



# **The Protection of Women against Violence**

**Recommendation Rec(2002)5  
of the Committee of Ministers to member States  
on the protection of women against violence  
adopted on 30 April 2002 and  
Explanatory Memorandum**

## **Council of Europe**

The Council of Europe is a political organisation which was founded on 5 May 1949 by ten European countries in order to promote greater unity between its members. It now numbers 44 European states.<sup>1</sup>

The main aims of the Organisation are to promote democracy, human rights and the rule of law, and to develop common responses to political, social, cultural and legal challenges in its member states. Since 1989 it has integrated most of the countries of central and eastern Europe and supported them in their efforts to implement and consolidate their political, legal and administrative reforms.

The Council of Europe has its permanent headquarters in Strasbourg (France). By Statute, it has two constituent organs: the Committee of Ministers, composed of the Ministers of Foreign Affairs of the 44 member states, and the Parliamentary Assembly, comprising delegations from the 44 national parliaments. The Congress of Local and Regional Authorities of Europe represents the entities of local and regional self-government within the member states.

The European Court of Human Rights is the judicial body competent to adjudicate complaints brought against a state by individuals, associations or other contracting states on grounds of violation of the European Convention on Human Rights.

### **The Council of Europe and equality between women and men**

The consideration of equality between women and men, seen as a fundamental human right, is the responsibility of the Steering Committee for Equality between Women and Men (CDEG). The experts who form the Committee (one from each member State) are entrusted with the task of stimulating action at the national level, as well as within the Council of Europe, to achieve effective equality between women and men. To this end, the CDEG carries out analyses, studies and evaluations, defines strategies and political measures, and, where necessary, frames the appropriate legal instruments.

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<sup>1</sup> Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Georgia, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, San Marino, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, “the former Yugoslav Republic of Macedonia”, Turkey, Ukraine, United Kingdom.

# COUNCIL OF EUROPE

## COMMITTEE OF MINISTERS

### **Recommendation Rec(2002)5 of the Committee of Ministers to member states on the protection of women against violence<sup>2</sup>**

*(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;

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<sup>2</sup> 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.

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 3<sup>rd</sup> 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 (23<sup>rd</sup> 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 4<sup>th</sup> Geneva Convention relative to the protection of civilian persons in time of war (1949) and the 1<sup>st</sup> and 2<sup>nd</sup> 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.

## EXPLANATORY MEMORANDUM

### I. Introductory remarks

#### A. Background

1. Violence against women was for many years an unexplored or even taboo subject. Even though the new prominence given to human rights and the introduction of machinery to protect them certainly served as a launch pad for the campaign against abuse, violence against women, unlike other aspects of gender inequality, only began to be acknowledged in Europe in the 1970s and 80s. The gradual disclosure of the existence and scale of the problem coincided with recognition of the principle of equality between women and men in law<sup>3</sup> (*de jure*).

2. Spurred by feminist groups and non-governmental organisations<sup>4</sup>, public awareness of the problem grew: through a combination of practical support measures and public campaigns, these organisations helped to put combating violence against women on the authorities' agenda.

3. The measures taken by governments and international organisations emphasised the universal nature of the problem. The United Nations, the Council of Europe, the European Union and, more recently, other organisations such as the Organisation for Security and Co-operation in Europe have all introduced broadly based policies and strategies.

4. Following extensive consultation, coalitions of women's organisations from each continent lobbied the United Nations World Conference on Human Rights (Vienna, June 1993) to have gender violence formally recognised as a fundamental violation of women's human rights. This position was reinforced in the Platform for Action adopted by the UN's Fourth World Conference on Women (Beijing, 4-15 September 1995), which called upon governments to take integrated measures to prevent and eliminate violence against women (see Chapter VI.D of the Platform for Action).

5. In 1994, the United Nations appointed a Special Rapporteur on Violence against Women, its Causes and Consequences, who was responsible for documenting and analysing the issue worldwide. In some regions, International Conventions on violence against women have already been introduced, eg the 1984 Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women.

6. Violence against women has only recently come to light, and research in this field and the quest for solutions continue to draw attention in most member states of the Council of Europe.

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<sup>3</sup> See the chronology in Appendix I.

<sup>4</sup> Thanks mainly to their work in the field, such as the setting-up of information centres, shelters for victims, etc.

## **B. The main features: a universal, multifaceted problem**

7. 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.

8. There is, then, a "hidden side" to violence, in that it appears from the research carried out in the various countries that, for all forms of violence, the number of cases reported and recorded is significantly lower than the actual number.

9. On the basis of the studies carried out and the data collected, a number of broad features would seem to emerge. The first is the universal nature of the problem: 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.

10. 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<sup>5</sup>.

## **C. Legislative differences between Council of Europe member states**

11. There are major legislative differences between Council of Europe member states. Two examples which have a particular impact in this area are: whether the legal system is adversarial or inquisitorial; and whether there is a constitution that safeguards Human Rights. The former affects legal procedure more than the form and content of legislation. *The existence of a constitution, or international obligations which may or may not be part of domestic law, will help determine whether or not acts of violence against women are a violation of Human Rights and fundamental freedoms.*

12. The other significant difference is that some countries have introduced specific legislation and/or legal procedures, thereby sending out a clear message that violence against women will no longer be tolerated.

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<sup>5</sup> On the various forms of violence, see Appendix II.

13. While it is still early to be talking about legislative trends, recent data indicates a new willingness on the part of member states to tackle violence, with some states introducing innovative measures such as restraining orders which prohibit the perpetrator from entering the victim's home and/or other premises<sup>6</sup>.

#### **D. Origins of the recommendation: the Council of Europe's work<sup>7</sup>**

14. Starting in the late 1970s, the Council of Europe and in particular its first Committee for the promotion of equality between women and men, took a series of initiatives to promote the protection of women against violence.

15. Recommendations were drawn up on the rights of victims of violence to assistance, the legal remedies open to them and the respect due to them in all criminal proceedings. The need for prevention and education was also stressed. Other surveys were carried out, and proposals formulated<sup>8</sup>, which led to the 3<sup>rd</sup> European Ministerial Conference on Equality between Women and Men (Rome, 21-22 October 1993) on: "Strategies for the elimination of violence against women in society: the media and other means". The *Declaration and Resolutions*<sup>9</sup> adopted by the ministers at that conference contained an outline of the Plan of Action that was to be expanded upon later.

16. This work continued, and in 1997 a Group of specialists working under the auspices of the Steering Committee for Equality between Women and Men (CDEG) finalised a *Plan of Action for Combating Violence against Women*<sup>10</sup>.

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<sup>6</sup> See the study on "*Legislation in the member States of the Council of Europe in the field of violence against women*", published in January 2001 (document EG(2001)3 prov.)

<sup>7</sup> This chapter contains a short summary of the Council of Europe's previous work in combating violence against women. It should be noted, however, that major efforts have also been made to combat trafficking in human beings for purposes of sexual exploitation, which are not included here. For more information on this point, see in particular Recommendation No. R (2000) 11 of the Committee of Ministers to member States on action against trafficking in human beings for the purpose of sexual exploitation and its explanatory report, or contact the Council of Europe, Division Equality between Women and Men – DG II, F-67075 Strasbourg Cedex, tel: (00) (33) 3 88 41 2966; fax: (00) (33) 3 88 41 27 05, <http://www.humanrights.coe.int/equality>.

<sup>8</sup> Up to 1993, the Council of Europe's work on violence against women produced the following documents:

- report on sexual violence against women, by Mrs A Snare, presented at the 15<sup>th</sup> Criminological Research Conference (Strasbourg, 22-25 November 1982) (PC-CRC 582) 2 rev);
- proceedings of the colloquy on violence within the family: measures in the social field (Strasbourg, 25-27 November 1987);
- Recommendation No. R (90) 2 of the Committee of Ministers to member States on social measures concerning violence within the family (15 January 1990);
- Sexual violence against women: contribution to a strategy for countering the various forms of such violence in the Council of Europe member states (EG(91)1);
- Communication from the Committee of Ministers on the practice of systematic rape in Bosnia-Herzegovina (9 December 1992).

<sup>9</sup> Document MEG-3(93)22. Readers needing further details should write to the Council of Europe, F-67075 Strasbourg, Cedex.

<sup>10</sup> Document EG-S-VL (97) 1. See also the summary of the action plan, document EG-S-VL (98)1.

17. On the basis of that plan, a number of activities were organised. These mainly took the form of conferences and research seminars:

- Seminar on “Promoting Equality: a common issue for men and women” (Strasbourg, 17-18 June 1997);
- Information Forum on “Ending domestic violence: action and measures” (Bucharest, 26-28 November 1998);
- Seminar on “Men and Violence against Women” (Strasbourg, 7-8 October 1999)<sup>11</sup>.

The following reference documents have also been published:

- “Violence against Women. Compilation of Council of Europe texts since 1995” (document EG(99)14);
- “Legislation in the member states of the Council of Europe in the field of violence against women” (document EG(2001)3).

18. The Council of Europe Parliamentary Assembly’s Committee on Equal Opportunities for Women and Men also held a seminar on “Violence against Women: from Domestic Abuse to Slavery” (Bari, Italy, 4-6 November 1999). The Assembly itself has recently adopted two texts:

- Recommendation 1450 (2000) on violence against women in Europe;
- Resolution 1212 (2000) on rape in armed conflicts.

## **E. The authors of the recommendation and their approach**

19. These studies showed that violence is still a major problem in all the Council of Europe member states and a persistent obstacle to the promotion and advancement of women’s rights. In spite of recent progress, national and international legal instruments remain inadequate, while violence against women is still rife in all sections of the community.

20. The Council of Europe’s Committee of Ministers and the CDEG accordingly felt that it was important to build on the work already done by devising guidelines for the introduction of a comprehensive system to combat violence. To this end, a Group of Specialists for the Protection of Women and Young Girls against Violence (EG-S-FV) was set up under the authority of the CDEG<sup>12</sup>. The EG-S-FV comprised 9 experts from various Council of Europe member states<sup>13</sup>. It

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<sup>11</sup> The proceedings of these seminars are available from the Council of Europe, Division Equality between Women and Men – DG II, F-67075 Strasbourg Cedex, tel (00) (33) 3 88 41 29 66, fax (00) (33) 3 88 41 27 05, <http://www.humanrights.coe.int/equality>.

<sup>12</sup> The EG-S-FV’s terms of reference were as follows:

On the basis of the work already done in this area by the CDEG, and particularly the Group of Specialists for Combating Violence against Women (EG-S-VL), and bearing in mind the work done by other international institutions, in particular the Special Rapporteur of the United Nations and the Platform for Action of the 4<sup>th</sup> World Conference on Women (Beijing, 4-15 September 1995), as well as existing legal texts, the Group is responsible for: drafting, particularly on the basis of the Plan of Action drawn up by the EG-S-VL and a preparatory study, and taking into account Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, a draft recommendation containing guidelines for developing national legislation aimed at combating violence against women and young girls, particularly by identifying the various forms of violence, the measures to

began work in June 1998 and completed its task in June 2000. During that period, it held five working meetings.

21. The Group's aim was to prepare a legal reference text, which governments could use as a basis for supplementing, amending, adjusting or drafting legislation to successfully combat violence against women in each member state. To assist it in its task, the Group consulted the Council of Europe's earlier texts and work, Article 3 of the European Convention for the Protection of Human Rights and its case law, the relevant international texts (particularly the UN texts) and existing national legislation. The Group tried to gather as much documentation as possible, including examples of national laws and systems which had proved effective and, where possible, been evaluated. This enabled it to construct a series of "optimum models" in each area – a list of "best standards and practices" – as a basis for its work. The Recommendation gives member states a list of measures which may help to protect victims' interests in practice, safeguard their rights and prevent all forms of violence against women.

22. These measures provide a set of guidelines which states may decide to apply, according to national circumstances.

## **II. Comments on the recommendation**

### **A. Personal scope of application: definition of the persons involved**

23. The authors began by looking at the scope of the recommendation. The issue of male victims of violence was examined on the basis of studies conducted in certain states on male victims of violence perpetrated by women.<sup>14</sup> Conscious of the fact that, statistically speaking, such cases are still in the minority, and bearing in mind the exact terms of reference assigned to them (see footnote no. 10), the authors of the recommendation defined those involved in violence as follows.

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be taken, the remedies which should be open to victims – and any other provision which the Group may deem useful.

<sup>13</sup> The Group comprised nine specialists from various Council of Europe member states, appointed by the CDEG in a manner which ensured fair geographical distribution between states and balanced representation of the various legal systems. The members had to be people with experience of drafting legislation at national level and a thorough knowledge of areas of law (civil, criminal, etc.) relevant to combating violence against women, or who had served on national committees responsible for examining legislation in this field. They came from the following states: Austria, Belgium, France, Iceland, Italy, Romania, the Russian Federation, Spain and Turkey.

<sup>14</sup> In particular, the authors examined reports according to which, for the past thirty years, discussions on domestic violence have tended to cast men in the role of aggressors and women in the role of victims with the result that today, in the United Kingdom, male victims receive scant attention from both government policy-makers and the community at large. According to these reports, there are over forty-five homes for battered women and their children in England and Wales, but not a single government-funded facility for men, who have no one to turn to, even just for information. It would seem that the great majority of male victims of violence feel that, on the whole, the police and social welfare agencies are unsupportive and, in some cases, downright hostile. On 7 January 1999, a Channel 4 programme ("Dispatches") featuring a report on a hundred men who had suffered domestic violence revealed how 25% of these men – and not the female partner who had attacked them – had been arrested by the police when they sought help. Only seven of the women had been arrested and of these, none were convicted. See Home Office Research Study 191 on "Domestic Violence: Findings from a new British Crime Survey self-completion questionnaire" by Catriona Mirrles-Black and "The physical aggression of women and men to their partners: A quantitative analysis" by John Archer, University of Central Lancashire, United Kingdom.

24. Women: in keeping with their terms of reference, the authors decided to concentrate on violence against women. The recommendation deals with violence perpetrated against women throughout their lifetime, from birth to death, and includes girls. This choice was made for several reasons:

- the particular characteristics of violence against women, which differentiate it from other forms of violence. Violence against women is an expression of the domination by one sex over the other and it is often more tolerated by society. Violence against girls is often a demonstration of cultural or religious traditions which reproduce the same models;

- the terms of reference and competence of the CDEG, which relate to questions concerning women's rights and equality between women and men.

25. It was for these reasons that the drafters decided to deal mainly with violence against women without, however, totally excluding young boys, particularly in the case of violence committed within the family or domestic unit. Various parts of the text therefore refer to measures aimed at children who are victims of violence.<sup>15</sup>

26. Girls/children: the recommendation is based on the definition provided by the UN Convention on the Rights of the Child<sup>16</sup>: "a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier".

27. Girls experience all the same kinds of violence as those perpetrated against women. Nowadays, they seem to be even more vulnerable owing to the fact that they are under constant pressure, including sexual pressure, to grow up fast. Certain forms of violence are more especially associated with girls: forced marriages and very early marriages; incest; sexual mutilation; violence perpetrated by other young people (gang rape). As far as incest is concerned, the authors have included acts committed by any members of the family as well as persons who share the victim's home on an occasional basis: the term can apply to any adult who abuses his or her authority.

28. All violence perpetrated against girls has very severe repercussions in adulthood and often prevents them from leading a full and satisfying life. Long-term follow-up care should be provided to help girls come to terms with the abuse they have suffered. The cost of such treatment should be borne by society.

29. In the course of their work, the authors acknowledged the fact that violence also hits boys who, like girls, are victims of, or have to cope with the consequences of, domestic violence as well as violence perpetrated outside the family (violence in school, paedophilia, sexual exploitation, etc.).

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<sup>15</sup> These are measures foreseen in the appendix concerning mainly criminal law, civil law and judicial proceedings: in these cases, the text extends protection to all children victims of violence, regardless of sex.

<sup>16</sup> Adopted by the UN General Assembly in resolution 44/25 of 20/11/89.

30. The victims: although there is no such thing as a typical victim profile, surveys<sup>17</sup> have shown that women, whatever their social background, experience all forms of violence<sup>18</sup>. For the victims, any violence has an impact on their physical and/or mental well-being, and some forms of abuse can be ongoing or continue over their lifetime. Victimization at an experiential level often involves combinations of various forms of violence and abuse and, while there is nothing preordained about the process, women who have suffered physical abuse in childhood are more likely to suffer violence in later life<sup>19</sup>.

31. The perpetrators: in the vast majority of cases, abuse of women and children is perpetrated by men. While assaults and abuse by women do occur, and need to be addressed, the authors were anxious that this minority of cases should not detract from the central issue – ie that male violence against women is endemic in most societies. International research has also shown that women are more likely to experience violence from men they know, especially relatives and partners. In some cases, however, the men in question are either acquaintances or strangers<sup>20</sup>.

32. Violence against women is committed in a wide range of relationships and locations. Abuse is perpetrated by: family members, current and former sexual partners, other relatives and friends, acquaintances (including colleagues and clients), those in various positions of authority (including bosses and superiors in the hierarchy, doctors, therapists, carers, clergy/religious leaders, teachers, police, military, institutional staff) and strangers. The assaults usually involve one assailant, although multiple offenders are not uncommon.

33. The state: the authors felt that the state was a key player in combating violence, and that governments have a responsibility to create a climate of zero tolerance of violence, by taking the appropriate measures and instituting a system of protection and prevention. To this end, and on the basis of European examples<sup>21</sup>, the recommendation specifies a series of measures and suggests initiatives that member state governments might consider adopting and implementing.

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<sup>17</sup> See in particular the Enveff survey conducted in 2000 in France, commissioned by the Department of Women's Rights and the State Secretary for Women's Rights (monthly bulletin of the *Institut national d'études démographiques*, no. 364, January 2001).

<sup>18</sup> The Enveff survey showed that violence, in particular domestic violence, is closely related to age: young women (20-24 years) are twice as likely to suffer violence as older women.

<sup>19</sup> Such women are five times more likely to suffer physical violence (11% as against 2% of women who have not been abused) and four times more likely to suffer sexual violence from their spouse (4% as against 1%). Source: Enveff survey.

<sup>20</sup> This particularly applies to groups of women who do not live with men, eg lesbians, disabled women or elderly women who live alone.

<sup>21</sup> Notable examples include the two policy memoranda issued by the Netherlands in 1982 and 1990, which were concerned with Human Rights and addressed legislation, law enforcement, preventive measures, research and victim support. A series of action programmes were initiated in Norway in 1983 to combat violence against women, in 1986 with specific reference to domestic violence and in 1992-93 on child sex abuse. An independent committee was set up by the Irish Ministry of Justice to review the legal framework for women and girls reporting crimes of violence against them. In 1997, Switzerland launched its first national campaign to raise awareness about violence against women. In 2000, France conducted an in-depth survey (see previous notes) and in January 2001 held a second national conference on violence against women.

## **B. Preamble**

34. The preamble briefly charts the events leading up to the outlawing of all forms of violence against women and girls, as reflected in the various international instruments referred to.

### *Paragraphs 1-5*

35. The preamble sets out the basic principles on which the entire recommendation is based. It embodies the very essence of the text, pointing out that the Committee of Ministers ranks violence against women as a most serious factor preventing the enjoyment of Human Rights. This principle is now recognised by the international community.

36. As regards the universal nature of the phenomenon and the various forms that violence can take, see also the comments above (under “introductory remarks”).

### *Paragraphs 6 -*

37. Apart from the basic principles, the preamble emphasises that violence against women concerns society at large. It involves the basic family unit and, particularly in its extreme forms, such as trafficking in human beings, poses a threat to democracy as a whole.

38. This statement is based partly on the heavy cost of violence against women, which only a few countries are beginning to recognise. The brunt is borne by women, but there are also significant costs to the state. They include: criminal and civil investigations and proceedings, healthcare costs (in terms of physical and mental health); lost days at work; provision of temporary and permanent rehousing and academic failure among children whose lives have been disrupted by domestic violence. Methods for calculating the financial cost of violence are beginning to be developed.<sup>22</sup> The figures obtained provide only a rough guide, however.

39. At a more fundamental level, the authors stressed that it was impossible to calculate the extent of the loss to society of women not being free, equal and safe; nor was it possible to gauge all the ramifications of living with the threat and reality of gender violence.

### *Paragraphs 9 to 18*

40. After briefly describing the context in which violence against women and girls occurs in Europe, the preamble refers to the main international instruments in this area.

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<sup>22</sup> Estimates compiled in Australia provide an idea of the figures involved: the annual expenditure related to domestic violence is 1.5 billion dollars in New South Wales; in Queensland, the annual cost of domestic violence is put at 557 million dollars, and that of rape and sexual assault at 63 million dollars. See also the study on “The Price of violence – The costs of Men’s Violence against Women in Finland”, Statistics Finland and Council for Equality, Helsinki, 2001. This study gives the figure of more than 50 million Euros as an evaluation of the cost of men’s violence against women in Finland for the year 1998.

41. It is worth recalling firstly that in the Final Declaration adopted at the second Council of Europe Summit (Strasbourg, 1997), the Heads of State and Government of the Council of Europe affirmed their determination to combat violence against women and young girls and all forms of sexual exploitation.

42. In their work, the authors repeatedly referred to the principles embodied in the European Convention on Human Rights (1950) and the Convention bodies' case-law, the European Social Charter (1961) and Revised Social Charter (1996), the additional protocol to the European Social Charter providing for a system of collective complaints (1995), and the European Convention on the Exercise of Children's Rights (1996), which are fundamental to the Council of Europe's activity. They also took account of the principles derived from the UN texts, in particular the UN Declaration on the Elimination of Violence against Women (1993) and the Platform for Action adopted at the Fourth World Conference on Women (Beijing, 1995), and the follow-up thereto (see the measures adopted at the special session of the UN General Assembly in order to further implement the Platform for Action)<sup>23</sup>.

43. The preamble also lists a series of recommendations adopted by the Council of Europe's Committee of Ministers and Parliamentary Assembly, to which reference was made when preparing the text.

### **C. Provisions of the recommendation**

44. The recommendation is aimed at the member states and urges them to incorporate the principles enshrined therein into the appropriate national legislation, amending it where necessary. In keeping with the spirit of the text, the following provisions must constitute the *basic principles* of government action in combating violence.

#### ***Point I***

##### *Paragraph 1*

45. The text draws on both Article 3 of the UN Declaration on the Elimination of Violence against Women and on Articles 2, 3, 5, 6 and 14 of the European Convention on Human Rights. Indeed, the rights that states must ensure the respect of are a mandatory part of the European Convention on Human Rights – and all Council of Europe member states have adhered to this legally binding text. This paragraph recalls the principle that is based on legal texts.

##### *Paragraph 2*

46. The authors wished to stress the importance of economic and social rights in combating violence and particularly the difficulties that women lacking economic autonomy face in order to put an end to a violent situation, especially by ceasing cohabitation with the perpetrator of the violence. In general, studies on this subject show that better protection of women's economic and

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<sup>23</sup> 23<sup>rd</sup> special session, New York, 5-9 June 2000.

social rights constitute a major tool to prevent violence.<sup>24</sup> “Economic and social rights” are to be understood as the rights listed in the main relevant international legal texts, such as the International Covenant on Economic, Social and Cultural Rights (1966), the European Social Charter (1961) and the Revised European Social Charter (1996).

*Paragraphs 3 and 4*

47. The action states take will involve various groups and authorities. Criminal law reform, recognition and compensation of victims, and punishment of offenders will thus be a matter for the ministry of justice; information, awareness-raising and training for the police and for medical and social service staff will be dealt with by three other ministries; international action will be the responsibility of the foreign affairs ministry, while equal opportunity, employment and education measures will be handled by yet other ministries. The ministries will also have to work with employers’ organisations, trade unions and non-governmental organisations. This requires a high degree of co-ordination between the authorities, state institutions and NGOs, with the latter playing a very important role on the ground. The idea will be to facilitate co-operation and co-ordination between all the agencies concerned. The support given to NGOs should enable them to pursue an ongoing strategy, something that requires sustained funding.

***Point II***

48. This short paragraph deals with a complex issue, still not fully developed: the responsibility of states with regard to violence.

49. The aim of the authors was to envisage the extremely serious cases of violence against women and children perpetrated by the state, or its agents, (i.e. law enforcement officials or other security or military personnel) which are an especially grave violation of human rights, now recognised as torture or even as crimes against humanity if perpetrated systematically (see below “Additional measures concerning violence in conflict and post-conflict situations”). The European Court of Human Rights considered in the case of *Aydin v. Turkey*<sup>25</sup> that the rape and ill-treatment of a female detainee by an official of the state amounted to torture in breach of Article 3 of the Convention.

50. A similar logic can be applied in relation to violence that is or that could be perpetrated in institutions, and particularly in prisons.

51. Beyond this, a problematic area appears when envisaging state responsibility arising out of acts of private individuals.

52. The trend towards holding states responsible for acts perpetrated by certain private actors is based on the unequal de facto protection accorded by legal provisions to women subjected to violence. Article 2(e) of the Convention on the Elimination of all forms of Discrimination

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<sup>24</sup> For example, the Enveff survey conducted in France in 2000 showed that domestic violence is more common among unemployed women and women receiving the “minimum integration income” (RMI) (14%) than among women who are gainfully employed or housewives (9%).

<sup>25</sup> 57/1996/676/866

Against Women states that states parties are required “to take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise.” Article 16 explicitly refers to discrimination in the family and General Recommendation No. 19 of the Committee on the Elimination of Discrimination Against Women (CEDAW) includes family violence in its scope. In Recommendation No. 19, it is emphasised that: “States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and providing compensation.”

53. The participants at the 3<sup>rd</sup> European Ministerial Conference on equality between women and men (Rome, 21-22 October 1993), organised by the Council of Europe, adopted a Declaration in which they noted that “the responsibility of states is engaged with regard to acts of violence carried out by public officials and that it may also be engaged with regard to private acts of violence if the state does not take action with sufficient diligence to prevent the violation of rights or investigate acts of violence, to sanction them and provide support for the victims”. Seven years after, this was reiterated in the Final Outcome Document on further actions and initiatives to implement the Beijing Declaration and Platform for Action, adopted by the United Nations General Assembly (New York, 5-9 June 2000).

### ***Point III***

54. The recommendation underlines the structural reasons for violence against women. The authors felt that violence against women needed to be understood in a social context, and not as a series of individual unconnected events. It is the result of a social construction of a particular form of masculinity (aggressive masculinity) – the set of traditions, habits and beliefs – which permit the perpetrators (mainly men) to assume the right to use violence as a means of exercising their dominance and control. That is not to say, however, that men are not individually responsible for their actions. Members of all communities have a collective duty to condemn the use of violence against women and give paramount importance to the safety of victims of violence. Everyone, everywhere must refuse to tolerate violence against women and uphold the belief that no woman deserves violence and that the use of violence is a crime<sup>26</sup>.

### ***Point IV***

55. Two elements were held by the authors to be of particular importance: the preparation of action plans containing concrete measures to be implemented at national, regional and local levels, and the involvement of all the appropriate institutions and professions to put these action plans into practice. The information and knowledge acquired through the exchange of experiences and practices between states and NGOs which have set up certain European programmes (such as the DAPHNE programme) can be used when preparing such action plans.

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<sup>26</sup> See in particular the conclusions of the seminar held by the Council of Europe in Strasbourg in 1999 on “Men and Violence against Women”, and those of the Forum held in Romania in 1998 “Ending domestic violence: actions and measures”.

***Points V, VI and VII***

56. The authors wished to urge governments to support research into combating violence, as a key factor in achieving a better understanding of the problem and introducing more effective means of preventing and dealing with it. The aim is for this research to form the basis for concrete action. To that end, links between research and other sectors must be strong and co-ordinated: the authors observed that violence against women is a subject that has only been partially explored and wanted to stress that co-operation between researchers and decision-makers is essential in order to carry out efficient action.

***Point VIII***

57. Because of the major legislative differences between Council of Europe member states, some of the measures listed in the recommendation may not apply to all of them. It will be up to each state to select the measures needed to supplement or amend their policies on women and young girls subjected to violence.

### III. Appendix to the recommendation

#### Definitions

##### *Paragraph 1*

58. Defining violence against women is not easy, for it is a concept that admits of more than one interpretation. The various international instruments and national texts on the subject define violence against women in more or less broad terms. International policy seems to be giving growing emphasis to domestic violence, and its impact on all the members of the family, including children. While including this type of violence within their field of inquiry, the authors wished to adopt the broad, comprehensive approach favoured by the United Nations, encompassing all forms of violence<sup>27</sup>.

59. The chosen definition covers all forms of gender-based violence, regardless of where and by whom it is perpetrated, and whatever the circumstances. The list of acts contained in a), b), c) and d) is not exhaustive<sup>28</sup>. Appendix II to this report contains extracts from the Plan of Action for combating violence against women, which the authors used as a basis for preparing the recommendation.

#### General measures concerning violence against women

##### *Paragraph 2*

60. It is the responsibility of states to make sure that the fundamental rights referred to in paragraph 18 are not violated. Bearing in mind the reasons sometimes cited in order to justify certain practices such as genital mutilation, killings in the name of honour, early marriages or “ritual abuse<sup>29</sup>”, the authors were anxious to exclude any exception to this rule, which may on no account be broken for reasons related to custom, religion, tradition, etc. Reference can be made here to the Platform for Action adopted at the Fourth World Conference on Women, Strategic objective D.1, paragraph 124 a.

##### *Paragraphs 3 to 5*

61. The drafters wanted to reiterate and make clearer the basic principles set out in the provisions of the recommendation (see in particular points I, IV, V, VI and VII). These paragraphs thus explain in more detail the elements that should constitute national policies against violence (paragraph 3), the modalities needed to co-ordinate measures to combat

<sup>27</sup> See the UN Declaration on the Elimination of Violence against Women (1993) and the Platform for Action adopted at the Beijing Conference (chapter IV.D).

<sup>28</sup> Specific measures have been provided for in the recommendation concerning particular forms of violence.

<sup>29</sup> In the Report by the Canadian study group (*Canadian Panel on Violence against Women, Changing the Landscape: Ending Violence – Achieving Equality*, 1993, Ministry of Supplies, Ottawa) ritual abuse is defined as “a combination of severe physical, sexual, psychological and spiritual abuse used systematically and in combination with symbols, ceremonies and/or group activities that have a religious, magical or supernatural connotation. Victims are terrorised into silence by repetitive abuse over time and indoctrinated into the beliefs and practices of the cult or group” (p. 45).

violence (paragraph 4) and the principal sectors where research should be developed (paragraph 5).

### **Information, public awareness, education and training**

#### *Paragraphs 6 to 13*

62. Information and awareness-raising are the two main tools for prevention. Information gathering (preferably through the creation of databases) is vital for introducing an effective awareness-raising policy. At European level, it is important to establish criteria for collecting comparable data, in order to be able to raise public awareness not only nationwide but also across Europe. Information campaigns should seek to inform and educate the public in general, and victims in particular<sup>30</sup>.

63. In addition, the recommendation advocates creating or developing national initiatives for members of all the professions concerned. These need to be understood in the broad sense as including: judges, prosecutors, court welfare officers, police, probation officers, prison guards, social workers, psychologists, psychiatrists, doctors and in particular paediatricians, nurses, midwives, accident and emergency staff, teachers, youth workers, counsellors, interpreters, crisis workers including those working in emergency housing, public housing workers, social security staff, refugee workers, immigration officials, clergy, disability workers, government officials and policy-makers.

64. These training courses should comprise a common core focusing on the definition, forms and scale of violence against women, its impact on the victims, the way perpetrators deny and deflect responsibility, and the financial and social costs of violence. The needs and experiences of particular groups of women should also be included. Specific additional elements should address the particular role each group can play in developing zero tolerance.

65. These curricula should become required elements in vocational qualifications and training courses and regular refresher sessions on new research and policies should be available. Awareness of violence against women and the link with equality issues should be a formal rating factor in staff performance appraisals.

#### *Paragraphs 14 to 16*

66. Education also has a key role to play in combating violence against women and children, whether in the short term, through awareness-raising, or in the longer term, by challenging the assumptions and attitudes that lie at the root of, and help to perpetuate, structural inequalities. Clearly, educators in every context and at every level have a responsibility to participate fully in this effort, while governments have a duty to establish the general framework within which this education is delivered, as well as the necessary facilities.

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<sup>30</sup> The “Action Plan to combat violence against women” (document EG-S-VL (97)1) contains examples of successful information campaigns, such as the “Zero Tolerance” campaign in Edinburgh, Scotland (United Kingdom) (chapter VII and appendix I).

## **Media**

### *Paragraphs 17 to 20*

67. The media form an influential group in modern societies. They relay information in various ways (press, TV and radio, advertising, cinema, the Internet, the telephone, books and conferences) and their influence in the matter of violence against women and girls can be complex – negative when they encourage violence by peddling stereotypes, positive when they inform the public and raise awareness. While respecting press freedom, governments might consider taking measures to make the media aware of the extent of their influence in both cases, with a view to enlisting their co-operation.

68. To this end, the recommendation stresses that media self-regulation could contribute to a better understanding by media professionals of the problems related to violence against women.

## **Local, regional and urban planning**

### *Paragraphs 21 and 22*

69. According to studies carried out by criminologists, local, regional and urban planning can help to improve security in cities or at least reduce the sense of insecurity. The recommendation refers to a series of measures which, although they come under local and regional planning and/or town planning, are nevertheless factors in ensuring better security for the public in general and women in particular. They include: reducing or eliminating high-risk (poorly lit and monitored) areas; not concentrating offices in particular districts, which are deserted after 5 pm; sitting public transport stops (bus, metro, railway) in secure areas; stepping up security patrols; developing community policing; setting up local points and centres to assist the public in emergencies; setting up neighbourhood committees; trying to keep people in the cities, and so avert a situation where they live in dormitory suburbs and town centres become deserted after hours; making cities more human<sup>31</sup>.

## **Assistance for, and protection of, victims (reception, treatment and counselling)**

### *Paragraphs 23 to 33*

70. The provisions of the recommendation are directly based on existing best practice in Europe. They describe a protocol that should be followed by professionals who come into contact with victims of violence (especially sexual abuse). These are specific procedures the primary purpose of which is to ensure that victims receive the proper care and attention and that evidence is gathered with a view to possible legal action without causing further distress (known as “secondary victimisation”).

71. The authors referred in particular to the operating procedure adopted by the Rape Trauma Centre in Reykjavik (Iceland). Another notable example is the *Sexual Assault Kit (SAK)* used in

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<sup>31</sup> See the pilot project conducted in 9 different towns in Italy: “URBAN Cities Anti-violence Network-Italy”, financed by the European Regional Development Fund under the auspices of the European Commission.

Belgium.<sup>32</sup> The authors wished to point out that victims must be able to benefit from the measures listed in the recommendation without any discrimination (paragraph 44). An indicative (and non-exhaustive) list of motives for discrimination was drawn up. These are: age, sex, sexual orientation, level of education, language, religion, physical and mental capacity, cultural and ethnic origin of the victims. Other forms of discrimination could also be prohibited depending on the case.

### **Criminal law, civil law and judicial proceedings**

72. This part of the recommendation was extensively discussed by the group of drafters. Confronted with very disparate legislation, they made it their goal to put protection of victims first, and accordingly based their approach on the most recent and innovative legislation adopted in Europe.<sup>33</sup>

### **Criminal law**

#### *Paragraphs 34 and 35*

73. "By studying certain classes of offences, it is possible to identify acts treated by law as contrary to social norms at a given time, and to measure, in terms of the penalty prescribed, the importance which society attaches to the values protected."<sup>34</sup> The drafters followed this penological orientation and made it their first concern to point out that provisions relating to violence must be legitimised by the bodily or sexual harm inflicted on individuals. The aim above all is to protect their physical and sexual integrity, and not solely to uphold the moral order; this must constitute the foundation for criminal law measures.

74. The drafters in fact challenged the view of sexual offences as being primarily breaches of society's good order and of public morality. Even though these offences can still be considered contrary to public morality, it must be unequivocally set down that the principal effect of

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<sup>32</sup> "The SAK is a means of ensuring that judicial enquiries are properly conducted in cases where sexual offences are reported. It is designed to prevent victims from being victimised a second time by ensuring that they are properly dealt with by the police, police surgeons and public prosecutors. In addition to recommendations and instructions to the above authorities, the SAK is a medical kit, containing a whole range of items which are carefully chosen and specially designed to test for all signs of sexual violence. These signs can provide scientific proof of the offence, as well as evidence of the suspect's guilt or innocence. This gives victims effective means of proof, and so greatly strengthens their position. The examination follows a standard course, which means that it cannot be challenged and removes the need for victims to undergo a second examination. Another advantage is that victims need to give evidence less frequently in court. The data in the police report, the results of the medical examination and analysis of the prints together provide sufficient information. The police and police surgeons are given standard instructions, requiring them to treat victims of sexual violence with respect and understanding – which represents an important step forward." Source: *Bilan de dix ans de lutte contre la violence physique et sexuelle à l'égard des femmes et des enfants*, Miet Smet, Belgian Minister of Employment and Labour, responsible for the equal opportunities policy for men and women, 1996.

<sup>33</sup> See in particular the legislation applicable in Austria, Belgium, Spain, Iceland and Sweden, and the French Penal Code which came into force in 1994, cf. compendium of Legislation of Council of Europe member states on violence against women, document EG (2001) 3, volumes I and II.

<sup>34</sup> Source: *"Des atteintes aux mœurs et à la pudeur aux agressions sexuelles"* (conceptualisation of sexual offences and indecent assault as sexual assault) by Luc-Michel NIVOSE, auxiliary judge of the French Court of Cassation, *Chroniques de Droit Pénal* series, May 1995, pp. 1-3.

violence, and specifically its sexual forms, is serious harm to the victim, whose protection is the prime obligation of the law.

75. Proceeding on this principle, the drafters examined a number of concepts whose meaning has evolved markedly with time and according to differing national contexts. *The text of the recommendation is not restrictive and leaves each state in control of defining criminal offences within the domestic legal framework*: it indicates guidelines or basic principles whose adaptation to the national context will rest with each member state.

76. Over and above the peculiarities of each domestic legal system, the following explanations relate to a series of points which the drafters wished to highlight.

### **Rape**

77. While the definition of rape and sexual violence is entirely a matter for domestic legislation, it should be noted that the recommendation plainly advocates criminalising rape between spouses or partners.

### **Consent**

78. Under the legislation of most countries, the act is punishable only if performed without the passive partner's consent. This is normally for the court to determine. The drafters nevertheless wanted to emphasise that lack of physical resistance does not necessarily signify consent; fear or threat can subdue any inclination to resist, without there being any question of valid consent. Use of force cannot be measured solely according to the degree of resistance put up by the victim.

79. The drafters have made reference to cases where consent may be rendered impossible and where a presumption of absence of consent could be contemplated, for instance in the following cases:

- Where the act is forced upon the victim by violence, threat, coercion or deceit;
- Where the act is made possible because of the victim's vulnerable condition, infirmity or physical or mental impairment (this presumption would apply only to acts made possible precisely because of the victim's infirmity or physical or mental impairment; it is essential to certify that the existence of such infirmity was what enabled the abuser to violate the victim's sexual integrity). The victim's infirmity or impairment must have constituted the means by which the abuser was able to achieve his ends. This is in no way intended to negate the capacity of persons who have an impairment to engage in consenting affective relationships, but rather to protect them against any abuses which could befall them owing to their special situation;
- Where a situation of authority, trust or dependence prevails between abuser and victim; this is a particularly sensitive issue, and cases where the culprits were people such as doctors, psychologists and agents of the state have been recorded;

- Minors must be protected against any assault by family members in the broad sense, whether or not the minors concerned are married. The relationship of authority, trust and affection between minors and the father or mother is usually such as to place the minor in a subordinate position, and in this case consent can never be validly given;
- Situation where the abuser (adult or minor) is a person related to the underage victim in the ascending line, an adoptive parent, a brother or a sister, whether or not living with the victim;
- Situation where the abuser is any adult who regularly or occasionally lives with and holds authority over the victim;
- An adoptive parent is treated as a blood relative in the ascending line;
- A relative in the ascending line or an adoptive parent is a parent, grandparent or great-grandparent by blood or adoption;
- Considering the number of family situations that no longer conform to the traditional categories, the above definitions also include foster parents, half-brothers and sisters, stepfathers, stepmothers and any person who cohabits with a relative in the ascending line or any other person who may regularly or occasionally live with and hold authority over the minor. The concept of "regularly living with" is a practical one which must take into account the chief place of effective residence, the place where day-to-day life goes on. It need not be the domicile of the minor or the family member. "Occasionally living together",<sup>35</sup> is likewise a practical concept mainly concerning cases where minors have short stays with one parent. The circumstance of living together and the relationship of authority combine to create a power relationship for the minor.

### **Definition of the age of majority in each state**

80. This raises questions about the role of state authorities in the protection of minors, parental authority, respect for private and family life, and the interests and welfare of minors. The legal age of consent to sexual acts does not always correspond to the age of criminal responsibility; consequently, the drafters use the terms minor and adult with reference to the age of criminal responsibility and leave states free to fix an age below which there exists an irrefutable presumption of lack of consent. Below that age, consent is invalid.

### **The burden of proof**

81. When convicting the suspected perpetrator of violence it is necessary to take all requisite measures available in accordance with the European Convention on Human Rights, and especially its article 6, paragraph 2, which states that "everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law".

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<sup>35</sup> Source: «*La modernisation du Code pénal dans le cas de violences intrafamiliales physiques et sexuelles*» (modernisation of the Penal Code in respect of physical and sexual violence within the family), Prof. Hustebaut, University of Louvain School of Criminology, Belgium, 1996.

The drafters were aware that in the area of civil law and labour law (e.g. sexual harassment at the workplace), the burden of proof can also be put on the employer or the perpetrator. Criminal law does not, however, allow for such a reversal/sharing of the burden of proof.<sup>36</sup>

## **Civil law**

### *Paragraphs 36 and 37*

82. Here, the drafters used the example of Iceland, where a state-supported financing system has the function of compensating victims for the damage suffered. The state authorities then institute proceedings against culprits to obtain compensation in turn. While the drafters did not recommend such an elaborate system, they did however suggest that states should envisage the establishment of financing systems (in whatever form) whose aim would be to compensate victims.

## **Judicial procedure**

### *Paragraphs 38 to 49*

83. The procedural rules presented in these paragraphs have the essential purpose of protecting victims, particularly minors. They take account of the United Nations Convention on the Rights of the Child which provides for the capacity of children to take legal action, through a representative if need be.

84. Paragraph 38 refers to Article 6 of the European Convention of Human Rights, and in particular to the following rights:

- the right to fair and equitable treatment, in particular to objective and considerate examination;
- the right to respect for private life, dignity, confidentiality and, among others, the right to a hearing in camera;
- the right to be heard in the best possible conditions so that the damage suffered may be established accurately;
- the right to have the legal access to one's file and the right to be informed about the legal proceedings, the handling of the case with regard to court decisions, the execution of the sentence and the date on which the sentences expires;
- the right to legal assistance.

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<sup>36</sup> This question is being researched in certain Council of Europe member states, such as Iceland and Sweden.

## **Intervention programmes for the perpetrators of violence**

### *Paragraphs 50 to 53*

85. Many of the suggested intervention programmes are still pilot schemes that seek to prevent recidivism by making perpetrators of violence appreciate the significance of their wrongdoing, teaching them to control their deviant behaviour and to avoid certain critical situations, and instilling social communication techniques that will enable them to express themselves in a non-violent manner.

86. The programmes may take place in state-approved specialised open centres employing specially qualified persons from NGOs that deal respectively with women victims of violence and violent men. It is indeed important that the two types of NGOs work in a co-ordinated fashion for the sake of good mutual understanding. Perpetrators should come to these centres of their own accord, at their request and after serving their sentence, and supervision by a team must be provided to prevent any relapse.<sup>37</sup>

## **Additional measures with regard to sexual violence**

### **Genetic data bank**

#### *Paragraph 54*

87. Setting up data banks storing the genetic profile of all convicted perpetrators of sexual violence as well as all unknown individuals (unidentified rapists) where a specimen of their biological material has been obtained from the victim would make it possible to determine the profile of attackers by cross-checking and would aid their arrest.

88. While this type of measure has indubitable advantages for police tracking of identified or unidentified abusers, it should be applied taking domestic legislation into account, in conformity with the relevant Council of Europe standards, viz. the Convention for the Protection of Persons with regard to Automatic Processing of Personal Data,<sup>38</sup> 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<sup>39</sup> and Recommendation No. R (92) 1 of the Committee of Ministers to member states on the use of analysis of deoxyribonucleic acid (DNA) within the framework of the criminal justice system.

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<sup>37</sup> Programmes of this type are operating in Ireland, Iceland and Norway; see Statement by Mr Per ISDAL at the Forum organised by the Council of Europe in Bucharest, Romania from 26 to 28 November 1998 on “Ending domestic violence: action and measures” (document EG/BUC (99) 1). Another example is that of the Danish Prison Service which offers teaching in cognitive skills to inmates serving time for violent behaviour, in order to give them the opportunity to change their behaviour. See also programmes set up by the MOVE organisation in Ireland.

<sup>38</sup> ETS No. 108.

<sup>39</sup> ETS No. 164.

## **Additional measures with regard to violence within the family**

### *Paragraphs 55 to 59*

89. The studies carried out in member states all identify the family environment as the scene of the most violence of all types against women and children. Realising the importance of the issue, the drafters wished to envisage specific measures.

### *Paragraph 55*

90. According to a certain number of practices and/or legal systems, violence committed within the family, and especially domestic violence, is considered to be a private affair that does not require legal treatment. This is why the drafters wanted to point to the necessity for member states to classify violent acts committed within the family as penal violations of varying degrees of seriousness according to their nature.<sup>40</sup>

### *Paragraphs 56 to 58*

91. The drafters regarded as a potential perpetrator any adult regularly or occasionally living with the victim. The circumstance of living together, even occasionally and even without any specific relationship of authority, nonetheless creates an intimate situation that warrants reinforcement of protection.

92. In this type of situation, police action remains an essential factor. Police forces should be enabled, if a person is in danger, to expel a perpetrator immediately from the dwelling, irrespective of the property relations concerning the residence or of any objections of fellow occupants. The provisions of the recommendation specify injunctions to the abuser to keep away from the victim's dwelling and/or other places, or *restraining orders* (whereas under conventional legislation the victim was expected to leave home). This type of arrangement, founded on concern to protect victims and spare them the trauma of leaving home, is established in Austria and Finland.<sup>41</sup> As an example, under Austrian law, expulsion carried out by the police force constitutes an administrative order that must consequently be confirmed by a court decision.

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<sup>40</sup> The UK Government is fully committed to all action to increase the safeguards afforded to women and children to protect them from violence, and is therefore content with paragraph 55. However, the UK Government does not consider that this paragraph applies to the proportionate and reasonable physical chastisement of a child by its parents. UK law allows parents to use physical punishment to discipline their children as long as the punishment amounts to "reasonable chastisement". If a parent is charged with assaulting their child and claims that they were exercising "reasonable chastisement" Courts have to take certain factors into account when considering whether the punishment did indeed amount to reasonable chastisement. The factors are:

- the nature and context of the treatment;
- its duration;
- its physical and mental effects; and, in some instances,
- the sex, age and state of health of the victim.

<sup>41</sup> Federal Act on protection against violence in the family, which came into force in Austria in May 1997. In 1999, 2,076 injunctions of this kind were made in Austria. Act on Restraining Orders, which came into force in Finland on 1 January 1999.

*Paragraph 59*

93. The situation of migrant women is distinctive: they may have suffered violence either before emigrating or afterwards. Risks of violence are also linked with their limited knowledge of the host country's language, culture and applicable legal provisions, which lessens their ability to avail themselves of aid services. The recommendation concerns those women whose right to reside in a given place depends on staying married to a violent man. The intention is to remedy the difficulty that, for women in such circumstances, any attempt to put a stop to the violence carries a risk of expulsion.

**Additional measures concerning sexual harassment***Paragraphs 60 and 61*

94. In this area, direct reference should be made to the texts adopted in the European Union framework (Council of the European Communities Resolution of 25 May 1991 on the protection of the dignity of women and men at work, calling on member states to institute positive measures in the public sector, in keeping with national legislation, to serve as an example for the private sector; European Commission Recommendation of 27 November 1992 on the protection of the dignity of women and men at work, requesting member states to take measures in the public sector to implement the code of practice on measures to combat sexual harassment), and to Convention No. 111 of the International Labour Organisation on Discrimination (Employment and Occupation).

95. Situations of sexual harassment are unacceptable if: a) such conduct is unwanted, unreasonable and offensive to the recipient; b) in the workplace, a person's rejection of, or submission to, such conduct on the part of employers or workers is used explicitly or implicitly as a basis for employment decisions concerning this person; c) such conduct creates an intimidating, hostile or humiliating environment for the recipient.

**Additional measures with regard to genital mutilation***Paragraphs 62 to 67*

96. Several international instruments have condemned genital mutilation (United Nations General Assembly Resolution 48/104 adopting a Declaration on the Elimination of Violence against Women, World Health Organisation Resolution of 10/05/94 on maternal and child health and family planning: traditional practices harmful to the health of women and children, Convention on the Rights of the Child, Article 24.3).

97. Bulgaria, Norway, Sweden, Switzerland and the United Kingdom have enacted specific criminal law provisions against injuring the sexual organs, injury to the female genital organs being generally targeted except in the Bulgarian provisions.

98. The recommendation encourages member states to enact national legislation which reaffirms the principles set forth in the relevant international instruments.

99. Mutilation refers to complete or partial removal of an organ, and specifically the practices of female circumcision, excision or infibulation.<sup>42</sup>

### **Additional measures concerning violence in conflict and post-conflict situations**

#### *Paragraphs 68 to 76*

100. Reference should be made to the Statute of the International Criminal Tribunal adopted in Rome in July 1998. Article 7 of the Statute defines rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation or any other form of sexual violence of comparable gravity, as crimes against humanity. Furthermore, Article 8 of the Statute defines rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation or any other form of sexual violence as a serious breach of the Geneva Conventions and as war crimes.

101. In preparing the recommendation, the drafters monitored the detection of cases of rape in a war situation, forced pregnancies and acts of "ethnic cleansing" occurring in the former Yugoslavia. They addressed the issue of the organised violence committed against women by members of the armed forces and police. The prevalence of this form of violence has not yet been properly studied. Also considered are cases of individuals who have used the powers attaching to offices conferred on them by the state as a means of access and of inflicting certain forms of violence on women.<sup>43</sup>

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<sup>42</sup> A report to the Council of Europe Parliamentary Assembly by the Committee on Equal Opportunities for Women and Men, describes these practices in detail (document AS/EQ (2000) 20 of 18 October 2000):

- The two most widespread types of mutilation are excision (80%) and infibulation (15%).
- Excision involves ablation of a large part of the clitoris and the labia minora. This form of mutilation is practised above all by tribes in West Africa. It might be compared with sectioning the penis of boys.
- Infibulation involves excision of the clitoris and labia minora and sectioning of the labia majora, the two remaining flaps being brought together in such a way that only a tiny opening remains for evacuation of urine and menstrual flow. The place of the vulva is taken by heavy scar tissue, which must be cut at marriage and childbirth. Infibulation is characteristic of East Africa.
- One type of infibulation peculiar to West Africa entails leaving the labia majora intact but drawing the reduced labia minora together so that the vagina is closed off almost entirely.
- There are still other forms of excision, including vaginal introcision, the introduction of corrosive substances or plants into the vagina in order to cause bleeding or reduce its size, pricking or perforation of the clitoris and cauterisation by burning the clitoris.
- These operations, which last some fifteen or twenty minutes, are generally carried out by a traditional excisor, usually the community headwoman, with crude instruments and without anaesthetic. Among the wealthier classes they are sometimes performed in hospitals by qualified staff.
- The age at which mutilation is carried out varies according to ethnic group and locality. It may concern babies no more than a few days old or girls between four and ten years of age. Sometimes it is delayed until adolescence, and on occasion it takes place at marriage or during the first pregnancy.
- All these forms of mutilation are irreversible and damaging to health, and they all have lifelong consequences.

<sup>43</sup> See the proceedings of the Seminar "Rape is a war crime. How to support the survivors. Lessons from Bosnia – Strategies for Kosovo", organised by the European Commission (Vienna, 18-20 June 1999), and the proceedings of the seminar on "Men and violence against women" organised by the Council of Europe, Strasbourg 1999 – EG/SEM/VIO (99) 11 (report on male violence against women and children in wartime by Dubrovka Kocijan Hercigonja).

### **Additional measures concerning violence in institutional environments**

#### *Paragraphs 77 and 78*

102. The specific characteristics of confinement or isolation and the authority brought to bear by the personnel over the individuals in an institutional environment, may lead to a greater vulnerability of the latter in situations of violence. If these characteristics make it difficult to detect this kind of violence, they must be the object of active prevention policies and court proceedings.

### **Additional measures concerning failure to respect freedom of choice with regard to reproduction**

#### *Paragraph 79*

103. This concerns the interferences with women's freedom of choice and physical integrity which can occur in a variety of situations (for example, the practice of pre-natal selection by sex). In Europe, these interferences have been particularly brutal in situations of overt or latent conflict.<sup>44</sup>

### **Additional measures concerning killings in the name of honour**

#### *Paragraphs 80 to 83*

104. Murders to clear the family honour are still committed in certain parts of Europe. This form of violence involves the brutal murder of young women by members of their family – usually young men who are often below the age of criminal responsibility – for apparent departures, perceived as "dishonouring", from the behaviour patterns expected of women. The drafters examined a number of cases of such murders in Turkey, as well as anecdotal testimonies to cases in other regions.<sup>45</sup> Although the phenomenon is not very widespread, it was considered most important that the recommendation should mention these practices and prescribe measures for their prohibition.

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<sup>44</sup> The most recent cases in Europe were recorded during the Yugoslav conflict.

<sup>45</sup> The following examples illustrate these practices. Rabia (age 25) (August 1995). Rabia fell in love with a young man and wanted to marry him, but her family objected. She eloped with him and they spent the night in a cemetery where they had sexual intercourse; next morning she had regrets and went to the police station. The family was summoned and the father said that, since his daughter had gone with the man of her own free will, he had nothing against the man and consented to their marriage. She was sent home on the strength of that statement. However, her angry father and brothers kept repeating that they would never again be able to look the neighbours in the eye; the family was disgraced. The following day, Rabia was taken away by car with her mother, who was dropped along the way. Suspecting that she was to be killed, the girl jumped out and hid in a shop. She was chased by her brother, dragged out by the hair, and thrown under the wheels of a passing tractor. He later declared that it was an accident. The court held that murder had been committed, on the same grounds as in previous cases: according to local custom, the family of a girl who elopes is shunned by society unless she kills the abductor. The family was placed under strong social pressure. Each of the accused was sentenced to twelve years and six months imprisonment. Between 1994 and 1998, five girls were killed for reasons of honour at Şanlı Urfa, a town in south-eastern Turkey. Such murders are common in the region and among its former residents living in major cities.

**Additional measures concerning early marriages**

*Paragraphs 84 and 85*

105. The drafters recommended that the age of consent (especially for marriage) should be determined by national legislation.

## Appendix I

### Chronology

Violence against women is a phenomenon which has constantly evolved with the passage of time but which remains more present than ever within our societies, whatever their nature.

From the 18<sup>th</sup> century onwards, successive industrial and social revolutions have afforded a number of women access to the world of work and education, though without granting them equivalent rights to men in keeping with their role or function.

Not until the 20<sup>th</sup> century were they able to claim equal rights, which were secured at least in law only towards its close. In practice, women are still subjected to discrimination in social, occupational and family life; they are the first to be affected by economic and political crises; they are the prime targets, the hostages and the first victims of conflicts in all parts of the world.

1945: the principle of equality between women and men was enshrined in the United Nations Charter; this major legal event of the post-war period concerned 50 nations, asserting "the determination to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women and of nations large and small". Accordingly, the Charter entitles women to full realisation of their fundamental rights and places the member states of the United Nations under a legal obligation to strive to eliminate all forms of discrimination against women.

1946: formation of the Commission on the Status of Women.

1975: in order to protect the status of women, too often flouted in the world at large, the UN proclaimed 1975 "International Women's Year" and organised the first World Conference on the International Women's Year in Mexico City.

1976-1985: United Nations General Assembly Resolution 3250 (XXX): proclaimed the decade 1975-85 the "Decade For Women: Equality, Development and Peace".

1979: Following this proclamation, the Council of Europe set up a "Committee on the status of women" whose primary responsibility was to establish a Council of Europe programme aimed at promoting equality between the sexes. On completing its terms of reference, the Committee considered that the Council of Europe should have a permanent structure to examine all aspects in this field, and suggested setting up a "Committee for Equality between Women and Men" (CAHFM), an intergovernmental co-ordinating and consultative body of a multidisciplinary and inter-sectoral nature.

1980: Second World Conference on women's issues in Copenhagen.

1982-86: The Council of Europe Committee for Equality between Women and Men (CAHFM) had the main function of evaluating and stimulating the Organisation's action in favour of

equality between women and men, and promoting measures suitable for adoption at the level not only of the Council of Europe but also of the member states.

1985: Third World Conference to review and appraise the achievements of the United Nations Decade for Women: Equality, Development and Peace in Nairobi (15-26 July 1985).

1987: On the expiry of the CAHFM's terms of reference, a new committee was set up, the European Committee for Equality between Women and Men (CEEG). Its functions were extended to promoting European co-operation for the attainment of real equality between women and men, and promoting measures suitable for adoption at the level not only of the Organisation but also of the member states.

1988: The Declaration of the Committee of Ministers, dated 16 November 1988, was a landmark in the Council's policy on equality between women and men. It affirms that the principle of equality of the sexes is an integral part of human rights, and that sex-related discrimination is an impediment to the exercise of fundamental freedoms. Its eradication is a *sine qua non* of democracy and an imperative of social justice.

1989: In pursuance of this policy, the European Committee was transferred from the field of social and economic affairs to that of human rights, which is one of the prime areas of the Council of Europe's work.

1992: The setting up of the current Steering Committee for Equality between Women and Men (CDEG) was a further important step in Council of Europe policy measures to promote equality. Its advancement to the status of a steering committee, which increased its importance and prerogatives (including the right to set up subordinate structures), demonstrated that equality between women and men constituted a priority for the Council of Europe.

1995: Fourth World Conference on Women in Beijing, 4-15 September 1995.

The Platform for Action adopted at this conference contains several chapters partly or entirely relating to the issue of violence against women (IV.C on women and health; IV.E on women and armed conflicts).

2000: The Special Session of the United Nations General Assembly (New York, 5-9 June 2000) "Women 2000: Gender Equality, Development and Peace for the Twenty-first Century", celebrating the 5<sup>th</sup> anniversary of the Beijing Conference, adopted a series of "Further actions and initiatives to implement the Beijing Declaration and Platform for Action" (see document A/S-23/10/Rev.1 – General Assembly, 23<sup>rd</sup> Special Session, Supplement No. 3). This text contains innovatory provisions on violence, in that it identifies killings in the name of honour and marital rape as practices to be condemned.

## Appendix II

### Defining violence against women and girls

*Excerpts from the Plan of action for combating violence against women (document EG-S-VL (97) 1)*

The information presented below was obtained by circulating a series of questionnaires to governmental organisations, NGOs and other bodies.

Some illustrations of the types of behaviour which the drafters include in the ambit of the term “violence against women”:

#### *Physical violence*

Pushing, shoving, hair-pulling, hitting, beating, kicking, burning, biting, strangling, stabbing, genital mutilation, torture, murder. Severity of injury ranges from minimal tissue damage, broken teeth and bones to permanent injury and death.

#### *Sexual violence*

Any non-consensual sexual activity including sexual taunts and jokes, staring and leering, unwelcome comments, indecent exposure, offensive phone calls, unwanted sexual propositions, forced viewing of or participation in pornography, unwanted touching, coerced sex, rape, incest, performance of sexual acts which the woman finds painful or humiliating, forced pregnancies, trafficking in women, and their exploitation by the sex industry.

#### *Psychological violence*

Taunts, jeers, spiteful or humiliating comments, threats, isolation, contempt, bullying, public insult. This kind of behaviour is usually experienced as damaging to self-image and self-confidence, especially if it is persistent.

#### *Economic violence*

Inequitable control over access to shared resources, for example denying/controlling access to household money, preventing the partner's access to employment or further education, or denial of the wife's right to property.

#### *Structural violence*

This form of violence is closely related to economic violence, and comprises non-visible and non-tangible barriers against the realisation of women's potential options and basic rights. These obstacles are grounded and reproduced daily in the very fabric of society, ie the power differentials and power relations (structures) which generate and legitimise inequality.

*Spiritual violence*

Behaviour that erodes or destroys a woman's cultural or religious beliefs by ridiculing or penalising them or forcing her to adhere to a different belief system.

The majority of instances of violence against women are combinations of physical, sexual and psychological violence, underpinned by structural violence, and sometimes also include economic and spiritual violence.

*Rape and sexual assault*

This paragraph discusses reported cases of rape and sexual assault. Direct comparisons were impossible since the available data covered various combinations of reported rapes, prosecuted cases and/or convictions for rape and associated crimes.

Several general points emerge from an analysis of the information:

The levels of reporting vary greatly between European countries, being comparatively high in some and comparatively low in others. While prevalence can indeed vary, some of the variation is due to differing levels of taboo, awareness and women's confidence in the police and other agencies;

In many countries an increase in reported rapes has been registered over the last decade, and the figures are larger each year. This is probably a reflection of liberation from taboo and increasing confidence in the criminal justice system;

In some countries this increased faith in the criminal justice system has not been borne out in practice since, while reporting has increased, the proportion of cases which result in convictions has decreased.<sup>46</sup>

Only two prevalence surveys on rape were reported to the drafters; by asking women about their experiences, these surveys allowed some estimate of the extent of under-reporting. In both, 20-25% of women reported rape or attempted rape. Their husbands or partners were usually the culprits and, where rape occurred in the context of a settled relationship, it was very likely to be a recurrent experience.

This finding raises a number of issues: the wide variations in reporting of rape between, and probably also within, countries; the "attrition" of reported cases as they are processed through the departments of the criminal justice system; the limited research data on rape in Europe.

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<sup>46</sup> The proportion of reported rapes leading to a conviction in the UK fell from 34% in 1977 to less than 10% in 1994 (Home Office figures). These percentages should be compared with figures from the Polish Ministry of Justice indicating verdicts of guilty in two-thirds of reported rape cases in 1994. The Home Office announced in late 1996 that it would conduct an inquiry into the decrease in conviction rates for rape cases.

### *Domestic violence*

The information supplied to the drafters clearly demonstrates increased reporting and recording of domestic violence over the last decade. It also appears that more research has been conducted on this issue than on many of the others covered by this report. The increase in reporting of cases was particularly marked in the 1990s, as illustrated by the figures received from different countries and different types of organisation. In other words, more women were contacting the police, availing themselves of refuges/shelters and turning to other women's organisations.

Domestic homicide, ie men killing female partners and ex-partners, and women killing their abusers, form a useful indicator of the levels and seriousness of domestic violence, and such figures should be regularly collected. The figures published for Russia, 5,300 women's deaths in 1991 and 14,000 in 1993, greatly alarmed the Group of Specialists. If the Interior Ministry figures are correct, they point to a rate 20 times that of the United States.<sup>47</sup>

The present report is confined to reported cases of domestic violence. In many countries, domestic violence made up a significant proportion of crimes against the person, in a range from 66% to 10%. Some countries also provided information from hospitals, where the proportion of injuries due to assault by a partner was surprisingly high. Another indication of prevalence was the proportion of women alleging violence or cruelty in divorce petitions, the highest figure in this respect being 70%.

The drafters were informed of six prevalence studies on domestic violence, and collected data on four more. There was astonishing consistency between the results, as all studies concluded that 25% of women suffered domestic violence and between 6% and 10% of women suffered violence in a given year.

Although the number of complaints of violence to law enforcement authorities varied, it would appear the rates were more consistent than for rape, and that the results of the prevalence surveys agreed sufficiently to suggest that at least one in four women in Europe suffers some form of violence at the hands of a male partner or ex-partner.

### *Sexual violence against children, especially girls*

The information collected demonstrates that sexual violence against children and girls has become an issue of increasing concern over the last decade. Violence against all children needs to be taken seriously, but this report focuses on girls since they are more likely to be sexually abused than boys, especially by a family member. The likelihood of girls being constantly victimised is far greater where childhood experiences are compounded by harassment and assaults in adulthood.

This paragraph discusses reported cases of child sexual abuse. Here again, reporting has increased over time but the overall figures are lower than for rape or domestic violence. It is plainly harder for children and young people to report offences to the authorities than for women. Although the drafters received only limited information on prosecutions, the facts disclosed

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<sup>47</sup> Source: The Economist 12.8.95.

would suggest that very few cases reach that stage, so that very few abusers are punished for their wrongdoing.

Slightly more information was found concerning the prevalence of sexual violence, and this showed the extent of under-reporting. The findings of these studies vary considerably, with a minimum of 8% and a maximum of 59% of girls reporting some form of sexual violence in childhood. The variation is largely due to difference in the methods used by the researchers, for example the time when the study was conducted (before or after liberation from taboos), definitions of childhood (ending at 14, 15, 16 or 17), and the definitions of sexual violence (whether it includes "non-contact" forms and abuse by peers as well as adults). These substantial differences in methodology mean that it is impossible to determine whether there are variations in prevalence between countries.

While a significant proportion of sexual violence is committed by family members (father, stepfather, brother, grandfather or uncle) and a smaller proportion by strangers, the intermediate grouping of adults and peers known to victims also needs to be considered. This group includes, for example, family friends, male peers, teachers, sports coaches, neighbours, religious leaders and institutional staff.

### *Sexual harassment*

The drafters received far less information about reported cases of sexual harassment or studies of it.

Some countries have recorded an increase in the number of reported cases, whereas others stated that no official report had been prepared. It was not clear from the information received whether there were distinct official data collection channels, since in many countries sexual harassment is not a criminal offence. The drafters had only very limited data on prosecuted cases and could not establish whether the reason was the fewness of cases or rather the absence of data-gathering mechanisms.

Estimates made from six European studies place the proportion of women experiencing workplace sexual harassment at between 45% and 81%, and those reporting it at between 5% and 22%.

Studies of sexual harassment tend to focus on the workplace. The harassment encountered by women in public places is seldom studied. Recent high-profile cases of "stalking" in the United Kingdom (repeated harassment which includes being followed in the street, receiving telephone calls and letters, and face-to-face contact), committed by men whom the victims scarcely knew, have highlighted the extent of the problem and the limited legal and protective remedies available to victims.

Other research data from the United Kingdom reveal the importance of other "neglected" forms of violence against women:

63% of women report at least one experience of flashing (exhibitionism);<sup>48</sup>

2 in 3 women have received abusive/obscene phone calls;<sup>49</sup>

1 in 10 women receive at least one such phone call per year.<sup>50</sup>

A substantial proportion of women interviewed during a survey in Merseyside (between 50% and 80% depending on the activity) said that they avoided certain activities<sup>51</sup> (walking alone at night, going out at night, attending evening classes/leisure activities, going on holiday alone) because of fears for their safety.

### *Female genital mutilation*

Very few European countries have collected statistics on this issue, with the exception of the United Kingdom. No prevalence study which includes or directly addresses it is available anywhere. In fact (see comparative legal study) many countries asserted, on sparse and unsubstantiated evidence, that they were not affected by the problem. The United Kingdom organisation FORWARD, committed to studying the problem of female genital mutilation, estimates that in the United Kingdom alone, at least 10,000 girls and young women are at risk.

### *Trafficking and the sex industry*

Several countries have noted an increase in trafficking within Europe and into Europe from elsewhere in the world. This increase in turn reflects the growth of sexual exploitation in Europe where new forms are emerging, including those which use technology such as telex, virtual sex and computer pornography.

The increase in trafficking between European countries evidently stems from Eastern Europe and is directed at Western Europe. It takes various forms ranging from kidnapping to bogus marriage bureaux and misleading women as to their destination and future employment.

In this matter, reference should be made to Recommendation No. R (2000) 11 of the Committee of Ministers to member states on action against trafficking in human beings for the purpose of sexual exploitation and the explanatory report thereto, and other relevant publications.<sup>52</sup>

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<sup>48</sup> Source: Sandra McNeill (1988) "Flashing – its effect on women" in: Women, Violence and Social Control, London.

<sup>49</sup> Source: Glasgow Women's Support Project (1990).

<sup>50</sup> Source: Obscene, threatening and other troublesome telephone calls to women in England and Wales: 1982-1992 (1995) Research and Planning Unit Paper 92, London. Home Office.

<sup>51</sup> M Foley and K Cook (1995), Women's Safety Survey, unpublished.

<sup>52</sup> Recommendation No. R (2000) 11 of the Committee of Ministers to member states on action against trafficking in human beings for the purpose of sexual exploitation, adopted on 19 May 2000.  
<http://www.humanrights.coe.int/equality>.