

# Recommendation 1371 (1998)<sup>[1]</sup>

## Abuse and neglect of children

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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.

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[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).

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