problems, primarily economic, faced by families, the absence or inadequacy of social benefits and the difficulty of changing people's attitudes. The victims of such practices are very often children from ethnic minorities.

6. The Assembly welcomes the fact that the upcoming accession to the European Union of certain candidate countries has put the political spotlight on the plight of children in institutions and that funds are being allocated to improving it. However, this assistance will shortly be discontinued and it questions the political will and ability of these countries to take over the task and consolidate and build upon the progress made.

7. It is also concerned about the number and the fate of children in institutions in other European countries which are not European Union applicant states. The fate of children in institutions has ceased to be a matter for the social welfare field and has now become first and foremost a human rights issue which gives the Council of Europe an important role in this respect.

8. The Assembly therefore recommends that the Committee of Ministers of the Council of Europe:

i. expedite the work of preparing and adopting the draft recommendation on the rights of children living in institutions and provide for a mechanism to supervise the implementation of this recommendation;

ii. add the rights of children living in institutions to the subjects covered by the thematic monitoring report;

iii. develop intergovernmental co-operation programmes for children in institutions, addressing the development of alternatives to institutionalisation; family and social policy measures for families aimed at preventing abandonment; and the integration into society and the labour market of young adults who have spent their whole lives in institutions;

iv. ask the member states to create institutions responsible for supervising and providing advice to institutions (homes, living groups, residential communities, Children's Villages, etc.) as well as foster and adoptive parents in order to protect the rights of the children concerned. These institutions should develop binding guidelines, with the participation of all parties concerned (including the children), aimed at monitoring the extent to which assistance is being provided in a targeted manner;

v. make an urgent appeal to sponsors throughout the international community – European and international institutions, NGOs, etc. – to continue their financial efforts on behalf of children in institutions;

vi. urge sponsors and the European Union in particular to ensure that European funds granted to the various European states for children in institutions actually reach their proper destination and to regularly verify the use of such funds.

1. *Assembly debate* on 25 April 2005 (9th Sitting) (see Doc. 10452, report of the Social, Health and Family Affairs Committee, rapporteur: Mr Hancock).

Text adopted by the Assembly on 25 April 2005 (9th Sitting).

Recommendation 1703 (2005)¹

Protection and assistance for separated children seeking asylum

1. Half of the world's refugees and displaced persons are children, defined as persons under 18 years of age by the 1989 United Nations Convention on the Rights of the Child. They have fled their homes to escape persecution, human rights violations, exploitation, abuse or natural disasters; more than 2 million have been killed in conflicts during the past decade; thousands lost their lives in the recent tsunami in Southeast Asia while those who survived, traumatised and confused, risk falling prey to unscrupulous traffickers.

2. Children are vulnerable and among them the most vulnerable group is represented by those who are in a foreign country seeking asylum and separated from their parents or legal or customary primary care-givers. Separated children seeking asylum make up approximately 4% of the number of asylum applicants in Europe; in some member states, including countries in which immigration is a relatively new phenomenon, this proportion can attain 10%.

3. The Parliamentary Assembly considers the situation of separated children seeking asylum in Council of Europe member states a matter of urgent concern. National legislation, policies and practices fail to address in a coherent manner the threefold protection needs of this group: as children, as children without parents or legal care-givers and as children in the asylum process.

4. Even if all Council of Europe member states are parties to the United Nations Convention on the Rights of the Child, a number of provisions laid down therein are often neglected by states in the elaboration and implementation of asylum measures. This is the case regarding the principle of the best interests of the child (Article 3), which in the wording of the convention should be a primary consideration; the principle of non-discrimination, including on grounds of nationality (Article 2); the facilitation of family reunification (Article 10); the right for the child to be consulted on all matters that may affect him or her (Article 12); and the right to special protection for refugee children or children seeking refugee status (Article 22).

5. As they are without their parents or legal or customary primary care-givers, separated children seeking asylum should benefit from the prompt appointment of a legal guardian to defend their interests and ensure their wellbeing and they should also be placed in care and reception structures in keeping with their age and maturity. By contrast, the legislation of Council of Europe member states often does not provide for an appropriate system of guardianship on behalf of foreign children. Even when an adequate legal framework is in place, administrative delays pose a serious threat to the safety of children, leaving them more exposed to a risk of trafficking or other abuses. Furthermore, the detention of separated children in the asylum process is a widespread practice in the vast majority of Council of Europe member states, in open disregard of the obligation to provide care and reception in structures suitable for children and in violation of Article 37 of the United Nations Convention on the Rights of the Child, which states that detention shall only be used as a measure of last resort and for the shortest appropriate period of time.

6. As regards the asylum system, the Assembly regrets that separated children are often prevented from having access to effective protection against *refoulement*, due to the applicable legislation: at procedural level, in most Council of Europe member states, children can be denied access to the territory on the grounds that they travelled via a safe country where they could have applied for asylum; their asylum application can be processed under an admissibility or accelerated asylum procedure; they may not benefit from the appointment of a legal representative; and at substantive level, most Council of Europe member states do not recognise child-specific forms of persecution, such as forced recruitment into armed forces, forced child labour, female genital mutilation, forced marriages or forced pregnancies, as persecution under the terms of the 1951 Geneva Convention relating to the Status of Refugees.

7. Various specialised agencies and bodies have adopted recommendations and guidelines to enhance the protection of separated children seeking asylum, including the Committee on the Rights of the Child, the United Nations High Commissioner for Refugees (UNHCR) and the Separated Children in Europe Programme. The Assembly believes that the Council of Europe should urge its member states to comply with the standards recommended by such agencies and bodies.

8. Moreover, the Council of Europe should complement these standards by adopting a single coherent instrument on the issue of separated children seeking asylum. Such an instrument should restate previous recommendations of the Assembly and the Committee of Ministers regarding specific aspects affecting refugee children and try to fill gaps in protection.

9. The Assembly therefore recommends that the Committee of Ministers:

i. instruct one or more of the specialised committees to conduct in-depth studies on access to the territory and to the asylum procedure for separated children seeking asylum in Council of Europe member states, as well as on the availability of a system of legal guardianship;

ii. instruct one or more of the specialised committees to conduct a study to review the practice of member states as regards child-specific forms of persecution;

iii. draw up, in co-operation and co-ordination with the UNHCR, the Save the Children Alliance and the Separated Children in Europe Programme, a recommendation urging member states to:

a. recognise the primacy of the principle of the best interests of the child in all asylum or immigration decisions, procedures, practices or legislative measures affecting minors;

b. recognise and fully implement in practice the principle of non-discrimination, ensuring that all rights apply to all children on their territory or within their jurisdiction without exception;

c. refrain from refusing entry to their territories to separated children, on any grounds;

d. amend their legislation and remove any administrative obstacle so as to ensure that separated children can have a legal guardian and a legal representative appointed as a matter of urgency and not later than two weeks of their presence coming to the

knowledge of the authorities;

e. ensure that separated children are heard in the context of the asylum procedure, either directly or through their legal guardian, and that they are questioned in a manner in keeping with their age, maturity and psychological situation;

f. amend their legislation so as to exempt separated children from accelerated or admissibility asylum procedures;

g. recognise child-specific forms of persecution as persecution within the meaning of the 1951 Geneva Convention relating to the Status of Refugees;

h. grant special or humanitarian residence permits to children who have been subjected to child-specific forms of persecution and who are not recognised as refugees;

i. facilitate family reunification on behalf of separated children, as indicated in Assembly Recommendation 1596 (2003) on the situation of young migrants in Europe;

j. allow the detention of separated children only as a last resort and for the shortest possible time, as indicated in Recommendation Rec(2003)5 of the Committee of Ministers to member states on measures of detention of asylum seekers;

k. ensure that the return of separated children to their country of origin is implemented only if this is in the best interest of the child and in compliance with the safeguards set out in Assembly Recommendations 1547 (2002) on expulsion procedures in conformity with human rights and enforced with respect for safety and dignity and Recommendation 1596 (2003) as mentioned above;

iv. encourage the organisation and provision of specific training for lawyers as well as officials and other professionals dealing with separated children during the asylum procedure and in the context of anti-trafficking policy and law;

v. urge member states to comply with the guidelines adopted by the UNHCR, the Save the Children Alliance and the Separated Children in Europe Programme, in particular the revised Statement of Good Practice on Separated Children Seeking Asylum;

vi. call on member states to continue their co-operation with the UNHCR and the Separated Children in Europe Programme in order to:

a. introduce a uniform format for registering information on separated children as regards age, gender and country of origin, with a view to facilitating identification, family tracing and the comparability of information collected;

b. introduce common standards for assessing the age of separated children;

c. harmonise the collection of statistical data relating to separated children seeking asylum as regards gender, age, country of origin and decisions on asylum and communicate such information to the UNHCR and other relevant organisations.

1. *Assembly debate* on 28 April 2005 (15th Sitting) (see Doc. 10477, report of the Committee on Migration, Refugees and Population, rapporteur: Mr van Thijn).
Text adopted by the Assembly on 28 April 2005 (15th Sitting).

Recommendation 1769 (2006)¹

The need to reconcile work and family life

1. The reconciliation of work and family life allows men and women to achieve economic independence, and fulfil themselves both professionally and personally, while also assuming their family obligations. It contributes to the increased participation of women and men in professional, public and political life.

2. The Parliamentary Assembly notes, however, that the aim of reconciling work and family life is far from being achieved in many Council of Europe member states. However, the absence of measures facilitating this reconciliation primarily penalises women, since they still carry most of the responsibility for running the home, bringing up young children and very often looking after their dependant parents or other elderly dependants as well. Thus, the absence, inadequacy or inaccessibility of care and support structures for children or old people obliges women with family responsibilities to work part time or stop working altogether.

3. This inequality is aggravated still further by the fact that access to the labour market and professional careers is in any case harder for women. Persistent wage discrepancies between women and men make it economically logical that, when children are born, it is the woman who stops working. Moreover, we still have a work culture which tends to attach too much importance to long working days, taking no account of workers' – and above all women workers' – family obligations.

4. The Assembly is convinced that measures making it easier to reconcile work and family life are a factor for growth and employment – particularly of women – and provide an answer to the challenges posed by the ageing of the population. The Assembly thus supports the efforts to promote reconciliation made by the Organisation for Economic Co-operation and Development (OECD) and the European Union which, in its Lisbon Strategy, aims to achieve a 60% employment rate for women by 2010, with child-minding facilities for at least 33% of children under 3 and 90% of children from the age of 3 to the age of compulsory schooling respectively.

5. The Assembly considers that reconciling work and family life is a “win-win” process for workers, public partners and socio-economic players, who must ensure, however, that measures taken for this purpose are aimed at both women and men with a view to promoting gender equality. It also emphasises that political determination on the part of Council of Europe member states is vital to defining innovative, negotiated solutions aimed at promoting a work/family balance and so making a real contribution to equal opportunities for women and men on the labour market.

6. The Assembly recalls Committee of Ministers Recommendation No. R (96) 5 on reconciling work and family life, whose general principles are still valid and relevant. However, the persistent discrimination which women still encounter, particularly on the labour market, should prompt the Council of Europe to encourage member states to introduce practical measures and devise proactive policies. These policies, offering both incentives and where necessary a coercive approach, should encourage employers to promote the reconciliation of work and family life, and therefore equal opportunities for women and men to access the labour market, pursue careers and cope with family

obligations.

7. The Assembly recommends that the Committee of Ministers assess the implementation of its Recommendation No. R (96) 5 and identify specific legal measures which member states or firms have taken or can take to truly promote the reconciliation of work and family life, bearing in mind the need to promote equal opportunities for both sexes.

8. Moreover, the Assembly invites the Committee of Ministers to address a recommendation to the member states asking them:

8.1. to fully implement Recommendation No. R (96) 5 on reconciling work and family life;

8.2. to endeavour to reach the goals set in the European Union 's Lisbon Strategy (child-minding facilities for at least 33% of children under 3 and 90% of children from the age of 3 to the age of compulsory schooling), also in non-European Union member states, and institute a dialogue between national governments, local and regional authorities and social partners on how best to reach these goals;

8.3. to take measures making it easier to reconcile work and family life which target women and men, including:

8.3.1. guaranteeing equal wages for women and men, thus ensuring that financial decisions do not necessarily disadvantage women workers;

8.3.2. identifying the need for child-minding facilities and determining the number of dependant persons, so that suitable structures can be provided and their effectiveness assessed;

8.3.3. initiating dialogue with workers and employers, local and regional authorities and the private sector to consider the main emphases in measures aimed at making it easier to reconcile work and family life and preserve the employability of persons using these measures;

8.3.4. fostering the introduction of working conditions which are flexible and freely accepted by workers, while ensuring that workers who make use of them have equal access to promotions, bonuses, pensions, etc.;

8.3.5. providing adequate remuneration/compensation during maternity leave;

8.3.6. introducing, if they have not yet done so, paid paternity leave and encouraging men to take it;

8.3.7. alleviating the social costs generated by motherhood and by measures which are favourable to parenthood, to ensure that firms taking on future parents are not penalised;

8.3.8. introducing paid, socially-covered parental leave, which may be used flexibly by the father and mother, taking special care to ensure that men are actually able to use it;

8.3.9. introducing a system of pension entitlement which takes account of periods of non - employment spent looking after young children or dependant persons;

8.3.10. setting up accessible and flexible care and support structures for young children and elderly dependant persons, especially for single-parent families;

8.3.11. guaranteeing a place in day nurseries for children whose parents wish to place them there;

8.3.12. in order to attract professional staff, making jobs in the care sector attractive, thereby ensuring high-quality care for all children and dependant elderly persons;

8.3.13. encouraging private and public employers to take account of their employees' family obligations, to adopt measures making it easier to reconcile work and family life and to facilitate the establishment of "firm-based day nurseries ", rewarding the most deserving with certificates or quality labels;

8.4. to sign and, if they have not already done so, to ratify the revised European Social Charter (ETS No. 163), and particularly Article 27 on the right of workers with family responsibilities to equal opportunities and treatment, and implement the Charter provisions.

1. *Assembly debate* on 6 October 2006 (31st Sitting) (see Doc. 11019, report of the Committee on Equal Opportunities for Women and Men, rapporteur: Ms Pericleous Papadopoulos).
Text adopted by the Assembly on 6 October 2006 (31st Sitting).

Resolution 1512 (2006)¹

Parliaments united in combating domestic violence against women

1. The Parliamentary Assembly deplores the upsurge in domestic violence against women in Europe, a problem which affects every single Council of Europe member state, resulting in serious violations of human rights. It stresses that domestic violence knows no geographical boundaries, has no age limit, is not the preserve of any particular race and occurs in every kind of family relationship and in every sort of social milieu.

2. Domestic violence is characterised by violent conduct in various forms – physical, sexual, psychological, or through a situation based on financial dependence. It is one of the most widespread violations of human rights and must be combated in all Council of Europe member states. The Assembly rejects any arguments based on cultural or religious relativism, which would lead states to avoid their obligation to eliminate all forms of violence against women.

3. The Assembly welcomes the fact that the heads of state and government of Council of Europe member states responded favourably to the Assembly's recommendations and included the organisation of a pan-European campaign to combat violence against women, including domestic violence, in the Action Plan adopted at the Warsaw Summit (16 and 17 May 2005), and that the Committee of Ministers decided that this campaign should be launched in late 2006. The Assembly resolves to play its part in this initiative, in particular by developing the parliamentary dimension.

4. In this context, convinced of the key role that national parliaments can play in preventing domestic violence, assisting victims and informing the public at large, the Parliamentary Assembly resolves to develop, in co-operation with the national parliaments of member states, parliaments having observer status with the Assembly, the European Parliament and the Nordic Council, an initiative entitled "Parliaments united in combating domestic violence against women", which will constitute parliamentary contribution to the Council of Europe's campaign. The Assembly takes this opportunity to welcome the July 2005 decision of the Mexican Congress to participate in this Parliamentary Assembly initiative.

5. Accordingly, the Assembly invites the national parliaments of Council of Europe member states and parliaments having observer status with the Parliamentary Assembly:

5.1. to organise a parliamentary day of action to combat domestic violence against women on 24 November 2006, to coincide with the launch of the Council of Europe's pan-European campaign in all Council of Europe member states and to make the issue of combating domestic violence against women a central theme of the International Day for the Elimination of Violence against Women in 2006;

5.2. to adopt, on 24 November 2006, a solemn declaration affirming the national parliaments' commitment to combating domestic violence against women;

5.3. to become actively involved in the preparation, launch and implementation of the

parliamentary dimension of the pan-European campaign from 2006 to 2008 by drawing up in that framework a timetable of activities designed to combat domestic violence against women;

5.4. to encourage members of parliament to take an individual and public stand on combating domestic violence against women whenever they have the opportunity to do so;

5.5. to organise public and parliamentary debates condemning domestic violence, and parliamentary hearings to examine and assess the effectiveness of legislation and other measures relating to violence within the family;

5.6. to adopt appropriate legislative and budgetary measures and national plans to bring to an end domestic violence against women, including, where such measures do not already exist, making marital rape a punishable criminal offence in the same way as non-marital rape, and providing for the removal of the violent partner from the home;

5.7. to ensure that laws and measures already adopted are applied satisfactorily, where appropriate in co-operation with the public players and non-governmental organisations active on the ground;

5.8. to encourage the public authorities to take the necessary action to combat domestic violence effectively and publicly, in particular, by providing refuges for the victims of domestic violence and their children, setting up domestic violence victim support facilities in police stations, training the staff concerned (in the health care, police, justice, social and education services, etc.), ensuring that complaints made by women to the police are taken seriously, setting up treatment centres for those responsible for such violence and compiling statistics, broken down by sex, type of violence and relationship between perpetrator and victim;

5.9. to identify the obstacles to implementing the norms contained in Committee of Ministers Recommendation Rec(2002)5 to member states on the protection of women against violence;

5.10. to launch at national level a domestic violence information and prevention campaign and, with the assistance of health service staff, a campaign to detect victims of domestic violence;

5.11. to make every effort to make known to the general public the legislative measures adopted and existing arrangements for assisting the victims of domestic violence;

5.12. to give special attention to groups of women who are particularly exposed to the risks and consequences of domestic violence, in particular women in and from immigrant communities, Roma women, women from other ethnic minority communities, pregnant women, disabled or vulnerable women, women in precarious situations or women confronted with alcohol or drug problems.

6. The Assembly calls on national parliaments of Council of Europe member states and

parliaments having observer status with the Parliamentary Assembly to support the Council of Europe's pan-European campaign to combat violence against women, including domestic violence:

6.1. by financing specific national and European activities at intergovernmental, parliamentary, local and regional levels;

6.2. by instructing their governments to allocate funding for initiatives at national level to combat domestic violence and to assist victims, and to include in their international co-operation programmes support for the introduction or strengthening of arrangements to combat domestic violence in Council of Europe member and observer states;

6.3. by providing support to local NGOs combating domestic violence and ensuring that they are involved in parliamentary discussions on the drafting of legislation and regulatory measures;

6.4. by proposing study visits to members of the Council of Europe national and observer parliaments in order to exchange good practice and/or providing technical assistance to parliaments wishing to improve their legal framework with regard to combating domestic violence;

6.5. by appointing a member of parliament to act as point of contact between the national parliaments of each member state and the Assembly and to play a leading role in promoting the implementation of the Assembly campaign at national level, ensuring that he or she is given the appropriate secretarial assistance;

6.6. by encouraging local and regional authorities to implement the Council of Europe pan-European campaign at local and regional level and to organise seminars with staff members of the medical, paramedical and education sectors, members of the police, socio-professional groups working in particular with women, trade union representatives and non-governmental organisations on the issue of domestic violence;

6.7. by encouraging the media to support the Council of Europe's pan-European campaign and drawing their attention to the fact that the use of stereotypical images of women is a factor that can contribute to the trivialisation of domestic violence.

7. The Assembly welcomes the report on the "Current situation in combating violence against women and any future actions" adopted on 2 February 2006 by the European Parliament and invites it to join the Parliamentary Assembly's initiative "Parliaments united in combating domestic violence against women" in order to condemn domestic violence as an unacceptable violation of human rights and to raise the awareness of the public authorities and the general public in the European Union of the need to combat domestic violence against women.

8. The Assembly calls on international and regional interparliamentary organisations, especially the Interparliamentary Union, the Nordic Council, the Forum of Parliaments of European Small States and the network of female members of parliament of the Stability Pact for South Eastern Europe, to participate in the Parliamentary Assembly's initiative "Parliaments united in combating domestic violence against women".

1. *Assembly debate* on 28 June 2006 (20th Sitting) (see Doc. 10934, report of the Committee on Equal Opportunities for Women and Men, rapporteur: Ms Cliveti).
Text adopted by the Assembly on 28 June 2006 (20th Sitting).

Recommendation 1778 (2007)¹

Child victims: stamping out all forms of violence, exploitation and abuse

1. The Parliamentary Assembly, referring to its Resolution 1530 (2007) on child victims: stamping out all forms of violence, exploitation and abuse, recommends that the Committee of Ministers invite those Council of Europe member states which have not already done so to sign and ratify as soon as possible the existing international and European legal instruments relating to the protection of children, in particular those mentioned in the resolution, to confirm within six months action taken on this point, and to introduce a procedure for monitoring the safeguards provided for children in member states.

2. The Assembly invites the Committee of Ministers to take all appropriate steps in order that the Council of Europe member states:

2.1. draw up and establish domestic legal and social procedures as set out in Resolution 1530 (2007) in order to guarantee children 's protection against all forms of violence, exploitation or abuse;

2.2. encourage the competent national authorities to ensure wide circulation to both children and adults of information and advice on prevention, detection and prosecution of child abuse, and to enhance specialist training in this respect for professionals dealing with children;

2.3. encourage partnerships and co -operation at national, European and international level in implementing effective machinery to protect children, such as the provision of central files that make it possible to record the various types of violence encountered and the victims thereof, to discover and dismantle any child exploitation networks that exist, and to activate appropriate and effective criminal justice machinery;

2.4. establish action plans backed by adequate material and human resources in order to combat all forms of violence, exploitation and abuse of children.

3. In addition, the Assembly urges the Committee of Ministers to instruct its competent governmental committees, particularly the European Committee on Legal Co-operation (CDCJ), working closely with the Parliamentary Assembly, to produce a draft convention aimed at affording children comprehensive, effective protection against all forms of violence, exploitation or abuse, and a model law transposing the provisions of this draft convention which could be applicable in all member states and would in particular define such concepts as the child's best interests, harmonise criminal law definitions of offences committed against children, and seek to protect them comprehensively against all interference with their bodily or psychological integrity, whatever their cause and form.

4. The Assembly asks the Committee of Ministers to instruct the relevant governmental committees to propose measures to facilitate and optimise children's access to the appeals and complaints procedures for upholding the rights bestowed on them by the Council of Europe's existing legal instruments, in particular the European Convention on Human Rights (ETS No. 5) and the revised European Social Charter (ETS No. 163).

5. The Assembly invites the Committee of Ministers to find ways and means of involving children as much as possible in the work done pursuant to this recommendation.

1. *Assembly debate* on 23 January 2007 (3rd Sitting) (see Doc. 11118, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Gardetto).
Text adopted by the Assembly on 23 January 2007 (4th Sitting).

Resolution 1530 (2007)¹

Child victims: stamping out all forms of violence, exploitation and abuse

1. The Parliamentary Assembly believes, like the heads of state and government of the Council of Europe member states in the Final Declaration and Action Plan adopted at the 3rd Summit (Warsaw, 16-17 May 2005), that the Council of Europe has an important role to play in finding concrete and effective solutions to cases of violence, exploitation and abuse in respect of children, whatever their form.
2. The Assembly supports the implementation, in this context, of the Council of Europe's three-year action programme (2006-2008) for the promotion of children's rights and the protection of children from violence, "Building a Europe for and with children", launched in Monaco on 4 and 5 April 2006.
3. It continues to be concerned about the high numbers of children in member states who, particularly because of their vulnerability, their legal incapacity as minors and the inadequacy of the legal and social protection they receive, are victims of violence, ill-treatment, exploitation, trafficking, trade in their organs, child prostitution and child pornography.
4. The statistics gathered in this field by international organisations such as UNICEF and the International Labour Organization (ILO) still fall short of reality since many children are not able to report to the authorities or to specialist associations the violence and abuses which they suffer.
5. The Assembly recalls that there is an extensive legal apparatus at international level intended to secure children's rights and combat certain forms of exploitation, in particular the 1989 United Nations Convention on the Rights of the Child and its protocols, and more recently Resolution 61/146 on the rights of the child adopted by the UN General Assembly on 19 December 2006, Convention No. 182 of the ILO concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, and the Yokohama Global Commitment made in 2001 at the 2nd World Congress against Commercial Sexual Exploitation of Children.
6. At European level, the Assembly recalls in particular the relevant Council of Europe conventions, especially the European Convention on Human Rights (ETS No. 5), the revised European Social Charter (ETS No. 163), the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126), specialised conventions such as the Convention on Cybercrime (ETS No. 185) and the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197), as well as many of its own resolutions and recommendations concerning the recognition, promotion and protection of children's rights.
7. The Assembly recalls the Committee of Ministers' reply of 20 April 2005 to its Recommendation 1666 (2004), stressing the importance which it attached to the issue of children's protection and its commitment to the welfare of children as a group in need of special protection from all forms of violence.
8. It is important that the Parliamentary Assembly and the Committee of Ministers

ensure that resolute action is taken Europe-wide to eradicate all forms of violence against children. From this standpoint, it is indispensable, in so far as they are also subjects of law, to grant children adequate legal protection as well as legal representation outside the family whenever necessary.

9. The Assembly welcomes the fact that work on a draft Council of Europe convention on the protection of children against sexual exploitation and abuse has recently been commenced.

10. It deems indispensable that, over and above the standard-setting measures already taken, and in view of the multitude of instruments each relating to specific forms of violence, an integrated approach be adopted at European level in order to achieve greater effectiveness and coherence in the protection of children against the intolerable and extremely varied situations of discrimination, violence, exploitation and abuse which persist and are even increasing in some areas. It accordingly considers that the existing convention-based system should be strengthened by adopting an approach aimed at integrated protection of children whatever the type of violence, exploitation or abuse committed, and that co-operation between member states in this area should be intensified.

11. The increase in cross-border family disputes in which children are direct victims is also of concern to the Assembly. In this context, it recalls the Council of Europe Convention on Contact concerning Children (ETS No. 192) and encourages the member states to ratify this convention as soon as possible.

12. Also, in this matter, the Assembly considers it urgent to strengthen co-operation among member states as a whole by using speedy judicial procedures suited to children, where they are not in place already, especially in the context of family conflicts, and as a supplementary measure to mediation procedures which are not always successful, so as to avert additional harm to children resulting from lengthy and distressing contentious proceedings. Furthermore, the Assembly calls on all member states to provide specialist training to a proportion of their judges in relation to child issues.

13. The Assembly furthermore recalls its Recommendation 1460 (2000) on setting up a European ombudsman for children and welcomes the stance of the Council of Europe Commissioner for Human Rights in favour of creating more such institutions in member states or extending the remit of existing ombudsmen to include the functions of promoting, safeguarding and strengthening children's rights.

14. In the light of the foregoing, the Parliamentary Assembly invites all parliaments of Council of Europe member states to:

14.1. consolidate and develop strategies and national policies aimed at protecting the rights of children;

14.2. examine the existing legislative framework and improve it as appropriate to ensure children's protection against all forms of violence, exploitation and abuse, making all interference with the child's bodily or psychological integrity a criminal

offence defined in relation to its degree of gravity and carrying effective, proportionate and dissuasive penalties;

14.3. harmonise these provisions in order to set up child protection legislation common to all states, in particular concerning the concept of the child's best interests and the definition of criminal law offences committed against children;

14.4. make legal provisions to:

14.4.1. suspend, where a relevant provision does not already exist, the limitation period for serious offences until the victim has reached the age of majority;

14.4.2. establish that prosecution of the most serious offences committed against children may not be subject to limitation;

14.4.3. extend states' jurisdiction so that perpetrators of serious offences against children committed beyond their borders may be effectively prosecuted;

14.4.4. introduce speedy civil and criminal law procedures which are suited to children, comprising, for example, the right to be heard by a court where capable of discernment, the right to be assisted by a lawyer paid for by the state or the right to obtain appropriate legal aid;

14.4.5. train specialised judges to conduct the above procedures, and in particular to train them to question children victims of violence, exploitation or abuse; and, when it is absolutely necessary to bring them face to face with the accused, to do so in a manner that safeguards the interests of the child as well as that of justice;

14.4.6. adapt civil and criminal law proceedings to children with emphasis on methods which spare unnecessary anguish, especially with regard to their testimony and appearance in court (by video link, for instance);

14.4.7. encourage member states to introduce legislation forbidding convicted child sex offenders from travelling abroad.

15. The Assembly also calls upon the member states to:

15.1. ratify international and European legal instruments relating to the protection of children as enumerated above;

15.2. establish, or promote where they already exist, mediation mechanisms designed to alleviate children's suffering, particularly in such contexts as their parents' separation, and to set up an ombudsman for children whom they can approach directly in serious cases, or to extend the responsibilities of the established ombudsmen to encompass children's protection against all forms of violence;

15.3. strengthen co-operation, at national and international level, between police forces and investigatory bodies for effective action against child exploitation and trafficking in Europe and beyond;

15.4. work towards the creation of a national body to collect information on child victims of violence, exploitation or abuse, and persons convicted of such offences, in order to produce a central file allowing the exchange of information, to which file all interested parties should have access, thus promoting the fight against these phenomena, and aiding the speedier resolution of disputes which involve children, in particular family conflicts, and with a view to creating an observatory of ill-treatment in each state and at the European level which would establish reliable statistics on cases of violence, exploitation and abuse involving children;

15.5. set up specialised European bodies as well as national and international co-operation and coordination networks between governmental authorities, judicial authorities, police forces, national bodies and NGOs specialising in the protection of children's rights.

16. Finally, the Assembly calls upon member states to consolidate their child welfare policy by the following means:

16.1. developing action plans at local and national level to eliminate violence, exploitation and abuse of children, in particular within the family unit, at school, in care institutions and in the community;

16.2. implementing long-term education, information and awareness-raising mechanisms aimed at children, parents, professionals and all authorities with special responsibility for the legal and social protection of children, with regard to the detection of ill-treatment and of all forms of abuse and ways to address these problems;

16.3. arranging for child victims or perpetrators of violence to receive close and regular attention in order to provide them with support from properly trained professionals and ensure their social readjustment and rehabilitation;

16.4. establishing machinery for the supervision of institutions charged with caring for children (such as schools, orphanages, placement centres, detention centres for young offenders, etc.), as well as methods of detection (for example, through school and pre-school medical examinations and interviews with psychologists) of acts of violence, exploitation or abuse of children, in order to certify and sanction all such behaviour;

16.5. providing Freephone numbers, telephone answering services and websites to enable children to anonymously report violence, exploitation or abuse, and to promote the wide dissemination of information to children who are victims of any kind of ill-treatment, particularly concerning social welfare facilities, specialised associations, bodies or institutions such as an ombudsman, to which they can directly and anonymously complain about acts of violence committed against them or against other children.

17. The Assembly encourages its Monitoring Committee to continue to include child welfare in its supervisory activities and reports.

1. *Assembly debate* on 23 January 2007 (3rd Sitting) (see Doc. 11118, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Gardetto).

Text adopted by the Assembly on 23 January 2007 (4th Sitting).

Recommendation 1796 (2007)¹

The situation of elderly persons in Europe

1. There is no denying the fact that Europe is ageing. However, old age must be regarded not as an illness but as a highly complex progressive process requiring a new approach to social policies.
2. Elderly persons possess an extremely diverse range of experience, skills, needs and concerns and constitute a new source of richness on account of their private and professional experience.
3. The Parliamentary Assembly takes this opportunity to congratulate the Congress of Local and Regional Authorities of the Council of Europe on its proposal to draw up a charter on inter-generational co-operation, aimed at establishing forums for dialogue between the generations.
4. A person's age is no longer an indicator of health, wealth or social status, and there is a pressing need to change approaches and stereotypes related to ageing and to adjust policies accordingly, notably with regard to the compulsory retirement age. Increased life expectancy also has significant implications for social protection systems in the Council of Europe member states.
5. In this connection, the Assembly refers to one of the conclusions of the United Nations 2nd World Assembly on Ageing held in Madrid in 2002, according to which "Older persons should have the opportunity to work for as long as they wish and are able to, in satisfying and productive work".
6. Unfortunately, elderly persons still too often encounter discrimination, whether in their daily lives or in a professional context. This discrimination concerns their employment, their access to health care, education and financial services and their involvement in political decision making. In this context, the Assembly considers that extremely rapid action is needed to end, *inter alia*, the scandalous situations observed in certain institutions or retirement homes and to prevent elderly people from suffering from social exclusion and having to live in unacceptable conditions incompatible with the fundamental principles governing member states. Increased life expectancy must be a blessing for everyone.
7. Bearing in mind Article 23 of the revised European Social Charter (ETS No. 163), which provides that elderly persons shall have access to "the health care and services necessitated by their state", the Assembly deplors the fact that in some countries elderly persons may be denied treatment because of its high cost.
8. In this connection, the Assembly underlines the need for appropriate legislation or collective agreements, not least in respect of dependent elderly persons living in institutions or retirement homes.
9. The Assembly points out that the majority of elderly persons in the member states are women, who form a particularly vulnerable group which is discriminated against in many ways. Furthermore, the insecurity of elderly women is exacerbated by

inadequate social support and their low income. It can also be noted that it is frequently women who have the responsibility of caring for elderly persons, obliging them to stop working with all the ensuing consequences for their income level and future pension.

10. The Assembly draws attention to the particular situation of elderly migrants and elderly disabled people. Elderly migrants face a particular risk of double or even triple discrimination and requires specific policies and culturally sensitive services, as outlined in Recommendation 1619 (2003) on rights of elderly migrants. Moreover, governments should recognise the significant contribution that elderly migrants have made to economic growth in the past and the important role they can still play in helping new generations of migrants to integrate in the host country.

11. The Assembly accordingly recommends that the Committee of Ministers request the member states to:

11.1. regarding social protection systems:

11.1.1. invite the social partners and the relevant international organisations to hold a debate on pension reform;

11.1.2. take the consequences of demographic trends into account in their social and economic policies;

11.1.3. take the necessary steps to ensure the funding and long-term viability of social protection systems (pension systems, health care and other social benefits) so as to avoid the risk of economic dependency;

11.1.4. review social support programmes for the elderly;

11.1.5. sign and ratify multilateral social security agreements, namely the European Convention on Social Security (ETS No. 78);

11.2. regarding employment of elderly people and their participation in local affairs:

11.2.1. develop policies for the employment of elderly persons, seeking to keep younger elderly persons in jobs so that they remain in the working population;

11.2.2. implement new patterns of working time so as to be able to derive maximum benefit from elderly persons' professional skills and knowledge;

11.2.3. encourage local authorities to develop projects aimed at involving elderly persons in decision making and reinforcing inter-generational solidarity;

11.2.4. create forums for exchanges between the generations of experience and skills in areas such as education, art, history, traditions, crafts, etc.;

11.2.5. foster voluntary work by elderly persons;

11.3. regarding assistance and support for families:

11.3.1. strengthen assistance and support measures for families by introducing a system of special allowances, in particular for those caring for the elderly, and thereby promote greater family involvement when elderly people encounter health problems;

11.3.2. encourage supplementary and specific allowances in the case of loss of autonomy;

11.3.3. expand support facilities in the form of short-stay institutions for the elderly;

11.3.4. draw up, at European level, model rules on minimum standards for elderly persons in institutional care;

11.4. regarding access to health care:

11.4.1. improve health-care systems and make them accessible to all elderly persons, ensuring they receive appropriate medical care with specific attention to their nutritional needs;

11.4.2. establish decent palliative and end-of-life care services for elderly persons;

11.4.3. provide special training for individuals caring for elderly persons at home and for medical practitioners;

11.4.4. adapt the existing structures for the provision of health care and assistance to the elderly in order to make them culturally appropriate to the needs of elderly migrants;

11.5. regarding vulnerable groups:

11.5.1. launch a process of reflection on the consequences arising from the migration of elderly persons;

11.5.2. establish a special support programme for ageing immigrants, women and people with disabilities;

11.5.3. establish preventive health-care systems for elderly persons;

11.5.4. provide specially adapted language courses and other activities fostering inclusion and participation of elderly migrants and support non-governmental organisations in their activities and assistance programmes in this regard;

11.5.5. provide practical information to elderly migrants about receiving social welfare, pensions and health care in the host country and the country of origin, via public institutions, community centres, immigrant organisations, cultural centres and religious institutions;

11.5.6. facilitate links between elderly migrants and their countries of origin.

1. *Text adopted by the Standing Committee, acting on behalf of the Assembly, on 24 May 2007 (see Doc. 11179, report of the Social, Health and Family Affairs Committee, rapporteur: Mr Bockel; and Doc. 11200, opinion of the Committee on Migration, Refugees and Population, rapporteur: Mrs Cliveti).*

Recommendation 1798 (2007)¹

Respect for the principle of gender equality in civil law

1. The Parliamentary Assembly welcomes recent developments in many member states of the Council of Europe securing more respect for the principle of gender equality in civil law. It remains concerned, however, that in some areas of law and in some jurisdictions – even in Europe – women continue to suffer discrimination.

2. Two studies of Europe's legal systems commissioned by the Assembly's Committee on Equal Opportunities for Women and Men have revealed that this discrimination is especially frequent in terms of women's personal status and in family law, in both domestic and international law. In practice, in some cases, discrimination against men also occurs, in particular concerning the exercise of parental rights.

3. Regarding discrimination against women in private relations governed by national law, a certain lack of equality within couples (inequality in matters of marriage and in the event of divorce) can be cited, as well as discrimination against mothers in establishing relationships by descent and the legal consequences thereof (including the passing on of the mother's surname to her children). Regarding the principle of gender equality in private international relations, rules of private international law providing for attachment to the husband's or father's national law are especially worrisome, as is the inequality resulting from the application of discriminatory rules of foreign law.

4. The Assembly recalls its Recommendations 1271 (1995) and 1362 (1998) on discrimination between women and men in the choice of a surname and in the passing on of parents' surnames to children. While most Council of Europe member states have in the meantime made it legal for a woman to retain her maiden name upon marriage, few have made it possible for a woman to pass on her surname to her children. Forcing a woman to take her husband's name can be seen as a form of "depersonalisation" of the woman, reducing her to a "part" of the husband's family, and violating her private life in revealing her marital status and sometimes even her marital problems to complete strangers. Similarly, the inability of women in many jurisdictions to pass on their surname and thus part of their identity – to their children can be seen as a form of discrimination against women. It is high time that all Council of Europe member states modify their legislation in both these areas without further delay in accordance with the Assembly's recommendations.

5. Discrimination against women also occurs in the sphere of private international relations, for instance where a conflict-of-law rule provides for a woman's attachment to the national law of residence of her husband or father. The same is true where such a rule results in the application of a foreign discriminatory provision. A typical example is legislation based on the traditional principles of Muslim law, which treat women as fundamentally unequal in status. When confronted with such legislation, European courts usually resort to the international public policy (*ordre public*) argument, which enables them to exclude the application of a rule of foreign law incompatible with the principle of equality.

6. However, the difficulties arising from acceptance of such foreign laws are greater where their application is an outcome of international treaties to which Council of

Europe member states are party, as the European Convention on Human Rights (ETS No. 5) does not automatically take precedence over other international instruments or provisions of foreign law designated by an international treaty.

7. The Assembly is convinced that only a new protocol to the European Convention on Human Rights enshrining gender equality as a human right can ensure that remaining discrimination against women in civil law, both in the domestic legislation of Council of Europe member states and in private international law, is finally eliminated.

8. This solution – going further than the existing rules of non-discrimination enshrined in Article 14 of the European Convention on Human Rights and in Protocol No. 12 to the Convention – would have the advantage of ensuring legal certainty by expressly providing for the pre-eminence of the principle of gender equality over any provision deriving from, or applicable under, an international agreement or convention. This pre-eminence would, of course, still be subject to the need to make an actual assessment of the question of equality in the case at hand.

9. The Assembly thus recommends that the Committee of Ministers:

9.1. draw up a new protocol to the European Convention on Human Rights enshrining gender equality as a fundamental human right with pre-eminence over any provision deriving from, or applicable under, private international law agreements or conventions;

9.2. invite member states, in the meantime, to ensure that they protect gender equality in civil law by:

9.2.1. reviewing and, if necessary, amending their own domestic legislation, especially in family law (including women's personal status, marriage and divorce law, and the rules governing the passing on of the mother's surname to her children);

9.2.2. reviewing and, if necessary, renegotiating or rejecting any provisions in bilateral or multilateral treaties which could lead to the acceptance or application of discriminatory rules of foreign law, including provisions in foreign law validating polygamous marriages and repudiations.

1. *Text adopted by the Standing Committee, acting on behalf of the Assembly, on 24 May 2007 (see Doc. 11177, report of the Committee on Equal Opportunities for Women and Men, rapporteur: Mrs Smirnova).*

PART II:

**COLLECTION OF TEXTS
OF THE COUNCIL OF EUROPE
IN THE FIELD OF FAMILY LAW**

II - The Committee of Ministers of the Council of Europe

A. Conventions

European Treaty Series - No. 5

**CONVENTION FOR THE PROTECTION
OF HUMAN RIGHTS
AND FUNDAMENTAL FREEDOMS,
AS AMENDED BY PROTOCOL NO. 11**

Rome, 4.XI.1950

Article 6 – Right to a fair trial

- 1 In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

Article 8 – Right to respect for private and family life

- 1 Everyone has the right to respect for his private and family life, his home and his correspondence.
- 2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 12 – Right to marry

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

Article 13 – Right to an effective remedy

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

Article 14 – Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

**PROTOCOL TO THE CONVENTION
FOR THE PROTECTION OF HUMAN
RIGHTS
AND FUNDAMENTAL FREEDOMS,
AS AMENDED BY PROTOCOL NO. 11**

Paris, 20.III.1952

Article 1 – Protection of property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Article 2 – Right to education

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

**PROTOCOL NO. 4 TO THE
CONVENTION
FOR THE PROTECTION OF HUMAN
RIGHTS AND FUNDAMENTAL
FREEDOMS,
SECURING CERTAIN RIGHTS AND
FREEDOMS OTHER THAN THOSE
ALREADY INCLUDED IN THE
CONVENTION AND IN THE FIRST
PROTOCOL THERETO, AS AMENDED
BY PROTOCOL NO. 11**

Strasbourg, 16.IX.1963

Article 2 – Freedom of movement

- 1 Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
- 2 Everyone shall be free to leave any country, including his own.
- 3 No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
- 4 The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.

**PROTOCOL NO. 7 TO THE
CONVENTION
FOR THE PROTECTION OF HUMAN
RIGHTS
AND FUNDAMENTAL FREEDOMS,
AS AMENDED BY PROTOCOL NO. 11**

Strasbourg, 22.XI.1984

Article 5 – Equality between spouses

Spouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with their children, as to marriage, during marriage and in the event of its dissolution. This Article shall not prevent States from taking such measures as are necessary in the interests of the children.

**EUROPEAN SOCIAL CHARTER
(REVISED)**

Strasbourg, 3.V.1996

Article 7 – The right of children and young persons to protection

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake:

- 1 to provide that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education;
- 2 to provide that the minimum age of admission to employment shall be 18 years with respect to prescribed occupations regarded as dangerous or unhealthy;
- 3 to provide that persons who are still subject to compulsory education shall not be employed in such work as would deprive them of the full benefit of their education;
- 4 to provide that the working hours of persons under 18 years of age shall be limited in accordance with the needs of their development, and particularly with their need for vocational training;
- 5 to recognise the right of young workers and apprentices to a fair wage or other appropriate allowances;
- 6 to provide that the time spent by young persons in vocational training during the normal working hours with the consent of the employer shall be treated as forming part of the working day;
- 7 to provide that employed persons of under 18 years of age shall be entitled to a minimum of four weeks' annual holiday with pay;
- 8 to provide that persons under 18 years of age shall not be employed in night work with the exception of certain occupations provided for by national laws or regulations;
- 9 to provide that persons under 18 years of age employed in occupations prescribed by national laws or regulations shall be subject to regular medical control;
- 10 to ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work.

Article 8 – The right of employed women to protection of maternity

With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake:

- 1 to provide either by paid leave, by adequate social security benefits or by benefits from public funds for employed women to take leave before and after childbirth up to a total of at least fourteen weeks;
- 2 to consider it as unlawful for an employer to give a woman notice of dismissal during the period from the time she notifies her employer that she is pregnant until the end of her maternity leave, or to give her notice of dismissal at such a time that the notice would expire during such a period;

- 3 to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose;
- 4 to regulate the employment in night work of pregnant women, women who have recently given birth and women nursing their infants;
- 5 to prohibit the employment of pregnant women, women who have recently given birth or who are nursing their infants in underground mining and all other work which is unsuitable by reason of its dangerous, unhealthy or arduous nature and to take appropriate measures to protect the employment rights of these women.

Article 15 – The right of persons with disabilities to independence, social integration and participation in the life of the community

With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular:

- 1 to take the necessary measures to provide persons with disabilities with guidance, education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialised bodies, public or private;
- 2 to promote their access to employment through all measures tending to encourage employers to hire and keep in employment persons with disabilities in the ordinary working environment and to adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability. In certain cases, such measures may require recourse to specialised placement and support services;
- 3 to promote their full social integration and participation in the life of the community in particular through measures, including technical aids, aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure.

Article 16 – The right of the family to social, legal and economic protection

With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.

Article 17 – The right of children and young persons to social, legal and economic protection

With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

- 1 a to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they

need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;

- b to protect children and young persons against negligence, violence or exploitation;
 - c to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support;
- 2 to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

Article 19 – The right of migrant workers and their families to protection and assistance

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake:

- 1 to maintain or to satisfy themselves that there are maintained adequate and free services to assist such workers, particularly in obtaining accurate information, and to take all appropriate steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration;
- 2 to adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and reception of such workers and their families, and to provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey;
- 3 to promote co-operation, as appropriate, between social services, public and private, in emigration and immigration countries;
- 4 to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters:
 - a remuneration and other employment and working conditions;
 - b membership of trade unions and enjoyment of the benefits of collective bargaining;
 - c accommodation;
- 5 to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals with regard to employment taxes, dues or contributions payable in respect of employed persons;
- 6 to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory;
- 7 to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals in respect of legal proceedings relating to matters referred to in this article;

- 8 to secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality;
- 9 to permit, within legal limits, the transfer of such parts of the earnings and savings of such workers as they may desire;
- 10 to extend the protection and assistance provided for in this article to self-employed migrants insofar as such measures apply;
- 11 to promote and facilitate the teaching of the national language of the receiving state or, if there are several, one of these languages, to migrant workers and members of their families;
- 12 to promote and facilitate, as far as practicable, the teaching of the migrant worker's mother tongue to the children of the migrant worker.

Article 20 – The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex

With a view to ensuring the effective exercise of the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex, the Parties undertake to recognise that right and to take appropriate measures to ensure or promote its application in the following fields:

- a access to employment, protection against dismissal and occupational reintegration;
- b vocational guidance, training, retraining and rehabilitation;
- c terms of employment and working conditions, including remuneration;
- d career development, including promotion.

Article 23 – The right of elderly persons to social protection

With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular:

- to enable elderly persons to remain full members of society for as long as possible, by means of:
 - a adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life;
 - b provision of information about services and facilities available for elderly persons and their opportunities to make use of them;
- to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of:
 - a provision of housing suited to their needs and their state of health or of adequate

support for adapting their housing;

- b the health care and the services necessitated by their state;
- to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in the institution.

Article 27 – The right of workers with family responsibilities to equal opportunities and equal treatment

With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake:

- 1 to take appropriate measures:
 - a to enable workers with family responsibilities to enter and remain in employment, as well as to re-enter employment after an absence due to those responsibilities, including measures in the field of vocational guidance and training;
 - b to take account of their needs in terms of conditions of employment and social security;
 - c to develop or promote services, public or private, in particular child daycare services and other childcare arrangements;
- 2 to provide a possibility for either parent to obtain, during a period after maternity leave, parental leave to take care of a child, the duration and conditions of which should be determined by national legislation, collective agreements or practice;
- 3 to ensure that family responsibilities shall not, as such, constitute a valid reason for termination of employment.

**EUROPEAN CONVENTION
ON THE ADOPTION OF CHILDREN**

Strasbourg, 24.IV.1967

Preamble

The member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose, among others, of facilitating their social progress;

Considering that, although the institution of the adoption of children exists in all member countries of the Council of Europe, there are in those countries differing views as to the principles which should govern adoption and differences in the procedure for effecting, and the legal consequences of, adoption; and

Considering that the acceptance of common principles and practices with respect to the adoption of children would help to reduce the difficulties caused by those differences and at the same time promote the welfare of children who are adopted,

Have agreed as follows:

Part I – Undertakings and field of application

Article 1

Each Contracting Party undertakes to ensure the conformity of its law with the provisions of Part II of this Convention and to notify the Secretary General of the Council of Europe of the measures taken for that purpose.

Article 2

Each Contracting Party undertakes to give consideration to the provisions set out in Part III of this Convention, and if it gives effect, or if, having given effect, it ceases to give effect to any of these provisions, it shall notify the Secretary General of the Council of Europe.

Article 3

This Convention applies only to legal adoption of a child who, at the time when the adopter applies to adopt him, has not attained the age of 18, is not and has not been married, and is not deemed in law to have come of age.

Part II – Essential provisions

Article 4

An adoption shall be valid only if it is granted by a judicial or administrative authority (hereinafter referred to as the “competent authority”).

Article 5

- 1 Subject to paragraphs 2 to 4 of this article, an adoption shall not be granted unless at least the following consents to the adoption have been given and not withdrawn:
 - a the consent of the mother and, where the child is legitimate, the father; or if there is neither father nor mother to consent, the consent of any person or body who may

- b be entitled in their place to exercise their parental rights in that respect;
- b the consent of the spouse of the adopter.

2 The competent authority shall not:

- a dispense with the consent of any person mentioned in paragraph 1 of this article, or
- b overrule the refusal to consent of any person or body mentioned in the said paragraph 1,

save on exceptional grounds determined by law.

3 If the father or mother is deprived of his or her parental rights in respect of the child, or at least of the right to consent to an adoption, the law may provide that it shall not be necessary to obtain his or her consent.

4 A mother's consent to the adoption of her child shall not be accepted unless it is given at such time after the birth of the child, not being less than six weeks, as may be prescribed by law, or, if no such time has been prescribed, at such time as, in the opinion of the competent authority, will have enabled her to recover sufficiently from the effects of giving birth to the child.

5 For the purposes of this article "father" and "mother" mean the persons who are according to law the parents of the child.

Article 6

1 The law shall not permit a child to be adopted except by either two persons married to each other, whether they adopt simultaneously or successively, or by one person.

2 The law shall not permit a child to be again adopted save in one or more of the following circumstances:

- a where the child is adopted by the spouse of the adopter;
- b where the former adopter has died;
- c where the former adoption has been annulled;
- d where the former adoption has come to an end.

Article 7

1 A child may be adopted only if the adopter has attained the minimum age prescribed for the purpose, this age being neither less than 21 nor more than 35 years.

2 The law may, however, permit the requirement as to the minimum age to be waived:

- a when the adopter is the child's father or mother, or
- b by reason of exceptional circumstances.

Article 8

- 1 The competent authority shall not grant an adoption unless it is satisfied that the adoption will be in the interest of the child.
- 2 In each case the competent authority shall pay particular attention to the importance of the adoption providing the child with a stable and harmonious home.
- 3 As a general rule, the competent authority shall not be satisfied as aforesaid if the difference in age between the adopter and the child is less than the normal difference in age between parents and their children.

Article 9

- 1 The competent authority shall not grant an adoption until appropriate enquiries have been made concerning the adopter, the child and his family.
- 2 The enquiries, to the extent appropriate in each case, shall concern, *inter alia*, the following matters:
 - a the personality, health and means of the adopter, particulars of his home and household and his ability to bring up the child;
 - b why the adopter wishes to adopt the child;
 - c where only one of two spouses of the same marriage applies to adopt a child, why the other spouse does not join in the application;
 - d the mutual suitability of the child and the adopter, and the length of time that the child has been in his care and possession;
 - e the personality and health of the child, and subject to any limitations imposed by law, his antecedents;
 - f the views of the child with respect to the proposed adoption;
 - g the religious persuasion, if any, of the adopter and of the child.
- 3 These enquiries shall be entrusted to a person or body recognised for that purpose by law or by a judicial or administrative body. They shall, as far as practicable, be made by social workers who are qualified in this field as a result of either their training or their experience.
- 4 The provisions of this article shall not affect the power or duty of the competent authority to obtain any information or evidence, whether or not within the scope of these enquiries, which it considers likely to be of assistance.

Article 10

- 1 Adoption confers on the adopter in respect of the adopted person the rights and obligations of every kind that a father or mother has in respect of a child born in lawful wedlock.

Adoption confers on the adopted person in respect of the adopter the rights and

obligations of every kind that a child born in lawful wedlock has in respect of his father or mother.

- 2 When the rights and obligations referred to in paragraph 1 of this article are created, any rights and obligations of the same kind existing between the adopted person and his father or mother or any other person or body shall cease to exist. Nevertheless, the law may provide that the spouse of the adopter retains his rights and obligations in respect of the adopted person if the latter is his legitimate, illegitimate or adopted child. In addition the law may preserve the obligation of the parents to maintain (in the sense of *l'obligation d'entretenir* and *l'obligation alimentaire*) or set up in life or provide a dowry for the adopted person if the adopter does not discharge any such obligation.
- 3 As a general rule, means shall be provided to enable the adopted person to acquire the surname of the adopter either in substitution for, or in addition to, his own.
- 4 If the parent of a child born in lawful wedlock has a right to the enjoyment of that child's property, the adopter's right to the enjoyment of the adopted person's property may, notwithstanding paragraph 1 of this article, be restricted by law.
- 5 In matters of succession, in so far as the law of succession gives a child born in lawful wedlock a right to share in the estate of his father or mother, an adopted child shall, for the like purposes, be treated as if he were a child of the adopter born in lawful wedlock.

Article 11

- 1 Where the adopted child does not have, in the case of an adoption by one person, the same nationality as the adopter, or in the case of an adoption by a married couple, their common nationality, the Contracting Party of which the adopter or adopters are nationals shall facilitate acquisition of its nationality by the child.
- 2 A loss of nationality which could result from an adoption shall be conditional upon possession or acquisition of another nationality.

Article 12

- 1 The number of children who may be adopted by an adopter shall not be restricted by law.
- 2 A person who has, or is able to have, a child born in lawful wedlock, shall not on that account be prohibited by law from adopting a child.
- 3 If adoption improves the legal position of a child, a person shall not be prohibited by law from adopting his own child not born in lawful wedlock.

Article 13

- 1 Before an adopted person comes of age the adoption may be revoked only by a decision of a judicial or administrative authority on serious grounds, and only if revocation on that ground is permitted by law.
- 2 The preceding paragraph shall not affect the case of:
 - a an adoption which is null and void;

- b an adoption coming to an end where the adopted person becomes the legitimated child of the adopter.

Article 14

When the enquiries made pursuant to Articles 8 and 9 of this Convention relate to a person who lives or has lived in the territory of another Contracting Party, that Contracting Party shall, if a request for information is made, promptly endeavour to secure that the information requested is provided. The authorities may communicate directly with each other for this purpose.

Article 15

Provision shall be made to prohibit any improper financial advantage arising from a child being given up for adoption.

Article 16

Each Contracting Party shall retain the option of adopting provisions more favourable to the adopted child.

Part III – Supplementary provisions

Article 17

An adoption shall not be granted until the child has been in the care of the adopters for a period long enough to enable a reasonable estimate to be made by the competent authority as to their future relations if the adoption were granted.

Article 18

The public authorities shall ensure the promotion and proper functioning of public or private agencies to which those who wish to adopt a child or to cause a child to be adopted may go for help and advice.

Article 19

The social and legal aspects of adoption shall be included in the curriculum for the training of social workers.

Article 20

- 1 Provision shall be made to enable an adoption to be completed without disclosing to the child's family the identity of the adopter.
- 2 Provision shall be made to require or permit adoption proceedings to take place *in camera*.
- 3 The adopter and the adopted person shall be able to obtain a document which contains extracts from the public records attesting the fact, date and place of birth of the adopted person, but not expressly revealing the fact of adoption or the identity of his former parents.

- 4 Public records shall be kept and, in any event, their contents reproduced in such a way as to prevent persons who do not have a legitimate interest from learning the fact that a person has been adopted or, if that is disclosed, the identity of his former parents.

Part IV – Final clauses

Article 21

- 1 This Convention shall be open to signature by the member States of the Council of Europe. It shall be subject to ratification or acceptance. Instruments of ratification or acceptance shall be deposited with the Secretary General of the Council of Europe.
- 2 This Convention shall enter into force three months after the date of the deposit of the third instrument of ratification or acceptance.
- 3 In respect of a signatory State ratifying or accepting subsequently, the Convention shall come into force three months after the date of the deposit of its instrument of ratification or acceptance.

Article 22

- 1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any non-member State to accede thereto.
- 2 Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession which shall take effect three months after the date of its deposit.

Article 23

- 1 Any Contracting Party may, at the time of signature or when depositing its instrument of ratification, acceptance or accession, specify the territory or territories to which this Convention shall apply.
- 2 Any Contracting Party may, when depositing its instrument of ratification, acceptance or accession or at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend this Convention to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.
- 3 Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn according to the procedure laid down in Article 27 of this Convention.

Article 24

- 1 Any Contracting Party whose law provides more than one form of adoption shall have the right to apply the provisions of Article 10, paragraphs 1, 2, 3 and 4, and Article 12, paragraphs 2 and 3, of this Convention to one only of such forms.
- 2 The Contracting Party exercising this right, shall, at the time of signature or when depositing its instrument of ratification, acceptance or accession, or when making a declaration in accordance with paragraph 2 of Article 23 of this Convention, notify the

Secretary General of the Council of Europe thereof and indicate the way in which it has been exercised.

- 3 Such Contracting Party may terminate the exercise of this right and shall give notice thereof to the Secretary General of the Council of Europe.

Article 25

- 1 Any Contracting Party may, at the time of signature or when depositing its instrument of ratification, acceptance or accession, or when making a declaration in accordance with paragraph 2 of Article 23 of this Convention, make not more than two reservations in respect of the provisions of Part II of the Convention.

Reservations of a general nature shall not be permitted; each reservation may not affect more than one provision.

A reservation shall be valid for five years from the entry into force of this Convention for the Contracting Party concerned. It may be renewed for successive periods of five years by means of a declaration addressed to the Secretary General of the Council of Europe before the expiration of each period.

- 2 Any Contracting Party may wholly or partly withdraw a reservation it has made in accordance with the foregoing paragraph by means of a declaration addressed to the Secretary General of the Council of Europe, which shall become effective as from the date of its receipt.

Article 26

Each Contracting Party shall notify the Secretary General of the Council of Europe of the names and addresses of the authorities to which requests under Article 14 may be addressed.

Article 27

- 1 This Convention shall remain in force indefinitely.
- 2 Any Contracting Party may, in so far as it is concerned, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
- 3 Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification.

Article 28

The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded to this Convention of:

- a any signature;
- b any deposit of an instrument of ratification, acceptance or accession;
- c any date of entry into force of this Convention in accordance with Article 21 thereof;

- d any notification received in pursuance of the provisions of Article 1;
- e any notification received in pursuance of the provisions of Article 2;
- f any declaration received in pursuance of the provisions of paragraphs 2 and 3 of Article 23;
- g any information received in pursuance of the provisions of paragraphs 2 and 3 of Article 24;
- h any reservation made in pursuance of the provisions of paragraph 1 of Article 25;
- i the renewal of any reservation carried out in pursuance of the provisions of paragraph 1 of Article 25;
- j the withdrawal of any reservation carried out in pursuance of the provisions of paragraph 2 of Article 25;
- k any notification received in pursuance of the provisions of Article 26;
- l any notification received in pursuance of the provisions of Article 27 and the date on which denunciation takes effect.

**EUROPEAN CONVENTION ON
THE LEGAL STATUS OF CHILDREN
BORN OUT OF WEDLOCK**

Strasbourg, 15.X.1975

The member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members, in particular by the adoption of common rules in the field of law;

Noting that in a great number of member States efforts have been, or are being, made to improve the legal status of children born out of wedlock by reducing the differences between their legal status and that of children born in wedlock which are to the legal or social disadvantage of the former;

Recognising that wide disparities in the laws of member States in this field still exist;

Believing that the situation of children born out of wedlock should be improved and that the formulation of certain common rules concerning their legal status would assist this objective and at the same time would contribute to a harmonisation of the laws of the member States in this field;

Considering however that it is necessary to allow progressive stages for those States which consider themselves unable to adopt immediately certain rules of this Convention,

Have agreed as follows :

Article 1

Each Contracting Party undertakes to ensure the conformity of its law with the provisions of this Convention and to notify the Secretary General of the Council of Europe of the measures taken for that purpose.

Article 2

Maternal affiliation of every child born out of wedlock shall be based solely on the fact of the birth of the child.

Article 3

Paternal affiliation of every child born out of wedlock may be evidenced or established by voluntary recognition or by judicial decision.

Article 4

The voluntary recognition of paternity may not be opposed or contested insofar as the internal law provides for these procedures unless the person seeking to recognise or having recognised the child is not the biological father.

Article 5

In actions relating to paternal affiliation scientific evidence which may help to establish or disprove paternity shall be admissible.

Article 6

- 1 The father and mother of a child born out of wedlock shall have the same obligation to

maintain the child as if it were born in wedlock.

- 2 Where a legal obligation to maintain a child born in wedlock falls on certain members of the family of the father or mother, this obligation shall also apply for the benefit of a child born out of wedlock.

Article 7

- 1 Where the affiliation of a child born out of wedlock has been established as regards both parents, parental authority may not be attributed automatically to the father alone.
- 2 There shall be power to transfer parental authority; cases of transfer shall be governed by the internal law.

Article 8

Where the father or mother of a child born out of wedlock does not have parental authority over or the custody of the child, that parent may obtain a right of access to the child in appropriate cases.

Article 9

A child born out of wedlock shall have the same right of succession in the estate of its father and its mother and of a member of its father's or mother's family, as if it had been born in wedlock.

Article 10

The marriage between the father and mother of a child born out of wedlock shall confer on the child the legal status of a child born in wedlock.

Article 11

- 1 This Convention shall be open to signature by the member States of the Council of Europe. It shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
- 2 This Convention shall enter into force three months after the date of the deposit of the third instrument of ratification, acceptance or approval.
- 3 In respect of a signatory State ratifying, accepting or approving subsequently, the Convention shall come into force three months after the date of the deposit of its instrument of ratification, acceptance or approval.

Article 12

- 1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any non-member State to accede to this Convention.
- 2 Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession which shall take effect three months after the date of its deposit.

Article 13

- 1 Any State may, at the time of signature, or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.
- 2 Any State may, when depositing its instrument of ratification, acceptance, approval or accession or at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend this Convention to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.
- 3 Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn according to the procedure laid down in Article 15 of this Convention.

Article 14

- 1 Any State may, at the time of signature, or when depositing its instrument of ratification, acceptance, approval or accession or when making a declaration in accordance with paragraph 2 of Article 13 of this Convention, make not more than three reservations in respect of the provisions of Articles 2 to 10 of the Convention. Reservations of a general nature shall not be permitted; each reservation may not affect more than one provision.
- 2 A reservation shall be valid for five years from the entry into force of this Convention for the Contracting Party concerned. It may be renewed for successive periods of five years by means of a declaration addressed to the Secretary General of the Council of Europe before the expiration of each period.
- 3 Any Contracting Party may wholly or partly withdraw a reservation it has made in accordance with the foregoing paragraphs by means of a declaration addressed to the Secretary General of the Council of Europe, which shall become effective as from the date of its receipt.

Article 15

- 1 Any Contracting Party may, insofar as it is concerned, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
- 2 Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification.

Article 16

The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded to this Convention of:

- a any signature;
- b any deposit of an instrument of ratification, acceptance, approval or accession;

- c any date of entry into force of this Convention in accordance with Article 11 thereof;
- d any notification received in pursuance of the provisions of Article 1;
- e any declaration received in pursuance of the provisions of paragraphs 2 and 3 of Article 13;
- f any reservation made in pursuance of the provisions of paragraph 1 of Article 14;
- g the renewal of any reservation carried out in pursuance of the provisions of paragraph 2 of Article 14;
- h the withdrawal of any reservation carried out in pursuance of the provisions of paragraph 3 of Article 14;
- i any notification received in pursuance of the provisions of Article 15 and the date on which denunciation takes effect.

**EUROPEAN CONVENTION
ON RECOGNITION AND ENFORCEMENT
OF DECISIONS CONCERNING CUSTODY
OF CHILDREN AND ON RESTORATION
OF CUSTODY OF CHILDREN**

Luxembourg, 20.V.1980

The member States of the Council of Europe, signatory hereto,

Recognising that in the member States of the Council of Europe the welfare of the child is of overriding importance in reaching decisions concerning his custody;

Considering that the making of arrangements to ensure that decisions concerning the custody of a child can be more widely recognised and enforced will provide greater protection of the welfare of children;

Considering it desirable, with this end in view, to emphasise that the right of access of parents is a normal corollary to the right of custody;

Noting the increasing number of cases where children have been improperly removed across an international frontier and the difficulties of securing adequate solutions to the problems caused by such cases;

Desirous of making suitable provision to enable the custody of children which has been arbitrarily interrupted to be restored;

Convinced of the desirability of making arrangements for this purpose answering to different needs and different circumstances;

Desiring to establish legal co-operation between their authorities,

Have agreed as follows:

Article 1

For the purposes of this Convention:

- a *child* means a person of any nationality, so long as he is under 16 years of age and has not the right to decide on his own place of residence under the law of his habitual residence, the law of his nationality or the internal law of the State addressed;
- b *authority* means a judicial or administrative authority;
- c *decision* relating to custody means a decision of an authority in so far as it relates to the care of the person of the child, including the right to decide on the place of his residence, or to the right of access to him;
- d *improper removal* means the removal of a child across an international frontier in breach of a decision relating to his custody which has been given in a Contracting State and which is enforceable in such a State; improper removal also includes:
 - i the failure to return a child across an international frontier at the end of a period of the exercise of the right of access to this child or at the end of any other temporary stay in a territory other than that where the custody is exercised;
 - ii a removal which is subsequently declared unlawful within the meaning of Article 12.

Part 1 – Central authorities

Article 2

- 1 Each Contracting State shall appoint a central authority to carry out the functions provided for by this Convention.
- 2 Federal States and States with more than one legal system shall be free to appoint more than one central authority and shall determine the extent of their competence.
- 3 The Secretary General of the Council of Europe shall be notified of any appointment under this Article.

Article 3

- 1 The central authorities of the Contracting States shall co-operate with each other and promote co-operation between the competent authorities in their respective countries. They shall act with all necessary despatch.
- 2 With a view to facilitating the operation of this Convention, the central authorities of the Contracting States:
 - a shall secure the transmission of requests for information coming from competent authorities and relating to legal or factual matters concerning pending proceedings;
 - b shall provide each other on request with information about their law relating to the custody of children and any changes in that law;
 - c shall keep each other informed of any difficulties likely to arise in applying the Convention and, as far as possible, eliminate obstacles to its application.

Article 4

- 1 Any person who has obtained in a Contracting State a decision relating to the custody of a child and who wishes to have that decision recognised or enforced in another Contracting State may submit an application for this purpose to the central authority in any Contracting State.
- 2 The application shall be accompanied by the documents mentioned in Article 13.
- 3 The central authority receiving the application, if it is not the central authority in the State addressed, shall send the documents directly and without delay to that central authority.
- 4 The central authority receiving the application may refuse to intervene where it is manifestly clear that the conditions laid down by this Convention are not satisfied.
- 5 The central authority receiving the application shall keep the applicant informed without delay of the progress of his application.

Article 5

- 1 The central authority in the State addressed shall take or cause to be taken without delay all steps which it considers to be appropriate, if necessary by instituting proceedings before its competent authorities, in order:
 - a to discover the whereabouts of the child;
 - b to avoid, in particular by any necessary provisional measures, prejudice to the interests of the child or of the applicant;
 - c to secure the recognition or enforcement of the decision;
 - d to secure the delivery of the child to the applicant where enforcement is granted;
 - e to inform the requesting authority of the measures taken and their results.
- 2 Where the central authority in the State addressed has reason to believe that the child is in the territory of another Contracting State it shall send the documents directly and without delay to the central authority of that State.
- 3 With the exception of the cost of repatriation, each Contracting State undertakes not to claim any payment from an applicant in respect of any measures taken under paragraph 1 of this article by the central authority of that State on the applicant's behalf, including the costs of proceedings and, where applicable, the costs incurred by the assistance of a lawyer.
- 4 If recognition or enforcement is refused, and if the central authority of the State addressed considers that it should comply with a request by the applicant to bring in that State proceedings concerning the substance of the case, that authority shall use its best endeavours to secure the representation of the applicant in the proceedings under conditions no less favourable than those available to a person who is resident in and a national of that State and for this purpose it may, in particular, institute proceedings before its competent authorities.

Article 6

- 1 Subject to any special agreements made between the central authorities concerned and to the provisions of paragraph 3 of this Article:
 - a communications to the central authority of the State addressed shall be made in the official language or in one of the official languages of that State or be accompanied by a translation into that language;
 - b the central authority of the State addressed shall nevertheless accept communications made in English or in French or accompanied by a translation into one of these languages.
- 2 Communications coming from the central authority of the State addressed, including the results of enquiries carried out, may be made in the official language or one of the official languages of that State or in English or French.
- 3 A Contracting State may exclude wholly or partly the provisions of paragraph 1b of this

article. When a Contracting State has made this reservation any other Contracting State may also apply the reservation in respect of that State.

Part II – Recognition and enforcement of decisions and restoration of custody of children

Article 7

A decision relating to custody given in a Contracting State shall be recognised and, where it is enforceable in the State of origin, made enforceable in every other Contracting State.

Article 8

- 1 In the case of an improper removal, the central authority of the State addressed shall cause steps to be taken forthwith to restore the custody of the child where:
 - a at the time of the institution of the proceedings in the State where the decision was given or at the time of the improper removal, if earlier, the child and his parents had as their sole nationality the nationality of that State and the child had his habitual residence in the territory of that State, and
 - b a request for the restoration was made to a central authority within a period of six months from the date of the improper removal.
- 2 If, in accordance with the law of the State addressed, the requirements of paragraph 1 of this article cannot be complied with without recourse to a judicial authority, none of the grounds of refusal specified in this Convention shall apply to the judicial proceedings.
- 3 Where there is an agreement officially confirmed by a competent authority between the person having the custody of the child and another person to allow the other person a right of access, and the child, having been taken abroad, has not been restored at the end of the agreed period to the person having the custody, custody of the child shall be restored in accordance with paragraphs 1b and 2 of this article. The same shall apply in the case of a decision of the competent authority granting such a right to a person who has not the custody of the child.

Article 9

- 1 In cases of improper removal, other than those dealt with in Article 8, in which an application has been made to a central authority within a period of six months from the date of the removal, recognition and enforcement may be refused only if:
 - a in the case of a decision given in the absence of the defendant or his legal representative, the defendant was not duly served with the document which instituted the proceedings or an equivalent document in sufficient time to enable him to arrange his defence; but such a failure to effect service cannot constitute a ground for refusing recognition or enforcement where service was not effected because the defendant had concealed his whereabouts from the person who instituted the proceedings in the State of origin;
 - b in the case of a decision given in the absence of the defendant or his legal representative, the competence of the authority giving the decision was not founded:
 - i on the habitual residence of the defendant, or

- ii on the last common habitual residence of the child's parents, at least one parent being still habitually resident there, or
 - iii on the habitual residence of the child;
 - c the decision is incompatible with a decision relating to custody which became enforceable in the State addressed before the removal of the child, unless the child has had his habitual residence in the territory of the requesting State for one year before his removal.
- 2 Where no application has been made to a central authority, the provisions of paragraph 1 of this Article shall apply equally, if recognition and enforcement are requested within six months from the date of the improper removal.

- 3 In no circumstances may the foreign decision be reviewed as to its substance.

Article 10

- 1 In cases other than those covered by Articles 8 and 9, recognition and enforcement may be refused not only on the grounds provided for in Article 9 but also on any of the following grounds:
- a if it is found that the effects of the decision are manifestly incompatible with the fundamental principles of the law relating to the family and children in the State addressed;
 - b if it is found that by reason of a change in the circumstances including the passage of time but not including a mere change in the residence of the child after an improper removal, the effects of the original decision are manifestly no longer in accordance with the welfare of the child;
 - c if at the time when the proceedings were instituted in the State of origin:
 - i the child was a national of the State addressed or was habitually resident there and no such connection existed with the State of origin;
 - ii the child was a national both of the State of origin and of the State addressed and was habitually resident in the State addressed;
 - d if the decision is incompatible with a decision given in the State addressed or enforceable in that State after being given in a third State, pursuant to proceedings begun before the submission of the request for recognition or enforcement, and if the refusal is in accordance with the welfare of the child.
- 2 In the same cases, proceedings for recognition or enforcement may be adjourned on any of the following grounds:
- a if an ordinary form of review of the original decision has been commenced;
 - b if proceedings relating to the custody of the child, commenced before the proceedings in the State of origin were instituted, are pending in the State addressed;

- c if another decision concerning the custody of the child is the subject of proceedings for enforcement or of any other proceedings concerning the recognition of the decision.

Article 11

- 1 Decisions on rights of access and provisions of decisions relating to custody which deal with the right of access shall be recognised and enforced subject to the same conditions as other decisions relating to custody.
- 2 However, the competent authority of the State addressed may fix the conditions for the implementation and exercise of the right of access taking into account, in particular, undertakings given by the parties on this matter.
- 3 Where no decision on the right of access has been taken or where recognition or enforcement of the decision relating to custody is refused, the central authority of the State addressed may apply to its competent authorities for a decision on the right of access, if the person claiming a right of access so requests.

Article 12

Where, at the time of the removal of a child across an international frontier, there is no enforceable decision given in a Contracting State relating to his custody, the provisions of this Convention shall apply to any subsequent decision, relating to the custody of that child and declaring the removal to be unlawful, given in a Contracting State at the request of any interested person.

Part III – Procedure

Article 13

- 1 A request for recognition or enforcement in another Contracting State of a decision relating to custody shall be accompanied by:
 - a a document authorising the central authority of the State addressed to act on behalf of the applicant or to designate another representative for that purpose;
 - b a copy of the decision which satisfies the necessary conditions of authenticity;
 - c in the case of a decision given in the absence of the defendant or his legal representative, a document which establishes that the defendant was duly served with the document which instituted the proceedings or an equivalent document;
 - d if applicable, any document which establishes that, in accordance with the law of the State of origin, the decision is enforceable;
 - e if possible, a statement indicating the whereabouts or likely whereabouts of the child in the State addressed;
 - f proposals as to how the custody of the child should be restored.
- 2 The documents mentioned above shall, where necessary, be accompanied by a

translation according to the provisions laid down in Article 6.

Article 14

Each Contracting State shall apply a simple and expeditious procedure for recognition and enforcement of decisions relating to the custody of a child. To that end it shall ensure that a request for enforcement may be lodged by simple application.

Article 15

- 1 Before reaching a decision under paragraph 1b of Article 10, the authority concerned in the State addressed:
 - a shall ascertain the child's views unless this is impracticable having regard in particular to his age and understanding; and
 - b may request that any appropriate enquiries be carried out.
- 2 The cost of enquiries in any Contracting State shall be met by the authorities of the State where they are carried out.
- 3 Request for enquiries and the results of enquiries may be sent to the authority concerned through the central authorities.

Article 16

For the purposes of this Convention, no legalisation or any like formality may be required.

Part IV – Reservations

Article 17

- 1 A Contracting State may make a reservation that, in cases covered by Articles 8 and 9 or either of these articles, recognition and enforcement of decisions relating to custody may be refused on such of the grounds provided under Article 10 as may be specified in the reservation.
- 2 Recognition and enforcement of decisions given in a Contracting State which has made the reservation provided for in paragraph 1 of this article may be refused in any other Contracting State on any of the additional grounds referred to in that reservation.

Article 18

A Contracting State may make a reservation that it shall not be bound by the provisions of Article 12. The provisions of this Convention shall not apply to decisions referred to in Article 12 which have been given in a Contracting State which has made such a reservation.

Part V – Other instruments

Article 19

This Convention shall not exclude the possibility of relying on any other international instrument in force between the State of origin and the State addressed or on any other law of the State addressed not derived from an international agreement for the purpose of obtaining recognition or enforcement of a decision.

Article 20

- 1 This Convention shall not affect any obligations which a Contracting State may have towards a non-Contracting State under an international instrument dealing with matters governed by this Convention.
- 2 When two or more Contracting States have enacted uniform laws in relation to custody of children or created a special system of recognition or enforcement of decisions in this field, or if they should do so in the future, they shall be free to apply, between themselves, those laws or that system in place of this Convention or any part of it. In order to avail themselves of this provision the State shall notify their decision to the Secretary General of the Council of Europe. Any alteration or revocation of this decision must also be notified.

Part VI – Final clauses

Article 21

This Convention shall be open for signature by the member States of the Council of Europe. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 22

- 1 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which three member States of the Council of Europe have expressed their consent to be bound by the Convention in accordance with the provisions of Article 21.
- 2 In respect of any member State which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 23

- 1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any State not a member of the Council to accede to this Convention, by a decision taken by the majority provided for by Article 20d of the Statute and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee.
- 2 In respect of any acceding State, the Convention shall enter into force on the first day of

the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 24

- 1 Any State may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.
- 2 Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt by the Secretary General of such declaration.
- 3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notification by the Secretary General.

Article 25

- 1 A State which has two or more territorial units in which different systems of law apply in matters of custody of children and of recognition and enforcement of decisions relating to custody may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that this Convention shall apply to all its territorial units or to one or more of them.
- 2 Such a State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territorial unit specified in the declaration. In respect of such territorial unit the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt by the Secretary General of such declaration.
- 3 Any declaration made under the two preceding paragraphs may, in respect of any territorial unit specified in such declaration, be withdrawn by notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notification by the Secretary General.

Article 26

- 1 In relation to a State which has in matters of custody two or more systems of law of territorial application:
 - a reference to the law of a person's habitual residence or to the law of a person's nationality shall be construed as referring to the system of law determined by the rules in force in that State or, if there are no such rules, to the system of law with which the person concerned is most closely connected;
 - b reference to the State of origin or to the State addressed shall be construed as

referring, as the case may, be to the territorial unit where recognition or enforcement of the decision or restoration of custody is requested.

- 2 Paragraph 1a of this article also applies *mutatis mutandis* to States which have in matters of custody two or more systems of law of personal application.

Article 27

- 1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it avails itself of one or more of the reservations provided for in paragraph 3 of Article 6, Article 17 and Article 18 of this Convention. No other reservation may be made.
- 2 Any Contracting State which has made a reservation under the preceding paragraph may wholly or partly withdraw it by means of a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall take effect on the date of receipt of such notification by the Secretary General.

Article 28

At the end of the third year following the date of the entry into force of this Convention and, on his own initiative, at any time after this date, the Secretary General of the Council of Europe shall invite the representatives of the central authorities appointed by the Contracting States to meet in order to study and to facilitate the functioning of the Convention. Any member State of the Council of Europe not being a party to the Convention may be represented by an observer. A report shall be prepared on the work of each of these meetings and forwarded to the Committee of Ministers of the Council of Europe for information.

Article 29

- 1 Any Party may at any time denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
- 2 Such denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the Secretary General.

Article 30

The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded to this Convention, of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Convention in accordance with Articles 22, 23, 24 and 25;
- d any other act, notification or communication relating to this Convention.

European Treaty Series - No. 160

**EUROPEAN CONVENTION ON THE
EXERCISE OF CHILDREN'S RIGHTS**

Strasbourg, 25.I.1996

Preamble

The member States of the Council of Europe and the other States signatory hereto,

Considering that the aim of the Council of Europe is to achieve greater unity between its members;

Having regard to the United Nations Convention on the rights of the child and in particular Article 4 which requires States Parties to undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the said Convention;

Noting the contents of Recommendation 1121 (1990) of the Parliamentary Assembly on the rights of the child;

Convinced that the rights and best interests of children should be promoted and to that end children should have the opportunity to exercise their rights, in particular in family proceedings affecting them;

Recognising that children should be provided with relevant information to enable such rights and best interests to be promoted and that due weight should be given to the views of children;

Recognising the importance of the parental role in protecting and promoting the rights and best interests of children and considering that, where necessary, States should also engage in such protection and promotion;

Considering, however, that in the event of conflict it is desirable for families to try to reach agreement before bringing the matter before a judicial authority,

Have agreed as follows:

Chapter I – Scope and object of the Convention and definitions

Article 1 – Scope and object of the Convention

- 1 This Convention shall apply to children who have not reached the age of 18 years.
- 2 The object of the present Convention is, in the best interests of children, to promote their rights, to grant them procedural rights and to facilitate the exercise of these rights by ensuring that children are, themselves or through other persons or bodies, informed and allowed to participate in proceedings affecting them before a judicial authority.
- 3 For the purposes of this Convention proceedings before a judicial authority affecting children are family proceedings, in particular those involving the exercise of parental responsibilities such as residence and access to children.
- 4 Every State shall, 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, specify at least three categories of family cases before a judicial authority to which this Convention is to apply.
- 5 Any Party may, by further declaration, specify additional categories of family cases to

which this Convention is to apply or provide information concerning the application of Article 5, paragraph 2 of Article 9, paragraph 2 of Article 10 and Article 11.

- 6 Nothing in this Convention shall prevent Parties from applying rules more favourable to the promotion and the exercise of children's rights.

Article 2 – Definitions

For the purposes of this Convention:

- a the term “judicial authority” means a court or an administrative authority having equivalent powers;
- b the term “holders of parental responsibilities” means parents and other persons or bodies entitled to exercise some or all parental responsibilities;
- c the term “representative” means a person, such as a lawyer, or a body appointed to act before a judicial authority on behalf of a child;
- d the term “relevant information” means information which is appropriate to the age and understanding of the child, and which will be given to enable the child to exercise his or her rights fully unless the provision of such information were contrary to the welfare of the child.

Chapter II – Procedural measures to promote the exercise of children's rights

A. Procedural rights of a child

Article 3 – Right to be informed and to express his or her views in proceedings

A child considered by internal law as having sufficient understanding, in the case of proceedings before a judicial authority affecting him or her, shall be granted, and shall be entitled to request, the following rights:

- a to receive all relevant information;
- b to be consulted and express his or her views;
- c to be informed of the possible consequences of compliance with these views and the possible consequences of any decision.

Article 4 – Right to apply for the appointment of a special representative

- 1 Subject to Article 9, the child shall have the right to apply, in person or through other persons or bodies, for a special representative in proceedings before a judicial authority affecting the child where internal law precludes the holders of parental responsibilities from representing the child as a result of a conflict of interest with the latter.
- 2 States are free to limit the right in paragraph 1 to children who are considered by internal law to have sufficient understanding.

Article 5 – Other possible procedural rights

Parties shall consider granting children additional procedural rights in relation to proceedings before a judicial authority affecting them, in particular:

- a the right to apply to be assisted by an appropriate person of their choice in order to help them express their views;
- b the right to apply themselves, or through other persons or bodies, for the appointment of a separate representative, in appropriate cases a lawyer;
- c the right to appoint their own representative;
- d the right to exercise some or all of the rights of parties to such proceedings.

B. Role of judicial authorities

Article 6 – Decision-making process

In proceedings affecting a child, the judicial authority, before taking a decision, shall:

- a consider whether it has sufficient information at its disposal in order to take a decision in the best interests of the child and, where necessary, it shall obtain further information, in particular from the holders of parental responsibilities;
- b in a case where the child is considered by internal law as having sufficient understanding:
 - ensure that the child has received all relevant information;
 - consult the child in person in appropriate cases, if necessary privately, itself or through other persons or bodies, in a manner appropriate to his or her understanding, unless this would be manifestly contrary to the best interests of the child;
 - allow the child to express his or her views;
- c give due weight to the views expressed by the child.

Article 7 – Duty to act speedily

In proceedings affecting a child the judicial authority shall act speedily to avoid any unnecessary delay and procedures shall be available to ensure that its decisions are rapidly enforced. In urgent cases the judicial authority shall have the power, where appropriate, to take decisions which are immediately enforceable.

Article 8 – Acting on own motion

In proceedings affecting a child the judicial authority shall have the power to act on its own motion in cases determined by internal law where the welfare of a child is in serious danger.

Article 9 – Appointment of a representative

- 1 In proceedings affecting a child where, by internal law, the holders of parental responsibilities are precluded from representing the child as a result of a conflict of interest between them and the child, the judicial authority shall have the power to appoint a special representative for the child in those proceedings.
 - 2 Parties shall consider providing that, in proceedings affecting a child, the judicial authority shall have the power to appoint a separate representative, in appropriate cases a lawyer, to represent the child.
- C. Role of representatives**

Article 10

- 1 In the case of proceedings before a judicial authority affecting a child the representative shall, unless this would be manifestly contrary to the best interests of the child:
 - a provide all relevant information to the child, if the child is considered by internal law as having sufficient understanding;
 - b provide explanations to the child if the child is considered by internal law as having sufficient understanding, concerning the possible consequences of compliance with his or her views and the possible consequences of any action by the representative;
 - c determine the views of the child and present these views to the judicial authority.
 - 2 Parties shall consider extending the provisions of paragraph 1 to the holders of parental responsibilities.
- D. Extension of certain provisions**

Article 11

Parties shall consider extending the provisions of Articles 3, 4 and 9 to proceedings affecting children before other bodies and to matters affecting children which are not the subject of proceedings.

E. National bodies

Article 12

- 1 Parties shall encourage, through bodies which perform, *inter alia*, the functions set out in paragraph 2, the promotion and the exercise of children's rights.
- 2 The functions are as follows:
 - a to make proposals to strengthen the law relating to the exercise of children's rights;
 - b to give opinions concerning draft legislation relating to the exercise of children's rights;
 - c to provide general information concerning the exercise of children's rights to the

media, the public and persons and bodies dealing with questions relating to children;

d to seek the views of children and provide them with relevant information.

F. Other matters

Article 13 – Mediation or other processes to resolve disputes

In order to prevent or resolve disputes or to avoid proceedings before a judicial authority affecting children, Parties shall encourage the provision of mediation or other processes to resolve disputes and the use of such processes to reach agreement in appropriate cases to be determined by Parties.

Article 14 – Legal aid and advice

Where internal law provides for legal aid or advice for the representation of children in proceedings before a judicial authority affecting them, such provisions shall apply in relation to the matters covered by Articles 4 and 9.

Article 15 – Relations with other international instruments

This Convention shall not restrict the application of any other international instrument which deals with specific issues arising in the context of the protection of children and families, and to which a Party to this Convention is, or becomes, a Party.

Chapter III – Standing Committee

Article 16 – Establishment and functions of the Standing Committee

- 1 A Standing Committee is set up for the purposes of this Convention.
- 2 The Standing Committee shall keep under review problems relating to this Convention. It may, in particular:
 - a consider any relevant questions concerning the interpretation or implementation of the Convention. The Standing Committee's conclusions concerning the implementation of the Convention may take the form of a recommendation; recommendations shall be adopted by a three-quarters majority of the votes cast;
 - b propose amendments to the Convention and examine those proposed in accordance with Article 20;
 - c provide advice and assistance to the national bodies having the functions under paragraph 2 of Article 12 and promote international co-operation between them.

Article 17 – Composition

- 1 Each Party may be represented on the Standing Committee by one or more delegates. Each Party shall have one vote.
- 2 Any State referred to in Article 21, which is not a Party to this Convention, may be represented in the Standing Committee by an observer. The same applies to any other

State or to the European Community after having been invited to accede to the Convention in accordance with the provisions of Article 22.

- 3 Unless a Party has informed the Secretary General of its objection, at least one month before the meeting, the Standing Committee may invite the following to attend as observers at all its meetings or at one meeting or part of a meeting:
 - any State not referred to in paragraph 2 above;
 - the United Nations Committee on the Rights of the Child;
 - the European Community;
 - any international governmental body;
 - any international non-governmental body with one or more functions mentioned under paragraph 2 of Article 12;
 - any national governmental or non-governmental body with one or more functions mentioned under paragraph 2 of Article 12.
- 4 The Standing Committee may exchange information with relevant organisations dealing with the exercise of children's rights.

Article 18 – Meetings

- 1 At the end of the third year following the date of entry into force of this Convention and, on his or her own initiative, at any time after this date, the Secretary General of the Council of Europe shall invite the Standing Committee to meet.
- 2 Decisions may only be taken in the Standing Committee if at least one-half of the Parties are present.
- 3 Subject to Articles 16 and 20 the decisions of the Standing Committee shall be taken by a majority of the members present.
- 4 Subject to the provisions of this Convention the Standing Committee shall draw up its own rules of procedure and the rules of procedure of any working party it may set up to carry out all appropriate tasks under the Convention.

Article 19 – Reports of the Standing Committee

After each meeting, the Standing Committee shall forward to the Parties and the Committee of Ministers of the Council of Europe a report on its discussions and any decisions taken.

Chapter IV – Amendments to the Convention

Article 20

- 1 Any amendment to the articles of this Convention proposed by a Party or the Standing Committee shall be communicated to the Secretary General of the Council of Europe and forwarded by him or her, at least two months before the next meeting of the Standing Committee, to the member States of the Council of Europe, any signatory, any Party, any State invited to sign this Convention in accordance with the provisions of Article 21 and any State or the European Community invited to accede to it in accordance with the provisions of Article 22.

- 2 Any amendment proposed in accordance with the provisions of the preceding paragraph shall be examined by the Standing Committee which shall submit the text adopted by a three-quarters majority of the votes cast to the Committee of Ministers for approval. After its approval, this text shall be forwarded to the Parties for acceptance.
- 3 Any amendment shall enter into force on the first day of the month following the expiration of a period of one month after the date on which all Parties have informed the Secretary General that they have accepted it.

Chapter V – Final clauses

Article 21 – Signature, ratification and entry into force

- 1 This Convention shall be open for signature by the member States of the Council of Europe and the non-member States which have participated in its elaboration.
- 2 This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
- 3 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which three States, including at least two member States of the Council of Europe, have expressed their consent to be bound by the Convention in accordance with the provisions of the preceding paragraph.
- 4 In respect of any signatory which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of its instrument of ratification, acceptance or approval.

Article 22 – Non-member States and the European Community

- 1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may, on its own initiative or following a proposal from the Standing Committee and after consultation of the Parties, invite any non-member State of the Council of Europe, which has not participated in the elaboration of the Convention, as well as the European Community to accede to this Convention by a decision taken by the majority provided for in Article 20, sub-paragraph d of the Statute of the Council of Europe, and by the unanimous vote of the representatives of the contracting States entitled to sit on the Committee of Ministers.
- 2 In respect of any acceding State or the European Community, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 23 – Territorial application

- 1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.

- 2 Any Party may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
- 3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 24 – Reservations

No reservation may be made to the Convention.

Article 25 – Denunciation

- 1 Any Party may at any time denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
- 2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of notification by the Secretary General.

Article 26 – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council, any signatory, any Party and any other State or the European Community which has been invited to accede to this Convention of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Convention in accordance with Articles 21 or 22;
- d any amendment adopted in accordance with Article 20 and the date on which such an amendment enters into force;
- e any declaration made under the provisions of Articles 1 and 23;
- f any denunciation made in pursuance of the provisions of Article 25;
- g any other act, notification or communication relating to this Convention.

**CONVENTION FOR THE PROTECTION
OF HUMAN RIGHTS AND DIGNITY OF THE
HUMAN BEING WITH REGARD TO THE
APPLICATION OF BIOLOGY AND
MEDICINE:**

**CONVENTION ON HUMAN RIGHTS
AND BIOMEDICINE**

Oviedo, 4.IV.1997

Article 2 – Primacy of the human being

The interests and welfare of the human being shall prevail over the sole interest of society or science.

Article 3 – Equitable access to health care

Parties, taking into account health needs and available resources, shall take appropriate measures with a view to providing, within their jurisdiction, equitable access to health care of appropriate quality.

Article 4 – Professional standards

Any intervention in the health field, including research, must be carried out in accordance with relevant professional obligations and standards.

Article 6 – Protection of persons not able to consent

- 1 Subject to Articles 17 and 20 below, an intervention may only be carried out on a person who does not have the capacity to consent, for his or her direct benefit.
- 2 Where, according to law, a minor does not have the capacity to consent to an intervention, the intervention may only be carried out with the authorisation of his or her representative or an authority or a person or body provided for by law.

The opinion of the minor shall be taken into consideration as an increasingly determining factor in proportion to his or her age and degree of maturity.

- 3 Where, according to law, an adult does not have the capacity to consent to an intervention because of a mental disability, a disease or for similar reasons, the intervention may only be carried out with the authorisation of his or her representative or an authority or a person or body provided for by law.

The individual concerned shall as far as possible take part in the authorisation procedure.

- 4 The representative, the authority, the person or the body mentioned in paragraphs 2 and 3 above shall be given, under the same conditions, the information referred to in Article 5.
- 5 The authorisation referred to in paragraphs 2 and 3 above may be withdrawn at any time in the best interests of the person concerned.

Article 7 – Protection of persons who have a mental disorder

Subject to protective conditions prescribed by law, including supervisory, control and appeal procedures, a person who has a mental disorder of a serious nature may be subjected, without his or her consent, to an intervention aimed at treating his or her mental disorder only where, without such treatment, serious harm is likely to result to his or her health.

**EUROPEAN CONVENTION
ON NATIONALITY**

Strasbourg, 6.XI.1997

Article 5 – Non-discrimination

- 1 The rules of a State Party on nationality shall not contain distinctions or include any practice which amount to discrimination on the grounds of sex, religion, race, colour or national or ethnic origin.
- 2 Each State Party shall be guided by the principle of non-discrimination between its nationals, whether they are nationals by birth or have acquired its nationality subsequently.

Article 6 – Acquisition of nationality

- 1 Each State Party shall provide in its internal law for its nationality to be acquired *ex lege* by the following persons:
 - a children one of whose parents possesses, at the time of the birth of these children, the nationality of that State Party, subject to any exceptions which may be provided for by its internal law as regards children born abroad. With respect to children whose parenthood is established by recognition, court order or similar procedures, each State Party may provide that the child acquires its nationality following the procedure determined by its internal law;
 - b foundlings found in its territory who would otherwise be stateless.
- 2 Each State Party shall provide in its internal law for its nationality to be acquired by children born on its territory who do not acquire at birth another nationality. Such nationality shall be granted:
 - a at birth *ex lege*; or
 - b subsequently, to children who remained stateless, upon an application being lodged with the appropriate authority, by or on behalf of the child concerned, in the manner prescribed by the internal law of the State Party. Such an application may be made subject to the lawful and habitual residence on its territory for a period not exceeding five years immediately preceding the lodging of the application.
- 3 Each State Party shall provide in its internal law for the possibility of naturalisation of persons lawfully and habitually resident on its territory. In establishing the conditions for naturalisation, it shall not provide for a period of residence exceeding ten years before the lodging of an application.
- 4 Each State Party shall facilitate in its internal law the acquisition of its nationality for the following persons:
 - a spouses of its nationals;
 - b children of one of its nationals, falling under the exception of Article 6, paragraph 1, sub-paragraph a;
 - c children one of whose parents acquires or has acquired its nationality;
 - d children adopted by one of its nationals;

- e persons who were born on its territory and reside there lawfully and habitually;
- f persons who are lawfully and habitually resident on its territory for a period of time beginning before the age of 18, that period to be determined by the internal law of the State Party concerned;
- g stateless persons and recognised refugees lawfully and habitually resident on its territory.

Article 7 – Loss of nationality *ex lege* or at the initiative of a State Party

- 1 A State Party may not provide in its internal law for the loss of its nationality *ex lege* or at the initiative of the State Party except in the following cases:
 - a voluntary acquisition of another nationality;
 - b acquisition of the nationality of the State Party by means of fraudulent conduct, false information or concealment of any relevant fact attributable to the applicant;
 - c voluntary service in a foreign military force;
 - d conduct seriously prejudicial to the vital interests of the State Party;
 - e lack of a genuine link between the State Party and a national habitually residing abroad;
 - f where it is established during the minority of a child that the preconditions laid down by internal law which led to the *ex lege* acquisition of the nationality of the State Party are no longer fulfilled;
 - g adoption of a child if the child acquires or possesses the foreign nationality of one or both of the adopting parents.
- 2 A State Party may provide for the loss of its nationality by children whose parents lose that nationality except in cases covered by sub-paragraphs c and d of paragraph 1. However, children shall not lose that nationality if one of their parents retains it.
- 3 A State Party may not provide in its internal law for the loss of its nationality under paragraphs 1 and 2 of this article if the person concerned would thereby become stateless, with the exception of the cases mentioned in paragraph 1, sub-paragraph b, of this article.

CONVENTION ON CYBERCRIME

Budapest, 23.XI.2001

Article 9 – Offences related to child pornography

- 1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct:
 - a producing child pornography for the purpose of its distribution through a computer system;
 - b offering or making available child pornography through a computer system;
 - c distributing or transmitting child pornography through a computer system;
 - d procuring child pornography through a computer system for oneself or for another person;
 - e possessing child pornography in a computer system or on a computer-data storage medium.
- 2 For the purpose of paragraph 1 above, the term “child pornography” shall include pornographic material that visually depicts:
 - a a minor engaged in sexually explicit conduct;
 - b a person appearing to be a minor engaged in sexually explicit conduct;
 - c realistic images representing a minor engaged in sexually explicit conduct.
- 3 For the purpose of paragraph 2 above, the term “minor” shall include all persons under 18 years of age. A Party may, however, require a lower age-limit, which shall be not less than 16 years.
- 4 Each Party may reserve the right not to apply, in whole or in part, paragraphs 1, sub-paragraphs d. and e, and 2, sub-paragraphs b. and c.

**CONVENTION ON CONTACT
CONCERNING CHILDREN**

Strasbourg, 15.V.2003

Preamble

The member States of the Council of Europe and the other signatories hereto,

Taking into account the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children of 20 May 1980 (ETS No. 105);

Taking into account the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction and the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children;

Taking into account the Council Regulation (EC) No. 1347/2000 of 29 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses;

Recognising that, as provided in the different international legal instruments of the Council of Europe as well as in Article 3 of the United Nations Convention on the Rights of the Child of 20 November 1989, the best interests of the child shall be a primary consideration;

Aware of the need for further provisions to safeguard contact between children and their parents and other persons having family ties with children, as protected by Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (ETS No. 5);

Taking into account Article 9 of the United Nations Convention on the Rights of the Child which provides for the right of a child, who is separated from one or both parents, to maintain personal relations and direct contact with both parents on a regular basis, except when this is contrary to the child's best interests;

Taking into account paragraph 2 of Article 10 of the United Nations Convention on the Rights of the Child, which provides for the right of the child whose parents reside in different States to maintain on a regular basis, save in exceptional circumstances, personal relations and direct contacts with both parents;

Aware of the desirability of recognising not only parents but also children as holders of rights;

Agreeing consequently to replace the notion of "access to children" with the notion of "contact concerning children";

Taking into account the European Convention on the Exercise of Children's Rights (ETS No. 160) and the desirability of promoting measures to assist children in matters concerning contact with parents and other persons having family ties with children;

Agreeing on the need for children to have contact not only with both parents but also with certain other persons having family ties with children and the importance for parents and those other persons to remain in contact with children, subject to the best interests of the child;

Noting the need to promote the adoption by States of common principles with respect

to contact concerning children, in particular in order to facilitate the application of international instruments in this field;

Realising that machinery set up to give effect to foreign orders relating to contact concerning children is more likely to provide satisfactory results where the principles on which these foreign orders are based are similar to the principles in the State giving effect to such foreign orders;

Recognising the need, when children and parents and other persons having family ties with children live in different States, to encourage judicial authorities to make more frequent use of transfrontier contact and to increase the confidence of all persons concerned that the children will be returned at the end of such contact;

Noting that the provision of efficient safeguards and additional guarantees is likely to ensure the return of children, in particular, at the end of transfrontier contact;

Noting that an additional international instrument is necessary to provide solutions relating in particular to transfrontier contact concerning children;

Desiring to establish co-operation between all central authorities and other bodies in order to promote and improve contact between children and their parents, and other persons having family ties with such children, and in particular to promote judicial co-operation in cases concerning transfrontier contact;

Have agreed as follows:

CHAPTER I – OBJECTS OF THE CONVENTION AND DEFINITIONS

Article 1 – Objects of the Convention

The objects of this Convention are:

- a to determine general principles to be applied to contact orders;
- b to fix appropriate safeguards and guarantees to ensure the proper exercise of contact and the immediate return of children at the end of the period of contact;
- c to establish co-operation between central authorities, judicial authorities and other bodies in order to promote and improve contact between children and their parents, and other persons having family ties with children.

Article 2 – Definitions

For the purposes of this Convention:

- a "*contact*" means:
 - i the child staying for a limited period of time with or meeting a person mentioned in Articles 4 or 5 with whom he or she is not usually living;
 - ii any form of communication between the child and such person;
 - iii the provision of information to such a person about the child or to the child

about such a person.

- b *“contact order”* means a decision of a judicial authority concerning contact, including an agreement concerning contact which has been confirmed by a competent judicial authority or which has been formally drawn up or registered as an authentic instrument and is enforceable;
- c *“child”* means a person under 18 years of age in respect of whom a contact order may be made or enforced in a State Party;
- d *“family ties”* means a close relationship such as between a child and his or her grandparents or siblings, based on law or on a de facto family relationship;
- e *“judicial authority”* means a court or an administrative authority having equivalent powers.

CHAPTER II – GENERAL PRINCIPLES TO BE APPLIED TO CONTACT ORDERS

Article 3 – Application of principles

States Parties shall adopt such legislative and other measures as may be necessary to ensure that the principles contained in this chapter are applied by judicial authorities when making, amending, suspending or revoking contact orders.

Article 4 – Contact between a child and his or her parents

- 1 A child and his or her parents shall have the right to obtain and maintain regular contact with each other.
- 2 Such contact may be restricted or excluded only where necessary in the best interests of the child.
- 3 Where it is not in the best interests of a child to maintain unsupervised contact with one of his or her parents the possibility of supervised personal contact or other forms of contact with this parent shall be considered.

Article 5 – Contact between a child and persons other than his or her parents

- 1 Subject to his or her best interests, contact may be established between the child and persons other than his or her parents having family ties with the child.
- 2 States Parties are free to extend this provision to persons other than those mentioned in paragraph 1, and where so extended, States may freely decide what aspects of contact, as defined in Article 2 letter *a*. shall apply.

Article 6 – The right of a child to be informed, consulted and to express his or her views

- 1 A child considered by internal law as having sufficient understanding shall have the right, unless this would be manifestly contrary to his or her best interests:
 - to receive all relevant information;

- to be consulted;
 - to express his or her views.
- 2 Due weight shall be given to those views and to the ascertainable wishes and feelings of the child.

Article 7 – Resolving disputes concerning contact

When resolving disputes concerning contact, the judicial authorities shall take all appropriate measures:

- a to ensure that both parents are informed of the importance for their child and for both of them of establishing and maintaining regular contact with their child;
- b to encourage parents and other persons having family ties with the child to reach amicable agreements with respect to contact, in particular through the use of family mediation and other processes for resolving disputes;
- c before taking a decision, to ensure that they have sufficient information at their disposal, in particular from the holders of parental responsibilities, in order to take a decision in the best interests of the child and, where necessary, obtain further information from other relevant bodies or persons.

Article 8 – Contact agreements

- 1 States Parties shall encourage, by means they consider appropriate, parents and other persons having family ties with the child to comply with the principles laid down in Articles 4 to 7 when making or modifying agreements on contact concerning a child. These agreements should preferably be in writing.
- 2 Upon request, judicial authorities shall, except where internal law otherwise provides, confirm an agreement on contact concerning a child, unless it is contrary to the best interests of the child.

Article 9 – The carrying into effect of contact orders

States Parties shall take all appropriate measures to ensure that contact orders are carried into effect.

Article 10 – Safeguards and guarantees to be taken concerning contact

- 1 Each State Party shall provide for and promote the use of safeguards and guarantees. It shall communicate, through its central authorities, to the Secretary General of the Council of Europe, within three months after the entry into force of this Convention for that State Party, at least three categories of safeguards and guarantees available in its internal law in addition to the safeguards and guarantees referred to in paragraph 3 of Article 4 and in letter *b* of paragraph 1 of Article 14 of this Convention. Changes of available safeguards and guarantees shall be communicated as soon as possible.
- 2 Where the circumstances of the case so require, judicial authorities may, at any time, make a contact order subject to any safeguards and guarantees both for the purpose of ensuring that the order is carried into effect and that either the child is returned at the

end of the period of contact to the place where he or she usually lives or that he or she is not improperly removed.

- a Safeguards and guarantees for ensuring that the order is carried into effect, may in particular include:
 - supervision of contact;
 - the obligation for a person to provide for the travel and accommodation expenses of the child and, as may be appropriate, of any other person accompanying the child;
 - a security to be deposited by the person with whom the child is usually living to ensure that the person seeking contact with the child is not prevented from having such contact;
 - a fine to be imposed on the person with whom the child is usually living, should this person refuse to comply with the contact order.

- b Safeguards and guarantees for ensuring the return of the child or preventing an improper removal, may in particular include:
 - the surrender of passports or identity documents and, where appropriate, a document indicating that the person seeking contact has notified the competent consular authority about such a surrender during the period of contact;
 - financial guarantees;
 - charges on property;
 - undertakings or stipulations to the court;
 - the obligation of the person having contact with the child to present himself or herself, with the child, regularly before a competent body such as a youth welfare authority or a police station, in the place where contact is to be exercised;
 - the obligation of the person seeking contact to present a document issued by the State where contact is to take place, certifying the recognition and declaration of enforceability of a custody or a contact order or both either before a contact order is made or before contact takes place;
 - the imposition of conditions in relation to the place where contact is to be exercised and, where appropriate, the registration, in any national or transfrontier information system, of a prohibition preventing the child from leaving the State where contact is to take place.

- 3 Any such safeguards and guarantees shall be in writing or evidenced in writing and shall form part of the contact order or the confirmed agreement.

- 4 If safeguards or guarantees are to be implemented in another State Party, the judicial authority shall preferably order such safeguards or guarantees as are capable of implementation in that State Party.

CHAPTER III – MEASURES TO PROMOTE AND IMPROVE TRANSFRONTIER CONTACT

Article 11 – Central authorities

- 1 Each State Party shall appoint a central authority to carry out the functions provided for by this Convention in cases of transfrontier contact.

- 2 Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one central authority and to specify the territorial or personal extent of their functions. Where a State has appointed more than one central authority, it shall designate the central authority to which any communication may be addressed for transmission to the appropriate central authority within that State.
- 3 The Secretary General of the Council of Europe shall be notified of any appointment under this article.

Article 12 – Duties of the central authorities

The central authorities of States Parties shall:

- a co-operate with each other and promote co-operation between the competent authorities, including judicial authorities, in their respective countries to achieve the purposes of the Convention. They shall act with all necessary despatch;
- b with a view to facilitating the operation of this Convention, provide each other on request with information concerning their laws relating to parental responsibilities, including contact and any more detailed information concerning safeguards and guarantees in addition to that already provided according to paragraph 1 of Article 10, and their available services (including legal services, publicly funded or otherwise) as well as information concerning any changes in these laws and services;
- c take all appropriate steps in order to discover the whereabouts of the child;
- d secure the transmission of requests for information coming from the competent authorities and relating to legal or factual matters concerning pending proceedings;
- e keep each other informed of any difficulties likely to arise in applying the Convention and, as far as possible, eliminate obstacles to its application.

Article 13 – International co-operation

- 1 The judicial authorities, the central authorities and the social and other bodies of States Parties concerned, acting within their respective competence, shall co-operate in relation to proceedings regarding transfrontier contact.
- 2 In particular, the central authorities shall assist the judicial authorities of States Parties in communicating with each other and obtaining such information and assistance as may be necessary for them to achieve the objects of this Convention.
- 3 In transfrontier cases, the central authorities shall assist children, parents and other persons having family ties with the child, in particular, to institute proceedings regarding transfrontier contact.

Article 14 – Recognition and enforcement of transfrontier contact orders

- 1 States Parties shall provide, including where applicable in accordance with relevant

international instruments:

- a a system for the recognition and enforcement of orders made in other States Parties concerning contact and rights of custody;
 - b a procedure whereby orders relating to contact and rights of custody made in other States Parties may be recognised and declared enforceable in advance of contact being exercised within the State addressed.
- 2 If a State Party makes recognition or enforcement or both of a foreign order conditional on the existence of a treaty or reciprocity, it may consider this Convention as such a legal basis for recognition or enforcement or both of a foreign contact order.

Article 15 – Conditions for implementing transfrontier contact orders

The judicial authority of the State Party in which a transfrontier contact order made in another State Party is to be implemented may, when recognising or declaring enforceable such a contact order, or at any later time, fix or adapt the conditions for its implementation, as well as any safeguards or guarantees attaching to it, if necessary for facilitating the exercise of this contact, provided that the essential elements of the order are respected and taking into account, in particular, a change of circumstances and the arrangements made by the persons concerned. In no circumstances may the foreign decision be reviewed as to its substance.

Article 16 – Return of a child

- 1 Where a child at the end of a period of transfrontier contact based on a contact order is not returned, the competent authorities shall, upon request, ensure the child's immediate return, where applicable, by applying the relevant provisions of international instruments, of internal law and by implementing, where appropriate, such safeguards and guarantees as may be provided in the contact order.
- 2 A decision on the return of the child shall be made, whenever possible, within six weeks of the date of an application for the return.

Article 17 – Costs

With the exception of the cost of repatriation, each State Party undertakes not to claim any payment from an applicant in respect of any measures taken under this Convention by the central authority itself of that State on the applicant's behalf.

Article 18 – Language requirement

- 1 Subject to any special agreements made between the central authorities concerned:
 - a communications to the central authority of the State addressed shall be made in the official language or in one of the official languages of that State or be accompanied by a translation into that language;
 - b the central authority of the State addressed shall nevertheless accept communications made in English or in French, or accompanied by a translation into one of these languages.

- 2 Communications coming from the central authority of the State addressed, including the results of enquiries carried out, may be made in the official language or one of the official languages of that State or in English or French.
- 3 However, a State Party may, by making a declaration addressed to the Secretary General of the Council of Europe, object to the use of either French or English under paragraphs 1 and 2 of this article, in any application, communication or other documents sent to their central authorities.

CHAPTER IV – RELATIONSHIP WITH OTHER INSTRUMENTS

Article 19 – Relationship with the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children

Paragraphs 2 and 3 of Article 11 of the European Convention of 20 May 1980 (ETS N° 105) on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children shall not be applied in relations between States Parties which are also States Parties of the present Convention.

Article 20 – Relationships with other instruments

- 1 This Convention shall not affect any international instrument to which States Parties to the present Convention are Parties or shall become Parties and which contains provisions on matters governed by this Convention. In particular, this Convention shall not prejudice the application of the following legal instruments:
 - a the Hague Convention of 5 October 1961 on the competence of authorities and the applicable law concerning the protection of minors,
 - b the European Convention on the recognition and enforcement of decisions concerning custody of children and on restoration of custody of children of 20 May 1980, subject to Article 19 above,
 - c the Hague Convention of 25 October 1980 on the civil aspects of international child abduction,
 - d the Hague Convention of 19 October 1996 on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children.
- 2 Nothing in this Convention shall prevent Parties from concluding international agreements completing or developing the provisions of this Convention or extending their field of application.
- 3 In their mutual relations, States Parties which are members of the European Community shall apply Community rules and shall therefore not apply the rules arising from this Convention, except in so far as there is no Community rule governing the particular subject concerned.

CHAPTER V – AMENDMENTS TO THE CONVENTION

Article 21 – Amendments

- 1 Any proposal for an amendment to this Convention presented by a Party shall be communicated to the Secretary General of the Council of Europe and forwarded by him or her to the member States of the Council of Europe, any signatory, any State Party, the European Community, to any State invited to sign this Convention in accordance with the provisions of Article 22 and to any State invited to accede to this Convention in accordance with the provisions of Article 23.
- 2 Any amendment proposed by a Party shall be communicated to the European Committee on Legal Co-operation (CDCJ), which shall submit to the Committee of Ministers its opinion on that proposed amendment.
- 3 The Committee of Ministers shall consider the proposed amendment and the opinion submitted by the CDCJ and, following consultation of the Parties to the Convention, which are not members of the Council of Europe, may adopt the amendment.
- 4 The text of any amendment adopted by the Committee of Ministers in accordance with paragraph 3 of this article shall be forwarded to the Parties for acceptance.
- 5 Any amendment adopted in accordance with paragraph 3 of this article shall enter into force on the first day of the month following the expiration of a period of one month after the date on which all Parties have informed the Secretary General that they have accepted it.

CHAPTER VI – FINAL CLAUSES

Article 22 – Signature and entry into force

- 1 This Convention shall be open for signature by the member States of the Council of Europe, the non-member States which have participated in its elaboration and the European Community.
- 2 This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
- 3 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which three States, including at least two member States of the Council of Europe, have expressed their consent to be bound by the Convention in accordance with the provisions of the preceding paragraph.
- 4 In respect of any State mentioned in paragraph 1 or the European Community, which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of its instrument of ratification, acceptance or approval.

Article 23 – Accession to the Convention

- 1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may, after consultation of the Parties, invite any non-member State of the Council of Europe, which has not participated in the elaboration of the Convention, to accede to this Convention by a decision taken by the majority provided for in Article 20 *d.* of the Statute of the Council of Europe, and by unanimous vote of the representatives of the Contracting States entitled to sit on the Committee of Ministers.
- 2 In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 24 – Territorial application

- 1 Any State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.
- 2 Any Party may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings. In respect of such territory, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
- 3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 25 – Reservations

No reservation may be made in respect of any provision of this Convention.

Article 26 – Denunciation

- 1 Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
- 2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

Article 27 – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, any State signatory, any State Party, the European Community, to

any State invited to sign this Convention in accordance with the provisions of Article 22 and to any State invited to accede to this Convention in accordance with the provisions of Article 23 of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Convention in accordance with Articles 22 and 23;
- d any amendment adopted in accordance with Article 21 and the date on which such an amendment enters into force;
- e any declaration made under the provisions of Article 18;
- f any denunciation made in pursuance of the provisions of Article 26;
- g any other act, notification or communication, in particular relating to Articles 10 and 11 of this Convention.

In witness whereof, the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, this 15th day of May 2003, in English and in French, both texts being equally authentic, in a single copy, which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Convention, to the European Community and to any State invited to accede to this Convention.

**COUNCIL OF EUROPE
CONVENTION ON THE AVOIDANCE
OF STATELESSNESS IN RELATION
TO STATE SUCCESSION**

Strasbourg, 19.V.2006

Preamble

The member States of the Council of Europe and the other States signatory to this Convention,

Considering that the avoidance of statelessness is one of the main concerns of the international community in the field of nationality;

Noting that State succession remains a major source of cases of statelessness;

Recognising that the European Convention on Nationality (ETS No. 166), opened for signature in Strasbourg on 6 November 1997, contains only general principles and not specific rules on nationality in case of State succession;

Bearing in mind that, with regard to statelessness in relation to State succession, other international instruments either do not have a binding character or do not address some important issues;

Convinced that for the reasons above there is a need for a comprehensive international instrument on State succession and the avoidance of statelessness which should be interpreted and applied, bearing in mind the principles of the European Convention on Nationality;

Taking into account Recommendation No. R (99) 18 of the Committee of Ministers on the Avoidance and Reduction of Statelessness, as well as the practical experience gained in recent years with regard to State succession and statelessness;

Having regard to other binding international instruments, namely the United Nations Conventions relating to the Status of Stateless Persons and on the Reduction of Statelessness, and the Vienna Conventions on Succession of States in respect of Treaties and on Succession of States in respect of State Property, Archives and Debts;

Having also regard to the draft articles on nationality of natural persons in relation to the succession of States, prepared by the United Nations International Law Commission, contained in the Annex to the United Nations General Assembly Resolution 55/153 of 2001 as well as the Declaration of the European Commission for Democracy through Law (Venice Commission) on the Consequences of State Succession for the Nationality of Natural Persons;

Building upon, but without prejudice to, the general principles established in the international instruments and documents mentioned above, by adding specific rules applicable to the particular situation of statelessness in relation to State succession;

In order to give effect to the principles established in the European Convention on Nationality that everyone has the right to a nationality and that the rule of law and human rights, including the prohibition of arbitrary deprivation of nationality and the principle of non-discrimination, must be respected in order to avoid statelessness,

Have agreed as follows:

Article 1 – Definitions

For the purposes of this Convention:

- a "State succession" means the replacement of one State by another in the responsibility for the international relations of territory;
- b "State concerned" means the predecessor State or the successor State, as the case may be;
- c "Statelessness" means the situation where a person is not considered as a national by any State under the operation of its internal law;
- d "Habitual residence" means a stable factual residence;
- e "Person concerned" means every individual who, at the time of the State succession, had the nationality of the predecessor State and who has or would become stateless as a result of the State succession.

Article 2 – Right to a nationality

Everyone who, at the time of the State succession, had the nationality of the predecessor State and who has or would become stateless as a result of the State succession has the right to the nationality of a State concerned, in accordance with the following articles.

Article 3 – Prevention of statelessness

The State concerned shall take all appropriate measures to prevent persons who, at the time of the State succession, had the nationality of the predecessor State, from becoming stateless as a result of the succession.

Article 4 – Non-discrimination

When applying this Convention, States concerned shall not discriminate against any person concerned on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 5 – Responsibility of the successor State

- 1 A successor State shall grant its nationality to persons who, at the time of the State succession, had the nationality of the predecessor State, and who have or would become stateless as a result of the State succession if at that time:
 - a they were habitually resident in the territory which has become territory of the successor State, or
 - b they were not habitually resident in any State concerned but had an appropriate connection with the successor State.
- 2 For the purpose of paragraph 1, sub-paragraph b, an appropriate connection includes *inter alia*:
 - a a legal bond to a territorial unit of a predecessor State which has become territory of the successor State;

- b birth on the territory which has become territory of the successor State;
- c last habitual residence on the territory of the predecessor State which has become territory of the successor State.

Article 6 – Responsibility of the predecessor State

A predecessor State shall not withdraw its nationality from its nationals who have not acquired the nationality of a successor State and who would otherwise become stateless as a result of the State succession.

Article 7 – Respect for the expressed will of the person concerned

A successor State shall not refuse to grant its nationality under Article 5 paragraph 1, sub-paragraph b, where such nationality reflects the expressed will of the person concerned, on the grounds that such a person can acquire the nationality of another State concerned on the basis of an appropriate connection with that State.

Article 8 – Rules of proof

- 1 A successor State shall not insist on its standard requirements of proof necessary for the granting of its nationality in the case of persons who have or would become stateless as a result of State succession and where it is not reasonable for such persons to meet the standard requirements.
- 2 A successor State shall not require proof of non-acquisition of another nationality before granting its nationality to persons who were habitually resident on its territory at the time of the State succession and who have or would become stateless as a result of the State succession.

Article 9 – Facilitating the acquisition of nationality by stateless persons

A State concerned shall facilitate the acquisition of its nationality by persons lawfully and habitually residing on its territory who, despite Articles 5 and 6, are stateless as a result of the State succession.

Article 10 – Avoiding statelessness at birth

A State concerned shall grant its nationality at birth to a child born following State succession on its territory to a parent who, at the time of State succession, had the nationality of the predecessor State if that child would otherwise be stateless.

Article 11 – Information to persons concerned

States concerned shall take all necessary steps to ensure that persons concerned have sufficient information about rules and procedures with regard to the acquisition of their nationality.

Article 12 – Procedural guarantees

When applying this Convention, the State concerned shall ensure that in the framework of the procedures relating to nationality:

- a the relevant applications be processed within a reasonable time;
- b the relevant decisions contain reasons in writing and be open to an administrative or judicial review in conformity with its internal law;
- c the fees be reasonable and not an obstacle for applicants.

Article 13 – Settlement by international agreement

States concerned shall endeavour to regulate matters relating to nationality, especially with a view to avoiding statelessness, where appropriate by international agreement.

Article 14 – International co-operation

- 1 In order to adopt appropriate measures to avoid statelessness arising from State succession, States concerned shall co-operate among themselves, including by providing information with regard to the operation of their relevant internal law.
- 2 For the same purpose as that mentioned in paragraph 1, States concerned shall also co-operate:
 - a with the Secretary General of the Council of Europe and the United Nations High Commissioner for Refugees (UNHCR) and,
 - b where appropriate, with other States and international organisations.

Article 15 - Application of this Convention

- 1 This Convention applies in respect of a State succession which has occurred after its entry into force.
- 2 A State concerned may, however, declare by notification addressed to the Secretary General of the Council of Europe at the time of expressing its consent to be bound by this Convention, or, at any time thereafter, that it will also apply the provisions of this Convention to a State succession occurring before the entry into force of this Convention.
- 3 If several States concerned make a declaration, as set out in paragraph 2, in respect of the same State succession, this Convention will apply between the States making such declaration.

Article 16 – Effects of this Convention

- 1 The provisions of this Convention shall not prejudice the provisions of internal law and binding international instruments which are already in force or may come into force, under which more favourable rights are or would be accorded to individuals on the avoidance of statelessness.
- 2 This Convention does not prejudice the application of:
 - a the European Convention on Nationality, in particular its Chapter VI relating to State succession and nationality;

- b other binding international instruments in so far as such instruments are compatible with this Convention,

in the relationship between the States Parties bound by these instruments.

Article 17 – Settlement of disputes

Any dispute concerning the interpretation or application of this Convention shall primarily be settled through negotiation.

Article 18 – Signature and entry into force

- 1 This Convention shall be open for signature by the member States of the Council of Europe and the non-member States which have participated in its elaboration. Such States may express their consent to be bound by:
 - a signature without reservation as to ratification, acceptance or approval; or
 - b signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.

Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

- 2 This Convention shall enter into force, for all States having expressed their consent to be bound by the Convention, on the first day of the month following the expiration of a period of three months after the date on which three member States of the Council of Europe have expressed their consent to be bound by this Convention in accordance with the provisions of the preceding paragraph.
- 3 In respect of any State which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of signature or of the deposit of its instrument of ratification, acceptance or approval.

Article 19 – Accession

- 1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any non-member State of the Council of Europe which has not participated in its elaboration to accede to this Convention.
- 2 In respect of any acceding State, this Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 20 - Reservations

- 1 No reservations may be made to this Convention except in respect of the provisions of Article 7, Article 8, paragraph 2, Article 12 and Article 14, paragraph 2, sub-paragraph b.

- 2 Any reservation made a State in pursuance of paragraph 1 shall be formulated at the time of signature or upon the deposit of its instrument of ratification, acceptance, approval or accession.
- 3 Any State may wholly or partly withdraw a reservation it has made in accordance with paragraph 1 by means of a declaration addressed to the Secretary General of the Council of Europe which shall become effective as from the date of its receipt.

Article 21 – Denunciation

- 1 Any State Party may at any time denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
- 2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of notification by the Secretary General.

Article 22 – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, any Signatory, any Party and any other State which has acceded to this Convention of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Convention in accordance with Articles 18 and 19 of this Convention;
- d any reservation and withdrawal of reservations made in pursuance of the provisions of Article 20 of this Convention;
- e any notification or declaration made under the provisions of Articles 15 and 21 of this Convention;
- f any other act, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, this 19th day of May 2006, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to each non-member State having participated in the elaboration of this Convention and to any State invited to accede to this Convention.

**COUNCIL OF EUROPE CONVENTION
ON THE PROTECTION OF CHILDREN
AGAINST SEXUAL EXPLOITATION
AND SEXUAL ABUSE**

Lanzarote, 25.X.2007

Preamble

The member States of the Council of Europe and the other signatories hereto;

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Considering that every child has the right to such measures of protection as are required by his or her status as a minor, on the part of his or her family, society and the State;

Observing that the sexual exploitation of children, in particular child pornography and prostitution, and all forms of sexual abuse of children, including acts which are committed abroad, are destructive to children's health and psycho-social development;

Observing that the sexual exploitation and sexual abuse of children have grown to worrying proportions at both national and international level, in particular as regards the increased use by both children and perpetrators of information and communication technologies (ICTs), and that preventing and combating such sexual exploitation and sexual abuse of children require international co-operation;

Considering that the well-being and best interests of children are fundamental values shared by all member States and must be promoted without any discrimination;

Recalling the Action Plan adopted at the 3rd Summit of Heads of State and Governments of the Council of Europe (Warsaw, 16-17 May 2005), calling for the elaboration of measures to stop sexual exploitation of children;

Recalling in particular the Committee of Ministers Recommendation No. R (91) 11 concerning sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults, Recommendation Rec(2001)16 on the protection of children against sexual exploitation, and the Convention on Cybercrime (ETS No. 185), especially Article 9 thereof, as well as the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197);

Bearing in mind the Convention for the Protection of Human Rights and Fundamental Freedoms (1950, ETS No. 5), the revised European Social Charter (1996, ETS No. 163), and the European Convention on the Exercise of Children's Rights (1996, ETS No. 160);

Also bearing in mind the United Nations Convention on the Rights of the Child, especially Article 34 thereof, the Optional Protocol on the sale of children, child prostitution and child pornography, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, as well as the International Labour Organization Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour;

Bearing in mind the Council of the European Union Framework Decision on combating the sexual exploitation of children and child pornography (2004/68/JHA), the Council of the European Union Framework Decision on the standing of victims in criminal proceedings (2001/220/JHA), and the Council of the European Union

Framework Decision on combating trafficking in human beings (2002/629/JHA);

Taking due account of other relevant international instruments and programmes in this field, in particular the Stockholm Declaration and Agenda for Action, adopted at the 1st World Congress against Commercial Sexual Exploitation of Children (27-31 August 1996), the Yokohama Global Commitment adopted at the 2nd World Congress against Commercial Sexual Exploitation of Children (17-20 December 2001), the Budapest Commitment and Plan of Action, adopted at the preparatory Conference for the 2nd World Congress against Commercial Sexual Exploitation of Children (20-21 November 2001), the United Nations General Assembly Resolution S-27/2 "A world fit for children" and the three-year programme "Building a Europe for and with children", adopted following the 3rd Summit and launched by the Monaco Conference (4-5 April 2006);

Determined to contribute effectively to the common goal of protecting children against sexual exploitation and sexual abuse, whoever the perpetrator may be, and of providing assistance to victims;

Taking into account the need to prepare a comprehensive international instrument focusing on the preventive, protective and criminal law aspects of the fight against all forms of sexual exploitation and sexual abuse of children and setting up a specific monitoring mechanism,

Have agreed as follows:

Chapter I – Purposes, non-discrimination principle and definitions

Article 1 – Purposes

- 1 The purposes of this Convention are to:
 - a prevent and combat sexual exploitation and sexual abuse of children;
 - b protect the rights of child victims of sexual exploitation and sexual abuse;
 - c promote national and international co-operation against sexual exploitation and sexual abuse of children.
- 2 In order to ensure effective implementation of its provisions by the Parties, this Convention sets up a specific monitoring mechanism.

Article 2 – Non-discrimination principle

The implementation of the provisions of this Convention by the Parties, in particular the enjoyment of measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, state of health, disability or other status.

Article 3 – Definitions

For the purposes of this Convention:

- a “child” shall mean any person under the age of 18 years;
- b “sexual exploitation and sexual abuse of children” shall include the behaviour as referred to in Articles 18 to 23 of this Convention;
- c “victim” shall mean any child subject to sexual exploitation or sexual abuse.

Chapter II – Preventive measures

Article 4 – Principles

Each Party shall take the necessary legislative or other measures to prevent all forms of sexual exploitation and sexual abuse of children and to protect children.

Article 5 – Recruitment, training and awareness raising of persons working in contact with children

- 1 Each Party shall take the necessary legislative or other measures to encourage awareness of the protection and rights of children among persons who have regular contacts with children in the education, health, social protection, judicial and law-enforcement sectors and in areas relating to sport, culture and leisure activities.
- 2 Each Party shall take the necessary legislative or other measures to ensure that the persons referred to in paragraph 1 have an adequate knowledge of sexual exploitation and sexual abuse of children, of the means to identify them and of the possibility mentioned in Article 12, paragraph 1.
- 3 Each Party shall take the necessary legislative or other measures, in conformity with its internal law, to ensure that the conditions to accede to those professions whose exercise implies regular contacts with children ensure that the candidates to these professions have not been convicted of acts of sexual exploitation or sexual abuse of children.

Article 6 – Education for children

Each Party shall take the necessary legislative or other measures to ensure that children, during primary and secondary education, receive information on the risks of sexual exploitation and sexual abuse, as well as on the means to protect themselves, adapted to their evolving capacity. This information, provided in collaboration with parents, where appropriate, shall be given within a more general context of information on sexuality and shall pay special attention to situations of risk, especially those involving the use of new information and communication technologies.

Article 7 - Preventive intervention programmes or measures

Each Party shall ensure that persons who fear that they might commit any of the offences established in accordance with this Convention may have access, where appropriate, to effective intervention programmes or measures designed to evaluate and prevent the risk of offences being committed.

Article 8 – Measures for the general public

- 1 Each Party shall promote or conduct awareness raising campaigns addressed to the

general public providing information on the phenomenon of sexual exploitation and sexual abuse of children and on the preventive measures which can be taken.

- 2 Each Party shall take the necessary legislative or other measures to prevent or prohibit the dissemination of materials advertising the offences established in accordance with this Convention.

Article 9 – Participation of children, the private sector, the media and civil society

- 1 Each Party shall encourage the participation of children, according to their evolving capacity, in the development and the implementation of state policies, programmes or others initiatives concerning the fight against sexual exploitation and sexual abuse of children.
- 2 Each Party shall encourage the private sector, in particular the information and communication technology sector, the tourism and travel industry and the banking and finance sectors, as well as civil society, to participate in the elaboration and implementation of policies to prevent sexual exploitation and sexual abuse of children and to implement internal norms through self-regulation or co-regulation.
- 3 Each Party shall encourage the media to provide appropriate information concerning all aspects of sexual exploitation and sexual abuse of children, with due respect for the independence of the media and freedom of the press.
- 4 Each Party shall encourage the financing, including, where appropriate, by the creation of funds, of the projects and programmes carried out by civil society aiming at preventing and protecting children from sexual exploitation and sexual abuse.

Chapter III – Specialised authorities and co-ordinating bodies

Article 10 – National measures of co-ordination and collaboration

- 1 Each Party shall take the necessary measures to ensure the co-ordination on a national or local level between the different agencies in charge of the protection from, the prevention of and the fight against sexual exploitation and sexual abuse of children, notably the education sector, the health sector, the social services and the law-enforcement and judicial authorities.
- 2 Each Party shall take the necessary legislative or other measures to set up or designate:
 - a independent competent national or local institutions for the promotion and protection of the rights of the child, ensuring that they are provided with specific resources and responsibilities;
 - b mechanisms for data collection or focal points, at the national or local levels and in collaboration with civil society, for the purpose of observing and evaluating the phenomenon of sexual exploitation and sexual abuse of children, with due respect for the requirements of personal data protection.
- 3 Each Party shall encourage co-operation between the competent state authorities, civil society and the private sector, in order to better prevent and combat sexual exploitation and sexual abuse of children.

Chapter IV – Protective measures and assistance to victims

Article 11 – Principles

- 1 Each Party shall establish effective social programmes and set up multidisciplinary structures to provide the necessary support for victims, their close relatives and for any person who is responsible for their care.
- 2 Each Party shall take the necessary legislative or other measures to ensure that when the age of the victim is uncertain and there are reasons to believe that the victim is a child, the protection and assistance measures provided for children shall be accorded to him or her pending verification of his or her age.

Article 12 – Reporting suspicion of sexual exploitation or sexual abuse

- 1 Each Party shall take the necessary legislative or other measures to ensure that the confidentiality rules imposed by internal law on certain professionals called upon to work in contact with children do not constitute an obstacle to the possibility, for those professionals, of their reporting to the services responsible for child protection any situation where they have reasonable grounds for believing that a child is the victim of sexual exploitation or sexual abuse.
- 2 Each Party shall take the necessary legislative or other measures to encourage any person who knows about or suspects, in good faith, sexual exploitation or sexual abuse of children to report these facts to the competent services.

Article 13 – Helplines

Each Party shall take the necessary legislative or other measures to encourage and support the setting up of information services, such as telephone or Internet helplines, to provide advice to callers, even confidentially or with due regard for their anonymity.

Article 14 – Assistance to victims

- 1 Each Party shall take the necessary legislative or other measures to assist victims, in the short and long term, in their physical and psycho-social recovery. Measures taken pursuant to this paragraph shall take due account of the child's views, needs and concerns.
- 2 Each Party shall take measures, under the conditions provided for by its internal law, to co-operate with non-governmental organisations, other relevant organisations or other elements of civil society engaged in assistance to victims.
- 3 When the parents or persons who have care of the child are involved in his or her sexual exploitation or sexual abuse, the intervention procedures taken in application of Article 11, paragraph 1, shall include:
 - the possibility of removing the alleged perpetrator;
 - the possibility of removing the victim from his or her family environment. The conditions and duration of such removal shall be determined in accordance with

the best interests of the child.

- 4 Each Party shall take the necessary legislative or other measures to ensure that the persons who are close to the victim may benefit, where appropriate, from therapeutic assistance, notably emergency psychological care.

Chapter V – Intervention programmes or measures

Article 15 – General principles

- 1 Each Party shall ensure or promote, in accordance with its internal law, effective intervention programmes or measures for the persons referred to in Article 16, paragraphs 1 and 2, with a view to preventing and minimising the risks of repeated offences of a sexual nature against children. Such programmes or measures shall be accessible at any time during the proceedings, inside and outside prison, according to the conditions laid down in internal law.
- 2 Each Party shall ensure or promote, in accordance with its internal law, the development of partnerships or other forms of co-operation between the competent authorities, in particular health-care services and the social services, and the judicial authorities and other bodies responsible for following the persons referred to in Article 16, paragraphs 1 and 2.
- 3 Each Party shall provide, in accordance with its internal law, for an assessment of the dangerousness and possible risks of repetition of the offences established in accordance with this Convention, by the persons referred to in Article 16, paragraphs 1 and 2, with the aim of identifying appropriate programmes or measures.
- 4 Each Party shall provide, in accordance with its internal law, for an assessment of the effectiveness of the programmes and measures implemented.

Article 16 – Recipients of intervention programmes and measures

- 1 Each Party shall ensure, in accordance with its internal law, that persons subject to criminal proceedings for any of the offences established in accordance with this Convention may have access to the programmes or measures mentioned in Article 15, paragraph 1, under conditions which are neither detrimental nor contrary to the rights of the defence and to the requirements of a fair and impartial trial, and particularly with due respect for the rules governing the principle of the presumption of innocence.
- 2 Each Party shall ensure, in accordance with its internal law, that persons convicted of any of the offences established in accordance with this Convention may have access to the programmes or measures mentioned in Article 15, paragraph 1.
- 3 Each Party shall ensure, in accordance with its internal law, that intervention programmes or measures are developed or adapted to meet the developmental needs of children who sexually offend, including those who are below the age of criminal responsibility, with the aim of addressing their sexual behavioural problems.

Article 17 – Information and consent

- 1 Each Party shall ensure, in accordance with its internal law, that the persons referred

to in Article 16 to whom intervention programmes or measures have been proposed are fully informed of the reasons for the proposal and consent to the programme or measure in full knowledge of the facts.

- 2 Each Party shall ensure, in accordance with its internal law, that persons to whom intervention programmes or measures have been proposed may refuse them and, in the case of convicted persons, that they are made aware of the possible consequences a refusal might have.

Chapter VI – Substantive criminal law

Article 18 – Sexual abuse

- 1 Each Party shall take the necessary legislative or other measures to ensure that the following intentional conduct is criminalised:
 - a engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities;
 - b engaging in sexual activities with a child where:
 - use is made of coercion, force or threats; or
 - abuse is made of a recognised position of trust, authority or influence over the child, including within the family; or
 - abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence.
- 2 For the purpose of paragraph 1 above, each Party shall decide the age below which it is prohibited to engage in sexual activities with a child.
- 3 The provisions of paragraph 1.a are not intended to govern consensual sexual activities between minors.

Article 19 – Offences concerning child prostitution

- 1 Each Party shall take the necessary legislative or other measures to ensure that the following intentional conduct is criminalised:
 - a recruiting a child into prostitution or causing a child to participate in prostitution;
 - b coercing a child into prostitution or profiting from or otherwise exploiting a child for such purposes;
 - c having recourse to child prostitution.
- 2 For the purpose of the present article, the term “child prostitution” shall mean the fact of using a child for sexual activities where money or any other form of remuneration or consideration is given or promised as payment, regardless if this payment, promise or consideration is made to the child or to a third person.

Article 20 – Offences concerning child pornography

- 1 Each Party shall take the necessary legislative or other measures to ensure that the

following intentional conduct, when committed without right, is criminalised:

- a producing child pornography;
 - b offering or making available child pornography;
 - c distributing or transmitting child pornography;
 - d procuring child pornography for oneself or for another person;
 - e possessing child pornography;
 - f knowingly obtaining access, through information and communication technologies, to child pornography.
- 2 For the purpose of the present article, the term “child pornography” shall mean any material that visually depicts a child engaged in real or simulated sexually explicit conduct or any depiction of a child’s sexual organs for primarily sexual purposes.
 - 3 Each Party may reserve the right not to apply, in whole or in part, paragraph 1.a and e to the production and possession of pornographic material:
 - consisting exclusively of simulated representations or realistic images of a non-existent child;
 - involving children who have reached the age set in application of Article 18, paragraph 2, where these images are produced and possessed by them with their consent and solely for their own private use.
 - 4 Each Party may reserve the right not to apply, in whole or in part, paragraph 1.f.

Article 21 – Offences concerning the participation of a child in pornographic performances

- 1 Each Party shall take the necessary legislative or other measures to ensure that the following intentional conduct is criminalised:
 - a recruiting a child into participating in pornographic performances or causing a child to participate in such performances;
 - b coercing a child into participating in pornographic performances or profiting from or otherwise exploiting a child for such purposes;
 - c knowingly attending pornographic performances involving the participation of children.
- 2 Each Party may reserve the right to limit the application of paragraph 1.c to cases where children have been recruited or coerced in conformity with paragraph 1.a or b.

Article 22 – Corruption of children

Each Party shall take the necessary legislative or other measures to criminalise the intentional causing, for sexual purposes, of a child who has not reached the age set in application of Article 18, paragraph 2, to witness sexual abuse or sexual activities, even without having to participate.

Article 23 – Solicitation of children for sexual purposes

Each Party shall take the necessary legislative or other measures to criminalise the intentional proposal, through information and communication technologies, of an adult to meet a child who has not reached the age set in application of Article 18, paragraph 2, for the purpose of committing any of the offences established in accordance with Article 18, paragraph 1.a, or Article 20, paragraph 1.a, against him or her, where this proposal has been followed by material acts leading to such a meeting.

Article 24 – Aiding or abetting and attempt

- 1 Each Party shall take the necessary legislative or other measures to establish as criminal offences, when committed intentionally, aiding or abetting the commission of any of the offences established in accordance with this Convention.
- 2 Each Party shall take the necessary legislative or other measures to establish as criminal offences, when committed intentionally, attempts to commit the offences established in accordance with this Convention.
- 3 Each Party may reserve the right not to apply, in whole or in part, paragraph 2 to offences established in accordance with Article 20, paragraph 1.b, d, e and f, Article 21, paragraph 1.c, Article 22 and Article 23.

Article 25 – Jurisdiction

- 1 Each Party shall take the necessary legislative or other measures to establish jurisdiction over any offence established in accordance with this Convention, when the offence is committed:
 - a in its territory; or
 - b on board a ship flying the flag of that Party; or
 - c on board an aircraft registered under the laws of that Party; or
 - d by one of its nationals; or
 - e by a person who has his or her habitual residence in its territory.
- 2 Each Party shall endeavour to take the necessary legislative or other measures to establish jurisdiction over any offence established in accordance with this Convention where the offence is committed against one of its nationals or a person who has his or her habitual residence in its territory.
- 3 Each Party 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 jurisdiction rules laid down in paragraph 1.e of this article.
- 4 For the prosecution of the offences established in accordance with Articles 18, 19, 20, paragraph 1.a, and 21, paragraph 1.a and b, of this Convention, each Party shall take the necessary legislative or other measures to ensure that its jurisdiction as regards paragraph 1.d is not subordinated to the condition that the acts are criminalised at the place where they were performed.

- 5 Each Party 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 to limit the application of paragraph 4 of this article, with regard to offences established in accordance with Article 18, paragraph 1.b, second and third indents, to cases where its national has his or her habitual residence in its territory.
- 6 For the prosecution of the offences established in accordance with Articles 18, 19, 20, paragraph 1.a, and 21 of this Convention, each Party shall take the necessary legislative or other measures to ensure that its jurisdiction as regards paragraphs 1.d and e is not subordinated to the condition that the prosecution can only be initiated following a report from the victim or a denunciation from the State of the place where the offence was committed.
- 7 Each Party shall take the necessary legislative or other measures to establish jurisdiction over the offences established in accordance with this Convention, in cases where an alleged offender is present on its territory and it does not extradite him or her to another Party, solely on the basis of his or her nationality.
- 8 When more than one Party claims jurisdiction over an alleged offence established in accordance with this Convention, the Parties involved shall, where appropriate, consult with a view to determining the most appropriate jurisdiction for prosecution.
- 9 Without prejudice to the general rules of international law, this Convention does not exclude any criminal jurisdiction exercised by a Party in accordance with its internal law.

Article 26 – Corporate liability

- 1 Each Party shall take the necessary legislative or other measures to ensure that a legal person can be held liable for an offence established in accordance with this Convention, committed for its benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:
 - a power of representation of the legal person;
 - b an authority to take decisions on behalf of the legal person;
 - c an authority to exercise control within the legal person.
- 2 Apart from the cases already provided for in paragraph 1, each Party shall take the necessary legislative or other measures to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of an offence established in accordance with this Convention for the benefit of that legal person by a natural person acting under its authority.
- 3 Subject to the legal principles of the Party, the liability of a legal person may be criminal, civil or administrative.
- 4 Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offence.

Article 27 – Sanctions and measures

- 1 Each Party shall take the necessary legislative or other measures to ensure that the offences established in accordance with this Convention are punishable by effective, proportionate and dissuasive sanctions, taking into account their seriousness. These sanctions shall include penalties involving deprivation of liberty which can give rise to extradition.
- 2 Each Party shall take the necessary legislative or other measures to ensure that legal persons held liable in accordance with Article 26 shall be subject to effective, proportionate and dissuasive sanctions which shall include monetary criminal or non-criminal fines and may include other measures, in particular:
 - a exclusion from entitlement to public benefits or aid;
 - b temporary or permanent disqualification from the practice of commercial activities;
 - c placing under judicial supervision;
 - d judicial winding-up order.
- 3 Each Party shall take the necessary legislative or other measures to:
 - a provide for the seizure and confiscation of:
 - goods, documents and other instrumentalities used to commit the offences established in accordance with this Convention or to facilitate their commission;
 - proceeds derived from such offences or property the value of which corresponds to such proceeds;
 - b enable the temporary or permanent closure of any establishment used to carry out any of the offences established in accordance with this Convention, without prejudice to the rights of *bona fide* third parties, or to deny the perpetrator, temporarily or permanently, the exercise of the professional or voluntary activity involving contact with children in the course of which the offence was committed.
- 4 Each Party may adopt other measures in relation to perpetrators, such as withdrawal of parental rights or monitoring or supervision of convicted persons.
- 5 Each Party may establish that the proceeds of crime or property confiscated in accordance with this article can be allocated to a special fund in order to finance prevention and assistance programmes for victims of any of the offences established in accordance with this Convention.

Article 28 – Aggravating circumstances

Each Party shall take the necessary legislative or other measures to ensure that the following circumstances, in so far as they do not already form part of the constituent elements of the offence, may, in conformity with the relevant provisions of internal

law, be taken into consideration as aggravating circumstances in the determination of the sanctions in relation to the offences established in accordance with this Convention:

- a the offence seriously damaged the physical or mental health of the victim;
- b the offence was preceded or accompanied by acts of torture or serious violence;
- c the offence was committed against a particularly vulnerable victim;
- d the offence was committed by a member of the family, a person cohabiting with the child or a person having abused his or her authority;
- e the offence was committed by several people acting together;
- f the offence was committed within the framework of a criminal organisation;
- g the perpetrator has previously been convicted of offences of the same nature.

Article 29 – Previous convictions

Each Party shall take the necessary legislative or other measures to provide for the possibility to take into account final sentences passed by another Party in relation to the offences established in accordance with this Convention when determining the sanctions.

Chapter VII – Investigation, prosecution and procedural law

Article 30 – Principles

- 1 Each Party shall take the necessary legislative or other measures to ensure that investigations and criminal proceedings are carried out in the best interests and respecting the rights of the child.
- 2 Each Party shall adopt a protective approach towards victims, ensuring that the investigations and criminal proceedings do not aggravate the trauma experienced by the child and that the criminal justice response is followed by assistance, where appropriate.
- 3 Each Party shall ensure that the investigations and criminal proceedings are treated as priority and carried out without any unjustified delay.
- 4 Each Party shall ensure that the measures applicable under the current chapter are not prejudicial to the rights of the defence and the requirements of a fair and impartial trial, in conformity with Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.
- 5 Each Party shall take the necessary legislative or other measures, in conformity with the fundamental principles of its internal law:
 - to ensure an effective investigation and prosecution of offences established in accordance with this Convention, allowing, where appropriate, for the possibility of covert operations;

- to enable units or investigative services to identify the victims of the offences established in accordance with Article 20, in particular by analysing child pornography material, such as photographs and audiovisual recordings transmitted or made available through the use of information and communication technologies.

Article 31 – General measures of protection

- 1 Each Party shall take the necessary legislative or other measures to protect the rights and interests of victims, including their special needs as witnesses, at all stages of investigations and criminal proceedings, in particular by:
 - a informing them of their rights and the services at their disposal and, unless they do not wish to receive such information, the follow-up given to their complaint, the charges, the general progress of the investigation or proceedings, and their role therein as well as the outcome of their cases;
 - b ensuring, at least in cases where the victims and their families might be in danger, that they may be informed, if necessary, when the person prosecuted or convicted is released temporarily or definitively;
 - c enabling them, in a manner consistent with the procedural rules of internal law, to be heard, to supply evidence and to choose the means of having their views, needs and concerns presented, directly or through an intermediary, and considered;
 - d providing them with appropriate support services so that their rights and interests are duly presented and taken into account;
 - e protecting their privacy, their identity and their image and by taking measures in accordance with internal law to prevent the public dissemination of any information that could lead to their identification;
 - f providing for their safety, as well as that of their families and witnesses on their behalf, from intimidation, retaliation and repeat victimisation;
 - g ensuring that contact between victims and perpetrators within court and law enforcement agency premises is avoided, unless the competent authorities establish otherwise in the best interests of the child or when the investigations or proceedings require such contact.
- 2 Each Party shall ensure that victims have access, as from their first contact with the competent authorities, to information on relevant judicial and administrative proceedings.
- 3 Each Party shall ensure that victims have access, provided free of charge where warranted, to legal aid when it is possible for them to have the status of parties to criminal proceedings.
- 4 Each Party shall provide for the possibility for the judicial authorities to appoint a special representative for the victim when, by internal law, he or she may have the status of a party to the criminal proceedings and where the holders of parental responsibility are precluded from representing the child in such proceedings as a

result of a conflict of interest between them and the victim.

- 5 Each Party shall provide, by means of legislative or other measures, in accordance with the conditions provided for by its internal law, the possibility for groups, foundations, associations or governmental or non-governmental organisations, to assist and/or support the victims with their consent during criminal proceedings concerning the offences established in accordance with this Convention.
- 6 Each Party shall ensure that the information given to victims in conformity with the provisions of this article is provided in a manner adapted to their age and maturity and in a language that they can understand.

Article 32 – Initiation of proceedings

Each Party shall take the necessary legislative or other measures to ensure that investigations or prosecution of offences established in accordance with this Convention shall not be dependent upon the report or accusation made by a victim, and that the proceedings may continue even if the victim has withdrawn his or her statements.

Article 33 – Statute of limitation

Each Party shall take the necessary legislative or other measures to ensure that the statute of limitation for initiating proceedings with regard to the offences established in accordance with Articles 18, 19, paragraph 1.a and b, and 21, paragraph 1.a and b, shall continue for a period of time sufficient to allow the efficient starting of proceedings after the victim has reached the age of majority and which is commensurate with the gravity of the crime in question.

Article 34 – Investigations

- 1 Each Party shall adopt such measures as may be necessary to ensure that persons, units or services in charge of investigations are specialised in the field of combating sexual exploitation and sexual abuse of children or that persons are trained for this purpose. Such units or services shall have adequate financial resources.
- 2 Each Party shall take the necessary legislative or other measures to ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations.

Article 35 – Interviews with the child

- 1 Each Party shall take the necessary legislative or other measures to ensure that:
 - a interviews with the child take place without unjustified delay after the facts have been reported to the competent authorities;
 - b interviews with the child take place, where necessary, in premises designed or adapted for this purpose;
 - c interviews with the child are carried out by professionals trained for this purpose;
 - d the same persons, if possible and where appropriate, conduct all interviews with

- the child;
- e the number of interviews is as limited as possible and in so far as strictly necessary for the purpose of criminal proceedings;
 - f the child may be accompanied by his or her legal representative or, where appropriate, an adult of his or her choice, unless a reasoned decision has been made to the contrary in respect of that person.
- 2 Each Party shall take the necessary legislative or other measures to ensure that all interviews with the victim or, where appropriate, those with a child witness, may be videotaped and that these videotaped interviews may be accepted as evidence during the court proceedings, according to the rules provided by its internal law.
 - 3 When the age of the victim is uncertain and there are reasons to believe that the victim is a child, the measures established in paragraphs 1 and 2 shall be applied pending verification of his or her age.

Article 36 – Criminal court proceedings

- 1 Each Party shall take the necessary legislative or other measures, with due respect for the rules governing the autonomy of legal professions, to ensure that training on children's rights and sexual exploitation and sexual abuse of children is available for the benefit of all persons involved in the proceedings, in particular judges, prosecutors and lawyers.
- 2 Each Party shall take the necessary legislative or other measures to ensure, according to the rules provided by its internal law, that:
 - a the judge may order the hearing to take place without the presence of the public;
 - b the victim may be heard in the courtroom without being present, notably through the use of appropriate communication technologies.

Chapter VIII – Recording and storing of data

Article 37 – Recording and storing of national data on convicted sexual offenders

- 1 For the purposes of prevention and prosecution of the offences established in accordance with this Convention, each Party shall take the necessary legislative or other measures to collect and store, in accordance with the relevant provisions on the protection of personal data and other appropriate rules and guarantees as prescribed by domestic law, data relating to the identity and to the genetic profile (DNA) of persons convicted of the offences established in accordance with this Convention.
- 2 Each Party shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, communicate to the Secretary General of the Council of Europe the name and address of a single national authority in charge for the purposes of paragraph 1.
- 3 Each Party shall take the necessary legislative or other measures to ensure that the information referred to in paragraph 1 can be transmitted to the competent authority of another Party, in conformity with the conditions established in its internal law and

the relevant international instruments.

Chapter IX – International co-operation

Article 38 – General principles and measures for international co-operation

- 1 The Parties shall co-operate with each other, in accordance with the provisions of this Convention, and through the application of relevant applicable international and regional instruments, arrangements agreed on the basis of uniform or reciprocal legislation and internal laws, to the widest extent possible, for the purpose of:
 - a preventing and combating sexual exploitation and sexual abuse of children;
 - b protecting and providing assistance to victims;
 - c investigations or proceedings concerning the offences established in accordance with this Convention.
- 2 Each Party shall take the necessary legislative or other measures to ensure that victims of an offence established in accordance with this Convention in the territory of a Party other than the one where they reside may make a complaint before the competent authorities of their State of residence.
- 3 If a Party that makes mutual legal assistance in criminal matters or extradition conditional on the existence of a treaty receives a request for legal assistance or extradition from a Party with which it has not concluded such a treaty, it may consider this Convention the legal basis for mutual legal assistance in criminal matters or extradition in respect of the offences established in accordance with this Convention.
- 4 Each Party shall endeavour to integrate, where appropriate, prevention and the fight against sexual exploitation and sexual abuse of children in assistance programmes for development provided for the benefit of third states.

Chapter X – Monitoring mechanism

Article 39 – Committee of the Parties

- 1 The Committee of the Parties shall be composed of representatives of the Parties to the Convention.
- 2 The Committee of the Parties shall be convened by the Secretary General of the Council of Europe. Its first meeting shall be held within a period of one year following the entry into force of this Convention for the tenth signatory having ratified it. It shall subsequently meet whenever at least one third of the Parties or the Secretary General so requests.
- 3 The Committee of the Parties shall adopt its own rules of procedure.

Article 40 – Other representatives

- 1 The Parliamentary Assembly of the Council of Europe, the Commissioner for Human Rights, the European Committee on Crime Problems (CDPC), as well as other relevant Council of Europe intergovernmental committees, shall each appoint a representative

to the Committee of the Parties.

- 2 The Committee of Ministers may invite other Council of Europe bodies to appoint a representative to the Committee of the Parties after consulting the latter.
- 3 Representatives of civil society, and in particular non-governmental organisations, may be admitted as observers to the Committee of the Parties following the procedure established by the relevant rules of the Council of Europe.
- 4 Representatives appointed under paragraphs 1 to 3 above shall participate in meetings of the Committee of the Parties without the right to vote.

Article 41 – Functions of the Committee of the Parties

- 1 The Committee of the Parties shall monitor the implementation of this Convention. The rules of procedure of the Committee of the Parties shall determine the procedure for evaluating the implementation of this Convention.
- 2 The Committee of the Parties shall facilitate the collection, analysis and exchange of information, experience and good practice between States to improve their capacity to prevent and combat sexual exploitation and sexual abuse of children.
- 3 The Committee of the Parties shall also, where appropriate:
 - a facilitate the effective use and implementation of this Convention, including the identification of any problems and the effects of any declaration or reservation made under this Convention;
 - b express an opinion on any question concerning the application of this Convention and facilitate the exchange of information on significant legal, policy or technological developments.
- 4 The Committee of the Parties shall be assisted by the Secretariat of the Council of Europe in carrying out its functions pursuant to this article.
- 5 The European Committee on Crime Problems (CDPC) shall be kept periodically informed regarding the activities mentioned in paragraphs 1, 2 and 3 of this article.

Chapter XI – Relationship with other international instruments

Article 42 – Relationship with the United Nations Convention on the Rights of the Child and its Optional Protocol on the sale of children, child prostitution and child pornography

This Convention shall not affect the rights and obligations arising from the provisions of the United Nations Convention on the Rights of the Child and its Optional Protocol on the sale of children, child prostitution and child pornography, and is intended to enhance the protection afforded by them and develop and complement the standards contained therein.

Article 43 – Relationship with other international instruments

- 1 This Convention shall not affect the rights and obligations arising from the provisions

of other international instruments to which Parties to the present Convention are Parties or shall become Parties and which contain provisions on matters governed by this Convention and which ensure greater protection and assistance for child victims of sexual exploitation or sexual abuse.

- 2 The Parties to the Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.
- 3 Parties which are members of the European Union shall, in their mutual relations, apply Community and European Union rules in so far as there are Community or European Union rules governing the particular subject concerned and applicable to the specific case, without prejudice to the object and purpose of the present Convention and without prejudice to its full application with other Parties.

Chapter XII – Amendments to the Convention

Article 44 – Amendments

- 1 Any proposal for an amendment to this Convention presented by a Party shall be communicated to the Secretary General of the Council of Europe and forwarded by him or her to the member States of the Council of Europe, any signatory, any State Party, the European Community, any State invited to sign this Convention in accordance with the provisions of Article 45, paragraph 1, and any State invited to accede to this Convention in accordance with the provisions of Article 46, paragraph 1.
- 2 Any amendment proposed by a Party shall be communicated to the European Committee on Crime Problems (CDPC), which shall submit to the Committee of Ministers its opinion on that proposed amendment.
- 3 The Committee of Ministers shall consider the proposed amendment and the opinion submitted by the CDPC and, following consultation with the non-member States Parties to this Convention, may adopt the amendment.
- 4 The text of any amendment adopted by the Committee of Ministers in accordance with paragraph 3 of this article shall be forwarded to the Parties for acceptance.
- 5 Any amendment adopted in accordance with paragraph 3 of this article shall enter into force on the first day of the month following the expiration of a period of one month after the date on which all Parties have informed the Secretary General that they have accepted it.

Chapter XIII – Final clauses

Article 45 – Signature and entry into force

- 1 This Convention shall be open for signature by the member States of the Council of Europe, the non-member States which have participated in its elaboration as well as the European Community.
- 2 This Convention is subject to ratification, acceptance or approval. Instruments of

ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

- 3 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which 5 signatories, including at least 3 member States of the Council of Europe, have expressed their consent to be bound by the Convention in accordance with the provisions of the preceding paragraph.
- 4 In respect of any State referred to in paragraph 1 or the European Community, which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of its instrument of ratification, acceptance or approval.

Article 46 – Accession to the Convention

- 1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may, after consultation of the Parties to this Convention and obtaining their unanimous consent, invite any non-member State of the Council of Europe, which has not participated in the elaboration of the Convention, to accede to this Convention by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe, and by unanimous vote of the representatives of the Contracting States entitled to sit on the Committee of Ministers.
- 2 In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 47 – Territorial application

- 1 Any State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.
- 2 Any Party may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings. In respect of such territory, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
- 3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 48 – Reservations

No reservation may be made in respect of any provision of this Convention, with the exception of the reservations expressly established. Any reservation may be withdrawn at any time.

Article 49 – Denunciation

- 1 Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
- 2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

Article 50 – Notification

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, any State signatory, any State Party, the European Community, any State invited to sign this Convention in accordance with the provisions of Article 45 and any State invited to accede to this Convention in accordance with the provisions of Article 46 of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Convention in accordance with Articles 45 and 46;
- d any amendment adopted in accordance with Article 44 and the date on which such an amendment enters into force;
- e any reservation made under Article 48;
- f any denunciation made in pursuance of the provisions of Article 49;
- g any other act, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Lanzarote, this 25th day of October 2007, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Convention, to the European Community and to any State invited to accede to this Convention.

**EUROPEAN CONVENTION
OF THE COUNCIL OF EUROPE ON THE
ADOPTION OF CHILDREN (REVISED)**

Strasbourg, 27.XI.2008

Preamble

The member States of the Council of Europe and the other signatories hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Considering that, although the institution of the adoption of children exists in the law of all member States of the Council of Europe, differing views as to the principles which should govern adoption and differences in adoption procedures and in the legal consequences of adoption remain in these countries;

Taking into account the United Nations Convention on the Rights of the Child, of 20 November 1989, and in particular its Article 21;

Taking into account The Hague Convention of 29 May 1993 on Protection of Children and Co operation in respect of Intercountry Adoption;

Noting the content of Recommendation 1443 (2000) of the Parliamentary Assembly of the Council of Europe on international adoption: respecting children's rights, and the Council of Europe's White Paper on principles concerning the establishment and legal consequences of parentage;

Recognising that some of the provisions of the 1967 European Convention on the Adoption of Children (ETS No. 58) are outdated and contrary to the case law of the European Court of Human Rights;

Recognising that the involvement of children in family proceedings affecting them has been improved by the European Convention of 25 January 1996 on the Exercise of Children's Rights (ETS No. 160) and by the case law of the European Court of Human Rights;

Considering that the acceptance of common revised principles and practices with respect to the adoption of children, taking into account the relevant developments in this area during the last decades, would help to reduce the difficulties caused by the differences in national laws and at the same time promote the interests of children who are adopted;

Being convinced of the need for a revised Council of Europe international instrument on adoption of children providing an effective complement in particular to the 1993 Hague Convention;

Recognising that the best interests of the child shall be of paramount consideration,

Have agreed as follows:

Part I – Scope of the Convention and application of its principles

Article 1 – Scope of the Convention

1 This Convention applies to the adoption of a child who, at the time when the adopter applies to adopt him or her, has not attained the age of 18, is not and has not been married, is not in and has not entered into a registered partnership and has not reached majority.

2 This Convention covers only legal institutions of adoption which create a permanent child parent relationship.

Article 2 – Application of principles

Each State Party shall adopt such legislative or other measures as may be necessary to ensure the conformity of its law with the provisions of this Convention and shall notify the Secretary General of the Council of Europe of the measures taken for that purpose.

Part II – General principles

Article 3 – Validity of an adoption

An adoption shall be valid only if it is granted by a court or an administrative authority (hereinafter the “competent authority”).

Article 4 – Granting of an adoption

1 The competent authority shall not grant an adoption unless it is satisfied that the adoption will be in the best interests of the child.

2 In each case the competent authority shall pay particular attention to the importance of the adoption providing the child with a stable and harmonious home.

Article 5 – Consents to an adoption

1 Subject to paragraphs 2 to 5 of this article, an adoption shall not be granted unless at least the following consents to the adoption have been given and not withdrawn:

- a the consent of the mother and the father; or if there is neither father nor mother to consent, the consent of any person or body who is entitled to consent in their place;
- b the consent of the child considered by law as having sufficient understanding; a child shall be considered as having sufficient understanding on attaining an age which shall be prescribed by law and shall not be more than 14 years;
- c the consent of the spouse or registered partner of the adopter.

2 The persons whose consent is required for adoption must have been counselled as may be necessary and duly informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin. The consent must have been given freely, in the required legal form, and expressed or evidenced in writing.

3 The competent authority shall not dispense with the consent or overrule the refusal to consent of any person or body mentioned in paragraph 1 save on exceptional grounds determined by law. However, the consent of a child who suffers from a disability preventing the expression of a valid consent may be dispensed with.

4 If the father or mother is not a holder of parental responsibility in respect of the child, or at least of the right to consent to an adoption, the law may provide that it shall not be necessary to obtain his or her consent.

5 A mother's consent to the adoption of her child shall be valid when it is given at such time after the birth of the child, not being less than six weeks, as may be prescribed by law, or, if no such time has been prescribed, at such time as, in the opinion of the competent authority, will have enabled her to recover sufficiently from the effects of giving birth to the child.

6 For the purposes of this Convention "father" and "mother" mean the persons who according to law are the parents of the child.

Article 6 – Consultation of the child

If the child's consent is not necessary according to Article 5, paragraphs 1 and 3, he or she shall, as far as possible, be consulted and his or her views and wishes shall be taken into account having regard to his or her degree of maturity. Such consultation may be dispensed with if it would be manifestly contrary to the child's best interests.

Article 7 – Conditions for adoption

1 The law shall permit a child to be adopted:

a by two persons of different sex

- i who are married to each other, or
- ii where such an institution exists, have entered into a registered partnership together;

b by one person.

2 States are free to extend the scope of this Convention to same sex couples who are married to each other or who have entered into a registered partnership together. They are also free to extend the scope of this Convention to different sex couples and same sex couples who are living together in a stable relationship.

Article 8 – Possibility of a subsequent adoption

The law shall not permit an adopted child to be adopted on a subsequent occasion save in one or more of the following circumstances:

- a where the child is adopted by the spouse or registered partner of the adopter;
- b where the former adopter has died;
- c where the adoption has been annulled;

- d where the former adoption has come or thereby comes to an end;
- e where the subsequent adoption is justified on serious grounds and the former adoption cannot in law be brought to an end.

Article 9 – Minimum age of the adopter

1 A child may be adopted only if the adopter has attained the minimum age prescribed by law for this purpose, this minimum age being neither less than 18 nor more than 30 years. There shall be an appropriate age difference between the adopter and the child, having regard to the best interests of the child, preferably a difference of at least 16 years.

2 The law may, however, permit the requirement as to the minimum age or the age difference to be waived in the best interests of the child:

- a when the adopter is the spouse or registered partner of the child's father or mother;
or
- b by reason of exceptional circumstances.

Article 10 – Preliminary enquiries

1 The competent authority shall not grant an adoption until appropriate enquiries have been made concerning the adopter, the child and his or her family. During such enquiries and thereafter, data may only be collected, processed and communicated according to the rules relating to professional confidentiality and personal data protection.

2 The enquiries, to the extent appropriate in each case, shall concern, as far as possible and inter alia, the following matters:

- a the personality, health and social environment of the adopter, particulars of his or her home and household and his or her ability to bring up the child;
- b why the adopter wishes to adopt the child;
- c where only one of two spouses or registered partners applies to adopt the child, why the other does not join in the application;
- d the mutual suitability of the child and the adopter, and the length of time that the child has been in his or her care;
- e the personality, health and social environment of the child and, subject to any limitations imposed by law, his or her background and civil status;
- f the ethnic, religious and cultural background of the adopter and of the child.

3 These enquiries shall be entrusted to a person or body recognised for that purpose by law or by a competent authority. They shall, as far as practicable, be made by social

workers who are qualified in this field as a result of either their training or their experience.

4 The provisions of this article shall not affect the power or duty of the competent authority to obtain any information or evidence, whether or not within the scope of these enquiries, which it considers likely to be of assistance.

5 Enquiries relating to the suitability to adopt and the eligibility of the adopter, the circumstances and the motives of the persons concerned and the appropriateness of the placement of the child shall be made before the child is entrusted with a view to adoption to the care of the prospective adopter.

Article 11 – Effects of an adoption

1 Upon adoption a child shall become a full member of the family of the adopter(s) and shall have in regard to the adopter(s) and his, her or their family the same rights and obligations as a child of the adopter(s) whose parentage is legally established. The adopter(s) shall have parental responsibility for the child. The adoption shall terminate the legal relationship between the child and his or her father, mother and family of origin.

2 Nevertheless, the spouse or partner, whether registered or not, of the adopter shall retain his or her rights and obligations in respect of the adopted child if the latter is his or her child, unless the law otherwise provides.

3 As regards the termination of the legal relationship between the child and his or her family of origin, States Parties may make exceptions in respect of matters such as the surname of the child and impediments to marriage or to entering into a registered partnership.

4 States Parties may make provision for other forms of adoption having more limited effects than those stated in the preceding paragraphs of this article.

Article 12 – Nationality of the adopted child

1 States Parties shall facilitate the acquisition of their nationality by a child adopted by one of their nationals.

2 Loss of nationality which could result from an adoption shall be conditional upon possession or acquisition of another nationality.

Article 13 – Prohibition of restrictions

1 The number of children who may be adopted by the same adopter shall not be restricted by law.

2 A person who has or is able to have a child shall not on that account be prohibited by law from adopting a child.

Article 14 – Revocation and annulment of an adoption

1 An adoption may be revoked or annulled only by decision of the competent authority. The best interests of the child shall always be the paramount consideration.

2 An adoption may be revoked only on serious grounds permitted by law before the child reaches the age of majority.

3 An application for annulment must be made within a period prescribed by law.

Article 15 – Request for information from another State Party

When the enquiries made pursuant to Articles 4 and 10 of this Convention relate to a person who lives or has lived in the territory of another State Party, that State Party shall, if a request for information is made, promptly endeavour to secure that the information requested is provided. Each State shall designate a national authority to which a request for information shall be addressed.

Article 16 – Proceedings to establish parentage

In the case of pending proceedings for the establishment of paternity, or, where such a procedure exists, for the establishment of maternity, instituted by the putative biological father or mother, adoption proceedings shall, where appropriate, be suspended to await the results of the parentage proceedings. The competent authorities shall act expeditiously in such parentage proceedings.

Article 17 – Prohibition of improper gain

No one shall derive any improper financial or other gain from an activity relating to the adoption of a child.

Article 18 – More favourable conditions

States Parties shall retain the option of adopting provisions more favourable to the adopted child.

Article 19 – Probationary period

States Parties are free to require that the child has been in the care of the adopter before adoption is granted for a period long enough to enable a reasonable estimate to be made by the competent authority as to their future relations if the adoption were granted. In this context the best interests of the child shall be the paramount consideration.

Article 20 – Counselling and post adoption services

The public authorities shall ensure the promotion and proper functioning of adoption counselling and post adoption services to provide help and advice to prospective adopters, adopters and adopted children.

Article 21 – Training

States Parties shall ensure that social workers dealing with adoption are appropriately trained in the social and legal aspects of adoption.

Article 22 – Access to and disclosure of information

1 Provision may be made to enable an adoption to be completed without disclosing the identity of the adopter to the child's family of origin.

2 Provision shall be made to require or permit adoption proceedings to take place in camera.

3 The adopted child shall have access to information held by the competent authorities concerning his or her origins. Where his or her parents of origin have a legal right not to disclose their identity, it shall remain open to the competent authority, to the extent permitted by law, to determine whether to override that right and disclose identifying information, having regard to the circumstances and to the respective rights of the child and his or her parents of origin. Appropriate guidance may be given to an adopted child not having reached the age of majority.

4 The adopter and the adopted child shall be able to obtain a document which contains extracts from the public records attesting the date and place of birth of the adopted child, but not expressly revealing the fact of adoption or the identity of his or her parents of origin. States Parties may choose not to apply this provision to the other forms of adoption mentioned in Article 11, paragraph 4, of this Convention.

5 Having regard to a person's right to know about his or her identity and origin, relevant information regarding an adoption shall be collected and retained for at least 50 years after the adoption becomes final.

6 Public records shall be kept and, in any event, their contents reproduced in such a way as to prevent persons who do not have a legitimate interest from learning whether a person was adopted or not, and if this information is disclosed, the identity of his or her parents of origin.

Part III – Final clauses

Article 23 – Effects of the Convention

1 This Convention shall replace, as regards its States Parties, the European Convention on the Adoption of Children, which was open for signature on 24 April 1967.

2 In relations between a Party to the present Convention and a Party to the 1967 Convention which has not ratified the present Convention, Article 14 of the 1967 Convention shall continue to apply.

Article 24 – Signature, ratification and entry into force

1 This Convention shall be open for signature by the member States of the Council of Europe and the non member States which have participated in its elaboration.

2 The Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

3 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which three signatories have expressed their consent to be bound by the Convention in accordance with the provisions of paragraph 2 of this article.

4 In respect of any State mentioned in paragraph 1, which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of its instrument of ratification, acceptance or approval.

Article 25 – Accession

1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may, after consultation of the Parties, invite any State not a member of the Council of Europe and not having participated in its elaboration to accede to this Convention by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe, and by unanimous vote of the representatives of the States Parties entitled to sit on the Committee of Ministers.

2 In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 26 – Territorial application

1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.

2 Any State Party may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings. In respect of such territory, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the

Secretary General of the Council of Europe. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 27 – Reservations

1 No reservations may be made to this Convention except in respect of the provisions of Article 5, paragraph 1.b, Article 7, paragraphs 1.a.ii and 1.b, and Article 22, paragraph 3.

2 Any reservation made by a State in pursuance of paragraph 1 shall be formulated at the time of signature or upon the deposit of its instrument of ratification, acceptance, approval or accession.

3 Any State may wholly or partly withdraw a reservation it has made in accordance with paragraph 1 by means of a declaration addressed to the Secretary General of the Council of Europe which shall become effective as from the date of its receipt.

Article 28 – Notification of competent authorities

Each State Party shall notify the Secretary General of the Council of Europe of the name and address of the authority to which requests under Article 15 may be addressed.

Article 29 – Denunciation

1 Any State Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.

2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

Article 30 – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, the non member States which have participated in the elaboration of this Convention, any State Party and any State which has been invited to accede to this Convention, of:

- a any signature;
- b any deposit of an instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Convention in accordance with Article 24 thereof;
- d any notification received in pursuance of the provisions of Article 2;

- e any declaration received in pursuance of the provisions of paragraph 2 of Article 7 and paragraphs 2 and 3 of Article 26;
- f any reservation and withdrawal of reservations made in pursuance of the provisions of Article 27;
- g any notification received in pursuance of the provisions of Article 28;
- h any notification received in pursuance of the provisions of Article 29 and the date on which denunciation takes effect,
- i any other act, notification or communication relating to this Convention.

In witness whereof, the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, this 27th day of November 2008, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non member States which have participated in the elaboration of the Convention and to any State invited to accede to this Convention.

PART II:

**COLLECTION OF TEXTS
OF THE COUNCIL OF EUROPE
IN THE FIELD OF FAMILY LAW**

II - The Committee of Ministers of the Council of Europe

B. Resolutions and Recommendations

RESOLUTION (72) 29

**ON THE LOWERING OF THE AGE OF
FULL LEGAL CAPACITY**

*(Adopted by the Committee of Ministers on 19 September 1972
at the 213th meeting of the Ministers' Deputies)*

The Committee of Ministers,

Considering that the aim of the Council of Europe is to achieve greater unity among its Members, *inter alia* by promoting the adoption of common rules in legal matters;

Noting that, whereas in the majority of member States the age of full legal capacity was established for a considerable period at 21 years, this age is now fixed below 21 in most member States;

Aware of the fact that under the laws of several member States minors of a certain age enjoy special legal capacity to act independently in some important matters and that in fact in other States very similar results have been achieved by other means;

Believing that even though life today is more complex than formerly, the education gained during a prolonged compulsory schooling and the abundance of information available enable young people to meet the exigencies of life at an earlier age than before;

Recognising that the need of protecting young people is diminishing in importance as a result of measures designed to protect people of all ages in the economic field;

Believing that lowering the age of majority should encourage the development of a sense of responsibility in young people,

1. Recommends governments of member States to lower the age of majority below 21 years and, if they deem it advisable, to fix that age at 18 years, provided that States may retain a higher age of capacity for the performance of certain limited and specified acts in fields where they believe that a higher degree of maturity is required;
2. Recommends governments of member States especially those States where the age of majority may remain above 18 years, to consider the advisability of granting to certain minors capacity to carry out everyday transactions and to act independently in other appropriate fields;

3. Recommends governments of member States in which the lowering of the age of majority would substantially curtail the rights enjoyed by children under their parents' maintenance obligations, with the possible consequence of depriving them of the necessary assistance for pursuing their education or training, to take appropriate measures to remedy such consequences;

4. Invites governments of member States to inform the Secretary General of the Council of Europe in due course of the action taken on the recommendation contained in this resolution.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RESOLUTION (77) 12

ON THE NATIONALITY OF SPOUSES OF DIFFERENT NATIONALITIES

*(Adopted by the Committee of Ministers on 27 May 1977
at the 271st meeting of the Ministers' Deputies)*

The Committee of Ministers,

Considering that the principle of legal equality between the sexes is being achieved progressively in the member states of the Council of Europe ;

Considering that in the case of nationality, this principle should lead to equal treatment of men and women in regard to the conditions under which one of the spouses can acquire the nationality of the other ;

Noting, nevertheless, that examination of the present legislation in the member states reveals that the evolution which is apparent in other branches of family law seems slower to take effect in the field of nationality ;

Considering that the unity of nationalities within the same family renders it desirable that spouses who so wish should be able to achieve this by having the possibility of acquiring according to a privileged procedure the nationality of the husband or the wife,

Recommends to governments of member states :

1. to move towards eliminating distinctions in the conditions under which their nationality may be acquired by the foreign husbands of their nationals, as compared with the foreign wives ;
2. to proceed, from now on, to the arrangements necessary at the internal level to accord to the foreign husband of their nationals, for the acquisition of nationality, a treatment as close as possible to that granted to the foreign wives of their nationals ;
3. not to require, for the acquisition of their nationality by the foreign spouse of a national, more than five years residence on their territory including not more than three years' of residence after the marriage ;
4. to provide in any event that foreign spouses of their nationals may acquire their nationality on more favourable conditions than those generally required of other aliens.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RESOLUTION (77) 13

ON THE NATIONALITY OF CHILDREN BORN IN WEDLOCK

*(Adopted by the Committee of Ministers on 27 May 1977
at the 271st meeting of the Ministers' Deputies)*

The Committee of Ministers,

Considering that the principle of the equality of a father's and a mother's rights concerning their joint children born in wedlock should entail in favour of such children the recognition of an equal right to acquire the nationality of their mother as well as that of their father ;

Considering that it appears to be difficult to reach this goal in the near future and that it should therefore be achieved progressively,

Recommends to governments of member states :

1. to grant their nationality at birth to children born in wedlock if their father or their mother possesses such nationality ;

alternatively, to provide for these children up to the age of 22 facilities to acquire that nationality ;

2. to insert provisions in their internal legislation for the purpose of avoiding dual nationality resulting either directly or indirectly from descent or resulting from the place of birth.

To this end, they should, as minimum :

a. give the right to their nationals having another nationality to renounce their nationality ;

b. permit their nationals having another nationality to make a declaration in favour of their nationality ; consequently, to insert provisions according to which their nationals having made a declaration in favour of another nationality which they possess equally, shall lose their nationality automatically.

They may in addition provide that their nationals of more than 22 years of age, possessing equally another nationality, and who have not made a declaration in favour of one or the other of their nationalities, may be summoned according to the previous paragraph to make a declaration within a time-limit which shall not be shorter than six months for one or the other nationality and that they, failing to do so within that time-limit, shall automatically lose the nationality of the state which summoned them ;

3. to inform each other reciprocally about declarations resulting in the acquisition, maintenance or loss of their nationality mentioned above as well as the modifications and the loss of nationality resulting from the application of the final sub-paragraph of paragraph 2 above.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RESOLUTION (77) 33

ON PLACEMENT OF CHILDREN

*(Adopted by the Committee of Ministers on 3 November 1977,
at the 277th meeting of the Ministers' Deputies)*

The Committee of Ministers,

Considering that the aim of the Council of Europe is the achievement of greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and of facilitating their economic and social progress ;

Bearing in mind the United Nations' Declaration of the Rights of the Child and especially its second, fifth and sixth principles ;

Bearing in mind Articles 16 and 17 of the European Social Charter, concerning the right of families to social, legal and economic protection and the right of mothers and children to social and economic protection ;

Bearing in mind the conclusions of the 13th Conference of European Ministers responsible for Family Affairs held in 1973 ;

Realising that children who grow up in environments that do not meet their fundamental physical, emotional, intellectual and social needs are put in jeopardy of their lifelong welfare ;

Affirming that preventive measures in the widest possible sense should remain the first strategy to avert this danger ;

Aware that in spite of these measures many children will continue to need temporary or long-term placement outside their families ;

Anxious to ensure that placement of children is carried out in the best possible circumstances,

Recommends the governments of member states :

I. General principles

1. To recognise that all arrangements for placement should be based on the following principles :

1.1. The need for placement should be avoided as far as possible through preventive measures of support for families in accordance with their special problems and needs ;

1.2. A request for placement should be considered as a warning signal of a difficult family situation ; consequently efforts to meet the child's needs should always be related to an understanding of the problems of his family and arrangements for the child should as a rule be coupled to specific arrangements for helping the parents ;

1.3. The arrangements made for the child (including a decision to leave him in his family or to place him) should try to ensure the highest possible degree of satisfaction of his developing emotional needs and his physical wellbeing as well as any preventive medical, educational or other care necessary to meet any special problems he may have ;

These arrangements should provide, as far as possible and when this is in the best interests of the child :

- maintenance of links to his family ;
- stability of care and bonds of affection, taking into account the child's developmental stage in regard to the formation of emotional attachments ;
- respect of his individuality ;
- a cultural and social environment which is appropriate and acceptable to society ;
- integration into a local community and preferably the same one as the family's ;
- for adolescents opportunities for assuming responsibility, for achieving independence and for taking up adult roles ;

1.4. The decisions about the child's placement should normally be taken after advice given by a multidisciplinary team ; similar advice should be available at each review ;

1.5. A plan for the child should be drawn up based on an assessment of the family, of the child himself and of the possible solutions available, in the light of the objectives mentioned above ;

This plan should incorporate in particular :

- a decision on the best initial mode of placement for the child ;
- a review of the child's situation after a period which will vary according to age and individual circumstances (being shorter in the case of very young children), but which should not normally exceed six months, after which there should be further reviews at regular intervals ;

1.6. Long-term placement of very young children in residential units should be avoided as much as possible ; thus adoption in the light of the European Convention on the Adoption of Children should be facilitated and encouraged to the greatest possible extent.

II. Policy

2. To ensure in the framework of their policies for family welfare that placement decisions are taken according to sound procedures and in a favourable context, in particular by :

A. Family support

2.1. Considering, in the framework of general economic and social policies, the implementation of measures to assist all families in rearing children well ; and developing more specific measures of family policy such as preparation at school of children of both sexes for home and family life ;

2.2. With a view to reducing the need for residential care on the sole grounds of handicap, providing the families of children with physical or mental handicaps with the necessary emotional support, with financial allowances, and also with technical, medical and educational support in decentralised forms ; such support could, for example, be provided through day care facilities, services in the home, schemes for reducing parental burdens, transport services, material aid ;

2.3. Providing facilities for the special assistance of families with acute psycho-social problems affecting the development of the child ;

B. Management of placements

2.4. Encouraging the participation in the management of a child's placement of the following :

- the service or organisation responsible for the placement, i.e. the placement agency ;
- the parents ;
- the child, who should be given an opportunity to discuss his situation progressively as he matures in understanding ;
- those caring for the child (foster parents or staff of residential units);

- social and other workers concerned with the family ;
- personnel of the statutory preventive public health services ;
- pre-school and school personnel, paediatricians, psychologists, and any other specialists involved ;

2.5. Ensuring that the professional staff involved in the management of the placement work, as far as possible, as a multidisciplinary team ;

C. Organisation

2.6. Subjecting all organisations responsible for placement to strict regulation and supervision, to ensure the maintenance of high professional standards ;

2.7. Integrating the organisations responsible for the placement of children with those responsible for assisting families or ensuring their closest co-operation in each case ; and securing the decentralisation of responsibility in different organisations and services necessary to achieve co-operation at local level, so as to create areas of responsibility which can be better supervised ;

2.8. Ensuring that financial arrangements do not establish an accidental bias towards the choice of one particular form of placement ;

2.9. Generally seeing that the organisation responsible for placement is capable of adaptation to new techniques and knowledge ;

D. Modes of placement

2.10. With a view to enabling them to match each placement to individual needs, making available to placement agencies an array of modes of placement from foster homes to various kinds of therapeutic care in residential homes (examples are given in the appendix) ;

2.11. Progressively providing the best possible geographical distribution of places so as to facilitate maintenance of links to the natural family and to promote co-operation with the biological parents, unless considered undesirable for the child ;

2.12. Progressively making support services (psychologist, psychiatrists, specialised equipment, etc.) equally available to all staff of all types of residential units and to foster parents ;

2.13. Promoting foster care as being frequently the best mode of temporary placement, especially for young children and therefore ensuring :

- education of the public on the value of foster care ;
- the development of schemes for recruiting foster parents ;
- careful selection of ordinary and specialised foster parents to be based, *inter alia*, on the assessment of each member of the household ;
- thorough preparation of foster parents including discussion on child development, the problems of foster children and the specific situation of the child to be placed with them ;
- definition of the obligations and rights of parents in whose care children are placed and the requirements they must satisfy ;

2.14. Providing for strict control of fostering arrangements and making fostering, especially private fostering, conditional upon notification and licensing ;

2.15. Discouraging, with a view to its elimination, illegal fostering by promoting general measures of support for families and extending the authorised machinery for placement ;

2.16. Providing for the development of small family-type residential units for children when fostering is not possible, and in consequence :

- a.* progressively running down larger residential institutions ;
- b.* ensuring that all residential units, including any larger institutions retained for the time being :
 - are organised in sub-units of a family type ;
 - receive children of mixed ages and both sexes ;
 - have mixed staff to provide identification objects of both sexes ;

- provide opportunities for keeping siblings together ;
 - encourage co-operation with biological parents ;
 - provide opportunities for experiments whereby parents and children can live together for a short time within the unit ;
 - provide special units for adolescents when needed ;
- c. encouraging the running of all residential units in close contact with the surrounding community, all personnel being considered as members of the caring team and the children being encouraged, according to their capacity, to participate in the running of the units ;

E. Staff and training

- 2.17. Recognising that the staff of placement agencies and of residential units are faced with an extremely delicate and laborious task, for which they must be suitably selected and trained, especially in child development and family social work ;
- 2.18. Ensuring that the staff of placement agencies will be adequately trained and experienced in making placement decisions ;
- 2.19. Ensuring that the training of the staff of placement agencies, of residential units and of field-workers include work in multidisciplinary teams, and also with parents, foster parents and children ; considering to this end introducing a common element into the initial training of different disciplines and facilitating inter-disciplinary joint discussion groups as part of in-service training ;
- 2.20. Providing a basic preparatory training with particular emphasis on knowledge of children for all foster parents using individual and group methods, and more extensive training for certain kinds of foster parents ;
- 2.21. Providing for the continuous training of all staff of residential units as a means of improving their professional knowledge and of giving them psychological support ; providing to this end, *inter alia*, training courses for all the staff of a unit at the same time, reliefs for living-in staff and resources for regular staff meetings ;
- 2.22. Providing for the further training of foster parents using individual and group methods as a source of psychological support and emphasising the importance of knowledge of child development ;
- 2.23. Ensuring that the training of foster parents takes place with the participation of the ordinary child care team as well as of any necessary specialists.

III. Research

3. Having due regard to the principles of confidentiality and privacy in respect of those concerned,
- 3.1. To encourage active research and evaluation on all modes of placement ;
- 3.2. To promote further research on local, national and international basis as well as the international exchange of information on problems of placement such as :
- the extent of and trends in needs of placement ;
 - the effects of different placement modes especially long-term placements ;
 - direct and indirect costs of various modes of placement.

IV. Others

- 4.1. To acknowledge, in the field of child welfare, the need to promote consultation and co-operation among bodies associated with social welfare, health, educational and legal matters, as well as among the professional groups concerned ;
- 4.2. To encourage associations of foster parents ;
- 4.3. To encourage communication with children so that their wishes and feelings may be taken into account so far as is practicable in policies of placement.

List of placement modes

(The following list is not exhaustive, but indicates a variety of measures which can be made available.)

- a.* Closer supervision and support of the child in its own family ;
- b.* Appropriate day-care placements (can be combined with *a*) ;
- c.* Placement in the extended family (i.e. a supervised placement by an authorised organisation as distinct from care arrangements made spontaneously on the sole responsibility of the parents) ;
- d.* Ordinary foster care (for which selection, preparation and continued support are nonetheless needed) ;
- e.* Specialised foster care (implies a more intensive training to deal with particular problems of the foster children and generally an increased remuneration) ;
- f.* "Seasonal" residential units (implies that the child returns home for part of the year) ;
- g.* Short-stay residential units for whole families ;
- h.* Small residential units where the staff (generally a couple) are permanently resident and the children are within the range of an ordinary family in number and, as far as possible, in age distribution ; often known as "family group homes" ;
- i.* Specialised residential units (say of about twenty-five children) with special facilities (psychiatric, pedagogical, technical) for the treatment or care of a particular category of children ; such units should be organised in sub-units of type *h* ;
- j.* Placement of adolescents in small, mainly self-governing communities of their own age group, under light but skilled supervision, or in a flat of their own.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RESOLUTION (78) 33

ON THE REUNION OF FAMILIES OF MIGRANT WORKERS IN COUNCIL OF EUROPE MEMBER STATES ^{1,2}

*(Adopted by the Committee of Ministers on 8 June 1978
at the 289th meeting of the Ministers' Deputies)*

The Committee of Ministers,

Considering that the family constitutes the basic unit of society and that the right to found a family and to share family life with its members should be safeguarded ;

Stressing the grave nature of the social, human and moral problems which arise when the members of a family are separated ;

Having regard to the provisions of Article 1 of the Statute of the Council of Europe and guided by Articles 16 and 19 of the European Social Charter, Articles 8 and 14 of the European Convention on Human Rights, Article 2 of the fourth Protocol to that Convention and Article 12 of the European Convention on the Legal Status of Migrant Workers ;

Noting that the situation of migrant workers in the host country presents serious problems from the point of view of family reunion ;

Recalling the recommendations contained in the Resolutions already adopted, and particularly in Resolutions (69) 8, (70) 35, (69) 7 and (74) 14 on low-cost housing, the schooling of migrant workers' children, the return to the home country, and the situation of migrant workers and their families in Europe, as well as those contained in Resolution (76) 12 on the school career and health record ;

Considering that it is desirable, in order to facilitate the reuniting of migrant workers with their families, that the immigration and emigration states should take the measures listed below, while retaining those provisions already embodied in internal legislation and international agreements which are more favourable to migrant workers,

Recommends that the governments of member states :

A. be guided, as regards the reuniting of migrant workers' families, by the following general principles :

1. The reuniting of a migrant worker's family should be recognised in the internal legislation. With due regard for the preservation of public policy ("ordre public"), national security or morals, its exercise should not be made dependent on conditions which make it impossible ;

1. When this resolution was adopted, the Representatives of the *United Kingdom* and of the *Federal Republic of Germany*, acting in accordance with Article 10.2.c of the Rules of Procedure for the meetings of the Ministers' Deputies, reserved the right of their Governments to comply with it or not.

2. When this resolution was adopted, the Representative of *Austria*, acting in accordance with Article 10.2.c of the Rules of Procedure for the meetings of the Ministers' Deputies, reserved the right of her Government to comply with paragraph B.1.a or not.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RESOLUTION (78) 37

ON EQUALITY OF SPOUSES IN CIVIL LAW

(Adopted by the Committee of Ministers on 27 September 1978
at the 292nd meeting of the Ministers' Deputies)

The Committee of Ministers,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members, *inter alia*, by promoting the adoption of common rules in legal matters ;

Recognising that the principle of legal equality between spouses is being implemented progressively in the member states of the Council of Europe ;

Noting, however, that discrimination against spouses still subsists in some states and is sanctioned by legal provisions ;

Concerned to promote equality of spouses in civil law while respecting as far as possible national customs, if any, in the proposed solutions ;

Conscious of the necessity to ensure or promote the equality of spouses in other branches of the law, in particular in constitutional, administrative, fiscal, criminal, social or labour laws,

A. Recommends governments of member states to grant or promote equality of spouses in civil law concerning the matters referred to in paragraphs 1 to 19 of this resolution and to this end :

I. *General matters*

1. to take all necessary steps to ensure that the civil law does not contain provisions whereby a spouse is put in a more advantageous position than the other spouse, in particular by being designated to act as the head of the family or by being given the sole right either to take decisions concerning the other spouse or to represent this spouse ;
2. to ensure that both spouses have equal rights where the civil law contains provisions to resolve questions in cases of absence of agreement between the spouses ;

II. *Personal matters concerning the spouses*

3. to ensure that both spouses have equal rights to freedom of movement, in particular, to grant an equal right to each spouse to travel within the state of his habitual residence and to leave and return to this state ;
4. to grant both spouses equal rights to exercise a trade or profession and undertake or continue studies of their choice ;
5. to ensure that both spouses have equal rights to choose the common residence of the family and that each spouse has an equal right to a residence separate from that of the other spouse, in cases where such a right is granted ;

6. to regulate matters concerning the family name of the spouses to ensure that a spouse is not required by law to change his family name in order to adopt the family name of the other spouse and, in doing so, to be guided for instance by one of the following systems :

i. choice of a common family name in agreement with the other spouse, in particular the family name of one of the spouses, the family name formed by the addition of the family names of both spouses or a name other than the family name of either spouse ;

ii. retention by each spouse of the family name he possessed prior to the marriage ;

iii. formation of a common family name by the operation of law by the addition of the family names of both spouses ;

7. to allow, after the dissolution of the marriage, each spouse to retain the common family name unless, in the case of a divorce, one of the spouses has obtained a decision from the appropriate authority requiring the former spouse to cease using the family name, for serious reasons, which apply equally to both spouses ;

III. *Matters concerning the property and financial relations of the spouses*

8. to take all necessary steps in relation to household expenses or maintenance to ensure :

i. that household expenses are borne jointly by both spouses according to the means of each spouse, work in the house by one spouse being considered as a contribution to household expenses ;

ii. that each spouse has equal obligations and rights in respect of maintenance and assistance from the other spouse during the marriage, or of maintenance after the dissolution of the marriage ;

iii. that each spouse has a duty to give sufficient information to the other spouse concerning his own financial situation for the purpose of ascertaining the amount of his contribution to the household expenses or to the maintenance of the other spouse as provided for in subparagraphs i and ii above ;

9. to take all necessary steps to ensure the provision of legal protection for the spouse who lives in or has lived in the family home but who does not own or possess a lease or any other right to the enjoyment of this home when such rights belong or have belonged to the other spouse and could be lost or have been lost owing to the unfair behaviour of this spouse, without prejudice to the rights of third parties ;

10. to take all necessary steps in relation to contracts of marriage to ensure :

i. that the laws relating to such contracts do not contain provisions which discriminate against one spouse ;

ii. that such contracts do not contain terms providing for an irrevocable transfer of the powers of administration of the property by one spouse to the other spouse ;

11. to provide for the removal of all presumptions relating to property based on the sex of either spouse ;

12. to give both spouses equal rights and obligations concerning their common property where the operation of law provides for a matrimonial property regime of community of goods and in particular :

i. the right to be informed by the other spouse of the actual extent of the common property ;

ii. an equal right to use, administer, receive profits or dispose of the common property and income as well as to share in the division of the property ;

iii. equal obligations concerning debts.

13. to ensure that where the operation of law provides for the sharing of the property acquired during the marriage and, where applicable, the property belonging to one of the spouses, the legal provisions protecting the rights of the spouses in such property, for example, the prohibition of gifts of great value, should be the same for both spouses ;

14. to ensure that, where a matrimonial property regime of separation of goods arises by the operation of law, a spouse, on the termination of the marriage by a judicial decree of divorce or nullity, has a legal right to obtain a fair share in the property of his former spouse, or a fixed sum, for any financial inequalities which had arisen during the course of the marriage ;

15. to ensure that, in those legislations which have provisions for dowries, both spouses have equal rights both to administer the dowry property, for example joint administration by both spouses, as well as to dispose of this property if such a disposal is not prohibited by law ;

16. to grant each spouse an equal right to be informed of the extent of the property belonging to the other spouse where the law requires such information to be given ;

IV. Matters concerning the spouses and their common children

17. to consider the possibility of taking the necessary steps with a view to allowing both spouses equal rights as to the family name to be given to the children of their marriage, or the children adopted by them, by making use, for instance, of one of the following systems :

i. when the parents do not have a common family name ;

a. to allow the child to take the family name of the parent whose name he was not granted by law,

b. to allow the family name of the children to be chosen by the common agreement of the parents ;

ii. when the parents have, by the addition of their family names, a common family name which has been either chosen by them or formed by the operation of law, the omission of part of this family name should not lead to discrimination concerning the choice of the family name or names to be omitted ;

18. to take all necessary steps to grant both spouses equal rights and obligations in respect of the children of the marriage and children adopted by them in particular in the following matters :

i. the use, administration, receipt of profits, disposal of the property or income of the child ;

ii. the legal representation of the child ;

iii. decisions concerning the personal life of the child, in particular matters relating to education, religion, health, travel, consent to marriage, adoption, choice of the first name or first names of the child, access and other rights and obligations concerning the child itself ;

iv. the contribution of spouses towards the maintenance of their children according to the means of each spouse ;

19. to take all necessary steps to ensure that, in the case of separation and after the dissolution of the marriage, the rights and obligations granted to spouses or former spouses concerning their common children, shall be given without any discrimination based on the sex of the parents ;

B. Invites governments of member states to inform the Secretary General of the Council of Europe in due course of the measures taken in order to implement the recommendations contained in this resolution.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RECOMMENDATION No. R (79) 17

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES CONCERNING THE PROTECTION OF CHILDREN AGAINST ILL-TREATMENT

*(Adopted by the Committee of Ministers on 13 September 1979
at the 307th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

1. Considering that the aim of the Council of Europe is the achievement of greater unity among its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and of facilitating their economic and social progress ;
2. Bearing in mind the United Nations' Declaration on the Rights of the Child, and especially its second and ninth principles ;
3. Bearing in mind Article 17 of the European Social Charter concerning the rights of mothers and children to appropriate social and economic protection ;
4. Bearing in mind Recommendation 561 (1969) of the Consultative Assembly of the Council of Europe ;
5. In the light of the report on the causes and prevention of child abuse prepared at the request of the Social Committee ;
6. Reaffirming the generally accepted principle that the rights of parents, guardians and custodians over children may and should be subjected to the necessary restraints to prevent serious and avoidable harm to the children ;
7. Reaffirming that this principle should be applied through effective intervention on the part of public authorities ;
8. Confirming that physical or emotional ill-treatment or neglect of children by those responsible for their care is a serious problem in most member states ;
9. Considering also that such child abuse may be the most extreme manifestation of a wider problem of family disorder and often of society as a whole ;
10. Noting that the long-term effects of the abusive home environment are frequently disastrous for the child's growth, his learning capacities, his personality development as well as his future behaviour as a parent and thus costly for society in the long run ;
11. Regretting that, despite this fact, there is ignorance, indifference and even resistance within society to the acknowledgement of the extent and gravity of the phenomenon and that it is often regarded as a problem for the authorities and not for the individual ;

12. Noting that the search for a long-term solution to this problem requires a dual strategy, consisting of effective measures of immediate intervention, detection and management, and secondly a policy of prevention ;

13. Noting the initiatives taken in several member states and in non-member states to develop systematic and co-ordinated methods in the prevention and management of child abuse, and their positive results ;

14. Anxious therefore, in view of the urgency of the problem, to promote the general application of such methods to combat the problem in member states ;

15. Anxious to encourage research and projects intended to obviate the lack of data presently available and the inadequacy of experience in this field, as well as to adapt measures taken to the newly acquired knowledge ;

16. Stressing that effective prevention and management of the problem requires the fullest co-ordination and co-operation between the health, social and other agencies,

I. Recommends that the governments of member states take all necessary measures to ensure the safety of abused children, who for the purposes of this recommendation are those subjected to physical injury and those who are victims of neglect, deprivation of affection or mental cruelty likely to jeopardise their physical, intellectual and emotional development, where the abuse is caused by acts or omissions on the part of persons responsible for the child's care or others having temporary or permanent control over him ;

To this effect, it invites them to :

1. foster a better awareness of the extent and gravity of the problem, in particular by encouraging public education campaigns in order to spread information on child abuse as a social phenomenon, on its causes, its signs and the measures which are being taken or could be taken to combat it ;

2. with a view to ensuring, in the most effective way, prevention, detection and management of cases of child abuse, improve the organisation of the child welfare and protection system, taking into account the principles and suggestions mentioned at Appendix I ;

3. promote co-ordination, knowledge and understanding among services and among persons belonging to the various professional groups involved in child protection, in order to facilitate a multidisciplinary approach ;

4. promote research into the problem giving priority within available resources to studies on schemes for prediction and prevention and for early identification and management ; formulate specific definitions on child abuse, and consider research along the lines indicated at Appendix II ;

5. keep child protection legislation constantly under review in order to ensure that it conforms to the guidelines set forth in the present recommendation and, if appropriate, adapt it according to developments in understanding of the problem of child abuse ;

II. Invites the governments of member states to inform the Secretary General of the Council of Europe every five years of the steps they have taken to implement the present recommendation.

Principles and suggestions to be considered

1. Prevention

In order to ensure effective prevention it would be appropriate :

- a.* to improve general socio-economic conditions and to develop measures for family welfare giving special consideration to those population groups which are economically and socially at a disadvantage ;
- b.* to develop family planning services with a view to enabling couples to avoid unwanted pregnancies ;
- c.* to encourage all measures likely to contain violence in society ;
- d.* to research into the most effective ways of preparing young people for parenthood, including the provision of courses at school and use of the mass media for teenagers and the public in general ;
- e.* to ensure, especially during the first pregnancy, that all parents have adequate opportunities to learn and discuss methods of child rearing appropriate to the various stages of development and are encouraged to do so ;
- f.* to devote particular attention to the perinatal period in order to promote the establishment of emotional bonds between the parents and the newborn child by :
 - ensuring a good preparation for childbirth and parenthood for both parents,
 - emphasising support and understanding for the mother in labour and discouraging the excessive use of emotionally traumatising practices at the time of birth, which might affect the mother's attitude towards the child,
 - encouraging rooming-in in the maternity wards,
 - promoting parents' self-confidence and competence in handling their baby, avoiding over-emphasis on the acquisition of technical skills,
 - favouring and promoting breast-feeding, where appropriate, by educating parents and persons who are likely to advise mothers,
 - recognising the important role of the father vis-à-vis both the mother and the newborn child, for example by giving the father the opportunity to participate at the childbirth and by giving consideration to providing for childbirth leave without loss of income for him ;
- g.* when low birthweight or sick newborn babies, particularly handicapped babies, are in special care units, to encourage maximum contact between parents and infants and especially to ensure support and counselling by nurses, doctors and others ;
- h.* to ensure that there exists a comprehensive preventive child health care system capable of following, by regular checks, the progress of every pre-school child, paying special attention to :
 - i. continuity of health care,
 - ii. ways of improving the take-up of services by families prone not to make full use of them ;
- i.* to establish a mechanism, or extend research, for predicting vulnerable families at an early stage in the antenatal and perinatal period ;
- j.* to give special care and support to vulnerable families with parenting problems in the early stages of the child's life ;
- k.* since many parents concerned have unrealistic expectations about child development and bearing in mind that the majority have not had a good model of parenting themselves and have great difficulty in understanding how to achieve a warm family relationship, to pay very special attention to :
 - i. teaching these parents to understand the needs and behaviour of young children at different stages of development,
 - ii. understanding and treating marital problems, giving psychological help where necessary,
 - iii. relieving environmental stresses which often coexist.

2. Detection

In order to reach the main objective, i.e. the detection of all cases of child abuse at an early stage, it would be appropriate :

- a.* to give the public information about reporting systems which it can use with discretion, so that the people around a child at risk may take effective measures ;

- b. to encourage the public and especially those most likely to meet ill-treated children to assist in the detection of cases of abuse ;
- c. to take such measures as are necessary to enable persons subject to professional secrecy to disclose cases of ill-treatment or neglect of minors, on the basis of established procedures and in a manner consistent with professional ethics, *inter alia* by the enactment of legislative provisions for this purpose or encouraging the adoption of similar provisions in codes of professional conduct.

3. Management

- a. The priority objective should be the interruption of ill-treatment and the prevention of further abuse in every detected case ;
- b. As a subsidiary objective, it should be endeavoured to maintain as far as practicable the child in his family by effective measures of support and treatment of the whole family unit ;
- c. It would be appropriate to ensure the use at local level, within the existing institutions for child welfare, of procedures making it possible to take action as soon as a case has been reported or detected, and providing in every case for immediate medical and psycho-social investigation by a multidisciplinary team and, if appropriate, legal intervention ;
- d. Procedures should be made available, subject to due process of law, both for short-term emergency removal of a child from its family to a place of safety and for partial or total deprivation of parental rights or of the exercise of those rights for a period or permanently, the criterion for the decision being the best interests of the child, assessed, where possible, after a thorough multidisciplinary psycho-social study of the child, its parents and the whole family ;
- e. Regular assessment of the long-term growth and development of the child can be used as a sign of the total family well-being as well as alerting professional staff to its own need for special treatment, training or care ;
- f. Steps should be taken to ensure the continuity and coherence of management and the adequate co-ordination of the parties involved.

4. Training of personnel

With a view to ensuring an adequate training of the personnel in the various professional groups dealing with the protection of children against ill-treatment, it would be appropriate :

- a. to favour a systematic approach to such training and to stimulate studies and experiments to determine the most appropriate content of such training, the teaching methods as well as the preparation of the necessary teaching aids ;
- b. to make such training an integral part of the formal training of all workers likely to be involved in the detection, management and prevention of child abuse ;
- c. to provide opportunities for in-service training and for regular refresher courses, in the light of the rapid developments of knowledge in the field ;
- d. to ensure that the training programmes of all paediatricians, school doctors, general practitioners and child psychologists, as well as of other members of the medical and para-medical professions likely to come across the problem, will enable them to recognise cases of child abuse at an early stage ;
- e. to ensure that social workers, teachers, members of the police and all professional workers likely to come across cases of child abuse will be taught to recognise signs of it ;
- f. to make known to all the professional workers referred to in *d* and *e* the steps to be taken in the presence of a suspected case ;
- g. to emphasise the need for a multidisciplinary approach in this training, as a means of breaking down any barriers to co-operation between disciplines and professions ;
- h. to ensure the co-operation of all bodies or services responsible for the training of all relevant professions, of the management for child abuse and of the teams, if any, especially concerned with child abuse attached to local paediatric units ;
- i. to introduce a new awareness of the concept of responsibility into training for medical and social personnel as well as into information for the public at large.

Subjects of research

- i. The evaluation of schemes for predicting families needing special help to prevent abnormal ways of child rearing.
- ii. The evaluation of schemes for the best means of providing this early intensive help and counselling.
- iii. The evaluation of the various family support systems on a long-term basis, once abuse has been recognised, e.g. extra health visiting, counselling, home-help services, day foster care, substitute grandmothers, crisis nurseries, day nurseries, twenty-four-hour assistance.
- iv. Carefully controlled follow-up studies on the later development and personality of children who have been abused.
- v. The evaluation of various forms of substitute family care, in terms of the child's overall personality development.
- vi. The establishment of guidelines for estimating the relative safety of the home before returning the child.
- vii. The study of various ways in which the existing law may be more effectively used for the protection of children.
- viii. Statistical data on the problem and research into the lives of people committing child abuse.
- ix. Action research programmes on measures of prevention, detection and management.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RECOMMENDATION No. R (81) 15

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES

ON THE RIGHTS OF SPOUSES

RELATING TO THE OCCUPATION OF THE FAMILY HOME

AND THE USE OF THE HOUSEHOLD CONTENTS¹

(Adopted by the Committee of Ministers on 16 October 1981
at the 338th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering the aim of the Council of Europe is to achieve a greater unity between its members, *inter alia*, by promoting the adoption of common rules in legal matters ;

Recognising that disparities still exist concerning the rights of spouses with regard to the family home and household contents between the laws of member states ;

Recalling its Resolution (78) 37 on equality of spouses in civil law ;

Recognising the importance of promoting such equality with regard to the occupation of the family home and the use of the household contents ;

Noting that in some states the rights of spouses relating to the family home and household contents are insufficiently protected ;

Considering that although legal and *de facto* equality between the sexes is being progressively achieved in the member states of the Council of Europe it is desirable to improve the legal situation of spouses with regard to the family home and household contents ;

Considering that the adoption by states of systems of co-ownership and co-leases of the family home is one of the means for strengthening the right of each spouse to occupy the said home while realising at the same time that such systems may not always sufficiently protect the right of occupation ;

Desirous of providing common rules to enable states progressively to improve the rights of spouses in this field,

Recommends governments of member states to secure the rights of spouses to occupy the family home and to use the furniture and other objects which are meant for the use of the family in the home by introducing legislation or adapting, where necessary, their legislation to comply with the principles set out in the appendix to this recommendation and to take into consideration the possibility of adopting systems of co-ownership and co-leases as one of the means for strengthening the right of occupation of the family home.

1. When this recommendation was adopted, and in application of Article 10.2.c of the Rules of Procedure for the meetings of the Ministers' Deputies :

— the Representative of France reserved the right of his government to comply or not with the principles set out in the appendix to the recommendation ;

— the Representative of the Federal Republic of Germany reserved the right of his government to comply or not with Principles 1, 2, 4 and 5, paragraph 2, of the appendix to the recommendation ;

— the Representative of Italy reserved the right of his government to comply or not with Principle 5 of the appendix to the recommendation.

Principles

A. Rights of spouses relating to the occupation of the family home

Principle 1 — Consent of the spouse

1. Any legal act by one spouse which might directly prejudice the right of the other spouse to occupy the family home must be carried out with the consent of the latter.
2. Where consent is unjustifiably withheld, or impossible to obtain, the authorisation of the court or other competent authority may be requested.
3. National legislation may provide for a system of registration of this right of occupation which ensures that this right is effective against third parties.

Principle 2 — Sanctions

1. Any act in breach of paragraph 1 of Principle 1 may, subject to paragraph 2 of Principle 1 and paragraph 2 below, be set aside or be subject to any other appropriate sanctions, when the right of occupation cannot be maintained.
2. The rights of bona fide third parties may be protected according to conditions laid down by national law.

Principle 3 — Breakdown of marriage

The right to occupy the family home may be assigned, in appropriate cases and according to the conditions laid down by national law, exclusively to one of the spouses in the case of a divorce or judicial separation.

Principle 4 — Surviving spouse

The surviving spouse shall have the right, in appropriate cases and according to the conditions laid down by national law, to continue to occupy the family home.

Principle 5 — Leases

1. Principles 1 to 4 shall also apply where the family home is held on leasehold by one of the spouses.
2. When the family home is held on leasehold by one of the spouses and this spouse does not discharge the obligations of a leaseholder, the other spouse shall have the right of continuing the lease by discharging these obligations.

B. The rights of spouses relating to the use of the household contents

Principle 6 — Consent of the spouses

Any act carried out by one spouse without the consent of the other spouse prejudicing the right of the latter to use the furniture and other objects which are meant for the use of the family in the home may be set aside, subject to any rights of bona fide third parties provided by national law, or this act may be subject to any other appropriate sanction.

Principle 7 — Breakdown of marriage

The whole or part of the said household contents may, in appropriate cases and according to the conditions laid down by national law, be assigned exclusively to one of the spouses in the case of a divorce or judicial separation.

Principle 8 — Surviving spouse

The surviving spouse shall have the right, in appropriate cases and according to the conditions laid down by national law, to be granted the whole or part of the said household contents.

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

RECOMMENDATION No. R (82) 2

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON PAYMENT BY THE STATE OF ADVANCES ON CHILD MAINTENANCE¹

*(Adopted by the Committee of Ministers on 4 February 1982
at the 343rd meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity between its members, *inter alia* by promoting the adoption of common rules in legal matters ;

Noting that a large number of children are brought up by only one of their parents and that often one of the persons who is responsible for meeting their needs (hereinafter referred to as the "debtor") does not live with them and does not comply with the maintenance obligation ;

Considering that it is primarily the responsibility of parents to provide children with appropriate maintenance but that the state should intervene when they fail to do so ;

Recollecting that the European Conference on Family Law, held at Vienna in September 1977, expressed the wish that states take necessary measures to intervene, either by way of advance payment or by any other method, when the father and mother or one of them fails to comply with their maintenance obligations ;

Having regard to Recommendation 869 (1979) of the Consultative Assembly of the Council of Europe on payment by the state of advances on child maintenance ;

Recognising the advantage of adopting common rules to enable states progressively to improve the rights of children in this field,

Recommends governments of member states :

1. to adopt, taking as a guide the principles contained in the appendix to this recommendation, a system of advance payment of maintenance to children when the debtor fails to comply with his obligation, if they already have a system aiming at the same objective, to adapt it, if necessary, to the above-mentioned principles ;
2. to strengthen the means of recovering advances from a debtor resident in another state and, to this end, to facilitate the recognition and enforcement of decisions relating to maintenance obligations for children, where appropriate by ratifying the relevant international instruments.

¹ When this recommendation was adopted, the Representatives of Ireland and Italy, in application of Article 10.2.c of the Rules of Procedure for the meetings of the Ministers' Deputies, reserved the right of their governments to comply with it or not.

Principles

1. Payments of advances on child maintenance will be made under a system set up by the state where a person who is under a legal obligation to pay maintenance, which has become enforceable by compulsory process, has failed to comply with his obligation. This system will apply to children habitually resident in the territory of that state and who are not living with the person liable to pay maintenance.
2. The age of the child up to which payments will be made will be fixed by each state. In any event, the advance payment will be made until the end of the period of compulsory schooling.
3. The advance payments may be refused if the child or the parent with whom he is living has sufficient financial resources to meet his needs.
4. Advance payments may be limited to a sum fixed according to criteria laid down by each state.
5. Advance payments will not release the debtor either from his obligations towards the state with regard to the sum advanced by the latter or from his obligations with regard to the child for any residual sum.
6. Public authorities may recover advance payments from the debtor. Where they have the recognised power to do so they may also recover, on behalf of the maintenance creditor, the full sum required by a legal obligation which has become enforceable by compulsory process. Except in cases of double payment, the failure to recover from the debtor all or part of the advanced payments will not give a right to recover these advances from the child.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RECOMMENDATION No. R (84) 4

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON PARENTAL RESPONSIBILITIES ¹

(Adopted by the Committee of Ministers on 28 February 1984
at the 367th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15. *b* of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its member states, *inter alia*, by promoting the adoption of common rules in legal matters ;

Considering that it is possible to make improvements to the legal systems relating to parental responsibilities in order to promote the development of the personality of the child and to protect his person and his moral and material interests while guaranteeing legal equality between parents,

Recommends governments of member states to adapt, where necessary, their legislation to comply with the principles concerning parental responsibilities set out in the appendix to this recommendation.

Appendix to Recommendation No. R (84) 4

Principle 1

For the purposes of this recommendation :

- a. parental responsibilities are a collection of duties and powers which aim at ensuring the moral and material welfare of the child, in particular by taking care of the person of the child, by maintaining personal relationships with him and by providing for his education, his maintenance, his legal representation and the administration of his property ;
- b. the terms "father", "mother", "parents" refer to persons having a legal filiation link with the child.

Principle 2

Any decision of the competent authority concerning the attribution of parental responsibilities or the way in which these responsibilities are exercised should be based primarily on the interests of the child. However, the equality between parents should also be respected and no discrimination should be made, in particular on grounds of sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

1. When this recommendation was adopted and in application of Article 10.2. *c* of the Rules of Procedure for the meetings of the Ministers' Deputies,

- the Representatives of Denmark, Liechtenstein, Norway and the United Kingdom reserved the right of their Governments to comply or not with the first paragraph of Principle 9 as set out in the appendix to the recommendation ;
- the Representative of the Netherlands reserved the right of his Government to comply or not with Principle 11 as set out in the appendix to the recommendation.

Principle 3

When the competent authority is required to take a decision relating to the attribution or exercise of parental responsibilities and affecting the essential interests of the children, the latter should be consulted if their degree of maturity with regard to the decision so permits.

Principle 4

When the persons having parental responsibilities exercise them in a way which is detrimental to the essential interests of the child, the competent authority should take, of its own motion or on application, any appropriate measures.

Principle 5

Parental responsibilities for a child of their marriage should belong jointly to both parents.

Principle 6

In the case of a dissolution of the marriage or of a separation of the parents, the competent authority requested to intervene should rule on the exercise of parental responsibilities. It should accordingly take any appropriate measures, for example by dividing the exercise of the responsibilities between the two parents or, where the parents consent, by providing that the responsibilities should be exercised jointly. In taking its decision, the authority should take account of any agreement concluded between the parents provided it is not contrary to the interests of the children.

Principle 7

1. Where the child is born out of wedlock and a legal filiation link is established with regard to one parent only, the parental responsibilities should belong to that parent.
2. Where the child is born out of wedlock and a legal filiation link is established with regard to both parents, national law may provide that the parental responsibilities should be exercised :
 - a. subject to the provisions of Principle 8 :
 - i. by the mother alone ;
 - ii. by the father alone, when a decision has been taken by the competent authority or when an agreement has been concluded between the two parents ;
 - b. according to the division between the two parents decided by the competent authority ;
 - c. jointly by both parents if they live together or if an agreement has been concluded between them.

Principle 8

In all cases both parents should be under a duty to maintain the child. The parent with whom the child does not live should have at least the possibility of maintaining personal relationships with the child unless such relationships would be seriously harmful to the interests of the child.

Principle 9

1. Where the parental responsibilities are exercised jointly by both parents and one of them dies, these responsibilities should belong to the surviving parent.
2. Where the parent who exercises alone some parental responsibilities dies, his responsibilities should be exercised by the surviving parent unless the interests of the child require any other measures.
3. Where there is no longer any parent living, the competent authority should take a decision concerning the attribution of parental responsibilities. National legislation may provide that these responsibilities may be given to a member of the family or to a person designated by the last parent to die, unless the interests of the child require any other measures.

Principle 10

1. Where parental responsibilities are exercised jointly by both parents, any decision affecting the interests of the child should be taken by the agreement of both.
2. Where there is a disagreement and the matter is referred to the competent authority by one of the parents, this authority should, insofar as the interests of the child so require, try to reconcile the parents, and, if this fails, take the appropriate decision.
3. With regard to third parties, the agreement of both parents should be presumed except in cases where national law, having regard to the importance of the interests at stake, requires an express agreement.

Principle 11

Each parent should normally be informed of the exercise of the responsibilities which have not been given to him, to the extent desired by him and, in any event, when the essential interests of the child are affected.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RECOMMENDATION No. R (85) 2

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON LEGAL PROTECTION AGAINST SEX DISCRIMINATION¹

*(Adopted by the Committee of Ministers on 5 February 1985
at the 380th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Aware that equality between men and women has not yet been fully achieved in spite of the extensive work carried out during these last years by member states ;

Noting that certain forms of sex discrimination still exist in the legislation and practice of some member states ;

Recognising the necessity to ensure legal and *de facto* equality between men and women, in particular by improving the situation of women and by taking into account the specific needs of certain categories of people ;

Conscious of the importance of the participation of women in the decision-making process at all levels ;

Realising the desirability of providing effective measures against sex discrimination and sanctions to ensure equality between men and women ;

Considering that the setting up of machinery to protect persons against sex discrimination is an important means of furthering equality between men and women ;

Having regard to the various relevant international instruments, especially the United Nations Convention of 1979 on the elimination of all forms of discrimination against women,

Recommends the governments of member states to take or reinforce, as the case may be, all measures they consider appropriate with a view to the progressive implementation of the principles set out in the appendix to this recommendation.

1. When this recommendation was adopted, and in application of Article 10.2.c of the Rules of Procedure for the meetings of the Ministers' Deputies, the Representative of Liechtenstein reserved the right of his Government to comply with it or not.

Principles

I. Promotion of equality between the sexes by legislation

In order to promote equality between the sexes, legislation should aim at the following objectives :

1. In the field of employment, men and women should have equal rights with regard to opportunities for employment and conditions of employment in all fields and, in particular, should be entitled to :

- a. equal right of access to work ;
- b. equal conditions of work ;
- c. equal opportunities for training ;
- d. equal pay for work of equal value ;
- e. equal opportunities for advancement.

2. In the field of social security and pensions, men and women should be treated in an equal way with regard to access to official social security and pension systems or to any other similar systems set up under public law and with regard to the benefits paid by such systems.

3. In the field of taxation, men and women should be treated equally.

4. In the field of civil law, equal rights and duties should be given to both men and women, in particular with regard to :

- a. the fulfilment of family responsibilities ;
- b. the exercise of parental responsibilities insofar as it is not contrary to the interests of the child ;
- c. the acquisition, administration and sharing of family property ;
- d. the conclusion of contracts ;
- e. the exercise of a gainful occupation by each spouse ;
- f. the payment of maintenance by one spouse to the other spouse in the case of a separation or to a former spouse in the case of a divorce ;
- g. the domicile and residence of each spouse ;
- h. the rights of succession.

Attention should be paid to the following questions :

- a. the age for marriage and the age to adopt children ;
- b. the family name.

5. In addition, equal treatment of men and women should be ensured concerning :

- a. the acquisition and loss of nationality ;
- b. political rights.

II. Other measures of a general character

1. States should, by means of adequate measures, endeavour to create the most favourable social, economic and cultural conditions in order to achieve equality between men and women. Appropriate information should be given to families in order that they can play an active role in the pursuit of these goals.

2. States should encourage the equal participation of men and women in all aspects of public life.

3. Men and women should be encouraged to make full use, on an equal basis, of all existing educational and training facilities.

4. Educational establishments, the mass media and persons or bodies responsible for the production of teaching material should be encouraged, by appropriate means, to play an active role promoting equality between men and women.

III. *Special temporary measures (positive action)*

States should, in those areas where inequalities exist, give consideration to the adoption of special temporary measures designed to accelerate the realisation of *de facto* equality between men and women, where there are no obstacles of a constitutional nature, in particular by :

- a. making employers aware of the desirability of having as an objective the achievement of equality between the sexes ;
- b. giving or encouraging special training for persons of the under-represented sex to enable them to obtain the necessary qualifications.

IV. *Machinery to promote equality*

States, in order to promote equality between men and women, should adopt suitable machinery which could have, without prejudice to the competence of the courts, one or more of the following tasks :

- a. suggesting draft legislation and giving advice to the public authorities ;
- b. preparing and promoting guidelines and codes of conduct ;
- c. encouraging parties to collective bargaining to promote equality and to avoid any discriminatory results ;
- d. acting to avoid and eliminate sex discrimination in advertisements ;
- e. advising and, where possible, promoting a conciliation between the parties to a dispute ;
- f. imposing appropriate administrative sanctions ;
- g. bringing, in appropriate cases, legal proceedings before the courts.

V. *Remedies and sanctions*

1. Legislation promoting equality should contain remedies and sanctions which are effective in discouraging discrimination, for example by making use of one or more of the following :

- a. orders to prevent discrimination (prohibiting or requiring the discontinuation of an act, requiring a certain act to be carried out, setting aside a decision of a discriminatory nature) ;
- b. adequate sanctions in case of failure to comply with such orders, administrative and, where necessary, criminal sanctions to punish acts of discrimination (such as fines, suspension of licence, public disclosure of discrimination) ;
- c. damages to compensate victims of discrimination.

2. States should provide, where cases concerning sex discrimination are brought before the courts, rapid, inexpensive and suitable proceedings as well as free legal assistance wherever this is necessary.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RECOMMENDATION No. R (85) 4

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON VIOLENCE IN THE FAMILY¹

*(Adopted by the Committee of Ministers on 26 March 1985
at the 382nd meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the family is the basic organisational unit of democratic societies ;

Considering that the defence of the family involves the protection of all its members against any form of violence, which all too often occurs among them ;

Considering that there is violence in any act or omission which prejudices the life, the physical or psychological integrity or the liberty of a person or which seriously harms the development of his or her personality ;

Considering that such violence affects in particular children on the one side and women on the other, though in differing ways ;

Considering that children are entitled to special protection by society against any form of discrimination or oppression and against any abuse of authority in the family and other institutions ;

Considering that the same is true of women insofar as they are subject to certain *de facto* inequalities which hamper the reporting of any violence of which they are victims ;

Having regard in this respect to its Resolution (78) 37 on the equality of spouses in civil law ;

Having regard also to its Recommendation No. R (79) 17 concerning the protection of children against ill-treatment ;

Having regard to the proceedings of the Council of Europe's 4th Criminological Colloquy, on the ill-treatment of children in the family ;

Having regard to Recommendation 561 (1969) of the Consultative Assembly of the Council of Europe, on the protection of minors against ill-treatment,

Recommends that the governments of member states :

I. With regard to the prevention of violence in the family :

1. alert public opinion to the extent, seriousness and specific characteristics of violence in the family with a view to obtaining its support for measures aimed at combating this phenomenon ;

1. When this recommendation was adopted, the Representative of the United Kingdom, in application of Article 10.2.c of the Rules of Procedure for the meetings of the Ministers' Deputies, reserved the right of her Government to comply or not with Article I.5 of the recommendation.

2. promote the dissemination among families of knowledge and information concerning social and family relations, early detection of potentially conflictual situations and the settlement of interpersonal and intra-family conflicts ;
3. provide appropriate professional training for all those responsible for intervening in cases of violence in the family, particularly those who, because of their functions, are in a position to detect such cases or deal with the victims thereof ;
4. arrange for and encourage the setting up, and support the work, of agencies, associations or foundations whose aim is to help and assist the victims of violent family situations, with due respect for the privacy of others ;
5. set up administrative departments or multidisciplinary boards with the task of looking after victims of violence in the family and with powers to deal with such cases.

Their powers might include the following :

- to receive reports of acts of violence in the family ;
 - to arrange for medical examinations at the victim's request ;
 - to help, care for and advise the various parties involved in cases of violence in the family and to that end to carry out social inquiries ;
 - to pass on, either to the family and children's courts or to the prosecuting authorities, information which the department or board deems should be submitted to one or another of those authorities ;
6. impose strict rules on these departments or boards concerning the divulging of information to which they have access in the exercise of their powers ;

II. With regard to the reporting of acts of violence in the family :

7. circulate specific information on the advisability and feasibility for persons who become aware of cases of violence in the family of reporting them to the competent bodies, particularly those mentioned in paragraphs 4 and 5 above, or of directly intervening to assist the person in danger ;
8. consider the possibility of removing the obligation of secrecy from the members of certain professions so as to enable them to disclose to the bodies mentioned in paragraph 5 above any information concerning cases of violence in the family ;

III. With regard to state intervention following acts of violence in the family :

9. take steps to ensure that, in cases of violence in the family, the appropriate measures can be quickly taken, even if only provisionally, to protect the victim and prevent similar incidents from occurring ;
10. take measures to ensure that, in any case resulting from a conflict between a couple, measures are available for the purpose of protecting the children against any violence to which the conflict exposes them and which may seriously harm the development of their personality ;
11. take measures to ensure that the victim's interests are not prejudiced by interference between civil, administrative and criminal measures, it being understood that criminal measures should be taken only as a last resort ;
12. review their legislation on the power to punish children in order to limit or indeed prohibit corporal punishment, even if violation of such a prohibition does not necessarily entail a criminal penalty ;
13. study the possibility of entrusting cases of violence in the family only to specialist members of prosecuting or investigating authorities or of trial courts ;
14. take steps to ensure that, as a general rule, a psycho-social inquiry is carried out into such cases and that, particularly on the basis of the findings of the inquiry and in accordance with criteria that take account of the interests of the victim as well as the children of the family, the prosecuting authority or the court is able to propose or take measures other than criminal ones, especially when the suspect or accused agrees to submit to the supervision of the competent social, medico-social or probation authorities ;

15. do not institute proceedings in cases of violence in the family unless the victim so requests or the public interest so requires ;
16. take measures to ensure protection against any external pressures on members of the family giving evidence in cases of violence in the family. In particular, minors should be assisted by appropriate counsel. Moreover, the weight of such evidence should not be diminished by rules relating to the oath ;
17. consider the advisability of adopting specific incriminations for offences committed within the family.

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

RECOMMENDATION No. R (87) 2

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES

CONTAINING A MODEL AGREEMENT TO ENABLE THE MEMBERS OF THE FAMILY FORMING PART OF THE HOUSEHOLD OF A MEMBER OF A DIPLOMATIC MISSION OR CONSULAR POST TO ENGAGE IN A GAINFUL OCCUPATION

*(Adopted by the Committee of Ministers on 12 February 1987
at the 404th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Noting the difficulties encountered in many states by members of the family forming part of the household of a member of a diplomatic mission or consular post who wish to engage in a gainful occupation;

Realising that many members of such households, in particular spouses, may wish to work in the state where the member of a diplomatic mission or consular post is assigned to duty;

Considering that a model agreement might assist states when preparing agreements to enable the members of such households to work,

Recommends governments of member states to take into consideration the model agreement appended to this recommendation during any negotiations concerning the exercise of a gainful occupation by the members of the family forming part of the household of a member of a diplomatic mission or consular post.

**Model agreement to enable
the members of the family forming part of the household
of a member of a diplomatic mission or consular post
to engage in a gainful occupation**

1. *Authorisation to engage in a gainful occupation*

a. The members of the family forming part of the household of a member of a diplomatic mission or consular post of the sending state shall be authorised, on a reciprocal basis, to engage in a gainful occupation in the receiving state, in accordance with the provisions of the law of the receiving state.

b. For the purposes of this agreement:

— “a member of a diplomatic mission or consular post” means any employee of the sending state who is not a national of the receiving state and who is assigned to official duty in the receiving state in a diplomatic mission, consular post or mission to an international organisation;

— “a member of the family” means the spouse of a member of a diplomatic mission or consular post and any minor child who form part of the household of a member of a diplomatic mission or consular post.

c. Any authorisation to engage in a gainful occupation in the receiving state shall, in principle, be terminated at the end of the assignment of the member of a diplomatic mission or consular post.

2. *Procedures*

a. A request for authorisation to engage in a gainful occupation shall be sent on behalf of the member of the family by the embassy of the sending state to the Ministry of Foreign Affairs of the receiving state.

b. The procedures followed shall be applied in a way which enables the member of the family to engage in a gainful occupation as soon as possible and any requirements relating to work permits and similar formalities shall be favourably applied.

3. *Civil and administrative privileges and immunities*

In the case of members of the family who enjoy immunity from the civil and administrative jurisdiction of the receiving state in accordance with the Vienna Convention on diplomatic relations or under any other applicable international instrument, such immunity shall not apply in respect of any act carried out in the course of the gainful occupation and falling within the civil or administrative law of the receiving state.

4. *Criminal immunity*

In the case of members of the family who enjoy immunity from the criminal jurisdiction of the receiving state in accordance with the Vienna Convention on diplomatic relations or under any other applicable international instrument:

a. *Alternative 1:* the provisions concerning immunity from the criminal jurisdiction of the receiving state shall continue to apply in respect of any act carried out in the course of the gainful occupation. However, the sending state shall give serious consideration to waiving the immunity of the member of the family concerned from the criminal jurisdiction of the receiving state.

Alternative 2: the sending state shall waive the immunity of the member of the family concerned from the criminal jurisdiction of the receiving state in respect of any act carried out in the course of the gainful occupation save in special instances when the sending state considers that such a waiver could be contrary to its interests.

b. The sending state shall give serious consideration to waiving the immunity of the member of the family from the execution of a sentence.

5. *Fiscal and social security regimes*

In accordance with the Vienna Convention on diplomatic relations or under any other applicable international instrument, members of the family shall be subject to the fiscal and social security regimes of the receiving state for all matters connected with their gainful occupation in that state.

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

RECOMMENDATION No. R (87) 6

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON FOSTER FAMILIES¹

*(Adopted by the Committee of Ministers on 20 March 1987
at the 405th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members, *inter alia* by promoting the adoption of common rules in legal matters;

Recognising that the law should protect the welfare of children;

Recognising that it is normally in a child's interests to remain with his family of origin and that an improvement in support for these families would ensure that the need for fostering is reduced;

Considering that it is possible to improve the legal systems relating to the fostering of children in order to promote the development of the personality of the child and to protect his person and his moral and material interests;

Considering that an improvement of the situation of foster parents might contribute to the welfare of children;

Realising that consideration might be given to the effects of fostering in other contexts such as social and other benefits;

Having regard to Resolution (77) 33 on the placement of children and Recommendation No. R (84) 4 on parental responsibilities,

Recommends the governments of member states to include in their legislation rules on foster families based on the principles set out in the appendix to this recommendation.

1. When this recommendation was adopted, and in application of Article 10.2.c of the Rules of Procedure for the meetings of the Ministers' Deputies, the Representatives of Denmark and Norway reserved the right of their Governments to comply or not with Principle 5 of the appendix to the recommendation.

Appendix to Recommendation No. R (87) 6

For the purposes of this recommendation, a fostering occurs when a child is entrusted, otherwise than with a view to adoption, to a couple or an individual ("foster parents") who takes care of the child for more than a short time or for an undetermined time and who does not have legal custody of the child and who is not a parent.

Principle 1

1. National legislation should provide a system of supervision of foster parents in order to ensure that they provide the necessary moral and material conditions for the proper development of the child, in particular by means of their personal qualities, especially their ability to bring up the child, and their housing conditions.

National legislation may provide that such supervision does not apply where the fostering is with a close relative.

2. The supervision should be based:

- on information given by the foster parents to the competent authority, or
- on an authorisation system, or

— on any other means which would enable this objective to be attained, for example a system of official approval of persons who regularly receive children.

3. In any event the competent authority should intervene and provide support where the interests of the child so require.

Principle 2

The personal relationships of the child with his family of origin should be maintained and information concerning the well-being of the child should be given to that family, provided that this is not detrimental to the essential interests of the child.

Principle 3

The foster parents should be presumed to have the power to exercise, on behalf of the legal representatives of the child, those parental responsibilities which are necessary to care for the child in day-to-day or urgent matters.

Principle 4

As far as possible before any important decision is taken concerning the person of the child, the foster parents should be given the opportunity to express their views.

Principle 5

After a foster child has become integrated into the foster family, in particular after a substantial period of fostering, the foster parents should be able to apply, subject to any conditions specified by national legislation, to a judicial or other competent authority, for power to exercise certain parental responsibilities including, where appropriate, legal custody.

Principle 6

Where the child has been integrated into the foster family, in particular after a substantial period of fostering, then, if the person or the authority which made the fostering wishes to terminate it and the foster parents oppose the termination, it is for the judicial or other competent authority to take a decision.

Principle 7

1. Before any decision is taken by the competent authority under Principles 5 and 6, the parents and the foster parents should be given the opportunity to express their views. The child should be consulted if his degree of maturity with regard to the decision so permits.

2. The authority should base its decision primarily on the interests of the child, taking account in particular of the links between the child, his parents and his foster parents. This decision should be taken without undue delay.

Principle 8

Agreements relating to the fostering of a child may not derogate from the principles set out in this recommendation.

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

RECOMMENDATION No. R (87) 20

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON SOCIAL REACTIONS TO JUVENILE DELINQUENCY

*(Adopted by the Committee of Ministers on 17 September 1987
at the 410th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that young people are developing beings and in consequence all measures taken in their respect should have an educational character;

Considering that social reactions to juvenile delinquency should take account of the personality and specific needs of minors and that the latter need specialised interventions and, where appropriate, specialised treatment based in particular on the principles embodied in the United Nations Declaration of the Rights of the Child;

Convinced that the penal system for minors should continue to be characterised by its objective of education and social integration and that it should as far as possible abolish imprisonment for minors;

Considering that measures in respect of minors should preferably be implemented in their natural environment and should involve the community, in particular at local level;

Convinced that minors must be afforded the same procedural guarantees as adults;

Taking account of earlier work by the Council of Europe in the field of juvenile delinquency and in particular of Resolution (78) 62 on juvenile delinquency and social change and the conclusions of the 14th Criminological Research Conference on "Prevention of juvenile delinquency: the role of institutions of socialisation in a changing society";

Having regard to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules),

Recommends the governments of member states to review, if necessary, their legislation and practice with a view:

I. *Prevention*

1. to undertaking or continuing particular efforts for the prevention of juvenile maladjustment and delinquency, in particular:

a. by implementing a comprehensive policy promoting the social integration of young people;

b. by providing special assistance and the introduction of specialised programmes, on an experimental basis, in schools or in young peoples' or sports' organisations for the better integration of young people who are experiencing serious difficulties in this field;

c. by taking technical and situational measures to reduce the opportunities offered to young people to commit offences;

II. *Diversion — mediation*

2. to encouraging the development of diversion and mediation procedures at public prosecutor level (discontinuation of proceedings) or at police level, in countries where the police has prosecuting functions, in order to prevent minors from entering into the criminal justice system and suffering the ensuing consequences; to associating Child Protection Boards or services to the application of these procedures;
3. to taking the necessary measures to ensure that in such procedures :
 - the consent of the minor to the measures on which the diversion is conditional and, if necessary, the co-operation of his family are secured;
 - appropriate attention is paid to the rights and interests of the minor as well as to those of the victim;

III. *Proceedings against minors*

4. to ensuring that minors are tried more rapidly, avoiding undue delay, so as to ensure effective educational action;
5. to avoiding committing minors to adult courts, where juvenile courts exist;
6. to avoiding, as far as possible, minors being kept in police custody and, in any case, encouraging the prosecuting authorities to supervise the conditions of such custody;
7. to excluding the remand in custody of minors, apart from exceptional cases of very serious offences committed by older minors; in these cases, restricting the length of remand in custody and keeping minors apart from adults; arranging for decisions of this type to be, in principle, ordered after consultation with a welfare department on alternative proposals;
8. to reinforcing the legal position of minors throughout the proceedings, including the police investigation, by recognising, *inter alia* :
 - the presumption of innocence;
 - the right to the assistance of a counsel who may, if necessary, be officially appointed and paid by the state;
 - the right to the presence of parents or of another legal representative who should be informed from the beginning of the proceedings;
 - the right of minors to call, interrogate and confront witnesses;
 - the possibility for minors to ask for a second expert opinion or any other equivalent investigative measure;
 - the right of minors to speak and, if necessary, to give an opinion on the measures envisaged for them;
 - the right to appeal;
 - the right to apply for a review of the measures ordered;
 - the right of juveniles to respect for their private lives;
9. to encouraging arrangements for all the persons concerned at various stages of the proceedings (police, counsel, prosecutors, judges, social workers) to receive specialised training on the law relating to minors and juvenile delinquency;
10. to ensuring that the entries of decisions relating to minors in the police records are treated as confidential and only communicated to the judicial authorities or equivalent authorities and that these entries are not used after the persons concerned come of age, except on compelling grounds provided for in national law;

IV. *Interventions*

11. to ensuring that interventions in respect of juvenile delinquents are sought preferably in the minors' natural environment, respect their right to education and their personality and foster their personal development;

12. to providing that intervention is of a determined length and that only the judicial authorities or equivalent administrative authorities may fix it, and that the same authorities may terminate the intervention earlier than originally provided;
13. when residential care is essential:
 - to diversifying the forms of residential care in order to provide the one most suited to the minor's age, difficulties and background (host families, homes);
 - to establishing small-scale educational institutions integrated into their social, economic and cultural environment;
 - to providing that the minor's personal freedom shall be restricted as little as possible and that the way in which this is done is decided under judicial control;
 - in all forms of custodial education, to fostering, where possible, the minor's relations with his family:
 - avoiding custody in places which are too distant or inaccessible;
 - maintaining contact between the place of custody and the family;
14. with the aim of gradually abandoning recourse to detention and increasing the number of alternative measures, to giving preference to those which allow greater opportunities for social integration through education, vocational training as well as through the use of leisure or other activities;
15. among such measures, to paying particular attention to those which:
 - involve probationary supervision and assistance;
 - are intended to cope with the persistence of delinquent behaviour in the minor by improving his capacities for social adjustment by means of intensive educational action (including "intensive intermediary treatment");
 - entail reparation for the damage caused by the criminal activity of the minor;
 - entail community work suited to the minor's age and educational needs;
16. in cases where, under national legislation, a custodial sentence cannot be avoided:
 - to establishing a scale of sentences suited to the condition of minors, and to introducing more favourable conditions for the serving of sentences than those which the law lays down for adults, in particular as regards the obtaining of semi-liberty and early release, as well as granting and revocation of suspended sentence;
 - to requiring the courts to give reasons for their prison sentences;
 - to separating minors from adults or, where in exceptional cases integration is preferred for treatment reasons, to protecting minors from harmful influence from adults;
 - to providing both education and vocational training for young prisoners, preferably in conjunction with the community, or any other measure which may assist reinsertion in society;
 - to providing educational support after release and possible assistance for the social rehabilitation of the minors;
17. to reviewing, if necessary, their legislation on young adult delinquents, so that the relevant courts also have the opportunity of passing sentences which are educational in nature and foster social integration, regard being had for the personalities of the offenders;

V. *Research*

18. to promoting and encouraging comparative research in the field of juvenile delinquency so as to provide a basis for policy in this area, laying emphasis on the study of:
 - prevention measures;
 - the relationship between the police and young people;
 - the influence of new crime policies on the functioning of legal systems concerned with minors;
 - specialised training for everyone working in this field;

- comparative features of juvenile delinquency and young adult delinquency, as well as re-education and social integration measures suitable for these age-groups;
- alternatives to deprivation of liberty;
- community involvement in the care of young delinquents;
- the relationship between demographic factors and the labour market on the one hand and juvenile delinquency on the other;
- the role of the mass media in the field of delinquency and reactions to delinquency;
- institutions such as a youth ombudsman or complaints board for the protection of young people's rights;
- measures and procedures of reconciliation between young offenders and their victims.

**COUNCIL OF EUROPE
COMMITTEE OF MINISTERS**

RECOMMENDATION No. R (88) 3

**OF THE COMMITTEE OF MINISTERS TO MEMBER STATES
ON THE VALIDITY OF CONTRACTS BETWEEN PERSONS
LIVING TOGETHER AS AN UNMARRIED COUPLE
AND THEIR TESTAMENTARY DISPOSITIONS¹**

*(Adopted by the Committee of Ministers on 7 March 1988
at the 415th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members, in particular by promoting the adoption of common rules in legal matters;

Considering that many problems concerning persons living together as an unmarried couple may be resolved by the conclusion of contracts between such persons or by testamentary dispositions made by one in favour of the other;

Noting that in some countries such contracts and testamentary dispositions might be considered to be contrary to public policy or morality,

Recommends that the governments of member states take the necessary measures:

i. to ensure that contracts relating to property between persons living together as an unmarried couple, or which regulate matters concerning their property either during their relationship or when their relationship has ceased, should not be considered to be invalid solely because they have been concluded under these conditions;

ii. to apply the same principle to testamentary dispositions.

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

RECOMMENDATION No. R (88) 6

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON SOCIAL REACTIONS TO JUVENILE DELINQUENCY AMONG YOUNG PEOPLE COMING FROM MIGRANT FAMILIES

*(Adopted by the Committee of Ministers on 18 April 1988
at the 416th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Drawing attention to the principles of the European Convention on Human Rights;

Having regard to the multicultural and multiracial nature of most European societies today and the need for Council of Europe member states to make allowance for this when framing their policies;

Considering the need for each state to reduce, as much as possible, differences existing between nationals and non-nationals in the participation in the social life of the country of residence;

Considering that any policy on juvenile delinquency necessarily entails taking measures to facilitate the social integration of young people in difficulty;

Considering that, of these young people, those coming from migrant families and in particular second-generation migrants deserve special attention;

Considering the need to prevent delinquent behaviour among the latter by giving them equal opportunities for self-fulfilment with the young among the indigenous population and enabling them to integrate themselves fully into the society of the country of residence;

Considering that special arrangements should be made to ensure that, when these young people come into contact with the system of justice for minors, the action taken is likely to foster their social integration;

Taking into account the work of the European Committee on Crime Problems in the sphere of juvenile delinquency and crime among migrants, namely: Resolution (75) 3 on the legal and administrative aspects of criminality among migrant workers, Resolution (78) 62 on juvenile delinquency and social change, Recommendation No. R (84) 12 concerning foreign prisoners and Recommendation No. R (87) 20 on social reactions to juvenile delinquency,

Recommends the governments of member states to take the following measures in legislation and practice in order to avoid any discriminatory treatment of young people coming from migrant families in the juvenile justice system and within the policy of social integration of youth and to help those who have displayed delinquent conduct to derive the maximum benefit from the measures available under that system:

I. Prevention

1. To promote their access to all available institutions and social resources in order to enable them to acquire a social status equivalent to that of other young people; to this end, to give young migrants, in accordance with arrangements laid down in the legislation, the possibility of acquiring the nationality of the country of residence;
2. To promote their participation in all facilities for young people: youth clubs and associations, sports clubs and social services; in this framework, encourage organisations aiming at conserving the cultural heritage of these groups;
3. To offer adequate aid and assistance to these young people and their families when they are in social and family crisis situations;
4. To ensure as far as possible that schools which have a certain proportion of these young people among their pupils are provided with special facilities, such as a larger number of teachers sensitive to the questions of migrants and minorities, tuition in the language and civilisation of both the host country and the country of origin, extra support in school work;
5. To ensure, with a view to securing equality of opportunities, that compulsory school attendance is effective for girls as well as boys;
6. To promote the access of these young people, even at a later stage, to training and offer them information and assistance in obtaining and keeping employment.

II. Police

7. To ensure that police services, which often constitute the first point of contact with young people in difficulty, adopt a non-discriminatory attitude during these contacts, taking into account the cultural context in which these young people live;
8. To ensure, consequently, that, in those departments of the police force responsible for juveniles, there are enough police officers having specialist training focused on the cultural values and standards of behaviour of the various ethnic groups with which they come into contact, including if possible police officers coming from a migrant background, and that all these officers may if necessary have recourse to interpreters;
9. To ensure that those departments establish links with associations concerned with these young people, in particular in order to be able to give the latter adequate assistance and guidance.

III. Juvenile justice and care system

10. To ensure that these young people benefit equally with young nationals from innovations in the juvenile justice and care system (diversion, mediation, other new forms of intervention, etc.);
11. To ensure that persons handling cases of minors at the various stages in proceedings are able to communicate in a satisfactory manner with the young migrants on account either of their ethnic origin or of their specialist training;
12. To intensify and ameliorate the contacts between the agents of the criminal justice and care system and families of migrants or other persons from the minor's environment in order better to understand the problems of the minor and reach well-founded decisions; to this end, to secure also the assistance of associations concerned with these young people.

IV. Interventions and measures

13. To undertake an adequate review of the young person's personal and social circumstances, in order to avoid simplistic and automatic "cultural" explanations, based on cultural values and conflicts;
14. To avoid systematic placing of these young people in institutions by providing the necessary resources in order that non-custodial measures and alternatives to placement and imprisonment are accessible and effectively applied to these young people in the same way as to the indigenous young people;
15. To ensure that educational and social staff are trained in the problems of these young people and include, if possible, members coming from migrant backgrounds, and that they can have recourse to collaborators (professional or voluntary) or to associations with experience in this field;

16. To avoid grouping young people of the same origin in specialised institutions ;
17. To ensure that religious convictions and practices, including food practices, of the groups concerned are respected in the course of these interventions ;
18. To encourage the recruitment of foster families representative of the various communities existing in the national territory so that, if desirable, young people can be entrusted to families of the same cultural origin ;
19. To avoid, in principle, the expulsion of second-generation migrants during their minority or later for offences committed during their minority.

V. Research

20. To promote research especially on the following subjects :
 - perception of the juvenile criminal justice system by young migrants and young people belonging to ethnic or cultural minorities ;
 - problems of young people returning to the country of origin and measures to be taken to prevent their possible misadaptation and delinquency ;
 - social and ethnic discrimination and institutional practice ;
 - practice related to reporting facts concerning these groups to the criminal justice system ;
 - discrimination in the reporting of criminality of young migrants by the media ;
 - effects of demographic changes on the labour-market and impact on the position of migrants and the development of criminality ;
 - studies of victimisation of young migrants or young people belonging to minorities, especially by racial attacks ;
 - ethnic monitoring of recruitment and selection of staff working in the juvenile justice system.

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

RECOMMENDATION No. R (89) 1

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON CONTRIBUTIONS FOLLOWING DIVORCE¹

*(Adopted by the Committee of Ministers on 18 January 1989
at the 423rd meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members, in particular, by promoting the adoption of common rules in legal matters;

Noting that a divorce may seriously affect the standard of living of both parties;

Desiring to help each party to be self-supporting after divorce;

Considering that, where a party is not able to be self-supporting after divorce, adequate contributions should be provided;

Having regard to Resolution (78) 37 of the Committee of Ministers on equality of spouses in civil law,

Recommends the governments of member states to implement the following principles:

Principle 1

After a divorce, the aim should be that, as far as possible, each party should be economically independent and self-supporting. This aim might be attained by appropriate rules relating to:

a. matrimonial property regimes, in particular by granting to a former spouse the right to obtain a fair share in the property of the other;

b. old-age insurance schemes, to enable the former spouses to benefit equally from payments made during their marriage.

¹ The Representative of Ireland, in application of Article 10.2.c of the Rules of Procedure for meetings of the Ministers' Deputies, reserved the right of his Government to comply with the recommendation or not.

Principle 2

The aim of Principle 1 could also be achieved by the payment, by one party to the other, either of a capital sum or periodical payments for a limited period.

Principle 3

If the aim cannot be attained, the party who is not self-supporting should be entitled to contributions made by the other party or by public authorities or both in the manner prescribed by national law.

Principle 4

In the assessment of contributions to be made by one party to the other party under Principles 2 and 3, account should be taken of all relevant factors and, in particular, the resources and the financial needs of each party.

Principle 5

In the assessment of contributions to be made by one party to the other party, account should not be taken of any fault of either party. However, legislation may provide the possibility that a contribution may be refused or reduced where the party seeking the contribution has been seriously at fault.

Principle 6

In the case of a change in the circumstances of either party, the amount of the periodical payments to be paid by one party to the other may be revised.

Principle 7

After the death of the debtor, contributions should, wherever possible, be maintained or replaced by other benefits such as a share in the debtor's estate or, if national law so provides, contributions by public authorities.

Principle 8

States should take measures or reinforce existing measures at a national and international level to ensure that effective means are available to enforce the recovery of contributions.

Principle 9

The parties should provide the necessary information to determine whether there is an obligation to provide contributions, to fix the amount and to enable the amount to be recovered.

The obligation to provide this information may also, if necessary, be imposed on public authorities or employers of the parties who possess it.

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

RECOMMENDATION No. R (91) 9

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON EMERGENCY MEASURES IN FAMILY MATTERS

*(Adopted by the Committee of Ministers on 9 September 1991
at the 461st meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Having regard to the large number of family cases which require prompt action in order to prevent adverse or even irreversible consequences;

Noting that, in many cases, the courts and other competent authorities dealing with family matters do not succeed in providing rapid solutions where the interests of children and other persons in need of special protection and assistance are in serious danger;

Recognising that existing emergency measures do not always enable the courts and other competent bodies to deal satisfactorily with certain urgent cases and in particular with cases where children have been improperly removed or their welfare is in serious danger;

Considering that states should give great priority to emergency measures in family matters and provide sufficient resources to protect the interests of the family;

Agreeing that effective emergency measures should be widely available;

Noting that steps should also be taken to encourage the persons concerned and those acting on their behalf to seek prompt action to make use of the available emergency measures,

Recommends governments of member states to take all necessary steps to implement the following principles and ensure that effective emergency measures are available to the courts and other competent authorities dealing with family matters to protect children and other persons who are in need of special protection and assistance and whose interests are in serious danger.

Principle 1

Courts and other competent authorities dealing with family matters should have sufficient emergency powers and resources to protect children and other persons in need of special protection and assistance and whose interests are in serious danger.

Particular protection should be given to a child whose welfare is in serious danger owing to neglect or any other physical or mental ill-treatment or who has been or may be improperly removed from a person entitled to custody.

Principle 2

These courts or competent authorities should be ready to act at any time in extremely urgent cases.

Principle 3

1. Simple and expeditious procedures should be available to ensure that decisions are reached very quickly. To this end, the following measures could be used:
 - lodging a request by simple application;
 - allowing a court or competent authority to act on its own motion;
 - provisional measures taken without a hearing;
 - using all modern communication technology to facilitate the introduction and conduct of any proceedings, the transmission of requests and exchanges of information between courts and other competent authorities and the different parties to the proceedings;
 - allowing the court or competent authority to play an active role in conducting the case and in calling for and taking evidence;
 - preventing any party from improperly delaying emergency measures.
2. National authorities should ensure that information on emergency measures is given to the public and to those to whom a person in need of such measures may turn for help.
3. Legal aid and advice should be provided rapidly when required.
4. Courts and other competent authorities should have the power to grant decisions which are immediately enforceable.
5. Courts and other competent authorities should be given sufficient powers to ensure that their decisions are rapidly enforced.

Principle 4

In family matters the existence of an international element should not be allowed to cause delay in giving a decision. To this end, states should ensure that simple and expeditious procedures are available.

In particular the following steps, in addition to those mentioned in Principles 1 to 3, should be taken where international co-operation between the courts or other competent authorities is required:

1. Any necessary assistance should be given to persons living abroad in applying for legal aid and advice and in providing translation, where appropriate.
2. These cases should be brought before the courts or other competent authorities without delay and dealt with rapidly.
3. Any necessary additional information from abroad concerning facts or law should be obtained quickly.
4. With a view to facilitating international co-operation in family matters, states should become parties to and apply effectively international instruments providing such co-operation and should consider withdrawing their reservations to such instruments where possible.
5. Where necessary, other forms of co-operation between states should be provided to ensure that emergency measures can be taken quickly.
6. In cases where the return of a child is sought, courts and other competent authorities should:
 - make use of appropriate measures in order to trace the child;
 - give a decision whenever possible within six weeks of the receipt of the complete application by the requested authority; a decision to return the child should be enforceable.

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

RECOMMENDATION No. R (91) 11

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES CONCERNING SEXUAL EXPLOITATION, PORNOGRAPHY AND PROSTITUTION OF, AND TRAFFICKING IN, CHILDREN AND YOUNG ADULTS

*(Adopted by the Committee of Ministers on 9 September 1991
at the 461st meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the well-being and interests of children and young adults are fundamental issues for any society;

Considering that sexual exploitation of children and young adults for profit-making purposes in the form of pornography, prostitution and traffic of human beings has assumed new and alarming dimensions at national and international level;

Considering that sexual experience linked to this social phenomenon, often associated with early sexual abuse within the family or outside of it, may be detrimental to a child's and young adult's psychosocial development;

Considering that it is in the interests of member states of the Council of Europe to harmonise their national legislation on sexual exploitation of children and young adults in order to improve the co-ordination and effectiveness of action taken at national and international level with a view to tackling this problem;

Having regard to Recommendation 1065 (1987) of the Parliamentary Assembly of the Council of Europe on the traffic in children and other forms of child exploitation;

Recalling Resolution No. 3 on sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults of the 16th Conference of European Ministers of Justice (Lisbon, 1988);

Recalling Recommendation No. R (85) 4 on violence in the family, Recommendation No. R (85) 11 on the position of the victim in the framework of criminal law and procedure, Recommendation No. R (87) 20 on social reactions to juvenile delinquency and Recommendation No. R (89) 7 concerning principles on the distribution of videograms having a violent, brutal or pornographic content;

Bearing in mind the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and the European Social Charter (1961);

Bearing also in mind the United Nations Convention on the Rights of the Child (1989),

I. Recommends that the governments of member states review their legislation and practice with a view to introducing, if necessary, and implementing the following measures:

A. *General measures*

a. *Public awareness, education and information*

1. make appropriate documentation on sexual exploitation of children and young adults available to parents, persons having minors in their care and other concerned groups and associations;
2. include in the programmes of primary and secondary school education information about the dangers of sexual exploitation and abuse to which children and young adults might be exposed, and about how they may defend themselves;
3. promote and encourage programmes aimed at furthering awareness and training for those who have functions involving support and protection of children and young adults in the fields of education, health, social welfare, justice and the police force in order to enable them to identify cases of sexual exploitation and to take the necessary measures;
4. make the public aware of the devastating effects of sexual exploitation which transforms children and young adults into consumer objects and urge the general public to take part in the efforts of associations and organisations intervening in field;
5. invite the media to contribute to a general awareness of the subject and to adopt appropriate rules of conduct;
6. discourage and prevent any abuse of the picture and the voice of the child in an erotic context;

b. *Collection and exchange of information*

7. urge public and private institutions and agencies dealing with children and young adults who have been victims of any form of sexual exploitation, to keep appropriate statistical information for scientific purposes and crime policy, while respecting anonymity and confidentiality;
8. encourage co-operation between the police and all public and private organisations handling cases of sexual abuse within the family or outside of it and of various forms of sexual exploitation;

c. *Prevention, detection, assistance*

9. urge police services to give special attention to prevention, detection, and investigation of offences involving sexual exploitation of children and young adults, and allocate to them sufficient means towards that end;
10. promote and further the creation and operation of specialised public and private services for the protection of children and young adults at risk in order to prevent and detect all forms of sexual exploitation;
11. support public and private initiatives at local level to set up helplines and centres with a view to providing medical, psychological, social or legal assistance to children and young adults who are at risk or who have been victims of sexual exploitation;

d. *Criminal law and criminal procedure*

12. ensure that the rights and interests of children and young adults are safeguarded throughout proceedings while respecting the rights of the alleged offenders;
13. ensure throughout judicial and administrative proceedings confidentiality of record and the respect for privacy rights of children and young adults who have been victims of sexual exploitation by avoiding, in particular, the disclosure of any information that could lead to their identification;
14. provide for special conditions at hearings involving children who are victims or witnesses of sexual exploitation, in order to diminish the traumatising effects of such hearings and to increase the credibility of their statements while respecting their dignity;

15. provide under an appropriate scheme for compensation of children and young adults who have been victims of sexual exploitation;

16. provide for the possibility of seizing and confiscating the proceeds from offences relating to sexual exploitation of children and young adults;

B. Measures relating to pornography involving children

1. provide for appropriate sanctions taking into account the gravity of the offence committed by those involved in the production and distribution of any pornographic material involving children;

2. examine the advisability of introducing penal sanctions for mere possession of pornographic material involving children;

3. ensure, particularly through international co-operation, the detection of firms, associations or individuals, often linked with two or more countries, using children for the production of pornographic material;

4. envisage informing the public, in order to raise awareness, of the implementation of penal policy, the number of prosecutions and convictions in cases involving child pornography, while ensuring the anonymity of the children concerned and of the alleged offenders;

C. Measures relating to the prostitution of children and young adults

1. increase the material and human resources of welfare and police services and improve their working methods so that places where child prostitution may occur are regularly inspected;

2. encourage and support the setting up of mobile welfare units for the surveillance of, or establishment of contact with, children at risk, particularly street children, in order to assist them to return to their families, if possible, and, if necessary, direct them to the appropriate agencies for health care, training or education;

3. intensify efforts with a view to identifying and sanctioning those who foster or encourage the prostitution of children or young adults, or who profit from it, on the one hand, and of the customers of child prostitution, on the other;

4. create or develop special units within the police and, if necessary, improve their working methods, in order to combat procuring of children and young adults;

5. dissuade travel agencies from promoting sex tourism in any form, especially through publicity, in particular by instituting consultations between them and the public services;

6. give priority to vocational training and reintegration programmes involving children and young adults who are occasionally or habitually prostituting themselves;

D. Measures relating to the trafficking in children and young adults

1. supervise the activities of artistic, marriage and adoption agencies in order to control the movement within, or between countries, of children and young adults, to prevent the possibility that they will be led into prostitution or other forms of sexual exploitation;

2. increase surveillance by immigration authorities and frontier police in order to ensure that travel abroad by children, especially those not accompanied by their parents or their guardian, is not related to trafficking in human beings;

3. set up facilities and support those existing, in order to protect and assist the victims of traffic in children and young adults.

II. International aspects

Recommends that the governments of member states:

1. examine the advisability of signing and ratifying, if they have not done so:

— the United Nations Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others (1950);

— the Hague Convention on Jurisdiction, Applicable Law and Recognition of Decrees relating to Adoptions (1965);

— the European Convention on the Adoption of Children (1967);

— Convention No. 138 concerning Minimum Age for Admission to Employment, of the International Labour Organisation (1973);

— the United Nations Convention on the Rights of the Child (1989);

2. introduce rules on extraterritorial jurisdiction in order to allow the prosecution and punishment of nationals who have committed offences concerning sexual exploitation of children and young adults outside the national territory, or, if applicable, review existing rules to that effect, and improve international co-operation to that end;

3. increase and improve exchanges of information between countries through Interpol, in order to identify and prosecute offenders involved in sexual exploitation, and particularly in trafficking in children and young adults, or those who organise it;

4. establish links with international associations and organisations working for the welfare of children and young adults in order to benefit from data available to them and secure, if necessary, their collaboration in combating sexual exploitation;

5. take steps towards the creation of a European register of missing children.

III. *Research priorities*

Recommends that the governments of member states promote research at national and international level, in particular in the following fields:

1. nature and extent of various forms of sexual exploitation of children and young adults, especially with a cross-cultural view;

2. nature of paedophilia and factors contributing to it;

3. links between adoption and sexual exploitation;

4. links between sexual abuse within the family and prostitution;

5. characteristics, role and needs of the consumers of child prostitution and child pornography;

6. evaluation studies of vocational training and reintegration programmes concerning youth involved in prostitution;

7. structure, international networks, interconnections and earnings of the sex industry;

8. links between the sex industry and organised crime;

9. possibilities and limitations of the criminal justice system as an instrument of prevention and repression of various forms of sexual exploitation of children and young adults;

10. epidemiology, causes and consequences of sexually transmitted diseases in children and young adults, and analysis of their links with sexual abuse and exploitation.

COUNCIL OF EUROPE COMMITTEE OF MINISTERS

RECOMMENDATION No. R (95) 6

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES

ON THE APPLICATION OF THE EUROPEAN CONVENTION ON RECOGNITION AND ENFORCEMENT OF DECISIONS CONCERNING CUSTODY OF CHILDREN AND ON RESTORATION OF CUSTODY OF CHILDREN

*(Adopted by the Committee of Ministers on 7 February 1995
at the 528th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Having regard to the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, done at Luxembourg on 20 May 1980 and The Hague Convention on the Civil Aspects of International Child Abduction, done at The Hague on 25 October 1980;

Recognising that the right of access of parents is a normal corollary to the right of custody;

Realising that a delay in the repatriation of a child may occur when neither parent is able or willing to pay for the costs of the repatriation and may result in the child being placed in care until the repatriation can take place;

Noting that Principle 4 of Recommendation No. R (91) 9 on emergency measures in family matters provides that family cases should be brought before the courts or other competent authorities and dealt with without delay;

Agreeing on the need to resolve matters relating to the repatriation of children as soon as possible and in the best interests of the children themselves,

Recommends that governments of members states:

- a. sign and ratify the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children and The Hague Convention on the Civil Aspects of International Child Abduction as soon as possible if they have not already done so;
- b. take the necessary measures at a national and international level:
 - i. to improve the operation of transfrontier access to children;
 - ii. to secure the rapid return of a child in compliance with a court decision.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RECOMMENDATION No. R (98) 1

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON FAMILY MEDIATION

*(Adopted by the Committee of Ministers on 21 January 1998
at the 616th meeting of the Ministers' Deputies)*

1. The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,
2. Recognising the growing number of family disputes, particularly those resulting from separation or divorce, and noting the detrimental consequences of conflict for families and the high social and economic cost to states;
3. Considering the need to ensure the protection of the best interests and welfare of the child as enshrined in international instruments, especially taking into account problems concerning custody and access arising as a result of a separation or divorce;
4. Having regard to the development of ways of resolving disputes in a consensual manner and the recognition of the necessity to reduce conflict in the interest of all the members of the family;
5. Acknowledging the special characteristics of family disputes, namely:
 - the fact that family disputes involve persons who, by definition, will have interdependent and continued relationships;
 - the fact that family disputes arise in a context of distressing emotions and increase them;
 - the fact that separation and divorce impact on all the members of the family, especially children;
6. Referring to the European Convention on the Exercise of Children's Rights, and in particular to Article 13 of this convention, which deals with the provision of mediation or other processes to resolve disputes affecting children;
7. Taking into account the results of research into the use of mediation and experiences in this area in several countries, which show that the use of family mediation has the potential to:
 - improve communication between members of the family;
 - reduce conflict between parties in dispute;
 - produce amicable settlements;
 - provide continuity of personal contacts between parents and children;
 - lower the social and economic costs of separation and divorce for the parties themselves and states;
 - reduce the length of time otherwise required to settle conflict;
8. Emphasising the increasing internationalisation of family relationships and the very particular problems associated with this phenomenon;
9. Realising that a number of states are considering the introduction of family mediation;

10. Convinced of the need to make greater use of family mediation, a process in which a third party, the mediator, impartial and neutral, assists the parties themselves to negotiate over the issues in dispute and reach their own joint agreements,

11. Recommends the governments of member states :

i. to introduce or promote family mediation or, where necessary, strengthen existing family mediation;

ii. to take or reinforce all measures they consider necessary with a view to the implementation of the following principles for the promotion and use of family mediation as an appropriate means of resolving family disputes.

Principles of family mediation

I. *Scope of mediation*

a. Family mediation may be applied to all disputes between members of the same family, whether related by blood or marriage, and to those who are living or have lived in family relationships as defined by national law.

b. However, states are free to determine the specific issues or cases covered by family mediation.

II. *Organisation of mediation*

a. Mediation should not, in principle, be compulsory.

b. States are free to organise and deliver mediation as they see fit, whether through the public or private sector.

c. Irrespective of how mediation is organised and delivered, states should see to it that there are appropriate mechanisms to ensure the existence of:

- procedures for the selection, training and qualification of mediators;
- standards to be achieved and maintained by mediators.

III. *Process of mediation*

States should ensure that there are appropriate mechanisms to enable the process of mediation to be conducted according to the following principles:

- i. the mediator is impartial between the parties;
- ii. the mediator is neutral as to the outcome of the mediation process;
- iii. the mediator respects the point of view of the parties and preserves the equality of their bargaining positions;
- iv. the mediator has no power to impose a solution on the parties;
- v. the conditions in which family mediation takes place should guarantee privacy;
- vi. discussions in mediation are confidential and may not be used subsequently, except with the agreement of the parties or in those cases allowed by national law;
- vii. the mediator should, in appropriate cases, inform the parties of the possibility for them to use marriage counselling or other forms of counselling as a means of resolving their marital or family problems;
- viii. the mediator should have a special concern for the welfare and best interests of the children, should encourage parents to focus on the needs of children and should remind parents of their prime responsibility relating to the welfare of their children and the need for them to inform and consult their children;
- ix. the mediator should pay particular regard to whether violence has occurred in the past or may occur in the future between the parties and the effect this may have on the parties' bargaining positions, and should consider whether in these circumstances the mediation process is appropriate;
- x. the mediator may give legal information but should not give legal advice. He or she should, in appropriate cases, inform the parties of the possibility for them to consult a lawyer or any other relevant professional person.

IV. *The status of mediated agreements*

States should facilitate the approval of mediated agreements by a judicial authority or other competent authority where parties request it, and provide mechanisms for enforcement of such approved agreements, according to national law.

V. *Relationship between mediation and proceedings before the judicial or other competent authority*

- a. States should recognise the autonomy of mediation and the possibility that mediation may take place before, during or after legal proceedings.
- b. States should set up mechanisms which would:
 - i. enable legal proceedings to be interrupted for mediation to take place;
 - ii. ensure that in such a case the judicial or other competent authority retains the power to make urgent decisions in order to protect the parties or their children, or their property;
 - iii. inform the judicial or other competent authority whether or not the parties are continuing with mediation and whether the parties have reached an agreement.

VI. *Promotion of and access to mediation*

- a. States should promote the development of family mediation, in particular through information programmes given to the public to enable better understanding about this way of resolving disputes in a consensual manner.
- b. States are free to establish methods in individual cases to provide relevant information on mediation as an alternative process to resolve family disputes (for example, by making it compulsory for parties to meet with a mediator), and by this enable the parties to consider whether it is possible and appropriate to mediate the matters in dispute.
- c. States should also endeavour to take the necessary measures to allow access to family mediation, including international mediation, in order to contribute to the development of this way of resolving family disputes in a consensual manner.

VII. *Other means of resolving disputes*

States may examine the desirability of applying, in an appropriate manner, the principles for mediation contained in this recommendation, to other means of resolving disputes.

VIII. *International matters*

- a. States should consider setting up mechanisms for the use of mediation in cases with an international element when appropriate, especially in all matters relating to children, and particularly those concerning custody and access when the parents are living or expect to live in different states.
- b. International mediation should be considered as an appropriate process in order to enable parents to organise or reorganise custody and access, or to resolve disputes arising following decisions having been made in relation to those matters. However, in the event of an improper removal or retention of the child, international mediation should not be used if it would delay the prompt return of the child.
- c. All the principles outlined above are applicable to international mediation.
- d. States should, as far as possible, promote co-operation between existing services dealing with family mediation with a view to facilitating the use of international mediation.
- e. Taking into account the particular nature of international mediation, international mediators should be required to undergo specific training.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RECOMMENDATION No. R (98) 8

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON CHILDREN'S PARTICIPATION IN FAMILY AND SOCIAL LIFE

*(Adopted by the Committee of Ministers on 18 September 1998
at the 641st meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is the achievement of greater unity among its members, for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Having regard to the Convention for the Protection of Human Rights and Fundamental Freedoms and its system of effective international protection of fundamental rights and freedoms;

Bearing in mind the European Convention on the Exercise of Children's Rights;

Bearing in mind the Vienna Declaration and Plan of Action on Combating Racism, Xenophobia, anti-Semitism and Intolerance of the Summit of Heads of State and Government of the Council of Europe in Vienna in 1993;

Having regard to the following recommendations of the Parliamentary Assembly of the Council of Europe: Recommendation 874 (1979) on a European charter on the rights of the child; Recommendation 1019 (1985) on the participation of young people in political and institutional life; Recommendation 1121 (1990) on the rights of children; and Recommendation 902 (1980) on youth co-operation in Europe;

Bearing in mind its own Recommendation No. R (84) 4 on parental responsibilities, Recommendation No. R (87) 6 on foster families, Recommendation No. R (83) 13 on the role of secondary school in preparing young people for life, Recommendation No. R (94) 14 on coherent and integrated family policies, and Recommendation No. R (97) 3 on youth participation and the future of civil society;

Bearing in mind Resolution 237 (1992) of the Standing Conference of Local and Regional Authorities of Europe on the Charter on the Participation of Young People in Municipal and Regional Life;

Taking into account the great importance of the United Nations Convention on the Rights of the Child, reflected by the fact that all Council of Europe member states have now ratified it;

Bearing in mind the diversity and richness of work already undertaken by the Council of Europe relating to children's participation in family and social life;

Conscious of the increasing importance of children's participation in Council of Europe member states and the growing and varied experience of such participation;

Recalling Article 5 of the United Nations Convention on the Rights of the Child, whereby "States Parties shall respect the responsibilities, rights and duties of parents";

Bearing in mind that children are full members of both today's and tomorrow's society;

Recognising the importance of the parent-child relationship and of an adequate family and social environment for the wellbeing of children;

Noting the need to promote from early childhood onwards a policy of equality between girls and boys, and women and men;

On the one hand being aware that the child's participation, in his or her own interest, also involves tasks and responsibilities that are appropriate to his or her age and capacities, and on the other hand being convinced that children should not be overburdened by duties which are beyond them and/or which upset them,

Affirms the following principles relating to the participation of children in family and social life:

1. every child should have the opportunity to participate without any kind of discrimination;
2. participation is essential for bringing the United Nations Convention on the Rights of the Child into life;
3. peace and friendship within and between families, societies and nations, including the concepts of non-discrimination, non-violence and tolerance are essential for ensuring respect for the individuality and dignity of the child, and for enabling the realisation of the child's best interests;
4. participation is a decisive factor for securing social cohesion and for living in a democracy in accordance with the values of a multicultural society and the principles of tolerance;
5. participation of children is crucial in influencing the conditions of their own lives, in that participation is not only involvement in institutions and decision-making but above all a general pattern of democracy relevant to all areas of family and social life;
6. participation is a necessary process in the development of the child;
7. participation in family life in various forms and degrees is possible and desirable in all stages of childhood;
8. participation in family life is a form of dialogue which develops the ability to negotiate and resolve conflicts peacefully;
9. participation in social life as a form of practising citizenship provides the opportunity for learning individual and collective responsibilities;
10. children from socially excluded families should have the possibility of participating sufficiently in the economic resources of society;
11. the participation of the child should not serve as a pretext for crushing the child with burdens and responsibilities it cannot assume because of its age;

Recommends governments of member states to promote and support children's participation in family and social, and particularly school, life and to identify and to remove barriers to this participation according to the principles and recommended measures appearing in the appendix.

Measures for the promotion of children's participation in family and social life

Information

1. Make information on participation available and accessible, in particular information on different forms of participation and related legal instruments.
2. Relate such information on children's participation to the possibilities of different types of participation.
3. Make information available in a form which is related to the child's age and capacity to understand.
4. Make information available to parents, as well as to all bodies and institutions working with children, concerning the implementation of different forms of participation.
5. Disseminate information concerning the experiences of children and families in exercising participation.
6. Enable schools, residential and day care centres, youth organisations, family associations and the media to play their role in developing concepts and in helping children to gain access to information.
7. Ensure that public authorities, municipalities, educational institutions, children's associations and institutions for children living in residential care provide information on participation both by traditional means and through new information technologies. Such information should illustrate how to participate in practical ways, and it should be made regularly available to the children concerned.

Education

8. Ensure that school curricula at all levels promote the acquisition of the skills and knowledge which children need to participate fully in family and social life.
9. Encourage educational, day care and residential care institutions for children to create possibilities for children to make their opinions heard on matters concerning them, and ensure that their views are taken into account in the decision-making processes in these institutions.

Out-of-school activities

10. Offer the possibility to all children to be involved in out-of-school activities that allow them to experience participation, such as appropriate recreational, sporting and cultural activities.

Children's associations

11. Support children's associations by providing the legal framework and resources, where possible, for the establishment and membership of children's associations, thus recognising the child's right to associate in organisations promoting his or her interests. Within these organisations children should have the possibility of experiencing participation.

Participation in public life

12. Encourage local authorities and municipalities to promote children's participation, as well as parent's and children's participation, in as many areas as possible of municipal life, as a way to develop community responsibility, and make citizenship a real-life experience for children.
13. Encourage the development of different forms of children's participation at the local, regional and national levels.

Work

14. Ensure that any form of work authorised for children be so organised as to promote their effective participation in family and social life, and contribute to their training and development, it being understood that illegal work by children is unacceptable.

Training

15. Develop interdisciplinary training models and programmes for professionals working or dealing with children and families. Target groups should include teachers, judges, social workers, nurses and medical practitioners.

Media

16. Encourage the media to place greater emphasis on the production of information and educational programmes geared to promoting the participation of children in family and social life.
17. Encourage a more active role for children in participating in the programming of media products, both those addressed to them and those related to them, as well as in producing media themselves.
18. Promote the access and the familiarisation of children, without discrimination, to the new technologies and to the new communication services, and encourage the use of interactive means for the exchange of information on good practice in the field of child participation.

Social cohesion

19. Take into account specific language and cultural needs of children when ensuring participation in family and social life.
20. Take into account the specific needs of children with disabilities when ensuring participation in family and social life.
21. Heighten public awareness about the importance of promoting social integration and participation of children at risk of social exclusion, such as children with behavioural problems, juvenile offenders, drug addicts, and other children who are in difficult circumstances

Research

22. Invite academic and research institutions as well as non-governmental organisations to develop research and programme evaluation to improve children's participation, and to produce, test, evaluate and distribute instruments illustrating how to develop and improve participation skills.

Legal framework

23. Provide for the appointment of an ombudsperson for children (or another similar structure) to further safeguard the interests of children.

European co-operation

24. Exchange information between and within member states on models, skills and knowledge concerning children's participation. Governmental and non-governmental bodies should create pan-European networks and exchange schemes for children and adults with examples of good practice.
25. Promote and support initiatives that make it possible for children to participate in international meetings and other international programmes, both with other children and/or together with adults.

**COUNCIL OF EUROPE
COMMITTEE OF MINISTERS**

RECOMMENDATION No. R (99) 4¹

**OF THE COMMITTEE OF MINISTERS TO MEMBER STATES
ON PRINCIPLES CONCERNING THE LEGAL PROTECTION
OF INCAPABLE ADULTS**

*(Adopted by the Committee of Ministers on 23 February 1999
at the 660th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Bearing in mind the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10 December 1948;

Bearing in mind the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights of 16 December 1966;

Bearing in mind the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950;

Bearing in mind the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine of 4 April 1997;

Considering that the aim of the Council of Europe is to achieve a greater unity between its members, in particular by promoting the adoption of common rules in legal matters;

Noting that demographic and medical changes have resulted in an increased number of people who, although of full age, are incapable of protecting their interests by reason of an impairment or insufficiency of their personal faculties;

Noting also that social changes have resulted in an increased need for adequate legislation to ensure the protection of such people;

Noting that legislative reforms on the protection, by representation or assistance, of incapable adults have been introduced or are under consideration in a number of member states and that these reforms have common features;

¹ When adopting this decision, the Representative of Ireland indicated that, in accordance with Article 10.2c of the Rules of Procedure for the meetings of the Ministers' Deputies, he reserved the right of his Government to comply or not with principles 5 and 6 of the Recommendation.

When adopting this decision, the Representative of France indicated that, in accordance with Article 10.2c of the Rules of Procedure for the meetings of the Ministers' Deputies, the following reservation should be made: France considers that the application of principle 23, para. 3 should be subject to a request by the person concerned.

Recognising, however, that wide disparities in the legislation of member states in this area still exist;

Convinced of the importance in this context of respect for human rights and for the dignity of each person as a human being,

Recommends the governments of member states to take or reinforce, in their legislation and practice, all measures they consider necessary with a view to the implementation of the following principles:

PRINCIPLES

Part I – Scope of application

1. The following principles apply to the protection of adults who, by reason of an impairment or insufficiency of their personal faculties, are incapable of making, in an autonomous way, decisions concerning any or all of their personal or economic affairs, or understanding, expressing or acting upon such decisions, and who consequently cannot protect their interests.
2. The incapacity may be due to a mental disability, a disease or a similar reason.
3. The principles apply to measures of protection or other legal arrangements enabling such adults to benefit from representation or assistance in relation to those affairs.
4. In these principles "adult" means a person who is treated as being of full age under the applicable law on capacity in civil matters.
5. In these principles "intervention in the health field" means any act performed professionally on a person for reasons of health. It includes, in particular, interventions for the purposes of preventive care, diagnosis, treatment, rehabilitation or research.

Part II – Governing principles

Principle 1 – Respect for human rights

In relation to the protection of incapable adults the fundamental principle, underlying all the other principles, is respect for the dignity of each person as a human being. The laws, procedures and practices relating to the protection of incapable adults shall be based on respect for their human rights and fundamental freedoms, taking into account any qualifications on those rights contained in the relevant international legal instruments.

Principle 2 – Flexibility in legal response

1. The measures of protection and other legal arrangements available for the protection of the personal and economic interests of incapable adults should be sufficient, in scope or flexibility, to enable a suitable legal response to be made to different degrees of incapacity and various situations.
2. Appropriate measures of protection or other legal arrangements should be available in cases of emergency.

3. The law should provide for simple and inexpensive measures of protection or other legal arrangements.
4. The range of measures of protection should include, in appropriate cases, those which do not restrict the legal capacity of the person concerned.
5. The range of measures of protection should include those which are limited to one specific act without requiring the appointment of a representative or a representative with continuing powers.
6. Consideration should be given to the inclusion of measures under which the appointed person acts jointly with the adult concerned, and of measures involving the appointment of more than one representative.
7. Consideration should be given to the need to provide for, and regulate, legal arrangements which a person who is still capable can take to provide for any subsequent incapacity.
8. Consideration should be given to the need to provide expressly that certain decisions, particularly those of a minor or routine nature relating to health or personal welfare, may be taken for an incapable adult by those deriving their powers from the law rather than from a judicial or administrative measure.

Principle 3 – Maximum preservation of capacity

1. The legislative framework should, so far as possible, recognise that different degrees of incapacity may exist and that incapacity may vary from time to time. Accordingly, a measure of protection should not result automatically in a complete removal of legal capacity. However, a restriction of legal capacity should be possible where it is shown to be necessary for the protection of the person concerned.
2. In particular, a measure of protection should not automatically deprive the person concerned of the right to vote, or to make a will, or to consent or refuse consent to any intervention in the health field, or to make other decisions of a personal character at any time when his or her capacity permits him or her to do so.
3. Consideration should be given to legal arrangements whereby, even when representation in a particular area is necessary, the adult may be permitted, with the representative's consent, to undertake specific acts or acts in a specific area.
4. Whenever possible the adult should be enabled to enter into legally effective transactions of an everyday nature.

Principle 4 – Publicity

The disadvantage of automatically giving publicity to measures of protection or similar legal arrangements should be weighed in the balance against any protection which might be afforded to the adult concerned or to third parties.

Principle 5 – Necessity and subsidiarity

1. No measure of protection should be established for an incapable adult unless the measure is necessary, taking into account the individual circumstances and the needs of the person concerned. A measure of protection may be established, however, with the full and free consent of the person concerned.

2. In deciding whether a measure of protection is necessary, account should be taken of any less formal arrangements which might be made, and of any assistance which might be provided by family members or by others.

Principle 6 – Proportionality

1. Where a measure of protection is necessary it should be proportional to the degree of capacity of the person concerned and tailored to the individual circumstances and needs of the person concerned.
2. The measure of protection should interfere with the legal capacity, rights and freedoms of the person concerned to the minimum extent which is consistent with achieving the purpose of the intervention.

Principle 7 – Procedural fairness and efficiency

1. There should be fair and efficient procedures for the taking of measures for the protection of incapable adults.
2. There should be adequate procedural safeguards to protect the human rights of the persons concerned and to prevent possible abuses.

Principle 8 – Paramountcy of interests and welfare of the person concerned

1. In establishing or implementing a measure of protection for an incapable adult the interests and welfare of that person should be the paramount consideration.
2. This principle implies, in particular, that the choice of any person to represent or assist an incapable adult should be governed primarily by the suitability of that person to safeguard and promote the adult's interests and welfare.
3. This principle also implies that the property of the incapable adult should be managed and used for the benefit of the person concerned and to secure his or her welfare.

Principle 9 – Respect for wishes and feelings of the person concerned

1. In establishing or implementing a measure of protection for an incapable adult the past and present wishes and feelings of the adult should be ascertained so far as possible, and should be taken into account and given due respect.
2. This principle implies, in particular, that the wishes of the adult as to the choice of any person to represent or assist him or her should be taken into account and, as far as possible, given due respect.
3. It also implies that a person representing or assisting an incapable adult should give him or her adequate information, whenever this is possible and appropriate, in particular concerning any major decision affecting him or her, so that he or she may express a view.

Principle 10 – Consultation

In the establishment and implementation of a measure of protection there should be consultation, so far as reasonable and practicable, with those having a close interest in the welfare of the adult concerned, whether as representative, close family member or otherwise. It is for national law to determine which persons should be consulted and the effects of consultation or its absence.

Part III – Procedural principles

Principle 11 – Institution of proceedings

1. The list of those entitled to institute proceedings for the taking of measures for the protection of incapable adults should be sufficiently wide to ensure that measures of protection can be considered in all cases where they are necessary. It may, in particular, be necessary to provide for proceedings to be initiated by a public official or body, or by the court or other competent authority on its own motion.
2. The person concerned should be informed promptly in a language, or by other means, which he or she understands of the institution of proceedings which could affect his or her legal capacity, the exercise of his or her rights or his or her interests unless such information would be manifestly without meaning to the person concerned or would present a severe danger to the health of the person concerned.

Principle 12 – Investigation and assessment

1. There should be adequate procedures for the investigation and assessment of the adult's personal faculties.
2. No measure of protection which restricts the legal capacity of an incapable adult should be taken unless the person taking the measure has seen the adult or is personally satisfied as to the adult's condition and an up-to-date report from at least one suitably qualified expert has been submitted. The report should be in writing or recorded in writing.

Principle 13 – Right to be heard in person

The person concerned should have the right to be heard in person in any proceedings which could affect his or her legal capacity.

Principle 14 – Duration, review and appeal

1. Measures of protection should, whenever possible and appropriate, be of limited duration. Consideration should be given to the institution of periodical reviews.
2. Measures of protection should be reviewed on a change of circumstances and, in particular, on a change in the adult's condition. They should be terminated if the conditions for them are no longer fulfilled.
3. There should be adequate rights of appeal.

Principle 15 – Provisional measures in case of emergency

If a provisional measure is needed in a case of emergency, principles 11 to 14 should be applicable as far as possible according to the circumstances.

Principle 16 – Adequate control

There should be adequate control of the operation of measures of protection and of the acts and decisions of representatives.

Principle 17 – Qualified persons

1. Steps should be taken with a view to providing an adequate number of suitably qualified persons for the representation and assistance of incapable adults.
2. Consideration should be given, in particular, to the establishment or support of associations or other bodies with the function of providing and training such people.

Part IV – The role of representatives

Principle 18 – Control of powers arising by operation of law

1. Consideration should be given to the need to ensure that any powers conferred on any person by operation of law, without the intervention of a judicial or administrative authority, to act or take decisions on behalf of an incapable adult are limited and their exercise controlled.
2. The conferment of any such powers should not deprive the adult of legal capacity.
3. Any such powers should be capable of being modified or terminated at any time by a measure of protection taken by a judicial or administrative authority.
4. Principles 8 to 10 apply to the exercise of such powers as they apply to the implementation of measures of protection.

Principle 19 – Limitation of powers of representatives

1. It is for national law to determine which juridical acts are of such a highly personal nature that they can not be done by a representative.
2. It is also for national law to determine whether decisions by a representative on certain serious matters should require the specific approval of a court or other body.

Principle 20 – Liability

1. Representatives should be liable, in accordance with national law, for any loss or damage caused by them to incapable adults while exercising their functions.
2. In particular, the laws on liability for wrongful acts, negligence or maltreatment should apply to representatives and others involved in the affairs of incapable adults.

Principle 21 – Remuneration and expenses

1. National law should address the questions of the remuneration and the reimbursement of expenses of those appointed to represent or assist incapable adults.

2. Distinctions may be made between those acting in a professional capacity and those acting in other capacities, and between the management of personal matters of the incapable adult and the management of his or her economic matters.

Part V – Interventions in the health field

Principle 22 – Consent

1. Where an adult, even if subject to a measure of protection, is in fact capable of giving free and informed consent to a given intervention in the health field, the intervention may only be carried out with his or her consent. The consent should be solicited by the person empowered to intervene.

2. Where an adult is not in fact capable of giving free and informed consent to a given intervention, the intervention may, nonetheless, be carried out provided that:

– it is for his or her direct benefit, and

authorisation has been given by his or her representative or by an authority or a person or body provided for by law.

3. Consideration should be given to the designation by the law of appropriate authorities, persons or bodies for the purpose of authorising interventions of different types, when adults who are incapable of giving free and informed consent do not have a representative with appropriate powers. Consideration should also be given to the need to provide for the authorisation of a court or other competent body in the case of certain serious types of intervention.

4. Consideration should be given to the establishment of mechanisms for the resolution of any conflicts between persons or bodies authorised to consent or refuse consent to interventions in the health field in relation to adults who are incapable of giving consent.

Principle 23 – Consent (alternative rules)

If the government of a member state does not apply the rules contained in paragraphs 1 and 2 of Principle 22, the following rules should be applicable:

Where an adult is subject to a measure of protection under which a given intervention in the health field can be carried out only with the authorisation of a body or a person provided for by law, the consent of the adult should nonetheless be sought if he or she has the capacity to give it.

2. Where, according to the law, an adult is not in a position to give free and informed consent to an intervention in the health field, the intervention may nonetheless be carried out if:

– it is for his or her direct benefit, and

– authorisation has been given by his or her representative or by an authority or a person or body provided for by law.

3. The law should provide for remedies allowing the person concerned to be heard by an independent official body before any important medical intervention is carried out.

Principle 24 – Exceptional cases

1. Special rules may be provided by national law, in accordance with relevant international instruments, in relation to interventions which, because of their special nature, require the provision of additional protection for the person concerned.
2. Such rules may involve a limited derogation from the criterion of direct benefit provided that the additional protection is such as to minimise the possibility of any abuse or irregularity.

Principle 25 – Protection of adults with a mental disorder

Subject to protective conditions prescribed by law, including supervisory, control and appeal procedures, an adult who has a mental disorder of a serious nature may be subjected, without his or her consent, to an intervention aimed at treating his or her mental disorder only where, without such treatment, serious harm is likely to result to his or her health.

*Principle 26 – Permissibility of intervention
in emergency situation*

When, because of an emergency situation, the appropriate consent or authorisation cannot be obtained, any medically necessary intervention may be carried out immediately for the benefit of the health of the person concerned.

*Principle 27 – Applicability of certain principles
applying to measures of protection*

1. Principles 8 to 10 apply to any intervention in the health field concerning an incapable adult as they apply to measures of protection.
2. In particular, and in accordance with principle 9, the previously expressed wishes relating to a medical intervention by a patient who is not, at the time of the intervention, in a state to express his or her wishes should be taken into account.

Principle 28 – Permissibility of special rules on certain matters

Special rules may be provided by national law, in accordance with relevant international instruments, in relation to interventions which are necessary in a democratic society in the interest of public safety, for the prevention of crime, for the protection of public health or for the protection of the rights and freedom of others.

**COUNCIL OF EUROPE
COMMITTEE OF MINISTERS**

RECOMMENDATION No. R (99) 7¹

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES

**ON THE APPLICATION OF THE EUROPEAN CONVENTION
ON RECOGNITION AND ENFORCEMENT OF DECISIONS CONCERNING
CUSTODY OF CHILDREN AND ON RESTORATION
OF CUSTODY OF CHILDREN**

*(Adopted by the Committee of Ministers on 23 February 1999
at the 660th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Having regard to the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, done at Luxembourg on 20 May 1980 ("the European Convention") and the Hague Convention on the Civil Aspects of International Child Abduction, done at The Hague on 25 October 1980 ("the Hague Convention");

Recognising the right to a fair hearing as guaranteed by paragraph 1 of Article 6 of the European Convention on Human Rights;

Agreeing that, in cases concerning the habitual residence of a child or contact with a child, legal assistance may have to be provided in order to ensure this right to a fair hearing;

Realising that, in addition to legal assistance in such cases, applicants who apply to a central authority under the European Convention shall not be required to defray any expenses in respect of measures taken by the central authorities under paragraph 1 of Article 5 of this convention;

Recommends that governments of member states:

- a.* sign and ratify the European Convention and the Hague Convention as soon as possible if they have not already done so;
- b.* sign and ratify these conventions without any reservation or withdraw any reservation, in particular to Articles 8 and 9 of the European Convention, and to Article 26 of the Hague Convention;
- c.* make, whenever possible, the decision concerning recognition and enforcement within a period of six weeks from the date of commencement of the proceedings before the judicial authority;

¹ When adopting this decision, the Representative of Ireland indicated that, in accordance with Article 10.2c of the Rules of Procedure for the meetings of the Ministers' Deputies, he reserved the right of his Government to comply or not with section b. of the Recommendation.

d ensure that, in compliance with paragraph 3 of Article 5 of the European Convention, all costs, in particular including costs of appeals, with the only exception of the costs directly linked with the repatriation of the child, shall be borne by the state addressed.

**COUNCIL OF EUROPE
COMMITTEE OF MINISTERS**

**Recommendation No. R (99) 18
of the Committee of Ministers to member States
on the avoidance and reduction of statelessness**

*(Adopted by the Committee of Ministers on 15 September 1999
at the 679th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Recognising the negative impact of statelessness on individuals and the problems that statelessness creates for States;

Convinced, therefore, of the need to avoid and reduce, as far as possible, cases of statelessness;

Agreeing that, in matters concerning nationality, account should be taken both of the legitimate interests of States and those of individuals;

Recalling that neither States nor individuals should benefit from the misuse of nationality laws;

Recalling Recommendation 87 (1955) on statelessness adopted by the Parliamentary Assembly of the Council of Europe at its 24th session on 25 October 1955;

Having regard to and taking into account the relevant international instruments in this field and, in particular, the 1930 Hague Protocol Relating to Certain Cases of Statelessness, the 1954 United Nations Convention Relating to the Status of Stateless Persons, the 1957 United Nations Convention on the Status of Married Women, the 1961 United Nations Convention on the Reduction of Statelessness, the 1966 International Covenant on Civil and Political Rights, the 1966 International Convention on the Elimination of All Forms of Racial Discrimination, the 1973 Convention to reduce the number of cases of statelessness of the International Commission on Civil Status, the 1979 Convention on the Elimination of All Forms of Discrimination against Women and the 1989 United Nations Convention on the Rights of the Child;

Taking into account the importance of the principles and rules of the 1997 European Convention on Nationality (European Treaty Series n° 166) towards the avoidance and reduction of statelessness;

Realising the need for further measures, both at national and international levels, to avoid and reduce cases of statelessness;

Hoping that as many member States as possible will soon sign and ratify the 1997 European Convention on Nationality,

1. Recommends governments of member States to avoid and reduce statelessness and to this end that:

1.1. they be guided by and act in conformity with the principles and rules which aim at avoiding and reducing statelessness and which are contained in the above mentioned international instruments;

1.2. laws and practices prevent the creation of and provide for the elimination of situations of statelessness;

1.3. they promote the avoidance of statelessness through co-operation with all States;

1.4. they apply in particular the following principles and provisions:

1. *Principles based on the European Convention on Nationality which have a special relevance to the avoidance and reduction of statelessness*

a. Laws and administrative practices relating to the acquisition, retention, loss, recovery or certification of nationality should not contain distinctions which amount to discrimination on the grounds of sex, religion, race, colour or national or ethnic origin.

b. Access to the nationality of a State should be possible whenever a person has a genuine and effective link with that State, in particular through birth, descent or residence.

c. Nationals should not be arbitrarily deprived of their nationality. Nationals who are deprived of their nationality, renounce or otherwise lose their nationality should not thereafter become stateless.

d. The acquisition of nationality by stateless persons should be facilitated and not subject to unreasonable conditions.

e. States should endeavour to regulate matters relating to statelessness, where appropriate and in particular in cases of state succession, by international agreement.

f. In the application and interpretation of national legislation, account should be taken of the consequences of the relevant corresponding provisions of the legislation and of the practice of other States concerned, in order to avoid statelessness.

II. *Provisions aiming at the avoidance and reduction of cases of statelessness*

A. *Avoiding and reducing statelessness at birth*

a. Each State should provide for its nationality to be acquired *ex lege* by children one of whose parents possesses, at the time of birth of these children, its nationality.

Exceptions made with regard to children born abroad should not lead to situations of statelessness.

b. Each State should ensure that its legislation provides for the acquisition of its nationality by children born on its territory who would otherwise be stateless.

B. *Facilitating the acquisition of nationality by stateless persons*

Each State should facilitate the acquisition of its nationality by stateless persons lawfully and habitually resident on its territory, and in particular each State should:

a. reduce the required period of residence in relation to the normal period of residence required;

b. not require more than an adequate knowledge of one of its official languages, whenever this is provided for by the internal law of the state;

c. ensure that procedures be easily accessible, not subject to undue delay and available on payment of reduced fees;

d. ensure that offences, when they are relevant for the decision concerning the acquisition of nationality, do not unreasonably prevent stateless persons seeking the nationality of a State.

C. *Avoiding statelessness as a consequence of loss of nationality*

a. Each State should ensure that the renunciation of its nationality will not take place without the possession, actual acquisition or guarantee of acquisition of another nationality. Where another nationality is not acquired or possessed, States should provide that the renunciation is without effect.

b. When a State requires persons to lose their previous nationality in order to acquire its nationality, this State should grant its nationality, even if the previous one is not immediately lost. The States concerned, if necessary, should agree on the modalities of the application of this provision.

c. In order to avoid, as far as possible, situations of statelessness, a State should not necessarily deprive of its nationality persons who have acquired its nationality by fraudulent conduct, false information or concealment of any relevant fact. To this effect, the gravity of the facts, as well as other relevant circumstances, such as the genuine and effective link of these persons with the state concerned, should be taken into account;

2. Instructs the Secretary General of the Council of Europe to transmit this Recommendation to the States parties to the European Convention on Nationality which are not members of the Council of Europe.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

**Recommendation Rec(2001)16
of the Committee of Ministers to member states
on the protection of children against
sexual exploitation**

*(Adopted by the Committee of Ministers
on 31 October 2001
at the 771st meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Determined to contribute effectively to the common goal of affording children adequate protection against sexual exploitation committed by anybody, especially by those who are or manage to be in close contact with them or who have authority over them;

Recalling its Recommendation No R (91) 11 concerning sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults;

Observing that the sexual exploitation of children in the form of pornography, prostitution, sexual slavery, sexual tourism and trafficking in human beings is destructive of a child's health and psychosocial development;

Considering that this exploitation has taken on worrying dimensions at both national and international level and that preventing and combating it require international co-operation;

Considering that the well-being and best interest of children are fundamental values shared by all member states and must be promoted without any discrimination;

Considering that experiences linked to sexual exploitation are detrimental to a child's health and psychosocial development;

Aware that children do not always experience the benefit of adequate protection, in particular against sexual exploitation;

Considering that sexual exploitation is linked, *inter alia*, with neglect and physical, psychological and sexual abuse, within or outside the family, as well as with illegal adoptions and certain social phenomena that can make children more vulnerable;

Recognising the role that advertising and the media, particularly the Internet, can play, in the spreading as well as in the prevention of this phenomenon;

Considering that it is the responsibility and in the interest of Council of Europe member states actively to work together to co-ordinate and reinforce their national and international actions to deal with this problem;

Bearing in mind the Convention for the Protection of Human Rights and Fundamental Freedoms (1950), the European Social Charter (1961) and the Convention on the Exercise of Children's Rights (1996);

Also bearing in mind the United Nations Convention on the Rights of the Child, especially Article 34 thereof, which requires states to take all appropriate national, bilateral and multilateral measures to protect children from sexual exploitation, the optional Protocol on the sale of children, child prostitution and child pornography, the additional Protocol to the United Nations Convention against Transnational Organized Crime on the prevention, suppression and punishment of trafficking in persons, especially women and children, as well as ILO Convention No. 182 on the worst forms of child labour;

Recalling Council of Europe Parliamentary Assembly Recommendations 1065 (1987) on the traffic in children and other forms of child exploitation; 1121 (1990) on the rights of children; 1286 (1996) on a European strategy for children; 1336 (1997) on combating child labour exploitation as a matter of priority; 1371 (1998) on abuse and neglect of children as well as Resolution 1099 (1996) on the sexual exploitation of children;

Bearing in mind recommendations of the Committee of Ministers of the Council of Europe No. R (79) 17 concerning the protection of children against ill-treatment; No. R (85) 4 on violence in the family; No. R (85) 11 on the position of the victim within the framework of criminal law and procedure; No. R (87) 21 on assistance to victims and the prevention of victimisation; No. R (89) 7 concerning principles on the distribution of videograms having a violent, brutal or pornographic content; No. R (90) 2 on social measures concerning violence within the family; No. R (93) 2 on the medico-social aspects of child abuse; No. (97) 13 concerning intimidation of witnesses and the rights of the defence; and in particular Recommendation No. R (2000) 11 on action against trafficking in human beings for the purpose of sexual exploitation;

Recalling the Convention on cyber-crime, especially Article 9 thereof,

Recommends that member states' governments ensure that effective measures are taken to protect children against sexual exploitation, review their legislation and practice in the light of the principles contained in the present recommendation and ensure that their implementation is followed closely, assessed on a permanent basis and accompanied by adequate technical assistance.

I. Aims and definitions

1. The present recommendation has the following aims:

- a. promoting the well-being and best interest of any child and his or her health and physical and mental, moral and social development to assist him or her in leading a life free from sexual abuse, violence and exploitation;
- b. planning and implementing measures, policies and practices with regard to the fight against sexual exploitation which take into consideration the views and experiences of children themselves;
- c. promoting co-operation among member states so that they may more effectively address the various aspects of sexual exploitation nationally and internationally;
- d. eliminating child pornography, child prostitution and trafficking in children, committed by natural or legal persons on an individual or organised basis, within the country or outside of it, by nationals or residents, with or without the child's consent.

2. For the purposes of this recommendation the following definitions are employed:

a. a child is any person under the age of 18;

b. the term *sexual exploitation* is a comprehensive term which mainly includes: child pornography, prostitution and sexual slavery as well as trafficking in children for such purposes;

c. the term *child pornography* shall include material that visually depicts a child engaged in sexually explicit conduct, a person appearing to be a child engaged in sexually explicit conduct or realistic images representing a child engaged in sexually explicit conduct. Child pornography includes the following conducts committed intentionally and without right, by any means:

- producing child pornography for the purpose of its distribution;
- offering or making available child pornography;
- distributing or transmitting child pornography;
- procuring child pornography for oneself or for another;
- possessing child pornography.

d. the term *child prostitution* means offering, obtaining, providing, procuring or using a child for sexual activities for remuneration or any other kind of consideration;

e. the term *trafficking* in children includes recruiting, transporting, transferring, harbouring, delivering, receiving or selling of children for purposes of sexual exploitation;

3. No provision in this recommendation shall prevent member states from applying rules more favourable to the promotion of the protection of children against sexual exploitation.

II. General measures

a. Public awareness, education and information

4. Bring this recommendation, by all appropriate means, to the attention of all relevant public and private bodies, (in particular politicians, police and judicial authorities, diplomatic missions, migration authorities, professionals in the social, medical and education fields and non-governmental organisations and the media).

5. Appoint an independent, competent and easily accessible individual or agency to promote the rights of all children and, in particular, to raise public awareness about the sexual exploitation of children.

6. Making information on sexual exploitation, its nature and its devastating effects available to the public and raising public awareness that the sexual exploitation of children in all its forms is a criminal offence that will be prosecuted.

7. Promote and organise programmes aimed at furthering awareness and training for those who are responsible for children in the fields of education, health, social welfare, justice as well as law enforcement agencies in order to enable them to identify cases of sexual exploitation and to take the necessary measures.

8. Include in the programmes of primary and secondary school education information about the risks of sexual exploitation and abuse to which children might be exposed, and about how they may defend themselves.

9. Make available to children who are out of school information on the risk of sexual exploitation, the variety of forms it may take and the ways to protect themselves.

b. Collection and exchange of information

10. Promote the collection of information in all sectors and across all agencies on the nature and prevalence of sexual exploitation of children on a national basis.

11. Establish a national mechanism to provide regular information on the best practices and most effective measures to prevent, combat and deal with the effects of sexual exploitation of children.

12. Promote international co-operation in the exchange of information, knowledge and expertise.

13. Identify areas in which technical assistance and expertise in the development of appropriate measures for preventing, combating and addressing the effects of sexual exploitation of children are particularly necessary.

c. Prevention, identification and assistance

14. Develop and financially support a multi-agency and multi-disciplinary approach to the prevention and identification of sexual exploitation of children and to provide psychological, legal, social or any other form of appropriate support or treatment to the victims, paying particular attention to high-risk groups.

15. Create or develop specialised public and/or private services for the protection of children at risk or already victims in order to prevent and identify all forms of sexual exploitation.

16. Recognise and support the central role played by NGOs in preventing sexual exploitation and in helping the victims.

17. Ensure that there are a variety of means whereby anyone, and in particular children, can reveal instances of sexual exploitation (including telephone hotlines, agencies, printed material and Internet sites).

18. Ensure that children in care are sufficiently protected by appropriate regulations, guidelines and procedures and that all members of staff responsible for them have the required qualifications and licences.

d. Media

19. Encourage the media to contribute in a constructive way to a general awareness of sexual exploitation of children and its effects and to develop appropriate rules of conduct and regulations for the written, audiovisual and electronic media, in particular referring to the respect of the privacy, identity and dignity of children.

20. Encourage representatives of the media to be involved and to participate in training and awareness programmes on sexual exploitation.

21. Encourage the media to act in a responsible way, while portraying children and childhood in general.

e. The Internet

22. Involve Internet service providers in raising awareness about sexual exploitation and its risks, especially on the Internet and through the use of modern communication technologies.

23. Ensure that Internet service providers work alongside the authorities to identify and to combat the various means through which the Internet can be used for the purpose of sexual exploitation of children.

24. Encourage Internet service providers to develop a code of conduct appropriate to the modern information and communications technologies to prevent the sexual exploitation of children, identify abuses of such a code and to take measures to inhibit and suppress such abuses.

25. Recognise that it is necessary for law-enforcement agencies to be able to use connection data to trace suspicious content and subsequently locate, identify and question those who edit or disseminate child pornography or encourage or incite child prostitution.

26. Provide information to parents, carers, all others responsible for children and children themselves on the risks of sexual exploitation on the Internet, the forms it may take and on how to limit access to it.

27. Create hotlines and encourage citizens to report cases of child pornography or of incitement to child prostitution on the website, thus enabling the appropriate law enforcement authorities to take specific action.

III. Criminal law, procedure and coercive measures in general

28. Ensure that the acts and activities defined under article 2. *c*, *d* and *e* are fully covered by their criminal law, whether these offences are committed on or outside their territory, on an individual or organised basis.

29. Invite police and other appropriate services to give special attention to prevention, detection, and investigation of offences involving sexual exploitation of children, and allocate sufficient means to them towards that end.

a. Measures concerning victims

30. Ensure that the rights and interests of children are safeguarded throughout proceedings, in particular by enabling them to be heard, to be assisted or, where relevant, to be represented, while respecting the rights of the alleged offenders.

31. Invite the relevant judicial authorities to give priority to cases involving sexual exploitation of children and to ensure that these cases are dealt with as quickly as possible.

32. Ensure throughout judicial, mediation or administrative proceedings the confidentiality of records and respect for the privacy of children who have been victims of sexual exploitation.
33. Provide special conditions for the taking of evidence from children who are victims of or witnesses to sexual exploitation, in order to reduce the number of statements and hearings of the child and thus minimise the harm caused to the victims, witnesses and their families and increase the credibility of their statements while respecting their dignity.
34. Grant victims and their families the possibility, where appropriate, to stay on the territory of the state so that they are able to fully participate in judicial proceedings, provide for measures designed to protect victims, witnesses and their families from intimidation, in particular where there are criminal networks; during this period make sure victims have access to welfare, medical and legal assistance.
35. Establish a scheme to fully repair any damage suffered by children victims of sexual exploitation and provide mechanisms to assist them to come to terms with their experiences.
36. Ensure that children who have been victims of sexual exploitation cannot be prosecuted for any act connected with this exploitation.

b. Measures concerning perpetrators

37. Seek to ensure that the limitation period for bringing criminal proceedings in the field of sexual exploitation only starts to run when the victim has ceased to be a child.
38. Take measures to punish offenders and provide treatment when appropriate.
39. Provide for the seizure and confiscation of the proceeds from offences relating to the sexual exploitation of children.
40. Develop and resource relapse prevention programmes for offenders.
41. Provide for the possibility of banning persons found guilty of offences involving the sexual exploitation of children from carrying out certain forms of employment or activities which could bring them into contact with children.

42. Make provisions for the temporary or permanent closure of, or withdrawal of licence from, establishments and businesses, whatever their nature, involved in sexual exploitation of children.

43. Ensure that legal entities may be held responsible for offences involving sexual exploitation of children and introduce specific sanctions to that end, while taking care not to prejudice the criminal liability of natural persons.

IV. Measures relating to pornography involving children

44. Introduce appropriate criminal sanctions taking into account the gravity of the offence committed by those involved in the production and distribution of any pornographic material, by whatever means, involving children or simulating the images of children.

45. Introduce criminal sanctions for mere possession, in whatever form, of pornographic material involving children or simulating the images of a child.

46. Organise information campaigns raising awareness of the fact that the mere possession of child pornography is liable to be criminally sanctioned.

47. Launch information campaigns on legal procedures and other forms of assistance available to victims of child pornography.

V. Measures relating to the prostitution of children

48. Introduce appropriate criminal sanctions against a person accepting the services of and/or using any child involved in prostitution.

49. Ensure the children involved in prostitution are provided with material, psychological and other appropriate forms of assistance, so that they are able to escape prostitution.

50. Give priority to educational programmes, including vocational training, and reintegration programmes, aimed at children.

51. Create or develop special police units and improve their working methods, in order to combat child prostitution.

52. Place social workers trained in preventive work with children, in particular those involved in street work, to help children escape from prostitution.

53. Involve the tourism industry in raising awareness about sex tourism and in the detection of it.

54. Organise information campaigns intended to discourage potential travellers from engaging in sex tourism.

VI. Measures relating to trafficking in children

55. Introduce appropriate criminal sanctions for trafficking in children taking into account the gravity of the offence.

56. Organise information campaigns in order to increase public awareness of high risk situations that may lead to organised trafficking in children, mainly girls.

57. Provide information on trafficking in and sexual exploitation of children and appropriate training to diplomatic and consular representatives, public authorities, the media, NGOs and other public and private bodies working in the countries of origin of potential victims.

58. Disseminate widely, in every member state, information on the risk that trafficking in, and sexual exploitation of, children entails to the life as well as the mental and physical health of children.

59. Make media more aware of issues related to trafficking in children and their role to prevent it.

60. Ensure that school curricula include information on risk of sexual exploitation and trafficking in children and ways of protecting themselves; this information should be also available to children outside the education system and to parents and guardians or other legal representatives of children.

61. Organise special training for diplomatic, consular, judicial, customs and police personnel to enable them to identify cases of trafficking in children for the purpose of sexual exploitation and respond appropriately.

VII. Research priorities

62. To promote research at national and international levels, respecting cultural diversity and in particular consider the study of:

– the number of criminal proceedings related to cases of sexual exploitation, prostitution, pornography and trafficking of children, each year for each country and with reference to the length of those proceedings;

– the experiences of children who have been sexually exploited and their experience of the justice and welfare systems;

– the specific links between sexual exploitation and organised crime;

- the specific links between sexual exploitation and previous experience with incest, sexual abuse and pornography;
- the nature of the process leading victims to become perpetrators;
- an audit of the available literature and research on sexual exploitation and how best to prevent it and to deal with it if it has occurred;
- the nature and scale of different forms of sexual exploitation of children, especially in its cross-cultural aspects;
- the long term effects of sexual exploitation and its effects on mental health, social and family relationships of adults in different countries;
- the extent and nature of sexual exploitation by adolescents;
- the nature of paedophilia and the ways in which perpetrators sexually exploit children;
- an audit of the measures and programmes directed at those who have sexually abused children;
- the links between adoption and sexual exploitation;
- the needs of families where a family member has been sexually exploited;
- an evaluation of the use of the Internet in the prevention of sexual exploitation;
- the training needs of personnel working with children who have been sexually exploited and with their families;
- items III. 5-10 of Recommendation N° R (91) 11 should also be included.

VIII. International co-operation

63. Consider taking such measures as may be necessary in order to establish extra-territorial jurisdiction over the offences defined under article 2. *c*, *d* and *e* in cases where:

- a.* these offences are committed by their nationals;
- b.* these offences are committed by any person who has his/her habitual residence on their territory; and, as appropriate,
- c.* the victim is one of their nationals.

64. Consider the possibility of establishing jurisdiction over offences of sexual exploitation of children, also in cases where the facts are not punishable under the law of the state where they are committed in particular on account of the age of the victim.

65. Bear in mind that trafficking in children usually falls within the scope of transnational organised crime.
66. Ensure that the offences defined under article 2. *c*, *d* and *e* are extraditable according to national legislation and international treaties and ensure that, where extradition cannot be granted for reasons of nationality, the facts be submitted to the competent authorities of the requested state in order that proceedings may be taken as appropriate.
67. Promptly afford one another the widest possible measure of mutual legal assistance in connection with proceedings brought in respect of any of the offences defined under article 2. *c*, *d* and *e*.
68. Take measures in order to facilitate the communication, between states, between states and international organisations such as Interpol, and between states and NGOs, of information concerning sexual exploitation of children.
69. Ensure that the fact that victims or witnesses are in a far away country, or otherwise do not appear in person, does not constitute an obstacle to the continuation of the proceedings, in particular where the evidence has been heard by a judicial authority, by using, for instance, the video-conferencing system.
70. Consider the possibility of transferring to other states proceedings in respect of the prosecution of any of the offences defined under article 2. *c*, *d* and *e*, in cases where transfer is considered to be in the interests of both the child and the administration of justice.
71. Take all feasible measures to avoid delays that are specific to cases having an international character, for example, by providing translations of documents and interpreters, when needed, or making use of appropriate measures in order to establish the age of a child or trace a child.
72. Encourage international co-operation by means of bilateral and multilateral agreements for the prevention and effective punishment of offenders of sexual exploitation of children, including sex tourism, in particular by way of co-ordinating investigation and prosecution.
73. Ratify and fully apply the international instruments relevant in this field, in particular the United Nations Convention on the Rights of the Child and its optional protocol on the sale of children, child prostitution and child pornography as well as ILO Convention No. 182 on the worst forms of child labour.
74. Promote European and international co-operation in the fields of technical or other assistance.
75. Take all other necessary measures for an effective pan-European strategy to fight against the phenomenon of the sexual exploitation of children and its the contributing factors.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

**Recommendation Rec(2002)4
of the Committee of Ministers to member states
on the legal status of persons admitted for family reunification**

(Adopted by the Committee of Ministers on 26 March 2002 at the 790th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Recalling the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms, and, in particular, its Article 8, which guarantees the protection of family and private life, its Article 14 which contains the principle of non-discrimination with regard to the rights granted, as well as the relevant case-law of the European Court of Human Rights;

Recalling the 1951 Convention relating to the Status of Refugees, the 1967 Protocol to this Convention as well as the Final Act to it and the United Nations Convention on the Rights of the Child;

Recognising that safeguarding family unity constitutes a universally recognised right enshrined in the Universal Declaration of Human Rights;

Conscious of the need to preserve and defend the best interest and well-being of minors and children and their particular need of protection and assistance;

Bearing in mind that family reunification is one of the major sources of immigration in most European states and that the residence status and other rights granted to the admitted family members are important elements in assisting the integration of the new migrants in the host society;

Considering that rules of member states on family reunion as an integral part of a coherent immigration and integration policy should be guided by common principles;

Taking into account Recommendation Rec(2000)15 of the Committee of Ministers to member states concerning the security of residence of long-term migrants, Recommendation No. (99) 23 of the Committee of Ministers on family reunion for refugees and other persons in need of international protection as well as Resolution (78) 33 of the Parliamentary Assembly on the Reunion of Families of Migrant Workers in Council of Europe member States;

Considering the important rights that have been granted to migrants and their family members under the European Convention on Social and Medical Assistance and its Protocol (1953, ETS Nos. 14 and 14A), the European Convention on Establishment (1955, ETS No. 19), the European Convention on the Legal Status of Migrant Workers

(1977, ETS No. 93), the Convention on the Participation of Foreigners in Public Life at Local Level (1992, ETS No. 144), the European Convention on the exercise of children's rights (1996, ETS No. 160, the revised European Social Charter (1996, ETS No. 163) and the European Convention on Nationality (1997, ETS No. 166);
Recommends to governments to apply in their legislation and administrative practice the following principles:

I. Scope of application

1. For the purpose of this recommendation, the term "family members" covers all persons admitted to reside on the territory of a member state with a national or a lawfully residing alien in order to form or preserve the family unit.
2. For the purpose of this recommendation, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.

II. Residence status of family members

1. After admission for family reunification, the family member should be granted an establishment permit, a renewable residence permit of the same duration as that held by the principal or a renewable residence permit.
2. In their decision on the length of the residence permit granted to children who are family members, member states should give primary consideration to the best interest and the wellbeing of these children.

III. Autonomy of the family member's residence status in relation to that of the principal right holder

1. After a period of four years of legal residence, adult family members should be granted an autonomous residence permit independent of that of the principal.
2. In the case of divorce, separation or death of the principal, a family member having been legally resident for at least one year may apply for an autonomous residence permit. Member states will give due consideration to such applications. In their decisions, the best interests of the children concerned shall be a primary consideration.

IV. Effective protection against expulsion of family members

1. When considering the withdrawal, refusal to renew a residence permit or the expulsion of a family member, member states should have proper regard to criteria such as the person's place of birth, his age of entry on the territory, the length of residence, his family relationships, the existence of family ties in the country of origin and the solidity of social and cultural ties with the country of origin. Special consideration should be paid to the best interest and wellbeing of children.
2. When the residence permit of a family member is either not renewed or withdrawn or expulsion ordered, member states should grant a right of appeal to competent

independent administrative authorities or courts.

V. Equal access to the labour market, to education and to social rights for family members

1. Family members should enjoy treatment equal to principals as concerns access to employment. Waiting periods for family members of short-term residents introduced by member states due to labour market considerations should not exceed two years.
2. Family members should enjoy social rights, in accordance with the legislation of the member state concerned, equal to those enjoyed by principals with regard to health care as well as social security.
3. If they have access to the labour market, they should also enjoy equal treatment with nationals as regards working conditions and the membership of and active and passive participation in trade unions.
4. Family members should enjoy equal treatment with nationals – in accordance with the legislation of the member state concerned – with regard to education, vocational training, initial and further training and retraining, including university education, equal to that enjoyed by nationals.

VI. Free movement

Family members should enjoy, in accordance with the legislation of the member state concerned, free movement on the territory of the state of residence.

VII. Political participation of persons admitted for family reunification

1. After five years of lawful residence, family members should enjoy the right to vote and to stand for election in local authority elections, as set out in the Convention on the Participation of Foreigners in Public Life at Local Level, provided that they comply with the same legal requirements as nationals.
2. Family members should enjoy the same treatment as nationals with respect to the freedom of assembly, of association and of expression, in conformity with the relevant provisions of the European Convention on Human Rights.

VIII. Acquisition of nationality

Each member state should facilitate the acquisition of its nationality for family members of long-term principals, in accordance with its internal law and taking into consideration the provisions of the European Convention on Nationality (1997).

IX. Final clauses

1. This recommendation is without prejudice to the option open to a member state to grant a more favorable legal status to family members.

2. This recommendation does not affect the rights of long-term migrants as defined in Recommendation Rec(2000)15 of the Committee of Ministers to member states concerning the security of residence of long-term migrants.

3. Member states not having yet done so are encouraged to ratify the European Convention on Social and Medical Assistance and its Protocol (1953), the European Convention on Establishment (1955), the European Convention on the Legal Status of Migrant Workers (1977), the Convention on the Participation of Foreigners in Public Life at Local Level (1992), the European Convention on the exercise of children's rights (1996), the revised European Social Charter (1996) and the European Convention on Nationality (1997).

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

**Recommendation Rec (2002) 5
of the Committee of Ministers to member states on the protection of women
against violence¹**

(Adopted by the Committee of Ministers on 30 April 2002 at the 794th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Reaffirming that violence towards women is the result of an imbalance of power between men and women and is leading to serious discrimination against the female sex, both within society and within the family;

Affirming that violence against women both violates and impairs or nullifies the enjoyment of their human rights and fundamental freedoms;

Noting that violence against women constitutes a violation of their physical, psychological and/or sexual integrity;

Noting with concern that women are often subjected to multiple discrimination on ground of their gender as well as their origin, including as victims of traditional or customary practices inconsistent with their human rights and fundamental freedoms;

Considering that violence against women runs counter to the establishment of equality and peace and constitutes a major obstacle to citizens' security and democracy in Europe;

Noting with concern the extent of violence against women in the family, whatever form the family takes, and at all levels of society;

Considering it urgent to combat this phenomenon which affects all European societies and concerns all their members;

Recalling the Final Declaration adopted at the Second Council of Europe Summit (Strasbourg, 1997), in which the heads of state and government of the member states affirmed their determination to combat violence against women and all forms of sexual exploitation of women;

Bearing in mind the provisions of the European Convention on Human Rights (1950) and the case-law of its organs, which safeguard, *inter alia*, the right to life and the right not to be subjected to torture or to inhuman or degrading treatment or punishment, the right to liberty and security and the right to a fair trial;

Considering the European Social Charter (1961) and the revised European Social

Charter (1996), in particular the provisions therein concerning equality between women and men with regard to employment, as well as the Additional Protocol to the European Social Charter providing for a system of collective complaints;

Recalling the following recommendations of the Committee of Ministers to member states of the Council of Europe: Recommendation No. R (79) 17 concerning the protection of children against ill-treatment; Recommendation No. R (85) 4 on violence in the family; Recommendation No. R (85) 11 on the position of the victim within the framework of criminal law and procedure; Recommendation No. R (87) 21 on assistance to victims and the prevention of victimisation; Recommendation No. R (90) 2 on social measures concerning violence within the family; Recommendation No. R (91) 11 concerning sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults; Recommendation No. R (93) 2 on the medico-social aspects of child abuse, Recommendation No. R (2000) 11 on action against trafficking in human beings for the purpose of sexual exploitation and Recommendation Rec (2001) 16 on the protection of children against sexual exploitation;

Recalling also the Declarations and Resolutions adopted by the 3rd European Ministerial Conference on Equality between Women and Men held by the Council of Europe (Rome, 1993);

Bearing in mind the United Nations Declaration on the Elimination of Violence against Women (1993), the United Nations Convention on the Elimination of All Forms of Discrimination against Women (1979), the United Nations Convention against Transnational Organised Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000), the Platform for Action adopted at the Fourth World Conference on Women (Beijing, 1995) and the Resolution on Further actions and initiatives to implement the Beijing Declaration and Platform for Action adopted by the United Nations General Assembly (23rd extraordinary session, New York, 5-9 June 2000);

Bearing in mind the United Nations Convention on the Rights of the Child (1989), as well as its Optional Protocol on the sale of children, child prostitution and child pornography (2000);

Also bearing in mind the International Labour Organisation Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999) and Recommendation (R 190) on the Worst Forms of Child Labour (1999);

Recalling the basic principles of international humanitarian law, and especially the 4th Geneva Convention relative to the protection of civilian persons in time of war (1949) and the 1st and 2nd additional Protocols thereto;

Recalling also the inclusion of gender-related crimes and sexual violence in the Statute of the International Criminal Court (Rome, 17 July 1998),

Recommends that the governments of member states:

- I. Review their legislation and policies with a view to:
 1. guaranteeing women the recognition, enjoyment, exercise and protection of their human rights and fundamental freedoms;
 2. taking necessary measures, where appropriate, to ensure that women are able to exercise freely and effectively their economic and social rights;
 3. ensuring that all measures are co-ordinated nation-wide and focused on the needs of the victims and that relevant state institutions as well as non-governmental organisations (NGOs) be associated with the elaboration and the implementation of the necessary measures, in particular those mentioned in this recommendation;
 4. encouraging at all levels the work of NGOs involved in combating violence against women and establishing active co-operation with these NGOs, including appropriate logistic and financial support;
- II. Recognise that states have an obligation to exercise due diligence to prevent, investigate and punish acts of violence, whether those acts are perpetrated by the state or private persons, and provide protection to victims;
- III. Recognise that male violence against women is a major structural and societal problem, based on the unequal power relations between women and men and therefore encourage the active participation of men in actions aiming at combating violence against women;
- IV. Encourage all relevant institutions dealing with violence against women (police, medical and social professions) to draw up medium- and long-term co-ordinated action plans, which provide activities for the prevention of violence and the protection of victims;
- V. Promote research, data collection and networking at national and international level;
- VI. Promote the establishment of higher education programmes and research centres including at university level, dealing with equality issues, in particular with violence against women;
- VII. Improve interactions between the scientific community, the NGOs in the field, political decision-makers and legislative, health, educational, social and police bodies in order to design co-ordinated actions against violence;
- VIII. Adopt and implement the measures described in the appendix to this recommendation in the manner they consider the most appropriate in the light of national circumstances and preferences, and, for this purpose, consider establishing a national plan of action for combating violence against women;
- IX. Inform the Council of Europe on the follow-up given at national level to the provisions of this recommendation.

Appendix to Recommendation Rec (2002) 5

Definition

1. For the purposes of this recommendation, the term “violence against women” is to be understood as any act of gender-based violence, which results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or private life. This includes, but is not limited to, the following:

a. violence occurring in the family or domestic unit, including, *inter alia*, physical and mental aggression, emotional and psychological abuse, rape and sexual abuse, incest, rape between spouses, regular or occasional partners and cohabitants, crimes committed in the name of honour, female genital and sexual mutilation and other traditional practices harmful to women, such as forced marriages;

b. violence occurring within the general community, including, *inter alia*, rape, sexual abuse, sexual harassment and intimidation at work, in institutions or elsewhere trafficking in women for the purposes of sexual exploitation and economic exploitation and sex tourism;

c. violence perpetrated or condoned by the state or its officials;

d. violation of the human rights of women in situations of armed conflict, in particular the taking of hostages, forced displacement, systematic rape, sexual slavery, forced pregnancy, and trafficking for the purposes of sexual exploitation and economic exploitation.

General measures concerning violence against women

2. It is the responsibility and in the interest of states as well as a priority of national policies to safeguard the right of women not to be subjected to violence of any kind or by any person. To this end, states may not invoke custom, religion or tradition as a means of evading this obligation.

3. Member states should introduce, develop and/or improve where necessary, national policies against violence based on:

a. maximum safety and protection of victims;

b. empowerment of victimised women by optimal support and assistance structures which avoid secondary victimisation;

c. adjustment of the criminal and civil law including the judicial procedure;

d. raising of public awareness and education of children and young persons;

e. ensuring special training for professionals confronted with violence against women;

f. prevention in all respective fields.

4. In this framework, it will be necessary to set up, wherever possible, at national level, and in co-operation with, where necessary, regional and/or local authorities, a governmental co-ordination institution or body in charge of the implementation of measures to combat violence against women as well as of regular monitoring and evaluation of any legal reform or new form of intervention in the field of action against violence, in consultation with NGOs and academic and other institutions.

5. Research, data collection and networking at national and international level should be developed, in particular in the following fields:

a. the preparation of statistics sorted by gender, integrated statistics and common indicators in order to better evaluate the scale of violence against women;

b. the medium- and long-term consequences of assaults on victims;

c. the consequence of violence on those who are witness to it, *inter alia*, within the family;

d. the health, social and economic costs of violence against women;

e. the assessment of the efficiency of the judiciary and legal systems in combating violence against women;

f. the causes of violence against women, i.e. the reasons which cause men to be violent and the reasons why society condones such violence;

g. the elaboration of criteria for benchmarking in the field of violence.

Information, public awareness, education and training

Member states should:

6. compile and make available to the general public appropriate information concerning the different types of violence and their consequences for victims, including integrated statistical data, using all the available media (press, radio and television, etc.);

7. mobilise public opinion by organising or supporting conferences and information campaigns so that society is aware of the problem and its devastating effects on victims and society in general and can therefore discuss the subject of violence towards women openly, without prejudice or preconceived ideas;

8. include in the basic training programmes of members of the police force, judicial personnel and the medical and social fields, elements concerning the treatment of domestic violence, as well as all other forms of violence affecting women;

9. include in the vocational training programmes of these personnel, information and training so as to give them the means to detect and manage crisis situations and

improve the manner in which victims are received, listened to and counselled;

10. encourage the participation of these personnel in specialised training programmes, by integrating the latter in a merit-awarding scheme;

11. encourage the inclusion of questions concerning violence against women in the training of judges;

12. encourage self-regulating professions, such as therapists, to develop strategies against sexual abuse which could be committed by persons in positions of authority;

13. organise awareness-raising campaigns on male violence towards women, stressing that men should be responsible for their acts and encouraging them to analyse and dismantle mechanisms of violence and to adopt different behaviour;

14. introduce or reinforce a gender perspective in human rights education programmes, and reinforce sex education programmes that give special importance to gender equality and mutual respect;

15. ensure that both boys and girls receive a basic education that avoids social and cultural patterns, prejudices and stereotyped roles for the sexes and includes training in assertiveness skills, with special attention to young people in difficulty at school; train all members of the teaching profession to integrate the concept of gender equality in their teaching;

16. include specific information in school curricula on the rights of children, help-lines, institutions where they can seek help and persons they can turn to in confidence.

Media

Member states should:

17. encourage the media to promote a non-stereotyped image of women and men based on respect for the human person and human dignity and to avoid programmes associating violence and sex; as far as possible, these criteria should also be taken into account in the field of the new information technologies;

18. encourage the media to participate in information campaigns to alert the general public to violence against women;

19. encourage the organisation of training to inform media professionals and alert them to the possible consequences of programmes that associate violence and sex;

20. encourage the elaboration of codes of conduct for media professionals, which would take into account the issue of violence against women and, in the terms of reference of media watch organisations, existing or to be established, encourage the inclusion of tasks dealing with issues concerning violence against women and sexism.

Local, regional and urban planning

Member states should:

21. encourage decision-makers in the field of local, regional and urban planning to take into account the need to reinforce women's safety and to prevent the occurrence of violent acts in public places;

22. as far as possible, take all necessary measures in this respect, concerning in particular public lighting, organisation of public transport and taxi services, design and planning of car parks and residential buildings.

Assistance for and protection of victims (reception, treatment and counselling)

Member states should:

23. ensure that victims, without any discrimination, receive immediate and comprehensive assistance provided by a co-ordinated, multidisciplinary and professional effort, whether or not they lodge a complaint, including medical and forensic medical examination and treatment, together with post-traumatic psychological and social support as well as legal assistance; this should be provided on a confidential basis, free of charge and be available around the clock;

24. in particular, ensure that all services and legal remedies available for victims of domestic violence are provided to immigrant women upon their request;

25. take all the necessary measures in order to ensure that collection of forensic evidence and information is carried out according to standardised protocol and forms;

26. provide documentation particularly geared to victims, informing them in a clear and comprehensible manner of their rights, the service they have received and the actions they could envisage or take, regardless of whether they are lodging a complaint or not, as well as of their possibilities to continue to receive psychological, medical and social support and legal assistance;

27. promote co-operation between the police, health and social services and the judiciary system in order to ensure such co-ordinated actions, and encourage and support the establishment of a collaborative network of non-governmental organisations;

28. encourage the establishment of emergency services such as anonymous, free of charge telephone help-lines for victims of violence and/or persons confronted or threatened by situations of violence; regularly monitor calls and evaluate the data obtained from the assistance provided with due respect for data protection standards;

29. ensure that the police and other law-enforcement bodies receive, treat and counsel victims in an appropriate manner, based on respect for human beings and dignity, and handle complaints confidentially; victims should be heard without delay by specially-trained staff in premises that are designed to establish a relationship of confidence between the victim and the police officer and ensure, as far as possible, that the victims of violence have the possibility to be heard by a female officer should they so wish;

30. to this end, take steps to increase the number of female police officers at all levels of responsibility;

31. ensure that children are suitably cared for in a comprehensive manner by specialised staff at all the relevant stages (initial reception, police, public prosecutor's department and courts) and that the assistance provided is adapted to the needs of the child;

32. take steps to ensure the necessary psychological and moral support for children who are victims of violence by setting up appropriate facilities and providing trained staff to treat the child from initial contact to recovery; these services should be provided free of charge;

33. take all necessary measures to ensure that none of the victims suffer secondary (re)victimisation or any gender-insensitive treatment by the police, health and social personnel responsible for assistance, as well as by judiciary personnel.

Criminal law, civil law and judicial proceedings

Criminal law

Member states should:

34. ensure that criminal law provides that any act of violence against a person, in particular physical or sexual violence, constitutes a violation of that person's physical, psychological and/or sexual freedom and integrity, and not solely a violation of morality, honour or decency;

35. provide for appropriate measures and sanctions in national legislation, making it possible to take swift and effective action against perpetrators of violence and redress the wrong done to women who are victims of violence. In particular, national law should:

- penalise sexual violence and rape between spouses, regular or occasional partners and cohabitants;
- penalise any sexual act committed against non-consenting persons, even if they do not show signs of resistance;
- penalise sexual penetration of any nature whatsoever or by any means whatsoever of a non-consenting person;
- penalise any abuse of the vulnerability of a pregnant, defenceless, ill, physically or mentally handicapped or dependent victim;
- penalise any abuse of the position of a perpetrator, and in particular of an adult *vis-à-vis* a child.

Civil law

Member states should:

36. ensure that, in cases where the facts of violence have been established, victims receive appropriate compensation for any pecuniary, physical, psychological, moral and social damage suffered, corresponding to the degree of gravity, including legal costs incurred;

37. envisage the establishment of financing systems in order to compensate victims.

Judicial proceedings

Member states should:

38. ensure that all victims of violence are able to institute proceedings as well as, where appropriate, public or private organisations with legal personality acting in their defence, either together with the victims or on their behalf;

39. make provisions to ensure that criminal proceedings can be initiated by the public prosecutor;

40. encourage prosecutors to regard violence against women and children as an aggravating or decisive factor in deciding whether or not to prosecute in the public interest;

41. take all necessary steps to ensure that at all stages in the proceedings, the victims' physical and psychological state is taken into account and that they may receive medical and psychological care;

42. envisage the institution of special conditions for hearing victims or witnesses of violence in order to avoid the repetition of testimony and to lessen the traumatising effects of proceedings;

43. ensure that rules of procedure prevent unwarranted and/or humiliating questioning for the victims or witnesses of violence, taking into due consideration the trauma that they have suffered in order to avoid further trauma;

44. where necessary, ensure that measures are taken to protect victims effectively against threats and possible acts of revenge;

45. take specific measures to ensure that children's rights are protected during proceedings;

46. ensure that children are accompanied, at all hearings, by their legal representative or an adult of their choice, as appropriate, unless the court gives a reasoned decision to the contrary in respect of that person;

47. ensure that children are able to institute proceedings through the intermediary of their legal representative, a public or private organisation or any adult of their choice approved by the legal authorities and, if necessary, to have access to legal aid free of charge;

48. provide that, for sexual offences and crimes, any limitation period does not

commence until the day on which the victim reaches the age of majority;

49. provide for the requirement of professional confidentiality to be waived on an exceptional basis in the case of persons who may learn of cases of children subject to sexual violence in the course of their work, as a result of examinations carried out or of information given in confidence.

Intervention programmes for the perpetrators of violence

Member states should:

50. organise intervention programmes designed to encourage perpetrators of violence to adopt a violence-free pattern of behaviour by helping them to become aware of their acts and recognise their responsibility;

51. provide the perpetrator with the possibility to follow intervention programmes, not as an alternative to sentence, but as an additional measure aiming at preventing violence; participation in such programmes should be offered on a voluntary basis;

52. consider establishing specialised state-approved intervention centres for violent men and support centres initiated by NGOs and associations within the resources available;

53. ensure co-operation and co-ordination between intervention programmes directed towards men and those dealing with the protection of women.

Additional measures with regard to sexual violence

A genetic data bank

Member states should:

54. consider setting up national and European data banks comprising the genetic profile of all identified and non-identified perpetrators of sexual violence in order to put in place an effective policy to catch offenders, prevent re-offending, and taking into account the standards laid down by domestic legislation and the Council of Europe in this field.

Additional measures with regard to violence within the family

Member states should:

55. classify all forms of violence within the family as criminal offence;

56. revise and/or increase the penalties, where necessary, for deliberate assault and battery committed within the family, whichever member of the family is concerned;

57. preclude adultery as an excuse for violence within the family;

58. envisage the possibility of taking measures in order to:

- a.* enable police forces to enter the residence of an endangered person, arrest the perpetrator and ensure that he or she appears before the judge;
- b.* enable the judiciary to adopt, as interim measures aimed at protecting the victims, the banning of a perpetrator from contacting, communicating with or approaching the victim, residing in or entering certain defined areas;
- c.* establish a compulsory protocol for operation so that the police and medical and social services follow the same procedure;
- d.* promote pro-active victim protection services which take the initiative to contact the victim as soon as a report is made to the police;
- e.* ensure smooth co-operation of all relevant institutions, such as police authorities, courts and victim protection services, in order to enable the victim to take all relevant legal and practical measures for receiving assistance and taking actions against the perpetrator within due time limits and without unwanted contact with the perpetrator;
- f.* penalise all breaches of the measures imposed on the perpetrators by the authorities.

59. consider, where needed, granting immigrant women who have been/are victims of domestic violence an independent right to residence in order to enable them to leave their violent husbands without having to leave the host country.

Additional measures with regard to sexual harassment

Member states should:

- 60. take steps to prohibit all conducts of a sexual nature, or other conduct based on sex affecting the dignity of women at work, including the behaviour of superiors and colleagues: all conduct of a sexual nature for which the perpetrator makes use of a position of authority, wherever it occurs (including situations such as neighbourhood relations, relations between students and teachers, telephone harassment, etc.), is concerned. These situations constitute a violation of the dignity of persons;
- 61. promote awareness, information and prevention of sexual harassment in the workplace or in relation to work or wherever it may occur and take the appropriate measures to protect women and men from such conduct.

Additional measures with regard to genital mutilation

Member states should:

- 62. penalise any mutilation of a woman's or girl's genital organs either with or without her consent; genital mutilation is understood to mean sewing up of the clitoris, excision, clitoridectomy and infibulation;
- 63. penalise any person who has deliberately participated in, facilitated or encouraged

any form of female genital mutilation, with or without the person's consent; such acts shall be punishable even if only partly performed;

64. organise information and prevention campaigns aimed at the population groups concerned, in particular immigrants and refugees, on the health risks to victims and the criminal penalties for perpetrators;

65. alert the medical professions, in particular doctors responsible for pre- and post-natal medical visits and for monitoring the health of children;

66. arrange for the conclusion or reinforcement of bilateral agreements concerning prevention, and prohibition of female genital mutilation and the prosecution of perpetrators;

67. consider the possibility of granting special protection to these women as a threatened group for gender-based reasons.

Additional measures concerning violence in conflict and post-conflict situations

Member states should:

68. penalise all forms of violence against women and children in situations of conflict, in accordance with the provisions of international humanitarian law, whether they occur in the form of humiliation, torture, sexual slavery or death resulting from these actions;

69. penalise rape, sexual slavery, forced pregnancy, enforced sterilisation or any other form of sexual violence of comparable gravity as an intolerable violation of human rights, as crimes against humanity and, when committed in the context of an armed conflict, as war crimes;

70. ensure protection of witnesses before the national courts and international criminal tribunals trying genocide, crimes against humanity and war crimes, and provide them with legal residence at least during the proceedings;

71. ensure social and legal assistance to all persons called to testify before the national courts and international criminal tribunals trying genocide, crimes against humanity and war crimes;

72. consider providing refugee status or subsidiary protection for reasons of gender-based persecution and/or providing residence status on humanitarian grounds to women victims of violence during conflicts;

73. support and fund NGOs providing counselling and assistance to victims of violence during conflicts and in post-conflict situations;

74. in post-conflict situations, promote the inclusion of issues specific to women into the reconstruction and the political renewal process in affected areas;

75. at national and international levels, ensure that all interventions in areas which

have been affected by conflicts are performed by personnel who have been offered gender-sensitive training;

76. support and fund programmes which follow a gender-sensitive approach in providing assistance to victims of conflicts and contributing to the reconstruction and repatriation efforts following a conflict.

Additional measures concerning violence in institutional environments

Member states should:

77. penalise all forms of physical, sexual and psychological violence perpetrated or condoned by the state or its officials, wherever it occurs and in particular in prisons or detention centres, psychiatric institutions, etc;

78. penalise all forms of physical, sexual and psychological violence perpetrated or condoned in situations in which the responsibility of the state or of a third party may be invoked, for example in boarding schools, retirement homes and other establishments.

Additional measures concerning failure to respect freedom of choice with regard to reproduction

Member states should:

79. prohibit enforced sterilisation or abortion, contraception imposed by coercion or force, and pre-natal selection by sex, and take all necessary measures to this end.

Additional measures concerning killings in the name of honour

Member states should:

80. penalise all forms of violence against women and children committed in accordance with the custom of "killings in the name of honour";

81. take all necessary measures to prevent "killings in the name of honour", including information campaigns aimed at the population groups and the professionals concerned, in particular judges and legal personnel;

82. penalise anyone having deliberately participated in, facilitated or encouraged a "killing in the name of honour";

83. support NGOs and other groups which combat these practices.

Additional measures concerning early marriages

Member states should:

84. prohibit forced marriages, concluded without the consent of the persons concerned;

85. take the necessary measures to prevent and stop practices related to the sale of children.

Note ¹ In conformity with Article 10.2c of the Rules of Procedure of the Ministers' Deputies, Sweden reserved its right to comply or not with paragraph 54 of this recommendation.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

**Recommendation Rec (2003) 20
of the Committee of Ministers to member states
concerning new ways of dealing with juvenile delinquency and the role of juvenile
justice**

(Adopted by the Committee of Ministers on 24 September 2003 at the 853rd meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that juvenile delinquency is perceived as a pressing concern in a number of European countries;

Aware of the fact that, although overall juvenile crime rates remain more or less stable, the nature and seriousness of juvenile delinquency require new responses and new methods of intervention;

Taking into consideration that the traditional criminal justice system may not by itself offer adequate solutions as regards the treatment of juvenile delinquents, given that their specific educational and social needs differ from those of adults;

Convinced that responses to juvenile delinquency should be multidisciplinary and multi-agency in their approach and should be so designed as to tackle the range of factors that play a role at different levels of society: individual, family, school and community;

Considering that the age of legal majority does not necessarily coincide with the age of maturity, so that young adult offenders may require certain responses comparable to those for juveniles;

Furthermore, considering that some categories of juvenile offenders, such as members of ethnic minorities, young women and those offending in groups, may need special intervention programmes;

Taking into account, inter alia, Recommendation No. R (87) 20 on social reactions to juvenile delinquency, Recommendation No. R (88) 6 on social reactions to juvenile delinquency among young people from migrant families and Recommendation Rec(2000)20 on the role of early psychosocial intervention in the prevention of criminality;

Having regard to the outcome of the 10th Criminological Colloquy on young adult offenders and crime policy (1991);

Taking into consideration the European Convention on Human Rights, the European

Convention on the Exercise of Children's Rights, the United Nations Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty,

Recommends that governments of member states:

- be guided in their legislation and policies and practice by the principles and measures laid down in this recommendation;
- bring this recommendation and its explanatory memorandum to the attention of all relevant agencies, the media and the public; and
- acknowledge the need for separate and distinct European rules on community sanctions and measures and European prison rules for juveniles.

I. Definitions

For the purposes of this recommendation:

- "juveniles" means persons who have reached the age of criminal responsibility but not the age of majority; however, this recommendation may also extend to those immediately below and above these ages;
- "delinquency" means actions which are dealt with under criminal law. In some countries it also extends to antisocial and/or deviant behaviour which may be dealt with under administrative or civil law;
- "juvenile justice system" is defined as the formal component of a wider approach for tackling youth crime. In addition to the youth court, it encompasses official bodies or agencies such as the police, the prosecution service, the legal profession, the probation service and penal institutions. It works closely with related agencies such as health, education, social and welfare services and non-governmental bodies, such as victim and witness support.

II. A more strategic approach

1. The principal aims of juvenile justice and associated measures for tackling juvenile delinquency should be:

- i. to prevent offending and re-offending;
- ii. to (re)socialise and (re)integrate offenders; and
- iii. to address the needs and interests of victims.

2. The juvenile justice system should be seen as one component in a broader, community-based strategy for preventing juvenile delinquency, that takes account of

the wider family, school, neighbourhood and peer group context within which offending occurs.

3. Resources should in particular be targeted towards addressing serious, violent, persistent and drug- and alcohol-related offending.

4. More appropriate and effective measures to prevent offending and re-offending by young members of ethnic minorities, groups of juveniles, young women and those under the age of criminal responsibility also need to be developed.

5. Interventions with juvenile offenders should, as much as possible, be based on scientific evidence on what works, with whom and under what circumstances.

6. In order to prevent discrimination public authorities should produce “impact” statements on the potential consequences of new policies and practices on young members of ethnic minorities.

III. New responses

7. Expansion of the range of suitable alternatives to formal prosecution should continue. They should form part of a regular procedure, must respect the principle of proportionality, reflect the best interests of the juvenile and, in principle, apply only in cases where responsibility is freely accepted.

8. To address serious, violent and persistent juvenile offending, member states should develop a broader spectrum of innovative and more effective (but still proportional) community sanctions and measures. They should directly address offending behaviour as well as the needs of the offender. They should also involve the offender’s parents or other legal guardian (unless this is considered counter-productive) and, where possible and appropriate, deliver mediation, restoration and reparation to the victim.

9. Culpability should better reflect the age and maturity of the offender, and be more in step with the offender’s stage of development, with criminal measures being progressively applied as individual responsibility increases.

10. Parents (or legal guardians) should be encouraged to become aware of and accept their responsibilities in relation to the offending behaviour of young children. They should attend court proceedings (unless this is considered counter-productive) and, where possible, they should be offered help, support and guidance. They should be required, where appropriate, to attend counselling or parent training courses, to ensure their child attends school and to assist official agencies in carrying out community sanctions and measures.

11. Reflecting the extended transition to adulthood, it should be possible for young adults under the age of 21 to be treated in a way comparable to juveniles and to be subject to the same interventions, when the judge is of the opinion that they are not as mature and responsible for their actions as full adults.

12. To facilitate their entry into the labour market, every effort should be made to ensure that young adult offenders under the age of 21 should not be required to disclose their criminal record to prospective employers, except where the nature of the employment dictates otherwise.
13. Instruments for assessing the risk of future re-offending should be developed in order that the nature, intensity and duration of interventions can be closely matched to the risk of re-offending, as well as to the needs of the offender, always bearing in mind the principle of proportionality. Where appropriate, relevant agencies should be encouraged to share information, but always in accordance with the requirements of data protection legislation.
14. Short time periods for each stage of criminal proceedings should be set to reduce delays and ensure the swiftest possible response to juvenile offending. In all cases, measures to speed up justice and improve effectiveness should be balanced with the requirements of due process.
15. Where juveniles are detained in police custody, account should be taken of their status as a minor, their age and their vulnerability and level of maturity. They should be promptly informed of their rights and safeguards in a manner that ensures their full understanding. While being questioned by the police they should, in principle, be accompanied by their parent/legal guardian or other appropriate adult. They should also have the right of access to a lawyer and a doctor. They should not be detained in police custody for longer than forty-eight hours in total and for younger offenders every effort should be made to reduce this time further. The detention of juveniles in police custody should be supervised by the competent authorities.
16. When, as a last resort, juvenile suspects are remanded in custody, this should not be for longer than six months before the commencement of the trial. This period can only be extended where a judge not involved in the investigation of the case is satisfied that any delays in proceedings are fully justified by exceptional circumstances.
17. Where possible, alternatives to remand in custody should be used for juvenile suspects, such as placements with relatives, foster families or other forms of supported accommodation. Custodial remand should never be used as a punishment or form of intimidation or as a substitute for child protection or mental health measures.
18. In considering whether to prevent further offending by remanding a juvenile suspect in custody, courts should undertake a full risk assessment based on comprehensive and reliable information on the young person's personality and social circumstances.
19. Preparation for the release of juveniles deprived of their liberty should begin on the first day of their sentence. A full needs and risk assessment should be the first step towards a reintegration plan which fully prepares offenders for release by addressing, in a co-ordinated manner, their needs relating to education, employment, income, health, housing, supervision, family and social environment.
20. A phased approach to reintegration should be adopted, using periods of leave,

open institutions, early release on licence and resettlement units. Resources should be invested in rehabilitation measures after release and this should, in all cases, be planned and carried out with the close co-operation of outside agencies.

IV. Implementation

21. The response to juvenile delinquency should be planned, co-ordinated and delivered by local partnerships comprising the key public agencies – police, probation, youth and social welfare, judicial, education, employment, health and housing authorities – and the voluntary and private sector. Such partnerships should be responsible and accountable for achieving a common and clearly defined aim, and:

- provide initial and in-service training;
- plan, fund and deliver services;
- set standards and monitor performance;
- share information (adhering to the legal requirements of data protection and professional secrecy and taking into consideration the specific duties of the agencies concerned); and
- evaluate effectiveness and disseminate good practice.

V. Rights and safeguards

22. All new responses and procedures contained in the current recommendation must be considered within the framework of the rights and safeguards set out in relevant international instruments.

VI. Monitoring, evaluation and dissemination of information

23. To increase the knowledge base as to what interventions work, funds should be allocated to the independent scientific evaluation of such interventions and the dissemination of findings to practitioners.

24. To prevent discrimination on ethnic grounds within the juvenile justice system and to identify cases where culturally specific interventions are required, information should be collected and/or research undertaken on the involvement and treatment of ethnic minorities at each and every stage of the juvenile justice system.

25. To counter overly negative perceptions, inform public opinion and increase public confidence, information strategies on juvenile delinquency and the work and effectiveness of the juvenile justice system should be developed, using a wide range of outlets, including television and the Internet. This should be accomplished without making available personal information or other data that may lead to the identification of an individual offender or victim.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation Rec (2005) 5
of the Committee of Ministers to member states
on the rights of children living in residential institutions

(Adopted by the Committee of Ministers on 16 March 2005 at the 919th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its member states, *inter alia*, by promoting the adoption of common rules;

Recalling the work of the Council of Europe's programme for children and its childhood policies project, in particular the recommendations from the Conference on "Children's Rights and Childhood Policies in Europe: New Approaches?", held in Leipzig in 1996, the Parliamentary Assembly's Recommendations 1286 (1996) on a European strategy for children, 1551 (2002) on building a 21st century society with and for children: follow-up to the European strategy for children (Recommendation 1286 (1996)), and 1601 (2003) on improving the lot of abandoned children in institutions;

Reaffirming the legal texts referring to the situation of children living in residential institutions in general, and in particular the European Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5); the United Nations Convention on the Rights of the Child; the European Social Charter (ETS No. 35) and the Revised European Social Charter (ETS No. 163); the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126); the European Convention on the Exercise of Children's Rights (ETS No. 160) and the Convention on Contact concerning Children (ETS No. 192);

Taking into account the Resolutions and Recommendations of the Committee of Ministers: Resolution No. R (77) 33 on the placement of children, and Recommendation No. R (79) 17 concerning the protection of children against ill-treatment, Recommendation No. R (84) 4 on parental responsibilities, Recommendation No. R (87) 6 on foster families, Recommendation No. R (87) 20 on social reactions to juvenile delinquency, Recommendation No. R (94) 14 on coherent and integrated family policies, Recommendation No. R (98) 8 on children's participation in family and social life, Recommendation Rec(2001)16 on the protection of children against sexual exploitation, Recommendation Rec(2003)19 on improving access to social rights and Recommendation Rec(2003)20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice;

Bearing in mind the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the United Nations Convention on the Rights of the Child according to which the placement of children should be avoided

wherever feasible by means of preventive measures;

Aware that, despite preventive measures, some children will still need to be placed outside their family;

Considering that the type of placement must primarily take account of the needs and best interests of the child and, where appropriate, his or her personal views on the matter; due weight should be given to these views in accordance with the child's age and his or her degree of maturity;

Anxious that all children who are placed outside their families, and particularly those placed in institutions, should grow in dignity, in the best possible conditions, without being marginalised either during their childhood or in adulthood, and that they should experience no obstacles to becoming fully-fledged citizens in European societies,

Recommends that governments of member states:

1. adopt such legislative and other measures as may be necessary, including national guidelines and action plans, to guarantee that the principles and quality standards set out in the Appendix to this Recommendation are complied with, with a view to achieving full implementation of the rights of children living in residential institutions, irrespective of the reasons for and the nature of the placement;
2. ensure, by appropriate means and action, a wide dissemination of this Recommendation to children and other relevant persons and bodies.

Appendix to Recommendation Rec (2005) 5

Basic principles

- The family is the natural environment for the growth and well-being of the child and the parents have the primary responsibility for the upbringing and development of the child;
- preventive measures of support for children and families in accordance with their special needs should be provided as far as possible;
- the placement of a child should remain the exception and have as the primary objective the best interests of the child and his or her successful social integration or re-integration as soon as possible; the placement must guarantee full enjoyment of the child's fundamental rights ;
- the placement should not be longer than necessary and should be subject to periodic review with regard to the child's best interests that should be the primary consideration during his or her placement; the parents should be supported as much as possible with a view to harmoniously reintegrating the child in the family and society;
- a child leaving care should be entitled to an assessment of his or her needs and appropriate after-care support in accordance with the aim to ensure the

re-integration of the child in the family and society;

- the decision taken about the placement of a child and the placement itself should not be subject to discrimination on the basis of gender, race, colour, social, ethnic or national origin, expressed opinions, language, property, religion, disability, birth or any other status of the child and/or his or her parents;
- the procedure, organisation and individual care plan of the placement, including a periodic review of the placement, shall guarantee the rights of the child, notably the child's right to be heard; due weight should be given to these views in accordance with the child's age and his or her degree of maturity;
- any measures of control and discipline which may be used in residential institutions, including those with the aim of preventing self-inflicted harm or injury to others, should be based on public regulations and approved standards;
- the family of the child should, if possible, be involved in the planning and organisation of the child's placement;
- when the return of the child to his or her own family is not possible, other means of care or the continuation of the placement should be envisaged, taking into account the child's wishes and the continuity in his or her life path and his or her fulfilment and own needs.

Specific rights for children living in residential institutions

To ensure the respect for these basic principles and fundamental rights of the child, the following specific rights of children living in residential institutions should be recognised:

- the right to be placed only to meet needs that have been established as imperative on the basis of a multidisciplinary assessment, and to have the placement periodically reviewed; in such reviews, alternatives should be sought and the child's views taken into account;
- the right to maintain regular contact with the child's family and other significant people; such contact may be restricted or excluded only where necessary in the best interests of the child;
- the right for siblings, whenever possible, to stay together or maintain regular contact;
- the right to an identity;
- the right to respect of the child's ethnic, religious, cultural, social and linguistic background;
- the right to privacy, including access to a person they trust and a competent body for confidential advice on their rights;

- the right to good quality health care adapted to the needs and well-being of the individual child;
- the right to respect for the child's human dignity and physical integrity; in particular, the right to conditions of human and non-degrading treatment and a non-violent upbringing, including the protection against corporal punishment and all forms of abuse;
- the right to equal opportunities;
- the right to have access to all types of education, vocational guidance and training, under the same conditions as for all other children;
- the right to be prepared for active and responsible citizenship through play, sport, cultural activity, informal education and increasing responsibilities;
- the right to participate in decision-making processes concerning the child and the living conditions in the institution;
- the right to be informed about children's rights and the rules of the residential institution in a child-friendly way;
- the right to make complaints to an identifiable, impartial and independent body in order to assert children's fundamental rights.

Guidelines and quality standards

To ensure the implementation of these principles and rights, the following guidelines and standards should be taken into account:

- when circumstances allow, a placement should be selected which is as close as possible to the child's environment and organised to allow parents to exercise their responsibilities and to maintain parent-child contact on a regular basis;
- a small family-style living unit should be provided;
- priority should be given to the physical and mental health of the child and his or her full, harmonious development as the essential conditions for the success of the care plan;
- an individual care plan should be drawn up which is based on both the development of the child's capacities and abilities and respect for his or her autonomy, as well as on maintaining contacts with the outside world and preparation for living outside the institution in the future;
- conditions that allow continuity of the educational and proper emotional relationship between staff and the children, notably through the stability of the staff (continuous presence, avoiding staff transfers) are preferable;

- an internal organisation of the institution should be foreseen, based on:
 - * the quality and stability of living units;
 - * mixed living units, when this is in the best interests of the child;
- high professional standards of the staff, benefiting from in-service training;
- adequate salaries for the staff;
- stability of staff and a sufficient number of staff members;
- diversified staff, particularly in terms of gender;
- multidisciplinary teamwork and other means of support, including supervision;
- effective child-centred use of available resources;
- means and specific training to develop appropriate cooperation with the child's parents;
- codes of ethics, describing the standards of practice that should be consistent with the United Nations Convention on the Rights of the Child;
- all residential institutions should be accredited and registered with the competent public authorities on the basis of regulations and national minimum standards of care;
- on the basis of these standards, an efficient system of monitoring and external control of residential institutions should be ensured;
- relevant statistical data should be collected and analysed, and research for the purposes of efficient monitoring should be supported;
- any infringements of the rights of children living in residential institution should be sanctioned in conformity with appropriate and effective procedures;
- it should be recognised that apart from public institutions, non-governmental organisations (NGOs), religious organisations and other private bodies may play an important role concerning children living in residential institutions; this role should be defined by member states' governments. Involving non-governmental bodies should not release member states from their obligations towards children in residential institutions that have been enshrined in this Recommendation, concerning in particular the establishment of appropriate standards, systems of accreditation and inspection by competent bodies.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

**Recommendation Rec(2006)5
of the Committee of Ministers to member states
on the Council of Europe Action Plan to promote the rights and full participation of
people with disabilities in society: improving the quality of life of people with
disabilities in Europe 2006-2015**

(Adopted by the Committee of Ministers on 5 April 2006 at the 961st meeting of the Ministers' Deputies)

The Committee of Ministers,

Recalling Resolution (59) 23 of 16 November 1959, on the extension of the activities of the Council of Europe in the social and cultural fields;

Having regard to Resolution (96) 35 of 2 October 1996 revising the Partial Agreement in the Social and Public Health Field, whereby it revised the structures of the Partial Agreement, and resolved to continue, on the basis of revised rules replacing those set out in Resolution (59) 23, the activities hitherto carried out and developed by virtue of that Resolution, aimed at, *inter alia*, integrating people with disabilities into the community with a view to defining and contributing to the implementation at European level of a model coherent policy for people with disabilities, based on the principles of full citizenship and independent living, implying the elimination of barriers to integration, whatever their nature, whether psychological, educational, family-related, cultural, social, professional, financial or architectural;

Considering that the aim of the Council of Europe is to achieve greater unity between its members and that this aim may be pursued, *inter alia*, by the adoption of common rules in the disability policy field for the purpose of promoting the protection of political, civil, social, cultural and educational rights;

Bearing in mind the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5);

Bearing in mind the principles embodied in the revised European Social Charter (ETS No. 163), namely the right of persons with disabilities to independence, social integration and participation in the life of the community;

Having regard to the United Nations Standard Rules on the Equalisation of Opportunities for Persons with Disabilities, 1993;

Having regard to the International Classification of Functioning, Disability and Health (ICF) of the World Health Organisation (WHO), 2001;

Having regard to the Convention concerning Vocational Rehabilitation and Employment (Disabled Persons) of the International Labour Organisation (ILO) (No.

C159), 1983, and the corresponding ILO Recommendation on Vocational Rehabilitation and Employment (Disabled Persons) (No. R168), 1983;

Having regard to Recommendation No. R (92) 6 of the Committee of Ministers to member states on a coherent policy for people with disabilities;

Having regard to the Ministerial Declaration on People with Disabilities "Progressing towards full participation as citizens", adopted at the Second European Conference of Ministers responsible for integration policies for people with disabilities held in Malaga (Spain) on 7 and 8 May 2003;

Having regard to the Action Plan of the Third Summit of Heads of State and Government of the Council of Europe (CM(2005)80 final), adopted in Warsaw on 17 May 2005, which lays down the role and main responsibilities of the Council of Europe in the coming years;

Having regard to Recommendation 1592 (2003) by the Council of Europe Parliamentary Assembly "Towards full social inclusion of people with disabilities";

Reaffirming the universality, indivisibility and interdependence of all human rights and fundamental freedoms and the need for people with disabilities to be guaranteed their full enjoyment without any discrimination;

Considering that the estimated proportion of persons with disabilities in the total population in Europe is 10-15%, that the main causes of disability are disease, accidents and disabling conditions among the elderly, and that the number of disabled people is expected to grow steadily due to increasing life expectancy, *inter alia*;

Considering that failure to promote the rights of citizens with disabilities and to ensure equality of opportunities is a violation of human dignity;

Considering that ensuring equal opportunities for members of all groups in society contributes to securing democracy and social cohesion;

Convinced that the human rights based approach to ensuring the integration and full participation of people with disabilities in society should be incorporated in all relevant policy areas at international, national, regional and local level;

Emphasising the need to mainstream disability issues in all sectors through coherent policies and co-ordinated action;

Acknowledging the work carried out by the Council of Europe Committee on the Rehabilitation and Integration of People with disabilities (CD-P-RR) in the drafting of this Disability Action Plan;

Emphasising the importance of establishing partnerships with non-governmental organisations of people with disabilities in the implementation and follow-up of the Disability Action Plan,

Recommends that the governments of the member states having due regard to their

specific national, regional or local structures and respective responsibilities:

- a. integrate as appropriate in their policy, legislation and practice the principles and implement the actions set out in the Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015, as it appears in the appendix to this recommendation;
- b. promote the implementation and application of the Council of Europe Disability Action Plan 2006-2015 in areas which are not the direct responsibility of public authorities, but where they nonetheless have a certain power or may play a certain role;
- c. assure to this end the widest possible dissemination of this recommendation amongst all parties concerned, for example through awareness-raising campaigns and co-operation with the private sector and civil society, involving, in particular, non-governmental organisations of people with disabilities.

Appendix to Recommendation Rec (2006) 5

**Council of Europe Action Plan
to promote the rights and full participation of people with disabilities in society:
improving the quality of life of people with disabilities in Europe 2006-2015**

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1. Executive Summary

1.1. Mission

1.1.1. Malaga Ministerial Declaration on People with disabilities

In 1992, following the first European Conference of Ministers responsible for policies on people with disabilities, Recommendation No. R (92) 6 on a coherent policy for people with disabilities was adopted by the Committee of Ministers.

This pioneering recommendation influenced disability policies for more than ten years and prompted new inclusive policy plans that have positively benefited people with disabilities both nationally and internationally.

However, major changes have taken place in society and new strategies are needed to further progress a social and human rights based approach to disability issues in the next decade.

In May 2003 at the Second European Ministerial Conference, which took place in Malaga, Spain, the Ministers responsible for policies on people with disabilities adopted the Malaga Ministerial Declaration on People with disabilities “Progressing towards full participation as citizens”.

An appropriate strategy was set out to elaborate a Council of Europe Disability Action Plan aimed at promoting human rights and improving of the quality of life of people with disabilities in Europe.

1.1.2. Mission statement

The Council of Europe Disability Action Plan 2006-2015 seeks to translate the aims of the Council of Europe with regard to human rights, non-discrimination, equal opportunities, full citizenship and participation of people with disabilities into a European policy framework on disability for the next decade.

This Action Plan aims to provide a comprehensive framework that is both flexible and adaptable in order to meet country-specific conditions. It is intended to serve as a roadmap for policy makers, to enable them to design, adjust, refocus and implement appropriate plans, programmes and innovative strategies.

The Council of Europe will seek to implement the Disability Action Plan by providing assistance to all member states in the form of recommendations, advice and expert information.

1.2. Fundamental principles and strategic goals

1.2.1. Fundamental principles

Member states will continue to work within anti-discriminatory and human rights frameworks to enhance independence, freedom of choice and the quality of life of people with disabilities and to raise awareness of disability as a part of human diversity.

Due account is taken of relevant existing European and international instruments, treaties and plans, particularly the developments in relation to the draft United Nations international convention on the rights of persons with disabilities.

The Council of Europe's New Strategy for Social Cohesion (2004) points out that there has to be particular commitment to ensure access to human rights for people who are at risk of becoming vulnerable, such as children and young people, migrants and ethnic minorities, people with disabilities and the elderly.

The Disability Action Plan acknowledges the basic principle that society has a duty towards all its citizens to ensure that the effects of disability are minimised through actively supporting healthy lifestyles, safer environments, adequate health care, rehabilitation and supportive communities.

1.2.2. Strategic goals

The key objective of the Disability Action Plan is to serve as a practical tool to develop and implement viable strategies to bring about full participation of people with disabilities in society and ultimately mainstreaming disability throughout all the policy areas of the member states. The Action Plan aims at meeting country-specific conditions as well as transition processes that are taking place in various member states.

It comprises recommendations to take specific actions at national level and also illuminates aspects of vulnerable groups of people with disabilities who face specific

barriers and problems that require a cross-cutting response.

It encourages member states to respond to the needs of people with disabilities by providing quality and innovative services and consolidating measures already in place.

The Action Plan seeks to provide a useful source of inspiration for private enterprise, non-governmental organisations and other international organisations. It considers non-governmental organisations of people with disabilities to be competent and expert partners in policy development, who should be consulted as stakeholders in decision-making processes which affect their lives. The implementation of the Action Plan will be monitored and regularly evaluated to identify progress at national level as well as to share good practices.

1.3. Key action lines

The Council of Europe Disability Action Plan has a broad scope, encompassing all key areas of the life of people with disabilities. These key areas are duly reflected in 15 action lines which set out key objectives and specific actions to be implemented by member states.

The action lines are the core of the Action Plan. They cover the following areas:

- No. 1: Participation in political and public life;
- No. 2: Participation in cultural life;
- No. 3: Information and communication;
- No. 4: Education;
- No. 5: Employment, vocational guidance and training;
- No. 6: The built environment;
- No. 7: Transport;
- No. 8: Community living;
- No. 9: Health care;
- No. 10: Rehabilitation;
- No. 11: Social protection;
- No. 12: Legal protection;
- No. 13: Protection against violence and abuse;
- No. 14: Research and development; and
- No. 15: Awareness raising.

Participation in political and public life (No. 1) and democratic processes is essential for the development and maintenance of democratic societies. People with disabilities should have the opportunity to influence the destiny of their communities. It is therefore important that people with disabilities be able to exercise their right to vote and participate in political and public activities.

To be fully integrated into society, people with disabilities should also be able to participate in the cultural life (No. 2) of that society. Appropriate measures should be taken to ensure that people with disabilities can participate in cultural activities and associations and can develop and utilise their creative and intellectual potential for their own benefit and that of their communities.

In this regard, access to information and communication (No. 3) is a prerequisite. It is important that public and private providers of information and communication take the needs of people with disabilities into account. Appropriate measures should be taken to ensure that people with disabilities can receive and impart information on an equal footing with other members of society.

Equal access to education (No. 4) is a fundamental requirement for ensuring social inclusion as well as independence for people with disabilities. Education should cover all life stages from pre-school education to professional education, as well as life-long learning. Mainstream education and specialised programmes, as appropriate, should be encouraged to work together to support people with disabilities in their local communities. A mainstream approach can also contribute to non-disabled people's awareness and understanding of human diversity.

Employment, vocational guidance and training (No. 5) are key factors for the social inclusion and economic independence of people with disabilities. Legislation, measures and services are needed to ensure equality of opportunity for disabled people in obtaining and retaining a job. Equal access to employment should be enhanced by combining anti-discrimination and positive action measures and by mainstreaming issues related to the employment of people with disabilities in employment policies.

An accessible, barrier-free built environment (No. 6) encourages equal opportunities, independent living, active involvement in the community and access to employment. By applying the principles of Universal Design an environment that is accessible to people with disabilities can be established and the creation of new barriers can be avoided.

The development and implementation of accessible transport (No. 7) at all levels should result in a substantial improvement of the accessibility of passenger transport services for all people with disabilities. This is a prerequisite to achieving independence, full participation in the labour market and active participation in the community.

People with disabilities should be able to live as independently as possible, including being able to choose where and how to live. Opportunities for independent living and social inclusion are first and foremost created by living in the community. Enhancing community living (No. 8) requires strategic policies which support the move from institutional care to community-based settings, ranging from independent living arrangements to sheltered, supportive living in small-scale settings. It also implies a co-ordinated approach in the provision of user-driven, community-based services and person-centred support structures.

Disabled people, like non-disabled people, require adequate health care (No. 9) and should have equal access to good quality health care services that are respectful of clients' rights. In this regard it is important that health care professionals (be trained to) focus more on the social model of disability.

To prevent the deterioration of disability, alleviate its consequences and enhance independence of people with disabilities, comprehensive rehabilitation (No. 10) programmes that include an array of accessible, and, where appropriate, community-based services, should be implemented.

Services provided by the social protection (No. 11) system – including social security, social assistance and support – can contribute to the quality of life of their recipients. People with disabilities should be able to adequately benefit from social protection systems and have equal access to these services. Policies encouraging a shift from benefit dependency towards employment and independence should be promoted, where possible.

People with disabilities should have access to the legal system on the same basis as other citizens. Legal protection (No. 12) entails taking appropriate measures to eliminate discrimination against people with disabilities. An adequate legal and administrative framework is necessary to prevent and combat discrimination.

Society also has a duty to prevent and protect people against acts of abuse and violence (No. 13). Policies should be aimed at safeguarding people with disabilities against all forms of abuse and violence and ensure appropriate support for victims of abuse and violence.

Research and development (No. 14), statistical data collection and analysis are essential to design and implement well-informed and evidence-based policies. Reliable information is helpful in order to identify emerging issues and helps to design solutions. It is also important to identify best practices and to monitor change in society.

Awareness raising (No. 15) is a key issue that underpins the whole Action Plan. Discriminatory behaviour and stigmatisation should be opposed and replaced by accessible and objective information on the consequences of impairments and disabilities in order to promote a better understanding of the needs and rights of people with disabilities in society. Action should be aimed at changing negative attitudes towards people with disabilities and should promote mainstreaming of disability issues in all government publications as well as publications of the media.

1.4. Cross-cutting aspects

Within the European disabled population there are people with disabilities who face specific barriers or experience two-fold discrimination.

Women and girls with disabilities, people with disabilities in need of a high level of support, children and young people with disabilities, ageing people with disabilities and people with disabilities from minorities and migrant communities have a higher risk of exclusion and generally have lower levels of participation in society than other disabled people.

Women and girls with disabilities often face multiple obstacles to participation in society due to discrimination on grounds of both gender and disability. The specific

situation of women and girls needs to be taken into account in the development of both disability and gender mainstream policies and programmes at all levels.

One of the more vulnerable groups of people with disabilities is the group of people who, due to the severity and complexity of their disability, are in need of a high level of support. Their quality of life is very much dependent on the availability of appropriate quality services and specific, often intensive support. Planning and co-ordination across relevant authorities, government agencies and service providers are needed to adequately address the specific problems of this group of people.

Children with disabilities should enjoy the same rights – as laid down in the United Nations Convention on the Rights of the Child – and opportunities as other children. Young people with disabilities are also a vulnerable group in our society. They still face considerable barriers in accessing all aspects of life. The specific problems faced by children and young people with disabilities must be studied in greater depth in order to design and implement well informed policies across a wide spectrum of policy areas.

The progressive ageing of people with disabilities, particularly of those requiring more intensive support, presents new challenges for societies across Europe. Innovative approaches are required to meet these challenges across a wide range of policy and service areas.

People with disabilities from minorities and migrant communities may experience multiple disadvantages because of discrimination or lack of familiarity with public services. A comprehensive approach, taking account of cultural background, language and particular needs, is required to address specific problems these groups may face.

The above-mentioned specific groups of people with disabilities require a cross-cutting response to ensure their inclusion in society. Policy makers need to acknowledge the barriers and challenges faced by each of these groups and ensure that policies include actions that cut across many key action lines to remove those barriers and ensure that individuals can reach their full potential. A twin-track approach, departing from this Action Plan and the Council of Europe's New Strategy for Social Cohesion (2004), is needed to promote the development of effective cross-cutting and integrated policies.

1.5. Implementation and follow-up

In line with the fundamental principles underpinning the action lines and the cross-cutting aspects, Universal Design principles, quality, training and mainstreaming are vital elements of the implementation strategy of the Disability Action Plan. The application of Universal Design principles is of paramount importance for improving the accessibility of the environment and the usability of products. It is also essential that all policies, actions and services be underpinned by high standards in terms of quality. A mainstream approach in policy development and service delivery plays an important role in promoting a more inclusive society.

Member states have primary responsibility for implementing disability policies at national level and in particular for implementing the specific actions referring to them

under each action line. Member states should start by an evaluation of existing policies and underlying basic principles against the blueprint of the Disability Action Plan, to identify in which areas progress has yet to be made and which specific actions have to be carried out.

Based on that evaluation, member states should set up strategies aimed at bringing their policies progressively in line with the recommendations and underlying basic principles of the Disability Action Plan, within the framework of national financial resources.

Member states should seek joint approaches and establish partnerships with relevant stakeholders, in particular with non-governmental organisations of people with disabilities, in the implementation and evaluation of the Disability Action Plan.

All relevant bodies and committees of the Council of Europe have been consulted to ensure an increased awareness and implementation of the Disability Action Plan.

The Committee of Ministers will designate an appropriate forum to manage the follow-up process and could recommend that member states analyse specific priority issues in depth. Effective follow-up to the Disability Action Plan requires member states to provide the designated forum with relevant information on a regular basis.

The designated forum will ensure that the Committee of Ministers is regularly informed about the progress made in the implementation of the Disability Action Plan.

2. Introduction

2.1. Mission

The Action Plan seeks to translate the aims of the Council of Europe with regard to human rights, non-discrimination, equal opportunities, full citizenship and the participation of people with disabilities into a European framework on disability for the next decade.

This Action Plan aims to provide a comprehensive framework that is both flexible and adaptable in order to meet country-specific conditions. It is intended to serve as a roadmap for policy makers, to enable them to design, adjust, refocus and implement appropriate plans, programmes and innovative strategies.

The Council of Europe will seek to implement the Action Plan by providing positive assistance to all member states in the form of recommendations, advice and expert information.

2.2. Paradigm shift from patient to citizen

The last decade has seen major political, economic, social and technological changes in Europe. The opportunities and challenges of globalisation, the development of information and communication technology, changing patterns of employment and unemployment, health and demography, migration, and the transition to market

economies are transforming the region. Many of these changes have been positive and have consequently raised people's hopes and expectations.

We have moved from seeing the disabled person as a patient in need of care who does not contribute to society to seeing him/her as a person who needs the present barriers removed in order to take a rightful place as a fully participative member of society. Such barriers include attitudes and social, legal and environmental barriers. We therefore need to further facilitate the paradigm shift from the old medical model of disability to the social and human rights based model.

We have shifted our focus to the individual as central to a coherent, integrated approach which respects the human rights, fundamental freedoms and dignity of all disabled individuals. Consequently there has been a shift in many European countries to promote active policies which empower the individual disabled person to control his/her life. At the same time the role of non-governmental organisations in general, and in particular of those of people with disabilities, in society has changed. They have become partners for governments and disabled people alike, as advocates, service providers or as a source of expert knowledge and competence.

The Action Plan is designed to be flexible to take account of future technological change and other developments.

Recent developments in the field of biotechnology and its potential use have created concerns amongst disabled people, to the point that even the right to life is sometimes in question. This plan deals with the full social inclusion and participation of disabled people and therefore it has not been considered appropriate to include such medically related issues as prenatal diagnosis and discrimination in abortion laws on the basis of disability.

However, there is no doubt about the importance of these issues and it is considered vital to ensure that disabled people, through their representative organisations, participate in the relevant national and international ethics and bio-ethics committees dealing with these matters.

2.3. *The Malaga Ministerial Declaration*

The Second European Conference of Ministers responsible for integration policies for people with disabilities, held in Malaga (Spain) on 7 and 8 May 2003, wished to build on the First European Conference of Ministers, which took place in 1991 and resulted in the Committee of Ministers' Recommendation No. R (92) 6 on a coherent policy for people with disabilities. This recommendation, adopted on 9 April 1992, influenced the disability policies of Council of Europe member states for more than ten years and prompted inclusive policies which have positively benefited disabled people both nationally and internationally. However, the ministers recognised that further work is needed to progress on disability issues in a changed environment.

In the Malaga Ministerial Declaration, entitled "Progressing towards full participation as citizens", adopted at the conference, the ministers considered that their main aim in the next decade is to further improve the quality of life of people with disabilities and

their families. A new strategy is needed to reflect the social model of disability and both the higher expectations of disabled people and of society.

The ministers considered that this strategy should be expressed in an Action Plan designed to eliminate all forms of discrimination against people with disabilities, regardless of their age. The Action Plan should have a special focus on disabled women, people with disabilities in need of a high level of support and ageing people with disabilities, and ensure that they will be able to enjoy their human rights, fundamental freedoms, and full citizenship.

2.4. *Human rights framework*

The Council of Europe and its member states will continue to work within anti-discriminatory and human rights frameworks towards safeguarding people with disabilities against any form of discrimination or abuse, and towards mainstreaming equality of opportunity for people with disabilities throughout all policy areas.

In drawing up the Action Plan, the member states would like to acknowledge the influence of existing legal treaties, instruments, standards and policies which support the equal treatment and human rights of people with disabilities. At European level, the Committee of Ministers' Recommendation No. R (92) 6 laid solid foundations. European Union legislation and programmes have further paved the way, and the European Commission Action Plan will shape the manner in which disability policies will henceforth be designed and implemented by the European institutions. The Council of Europe's New Strategy for Social Cohesion (2004) includes a particular commitment to making a reality the rights of those individuals and groups in society who are at particular risk of becoming vulnerable and socially excluded.

In addition to existing European instruments, the United Nations Standard Rules on the Equalisation of Opportunities for Persons with Disabilities, the main United Nations human rights treaties, and developments in relation to the draft United Nations international convention on the rights of persons with disabilities are noted.

2.5. *Strategic goals*

The key objective of this Action Plan is to bring about the full participation of people with disabilities in society, ultimately mainstreaming disability issues throughout all the policy areas.

The plan provides a comprehensive framework of specific recommendations flexible enough to be adaptable in order to meet country-specific conditions. It thus takes due account of the geographic, economic, cultural, and social diversity of member states and recognises that transition processes are under way in various member states. It is intended to serve as a practical tool, a roadmap, for policy makers to enable them to develop and implement appropriate strategies focused on key priorities.

It will aid those countries who need to establish a first national Action Plan for the integration of their disabled citizens and also help countries who already have established such policies and plans to progress them further.

It will help member states to promote active policies which prohibit discrimination and promote the right to equal opportunities with effective means of redress if those rights are infringed.

It encourages member states to respond to the needs of people with disabilities by providing quality and innovative services and consolidating measures already in place.

It provides a useful source of inspiration for private enterprise, non-governmental organisations, and other international organisations.

Lastly and most importantly, the Action Plan promotes the essential concept that disabled people and their representatives need to be consulted as stakeholders in decision-making processes which affect their lives, from national policy design to more individual subjects.

The implementation of the Action Plan will be regularly evaluated to identify progress and share good practice. This will require effective and feasible mechanisms to monitor progress and evaluate the outcome at national level.

2.6. *Structure and content*

The Action Plan has a broad scope and encompasses all key areas of the life of people with disabilities; for example housing, education, employment, mobility and awareness raising. These key areas are duly reflected in the action lines that are the core of the Action Plan.

The Plan also includes cross-cutting aspects, such as those of women and girls with disabilities, children and young people with disabilities, ageing of people with disabilities, people with disabilities in need of a high level of support, and people with disabilities from minorities and migrants.

In the Action Plan, due account is taken of relevant existing European and international instruments, treaties, plans and developments in relation to the draft United Nations international convention on the rights of persons with disabilities.

The fundamental principles governing this Action Plan include non-discrimination, equal opportunities, independence and full participation of disabled people.

The key elements of the Action Plan are overarching and fundamental principles, key action lines, cross-cutting aspects, implementation and follow-up mechanisms and a phased implementation process. The Action Plan is structured accordingly.

The Action Plan does not contain a definition of disability. The committee agreed that this is a matter for individual member states and their national policy.

Similarly, the Action Plan does not contain a specific action line on the subject of prevention. This is a subject important to disabled people, non-disabled people and governments since the effects of disability impact on the individual, their families and society in general. In line with the World Health Organisation (WHO) International

Classification of Functioning, Disability and Health (ICF),⁴ this Action Plan as a whole deals with the prevention of the development of activity limitations and participation restrictions. The Action Plan thus acknowledges the ICF and will encourage member states to use this as a standardisation framework.

The committee felt that ongoing developments in medical treatment, advancements in the early detection of disability and the advancement of public health policies should be addressed by relevant committees within the Council of Europe.

The Action Plan acknowledges the principle that society has a duty to all its citizens to ensure that the effects of disability are minimised through actively supporting healthy lifestyles, safer environments and supportive communities. These issues are addressed in the various action lines, but particularly in the ones dealing with health care and rehabilitation.

2.7. *Fundamental principles*

The fundamental principles which govern this Action Plan are:

- non-discrimination;
- equality of opportunities;
- full participation in society of all persons with disabilities;
- respect for difference and acceptance of disability as part of human diversity;
- dignity and individual autonomy including the freedom to make one's own choices;
- equality between women and men;
- participation of disabled people in all decisions affecting their lives, both at individual level and at society level through their representative organisations.

2.8. *Procedure*

The drafting process of the Action Plan started at the 26th session of the Committee on the Rehabilitation and Integration of People with disabilities (Partial Agreement) (CD-P-RR) in October 2003. To facilitate this process a working group, mandated by the CD-P-RR and assisted by an ad hoc drafting group, was established to elaborate the Action Plan.

The Action Plan advocates the role of non-governmental organisations of people with disabilities as a source of expert knowledge and sees them as competent partners in policy development. Consequently, the European Disability Forum, representing disabled persons' organisations, has played an important and active role in the elaboration of the Council of Europe Disability Action Plan.

To ensure an increased awareness and implementation of the Action Plan all relevant Council of Europe bodies and committees have been consulted.

⁴ Geneva, 2001.

3. Key action lines

The Action Plan outlines specific actions in a broad range of policy areas which, when combined, can provide a comprehensive framework to develop and progress national policies and strategies for people with disabilities and also mainstream policies with a view to promoting the full participation of people with disabilities in society.

The action lines build on the Malaga Ministerial Declaration on People with disabilities "Progressing towards full participation as citizens" (adopted at the Second European Conference of Ministers responsible for disability integration policies, Malaga, Spain, May 2003), on Council of Europe Recommendation No. R (92) 6 on a coherent policy for people with disabilities and on developments in Europe generally.

Each action line sets out key objectives and specific actions to be implemented by member states under the following headings:

- No. 1: Participation in political and public life;
- No. 2: Participation in cultural life;
- No. 3: Information and communication;
- No. 4: Education;
- No. 5: Employment, vocational guidance and training;
- No. 6: The built environment;
- No. 7: Transport;
- No. 8: Community living;
- No. 9: Health care;
- No. 10: Rehabilitation;
- No. 11: Social protection;
- No. 12: Legal protection;
- No. 13: Protection against violence and abuse;
- No. 14: Research and development; and
- No. 15: Awareness raising.

3.1. Action line No.1: Participation in political and public life

3.1.1. Introduction

The participation of all citizens in political and public life and the democratic process is essential for the development of democratic societies. Society needs to reflect the diversity of its citizens and benefit from their varied experience and knowledge. It is therefore important that people with disabilities can exercise their rights to vote and to participate in such activities.

Efforts must be made to create the environment where people with disabilities are encouraged and are able to participate in politics at local, regional, national and international levels. This can only be achieved if conditions are created whereby everyone can enjoy their political rights.

It is noted that women and young people with disabilities generally account for a small proportion of those occupying representative functions. It is important that they are

also encouraged to participate and included in representative groups.

3.1.2. Objectives

- i. To actively promote an environment where people with disabilities can participate on an equal footing in political parties and civil society;
- ii. to increase the participation of people with disabilities in political and public life at all levels, local, regional, national and international, in order to fully represent the diverse nature of society;
- iii. to work to encourage the participation of women and young people with disabilities, as well as those in need of a high level of support, in the political arena at all levels;
- iv. to ensure that people with disabilities and their representative organisations are consulted and have a role to play in determining policies for people with disabilities.

3.1.3. Specific actions by member states

- i. To ensure that voting procedures and facilities are appropriate and accessible to people with disabilities so that they are able to exercise their democratic rights, and allow, where necessary, the provision of assistance in voting;
- ii. to protect the right of people with disabilities to vote by secret ballot and, where necessary, upon their request, allow assistance in voting by a person of their choice;
- iii. to ensure that no person with a disability is excluded from the right to vote or to stand for election on the basis of her/his disability;
- iv. to ensure that election information is available and accessible in all necessary alternative formats, and easy to understand;
- v. to encourage political parties and other civil society organisations to provide their information and organise their public meetings in an accessible way;
- vi. to encourage people with disabilities, in particular women and young people, to form and join representative disability organisations at local, regional and national level for the purpose of contributing to and influencing policy at all levels;
- vii. to encourage consultation with people with disabilities and their organisations on an equal basis to others, in the democratic decision-making process;
- viii. to implement the relevant provisions included in Recommendations Rec(2001)19 of the Committee of Ministers to member states on the participation of citizens in local public life, Rec(2003)3 of the Committee of Ministers to member states on balanced participation of women and men in political and public decision making, Rec(2004)11 on legal, operational and technical standards of e-voting, and Rec(2004)15 on electronic governance.

3.2. Action line No. 2: Participation in cultural life

3.2.1. Introduction

The right of people with disabilities as individuals to be fully integrated into society is dependent on them being able to participate in the cultural life of that society. If people with disabilities are to remain or become independent they must have as complete a life as possible interacting with other members of society, be they disabled or non-disabled people. They have the right to participate in culture, leisure, sport and tourism.

The Council of Europe and its member states are committed to taking the rights of people with disabilities into account when formulating and implementing their cultural policy. Concerted action is required to transform the opportunities and quality of life for people with disabilities through their access and involvement in the arts and social life.

There is no easy route to attaining this goal. Various means can be pursued but it may ultimately require enactment of specific legislation. This should reflect the concept of "reasonable adjustment" especially in the context of access to older buildings or historic monuments and smaller private business premises. It will also require the diversity of society to be fully reflected in broadcasting media.

3.2.2. Objectives

- i. To take appropriate measures to ensure that persons with disabilities can access local, regional and national cultural life;
- ii. to ensure that people with disabilities can participate in cultural, recreational, leisure, sporting, spiritual and social activities, both as observers and as actors;
- iii. to work to ensure that people with disabilities can develop and utilise their creative, athletic, artistic, spiritual and intellectual potential for their own benefit and that of their communities.

3.2.3. Specific actions by member states

- i. To encourage institutions and relevant bodies at local, regional, national and international level to make literature and other cultural information material accessible to people with disabilities, making full use of electronic technology where appropriate, and in simple and understandable wording;
- ii. to urge public institutions and to encourage private institutions, relevant bodies and providers to actively engage all people with disabilities in their cultural, leisure, sporting, spiritual and intellectual activities;
- iii. to encourage their broadcasting and related creative industries to ensure that people with disabilities can access broadcasting, films, theatre plays and other arts-related activities in accessible formats which may include captioning, subscript,

audio description and sign language;

- iv. to urge national broadcasting and related creative industries to publish Action Plans for increasing the employment of people with disabilities both “in front of the camera/microphone and behind it”;
- v. to encourage institutions and relevant bodies dealing with culture, sports, leisure and tourism to undertake regular disability awareness training for their staff as a mainstream activity;
- vi. to enable people with disabilities to enjoy access to culture, sports, tourism and leisure activities by, for example, encouraging providers to make their premises and services accessible through whatever means that are necessary;
- vii. to take appropriate steps:
 - to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by people with disabilities to cultural materials, while respecting the provisions of international law;
 - to ensure that persons with disabilities can acquire artist’s status and benefit from their artistic property;
- viii. to encourage people with disabilities to participate in activities regardless of whether they are intended for people with or without disabilities;
- ix. to ensure that sport and cultural activities are an integral part of the education programmes for children with disabilities, recognising the role of such activities in enhancing social skills.

3.3. Action line No. 3: Information and communication

3.3.1. Introduction

Access to information and communication is a key aspect for participation in society. If people with disabilities are to exercise their rights actively, participate and make choices about their lives, it is essential that they can access information through adequate communication systems. For many people with disabilities, however, information and communication continue to be largely inaccessible.

Ongoing developments in information and communications are changing the way in which citizens interact with each other, conduct business, access services and information and communicate generally. Technological advancements include the Internet, eCommunication facilities, videophones, etc. It is important that all citizens benefit from such technological advancements and that no group be excluded, in particular people with disabilities.

Public bodies have a particular duty to ensure that their information is accessible in a range of formats responding to the diverse needs of people with disabilities. Such

bodies should also be models of best practice for the private sector, and all those providing services to people with disabilities, who should be encouraged to adopt such practices also.

Communication systems must also be accessible to people with disabilities. There are already good examples of the types of systems that can be used, such as telephone relay systems or text and video communication systems.

People with disabilities should be consulted regarding the development of standards and the design of new communication and information systems.

If we are to have a truly inclusive society, people with disabilities must be able to use information and communication systems along with everyone else.

3.3.2. Objectives

- i. To take appropriate measures to ensure that people with disabilities can seek, receive and impart information on an equal footing with other members of society;
- ii. to make the best use of new technologies with the aim of increasing independence and interactions of people with disabilities in all areas of life.

3.3.3. Specific actions by member states

- i. To seek to provide official information to people with disabilities in accessible formats and technologies, acknowledging the needs arising from different impairments (for example Braille, audio-tape or easy-to-read versions);
- ii. to undertake training and other actions to encourage the use of information and communication technologies by persons with disabilities;
- iii. to ensure that all e-learning materials are accessible to persons with disabilities through compliance with existing accessibility standards;
- iv. to recognise that people with disabilities may use sign languages, Braille, and alternative means and modes of communication (including advocacy services), and seek to accommodate these as far as possible in official interaction. On request, in meetings and conferences, a person should be available to summarise the contents in simple wording;
- v. to make communication systems more accessible to people with disabilities through new technologies, for example text communication;
- vi. to ensure public authorities and other public bodies make their information and communications accessible to people with disabilities, including their websites which shall comply with current international accessibility guidelines;
- vii. to encourage all private bodies, particularly those that receive public funding, to make their information and communications accessible to people with disabilities;

- viii. to encourage the development, production and distribution of affordable assistive technologies in information and communication;
- ix. to promote compliance with universal design principles with respect to all new information and communication technology developments;
- x. to implement Resolution ResAP(2001)3 "Towards full citizenship of persons with disabilities through inclusive new technologies".

3.4. Action line No. 4: Education

3.4.1. Introduction

Education is a basic factor in ensuring social inclusion and independence for all people, including those with disabilities. Social influences, for example from families and friends, also contribute, but for the purposes of this action line education shall cover all stages of life, including pre-school, primary, secondary, high school education and professional training, as well as life-long learning. The creation of opportunities for disabled people to participate in mainstream education is not only important for disabled people but will also benefit non-disabled people's understanding of human diversity. Most education systems provide access to mainstream education and specialised educational structures for disabled people, as appropriate. Mainstream and specialised structures should be encouraged to work together to support disabled people in their local communities, but this should be consistent with the goal of full inclusion.

3.4.2. Objectives

- i. To ensure that all persons, irrespective of the nature and degree of their impairment, have equal access to education, and develop their personality, talents, creativity and their intellectual and physical abilities to their full potential;
- ii. to ensure that disabled people have the opportunity to seek a place in mainstream education by encouraging relevant authorities to develop educational provision to meet the needs of their disabled population;
- iii. to support and promote lifelong learning for disabled people of all ages and facilitate efficient and effective transitions between each phase of their education and between education and employment;
- iv. to foster at all levels of the educational system, including in all children from an early age, an attitude of respect for the rights of people with disabilities.

3.4.3. Specific actions by member states

- i. To promote legislation, policies and planning to prevent discrimination against children, young people and adults with disabilities in the access to all phases of their education from early years through to adult provision. In doing so, consult with

disabled users, parents, and carers, voluntary organisations, and other relevant professional bodies, if appropriate;

ii. to encourage and support the development of a unified education system, including mainstream and specialised educational provision, which promotes the sharing of expertise and greater inclusion of disabled children, young people and adults in the community;

iii. to enable the early appropriate assessment of the special educational needs of disabled children, young people and adults to inform their educational provision and planning;

iv. to monitor the implementation of individual education plans and facilitate a co-ordinated approach to education provision throughout and towards employment;

v. to ensure that people with disabilities, including children, receive the support required, within the mainstream education system, to facilitate their effective education. In exceptional circumstances, where their professionally-assessed special education needs are not met within the mainstream education system, member states will ensure that effective alternative support measures are provided consistent with the goal of full inclusion. All special and mainstream provisions should encourage the transition to mainstream education and reflect the same goals and standards;

vi. to encourage the development of initial and ongoing training for all professionals and staff working across all phases of education to incorporate disability awareness and the use of appropriate educational techniques and materials to support disabled pupils and students where appropriate;

vii. to ensure that all educational material and schemes provided through the general educational system are accessible to persons with disabilities;

viii. to include, in school civic education syllabuses, subjects relating to people with disabilities as people who have the same rights as all other citizens;

ix. to ensure that disability awareness is a key part of education programmes in mainstream schools and institutions;

x. to take steps to make places of education and training accessible for persons with disabilities, including by the provision of personal support and of reasonable adjustments (including equipment) to meet their needs;

xi. to ensure that parents of disabled children are active partners in the process of the development of the individualised education plans of their children;

xii. to ensure access to non-formal education allowing disabled youth to develop needed skills otherwise unattainable through formal education;

xiii. to consider, where appropriate, signing and ratifying the European Social Charter (revised) (ETS No. 163), in particular Article 15.

3.5. Action line No. 5: Employment, vocational guidance and training

3.5.1. Introduction

Employment is a key element for the social inclusion and economic independence of all citizens of working age. Compared to non-disabled persons, the employment and activity rates of disabled people are very low. Policies to increase the activity rate need to be diversified – according to the employment potential of disabled people – and comprehensive, in order to address all the barriers to participation in the workforce. Improving the employment situation of disabled people would not only benefit the disabled persons but also employers and society as a whole.

Vocational guidance and assistance play an important role in helping people to identify activities for which they are best suited and to guide training needs or future occupation. It is vital that people with disabilities have access to assessments, vocational guidance and training to ensure they can attain their potential.

This action line seeks to form the basis for greater participation of persons with disabilities in employment, to ensure career choices and to lay the foundations through structures and support in order to ensure real choices. All measures apply to public as well as private employers.

Social enterprises (for example social firms, social co-operatives) as part of the open employment, or sheltered workshops may contribute to the employment of disabled persons.

3.5.2. Objectives

- i. To promote the employment of people with disabilities within the open labour market by combining anti-discrimination and positive action measures in order to ensure that people with disabilities have equality of opportunity;
- ii. to tackle discrimination and promote participation of people with disabilities in vocational assessment, guidance, training, and employment-related services.

3.5.3. Specific actions by member states

- i. To mainstream issues relating to the employment of people with disabilities in general employment policies;
- ii. to ensure that persons with disabilities have access to an objective and individual assessment which:
 - identifies their options regarding potential occupations;
 - shifts the focus from assessing disabilities to assessing abilities and relating them to specific job requirements;
 - provides the basis for their programme of vocational training;
 - helps them find appropriate employment or re-employment;

- iii. to ensure that people with disabilities have access to vocational guidance, training and employment-related services at the highest possible qualification level, and making reasonable adjustments where necessary;
- iv. to ensure protection against discrimination in all stages of employment, including selection and recruitment, as well as in all measures related to career progression;
- v. to encourage employers to employ people with disabilities by:
 - applying recruitment procedures (for example advertising, interview, assessment, selection) which ensure that job opportunities are positively made available to people with disabilities;
 - making reasonable adjustments to the workplace or working conditions, including telecommuting, part-time work and work from home, in order to accommodate the special requirements of employees with disabilities;
 - increasing the disability awareness of management and staff through relevant training;
- vi. to ensure that general self-employment schemes are accessible and supportive to people with disabilities;
- vii. to ensure that support measures, such as sheltered or supported employment, are in place for those people whose needs cannot be met without personal support in the open labour market;
- viii. to support people with disabilities to progress from sheltered and supported employment to open employment;
- ix. to remove disincentives to work in disability benefit systems and encourage beneficiaries to work when they can;
- x. to consider the needs of women with disabilities when devising programmes and policies related to equal opportunities for women in employment, including childcare;
- xi. to ensure that employees with disabilities enjoy the same rights as other employees in relation to consultation on employment conditions and membership and active participation in trade unions;
- xii. to provide effective measures to encourage the employment of people with disabilities;
- xiii. to ensure that health and safety legislation and regulations include the needs of persons with disabilities and do not discriminate against them;
- xiv. to promote measures, including legislative and integration management, that enable persons who become disabled while employed to stay within the labour market;

xv. to ensure that especially young disabled people can benefit from employment internships and traineeships in order to build skills and from information on employment practices;

xvi. to consider, where appropriate, signing and ratifying the European Social Charter (revised) (ETS No. 163), in particular Article 15;

xvii. to implement Resolution ResAP(95)3 on a charter on the vocational assessment of people with disabilities.

3.6. Action line No. 6: The built environment

3.6.1. Introduction

The overarching aim is to create a society for all. An accessible environment has a key role to play in creating a more inclusive society where people with disabilities can participate in daily life. Existing barriers in the built environment hinder or prevent disabled persons from such participation and enjoyment of fundamental rights. Making the environment accessible to persons with disabilities, irrespective of type of disability, would additionally benefit all members of society. This requires an understanding of existing barriers, including attitudes and physical barriers, and a commitment to removing these through positive actions and other measures. The Resolution ResAP(2001)1 on Universal Design promotes the introduction of the principles of universal design into the curricula of all occupations working on the built environment, including architects, engineers, town planners and all other relevant professions and occupations working on or with the built environment. It also aims to simplify life for everyone by making the built environment more accessible, usable and understandable.

3.6.2. Objective

To progressively establish an environment accessible to people with disabilities by applying the principles of Universal Design, thus avoiding the creation of new barriers.

3.6.3. Specific actions by member states

i. To ensure that all relevant policy areas include the overarching aim of creating a barrier-free built environment;

ii. to develop guidelines and standards, and if necessary legislation, to promote public buildings, and public indoor as well as outdoor environments to be accessible to and usable by people with disabilities, taking into account the specific nature of historic buildings;

iii. to ensure that universities and institutions responsible for the training of all occupations working on the built environment (such as architects and town planners, professionals in the construction sector, cultural heritage conservators and cultural tourism specialists) promote the principle of universal design through curricula for

initial and further training and other appropriate means;

iv. to promote the use of assistive devices and technological innovations in order to improve the accessibility of the built environment and give persons with disabilities equal opportunities to participate in community life. Such practices should be applied to new constructions and progressively extended to existing buildings;

v. to support the creation, nomination, and maintenance of centres that promote the concept of Universal Design;

vi. to ensure that due attention is paid to the safety of people with disabilities when designing emergency and evacuation procedures;

vii. to ensure that access to buildings and public areas is not barred to assistive animals accompanying persons with disabilities;

viii. to implement Resolution ResAP(2001)1 on the introduction of the principles of Universal Design into the curricula of all occupations working on the built environment.

3.7. Action line No. 7: Transport

3.7.1. Introduction

The development and implementation of accessible transport policies at all levels can result in a substantial improvement in the quality of life of many people with disabilities and can be a prerequisite to achieving equality of opportunity, independent living and active participation in the community social and cultural life as well as employment.

Many member states will already be aware of or party to developments through the European Conference of Ministers of Transport (ECMT) and the principles and actions promoted through that forum can guide progress by member states in implementing this Disability Action Plan. The resulting accessible transport services will benefit other transport users including the elderly and parents with young children.

In order to ensure that disabled people can benefit from public transport, it is vital that the whole transport chain be accessible.

3.7.2. Objectives

i. To enhance the participation of persons with disabilities in society through the implementation of accessible transport policies;

ii. to ensure that accessible transport policies are implemented taking account of the needs of all persons with different kinds of impairments and disabilities;

iii. to promote the accessibility of existing passenger transport services for all persons with disabilities, and ensure that all new transport services and related

infrastructure be accessible;

iv. to promote the implementation of the principle of universal design in the transport sector.

3.7.3. *Specific actions by member states*

i. To take account of the recommendations, reports and guidelines developed and agreed by international bodies, particularly in relation to the development of standards, guidelines, strategies and, if appropriate, legislation, to ensure the accessibility of transport services and infrastructure including the built environment;

ii. to monitor and review the implementation of accessible transport policies;

iii. to ensure that public transport operators include mandatory disability awareness training as part of the standard training courses for persons engaged in transport service provision;

iv. to promote the introduction and adoption of national guidelines for accessible transport service provision for use by both public and private transport operators;

v. to establish procedures for co-operation and consultation with the relevant stakeholders including in particular relevant government agencies, service providers and disability interest groups to inform policy development and planning in relation to accessible transport provision;

vi. to promote and encourage private transport service operators to provide accessible services;

vii. to ensure that information on public transport services be made accessible as far as possible in diverse formats and through diverse communication systems to cater for people with disabilities;

viii. to encourage the design of innovative programmes which support disabled people who experience difficulties in using public transport to utilise their own private transport;

ix. to ensure that assistive animals (for example guide dogs) accompanying people with disabilities are accommodated in public transport;

x. to ensure the provision and protection of parking facilities for disabled people with reduced mobility;

xi. to recognise the specific requirements of people with disabilities when devising general fundamental texts on passenger rights;

xii. to protect through legislation disabled people from discrimination in accessing transport;

xiii. to ensure that transport safety and emergency procedures do not create

additional inequalities for people with disabilities.

3.8. Action line No. 8: Community living

3.8.1. Introduction

This action line focuses on enabling people with disabilities to live as independently as possible, empowering them to make choices on how and where they live. This requires strategic policies which support the move from institutional care to community-based settings ranging from independent living arrangements to small group homes. Such policies should be flexible, covering programmes which enable persons with disabilities to live with their families and recognising the specific needs of individuals with disabilities requiring a high level of support.

In general, a family's day-to-day life differs considerably depending whether or not it has a child with a disability: guidance and care, for instance, take up a great deal of time, visits to therapists, doctors, etc., are necessary, the child needs supervision in recreational activities and assistance with the practical aspects of daily living, etc. It is important that parents of children with disabilities can have access to suitable training enabling them to acquire the requisite proficiencies to lead a life as close as possible to normal with their disabled child.

Full independent living may not be a possibility or a choice for all individuals. In exceptional cases, care in small, quality structures should be encouraged as an alternative to living in an institution. The design of independent living arrangements should involve people with disabilities and their representative organisations.

Disabled people living in the community have different needs that require different levels of care, assistance and support. Transparent eligibility criteria and independent individual assessment procedures, which take into account disabled persons' own choice, autonomy and welfare, will promote equitable access to services.

Independent living policies are not just confined to living arrangements, but are also dependent on the accessibility of a broad range of services, including transport. The success of such policies requires a mainstream approach to the planning, development and delivery of mainstream services to ensure they also respond to the needs of individuals with disabilities with cross-agency support to ensure a co-ordinated approach.

3.8.2. Objectives

- i. To enable people with disabilities to plan their life and live as independently as possible in their community;
- ii. to provide a broad range of quality support services at community level in order to allow for freedom of choice;
- iii. to pay special attention to the situation of families that have a child/children with disabilities and advocate an approach that accommodates training for parents

concerned, as well as to disabled parents and their participation in child-care and education tasks.

3.8.3. Specific actions by member states

- i. To ensure a co-ordinated approach in the provision of community-based quality support services to enable people with disabilities to live in their communities and enhance their quality of life;
- ii. to develop and promote housing policies which enable people with disabilities to live in suitable housing in their local community;
- iii. to support formal and informal help, making it possible for people with disabilities to live at home;
- iv. to recognise the status of carers, by providing them with support and relevant training;
- v. to have the needs of families as providers of informal care thoroughly assessed, especially those with children with disabilities or caring for persons in need of a high level of support, with a view to providing information, training and assistance, including psychological support, to enable life within the family, paying particular attention to the reconciliation of private and professional life and to gender equality;
- vi. to ensure community-based quality service provision and alternative housing models, which enable a move from institution-based care to community living;
- vii. to ensure that individuals can make informed choices with the assistance, when appropriate, of a skilled advocacy service;
- viii. to promote schemes which will allow disabled people to employ personal assistants of their choice;
- ix. to provide complementary services and other facilities, for example day centres, short-stay centres or self-expression groups, offering suitable forms of therapy, to give people with disabilities and their families periods of support and respite;
- x. to provide people with disabilities, in particular those in need of a high level of support, with tailored support provision, including advocacy, in order to reduce any risk of social exclusion;
- xi. to implement the relevant provisions included in Recommendation No. R (96) 5 of the Committee of Ministers to member states on reconciling work and family life.

3.9. Action line No. 9: Health care

3.9.1. Introduction

People with disabilities have the same right as other members of society to good quality health services and relevant treatment and technology to ensure the best

possible health. In some cases, disabled people will require special and innovative health care services to improve the quality of their life. Disabled people and their representatives (where necessary) should be consulted and fully involved in the decision-making process regarding their personal care plan. This approach places disabled people at the centre of the planning process and service provision design and empowers the individuals to make informed decisions about their health.

When planning and delivering health care services, account should be taken of developments regarding the ageing population and the related health consequences, particularly for persons with disabilities. It is therefore necessary to give priority to the development of new policies and strategies in the area of health.

Health care professionals in all member states need to acknowledge the social and human rights model of disability and not focus solely on the medical aspect of disability.

3.9.2. Objectives

- i. To ensure that all disabled people, regardless of gender, age and origin, nature or degree of impairment:
 - have equal access to all health care services;
 - benefit from access to available specialised services, as appropriate;
 - are as fully involved as possible in the decision-making process of their personal care plan;
- ii. to ensure that the needs of people with disabilities are included in health education information and public health campaigns.

3.9.3. Specific actions by member states

- i. To ensure that no disabled people are discriminated against in access to health care services and medical records;
- ii. to ensure that each disabled person, or, where not possible due to the origin, nature or degree of their impairment, their representative, carer or advocate is fully consulted to the maximum possible extent, in the assessment, design and delivery of their health care plan, medical intervention and treatment;
- iii. to work towards accessible public and private health service facilities and equipment and ensure that health care services, including mental health, psychological support services and in- and out-patient services are equipped and competent to meet the needs of disabled people;
- iv. to ensure that women with disabilities have equal access to health care services, including in particular, ante-natal, gynaecological and family planning advice and treatment;

- v. to ensure that gender specific aspects are respected in health care for disabled people;
- vi. to ensure that reasonable steps are taken to provide all relevant information regarding an individual's health care needs or services in a format understandable to the disabled person;
- vii. to ensure that notification of the disability, whether it occurs before or after birth or after an illness or accident, is made under conditions guaranteeing respect for the person concerned and the family and ensuring clear, comprehensible information and support for the individual and his or her family;
- viii. to provide access to health education and public health campaigns through, amongst others, information and advice for people with disabilities;
- ix. to train health care professionals in such a way as to instill disability awareness together with the proficiency and methods for meeting the specific needs of persons with disabilities;
- x. to recognise the need for early intervention and thus establish effective measures to detect, diagnose, and treat impairments at an early stage, and also to develop effective guidelines for early detection and intervention measures;
- xi. to consider, where appropriate, signing and ratifying the European Social Charter (revised), in particular Article 11.

3.10. Action line No. 10: Rehabilitation

3.10.1. Introduction

The Committee of Ministers' Recommendation No. R (92) 6 on a coherent policy for people with disabilities recognises that rehabilitation of people with disabilities, by virtue of the economic and social integration it achieves, is a duty of the community, that it guarantees human dignity and alleviates the difficulties stemming from society with which people with disabilities are confronted, and that it should be included among the priority objectives of any society. With respect to this recommendation, a coherent policy for the rehabilitation of people with disabilities should aim at preventing the deterioration of disability, alleviating its consequences, furthering the autonomy of people with disabilities as individuals and ensuring their economic independence and full integration into society. Comprehensive rehabilitation programmes should include a variety of complementary measures, provisions, services and facilities that can considerably contribute to the physical and psychological independence of disabled people.

3.10.2. Objectives

- i. To enable people with disabilities to attain their maximum independence and achieve their fullest physical, mental, social, and vocational ability;

- ii. to organise, strengthen and extend comprehensive rehabilitation services;
- iii. to enable access to mainstream services and specialist provision to enable people with disabilities to achieve full social integration within their communities and societies;
- iv. to ensure, in particular, high-quality early intervention, a multi-disciplinary approach, from birth, including support and guidance for parents.

3.10.3. Specific actions by member states

- i. To formulate, implement and regularly review national rehabilitation policies and ensure continuous improvement;
- ii. to ensure that people with disabilities, their families and representative organisations contribute to the design of holistic rehabilitation programmes, their delivery and their evaluation;
- iii. to ensure that rehabilitation programmes are accessible and tailored to the individual needs of the disabled person; they need the consent of the disabled person or his/her representative;
- iv. where possible, to utilise mainstream provision and facilities but also ensure that specialist rehabilitation centres are as fully equipped as possible for the service they provide and have a multidisciplinary team of staff specialising in rehabilitation;
- v. to enhance rehabilitation services and support by means of individual multidisciplinary assessment using a holistic approach;
- vi. to promote multi-sector collaboration with the involvement of all relevant sectors, especially health, education, social and employment and to provide an integrated rehabilitation management, where necessary to ensure that persons with disabilities have equality of opportunity;
- vii. to ensure, during education, that children with disabilities have access to programmes of pedagogical rehabilitation and other resources enabling them to achieve their full potential;
- viii. to involve both employers and employees and their organisations in vocational rehabilitation in order to support people who become disabled to return to work at the earliest opportunity;
- ix. to work towards the availability of individualised, community-based programmes of rehabilitation for individuals with a disability who so require;

- x. to promote the availability and affordability of assistive devices as part of rehabilitative measures/programmes for people with disabilities who so require.

3.11. Action line No. 11: Social protection

3.11.1 Introduction

Social protection includes social security, social assistance or support, and social services, which are vital supports for those dependent on them, as they contribute to the quality of life of their recipients. However, there are many situations in which people with disabilities do not adequately benefit from social protection systems, be it due to the lack of such provisions or due to access difficulties. The social rights enshrined in the revised European Social Charter (ETS No. 163), include in particular the right to social security (Article 12), the right to social and medical assistance (Article 13), and the right to benefit from social welfare services (Article 14). The implementation of these rights helps to reduce the risk of social exclusion and marginalisation and hence contributes to opening access to another right enshrined in the Charter, namely the right of persons with disabilities to independence, social integration and participation in the life of the community (Article 15).

3.11.2 Objectives

- i. To provide equal access to social protection for people with disabilities;
- ii. to promote policies which progress the shift from financial benefit dependency towards, where possible, employment and independence.

3.11.3. Specific actions by member states

- i. To ensure a coherent balance between social protection measures and active employment oriented policies in order to discourage inactive benefit dependency;
- ii. to ensure that the allocation of social services and related support is based on a sound, multidisciplinary assessment of the person's needs, and subject to periodic review;
- iii. to ensure that all benefit assessment systems and procedures are accessible to people with disabilities or their representatives;
- iv. to ensure that general social services take account of the specific needs of people with disabilities and their families;
- v. to ensure that co-ordination between and across administrative departments and public and private providers of social services is continuously improved, so that the provision of quality services meets the needs of people with disabilities;
- vi. to consult with social partners and other key actors, including organisations of people with disabilities, in relation to the planning and implementation of social protection policies;

- vii. to ensure effective dissemination of information on all the social protection benefits to which people with disabilities could be entitled, with special focus on people with disabilities at risk of social exclusion;
- viii. to ensure that social inclusion and anti-poverty strategies recognise the specific needs of people with disabilities;
- ix. to consider, where appropriate, signing and ratifying the European Social Charter (revised), the European Code of Social Security (ETS No. 48), the revised European Code of Social Security (ETS No. 139), and the European Convention of Social Security (ETS No. 78);
- x. to implement the relevant provisions included in Recommendation Rec(2003)19 of the Committee of Ministers to member states on access to social rights.

3.12. Action line No. 12: Legal protection

3.12.1. Introduction

People with disabilities have the right to recognition everywhere as persons before the law. When assistance is needed to exercise that legal capacity, member states must ensure that this is appropriately safeguarded by law.

Persons with disabilities constitute a varied population group, but all have in common, to a greater or lesser extent, the need for additional safeguards in order to enjoy their rights to the full and to participate in society on an equal basis with other members.

The need to focus particular attention on the situation of persons with disabilities, in terms of the exercise of their rights on an equal basis with others, is confirmed by the initiatives taken in this area at national and international level.

The principle of non-discrimination should be the basis of government policies designed to deliver equality of opportunity for people with disabilities.

Access to the legal system is a fundamental right in a democratic society but people with disabilities can often face a number of barriers, including physical access difficulties. This requires a range of measures and positive actions, including general awareness raising among the legal professions about disability issues.

3.12.2. Objectives

- i. To ensure effective access to justice for persons with disabilities on an equal basis with others;
- ii. to protect and promote the enjoyment of all human rights and fundamental freedoms by persons with disabilities on an equal basis with others.

3.12.3. Specific actions by member states

- i. To provide protection against discrimination through the setting up of specific legislative measures, bodies, reporting procedures and redress mechanisms;
- ii. to ensure that provisions which discriminate against disabled people are eradicated from mainstream legislation;
- iii. to promote training on human rights and disability (both national and international) for law enforcement personnel, public officials, judiciary and medical staff;
- iv. to encourage non-governmental advocacy networks working in defence of people with disabilities' human rights;
- v. to ensure people with disabilities have equal access to the judicial system by securing their right to information and communication that are accessible to them;
- vi. to provide appropriate assistance to those people who experience difficulty in exercising their legal capacity and ensure that it is commensurate with the required level of support;
- vii. to take appropriate measures to ensure that people with disabilities are not deprived of their liberty, except in accordance with the law;
- viii. to take effective measures to ensure the equal right of persons with disabilities to own and inherit property, providing legal protection to manage their assets on an equal basis to others;
- ix. to ensure that no person with a disability is subjected to medical experimentation against their will;
- x. to implement the relevant provisions included in the Recommendation No. R (99) 4 of the Committee of Ministers to member states on principles concerning the legal protection of incapable adults.

3.13. Action line No. 13: Protection against violence and abuse

3.13.1. Introduction

Acts of abuse or violence against any person are unacceptable and society has a duty to ensure that individuals, particularly the most vulnerable, are protected against such abuse.

There are indications that the rate of abuse and violence committed against persons with disabilities is considerably higher than the rate for the general population, and higher in women with disabilities, particularly women with severe disabilities, where the percentages of abuse far exceed those of non-disabled women. Such abuse can occur in institutions or other types of care and situations, including the family environment. It can be inflicted by strangers or persons known to the individual and can take many forms, for instance verbal abuse, violent actions, or the refusal to meet

basic needs.

While governments cannot guarantee that abuse will not happen they must do their utmost to establish protection and the strongest possible safeguards. Prevention can be assisted in many ways, particularly through education to appreciate the rights of individuals to protection and to recognise and reduce the risk of abuse. Persons with disabilities who experience abuse or violence should have access to appropriate supports. They must have a system in which they can have sufficient confidence to report abuse and expect follow-up action, including individual support. Such systems require personnel who are skilled and qualified to detect and respond to situations of abuse.

While there has been some research undertaken in recent years, it is clear that further knowledge is required to inform future strategies and best practice.

3.13.2. Objectives

- i. To work within anti-discriminatory and human rights frameworks towards safeguarding people with disabilities against all forms of violence and abuse;
- ii. to ensure access for people with disabilities to services and support systems for victims of violence and abuse.

3.13.3. Specific actions by member states

- i. To establish safeguards to protect people with disabilities from violence and abuse through the effective implementation of policies and legislation, where necessary;
- ii. to promote the availability of and access to training courses for people with disabilities to reduce the risk of violence and abuse, for example courses in self-confidence and empowerment;
- iii. to develop processes, measures and protocols adapted to people with disabilities, to improve detection of violence and abuse, and to ensure that the necessary action is taken against perpetrators, including redress and adequate professional counselling in case of emotional problems;
- iv. to ensure that disabled victims of violence and abuse, including domestic, have access to the relevant support services, including redress;
- v. to prevent and combat violence, ill-treatment and abuse in all situations by supporting families, raising public awareness and education, promoting discussion and co-operation among relevant parties;
- vi. to support people with disabilities, in particular women, and their families, in situations of abuse through the provision of information and access to services;
- vii. to ensure that systems are in place for the protection against abuse of persons

with disabilities in psychiatric facilities, social care homes and institutions, orphanages, and other institutional settings;

viii. to ensure that relevant training is provided to all staff working in disability-specific institutional settings and mainstream support services;

ix. to train police and judicial authorities so that they can receive testimony from disabled people and treat instances of abuse seriously;

x. to provide people with disabilities with information on how to avoid the occurrence of violence and abuse, how to recognise it, and how to report it;

xi. to take effective legislative, administrative, judicial or other measures with strong sanctions in a transparent manner and to allow for independent review by civil society in order to prevent all forms of physical or mental violence, injury or abuse, neglect and negligent treatment, maltreatment, exploitation or abduction of people with disabilities;

xii. to implement the relevant provisions included in Recommendation Rec(2002)5 of the Committee of Ministers to member states on the protection of women against violence;

xiii. to implement the relevant provisions included in Recommendation No. R (99) 4 of the Committee of Ministers to member states on principles concerning the legal protection of incapable adults;

xiv. to implement Resolution ResAP(2005)1 on safeguarding adults and children with disabilities against abuse, and to take account of the relevant complementary report.⁵

3.14. Action line No. 14: Research and development

3.14.1. Introduction

Comprehensive research, statistical data collection and analysis inform evidence-based policy design. Reliable information identifies emerging issues, helps to design solutions and deliver effective results. It also identifies best practice and monitors change in society.

The lack of data in relation to people with disabilities is recognised as a barrier to policy development at both national and international levels. We need to encourage and advance comprehensive, diversified and specialised research on all disability issues and co-ordinate it at all levels in order to promote the effective implementation of the objectives set out in this Action Plan.

3.14.2. Objectives

⁵ Safeguarding adults and children with disabilities against abuse, Council of Europe Publishing, Strasbourg, 2003, ISBN 92-871-4919-4.

- i. To promote more evidence-based policy and standard development by improving the translation of future-oriented research findings into policy;
- ii. to harmonise statistical data collection methodology, nationally and internationally, in order to achieve valid and comparable research information;
- iii. to use and support all available research and development potential, in a multidisciplinary way, in order to promote the participation of people with disabilities and improve their quality of life.

3.14.3. Specific actions by member states

- i. To develop statistical and information strategies for disability policy and standard development based on a social and human rights-based model of disability, and to review the effectiveness of existing national strategies and databases;
- ii. to ensure information gained through needs assessments, whilst being treated as confidential on an individual basis, is used to the greatest effect to inform overall service planning and provision at national, regional and local levels;
- iii. to ensure that mainstream research, where appropriate, provides data about the participation of people with disabilities, covering all relevant areas of this Action Plan;
- iv. to ensure that research, where possible, incorporates a gender dimension facilitating analysis of the situation regarding women with disabilities;
- v. to work towards a co-ordinated approach to research by agreeing common classifications leading to evaluation and analysis across national and international databases;
- vi. to promote research studies on successful rehabilitation measures aimed at recovery and reintegration in the community;
- vii. to promote studies on the effects of demographic changes and the ageing process on the quality of life of people with disabilities;
- viii. to involve representatives of persons with disabilities and other relevant stakeholders in the development of research strategy and data gathering;
- ix. to support applied scientific research into the design of new information and communication technologies, technical aids, products and devices which can contribute to the independent living and participation of disabled people in society;
- x. to encourage all product research to take account of universal design principles;
- xi. to promote the exchange of good practice, sharing of information and close co-operation between relevant bodies to ensure availability of comprehensive data to inform policies;

xii. to commission relevant research and innovative pilot projects to support policy development which covers all the relevant areas of this Action Plan.

3.15. Action line No. 15: Awareness raising

3.15.1. Introduction

People with disabilities face many barriers to their participation and recognition as full and equal members of society. Most disabled people consider society's attitude to be the biggest barrier to their full integration.

Persons with disabilities are still confronted with unacceptable attitudes based on existing prejudices, fear, low expectations and distrust in their abilities. These attitudes could be changed through effective awareness raising strategies involving a range of stakeholders.

In recent years, many member states have progressed anti-discrimination legislation and have encouraged social policy initiatives. These initiatives are contributing to the integration of disabled people into their local communities but this alone is not enough.

In order to promote their activities, member states should ensure co-operation both in the field of media, and in other fields of activity that could help in bringing about a change in attitudes.

Disabled people need to be present in advertisements, on screen, on radio, and in print to bring about a paradigm shift in the perception of disability and disabled people; a real change in attitudes by all members of society can then become a reality.

Society needs to be made aware of the fact that persons with disabilities have the same human rights as all other people and that there are many barriers in society which hinder or prevent people with disabilities in the enjoyment of these rights. The elimination of these barriers will not only benefit persons with disabilities but society in general. Moreover, it is important to show the positive contribution that all persons with disabilities, regardless of the degree of their disability, make as active and full members of society.

3.15.2. Objectives

- i. To improve attitudes towards people with disabilities as active and full members of society through a wide range of actions;
- ii. to raise awareness about disability and the rights of people with disabilities to equality of opportunity and protection against discrimination;
- iii. to combat any negative attitude against disabled persons that could harm the image and interests of people with disabilities.

3.15.3. Specific actions by member states

- i. To mainstream images of disability in all government advertising and publicity to bring about a change of attitudes in society;
- ii. to encourage all media and media organisations to increase and improve the portrayal of people with disabilities as full citizens in their media broadcasting and written communications, for example by introducing ethical guidelines related to the dignity of people with disabilities;
- iii. to encourage television channels and radio stations to discuss issues relating to persons with disabilities in general programmes and, where appropriate, in specialised programmes;
- iv. to undertake, where possible, regular national awareness raising campaigns on the rights, potential and contributions of people with disabilities;
- v. to use innovative and other practical means to highlight to children, young people and adults the issues faced by disabled people;
- vi. to encourage people with disabilities and their organisations to publicise themselves locally and nationally by making available guidance on dealing with the media;
- vii. to support and promote the distribution of examples of good practice in all areas of life to raise awareness in education, working environment and the community.

4. Cross-cutting aspects

4.1 Introduction

Within the European disabled population there are people with disabilities who face specific barriers or experience two-fold discrimination.

These people have a higher risk of exclusion and generally experience lower levels of participation in society. As such, policy makers need to ensure that their inclusion policies and strategies take into account the needs of specific groups of people with disabilities to ensure their participation in society.

The Malaga Declaration highlights two such groups to be considered throughout this Action Plan – women with disabilities and persons in need of a high level of support. The reports of the Working Group on Discrimination against Women with Disabilities and Persons in Need of a High Level of Support analysed the particular factors unique to these groups and proposed specific actions which cut across many action lines, including independent living, education, employment, etc.⁶

Other groups which require a cross-cutting response include children with disabilities and ageing persons with disabilities, people with disabilities from minorities (for

⁶ Discrimination against women with disabilities, Council of Europe Publishing, Strasbourg, 2003, ISBN 92-871-5316-7, Community living for people with disabilities in need of a high level of support, Council of Europe, Strasbourg, 2004.

example Roma, migrants, refugees, displaced persons, or other ethnic, cultural or linguistic minorities). Policy makers need to acknowledge the barriers and challenges faced by each of these groups and ensure that their policies are equipped to remove those barriers and ensure that individuals can reach their full potential alongside other citizens.

4.2 *Women and girls with disabilities*

Women and girls with disabilities⁷ can and often do face multiple obstacles to participation in society due to two-fold discrimination, namely on grounds of both gender and disability. Although the general situation of people with disabilities has significantly improved, the benefits of such changes in society are not always equally distributed between women with disabilities and men with disabilities.

The development and implementation of relevant policies and implementation measures should be designed so as to ensure a balance of opportunities between disabled men and women. The specific situation of women and girls with disabilities needs to be taken into account in the development of both disability and gender mainstream policies and programmes at all levels, namely international, national, regional and local.

Action is required to remove obstacles which prevent women with disabilities from enjoying their rights on the same basis as men and other women. This action extends across a broad range of areas including relationships, parenthood, family life, sexuality and protection from violence and abuse. It also includes measures to ensure equal opportunities to participate in political and public life, education, training, employment and social and cultural life. Many of these policy areas are covered by action lines in this Action Plan but must be considered in terms of how factors affecting the participation of women and girls with disabilities can be addressed by member states.

4.3 *People with disabilities in need of high level of support*⁸

One of the more vulnerable groups of people with disabilities is the group of individuals with disabilities who, due to the severity and complex nature of their impairment, require a high level of support. Their quality of life is very much dependent on the availability of appropriate and quality services that respond to their and their families' needs to facilitate their participation in society to the greatest extent possible, rather than a replica of services provided to persons with disabilities generally.

This group tends to be the most likely group to be living in institutional settings or in some cases living with their family but may experience isolation due to little or no contact with service provision and other members of society. For these reasons people of this group require intensive and permanent quality services geared to their specific

⁷ Any reference in this Action Plan to women with disabilities is understood to include girls with disabilities.

⁸ Community living for people with disabilities in need of a high level of support, op. cit.

needs.

Delivery provision needs to be strengthened in order to respond without departing from a model of community based services and equitable access to mainstream provision. Member states need to recognise that this requires intensive planning and co-ordination across relevant authorities, government agencies and service providers both at national and local levels.

4.4. Children and young people with disabilities

The Convention on the Rights of the Child is based on four fundamental principles – the child’s right not be discriminated against; the best interests of the child to be considered in all decisions; the child’s right to life and development; and the right to express its opinion. Boys and girls with disabilities also have the right to access these same rights, member states need to build knowledge about their needs to inform planning, decisions and practices across a wide spectrum of policy areas.

The needs of children with disabilities and their families must be carefully assessed by responsible authorities with a view to providing measures of support which enable children to grow up with their families, to be included in the community and local children’s life and activities. Children with disabilities need to receive education to enrich their lives and enable them to reach their maximum potential.

Quality service provision and family support structures can ensure a rich and developing childhood and lay the foundation for a participative and independent adult life. It is important therefore that policy makers take into account the needs of children with disabilities and their families when designing disability policies and mainstream policies for children and families.

Participation and active citizenship is about having the right, the means, the space and the opportunity and where necessary the support to participate in and influence decisions and engage in actions and activities so as to contribute to building a better society. Youth disability organisations should be consulted in the preparation of youth policy and programmes. The voices of young people with disabilities should be heard in all matters which concern them.

Young people with disabilities still face considerable barriers in accessing all aspects of their life: education, work, sports, culture, entertainment, and community life. These issues can only be addressed on the basis of a comprehensive strategy. Ways to ensuring their full participation in society, taking into account their specific needs, must be addressed in the preparation of any youth policy. In accordance with the European Charter on the participation of young people in local and regional life, the active participation of young people in decisions and actions at local and regional level is essential for building more democratic, inclusive and prosperous societies.

4.5. Ageing of people with disabilities

The ageing of people with disabilities, particularly those requiring more intensive support due to the nature of their impairment, presents new challenges for societies across Europe. This includes support for individuals and for their families especially

where elderly parents are the main carers. Innovative approaches are required to meet these challenges across a wide range of policy and service areas. Council of Europe reports identify key issues for this group and proposals for the way forward. Co-ordinated action which can respond to specific needs with the aim of enabling ageing people with disabilities to remain in their community to the greatest extent possible. This requires an assessment of individual needs and forward planning as well as the availability of required services. Disability issues should also be taken into account when designing policies for older people.

It is considered that these issues and factors affecting the participation of ageing people with disabilities in daily life and activities should be taken into account when devising actions across the action lines set out in this Action Plan.⁹

4.6. *People with disabilities from minorities and migrants*

People with disabilities from minority groups, disabled migrants and refugees may experience multiple disadvantages because of discrimination or lack of familiarity with public services.

As an example, despite increased attention paid to Roma in Europe, further action is needed to recognise their status as full and equal members of society. Inside their own community, disabled people are considered as invisible and are therefore a specifically vulnerable group.

Education, employment, social health services and cultural life are particularly important areas to address for all groups.

Member states should ensure that support for people with disabilities takes account of their language or cultural background and the particular needs of such minority groups.

5. Implementation and follow-up

5.1. *Introduction*

The governments of member states have the primary responsibility for implementing disability policies at national level, and in particular for implementing the specific actions referring to them under each action line.

This Action Plan acknowledges that anti-discrimination policy, administrative machinery, resources, demography, etc., differ from country to country. It therefore allows member states to decide national priorities and to take a progressive approach to implementation by whatever means are appropriate to them.

It is intended that when implementing the specific actions contained within this Action Plan, that member states will take full account of:

⁹ Framework for the qualitative and quantitative analysis of data on the ageing of people with disabilities, Council of Europe Publishing, Strasbourg, 1998, ISBN 92-871-3327-1.

- the principles underpinning the Action Plan, including in particular the rights of individuals to protection against discrimination, to equal opportunities and to the respect of their rights as citizens;
- cross-cutting aspects including the specific needs of women and girls with disabilities, children and young people with disabilities, people with disabilities in need of a high level of support, ageing people with disabilities, migrants with disabilities and people with disabilities from minorities, in addition to the crucial role that quality services and training play in relation to the provision of services to people with disabilities;
- the involvement of representative disability organisations in all stages of implementation, monitoring and evaluation at European, national, regional and local levels which is considered a key element.

5.1.1 Universal Design

Equality of access is essential for the development of a fully inclusive society. The design of buildings, the environment, products, communication and electronic systems is particularly important to facilitate the participation and independence of people with disabilities in all aspects of life.

Universal Design is an effective way to improve the accessibility and the quality of the built environment, services and products. It focuses on the importance of ensuring that design of the environment, buildings and everyday products is right from the start rather than adapting them at a later stage. Whilst it may not always be possible to make older or historic buildings completely accessible, there are still too many obstacles that impede disabled people from taking part in all aspects of society and making use of all its facilities. Promoting the principle of Universal Design, its wide application and user participation in all design stages is of paramount importance for improving the accessibility of the built environment, transport and communication systems and the usability of products.

5.1.2. Quality of services and training of staff

Quality and training are key principles which underpin the action lines in this Plan. Many European countries are already systematically working on improving quality of services and training of staff and personnel. It is considered essential that all policies, services and actions be underpinned by high quality standards and delivered by competent, trained personnel. People with disabilities should be the focal point of the services provided. Client satisfaction should be the primary motivation for viable quality policies. It is vitally important that people with disabilities, the service users, should be active participants in quality assurance and monitoring of services.

Training is also an essential element of quality service. This not only includes appropriate training for the personnel involved in service delivery, both disability specific and mainstream services, but also for those who have a role in developing policies which affect the lives of people with disabilities. Training should incorporate

awareness of the human rights of people with disabilities.

5.1.3. Mainstreaming or sector responsibility

A mainstreaming approach, or sector responsibility, in policy development and service delivery plays an important role in promoting a more inclusive society and is a key, underlying principle of this Action Plan. Mainstreaming involves the integration of services for people with disabilities with those for other citizens. The goal is to move away from policies which support segregation towards integration in the mainstream wherever possible. However, mainstreaming does not preclude the existence of disability specific policies, where they are in the best interests of persons with disabilities (the so called twin-track approach).

In practice this approach means that disability policies are no longer seen as solely the responsibility of a specific ministry or department. It is the responsibility of all ministries to ensure that their initiatives take into account the rights of persons with disabilities. Co-ordination across and between government sectors and the creation of a focal point for all disability issues should be promoted to enhance and develop the mainstream approach.

5.2. Implementation

The governments of member states have the primary responsibility for implementing disability policies at national level, and in particular for implementing the specific actions referring to them under each action line.

Member states should start with an evaluation of their existing disability policy programmes and underlying basic principles against the blueprint of the Council of Europe Disability Action Plan to identify in which areas progress has yet to be made and which specific actions will have to be carried out.

Based on that evaluation member states should set up strategies to ensure that their own co-ordinated disability policy programmes, strategies and actions are progressively advanced in line with the Council of Europe Disability Action Plan and national financial resources.

The prioritisation and the establishment of a timetable to progress measures outlined are the responsibilities of each member state.

It is important that the implementation of the Plan by member states is supported by a co-ordinated approach involving relevant stakeholders, including non-governmental organisations of people with disabilities, as appropriate.

As part of the implementation, member states should consider the issue of the definition of disability, as appropriate.

Member states will translate the Action Plan into their official languages and make these translations available in alternative formats. Member states will promote the Action Plan involving all relevant stakeholders in order to ensure long-term support.

Upon request, the Council of Europe will assist member states with implementing the Action Plan. Member states should consider co-operation with the Council of Europe Development Bank (CEB) and present bankable projects aimed at implementing the Action Plan at national level.

5.3. Follow-up

The governments of member states have the primary responsibility for the follow-up to be given to the Council of Europe Action Plan at national level, where they decide on appropriate review and follow-up arrangements. To that end, member states should consult with relevant stakeholders, in particular non-governmental organisations of people with disabilities.

At European level, the follow-up of this Action Plan should focus on strengthening co-operation in the field of disability and should allow for effective exchange of information, experience and best practice in a structured way.

Effective follow-up to this Action Plan requires member states to regularly provide the Council of Europe with relevant information. In that context, national government reports to parliament, as well as reports and surveys provided by non-governmental organisations, are of particular interest and relevance.

The forum designated to follow up the Action Plan will manage that process, including the necessary procedures, the establishment of a timetable and a possible mid-term review.

This forum could suggest to member states specific priority issues to be analysed in depth. It will ensure that the Committee of Ministers is regularly informed about progress made in the implementation of this Action Plan.

International non-governmental organisations of people with disabilities will participate in this process within the given rules of procedure. Furthermore, other relevant stakeholders could be invited to contribute to the process, in a way to be specified in the terms of reference for the designated forum.

Appendix 1 to the Action Plan

Malaga Ministerial Declaration on People with disabilities "Progressing towards full participation as citizens"

(Adopted at the Second European Conference of Ministers responsible for integration policies for people with disabilities, Malaga, Spain, 7-8 May 2003)

1. We, the Ministers responsible for integration policies for people with disabilities, gathered from 7 to 8 May 2003 in Malaga on invitation of the Spanish

Government, at the Second European Conference of Ministers, organised by the Council of Europe,

1. Aware of:

2. the Council of Europe's aim, as enshrined in its Statute, is "to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress";

3. the outcome of the first Conference of Ministers responsible for policies for people with disabilities, held in Paris, 7 and 8 November 1991, entitled "Independent Living for people with disabilities", which led the Committee of Ministers of the Council of Europe to adopt Recommendation No. R (92) 6 on a coherent policy for people with disabilities;

4. the fact that protection and promotion of human rights and fundamental freedoms, and their full enjoyment are essential for the active participation of people with disabilities in society, and that the principle of equality of opportunities for people with disabilities represents a basic value shared by all Council of Europe member states;

5. the contribution of the European disability movement to the Council of Europe Second Ministerial Conference on disability "From words to deeds", adopted at the European NGO Forum on 8 April 2003 in Madrid;

6. the existence of substantial variations among Council of Europe member states as regards their political, economic and social situation and of the fact that a number of countries, particularly those with economies in transition, may be less well equipped to meet the demands of modern disability policies and need more advice and further assistance;

7. the fact that policies for people with disabilities are faced with certain political, economic, social, demographic, cultural and technological challenges, since, in the last decade, Europe has been undergoing various changes, which affect the quality of life of the population and raise multiple challenges whilst offering new opportunities for the development of coherent policies for people with disabilities;

8. the fact that two aspects are especially relevant in relation to people with disabilities: on the one hand, the increasing number of the European elderly population, which must be taken into account in any future strategy for social cohesion, based on prevention of dependency on support services over the life course and preservation of quality of life in old age; on the other hand, the fact that, as result of scientific advances in the health field and the improvement of living conditions, persons with physical and mental impairments live longer and fuller lives, generating new needs in relation to the provision of services, economic support and protection of their human rights;

9. the fact that 2003 has been proclaimed European Year of People with

Disabilities by the European Union, and that its main aim is to raise awareness of the rights of people with disabilities to equal opportunities and promote full and equal enjoyment of these rights;

10. the works of the UN Ad Hoc Committee “to consider proposals for a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities”;

11. the work carried out by the Council of Europe Committee on the Rehabilitation and Integration of People with disabilities, enhancing intergovernmental co-operation in the framework of the Partial Agreement in the Social and Public Health Field;

12. the achievements of the Council of Europe and other international organisations, institutions or events as listed in the Appendix to this Declaration;

2. Reaffirm:

13. our commitment to securing human rights and fundamental freedoms for everyone under our countries’ jurisdiction, as set out in the European Convention on Human Rights, and that all human beings are born free and equal in dignity and rights, and with a potential to contribute constructively to the development and well-being of society, and that all persons are equal before the law and entitled to equal protection of the law;

14. that arrangements for the full and effective implementation of all human rights, as enshrined in European and other international human rights instruments, must be applicable without any discrimination or distinction on any ground, including disability;

15. our will expressed in the 1st Conference of Ministers responsible for policies for people with disabilities, held in Paris in 1991, to promote a coherent and integrated policy for persons with disabilities, and that Recommendation No. R (92) 6 on “A coherent policy for people with disabilities” has inspired countries to adopt legislative and policy measures leading to progress on the way to full participation, and that it is a basic reference document which should serve as a platform for future action;

16. that enhancing citizenship and full participation of people with disabilities requires empowerment of the individual so that he/she can take control of his/her own life, which may require specific support measures;

3. Consider:

17. that our main aim in the next decade is to improve the quality of life of people with disabilities and their families, putting the emphasis on their integration and full participation in society, since a participative and accessible society is of benefit to the whole population;

18. that measures aimed at improving the quality of life of people with disabilities should be based on a sound assessment of their situation, potential and needs,

developing innovative approaches in services, taking account of their preferences, entitlements and circumstances;

19. that appropriate strategy to reach this aim should be expressed in a future Action Plan to promote the elimination of all forms of discrimination against people with disabilities of all ages, with special focus on disabled women and people with disabilities in need of a high level of support, so that they will all be able to enjoy their human rights, fundamental freedoms and full citizenship;

20. that it is necessary to adopt an integrated approach towards the elaboration of national and international disability policies and legislation, and to duly reflect the needs of people with disabilities in all relevant fields of policies, particularly in key areas such as access to housing, education, vocational guidance and training, employment, the built environment, public transport, information, health care, and social protection;

21. that it is a basic objective to develop economic, social, educative, employment, environmental and health measures in order to maintain every disabled individual's maximum capacity over the life course and in order to help prevent disability;

22. that education is a basic instrument of social integration and efforts should be made to give the opportunity to children with disabilities to attend a mainstream school, if it is in the interest of the child, to facilitate the transition from school or higher education to employment, and to develop the concept of life-long learning;

23. that equality of access to employment is a key element for social participation; therefore progress should be made towards the integration of people with disabilities in the labour market, preferably in the open market, shifting our focus to assessing abilities and implementing active policies, and that having a diverse workforce by promoting access of people with disabilities in the ordinary labour markets is an added value for society;

24. it vital to understand the social nature of technology and to make the best use of the potential of new technologies, with the aim of increasing autonomy and interactions of people with disabilities in all areas of life;

25. that as a result of scientific advances in the health field and the improvement of living conditions, persons with physical, psychological and intellectual impairments live longer, generating new needs and challenges in relation to the provision of care services, which should be met with innovative approaches;

26. the need to ensure that the benefits of living longer do not result in an increasingly higher number of persons dependent on support services, by fostering, among the population from an early age, healthy habits and life conditions which enable a good state of physical and mental health at a later stage in life;

27. that progress is required to provide for the removal of barriers and the adoption of the universal design principle to ensure that new barriers are not created;

28. that there is a small but growing number of people with disabilities in need of a high level of support and we therefore recognise the need to strengthen structures around those individuals and their families without departing from a model of community-based services;

29. that the situation of women with disabilities in Europe deserves higher visibility and more specific attention in order to guarantee their independence, autonomy, participation and social integration and that action taken should support a gender mainstreaming approach to disability policy development;

4. Undertake:

30. to work within anti-discriminatory and human rights frameworks towards mainstreaming equality of opportunity for people with disabilities throughout all policy areas;

31. not to discriminate on the grounds of the origin of the disability or the identity of the disabled person;

32. to enhance the possibilities of people with disabilities to carry on an independent life, within the community, through the progressive adoption of the principles of inclusive technologies and universal design *inter alia* in the building of environments, public facilities, communication systems and housing;

33. to work towards strengthening co-ordination across and between government departments; with a particular commitment to promoting equity in mainstream service provision, health care and the legal system as well as improving accountability between local, regional and national areas of responsibility;

34. to promote the provision of quality services, responding to the needs of individuals with disabilities which are accessed via published eligibility criteria, based on thorough and equitable assessment, shaped by the disabled person's own choices, autonomy, welfare and representation, with proper safeguards, regulation and access to independent adjudication of complaints, and to consolidate and strengthen measures already in place;

35. to champion the inclusion of people with disabilities in all walks of life through education and by making a commitment to people with disabilities as citizens with control over their life;

36. to progress the integration of people with disabilities into the labour market by moving the focus to assessing abilities, in particular vocational abilities, and by making vocational guidance and training as well as employment more accessible;

37. to take full account of the needs of children with disabilities and their families as well as of elderly people with disabilities without detracting from the current commitments to disabled adults of working age, whether or not they are in employment, noting that employment cannot be allowed to stand as the only measure of citizenship, arena for participation and route to human dignity;

38. to continue supporting basic and applied scientific research particularly in the area of new information and communication technologies, in order to improve aids that enable interactive participation in all areas of life;

39. to implement the means necessary for an effective balancing of opportunities between men and women and active participation of persons with disabilities, with special focus on women and girls within the areas of education and training, employment, social policy, participation and decision-making, sexuality, social representation, motherhood, home and family life, and on prevention of violence;

40. to carry out further analyses of the scope of measures and provisions that would effectively improve community living for people with disabilities in need of a high level of support, and to collect the statistical data necessary for the definition and evaluation of disability policies;

41. to have the needs of families of children with disabilities carefully assessed by the responsible authorities with a view to providing measures of support to enable children to grow up with their families, to be included in local children's life, and to receive an education;

42. to have the needs of families as providers of informal care thoroughly assessed, especially those with children with disabilities or caring for persons in need of a high level of support, with a view to providing measures of information, training and assistance, including psychological support, to enable life within the family;

43. to work on the development of programmes and resources to meet the needs of persons with disabilities as they age;

44. to foster among the population from early age health habits and life conditions in order to reach active ageing in the highest attainable standard of physical and mental health;

45. to work towards the development of a positive image of people with disabilities in co-operation with various stakeholders, including the media;

46. to involve people with disabilities in decisions affecting them personally, and organisations of people with disabilities in policy making, paying special attention to people with multiple disabilities or complex disorders and those who are unable to represent themselves;

47. to promote the involvement and collaboration of the social partners and all other public and private stakeholders and actors involved in policy-making;

5. Recommend:

48. that the Committee of Ministers of the Council of Europe continues to promote policies aimed at ensuring full citizenship and active participation of people with disabilities, with the full participation of all member states, and to strengthen the role of the Council of Europe as a platform for international co-operation in the field of

disability policy-making by inviting the Committee on the Rehabilitation and Integration of People with disabilities and other relevant Council of Europe committees to further mainstream disability policies within their areas of competence;

49. the elaboration, taking into account the considerations raised at this Ministerial Conference, of a Council of Europe Action Plan for people with disabilities: a new European policy framework for the next decade, based on human rights and partnership between different actors, setting up strategic objectives and priority issues in order to achieve full citizenship and active participation of people with disabilities in the life of the community, through workable, affordable and sustainable policies;

50. that the Council of Europe plays an active role in the negotiations in the context of the forthcoming sessions of the United Nations Ad hoc Committee established “to consider proposals for a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities”, by making use of the Council’s extensive experience in human rights matters;

6. Invite:

51. all Council of Europe member and observer states and representatives from European non-governmental organisations to participate in the activities and work of the Council relating to the enhancing of a coherent policy for and through full participation of people with disabilities;

7. Wish:

52. to share the beliefs, values and principles concerning the human rights and fundamental freedoms of people with disabilities, as well as full citizenship and active participation in the life of the community, set out in this Declaration of European Ministers, and identified as common European features, with everybody, including people outside Europe.

Finally, we thank the Spanish authorities for the excellent organisation of the Conference and for their generous hospitality.

Appendix 2 to the Action Plan

Reference Texts

Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5);

European Social Charter (ETS No. 35) and European Social Charter (revised) (ETS No. 163);

European Code of Social Security (ETS No. 48), Protocol to the European Code of Social Security (ETS No. 48A), European Code of Social Security (revised) (ETS No. 139);

Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and

Biomedicine (ETS No. 164);

European Convention on Architectural Heritage (ETS No. 121);

Landscape Convention (ETS No. 176);

“Strategy for Social Cohesion” adopted by the European Committee for Social Cohesion of the Council of Europe on 12 May 2000;

Recommendation No. R (86) 18 of the Committee of Ministers on the European Charter on Sport for all: disabled persons;

Recommendation No. R (92) 6 of the Committee of Ministers on a coherent policy for people with disabilities;

Resolution ResAP(95)3 on a charter on the vocational assessment of people with disabilities;

Recommendation No. R (96) 5 of the Committee of Ministers to member states on reconciling work and family life;

Recommendation No. R (98) 3 of the Committee of Ministers to member states on access to higher education;

Recommendation No. R (98) 9 of the Committee of Ministers to member states on dependence;

Recommendation No. R (99) 4 of the Committee of Ministers to member states on the legal protection of incapable adults;

Recommendation Rec(2001)12 of the Committee of Ministers to member states on the adaptation of health care services to the demand for health care and health care services of people in marginal situations;

Recommendation Rec(2001)19 of the Committee of Ministers to member states on the participation of citizens in local public life;

Recommendation Rec(2002)5 of the Committee of Ministers to member states on the protection of women against violence;

Recommendation Rec(2003)3 of the Committee of Ministers to member states on balanced participation of women and men in political and public decision-making;

Recommendation Rec(2003)19 of the Committee of Ministers to member states on improving access to social rights;

Recommendation Rec(2004)10 of the Committee of Ministers to member states concerning the protection of the human rights and dignity of persons with mental disorder;

Recommendation Rec(2004)11 of the Committee of Ministers to member states on legal, operational and technical standards for e-voting;

Recommendation Rec(2004)15 of the Committee of Ministers to member states on electronic governance (“e-governance”);

Recommendation Rec(2005)5 of the Committee of Ministers to member states on the rights of children living in residential institutions;

Resolution ResAP(2001)1 of the Committee of Ministers of the Council of Europe on the introduction of the principles of Universal Design into the curricula of all occupations working on the built environment (“The Tomar Resolution”);

Resolution ResAP(2001)3 of the Committee of Ministers of the Council of Europe “Towards full citizenship for people with disabilities through inclusive new technologies”;

Resolution ResAP(2005)1 of the Committee of Ministers of the Council of Europe on safeguarding adults and children with disabilities against abuse;

Recommendation 1185 (1992) of the Parliamentary Assembly of the Council of Europe on rehabilitation policies for the disabled;

Recommendation 1418 (1999) of the Parliamentary Assembly of the Council of Europe on the protection of the human rights and dignity of the terminally ill and the dying;

Recommendation 1560 (2002) of the Parliamentary Assembly of the Council of Europe “Towards concerted efforts for treating and curing spinal cord injury”;

Recommendation 1592 (2003) of the Parliamentary Assembly of the Council of Europe “Towards full social inclusion of persons with disabilities”;

Recommendation 1598 (2003) of the Parliamentary Assembly of the Council of Europe on protection of sign languages in the member states of the Council of Europe;

Recommendation 1601 (2003) of the Parliamentary Assembly of the Council of Europe on improving the lot of abandoned children in institutions;

Recommendation 1698 (2005) of the Parliamentary Assembly of the Council of Europe on the rights of children in institutions;

Resolution 216 (1990) of the Standing Conference of Local and Regional Authorities of Europe (currently the Congress of Local and Regional Authorities of the Council of Europe (Congress)) on the rehabilitation and integration of the disabled: role of local authorities;

Congress Recommendation 129 (2003) and Resolution 153 (2003) on employment and vulnerable groups;

Revised European Charter on the Participation of Young People in Local and Regional Life (Congress), 21 May 2003;

Final Declaration adopted by the Heads of State and Government of the member states of the Council of Europe, meeting in Strasbourg for the Second Summit of the Council of Europe (October 1997), who recognised that “social cohesion is one of the foremost needs of the wider Europe and should be pursued as an essential complement to the promotion of human rights and dignity”;

Final Declaration (Malta Declaration) adopted at the Council of Europe Conference on Access to Social Rights, 14-15 November 2002;

Council of Europe Commissioner for Human Rights contributions;

United Nations Convention on the Rights of the Child (1989);

United Nations International Covenant on Economic, Social and Cultural Rights (1966);

United Nations International Covenant on Civil and Political Rights (1966);

United Nations Universal Declaration of Human Rights (1948);

United Nations Standard Rules on the Equalisation of Opportunities for Persons with Disabilities (1993);

UNESCO Salamanca Statement and Framework for Action on Special Needs Education (1994);

International Plan of Action on Ageing, adopted by the Second World Assembly on Ageing, Madrid, 8-12 April 2002;

Regional Implementation Strategy for the Madrid International Plan of Action on Ageing 2002, adopted by the United Nations Economic Commission for Europe Ministerial Conference on Ageing, Berlin, 11-13 September 2002;

International Classification of Impairments, Disabilities and Handicaps (ICIDH) (1980) of the World Health Organisation (WHO);

International Classification of Functioning, Disability and Health (ICF) (2001) of the World Health Organisation (WHO);

Convention concerning Vocational Rehabilitation and Employment (Disabled Persons) of the International Labour Organisation (ILO) (No.C159), 1983, and the corresponding ILO Recommendation on Vocational Rehabilitation and Employment (Disabled Persons) (No. R168), 1983

Resolution of the Council and the Ministers for Education meeting with the Council of 31 May 1990 concerning integration of children and young people with disabilities into ordinary systems of education;

Communication of the Commission on Equality of Opportunity for People with Disabilities: a New European Community Disability Strategy (COM(96) 406 final);

Resolution of the Council of the European Union and of the representatives of the governments of the member states meeting within the Council of 20 December 1996 on equality of opportunity for people with disabilities;

Council Recommendation of 4 June 1998 on a parking card for people with disabilities (98/376/EC);

Council Resolution of 17 June 1999 on equal employment opportunities for people with disabilities (1999/C 186/02);

Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions: Towards a Barrier Free Europe for People with Disabilities (COM(2000) 284 final);

Council Directive (2000/78/EC) of 27 November 2000 establishing a general framework for equal treatment in employment and occupation;

Council Decision (2000/750/EC) of 27 November 2000 establishing a Community action programme to combat discrimination (2001-2006);

Council Decision (2001/903/EC) of 3 December 2001 on a European Year of People with Disabilities 2003;

Council Resolution on 6 February 2003 "eAccessibility" – improving the access of people with disabilities to the knowledge based society, (2003/C 39/03);

Council Resolution of 5 May 2003 on equal opportunities for pupils and students with disabilities in education and training (2003/C 134/04);

Council Resolution on 6 May 2003 on accessibility of cultural infrastructure and cultural activities for people with disabilities (2003/C 134/05);

Council Resolution of 15 July 2003 on promoting the employment and social integration of people with disabilities (2003/C 175/01);

Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions: eAccessibility (COM(2005) 425 final);

Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions: Implementation, results and overall assessment of the European Year of People with Disabilities 2003 (COM(2005) 486 final);

Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions: Situation of

disabled people in the enlarged European Union: the European Action Plan 2006-2007 (COM(2005) 604 final);

Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions: Equal opportunities for people with disabilities: a European Action Plan (COM(2003) 650 final);

Madrid Declaration "Non-discrimination plus positive action results in social inclusion", adopted at the European Conference of non-governmental organisations held in Madrid, March 2002;

Barcelona Declaration: the City and the Disabled (1995);

Declaration of the European Social Partners on the employment of people with disabilities (Cologne, May 1999);

Declaration of the Social Partners for the European Year of People with Disabilities: Promoting equal opportunities and access to employment for people with disabilities (20 January 2003);

Contribution of the European disability movement to the Council of Europe Second European Conference on disability "From words to deeds", adopted at the European NGO Forum on 8 April 2003 in Madrid.

**Recommendation Rec (2006) 19
of the Committee of Ministers to member states on policy to support positive
parenting**

(Adopted by the Committee of Ministers on 13 December 2006 at the 983rd meeting of the Ministers' Deputies)

The Committee of Ministers, under Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its member states, *inter alia*, by promoting the adoption of common rules;

Referring to the work of the Council of Europe in the field of children and families and reaffirming in general the following legal instruments:

- the Convention on Human Rights and Fundamental Freedoms (ETS No. 5), which protects the rights of everyone, including children;
- the European Social Charter (ETS No. 35) and revised European Social Charter (ETS No. 163), stating that “the family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development” (Article 16);
- the European Convention on the Exercise of Children’s Rights (ETS No. 160);
- the Convention on Contacts concerning children (ETS No. 192);
- the Recommendations of the Committee of Ministers to member states: No. R (84) 4 on parental responsibilities; No. R (85) 4 on violence in the family; No. R (87) 6 on foster families; No. R (94) 14 on coherent and integrated family policies; No. R (96) 5 on reconciling work and family life; No. R (97) 4 on securing and promoting the health of single parent families; No. R (98) 8 on children’s participation in family and social life; Rec(2005)5 on the rights of children living in residential institutions and Rec(2006)5 on the Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015;

Bearing in mind the Revised Social Strategy for Social Cohesion for which families are the place where social cohesion is first experienced and learnt and that a social cohesion strategy, while fully respecting the autonomy of the private sphere and of civil society, must seek to be supportive of families;

Recalling the Parliamentary Assembly’s Recommendations 751 (1975) on the position and responsibility of parents in the modern family and their support by society; 1074 (1988) on family policy; 1121 (1990) on the rights of children; 1443 (2000) on international adoption: respecting children’s rights; 1501 (2001) on parents’ and teachers’ responsibilities in children’s education; 1551 (2002) on building a 21st-century society with and for children: follow-up to the European strategy for children (Recommendation 1286 (1996)); 1639 (2003) on family mediation and equality of sexes; 1666 (2004) on a Europe-wide ban on corporal punishment of children; 1698 (2005) on the rights of children in institutions: follow-up to Recommendation 1601 (2003) of the Parliamentary Assembly;

Stressing the importance of the United Nations Convention on the Rights of the Child, to which all the member states of the Council of Europe are Parties, and the basic principles of which should always underlie the rearing of children;

Recalling the Third Summit of Heads of State and Government (Warsaw, Poland, May 2005) and the commitment made there to fully comply with the obligations of the United Nations Convention on the Rights of the Child, to effectively promote the rights of the child and to take specific action to eradicate all forms of violence against children, and the ensuing programme “Building a Europe for and with children”, officially launched in Monaco, on 4 and 5 April 2006;

Referring to the Final Communiqué and Political Declaration of the European Ministers responsible for Family Affairs at their 28th session (Lisbon, Portugal, 16-17 May 2006), particularly:

- recognising that parenting, though linked to family intimacy, should be designated as a domain of public policy and all the necessary measures should be adopted for supporting parenting and creating the conditions necessary for positive parenting;
- recalling their commitment to promote and pursue a common European policy in the field of family affairs and the rights of the child within the framework of the Council of Europe;

Recognising the child as a person with rights, including the right to be protected and to participate, to express her/his views, to be heard and be heeded;

Recalling that public authorities have a vital role to play in supporting families in general and parents in particular, which is expressed through three core elements of family policy: public transfers and taxation, measures to balance work and family life, childcare provision and other services;

Considering that the family is a primary unit of society and that parenting plays a fundamental role in society and for its future;

Conscious of the many changes and challenges facing families today which require parenthood to be given greater prominence and better support, considering that such support is essential for children, parents and society as a whole;

Recognising that all levels of society have a role to play in supporting children, parents and families;

Considering that public authorities in conjunction with the economic and social sectors and civil society can, in taking action in support of parenting, help strive for a healthier and more prosperous future for society, as well as an improvement in the quality of family life;

Noting the need for a cross-sectoral and co-ordinated approach;

Keen to promote positive parenting as an essential part of the support provided for

parenting, and as a means of ensuring respect for and implementation of children's rights,

Recommends that the governments of member states:

- acknowledge the essential nature of families and of the parental role and create the necessary conditions for positive parenting in the best interests of the child;
- take all appropriate legislative, administrative, financial and other measures adhering to the principles set out in the appendix to this recommendation.

Appendix to the Recommendation Rec (2006) 19

1. Definitions

For the purpose of this recommendation, the term:

“Parents”: refers to persons with parental authority or responsibility;

“Parenting”: refers to all the roles falling to parents in order to care for and bring up children. Parenting is centred on parent-children interaction and entails rights and duties for the child's development and self-fulfilment;

“Positive parenting”: refers to parental behaviour based on the best interests of the child that is nurturing, empowering, non-violent and provides recognition and guidance which involves setting of boundaries to enable the full development of the child.

2. Fundamental principles of policies and measures

Policies and measures in the field of support for parenting should:

- i. adopt a rights-based approach: this means treating children and parents as holders of rights and obligations;
- ii. be based on a voluntary choice by the individuals concerned, except when public authorities have to intervene to protect the child;
- iii. acknowledge that parents have the prime responsibility for their child, subject to the child's best interests;
- iv. consider parents and children as partners sharing, as appropriate, the setting up and implementation of the measures relating to them;
- v. be based on the equal involvement of parents and respect for their complementarity;
- vi. guarantee equal opportunities for children irrespective of their gender, status, abilities or family situation;

- vii. take into account the importance of a sufficient standard of living to engage in positive parenting;
- viii. be based on a clearly expressed concept of positive parenting;
- ix. address parents and key players having childcare, health and educational and social responsibilities towards the child and who should also respect the principles of positive parenting;
- x. recognise the diverse types of parenting and parental situations through adopting a pluralistic approach;
- xi. adopt a positive approach to parents' potential, particularly through placing priority on incentives;
- xii. be long-term in order to guarantee stability and continuity of policy;
- xiii. ensure that the number of common rules of principle at national or federal level are kept to a minimum to promote equal standards at local level and that there is a local network of services providing parenting support measures;
- xiv. ensure inter-ministerial co-operation, encouraging and co-ordinating the action(s) in this field of the different ministries, departments and agencies concerned in order to implement policy that is coherent and comprehensive;
- xv. be co-ordinated at international level, through facilitating exchanges of knowledge, experience and good practice in the application of the guidelines on positive parenting.

3. Objectives

Governments should organise their policies and programmes on positive parenting with a view to achieving the following three types of objectives:

- i. the creation of the conditions for positive parenting, by ensuring that all those rearing children have access to an appropriate level and diversity of resources (material, psychological, social and cultural) and that broad social attitudes and patterns of prevailing life are receptive to the needs of families with children and also those of parents;
- ii. the removal of barriers to positive parenting, whatever their origin. Employment policy, in particular, should allow a better reconciliation of family and working life;
- iii. the promotion of positive parenting by developing awareness of it and taking all the necessary measures to make it a reality. In order to have efficient policies to support parenting, public authorities should promote initiatives aiming to make people aware of the value and importance of positive parenting. Governments should take a pro-active approach to promoting awareness of parenting issues

and to normalising participation in parenting programmes. Information should present different images of parenting in order to avoid stigmatising differences.

The goal of policy and measures should be the harmonious development (in all its dimensions) and proper treatment of children, with due regard for their fundamental rights and dignity. As a priority, measures should be taken to eliminate all child neglect and abuse and physical or psychological violence (including humiliation, degrading treatment and corporal punishment).

It is also essential to implement and further develop a suitable policy to bring about a change in social attitudes and patterns of life in order to accommodate more effectively the needs of children, parents and families and in particular to promote family-friendly working environments and services.

4. Incorporating children's rights in public policies

Public policies on support for parenting should incorporate childhood-related issues, acknowledging the needs and interests of all children and paying attention to their varying needs depending on their age, capacity, and level of maturity. For this purpose, the principles enshrined in the United Nations Convention on the Rights of the Child should be respected by all, regardless of context, and particularly guide the activities of all bodies working in the field, both public and private, especially for the following rights and general principles:

- i. the right to non-discrimination;
- ii. the best interests of the child should be of primary consideration;
- iii. the child's right to life and development;
- ix. the child's right to participation, to express her/his views, to be heard and be heeded, to receive information and to join associations and other organisations;
- x. the right to protection and care.

For this purpose, it is important for the child to grow up in a favourable family environment and in a positive atmosphere.

5. Considering parents' responsibilities, rights and obligations

In the best interests of the child, the rights of parents, such as entitlement to appropriate support from public authorities in fulfilling their parental functions, must also be given prominence. The exercise by parents of equal and shared responsibility for their children makes a major contribution to the harmonious development of the child's personality.

Particular attention should be paid to the important role of fathers in the care and rearing of their children, taking into account in particular the principle of gender equality, the impact on families of the reconciliation of work and family life and family breakdown, which can often result in fathers living apart from their children.

6. Core components of policies and measures

Policies to promote and encourage positive parenting will work best if they are based on consultation and dialogue with parents and on their voluntary involvement and participation, in order to reach a real partnership. In addition to the essential elements at point 4 and 5 of this recommendation, core components include the following:

6.1. Supporting parents

- i. alongside the measures proposed by public authorities to afford and improve support for parents, support from other agencies (such as municipalities, social security and associations) should also be acknowledged and encouraged;
- ii. policies should be geared to engendering support for parenting at the following three levels:
 - informal: creating and strengthening existing social bonds and encouraging new links between parents and their family, neighbours and friends;
 - semi-formal: empowering parents' and children's associations and NGOs and activating a range of self-help and other community-based groups and services;
 - formal: facilitating access to public services.

6.2. Promoting education in children's rights and positive parenting

- i. parents should be encouraged to become more aware of the nature of their role (and how it is changing), children's rights, the responsibilities and obligations that derive from these and their own rights;
- ii. governments should also arrange for comprehensive guidelines and specific programmes to assist them in challenging life situations, conflict resolution, anger management through non-violent approaches and mediation techniques;
- iii. prevention programmes regarding the different forms of ill-treatment of children should be promoted and parents made aware of this serious problem and of its consequences on the child's development;
- iv. children should also be taught about their rights and duties in order to make them aware of the concept of positive parenting and what this means for them.

6.3. Reconciling family and working life

- i. public authorities should create the necessary conditions – and employers should be encouraged – to implement a better reconciliation of family and working life through legal and other provisions (such as flexible working arrangements, adjustment of working and school hours, leave policies, various types of good quality childcare services, provisions for looking after children with disabilities as well as sick children, etc.);

- ii. the social partners should be encouraged to negotiate and develop tailor-made policies adapted to the specific needs of each company and of their employees;
- iii. good practices make it clear to employers that a comprehensive work/life balance policy creates a win-win situation within companies.

6.4. Policies at local level

The action taken at local level is particularly important in providing a response tailored more closely to the needs and characteristics of the populations concerned. Co-operation and co-ordination at national or federal and local levels and between these levels are necessary in order to offer families better service and optimise available resources and the use made of them. Administrative procedures should allow for an appropriate level of flexibility in service provision, consistent with ensuring equitable treatment of all families.

7. Targeting of policies and measures

Particular attention should be paid to difficult social and economic circumstances and to crises within families, which require more specific support.

It is also essential to supplement general policies with a more targeted approach. Parenting in certain situations and at certain periods in the life cycle is by its nature more challenging. Despite the variations from country to country, the needs of the following groups should be especially attended to:

- i. first-time parents;
- ii. teenage parents;
- iii. families with particular needs;
- iv. families in difficult socio-economic circumstances.

In the case of separated parents, support policies should be aimed in particular at maintaining links between children and both their parents, unless this is contrary to the child's best interests. Access to professional counselling should be provided and attention should be paid to cases where the parents have different cultural backgrounds or are of different nationalities.

Public authorities should stimulate and facilitate the creation of networks of mutual assistance associations between families and make available places where parents could meet to discuss – with professionals, if necessary – on issues relating to parenting, and provide parents with adequate support services like free help lines and counselling services.

8. Parenting in situations of social exclusion

Parenting in situations of social exclusion or at risk of social exclusion can be particularly

difficult and special attention should be paid to the needs of children and families in this situation, with reference in particular to the following:

- i. providing long-term support, as appropriate, to help them achieve the same results as other children and families; this support should include reaching out to them in their homes or in the places they frequent, and take into consideration the possible fear of parents in a situation of social exclusion towards social services, particularly of having their children taken away;
- ii. giving sufficient means to support parents and to allow them to acquire the necessary competence to fulfil their responsibilities towards their children;
- iii. guaranteeing access to social rights (including the right to adequate income, health, education, housing and employment) and the same quality targeted services as those enjoyed by other families;
- iv. ensuring that families and children suffering exclusion are considered in their social context (including the extended family, the community and their relational networks) and enjoy the same quality services, including local ones, as those enjoyed by other families, in accordance with their needs;
- v. building a trustworthy relationship with the families and enabling parents to regain control of their own lives;
- vi. organising training for professionals and parents together in order to achieve better mutual knowledge and understanding, to build a common project in the best interests of the child and enabling professionals to learn about what these families are experiencing and to better know their family project, with a view to focusing their practice on it;
- vii. ensuring personal and collective support for professionals in order to raise their level of competence in working with people in very difficult situations and take the necessary steps to create new approaches;
- viii. taking ad hoc measures to avoid the risk of marginalisation of migrant families;
- ix. avoiding measures and administrative practice that stigmatise children and parents by treating them differently because their families are less well-off than others;
- x. introducing measures to prevent dropout from school as an efficient means to counteract family distress.

9. Qualitative guidelines for professionals

In order for the above rights and principles to be applied, benchmarks and standards must be set. Guidelines on the focus of their services – such as the Council of Europe guidelines on positive parenting – should be given to professionals and practitioners (including those not directly involved with children but whose work could have an

impact on their rights), with particular emphasis on:

- i. the principle of equity and accessibility, which should underlie all action taken;
- ii. the principle of becoming partners with and empowering parents. Partnership presupposes recognition of parents' own experience and their knowledge of their own children;
- iii. application of the concept of partnership to co-operation and interdisciplinary co-ordination between agencies, specifying the particular areas of activity of each department, providing for a sharing of facilities and working in a cross-curricular network;
- iv. ensuring that the application of comprehensive services is conceived in terms of support and assistance, encouraging family initiative without creating excessive dependency. Accordingly, strengths and resources of families should be supported. This also means that professionals should act as support for parents, in ways that are non-judgmental and non-stigmatising;
- v. building up parents' self-confidence, enhancing their competencies and potential and motivating parents to be informed and trained;
- vi. enabling children to communicate their feelings and needs, in particular very young children and children with communication impairments;
- vii. the importance of service provision and professional practices by ensuring that the emphasis is placed on:
 - thorough training of the professionals concerned;
 - ongoing evaluation, both external and internal (self-evaluation);
 - continuity of action;
 - responses based on the understanding of the child and families in their context;
- viii. devising methods to identify risk factors regarding failure to provide parental care to be disseminated among social services, health-care professionals, those dealing with young people, teachers and childcare staff to train them in identifying families with problems in this respect and offer support. A better co-ordination among the services working to support a family should constantly be sought;
- ix. co-ordinating the implementation of measures to separate children from their parents, when this is necessary, with work with the family of origin (particularly in partnership with the parents) in order to enable them to prepare or better prepare for and accept this step as a means of ensuring the best interests of the child. The aim of any such measure should be the return, if possible, of the child in the family environment.

10. School and childcare environment

An integrated approach to the provision of assistance with schooling and support for parenting should be encouraged (especially where children lack stable roots or a permanent home – for example children with a Roma or Gypsy background, children of migrants); childcare and school integration as well as dialogue between these service providers and parents should be encouraged, with special attention to families in difficult situations and to those with particular needs.

11. Key messages for parents and all those having responsibilities for children and their rearing

Key messages on positive parenting should be issued to all parents and persons providing care and involved in the rearing of a child on a daily basis (such as childminders or school staff). These messages should make clear how the child is to be respected as a person and how his/her participation should be promoted, and that parents have rights as well as responsibilities. Key messages should be drawn up on the basis of consultation with all the stakeholders involved, especially parents, service providers and children, and be monitored to ensure that they are effective and are being adhered to.

12. International co-operation

Measures should be put in place to improve international co-operation and exchange of best practice in relation to parenting.

**Recommendation CM/Rec(2007)9
of the Committee of Ministers to member states on life projects for unaccompanied
migrant minors**

(Adopted by the Committee of Ministers on 12 July 2007 at the 1002nd meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity among its member states;

Recalling the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5) and its Protocols;

Recalling the 1996 European Social Charter (revised) (ETS No. 163);

Recalling the 2005 Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197);

Recalling the 1989 United Nations Convention on the Rights of the Child and its two optional Protocols;

Recalling the 1951 United Nations Convention relating to the Status of Refugees and its 1967 Protocol;

Recalling the 2000 United Nations Convention against Transnational Organised Crime and its two Protocols;

Having regard to General Comment No. 6 (2005) of the United Nations Committee on the Rights of the Child on the treatment of unaccompanied and separated children outside their country of origin;

Having regard to the Inter-agency Guiding Principles on Unaccompanied and Separated Children adopted by the International Committee of the Red Cross (ICRC), the United Nations High Commissioner for Refugees (UNHCR), the United Nations Children's Fund (UNICEF), the International Rescue Committee (IRC), the Save the Children UK (SCUK) and the World Vision International (WVI) in 2004;

Having regard to the 1997 Guiding Principles of the United Nations High Commissioner for Refugees (UNHCR) on policies and procedures applicable to unaccompanied children seeking asylum, and the 2006 UNHCR Guiding Principles on Formal Determination of the Best Interests of the Child;

Considering the recommendations of the Parliamentary Assembly of the Council of Europe, Recommendation 1596 (2003) on the situation of young migrants in Europe and Recommendation 1703 (2005) on protection and assistance for separated children seeking asylum;

Having regard to the Twenty Guidelines on Forced Return adopted by the Committee of Ministers of the Council of Europe in 2005;
Considering the Statement of Good Practice of the Separated Children in Europe Programme adopted by the International Save the Children Alliance in Europe and the United Nations High Commissioner for Refugees in 2004;

Taking account of the work of the Council of Europe Regional Conference entitled "Migration of unaccompanied minors: acting in the best interest of the child", held in Málaga (Spain) on 27 and 28 October 2005 and in particular its conclusions;

Considering that there are in the member states of the Council of Europe or at their borders an increasing number of unaccompanied migrant minors who find themselves alone, in situations of vulnerability, far from their family environment, separated from their parents or families and exposed to multiple risks;

Considering that migration policies in general, and in relation to unaccompanied migrant minors in particular, require a range of measures that go beyond border controls and action against irregular migration;

Stressing the necessity to improve the management of migration of unaccompanied minors in order to overcome the difficulties of member states in taking care of them;

Considering the need to reduce the risks faced by unaccompanied migrant minors that endanger their health, their development and in some cases their lives;

Considering the need to support the efforts of countries of origin in providing information on the risks, dangers, and vulnerabilities relating to the situation of unaccompanied migrant minors and in preventing their migration;

Considering that the best interests of unaccompanied migrant minors should be the primary consideration in all decisions relating to them and that any action taken in relation to them must protect their rights and safety and promote their personal development;

Stressing that the diversity and heterogeneity of the situation of unaccompanied migrant minors based on their origin, gender, personal history, cultural diversity, legal status or any other condition, must be taken into account in accordance with an individualised, multidisciplinary and participatory approach;

Being convinced that the member and non-member states of the Council of Europe can, by strengthening their co-operation, contribute to finding lasting solutions for and with unaccompanied migrant minors that will help them to build life projects guaranteeing them a better future,

Recommends that the governments of member states:

a. take steps to implement in their policy, law and practice the principles and measures set out in the appendix to this recommendation;

- b. promote the implementation of these principles and measures by the relevant governmental agencies and authorities dealing directly or indirectly with the elaboration and implementation of national policies regarding non accompanied migrant minors;
- c. ratify as soon as possible the 2005 Council of Europe Convention on Action against Trafficking in Human Beings if they have not yet done so.

Appendix to Recommendation CM/Rec (2007) 9

I. Concepts

Life projects

1. Life projects aim to develop the capacities of minors allowing them to acquire and strengthen the skills necessary to become independent, responsible and active in society. In order to achieve this, life projects, fully in accord with the best interests of the child, as defined in the Convention on the Rights of the Child, pursue objectives relating to the social integration of minors, personal development, cultural development, housing, health, education and vocational training, and employment.
2. Life projects are individual tools, based on a joint undertaking between the unaccompanied migrant minor and the competent authorities for a limited duration. They define the minor's future prospects, promote the best interests of the child without discrimination and provide a long-term response to the needs of both the minor and the parties concerned.
3. Life projects are a lasting solution for both member states and the minors themselves, meeting the challenges arising out of the migration of unaccompanied minors. They shall therefore be an integrated policy tool available to member states in order to meet the needs of such minors and to tackle the many difficulties arising out of this migration.

Unaccompanied migrant minors

4. This recommendation concerns unaccompanied migrant minors who are outside their country of origin, regardless of their status, irrespective of the reasons for their migration and whether or not they are asylum seekers. The expression 'unaccompanied migrant minors' includes separated children and minors who have been left to their own devices after entering the territory of the member state.
5. Unaccompanied minors are children under the age of 18 who have been separated from both parents and other relatives and are in the care of an adult who, by law or custom, is responsible for doing so.
6. Separated children are children under the age of 18 who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. They may, therefore, be children accompanied by other adult family members.

II. Life projects: an integrated policy tool

7. Every life project is based on a comprehensive, integrated and therefore multidisciplinary approach.

8. Drawing on a holistic approach, every life project should take account of the child's specific situation. It should take account of several elements, in particular:

i. the minor's personal profile: age, gender, identity, legal status, culture of origin, level of education, mental development and maturity, possible traumas suffered, health, vocational experience and skills;

ii. the minor's migration itinerary: factors influencing his or her departure, circumstances of the journey, duration of residence and living arrangements in countries of transit and in Europe;

iii. the minor's family environment and particularly the nature of his or her family relations;

iv. the minor's expectations, wishes and perceptions;

v. the situation in the country of origin: the political, legislative, socio-economic, educative and cultural context, the human rights situation (taking account of ethnic, religious and sex discrimination and other potential dangers), the availability of appropriate care and support, including reception;

vi. the special guarantees afforded to unaccompanied minors seeking asylum, in particular regarding *non-refoulement* and the identification of durable solutions;

vii. the situation in the host country: the political, legislative and socio-cultural context; availability of opportunities for the minor, including level and degree of support available; possibility of remaining in the host country; opportunities in terms of integration in the host country.

9. Unaccompanied migrant minors should be able to enjoy all rights recognised by the relevant international and European standards and in particular the United Nations Convention on the Rights of the Child, which are preconditions for the realisation of their life projects. In order to ensure effective access to these rights the member states should take action, in particular, in the political, legal, social, health, educational, economic and cultural areas.

10. In order to contribute to the full realisation of life projects, the co-ordination of policy and practice should be a priority. Accordingly, member states should take the action set out below:

i. establish and/or support national bodies for co-ordinating the various agencies dealing with unaccompanied migrant minors and, where appropriate, allocate the requisite material, human and financial resources for creating such bodies;

ii. create and operate European networks for information exchange involving not only origin, transit and host countries but also the relevant international organisations and representatives of civil society;

iii. strengthen co-operation with the non-member states representing the main countries of origin of unaccompanied migrant minors with a view to establishing long-term relations of trust based on a clear definition of the respective responsibilities in implementing the minors' life projects.

11. Bilateral agreements should set out minimum conditions under which unaccompanied migrant minors can implement their life projects in their countries of origin and provide for exchanges between social workers specialising in the care of minors.

12. Within the framework of their co-operation, the member states should refrain from divulging information on asylum seekers and refugees.

13. Alongside national schemes for co-operating with the countries of origin, exchanges between local authorities or NGO representatives directly involved in providing for unaccompanied minors should be supported and further developed.

14. Member states, along with countries of origin, should foster public information and awareness-raising campaigns on the risks linked to child migration, particularly the dangers of networks involved in clandestine immigration, exploitation of minors and organised crime.

III. Life projects: a mutual commitment

15. Life projects should be formalised by a written agreement setting out the respective commitments of both parties and signed by them and/or by the guardian of the unaccompanied migrant minor.

16. Life projects should comprise individualised, open-ended objectives which the minor undertakes to pursue, the arrangements for monitoring their implementation and a regular assessment based on exchanges between the minor and the competent authorities. They should take account of the unaccompanied migrant minor's personal profile and expectations, as well as the opportunities provided for him or her in the host country and the country of origin.

17. The competent authorities should undertake to ensure that the life project comprises measures to protect the minors in order to help them achieve the aforementioned objectives. These measures should include access to:

- appropriate accommodation;
- specialised support provided by properly trained personnel;
- appointment of specially trained guardians and/or legal representatives;
- clear and full information about his or her situation in a language that he or she understands;
- basic services, including food, medical care and education.

18. The competent authorities should undertake as soon as possible an analysis of the unaccompanied migrant minor's family situation and prioritise the search for the parents or legal or customary guardian in order to establish, as appropriate and always respecting the child's best interests, direct or indirect contacts with a view to possible family reunion.

19. The competent authorities should ensure the funding of all action to identify, accommodate, assess the situation and protect unaccompanied migrant minors.

20. Life projects should create favourable conditions for guaranteeing genuine dialogue between the competent authorities and the unaccompanied migrant minors in order to enable them to understand the opportunities they are being offered and to guarantee their participation and involvement in all stages of the formulation and implementation of their life project.

IV. The conditions required to implement life projects

21. Member states should define the responsibilities of each partner, in particular national and local authorities, welfare services, youth workers, families and legal representatives, in implementing and monitoring life projects and ensuring their co-ordination. Member states should provide in particular for appropriate funding and distribution of funds.

22. The member states should establish or reinforce procedures guaranteeing the identification and registration of unaccompanied migrant minors and the issuing to them of the necessary documents, including, if necessary, proper travel documents.

23. Special attention should be given to the case of unaccompanied minors seeking asylum. Asylum procedures should not affect the effective preparation and implementation of life projects for these minors, for whom enhanced protection is necessary, in particular with regard to the principle of *non-refoulement*.

24. The life project may, depending on its particular objectives, be implemented either in the host country or, alternatively, in the host country and in the country of origin, or in the country of origin. In specific cases, in particular in the case of family reunion with parents residing lawfully in a third country, the life project might be implemented in this country. In this case, in addition to the measures mentioned in paragraphs 28 and 29, the member states should facilitate the minor's departure and implementation of his or her life project in this country.

Life projects in the host country

25. For as long as the life project is implemented in the host country, the member state should guarantee access for the unaccompanied migrant minor to classes in the language of the host country, to education and/or to appropriate vocational training on an equal footing with nationals. The minor should also have the possibility of entering the labour market.

26. Where a minor involved in the implementation of his or her life project attains the age of majority and where he or she shows a serious commitment to their educational or vocational career and a determination to integrate in the host country, he or she should be issued with a temporary residence permit in order to complete the life project and for the time necessary to do so.

Life projects in both the host country and the country of origin

27. Where the life project begins in the host country and continues in the country of origin, member states should take all practical steps to ensure its continuity and satisfactory conclusion.

Life projects in the country of origin

28. Where the life project is implemented in the country of origin, member states should define the conditions that will guarantee its success. These conditions should include at least the following:

- i. consideration of the needs corresponding to age and degree of maturity of the minor;
- ii. reception, protection and appropriate care and support in the country of origin, guaranteed either by the parents or guardian and/or other legal guardian, or by governmental or non-governmental authorities, always respecting the best interests of the child;
- iii. involvement of the local authorities in implementing the life project in the country of origin, including protective measures for the minor, social, health and educational services and the selection of local bodies (for example, NGOs) capable of helping implement and monitor the life project;
- iv. funding, as far as possible, of training courses for specialist staff or local bodies assisting with the life project.

29. Where the minors return to their country of origin, member states should request the support of non governmental organisations or relevant international organisations in this field, such as the United Nations High Commissioner for Refugees (UNHCR), the United Nations Children's Fund (UNICEF) and the International Organisation for Migration (IOM), in accordance with their respective mandates.

V. Communication strategy and follow-up to the recommendation

30. Member states should take specific measures to identify and inform professionals working, in particular, in agencies and institutions in charge of the reception, social assistance, protection and monitoring of unaccompanied migrant minors. This could be carried out through awareness-raising campaigns, training courses, conferences and seminars, networks to exchange experience (partnerships) or any other way that might improve their knowledge of life projects and expertise in implementing them. Member states should inform the competent authorities from

origin and transit countries of the principles of this recommendation.

31. With a view to promoting life projects, member states should also widely disseminate the principles of this recommendation, especially to media, non-governmental organisations and other actors. The objective is to raise awareness in public opinion concerning migration and the unavoidable presence of unaccompanied minors in the member states, their fragility and the risks that a precarious situation entails for them, as well as the need for the competent authorities to take care of them through life projects.

32. Member states are encouraged to devise indicators to gauge the formulation, implementation and evaluation of life projects in their respective countries.

33. Where possible, member states are encouraged to list the measures taken to implement the recommendation in their respective national reports on the implementation of the United Nations Convention on the Rights of the Child.

