COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 16 April 2010

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AD HOC COMMITTEE ON PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE (CAHVIO)

REPORT OF THE 4th MEETING

Strasbourg
22-24 February 2010

Document prepared by the
Directorate General of Human Rights and Legal Affairs

ITEM 1 OF THE AGENDA: OPENING OF THE MEETING

1. The fourth meeting of the Ad Hoc Committee on Preventing and Combating Violence against Women and Domestic Violence (CAHVIO) was opened by Ms Dubravka Šimonović and Mr Eric Ruelle as Co-Chairs.

2. Mr Jan Kleijssen, Director of Standard-Setting of the Directorate General of Human Rights and Legal Affairs of the Council of Europe, addressed the Committee in an opening speech. Welcoming the delegates, scientific experts and observers, including first-time participants such as Mexico (see list of participants as it appears in Appendix II), he invited the Committee to continue the first reading of the draft convention on preventing and combating violence against women and domestic violence. He expressed his hope that, at the end of this meeting, the Committee would have finished the first reading, allowing it to start the second reading at its next meeting in June. He informed the Committee that for this purpose, and on the basis of comments received to date on Articles 1-27 and comments to be submitted on subsequent articles, the Secretariat would draw up a revised version of the draft convention. Finally, Mr Kleijssen referred to the statement made by the Representative of the European Union at the last meeting. He expressed his belief that the EU would rapidly clarify its position.

ITEM 2 OF THE AGENDA: ADOPTION OF THE AGENDA

3. The Committee adopted the agenda as it appears in Appendix I.

ITEM 3 OF THE AGENDA: INFORMATION BY THE CO-CHAIRPERSONS

4. The Co-Chairs informed the Committee that the aim of the meeting was to finalise the first reading of the text by examining it article by article, starting at article 28 where the 3rd CAHVIO meeting had left off. In order to ensure the efficient use of meeting time, the Co-Chairs requested that delegations only put forward concrete remarks. Following suggestions on methodology, the Co-chairs asked the Secretariat to briefly introduce each article before opening the discussion.

ITEM 4 OF THE AGENDA: INFORMATION BY THE SECRETARIAT

5. Mr Carlo Chiaromonte, Secretary to the Committee, informed the Committee that, following the call for proposals on alternative or additional wording and comments on draft articles 1-27, the Secretariat had received submissions from more than 30 delegations. These comments/proposals for amendments would be included in a compilation presenting all contributions received by all delegations and those that are not in conflict with the conclusions presented by the Co-chairs at the end of the first discussions on the relevant articles will be incorporated in the revised version of the text, which is to be presented during the 5th CAHVIO meeting in June/July. He proceeded to explain that, following this meeting, delegations would be invited to submit comments on articles 28 to 67 and that the same procedure would be followed. A revised version of the convention will be therefore prepared by the Secretariat, together with the Co-chairs and the scientific experts, that will take account of comments of the delegations .

ITEM 5 OF THE AGENDA: CONTINUATION OF THE EXAMINATION OF THE DOCUMENT "DRAFT CONVENTION ON PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE" (CAHVIO (2009)32 PROV)

6. The Committee proceeded with the second part of the first reading of the draft convention article by article. It covered articles 28 to 59.

7. During the discussion on the remainder of Section 2 on Criminal Law (articles 28 – 36), many different views were expressed. While some delegations expressed concern over criminalising in particular sexual harassment and forced marriages, others wished to see these forms of behaviour sanctioned by criminal law. In relation to sexual harassment, some delegations pointed out difficulties in proving intent of such behaviour as well as the danger of a possible overlap with behaviour criminalised in article 27. The Co-chairs noted that the criminal scope of the article needed to be limited, but highlighted that the Interim Report required the inclusion of a definition of sexual harassment to cover all types of situations where women are in a position of weakness – beyond the area of employment and education.

8. Regarding the introduction of the criminal offence of forced marriage, a large number of delegations supported its criminalisation. In particular, one delegation stressed the need to include references to socio-cultural values since they are closely linked to the phenomenon. Other delegations stressed the importance of linking such a criminal law provision with civil law aspects of forced marriages, thereby exposing the need to re-visit other provisions of the draft convention. Furthermore, some delegations suggested to give further thought to early marriages and references to age, but also clearly define the notions of consent and constraint.

9. In relation to article 30, some delegations called for more precision with regards to the types of procedures for non-medical purposes leading to female genital mutilation. Important issues such as forced sterilisation and forced abortion were also put forward during the discussion. It was agreed that in re-drafting this provision, delicate issues such as a definition of medical purposes, consent and burden of proof as well as extra-territorial jurisdiction needed to be borne in mind.

10. The Committee then proceeded with the examination of Chapter VI on investigation, prosecution, procedural law and sentencing. Many delegations suggested changes and additions of a more general nature, such as including provisions on the important role of the police, modeling the structure, content and wording of this chapter more closely after similar provisions contained in the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, and strengthening the rights of the accused. Many detailed amendments were put forward as several delegations found a number of provisions too absolute or too far-reaching. These delegations were invited to submit proposals for alternative wording in writing.

11. As for the provisions contained in Chapter VII on migration, the majority of delegations agreed with the importance of finding sound legal solutions for residence issues of migrant women who are victims of violence against women as well as providing asylum to women fleeing gender-based violence. Notwithstanding a high level of general support for such provisions, many changes to articles 47 and 48 were proposed. These include, for example, the proposal to ensure application of article 47 not only to married women but also to common-law spouses. While others, in particular the delegation from Romania, agreed in principle with the idea of granting independent residence permits to victims of domestic violence who are married to the perpetrator and who would lose their status upon separation,

they preferred to introduce an element of choice by changing the wording of article 47 (1) to "may be granted an independent residence permit". A small number of delegations questioned the need for these provisions. The delegation from the Russian Federation expressed general reservations on both articles. The delegation from Azerbaijan expressed a general reservation on Article 48.

12. In relation to Chapter VIII on international co-operation, many delegations stressed the importance of ensuring the protection of personal data, defining more clearly the requirements under articles 50 and 51 and limiting the obligation to exchange information to the most serious forms of violence only. Since the purpose and obligations of the body referred to in Article 7 of the convention had not yet been clarified, some delegations found it difficult to discuss its role in international co-operation. It was agreed that this chapter required re-wording and further clarification, in particular in relation to the purpose of its provisions, the type of body to be set up under Article 7, and the type of data to be collected and shared.

13. In order to prepare the ground for an extensive discussion on the future monitoring mechanism of the convention, Mr Christos Giakoumopoulos, Director of Monitoring of the Directorate General of Human Rights and Legal Affairs of the Council of Europe, provided the Committee with an overview of the existing monitoring mechanisms at Council of Europe level. These include judicial mechanisms such as the European Court of Human Rights, quasi-judicial mechanisms as available under the European Social Charter, but also a two-tiered approach (consultative process followed by review of the Committee of Ministers) as available under the Convention on Action against Trafficking in Human Beings. Finally, Mr. Giakoumopoulos pointed to the possibility of a soft monitoring mechanism by setting up a Committee of the Parties. He advised the Committee to carefully discuss the requirements and expectations of the future monitoring mechanism under this convention, such as the power to carry out country visits, issue reports and recommendations (confidential or public) or mere advice, composition of the body/bodies established (multi-disciplinary, independent) etc, as these carry many political and financial consequences. Finally, Mr Giakoumopoulos stressed the importance of ensuring co-operation among the various monitoring mechanisms and the need for a new mechanism to find its place among these.

14. Following this presentation, the Committee engaged in a discussion on the requirements of a monitoring mechanism. Many delegations expressed the view that this mechanism needed to be tailor-made to meet the specific demands of monitoring a convention with a broad scope such as this. A large number of delegations agreed on the need to ensure the independence and efficiency, including cost-efficiency, of the monitoring mechanism. The Parliamentary Assembly highlighted the importance of granting national parliaments a role in monitoring the implementation of the convention, while other delegations stressed the need to include civil society and non-governmental organisations in a systematic way. It was agreed that a range of issues needed further discussion, such as the types of results expected from the monitoring mechanism, its working methods and powers, rules of procedures and election, its composition and much more. This discussion needed to be held bearing in mind the specific nature of this convention: a human rights convention dealing with state (in)action in protecting against a wide range of private acts. The CAHVIO Secretariat mentioned also the possibility of establishing a "(enlarged) partial agreement" - such as GRECO for example – to ensure the monitoring of the future convention. This would certainly overcome significant current financial problems related to establishing new monitoring mechanisms in the Council of Europe. It would also take account of the global nature of this convention and it would have the clear advantage of making the accession of non-member states easier. The group agreed on the proposal of the Secretariat to present two alternatives for a monitoring mechanism based on the discussions held on this issue.

ITEM 6 OF THE AGENDA: PLANNING OF THE FUTURE WORK OF THE COMMITTEE

15. The Committee completed the first reading of articles 1-59. In relation to the standard final clauses contained in articles 60 – 67, the Committee decided to engage in an exchange of views in writing. All participants to CAHVIO were invited to submit in writing to the Secretariat proposals on alternative wording for articles 28-67 by 26 March 2010. On the basis of these proposals, as well as the proposals for alternative wording on articles 1-27 received earlier, the Secretariat will prepare a revised version of the draft convention for the 5th meeting, which will be made available to the Committee prior to the next meeting.

ITEM 7 OF THE AGENDA: OTHER BUSINESS

16. At its 3rd meeting, the Committee had decided to postpone the vote on a request for observer status received from the German Institute for Human Rights to its 4th meeting in order to allow all delegations to adopt a position on this matter. In the meantime, the German Institute for Human Rights submitted another letter in which it clarified that it sought observer status on behalf of the European Group of National Human Rights Institutes. In the subsequent vote on this request, one member state voted against the admission of the German Institute for Human Rights on behalf of the European Group of National Human Rights Institutes as observer to CAHVIO. In accordance with point 3.4 of *Resolution Res (2005) 47 on committees and subordinate bodies, their terms of reference and working methods,* the Committee then voted on the referral of this matter to the Committee of Ministers. As 26 out of 38 member states present voted in favour of referral, the Committee decided to transmit the matter to the Committee of Ministers.

ITEM 8 OF THE AGENDA: DATE OF NEXT MEETING OF THE COMMITTEE

17. The next meeting of the Ad Hoc Committee on Preventing and Combating Violence against Women and Domestic Violence (CAHVIO) will be held on 29 June – 2 July 2010.

APPENDIX I: AGENDA

1. Opening of the meeting

2. Adoption of the agenda

3. Information by the co-Chairpersons

4. Information by the Secretariat

5. Continuation of the examination of the document “Draft Convention on preventing and combating violence against women and domestic violence” (CAHVIO (2009)32 prov)

6. Planning of the future work of the Committee

7. Other business

8. Date of next meeting of the Committee

APPENDIX II: LIST OF PARTICIPANTS

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