THE APPLICATION OF HUMAN RIGHTS TO REPRODUCTIVE AND SEXUAL HEALTH: A COMPILATION OF THE WORK OF THE EUROPEAN HUMAN RIGHTS SYSTEM

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Information Compiled by:
Julie Stanchieri, BA, LLB
Isfahan Merali, BA, LLB
Nell Rasmussen, LLM
Dina Bogecho, BA
Rebecca J. Cook, MPA, JD, JSD

Federation for Women and Family Planning, Poland
Nowolipie 13/15, 00-150
Warsaw, Poland; and

ASTRA - Central and Eastern European Women's Network for Sexual and Reproductive Health and Rights
Nowolipie 13/15, 00-150
Warsaw, Poland; and

In co-operation with:

International Programme of Reproductive and Sexual Health Law
Faculty of Law,
University of Toronto,
Toronto, Canada

The Danish Centre for Human Rights
38, Studiestraede
DK-1455 Copenhagen K
Denmark

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INTRODUCTION

This is a compilation of documents, legislation and case-law selected from the work of treaty bodies and courts within the European Human Rights System, that relate to reproductive and sexual health. This compilation was assembled to assist those who are preparing reports, briefs, or alternative reports relating to this topic.

This introduction consists of two parts. The first contains a brief overview of the types of human rights that are included in the area of reproductive and sexual health. The second part provides a brief introduction to each of the treaty bodies or courts set out above, as well as the methodology used to obtain the selections in this manual.

Following the introduction there is a select bibliography and a list of key websites that are useful for providing a better understanding of how to protect and promote reproductive and sexual health rights within the European Human Rights System.

1. Human Rights Relevant to Reproductive and Sexual Health[1]

At the United Nations International Conference on Population and Development held in Cairo (1994), Reproductive Health was described as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes."[2] The Cairo Conference further established that reproductive health also includes the right to "a satisfying and safe sex life with the capability to reproduce and the freedom to decide if, when and how often to do so." Implied in this statement is the notion that in order to reproduce safely and freely, men and women must be informed and have access to:

> safe, effective, affordable and acceptable methods of family planning of their choice as well as the right of access to appropriate health care services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant.[3]

The definition of reproductive health was further expanded to advance women's wider interests in the Declaration and Platform for Action adopted by 187 United Nations Member States at the 1995 Fourth World Conference on Women, held in Beijing. The Declaration and Platform for action states:

> The human rights of women include the right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence. Equal relationships between women and men in matters of

[1]For a discussion of the identification of rights relevant to reproductive health, please see: Rebecca J. Cook and Mahamoud Fathalla, "Advancing Reproductive Rights Beyond Cairo and Beijing (1996) 22(3) International Family Planning Perspectives 115 - 121.

[2] United Nations (UN) *Report of the International Conference on Population and Development,* Document A/Conf.171/13, New York, 1994, par. 7.2.

[3] United Nations (UN) *Report of the International Conference on Population and Development,* Document A/Conf.171/13, New York, 1994, par. 7.2.

> sexual relations and reproduction, including full respect for the integrity of the person, require mutual respect, consent and shared responsibility for sexual behavior and its consequences.[4]

At the 1999 Special General Assembly on the follow-up to the Cairo Conference, Cairo + 5 and the follow up to the Beijing Conference, Beijing + 5 in 2000 respectively, language on some issues within sexual and reproductive health was further advanced and elaborated.

There are various ways that reproductive rights may be violated:
1) Violations may result from direct action on the part of a state which interferes with one's reproductive rights, such as coercive sterilization;
2) Violations may also result from a state's failure to meet the minimum core obligations of a human rights treaty. For example, a state may neglect to reduce maternal mortality and thereby fail to observe the minimum core obligation of ensuring the right to life;
3) Violations may arise as a result of patterns of discrimination, such as persistent and gross discrepancies in access to health services, that cumulatively disadvantage the reproductive health of certain groups.

In order to provide some examples of what reproductive and sexual rights encompass, several relevant articles from the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention) and the European Social Charter (Social Charter) are listed below:

Right to Non-Discrimination in Relation to the Substantive Rights of the Convention

European Convention: Article 14

> The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

The right to non-discrimination in the enforcement of convention rights requires governments to remove barriers that discriminate against women in their enforcement of, for example, their right to a private life. Governments would therefore be obligated to repeal policies that require women to have the authorization of their husbands in order to obtain reproductive and sexual health services.

Right to life

European Convention: Article 2

> Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

The right to life requires governments to address the preventable causes of maternal mortality, such as emergency obstetric care and unsafe abortions.

[4] United Nations (UN) Report on the Fourth World Conference on Women, Document A/Conf.117/20, New York, 1995 par. 96.

Right to Liberty and Security of the Person

European Convention: Article 5

> Everyone has the right to liberty and security of the person.

Government regulation of population size may interfere with the right to liberty and security of the person if it results in compelled sterilization and abortion. The right to liberty and security of the person may also be violated if the state imposes criminal sanctions on those who provide or seek voluntary sterilization, contraception, abortion and thereby subject women to compulsory pregnancy.

Right to Private and Family Life

European Convention: Article 8

> 1. Everyone has the right to respect for his private and family life, his home and his correspondence.
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

The right to private life requires states to protect confidentiality in the provision of reproductive and sexual health services.

Right to Receive Information

European Convention: Article 10

> 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of ealth or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

The right to receive and impart information requires states to ensure that individuals receive information necessary for them to protect and promote their reproductive and sexual health.

Right to Protection for Mothers and Children

Social Charter:

Article 8

With a view to ensuring the effective exercise of the right of employed women to protection, the Contracting Parties undertake:

1. To provide either by paid leave, by adequate social security benefits or by benefits from public funds for women to take leave before and after childbirth up to a total of at least 12 weeks;
2. To consider it as unlawful for an employer to give a woman notice of dismissal during her absence on maternity leave or to give her notice of dismissal at such time that the notice would expire during such absence;
3. To provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose;
4. a) To regulate the employment of women workers on night work in industrial employment;
   b) To prohibit the employment of women workers in underground mining, and as appropriate, on all other work which is unsuitable for them by reason of its dangerous, unhealthy, or arduous nature.

Article 17

With a view to ensuring the effective exercise of the right of mothers and children to social and economic protection, the Contracting Parties will take all appropriate and necessary measures to that end, including the establishment or maintenance of appropriate institutions or services.

Women require care and protection during pregnancy, as well as during and after childbirth to ensure maternal health. Not only does this require care before, during and after childbirth, but it also requires sufficient time off of work, and paid maternity leave.

Right to Health

Social Charter:

Article 3

With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Contracting Parties undertake:

1. to issue safety and health regulations;
2. to provide for the enforcement of such regulations by measures of supervision;
3. to consult, as appropriate, employers' and workers' organisations on measures intended to improve industrial safety and health.

Article 11

With a view to ensuring the effective exercise of the right to protection of health, the Contracting Parties undertake, either directly or in co-operation with public or private organisations, to take appropriate measures designated inter alia:

1. to remove as far as possible the causes of ill-health;
2. to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;

3. to prevent as far as possible epidemic, endemic and other diseases.

Without affordable and accessible health services, reproductive health cannot be ensured. Reproductive health care includes services that not only provide care for existing reproductive health problems, but also provide preventative measures such as counseling and treatment related to reproduction and sexually transmitted diseases.

Rights of the Family

Social Charter: *Article 16*

> With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Contracting Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married, and other appropriate means.

Infertility due to reproductive tract infection jeopardizes the right to form a family. Governments therefore have the positive obligation to provide relevant information, education and services to protect the formation of families. Also, to ensure women's autonomous and confidential choices in reproductive matters, women's private lives must be protected against public officials' intrusions.

2. Summary of Mechanisms for Implementing Rights in the European Human Rights System

It is helpful to consider the Council of Europe and the European Union as two separate systems, and they are therefore discussed separately below. However, these two systems are not completely unrelated since the Member States of the EU are bound by the provisions of the institutions under the Council of Europe.

The Council of Europe[5]

The Council of Europe is a regional organization established in 1949 whose main role is to strengthen democracy, human rights and the rule of law throughout its Member States. The Statute of the Council of Europe provides that the Council's aim of achieving unity amongst its members will be pursued by taking action in economic, social, cultural, scientific, legal, and administrative fields, as well as by the maintenance and further realization of human rights and fundamental freedoms.

The Council of Europe has two main organs: the Committee of Ministers, which represents the Governments of the Member States, and the Parliamentary Assembly, which represents the Parliaments of Member States. Both of these bodies are described in more detail below.

Committee of Ministers

The Committee of Ministers is the decision-making body of the Council of Europe, comprising the ministers for foreign affairs of the forty Member States or their permanent representatives. It meets at least twice a year to review European co-operation and matters of political concern.

[5] for more information on this organization, see: http://www.coe.fr/index.asp

The Committee of Ministers makes recommendations to Member States on matters for which the Committee has agreed upon "a common policy" and recommendations concerning a particular Member State under the European Social Charter. The Committee may also adopt recommendations given by the Parliamentary Assembly, issue replies to recommendations of the Parliamentary Assmbly, or adopt declarations or resolutions on international issues and other political questions.

Another important task of this Committee is to monitor the implementation of judgments made by the European Court of Human Rights.

Recommendations, declarations, resolutions, or replies that have been issued by the Committee of Ministers relevant to reproductive and sexual health were selected from the Committee of Minsters' website at: http://www.coe.fr/cm/ and may be found in Part III in Volume I.

Parliamentary Assembly

The Parliamentary Assembly is a consultative body. Its Recommendations to the Committee of Ministers may, however, serve as a starting point for action in many key areas of the Council's work. The Replies of the Committee of Ministers to recommendations issued by the Parliamentary Assembly relevant to reproductive and sexual health may be found in Part III in Volume I. For more information on the Parliamentary Assembly, please visit: http://stars.coe.fr/.

Relevant Conventions

The protection of human rights is one of the most important functions of the Council of Europe. The Council has directed its activities to achieve these ends through the adoption of conventions and recommendations. Among the human rights conventions adopted by the Council are:

- European Convention on Human Rights,
- European Social Charter,
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment; and
- 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

each of which is described below.

A list of ratifications for these treaties can be found in Appendix II which is current to December 2001. For a more complete list of the Council of Europe's treaties and up to date ratification information, see: http://conventions.coe.int/Treaty/EN/CadreListeTraites.htm.

The European Convention

The European Convention offers protection for a wide variety of civil and political human rights. Some of the particular provisions relevant to reproductive and sexual health have been outlined above. A complete list may be found in the chart in Appendix I. In addition to the rights protected under the European Convention, there are nine Protocols that have been added which offer protection for further rights and liberties.

The European Court of Human Rights is responsible for the enforcement of the provisions of the European Convention. It has the discretion and authority to hear cases involving both inter-state complaints as well as complaints involving individual human rights violations.[6]

The text of the European Convention, and the protocols relevant to reproductive and sexual health may be found in Part I of this manual. Relevant cases of the European Human Rights Court and an application form for submitting complaints to this court were selected from the Court's homepage, and may also be found in Part I. For more information about the European Court and its case-law, or to view the Convention and its full list of protocols online, please visit: http://www.echr.coe.int.

The European Social Charter

The Social Charter is the natural counterpart to the European Convention. Whereas the European Convention guarantees civil and political rights, the Social Charter guarantees economic, social and cultural rights. Some of the rights protected under the Charter that are relevant to reproductive and sexual health have been listed above. A more complete list of these rights can be found in the chart in Appendix I.

The Social Charter is the only convention of the Council of Europe in the field of human rights that provides for a systematic monitoring of the undertakings accepted by States Parties, at regular intervals called "supervision cycles." States Parties must report every two or four years, (depending on which provisions they are reporting) on how they have implemented the rights included in the Social Charter with which they have agreed to comply.[7] After States Parties' reports are submitted, they are evaluated by three different bodies. The European Committee of Social Rights (ECSR) (formerly the Committee of Independent Experts), is responsible for giving a legal assessment of compliance with the accepted provisions. The Governmental Committee gives a political evaluation of reports based on social, economic and other policy considerations. The Committee of Ministers issues resolutions for entire supervision cycles, which also include individual recommendations to the Contracting Parties concerned. The resolutions and recommendations of the Committee of Ministers are based on a report put together by the Governmental Committee.

The relevant excerpts from the Conclusions of the European Committee of Social Rights, and the general recommendations of the Committee of Ministers can be found in Part IV in Volume II. The full text of the European Social Charter (Revised) may also be found in Part IV. Further information on the Charter and its protocols can be obtained from: http://www.humanrights.coe.int/cseweb/GB/index.htm.

European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment[8]

This convention provides for the setting up of an international committee empowered to visit all places where persons are deprived of their liberty by a public authority. The committee, composed of independent experts, may make recommendations and suggest improvements in order to strengthen, if necessary, the protection of persons visited from torture and from inhuman or degrading treatment or punishment. It should be noted that the committee is a non-judicial one, and is based on the principles of state co-operation and confidentiality. The purpose of the committee is not to condemn states, but, in a spirit of co-operation and through advice, to seek improvements, if necessary, in the protection of persons deprived of

[6] see the introduction to Part I for a discussion of submission of complaints to this court.
[7] see the introduction to Part II for a discussion of who may submit reports to the ECSR.
[8] This summary was obtained from the Council of Europe website at:
http://conventions.coe.int/Treaty/EN/CadreListeTraites.htm

their liberty. The Committee is entitled to issue a report which contains recommendations after each visit but the report is kept confidential.[9]

Nevertheless, the States Parties that have ratified this Convention are obligated to honour it. Arguments may be made in domestic courts for the enforcement of rights it is supposed to protect.

The Convention can be found in Part II of this compilation and the rights under this Convention which pertain to reproductive and sexual health are set out in Appendix I.

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

This convention is included because of its immediate relevance for patients' rights in reproductive and sexual health services. Although this convention does not yet have a treaty body responsible for the enforcement of its provisions, it may be used in domestic courts within those Member States that have signed and ratified it. The convention can be found in Part II of this compilation and the rights under the convention, which pertain to reproductive and sexual health, are set out in Appendix I.

European Union[10]

The European Union (EU) is the result of a process of cooperation and integration that began in 1951 between six countries. The EU today has fifteen Member States[11] and is preparing for its fifth enlargement, this time towards Eastern and Southern Europe. One of the goals of the EU is the improvement of living and working conditions for citizens. It is for this reason that the EU case-law and legislation has been added to this manual.

Legislation in the European Union is brought into force by the European Parliament and the Council, after it has been initiated by the Commission. It is the responsibility of the Court of Justice to ensure compliance with the legislation once it has been created.

European Union Directives[12] and European Court of Justice Cases[13]

Included in this compilation are selected EU directives, resolutions and recommendations relating to reproductive and sexual health issues. Since the directives are immediately binding for the EU Member States they constitute vital common legislation to these States and will become an increasingly important part of national legislation. In addition, cases of the European Court of Justice concerning reproductive and sexual health have been included.

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[9] note that under art. 11(2) of the Convention, each state party may decide to lift the confidentiality requirement.
[10] This summary was obtained from the European Union website at:
http://www.europa.eu.int/index_en.htm
[11] see Part V for a of member states current to Dec. 2001, or see: http://europa.eu.int/eur-lex/
for up to date information
[12] http://europa.eu.int/index/policies/-en.htm

[13] http://europa/en/int/inst-eng.htm

EU Legislation in Cases of the European Court of Justice were selected from: http://europa.eu.int/eur-lex/ and may be found in Part IV of Volume I.

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Comments Welcome

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It is hoped that these materials and this project will be useful to government officials, non-governmental human rights activists, students, teachers, and researchers in the field of reproductive and sexual health law. The material will be updated periodically. We welcome any comments or suggestions on these materials.

BIBLIOGRAPHY

The bibliography includes selected texts, articles, and documents relevant to the promotion of reproductive and sexual health rights in the European Human Rights system. It is not exhaustive, but rather, is meant to provide a suggested list of readings that will assist the reader in understanding and gaining further knowledge on the protection of reproductive and sexual health rights in the European Human Rights system. Due to the wealth of materials published on these topics, only some of the most recent publications written in English have been included.

The European Human Rights System

Alston, Philip, et al., (eds.), *The EU and Human Rights*, (Oxford: Oxford UP, 1999)
In this volume the leading experts in the field, including individuals from every EU country, provide an insightful critique of current policies and detailed recommendations for the future. This includes: access to justice, racial and disability discrimination, multinationals, environmental rights and European Citizenship. Other chapters focus on the role of the European Parliament, the European Court of Justice, and the European Court of Human Rights

Arai, Yataka, "The Margin of Appreciation Doctrine in the Jurisprudence of Article 8 of the European Convention on Human Rights" 16(1) N.Q.H.R (1998) 41-61
Both the European Commission and Court of Human Rights are entrusted with the balancing between the Europe-wide 'uniform' approach on one hand and the need to defer to the national sovereignty and to various local values deriving from cultural, religious, and socio-economic diversity on the other. By analysing the interplay between strictness of scrutiny and the width of the margin of appreciation in the case-law of Article 8, the author attempts to identify the underlying policy grounds for the margin of appreciation under Article 8.

Arnull, Anthony, *The European Union and its Court of Justice* (New York: Oxford University Press, Oxford EC Law Library, 1999)
This book examines the contribution of the European Court of Justice in shaping the legal framework within which the European Union operates. It considers the Court's place in the institutional architecture of the EU, its organization and working methods, what its powers are and how it has used those powers to resolve important questions of both constitutional and substantive law.

Betten, Lammy & Nicholas Grief, *European Union Law and Human Rights* (London: Longman, 1998)
Setting the development of human rights protection within an international context, the authors outline the scope, substance and control machinery of the European Convention on Human Rights and the European Social Charter. They then examine relevant ECJ case law and assess its implications for Community institutions and Member States, illustrating the significance of the European Convention for EU lawyers. Particular attention is paid to the impact of the Amsterdam Treaty and of the decision to incorporate the Convention into UK law.

Blackburn, Robert, *The European Convention on Human Rights: the Impact of the European Convention on Human Rights on the Legal and Political Systems of Member States* (London: Cassel, 1998)
This commentary on the achievement of the European Convention on Human Rights assesses its impact within each Member State. The contributors are lawyers from the countries concerned, most of whom act as the official national correspondent to the Council of Europe's Directorate of Human Rights on behalf of their respective countries.

Clements, Mole and Simmons, *European Human Rights: Taking a Case under The Convention* (2nd edition, London: Sweet & Maxwell, 1999)
This book deals with the preparation of complaints before the European Commission on Human Rights. Coverage of the second Protocol to the European Convention is included as are precedents of successful and non-successful complaints.

Council of Europe, *Case law Concerning Article 10 of the European Convention on Human Rights*, Human rights files No. 18 (Strasbourg: Council of Europe, 2001)
This document presents comments on the case law relating to freedom of expression current to December 2000.

Council of Europe, *Children and Adolescents: Protection within the European Social Charter* (Strasbourg: Council of Europe Publishing, 1996)
This monograph presents the norms of the European Social Charter in relation to the protection of children and adolescents. This study highlights the important contribution made by the revised Charter of 1996.

Council of Europe, *The European Convention on Human Rights*, (Strasbourg: Council of Europe Publishing, 1995)
The Council of Europe's major achievement in the field of human rights is the European Convention on Human Rights. Over a period of more than forty years it has become the most sophisticated and effective human rights treaty in the world.

Council of Europe, *The European Social Charter: the Charter, its Protocols, the Revised Charter* (Strasbourg: Council of Europe, 1999)
As a complement to the European Convention on Human Rights which protects civil and political rights, the European Social Charter promotes the protection of fundamental social and economic rights to the citizens of its Contracting Parties. This volume presents the official text of the revised Charter and its protocols.

Council of Europe, *European Social Charter: collected texts* 2nd ed. (Strasbourg: Council of Europe, 2000)
This book is a comprehensive reference for those seeking to gain knowledge of the Charter and an understanding of its supervisory mechanisms. The texts show the progress of adoptions and ratifications by an increasing number of European countries, as well as the Rules of Procedure of the different bodies involved in the Charter's functioning; the European Committee of Social Rights, the Governmental Committee and the Committee of Ministers. It also includes official decisions made by these bodies since the Charter's entry into force in order to develop observance of the Charter in Europe.

Council of Europe, *Exceptions to Article 8 to 11 of the European Convention on Human Rights* (Strasbourg: Council of Europe, 1997)
Conflicts inevitably arise between the implementation of the rights guaranteed under Articles 8 to 11 of the European Convention and the limitations which may be imposed for the purposes of protecting either the general interest of the state or the interests of sections of society or of individuals. This monograph studies the case-law covering such exceptions, addressing aspects of the fundamental philosophy of the Convention.

Council of Europe, Equality between women and men in the European Social Charter, Human Rights Social Charter Monographs No.2 (2000)
This monograph reviews the content of the Charter provisions and the case-law of the European Committee of Social Rights in light of the changes which have taken place in Europe. This study explores the extent of the protection afforded by the Charter and the requirement of *de jure* and *de facto* equality of rights between men and women which must be observed by Contracting Parties.

Council of Europe, The protection of fundamental social rights in Europe through the European Social Charter - Proceedings, Sofia, July 2000 (Social Charter Monographs No. 11) (2001)
The aim of the conference was to discuss the plurality of European systems relating to social rights: the respective roles of European Community law and the Social Charter, the ratification of the Social Charter by the majority of central and eastern European countries and its resulting obligations, and the role of the Charter in the process of integration into the European Community.

Council of Europe, Social Protection in the European Social Charter, Human Rights Social Charter Monographs No. 7, (2000)

The European Social Charter is the only treaty in European law to apply to all the aspects of social protection which are the core of the European social model. It guarantees the right to social security, the right to social assistance and the right to benefit from social services. This monograph explains the content of these provisions and the case law of the European Committee of Social Rights in light of recent developments in Europe. The study gives further insight into the scope of the Charter's protection and the fundamental social rights of individuals confronted with various risks, such as illness, old age and poverty.

Dehousse, Renaud, *The European Court of Justice: The Politics of Judicial Integration*, European Union series (New York: St. Martin's Press, 1998)
The ECJ has, according to the author, independently shaped the institutions of the European Union and the evolution of the larger European experiment, but it has been molded, at the same time, by the political environment in which it operates. The first two chapters of this book explain the powers, functions and organization of the ECJ and review the major jurisprudential landmarks of the Court. This book offers a well-argued explanation for changes in the Court's decisions.

Dickson, Brice, *Human Rights and the European Convention : The Effects of the Convention on the United Kingdom and Ireland* (London : Sweet & Maxwell, 1997)
This book examines the various ways in which the European Convention has affected the legal systems of England and Wales, Scotland, Northern Ireland and the Republic of Ireland. The chapters on the four jurisdictions look not just at the cases which have reached Strasbourg, but also at cases coming before local courts where the European Convention has been discussed. Other chapters deal with the Convention within the context of the Council of Europe, its relationship with the European Union, and the overall performance of the enforcement organs in handling common law problems.

van Dijk, Pieter *et al.*, *Theory and Practice of the European Convention on Human Rights*, 3rd ed. (The Hague: Kluwer, 1998)
Like its predecessors, this third edition offers a full description of the present procedural practice and case-law of both the European Commission and the European Court of Human rights, including the newly instituted procedures under Protocol No. 11 to the European Convention. Protocol No. 11 drastically changed the supervisory system with the establishment of a single European Court of Human Rights to replace the two-tier system of Commission and Court as of 1 November 1998.

Drzemczewski, Andrew, "Fact-finding as Part of Effective Implementation; the Strasbourg Experience" in Bayefsky, A.F., *The UN Human Rights Treaty System in the 21st Century* (The Hague, London, Boston: Kluwer Law International, 2000) at 115
This article provides an overview of enforcement mechanisms for the European Convention on Human Rights, the European Social Charter, and the European Convention for the Prevention of Torture. In addition, the fact-finding procedures under each of these three treaties are explained.

Freedman, Sandra (ed.), *Discrimination and Human Rights: The Case of Racism* (New York: Oxford University Press, 2001)
This set of essays constitutes a key contribution to the debate about the role of human rights law in combating race discrimination. Including essays by a range of leading experts, the book is a particularly important source of information and critical analysis for students, researchers, and policy-makers aiming to understand both the new race Directive adopted by the EU, and the role of international human rights law which is the focus of the UN world conference on racism in 2001.

Gomien, Donna, Harris, David, & Zwaak, Leo, *Law and Practice of the European Convention on Human Rights and the European Social Charter*, (Strasbourg: Council of Europe, 1996)
This book explains both the substantive legal standards contained in the European Convention and the European Social Charter, and the means by which those standards evolve in response to a changing Europe. In the form of over 300 case studies, it brings to life concrete situations in which these rights have been questioned and defended. This book is targeted at university students in international law and at all those interested in the human rights challenge in Europe. It also sheds light on similarities with other national structures in the US and a number of Commonwealth countries.

Gomien, Donna, *Short guide to the European Convention on Human Rights* (Strasbourg: Council of Europe, 1998)
This book is intended to provide a concise overview of the basic rights guaranteed by the European Convention, the case-law relating to these rights, and the procedures followed by the European Court of Human Rights when handling applications under the Convention. In addition, the role of the Committee of Ministers as a supervisory organ in giving force to the judgments of the Court is discussed. This study reflects changes adopted in accordance with Protocol No. 11 to the Convention, which introduced a single European Court of Human Rights to replace the two-tier system of Commission and Court as of 1 November 1998.

Grosz, Stephen, *Human Rights: the 1998 Act and the European Convention* (London: Sweet & Maxwell, 2000)
Featuring a comprehensive analysis of the ECHR and the *Human Rights Act* 1998, this book sets out how the Convention affects English law and clearly explains its status, scope and impact. It clarifies the principles the Strasbourg institutions have adopted in interpreting and applying the Convention, and also covers the most important case-law article by article.

Guild, Elspeth, & Lesieur, Guillaume, *The European Court of Justice on the European Convention on Human Rights: Who Said What, When? Court of Justice of the European Communities* (London, Boston: Kluwer Law International, 1998)
The European Court of Justice has considered and commented on almost all of the substantive articles of the European Convention on Human Rights in the context of European Community law. These references to the European Convention by the European Court of Justice, the Court of First Instance and the Advocates-General of the two Courts have been brought together and published by reference to the substantive right under consideration. This book presents extensive extracts from these cases, permitting

the reader to follow the development of the Court's thinking on each article of the European Convention on Human Rights.

Kenny, Tom, *Securing social rights across Europe: How NGOs can make use of the European Social charter* (Oxford: Oxfam, 1997)
This book describes how NGOs can use the Social Charter as a framework for promoting basic social rights.

Klein, Eckart, Heike Stender, et. al., (eds.), *The European Court of Human Rights: Organization and Procedure: Questions Concerning the Implementation of Protocol No. 11 to the European Convention on Human rights: Colloquy: Reports and Proceedings* (Potsdam: University of Potsdam, 1998)
This Annual Report covers the activities of the Human Rights Centre of the University of Potsdam (MRZ) in 1999 and discusses the implementation of a single European Court of Human Rights and its implications.

Morgan, R. Evans, M., *Combating torture in Europe - The work and standards of the European Committee for the Prevention of Torture* (Council of Europe Publishing: 2001)
This book provides insight into the work carried out by one of the Council's highly influential, yet - of necessity given the confidentiality rule which applies to it - rather self-effacing, non-judicial mechanism. Since its inception in 1989, specialist members of the committee (doctors, lawyers, etc.) have visited places of detention, prisons and psychiatric hospitals throughout Europe to monitor the living conditions (hygiene, provision of food and drink, health care, etc.) of those being detained. Following these visits the committee publishes reports suggesting improvements and laying down standards.

O'Boyle, Michael, "Reflections on the Effectiveness of the European System for the Protection of Human Rights" in Bayefsky, A.F., *The UN Human Rights Treaty System in the 21st Century* (The Hague, London, Boston: Kluwer Law International, 2000) at 169
This commentary identifies those aspects of the European Convention system which have contributed to its reputation for effectiveness. It examines: the particular features of the petition system; jurisprudential developments enhancing the effectiveness of the system; external indicia of effectiveness; the improvements brought about by Protocol No. 11; and the reasons for the success of the system.

Reid, K. *A Practitioner's Guide to the European Convention of Human Rights* (London: Sweet & Maxwell, 1998)
This book investigates the range of situations and legal problems to which the European Convention on Human Rights and its Protocols apply. The author is a senior lawyer with the Secretariat of the European Court of Human Rights in Strasbourg, and had been a member of the Secretariat of the European Commission prior to the coming into force of Protocol No. 11 to the Convention in November 1998.

Samuel, Lenia, *Fundamental Social Rights: Caselaw of the European Social Charter* (Strasbourg: Council of Europe, 1997)
The author discusses the substantive rules and interpretation of each right secured under the European Social Charter. With its practical examples, the book makes it easy to understand the scope of the Charter's provisions.

Yourow, Howard C, *The margin of appreciation doctrine in the dynamics of European human rights jurisprudence* (London, New York, The Hague: Martinus Nijhoff Publishers, Kluwer Press, 1996)
This book provides a strong and scholarly base for a theoretical and doctrinal analysis of the concept of the margin of appreciation. It tracks the evolution of the doctrine within Convention jurisprudence as well as

the internal development of the doctrine itself. The analysis illustrates the complexity of the doctrine in its case-by-case evolution.

Zwaak, L.F., "The Effects of Final Decisions of the Supervisory Organs Under the European Convention on Human Rights" in Bayefsky, A.F., *The UN Human Rights Treaty System in the 21st Century* (The Hague, London, Boston: Kluwer Law International, 2000) at 255
This article discusses some of the strengths and weaknesses of the enforcement machinery under the European Convention including: the possibility that States Parties may limit the effectiveness of the European Convention, the impact of decisions of the supervisory organs, and the supervision of the execution of the judgments of the Strasbourg organs.

Reproductive & Sexual Health Rights

Altink, Sietske, *Stolen Lives: Trading Women into Sex and Slavery*, (London: Scarlet Press, 1995)
With personal testimony from women caught in the trafficking web, this book reveals the violent inner workings of international crime networks, the routes and methods involved and how the trafficking gangs are able to circumvent the law. The trade in women is one of the most shameful abuses of human rights yet continues to be ignored by national governments. It confronts the hidden scandal of global trafficking, which exploits women as they attempt to emancipate themselves.

Bennett, Rebecca, Erin, Charles A. (eds*), HIV and AIDS: Testing, Screening, and Confidentiality* (New York: Oxford University Press, 1999)
This book is the outgrowth of a research project in Europe--"AIDS: Ethics, Justice and European Policy." The chief aim of the project was to identify basic principles of, and sketch an ethical framework for, European social and legislative policy on HIV and AIDS. This research addressed many AIDS-related issues but the most complex was that surrounding testing and screening for HIV, especially in regard to the confidentiality of the results. An appendix provides a summary of conclusions and recommendations from the European Commission, Directorate General XII, Biomedicine and Health Research Programme, and Cooperation in Science and Technology with Central and Eastern European Countries on "AIDS: Ethics, Justice, and European Policy."

Carlier, Jean-Yves, Schiffino, Graciela, *Free Movement of Persons Living with HIV/AIDS*, (Brussels, Belgium: European Communities, 1999)
This book discusses the issue of free movement of persons living with HIV/AIDS between countries throughout the world. The first part of the book covers restrictions on the free movement of persons either authorized or forbidden by International and European law. The next part covers the legislation of the various European Union Member states in regards to HIV/AIDS, and the last part looks at those countries that are not part of the European Union.

Cook, R.J. & Dickens, B.M., "Considerations for Formulating Reproductive Health Laws: A Discussion Paper" (2nd ed.) (Geneva: World Health Organization, 2000)
The Report explores how human rights found in national constitutions and laws, and regional and international treaties have been, and can be more effectively applied to protect and promote reproductive and sexual health. It addresses legal principles governing relations between providers of health services and intended recipients of those services. The legal principles that are examined include those governing free and informed decision making, privacy and confidentiality, the competent delivery of services and the use of conscientious objection.

Commission of the European Communities, Directorate General XII, Biomedicine and Health Research Programme (BIOMED 1), "AIDS: Ethics, Justice and European Policy," Final Report (The Centre for Social Ethics and Policy, University of Manchester, 1996)
This report presents an overview of the research stimulated by the Concerted Action 'AIDS: Ethics, Justice and European Policy'. The chief aim of this study was to identify basic principles of, and sketch an ethical framework for, European social and legislative policy on HIV and AIDS. The study takes a multi-disciplinary approach. It is argued that in the absence of a cure for AIDS, a common coordinated approach among nation states is necessary. By bringing together academics from many European countries it was possible to look directly at each country's policy experience and explore the scope for, and limits of, consensus while respecting cultural, religious and political differences which must influence the development of any European Policy on AIDS. A project summary published under the same title is also available.

Council of Europe, "Guaranteeing Freedom of Choice in Matters of Reproduction, Sexuality and Lifestyles in Europe: trends and developments," International Forum: Tallin, November 1997, (Strasbourg: Council of Europe)
Participants of this international forum exchange views on the different European experiences and discuss the personal, ethical and social dimensions of reproductive rights. They identify a certain number of obstacles to the enjoyment of the right to free choice in matters of reproduction and sexuality, and make recommendations for overcoming these obstacles.

Council of Europe, "Report on Equality between Women and Men: the Right to Free Choice of Maternity" 25 February 1993, ADOC6781
In this report, the Assembly is invited to recognise that choice of the interruption or continuation of a pregnancy must in the last analysis be the right of the woman, subject to national laws and in the light of medical diagnosis. It is argued that this right is implicit in Articles 8, 12, and 14 of the European Convention on Human Rights, interpreted in the light of contemporary social conditions and medical understanding. Member states of the Council of Europe are therefore under an obligation to make provisions for the exercise of this right in good conditions.

Council of Europe, "Reproductive Choice," 1999
This report summarizes a study carried out by the Group of Specialists on the Right to Free Choice in Matters of Reproduction and Life Styles. The study focuses on the legal situation, services, and sex education programmes in member States and proposes standards for the development of national legislation and programmes for action by the Council of Europe's Steering Committee for equality between women and men.

Cromack, Valerie, "The E.C. Pregnancy Directive - Principle or Pragmatism?" (1993) 4 J. of Soc. Welfare & Fam. L. 261-72
Current law affecting pregnant women is outlined with particular emphasis on the law relating to unfair dismissal, maternity leave and pay and the right to return to work. The effect of the new EC Pregnancy Directive on UK law is considered, and its proposed implementation under the Trade Union and Employment Rights Bill 1992. Conclusions are drawn on the "free market economy" approach presently espoused by the UK Government on employment protections and rights for pregnant employees.

Center for Reproductive Law and Policy (CRLP), ***Women of the World Laws and Policies Affecting Their Reproductive Lives: East Central Europe*** **(New York: CRLP, 2000)**
The report is an extensive examination of laws and policies affecting women's lives in Albania, Croatia, Hungary, Lithuania, Poland, Romania and Russia. Based on eighteen months of research, the report is a unique collaboration between non-governmental organizations in each of these countries and CRLP. The

report concludes that the privatization of the health care system under structural adjustment programs has led to decreased spending on health care and a deterioration in women's ability to control their fertility. Access to comprehensive reproductive health services and basic family planning, such as contraceptives, is extremely limited across the region.

Ellis, Evelyn, EC Sex Equality Law (2nd ed.) (New York: Oxford University Pres, Oxford EC Law Library, 1998)
This book offers a detailed and critical examination of European Community sex equality law, as interpreted by the European Court of Justice. It contains a thorough analysis of the basic principles of Community law in the context of sex equality claims and a comprehensive discussion of equal pay, equal treatment and equality in relation to social security.

Eriksson, Maja K., ***Reproductive Freedom: in the Context of International Human Rights and Humanitarian Law*** **(The Hague: Martinus Nijhoff, 1999)**
The author discusses reproductive freedom in the context of feminist legal theory, international human rights and humanitarian law. In surveying the international commitment to women's rights and examining critically the way in which international global and regional human rights bodies and ad hoc international tribunals deal with issues pertaining to reproductive freedom and sexual violence, this volume makes clear to what extent contemporary international law norms may be used as a tool for change, and how they need to be adapted to meet the special needs of girls and women worldwide. The book explores what improvements are necessary to prevent and protect adolescents, women and men against violation of their reproductive freedom.

European Union: European Commission – Directorate General for the Employment, Industrial Relations & Social Affairs, Sexual Harassment at the workplace in the European Union (Luxembourg: Office for official Publications of the European Communities, 1999)
This report is the European Commission's review of research conducted by eleven member countries into sexual harassment in employment in the European Community.

Forder, Caroline J., "Abortion: A Constitutional Problem in European Perspective" (1994) 1 Maastricht J. Eur. & Comp. L., 56-100
This article investigates the constitutional limits of abortion in Europe. Part I looks at various options found in different European countries for recognizing abortion and considers the advantages and disadvantages. Part II considers the approach under German Basic Law, and its lessons for other European countries.

Gostin, Lawrence O., & Lazzarini, Zita, ***Human Rights and Public Health in the AIDS Pandemic*****, (New York: Oxford University Press,1997)**
This book aims to show how human rights and public health are intertwined, with conflicts and trade-offs. It addresses "the broad audience of concerned individuals and organizations that seek to protect the health and human rights of persons living with HIV/AIDS." Its target audience includes governmental organizations, nongovernmental organizations, community-based groups, policymakers, and PWAs. The five chapters cover: "International Human Rights Law in the AIDS Pandemic," "Harmonizing Human Rights and Public Health," "Human Rights Impact Assessment," "AIDS Policies and Practices: Integrating Public Health and Human Rights," and "Case Studies Raising Critical Questions in HIV Policy and Research: Balancing Public Health Benefits and Human Rights Burdens."

Hendricks, Aart, "**The Close Connection Between Classical Rights and the Right to Health, with Special Reference to the Right to Sexual Health and Reproductive Health**" **(1999) 18 (2&3) Med. & L., 225-242**
Although several international and regional human rights instruments, including the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, give explicit recognition to a broad right to health, this right, at present, offers little real protection to interests in individual and community health, including reproductive and sexual health. This is so, the author argues, because the mechanisms now in place for supervision and enforcement of this and other "social human rights" are extremely weak. In these circumstances, better protection is available *indirectly*, through enforcement of certain "classical human rights," such as the right to life, the right to be free from inhuman and degrading treatment, and the right to found a family, that contribute to - and depend upon realisation of a right to health.

Hervey, Tamara K., O'Keeffe, David (eds.), ***Sex Equality Law in the European Union*****, University College London, Centre for the law of the European Union (Chichester: Wiley, 1996)**
Sex Equality Law in the European Union provides an examination of the European Union's regulation of sex equality and the contribution of the law to the position of women and men in the Member States. The contributors provide invaluable analysis of the current state of the law and offer opinion on the best way forward. The breadth of topics dealt with are placed within the context of the following seven key areas: Equal pay, Equal treatment, Social security, Enforcement of sex equality in employment, Citizenship and human rights, Women and the internal market, and Perspectives on sex equality law.

Hohn, Charlotte, "**Population-relevant policies before and after unification of Germany" (1992) 75 Materialien zur Bevolkerungswissenschaft, 5-27 (In Eng.)**
The author reviews changes in population policy in Germany from 1949, when the two separate German states were formed, to the present. After a comparison of policy strategies in the two countries, she examines the policy needs of post-unification Germany, focusing on child care, immigration law, fertility, and demographic aging.

Human Rights Watch, International Gay and Lesbian Human Rights Commission, ***Public Scandals: Sexual Orientation and Criminal Law in Romania*****, 1998 (Eng. & Rom.)**
In this joint report, a climate of legalized intolerance of homosexuality in Romania is documented. Gays and lesbians are denied privacy in Romanian law, and they are also denied basic rights of expression, association, and assembly. Officials and ordinary citizens regard gays and lesbians as persons without rights. Once arrested, those accused of homosexuality are routinely beaten and tortured by police. In detention, they are raped and abused by other inmates, with the collusion and encouragement of the authorities. This report calls on Romania and the international community to eliminate laws which condone or enforce unequal treatment based on sexual orientation, and to end the abuse of gays and lesbians by police and other officials.

International Planned Parenthood Federation (IPPF) IPPF Charter on Sexual and Reproductive rights: Vision 2000, (London, 1996)
The IPPF Charter on Sexual and Reproductive Rights was first published in 1996. The twelve rights, as set out in the Charter, provide IPPF and its family planning associations (FPAs) with a demanding agenda for this century with a strong focus on the promotion and defence of the sexual and reproductive rights of individuals worldwide.

Irvine, W., "A Time to Regulate? Possible Implications Of European Human Rights Law On Abortion In Northern Ireland" (2001) 5 Medical L. Int'l, 127-140
Since the introduction of the Abortion Act 1967 the legality and status of abortion in Northern Ireland, excluded from the provisions of the 1967 Act, has remained shrouded in uncertainty. In light of the introduction of the Human Rights Act 1998, this article explores whether this inconsistency in the U.K. is in breach of the provisions laid down in Articles 8 and 14. It will be shown that while compelling arguments can be built under these provisions, perhaps the most persuasive arguments in favour of law reform are the inequities that the current legal regime has perpetuated.

Klashtorny, Natalie, "Ireland's Abortion Law: An Abuse of International Law" (1996) 10 Temple Int'l & Comp. L. J., 419-43
This comment argues that Ireland's ban on abortion is a violation of women's international human rights. Part II looks at the historical background of Ireland's abortion law. Part III chronicles the course of events since the enactment of the Amendment to the Irish Constitution guaranteeing the right to life for the unborn and the lawsuits that followed. Part IV discusses reproductive rights as international human rights and argues that the European Court of Human Rights failed in its duty to protect the rights of women in Ireland.

Laurant, Françoise, "Is abortion a right? France reforms the Veil Act" (2000) 28(2) Choices (available at: http://www.ippf.org/regions/europe/choices/index.htm)
After years of activism and countless demonstrations, the Veil Act legalized abortion in France in 1975 -- thus ending decades of clandestine abortion and the related threats to French women's reproductive health. This law was a health response to a public health problem, and made abortion not only affordable but also ensured that clinical standards of abortion provision were met. None the less, this law is restrictive and it is argued that this legislation does not legitimise a woman's right to control procreation. The framework of the law is obsolete and the definition of abortion as a surgical intervention that must be performed in a hospital -- as stipulated by the law -- does not recognize developments in abortion technique.

Liddy, Jane, "The Concept of Family Life under the ECHR," (1998) E.H.R.L.R., 15-25
This articles considers the changing identity of the family, and analyses the nature of the relationships considered by the European Commission and Court to constitute "family life" worthy of protection under Article 8 of the European Human Rights Convention. This analysis extends to the relevance of the concept of "family life" in various biological and social relationships; as between for example, non-married parents, non-heterosexual couples, transexuals, and between sperm donors and their children. The author concludes that the concept of "family life" at the end of the twentieth century is uncertain in the light of changing ethical and social standards. However, the author notes that even where the Commission concludes that the question of family life does not arise, there may be questions relating to the right to respect for private life.

Loenen, Titia, (1994) "Rethinking Sex Equality as a Human Right" (1994) 12 Neth. Q. of H. R., 253-270
The way the principle of sex equality is interpreted by several international (quasi) judicial bodies is critically examined. It is argued that the current, mainly formal approach to equality and discrimination is in need of a fundamental reinterpretation towards a more substantive one, as formal equality often leads to the exclusion of those, like women, who do not fit dominant models or standards. Though the role of the courts in striving for substantive legal equality is necessarily limited, given the division of powers between the courts and the legislature in the democratic state, courts can contribute more than they do currently. In this respect, it is held that the concept of indirect discrimination, as developed in the case law of the ECJ, provides openings for a more substantive approach to equality and discrimination and should be adopted by human rights courts.

McGlynn, Clare, "Pregnancy, parenthood and the Court of Justice in Abdoulaye" (2000) 25 E. L. Rev. Dec., 654-662
This article discusses the *Abdoulaye* case where the Court of Justice rejected a claim by men that the grant of a lump sum payment to women only "when taking maternity leave," made in addition to their full salary, constituted sex discrimination. It is argued that the judgment reflects a "maternalist" feminist approach which seeks to empower women within their traditional caregiving roles. Such an approach, however, may have the effect of replicating traditional assumptions about motherhood and parenthood, adversely affecting women's opportunities in the workplace and men's in the family in the long term.

Medicine and Law Vol. 18, No. 2 & 3 (1999): Legal and Ethical Aspects of Reproductive and Sexual Health in Central and Eastern Europe
The papers in this volume were brought together to consider the present state of reproductive rights in countries of Central and Eastern Europe and to address the prospects of protecting and promoting such rights and the obstacles to advancement. It contains discussions related to comparisons and contrasts among countries in the region, and to wider international experiences. Participants formulated recommendations that address ethical and legal developments necessary for protection and enhancement of reproductive rights in the region.

Minnesota Advocates for Human Rights, Domestic Violence in Albania (Minneapolis: Minnesota Advocates for Human rights, 1996)
This publication includes interviews conducted by Minnesota Advocates for Human Rights, where both men and women reported incidents of severe physical abuse of women by their husbands and intimate partners.

Minnesota Advocates for Human Rights, Domestic Violence in Bulgaria (Minneapolis: Minnesota Advocates for Human rights, 1996)
A survey on domestic violence is conducted in Bulgaria by Minnesota Advocates for Human Rights.

Minnesota Advocates for Human Rights, Domestic Violence in Macedonia (Minneapolis: Minnesota Advocates for Human rights, 1998)
A survey on domestic violence is conducted in Macedonia by Minnesota Advocates for Human Rights.

Minnesota Advocates for Human Rights, Lifting The Last Curtain: A Report On Domestic Violence In Romania (Minneapolis: Minnesota Advocates for Human rights, 1995)
A survey on domestic violence is conducted in Romania by Minnesota Advocates for Human Rights.

Medical Issues and Health Care Reform in Russia, *Studies in health and human services*, v. 35 (Lewiston, N.Y. : Edwin Mellen Press, 1999)
Based on a 1996 University of Iowa symposia series on "Women's Health Issues in Russia at the End of the 20th Century" and the editors' public opinion polling in Russia, this collection of eleven studies offers a multi-faceted approach. Focusing on the impact of socio-political transitions on health and health care, Part I assesses Russian attitudes and the politics of promoting women's issues. Current conditions and future needs of women as consumers of health care are addressed in Part II. Part III examines aspects of sexual politics and policy: e.g. attitudes toward family planning and press coverage of women's health issues. Finally, health care innovations, cross- cultural training, and educational initiatives are discussed.

Monk, Daniel, "Sex Education and the Problematization of Teenage Pregnancy: a Genealogy of Law and Governance" (1998) 7(2) *SOC. & LEG. STUDIES*, 239-59
This essay provides a theoretical examination of the law regulating sex education. It focuses on teenage pregnancies. It seeks to demystify the 'common sense' political consensus in Britain that the current rate of teenage pregnancies is a 'problem', by examining how they are problematized by the social constructions. It then demonstrates how these constructions translate into conflicting solutions, or programmes, of health education and moral education. It also demonstrates how these programmes are deployed to govern child sexuality. In examining the role of law throughout this process, this essay demonstrates how the law concerning sex education operates outside of a repressive juridical model and is able to connect the aims of the state with more positive uses of power.

Moshin, Veaceslav, Blaje, Manana & Bodrug, Valentina, "Abortion in Moldova"(2000) 28(2) Choices (available at: http://www.ippf.org/regions/europe/choices/index.htm)
Unsafe abortion is a major public health issue and a clear indication of unmet needs for contraception. The health consequences of unsafe abortion should be recognised and managed, and counselling and care provided for all complications. Where abortion is legal it should be safe. All women should have access to high-quality and affordable counselling and services, including post-abortion family planning.

Niveau, Gérard, Ummel, Marinette & Harding, Timothy, "Human Rights Aspects of Transsexualism," (1999) 4(1) Health and Human Rights: an International Journal, 135
The problem of changing the civil status of transsexuals has been tackled in different ways in various European countries. Six applications made by transsexuals have led to judgments by the European Court of Human Rights. These cases illuminate some specific aspects of the relationships between health, law, and human rights, including criteria used to determine gender and the impact of authorities' refusal to modify civil status, which may be seen as violating the right to be free from inhuman or degrading treatment, respect for the private and family life of transsexuals, and the right to marry.

Nowicka, Wanda, "**Ethical Considerations on Anti-Abortion Law, Poland" (Safe Abortion: A WHO Technical Consultation to Develop Technical and Policy Guidance for Health Systems, 18-22 September 2000,Geneva) [unpublished] available at: http://home.nextra.sk/sspprv/nowicka.htm**
This is a discussion paper on ethical considerations concerning anti-abortion law in Poland which has affected the autonomy of women by limiting access to reproductive health services, including safe abortion. The paper touches upon the ethical issues that were raised during discussions that preceded and followed the introduction of this law, as well as the issues that have appeared during the law's implementation. The paper also addresses some implications of such regulations on women's well-being, self-determination and other human rights.

Packer, Corinne, "Defining and Delineating the Right to Reproductive Choice," (1998) 67 Nordic J. of Int'l L. 77-95
While the notion of a prescribed set of reproductive rights has been advanced in various contexts, these rights as a group remain controversial. In this article, the definition of reproductive rights in the Beijing Platform for Action is critically scrutinized, leading to the conclusion that only four of the so-called reproductive rights are provided for in existing international human rights instruments. The special conflict which can arise between two members of a couple who, while bearing equal rights to reproductive choice, may hold differing views and have opposing desires regarding reproduction is also examined. More specifically, the role of the State in resolving the potential for the violation of one individual's right to reproductive choice by another individual is examined.

Packer, Corinne A., "Preventing Adolescent Pregnancy: The Protection Offered by International Human Rights Law" (1997) 5 Int'l J. of Children's Rights 47-76.
The purpose of this article is threefold. The first is to highlight the principal challenges which adolescents may face in obtaining information on sexual and reproductive matters and in gaining access to contraceptive methods and services; the second is to identify clearly which human rights are relevant in the prevention of unwanted pregnancy among adolescents; and the third is to address, and endeavour to resolve, the apparent conflict between the competing interests and rights of children and their parents or guardians.

Phillips, Robin, "Violence in the Workplace: Sexual Harassment," in Askin and Koenig (eds.), *Women and International Human Rights Law*, Vol. 1 257-85 (New York: Transnational Publishers Inc., 1999)
Robin Phillips provides a general overview of the problem of sexual harassment and the different legal approaches that have been implemented to solve it. She outlines in detail the development of United States law prohibiting sexual harassment as a means of illustrating the complicated issues that must be addressed in attempting to protect people from discrimination based on sex. Phillips also provides examples of the laws relating to sexual harassment in other countries, but notes that the implementation and enforcement of some of these laws remains unclear. Finally, Phillips describes how international organizations have addressed sexual harassment, particularly their use of international instruments.

Rutkiewicz, Malgorzata, "Towards a Human Rights–based Contraceptive Policy; a critique of Anti-sterilisation Law in Poland" (2001) 8 Eur. J. of Health L. 225-242
This article argues that implications of the anti-sterilisation policy in Poland amount to a violation of human rights, especially the right to respect for private and family life and the right to equality. The article concludes that sterilisation policy should be part of the comprehensive reproductive health policy built upon respect for human rights and principles of equality, as opposed to the present Polish government's policy, which is ideologically driven and does not conform to international standards.

Salzman, Todd A., "Rape Camps as a Means of Ethnic Cleansing: Religious, Cultural, and Ethical Responses to Rape Victims in the Former Yugoslavia" (1998) 20(2) Hum. Rts. Quart. 378
While in past conflicts rape was sometimes considered an inevitable byproduct of war, and thus largely ignored when it came to punishing the perpetrators, the Bosnian conflict brought the practice of rape with genocidal intent to a new level, causing an outcry among the international community. Evidence suggests that these violations were not random acts carried out by a few dissident soldiers. Rather, this was an assault against the female gender, violating her body and its reproductive capabilities as a "weapon of war." This article examines the Serbs' systematic use of rape camps with the specific intent of impregnating their victims, along with the cultural, political, and religious foundations that support this usurpation of the female body. It then analyzes the "secondary victimization" of these women and the various responses implicitly supporting the Serbian practice and objective.

Toebes, Brigit, *The Right to Health as a Human Right in International Law*, (Antwerpen: Intersentia-Hart, 1999)
This book aims to contribute to an improved understanding of the right to health. It addresses its current implementation practices by treaty monitoring bodies by providing an extensive evaluation of reporting practices. In addition, it addresses the justiciability issue by giving an elaborate description of international and national case law by judicial and quasi-judicial bodies. On the basis of these findings it outlines the content of the right to health and describes the resulting obligations on the part of States. This study not only seeks to contribute to the international discussion about the character and significance of economic, social and cultural human rights in general, but also seeks to substantiate the independence and equality of these rights with civil and political rights.

Tomasevski, Katarina, "European Approaches to Enhancing Reproductive Freedom," (1995) 44 Am. U. L. Rev. 1037-51
This article describes and analyzes current European approaches to human rights relating to reproduction to demonstrate the accomplishments, controversies and unresolved problems in attempting to balance freedom and equality. The article notes that existing safeguards for individual choice need to be broadened geographically, specifically to Eastern Europe.

UNFPA, *The State of World Population, the Right to Choose: Reproductive Rights and Reproductive Health*, 2001
Each year since 1978, UNFPA has issued a report highlighting new developments in population. The 2001 report finds that expanding women's opportunities and ensuring their reproductive health and rights are critically important, both to improve the well-being of growing human populations and to protect the natural world. In this report there is data on reproductive rights, violence, and health.

Walker Kristen, "Moving gaily forward? Lesbian, gay and transgender human rights in Europe" (2001) 2(1) Melbourne J. of Int'l L. 122-143
The article assesses the recent jurisprudence of European judicial institutions in the area of lesbian, gay and transgender rights. It explores the judicial decisions in the matter and reveals the greater attention which is now paid in Europe in the field of sexual minorities' rights. The article considers four areas of rights protection: privacy, non-discrimination, family and marriage. It concludes that although the record of the European judicial institutions has been mixed, recent developments suggest a greater willingness to protect lesbian, gay and transgender people from rights violations.

KEY WEBSITES

European Human Rights System

Committee of Ministers
http://www.coe.int/cm

This site describes the Committee of Ministers' functions and explains its procedures. It contains full text documents adopted by the Committee including, declarations, treaties/conventions, and recommendations. Other documents contained in this site include general resolutions issued by the Committee and replies from the Committee to recommendations of the Parliamentary Assembly.

Council of Europe
www.coe.int

This site contains links to the Committee of Ministers, Parliamentary Assembly, Human Rights Court, the European Social Charter, and the European Union websites. This site also contains information regarding the role and functions of the Council of Europe. It is available in both English and French.

European Committee for the Prevention of Torture and Inhuman and Degrading Treatment
http://www.cpt.coe.int/en/

This site contains basic texts, all reports of the CPT, public statements, documents state by state, and third party publications on the CPT.

European Court of Human Rights
www.echr.coe.int

This site contains a list of recent judgments, as well as press releases and information on the effects those judgments. The Courts' previous judgments may be searched through the HUDOC database. The European Convention on Human Rights and its Protocols are also available. The site may be viewed in English or French.

European Union
http://europa.eu.int/eur-lex/

This site contains the founding treaties of the European Union, as well as case-law, legislation (both in preparation and in force), the official journal, parliamentary questions, and European Commission documents of public interest, including communications and reports. Documents are available in HTML, PDF, or TIF formats. There is a chronological list of consolidated legislation for the years 1953 to present, and the European Union case-law is fully searchable.

International Court of Justice
http://www.icj-cij.org/

This site provides general information about the ICJ, publications and decisions of the Court, as well as its current dockets. The site is fully searchable, and available in both English and French.

Parliamentary Assembly
http://stars.coe.fr/

This site describes the role and functions of the Parliamentary Assembly and includes agendas for upcoming meetings. Full text recommendations, resolutions, opinions and orders of the Parliamentary Assembly are available online. The site may be viewed in English or French.

Reproductive and Sexual Health

Alan Guttmacher Institute (AGI)
www.agi-usa.org/index.html

The AGI site contains information on reproductive and sexual health issues, such as sexual behavior, pregnancy and birth, contraception, abortion, sexually transmitted diseases, youth, law and policy.

ASTRA, Central and Eastern European Women's Network for Sexual and Reproductive Health and Rights
http://www.womenaction.org/csw44/astra.html

This site provides contact information as well as general objectives of the Central and Eastern European Network for Sexual and Reproductive Health and Rights.

EngenderHealth
www.engenderhealth.org

This site contains information about various reproductive and sexual health issues including family planning, maternal/child health, male reproductive health, post- abortion care, infections (STI/HIV), and sexuality & gender. Online courses on reproductive health and infection prevention are also available on this site to provide training for health care staff who work in low-resource settings.

European Union HIV/AIDS Programme in Developing Countries
http://europa.eu.int/comm/development/aids/

This site contains online publications concerning STDs and HIV/AIDS, including the *HIV/AIDS Programme in Developing Countries newsletter*, as well as information about upcoming conferences and links to other useful sites. Various topics related to the subject of HIV/AIDS are explored in the documents contained in this site including gender and health, the free movement of persons living with HIV/AIDS, factsheets, and education for the prevention of HIV/AIDS.

Human Rights Internet
www.hri.ca

This is a site dedicated to international NGOs, with a database of human rights websites including those pertaining to reproductive and sexual health, a documentation centre and publishing house. It provides a world calendar of human rights events occurring each month around the globe on which visitors can post information on events in their region.

International Council of AIDS Services Organizations (ICASO)
http://www.icaso.org/icaso.htm

This site contains online documents relating to AIDS, including information about vaccines. There are links to ICASO's five regional offices and descriptions of human rights violations that NGOs often encounter. In addition, the site contains information about upcoming International AIDS conferences.

International HIV/AIDS Alliance
www.aidsalliance.org
www.aidsmap.com

This site contains online publications and resources, as well as numerous links which are divided into the following categories: general HIV/AIDS, people living with HIV/AIDS, prevention, care and support, organizational development, impact mitigation and regional web sites.

International Women's Health Coalition
http://www.iwhc.org/

This site contains information on international programs relating to reproductive and sexual health and on-line publications and reports. Highlights include updates on follow-up measures taken by the international community and non-governmental organizations to ensure women's health and rights. The site features initiatives on adolescent health and rights, sexual rights, and access to safe abortion. Most sections now appear in Spanish, French, and Portuguese as well as English.

International Planned Parenthood Federation (IPPF)
www.ippf.org/index.htm

This site contains online documents and reports relating to reproductive and sexual health, as well as links to IPPF regional offices and other organizations concerned with reproductive health issues.

IPAS
www.ipas.org

This site provides information on IPAS' strategies and projects to improve the reproductive health of women, with a focus on preventing unsafe abortion, improving treatment of its complications, and reducing its consequences. It also makes available a number of full-text IPAS documents and publications.

International Women's Tribune Center (IWTC)
www.iwtc.org

Designed as an information and resource center for women advocates worldwide, the IWTC site focuses on the Beijing Platform for Action (PFA) and Beijing+5 follow-up plans and policies. Chapters from the IWTC manual, *Women! Policy! Action! A Community Action Guide to the Platform for Action,* are featured, with a summarized form of the PFA strategic objectives and actions for each critical area of concern, plus obstacles and challenges added at the Beijing+5 meeting in June 2000. Lists of websites and publications also are included.

Population Council
www.popcouncil.org

This site includes extensive information on the Council's efforts on a range of reproductive health and family planning issues, as well as numerous full-text documents published by the Council.

Safe Motherhood
www.safemotherhood.org

This site contains information about initiatives developed by the Inter-Agency group for Safe Motherhood, created in 1987 by the United Nations Population Fund (UNFPA), the United Nations Children's Fund (UNICEF), the World Health Organization (WHO), the World Bank, the International Planned Parenthood Federation (IPPF), and the Population Council. The agency aims to assess the problem of maternal deaths and disability and to recommend solutions. Links to a number of full-text fact sheets, pamphlets, and compilations of data are provided.

Q Web Sweden
www.qweb.kvinnoforum.se

The aim of this site is to promote women's health and equal rights and to ensure women's control over sexuality and reproduction. It contains sections on the empowerment of women, women's health in a cultural and social context, sexual and reproductive health and rights, violence and abuse, adolescent sexuality, fertility, and gender issues. Each section includes extensive links to other sites on the web and lists of references, papers, and presentations. In addition, the site displays contact information and brief descriptions submitted by programs and researchers from around the world who have registered with Q Web. The site is available in English and Swedish.

UNAIDS
www.unaids.org

This site includes information on the projects, research, and conferences sponsored by UNAIDS aimed at strengthening and supporting an expanded worldwide response to the HIV/AIDS epidemic. The site contains an extensive collection of full-text documents and publications, including country-by-country data on HIV/AIDS prevalence and prevention indicators and the most recent *Global Reports* published by the organisation.

United Nations Children's Emergency Fund (UNICEF)
www.unicef.org/safe

This site provides information on all UNICEF programmes and research. The site also makes available UNICEF's annual *Progress of Nations and State of the World's Children* reports. There are sections within the site that summarise UNICEF research into children's and women's health, and in particular the organisation's research into promoting safe motherhood and preventing mother-to-child transmission of HIV/AIDS. The statistical section of the website (www.unicef.org/statis/) allows users to click on a map to obtain statistics for specific countries or a given region. The information includes statistics on reproductive health (Total Fertility Rate, Contraceptive Prevalence and Maternal Mortality Ratio), education rates and other health and welfare indicators.

United Nations Population Fund (UNFPA)
www.unfpa.org

This site provides an overview of UNFPA's work in the programme area of reproductive health, including family planning and sexual health. The site also provides links to a number of full text UNFPA publications, including its advocacy series collection, technical publications for health service providers, and its annual *State of World Population* report.

Women's Human Rights Resources (WHRR)
www.law-lib.utoronto.ca/Diana/mainpage.htm

This site is maintained by the Women's Human Rights Resources group of the Bora Laskin Law Library of Faculty of Law of the University of Toronto, in collaboration with law librarians, lawyers, students, researchers, activists and human rights experts around the world. The section on reproductive rights and sexual health contains annotated lists of articles, documents, cases, and other resources on the subject, many of which are linked to full-text online versions. In addition, the site provides many specific topics that contain information related to reproductive and sexual health, including, but not limited to: age of marriage, marriage and family life, health and well-being, and violence against women. There are also research guides available online which describe briefly some strategies for researching in the areas of international human rights and international women's rights.

World Bank
www.worldbank.org

This site provides information on World Bank projects and initiatives to alleviate poverty around the world. It contains sections which focus on the economic aspects of reproductive health, including safe motherhood and HIV/AIDS.

World Health Organization, Department of Reproductive Health and Research
www.who.int/reproductive-health

This section of the WHO site on family and reproductive health contains information on WHO research projects, as well as links to a number of online versions of WHO documents, including guidelines for health care providers, WHO fact sheets, and training manuals.

Ratifications Chart*

To check the current ratification status of European human rights documents, see: www.conventions.coe.int/treaty/EN/cadreprincipal.htm

	European Convention on Human Rights (the European Convention)*	Protocol No. 1 to the European Convention	Protocol No. 7 to the European Convention	Protocol No. 11 to the European Convention	Protocol No. 12 to the European Convention (the Protocol against Discrimination)	European Social Charter (Revised)	European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment	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
Albania	X	X	X	X		S	X	
Andorra	X			X		S	X	
Armenia	S	S	S	S		S	S	
Austria	X	X	X	X	S	S	X	
Azerbaijan	S	S	S	S		S	S	
Belgium	X	X		X	S	S	X	
Bulgaria	X	X	X	X		X	X	S
Croatia	X	X	X	X			X	S
Cyprus	X	X	X	X	S	X	X	S
Czech Republic	X	X	X	X	S	S	X	X
Denmark	X	X	X	X		S	X	X
Estonia	X	X	X	X	S	X	X	S
Finland	X	X	X	X	S	S	X	S
France	X	X	X	X		X	X	S
Georgia	X	S	X	X	X	S	X	X
Germany	X	X	S	X	S		X	
Greece	X	X	X	X	S	S	X	X

* status as of 06/01/02

	European Convention on Human Rights (the European Convention)*	Protocol No. 1 to the European Convention	Protocol No. 7 to the European Convention	Protocol No. 11 to the European Convention	Protocol No. 12 to the European Convention (the Protocol against Discrimination)	European Social Charter (Revised)	European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment	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
Hungary	X	X	X	X	S		X	S
Iceland	X	X	X	X	S	S	X	S
Ireland	X	X	X	X	S	X	X	
Italy	X	X	X	X	S	X	X	S
Latvia	X	X	X	X	S		X	S
Liechtenstein	X	X		X	S		X	
Lithuania	X	X	X	X		X	X	S
Luxembourg	X	X	X	X	S	S	X	S
Malta	X	X		X			X	
Moldova	X	X	X	X	S	X	X	S
Netherlands	X	X	S	X	S		X	S
Norway	X	X	X	X		X	X	S
Poland	X	X	S	X			X	S
Portugal	X	X	S	X	S	S	X	X
Romania	X	X	X	X	S	X	X	X
Russia	X	X	X	X	S	S	X	
San Marino	X	X	X	X	S	S	X	X
Slovakia	X	X	X	X	S	S	X	X
Slovenia	X	X	X	X	S	X	X	X
Spain	X	X	S	X		S	X	X
Sweden	X	X	X	X		X	X	
Switzerland	X	S	X	X			X	
The Former Yugoslav Republic of Macedonia	X	X	X	X	S		X	

	European Convention on Human Rights (the European Convention)*	Protocol No. 1 to the European Convention	Protocol No. 7 to the European Convention	Protocol No. 11 to the European Convention	Protocol No. 12 to the European Convention (the Protocol against Discrimination)	European Social Charter (Revised)	European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment	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
Turkey	X	X	S	X	S		X	
Ukraine	X	X	X	X	S	S	X	
United Kingdom	X	X		X		S	X	

Human Rights Relating to Reproductive and Sexual Health in the European Human Rights System*

Conventions	European Convention on Human Rights (European Convention)	Protocol No. 1 to the European Convention	Protocol No. 7 to the European Convention	Protocol No. 12 to the European Convention	The European Social Charter (Revised)	European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment	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
LIFE, SURVIVAL AND SECURITY							
Right to Life and Survival	2						
Right to Liberty & Security of the Person	5				7(10), 17		
Right to be Free from Inhuman and Degrading Treatment	3				7(10), 17	E	

* Revised from: Rebecca J. Cook, Bernard M. Dickens, Mahmoud F. Fathalla, *Reproductive Health and Human Rights: Medical, Ethical and Legal Contributions* (forthcoming, 2002).

Conventions	European Convention on Human Rights (European Convention)	Protocol No. 1 to the European Convention	Protocol No. 7 to the European Convention	Protocol No. 12 to the European Convention	The European Social Charter (Revised)	European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment	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
FREE CHOICE OF MATERNITY							
Right to Maternity Protection					8, 11, 12, 13, 14		
Right to Marry and Found a Family	12				12, 14		
Right to Private and Family Life	8				16, 19, 27		
REPRODUCTIVE AND SEXUAL HEALTH							
Right to Highest Attainable Standard of Health					3, 7(1), 7(2), 11, 12, 13, 14		

Conventions	European Convention on Human Rights (European Convention)	Protocol No. 1 to the European Convention	Protocol No. 7 to the European Convention	Protocol No. 12 to the European Convention	The European Social Charter (Revised)	European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment	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
Right to Procedural Fairness	6,7						
Right to Benefits of Scientific Progress	27						
NON-DISCRIMINATION AND DUE RESPECT FOR DIFFERENCE							
Sex and Gender	14		5	1, 2	E		1, 11
Marital Status	14		5	1, 2	E		1
Age	14			1, 2	E		1
Sexual Orientation	14			1, 2	E		1
Genetic Heritage							1, 11

Conventions	European Convention on Human Rights (European Convention)	Protocol No. 1 to the European Convention	Protocol No. 7 to the European Convention	Protocol No. 12 to the European Convention	The European Social Charter (Revised)	European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment	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
Race and Ethnicity	14			1, 2	E		1
INFORMATION, EDUCATION AND DECISION-MAKING							
Right to Receive & to Impart Information	10						
Right to Education		2			7(3), 15(1), 17		
Right to Freedom of Thought, Conscience, and Religion	9						

PART I – THE CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

A) Introduction to the European Convention

THE EUROPEAN CONVENTION[14]

The Convention for the Protection of Human Rights and Fundamental Freedoms was drawn up within the Council of Europe. The purpose of the Convention was to enable the enforcement of certain of the rights set out in the United Nations Universal Declaration of Human Rights of 1948.

The Convention was opened for signature in Rome on 4 November, 1950 and entered into force in September 1953. It has since been ratified by *all* the member States of the Council of Europe.

In addition to laying down a catalogue of civil and political rights and freedoms, the Convention set up a system of enforcement of the obligations entered into by Contracting States. Three institutions were entrusted with this responsibility: the European Commission of Human Rights (European Commission) which was established in 1954, the European Court of Human Rights (European Court) which was established in 1959, and the Committee of Ministers of the Council of Europe (Committee of Ministers). A new system has recently been established where the European Court assumes the responsibilities traditionally entrusted to the European Commission and the Committee of Ministers. The "new" European Court is described more fully below.

Summary of the Treaty

The Convention for the Protection of Human Rights and Fundamental Freedoms defines, in Section I, the rights and freedoms which it guarantees. The Rights under this Convention which are particularly relevant to reproductive and sexual health include:

- Article 2: right to life
- Article 3: right to be free from inhuman and degrading treatment
- Article 5: right to liberty and security of the person
- Articles 6 , 7 & 13: right to procedural fairness
- Article 8: right to private and family life
- Article 9: freedom of thought, conscience and religion
- Article 10: right to receive and impart information
- Article 12: right to marry and found a family
- Article 14, Protocol Nos. 7 & 12: right to equality
- Protocol No.1: right to education

In accordance with the provisions of the Convention, the European Commission and European Court were established to ensure that the Contracting Parties complied with their obligations under the Convention. In addition, the Convention gave the Committee of Ministers an autonomous decision-making power when a

[14] Information contained in the introductory section of Part II regarding the European Convention and the European Court was obtained from the European Court of Human Rights Website at:http://www.echr.coe.int/Eng/General.htm. This is a brief overview of Court procedures for a more complete description see the above website.

case had not been brought before the Court, and the authority to supervise the execution of the Court's judgment when the case had been brought before the latter.

Since the adoption of the European Convention, eleven Protocols to the Convention have come into force. Several of those Protocols are particularly important for reproductive and sexual health rights as they add further rights and liberties to those guaranteed by the Convention:

Protocol No. 1: Article 2 of this Protocol establishes the right to education

Protocol No. 7: Article 5 of this Protocol establishes equal rights and responsibilities of spouses in marriage

Protocol No. 12: This protocol is dedicated to the elimination of discrimination

The texts of the above Protocols are included in the Basic Text sections of this Part.

Several Other Protocols should be considered when considering the submission of an application because they alter the Convention machinery. **Protocol No. 9**, which entered into force on 1 October 1994, allowed the submission of individual complaints to the European Court of Human Rights. Although the right to submit individual complaints remains, Protocol No. 9 has been repealed by **Protocol No. 11**:

Protocol No. 11:
This Protocol, which entered into force on 1 November 1998, was the protocol that brought about a radical reform of the Convention machinery by replacing the present Commission and Court with a single, permanent European Court of Human Rights. In addition to the amendments made to the European Convention and repeal of Protocol No. 9, Protocol No. 11 amended Protocols 1, 4, 6, and 7.

One of the most significant changes brought about by this Protocol was the opening of the possibility of submitting information to the Court in an "Amici Curia" submission regarding state or individual violations of rights.

Protocol No. 11 required ratification by all the Contracting States and has now entered into force. New Member States of the Council of Europe are required to ratify both the European Convention and Protocol No. 11.

The New European Court of Human Rights

The new European Court of Human Rights - which began operating on 1 November 1998 – has taken up the responsibilities that were handled by the European Court of Human Rights, the European Commission of Human Rights and the Committee of Ministers. The new Court was created to strengthen the judicial character of the system, to make the machinery more accessible to individuals, to speed up the procedure, and ensure greater efficiency.

Under the new system, the Court deals with all allegations of violations of individuals' rights as well as inter-state complaints. The Committee of Ministers no longer has jurisdiction to decide on the merits of certain cases, though it retains its important role of monitoring the enforcement of the Court's judgments. In addition, any cases that are clearly unfounded are sifted out of the system at an early stage by a unanimous decision of the Court, sitting as a three-judge committee.

Starting in November 1998, the Court took up all cases currently pending before the old Court as well as cases currently pending before the Commission that had not been declared admissible. The old Court no longer exists, but the Commission had an extra year to deal with cases it had declared admissible before November 1998. Although there is a new European Court, there are some cases of the former European Court and European Commission that are relevant to reproductive and sexual health and should be consulted when considering the jurisprudence of the new European Court. Those cases have been included below in the "Case-law" section of Part II.

a) Procedure for the Submission of Complaints

Any Contracting State (State application) or individual claiming to be a victim of a violation of the Convention (individual application) may lodge directly with the Court in Strasbourg an application alleging a breach by a Contracting State of one of the Convention rights. An application form is included in Part II, and may also be obtained from the European Court website at:
http://www.echr.coe.int/Application%20forms/Formule-bil1.pdf

Notes for the guidance of persons wishing to apply to the European Court of Human Rights, and an explanatory note for persons competing the Application Form can also be found at:
http://www.echr.coe.int/Notesfor%20guidanceApplicants/NoticeENG.pdf and
http://www.echr.coe.int/Explanatory%20Notes/note-eng.pdf respectively.

b) Third Party Intervention

Under Art. 36, a Contracting Party may submit materials and take part in hearings. In addition, the President of the Court may invite any Contracting Party who is not party to the proceedings, or any person concerned, to submit written comments or to take part in hearings.

Non-governmental organizations may also file *amicus* briefs where they can show that they have an interest in the case or special knowledge of the subject matter, and that their intervention would serve the administration of justice.[15]

c) Powers of the Court

Article 38 allows the court to assist the parties in reaching a "friendly settlement".

Under Art. 41 of the Convention, where a Contracting Party is in breach of its obligation under the Convention, and if its domestic law does not provide for adequate reparation of that breach, then the Court has the right to make an award of just satisfaction to the injured Party.[16] It may also award both pecuniary and non-pecuniary damages payable within three months of judgment.[17]

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[15] Protocol No. 11 amends the Convention to allow these briefs.
[16] It is the goal of the Court to place the applicant as close as possible to the position in which he would have been had the violation of the Convention not taken place: *Piersack v. Belgium*, Series A, Volume 85 (23 October 1984).
[17] See *Moreira De Azevedo v. Portugal*, Series A,Volume 208-C (28 August 1991) at 30; *Kremzow v. Austria*, Series A., Volume 268-B (21 September 1993) at 34; *Dombo Beheer B.V. v. The Netherlands*, Series A, Volume 274 (27 October 1993) at 41; see Zwaak, L.F., "The Effects of Final Decisions of the Supervisory Organs Under the European Convention on Human Rights" in Bayefsky, A.F., *The UN Human Rights Treaty System in the 21st Century* (The Hague, London, Boston: Kluwer Law International, 2000) at 255 for a fuller discussion of case-law regarding compensatory awards of the European Court.

Article 46 states that the Court's judgments are binding and final, and that Contracting Parties undertake to abide by these judgments. In practice this means that although Contracting Parties are obligated to take general measures to abide by the Court's decisions, it is within their discretion to decide to take a particular action in response to a violation. The Court does not have the power to recommend specific measures.

Finally, under Article 47, the Court may, at the request of the Committee of Ministers, give advisory opinions on legal questions concerning the interpretation of the Convention and Protocols.

d) Helpful Tips:

(a) The procedure before the new European Court of Human Rights is adversarial and public. Hearings are, in principle, public, unless the Chamber/Grand Chamber decides otherwise on account of exceptional circumstances. Memorials and other documents filed with the Court's Registry by the parties are therefore accessible to the public.

(b) Individual applicants may submit applications themselves, but legal representation is recommended, and even required for hearings or after a decision declaring an application admissible. The Council of Europe has set up a legal aid scheme for applicants who do not have sufficient means.

(c) The official languages of the Court are English and French, but applications may be drafted in one of the official languages of the Contracting States. Once the application has been declared admissible, one of the Court's official languages must be used, unless the President of the Chamber/Grand Chamber authorises the continued use of the language of the application.

(d) It is crucial that individuals and States Parties have exercised all other option available to them domestically before submitting an application to the European Court. The European Convention is subsidiary to national laws. Examples of decisions on exhaustion of domestic remedies may be found in the "Case-law" section of Part II.

(e) Responsibility for supervising the execution of judgments and friendly settlements lies with the Committee of Ministers. It is thus for the Committee of Ministers to verify whether States in respect of which a violation of the Convention is found have taken adequate remedial measures to comply with the specific or general obligations arising out of the Court's judgments. Details of amended legislation following European Court decisions appear in the published *Collection of Resolutions*.

B) Basic Texts

CONVENTION FOR PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS[18]

COUNCIL OF EUROPE
EUROPEAN TREATIES
ETS NO. 5

ROME, 4.XI.1950

The text of the Convention had been amended according to the provisions of Protocol No. 3 (ETS No. 45), which entered into force on 21 September 1970, of Protocol No. 5 (ETS No. 55), which entered into force on 20 December 1971 and of Protocol No. 8 (ETS No. 118), which entered into force on 1 January 1990, and comprised also the text of Protocol No. 2 (ETS No. 44) which, in accordance with Article 5, paragraph 3 thereof, had been an integral part of the Convention since its entry into force on 21 September 1970. All provisions which had been amended or added by these Protocols are replaced by Protocol No. 11 (ETS No. 155), as from the date of its entry into force on 1 November 1998. As from that date, Protocol n° 9 (ETS No. 140), which entered into force on 1 October 1994, is repealed and Protocol n° 10 (ETS No. 146), which has not entered into force, has lost its purpose.

The governments signatory hereto, being members of the Council of Europe,
Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10th December 1948;
Considering that this Declaration aims at securing the universal and effective recognition and observance of the Rights therein declared;
Considering that the aim of the Council of Europe is the achievement of greater unity between its members and that one of the methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms;
Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the human rights upon which they depend;
Being resolved, as the governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration,
Have agreed as follows:

Article 1 [footnote 1] – Obligation to respect human rights
The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

Section I – Rights and freedoms

Article 2 [footnote 1] – Right to life
1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
a) in defence of any person from unlawful violence;
b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Article 3 [footnote 1] – Prohibition of torture
No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 4 [footnote 1] – Prohibition of slavery and forced labour
1. No one shall be held in slavery or servitude.

[18] http://www.echr.coe.int/Convention/webConvenENG.pdf

2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this article the term "forced or compulsory labour" shall not include:

a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;

b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;

c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;

d) any work or service which forms part of normal civic obligations.

Article 5 [footnote 1] – Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

a) the lawful detention of a person after conviction by a competent court;

b) the lawful arrest or detention of a person for non- compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
3. Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

Article 6 [footnote 1] – Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:

a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

b) to have adequate time and facilities for the preparation of his defence;

c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Article 7 [footnote 1] – No punishment without law
1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

Article 8 [footnote 1] – Right to respect for private and family life
1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 9 [footnote 1] – Freedom of thought, conscience and religion
1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 10 [footnote 1] – Freedom of expression
1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 11 [footnote 1] – Freedom of assembly and association
1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Article 12 [footnote 1] – Right to marry
Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

Article 13 [footnote 1] – Right to an effective remedy
Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

Article 14 [footnote 1] – Prohibition of discrimination
The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 15 [footnote 1] – Derogation in time of emergency
1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from

its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.
2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.
3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

Article 16 [footnote 1] – Restrictions on political activity of aliens
Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

Article 17 [footnote 1] – Prohibition of abuse of rights
Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

Article 18 [footnote 1] – Limitation on use of restrictions on rights
The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

Section II – European Court of Human Rights [footnote 2]

Article 19 – Establishment of the Court
To ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto, there shall be set up a European Court of Human Rights, hereinafter referred to as "the Court". It shall function on a permanent basis.

Article 20 – Number of judges
The Court shall consist of a number of judges equal to that of the High Contracting Parties.

Article 21 – Criteria for office
1. The judges shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence.
2. The judges shall sit on the Court in their individual capacity.
3. During their term of office the judges shall not engage in any activity which is incompatible with their independence, impartiality or with the demands of a full-time office; all questions arising from the application of this paragraph shall be decided by the Court.

Article 22 – Election of judges
1. The judges shall be elected by the Parliamentary Assembly with respect to each High Contracting Party by a majority of votes cast from a list of three candidates nominated by the High Contracting Party.
2. The same procedure shall be followed to complete the Court in the event of the accession of new High Contracting Parties and in filling casual vacancies.

Article 23 – Terms of office
1. The judges shall be elected for a period of six years. They may be re-elected. However, the terms of office of one-half of the judges elected at the first election shall expire at the end of three years.
2. The judges whose terms of office are to expire at the end of the initial period of three years shall be chosen by lot by the Secretary General of the Council of Europe immediately after their election.
3. In order to ensure that, as far as possible, the terms of office of one-half of the judges are renewed every three years, the Parliamentary Assembly may decide, before proceeding to any subsequent election, that the term or terms of office of one or more judges to be elected shall be for a period other than six years but not more than nine and not less than three years.
4. In cases where more than one term of office is involved and where the Parliamentary Assembly applies the preceding paragraph, the allocation of the terms of office shall be effected by a drawing of lots by the Secretary General of the Council of Europe immediately after the election.
5. A judge elected to replace a judge whose term of office has not expired shall hold office for the remainder of his predecessor's term.
6. The terms of office of judges shall expire when they reach the age of 70.
7. The judges shall hold office until replaced. They shall, however, continue to deal with such cases as they already have under consideration.

Article 24 – Dismissal
No judge may be dismissed from his office unless the other judges decide by a majority of two-thirds that he has ceased to fulfil the required conditions.

Article 25 – Registry and legal secretaries
The Court shall have a registry, the functions and organisation of which shall be laid down in the rules of the Court. The Court shall be assisted by legal secretaries.

Article 26 – Plenary Court
The plenary Court shall

a) elect its President and one or two Vice-Presidents for a period of three years; they may be re-elected;

b) set up Chambers, constituted for a fixed period of time;

c) elect the Presidents of the Chambers of the Court; they may be re-elected;

d) adopt the rules of the Court, and

e) elect the Registrar and one or more Deputy Registrars.

Article 27 – Committees, Chambers and Grand Chamber
1. To consider cases brought before it, the Court shall sit in committees of three judges, in Chambers of seven judges and in a Grand Chamber of seventeen judges. The Court's Chambers shall set up committees for a fixed period of time.
2. There shall sit as an ex officio member of the Chamber and the Grand Chamber the judge elected in respect of the State Party concerned or, if there is none or if he is unable to sit, a person of its choice who shall sit in the capacity of judge.
3. The Grand Chamber shall also include the President of the Court, the Vice-Presidents, the Presidents of the Chambers and other judges chosen in accordance with the rules of the Court. When a case is referred to the Grand Chamber under Article 43, no judge from the Chamber which rendered the judgment shall sit in the Grand Chamber, with the exception of the President of the Chamber and the judge who sat in respect of the State Party concerned.

ARTICLE 28 – Declarations of inadmissibility by committees
A committee may, by a unanimous vote, declare inadmissible or strike out of its list of cases an application submitted under Article 34 where such a decision can be taken without further examination. The decision shall be final.

Article 29 – Decisions by Chambers on admissibility and merits
1. If no decision is taken under Article 28, a Chamber shall decide on the admissibility and merits of individual applications submitted under Article 34.
2. A Chamber shall decide on the admissibility and merits of inter-State applications submitted under Article 33.
3. The decision on admissibility shall be taken separately unless the Court, in exceptional cases, decides otherwise.

Article 30 – Relinquishment of jurisdiction to the Grand Chamber
Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects.

Article 31 – Powers of the Grand Chamber
The Grand Chamber shall

a) determine applications submitted either under Article 33 or Article 34 when a Chamber has relinquished jurisdiction under Article 30 or when the case has been referred to it under Article 43; and

b) consider requests for advisory opinions submitted under Article 47.

Article 32 – Jurisdiction of the Court
1. The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the protocols thereto which are referred to it as provided in Articles 33, 34 and 47.
2. In the event of dispute as to whether the Court has jurisdiction, the Court shall decide.

Article 33 – Inter-State cases
Any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the protocols thereto by another High Contracting Party.

Article 34 – Individual applications
The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The

High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

Article 35 – Admissibility criteria
1. The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.
2. The Court shall not deal with any application submitted under Article 34 that
a) is anonymous; or
b) is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.
3. The Court shall declare inadmissible any individual application submitted under Article 34 which it considers incompatible with the provisions of the Convention or the protocols thereto, manifestly ill-founded, or an abuse of the right of application.
4. The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings.

Article 36 – Third party intervention
1. In all cases before a Chamber of the Grand Chamber, a High Contracting Party one of whose nationals is an applicant shall have the right to submit written comments and to take part in hearings.
2. The President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings.

Article 37 – Striking out applications
1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
a) the applicant does not intend to pursue his application; or
b) the matter has been resolved; or
c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.
However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the protocols thereto so requires.
2. The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course.

Article 38 – Examination of the case and friendly settlement proceedings
1. If the Court declares the application admissible, it shall
a) pursue the examination of the case, together with the representatives of the parties, and if need be, undertake an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities;
b) place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the protocols thereto.
2. Proceedings conducted under paragraph 1.b shall be confidential.

Article 39 – Finding of a friendly settlement
If a friendly settlement is effected, the Court shall strike the case out of its list by means of a decision which shall be confined to a brief statement of the facts and of the solution reached.

Article 40 – Public hearings and access to documents
1. Hearings shall be in public unless the Court in exceptional circumstances decides otherwise.
2. Documents deposited with the Registrar shall be accessible to the public unless the President of the Court decides otherwise.

Article 41 – Just satisfaction
If the Court finds that there has been a violation of the Convention or the protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.

Article 42 – Judgments of Chambers
Judgments of Chambers shall become final in accordance with the provisions of Article 44, paragraph 2.

Article 43 – Referral to the Grand Chamber
1. Within a period of three months from the date of the judgment of the Chamber, any party to the case may, in exceptional cases, request that the case be referred to the Grand Chamber.

2. A panel of five judges of the Grand Chamber shall accept the request if the case raises a serious question affecting the interpretation or application of the Convention or the protocols thereto, or a serious issue of general importance.
3. If the panel accepts the request, the Grand Chamber shall decide the case by means of a judgment.

Article 44 – Final judgments
1. The judgment of the Grand Chamber shall be final.
2. The judgment of a Chamber shall become final
a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or
b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or
c) when the panel of the Grand Chamber rejects the request to refer under Article 43.
3. The final judgment shall be published.

Article 45 – Reasons for judgments and decisions
1. Reasons shall be given for judgments as well as for decisions declaring applications admissible or inadmissible.
2. If a judgment does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

Article 46 – Binding force and execution of judgments
1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

Article 47 – Advisory opinions
1. The Court may, at the request of the Committee of Ministers, give advisory opinions on legal questions concerning the interpretation of the Convention and the protocols thereto.
2. Such opinions shall not deal with any question relating to the content or scope of the rights or freedoms defined in Section I of the Convention and the protocols thereto, or with any other question which the Court or the Committee of Ministers might have to consider in consequence of any such proceedings as could be instituted in accordance with the Convention.
3. Decisions of the Committee of Ministers to request an advisory opinion of the Court shall require a majority vote of the representatives entitled to sit on the Committee.

Article 48 – Advisory jurisdiction of the Court
The Court shall decide whether a request for an advisory opinion submitted by the Committee of Ministers is within its competence as defined in Article 47.

Article 49 – Reasons for advisory opinions
1. Reasons shall be given for advisory opinions of the Court.
2. If the advisory opinion does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.
3. Advisory opinions of the Court shall be communicated to the Committee of Ministers.

Article 50 – Expenditure on the Court
The expenditure on the Court shall be borne by the Council of Europe.

Article 51 – Privileges and immunities of judges
The judges shall be entitled, during the exercise of their functions, to the privileges and immunities provided for in Article 40 of the Statute of the Council of Europe and in the agreements made thereunder.

Section III – Miscellaneous provisions [footnote 3] [footnote 1]

Article 52 [footnote 1] **– Inquiries by the Secretary General**
On receipt of a request from the Secretary General of the Council of Europe any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention.

Article 53 [footnote 1] **– Safeguard for existing human rights**
Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a Party.

Article 54 [footnote 1] **– Powers of the Committee of Ministers**
Nothing in this Convention shall prejudice the powers conferred on the Committee of Ministers by the Statute of the Council of Europe.

Article 55 [footnote 1] – Exclusion of other means of dispute settlement

The High Contracting Parties agree that, except by special agreement, they will not avail themselves of treaties, conventions or declarations in force between them for the purpose of submitting, by way of petition, a dispute arising out of the interpretation or application of this Convention to a means of settlement other than those provided for in this Convention.

Article 56 [footnote 1]– Territorial application

1. footnote 4 Any State may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary General of the Council of Europe that the present Convention shall, subject to paragraph 4 of this Article, extend to all or any of the territories for whose international relations it is responsible.
2. The Convention shall extend to the territory or territories named in the notification as from the thirtieth day after the receipt of this notification by the Secretary General of the Council of Europe.
3. The provisions of this Convention shall be applied in such territories with due regard, however, to local requirements.
4. footnote 4 Any State which has made a declaration in accordance with paragraph 1 of this article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided by Article 34 of the Convention.

Article 57 [footnote 1] – Reservations

1. Any State may, when signing this Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this article.
2. Any reservation made under this article shall contain a brief statement of the law concerned.

Article 58 [footnote 1] – Denunciation

1. A High Contracting Party may denounce the present Convention only after the expiry of five years from the date on which it became a party to it and after six months' notice contained in a notification addressed to the Secretary General of the Council of Europe, who shall inform the other High Contracting Parties.
2. Such a denunciation shall not have the effect of releasing the High Contracting Party concerned from its obligations under this Convention in respect of any act which, being capable of constituting a violation of such obligations, may have been performed by it before the date at which the denunciation became effective.
3. Any High Contracting Party which shall cease to be a member of the Council of Europe shall cease to be a Party to this Convention under the same conditions.
4. [footnote 4] The Convention may be denounced in accordance with the provisions of the preceding paragraphs in respect of any territory to which it has been declared to extend under the terms of Article 56.

Article 59 [footnote 1] – Signature and ratification

1. This Convention shall be open to the signature of the members of the Council of Europe. It shall be ratified. Ratifications shall be deposited with the Secretary General of the Council of Europe.
2. The present Convention shall come into force after the deposit of ten instruments of ratification.
3. As regards any signatory ratifying subsequently, the Convention shall come into force at the date of the deposit of its instrument of ratification.
4. The Secretary General of the Council of Europe shall notify all the members of the Council of Europe of the entry into force of the Convention, the names of the High Contracting Parties who have ratified it, and the deposit of all instruments of ratification which may be effected subsequently.

Done at Rome this 4th day of November 1950, in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary
shall transmit certified copies to each of the signatories.

Footnotes

1. Heading added according to the provisions of Protocol No. 11 (ETS No. 155).
2. New Section II according to the provisions of Protocol No. 11 (ETS No. 155).
3. The articles of this Section are renumbered according to the provisions of Protocol No. 11 (ETS No. 155).
4. Text amended according to the provisions of Protocol No. 11 (ETS No. 155).

Protocol to The Convention for the Protection of Human Rights and Fundamental Freedoms, as Amended by Protocol No.11[19]

COUNCIL OF EUROPE
EUROPEAN TREATIES
ETS NO. 9

PARIS, 20.III.1952

Headings of articles added and text amended according to the provisions of Protocol No. 11 (ETS No. 155) as of its entry into force on 1 November 1998.

The governments signatory hereto, being members of the Council of Europe,

Being resolved to take steps to ensure the collective enforcement of certain rights and freedoms other than those already included in Section I of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"),

Have agreed as follows:

Article 1 – Protection of property
Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it
deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Article 2 – Right to education
No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in
conformity with their own religious and philosophical convictions.

Article 3 – Right to free elections
The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under
conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

Article 4 [footnote 1] – Territorial application
Any High Contracting Party may at the time of signature or ratification or at any time thereafter communicate to the Secretary General of the Council of Europe a declaration stating the extent to which it undertakes that the provisions of the present Protocol shall apply to such of the territories for the international relations of which it is responsible as are named therein.

Any High Contracting Party which has communicated a declaration in virtue of the preceding paragraph may from time to time communicate a further declaration modifying the terms of any former declaration or terminating the application of the provisions of this Protocol in respect of any territory.

A declaration made in accordance with this article shall be deemed to have been made in accordance with
paragraph 1 of Article 56 of the Convention.

Article 5 – Relationship to the Convention
As between the High Contracting Parties the provisions of Articles 1, 2, 3 and 4 of this Protocol shall be regarded as additional articles to the Convention and all the provisions of the Convention shall apply accordingly.

[19] http://www.echr.coe.int/Convention/webConvenENG.pdf

Article 6 – Signature and ratification

This Protocol shall be open for signature by the members of the Council of Europe, who are the signatories of the Convention; it shall be ratified at the same time as or after the ratification of the Convention. It shall enter into force after the deposit of ten instruments of ratification. As regards any signatory ratifying subsequently, the Protocol shall enter into force at the date of the deposit of its instrument of ratification.

The instruments of ratification shall be deposited with the Secretary General of the Council of Europe, who will notify all members of the names of those who have ratified.

Done at Paris on the 20th day of March 1952, in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatory governments.

Footnotes

1. Text amended according to the provisions of Protocol No. 11 (ETS No. 155).

Protocol No. 7 to The Convention for the Protection of Human Rights and Fundamental Freedoms, As Amended By Protocol No. 11[20]

COUNCIL OF EUROPE
EUROPEAN TREATIES

ETS NO. 117

STRASBOURG, 22.XI.1984

Headings of articles added and text amended according to the provisions of Protocol No. 11 (ETS No. 155) as from its entry into force on 1 November 1998.

The member States of the Council of Europe signatory hereto,

Being resolved to take further steps to ensure the collective enforcement of certain rights and freedoms by means of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"),

Have agreed as follows :

Article 1 – Procedural safeguards relating to expulsion of aliens

1. An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed:

a) to submit reasons against his expulsion,

b) to have his case reviewed, and

c) to be represented for these purposes before the competent authority or a person or persons designated by that authority.

2. An alien may be expelled before the exercise of his rights under paragraph 1.a, b and c of this Article, when such expulsion is necessary in the interests of public order or is grounded on reasons of national security.

Article 2 – Right of appeal in criminal matters

1. Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.

2. This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal.

Article 3 – Compensation for wrongful conviction

When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to the law or the practice of the State concerned, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

Article 4 – Right not to be tried or punished twice

1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.

2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly

[20] http://www.echr.coe.int/Convention/webConvenENG.pdf

discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.

3. No derogation from this Article shall be made under Article 15 of the Convention.

Article 5 – Equality between spouses

Spouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with their children, as to marriage, during marriage and in the event of its dissolution. This Article shall not prevent States from taking such measures as are necessary in the interests of the children.

Article 6 – Territorial application

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which the Protocol shall apply and state the extent to which it undertakes that the provisions of this Protocol shall apply to such territory or territories.

2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of two months after the date of receipt by the Secretary General of such declaration.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn or modified by a notification addressed to the Secretary General. The withdrawal or modification shall become effective on the first day of the month following the expiration of a period of two months after the date of receipt of such notification by the Secretary General.

4. [footnote 1] A declaration made in accordance with this Article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.

5. The territory of any State to which this Protocol applies by virtue of ratification, acceptance or approval by that State, and each territory to which this Protocol is applied by virtue of a declaration by that State under this Article, may be treated as separate territories for the purpose of the reference in Article 1 to the territory of a State.

6. [footnote 2] Any State which has made a declaration in accordance with paragraph 1 or 2 of this Article may at
any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it
accepts the competence of the Court to receive applications from individuals, non-governmental organisations or
groups of individuals as provided in Article 34 of the Convention in respect of Articles 1 to 5 of this Protocol.

Article 7 [footnote 1] – Relationship to the Convention

As between the States Parties, the provisions of Article 1 to 6 of this Protocol shall be regarded as additional
Articles to the Convention, and all the provisions of the Convention shall apply accordingly.

Article 8 – Signature and ratification

This Protocol shall be open for signature by member States of the Council of Europe which have signed the
Convention. It is subject to ratification, acceptance or approval. A member State of the Council of Europe may
not ratify, accept or approve this Protocol without previously or simultaneously ratifying the Convention.
Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 9 – Entry into force

1. This Protocol shall enter into force on the first day of the month following the expiration of a period of two
months after the date on which seven member States of the Council of Europe have expressed their consent to be
bound by the Protocol in accordance with the provisions of Article 8.

2. In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of two months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 10 – Depositary functions

The Secretary General of the Council of Europe shall notify all the member States of the Council of Europe of:

a) any signature;

b) the deposit of any instrument of ratification, acceptance or approval;

c) any date of entry into force of this Protocol in accordance with Articles 6 and 9;

d) any other act, notification or declaration relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 22nd day of November 1984, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

Footnotes

1. Text amended according to the provisions of Protocol No. 11 (ETS No. 155).

2. Text added according to the provisions of Protocol No. 11 (ETS No. 155).

Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Restructuring the Control Machinery Established Thereby[21]

COUNCIL OF EUROPE
European Treaties
ETS No. 155

Strasbourg, 11.V.1994

The member States of the Council of Europe,
signatories to this Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"),
Considering the urgent need to restructure the control machinery established by the Convention in order to maintain and improve the efficiency of its protection of human rights and fundamental freedoms, mainly in view of the increase in the number of applications and the growing membership of the Council of Europe;
Considering that it is therefore desirable to amend certain provisions of the Convention with a view, in particular, to replacing the existing European Commission and Court of Human Rights with a new permanent Court;
Having regard to Resolution No. 1 adopted at the European Ministerial Conference on Human Rights, held in Vienna on 19 and 20 March 1985;
Having regard to Recommendation 1194 (1992), adopted by the Parliamentary Assembly of the Council of Europe on 6 October 1992;
Having regard to the decision taken on reform of the Convention control machinery by the Heads of State and Government of the Council of Europe member States in the Vienna Declaration on 9 October 1993,

Have agreed as follows:

Article 1
The existing text of Sections II to IV of the Convention (Articles 19 to 56) and Protocol No. 2 conferring
upon the European Court of Human Rights competence to give advisory opinions shall be replaced by the
following Section II of the Convention (Articles 19 to 51):

"Section II - European Court of Human Rights

Article 19 - Establishment of the Court
To ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the protocols thereto, there shall be set up a European Court of Human Rights, hereinafter referred to as "the Court". It shall function on a permanent basis.

Article 20 - Number of judges
The Court shall consist of a number of judges equal to that of the High Contracting Parties.

Article 21 - Criteria for office

1.The judges shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence.
2.The judges shall sit on the Court in their individual capacity.
3.During their term of office the judges shall not engage in any activity which is incompatible with their independence, impartiality or with the demands of a full-time office; all questions arising from the application of this paragraph shall be decided by the Court.

Article 22 - Election of judges
1.The judges shall be elected by the Parliamentary Assembly with respect to each High Contracting Party by a majority of votes cast from a list of three candidates nominated by the High Contracting Party.
2.The same procedure shall be followed to complete the Court in the event of the accession of new High Contracting Parties and in filling casual vacancies.

[21] http://www.echr.coe.int/Convention/webConvenENG.pdf

Article 23 - Terms of office

1.The judges shall be elected for a period of six years. They may be re-elected. However, the terms of office of one-half of the judges elected at the first election shall expire at the end of three years.

2.The judges whose terms of office are to expire at the end of the initial period of three years shall be chosen by lot by the Secretary General of the Council of Europe immediately after their election.

3.In order to ensure that, as far as possible, the terms of office of one-half of the judges are renewed every three years, the Parliamentary Assembly may decide, before proceeding to any subsequent election, that the term or terms of office of one or more judges to be elected shall be for a period other than six years but not more than nine and not less than three years.

4. In cases where more than one term of office is involved and where the Parliamentary Assembly applies the preceding paragraph, the allocation of the terms of office shall be effected by a drawing of lots by the Secretary General of the Council of Europe immediately after the election.

5.A judge elected to replace a judge whose term of office has not expired shall hold office for the
remainder of his predecessor's term.

6.The terms of office of judges shall expire when they reach the age of 70.

7.The judges shall hold office until replaced. They shall, however, continue to deal with such cases as they already have under consideration.

Article 24 - Dismissal

No judge may be dismissed from his office unless the other judges decide by a majority of two-thirds that he has ceased to fulfil the required conditions.

Article 25 - Registry and legal secretaries

The Court shall have a registry, the functions and organisation of which shall be laid down in the rules of the Court. The Court shall be assisted by legal secretaries.

Article 26 - Plenary Court

The plenary Court shall

a) elect its President and one or two Vice-Presidents for a period of three years; they may be
re-elected;

b) set up Chambers, constituted for a fixed period of time;

c) elect the Presidents of the Chambers of the Court; they may be re-elected;

d) adopt the rules of the Court; and

e) elect the Registrar and one or more Deputy Registrars.

Article 27 - Committees, Chambers and Grand Chamber

1.To consider cases brought before it, the Court shall sit in committees of three judges, in Chambers of seven judges and in a Grand Chamber of seventeen judges. The Court's Chambers shall set up committees for a fixed period of time.

2.There shall sit as an ex officio member of the Chamber and the Grand Chamber the judge elected in
respect of the State Party concerned or, if there is none or if he is unable to sit, a person of its choice who shall sit in the capacity of judge.

3.The Grand Chamber shall also include the President of the Court, the Vice-Presidents, the Presidents of the Chambers and other judges chosen in accordance with the rules of the Court. When a case is referred to the Grand Chamber under Article 43, no judge from the Chamber which rendered the judgment shall sit in the Grand Chamber, with the exception of the President of the Chamber and the judge who sat in respect of the State Party concerned.

Article 28 - Declarations of inadmissibility by committees

A committee may, by a unanimous vote, declare inadmissible or strike out of its list of cases an individual application submitted under Article 34 where such a decision can be taken without further examination. The decision shall be final.

Article 29 - Decisions by Chambers on admissibility and merits

1.If no decision is taken under Article 28, a Chamber shall decide on the admissibility and merits of individual applications submitted under Article 34.

2.A Chamber shall decide on the admissibility and merits of inter-State applications submitted under Article 33.

3.The decision on admissibility shall be taken separately unless the Court, in exceptional cases, decides otherwise.

Article 30 - Relinquishment of jurisdiction to the Grand Chamber

Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects.

Article 31 - Powers of the Grand Chamber

The Grand Chamber shall

a) determine applications submitted either under Article 33 or Article 34 when a Chamber has relinquished jurisdiction under Article 30 or when the case has been referred to it under Article 43; and

b) consider requests for advisory opinions submitted under Article 47.

Article 32 - Jurisdiction of the Court

1.The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the protocols thereto which are referred to it as provided in Articles 33, 34 and 47.

2.In the event of dispute as to whether the Court has jurisdiction, the Court shall decide.

Article 33 - Inter-State cases

Any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the protocols thereto by another High Contracting Party.

Article 34 - Individual applications

The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

Article 35 - Admissibility criteria

1.The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.

2.The Court shall not deal with any individual application submitted under Article 34 that

a) is anonymous; or

b) is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.

3.The Court shall declare inadmissible any individual application submitted under Article 34 which it considers incompatible with the provisions of the Convention or the protocols thereto,

manifestly ill-founded, or an abuse of the right of application.
4.The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings.

Article 36 - Third-party intervention
1.In all cases before a Chamber or the Grand Chamber, a High Contracting Party one of whose nationals is an applicant shall have the right to submit written comments and to take part in hearings.
2.The President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings.

Article 37 - Striking out applications
1.The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

a) the applicant does not intend to pursue his application; or

b) the matter has been resolved; or

c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the protocols thereto so requires.
2.The Court may decide to restore an application to its list of cases if it considers that the
circumstances justify such a course.

Article 38 - Examination of the case and friendly settlement proceedings
1.If the Court declares the application admissible, it shall

a) pursue the examination of the case, together with the representatives of the parties, and if need be, undertake an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities;

b) place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the protocols thereto.
2.Proceedings conducted under paragraph 1.b shall be confidential.

Article 39 - Finding of a friendly settlement
If a friendly settlement is effected, the Court shall strike the case out of its list by means of a decision which shall be confined to a brief statement of the facts and of the solution reached.

Article 40 - Public hearings and access to documents
1.Hearings shall be public unless the Court in exceptional circumstances decides otherwise.
2.Documents deposited with the Registrar shall be accessible to the public unless the President of the Court decides otherwise.

Article 41 - Just satisfaction
If the Court finds that there has been a violation of the Convention or the protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.

Article 42 - Judgments of Chambers
Judgments of Chambers shall become final in accordance with the provisions of Article 44, paragraph 2.

Article 43 - Referral to the Grand Chamber
1.Within a period of three months from the date of the judgment of the Chamber, any party to the case may, in exceptional cases, request that the case be referred to the Grand Chamber.
2.A panel of five judges of the Grand Chamber shall accept the request if the case raises a serious question affecting the interpretation or application of the

Convention or the protocols thereto, or a serious issue of general importance.
3.If the panel accepts the request, the Grand Chamber shall decide the case by means of a judgment.

Article 44 - Final judgments
1.The judgment of the Grand Chamber shall be final.
2.The judgment of a Chamber shall become final

a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or

b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or

c) when the panel of the Grand Chamber rejects the request to refer under Article 43.

3.The final judgment shall be published.

Article 45 - Reasons for judgments and decisions
1.Reasons shall be given for judgments as well as for decisions declaring applications admissible or inadmissible.
2.If a judgment does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

Article 46 - Binding force and execution of judgments
1.The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
2.The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

Article 47 - Advisory opinions
1.The Court may, at the request of the Committee of Ministers, give advisory opinions on legal questions concerning the interpretation of the Convention and the protocols thereto.
2.Such opinions shall not deal with any question relating to the content or scope of the rights or freedoms defined in Section I of the Convention and the protocols thereto, or with any other question which the Court or the Committee of Ministers might have to consider in consequence of any such proceedings as could be instituted in accordance with the Convention.
3.Decisions of the Committee of Ministers to request an advisory opinion of the Court shall require a majority vote of the representatives entitled to sit on the Committee.

Article 48 - Advisory jurisdiction of the Court
The Court shall decide whether a request for an advisory opinion submitted by the Committee of Ministers is within its competence as defined in Article 47.

Article 49 - Reasons for advisory opinions
1.Reasons shall be given for advisory opinions of the Court.
2.If the advisory opinion does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.
3.Advisory opinions of the Court shall be communicated to the Committee of Ministers.

Article 50 - Expenditure on the Court
The expenditure on the Court shall be borne by the Council of Europe.

Article 51 - Privileges and immunities of judges
The judges shall be entitled, during the exercise of their functions, to the privileges and immunities provided for in Article 40 of the Statute of the Council of Europe and in the agreements made thereunder."

Article 2

1.Section V of the Convention shall become Section III of the Convention; Article 57 of the Convention shall become Article 52 of the Convention; Articles 58 and 59 of the Convention shall be deleted, and Articles 60 to 66 of the Convention shall become Articles 53 to 59 of the Convention respectively.
2.Section I of the Convention shall be entitled "Rights and freedoms" and new Section III of the Convention shall be entitled "Miscellaneous

provisions". Articles 1 to 18 and new Articles 52 to 59 of the Convention shall be provided with headings, as listed in the appendix to this Protocol.

3.In new Article 56, in paragraph 1, the words ," subject to paragraph 4 of this Article," shall be inserted after the word "shall"; in paragraph 4, the words "Commission to receive petitions" and "in accordance with Article 25 of the present Convention" shall be replaced by the words "Court to receive applications" and "as provided in Article 34 of the Convention" respectively. In new Article 58, paragraph 4, the words "Article 63" shall be replaced by the words "Article 56".

4.The Protocol to the Convention shall be amended as follows

a) the Articles shall be provided with the headings listed in the appendix to the present Protocol; and

b) in Article 4, last sentence, the words "of Article 63" shall be replaced by the words "of Article 56".

5.Protocol No. 4 shall be amended as follows

a) the Articles shall be provided with the headings listed in the appendix to the present Protocol;

b) in Article 5, paragraph 3, the words "of Article 63" shall be replaced by the words "of Article 56"; a new paragraph 5 shall be added, which shall read

> "Any State which has made a declaration in accordance with paragraph 1 or 2 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided in Article 34 of the Convention in respect of all or any of Articles 1 to 4 of this Protocol."; and

c) paragraph 2 of Article 6 shall be deleted.

6.Protocol No. 6 shall be amended as follows

a) the Articles shall be provided with the headings listed in the appendix to the present Protocol; and

b) .in Article 4 the words "under Article 64" shall be replaced by the words "under Article 57".

7.Protocol No. 7 shall be amended as follows:

a) the Articles shall be provided with the headings listed in the appendix to the present Protocol;

b) in Article 6, paragraph 4, the words "of Article 63" shall be replaced by the words "of Article 56"; a new paragraph 6 shall be added, which shall read:

> "Any State which has made a declaration in accordance with paragraph 1 or 2 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided in Article 34 of the Convention in respect of Articles 1 to 5 of this Protocol."; and

c) paragraph 2 of Article 7 shall be deleted.

8.Protocol No. 9 shall be repealed.

Article 3

1.This Protocol shall be open for signature by member States of the Council of Europe signatories to the Convention, which may express their consent to be bound by:

a) signature without reservation as to ratification, acceptance or approval; or

b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.

2. The instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 4

This Protocol shall enter into force on the first day of the month following the expiration of a period of one year after the date on which all Parties to the Convention have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 3. The election of new judges may take place, and any further necessary steps may be taken to establish the new Court, in accordance with the provisions of this Protocol from the date on which all Parties to the Convention have expressed their consent to be bound by the Protocol.

Article 5

1.Without prejudice to the provisions in paragraphs 3 and 4 below, the terms of office of the judges, members of the Commission, Registrar and Deputy Registrar shall expire at the date of entry into force of this Protocol.

2.Applications pending before the Commission which have not been declared admissible at the date of the entry into force of this Protocol shall be examined by the Court in accordance with the provisions of this Protocol.

3.Applications which have been declared admissible at the date of entry into force of this Protocol shall continue to be dealt with by members of the Commission within a period of one year thereafter. Any applications the examination of which has not been completed within the aforesaid period shall be transmitted to the Court which shall examine them as admissible cases in accordance with the provisions of this Protocol.

4.With respect to applications in which the Commission, after the entry into force of this Protocol, has adopted a report in accordance with former Article 31 of the Convention, the report shall be transmitted to the parties, who shall not be at liberty to publish it. In accordance with the provisions applicable prior to the entry into force of this Protocol, a case may be referred to the Court. The panel of the Grand Chamber shall determine whether one of the Chambers or the Grand Chamber shall decide the case. If the case is decided by a Chamber, the decision of the Chamber shall be final. Cases not referred to the Court shall be dealt with by the Committee of Ministers acting in accordance with the provisions of former Article 32 of the Convention.

5.Cases pending before the Court which have not been decided at the date of entry into force of this Protocol shall be transmitted to the Grand Chamber of the Court, which shall examine them in accordance with the provisions of this Protocol.

6.Cases pending before the Committee of Ministers which have not been decided under former Article 32 of the Convention at the date of entry into force of this Protocol shall be completed by the Committee of Ministers acting in accordance with that Article.

Article 6

Where a High Contracting Party had made a declaration recognising the competence of the Commission or the jurisdiction of the Court under former Article 25 or 46 of the Convention with respect to matters arising after or based on facts occurring subsequent to any such declaration, this limitation shall remain valid for the jurisdiction of the Court under this Protocol.

Article 7

The Secretary General of the Council of Europe shall notify the member States of the Council of:

a) any signature;

b) the deposit of any instrument of ratification, acceptance or approval;

c) the date of entry into force of this Protocol or of any of its provisions in accordance with Article 4; and

d) any other act, notification or communication relating to this Protocol.

In witness whereof, the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 11th day of May 1994, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

Appendix

Headings of articles to be inserted into the text of the Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols[1]

Article 1 – Obligation to respect human rights
Article 2 – Right to life
Article 3 – Prohibition of torture
Article 4 – Prohibition of slavery and forced labour
Article 5 – Right to liberty and security
Article 6 – Right to a fair trial
Article 7 – No punishment without law
Article 8 – Right to respect for private and family life
Article 9 – Freedom of thought, conscience and religion
Article 10 – Freedom of expression
Article 11 – Freedom of assembly and association
Article 12 – Right to marry
Article 13 – Right to an effective remedy
Article 14 – Prohibition of discrimination
Article 15 – Derogation in time of emergency
Article 16 – Restrictions on political activity of aliens
Article 17 – Prohibition of abuse of rights
Article 18 – Limitation on use of restrictions on rights
[...]
Article 52 – Enquiries by the Secretary General
Article 53 – Safeguard for existing human rights
Article 54 – Powers of the Committee of Ministers
Article 55 – Exclusion of other means of dispute settlement
Article 56 – Territorial application
Article 57 – Reservations
Article 58 – Denunciation
Article 59 – Signature and ratification

Protocol
Article 1 – Protection of property
Article 2 – Right to education
Article 3 – Right to free elections
Article 4 – Territorial application
Article 5 – Relationship to the Convention
Article 6 – Signature and ratification

Protocol No. 4
Article 1 – Prohibition of imprisonment for debt
Article 2 – Freedom of movement
Article 3 – Prohibition of expulsion of nationals
Article 4 – Prohibition of collective expulsion of aliens
Article 5 – Territorial application
Article 6 – Relationship to the Convention
Article 7 – Signature and ratification

Protocol No. 6
Article 1 – Abolition of the death penalty
Article 2 – Death penalty in time of war
Article 3 – Prohibition of derogations
Article 4 – Prohibition of reservations
Article 5 – Territorial application
Article 6 – Relationship to the Convention
Article 7 – Signature and ratification
Article 8 – Entry into force
Article 9 – Depositary functions

Protocol No. 7
Article 1 – Procedural safeguards relating to expulsion of aliens
Article 2 – Right of appeal in criminal matters
Article 3 – Compensation for wrongful conviction
Article 4 – Right not to be tried or punished twice
Article 5 – Equality between spouses
Article 6 – Territorial application
Article 7 – Relationship to the Convention
Article 8 – Signature and ratification
Article 9 – Entry into force
Article 10 – Depositary functions

Footnotes

[1].Headings have already been added to new Articles 19 to 51 of the Convention by the present Protocol.

PROTOCOL NO. 12 TO THE CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

ETS no. : 177[22]
Treaty open for signature by the member States signatories to Treaty ETS 5

Opened for signature:
04/11/00

The member States of the Council of Europe signatory hereto,

Having regard to the fundamental principle according to which all persons are equal before the law and are entitled to the equal protection of the law;

Being resolved to take further steps to promote the equality of all persons through the collective enforcement of a general prohibition of discrimination by means of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention");

Reaffirming that the principle of non-discrimination does not prevent States Parties from taking measures in order to promote full and effective equality, provided that there is an objective and reasonable justification for those measures,

Have agreed as follows:

Article 1 – General prohibition of discrimination

1 The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2 No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

Article 2 – Territorial application

1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.

2 Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt by the Secretary General of such declaration.

3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn or modified by a notification addressed to the Secretary General of the Council of Europe. The withdrawal or modification shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

4 A declaration made in accordance with this article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.

5 Any State which has made a declaration in accordance with paragraph 1 or 2 of this article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided by Article 34 of the

[22] http://www.echr.coe.int/Convention/webConvenENG.pdf

Convention in respect of Article 1 of this Protocol.

Article 3 – Relationship to the Convention

As between the States Parties, the provisions of Articles 1 and 2 of this Protocol shall be regarded as additional articles to the Convention, and all the provisions of the Convention shall apply accordingly.

Article 4 – Signature and ratification

This Protocol shall be open for signature by member States of the Council of Europe which have signed the Convention. It is subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol without previously or simultaneously ratifying the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 5 – Entry into force

1 This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which ten member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 4.

2 In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 6 – Depositary functions

The Secretary General of the Council of Europe shall notify all the member States of the Council of Europe of:

a any signature;

b the deposit of any instrument of ratification, acceptance or approval;

c any date of entry into force of this Protocol in accordance with Articles 2 and 5;

d any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Rome, this 4th day of November 2000, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

C) Application Form for the European Court

Voir Note explicative

See Explanatory Note

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

Conseil de l'Europe – *Council of Europe*
Strasbourg, France

REQUÊTE
APPLICATION[23]

présentée en application de l'article 34 de la Convention européenne des Droits de l'Homme, ainsi que des articles 45 et 47 du Règlement de la Cour

under Article 34 of the European Convention on Human Rights and Rules 45 and 47 of the Rules of Court

IMPORTANT: La présente requête est un document juridique et peut affecter vos droits et obligations.
This application is a formal legal document and may affect your rights and obligations.

[23] As found at: http://www.echr.coe.int/Application%20forms/Formule-bil1.pdf

I. LES PARTIES
THE PARTIES

A. LE REQUÉRANT / LA REQUÉRANTE
THE APPLICANT

(Renseignements à fournir concernant le / la requérant(e) et son / sa représentant(e) éventuel(le))
(Fill in the following details of the applicant and the representative, if any)

1. Nom de famille ..... 2. Prénom (s).....
Surname *First name (s)*
Sexe: masculin / féminin *Sex: male / female*

3. Nationalité ..... 4. Profession .....
Nationality Occupation

5. Date et lieu de naissance .....
Date and place of birth

6. Domicile .....
Permanent address

7. Tel. No.....

8. Adresse actuelle (si différente de 6.) .....
Present address (if different from 6.)

9. Nom et prénom du / de la représentant(e)* .....
*Name of representative**

10. Profession du / de la représentant*(e)* .....
Occupation of representative

11. Adresse du / de la représentant(e) .....
Address of representative

12. Tel. No..... Fax No.....

B. LA HAUTE PARTIE CONTRACTANTE
THE HIGH CONTRACTING PARTY

(Indiquer ci-après le nom de l'Etat / des Etats contre le(s) quel(s) la requête est dirigée)
(Fill in the name of the State(s) against which the application is directed)

13. .....

* Si le / la requérant(e) est représenté(e), joindre une procuration signée par le / la requérant(e) en faveur du/de la représentant(e).

A form of authority signed by the applicant should be submitted if a representative is appointed.

II. EXPOSÉ DES FAITS
STATEMENT OF THE FACTS

(Voir chapitre II de la note explicative)
(See Part II of the Explanatory Note)

14.

Si nécessaire, continuer sur une feuille séparée
Continue on a separate sheet if necessary

III. EXPOSÉ DE LA OU DES VIOLATION(S) DE LA CONVENTION ET / OU DES PROTOCOLES ALLÉGUÉE(S), AINSI QUE DES ARGUMENTS À L'APPUI
STATEMENT OF ALLEGED VIOLATION(S) OF THE CONVENTION AND / OR PROTOCOLS AND OF RELEVANT ARGUMENTS

(Voir chapitre III de la note explicative)
(See Part III of the Explanatory Note)

15.

IV. EXPOSÉ RELATIF AUX PRESCRIPTIONS DE L'ARTICLE 35 § 1 DE LA CONVENTION
STATEMENT RELATIVE TO ARTICLE 35 § 1 OF THE CONVENTION

(Voir chapitre IV de la note explicative. Donner pour chaque grief, et au besoin sur une feuille séparée, les renseignements demandés sous les points 16 à 18 ci-après)
(See Part IV of the Explanatory Note. If necessary, give the details mentioned below under points 16 to 18 on a separate sheet for each separate complaint)

16. Décision interne définitive (date et nature de la décision, organe – judiciaire ou autre – l'ayant rendue)
Final decision (date, court or authority and nature of decision)

17. Autres décisions (énumérées dans l'ordre chronologique en indiquant, pour chaque décision, sa date, sa nature et l'organe – judiciaire ou autre – l'ayant rendue)
Other decisions (list in chronological order, giving date, court or authority and nature of decision for each of them)

18. Dispos(i)ez-vous d'un recours que vous n'avez pas exercé? Si oui, lequel et pour quel motif n'a-t-il pas été exercé?
Is there or was there any other appeal or other remedy available to you which you have not used? If so, explain why you have not used it.

Si nécessaire, continuer sur une feuille séparée
Continue on a separate sheet if necessary

V. EXPOSÉ DE L'OBJET DE LA REQUÊTE ET PRÉTENTIONS PROVISOIRES POUR UNE SATISFACTION EQUITABLE
STATEMENT OF THE OBJECT OF THE APPLICATION AND PROVISIONAL CLAIMS FOR JUST SATISFACTION

(Voir chapitre V de la note explicative)
(See Part V of the Explanatory Note)

19.

VI. AUTRES INSTANCES INTERNATIONALES TRAITANT OU AYANT TRAITÉ L'AFFAIRE
STATEMENT CONCERNING OTHER INTERNATIONAL PROCEEDINGS

(Voir chapitre VI de la note explicative)
(See Part VI of the Explanatory Note)

20. Avez-vous soumis à une autre instance internationale d'enquête ou de règlement les griefs énoncés dans la présente requête? Si oui, fournir des indications détaillées à ce sujet.
Have you submitted the above complaints to any other procedure of international investigation or settlement? If so,give full details.

VII. PIÈCES ANNEXÉES **(PAS D'ORIGINAUX, UNIQUEMENT DES COPIES)**
LIST OF DOCUMENTS ***(NO ORIGINAL DOCUMENTS, ONLY PHOTOCOPIES)***

(Voir chapitre VII de la note explicative. Joindre copie de toutes les décisions mentionnées sous ch. IV et VI ci-dessus. Se procurer, au besoin, les copies nécessaires, et, en cas d'impossibilité, expliquer pourquoi celles-ci ne peuvent pas être obtenues. Ces documents ne vous seront pas retournés.)
(See Part VII of the Explanatory Note. Include copies of all decisions referred to in Parts IV and VI above. If you do not have copies, you should obtain them. If you cannot obtain them, explain why not. No documents will be returned to you.)

21.a) .....
b) .....
c) .....

VIII. DÉCLARATION ET SIGNATURE
DECLARATION AND SIGNATURE

(Voir chapitre VIII de la note explicative)
(See Part VIII of the Explanatory Note)

Je déclare en toute conscience et loyauté que les renseignements qui figurent sur la présente formule de requête sont exacts.
I hereby declare that, to the best of my knowledge and belief, the information I have given in the present application form is correct.

Lieu / *Place* .....
Date / *Date* .....

(Signature du / de la requérant(e) ou du / de la représentant(e))
(Signature of the applicant or of the representative)

D) Case-Law Under the European Convention

DECISIONS OF THE EUROPEAN COURT ON HUMAN RIGHTS

The following is a list of cases relevant to reproductive and sexual rights that have been decided by the European Court and the former European Commission of Human Rights. This is not an exhaustive list, but only an indication of the types of cases that may be used to advance reproductive and sexual health rights in the European Human Rights System. The cases listed have been organized according to reproductive and sexual rights that are offered protection under the European Convention. Full texts of these cases, may be found on the European Court of Human Rights web page at http://www.echr.coe.int/.

It is important to note that apart from taking a case directly to the court, there are other ways of submitting information to the European Court of Human Rights. Others, such as non-governmental organisations, (NGOs) who are not party to a complaint may nevertheless submit *amicus curiae* (friends of the court) documentation under Article 36 of Protocol No. 11 to the European Convention.:

Right to be Free from Inhuman and Degrading Treatment

D. v. United Kingdom (1997), Eur. Ct. H.R., Ser. A, No. , 24 E.H.R.R. 423
(Proposed removal of alien drug carrier dying of AIDS would deny the applicant vital medical treatment and shorten his life thus violating the prohibition of inhuman or degrading treatment under Art. 3).

Aydin v. Turkey (1997), Eur. Ct. H.R. 25 E.H.R.R. 251, Reports 1997-VI
(complainant was awarded damages after being subjected to rape and other forms of ill treatment amounting to torture under Article 3; complainant also denied right to fair hearing under Art. 6(1)).

Right to Procedural Fairness

Airey v. Ireland (1979), Eur. Ct. H.R., Series A No. 32
(The state was compelled to provide legal assistance to the applicant, who sought representation in order to obtain a judicial separation from her abusive husband. Failure to provide such representation resulted in the violation of her right to procedural fairness under Art. 6(1), and her right to private or family life under Art. 8).

Feldbrugge v. The Netherlands (1985), Eur. Ct. H.R., Ser. A, No. 99; 8 E.H.R.R. 425
(Proceedings that barred the applicant from continuing to receive a health insurance allowance held to violate the right to a fair hearing under Art. 6(1)).

X. v. France (1992), Eur. Ct. H.R., Ser. A., No. 234-C
(The length of compensation proceedings brought by a haemophiliac infected with the AIDS virus following blood transfusions, violated his right to a hearing within a reasonable time under Art. 6).

Stubbings & others v. U.K. (1996), Eur. Ct. H.R., Reports 1996-IV
(In view of the protection afforded by the domestic law against the sexual abuse of children and the margin of appreciation allowed to States in these matters, the denial of access of applicants to a court in respect of claims for compensation for psychological injury caused by childhood sexual abuse due to the Limtation Act, did not result in a violation of Art. 8 of the Convention (right to respect for privacy) or Art. 6 (right to a fair trial).

Van der Mussele v. Belgium (1983), Eur. Ct. H.R., Series A No. 70
(In the contracting state, the bar was obliged to provide legal representation of indigent persons and thus there was no violation of the applicants right not to be forced into compulsory labour under Art. 4).

See also:
Aydin v. Turkey under "Right to be free from Inhuman and Degrading Treatment"
Schuler-Zgraggen v. Switzerland under "Right to Equality"

Right to Private and Family Life

M.S. v. Sweden (1997), Eur. Ct. H.R., Reports 1997-I
(If the disclosure is proportionate to the legitimate aim pursued, personal and confidential medical data may be communicated by one public authority to another without a patient's consent, without being deemed a violation of the respect for private life under Art. 8).

Z. v. Finland (1997), Eur. Ct. H.R., Reports 1997-I
(The publication of an applicant's identity and medical condition (HIV positive) by the Finnish Court of Appeal in its judgment dealing with the conviction of her husband for rape and attempted manslaughter, did not pursue a legitimate aim, and was not found to necessary in a democratic society. Therefore the publication of this information was held to be a violation of the applicant's respect to privacy under Art. 8).

Keegan v. Ireland (1994), Eur. Ct. H.R., Ser. A, No.290
(The fact that Irish law permitted the secret placement of the child for adoption without the applicant's knowledge or consent, leading to the bonding of the child with the proposed adopters and to the subsequent making of an adoption order, amounted to an interference with the applicant's right to respect for family life under Art. 8).

Kjeldsen v. Denmark (1976), Eur. Ct. H.R., Ser. A, No. 23, 1 E.H.R.R. 711
(Information in a compulsory sex education course taught in State schools was conveyed in an objective and pluralistic manner, did not constitute indoctrination, and did not disrespect parents' religious or philosophical views, and thus was held to be consistent with the right to family life (Art. 8)).

Berrehab v. Netherlands, (1988), Eur. Ct. H.R., Ser. A., No 138, 11 E.H.R.R. 322
(Refusal of the Netherlands' government to grant the applicant a new residence permit after the divorce from his wife meant that he would be unable to continue to visit his daughter, and therefore amounted to interferences with the right to private and family life (Art. 8)).

Dalia v. France, (1981), Eur. Ct. H.R., Reports 1998-I
(Order permananently excluding from French territory a convicted Algerian woman who had arrived in France when she was 17 or to join her mother and seven brothers and sisters lawfully resident there, and who had an under-age child of French nationality, was not found to violate Article 8 (right to private and family life)).

Johnston v. Ireland (1986), Eur. Ct. H.R., Ser. A, No. 112
(Although Art. 8 does not require a state to implement divorce laws, it does require the state to place a child "legally and socially, in a position akin to that of a legitimate child ...". Therefore, a law in Ireland which prevented a child's parents from marrying due to the prohibition of divorce resulted in a failure to respect the child's right to family life under Art. 8).

Kroon v. The Netherlands (1994), Eur. Ct. H.R., Ser. A, No. 297-C, 19 E.H.R.R. 263
(The right to respect for family life is not confined to marriage-based relationships. Therefore, a father wrongly barred from establishing paternity resulted in a violation under Art. 8).

X., Y. and Z. v. The United Kingdom (1997), Eur. Ct. H.R., Reports 1997-II
(Notion of "family life" not confined solely to families based on marriage; factors such as cohabitation and length of relationship are also relevant under Art. 8).

Marckx v. Belgium (1979), Eur. Ct. H.R., Ser. A, No. 31; 2 E.H.R.R. 330
(Belgian legislation requiring an unmarried mother to specifically legitimate her child born out of wedlock held to discriminate on the basis of marital status (Art. 14), and to violate the right to respect for family life under (Art. 8).

X & Y. v. The Netherlands (1985), Eur. Ct. H.R., Ser. A, No.91, 8 E.H.R.R. 235
(State held responsible for not having enacted appropriate criminal legislation to vindicate the right to private life of a mentally handicapped sixteen-year girl who had been raped under Art. 8).

Dudgeon v. United Kingdom (1981), Eur. Ct. H.R., Ser. A, No. 5; 4 E.H.R.R. 149
(Northern Irish laws criminalizing consenting adult private homosexual conduct violated respect for private life (Article 8)).

Laskey, Jaggard, & Brown v. U.K. (1997), Eur. Ct. H.R., Reports 1997-I
(It is not a violation of privacy for national authorities to consider that the prosecution and conviction of the applicants for their sado-masochistic activities was necessary in a democratic society for the protection of health within the meaning of Article 8(2)).

Lustig-Prean & Beckett v. U.K (1999), Eur. Ct. H.R., Application no. 31417/96 ; 32377/96
(Neither the investigations conducted into the applicants' sexual orientation, nor their discharge from the British Armed Forces on the grounds of their homosexuality in pursuance of the Ministry of Defence policy were justified under Article 8(2) of the Convention).

Smith & Grady v. UK (1999) Eur. Ct. H:R:, Reports 1999-VI
(Neither the investigations conducted into the applicants' sexual orientation, nor their discharge from the British Armed Forces on the grounds of their homosexuality in pursuance of the Ministry of Defence policy were justified under Article 8(2) of the Convention).

A.D.T. v. The United Kingdom (2000) Eur. Ct. H:R. Application no. 00035765/97
(Since there was no "presseing social need" for the criminalisation of and prosecution for truly private and consensual group male homosexual activity, both the law prohibiting consensual sexual acts between more than two men in private and the conviction of the applicant were held to be in violation of Art. 8).

Modinos v. Cyprus (1993), Eur. Ct. H.R., Ser. A, No. 259, 16 E.H.R.R. 485
(Cypriot laws criminalizing consenting adult private homosexual conduct violated respect for private life under Art. 8).

Norris v. Ireland (1988), Eur. Ct. H.R., Ser. A, No. 142, 13 E.H.R.R. 186
(Irish laws criminalizing consenting adult private homosexual conduct violated respect for private life under Art. 8).

Rees v. United Kingdom (1987), Eur. Ct. H.R. Ser. A, No.106, 9 E.H.R.R. 433
(Government's refusal to change birth certificate to reflect applicant's new gender after operation was not a violation of Art. 8).

Van Oosterwijck v. Belgium (1980), Eur. Ct. H.R., Ser.A, No.40
(Case where applicant, a female to male transsexual, argued that the refusal to change his birth certificate was a violation of his right to privacy under Art. 8 was dismissed on basis of failure to exhaust domestic remedies).

B. v. France (1992), Eur. Ct. H.R., Ser. A, No.232-C
(As a result of the frequent necessity of disclosing information concerning her private life to third parties, the applicant, who was a transsexual, suffered distress which was too serious to be justified on the ground of respect for the rights of others which resulted in a violation of Art. 8).

See also:
Aireycase under "Right to Procedural Fairness"
Vermiere v. Belgium; Abdulaziz, Cabales and Balkandali v. United Kingdom; *Salguerio da Silva Mouta V* under "Right to Equality"
Stubbings & others v. U.K under "Right to Procedural Fairness"
Cossey v. U.K. under "Right to Marry"

Right to Freedom of Thought, Conscience and Religion

Thlimmenos v. Greece (2000), European Ct. H.R, App. No. 34369/97
(The Hellenic Republic was found to have violated the applicant's right to freedom of thought, conscience and religion when he was denied an appointment to the post of chartered accountant due to his prior criminal conviction for refusing to wear the military uniform based on his religious beliefs. This was held to violate Arts. 9 (freedom of thought, conscience and religion) and 14 (right to equality)).

Right to Receive and Impart Information

Bowman v. United Kingdom (1998), Eur. Ct. H.R. Ser. A, No. 141, 2-4 H.R.L.J. 84
(British legislation prohibiting payment for the distribution of anti-abortion leaflets in an election campaign found to violate of the right to freedom of expression under Art.10).

Handyside v. U.K. (1976) Eur. Ct. H.R. Ser. A, No. 24.
(The English court was entitled, in its discretion to decide that a book about sexuality would have pernicious effects on the morals of the children and adolescents and therefore there was no violation of the right to freedom of expression under Art. 10).

Open Door Counselling and Dublin Well Women v. Ireland (1992), Eur. Ct. H.R., Ser. A, No. 246, 15 E.H.R.R. 244
(Irish governmental ban on counselling and circulation of information with regard to where one might find legal abortions in Britain violated the right to impart and receive information under Art. 10).

Right to Marry and Found a Family

F. v. Switzerland (1987), Eur. Ct. H.R., Ser. A, No.128
(Swiss legislation that prohibited the applicant from remarrying for three years following his third divorce was in contravention of the Convention since divorced persons have the right to remarry without unreasonable restrictions under Art. 12 (right to marry)).

Cossey v. U.K. (1990), Eur. Ct. H.R., Ser.A, No.184
(Contracting States may regulate marriages and may require that only couples who are biologically of the opposite sex may marry. Therefore the refusal to allow the applicant - a male to female transsexual – to marry another man was not a violation of the right to privacy (Art. 8) or the right to marry (Art. 12).

Right to Equality

Abdulaziz, Cabales and Balkandali v. United Kingdom, (1985), Eur. Ct. H.R., Ser. A, No. 94
(Law requiring women, but not men, lawfully settled in the United Kingdom to meet certain requirements before their foreign husbands could join them amounted to sex discrimination with respect to their right to respect for family life (Article 14 in conjunction with Article 8).

Rasmussen v. Denmark (1984), Eur. Ct. H.R., Ser. A., No. 87
(Danish law that established time limits for paternity tests but no time limits for maternity tests did not result in a violation of the right to equality under Art. 14).

Inze v. Austria (1987), Eur. Ct. H.R., Ser. A, No. 126
(Austrian law drawing a distinction on grounds of legitimacy found to be a breach of Article 1 of Protocol 1 to the European Convention and Article 14 of the European Convention).

Vermiere v. Belgium (1991), Eur. Ct. H.R., Ser. A, No.214-C
(The applicant's exclusion from the estate of her grandfather solely by reason of her being an illegitimate child violated Art. 14 (prohibition of discrimination) in conjunction with Art. 8 (right to respect for private life)).

Salguerio da Silva Mouta v. Portugal (1999) Eur. Ct. H.R. Reports 1999-IX
*(*The applicant was prevented by his ex-wife from visiting his daughter in breach of an agreeement reached at the time of their divorce. Parental responsibility for the child was granted to her mother, based on the fact that the applicant was homosexual and was living with another man. Because the final decision to award custody had made a distinction based on the applicant's sexual orientation there had been a violation of Art. 8 in conjunction with Art. 14).

Schuler-Zgraggen v. Switzerland (1993), Eur. Ct. H.R., Ser. A, No. 263, 16 E.H.R.R. 405
(Denial of social security benefit on basis of assumption that women gave up work after they gave birth to a child constituted discrimination on the basis of sex under Art. 14 and violated the applicant's right to fair proceedings under Art. 6(1)).

See also:
Thlimmenos v. Greece under "Right to Freedom of Thought, Conscience and Religion"

SELECTED DECISIONS OF THE EUROPEAN COMMISSION ON HUMAN RIGHTS

Right to Life and Survival

X. v. Norway (1961), Eur. Comm. H.R., Application No. 867/60
(Right to life under Article 2 is compatible with law authorizing interruption of pregnancy).

Tavares v. France (1991), Eur. Comm. H.R., Application No. 16593/90, unpublished
(Maternal death case held inadmissible for technical reasons, but the Commission emphasized that the right to life (Article 2) not only requires States to take steps to prevent intentional killing but to take measures necessary to protect life against unintentional loss).

Right to be Free from Inhuman and Degrading Treatment

Karara v. Finland, (1988), Eur. Comm. H.R., Application No. 40900/98, 29 May 1998
(An HIV positive applicant's challenge to a deportation order was dismissed where there was no indication that he would have to face ill-treatment upon returning to home country and he had not yet reached such an advanced stage of illness such that his deportation would amount to treatment proscribed by Article 3 of the Charter).

Cyprus v. Turkey (1976), Eur. Comm. H.R., 4 E.H.R.R. 482
(The non-derogable prohibition of torture violated when Turkish troops raped women during the invasion of Cyprus).

Right to Liberty and Security of the Person

R. Magarit v. U.K., Eur. Comm. H.R., Application no. 22761/93, 14 April 1994
(The decision not to take the applicant's onset of AIDS into account as a mitigating factor in sentencing was not unreasonable or disproportionate and therefore did not violate the applicant's right to liberty and security of the person under Article 5 of the Charter).

Right to Private and Family Life

Bruggemann & Scheuten v. Federal Republic of Germany (1977), Eur. Comm. H.R., 3 E.H.R.R. 244
(Not every restriction on the termination of an unwanted pregnancy constituted an interference with the right of respect for private life of the mother. Article 8(1) of the Convention could not therefore be interpreted as meaning that preganancy and its termination were, in principle, solely a matter of the private life of the mother).

H v. Norway (1992), Eur. Comm. H.R., 73 E.H.R.R. 155
(Father's right to respect for privacy and family life not violated by failure of mother to consult him before having an abortion since any interpretation of a father's right in connection with an abortion must first of all take into consideration the mother's right).

Paton v. United Kingdom (1980), Eur. Comm. H.R., 3 E.H.R.R. 408; 19 Eur. Comm'n H.R. 244
(A woman's right to respect for private life in her decision on childbearing given priority over her husband's right to respect for his family life in the birth of his child).

E.L. H. and P.B. H. v. the United Kingdom (1997), Eur. Comm. H.R., Application no. 32094/96, & 32568/96, 91 E.H.R.R. 61
(Refusal to authorise conjugal visits to a prisoner for the purposes of procreation does not violate right to private life under Article 8 or the right to non-discrimination based on religion under Art).

Roetzheim v. Germany, (1997), Eur. Comm. H.R., Application no. 31177/96, 91 E.H.R.R. 40
(The refusal of a transsexual's request for rectification of his birth certificate on the ground that he does not meet the conditions laid down by domestic law (namely, that he be unmarried, has undergone gender reassignment surgery and is permanently unable to procreate) does not disclose any lack of respect for private life (Article 8)).

Right to Equality

Application No. 9639/82 v. Germany (1984), Eur. Comm. H.R., 7 E.H.R.R. 135
(German legislation that gives mother of a child born out of wedlock sole custody is not discriminatory under Art. 14).

Lindsay v. United Kingdom (1986), Eur. Comm. H.R., 9 E.H.R.R. 555
(Dismissed complaint that U.K. law bore unfavourably on married women as opposed to married men since married couples are considered as a single taxable unit. Therefore no violation of Art. 14).

Ms. X and her daughter v. the United Kingdom, (1989), Application No. 14753/89, unpublished, as cited in M. Buquicchio-de Boer, Equality Between the Sexes and the European Convention on Human Rights (1995)
(Immigration rules which give priority and better guarantees to traditional established families rather than other established relationships like a lesbian partnership do not constitue discrimination under Art. 14).

Rabia Bibi v. the United Kingdom, (1992), Application No. 19628/92, unpublished, as cited in M. Buquicchio-de Boer, Equality Between the Sexes and the European Convention on Human Rights (1995)
(Refusal of State to allow second wife of polygamous marriage into United Kingdom was a legitimate aim to preserve monogamous culture and within State's discretion, therefore no violation of Art.14).

S. v. the United Kingdom, (1986), Application No. 11716/85, unpublished, as cited in M. Buquicchio-de Boer, Equality Between the Sexes and the European Convention on Human Rights (1995)
(Refusal to vest a tenancy in the survivor of a lesbian couple did not amount to discrimination since the protection of heterosexual family life under the Housing Act 1980 is objective and reasonable and therefore no violation of Art. 14).

See also:
E.L. H. and P.B. H. v. the United Kingdom (1997), Eur. Comm. H.R., Application no. 32094/96, & 32568/96, 91 E.H.R.R. 61 under "Right to private and family life"

EXHAUSTION OF DOMESTIC REMEDIES

a) Basic Rules

1) Article 35(1) of the Convention states:

   1) The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.

   2) The rule of exhaustion of domestic remedies obliges those seeking to bring their case against the state before an international judicial or arbitral organ to use first the remedies provided by the national legal system (*Akdivar and others v. Turkey*, (1996) Eur. Ct. H.R., Reports 1996-IV).

   3) The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (*Akdivar and others v. Turkey*, (1996) Eur. Ct. H.R., Reports 1996-IV).

   4) The complaints intended to be made at Strasbourg should also have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should have been used (See for e.g. *Ahmet Sadik v. Greece*, (1996) Eur. Ct. H.R., Reports 1996-V; *Van Oosterwijck v. Belgium*, (1980) Eur. Ct. H.R., Ser.A, No.40; *Quintana Zapata v. Spain* (1998), Application no. 34615/97, 92 E.H..R.R. 139).

b) Exceptions

1) There is no obligation to have recourse to remedies which are inadequate or ineffective. An applicant is not required to exhust a domestic remedy if, in view of the consistent caselaw of the national courts, this remedy has no reasonable chance of success. However the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust domestic remedies,meaning that the existing remedies at the national level must be exhausted not only in theory, but also in practice. (See, for e.g. *I.S. v. Slovakia*, (2000) Eur. Ct. H.R., Application no. 00025006/94; *Raninen v. Finland*, (1997) Eur. Ct. H.R., Reports 1997-VIII; *Andronicou and Constantinou v. Cyprus*, (1997) Eur. Ct. H.R., Reports 1997-VI; *Gautrin and others v. France*, (1998) Eur. Ct. H. R., Reports 1998-III).

2) According to the "generally recognised rules of international law" there may be special circumstances which absolve the applicant from the obligation to exhaust the domestic remedies at his disposal (See, for e.g. *Akdivar and others v. Turkey*, (1996) Eur. Ct. H.R., Reports 1996-IV).

3) Such special circumstances include, for example:
   i) an administrative practice which consists of a repetition of acts incompatible with the Convention, and where official tolerance by the State authorities has been shown to exist and is of such a nature as to make proceedings futile or ineffective (See, for e.g. *Akdivar and others v. Turkey*, (1996) Eur. Ct. H.R., Reports 1996-IV; *Mentes And Others v. Turkey*, (1997) Eur. Ct. H.R. Reports 1997-VIII).

ii) national authorities remaining totally passive in the face of serious allegations of misconduct or infliction of harm by State agents, for example where they have failed to undertake investigations or offer assistance (See, for e.g. *Aksoy v. Turkey*, (1996) Eur. Ct. H.R., Reports 1996-VI).

4) Furthermore, the Human Rights Court has recognised that Art. 35 must be applied with some degree of flexibility and without excessive formalism (*Akdivar and others v. Turkey*, (1996) Eur. Ct. H.R., Reports 1996-IV).

5) The rule of exhaustion of domestic remedies is neither absolute nor capable of being applied automatically. In reviewing whether it has been observed, it is essential to have regard to the particular circumstances of each individual case. This means amongst other things that it must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned, but also of the general legal and political context in which they operate as well as the personal circumstances of the applicants (See, for e.g. *Akdivar and others v. Turkey*, (1996) Eur. Ct. H.R., Reports 1996-IV).

c) Burden of proof

1) The Human Rights Court states that there is a distribution of the burden. It is incumbent on the government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time - i.e. - it was accessible, was capable of providing redress in respect of the applicant's complaints, and offered reasonable prospects of success.

2) Once this burden of proof has been satisfied it falls to the applicant to establish that the remedy advanced by the government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from the requirement.

3) Finally, if the applicant satisfies this burden, the burden of proof shifts once again, so that it becomes incumbent on the respondent government to show what they have done in response to the scale and seriousness of the matters complained of (*Akdivar and others v. Turkey*, (1996) Eur. Ct. H.R., Reports 1996-IV).

PART II:

THE EUROPEAN CONVENTION FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

&

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

A) Introduction to the Conventions

Introduction to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment[24]

Open for signature by the member States of the Council of Europe, in Strasbourg, on 26 November 1987 and *entered into force* 1 February 1989.

Prevention a priority
In recent years the Council of Europe‘s efforts to guarantee human rights have laid increasing emphasis on preventing violations. Article 3 of the European Convention on Human Rights provides that “No one shall be subjected to torture or to inhuman or degrading treatment or punishment”. The idea behind the drafting of the 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment was to prevent such ill-treatment of people deprived of their liberty.

The Convention provides non-judicial preventive machinery to protect detainees. It is based on a system of visits by members of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). The Secretariat of the CPT forms part of the Council of Europe’s Directorate of Human Rights.

Independent experts
The CPT’s members are independent and impartial experts from a variety of backgrounds, including law, medicine, prison affairs and politics, elected for a four-year term by the Committee of Ministers, the Council of Europe’s decision-making body. One member may be elected in respect of each Contracting State.

A system of visits
The CPT visits places of detention - e.g. prisons and places of youth detention, police stations, army barracks and psychiatric hospitals - to see how detainees are treated and, if necessary, to recommend improvements. However, the CPT is not empowered to deal with individual applications as these are the responsibility of the judicial bodies set up under the European Convention on Human Rights.

Delegations, usually of two or more CPT members, visit for one or two weeks, accompanied by other experts, members of the Committee’s Secretariat and interpreters. The member elected in respect of the country being visited does not join the delegation.

Spot checks
CPT delegations visit Contracting States periodically but may organise additional “ad hoc” visits if necessary. To date the CPT has made 87 periodic visits and 40 ad hoc visits. The Committee must notify the state concerned but need not specify the period between notification and the actual visit, which, in exceptional circumstances, may be carried out immediately after notification. Governments’ objections to the time or place of a visit can only be justified on grounds of national defence, public safety, serious disorder, the medical condition of a person or that an urgent interrogation relating to a serious crime is in progress. In such cases the state must immediately take steps to enable the Committee to visit as soon as possible.

Unlimited access
Under the Convention, CPT delegations have unlimited access to places of detention and complete freedom of movement within them. They interview detainees without witnesses and have free access to anyone who

[24] This summary was taken from the CPT website at: http://www.cpt.coe.int/en/about.htm

can provide information. Their recommendations, if any, are included in a report, which is a basis for dialogue with the state concerned.

Co-operation and confidentiality

The CPT has two guiding principles - co-operation and confidentiality. Co-operation with the national authority is at the heart of the Convention - the object is to protect detainees rather than to condemn States for abuses. Therefore the Committee meets in private and its reports are strictly confidential. Nevertheless, if a country refuses to co-operate or fails to improve the situation in the light of the Committee's recommendations, the CPT may decide to make a public statement. Of course, the state itself may request publication of the Committee's report, together with its comments - to date, 83 reports have been published in this way. In addition, the CPT's annual report to the Committee of Ministers is made available as a public document. These documents may be found online at: http://www.cpt.coe.int/en/

New provisions

There are two amending protocols to the European Convention for the Prevention of Torture and Inhuman or Degrading Punishment. The first protocol "opens" the Convention to non-member States which the Committee of Ministers invite to accede to it. The second protocol introduces technical changes, including provisions to renew half the CPT's membership every two years. It also allows members to be re-elected twice, instead of once, as at present. These protocols will be effective when all Contracting States agree to them.

Introduction to 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 [25]

Open for signature by the Member States of the Council of Europe, the non-member States which have participated in its elaboration and by the European Community, on 4 April 1997 and *Entered into force* 1 December 1999.

Summary of the treaty

The Convention is the first legally-binding international text designed to preserve human dignity, rights and freedoms through a series of principles and prohibitions against the misuse of biological and medical advances.

The Convention's starting point is that the interests of human beings must come before the interests of science or society. It lays down a series of principles and prohibitions concerning bioethics, medical research, consent, rights to private life and information, organ transplantation and public debate.

It bans all forms of discrimination based on the grounds of a person's genetic make-up and allows the carrying out of predictive genetic tests only for medical purposes. The treaty allows genetic engineering only for preventive, diagnostic or therapeutic reasons and only where it does not aim to change the genetic make-up of a person's descendants. It prohibits the use of techniques of medically assisted procreation to help choose the sex of a child, except where it would avoid a serious hereditary condition.

[25] This summary was taken from the Council of Europe website at: http://conventions.coe.int/Treaty/EN/CadreListeTraites.htm

The Convention sets out rules related to medical research by including detailed and precise conditions, especially for people who cannot give their consent. It prohibits the creation of human embryos for research purposes and requires an adequate protection of embryos where countries allow in-vitro research.

The Convention states the principle according to which a person has to give the necessary consent for treatment expressly, in advance, except in emergencies, and that such consent may be freely withdrawn at any time. The treatment of persons unable to give their consent, such as children and people with mental illnesses, may be carried out only if it could produce real and direct benefit to his or her health.

The Convention stipulates that all patients have a right to be informed about their health, including the results of predictive genetic tests. The Convention recognises also the patient's right not to know.

Additional Protocols clarify, strengthen and supplement the overall Convention.

The Steering Committee on Bioethics (CDBI), or any other committee designated by the Committee of Ministers or the Parties, may request the European Court of Human Rights to give advisory opinions on legal questions concerning the interpretation of the Convention.

The articles relevant to reproductive and sexual health rights include, but are not limited to:

- Articles 1, 11, & 14: right to equality
- Article 3: right to equitable access to health care
- Articles 5, 16 & 17: right to free and informed consent
- Article 10: right to private life and right to information

B) Basic Texts

EUROPEAN CONVENTION FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Strasbourg, 26.XI.1987

Protocol no. 1 to the Convention (ETS 151)
Protocol no. 2 to the Convention (ETS 152)

The member States of the Council of Europe, signatory hereto,
Having regard to the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms;
Recalling that, under Article 3 of the same Convention, "no one shall be subjected to torture or to inhuman or degrading treatment or punishment";
Noting that the machinery provided for in that Convention operates in relation to persons who allege that they are victims of violations of Article 3;
Convinced that the protection of persons deprived of their liberty against torture and inhuman or degrading treatment or punishment could be strengthened by non-judicial means of a preventive character based on visits,
Have agreed as follows:

Chapter I

Article 1

There shall be established a European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "the Committee"). The Committee

shall, by means of visits, examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment.

Article 2

Each Party shall permit visits, in accordance with this Convention, to any place within its jurisdiction where persons are deprived of their liberty by a public authority.

Article 3

In the application of this Convention, the Committee and the competent national authorities of the Party concerned shall co-operate with each other.

Chapter II

Article 4

1. The Committee shall consist of a number of members equal to that of the Parties.
2. The members of the Committee shall be chosen from among persons of high moral character, known for their competence in the field of human rights or having professional experience in the areas covered by this Convention.
3. No two members of the Committee may be nationals of the same State.
4. The members shall serve in their individual capacity, shall be independent and impartial, and shall be available to serve the Committee effectively.

Article 5

1. The members of the Committee shall be elected by the Committee of Ministers of the Council of Europe by an absolute majority of votes, from a list of names drawn up by the Bureau of the Consultative Assembly of the Council of Europe; each national delegation of the Parties in the Consultative Assembly shall put forward three candidates, of whom two at least shall be its nationals.
2. The same procedure shall be followed in filling casual vacancies.
3. The members of the Committee shall be elected for a period of four years. They may only be re-elected once. However, among the members elected at the first election, the terms of three members shall expire at the

end of two years. The members whose terms are to expire at the end of the initial period of two years shall be chosen by lot by the Secretary General of the Council of Europe immediately after the first election has been completed.

Article 6

1. The Committee shall meet in camera. A quorum shall be equal to the majority of its members. The decisions of the Committee shall be taken by a majority of the members present, subject to the provisions of Article 10, paragraph 2.
2. The Committee shall draw up its own rules of procedure.
3. The Secretariat of the Committee shall be provided by the Secretary General of the Council of Europe.

Chapter III

Article 7

1. The Committee shall organise visits to places referred to in Article 2. Apart from periodic visits, the Committee may organise such other visits as appear to it to be required in the circumstances.
2. As a general rule, the visits shall be carried out by at least two members of the Committee. The Committee may, if it considers it necessary, be assisted by experts and interpreters.

Article 8

1. The Committee shall notify the Government of the Party concerned of its intention to carry out a visit. After such notification, it may at any time visit any place referred to in Article 2.
2. A Party shall provide the Committee with the following facilities to carry out its task:
    a. access to its territory and the right to travel without restriction;
    b. full information on the places where persons deprived of their liberty are being held;
    c. unlimited access to any place where persons are deprived of their liberty, including the right to move inside such places without restriction;
    d. other information available to the Party which is necessary for the Committee to carry out its task. In seeking such information, the Committee shall have regard to applicable rules of national law and professional ethics.
3. The Committee may interview in private persons deprived of their liberty.
4. The Committee may communicate freely with any person whom it believes can supply relevant information.
5. If necessary, the Committee may immediately communicate observations to the competent authorities of the Party concerned.

Article 9

1. In exceptional circumstances, the competent authorities of the Party concerned may make representations to the Committee against a visit at the time or to the particular place proposed by the Committee. Such representations may only be made on grounds of national defence, public safety, serious disorder in places where persons are deprived of their liberty, the medical condition of a person or that an urgent interrogation relating to a serious crime is in progress.
2. Following such representations, the Committee and the Party shall immediately enter into consultations in order to clarify the situation and seek agreement on arrangements to enable the Committee to exercise its functions expeditiously. Such arrangements may include the transfer to another place of any person whom the Committee proposed to visit. Until the visit takes place, the Party shall provide information to the Committee about any person concerned.

Article 10

1. After each visit, the Committee shall draw up a report on the facts found during the visit, taking account of any observations which may have been submitted by the Party concerned. It shall transmit to the latter its report containing any recommendations it considers necessary. The Committee may consult with the Party with a view to suggesting, if necessary, improvements in the protection of persons deprived of their liberty.

2. If the Party fails to co-operate or refuses to improve the situation in the light of the Committee's recommendations, the Committee may decide, after the Party has had an opportunity to make known its views, by a majority of two-thirds of its members to make a public statement on the matter.

Article 11

1. The information gathered by the Committee in relation to a visit, its report and its consultations with the Party concerned shall be confidential.
2. The Committee shall publish its report, together with any comments of the Party concerned, whenever requested to do so by that Party.
3. However, no personal data shall be published without the express consent of the person concerned.

Article 12

Subject to the rules of confidentiality in Article 11, the Committee shall every year submit to the Committee of Ministers a general report on its activities which shall be transmitted to the Consultative Assembly and made public.

Chapter IV

Article 15

Each Party shall inform the Committee of the name and address of the authority competent to receive notifications to its Government, and of any liaison officer it may appoint.

Article 16

The Committee, its members and experts referred to in Article 7, paragraph 2 shall enjoy the privileges and immunities set out in the annex to this Convention.

Article 17

1. This Convention shall not prejudice the provisions of domestic law or any international agreement which provide greater protection for persons deprived of their liberty.
2. Nothing in this Convention shall be construed as limiting or derogating from the competence of the organs of the European Convention on Human Rights or from the obligations assumed by the Parties under that Convention.
3. The Committee shall not visit places which representatives or delegates of Protecting Powers or the International Committee of the Red Cross effectively visit on a regular basis by virtue of the Geneva Conventions of 12 August 1949 and the Additional Protocols of 8 June 1977 thereto.

Article 13

The members of the Committee, experts and other persons assisting the Committee are required, during and after their terms of office, to maintain the confidentiality of the facts or information of which they have become aware during the discharge of their functions

Article 14

1. The names of persons assisting the Committee shall be specified in the notification under Article 8, paragraph 1.
2. Experts shall act on the instructions and under the authority of the Committee. They shall have particular knowledge and experience in the areas covered by this Convention and shall be bound by the same duties of independence, impartiality and availability as the members of the Committee.
3. A Party may exceptionally declare that an expert or other person assisting the Committee may not be allowed to take part in a visit to a place within its jurisdiction.

Chapter V

Article 18

This Convention shall be open for signature by the member States of the Council of Europe. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 19

1. This Convention shall enter into force on the first day of the month

following the expiration of a period of three months after the date on which seven member States of the Council of Europe have expressed their consent to be bound by the Convention in accordance with the provisions of Article 18.

2. In respect of any member State which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 20

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Convention shall apply.
2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 21

No reservation may be made in respect of the provisions of this Convention.

Article 22

1. Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
2. Such denunciation shall become effective on the first day of the month following the expiration of a period of twelve months after the date of receipt of the notification by the Secretary General.

Article 23

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe of:

a. any signature;
b. the deposit of any instrument of ratification, acceptance or approval;
c. any date of entry into force of this Convention in accordance with Articles 19 and 20;
d. any other act, notification or communication relating to this Convention, except for action taken in pursuance of Articles 8 and 10.

In witness whereof, the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, this 26th day of November 1987, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

Annex

Privileges and immunities

(Article 16)

1. For the purpose of this annex, references to members of the Committee shall be deemed to include references to experts mentioned in Article 7, paragraph 2.
2. The members of the Committee shall, while exercising their functions and during journeys made in the exercise of their functions, enjoy the following privileges and immunities:
   a. immunity from personal arrest or detention and from seizure of their personal baggage and, in respect of words spoken or written and all acts done by them in their official capacity,

immunity from legal process of every kind;

b. exemption from any restrictions on their freedom of movement on exit from and return to their country of residence, and entry into and exit from the country in which they exercise their functions, and from alien registration in the country which they are visiting or through which they are passing in the exercise of their functions.

3. In the course of journeys undertaken in the exercise of their functions, the members of the Committee shall, in the matter of customs and exchange control, be accorded:

a. by their own Government, the same facilities as those accorded to senior officials travelling abroad on temporary official duty;

b. by the Governments of other Parties, the same facilities as those accorded to representatives of foreign Governments on temporary official duty.

4. Documents and papers of the Committee, in so far as they relate to the business of the Committee, shall be inviolable. The official correspondence and other official communications of the Committee may not be held up or subjected to censorship.

5. In order to secure for the members of the Committee complete freedom of speech and complete independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer engaged in the discharge of such duties.

6. Privileges and immunities are accorded to the members of the Committee, not for the personal benefit of the individuals themselves but in order to safeguard the independent exercise of their functions. The Committee alone shall be competent to waive the immunity of its members; it has not only the right, but is under a duty, to waive the immunity of one of its members in any case where, in its opinion, the immunity would impede the course of justice, and where it can be waived without prejudice to the purpose for which the immunity is accorded.

CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND DIGNITY OF THE HUMAN BEING WITH REGARD TO THE APPLICATION OF BIOLOGY AND MEDICINE: CONVENTION ON HUMAN RIGHTS AND BIOMEDICINE

Oviedo, 4.IV.1997

Preamble

The member States of the Council of Europe, the other States and the European Community, signatories hereto,
Bearing in mind the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10 December 1948;
Bearing in mind the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950;
Bearing in mind the European Social Charter of 18 October 1961;
Bearing in mind the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights of 16 December 1966;
Bearing in mind the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981;
Bearing also in mind the Convention on the Rights of the Child of 20 November 1989;
Considering that the aim of the Council of Europe is the achievement of a greater unity between its members and that one of the methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms;
Conscious of the accelerating developments in biology and medicine;
Convinced of the need to respect the human being both as an individual and as a member of the human species and recognising the importance of ensuring the dignity of the human being;
Conscious that the misuse of biology and medicine may lead to acts endangering human dignity;
Affirming that progress in biology and medicine should be used for the benefit of present and future generations;
Stressing the need for international co-operation so that all humanity may enjoy the benefits of biology and medicine;
Recognising the importance of promoting a public debate on the questions posed by the application of biology and medicine and the responses to be given thereto;
Wishing to remind all members of society of their rights and responsibilities;
Taking account of the work of the Parliamentary Assembly in this field, including Recommendation 1160 (1991) on the preparation of a convention on bioethics;
Resolving to take such measures as are necessary to safeguard human dignity and the fundamental rights and freedoms of the individual with regard to the application of biology and medicine,
Have agreed as follows:

Chapter I – General provisions

Article 1 – Purpose and object

Parties to this Convention shall protect the dignity and identity of all human beings and guarantee everyone, without discrimination, respect for their integrity and other rights and fundamental freedoms with regard to the application of biology and medicine. Each Party shall take in its internal law the necessary measures to give effect to the provisions of this Convention.

Article 2 – Primacy of the human being

The interests and welfare of the human being shall prevail over the sole interest of society or science.

Article 3 – Equitable access to health care

Parties, taking into account health needs and available resources, shall take appropriate measures with a view to providing, within their jurisdiction, equitable access to health care of appropriate quality.

Article 4 – Professional standards

Any intervention in the health field, including research, must be carried out in accordance with relevant professional obligations and standards.

Chapter II – Consent

Article 5 – General rule

An intervention in the health field may only be carried out after the person concerned has given free and informed consent to it. This person shall beforehand be given appropriate information as to the purpose and nature of the intervention as well as on its consequences and risks. The person concerned may freely withdraw consent at any time.

Article 6 – Protection of persons not able to consent

1. Subject to Articles 17 and 20 below, an intervention may only be carried out on a person who does not have the capacity to consent, for his or her direct benefit.
2. Where, according to law, a minor does not have the capacity to consent to an intervention, the intervention may only be carried out with the authorisation of his or her representative or an authority or a person or body provided for by law.
   The opinion of the minor shall be taken into consideration as an increasingly determining factor in proportion to his or her age and degree of maturity.
3. Where, according to law, an adult does not have the capacity to consent to an intervention because of a mental disability, a disease or for similar reasons, the intervention may only be carried out with the authorisation of his or her representative or an authority or a person or body provided for by law.
   The individual concerned shall as far as possible take part in the authorisation procedure.
4. The representative, the authority, the person or the body mentioned in paragraphs 2 and 3 above shall be given, under the same conditions, the information referred to in Article 5.
5. The authorisation referred to in paragraphs 2 and 3 above may be withdrawn at any time in the best interests of the person concerned.

Article 7 – Protection of persons who have a mental disorder

Subject to protective conditions prescribed by law, including supervisory, control and appeal procedures, a person who has a mental disorder of a serious nature may be subjected, without his or her consent, to an intervention aimed at treating his or her mental disorder only where, without such treatment, serious harm is likely to result to his or her health.

Article 8 – Emergency situation

When because of an emergency situation the appropriate consent cannot be obtained, any medically necessary intervention may be carried out immediately for the benefit of the health of the individual concerned.

Article 9 – Previously expressed wishes

The previously expressed wishes relating to a medical intervention by a patient who is not, at the time of the intervention, in a state to express his or her wishes shall be taken into account.

Chapter III – Private life and right to information

Article 10 – Private life and right to information

1. Everyone has the right to respect for private life in relation to information about his or her health.
2. Everyone is entitled to know any information collected about his or her health. However, the wishes of individuals not to be so informed shall be observed.
3. In exceptional cases, restrictions may be placed by law on the exercise of the rights contained in paragraph 2 in the interests of the patient.

Chapter IV – Human genome

Article 11 – Non-discrimination

Any form of discrimination against a person on grounds of his or her genetic heritage is prohibited.

Article 12 – Predictive genetic tests

Tests which are predictive of genetic diseases or which serve either to identify the subject as a carrier of a gene responsible for a disease or to detect a genetic predisposition or susceptibility to a disease may be performed only for health purposes or for scientific research linked to health purposes, and subject to appropriate genetic counselling.

Article 13 – Interventions on the human genome

An intervention seeking to modify the human genome may only be undertaken for preventive, diagnostic or therapeutic purposes and only if its aim is not to introduce any modification in the genome of any descendants.

Article 14 – Non-selection of sex

The use of techniques of medically assisted procreation shall not be allowed for the purpose of choosing a future child's sex, except where serious hereditary sex-related disease is to be avoided.

Chapter V – Scientific research

Article 15 – General rule

Scientific research in the field of biology and medicine shall be carried out freely, subject to the provisions of this Convention and the other legal provisions ensuring the protection of the human being.

Article 16 – Protection of persons undergoing research

Research on a person may only be undertaken if all the following conditions are met:

i. there is no alternative of comparable effectiveness to research on humans;
ii. the risks which may be incurred by that person are not disproportionate to the potential benefits of the research;
iii. the research project has been approved by the competent body after independent examination of its scientific merit, including assessment of the importance of the aim of the research, and multidisciplinary review of its ethical acceptability;
iv. the persons undergoing research have been informed of their rights and the safeguards prescribed by law for their protection;
v. the necessary consent as provided for under Article 5 has been given expressly, specifically and is documented. Such consent may be freely withdrawn at any time.

Article 17 – Protection of persons not able to consent to research

1. Research on a person without the capacity to consent as stipulated in Article 5 may be undertaken only if all the following conditions are met:
   i. the conditions laid down in Article 16, sub-paragraphs i to iv, are fulfilled;
   ii. the results of the research have the potential to produce real and direct benefit to his or her health;
   iii. research of comparable effectiveness cannot be carried out on individuals capable of giving consent;
   iv. the necessary authorisation provided for under Article 6 has been given specifically and in writing; and
   v. the person concerned does not object.
2. Exceptionally and under the protective conditions prescribed by law, where the research has not the potential to produce results of direct benefit to the health of the person concerned, such research may be authorised subject to the conditions laid down in paragraph 1, sub-paragraphs i, iii, iv and v above, and to the following additional conditions:
   i. the research has the aim of contributing, through significant improvement in the scientific understanding of the individual's condition, disease or disorder, to the ultimate attainment of results capable of conferring benefit to the person concerned or to other persons in the same age category or afflicted with the same disease or disorder or having the same condition;
   ii. the research entails only minimal risk and minimal burden for the individual concerned.

Article 18 – Research on embryos in vitro

1. Where the law allows research on embryos in vitro, it shall ensure adequate protection of the embryo.
2. The creation of human embryos for research purposes is prohibited.

Chapter VI – Organ and tissue removal from living donors for transplantation purposes

Article 19 – General rule

1. Removal of organs or tissue from a living person for transplantation purposes may be carried out solely for the therapeutic benefit of the recipient and where there is no suitable organ or tissue available from a deceased person and no other alternative therapeutic method of comparable effectiveness.
2. The necessary consent as provided for under Article 5 must have been given expressly and specifically either in written form or before an official body.

Article 20 – Protection of persons not able to consent to organ removal

1. No organ or tissue removal may be carried out on a person who does not have the capacity to consent under Article 5.
2. Exceptionally and under the protective conditions prescribed by law, the removal of regenerative tissue from a person who does not have the capacity to consent may be authorised provided the following conditions are met:
   - i. there is no compatible donor available who has the capacity to consent;
   - ii. the recipient is a brother or sister of the donor;
   - iii. the donation must have the potential to be life-saving for the recipient;
   - iv. the authorisation provided for under paragraphs 2 and 3 of Article 6 has been given specifically and in writing, in accordance with the law and with the approval of the competent body;
   - v. the potential donor concerned does not object.

Chapter VII – Prohibition of financial gain and disposal of a part of the human body

Article 21 – Prohibition of financial gain

The human body and its parts shall not, as such, give rise to financial gain.

Article 22 – Disposal of a removed part of the human body

When in the course of an intervention any part of a human body is removed, it may be stored and used for a purpose other than that for which it was removed, only if this is done in conformity with appropriate information and consent procedures.

Chapter VIII – Infringements of the provisions of the Convention

Article 23 – Infringement of the rights or principles

The Parties shall provide appropriate judicial protection to prevent or to put a stop to an unlawful infringement of the rights and principles set forth in this Convention at short notice.

Article 24 – Compensation for undue damage

The person who has suffered undue damage resulting from an intervention is entitled to fair compensation according to the conditions and procedures prescribed by law.

Article 25 – Sanctions

Parties shall provide for appropriate sanctions to be applied in the event of infringement of the provisions contained in this Convention.

Chapter IX – Relation between this Convention and other provisions

Article 26 – Restrictions on the exercise of the rights

1. No restrictions shall be placed on the exercise of the rights and protective provisions contained in this Convention other than such as are prescribed by law and are necessary in a democratic society in the interest of public safety, for the prevention of crime, for the protection of

public health or for the protection of the rights and freedoms of others.

2. The restrictions contemplated in the preceding paragraph may not be placed on Articles 11, 13, 14, 16, 17, 19, 20 and 21.

Article 27 – Wider protection

None of the provisions of this Convention shall be interpreted as limiting or otherwise affecting the possibility for a Party to grant a wider measure of protection with regard to the application of biology and medicine than is stipulated in this Convention.

Chapter X – Public debate

Article 28 – Public debate

Parties to this Convention shall see to it that the fundamental questions raised by the developments of biology and medicine are the subject of appropriate public discussion in the light, in particular, of relevant medical, social, economic, ethical and legal implications, and that their possible application is made the subject of appropriate consultation.

Chapter XI – Interpretation and follow-up of the Convention

Article 29 – Interpretation of the Convention

The European Court of Human Rights may give, without direct reference to any specific proceedings pending in a court, advisory opinions on legal questions concerning the interpretation of the present Convention at the request of:

- the Government of a Party, after having informed the other Parties;
- the Committee set up by Article 32, with membership restricted to the Representatives of the Parties to this Convention, by a decision adopted by a two-thirds majority of votes cast.

Article 30 – Reports on the application of the Convention

On receipt of a request from the Secretary General of the Council of Europe any Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention.

Chapter XII – Protocols

Article 31 – Protocols

Protocols may be concluded in pursuance of Article 32, with a view to developing, in specific fields, the principles contained in this Convention.

The Protocols shall be open for signature by Signatories of the Convention. They shall be subject to ratification, acceptance or approval. A Signatory may not ratify, accept or approve Protocols without previously or simultaneously ratifying accepting or approving the Convention.

Chapter XIII – Amendments to the Convention

Article 32 – Amendments to the Convention

1. The tasks assigned to "the Committee" in the present article and in Article 29 shall be carried out by the Steering Committee on Bioethics (CDBI), or by any other committee designated to do so by the Committee of Ministers.
2. Without prejudice to the specific provisions of Article 29, each member State of the Council of Europe, as well as each Party to the present Convention which is not a member of the Council of Europe, may be represented and have one vote in the Committee when the Committee carries out the tasks assigned to it by the present Convention.
3. Any State referred to in Article 33 or invited to accede to the Convention in accordance with the provisions of Article 34 which is not Party to this Convention may be represented on the Committee by an observer. If the European Community is not a Party it may be represented on the Committee by an observer.
4. In order to monitor scientific developments, the present Convention shall be examined within the Committee no later than five years from its entry into force and thereafter at such intervals as the Committee may determine.
5. Any proposal for an amendment to this Convention, and any proposal for a Protocol or for an amendment to a Protocol, presented by a Party, the Committee or the Committee of Ministers shall be communicated to the Secretary General of the Council of Europe and forwarded by him to the member States of

the Council of Europe, to the European Community, to any Signatory, to any Party, to any State invited to sign this Convention in accordance with the provisions of Article 33 and to any State invited to accede to it in accordance with the provisions of Article 34.

6. The Committee shall examine the proposal not earlier than two months after it has been forwarded by the Secretary General in accordance with paragraph 5. The Committee shall submit the text adopted by a two-thirds majority of the votes cast to the Committee of Ministers for approval. After its approval, this text shall be forwarded to the Parties for ratification, acceptance or approval.
7. Any amendment shall enter into force, in respect of those Parties which have accepted it, on the first day of the month following the expiration of a period of one month after the date on which five Parties, including at least four member States of the Council of Europe, have informed the Secretary General that they have accepted it.

   In respect of any Party which subsequently accepts it, the amendment shall enter into force on the first day of the month following the expiration of a period of one month after the date on which that Party has informed the Secretary General of its acceptance.

Chapter XIV – Final clauses

Article 33 – Signature, ratification and entry into force

1. This Convention shall be open for signature by the member States of the Council of Europe, the non-member States which have participated in its elaboration and by the European Community.
2. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
3. This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which five States, including at least four member States of the Council of Europe, have expressed their consent to be bound by the Convention in accordance with the provisions of paragraph 2 of the present article.
4. In respect of any Signatory which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of its instrument of ratification, acceptance or approval.

Article 34 – Non-member States

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may, after consultation of the Parties, invite any non-member State of the Council of Europe to accede to this Convention by a decision taken by the majority provided for in Article 20, paragraph d, of the Statute of the Council of Europe, and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee of Ministers.
2. In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 35 – Territories

1. Any Signatory may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Convention shall apply. Any other State may formulate the same declaration when depositing its instrument of accession.
2. Any Party may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of

three months after the date of receipt of such declaration by the Secretary General.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 36 – Reservations

1. Any State and the European Community may, when signing this Convention or when depositing the instrument of ratification, acceptance, approval or accession, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this article.
2. Any reservation made under this article shall contain a brief statement of the relevant law.
3. Any Party which extends the application of this Convention to a territory mentioned in the declaration referred to in Article 35, paragraph 2, may, in respect of the territory concerned, make a reservation in accordance with the provisions of the preceding paragraphs.
4. Any Party which has made the reservation mentioned in this article may withdraw it by means of a declaration addressed to the Secretary General of the Council of Europe. The withdrawal shall become effective on the first day of the month following the expiration of a period of one month after the date of its receipt by the Secretary General.

Article 37 – Denunciation

1. Any Party may at any time denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
2. Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

Article 38 – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council, the European Community, any Signatory, any Party and any other State which has been invited to accede to this Convention of:

a. any signature;
b. the deposit of any instrument of ratification, acceptance, approval or accession;
c. any date of entry into force of this Convention in accordance with Articles 33 or 34;
d. any amendment or Protocol adopted in accordance with Article 32, and the date on which such an amendment or Protocol enters into force;
e. any declaration made under the provisions of Article 35;
f. any reservation and withdrawal of reservation made in pursuance of the provisions of Article 36;
g. any other act, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Oviedo (Asturias), this 4th day of April 1997, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the European Community, to the non-member States which have participated in the elaboration of this Convention, and to any State invited to accede to this Convention.

PART III: THE COUNCIL OF EUROPE – MAIN ORGANS

A) Introduction to the Committee of Ministers, and the Parliamentary Assembly

THE COUNCIL OF EUROPE[26]

The Council of Europe is a political organisation, founded in 1949. Its aims are to guarantee democracy, human rights and the rule of law. All European states that are prepared to respect its principles may become members. Today, 43 states are part of the Organisation.

The Council of Europe has two main organs. The Committee of Ministers represents the Governments of the Member States, and the Parliamentary Assembly represents the Parliaments of Member States. Both of these bodies are described in more detail below.

1) Committee of Ministers[27]

The Committee of Ministers is the decision-making body of the Council of Europe comprising the ministers for foreign affairs of the forty Member States or their permanent representatives. It meets at least twice a year to review European co-operation and matters of political concern.

Responsibilities of the Committee of Ministers

Article 15(a) of the Statute of the Council of Europe allows the Committee of Ministers to conclude "conventions and agreements" in order to "further the aim of the Council of Europe". The text of a Convention is finalized when it is adopted by the Committee. The Committee also fixes the date that a Convention will be opened for signature. Conventions are only binding on those States that ratify them. The European Convention is one example of a Convention adopted by the Committee of Ministers.

Article 15(b) of the Statute of the Council of Europe provides for the Committee of Ministers to make Recommendations to Member States on matters for which the Committee has agreed "a common policy". The Committee may adopt Recommendations given by the Parliamentary Assembly. Recommendations given by the Committee of Ministers relevant to reproductive and sexual health have been included in Section B which follows. Since 1993, Recommendations have also been adopted by the Committee in order to fulfill its functions under Article 29 of the European Social Charter. These Recommendations may be found in section C of Part V.

The Committee may also adopt Declarations or Resolutions on international issues and other political questions, and may issue Replies to the Recommendations of the Parliamentary Assembly. Declarations, and Replies that have been issued by the Committee of Ministers relevant to reproductive and sexual health may be found in sections D and E respectively.

The Committee of Ministers also ensures that European conventions and agreements concluded by Member States are actually implemented. This is a particularly crucial function in the case of human rights texts, the most important of which are the European Convention and the Social Charter.

Under the European Convention, the Committee of Ministers is an integral part of the supervision system, with the task of making final decisions on cases which are not referred to the European Court of Human Rights. It is also responsible for ensuring that states comply with judgments given by the Court. The

[26] http://www.coe.fr/index.asp

[27] http://www.coe.fr/cm/

Committee retains the responsibility for this latter task despite the replacement of the European Court and Commission of Human Rights by a single permanent Court.[28]

2) Parliamentary Assembly[29]

The Council of Europe's Parliamentary Assembly is made up of 286 representatives and the same number of substitutes from the parliaments of the Member States. Each delegation's composition reflects that of its parliament of origin. The Parliamentary Assembly is a consultative body. Its Recommendations to the Committee of Ministers may however serve as a starting point for action in many key areas of the Council's work.

[28] see the Introduction in Part II for a discussion of the creation of a single court of human rights.
[29] http://stars.coe.fr/

B) Recommendations of the Committee of Ministers

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

RECOMMENDATION NO. R (89) 14
OF THE COMMITTEE OF MINISTERS TO MEMBER STATES
ON THE ETHICAL ISSUES OF HIV INFECTION
IN THE HEALTH CARE AND SOCIAL SETTINGS

(adopted by the Committee of Ministers on 24 October 1989 at the 429th meeting of the Ministers' Deputies) (1) (2)

The Committee of Ministers under the terms of Article 15.b of the Statute of the Council of Europe,
Considering that the aim of the Council of Europe is to achieve greater unity between its members and that this aim may be pursued, inter alia, by the adoption of common action in the health field;
Aware of the magnitude of the challenge HIV infection represents for Public Health Authorities in the absence of vaccine and curative treatment;
Conscious in particular of the ethical issues arising in health care and social settings deriving from the need to balance individual and collective rights and duties in the fight against infection;
Believing that respect for the human and social rights of HIV infected individuals and patients with Aids is crucial for the success of a preventive public health policy;
Bearing in mind in this respect the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the European Social Charter;
Recalling its Recommendation No R (87) 25 concerning a Common European Public Health Policy to fight the Acquired Immunodeficiency Syndrome (AIDS) and in particular the recommendations concerning the implementation for a comprehensive information strategy,
Recommends that the Governments of Member States :

- ensure that the principles contained in the Appendix to the Recommendation, drawn up in the light of present knowledge, are reflected in the application of national public health policies to fight HIV infection,
- for this purpose, ensure that the Recommendation is brought to the attention of all those individuals and bodies responsible for the drawing up and implementation of policies to fight HIV infection.

APPENDIX TO RECOMMENDATION No R (89) 14

I. PUBLIC HEALTH POLICY

In this connection, the three main ethical and legal issues to be addressed are :

- whether to introduce voluntary testing, or various forms of screening;
- whether to offer infected persons the same guarantees of confidentiality, as other patients;
- whether to introduce restrictive measures.

In the light of present knowledge, voluntary testing, integrated into the process of counselling, is the approach which is most effective from the public health point of view, and most acceptable ethically and legally, provided that it is supported by vigorous information campaigns, full respect for confidentiality and the implementation of a non-discriminatory policy.

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1) When this Recommendation was adopted the Representative of Sweden, referring to Article 10.2.d of the Rules of Procedure the meetings of the Ministers' Deputies, recorded her abstention and in an explanatory statement said that her Government will not consider itself bound by the Recommendation.
(2) When this Recommendation was adopted the Representative of Iceland, in application of Article 10.2.c of the Rules of Procedure for the meetings of the Ministers' Deputies, reserved the right of his Government to comply or not with first sub-paragraph of paragraph 41 of Appendix to the Recommendation concerning "partner notification".

A. Voluntary testing and screening

It follows from the above that public health authorities are recommended to :

a) in relation to counselling and voluntary testing

- ensure that voluntary testing is easily accessible at sites such as STD clinics, primary health care services, in particular general practitioners' practices, as well as drug treatment centres; that such services respect confidentiality, are always accompanied by counselling and are free of charge (or covered by social security through a confidential system);
- provide training for counselling allowing for the acquisition of the necessary skills by large numbers of health care and social workers especially at primary health care level and by health care volunteers;
- ensure that counselling services are consensual and confidential, provide for continuing psychological and practical support, are respectful of the dignity and autonomy of individuals and assist them in understanding their rights and responsibilities in relation to HIV infection;
- promote and regularly evaluate information and education strategies for the general public and those likely to engage in risk behaviour and promote research on behaviour and attitudes associated with HIV transmission, factors favouring behaviour change and its maintenance;
- intensify targeted health information and education programmes for those who are potentially exposed, stressing the importance of risk behaviours;
- ensure that those population groups most difficult to reach (eg. ethnic minority groups, the sensorily deprived, those with learning difficulties, etc.) are effectively informed through targeted outreach campaigns;
- consider seriously non-coercive pragmatic approaches (eg. the availability of sterile syringes and needles for drug misusers, the provision of instructions on methods of cleaning needles and the availability of condoms in prison), to reduce probabilities of transmission in relation to high-risk situations; such measures should be part of a comprehensive preventive policy including information, counselling and treatment;
- promote the adoption of non-discriminatory policies in all settings concerned and ensure their implementation (see below under V).

b) In relation to systematically offered screening

- carefully examine the advisability of introducing systematically offered screening programmes as a preventive measure in the light of various issues, namely :
    - the rationale of the proposed programme,
    - the population to be screened,
    - specific prevalence rates,
    - the test method to be used,
    - the intended use of data obtained from screening,
    - how results are to be communicated to the person tested and how pre- and post-test counselling is to be accomplished,
    - the social impact of screening,
    - legal and ethical considerations raised by the proposed screening programme.
- delegate to health care staff the task of identifying, in the light of specific prevalence rates, groups and individuals to whom targetted testing should be offered, respecting informed consent and confidentiality of data;
- ensure that in order to fulfil the preventive objective of systematically offered screening programmes, counselling services are offered to all individuals to be screened.

c) In relation to systematic screening (routine)

- in the light of present knowledge and in the absence of curative treatment, consider systematic screening unethical and contrary to the rights of individuals, if carried out automatically on population groups without informed consent and without counselling, because it overrides the principles of autonomy and physical integrity, affects the privacy of the individual, and is likely to have serious psychological, social and financial consequences for the individual;
- ensure that such procedures are not carried out by drawing the attention of health care staff and services on ethical unacceptability of these measures.

d) In relation to mandatory screening

- fully implement mandatory screening in respect of donations of blood, and those donating mothers' milk, organs, tissues, cells and semen donation in compliance with the usual strict requirements of informed consent and regulations for confidentiality of data;
- carefully examine how results are to be communicated to the person tested and how pre- and post- test counselling is to be accomplished.

e) In relation to compulsory screening

- consider, in the absence of curative treatment and in view of the impossibility of imposing behaviour modification and the impracticability of restrictive measures, compulsory screening as being unethical, ineffective, unnecessarily intrusive, discriminatory and counterproductive;
- ensure that compulsory screening is not introduced for any population group and especially for any given population group such as "captive" populations e.g. prisoners, immigrants and military recruits;
- make available information and counselling to such groups.

B. Confidentiality

Public health authorities are recommended to :

- in relation to reporting of cases
- ensure that the reporting of Aids cases and, where required by Health Authorities, of seropositivity is used for epidemiological purposes only and therefore carried out in strict compliance with appropriate confidentiality regulations and in particular that data is transmitted on a non-identifiable basis:
    - to avoid any possible discriminatory use of sensitive health related data,
    - to avoid discouraging individuals from seeking voluntary testing,
- In relation to the patient-health care worker relationship
- strongly support respect for confidentiality, if necessary by introducing specific policies, and by promoting educational programmes for health care workers to clarify confidentiality issues in relation to HIV infection.
- In relation to partner notification
- ensure that as a general rule there is no partner notification without the consent of the patient, and consider procedures of consultation in accordance with national codes of medical ethics and regulations for the extreme case where a patient refuses to cooperate in the notification of an unsuspecting third party known to the health care worker;
- ensure that the autonomy and the dignity of the patient is fully respected in this context as well as confidentiality;
- draw the attention of health care staff to the crucial role extensive counselling plays for successful partner notification;
- draw the attention of health care staff to the importance of assisting patients in understanding their responsibility towards partners;
- support partner notification within a comprehensive preventive strategy providing accessible services including confidential provider referral where necessary without patient identification;

C. Health controls

Public health authorities are recommended to :

- refrain from introducing restrictions on freedom of movement through ineffective and costly border procedures, for travellers of all kinds, including migrant workers;
- not to resort to coercive measures such as quarantine and isolation for people infected with HIV or those who have developed Aids.

II. HEALTH CARE WORKERS

The general rules applying to the workplace (see section V.A) also apply to health care settings; additional recommendations are however needed in view of the specific caring duties of health staff and the ethical and legal consequences involved.

A. PREVENTION

a) Education and training

- health care workers should receive appropriate education about the human immunodeficiency virus, about infection by the virus, about its psychological and social implications, and about the prevention of infection; such education should also explain the general ethical and legal issues in relation to HIV-infection including its possible recognition as an occupational disease;

this education should be integrated into basic, in-service and further education;

- health care workers directly in contact with patients should in particular be educated in:
  - routine use for all patients of safe-handling techniques and procedures for the control of infection by blood and such body substances that might transmit infectious diseases and HIV in particular,
  - epidemiological trends of HIV infection to assist them identify those persons to whom voluntary testing should be proposed,
  - counselling techniques and methods helping to give the necessary psychological support to the patient,
  - ethical and legal issues in relation to HIV infection,
- pre-hospital emergency care providers should also receive basic as well as continuing education on methods to prevent transmission of infectious diseases.

b) Methods and procedures for the prevention of infection in health care settings

- In order to protect health care workers whose job involves exposure to blood and body fluids, or tissues suspected of being infected, permanent and enforceable standards should be adopted as regards standard operating procedures related to the treatment of blood-borne diseases; emphasis should be laid upon precautions designed to prevent needle-stick injuries, and these should be used routinely for all patients;
- these standards should be elaborated on the basis of an evaluation of the potential exposure of health care professionals to infection, through an examination of their working conditions and the specific tasks which they might encounter (*);
- health care workers should consider all patients as potentially infectious and should adhere rigourously to precautions concerning blood, body fluids and tissues or other control of infection procedures;
- hospitals and other medical facilities should, under the supervision of health authorities, implement a system of control and protective measures (including standard operating procedures); in parallel health staff should receive appropriate training, protective equipment should be made available and adherence to recommended control procedures should be monitored; in case of failure, counselling, education and retraining should be made available.

c) Medical and psychological support for health care staff

- health authorities or other employers concerned should make available (without cost) to any health care professional who cares for HIV patients and who may be at risk of infection:
  - medical counselling as a result of the above-mentioned monitoring,
  - psycho-social counselling to cope with the strain which health care professionals caring for HIV infected or AIDS patients may undergo;
- following a known or suspected parenteral accidental exposure to blood, body fluids or tissues, serological testing and counselling should be made available; such a monitoring programme should include strict provisions for the protection of the confidentiality of test results.

B. HEALTH CARE STAFF INFECTED WITH HIV

- should be informed and should seek counselling about potential risks associated with taking care of patients with transmissable infections and about measures to minimise the risk of exposure both for themselves and for their patients;
- should refrain from undertaking any “medical activities” that might create even a minimal risk of transmission to patients; this approach also applies to seropositive health care professionals working independently);
- should be counselled, when appropriate, to seek either job restructuring or reallocation of work (if such possibilities exist) or flexible scheduling;

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(*) The following classification of risk-related tasks should be recommended:

- Category I : Requires protective equipment to be worn during the task;

- Category II : The task belonging to Category I might occur unexpectedly, therefore protective equipment should be easily and immediately accessible;
- Category III : Does not require any protective equipment.

- should be informed of provisions and procedures allowing for the possible recognition of HIV infection as an occupational disease or accident at work.

C. DUTY OF HEALTH PROFESSIONALS

- all health care workers have an obligation to care for people infected with HIV and AIDS patients; only when employee protection is clearly insufficient (lack of protective equipment, training, etc.) may the health care professional decline to perform tasks involving risk. Therefore :

  - a health care worker may not ethically and/or contractually refuse to treat a patient whose condition is within his current realm of competence solely because the patient is seropositive,
  - any health care worker who is not able to provide the care and services required by a person with AIDS should refer the patient to those doctors or facilities which are equipped to provide such services; until the referral can be accomplished, the doctor must care for the patient to the best of his/her ability,
  - the principle of freedom among doctors to choose whether or not to treat patients has to be implemented in such a way that it does not support discrimination against individuals or groups of patients; it should be consistent with rules governing the doctor-patient relationship;
  - a violation of these principles should be reported to the competent authority which will act according to legislation.

III. HEALTH CARE AND SOCIAL ASSISTANCE

Discrimination by health care and social services, public or private, should be considered unethical and the interests of social solidarity, where those of the individual and society converge, should be given priority.
Public health authorities are therefore recommended to :

- in relation to social security
- ensure that health care both in- and out-patient, preventive and therapeutic, is either free of charge or that costs are reimbursed in accordance with existing social security systems;
- in relation to health care services
- ensure full provision without discrimination of a comprehensive range of preventive activities and services such as information, counselling, testing, psychological support;
- offer a full range of health care services, both in- and out- patient, including terminal care, staffed by multidisciplinary teams, so that preference can be given to those services which are considered to correspond best to psychological and social requirements of individuals;
- in relation to social assistance
- ensure the cooperation between social workers and health care workers to help those infected in maintaining an integrated and productive life within the community, and to assist them with psychological, family, social, employment, financial and legal questions;
- promote domiciliary health care and home-help services and the setting-up of self-help groups by supporting voluntary associations;

IV. EPIDEMIOLOGICAL RESEARCH

With a view to their possible contribution to the planning of information and education campaigns as well as health care services, the introduction of epidemiological surveys should be considered as a means of assessing the incidence and prevalence of the infection. To balance the ethical and legal issues they raise and to meet scientific requirements it is recommended that :

- before authorising epidemiological studies of seroprevalence on representative samples of the population, authorities should :
  - ensure that such studies are carried out in compliance with ethical and legal requirements,
  - assess carefully the scientific value of the prospective results in terms of public health strategies;
- if such studies are authorised, the public should be adequately informed;

- if national legislation or regulations allow for testing to be carried out without consent, results should be unlinked and consequently anonymous;
- if testing is to be carried out with consent, linked testing should be done on those who accept and an unlinked test should be offered to those refusing a named testing;
- counselling and voluntary testing should as much as possible be made easily available in settings where unlinked testing is carried out;

V. SOCIAL SETTINGS

As HIV is not transmitted through normal social contact, because of its long latency period and because there is no evidence that HIV infection implies by itself impaired occupational performance, there is no justification for screening for evidence for HIV infection in the workplace nor in educational settings. Similarly discrimination in relation to accommodation cannot be justified.

A. EMPLOYMENT
It is recommended that competent authorities ensure that :

- before employment

- any practice by public or private employers to compel a prospective employee to submit to a test for evidence of HIV infection should be vigorously opposed; the prospective employee should not be subjected to pressure to disclose whether he/she is infected with HIV;
- no sanction should be imposed subsequently if evidence later emerges of an HIV positive test prior to recruitment.

- During employment

- employees should not be compelled to undergo screening for evidence for HIV infection nor to reveal detailed information about personal behaviour;
- employers should see to it that their staff management policies provide HIV infected employees with the same rights and benefits offered to employees with other predispositions, illnesses and disabilities;
- employees with any disease or disability, including HIV infection, should be treated fairly and with understanding and should be allowed to continue working as long as they are able to do so.

- In relation to occupational health services

- occupational health care staff should on no account be compelled by an employer to carry out HIV screening on applicants or employees;
- occupational health care staff if informed by an employee of a possible HIV infection, should treat the employee's case with the usual rules of confidentiality and use such information only in the interest of the patient's health;
- on no account should the occupational health care staff reassess his aptitude in the light of such information (unless the employee might risk exposure to factors in the workplace potentially detrimental to his health), on no account should they be required to inform the employer of the condition of any worker who is HIV infected;
- employers should have a duty to protect the confidentiality of medical information relating to their employees, particularly as concerns HIV infection; therefore health data should only be handled and stored by authorised personnel who are bound by rules on medical confidentiality.

- In relation to staff management policies and information programmes

- employers, top level management and trade union leadership should openly and unequivocally adopt non-discriminatory employment policies and initiate, support and finance educational programmes about HIV infection, its transmission and preventive measures;
- the occupational health doctor should cooperate closely in the development of such programmes.

B. EDUCATION
It is recommended that competent authorities ensure that :

- in relation to screening
- compulsory screening programmes should not be introduced for pupils, students and teachers as a selection procedure;
- in relation to staff management policies;
- all recommendations listed under employment should be followed with respect to teachers;
- in relation to information programmes;
- school health education programmes about HIV-infection and Aids should be an integral part of a more planned and sequential programme of comprehensive school health education which includes education for family life and sex education; they should start before pupils reach the age of puberty;
- a vigorous training programme should be initiated for teachers and health educators involved;
- such programmes should be developed in close cooperation with school health services and health care staff in the community to ensure consistency of information and appropriate follow up by health care staff (eg. counselling, testing);
- in relation to confidentiality
- school health staff, teachers and other educational staff should all strictly respect the principles of confidentiality;
- decisions on whether to inform the school of the presence of an HIV infected child or adolescent should be taken only when in the interest of the person in question on a case by case basis and after a consultation among, if possible the infected person, the parents, the teachers and the health care staff.

C. HOUSING
It is recommended that competent authorities :
- contact housing agencies to provide them with information on HIV infection, on the social rights of individuals, on sanctions in case of discriminatory policies;
- promote the organisation of suitable housing arrangements integrated within the community for people infected with HIV in need of accommodation.

VI. INSURANCE

National authorities should cooperate with private insurance companies to elaborate a code of practice with a view to ensuring :
- respect for the dignity and private life of an individual, - seeking of informed consent with counselling for any form of testing, - no introduction of screening for group insurance policies, - protection of health related data and any other confidential information affecting the privacy of the individual, - the adoption of unequivocal policies concerning HIV infection.
National authorities should consider studying insurance possibilities for HIV infected individuals.
In all the settings and situations where discrimination and violation of civil and social rights of an individual may arise, there should be an appropriate and confidential system providing speedy redressement of violation or discrimination.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

RECOMMENDATION NO. R (90)2
OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON SOCIAL MEASURES CONCERNING VIOLENCE WITHIN THE FAMILY

(adopted by the Committee of Minsters on 15 January 1990 at the 432nd meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

1. Considering that the aim of the Council of Europe is the achievement of greater unity among its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and of facilitating their economic and social progress;
2. Bearing in mind the right to respect of private and family life as defined in Article 8 of the European Convention of Human Rights ;
3. Bearing in mind the right of the family to social, legal and economic protection, and the rights of mothers and children to appropriate social and economic protection as defined in Articles 16 and 17 of the European Social Charter;
4. Bearing in mind the Declaration on equality between women and men, adopted by the Committee of Ministers at its 83rd session (16 November 1988);
5. Bearing in mind Recommendation No. R (84) 4 of the Committee of Ministers on parental responsibilities;
6. Bearing in mind Recommendation 561 (1969) of the Assembly of the Council of Europe on the protection of minors against ill-treatment;
7. Bearing in mind Recommendation No. R (79) 17 of the Committee of Ministers concerning the protection of children against ill-treatment;
8. Bearing in mind the proceedings of the Council of Europe's 4th Criminological Colloquy, on the ill-treatment of children in the family (1979);
9. Bearing in mind Recommendation No. R (87) 21 of the Committee of Ministers on assistance to victims and the prevention of victimisation;
10. Having regard to Recommendation No. R (85) 4 of the Committee of Ministers on violence in the family;
11. Having regard to the conclusions of the Council of Europe's Colloquy on "violence within the family : measures in the social field" (Strasbourg, 25-27 November 1987);
12. Recognising that the problem of violence in the family calls for measures to be taken at national and international level;
13. Noting that violence within the family occurs at all levels of society, and in all countries, rich or poor, with no regard, for instance, to family structures, ethnic origin, age, language, religion, political or other opinion, national or social origin, or property;
14. Acknowledging that social and economic pressures on families contribute to violent behaviour;
15. Noting the need to identify the other factors contributing to violence, to prevent violence in the family, and to consider social measures to remedy violence in the family when it has already taken place;
16. Considering the need for a change in the consciousness of the whole of society, whereby everyone would recognise the unacceptability of the phenomenon of violence both in the family and in society as a whole;
17. Recognising the general importance of the non-violent settlement of conflicts and the discouragement of the misuse of power;
18. Believing that trends towards the democratisation of the family, implying respect for members of the family as individuals with equal rights and equal opportunities, can help to discourage violence;
19. Bearing in mind the importance of adequate financial resources for carrying out planned and proposed measures in the social field,

Recommends that governments of member States take, or, where appropriate, encourage the general preventive measures and the specific measures mentioned in the Appendix to the present Recommendation.

Section A : General preventive measures

1. The family, a fundamental unit of society, should be supported by all possible means.
2. The rights of individuals should be recognised and respected, with particular attention being paid to those of the weaker members of the family.
3. Full equality should be implemented between the sexes; this involves equal education, equal opportunities for work and decision-making, and equal opportunities for economic independence and personal growth.
4. Social and economic pressures should be relieved in areas such as social welfare, health, housing and urban planning, the world of work, culture, education.
5. The extent, seriousness and negative consequences of violence within the family should be accurately established. The public should be extensively informed about them, and about the principles of non-violent settlement of conflicts, the non-acceptance by society of the misuse of power, and the possibilities of treatment. To this end, education and the media should be properly used.
6. The justification of violence in the media should be limited by all the means possible in a democratic society. The media should be invited to collaborate (via professional codes of conduct for instance) in such a policy.
7. Adequate housing and urban policies which can prevent potentially explosive situations within the family as well as in the wider community should be undertaken. The specific needs of the elderly, of families (in particular those with many children), of young people and of certain under-privileged groups should be given high priority.
8. Social and economic protection on an independent basis should be assured for those caring full-time at home for young children, an elderly parent, or a disabled relative, in order to support carers in what can be conditions of constraint and conflict.
9. Everything necessary should be done to reconcile family life with working life, with particular attention being paid to, on the one hand, the provision, quality and accessibility of child day care facilities, family support services and social security, and, on the other hand, on a voluntary basis, part-time work, flexible arrangements of working hours, and parental leave.
10. Research should be undertaken to identify those family situations which lead to an increased number of dangerous conflicts, in order to prevent or resolve potentially violent situations.
11. In the absence of adequate research on the special situation of disabled members of the family, the governments should promote and/or subsidise studies on this subject as well as considering in depth to what extent the present Recommendation can be applied to this particularly vulnerable group.

Section B : Specific measures

I. Information

1. Non-sensationalist information campaigns should be encouraged on the part of the media, schools, and other agencies that influence the public at large. Such campaigns could include information on work in women's shelters, crisis intervention centres, and on parental responsibilities, and agencies to which children can turn.
2. Information concerning the causes, identification and prevention of family violence must be adapted to those to whom it is addressed : for example, professional people, children, young adults, parents ...
3. Adequate means should be found for providing victims, particularly first-time victims, with information concerning crisis intervention methods, such as the numbers of crisis telephones, and the addresses of shelters and self-help groups.

II. Detection of violence

4. The public in general and professionals dealing with families in particular should be made aware of the need to detect and make an early diagnosis of cases of violence within the family. This can be achieved by information campaigns for the general public and by special information campaigns aimed at specific categories of professionals.

III. Reporting violence

5. The community as a whole should be encouraged to act responsibly and report cases of violence in the family to authorities empowered to help or change the situation. This applies particularly to neighbours, friends, workers in day-care and other institutions and teachers, who have to overcome an understandable reticence in the matter.
6. All cases of violence reported at hospitals, social services, or by the police, should be directed to the social services or to relevant courts (for instance, family courts, where they exist), with the informed consent of the adult victim of

violence or in accordance with other guarantees laid down by domestic law, in order that the necessary steps to safeguard the person in danger can be taken.
Guidelines for reporting should be developed.
7. Whenever the social services are not informed, for example because of professional secrecy, this should not suppress the need to assist individuals in danger.
8. The conditions in which victims of violence within their family disclose their painful experiences, whether to social, medical, or judicial authorities, should be improved. Facilities should exist for victims to be given support by a social worker or a confidant in addition to any legal representation that might be appropriate.

IV. Help and therapy for the whole family

9. Practical services that should be available for all members of the family include, apart from social welfare services in general :

- telephone lines (for emergency calls and for counselling),
- crisis services where possible with a 24-hour service,
- counselling centres.

Steps should be taken to co-ordinate these various services.
10. The therapy adopted for the treatment of victims of violence, especially sexual abuse, whether individual therapy or therapy for the family as a whole, should be adapted to each case.
11. Self-help groups for victims, and self-help groups for perpetrators, should both be widely encouraged and supported.
12. A combination of professional individual therapy and self-help groups should be used wherever possible, since experience shows such a combination to be effective.

V. Measures for children

13. The good care and upbringing of children should be promoted.
This includes the training of young parents both before and after the birth of their children, and the provision of advisory services.
14. The general condemnation of corporal punishment and other forms of degrading treatment as a means of education, and of the need for violence-free education should be emphasised .
15. Particular attention should be paid by the social and health services to individuals and families known to be particularly at risk as far as violence against children is concerned.
16. The specific problems that may be encountered in families where there are step-children, or foster children or disabled children should be taken into consideration.
17. In order to achieve continuity in the treatment of the family, which is one of the great challenges when working with child abuse, ways of working should be developed that integrate the authority of the members of the various professions concerned.
18. When the interests of an abused child are in conflict with those expressed by its parents, the child's interests should in principle have priority. When there is a need to protect the child by removing it from its family, short- or long-term, that should not be considered as an end in itself but as a provisional part of an overall family treatment approach for the interests of both parties. Work with the family should continue regardless of the child's removal.
19. A wide spectrum of treatment offers should be developed:

- emotional support for child as well as parents;
- help with socio-economic stress factors;
- treatment of parent/child interaction and marital relationships;
- work with improving the family's social network.

VI. Measures for women

20. Women who are victims of violence within the family should be given co-ordinated and comprehensive assistance, including, if necessary, financial assistance in accordance with national legislation. Specific responsibilities for particular tasks indealing with violence against women should be assigned to public authorities in association where necessary with non-governmental organisations.
21. If legal possibilities of removing an abusive spouse exist, they should be used to allow the abused woman and her children to remain at home.

22. Where a victim of violence was previously financially dependent on the violent person, financial assistance should be made available if needed to enable the victim and children to become independent. This measure should not discharge the perpetrator from his financial responsibilities.
23. There should be general and sufficient provision of the possibility of finding accommodation in a hostel for battered women (shelter). The aim of shelters for battered women is to provide rapid help for women and children in danger. Before being provided with accommodation in a hostel for battered women, the persons concerned should, where possible, be given counselling.
24. Victims of violence should not themselves be expected to meet the capital and recurrent costs of shelters. Public authorities should, in appropriate circumstances and according to national legislation, subsidise these shelters.
25. Each crisis centre and shelter for abused women should have its own policy concerning the disclosure of its address and the acceptance or non-acceptance of visitors. If the reuniting of the family is considered possible, supervised meetings between the family members in the shelter can be of help. In some countries, however, experience shows that shelters function more effectively if outside people have no access to them. Abused women must be entirely free to decide whether or not they want to return to their partners.
26. Once a battered woman has been admitted to a shelter, she should, if she so wishes, be adequately helped by social workers, psychologists, lawyers and other qualified persons including experienced voluntary workers who can help in particular with practical and administrative questions concerning the woman and, as appropriate, her children. An important element can also be mutual assistance and the exchange of experiences with other battered women in the shelter.
27. When a battered woman leaves a shelter, there should be proper after-care provided, preferably by a social worker who can visit the woman, on request, in her home and take care of her problems.
28. Self-help groups should be established, whereby women who have left a shelter meet each other regularly and help each other in order to avoid isolation. Informal networks should be set up for the exchange of information and ideas between shelters and self-help groups.

VII. Measures for old people

29. There is a particular lack of knowledge of the extent of violence against old people. As a first step, research should be undertaken or promoted and information programmes should be carried out.
30. An effective “family policy for old people” (including day-centres, community services, home care services, respite care, etc.) should be set up in order to relieve pressure on families and thus contribute to the reduction of factors leading to violence.
31. The situation of frail old people (in particular as to the respect of their rights) who have been placed in an institution or host family in return for payment should be the subject of special attention in order to avoid possible abuse by members of their family who have remained in contact with them.
32. In order to avoid old people being “excluded” from their community, appropriate housing and living conditions should be promoted by governments and local authorities.
33. Close members of the family should have access to information and counselling about specific problems that can arise when caring for old people.
34. The strengthening of awareness and competence among health and social workers who are called on to assist elderly victims of abuse should be seen as crucial. When designing adequate services for abused old people, existing health and social services should be considered responsible for dealing with the problem.
35. Measures envisaged should include the removal of the abused old person from the scene of violence as well as family counselling, preferably with the agreement of the person concerned but failing that by taking coercive action against the perpetrator.

VIII. Measures for the perpetrators

36. Help-oriented measures for perpetrators should be encouraged after a court appearance and the due process of law has taken its course. These might include self-help groups of offenders and psychotherapy in or out of prison.
37. The social services should maintain contact with perpetrators whose families have left them, to find out their needs, discuss their problems and give them counselling and help.
38. Research on therapeutic methods and other measures which could have a positive influence on perpetrators should be promoted.

IX Education

39. The establishment of programmes for the prevention of physical, emotional and sexual abuse should be encouraged in schools.This should be done by setting up committees in competent education authorities, with membership drawn from the field of education and those who work in the area of child abuse, as well as from among the parents, and, where appropriate, from voluntary organisations. Special training should be provided for the members of such committees.

40. Educational programmes starting at the pre-school level should take into account changes in society, including increased attention to childhood, positive perceptions of old age, and the changing roles of women and men. Positive aspects of human relationships and moral values, and of human love, affection and sexuality should be outlined and discussed before issues of violence and sexual abuse are raised.

Specific courses on partnership and parental responsibilities should include the learning of non-violent conflict resolution.

X. Social workers

41. When confronted by problems of violence, social workers should preferably work in multidisciplinary teams together with all the professions concerned; this is particularly important when there is a question of reporting family violence to the authorities.

42. In the course of their everyday work, social workers should be provided with help in the form of supervision and continuing training to enable them to clarify their own values and to distinguish within different examples of family violence, what concerns the victims and what concerns the perpetrators of the violence.

43. Initial and in-service training of social workers, workers in day-care and other institutions, medical personnel, magistrates, police and teachers should include the learning of multidisciplinary and inter-institutional work.

XI. Role of voluntary associations

44. Competent voluntary organisations can make an important contribution to the prevention and remedying of violence in the family. They should be recognised, encouraged and financially supported in their work by the public authorities in accordance with the provisions set out in Recommendation No. R (85) 9 of the Committee of Ministers on voluntary work in social welfare activities. The best possible co-operation between the various public services and the voluntary organisations and workers should be ensured.

45. In order to satisfy the particular demands made by the prevention and treatment of violence in the family, it is highly desirable that voluntary workers be properly selected, trained and supervised.

XII. Financial implications

46. National, regional, and local authorities should take the appropriate steps for the provision of proper financing of the programmes and measures implemented in the framework of this Recommendation.

1. When this Recommendation was adopted, the Representative of Denmark, in application of Article 10.2.c of the Rules of Procedure for the meetings of the Ministers' Deputies, reserved the right of her Government to comply or not with paragraphs 6 of Section A and 46 of Section B of the Appendix to the Recommendation.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

RECOMMENDATION NO. R(90)8
OF THE COMMITTEE OF MINISTERS TO MEMBER STATES
ON THE IMPACT OF NEW TECHNOLOGIES ON HEALTH SERVICES, PARTICULARLY PRIMARY HEALTH CARE

(adopted by the Committee of Ministers on 29 March 1990 at the 436th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,
Considering that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of facilitating their economic and social progress;
Considering that this aim may be pursued, inter alia, by the adoption of common rules in the health field;
Conscious of the importance of promoting improvements in the quality of life experienced by patients;
Mindful of the need for proper assessment and evaluation of new techniques and systems being introduced within the field of health care;
Bearing in mind the contents of Resolution (76)8 on the development of treatment outside hospitals, and Recommendation No.R(80)15 on better distribution of medical care inside and outside hospitals;
Bearing in mind equally the value of screening as a tool of preventive medicine as described in Resolution (74)30;
Convinced of the value of active participation of the patient in his own treatment in accordance with Recommendation No. R(80)4;
Conscious of the need to protect the privacy of individuals when their personal data are stored in health information systems, especially when the data are of a sensitive nature;
Bearing in mind, in this context, the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981, as well as the provisions of Recommendation No. R(81)1 on regulations for automated medical data banks,
Recommends the governments of member States of the Council of Europe to follow the guidelines set out in the Appendix to this Recommendation.

Appendix to Recommendation No. R(90)8

Guidelines

1. Improvement in the quality of human life and the protection of human rights must be the overriding consideration with respect to the introduction of new technologies.
2. Proper evaluation of all technologies should be carried out against the criteria recommended below insofar as this is possible:

i. Validity of outputs
ii. Validity of data capture
iii. Ability to fit within the framework of primary health care
iv. Social acceptability
v. Ethical acceptability
vi. Professional acceptability
vii. Reliability
viii. Capacity for continuous assessment
ix. Safety for providers, consumers and the environment
x. Cost effectiveness compared to older technologies
xi. Availability of full information on the technology and experience in implementing it
xii. Protection of confidentiality
xiii. Ability to be integrated smoothly into existing systems
xiv. Availability of adequate resources

This evaluation should consist of appropriate studies giving conclusive results, and should be carried out prior to the general introduction of any new technology.

3. National health administrations should establish an organisation at an appropriate level responsible for assessment of technology. Development of new technologies and studies to assess their potential for use within the health care system should be carried out in conjunction with the grass-root users.

4. Multidisciplinary, multi-centric studies preferably involving more than one member State should be carried out to assess the impact of specific technologies, both old and new, upon health with particular emphasis being placed on outcomes.

5. There should be continuous monitoring of existing technologies to ensure that they remain cost-effective, particularly those technologies which seem likely to become obsolete. The rate of diffusion of new technologies should be carefully evaluated.

6. Facilities should be established at local level to provide full information on new and existing technologies, as well as education for health professionals. Information and education on relevant technologies should be made available equally to patients and informal carers.

7. The results of evaluations carried out in one country should be made available to the national health administrations of other member States.

8. Specific models designed to ensure confidentiality of patient information should be developed in relation to the application of information technology to health care systems.

9. National health administrations should consider the establishment of a central data base accessible to all member States which should contain the results of technology assessments carried out both within and outside Europe.

10. Introduction of screening or diagnostic techniques can be considered beneficial not only if there exists an effective and agreed-upon treatment for the disease diagnosed or screened but also where the information will enable the persons concerned to take appropriate decisions in relation, for example, to procreation.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

RECOMMENDATION NO. R (90) 13
OF THE COMMITTEE OF MINISTERS TO MEMBER STATES
ON PRENATAL GENETIC SCREENING, PRENATAL GENETIC DIAGNOSIS AND ASSOCIATED GENETIC COUNSELLING

(adopted by the Committee of Ministers on 21 June 1990 at the 442nd meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,
Considering that the aim of the Council of Europe is to achieve a greater unity between its members, in particular by adoption of common rules on matters of common interest;
Aware of the Council of Europe's vocation for safeguarding the moral values which are the common heritage of the member States, based essentially on the respect for life and human dignity;
Reaffirming its commitment to personal freedom and respect for private and family life;
Having regard to the Convention for the protection of human rights and fundamental freedoms (1950), the Convention for the protection of individuals with regard to automatic processing of personal data (1981) and other relevant international instruments;
Having regard to Recommendation 934 (1982) on genetic engineering of the Parliamentary Assembly of the Council of Europe as well as the World Medical Association's Madrid Statement (1987) on genetic counselling and genetic engineering;
Recognising the continuing relevance of detailed principles contained in the Committee of Ministers' Recommendation No. R (81) 1 on regulations for automated medical data banks, for the collection, storage and processing of personal data but believing nevertheless that it is necessary to make specific provision for such data in the context of prenatal screening and diagnosis and associated genetic counselling;
Noting that in recent decades considerable progress has been achieved in detecting genetic abnormalities in the child to be born, through genetic screening and through prenatal diagnosis of pregnant women, but also noting the fears that these procedures arouse;
Considering that women of childbearing age and couples should be fully informed and educated about the availability of, the reasons for and risks of of such procedures;
Convinced that the genetic diagnosis and screening must always be accompanied by appropriate genetic counselling but that such counselling should in no cases be of a directive nature and must always leave the women of childbearing age fully informed to take a free decision;
Aware of the role that mass media play in informing and educating the public and considering therefore that it is appropriate that they should be better and regularly informed about progress, practice, availability, ethical issues and ethical principles relating to prenatal screening and diagnosis and, in particular, procedures used for prenatal genetic screening and diagnosis;
Aware of the fear that prenatal screening and diagnosis could adversely affect social attitudes to the handicapped and wishing that all necessary measures are taken to ensure that society's attitude and behaviour is not so affected;
Considering the use of these procedures should be governed by ethical, medical, legal and social principles in order to prevent any abuse,
Recommends that the governments of the member States adopt legislation in conformity with the Principles contained in this Recommendation or take any other measures to ensure theirn implementation.

Scope and Definitions
For the purpose of these principles "prenatal genetic screening" is the term used to describe screening tests carried out to identify from among the general population of apparently healthy individuals, those at risk of transmitting a genetic disorder to their offspring.
Prenatal genetic screening may take place during pregnancy and involves testing people of either sex.
The Principles also cover pre-marriage and preconception screening which are undertaken to identify a risk to health of the future child.

"Prenatal diagnosis" is the term used to describe tests used to confirm or exclude whether an individual embryo or foetus is affected by a specific disorder.

Principle 1 :	No prenatal genetic screening and/or prenatal genetic diagnosis tests should be carried out if counselling prior to and after the tests is not available.
Principle 2 :	Prenatal genetic screening and/or prenatal genetic diagnosis tests undertaken for the purpose of identifying a risk to the health of an unborn child should be aimed only at detecting a serious risk to health of the child.
Principle 3 :	Prenatal genetic screening and prenatal genetic diagnosis should only be carried out under the responsibility of a physician; laboratory procedures must be carried out in qualified institutions which have been approved by the State or by a competent authority of the State to conduct such procedures.
Principle 4 :	The counselling must be non-directive; the counsellor should under no condition try to impose his or her convictions on the persons being counselled but inform and advise them on pertinent facts and choices.
Principle 5 :	The participation of both partners in the counselling sessions should be encouraged.
Principle 6 :	Prenatal genetic screening and prenatal genetic diagnosis may only take place with the free and informed consent of the person concerned. Special care is needed for legally incapacitated persons to ensure that they should not be denied access to prenatal genetic screening and prenatal genetic diagnosis on account of the legal incapacity and that their legal representative or an authority or a person designated under national law should be consulted on their behalf. Prenatal genetic screening or prenatal genetic diagnosis should not be carried out when the person to undergo tests objects.
Principle 7 :	When prenatal genetic screening and prenatal genetic diagnosis is offered routinely this by no means does away with the requirement of free and informed consent.
Principle 8 :	The information given during the counselling prior to prenatal genetic screening and prenatal genetic diagnosis must be adapted to the person's circumstances and be sufficient to reach a fully informed decision. This information should in particular cover the purpose of the tests and their nature as well as any risks which these tests present.
Principle 9 :	In order to protect the woman's freedom of choice she should not be compelled by the requirements of national law or administrative practice to accept or refuse screening or diagnosis. In particular, any entitlement to medical insurance or social allowance should not be dependent on undergoing these tests.
Principle 10 :	No discriminatory conditions should be applied to women who seek prenatal screening or diagnostic testing or to those who do not seek such tests, where these are appropriate.
Principle 11 :	In prenatal genetic screening, prenatal genetic diagnosis or associated genetic counselling personal data may only be collected, processed and stored for the purposes of medical care, diagnosis and prevention of disease and research closely related to medical care. Such data should be collected, processed and stored in accordance with the Convention for the protection of individuals with regard to automatic processing of personal data and the Committee of Ministers' Recommendation No. R (81) 1 on regulations for automated medical data banks.
Principle 12 :	Any information of a personal nature obtained during prenatal genetic screening and prenatal genetic diagnosis must be kept confidential.
Principle 13 :	The right of access to personal data collected pursuant to prenatal genetic screening and prenatal genetic diagnosis should be given only to the data subject in the normal manner required for personal health data in accordance with national law and practice. Genetic data which relate to one member of the couple should not be communicated to the other member of the couple without free and informed consent of the former to the other.
Principle 14 :	Where there is a increased risk of passing on a serious genetic disorder, access to preconception counselling and, if necessary, premarriage and preconception screening and diagnostic services should be readily available and widely known.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

RECOMMENDATION NO. R(91)11
OF THE COMMITTEE OF MINISTERS TO MEMBER STATES CONCERNING SEXUAL EXPLOITATION, PORNOGRAPHY AND PROSTITUTION OF, AND TRAFFICKING IN, CHILDREN AND YOUNG ADULTS

(adopted by the Committee of Ministers on 9 September 1991 at the 461st meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,
Considering that the well-being and interests of children and young adults are fundamental issues for any society;
Considering that sexual exploitation of children and young adults for profit-making purposes in the form of pornography, prostitution and traffic of human beings has assumed new and alarming dimensions at national and international level;
Considering that sexual experience linked to this social phenomenon, often associated with early sexual abuse within the family or outside of it, may be detrimental to a child's and young adult's psychosocial development;
Considering that it is in the interests of member States of the Council of Europe to harmonise their national legislation on sexual exploitation of children and young adults in order to improve the co-ordination and effectiveness of action taken at national and international level with a view to tackling this problem;
Having regard to Recommendation 1065 (1987) of the Parliamentary Assembly of the Council of Europe on the traffic in children and other forms of child exploitation;
Recalling Resolution No. 3 on sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults of the 16th Conference of European Ministers of Justice (Lisbon, 1988);
Recalling Recommendation No. R(85)4 on violence in the family, Recommendation No. R(85)11 on the position of the victim in the framework of criminal law and procedure, Recommendation No. R(87)20 on social reactions to juvenile delinquency and Recommendation No. R(89)7 concerning principles on the distribution of videograms having a violent, brutal or pornographic content;
Bearing in mind the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and the European Social Charter (1961);
Bearing also in mind the United Nations Convention on the Rights of the Child (1989),
I. Recommends that the governments of member States review their legislation and practice with a view to introducing, if necessary, and implementing the following measures:

A. General measures

a) Public awareness, education and information

1. Make appropriate documentation on sexual exploitation of children and young adults available to parents, persons having minors in their care and other concerned groups and associations;
2. Include in the programmes of primary and secondary school education information about the dangers of sexual exploitation and abuse to which children and young adults might be exposed, and about how they may defend themselves;
3. Promote and encourage programmes aimed at furthering awareness and training for those who have functions involving support and protection of children and young adults in the fields of education, health, social welfare, justice and the police force in order to enable them to identify cases of sexual exploitation and to take the necessary measures;
4. Make the public aware of the devastating effects of sexual exploitation which transforms children and young adults into consumer objects and urge the general public to take part in the efforts of associations and organisations intervening in the field;
5. Invite the media to contribute to a general awareness of the subject and to adopt appropriate rules of conduct;
6. Discourage and prevent any abuse of the picture and the voice of the child in an erotic context;

b) Collection and exchange of information

7. Urge public and private institutions and agencies dealing with children and young adults who have been victims of all forms of sexual exploitation, to keep appropriate statistical information for scientific purposes and crime policy, while respecting anonymity and confidentiality;
8. Encourage co-operation between the police and all public and private organisations handling cases of sexual abuse within the family or outside of it and of various forms of sexual exploitation;

c) Prevention, detection, assistance

9. Urge police services to give special attention to prevention, detection, and investigation of offences involving sexual exploitation of children and young adults, and allocate to them sufficient means towards that end;
10. Promote and further the creation and operation of specialised public and private services for the protection of children and young adults at risk in order to prevent and detect all forms of sexual exploitation;
11. Support public and private initiatives at local level to set up helplines and centres with a view to providing medical, psychological, social or legal assistance to children and young adults who are at risk or who have been victims of sexual exploitation;

d) Criminal law and criminal procedure

12. Ensure that the rights and interests of children and young adults are safeguarded throughout proceedings while respecting the rights of the alleged offenders;
13. Ensure throughout judicial and administrative proceedings confidentiality of record and the respect for privacy rights of children and young adults who have been victims of sexual exploitation by avoiding, in particular, the disclosure of any information that could lead to their identification;
14. Provide for special conditions at hearings involving children who are victims or witnesses of sexual exploitation, in order to diminish the traumatising effects of such hearings and to increase the credibility of their statements while respecting their dignity;
15. Provide under an appropriate scheme for compensation of children and young adults who have been victims of sexual exploitation;
16. Provide for the possibility of seizing and confiscating the proceeds from offences relating to sexual exploitation of children and young adults.

B. Measures relating to pornography involving children

1. Provide for appropriate sanctions taking into account the gravity of the offence committed by those involved in the production and distribution of any pornographic material involving children;
2. Examine the advisability of introducing penal sanctions for mere possession of pornographic material involving children;
3. Ensure, particularly through international co-operation, the detection of firms, associations or individuals often linked with two or more countries, using children for the production of pornographic material;
4. Envisage informing the public, in order to raise awareness, of the implementation of penal policy, the number of prosecutions and convictions in cases involving child pornography, while ensuring the anonymity of the children concerned and of the alleged offenders.

C. Measures relating to the prostitution of children and young adults

1. Increase the material and human resources of welfare and police services and improve their working methods so that places where child prostitution may occur are regularly inspected;
2. Encourage and support the setting up of mobile welfare units for the surveillance of, or establishment of contact with, children at risk, particularly street children, in order to assist them to return to their families, if possible, and, if necessary, direct them to the appropriate agencies for health care, training or education;
3. Intensify efforts with a view to identifying and sanctioning those who foster or encourage the prostitution of children or young adults, or who profit from it, on the one hand, and of the customers of child prostitution, on the other;
4. Create or develop special units within the police and, if necessary, improve their working methods, in order to combat procuring of children and young adults;

5. Dissuade travel agencies from promoting sex tourism in any form, especially through publicity, in particular by instituting consultations between them and the public services;
6. Give priority to vocational training and reintegration programmes involving children and young adults who are occasionally or habitually prostituting themselves.

D. Measures relating to the trafficking in children and young adults

1. Supervise the activities of artistic, marriage and adoption agencies in order to control the movement within, or between countries, of children and young adults to prevent the possibility that they will be led into prostitution or other forms of sexual exploitation;
2. Increase surveillance by immigration authorities and frontier police in order to ensure that travel abroad by children, especially those not accompanied by their parents or their guardian, is not related to trafficking in human beings;
3. Set up facilities and support those existing, in order to protect and assist the victims of traffic in children and young adults.

II. International aspects

Recommends that the Governments of member States:

1. Examine the advisability of signing and ratifying, if they have not done so:
   - the United Nations Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others (1950);
   - the Hague Convention on Jurisdiction, Applicable Law and Recognition of Decrees relating to Adoptions (1965);
   - the European Convention on the Adoption of Children (1967);
   - Convention N 138 concerning Minimum Age for Admission to Employment of the International Labour Organisation (1973);
   - the United Nations Convention on the Rights of the Child (1989).
2. Introduce rules on extraterritorial jurisdiction in order to allow the prosecution and punishment of nationals who have committed offences concerning sexual exploitation of children outside the national territory, or, if applicable, review existing rules to that effect, and improve international co-operation to that end;
3. Increase and improve exchanges of information between countries through Interpol, in order to identify and prosecute offenders involved in sexual exploitation, and particularly in trafficking in children and young adults, or those who organise it;
4. Establish links with international associations and organisations working for the welfare of children and young adults in order to benefit from data available to them and secure, if necessary, their collaboration in combatting sexual exploitation;
5. Take steps towards the creation of a European register of missing children.

III. Research priorities

Recommends that the Governments of member States promote research at national and international level, in particular, in the following fields:

1. Nature and extent of various forms of sexual exploitation of children and young adults, especially with a cross-cultural view;
2. Nature of paedophilia and factors contributing to it;
3. Links between adoption and sexual exploitation;
4. Links between sexual abuse within the family and prostitution;
5. Characteristics, role and needs of the consumers of child prostitution and child pornography;
6. Evaluation studies of vocational training and reintegration programmes concerning youth involved in prostitution;
7. Structure, international networks, interconnections and earnings of the sex industry;
8. Links between the sex industry and organised crime;
9. Possibilities and limitations of the criminal justice system as an instrument of prevention and repression of various forms of sexual exploitation of children and young adults;

10. Epidemiology, causes and consequences of sexually transmitted diseases in children and young persons, and analysis of their links with sexual abuse and exploitation.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

RECOMMENDATION NO. R (92) 2
OF THE COMMITTEE OF MINISTERS TO MEMBER STATES
ON MAKING FAMILY BENEFITS GENERALLY AVAILABLE

(adopted by the Committee of Ministers on 13 January 1992 at the 469th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,
Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose, inter alia, of facilitating their social progress;
Considering that the generalisation of family benefits constitutes a means of furthering social progress in Europe;
Recalling that, in its Declaration on Human Rights of 27 April 1978 the Committee of Ministers resolved to explore the possibilities of extending individual rights, particularly in the social field, requiring protection by European conventions or other suitable means;
Bearing in mind the right to social security, Part VII of the European Code of Social Security as amended by the Protocol thereto, Part VII of the European Code of Social Security (Revised), as well as the provisions of the Committee of Ministers Resolution (68) 37 on the laws and regulations designed to compensate family commitments and Resolution (70) 15 on the social protection of unmarried mothers and their children;
Noting that, despite the progress achieved, social security systems needed to adapt more fully to the new patterns of family life and to the changing structure of households in order to ensure the welfare of children;
Considering that it lies with member States through their social legislation to promote the welfare of families with dependent children and to ensure that they enjoy a decent standard of living, respecting always the principle of equality of treatment between men and women;
Noting that the concept of family benefits can include within the different member States a number of various benefits in kind or in cash;
Considering that for the purposes of this Recommendation priority attention should be given to basic family benefits namely family allowances,
Recommends that the governments of the member States:

1. In cases where there is no provision for family benefits, create a family benefit scheme, comprising, during an initial period, the grant at least of family allowances;
2. Extend progressively the right to family allowances to cover all children residing in each member State in accordance with the guiding principles contained in the Appendix (part A) to the present Recommendation;
3. Set the amount of these family allowances at a sufficiently high level to contribute substantially to the standard of living of the family, in accordance with the guiding principles contained in the Appendix (part B) to the present Recommendation, and also to contribute to guaranteeing an average minimum subsistence level for children;
4. To progressively make all existing family benefits generally available.

Appendix to Recommendation No. R (92) 2

Part A: Guiding principles for the granting of family benefits, covered by the present Recommendation

Objectives

1. The fundamental objective of family benefits should be to ensure the welfare of children and the economic stability of their families.

Method of payment

2. Family allowances should comprise periodical cash payments for the benefit of each child.

Entitlement to benefits

3. Notwithstanding the method of financing, family allowances should be granted to all children residing in the territory of the member State;
4. Family benefits should be granted as provided in the following circumstances:
   a) at least until the end of the child's compulsory schooling or until the age of 16 years,
   b) until the age of 18 for so long as the child is receiving on a full time basis further education or vocational training and is not in receipt of an adequate income determined by national legislation.

Financing of family benefit schemes

5. The progressive extension of the entitlement to family benefits should be facilitated by endowing the appropriate institutions with sufficient financial resources to achieve this objective.
6. Where contributions are levied they should take account of the contributory capacity of the contributors to avoid placing too heavy a burden on those with few means.
7. Each member State should guarantee optimum solidarity in the financing of family benefits, in particular in favour of those in the lowest income groups.

The recipient of family benefits

8. The recipient of family benefits should be the person actually responsible for the child, or the child when he or she reaches the age of majority.

Part B: Guiding principles concerning the level of family benefits covered by the present Recommendation

9. a) Family allowances should be set at a level which relates directly to the actual cost of providing for a child and should represent a substantial contribution to this cost.
   b) Provision should be made for the adjustment of family benefits in order to take into account changes in the cost of providing for children or in the general cost of living.
   c) Those States meeting the minimum standard laid down in Article 49.b of the European Code of Social Security (Revised) are considered to be implementing the provisions with regard to the level of benefits provided for in this Recommendation.
10. a) Family allowances at the minimum rate should be granted regardless of means.
    b) Benefits above the amount which results from the application of the principle mentioned in paragraph 9 may however be subject to a means-test.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

RECOMMENDATION NO. R(92)3
OF THE COMMITTEE OF MINISTERS TO MEMBER STATES
ON GENETIC TESTING AND SCREENING FOR HEALTH CARE PURPOSES

(Adopted by the Committee of Ministers on 10 February 1992 at the 470th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,
Considering that the aim of the Council of Europe is to achieve a greater unity between its members;
Having regard to the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981;
Having regard to the Recommendations of the Committee of Ministers No. R (90) 3 on medical research on human beings, No. R (90) 13 on prenatal genetic screening, prenatal genetic diagnosis and associated genetic counselling, and No. R (92) 1 on the use of analysis of deoxyribonucleic acid (DNA) within the framework of the criminal justice system;
Bearing in mind that recent progress in the field of biomedical science has made it possible to obtain a greater knowledge of the human genome and the nature of genetic disorders;
Recognising the benefits and potential usefulness of genetic testing and screening not only for the individual, but also for the family and other relatives, as well as for the population as a whole;
Aware that the introduction of these techniques also arouses anxiety and that it is therefore desirable to give assurances as to their proper use;
Bearing in mind that rules governing the collection and use of medical data also apply to genetic data collected and used for health care purposes, including medical research;
Recognising the need for education of the members of the health care professions and the general public about the importance of genetic factors to health, and for including this subject in curricula for general and further education, both at school and at university level, and in professional training;
Considering that each country must determine its own special needs in order to develop the most appropriate services;
Recognising that it should be the goal of every country to offer its citizens equal opportunity of access to genetic testing and screening services;
Aware of the dangers of discrimination and social stigmatisation which may result from genetic information, and determined to fight such phenomena,
Recommends that the governments of the member States

a) be guided in their legislation and policy by the principles and recommendations set out below;
b) promote in their educational systems the teaching of human genetics.

PRINCIPLES AND RECOMMENDATIONS

PURPOSE, SCOPE AND DEFINITIONS

The purpose of this Recommendation is to ensure respect for certain principles in the field of genetic testing and screening for health care purposes, including medical research. See [footnote 2].

For the purposes of this Recommendation:

a) the term "genetic tests for health care purposes" refers to tests which serve:
- to diagnose and classify a genetic disease;
- to identify unaffected carriers of a defective gene in order to counsel them about the risk of having affected children;
- to detect a serious genetic disease before the clinical onset of symptoms in order to improve the quality of life by using secondary preventive measures and/or to avoid giving birth to affected offspring;

- to identify persons at risk of contracting a disease where both a defective gene and a certain lifestyle are important as causes of the disease;

b) the term “genetic diagnosis” refers to tests carried out to diagnose a presumed ailment on an individual or several members of a family in the framework of a family study;

c) the term “genetic screening” refers to genetic tests carried out on a population as a whole or a subset of it without previous suspicion that the tested individuals may carry the trait. See [footnote 3].

I. RULES FOR GOOD PRACTICE IN GENETIC TESTING AND SCREENING

Principle 1 - Informing the public

a) Plans for the introduction of genetic testing and screening should be brought to the notice of individuals, families and the public.
b) The public should be informed about genetic testing and screening, in particular their availability, purpose and implications - medical, legal, social and ethical - as well as the centres where they are carried out. Such information should start within the school system and be continued by the media.

Principle 2 - Quality of genetic services

a) Proper education should be provided regarding human genetics and genetic disorders, particularly for health professionals and the paramedical professions, but also for any other profession concerned.
b) Genetic tests may only be carried out under the responsibility of a duly qualified physician.
c) It is desirable for centres where laboratory tests are performed to be approved by the State or by a competent authority in the State, and to participate in an external quality assurance.

Principle 3 - Counselling and support

a) Any genetic testing and screening procedure should be accompanied by appropriate counselling, both before and after the procedure.
Such counselling must be non-directive. The information to be given should include the pertinent medical facts, the results of tests, as well as the consequences and choices. It should explain the purpose and the nature of the tests and point out possible risks. It must be adapted to the circumstances in which individuals and families receive genetic information.
b) Everything should be done to provide, where necessary, continuing support for the tested persons.

II. ACCESS TO GENETIC TESTS

Principle 4 - Equality of access - non-discrimination

a) There should be equality of access to genetic testing, without financial considerations and without preconditions concerning eventual personal choices.
b) No condition should be attached to the acceptance or the undergoing of genetic tests.
c) The sale to the public of tests for diagnosing genetic diseases or a predisposition for such diseases, or for the identification of carriers of such diseases, should only be allowed subject to strict licensing conditions laid down by national legislation.

Principle 5 - Self-determination

a) The provision of genetic services should be based on respect for the principle of self-determination of the persons concerned. For this reason, any genetic testing, even when offered systematically, should be subject to their express, free and informed consent.
b) The testing of the following categories of persons should be subject to special safeguards:
- minors;

- persons suffering from mental disorders;
- adults placed under limited guardianship.

Testing of these persons for diagnostic purposes should be permitted only when this is necessary for their own health or if the information is imperatively needed to diagnose the existence of a genetic disease in family members.

The consent of the person to be tested is required, except where national law provides otherwise.

Principle 6 - Non-compulsory nature of tests

a) Health service benefits, family allowances, marriage requirements or other similar formalities, as well as the admission to, or the continued exercise of, certain activities, especially employment, should not be made dependent on the undergoing of genetic tests or screening.

Exceptions to this principle must be justified by reasons of direct protection of the person concerned or of a third party and be directly related to the specific conditions of the activity.

b) Only if expressly allowed by law may tests be made compulsory for the protection of individuals or the public.

Principle 7 - Insurance

Insurers should not have the right to require genetic testing or to enquire about results of previously performed tests, as a pre-condition for the conclusion or modification of an insurance contract.

III. DATA PROTECTION AND PROFESSIONAL SECRECY

Principle 8 - Data protection

a) The collection and storage of substances and of samples, and the processing of information derived therefrom, must be in conformity with the Council of Europe's basic principles of data protection and data security laid down in the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, European Treaty Series No. 108 of 28 January 1981 and the relevant Recommendations of the Committee of Ministers in this field.

In particular in genetic screening and testing or associated genetic counselling personal data may be collected, processed and stored only for the purposes of health care, diagnosis and disease prevention, and for research closely related to these matters, as outlined in Principle 5.

b) Nominative genetic data may be stored as part of medical records and may also be stored in disease-related or test-related registers. The establishment and maintenance of such registers should be subject to national legislation.

Principle 9 - Professional secrecy

Persons handling genetic information should be bound by professional rules of conduct and rules laid down by national legislation aimed at preventing the misuse of such information and, in particular, by the duty to observe strict confidentiality. Personal information obtained by genetic testing is protected on the same basis as other medical data by the rules of medical data protection.

However, in the case of a severe genetic risk for other family members, consideration should be given, in accordance with national legislation and professional rules of conduct, to informing family members about matters relevant to their health or that of their future children.

Principle 10 - Separate storage of genetic information

Genetic data collected for health care purposes, as for all medical data, should as a general rule be kept separate from other personal records.

Principle 11 - Unexpected findings

In conformity with national legislation, unexpected findings may be communicated to the person tested only if they are of direct clinical importance to the person or the family.
Communication of unexpected findings to family members of the person tested should only be authorised by national law if the person tested refuses expressly to inform them even though their lives are in danger.

IV. RESEARCH

Principle 12 - Supervision

Research projects involving medical genetic data have to be carried out, in conformity with the standards of medical ethics, under the direct supervision of a responsible physician or, in exceptional circumstances, of a responsible scientist.

Principle 13 - Handling of data

a) Samples collected for a specific medical or scientific purpose may not, without the permission of the persons concerned or the persons legally entitled to give permission on their behalf, be used in ways which could be harmful to the persons concerned.
b) The use of genetic data for population and similar studies has to respect rules governing data protection, and in particular concerning anonymity and confidentiality. The same applies to the publishing of such data.

Footnotes
1. When this Recommendation was adopted and in application of Article 10.2.c of the Rules of Procedure for the meetings of the Ministers' Deputies:
- the Representative of the Netherlands reserved the right of his government to comply or not with principle 7 of the Recommendation;
- the Representative of Germany reserved the right of his government to comply or not with the words "and/or to avoid giving birth to affected offspring" in the third indent of sub-paragraph a. of the paragraph on "Purpose, scope and definitions" of the Recommendation. Recommendation can be found at http://www.coe.fr/cm/ta/rec/1992/92r3.htm
2. Genetic testing and screening can be carried out at different levels, such as on chromosomes, genes (DNA), proteins, organs or a given individual, and can be complemented with aspects of the family history.
3. The essential distinction between genetic diagnosis and genetic screening is that the latter is not initiated by the individual who is its subject, but by the provider of the screening service.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

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RECOMMENDATION NO. R (93)2
OF THE COMMITTEE OF MINISTERS TO MEMBER STATES
ON THE MEDICO-SOCIAL ASPECTS OF CHILD ABUSE

(adopted by the Committee of Ministers on 22 March 1993 at the 490th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,
Considering that the aim of the Council of Europe is to achieve a greater unity between its members, in particular by the adoption of common rules on matters of common interest;
Recognising the right of all children to live in conditions favourable to their proper development and to grow up free from physical abuse, sexual abuse, emotional abuse, neglect and other forms of child abuse;
Noting that child abuse is a phenomenon which in recent years has given rise to considerable concern in member States;
Having regard to account Recommendation No. R (79)17 concerning the protection of children against ill-treatment, Recommendation No. R (85)4 on violence in the family and Recommendation No. R (90)2 on social measures concerning violence within the family;
Bearing in mind the United Nations Convention on the Rights of the Child;
Recognising the need for policies designed to prevent child abuse, while taking into account the need for protection of privacy of all persons concerned, and the respect of confidentiality,

Recommends the governments of the member States to

1. adopt a policy which aims to secure the child's welfare within his/her family,
2. establish a system for the effective prevention, identification, notification, investigation, assessment, intervention, treatment, and follow-up of cases of child abuse on a multidisciplinary basis, which specifies clearly the roles and responsibilities of the various agencies involved,
3. take to this end the measures appearing in the Appendix to this Recommendation.

Appendix to Recommendation No. R (93)2

1. Prevention

1.1 To develop, implement, monitor and evaluate a programme of preventive policies at primary, secondary and tertiary levels nationally and locally in respect of child abuse.

1.2 At a primary level:
a) to promote, through public information campaigns of various kinds (eg. TV, radio, press, leaflets, posters) and other measures, societal awareness of children's rights to a life free from neglect, physical, emotional and/or sexual abuse, of the harmful consequences of child abuse and of positive, non-abusive modes of child-rearing;
b) to establish socio-economic conditions and health and social welfare services which strengthen the capacity of all families to support and care for their children;
c) to emphasise the rights of all children and young persons to freedom from abuse and the need to change patterns of upbringing and behaviour which threaten this;
d) to minimise levels of violence within society and the resort to violence in child-rearing practices.

1.3 At the secondary and tertiary levels:
to develop, implement, monitor and where appropriate review preventive programmes to prevent child abuse, taking account of local conditions and structures of service delivery. These may include:
a) the preventive measures outlined in Recommendation No. R (79)17 concerning the protection of children against ill-treatment and Recommendation No. R (90)2 on social measures concerning violence within the family;

b) the provision of playgroups, nurseries, child health care and other social welfare services to meet the material, psychosocial and medical needs of children and promote their proper development;
c) the provision of accessible, non-stigmatising services to help and support parents experiencing problems with child-rearing;
d) the implementation of educational programmes for children concerning their right to a life free from abuse, emphasising body awareness, assertiveness training and their right to say no;
e) publicity concerning sources of help (eg. telephone helplines, sheltered homes for children experiencing problems of neglect or abuse).

2. Detection and notification

2.1 Designate an agency (or agencies) or any individual at the appropriate level, available 24 hours a day, to receive notifications of abuse.

2.2 Encourage professionals (for example, teachers, doctors, social workers, nurses and others in contact with children) to notify the designated agency if they have reasonable grounds to believe that a child has been abused, is being abused or where there is a strong suspicion of abuse, or clear grounds for believing that it is likely to occur.

2.3 Advise professionals that in respecting ethical codes and legal rules of confidentiality account should be taken of the fact that in such circumstances, the designated agency should be notified.

2.4 Consider indemnity from legal proceedings to persons summoned as witnesses who, bona fide and with care, report abuse or a reasonable suspicion of child abuse.

2.5 Take measures to advise members of the community, for example, of the existence and signs of child abuse and of the availability of services to help children and families through public information campaigns in the media, and the distribution of leaflets, etc. in health clinics, libraries, etc.

2.6 Take steps to promote the responsible reporting of lay concerns that a child may be being abused with safeguards where required for the anonymity of those making such reports.

2.7 Ensure that the person who has reported is informed of the appropriate steps taken as far as legal and moral codes of confidentiality permit.

2.8 Establish services (such as telephone helplines) for victims of abuse and other persons wishing to report their concerns.

3. Investigation and Assessment

3.1 Establish at the appropriate level services available 24 hours a day, with powers and resources to provide within an appropriate time-scale for:
a) the multidisciplinary investigation of notifications of child abuse;
b) psychosocial assessment of the needs of children and their families for practical assistance and support, therapy, legal measures of protection, etc;
c) medical assessment, psychosomatic and physical of the child as required according to the nature of the concerns and the type of abuse;
d) emergency or long-term legal measures for the protection of the child if required;
e) the taking at any moment of urgent measures including placement in sheltered homes.

3.2 Ensure that in intervention in all cases of child abuse the best interests of the child shall be the primary consideration and that when services are made available to abused children and their families, they are sensitive to the child's age, wishes, understanding, gender and to his/her ethnic, cultural, religious and linguistic background, and to special needs, such as disability.

3.3 Implement policies which aim, whenever possible, to work in partnership with the child's parents and to secure the child's welfare within his/her own family, through the provision of appropriate help and support.

3.4 See to it that children are informed of the nature of concerns about them, of their rights and of the actions which will be taken to investigate the concerns.

3.5 Ensure that, except where this would be contrary to the best interests of the child, parents are informed of the concerns about their child and of their rights to participate in decision-making and of appeal.

3.6 Ensure that in cases where children are separated from their parents, strenuous efforts are made to maintain links between the child and his/her parents as far as possible and consistent with the welfare of the child.

3.7 See to it that children are appropriately represented and that their views are sought and taken into account, having regard to their age and understanding.

3.8 Make arrangements, where appropriate, for medical assessment of the child to be undertaken in suitable premises by personnel with training, skill, experience and aptitude in the identification of child abuse and in working with children. Any medical examination should be carried out within a time-scale appropriate to each case. In some circumstances urgency is required.

3.9 Restrict any medical examinations to the minimum number and the least intrusive approach required to help establish whether child abuse has occurred, to secure the requisite treatment and, where necessary, to document clinical evidence which may be used, as appropriate, in legal proceedings for the protection of the child or the prosecution of abusers.

3.10 Ensure that in any police investigations and subsequent criminal proceedings the welfare and interests of the child are paramount. This includes sensitivity to the child's needs in interviews and in the courts when children are called as witnesses, and ensuring that any delays are kept to a minimum and do not prejudice the child's right to receive help.

3.11 Adopt practices which encourage the sharing of information between the various professionals involved in investigation and assessment and which acknowledge the need to respect the confidentiality of the information shared. This may be achieved through holding a multidisciplinary case conference convened within an agreed time-scale, at which reports from all those involved in the investigation and assessment are presented and a plan drawn up for the welfare and protection of children, for their families and, where appropriate, for the abuser(s).

4. Follow-up Intervention, Treatment and Review

4.1 Following investigation and assessment, to base all help, intervention and treatment for abused children upon a written plan designed to meet the needs of the child and her/his family, including any siblings, in the short, medium or long term.

The plan may include, inter alia, the provision of financial and material aid, services such as day care, respite care or rehousing, therapy, counselling or support for the child and for her/his family. The need for services for children and their families should be assessed whether the child is maintained at home or whether separation is deemed to be necessary.

4.2 Appoint a key worker for each case to consult with and co-ordinate all services or institutions involved with the child and the family and to ensure the implementation of the plan for the welfare and protection of the child and her/his family.

4.3 Establish policies which guarantee that appropriate help and support are provided, that judicial or administrative decisions taken promote the child's welfare and development and are made with all reasonable speed to a time-scale consistent with the child's needs and understanding.

4.4 Establish procedures at the appropriate level for the periodic review and follow-up of cases of abuse to monitor the implementation of the plans for the welfare and protection of the children and of their families. Central to such procedures is the involvement of a person (who may be the key worker or an independent advocate) whose role is to represent the child's interests and to act as advocate or guardian of the child's welfare, having regard to the child's needs, wishes and feelings.

4.5 Establish arrangements to facilitate the closure of cases, following multidisciplinary review, recovery of the victim and of the authors of abuse, and in circumstances in which services are no longer required for the welfare or protection of the child and her/his family.

4.6 Implement measures in respect of those who abuse children, whether through criminal prosecutions, therapy or a combination of treatment programmes with legal sanctions. Responses to abusers will be affected by consideration of, inter alia, the needs of the children concerned, the nature of the abuse, assessment of the abusers, their reactions and attitude to the abuse, the opportunities and prospects for treatment and rehabilitation as well as the requirements of the criminal justice system.

5. Training

5.1 Ensure that there is adequate training of the personnel in the various professional groups involved with the prevention of child abuse and the protection of children against abuse and, in particular, to:

a) require bodies responsible for basic qualifying courses for doctors, community nurses, social workers, teachers, police officers, child psychologists, the legal profession and any others likely to come across cases of child abuse to include coverage of the topic of child abuse and child protection in the formal curriculum;
b) make known to all personnel who work with children their roles and responsibilities, and those of other professionals, with respect to the notification of suspected cases and the actions to be taken thereafter and ensure that all personnel are aware of the needs of children and of the legislation, policies, and procedures for securing the welfare and protection of abused children and their families, and for respecting confidentiality in the medical and all other fields;
c) ensure that professionals involved in the investigation and assessment of child abuse; in intervention and therapy with abused children, their families or abusers and in civil or criminal legal proceedings in connection with child abuse are fully trained and appropriately experienced;
d) require those who are closely involved with cases of child abuse to undertake specialised training in the skills of communicating with children who are or may have been abused; and to have the necessary professional qualifications, as well as involvement, availability and stability (families cannot be helped in a fragmentary and piecemeal fashion);
e) provide opportunities for in-service and post-qualifying training to keep professionals informed of developments and trends in work with abused children, their families and with abusers;
f) provide opportunities for multidisciplinary training, to increase understanding and cooperation between the many disciplines involved;
g) provide opportunities for those closely involved with cases of child abuse to examine their own responses to the issues and to explore the specific challenges of work with abused children, their families and with abusers;
h) monitor and evaluate training programmes in the field of child abuse to increase knowledge of appropriate content, teaching materials and methods.

6. Research

6.1 To promote research on a comparative basis between the Member States to analyse the various systems for meeting the needs of children and their families and responding to child abuse and to compare and contrast their effectiveness for the children and families concerned.

6.2 To develop programmes of research on the topic of child abuse giving particularly priority to:
a) the evaluation of different approaches to the prevention of child abuse;
b) the evaluation of different systems for the involvement of children and parents in decision-making and for protecting their rights;
c) the evaluation of different approaches to treatment and intervention in direct work with children, families and abusers;
d) the identification of patterns and trends in child abuse to help target prevention and intervention.

7. Financial Implications

7.1 To take appropriate steps at national, regional and local levels to ensure the provision of proper financing of the programmes and measures to be implemented within the framework of this Recommendation.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

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RECOMMENDATION NO. R (93)3
OF THE COMMITTEE OF MINISTERS TO MEMBER STATES
ON HEALTH MANPOWER PLANNING

(Adopted by the Committee of Ministers on 22 March 1993 at the 490th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,
Considering that the aim of the Council of Europe is to achieve a greater unity between its members and that this aim can be pursued, inter alia, by the adoption of common regulations in the health field;
Considering that demographic, technological, social and cultural changes require a reorientation of health services towards a holistic approach to health and disease;
Convinced that an adequate supply of appropriately skilled people is needed to deliver a good quality service based on this approach;
Recognising that health manpower planning is an essential element for achieving a proper balance between supply and demand;
Taking into account the conclusions of the Consultation on Health Manpower held by representatives of the European Community health ministries in Paris in 1989, of the International Consultation on Training, Health Manpower Education and Policy, held by the World Health Organisation in Barcelona in 1990 and of the 4th Conference of European Health Ministers, held by the Council of Europe in Nicosia in October 1990;
Considering that the growing movement of health personnel between countries requires that statistical data on health personnel are available to allow broadly based manpower planning,

Recommends the governments of member states to:

- undertake health manpower planning, adapted to their needs with a view to enabling each state to meet demand for health care services on its territory and to balance health care manpower supply and demand;
- provide an education which will produce a highly efficient and effective workforce with the kind of skills responsive to future needs;
- take, to this end, the measures described in the appendix to this recommendation.

Appendix to Recommendation No. R (93)3

1. Measures to determine the situation concerning the balance between supply and demand
Member states should establish appropriate means to determine the situation concerning the balance between demand and supply, for instance through a minimum personnel database.

2. Measures designed to establish a balance between supply and demand
Member states should endeavour to:
- promote career counselling centres and better inform young people particularly through the media, about health care professional career prospects, to redress imbalance of under/over supply;
- take measures to reassess the value of general practice and to develop health promotion;
- improve the quality of medical training by providing special training, for example in social medicine and health promotion;
- promote the growth of other professions such as physiotherapy and occupational therapy to ensure an appropriate balance of skills, best use of resources and an efficient workforce profile;
- ensure that the nursing profession retains a high quality image through an appropriate general level of education and professional education; that nurses are not used to perform inappropriate skill tasks;
- provide opportunities for nurses, midwives and professions supplementary to medicine to take higher education and degree courses, and to undertake research in preparation for roles of clinical excellence, leadership and management;

provide adequate numbers of appropriately trained support staff to assist qualified health care professionals, when necessary and appropriate;
- promote multiprofessional education:
- to take better into account public health concerns and favour a global approach of patients;
- to ensure greater mobility between the professions and make reorientation possible;
- to foster amongst health professionals an appreciation of each other's work and goals and a better recognition of their professional identity.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

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RECOMMENDATION NO. R (94) 10
OF THE COMMITTEE OF MINISTERS TO MEMBER STATES
ON EARLY PHARMACOLOGICAL INTERVENTION
AGAINST HIV INFECTION

(Adopted by the Committee of Ministers on 10 October 1994 at the 518th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity between its members and that this aim may be pursued, inter alia, by the adoption of common action in the health field;

Aware that early pharmacological intervention programmes for people infected with the human immunodeficiency virus (HIV) are being developed in order to prevent or delay symptoms of the disease as much as possible;

Aware that HIV infection represents a major challenge to public health authorities in the absence of vaccine and curative treatment;

Conscious in particular of the ethical issues in health care and social settings arising from the need to balance individual and collective rights in the fight against infection;

Believing that respect for the human and social rights of individuals living with HIV and patients suffering from an acquired immunodeficiency syndrome (Aids) is crucial for the success of a preventive public health policy;

Bearing in mind the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms and of the European Social Charter;

Having regard to Recommendation No. R (87) 25 concerning a common European public health policy to fight Aids, and in particular the recommendations concerning the implementation of a comprehensive information strategy, and to Recommendation No. R (89) 14 concerning the ethical issues of HIV infection in the health care and social settings, and in particular the issues on voluntary testing and screening;

Taking account of the fact that drugs which slow down the progression of the infection are already available or will become available in the future;

Considering that such drugs have been of benefit to some patients;

Considering that the risks and benefits of early pharmacological intervention should be carefully assessed for both the individual and society,

Recommends that governments of member states:

i) develop early pharmacological intervention programmes only in addition to primary prevention, which should remain a top priority against the spread of HIV infection;

ii) introduce early pharmacological intervention programmes in the light of the possibilities and benefits of treatment. If the benefit is clear, those programmes should be further promoted;

iii) make information accessible to the population at risk, and include in this information possible benefits as well as disadvantages of early pharmacological intervention;

iv) reconfirm their policy against discrimination and social exclusion of people with HIV, in respect of the new possibilities of early pharmacological intervention;

v) support self-help groups at local, regional and national level;

vi) create optimal conditions for early pharmacological intervention, in particular:

a) the provision of general information on the possibilities of early pharmacological intervention, availability of sufficient facilities for pre-test and post-test counselling, anonymous and voluntary testing, and social and psychological support;

b) the availability of professional care-givers who should ensure that before entering an early pharmacological intervention programme individuals are fully informed of all implications of pharmacological intervention including risks and benefits;

c) full guarantees that an individual's choice not to start an early pharmacological intervention programme should not influence access to other appropriate care and treatment;

d) the full protection of a person's privacy, as well as full respect for a person's free choice.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

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RECOMMENDATION NO. R (94) 11
OF THE COMMITTEE OF MINISTERS TO MEMBER STATES
ON SCREENING AS A TOOL OF PREVENTIVE MEDICINE

(Adopted by the Committee of Ministers on 10 October 1994 at the 518th meeting of the Ministers' Deputies)

The Committee of Ministers,
Considering that the aim of the Council of Europe is to achieve a greater unity between its members and that this aim may be pursued, inter alia, by the adoption of common action in the public health field;
Noting that chronic diseases are the major causes of death and a high social and economic burden in developed countries;
Considering that screening for the early detection of some of these diseases, could in principle provide a method for their control;
Considering that, as yet, there is no absolute proof of the value of screening and early treatment in most diseases;
Considering that few, if any, diseases can at the present time be regarded as fulfilling all the desirable criteria for screening, and that the recommended evaluative procedures are not often carried out in full;
Recognising that the implementation of widespread screening programmes raises major ethical, legal, social, medical, organisational and economic problems which require initial and ongoing evaluation;
Taking into account the provisions of the Convention of Human Rights and of the European Social Charter;
Bearing in mind the Convention for the protection of individuals with regard to automatic processing of personal data of 28 January 1981, as well as the provisions of Recommendation No. R (81) 1 on regulations for automated medical banks and Recommendation No. R (83) 10 on the protection of personal data used for purposes of scientific research and statistics,
Recommends to governments of member states that they take account in their national health planning regulations and legislation of the conclusions and recommendations set out in the appendix to this recommendation.

Appendix to Recommendation No. R (94) 11

1. Introduction

1.1. For the purposes of this recommendation, screening means applying a test to a defined group of persons in order to identify an early stage, a preliminary stage, a risk factor or a combination of risk factors of a disease. In any case it is a question of detecting phenomena, which can be identified prior to the outbreak of the disease.

1.2. The object of screening as a service is to identify a certain disease or risk factor for a disease before the affected person spontaneously seeks treatment, in order to cure the disease or prevent or delay its progression or onset by (early) intervention.

1.3. The value of existing forms of screening for infectious diseases is fully acknowledged but these established methods are not considered in detail in this recommendation. Emphasis is made on screening for chronic degenerative non-communicable disorders.

1.4. Screening is only one method of controlling disease. It should be viewed in the whole context of reducing the burden of ill health to the individual and the community by, for example, socio-economic, environmental measures, health education and improvement of existing health care and disease prevention systems.

1.5. Environmental factors are recognized as important contributors to disease, but inherited factors may also play an important role. With the advent of new genetic knowledge, an increasing number of genetic diseases and genetic risk factors for disease will be identified and offer the possibility for new screening procedures. As the procedures for genetic screening are not fully established nor fully evaluated, they have not been included in this recommendation.

1.6. The present position is that the implementation of screening in European countries is fragmentary, with few national screening programmes for the total population but many screening schemes restricted to population groups.

1.7. Because there are differences in health needs and health services, as well as in ethical values and in legal norms and rules between countries, the decision to implement a particular screening programme should be taken in co-operation with the medical profession by each country. Nevertheless there are common general principles and problems which are equally relevant to all systems.

1.8. Screening is a tool which is potentially capable of improving the health of the population but it also has adverse effects. Constant care should be taken to ensure that in any screening programme the advantages prevail over the disadvantages.

1.9. The general benefits of screening are often described. It is, however, also important to be aware of the adverse effects which can be :
- stigmatisation and/or discrimination of (non) participants;
- social pressure to participate in the screening and undergo the intended treatment/intervention;
- psychological distress where there is no cure for the disease or where the treatment and/or intervention is morally unacceptable to the individual concerned;
- exposure to physical and psychological risks with limited health gains;
- creation of expectations which probably cannot be fulfilled;
- individuals who are positively screened might experience difficulties such as access to insurance, employment, etc.;
- severe side effects of invasive clinical diagnosis of false positives;
- delay in diagnosing false negatives;
- unfavourable cost-benefit relationship of a screening programme.

1.10. The various problems which are encountered in the introduction and provision of screening services are interrelated.
Nevertheless a distinction may be made between those concerned with:
i) ethical and legal issues;
ii) selection of diseases (medically) suitable for screening;
iii) economic aspects and evaluation of screening;
iv) quality assurance;
v) organisation of a screening programme;
vi) scientific research.

2. Ethical and legal values

2.1. Effectiveness is a necessary prerequisite for the screening to be ethical. It should nonetheless be kept in mind that screening can be effective and still unethical.

2.2. Advantages and disadvantages of screening for the target population and the individual must be well balanced, taking into account social and economic costs, equity as well as individual rights and freedoms.

2.3. Failure to make known information on the positive and negative aspects of the screening is unethical and infringes the autonomy of the individual.

2.4. The decision to participate in a screening programme should be taken freely. The diagnoses and treatments which may follow the screening should also require a free and separate consent. No pressure should be used to lead somebody to undergo any of these procedures.

2.5. The right to privacy requires that the results of the tests as a general rule are not communicated to those who do not wish to be informed, are collected, stored, and handled confidentially, and adequately protected. It is preferable not to screen individuals who do not wish to be informed of the results of the screening.

2.6. Neonatal screening can only be justified if the intervention is of direct health benefit to the child. Otherwise screening should be postponed until the child can decide for itself.

2.7. No personal data derived from the screening should be communicated to third parties unless the data subject has given consent to it or in accordance with national law.

2.8. When a screening programme is provided as a service and conducted also for research purposes, the decision to make available personal medical data stemming from the screening programme for research purposes should be taken freely, without undue pressure.
The decision not to take part in the research should not in any way prevent the individual from participating in the screening programme.

3. Criteria for selecting diseases suitable for screening

3.1. The disease should be an obvious burden for the individual and/or the community in terms of death, suffering, economic or social costs.

3.2. The natural course of the disease should be well-known and the disease should go through an initial latent stage or be determined by risk factors, which can be detected by appropriate tests. An appropriate test is highly sensitive and specific for the disease as well as being acceptable to the person screened.

3.3. Adequate treatment or other intervention possibilities are indispensable. Adequacy is determined both by proven medical effect and ethical and legal acceptability.

3.4. Screening followed by diagnosis and intervention in an early stage of the disease should provide a better prognosis than intervention after spontaneously sought treatment.

4. Economic aspects

4.1. The increasing financial burden of health care makes it necessary to assess the economic aspects of screening. However these aspects should not be the overriding consideration. In all screening programmes human consideration regarding the value and quality of life, life expectancy as well as respect for individual rights are of prime importance.

4.2. Economic assessments are necessary to enable rational decisions to be made on the priority to be given to alternative ways of using health resources.

4.3. Measurement of the economic aspects of screening is not fully mastered. Early detection and treatment may be less expensive than late treatment. However, available studies relate only to present screening costs and further work is necessary to determine possible cost control in the long term.

4.4. Non systematic screening or spontaneous screening results in high marginal costs. Only systematic screening is able to provide means for controlling cost. Therefore, constant care should be taken to ensure that in any screening programme the allocated resources are used in an optimal way.

5. Quality assurance

5.1. Screening should aim at the highest possible standards of quality from the medical and organisational point of view.

5.2. Because of the expectations that screening creates as well as its adverse effects, screening should meet the highest quality assurance standards in all its aspects.

5.3. An assessment of the scientific evidence of the effectiveness of screening in the control of a disease should be made by experimental studies before introducing a screening programme as a service. The practical arrangements for a mass screening, which are directly linked to the health structures and systems, should obtain the same effectiveness as that obtained in the randomised trial.

5.4. Having implemented a screening programme, it should be subjected to continuous independent evaluation. Evaluation will facilitate adaptation of the programme, correction of deficiencies noted and verification of achievement of objectives. The adverse effects of the screening programme should not be ignored in the evaluation which should be carried out by independent public health experts.

5.5. If quality assurance standards are not met in the long term it should be possible for the screening programme to be corrected, and, if this is not possible, stopped.

5.6. The programme must evaluate participation, and the percentage of people screened in the target population, the technical quality of testing and the quality of diagnosis and treatment provided as a follow-up for persons with a positive test result.
Severe side effects of false positives should be revealed and evaluated.

5.7. There is a need for more teaching of medical students in epidemiology and its application to measuring the effects of screening. Similarly post-graduate education in this field is also needed to enable practising doctors to understand the principles and evaluation of screening.

5.8. Provision of screening programmes requires that training in techniques and interpretation of screening tests is included in undergraduate and post-graduate medical teaching programmes.

5.9. A screening programme requires resources in both staff and technical facilities for carrying out the screening tests. In many instances tests can be performed by non medical staff. Provision should be made for initial and further training of the medical and technical staff who will be involved in performing the screening tests

and interpreting their results. Technical methods, including automated techniques, are useful in screening for some diseases. Quality of screening methods should be monitored.

6. Organisation

6.1. The organising body of a screening programme should be held responsible throughout the programme. The organisation of a screening programme should comply with what is described in national guidelines and protocols.

6.2. Within the organisational framework the target population should be defined (by age or otherwise) as well as the frequency of screening tests and the general and specific objectives and quality assurance guidelines.

6.3. It must be stressed that screening cannot succeed without co-operation between preventive and curative systems. Organisation must be tailored to the structures of the health system. If appropriate structures in the curative health care system are lacking, screening should not be implemented until they are developed (pilot programmes, for example). There are various degrees to which screening services may be integrated with curative services or develop as a separate speciality. The advantages and disadvantages of these should be assessed separately in different health care systems.

6.4. Provisions should be made for the financing of the programme, the cost of organising and evaluating the structure, the cost of testing, the cost of quality assessment and monitoring, and the cost of the follow-up care of those people who screen positively.

6.5. Process and outcome indicators should be constantly evaluated.

6.6. Systematic collection of data is required in screening programmes to serve the needs of the individual and of the health service. To that end, data should be collected on the target population, on persons screened (with dates and the results of the test carried out), and on the results of eventual diagnostic examinations. Access to a morbidity register considerably facilitates evaluation.

6.7. Adequate protection of all data collected by means of a screening programme should be guaranteed.

6.8. Participation of the public in screening programmes is determined by personal factors (for example attitudes, motivation and anxiety) and by situational factors (waiting time and efficient organisation, for example). These can be influenced for instance by health education and by good organisation of the screening procedure.

6.9. In order to ensure optimal participation by the target population, the best possible information should be widely provided and awareness-raising and education programmes should be organised for both the target population and the health professionals.

6.10. Invitations should be accompanied by written information on the purposes and effectiveness of the programme, on the test, on potential advantages and disadvantages, on the voluntary nature of participation and on how data will be protected. An address should be provided for those who require further information.

6.11. Participants should be informed on how, when and where their test results will be available or will be communicated to them.

6.12. The positive results found at screening should always be confirmed by subsequent diagnostic tests before commencing a treatment/intervention, unless the screening test is a diagnostic test. It is absolutely essential that adequate diagnostic facilities are available to confirm or reject the screening finding as soon as possible. Similarly, treatment facilities must be available and easily accessible to the confirmed cases. The work load placed on the health services by screening can be very large, especially since most screening programmes also lead to incidental pathological findings unrelated to the disease at which the programme is aimed.

6.13. Combining screening for several diseases into a multiple screening procedure may seem to be convenient to the individual and economic to the programme, but such a “package deal” may negatively influence the extent to which most of the criteria for screening including age limit and frequency would be met.

7. Research

7.1. Research into new, more effective, screening tests must be encouraged and the long-term effects of the various methods of treatment and provision for positive subjects studied. Research must be further developed to answer the numerous social, ethical, legal, medical, organisational and economic questions as well as psychological problems raised by screening, on which evidence is incomplete.

7.2. Quality assurance concerning research programmes should be conducted into the effectiveness of the various screening tests, the practical arrangements for screening, the measures to increase participation, the

means of improving test efficiency, follow-up to and provisions for screened positive assessment process and all the economic aspects.

7.3. Information gathered during screening should be available for the purpose of scientific research, for the improvement of health services, and for the benefit of future screening, taking into account full respect of autonomy and confidentiality and the protection of personal privacy.

8. General remarks

8.1. It is particularly important that political decision-makers and target groups should be kept informed of the current state of knowledge about the value of screening for particular diseases. Improved communication should be encouraged.

8.2. Governments should promote the research and evaluation necessary for assessing the value of both new and existing programmes. This form of research necessarily means large-scale research which, in some instances, may be designed as international collaborative studies. Scientific evaluation is the only way in which the positive and negative effects of screening can be assessed in order that a rational decision can be taken on whether a screening programme should be implemented and what resources should be allocated.

Quality assurance (as defined by World Health Organisation) :
"All those planned and systematic actions necessary to provide adequate confidence that a structure, system or component will perform satisfactorily in service (ISO 6215-198O). Satisfactory performance in service implies the optimum quality of the entire diagnostic process i.e., the consistent production of adequate diagnostic information with minimum exposure of both patients and personnel."
Quality control (as defined by World Health Organisation) :
"The set of operations (programming, co-ordinating, carrying out) intended to maintain or to improve [...] (ISO 3534-1977). As applied to a diagnostic procedure, it covers monitoring, evaluation and maintenance at optimum levels of all characteristics of performance that can be defined, measured, and controlled."

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

RECOMMENDATION NO. R (94) 14
OF THE COMMITTEE OF MINISTERS TO MEMBER STATES
ON COHERENT AND INTEGRATED FAMILY POLICIES

(Adopted by the Committee of Ministers on 22 November 1994 at the 521st meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,
Considering that the aim of the Council of Europe is the achievement of greater unity among its members, for the purpose of safeguarding and realising the ideals and principles which are their common heritage and of facilitating their economic and social progress;
Considering the European Convention on Human Rights and recalling in particular the right to respect for private and family life as defined in Article 8;
Considering the European Social Charter and recalling the right of the family to social, legal and economic protection as defined in Article 16;
Bearing in mind the Declaration on equality between women and men, adopted by the Committee of Ministers at its 83rd Session (16 November 1988);
Bearing in mind Recommendation 1074 (1988) of the Parliamentary Assembly of the Council of Europe on family policy;
Bearing in mind Recommendation No. R (92) 2 of the Committee of Ministers on making family benefits generally available;

Taking note of the final communiqués of the sessions of the Conference of European Ministers responsible for Family Affairs;
Bearing in mind the rich diversity of work already completed by the Council of Europe relating to questions affecting families;
Taking into account the United Nations Convention on the Rights of the Child;
On the occasion of the International Year of the Family 1994 proclaimed by the United Nations;
Taking note of the interaction between the family and political, economic and social evolution;
Recognising that the family takes on different forms within the same society, or within the lifespan of a single individual, thus creating different stages of family life cycles;
Recognising that the interests of families in all sectors of society and areas of policy call for a better co-ordination of all social policies involved _ for example those affecting young people, elderly people, and disabled people, as well as health, employment, vocational training, social protection, consumer protection, culture, migration, environment, housing, education, media, traffic and tourism _ in order to give families better living conditions and to improve their human relations;
Recognising that the dramatic changes in family structures create a need for coherent and integrated family policies, followed by appropriate measures, to promote balanced legal, social and economic treatment for families, helping them to discharge their functions and thus to live in dignity,
Recommends that member governments support the implementation of coherent and integrated family policies on the basis of the following principles: consultation, co-ordination, efficiency and flexibility; these principles to be applied across the board, at local, regional and national level, as appropriate.

Appendix to Recommendation No. R (94) 14

BASIC PRINCIPLES

At the dawn of the twenty-first century, family policies must support families in present-day society, giving them the protection and assistance which they need to discharge their functions in society. The full potential of all families, and particularly the poorest families, must be promoted, so that they can exercise both their responsibilities and their independence in a manner consistent with the dignity which belongs to every human being.

1. Regardless of its form and diversity, the family remains a fundamental unit of society; it plays the primary role in socialisation.
2. The family also plays the primary role in promoting solidarity between the generations and with the weakest members of the community, as well as genuine partnership between the couple. Parents are primarily responsible for bringing up their children according to the basic values of a democratic society. High priority must be given to education and mediation services making it possible to resolve any family conflicts.
3. Within families, the rights of each member must be taken into account.
4. The family must be a place where equality, including legal equality, between women and men is especially promoted by sharing responsibility for running the home and looking after children, and, more specifically, by ensuring that mother and father take turns and complement each other in carrying out their respective roles.
5. The public authorities should promote the harmonious reconciliation of family life and working life.
6. Family policies must take into account the plurality of family structures and their specific needs.
7. Children should be prepared for independent, responsible and caring citizenship by having their rights and needs taken into account within the family. They should be educated and adequately informed about their rights and duties.
8. The public authorities should make the necessary provision to enable children to help themselves to have access to their rights, and are entitled to intervene in the private family domain, in accordance with the law, when the child is in danger within it. They need to be aware of the responsibilities and difficulties involved in respecting as far as possible the integrity of the family unit, whilst also identifying and deciding on appropriate action in those cases where the child's rights are violated by family members.
9. Government policies should take account of the costs involved in bringing up children.
10. In order for older family members to enjoy a dignified and secure old age, it is particularly necessary to respect their capacity to stay independent, to continue to take their own decisions and to remain a part of the community.
11. Governments have a special responsibility to protect families at times of economic crisis, particularly by introducing both preventive and assistance measures to achieve a significant reduction in the number of families living in poverty, while fully respecting their dignity.
12. The public authorities should create conditions conducive to the well-being and autonomy of families, particularly by providing appropriate day-care, medical, social, educational and cultural services.
13. Families should be given the possibility of forming or joining associations, so that they can convey their views on family issues to the authorities and suggest measures which they consider in their interest.
14. The concept inherent to this recommendation is defined as follows:

    i) the significance of preventive family policy must be emphasised: a family may need guidance, counselling and services at different stages of its life, by means of which its vulnerability can be greatly diminished;
    ii) the concept for a coherent and integrated family policy is that the role of the public authorities is to create the circumstances conducive to the emergence of a family unit in which the individual can develop in safety, self-respect and solidarity, enjoying fundamental rights, in a legal, social, cultural and economic context. Special needs of different types of families at various stages of family life cycles must be allowed for here;
    iii) the concept of a coherent and integrated family policy must be applied in examining all stages of policy with reference to the interests of the family and all its members;
    iv) the objective is that a coherent and integrated family policy should function across administrative boundaries as a factor co-ordinating all action taken affecting families;
    v) in practice this means co-ordinating and reconciling the various sectors which affect members of families as citizens, for example social security, working life, education, environment, consumer interests, culture, housing, traffic, mass media and tourism.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

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RECOMMENDATION NO. R (95) 14
OF THE COMMITTEE OF MINISTERS TO MEMBER STATES
ON THE PROTECTION OF THE HEALTH OF DONORS AND RECIPIENTS
IN THE AREA OF BLOOD TRANSFUSION

(Adopted by the Committee of Ministers on 12 October 1995 at the 545th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,
Considering that the aim of the Council of Europe is to achieve a greater unity between its members and that this aim may be pursued, inter alia, by the adoption of common regulations in the health field;
Recalling its Resolution (78) 29 on harmonisation of legislations of member states relating to the removal, grafting and transplantation of human substances;
Recalling also its Recommendations No. R (80) 5 concerning blood products for the treatment of haemophiliacs; No. R (81) 14 on preventing the transmission of infectious diseases in the international transfer of blood, its components and derivatives; No. R (83) 8 on preventing the possible transmission of acquired immune deficiency syndrome (Aids) from affected blood donors to patients receiving blood or blood products; No. R (84) 6 on the prevention of the transmission of malaria by blood transfusion; No. R (88) 4 on the responsibilities of health authorities in the field of blood transfusion; No. R (89) 14 on the ethical issues of HIV infection in the health care and social settings, and No. R (90) 9 on plasma products and European self-sufficiency;
Recalling Recommendation No. R (95) 15 on the preparation, use and quality assurance of blood components establishing a set of guidelines necessary for health authorities and transfusion services;
Recalling the principles underlying the above recommendations, namely that, for both ethical and medical reasons, blood donations should be voluntary and non-remunerated and that optimal use should be made of blood;
Aware that the availability of blood products for the benefit of all patients depends on the recruitment of donors and that it is necessary to take measures to ensure the safety of both donors and recipients in the area of blood, plasma and cell donation;
Recalling the importance of good donor selection, avoiding any possible discrimination; recognising the necessity to provide pertinent information to blood donors, in order to avoid donations by persons who have a medical history or whose behaviour and/or health status is likely to increase the risk of infection for the recipient;
Believing that the harmonisation of national regulations on the protection of health of donors and recipients in the field of blood transfusion will greatly facilitate the achievement of the above aims and principles,
Recommends that the governments of member states bring their national regulations into conformity with the principles contained in the appendix hereto.

Appendix to Recommendation No. R (95) 14

A. Ethical principles

Article 1
The donation of blood, plasma or cellular components should comply with the ethical principle of voluntary, non-remunerated donation applicable to all removal, grafting and transplantation of human substances.

Article 2
Donation is considered voluntary and non-remunerated if the person gives blood, plasma or cellular components of his or her own free will and receives no payment for it, either in the form of cash or in kind which could be considered a substitute for money. This would include time off work other than that reasonably needed for the donation and travel. Small tokens, refreshments and reimbursements of direct travel costs are compatible with voluntary, non-remunerated donation.

Article 3
All collections should be effected in such a manner that the donor's health is not harmed and that its therapeutic use in the form of cellular components or plasma derivatives involves minimal risks to the recipient.

Article 4
The human origin of blood and its constituents and derivatives, as well as the ethical principles of voluntary and non-remunerated donation, demand that substances be used optimally so as to avoid all wastage.

Article 5
All potential donors should be informed prior to donation that their blood will be examined for the detection of serological markers of viral or other infections. Transfusion centres should notify the donor, preferably by a physician or any other person medically qualified, if analysis of the blood samples taken has produced evidence of any pathological condition. Confidentiality of these medical data should be respected.

B. Needs related to blood collection

Article 6
The premises used for blood collection should:

- be so designed that they can be used in a rational way;
- meet the hygiene requirements applicable to this type of activity;
- have facilities for carrying out medical checks in strict conditions of confidentiality in order to verify whether individuals wishing to donate blood should be accepted as donors or whether they should be discreetly rejected;
- allow for the collection of blood, plasma or cells from donors in full safety (and, if necessary, for re-injection without any risk to the donor).

Article 7
Each collection centre should have the necessary facilities for dealing with incidents which may arise during blood/plasma/cell donation.

Article 8
Equipment and particularly collection equipment should be visually inspected so as to avoid any complications, in particular involving contamination.

Article 9
The medical and scientific aspects and laboratory functions of a blood transfusion centre should be supervised by a suitably qualified person specifically appointed for that purpose, who should see to it that all operations (in particular the screening of donors and associated medical checks) are carried out properly and efficiently. Collection of blood/plasma/cells should be carried out under the supervision of medically qualified persons.

C. Measures to be taken for the safety of donors

Article 10
Each transfusion centre should have acceptance criteria for selecting blood/plasma/cell donors which conform to the highest applicable standards, as set out in the appendix to Recommendation No. R (95) 15 on the preparation, use and quality assurance of blood components.

Article 11
During collection, strict precautions should be observed with regard to hygiene in order to prevent not only contamination of the blood collected, but also any possibility of infection to the donor.

Article 12
The intervals between two donations and the volume collected should comply with the strictest criteria, as set out in the appendix to Recommendation No. R (95) 15 on the preparation, use and quality assurance of blood components.

Article 13
After giving blood, donors should be allowed time to recover while under discreet medical supervision.

Article 14
Before each collection session, all donors should be questioned individually and confidentially by a qualified person on the basis of a printed questionnaire in order to identify any risks they may face.

Article 15
Each new donor should undergo a detailed medical assessment which should be repeated if the need arises.

Article 16
Donors should be subjected to haematological tests, as indicated in the appendix to Recommendation No. R (95) 15 on the preparation, use and quality assurance of blood components. Current tests do not exclude latent iron deficiency; when such tests are available, it is recommended that they be used.

Article 17
Given that extracorporeal circuits are involved, plasmapheresis and cytapheresis should be subject to additional precautions, as set out in the appendix to Recommendation No. R (95) 15 on the preparation, use and quality assurance of blood components.

Article 18
Collection centres should have insurance cover for accidents arising in connection with blood/plasma/cell donation.

D. Donor selection

Article 19
The medical criteria used in donor selection should ensure the quality and safety of the final blood product.

Article 20
Reduction of the risk for the recipient depends primarily on measures to inform and educate donors which should be as clear and comprehensive as possible. Potential donors should be informed of what, in their medical history, in their current behaviour and in their state of health, is likely to increase the risk of infection for the recipient.

Article 21
The medical interview should be regarded as an important element in the selection of potential donors. The following should be excluded (temporarily or permanently as the case may be): persons belonging to categories who by virtue of their medical history or current activities or behaviour present a high risk of transmission of infectious diseases (for example HIV, hepatitis viruses, prions, etc.).

E. Measures to be taken for the safety of recipients

Article 22
Strict precautions should be taken in the collection, production and storage of blood products to prevent transfusion complications.

Article 23
Blood products and plasma derivatives should be stored and transported under strict conditions and in accordance with the most scrupulous criteria as set out in the appendix to Recommendation No. R (95) 15 on the preparation, use and quality assurance of blood components, both in transfusion centres and in hospitals.

Article 24
There should be systematic quality control of blood products and plasma derivatives issued by blood transfusion centres.

Article 25

All blood collected from a donor should be subjected to analyses capable of detecting infections transmissible through blood (for example HIV, hepatitis viruses, etc.).
Regional epidemiological surveys can provide data which may be used as a basis for decisions to conduct additional tests for either new infectious agents or surrogate markers.

Article 26

Pre-transfusion laboratory tests should ensure serological compatibility between the unit to be used for transfusion and the recipient, in accordance with the strictest criteria, as set out in the appendix to Recommendation No. R (95) 15 on the preparation, use and quality assurance of blood components.

Article 27

Transfusion which is a therapeutic act should be prescribed by a physician and carried out under his or her supervision and responsibility. The physician should inform the patient of any potential side-effects of the transfusion.

Article 28

A final check is needed immediately prior to transfusion to ensure correct identification both of the recipient and of the unit to be transfused.

Article 29

The patient's need for a transfusion should be assessed by pre-transfusion testing; post-transfusion tests are recommended in order to monitor and keep on record the effectiveness of the transfusion on the recipient.
Haemovigilance systems should be implemented in order to detect possible adverse effects on the recipient.

Article 30

Transfusion centres should provide written information on the procedures for dispensing the blood products distributed to users (clinics, hospitals, etc.).

F. Quality assurance

Article 31

Transfusion centres should be required to operate quality assurance programmes. Blood products prepared under their responsibility should be subject to regular quality controls. There should be strict compliance with quality assurance provisions as set out in the appendix to Recommendation No. R (95) 15 on the preparation, use and quality assurance of blood components.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

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RECOMMENDATION NO. R (97) 4
OF THE COMMITTEE OF MINISTERS TO MEMBER STATES
ON SECURING AND PROMOTING THE HEALTH
OF SINGLE PARENT FAMILIES

(Adopted by the Committee of Ministers on 13 February 1997 at the 584th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,
Considering that the aim of the Council of Europe is to achieve a greater unity between its members and that this aim may be pursued, inter alia, in particular by the adoption of common rules in the health field;
Noting that single parent families are constantly increasing in the member states;
Considering that problems specific to single parent families may have consequences on their health which are a major public health problem of growing importance and a serious and costly burden for the individual, the family and the community;
Noting that psychological stress experienced by many single parent families has an effect on their physical health;
Recognising the need for policies designed to prevent health problems of single parent families, while taking into account the need for protection of privacy of all persons concerned, and the respect of confidentiality;
Recognising the right of single parent families to live in conditions favourable to their proper development free from physical and psychological overload, social isolation, psychosomatic symptoms related to stress and other forms of health handicaps;
Aware that measures aimed at reducing the incidence of health problems of single parent families at primary level depend to a large extent on situations outside the normal sphere of health and social services activities;
Considering that the aim and duty of the state and society is to influence broad social and economic prerequisites to health, which finally determine the poorer health of the members of single parent families;
Aware of the Council of Europe Project on Human Dignity and Social Exclusion;
Having regard to 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 (90) 2 on social measures concerning violence within the family and Recommendation No. R (93) 2 on the medico-social aspects of child abuse;
Bearing in mind the United Nations Convention on the Rights of the Child;
Further noting the World Health Organization Targets for Health for All for the European region and its guidelines on health of women and children, and prevention of mental and psycho-social disorder;
Bearing in mind the 1994 "Declaration of Amsterdam with Respect to the Position of and Policy for Single Parent Families" and its statement that all families are equal and should be therefore equally treated;
Recognising the influence of the standards of the European Social Charter on the improvement of the situation of all types of families,
Recommends the governments of the member states to :

i) adopt a policy which:
- secures and promotes the health of single parent families;
- ensures supportive environments for the fulfilment of the family and its social integration;
- protects human dignity and prevents social exclusion and discrimination;

ii) establish a system for the effective prevention, identification, assessment and treatment of health problems of single parent families on a multidisciplinary basis, which specifies clearly the roles and responsibilities of the various agencies involved;

iii) take to this end, whenever feasible, the measures appearing in the appendix to this recommendation.

Appendix to Recommendation No. R (97) 4

I. Development of an integrated and coherent health policy

1. A health policy for single parent families should :

- be based on values propounded by the Council of Europe: human rights and patients' rights, human dignity, equity, solidarity, equal gender opportunity, participation, freedom of choice _ balanced by the obligation to help strengthen one's own health;
- encourage the consultation of families and their participation in the formulation, implementation and evaluation of policies;
- avoid labelling and legal or social stigmatisation;
- provide measures:
    - to ensure that problems of single parent families are dealt with within the context of the overall national family policy;
    - to forestall the problems that are likely to arise in single parent families as a result of isolation, stress, poor living conditions, accumulation of social roles, physical and psychological overload;
    - to promote the mental and physical well-being of the family through coping mechanisms at the individual level and a supportive environment at the community level;
- ensure equitable access to health services, particularly for the more vulnerable categories such as low-income groups, the homeless, ethnic minorities, young single mothers.

2. The health policy should respect the current diversity of family structures, make efforts to integrate them, accept the changing quality and content of family life and afford equal treatment to different types of family.
3. The health policy should be built on a structured co-ordination between all the sectors involved in the protection and promotion of the well-being of citizens, and particularly those sectors that are concerned with income, housing and training. Such co-ordination should ensure a coherent interdisciplinary approach to the health problems of single parent families.
4. In implementing this policy, governments should assess policies and programmes from the point of view of single parent families, co-ordinate policies and services, co-operate with NGOs, facilitate community actions, collect and report statistical data and allocate funds, where applicable.
   These actions can be carried out through a focal point for family policy within the health administration or within the various frameworks and institutions set up for this purpose.
5. This health policy should be integrated into the health system of each member state and appropriately co-ordinated with the social policy.

II. Specific measures

The following action areas are recommended for governments to protect and promote the health of single parent families:

1. Health promotion programmes
   These programmes should be developed to help strengthen personal skills to cope with problems affecting health, provide appropriate information and education should be easily accessible.
   They should, in particular :
   - heighten public awareness of the need for health policies and programmes tackling the inequality and social exclusion issues;
   - promote awareness of potential health problems in the absence of adequate support;
   - train in parenting and assist in establishing improved relationships with their children;
   - build up self-esteem in the members of the family;
   - provide organisational and financial assistance in building up self-help groups.
2. Reorientation of health services
   Single parent families should be empowered to use effectively the health services they need. The specific needs of single parent families should be considered as necessary and essential health needs and treated as a priority.
   Health services should therefore be reoriented to ensure:
   - efficient co-ordination and interaction between different service providers in a decentralised environment;
   - no discrimination;
   - no duplication;
   - family participation in the decision-making process;
   - effective quality control of the services and the establishment of standards, performance indicators and guidelines reflecting the specific needs of single parent families;

- free choice of services;
- when needed, specially targeted programmes intended for a specific group.

3. Facilities such as short-stay flats and day centres for children should be made available, particularly at times of crisis (separation, divorce, violence).
   In particular, day-care centres for children should be adapted to the working hours of the parent and be able to take sick children of parents who work outside the home. Parents of sick children should have the possibility of staying at home with their sick child.
4. Free access to counselling services should be ensured.
5. Full information should be provided to single parents on both the public and voluntary services available for the family. Public services should co-operate with the voluntary sector to provide single parent families with a wide range of services.
6. Closer co-operation between and support for non-governmental organisations is recommended, so that their common action better promotes the physical and psychological health of single parent families.
7. A statistical system should include data on single parent family health, social and economic status, access and utilisation of services.

III. Education and training of health and related staff

Improved education and training should be provided in the following areas :

1. Therapeutic skills for health and social services professionals :
   - in the undergraduate curriculum of health, education and social services personnel, in relation to the use of problem-solving approaches for the most vulnerable groups;
   - at post-graduate level, multidisciplinary training with emphasis upon the formation of self-help groups, the importance of communication and the need for awareness of local community needs.
2. Use of early detection methods by health and social services professionals :
   - promotion of skills in early diagnosis of mental health problems, particularly in relation to depression;
   - training for both education and health personnel in the early detection of problems at school, and in multidisciplinary approaches taking account of educational, psychological and social aspects.

IV. Research

The following issues should be addressed by the research programmes:

- assessment of cost/benefit and cost/effectiveness of different policies and programmes for single parent families;
- the transportability of successful policies and programmes;
- tools for monitoring and evaluation of policies, programmes and services which provide a scientific basis for continuous learning and improvement;
- development of quality indicators and practice guidelines based on the proper empirical evidence;
- assessment of the health impact of different policies particularly as regards single parent families;
- factors affecting the mental health of single parent families (homelessness, unemployment and other forms of social exclusion) as well as factors which may facilitate the psycho-social development of children and young people at risk

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

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RECOMMENDATION NO. R (97) 5
OF THE COMMITTEE OF MINISTERS TO MEMBER STATES
ON THE PROTECTION OF MEDICAL DATA

(Adopted by the Committee of Ministers on 13 February 1997 at the 584th meeting of the Minsters' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,
Considering that the aim of the Council of Europe is to achieve a greater unity between its members;
Recalling the general principles on data protection in the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (European Treaty Series, No. 108) and in particular its Article 6 which stipulates that personal data concerning health may not be processed automatically unless domestic law provides appropriate safeguards;
Aware of the increasing use of automatic processing of medical data by information systems, not only for medical care, medical research, hospital management and public health but also outside the health-care sector;
Convinced of the importance of the quality, integrity and availability of medical data for the health of the data subject and his family;
Aware that progress in medical science is dependent to a great extent on the availability of medical data on individuals;
Convinced that it is desirable to regulate the collection and processing of medical data, to safeguard the confidentiality and security of personal data regarding health, and to ensure that they are used subject to the rights and fundamental freedoms of the individual, and in particular the right to privacy;
Aware that progress made in medical science and developments in information technology since 1981 have made it necessary to revise various provisions in Recommendation No. R (81) 1 on regulations for automated medical data banks,
Recommends that the governments of member states:
- take steps to ensure that the principles contained in the appendix to this recommendation are reflected in their law and practice;
- ensure wide circulation of the principles contained in the appendix to this recommendation among persons professionally involved in the collection and processing of medical data;
Decides that this recommendation will replace Recommendation No. R (81) 1 on regulations for automated medical data banks.

Appendix to Recommendation No. R (97) 5

1. Definitions

For the purposes of this recommendation:

- the expression "personal data" covers any information relating to an identified or identifiable individual. An individual shall not be regarded as "identifiable" if identification requires an unreasonable amount of time and manpower. In cases where the individual is not identifiable, the data are referred to as anonymous;
- the expression "medical data" refers to all personal data concerning the health of an individual. It refers also to data which have a clear and close link with health as well as to genetic data;
- the expression "genetic data" refers to all data, of whatever type, concerning the hereditary characteristics of an individual or concerning the pattern of inheritance of such characteristics within a related group of individuals.
  It also refers to all data on the carrying of any genetic information (genes) in an individual or genetic line relating to any aspect of health or disease, whether present as identifiable characteristics or not.
  The genetic line is the line constituted by genetic similarities resulting from procreation and shared by two or more individuals.

2. Scope

2.1. This recommendation is applicable to the collection and automatic processing of medical data, unless domestic law, in a specific context outside the health-care sector, provides other appropriate safeguards.

2.2. A member state may extend the principles set out in this recommendation to cover medical data not processed automatically.

3. Respect for privacy

3.1. The respect of rights and fundamental freedoms, and in particular of the right to privacy, shall be guaranteed during the collection and processing of medical data.

3.2. Medical data may only be collected and processed if in accordance with appropriate safeguards which must be provided by domestic law.

In principle, medical data should be collected and processed only by health-care professionals, or by individuals or bodies working on behalf of health-care professionals. Individuals or bodies working on behalf of health-care professionals who collect and process medical data should be subject to the same rules of confidentiality incumbent on health-care professionals, or to comparable rules of confidentiality.

Controllers of files who are not health-care professionals should only collect and process medical data subject either to rules of confidentiality comparable to those incumbent upon a health-care professional or subject to equally effective safeguards provided for by domestic law.

4. Collection and processing of medical data

4.1. Medical data shall be collected and processed fairly and lawfully and only for specified purposes.

4.2. Medical data shall in principle be obtained from the data subject. They may only be obtained from other sources if in accordance with Principles 4, 6 and 7 of this recommendation and if this is necessary to achieve the purpose of the processing or if the data subject is not in a position to provide the data.

4.3. Medical data may be collected and processed:

a) if provided for by law for:

i) public health reasons; or

ii) subject to Principle 4.8, the prevention of a real danger or the suppression of a specific criminal offence; or

iii) another important public interest; or

b) if permitted by law:

i) for preventive medical purposes or for diagnostic or for therapeutic purposes with regard to the data subject or a relative in the genetic line; or

ii) to safeguard the vital interests of the data subject or of a third person; or

iii) for the fulfilment of specific contractual obligations; or

iv) to establish, exercise or defend a legal claim; or

c) if the data subject or his/her legal representative or an authority or any person or body provided for by law has given his/her consent for one or more purposes, and in so far as domestic law does not provide otherwise.

4.4. If medical data have been collected for preventive medical purposes or for diagnostic or therapeutic purposes with regard to the data subject or a relative in the genetic line, they may also be processed for the management of a medical service operating in the interest of the patient, in cases where the management is provided by the health-care professional who collected the data, or where the data are communicated in accordance with principles 7.2 and 7.3.

Unborn children

4.5. Medical data concerning unborn children should be considered as personal data and enjoy a protection comparable to the protection of the medical data of a minor.

4.6. Unless otherwise provided for by domestic law, the holder of parental responsibilities may act as the person legally entitled to act for the unborn child, the latter being a data subject.

Genetic data

4.7. Genetic data collected and processed for preventive treatment, diagnosis or treatment of the data subject or for scientific research should only be used for these purposes or to allow the data subject to take a free and informed decision on these matters.

4.8. Processing of genetic data for the purpose of a judicial procedure or a criminal investigation should be the subject of a specific law offering appropriate safeguards.
The data should only be used to establish whether there is a genetic link in the framework of adducing evidence, to prevent a real danger or to suppress a specific criminal offence. In no case should they be used to determine other characteristics which may be linked genetically.

4.9. For purposes other than those provided for in Principles 4.7 and 4.8, the collection and processing of genetic data should, in principle, only be permitted for health reasons and in particular to avoid any serious prejudice to the health of the data subject or third parties.
However, the collection and processing of genetic data in order to predict illness may be allowed for in cases of overriding interest and subject to appropriate safeguards defined by law.

5. Information of the data subject

5.1. The data subject shall be informed of the following elements:
a) the existence of a file containing his/her medical data and the type of data collected or to be collected;
b) the purpose or purposes for which they are or will be processed;
c) where applicable, the individuals or bodies from whom they are or will be collected;
d) the persons or bodies to whom and the purposes for which they may be communicated;
e) the possibility, if any, for the data subject to refuse his consent, to withdraw it and the consequences of such withdrawal;
f) the identity of the controller and of his/her representative, if any, as well as the conditions under which the rights of access and of rectification may be exercised.

5.2. The data subject should be informed at the latest at the moment of collection. However, when medical data are not collected from the data subject, the latter should be notified of the collection as soon as possible, as well as - in a suitable manner - of the information listed under Principle 5.1, unless this is clearly unreasonable or impracticable, or unless the data subject has already received the information.

5.3. Information for the data subject shall be appropriate and adapted to the circumstances. Information should preferably be given to each data subject individually.

5.4. Before a genetic analysis is carried out, the data subject should be informed about the objectives of the analysis and the possibility of unexpected findings.

Legally incapacitated persons

5.5. If the data subject is a legally incapacitated person, incapable of free decision and domestic law does not permit the data subject to act on his/her own behalf, the information shall be given to the person recognised as legally entitled to act in the interest of the data subject.
If a legally incapacitated person is capable of understanding, he/she should be informed before his/her data are collected or processed.

Derogations

5.6. Derogations from Principles 5.1, 5.2 and 5.3 may be made in the following cases:
a) information of the data subject may be restricted if the derogation is provided for by law and constitutes a necessary measure in a democratic society:
i) to prevent a real danger or to suppress a criminal offence.
ii) for public health reasons.
iii) to protect the data subject and the rights and freedoms of others;
b) in medical emergencies, data considered necessary for medical treatment may be collected prior to information.

6. Consent

6.1. Where the data subject is required to give his/her consent, this consent should be free, express and informed.

6.2. The results of any genetic analysis should be formulated within the limits of the objectives of the medical consultation, diagnosis or treatment for which consent was obtained.

6.3. Where it is intended to process medical data relating to a legally incapacitated person who is incapable of free decision, and when domestic law does not permit the data subject to act on his/her own behalf, consent is required of the person recognised as legally entitled to act in the interest of the data subject or of an authority or any person or body provided for by law.

If, in accordance with Principle 5.5 above, a legally incapacitated person has been informed of the intention to collect or process his/her medical data, his/her wishes should be taken into account, unless domestic law provides otherwise.

7. Communication

7.1. Medical data shall not be communicated, unless on the conditions set out in this principle and in Principle 12.

7.2. In particular, unless other appropriate safeguards are provided by domestic law, medical data may only be communicated to a person who is subject to the rules of confidentiality incumbent upon a health-care professional, or to comparable rules of confidentiality, and who complies with the provisions of this recommendation.

7.3. Medical data may be communicated if they are relevant and:

a) if the communication is provided for by law and constitutes a necessary measure in a democratic society for:

i) public health reasons; or

ii) the prevention of a real danger or the suppression of a specific criminal offence; or

iii) another important public interest; or

iv) the protection of the rights and freedoms of others; or

b) if the communication is permitted by law for the purpose of:

i) the protection of the data subject or a relative in the genetic line;

ii) safeguarding the vital interests of the data subject or a third person; or

iii) the fulfilment of specific contractual obligations; or

iv) establishing, exercising or defending a legal claim; or

c) if the data subject or his/her legal representative, or an authority, or any person or body provided for by law has given his/her consent for one or more purposes, and in so far as domestic law does not provide otherwise; or

d) provided that the data subject or his/her legal representative, or an authority, or any person or body provided for by law has not explicitly objected to any non-mandatory communication, if the data have been collected in a freely chosen preventive, diagnostic or therapeutic context, and if the purpose of the communication, in particular the provision of care to the patient or the management of a medical service operating in the interest of the patient, is not incompatible with the purpose of the processing for which they were collected.

8. Rights of the data subject

Rights of access and of rectification

8.1. Every person shall be enabled to have access to his/her medical data, either directly or through a health-care professional or, if permitted by domestic law, a person appointed by him/her. The information must be accessible in understandable form.

8.2. Access to medical data may be refused, limited or delayed only if the law provides for this and if:

a) this constitutes a necessary measure in a democratic society in the interests of protecting state security, public safety, or the suppression of criminal offences; or

b) knowledge of the information is likely to cause serious harm to the data subject's health; or

c) the information on the data subject also reveals information on third parties or if, with respect to genetic data, this information is likely to cause serious harm to consanguine or uterine kin or to a person who has a direct link with this genetic line; or

d) the data are used for statistical or for scientific research purposes where there is clearly no risk of an infringement of the privacy of the data subject, notably the possibility of using the data collected in support of decisions or measures regarding any particular individual.

8.3. The data subject may ask for rectification of erroneous data concerning him/her and, in case of refusal, he/she shall be able to appeal.

Unexpected findings

8.4. The person subjected to genetic analysis should be informed of unexpected findings if the following conditions are met:

a) domestic law does not prohibit the giving of such information;
b) the person himself has asked for this information;
c) the information is not likely to cause serious harm:
i) to his/her health; or
ii) to his/her consanguine or uterine kin, to a member of his/her social family, or to a person who has a direct link with his/her genetic line, unless domestic law provides other appropriate safeguards.
Subject to sub-paragraph a, the person should also be informed if this information is of direct importance to him/her for treatment or prevention.

9. Security

9.1. Appropriate technical and organisational measures shall be taken to protect personal data - processed in accordance with this recommendation - against accidental or illegal destruction, accidental loss, as well as against unauthorised access, alteration, communication or any other form of processing.
Such measures shall ensure an appropriate level of security taking account, on the one hand, of the technical state of the art and, on the other hand, of the sensitive nature of medical data and the evaluation of potential risks.
These measures shall be reviewed periodically.

9.2. In order to ensure in particular the confidentiality, integrity and accuracy of processed data, as well as the protection of patients, appropriate measures should be taken:
a) to prevent any unauthorised person from having access to installations used for processing personal data (control of the entrance to installations);
b) to prevent data media from being read, copied, altered or removed by unauthorised persons (control of data media);
c) to prevent the unauthorised entry of data into the information system, and any unauthorised consultation, modification or deletion of processed personal data (memory control);
d) to prevent automated data processing systems from being used by unauthorised persons by means of data transmission equipment (control of utilisation);
e) with a view to, on the one hand, selective access to data and, on the other hand, the security of the medical data, to ensure that the processing as a general rule is so designed as to enable the separation of:
- identifiers and data relating to the identity of persons;
- administrative data;
- medical data;
- social data;
- genetic data (access control);
to guarantee the possibility of checking and ascertaining to which persons or bodies personal data can be communicated by data transmission equipment (control of communication);
g) to guarantee that it is possible to check and establish a posteriori who has had access to the system and what personal data have been introduced into the information system, when and by whom (control of data introduction);
h) to prevent the unauthorised reading, copying, alteration or deletion of personal data during the communication of personal data and the transport of data media (control of transport);
i) to safeguard data by making security copies (availability control).

9.3. Controllers of medical files should, in accordance with domestic law, draw up appropriate internal regulations which respect the related principles in this recommendation.

9.4. Where necessary, controllers of files processing medical data should appoint an independent person responsible for security of information systems and data protection and competent for giving advice on these issues.

10. Conservation

10.1. In general, medical data shall be kept no longer than necessary to achieve the purpose for which they were collected and processed.

10.2. When, in the legitimate interest of public health, medical science - of the person in charge of the medical treatment or the controller of the file, in order to enable him/her to defend or exercise a legal claim - or for historical or statistical reasons, it proves necessary to conserve medical data that no longer serve their original purpose, technical arrangements shall be made to ensure their correct conservation and security, taking into account the privacy of the patient.

10.3. On the request of the data subject, his/her medical data should be erased - unless they have been made anonymous or there are overriding and legitimate interests, in particular those stated in Principle 10.2 not to do so, or there is an obligation to keep the data on record.

11. Transborder flows

11.1. The principles of this recommendation are applicable to the transborder flow of medical data.

11.2. The transborder flow of medical data to a state which has ratified the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, and which disposes of legislation which provides at least equivalent protection of medical data, should not be subjected to special conditions concerning the protection of privacy.

11.3. Where the protection of medical data can be considered to be in line with the principle of equivalent protection laid down in the convention, no restriction should be placed on the transborder flow of medical data to a state which has not ratified the convention but which has legal provisions which ensure protection in accordance with the principles of that convention and this recommendation.

11.4. Unless otherwise provided for by domestic law, the transborder flow of medical data to a state which does not ensure protection in accordance with the convention and with this recommendation, should not as a rule occur unless:

a) necessary measures, including those of a contractual nature, to respect the principles of the convention and this recommendation, have been taken, and the data subject has the possibility to object to the transfer; or

b) the data subject has given his consent.

11.5. Unless in the case of emergency or of a transfer to which the data subject has given his informed consent, appropriate measures should be taken to ensure the protection of medical data transferred from one country to another, and in particular:

a) the person responsible for the transfer should indicate to the addressee the specified and legitimate purposes for which the data have been originally collected, as well as the persons or bodies to whom they may be communicated;

b) unless otherwise provided for by domestic law, the addressee should undertake, in respect of the person responsible for the transfer, to honour the specified and legitimate purposes which he/she has accepted, and not to communicate the data to persons or bodies other than those indicated by the person responsible for the transfer.

12. Scientific research

12.1. Whenever possible, medical data used for scientific research purposes should be anonymous. Professional and scientific organisations as well as public authorities should promote the development of techniques and procedures securing anonymity.

12.2. However, if such anonymisation would make a scientific research project impossible, and the project is to be carried out for legitimate purposes, it could be carried out with personal data on condition that:

a) the data subject has given his/her informed consent for one or more research purposes; or

b) when the data subject is a legally incapacitated person incapable of free decision, and domestic law does not permit the data subject to act on his/her own behalf, his/her legal representative or an authority, or any person or body provided for by law, has given his/her consent in the framework of a research project related to the medical condition or illness of the data subject; or

c) disclosure of data for the purpose of a defined scientific research project concerning an important public interest has been authorised by the body or bodies designated by domestic law, but only if:

i) the data subject has not expressly opposed disclosure; and

ii) despite reasonable efforts, it would be impracticable to contact the data subject to seek his consent; and

iii) the interests of the research project justify the authorisation; or

d) the scientific research is provided for by law and constitutes a necessary measure for public health reasons.

12.3. Subject to complementary provisions determined by domestic law, health-care professionals entitled to carry out their own medical research should be able to use the medical data which they hold as long as the data subject has been informed of this possibility and has not objected.

12.4. As regards any scientific research based on personal data, the incidental problems, including those of an ethical and scientific nature, raised by respect of the provisions of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data should also be examined in the light of other relevant instruments.

12.5. Personal data used for scientific research may not be published in a form which enables the data subjects to be identified, unless they have given their consent for the publication and publication is permitted by domestic law.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

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RECOMMENDATION NO. R (97) 17
OF THE COMMITTEE OF MINISTERS TO MEMBER STATES
ON THE DEVELOPMENT AND IMPLEMENTATION OF QUALITY IMPROVEMENT SYSTEMS (QIS) IN HEALTH CARE

(Adopted by the Committee of Ministers on 30 September 1997 at the 602nd meeting of the Ministers' Deputies)
Provisional version

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe
Considering that the aim of the Council of Europe is to achieve greater unity between its members and that this aim may be pursued, inter alia, by the adoption of common action in the public health field;
Considering that receiving health care of good quality of is a fundamental right of every individual and each community;
Bearing in mind Article 11 of the European Social Charter on the right to the protection of health;
Recalling that Article 3 of the Convention on Human Rights and Biomedicine requires that Contracting Parties provide "equitable access to health care of appropriate quality,"
Noting that continuous improvement of this quality of care is a key priority for all member states, particularly in a situation of economic restraints and reduced budgets in health care;
Considering that good quality care covers:
- structural and organisational aspects of care provision, such as accessibility,
- process aspects such as professional excellence and efficient use of resources, and
- good outcomes of care;
Considering that particularly the outcomes in terms of patients' health, well-being, and satisfaction are crucial;
Considering that the users should necessarily participate in their health care and recognizing that the health professionals should provide complete and clear information;
Considering that it is necessary for each member State to promote the general education of the public about problems of health, health promotion, disease prevention and forms of taking responsibilities;
Considering that ensuring good quality of health care is an obligation of all member states, and demands planned, systematic, and continuous attention and action and a mobilisation of all the actors, including researchers;
Considering that multitude of research results demonstrate the importance of iatrogenic risks, both medication and non-drug related, which arise in the practice of medicine;
Considering that quality improvement in health care is a relatively new field and so far not fully developed,
Recommends that the governments of the member States
- create policies and structures, where appropriate, that support the development and implementation of "quality improvement systems," i.e. systems for continuously assuring and improving the quality of health care at all levels, according to the guidelines in the Appendix set out hereafter.

Appendix to the Recommendation No. R (97) 17

I. DIMENSIONS OF QUALITY IMPROVEMENT SYSTEMS

A. Procedures and processes for quality improvement

1. The following essential features of quality improvement systems should be implemented:
   - identification of quality problems and successes;
   - systematic collection of data on care provision;
   - standards and evidence-based guidelines for high-quality cost-effective care;
   - implementing changes when needed by effective mechanisms and strategies;
   - measuring the impact of changes;
   - exploiting best practices.

B. Organisation of quality improvement

2. Such systems should be set up at all levels of care provision: individual care providers, practices, hospitals, other institutions, and at the interfaces between them. The same requirements for health care quality assurance should be established in all public and private health institutions.

C. Responsibilities: the actors in quality improvement

3. All the different parties involved in health care (providers, patients, funders, managers, and authorities) need to participate in setting up and maintaining these quality improvement systems in a close and continuous cooperation.
4. Health care providers should themselves develop, set up, and maintain quality improvement systems adapted to their health care settings and make these systems transparent to others.
5. Funders should contribute to quality improvement by requiring the establishment of quality improvement systems in their contracts with practitioners, hospitals, and health care organisations.
6. Health policy makers should create the necessary framework for policies, laws, and regulations concerning quality, accompanied by appropriate evaluation and updating procedures.
7. Managers in health care should assume leadership in setting up such systems in their organisations.

II. KEY ISSUES IN QUALITY IMPROVEMENT SYSTEMS: GENERAL PRINCIPLES

A. Practice guidelines

8. Guidelines should be developed systematically, disseminated effectively to the professionals as well as the public, and their effects monitored.

B. Technology assessment and quality improvement

9. Health care should be improved by applying methods of evidence-based medicine and utilising the results of technology assessment in decision-making, directing appropriate attention to laboratory quality assurance.

C. Quality indicators and information systems

10. Health care information systems should be set up for using relevant quality of care and process indicators and allow for timely production, feedback, and reliable comparisons of health care data. In all cases, individual patient data must be kept confidential.

D. Patient's perspective

11. Information on the needs, priorities, and experiences of patients at all levels of care provision should be gathered through appropriate methods ensuring active participation of patients.

E. Managing change

12. Quality improvement systems should include effective mechanisms and strategies:
- for achieving necessary changes in a planned and managed approach;
- for involving all the actors in care processes and decision making, in particular, patients

III. CONDITIONS FOR IMPLEMENTATION OF QIS

13. The necessary conditions should be created in accordance with each member state's legal and political system, for setting up and implementing quality improvement systems namely:

- support structures, such as agencies, boards, committees, and networks;
- making full use of available resources, and where necessary provide resources and specific financing mechanisms for quality assessment, assurance, improvement and development;
- pre- and postgraduate education for health care providers to gain knowledge of and skills in quality assessment and improvement systems;
- appropriate incentives for participation in quality improvement.

IV. EVALUATION OF QUALITY IMPROVEMENT SYSTEMS

A. Public accountability

14. Public accountability of quality improvement systems should be examined through objective external assessment by independent bodies and appropriate communication of the results.

B. Feedback

15. The results of external assessment should be used to support continuous internal evaluation and improvement.

V. RESEARCH AND DEVELOPMENT

National efforts

16. All necessary measures should be taken to promote research and development of quality improvement.

European co-operation

17. Stimulating exchange and collaboration in quality improvement at the national as well as at the European level should be encouraged. Quality issues should be included into European co-operative initiatives (e.g. data handling and exchange).

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

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RECOMMENDATION NO. R (98) 7
OF THE COMMITTEE OF MINISTERS TO MEMBER STATES
CONCERNING THE ETHICAL AND ORGANISATIONAL ASPECTS
OF HEALTH CARE IN PRISON

(Adopted by the Committee of Ministers on 8 April 1998 at the 627th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,
Considering that medical practice in the community and in the prison context should be guided by the same ethical principles;
Aware that the respect for the fundamental rights of prisoners entails the provision to prisoners of preventive treatment and health care equivalent to those provided to the community in general;
Recognising that the medical practitioner in prison often faces difficult problems which stem from conflicting expectations from the prison administration and prisoners, the consequences of which require that the practitioner should adhere to very strict ethical guidelines;
Considering that it is in the interests of the prison doctor, the other health care staff, the inmates and the prison administration to proceed on a clear vision of the right to health care in prison and the specific role of the prison doctor and the other health care staff;
Considering that specific problem situations in prisons such as overcrowding, infectious diseases, drug addiction, mental disturbance, violence, cellular confinement or body searches require sound ethical principles in the conduct of medical practice;
Bearing in mind the European Convention on Human Rights, the European Social Charter and the Convention on Human Rights and Biomedicine;
Bearing in mind the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and the recommendations on health care service in prisons summarised in the 3rd general report on the activities of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;
Referring to its Recommendation No. R (87) 3 on the European Prison Rules which help to guarantee minimum standards of humanity and dignity in prisons;
Recalling Recommendation No. R (90) 3 on medical research on human beings and Recommendation No. R (93) 6 concerning prison and criminological aspects of the control of transmissible diseases including Aids and related health problems in prison, as well as the 1993 WHO guidelines on HIV infection and Aids in prison;
Mindful of Recommendations 1235 (1994) on psychiatry and human rights and 1257 (1995) on the conditions of detention in Council of Europe member states, prepared by the Parliamentary Assembly of the Council of Europe;
Referring to the Principles of Medical Ethics for the Protection of Detained Persons and Prisoners against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by United Nations General Assembly in 1982;
Referring to the specific declarations of the World Medical Association (WMA) concerning medical ethics, in particular the Declaration of Tokyo (1975), the Declaration of Malta on hunger strikers (1991) and the Statement on body searches of prisoners (1993);
Taking note of recent reforms in structure, organisation and regulation of prison health care services in several member states, in particular in connection with reforms of their health care systems;
Taking into account the different administrative structures of member states which require the implementation of recommendations both at federal and state levels,
Recommends that the governments of member states:
- take into account, when reviewing their legislation and in their practice in the area of health care provision in prison, the principles and recommendations set out in the appendix to this recommendation;
- ensure the widest possible dissemination of the recommendation and its explanatory memorandum, paying special attention to all individuals and bodies responsible for the organisation and provision of preventive treatment and health care in prison.

Appendix to Recommendation No. R (98) 7

I. Main characteristics of the right to health in prison

A. Access to a doctor

1. When entering prison and later on while in custody, prisoners should be able at any time to have access to a doctor or a fully qualified nurse, irrespective of their detention regime and without undue delay, if required by their state of health. All detainees should benefit from appropriate medical examinations on admission. Special emphasis should be put on the screening of mental disorders, of psychological adaptation to prison, of withdrawal symptoms resulting from use of drugs, medication or alcohol, and of contagious and chronic conditions.
2. In order to satisfy the health requirements of the inmates, doctors and qualified nurses should be available on a full-time basis in the large penal institutions, depending on the number and the turnover of inmates and their average state of health.
3. A prison's health care service should at least be able to provide out-patient consultations and emergency treatment. When the state of health of the inmates requires treatment which cannot be guaranteed in prison, everything possible should be done to ensure that treatment is given, in all security in health establishments outside the prison .
4. Prisoners should have access to a doctor, when necessary, at any time during the day and the night. Someone competent to provide first aid should always be present on the prison premises. In case of serious emergencies, the doctor, a member of the nursing staff and the prison management should be warned; active participation and commitment of the custodial staff is essential.
5. An access to psychiatric consultation and counselling should be secured. There should be a psychiatric team in larger penal institutions. If this is not available as in the smaller establishments, consultations should be assured by a psychiatrist, practising in hospital or in private.
6. The services of a qualified dental surgeon should be available to every prisoner.
7. The prison administration should make arrangements for ensuring contacts and co-operation with local public and private health institutions. Since it is not easy to provide appropriate treatment in prison for certain inmates addicted to drugs, alcohol or medication, external consultants belonging to the system providing specialist assistance to addicts in the general community should be called on for counselling and even care purposes.
8. Where appropriate, specific services should be provided to female prisoners. Pregnant inmates should be medically monitored and should be able to deliver in an external hospital service most appropriate to their condition.
9. In being escorted to hospital the patient should be accompanied by medical or nursing staff, as required.

B. Equivalence of care

10. Health policy in custody should be integrated into, and compatible with, national health policy. A prison health care service should be able to provide medical, psychiatric and dental treatment and to implement programmes of hygiene and preventive medicine in conditions comparable to those enjoyed by the general public. Prison doctors should be able to call upon specialists. If a second opinion is required, it is the duty of the service to arrange it.
11. The prison health care service should have a sufficient number of qualified medical, nursing and technical staff, as well as appropriate premises, installations and equipment of a quality comparable, if not identical, to those which exist in the outside environment.
12. The role of the ministry responsible for health should be strengthened in the domain of quality assessment of hygiene, health care and organisation of health services in custody, in accordance with national legislation. A clear division of responsibilities and authority should be established between the ministry responsible for health or other competent ministries, which should co-operate in implementing an integrated health policy in prison.

C. Patient's consent and confidentiality

13. Medical confidentiality should be guaranteed and respected with the same rigour as in the population as a whole.

14. Unless inmates suffer from any illness which renders them incapable of understanding the nature of their condition, they should always be entitled to give the doctor their informed consent before any physical examination of their person or their body products can be undertaken, except in cases provided for by law. The reasons for each examination should be clearly explained to, and understood by, the inmates. The indication for any medication should be explained to the inmates, together with any possible side effects likely to be experienced by them.
15. Informed consent should be obtained in the case of mentally ill patients as well as in situations when medical duties and security requirements may not coincide, for example refusal of treatment or refusal of food.
16. Any derogation from the principle of freedom of consent should be based upon law and be guided by the same principles which are applicable to the population as a whole.
17. Remand prisoners should be entitled to ask for a consultation with their own doctor or another outside doctor at their own expense.
Sentenced prisoners may seek a second medical opinion and the prison doctor should give this proposition sympathetic consideration. However, any decision as to the merits of this request is ultimately his responsibility.
18. All transfers to other prisons should be accompanied by full medical records. The records should be transferred under conditions ensuring their confidentiality. Prisoners should be informed that their medical record will be transferred. They should be entitled to object to the transfer, in accordance with national legislation.
All released prisoners should be given relevant written information concerning their health for the benefit of their family doctor.

D. Professional independence

19. Doctors who work in prison should provide the individual inmate with the same standards of health care as are being delivered to patients in the community. The health needs of the inmate should always be the primary concern of the doctor.
20. Clinical decisions and any other assessments regarding the health of detained persons should be governed only by medical criteria. Health care personnel should operate with complete independence within the bounds of their qualifications and competence.
21. Nurses and other members of the health care staff should perform their tasks under the direct responsibility of the senior doctor, who should not delegate to paramedical personnel tasks other than those authorised by law and by deontological codes. The quality of the medical and nursing services should be assessed by a qualified health authority.
22. The remuneration of medical staff should not be lower than that which would be used in other sectors of public health.

II. The specific role of the prison doctor and other health care staff in the context of the prison environment

A. General requirements

23. The role of the prison doctor is firstly to give appropriate medical care and advice to all the prisoners for whom he or she is clinically responsible.
24. It should also imply advising the prison management on matters concerned with nutrition or the environment within which the prisoners are required to live, as well as in respect of hygiene and sanitation.
25. Health care staff should be able to provide health information to the prison management and custodial staff as well as appropriate health training, as necessary.

B. Information, prevention and education for health

26. On admission to prison, each person should receive information on rights and obligations, the internal regulations of the establishment as well as guidelines as to how and where to get help and advice. This information should be understood by each inmate. Special instruction should be given to the illiterate.

27. A health education programme should be developed in all prison establishments. Both inmates and prison administrators should receive a basic health promotion information package, targeted towards health care for persons in custody.
28. Emphasis should be put on explaining the advantages of voluntary and anonymous screening for transmissible diseases and the possible negative consequences of hepatitis, sexually transmitted diseases, tuberculosis or infection with HIV. Those who undergo a test must benefit from follow-up medical consultation.
29. The health education programme should aim at encouraging the development of healthy lifestyles and enabling inmates to make appropriate decisions in respect of their own health and that of their families, preserving and protecting individual integrity, diminishing risks of dependency and recidivism. This approach should motivate inmates to participate in health programmes in which they are taught in a coherent manner the behaviour and strategies for minimising risks to their health.

C. Particular forms of pathology and preventive health care in prison

30. Any signs of violence observed when prisoners are medically screened on their admission to a prison establishment should be fully recorded by the doctor, together with any relevant statements by the prisoner and the doctor's conclusions. This information should also be made available to the prison administration with the consent of the prisoner.
31. Any information on cases of violence against inmates, occasioned in the course of detention, should be forwarded to the relevant authorities. As a rule, such action should only be undertaken with the consent of the inmates concerned.
32. In certain exceptional cases, and in any event in strict compliance with the rules of professional ethics, the informed consent of the prisoner need not be regarded as essential, in particular, if the doctor considers that he or she has an overriding responsibility both to the patient and to the rest of the prison community to report a serious incident that presents a real danger. The health care service should collect, if appropriate, periodic statistical data concerning injuries observed, with a view to communicating them to the prison management and the ministries concerned, in accordance with national legislation on data protection.
33. Appropriate health training for members of the custodial staff should be provided with a view to enabling them to report physical and mental health problems which they might detect in the prison population.

D. The professional training of prison health care staff

34. Prison doctors should be well versed in both general medical and psychiatric disorders. Their training should comprise the acquisition of initial theoretical knowledge, an understanding of the prison environment and its effects on medical practice in prison, an assessment of their skills, and a traineeship under the supervision of a more senior colleague. They should also be provided with regular in-service training.
35. Appropriate training should also be provided to other health care staff and should include knowledge about the functioning of prisons and relevant prison regulations.

III. The organisation of health care in prison with specific reference to the management of certain common problems

A. Transmitted diseases, in particular: HIV infection and Aids, Tuberculosis, Hepatitis

36. In order to prevent sexually transmitted infections in prison adequate prophylactic measures should be taken.
37. HIV tests should be performed only with the consent of the inmates, on an anonymous basis and in accordance with existing legislation. Thorough counselling should be provided before and after the test.
38. The isolation of a patient with an infectious condition is only justified if such a measure would also be taken outside the prison environment for the same medical reasons.
39. No form of segregation should be envisaged in respect of persons who are HIV antibody positive, subject to the provisions contained in paragraph 40.
40. Those who become seriously ill with Aids-related illnesses should be treated within the prison health care department, without necessarily resorting to total isolation. Patients, who need to be protected from the

infectious illnesses transmitted by other patients, should be isolated only if such a measure is necessary for their own sake to prevent them acquiring intercurrent infections, particularly in those cases where their immune system is seriously impaired.

41. If cases of tuberculosis are detected, all necessary measures should be applied to prevent the propagation of this infection, in accordance with relevant legislation in this area. Therapeutic intervention should be of a standard equal to that outside of prison.

42. Because it is the only effective method of preventing the spread of hepatitis B, vaccination against hepatitis B should be offered to inmates and staff. Information and appropriate prevention facilities should be made available in view of the fact that hepatitis B and C are transmitted mainly by the intravenous use of drugs together with seminal and blood contamination.

B. Addiction to drugs, alcohol and medication: management of pharmacy and distribution of medication

43. The care of prisoners with alcohol and drug-related problems needs to be developed further, taking into account in particular the services offered for drug addicts, as recommended by the Co-operation Group to Combat Drug Abuse and Illicit Trafficking in Drugs ("Pompidou Group"). Therefore, it is necessary to offer sufficient training to medical and prison personnel, and to improve co-operation with external counselling services, in order to ensure continuing follow-up therapy on discharge to the community.

44. The prison doctor should encourage prisoners to take advantage of the system of social or psychotherapeutic assistance in order to prevent the risks of abuse of drugs, medication and alcohol.

45. The treatment of the withdrawal symptoms of abuse of drugs, alcohol or medication in prison should be conducted along the same lines as in the community.

46. If prisoners undergo a withdrawal cure, the doctor should encourage them, both while still in prison and after their release, to take all the necessary steps to avoid a relapse into addiction.

47. Detained persons should be able to consult a specialised internal or external counsellor who would give them the necessary support both while they are serving their sentence and during their care after release. Such counsellors should also be able to contribute to the in-service training of custodial staff.

48. Where appropriate, prisoners should be allowed to carry their prescribed medication. However, medication which is dangerous if taken as an overdose should be withheld and issued to them on an individual dose-by-dose basis.

49. In consultation with the competent pharmaceutical adviser, the prison doctor should prepare as necessary a comprehensive list of medicines and drugs usually prescribed in the medical service. A medical prescription should remain the exclusive responsibility of the medical profession, and medicines should be distributed by authorised personnel only.

C. Persons unsuited to continued detention: serious physical handicap, advanced age, short term fatal prognosis

50. Prisoners with serious physical handicaps and those of advanced age should be accommodated in such a way as to allow as normal a life as possible and should not be segregated from the general prison population. Structural alterations should be effected to assist the wheelchair-bound and handicapped on lines similar to those in the outside environment.

51. The decision as to when patients subject to short term fatal prognosis should be transferred to outside hospital units should be taken on medical grounds. While awaiting such transfer, these patients should receive optimum nursing care during the terminal phase of their illness within the prison health care centre. In such cases provision should be made for periodic respite care in an outside hospice. The possibility of a pardon for medical reasons or early release should be examined.

D. Psychiatric symptoms, mental disturbance and major personality disorders, risk of suicide

52. The prison administration and the ministry responsible for mental health should co-operate in organising psychiatric services for prisoners.

53. Mental health services and social services attached to prisons should aim to provide help and advice for inmates and to strengthen their coping and adaptation skills. These services should co-ordinate their activities, bearing in mind their respective tasks. Their professional independence should be ensured, with due regard to the specific conditions of the prison context.

54. In cases of convicted sex offenders, a psychiatric and psychological examination should be offered as well as appropriate treatment during their stay and after.
55. Prisoners suffering from serious mental disturbance should be kept and cared for in a hospital facility which is adequately equipped and possesses appropriately trained staff. The decision to admit an inmate to a public hospital should be made by a psychiatrist, subject to authorisation by the competent authorities.
56. In those cases where the use of close confinement of mental patients cannot be avoided, it should be reduced to an absolute minimum and be replaced with one-to-one continuous nursing care as soon as possible.
57. Under exceptional circumstances, physical restraint for a brief period in cases of severely mentally ill patients may be envisaged, while the calming action of appropriate medication begins to take effect.
58. The risk of suicide should be constantly assessed both by medical and custodial staff. Physical methods designed to avoid self-harm, close and constant observation, dialogue and reassurance, as appropriate, should be used in moments of crisis.
59. Follow-up treatment for released inmates should be provided for at outside specialised services.

E. Refusal of treatment, hunger strike

60. In the case of refusal of treatment, the doctor should request a written statement signed by the patient in the presence of a witness. The doctor should give the patient full information as to the likely benefits of medication, possible therapeutic alternatives, and warn him/her about risks associated with his/her refusal. It should be ensured that the patient has a full understanding of his/her situation. If there are difficulties of comprehension due to the language used by the patient, the services of an experienced interpreter must be sought.
61. The clinical assessment of a hunger striker should be carried out only with the express permission of the patient, unless he or she suffers from serious mental disorders which require the transfer to a psychiatric service.
62. Hunger strikers should be given an objective explanation of the harmful effects of their action upon their physical well-being, so that they understand the dangers of prolonged hunger striking.
63. If, in the opinion of the doctor, the hunger striker's condition is becoming significantly worse, it is essential that the doctor report this fact to the appropriate authority and take action in accordance with national legislation (including professional standards).

F. Violence in prison: disciplinary procedures and sanctions, disciplinary confinement, physical restraint, top security regime

64. Prisoners who fear acts of violence including possible sexual offences from other prisoners for any pertinent reason, or who have recently been assaulted or injured by other members of the prison community, should be able to have access to the full protection of custodial staff.
65. The doctor's role should not involve authorising and condoning the use of force by prison staff, who must themselves take that responsibility to achieve good order and discipline.
66. In the case of a sanction of disciplinary confinement, any other disciplinary punishment or security measure which might have an adverse effect on the physical or mental health of the prisoner, health care staff should provide medical assistance or treatment on request by the prisoner or by prison staff.

G. Health care special programmes: sociotherapeutic programmes, family ties and contacts with the outside world, mother and child

67. Sociotherapeutic programmes should be organised along community lines and carefully supervised. Doctors should be willing to co-operate in a constructive way with all the services concerned, with a view to enabling prisoners to benefit from such programmes and thus to acquire the social skills which might help reduce the risks of recidivism after release.
68. Consideration should be given to the possibility of allowing inmates to meet with their sexual partner without visual supervision during the visit.
69. It should be possible for very young children of detained mothers to stay with them, with a view to allowing their mothers to provide the attention and care they need for maintaining a good state of health and to keep an emotional and psychological link.

70. Special facilities should be provided for mothers accompanied by children (crèches, daynurseries).
71. Doctors should not become involved in administrative decisions concerning the separation of children from their mothers at a given age.

H. Body searches, medical reports, medical research

72. Body searches are a matter for the administrative authorities and prison doctors should not become involved in such procedures. However, an intimate medical examination should be conducted by a doctor when there is an objective medical reason requiring her/his involvement.
73. Prison doctors should not prepare any medical or psychiatric reports for the defence or the prosecution, save on formal request by the prisoner or as directed by a court. They should avoid any mission as medical experts involved in the judicial procedure concerning remand prisoners. They should collect and analyse specimens only for diagnostic testing and solely for medical reasons.
74. Medical research on prisoners should be carried out in accordance with the principles set out in Recommendations No. R (87) 3 on the European Prison Rules, No. R (90) 3 on medical research in human beings and No. R (93) 6 on prison and criminological aspects of the control of transmissible diseases including Aids and related health problems in prison.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

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 By The Committee Of Ministers, On 19 May 2000 at the 710th Meeting Of The Ministers' Deputies.)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,
Bearing in mind that Europe has recently experienced a considerable growth of activities connected with trafficking in human beings for the purpose of sexual exploitation, which is often linked to organised crime in as much as such lucrative practices are used by organised criminal groups as a basis for financing and expanding their other activities, such as drugs and arms trafficking and money laundering;

Considering that trafficking in human beings for the purpose of sexual exploitation extends well beyond national borders, and that it is therefore necessary to establish a pan-European strategy to combat this phenomenon and protect its victims, while ensuring that the relevant legislation of the Council of Europe's member states is harmonised and uniformly and effectively applied;

Recalling the Declaration adopted at the Second Summit of the Council of Europe (October 1997), in which the heads of state and government of the member states of the Council of Europe decided "to seek common responses to the challenges posed by the growth (□) in organised crime (□) throughout Europe" and affirmed their determination "to combat violence against women and all forms of sexual exploitation of women";

Bearing in mind the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and its protocols;

Bearing in mind the European Social Charter (1961), the Revised European Social Charter (1996) and the Additional Protocol to the European Social Charter providing for a System of Collective Complaints;
Bearing in mind the following recommendations of the Committee of Ministers to member states of the Council of Europe: Recommendation No. R (91) 11 on sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults; Recommendation No. R (96) 8 on crime policy in Europe in a time of change, and Recommendation No. R (97) 13 concerning intimidation of witnesses and the rights of the defence;

Bearing in mind the following texts of the Parliamentary Assembly of the Council of Europe: Recommendation 1065 (1987) on the traffic in children and other forms of child exploitation, Recommendation 1211 (1993) on clandestine migration: traffickers and employers of clandestine migrants, Resolution 1099 (1996) on the sexual exploitation of children and Recommendation 1325 (1997) of the Council of Europe on trafficking in women and forced prostitution in Council of Europe member states;

Recalling also the Convention on the Elimination of all forms of Discrimination against Women (1979) and other international conventions such as the United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949);

Considering that trafficking in human beings for the purpose of sexual exploitation, which mainly concerns women and young persons, may result in slavery for the victims;

Condemns trafficking in human beings for the purpose of sexual exploitation, which constitutes a violation of human rights and an offence to the dignity and the integrity of the human being,

Recommends that the governments of member states:

1. review their legislation and practice with a view to introducing, where necessary, and applying the measures described in the appendix to this recommendation;
2. ensure that this recommendation is brought to the attention of all relevant public and private bodies, in particular police and judicial authorities, diplomatic missions, migration authorities, professionals in the social, medical and education fields and non-governmental organisations.

Appendix to Recommendation No. R (2000) 11

I. Basic principles and notions

1. The basic notions should be as follows: trafficking in human beings for the purpose of sexual exploitation includes the procurement by one or more natural or legal persons and/or the organisation of the exploitation and/or transport or migration – legal or illegal – of persons, even with their consent, for the purpose of their sexual exploitation, *inter alia* by means of coercion, in particular violence or threats, deceit, abuse of authority or of a position of vulnerability.

On this basis, the governments of member States are invited to consider the following measures:

II. General measures

2. Take appropriate legislative and practical measures to ensure the protection of the rights and the interests of the victims of trafficking, in particular the most vulnerable and most affected groups: women, adolescents and children.
3. Give absolute priority to assisting the victims of trafficking through rehabilitation programmes, where applicable, and to protecting them from traffickers.
4. Take action to apprehend, prosecute and punish all those responsible for trafficking, and to prevent sex tourism and all activities which might lead to forms of trafficking.
5. Consider trafficking in human beings for the purposes of sexual exploitation as falling within the scope of international organised crime, and therefore calls for co-ordinated action adapted to realities both at national and international levels.

III. Basis for action and methods

6. Take co-ordinated action using a multidisciplinary approach involving the relevant social, judicial, administrative, customs, law enforcement and immigration authorities and non-governmental organisations (NGOs).
7. Encourage co-operation, involving both national authorities and NGOs, between countries of origin, transit and destination of the victims of trafficking, by means of bilateral and multilateral agreements.
8. In order to ensure that these actions have a firm and reliable basis, encourage national and international research concerning, in particular:
   - the influence of the media, and above all new information and communication techniques on trafficking in human beings for the purpose of sexual exploitation;
   - the clients of the sex trade: trends in demand and their consequences for trafficking in human beings for the purpose of sexual exploitation;
   - the origin of the phenomenon of trafficking and the methods used by traffickers.
9. Consider the establishment of research units specialising in trafficking in human beings for the purpose of sexual exploitation.
10. Take steps to develop, both at national and international level, data and statistics that will help to shed more light on the phenomenon of trafficking in human beings for the purpose of sexual exploitation and, if possible, compare the way the phenomenon is developing in the Council of Europe's different member States.

IV. Prevention

i) Awareness-raising and information

11. Organise information campaigns with a gender perspective in order to increase public awareness of the hazardous situations that may lead to trafficking and the negative effects of such trafficking and, in particular, discredit the notion that there are easy gains to be made from prostitution; these campaigns should be directed at all parties concerned, particularly female immigration applicants and women refugees.
12. Organise information campaigns intended to discredit sex tourism and discourage potential participants from joining in such activities.
13. Provide appropriate information, such as documentation, videos and leaflets on trafficking in and the sexual exploitation of women, children and young persons to diplomatic representatives, public authorities, the media, humanitarian NGOs and other public and private bodies working in the countries of origin of potential victims.
14. Disseminate widely, in every country, information on the health risks associated with sexual exploitation.
15. Encourage and organise activities to make media professionals more aware of issues relating to trafficking in human beings for the purpose of sexual exploitation and the influence the media can have in this field.

ii) Education

16. Introduce or step up sex education programmes in schools, with particular emphasis on equality between women and men and on respect for human rights and individual dignity, taking into account the rights of the child as well as the rights of his or her parents, legal guardians and other individuals legally responsible for him or her.
17. Ensure that school curricula include information on the risks of exploitation, sexual abuse and trafficking that children and young people could face and ways of protecting themselves; this information should also be circulated to young people outside the education system and to parents.
18. Provide both boys and girls with an education that avoids gender stereotypes and ensures that all teachers and others involved in education are trained in such a way as to incorporate a gender dimension into their teaching.

iii) Training

19. Organise special training for social workers, as well as for medical, teaching, diplomatic, consular, judicial, customs and police personnel to enable them to identify cases of trafficking for the purpose of sexual exploitation and respond appropriately.
20. Introduce and/or develop training programmes to enable police personnel to acquire specialised skills in this field.
21. In particular, set up specific training programmes and exchanges of experiences in order to improve co-operation between the police and the NGOs specialising in victim protection.
22. Also introduce training programmes for immigration officials and frontier police so that they can contribute to prevention by making sure that persons travelling abroad, particularly young persons not accompanied by a parent or guardian, are not involved in trafficking.

iv) Long-term action

23. Combat the long-term causes of trafficking, which are often linked to the inequalities between economically developed countries and those that are less developed, particularly by improving the social status as well as the economic condition of women in the latter.
24. Take into account in economic, social, migration or other policies, the need to improve women's condition and prevent trafficking in human beings and sex tourism.
25. Disseminate information on the possibilities of legal migration in order to make women aware of the conditions and procedures for obtaining visas and residence permits.

V. Assistance to and protection of victims

i) Victim support

26. Encourage the establishment or development of reception centres or other facilities where the victims of human trafficking can benefit from information on their rights, as well as psychological, medical, social and administrative support with a view to their reintegration into their country of origin or the host country.
27. In particular, ensure that the victims have the opportunity, for example through the reception centres or other facilities, to benefit from legal assistance in their own language.

ii) Legal action

28. Provide, where possible, victims of trafficking, particularly children and witnesses, with special (audio or video) facilities to report and file complaints, and which are designed to protect their private lives and their dignity and reduce the number of official procedures and their traumatising effects.
29. If necessary, and particularly in the case of criminal networks, take steps to protect victims, witnesses and their families to avoid acts of intimidation and reprisals.
30. Establish victim protection systems which offer effective means to combat intimidation as well as real threats to the physical security of the victims and their families both in countries of destination and countries of origin.
31. Provide protection when needed in the country of origin for the families of victims of trafficking when the latter bring legal proceedings in the country of destination.
32. Extend, where appropriate, this protection to members of associations or organisations assisting the victims during civil and penal proceedings.
33. Enable the relevant courts to order offenders to pay compensation to victims.
34. Grant victims, if necessary, and in accordance with national legislation, a temporary residence status in the country of destination, in order to enable them to act as witnesses during judicial proceedings against offenders; during this time, it is essential to ensure that victims have access to social and medical assistance.
35. Consider providing, if necessary, a temporary residence status on humanitarian grounds.

iii) Social measures for victims of trafficking in countries of origin

36. Encourage and support the establishment of a network of NGOs involved in assistance to victims of trafficking.
37. Promote co-operation between reception facilities and NGOs in countries of origin to assist the return and reintegration of victims.

iv) Right of return and rehabilitation

38. Grant victims the right to return to their countries of origin, by taking all necessary steps, including through co-operation agreements between the countries of origin and countries of destination of the victims.
39. Establish, through bilateral agreements, a system of financing the return of victims and a contribution towards their reintegration.
40. Organise a system of social support for returnees to ensure that victims are assisted by the medical and social services and/or by their families.
41. Introduce special measures concerned with victims' occupational reintegration.

VI. Penal legislation and judicial co-operation

42. Enact or strengthen legislation on trafficking in human beings for the purpose of sexual exploitation and introduce, where necessary, a specific offence.
43. Introduce or increase penal sanctions that are in proportion to the gravity of the offences, including dissuasive custodial sentences, and allow for effective judicial co-operation and the extradition of the persons charged or convicted.

44. Take such steps as are necessary to order, without prejudice to the rights of third parties in good faith, the seizure and confiscation of the instruments of, and proceeds from, trafficking.
45. Facilitate police investigation and monitoring of establishments in which victims of trafficking are exploited and organise their closure if necessary.
46. Provide for rules governing the liability of legal persons, with specific penalties.
47. Provide for traffickers to be extradited in accordance with applicable international standards, if possible, to the country where evidence of offences can be uncovered.
48. Establish rules governing extra-territorial jurisdiction to permit and facilitate the prosecution and conviction of persons who have committed offences relating to trafficking in human beings for the purpose of sexual exploitation, irrespective of the country where the offences were committed, and including cases where the offences took place in more than one country.
49. In accordance with national laws concerning the protection of personal data, as well as with the provisions of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, set up and maintain information systems which could be useful for the investigation and prosecution of trafficking offences.

VII. Measures for co-ordination and co-operation

i) At national level

50. Set up a co-ordinating mechanism responsible for drawing up the national policy on combatting trafficking and organising a multidisciplinary approach to the issue.
51. Use this mechanism to encourage the exchange of information, the compilation of statistics and the assessment of practical findings obtained in the field, trends in trafficking and the results of national policy.
52. Use this mechanism to liaise with mechanisms of other countries and international organisations in order to co-ordinate activities, and to monitor, review and implement national and international strategies aimed at combatting trafficking;

ii) At international level

53. As far as possible, make use of all the available international instruments and mechanisms applicable to trafficking, particularly regarding the seizure and confiscation of profits earned from trafficking.
54. Set up an international body to co-ordinate the fight against trafficking, with particular responsibility for establishing a European file of missing persons, in accordance with national laws concerning the protection of personal data.
55. Increase and improve exchanges of information and co-operation between countries at bilateral level as well as through international organisations involved in combatting trafficking.
56. Governments are invited to consider signing and ratifying, if they have not already done so, the Council of Europe's Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990), the Revised European Social Charter (1996) and the Additional Protocol to the European Social Charter providing for a System of Collective Complaints (1995), the European Convention on the Exercise of Children's Rights (1996), the Convention on the Elimination of all forms of discrimination against Women (1979) and its Optional Protocol (1999), as well as the United Nations Convention on the Rights of the Child (1989) and/or to consider withdrawing existing reservations to these instruments.
57. Governments are invited to incorporate into their national systems all the measures necessary to apply the principles and standards laid down in the Action Programme adopted at the 4th World Conference on Women (Beijing, 4-15 September 1995), and in particular Part IV.D, and the agreed conclusions adopted at the 42nd session of the United Nations Commission on the Status of Women, the resolution adopted regularly by the General Assembly of the United Nations on the Traffic in Women and Girls, the declaration adopted at the Ministerial Conference containing European Guidelines for Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation (The Hague, 24-26 April 1997), as well as in the following recommendations of the Committee of Ministers to the member states of the Council of Europe:
- Recommendation No. R (80) 10 on measures against the transfer and the safekeeping of funds of criminal origin,

- Recommendation No. R (85) 11 on the position of the victim in the framework of criminal law and procedure and
- Recommendation No. R (87) 21 on assistance to victims and the prevention of victimisation.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

RECOMMENDATION REC(2000)18
OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON CRITERIA FOR THE DEVELOPMENT OF HEALTH PROMOTION POLICIES

(Adopted by the Committee of Ministers on 21 September 2000 at the 722nd meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.*b* of the Statute of the Council of Europe,
Considering that the aim of the Council of Europe is to achieve greater unity between its members and that this aim may be pursued, *inter alia*, by the adoption of common action in the area of public health;

Bearing in mind Article 11 of the European Social Charter on the right to the protection of health;
Recalling that Article 3 of the Convention on Human Rights and Biomedicine requires that contracting parties provide "equitable access to health care of appropriate quality";

Noting moreover the relevance of the World Health Organization's Targets for Health for All for the European region and of its recent policy documents on health promotion and prevention policies;

Noting the importance of the Ottawa Charter for Health Promotion (1986), the Djakarta Declaration on Leading Health Promotion into the 21st Century (1997) and the Verona Declaration on the implementation of investment for health as statements on the guiding principles of public health;

Noting that the 5th Global conference on Health Promotion (2000) in Mexico pledged to bridge the equity gap and to monitor progress made in incorporating health promotion strategies into national and local policy and planning;
Noting that the strengthening and maintaining of health is a key priority for all member states, as an investment which helps people to reach their full potential and countries to maintain social cohesion as well as the competitiveness of the economy;Aware that non-communicable diseases linked to unhealthy lifestyles and environments are overtaking communicable diseases, mental health disturbances and problems related to ageing;
Conscious that health promotion is a process which enables people to increase control over and improve their health, contributes to their individual and collective well-being and helps to reduce inequities in health;

Aware that carefully planned health promotion policy is therefore an investment for all countries, whatever their economic situation, which has the potential to reduce the demand for and cost of some community health and hospital services;

Considering that health promotion is an essential element of a citizen's right to health care and therefore is a responsibility of the government;

Conscious that health promotion is a dynamic concept which is constantly evolving and which has to be adapted to the culture and situation of each member state;

Considering also that citizens have a responsibility to put into practice the message transmitted by health promotion and prevention activities as a tool for avoiding ill-health;

Aware that measures aimed at reducing the incidence of health problems depend to a large extent on situations and factors beyond the immediate control of health and social services activities;

Recommends that the Governments of member states:
- develop comprehensive and coherent strategies for the promotion of health at a countrywide level;
- monitor health and its determinants with a view to identifying priority needs and improving the health of the population and reducing inequalities;
- adopt, where necessary, policies, legislative and other measures necessary for:

- integrating health promotion into the activities and decision-making processes of government, public sector, private sector and non-governmental organisations;

- ensuring that the impact on health of the relevant major policies in decision making are foreseen, measured and taken into account in planning;

- facilitating the participation of all those involved;
- improving health education and the dissemination of information;
- implement all aspects of health promotion, including preventative action, for the benefit of the whole population and particularly of vulnerable groups, who would be underprivileged even further if health promotion were not developed;
- take into account the concept of quality of life in health promotion.

In pursuit of these goals governments should take into account the criteria set out in the appendix to this recommendation.

Appendix to Recommendation Rec(2000)18

I. Establishing an evidence-based health promotion policy and plan of action
1. When developing health promotion programmes for the population in general and/or specific target groups, member states should:

- establish with a high degree of certainty which are the determinants of health, and, in particular, of inequalities of health within the community;

- have clear and feasible goals and objectives supported by available evidence;

- define the measures likely to be taken;

- have reliable evidence that the proposed policies and interventions are efficient and sustainable;

- ensure that the programme is cost/effective;

- undertake an assessment of alternative actions.

2. Providers should be trained to adopt evidence-based health promotion practices and the public should be educated and encouraged to demand and accept evidence-based medicine and health policy.

II. Impact of other policies on health
1. All government sectors should acknowledge the influence of the socio-economic determinants on health and recognise the real cost of the absence of a planned health promotion.
The role and impact on health of other policies, systems and services (transport, food production, housing, employment, education, environment, communication) should be taken into account in developing health promotion policies and the systems and services should be organised and adapted accordingly.
2. Priority needs to be given to reducing or eliminating the major avoidable causes of disability and death in countries and to the most significant pre-determinants of health (sufficient and healthy food, pure water, clean air, a guaranteed basic minimum income for families, housing, maternal and child care, good general education, labour protection and health at work).

III. Integrated approach to health promotion
1. Health promotion should be an integral part of all public policies. The status of
health as a goal should be boosted and health promotion used as a mechanism for its delivery in all sectors of society. It should be based on an integrated approach towards the better health of both whole populations and individual citizens, in partnership with a wide range of agencies and social actors.
2. At the same time the responsibility of individuals for their own health should be emphasised, and adequate skills and conditions enabling healthy choices assured.
3. Member states should ensure that health promotion strategies are implemented at all levels, from the individual citizen in specific settings (schools, workplace and health care) to local and national government.

4. All government departments and regional and local authorities should co-ordinate between them to ensure that health becomes an integral aspect of policy in all sectors of activity. Integration of health into all sectors of society is successful only if management at the highest level takes responsibility for health promotion.
5. The impact of other major policies on health and vice versa should be evaluated and monitored regularly. The necessary organisational structures therefore need to be created at the national, regional and local levels to enable real partnership to develop across all sectors.
6. Health promotion, as a major activity of health care services, should be given proper recognition at all levels from the most senior level of management to the community level.
7. The role of the health care services as a vehicle for health promotion should be recognised. Structures and processes need to be in place supporting communication between practitioners involved in prevention, treatment and care.

IV. Participation
1. Member states should:

- encourage political and social dialogue between the public, the providers and buyers of health promotion;

- involve all the major agencies in health promotion planning;

- ensure the participation and consultation of the public in such planning.

This process should not however hamper the implementation of public health measures in the event of a crisis such as a serious epidemic of infectious disease.
2. The most disadvantaged groups of the population should play an important role in the assessment of their own health needs and in the success of implementing policies.
3. Tools should be made available to individualise health promotion at the primary health care level (for example: developing personalised self-care programmes by using computer-assisted health promotion diagnosis).
V. Information and education
1. In order to make informed choices about health promotion programmes, the public, which is the major provider of health and social care, through self-care and care of family and friends, should have free access to information about the range of treatments or policy interventions available, their outcomes and variations in outcomes.
Where possible, the existing knowledge and evidence basis should be explained in plain language.
2. The public should be properly informed about the benefits of health promotion especially and about health protection and disease prevention programmes. They should also be informed about any accompanying risks and harmful effects. The quality criteria should also be made known.
3. Health promotion should be based on a positive approach to life, through the creation of environments (social, physical and economic environments) which do not only enhance individual responsibility but structurally promote healthy and pleasurable choices as well.
4. When health promotion and health education programmes are drawn up they should take into account the culture, the traditional beliefs and values of the communities for which they are intended.
5. Information on the effectiveness of health promotion programmes such as the WHO CINDI programme and the European Network of Health Promoting Schools (ENHPS) project (a joint WHO/Council of Europe/European Commission project) should be made more widely available. Local demonstration projects should build on knowledge gained from such projects and demonstrate the real effectiveness and transferability of knowledge to different countries and cultures.
6. The role of different professional and occupational groups (doctors, nurses, teachers, pharmacists, police, social workers) should be defined (at a countrywide level) and their training adapted and developed as appropriate. Where necessary management and incentive arrangements should be changed to support the provision of health promotion.
7. The specific roles of policy makers in many sectors including that of politicians and the media need to be recognised and supported through information, education and other approaches.
VI. Evaluation
1. Specific indicators should be introduced to monitor the impact of the outcomes of health promotion activities including preventive policies (changes in risk factors, preventable complications of disease, improvement in functional capacity, premature mortality and morbidity, percentage of total health expenditure).
2. Minimum databases should be constructed to monitor the promotion of health including prevention of disease as part of the normal reporting systems, vital statistics, surveys, regulatory surveillance, etc.

3. The effectiveness of health promotion measures should be supported by scientific evidence on the basis of repeatability of the results in real every day practice.

VII. Resources

1. Health promotion policies should be planned in detail, taking into account the cost of delivering the intervention to the population as a whole or groups of the population at risk.

2. Where health promotion resources are the responsibility of health ministers, appropriate management and accountability structures should be available to protect health promotion services from the ever-rising cost pressures of providing curative services.

3. Where there is sufficient evidence, a shift of resources from curative to preventive policies should be considered, within a unified approach towards strengthening the health of the population. In the allocation of resources, the basket of essential health promotion and preventive services should be defined. Such an approach should help ensure that health promotion is affordable and sustainable.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

RECOMMENDATION REC(2001)12
OF THE COMMITTEE OF MINISTERS TO MEMBER STATES
ON THE ADAPTATION OF HEALTH CARE SERVICES TO THE DEMAND FOR HEALTH CARE AND HEALTH CARE SERVICES OF PEOPLE IN MARGINAL SITUATIONS

(Adopted by the Committee of Ministers on 10 October 2001 at the 768th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,
Considering that the aim of the Council of Europe is to achieve a greater unity between its members and that this aim may be pursued, inter alia, in particular by the adoption of common rules in the health field;

Noting that the number of persons living in marginal situations is constantly increasing in the member states;
Considering that problems specific to persons living in marginal situations have serious consequences on their health and that this becomes a public health problem of growing importance and a serious and costly burden for the individual, the family, the community and the state;

Recognising that due to the growth of inequalities in health in the European countries, any relevant and effective health policy should not only consider the health problems of the persons living in marginal situations but also those of the persons living in insecure conditions, health promotion being one of the key components of such a policy;
Noting that it is now largely documented that psychological stress experienced by persons living in such insecure conditions has an effect on their physical and mental health;

Recognising the need for policies designed to prevent health problems of persons living in marginal situations, while taking into account the need for protection of privacy of all persons concerned, and the respect of confidentiality;
Recognising the right of persons living in insecure situations to live in conditions favourable to their proper development free from physical and psychological overload, social isolation, psychosomatic symptoms related to stress and other forms of handicap;

Recalling Article 11 of the European Social Charter on the right to health protection and Article 3 of the Convention on Human Rights and Biomedicine on the equitable access to health care;

Referring to the 1994 Ljubljana Charter on Health reforms and the Copenhagen Declaration on Reducing the Social Inequalities in Health of September 2000;

Having regard to the recommendations of the Committee of Ministers to Member States, No. R (2000) 5 on the development of structures for citizen and patient participation in the decision-making process affecting health care, Recommendation No. R (97) 4 on securing and promoting the health of single parent families and Recommendation No. R (98) 7 concerning the ethical and organisational aspects of health care in prison;

Aware that measures aimed at reducing the incidence of health problems of persons living in insecure conditions at primary level depend largely on situations outside the normal sphere of health and social services activities;
Considering that the aim and duty of the state and society is to influence broad social and economic prerequisites to health, which finally determine the poorer health of persons living in marginal situations;

Considering that it is also the responsibility of the state to ensure that policies affecting health are developed in a coherent way to increase the potential for health gain and to avoid adverse effects on health;
Aware of the Council of Europe Project on Human Dignity and Social Exclusion and the proposals for action adopted at the 1998 Helsinki Conference;

Aware of the WHO initiative on Partnership in Health and Poverty and aware of the communication of the European Commission on "Building an Inclusive Europe" and the programme of Community action to encourage co-operation between member states of the European Union to combat social exclusion;

Aware of the Charter of Fundamental Rights of the European Union,

Recommends the governments of member states to:
i. develop a coherent and comprehensive policy framework that:
- secures and promotes the health of persons living in insecure conditions;
- protects human dignity and prevents social exclusion and discrimination;
- ensures supportive environments for the social integration of persons living in marginal situations or in insecure conditions;

ii. strengthen and implement their legislation in order to ensure human rights protection, social solidarity and equity;

iii. improve multisectoral co-operation to increase the ability of their social systems to participate in preventing health problems for persons living in insecure conditions. This approach should clearly specify the role, responsibilities and co-ordination of the various agencies and social institutions involved in order to prevent these persons from falling into marginal situations;

iv. develop comprehensive, effective and efficient health systems for a timely and adequate response to health needs in order to ensure equity and equal access to health care services, taking into account health needs and available resources, and to be able to identify, assess and treat health problems of persons living in marginal situations;

v. take to this end, whenever feasible, the measures presented in the appendix to this recommendation.

Appendix to Recommendation Rec(2001)12

I. Principles
Governments are encouraged to develop a social/health policy in the framework of the principles adopted by the World Health Organisation at the 1986 Ottawa Conference in order to prevent insecure conditions and therefore limit the risks of falling into marginal situations.
When adapting the health care services to the needs of persons living in marginal situations or in insecure conditions, governments of member states should consider a certain number of principles:
1. The policy should be based on values propounded by the Council of Europe: human rights and patient's rights, human dignity, social cohesion, democracy, equity, solidarity, equal gender opportunity, participation, freedom of choice – balanced by the obligation to help strengthen one's own health.
To be efficient, any health policy, especially if oriented towards the needs of persons living in marginal situations, should be based on an integrated approach and begin with social protection measures. A minimal regular income should be given to these persons.
2. One of the best policies (apart from raising the standard of living) for improving their health and to prevent them from falling into marginal situations is to ensure equal access to social and health systems for everybody whatever his/her economic and legal status. It should take into account the fact that new groups and individuals may at any time find themselves in a marginal situation.
3. Social and economic prevention of the risk of falling into marginal situations should become a priority for governments and societies.
4. Long-term policies to improve social and health conditions for persons living in marginal situations or in insecure conditions cannot be implemented without their participation and agreement. They should, therefore, be considered as responsible persons, able to assume their own responsibilities and as much as possible involved in the decision process.
5. To ensure non-stigmatisation, member states, working in a long-term perspective, should endeavour to meet the needs of persons living in marginal situations within the existing health system. They should ensure an equal access for everybody to the national health resources, which may require positive discrimination in the form of well targeted outreach measures, limited in time and scope and fully integrated into the normal health services.

6. There is no specific disease of the poor. Persons living in marginal situations suffer from the same diseases as the rest of the population but in a disproportionate way.
7. The social and health policies need to be grounded on aims to prevent impoverishment and ill-health, where other than merely health and social sectors matter. All policies need to be assessed and evaluated in terms of their impacts on social cohesion, social exclusion and health. This implies intersectoral action and accountability of all policies, including economic and trade policies, in terms of their implications for social well-being, health, equity and marginalisation of people.
8. The health systems have to be based on equity guaranteeing access to care according to need and financing of care regardless of the ability to pay.
9. Prevention, health promotion and health care measures for persons living in marginal situations or in insecure conditions should be an integral and integrated dimension of national and local social/health policy.
10. Children are particularly vulnerable in deprived conditions, governments should pay particular attention to them in ensuring that they will benefit from specific social/health preventive policies.
11. Governments should identify critical gaps and barriers in access to health care services: legal, social, economic, cultural, administrative and/or physical barriers. Initiatives and programmes should be implemented in order to reduce these obstacles, which often increase inequalities.
12. Appropriate policies should be developed to adapt the health system to the needs of persons living in marginal situations or in insecure conditions. Further elaboration and implementation of these policies should take into account the decisive role of civil society and NGOs in tackling social inequalities.

II. Development of an integrated and coherent social/ health policy

Developing an integrated social/health policy in the framework of the Ottawa Charter includes measures which are obviously beyond the capacity of the health sector alone. ("The fundamental conditions and resources for health are peace, shelter, education, food, income, a stable ecosystem, sustainable resources, social justice and equity. Health promotion action means: build a healthy public policy, create supportive environments, strengthen community action, develop personal skills, reorient health services".) These measures should depend on national and regional conditions and may include, among others:

- compulsory education, including health education from early childhood;
- an environment which provides suitable jobs and professional activities;
- decent housing; and
- other measures which ensure a satisfactory social protection.

Those issues are currently under study by the Social Cohesion Committee in order to develop a comprehensive recommendation on access to social goods and services.

In health care, the priority aim should be to ensure that health services are available and financially accessible to everyone.

The health policy should be formulated and implemented in order to improve the primary health care system so as to better respond to the needs of various social and cultural groups. It should also provide services of appropriate quality to everybody, including health promotion ones.

A special effort should be made to develop a specific preventive health policy for the most vulnerable persons including unemployed persons and their families, young single parent households, disabled, refugees, migrants and prisoners. Special attention should be paid to mental health problems, which often affect people in conditions of socio-economic vulnerability, poverty and exclusion.

Programmes for health promotion should reach people in marginal situations and should be planned in co-operation with them and be acceptable to them.

While all age groups should be considered for targeted action, special emphasis should be placed on the very early period in life, between conception and school age.

All children should be offered a complete programme of immunisation and equal access to paediatric health services and all women should receive antenatal, birth and postnatal care in appropriate health facilities.

Screening and rehabilitation should be offered to anyone regardless of his/her economic, social and cultural status.

Physical access to all facilities for the disabled should be secured.

Each person should have an equal access to curative services including secondary and tertiary hospital care, where most people in marginal situations usually end up due to emergencies.

III. Development of specific measures to guarantee a better equity

When deciding on and implementing specific measures to improve access to health services to persons living in marginal situations or in insecure conditions, governments should pay particular attention to the risk of stigmatisation of these people. In addition, and because the objective is that everyone should have an equal access to health services, positive discrimination measures may be proposed for a limited period of time and be integrated into the normal health system.

1. Accessibility to preventive, promotional and curative health services and programmes

- Regional/local systems for identifying people living in marginal situations should be developed.
- Emphasis should be put on the primary health care network for providing affordable health services to persons living in marginal situations.
- Health promotion and preventive services should be organised at local level with particular emphasis on outreach activities toward people living in marginal situations.
- Provision and delivery of emergency health services should not depend on advance payment but be guaranteed irrespective of the ability to pay for it.
- Innovative organisational approaches should be encouraged, aimed at increasing flexibility of health care provision (adjusted opening hours, telephone booking system, etc.).
- Specific measures should be taken for financing basic health care services to persons living in illegal situations.
- Persons living in marginal situations or in insecure conditions are often poorly informed. Communication should be improved for informing them about existing programmes and services and how to reach them.
- Health professionals should act as advocates for persons living in marginal situations who generally have a low access to health services. This role could include lobbying authorities, politicians, and international organisations for improving access to health services for these persons.
- Health care of people living in illegal situations should be provided, with respect for their anonymity.

2. Specific population groups

Health services should be offered to everyone but special attention should be paid to persons living in insecure conditions, avoiding stigmatisation.

- Women living in insecure conditions have a higher rate of premature birth and perinatal morbidity, so they should benefit from special social/health surveillance during pregnancy and the perinatal period.
- Children with social/family risk factors should receive special attention from social/health services.
- Families with economic and/or social difficulties should receive support in educating their children, with an emphasis on measures directly benefiting the recipient children (educational vouchers, food stamps, etc.).
- Specific social/health services should be implemented at local level for young people having family/social risks factors with special emphasis on information on family planning, STD, HIV/Aids, traffic accidents, suicide, drug abuse, alcohol, etc. Their general physical and psychosocial well-being should be regularly assessed.
- Social/health services should pay particular attention to the needs of disabled persons whatever the origin of the handicap.
- Special attention should be paid to the needs of persons living in marginal situations with chronic diseases as well as with metabolic or neurological pathologies.
- Occupational health should be developed in particularly exposed working places.
- People living in prison and their children living in collective institutions should benefit from health services of equally good quality as outside prison.
- For underprivileged groups of population including refugees, recent migrants, etc., special attention should be paid to the specific cultural dimension of health. Some key social/health services should include professionals coming from such populations.
- Health care for elderly persons living in insecure conditions should be developed within the community by specially trained social/health workers.
- Specialised services should be available for alcohol and drug abusers.

IV. Improvement of knowledge on the health of persons living in insecure conditions

Governments should pay particular attention to the improvement of knowledge on the health of persons living in insecure conditions and their specific health needs. There is a need for the routine collection of standardised and comparable data based on common definitions. Health and social indicators should be linked together. A monitoring and surveillance system should be developed, resulting in regular, if possible annual, reports at country and European levels. The following measures are recommended:

1. Information system

- An observatory of social/health development should be set up at national/regional level to collect, process and disseminate reliable information on social/health status of persons living in insecure conditions.
- Data collected on a routine basis should include social and economic indicators as well as indicators of accessibility to health services.
- In order to avoid discrimination and to ensure individual protection, anonymity of data should be fully respected.
- Periodic and regular surveys should be conducted to better assess the use of services for specific problems.
- Regional/local health conferences should be organised to collect and disseminate information.
- Information should be made available to both social/health professionals and to the public.
- Existing networks in the community should be identified in order to create supportive environments.

2. Research

Research programmes should address the following issues:
- Cost/utility, cost/benefit and cost/effectiveness evaluation of different health policies and programmes for improving access to health services for persons living in insecure conditions.
- Selection of relevant indicators for monitoring and evaluation of policies, programmes and activities.
- Health status and needs of people at risk and those living in marginal situations.
- Qualitative surveys on health perception and obstacles to access to health care.
- Longitudinal analysis of individual histories of how people get into marginal situations and of the strategies used to leave them.
- Health status and needs of young adults should receive particular attention.
- Differences in values, social support networks, positive and negative experiences with health care services.
- Social distance between various groups and health care professionals.
- The role and impact of NGOs interventions.
- Ways in which health facilities are modified to meet the needs of groups in marginal situations.

V. Change of behaviour of the administration and of health/ social professionals at the central and local level

The following action areas are recommended to help the administration and health/social professionals at the national and local level to adapt their response to the health needs of persons living in insecure conditions:

1. Policies
- A policy paper on health protection and health promotion for persons living in marginal situations should be published. The formulation of such a policy should be based on a large consensus among all potential partners and when feasible with the community concerned.
- Policy implementation should be based on a multisectoral approach and its impact systematically monitored and evaluated.
- Re-assessment of the interface between health authorities and social services is encouraged .
- NGOs experience and capacity should be used to implement policies at local level.
- Instruments should be experimented with and developed with a view to involving people living in insecure conditions in the decision making process to design and organise health services.

2. Professional practices
- Regular meetings should be organised at local level between administration staff, social/health professionals and NGOs to organise responses to health needs of groups/persons living in marginal situations.
- New social professions should be created for young adults in marginal situations to prepare them for working in their own community.

3. Training
- Disciplines like public health, epidemiology (in particular of non-communicable diseases), health promotion, social sciences, and health economy should be reinforced in the undergraduate curriculum of health professionals and social workers and, particularly, future physicians.
- National postgraduate programmes should be implemented with an emphasis on specific approaches to vulnerable social groups and individuals, preventive actions, outreach strategies and non-discriminatory identification methods of the health needs at community level.
- Training programmes should be organised for both health and education personnel for an early detection of health problems at school.
- Special programmes should be prepared for social/health/education staff for drawing their attention to the specific needs of the poor, unemployed people, refugees, etc.
- Professionals working at grassroots level and NGOs should be encouraged to play an important role in such training programmes.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

RECOMMENDATION REC(2001)13
OF THE COMMITTEE OF MINISTERS TO MEMBER STATES
ON DEVELOPING A METHODOLOGY FOR DRAWING UP GUIDELINES
ON BEST MEDICAL PRACTICES

(Adopted by the Committee of Ministers on 10 October 2001 at the 768th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,
Considering that the aim of the Council of Europe is to achieve greater unity between its members and that this aim may be pursued, inter alia, by the adoption of common action in the public health field;

Bearing in mind the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms and of the European Social Charter;

Recalling that Article 3 of the Convention on Human Rights and Biomedicine requires that contracting parties provide equitable access to health care of appropriate quality, Article 4 requests that any intervention in the health field, including research, must be carried out in accordance with relevant professional obligations and standards and Article 10 emphasises the right of everyone to know any information about his or her health;

Recalling the recommendations of the Committee of Ministers to member states, No. R (97) 5 on the protection of medical data, No. R (97) 17 on the development and implementation of quality improvement systems in health care, No. R (99) 21 on the criteria for the management of waiting lists and waiting times in health care, as well as No. R (2000) 5 on the development of structures for citizen and patient participation in the decision-making process affecting health care;

Recognising that health policies and health care systems should be based on best available evidence;
Recognising that medical evidence incorporated in guidelines may support national decisions on prioritisation of health needs based on ethical, social, and financial issues, structural differences of health care systems and variations in epidemiology and health data, but should not be used for purely cost containment or rationing purposes;

Recognising the right of patients and citizens to be provided with and to have easy access to relevant information about their health and health care in a format and language they can understand;

Considering that the same principles of best medical practices apply equally to primary, secondary and tertiary care and to all health professions as well as to health promotion, prevention, diagnosis, treatment, rehabilitation, and other aspects of health care;

Recognising that, in different nations, guidelines on best medical practices are developed in variable ways in a complex environment of health care systems and of ethical, economic, social, legal and other factors;
Considering that the methodology for the development and implementation of guidelines crosses national boundaries and that the evaluative interpretation of evidence requires substantial resources and expertise and should be shared;

Recognising the necessity of promoting harmonisation of national and international regulations related to quality research and applied clinical research;

Recognising that guidelines are but one of the tools to improve the quality and appropriateness of health services and therefore should not serve as a substitute for sound clinical judgement nor replace professional responsibility of providers nor patients' preferences;

Considering that the main aim of the guidelines is to support and promote good clinical practice in the best interest of patients and therefore should be used as a policy instrument, whose legal interpretation and status depends on circumstances pertaining to each country,

Recommends that the governments of member states:

i. develop a coherent and comprehensive national policy framework that:
- ensures that the national methods for the production and appraisal of guidelines on best medical practices comply with internationally accepted, current state of the art practices;
- ensures that policy makers, health care professionals, citizens and patients appreciate the advantages of using the best available evidence to provide information to support medical decisions;
- supports the production, use and timely updating of nationally and locally relevant, evidence-based guidelines for clinical practice and medical treatment policies, targeting important issues in health care;
- ensures that guidelines are produced and implemented in consideration of the legal aspects inherent to the guidelines;
- ensures that guidelines are implemented in an appropriate manner, and that their effects on the clinical process and its results, as well as on the legal consequences with regard to the patient and those who provide medical care, are monitored;
- facilitates the availability and use of guidelines, as well as the availability of information on their aim, legal status legal implications, health care literature and databases to citizens, patients and professionals in language they can understand and formats they can use easily;
ii. promote international networking between organisations, research institutions, clearinghouses and other agencies that are producing evidence-based medical information;
iii. support an active, targeted dissemination of these recommendations and the explanatory memorandum, paying special attention to individuals and organisations involved in decisions within health care.
Appendix to Recommendation Rec(2001)13

I. Guidelines in support of health care
The main aim of clinical practice guidelines is to support and promote good clinical practice.
Guidelines are produced and used in the complex environment of a health care system with its ethical, economic, legal and other aspects; these aspects need to be taken into consideration in each country.

II. Topic selection
Guideline topics should be selected for development to support and assist decision making on important issues in health care.
Prioritisation of guideline topics may be based on the epidemiology of health problems, health inequalities, variations in the provision and quality of care, emergence of new technologies, or other factors that create a need for high quality, updated information.
The existence of presently available evidence-based guidelines should be considered in the prioritisation of topics for development.

III. Guidelines development
Guidelines should be produced by multiprofessional groups in a systematic, independent and transparent fashion, using appropriate quality criteria.
End user involvement through a wide review and/or testing of the pilot version is necessary before adopting a guideline for implementation.
If guidelines are adapted from other countries or areas, they must be re-edited and reviewed or tested for applicability in the new environment.

IV. Dissemination of guidelines
The funding for guideline dissemination, implementation, evaluation, and updating must be carefully considered at the same time as the decision is made to develop the guideline. Funding support may vary. The source of support must be transparent.
Guidelines should target multiple audiences (professionals, patients, and policy makers) and be available in suitable formats for these different groups.
Guideline dissemination should be planned, active, sustainable, and ensure high accessibility.

Guideline clearinghouses or guideline production programmes facilitate the accessibility of multiple guidelines on similar problems and may increase guideline quality.

V. Guideline implementation

For the most effective implementation of guidelines, a systematic approach to managing the quality of health care and determining those responsible is essential.

Various guideline dissemination and implementation strategies should be used in combinations to ensure maximum effect.

Professional, organisational, financial, and regulatory incentives and disincentives need to be considered together with other barriers and facilitators of guideline use at both national and local levels (tailored implementation).

In implementing guidelines, the best interest of the patient should be served and professional responsibility and patients' rights should be respected.

Guidelines must become an essential element in the undergraduate and clinical training of health care professionals as well as in the continuing professional development of health care teams.

VI. Evaluation of guidelines and of their impact

Tools for evaluating the quality of existing guidelines should be used to decide which guidelines should be implemented.

Well-planned monitoring of guideline effects is essential, and especially the impact of guidelines on health outcomes needs further development and evaluation.

Guidelines can include a list of essential indicators that can be used for evaluating the results of guideline implementation.

An internationally co-ordinated research network should study the methodology of guidelines evaluation and impact monitoring, including the impact of guidelines on learning process and medical knowledge of professionals.

VII. Updating

The guideline production process must include clear policies and responsibilities on guideline updating.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

RECOMMENDATION REC(2001)16
ON THE PROTECTION OF CHILDREN AGAINST SEXUAL EXPLOITATION

(Adopted by the Committee of Ministers on 31 October 2001 at the 771st meeting of the Ministers'Deputies)

The Committee of Ministers, under the terms of Article 15.*b* of the Statute of the Council of Europe,
Determined to contribute effectively to the common goal of affording children adequate protection against sexual exploitation committed by anybody, especially by those who are or manage to be in close contact with them or who have authority over them;

Recalling its Recommendation No R (91) 11 concerning sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults;

Observing that the sexual exploitation of children in the form of pornography, prostitution, sexual slavery, sexual tourism and trafficking in human beings is destructive of a child's health and psychosocial development;

Considering that this exploitation has taken on worrying dimensions at both national and international level and that preventing and combating it require international co-operation;

Considering that the well-being and best interest of children are fundamental values shared by all member states and must be promoted without any discrimination;

Considering that experiences linked to sexual exploitation are detrimental to a child's health and psychosocial development;

Aware that children do not always experience the benefit of adequate protection, in particular against sexual exploitation;

Considering that sexual exploitation is linked, *inter alia*, with neglect and physical, psychological and sexual abuse, within or outside the family, as well as with illegal adoptions and certain social phenomena that can make children more vulnerable;

Recognising the role that advertising and the media, particularly the Internet, can play, in the spreading as well as in the prevention of this phenomenon;

Considering that it is the responsibility and in the interest of Council of Europe member states actively to work together to co-ordinate and reinforce their national and international actions to deal with this problem;
Bearing in mind the Convention for the Protection of Human Rights and Fundamental Freedoms (1950), the European Social Charter (1961) and the Convention on the Exercise of Children's Rights (1996);

Also bearing in mind the United Nations Convention on the Rights of the Child, especially Article 34 thereof, which requires states to take all appropriate national, bilateral and multilateral measures to protect children from sexual exploitation, the optional Protocol on the sale of children, child prostitution and child pornography, the additional Protocol to the United Nations Convention against Transnational Organized Crime on the prevention, suppression and punishment of trafficking in persons, especially women and children, as well as ILO Convention No. 182 on the worst forms of child labour;

Recalling Council of Europe Parliamentary Assembly Recommendations 1065 (1987) on the traffic in children and other forms of child exploitation; 1121 (1990) on the rights of children; 1286 (1996) on a European strategy for

children; 1336 (1997) on combating child labour exploitation as a matter of priority; 1371 (1998) on abuse and neglect of children as well as Resolution 1099 (1996) on the sexual exploitation of children;

Bearing in mind recommendations of the Committee of Ministers of the Council of Europe No. R (79) 17 concerning the protection of children against ill-treatment; No. R (85) 4 on violence in the family; No. R (85) 11 on the position of the victim within the framework of criminal law and procedure; No. R (87) 21 on assistance to victims and the prevention of victimisation; No. R (89) 7 concerning principles on the distribution of videograms having a violent, brutal or pornographic content; No. R (90) 2 on social measures concerning violence within the family; No. R (93) 2 on the medico-social aspects of child abuse; No. **(97) 13 concerning intimidation of witnesses and the rights of the defence;** and in particular Recommendation No. R (2000) 11 on action against trafficking in human beings for the purpose of sexual exploitation;

Recalling the Convention on cyber-crime, especially Article 9 thereof,
Recommends that member states' governments ensure that effective measures are taken to protect children against sexual exploitation, review their legislation and practice in the light of the principles contained in the present recommendation and ensure that their implementation is followed closely, assessed on a permanent basis and accompanied by adequate technical assistance.

I. Aims and definitions

1. The present recommendation has the following aims:
a. promoting the well-being and best interest of any child and his or her health and physical and mental, moral and social development to assist him or her in leading a life free from sexual abuse, violence and exploitation;
b. planning and implementing measures, policies and practices with regard to the fight against sexual exploitation which take into consideration the views and experiences of children themselves;
c. promoting co-operation among member states so that they may more effectively address the various aspects of sexual exploitation nationally and internationally;
d. eliminating child pornography, child prostitution and trafficking in children, committed by natural or legal persons on an individual or organised basis, within the country or outside of it, by nationals or residents, with or without the child's consent.
2. For the purposes of this recommendation the following definitions are employed:
a. a child is any person under the age of 18;
b. the term *sexual exploitation* is a comprehensive term which mainly includes: child pornography, prostitution and sexual slavery as well as trafficking in children for such purposes;
c. the term *child pornography* shall include material that visually depicts a child engaged in sexually explicit conduct, a person appearing to be a child engaged in sexually explicit conduct or realistic images representing a child engaged in sexually explicit conduct. Child pornography includes the following conducts committed intentionally and without right, by any means:
– producing child pornography for the purpose of its distribution;
– offering or making available child pornography;
– distributing or transmitting child pornography;
– procuring child pornography for oneself or for another;
– possessing child pornography.
d. the term *child prostitution* means offering, obtaining, providing, procuring or using a child for sexual activities for remuneration or any other kind of consideration;
e. the term *trafficking* in children includes recruiting, transporting, transferring, harbouring, delivering, receiving or selling of children for purposes of sexual exploitation;
3. No provision in this recommendation shall prevent member states from applying rules more favourable to the promotion of the protection of children against sexual exploitation.

II. General measures

a. *Public awareness, education and information*
4. Bring this recommendation, by all appropriate means, to the attention of all relevant public and private bodies, (in particular politicians, police and judicial authorities, diplomatic missions, migration authorities, professionals in the social, medical and education fields and non-governmental organisations and the media).

5. Appoint an independent, competent and easily accessible individual or agency to promote the rights of all children and, in particular, to raise public awareness about the sexual exploitation of children.
6. Making information on sexual exploitation, its nature and its devastating effects available to the public and raising public awareness that the sexual exploitation of children in all its forms is a criminal offence that will be prosecuted.
7. Promote and organise programmes aimed at furthering awareness and training for those who are responsible for children in the fields of education, health, social welfare, justice as well as law enforcement agencies in order to enable them to identify cases of sexual exploitation and to take the necessary measures.
8. Include in the programmes of primary and secondary school education information about the risks of sexual exploitation and abuse to which children might be exposed, and about how they may defend themselves.
9. Make available to children who are out of school information on the risk of sexual exploitation, the variety of forms it may take and the ways to protect themselves.
b. *Collection and exchange of information*
10. Promote the collection of information in all sectors and across all agencies on the nature and prevalence of sexual exploitation of children on a national basis.
11. Establish a national mechanism to provide regular information on the best practices and most effective measures to prevent, combat and deal with the effects of sexual exploitation of children.
12. Promote international co-operation in the exchange of information, knowledge and expertise.
13. Identify areas in which technical assistance and expertise in the development of appropriate measures for preventing, combating and addressing the effects of sexual exploitation of children are particularly necessary.
c. *Prevention, identification and assistance*
14. Develop and financially support a multi-agency and multi-disciplinary approach to the prevention and identification of sexual exploitation of children and to provide psychological, legal, social or any other form of appropriate support or treatment to the victims, paying particular attention to high-risk groups.
15. Create or develop specialised public and/or private services for the protection of children at risk or already victims in order to prevent and identify all forms of sexual exploitation.
16. Recognise and support the central role played by NGOs in preventing sexual exploitation and in helping the victims.
17. Ensure that there are a variety of means whereby anyone, and in particular children, can reveal instances of sexual exploitation (including telephone hotlines, agencies, printed material and Internet sites).
18. Ensure that children in care are sufficiently protected by appropriate regulations, guidelines and procedures and that all members of staff responsible for them have the required qualifications and licences.
d. *Media*
19. Encourage the media to contribute in a constructive way to a general awareness of sexual exploitation of children and its effects and to develop appropriate rules of conduct and regulations for the written, audiovisual and electronic media, in particular referring to the respect of the privacy, identity and dignity of children.
20. Encourage representatives of the media to be involved and to participate in training and awareness programmes on sexual exploitation.
21. Encourage the media to act in a responsible way, while portraying children and childhood in general.
e. *The Internet*
22. Involve Internet service providers in raising awareness about sexual exploitation and its risks, especially on the Internet and through the use of modern communication technologies.
23. Ensure that Internet service providers work alongside the authorities to identify and to combat the various means through which the Internet can be used for the purpose of sexual exploitation of children.
24. Encourage Internet service providers to develop a code of conduct appropriate to the modern information and communications technologies to prevent the sexual exploitation of children, identify abuses of such a code and to take measures to inhibit and suppress such abuses.
25. Recognise that it is necessary for law-enforcement agencies to be able to use connection data to trace suspicious content and subsequently locate, identify and question those who edit or disseminate child pornography or encourage or incite child prostitution.
26. Provide information to parents, carers, all others responsible for children and children themselves on the risks of sexual exploitation on the Internet, the forms it may take and on how to limit access to it.
27. Create hotlines and encourage citizens to report cases of child pornography or of incitement to child prostitution on the website, thus enabling the appropriate law enforcement authorities to take specific action.

III. Criminal law, procedure and coercive measures in general

28. Ensure that the acts and activities defined under article 2. *c*, *d* and *e* are fully covered by their criminal law, whether these offences are committed on or outside their territory, on an individual or organised basis.

29. Invite police and other appropriate services to give special attention to prevention, detection, and investigation of offences involving sexual exploitation of children, and allocate sufficient means to them towards that end.

a. *Measures concerning victims*

30. Ensure that the rights and interests of children are safeguarded throughout proceedings, in particular by enabling them to be heard, to be assisted or, where relevant, to be represented, while respecting the rights of the alleged offenders.

31. Invite the relevant judicial authorities to give priority to cases involving sexual exploitation of children and to ensure that these cases are dealt with as quickly as possible.

32. Ensure throughout judicial, mediation or administrative proceedings the confidentiality of records and respect for the privacy of children who have been victims of sexual exploitation.

33. Provide special conditions for the taking of evidence from children who are victims of or witnesses to sexual exploitation, in order to reduce the number of statements and hearings of the child and thus minimise the harm caused to the victims, witnesses and their families and increase the credibility of their statements while respecting their dignity.

34. Grant victims and their families the possibility, where appropriate, to stay on the territory of the state so that they are able to fully participate in judicial proceedings, provide for measures designed to protect victims, witnesses and their families from intimidation, in particular where there are criminal networks; during this period make sure victims have access to welfare, medical and legal assistance.

35. Establish a scheme to fully repair any damage suffered by children victims of sexual exploitation and provide mechanisms to assist them to come to terms with their experiences.

36. Ensure that children who have been victims of sexual exploitation cannot be prosecuted for any act connected with this exploitation.

b. *Measures concerning perpetrators*

37. Seek to ensure that the limitation period for bringing criminal proceedings in the field of sexual exploitation only starts to run when the victim has ceased to be a child.

38. Take measures to punish offenders and provide treatment when appropriate.

39. Provide for the seizure and confiscation of the proceeds from offences relating to the sexual exploitation of children.

40. Develop and resource relapse prevention programmes for offenders.

41. Provide for the possibility of banning persons found guilty of offences involving the sexual exploitation of children from carrying out certain forms of employment or activities which could bring them into contact with children.

42. Make provisions for the temporary or permanent closure of, or withdrawal of licence from, establishments and businesses, whatever their nature, involved in sexual exploitation of children.

43. Ensure that legal entities may be held responsible for offences involving sexual exploitation of children and introduce specific sanctions to that end, while taking care not to prejudice the criminal liability of natural persons.

IV. Measures relating to pornography involving children

44. Introduce appropriate criminal sanctions taking into account the gravity of the offence committed by those involved in the production and distribution of any pornographic material, by whatever means, involving children or simulating the images of children.

45. Introduce criminal sanctions for mere possession, in whatever form, of pornographic material involving children or simulating the images of a child.

46. Organise information campaigns raising awareness of the fact that the mere possession of child pornography is liable to be criminally sanctioned.

47. Launch information campaigns on legal procedures and other forms of assistance available to victims of child pornography.

V. Measures relating to the prostitution of children

48. Introduce appropriate criminal sanctions against a person accepting the services of and/or using any child involved in prostitution.

49. Ensure the children involved in prostitution are provided with material, psychological and other appropriate forms of assistance, so that they are able to escape prostitution.

50. Give priority to educational programmes, including vocational training, and reintegration programmes, aimed at children.
51. Create or develop special police units and improve their working methods, in order to combat child prostitution.
52. Place social workers trained in preventive work with children, in particular those involved in street work, to help children escape from prostitution.
53. Involve the tourism industry in raising awareness about sex tourism and in the detection of it.
54. Organise information campaigns intended to discourage potential travellers from engaging in sex tourism.

VI. Measures relating to trafficking in children

55. Introduce appropriate criminal sanctions for trafficking in children taking into account the gravity of the offence.
56. Organise information campaigns in order to increase public awareness of high risk situations that may lead to organised trafficking in children, mainly girls.
57. Provide information on trafficking in and sexual exploitation of children and appropriate training to diplomatic and consular representatives, public authorities, the media, NGOs and other public and private bodies working in the countries of origin of potential victims.
58. Disseminate widely, in every member state, information on the risk that trafficking in, and sexual exploitation of, children entails to the life as well as the mental and physical health of children.
59. Make media more aware of issues related to trafficking in children and their role to prevent it.
60. Ensure that school curricula include information on risk of sexual exploitation and trafficking in children and ways of protecting themselves; this information should be also available to children outside the education system and to parents and guardians or other legal representatives of children.
61. Organise special training for diplomatic, consular, judicial, customs and police personnel to enable them to identify cases of trafficking in children for the purpose of sexual exploitation and respond appropriately.

VII. Research priorities

62. To promote research at national and international levels, respecting cultural diversity and in particular consider the study of:
– the number of criminal proceedings related to cases of sexual exploitation, prostitution, pornography and trafficking of children, each year for each country and with reference to the length of those proceedings;
– the experiences of children who have been sexually exploited and their experience of the justice and welfare systems;
– the specific links between sexual exploitation and organised crime;
– the specific links between sexual exploitation and previous experience with incest, sexual abuse and pornography;
– the nature of the process leading victims to become perpetrators;
– an audit of the available literature and research on sexual exploitation and how best to prevent it and to deal with it if it has occurred;
– the nature and scale of different forms of sexual exploitation of children, especially in its cross-cultural aspects;
– the long term effects of sexual exploitation and its effects on mental health, social and family relationships of adults in different countries;
– the extent and nature of sexual exploitation by adolescents;
– the nature of paedophilia and the ways in which perpetrators sexually exploit children;
– an audit of the measures and programmes directed at those who have sexually abused children;
– the links between adoption and sexual exploitation;
– the needs of families where a family member has been sexually exploited;
– an evaluation of the use of the Internet in the prevention of sexual exploitation;
– the training needs of personnel working with children who have been sexually exploited and with their families;
– items III. 5-10 of Recommendation N° R (91) 11 should also be included.

VIII. International co-operation

63. Consider taking such measures as may be necessary in order to establish extra-territorial jurisdiction over the offences defined under article 2. *c*, *d* and *e* in cases where:
a. these offences are committed by their nationals;
b. these offences are committed by any person who has his/her habitual residence on their territory; and, as appropriate,
c. the victim is one of their nationals.

64. Consider the possibility of establishing jurisdiction over offences of sexual exploitation of children, also in cases where the facts are not punishable under the law of the state where they are committed in particular on account of the age of the victim.
65. Bear in mind that trafficking in children usually falls within the scope of transnational organised crime.
66. Ensure that the offences defined under article 2. *c*, *d* and *e* are extraditable according to national legislation and international treaties and ensure that, where extradition cannot be granted for reasons of nationality, the facts be submitted to the competent authorities of the requested state in order that proceedings may be taken as appropriate.
67. Promptly afford one another the widest possible measure of mutual legal assistance in connection with proceedings brought in respect of any of the offences defined under article 2. *c*, *d* and *e*.
68. Take measures in order to facilitate the communication, between states, between states and international organisations such as Interpol, and between states and NGOs, of information concerning sexual exploitation of children.
69. Ensure that the fact that victims or witnesses are in a far away country, or otherwise do not appear in person, does not constitute an obstacle to the continuation of the proceedings, in particular where the evidence has been heard by a judicial authority, by using, for instance, the video-conferencing system.
70. Consider the possibility of transferring to other states proceedings in respect of the prosecution of any of the offences defined under article 2. *c*, *d* and *e*, in cases where transfer is considered to be in the interests of both the child and the administration of justice.
71. Take all feasible measures to avoid delays that are specific to cases having an international character, for example, by providing translations of documents and interpreters, when needed, or making use of appropriate measures in order to establish the age of a child or trace a child.
72. Encourage international co-operation by means of bilateral and multilateral agreements for the prevention and effective punishment of offenders of sexual exploitation of children, including sex tourism, in particular by way of co-ordinating investigation and prosecution.
73. Ratify and fully apply the international instruments relevant in this field, in particular the United Nations Convention on the Rights of the Child and its optional protocol on the sale of children, child prostitution and child pornography as well as ILO Convention No. 182 on the worst forms of child labour.
74. Promote European and international co-operation in the fields of technical or other assistance.
75. Take all other necessary measures for an effective pan-European strategy to fight against the phenomenon of the sexual exploitation of children and its the contributing factors.

C) Recommendations on the Application of the European Social Charter

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

RECOMMENDATION NO. R CHS (98) 1
ON THE APPLICATION OF THE EUROPEAN SOCIAL CHARTER BY FRANCE DURING THE PERIOD 1993-94

(13th supervision cycle — part IV)

(Adopted by the Committee of Ministers on 4 February 1998 at the 617th meeting of the Ministers' Deputies)

The Committee of Ministers ([footnote 1]),
Having regard to the European Social Charter, in particular Part IV thereof;

Whereas the European Social Charter, signed in Turin on 18 October 1961, came into force on 8 April 1973 with respect to France and whereas, in accordance with Article 20, France has accepted seventy-two of the provisions contained in the Charter;

Whereas the Government of France submitted in 1995 its 11th report on the application of the Charter, and whereas this report has been examined in accordance with Articles 24 to 27 of the Charter;

Having examined Conclusions XIII-4 of the Committee of Independent Experts appointed under Article 25 of the Charter and the 13th report (IV) of the Governmental Committee appointed under Article 27 of the Charter;

Having noted that the Committee of Independent Experts had adopted a negative conclusion with regard to Article 17 (the right of mothers and children to social and economic protection) because of the differences which still exist between the inheritance rights of children born in and out of marriage;

Following a proposal by the Governmental Committee,

Recommends that the Government of France take account, in an appropriate manner, of the negative conclusion of the Committee of Independent Experts and requests that it provide information in its next report on the measures it has taken to this effect.

1 At the 492nd meeting of Ministers' Deputies in April 1993, the Deputies "agreed unanimously to the introduction of the rule whereby only representatives of thoses states which have ratified the Charter vote in the Committee of Ministers when the latter acts as a control organ of the application of the Charter".
These states are presently Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Spain, Sweden, Turkey and the United Kingdom.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

RECOMMENDATION NO. R CHS (98) 4
ON THE APPLICATION OF THE EUROPEAN SOCIAL CHARTER BY TURKEY DURING THE PERIOD 1993-94

(13th supervision cycle — part IV)

(Adopted by the Committee of Ministers on 4 February 1998 at the 617th meeting of the Ministers' Deputies)

The Committee of Ministers ([footnote 1]),
Having regard to the European Social Charter, in particular Part IV thereof;

Whereas the European Social Charter, signed in Turin on 18 October 1961, came into force on 24 December 1989 with respect to Turkey and whereas, in accordance with Article 20, Turkey has accepted forty provisions contained in the Charter;

Whereas the Government of Turkey submitted in 1995 its 3rd report on the application of the Charter, and whereas this report has been examined in accordance with Articles 24 to 27 of the Charter;

Having examined Conclusions XIII-4 of the Committee of Independent Experts appointed under Article 25 of the Charter and the 13th report (IV) of the Governmental Committee appointed under Article 27 of the Charter;

Having noted that the Committee of Independent Experts had adopted a negative conclusion:

1. considering that under Article 11 (the right to protection of health) the measures taken to reduce the particularly high rate of perinatal and infant mortality are not sufficient;

2. considering that under Article 16 (the right of the family to social, legal and economic protection) the proportion of families in receipt of family allowance is small; and that the civil code permits inequality within the couple as spouses as well as parents;

Following a proposal by the Governmental Committee,

Recommends that the Government of Turkey take account, in an appropriate manner, of the negative conclusion of the Committee of Independent Experts and requests that it provide information in its next report on the measures it has taken to this effect.

1 At the 492nd meeting of Ministers' Deputies in April 1993, the Deputies "agreed unanimously to the introduction of the rule whereby only representatives of thoses states which have ratified the Charter vote in the Committee of Ministers when the latter acts as a control organ of the application of the Charter".
These states are presently Austria, Belgium, Cyprus, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Spain, Sweden, Turkey and the United Kingdom.

D) Declarations of the Committee of Ministers

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

DECLARATION ON THE OCCASION OF THE 50TH ANNIVERSARY OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

(Adopted by the Committee of Ministers on 10 December 1998, at the 651bis meeting of the Ministers' Deputies)

THE GOVERNMENTS OF THE MEMBER STATES OF THE COUNCIL OF EUROPE,

1. Considering that today marks the 50th anniversary of the Universal Declaration of Human Rights to which the member States of the Council of Europe are deeply committed and whose continued importance they reaffirm;
2. Recalling that the Universal Declaration is the basis of the human rights protection systems of the United Nations, the Council of Europe and other organisations in different regions of the world;
3. Recognising that the universal protection of human rights and fundamental freedoms is the foundation of justice and peace in the world, and an essential factor for the development and strengthening of pluralist democracy;
4. Reaffirming that all human rights are universal, indivisible, interdependent and interrelated, be they civil, political, economic, social or cultural;
5. Welcoming the progress made in the last 50 years in the universal acceptance and implementation of international human rights standards;
6. Paying tribute to the work of the United Nations in this field at the global level and stressing the need for an in-depth assessment of progress in the implementation of the Declaration and Programme of Action adopted at the World Conference on Human Rights (Vienna, 1993);
7. Recognising the indispensable contribution of non-governmental organisations as well as individuals to the defence of human rights throughout the world;
8. Welcoming the adoption, on 17 July 1998 in Rome, of the Statute of the International Criminal Court, as an important step towards the establishment of the rule of law at the international level and a significant contribution to the international protection of human rights;
9. Deploring strongly the fact that serious and large-scale violations of human rights continue to occur throughout the world;
10. Believing that further efforts and enhanced co-operation are needed to ensure that human rights are effectively protected at the national, regional and international levels;
11. Reaffirming in this context their attachment to the fundamental principles of the Council of Europe – pluralist democracy, respect for human rights, the rule of law and stressing its essential role in the protection, promotion and further development of human rights;
12. Recalling the historic changes which have made Europe so much more united around common values than it was fifty years ago;
13. Recalling that, by adopting the European Convention on Human Rights, the member States of the Council of Europe took the first steps to ensure the collective enforcement of rights stated in the Universal Declaration;
14. Reaffirming:
    - the need to reinforce the protection of fundamental social and economic rights,
    - the need to combat racism, intolerance, xenophobia and anti-Semitism,
    - the importance of the protection of the rights of persons belonging to national minorities, all of which form an integral part of human rights protection;
15. Welcoming therefore the entry into force of the collective complaints Protocol to the European Social Charter, the enhanced programme of the European Commission against Racism and Intolerance and the implementation of the monitoring mechanism of the Framework Convention for the Protection of National Minorities;
16. Stressing the need to secure the full enjoyment of human rights by women;
17. Stressing the importance of effective protection of the rights of the child;

18. Reaffirming that the protection of media freedoms is an integral part of the international protection of human rights;
19. Recognising the need to promote a genuine human rights culture in all sectors of society through education and awareness-raising in human rights;
20. Recalling the European regional colloquy "In Our Hands – The Effectiveness of Human Rights Protection 50 Years after the Universal Declaration," organised by the Council of Europe on 2-4 September 1998 as a contribution to the commemoration of the 50th anniversary of the Declaration;
21. Bearing in mind the decisions of the First and Second Summits of Heads of State and Government of the Council of Europe (Vienna, October 1993 and Strasbourg, October 1997),

I. CONDEMN VIGOROUSLY the continuing serious and large-scale violations of human rights throughout the world, and CALL FOR immediate steps to put an end to them and to bring those responsible to justice;

II. CALL ON STATES:
- to become Party to the universal human rights instruments, wherever possible without reservations, to review existing reservations with a view to withdrawing them and to ensure the full and effective implementation of those instruments at the national level;
- to refrain from any steps in contradiction with the General Comment of the United Nations Human Rights Committee of 29 October 1997 confirming that the International Covenant on Civil and Political Rights is not subject to denunciation or withdrawal;
- to sign and ratify the Rome Statute and facilitate the rapid establishment of the International Criminal Court;

III. FURTHER CALL ON ALL STATES:
- to establish or reinforce independent national institutions for the protection and promotion of human rights;
- to draw up and implement programmes and policies for education and awareness-raising in human rights for all sectors of society;

IV. URGE ALL STATES to abolish the death penalty as soon as possible, to maintain a moratorium on executions pending complete abolition or to refrain from re-introducing the death penalty;

V. REAFFIRM that the promotion and protection of human rights shall remain of the highest priority for the Council of Europe;

VI. INVITE ALL MEMBER STATES to sign and ratify the human rights instruments of the Council of Europe, wherever possible without reservations, to review existing reservations with a view to their withdrawal and to ensure the full and effective implementation of those instruments at the national level;

VII. HIGHLIGHT the significance of the establishment of the new European Court of Human Rights on 1 November 1998, for the consolidation of the judicial protection of human rights set up by the European Convention on Human Rights;

VIII. CONFIRM their continued support for the other human rights treaties of the Council of Europe, as well as their supervisory mechanisms notably the European Social Charter, the European Convention for the prevention of torture and inhuman or degrading treatment or punishment and the Framework Convention for the Protection of National Minorities;

IX. UNDERTAKE to set up the institution of the Council of Europe Commissioner for Human Rights as soon as possible in 1999;

X. AGREE to finalise as soon as possible the text of a legally binding instrument providing for the prohibition of discrimination in all its forms;

XI. UNDERTAKE, in the light of the decisions of the First and Second Summits, to take all necessary further steps so that:
- priority continues to be given to the intergovernmental and other human rights activities of the Council of Europe;
- the Council of Europe's human rights treaties and mechanisms are capable of effectively defending the rights of individuals throughout Europe;
- the Council of Europe continues to play a pre-eminent role in the promotion and protection of human rights within Europe;

XII. CALL on the members of the international community - both governmental and non-governmental - to co-operate in achieving the aims of the Universal Declaration.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

DECLARATION
ON THE RAPE OF WOMEN AND CHILDREN
IN THE TERRITORY OF FORMER YUGOSLAVIA

(adopted by the Committee of Ministers on 18 February 1993 at the 488th meeting of the Ministers' Deputies)

1. The Committee of Ministers of the Council of Europe recalls its Declaration of 9 December 1992 on the practice of systematic rape in Bosnia-Herzegovina, in which it stated that "such a degree of barbarity, rarely seen, is intolerable ..." and that "those who perpetrate such crimes must realise that they shall not go unpunished".
2. The Committee of Ministers considers it unacceptable that controversy regarding the exact number of victims and the exact scale on which rapes have been committed has been deliberately encouraged and considers that such controversy can in no event detract from the gravity of these violations of human rights.
3. The Committee of Ministers considers that urgent action must be taken to end this barbaric practice, directed in particular against women and children belonging to the Moslem population of Bosnia-Herzegovina, and to provide the victims concerned with the support and assistance they need.
4. In view of the foregoing, the Committee of Ministers, having regard to the specific responsibility of the Council of Europe to safeguard human rights and fundamental freedoms:
   - considers that rape, since it constitutes an attack on the physical and mental integrity and on the dignity of the victims, is a violation of human rights;
   - reaffirms that the use of rape as an instrument of warfare and within the context of a strategy of ethnic cleansing - as is the case in the territory of former Yugoslavia - is a war crime and should be considered a crime against humanity;
   - demands that those concerned put an end to these flagrant violations of human rights;
   - appeals to member States and the international community at large to ensure that these atrocities cease and that their instigators and perpetrators are prosecuted by an appropriate national or international penal tribunal;
   - declares its readiness to take part - together with other international agencies concerned - in the efforts to coordinate the assistance and support organised by individual member Governments and non governmental agencies for victims of rape and enforced procreation in the territory of former Yugoslavia.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

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DECLARATION ON THE SYSTEMATIC PRACTICE OF RAPE IN BOSNIA-HERZEGOVINA

(Adopted by the Committee of Ministers on 9 December 1992 at the 484bis meeting of the Ministers' Deputies)

The Committee of Ministers of the Council of Europe recalls its previous declarations on the conflict in the former Yugoslavia and in particular its condemnation in the strongest terms of the brutal violations of human rights and international humanitarian law perpetrated during this conflict.
On this International Human Rights Day, it denounces one particularly vile aspect of the treatment meted out in recent months, namely the systematic practice of gang-rape of women and children, in particular those belonging to the Muslim community.

Numerous reports, notably that of Mr Mazowiecki, point to the organised and planned use of these rapes as a commonplace military measure intended to totally humiliate the enemy and drive it into exodus.
Such a degree of barbarity, rarely seen, is intolerable in the eyes of our nations. On this day of human rights, those who perpetrate such crimes must realise that they shall not go unpunished.

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

DECLARATION
ON THE PROTECTION OF HUMAN RIGHTS IN EUROPE
GUARANTEEING THE LONG-TERM EFFECTIVENESS OF THE EUROPEAN COURT OF HUMAN RIGHTS

(Adopted by the Committee of Ministers at its 109th Session Strasbourg, 8 November 2001)

The Committee of Ministers

1. reiterating its conviction that the European Convention on Human Rights must remain the essential reference point for the protection of human rights everywhere in Europe both in terms of rights guaranteed and of its judicial mechanism of control;
2. expressing the determination of the member States of the Council of Europe, in the interest of legal certainty and coherence, to guarantee the central role that the Convention and the Court must continue to play in the protection of the human rights and fundamental freedoms of 800 million people in Europe;
3. underlining that the effective protection of the human rights and fundamental freedoms guaranteed by the Convention must be secured first and foremost by the States Parties;
4. preoccupied by the challenges faced by the Court on account of the increasing number of individual applications submitted to it
5. determined that urgent and significant steps must be taken to ensure that the Court can deal with these cases within a reasonable time, whilst maintaining its judicial nature, the unique right of individual petition and the quality of its jurisprudence;
6. noting with satisfaction that the Court itself is implementing and studying measures to improve its internal procedures for example by establishing a new streaming of individual applications;
7. considering that the fulfilment of its own role of supervising the execution of the Court's judgments is an essential factor in preserving the efficiency and credibility of the Convention mechanism;
8. wishing to give full effect to the Resolutions and the Declaration adopted by the Ministerial Conference held in Rome in November 2000 on the occasion of the 50th anniversary of the Convention,
9. URGES all States Parties to ensure the existence of effective remedies at national level in respect of the exercise of the human rights and fundamental freedoms guaranteed by the Convention and to take the necessary measures as appropriate;
10. WARMLY WELCOMES the Report of the Evaluation Group established to examine possible means of guaranteeing the continuing effectiveness of the European Court of Human Rights and INSTRUCTS the Ministers' Deputies to pursue urgent consideration of all the recommendations contained in the report concerning:
a. the follow-up to the Rome Ministerial Conference with particular regard to improved national implementation of the Convention, teaching of its case-law, human rights awareness and training, the availability of effective domestic remedies and responses to slow execution or non-execution of judgments;
b. the use of every means at their disposal to ensure the expeditious and effective execution of judgments of the Court, including those involving issues generating repetitive applications;
c. the human resources, budget and accommodation needs of the Court;
d. measures involving amendment of the Convention;
11. INVITES the Ministers' Deputies to share information with the Parliamentary Assembly on the implementation of this declaration;
12. INSTRUCTS the Ministers' Deputies to conduct, in consultation with the Court, regular reviews of the implementation of this declaration and to report back at its 111th Session, at the conclusion of the chairmanship of Luxembourg in November 2002.

E) Reply of the Committee of Ministers Parliamentary Assembly Recommendations

627th meeting – 8 April 1998
Item 4.1

Committee of Ministers Reply to Parliamentary Assembly Recommendation 1321 (1997) IMPROVING THE SITUATION OF WOMEN IN RURAL SOCIETY

Decision

The Deputies adopted the following reply to Parliamentary Assembly Recommendation 1321 (1997):

"The Committee of Ministers has carefully examined Recommendation 1321 (1997) of the Parliamentary Assembly on improving the situation of women in rural society and brought it to the attention of the Governments of its member States.

The Committee of Ministers welcomes the interest shown by the Parliamentary Assembly in this issue. The Recommendation is a valuable contribution to the follow-up to the 4th World Conference on Women (Beijing, 4-15 September 1995).

While the Committee of Ministers has not made detailed studies of the specific position of women in rural areas, some projects have been undertaken in the framework of the co-operation and assistance Programmes with countries of Central and Eastern Europe. A seminar on rural women and their participation in public and economic life was organised in 1996 at the request of the Slovak authorities.

Other international organisations have recently carried out in-depth research on the status, role and prospects of women in rural areas with a view to improving their rights (the Commission of the European Communities, the European Parliament and the Food and Agriculture Organisation). The Committee of Ministers does not wish to duplicate this work.

The Committee of Ministers believes that, while the matter is an important one, it would be difficult for the time being to insert any specific activity into the present work programme, which is in the process of being restructured to reflect the Council of Europe priorities set at the Second Summit of Heads of State and Government."

645th meeting – 20 October 1998
Item 4.1

COMMITTEE OF MINISTERS REPLY TO PARLIAMENTARY ASSEMBLY RECOMMENDATION 1325 (1997) TRAFFIC IN WOMEN AND FORCED PROSTITUTION IN COUNCIL OF EUROPE MEMBER STATES

The Deputies adopted the following reply to Parliamentary Assembly Recommendation 1325 (1997) on traffic in women and forced prostitution in Council of Europe member States:

"1. The Committee of Ministers has noted with interest Parliamentary Assembly Recommendation 1325 (1997). It shares the Concern of the Parliamentary Assembly regarding the dramatic increase in recent years in traffic in human beings for sexual exploitation.

2. The importance that the Committee attaches to this question was underscored in the Final Declaration of the Second Summit, where the Heads of State and Government reaffirmed their "determination to combat violence against women and all forms of sexual exploitation".

3. In order to address the issues raised in Recommendation 1325, the Committee of Ministers has created a Multisectoral Group on Action against Trafficking in Human Beings for the purpose of Sexual Exploitation (EG-S-TS). Under its terms of reference, adopted in June 1997, the task of the Group is "to plan and prepare actions that the Council of Europe could undertake in the field of combating traffic in human beings for the purpose of sexual exploitation, and in particular traffic in women and children, notably girls."

4. The Group is in the process of preparing a draft Recommendation containing principles and suggested action at national level in the fight against trafficking in human beings for sexual exploitation.

5. Against the background of the Second Summit, a Follow-up Conference to the World Congress against Sexual Exploitation of Children (Stockholm, August 1996) was organised in Strasbourg on 28 and 29 April 1998. In the light of this Follow-up Conference, the European Committee on Crime Problems (CDPC), at its 47th plenary session, in June 1998, set up a reflection group to examine the follow-up to the Conference and to address proposals to the Committee of Ministers.

6. Given that the issues raised in the Recommendation concern many sectors of activity, the Deputies requested opinions from the competent steering committees. These opinions - the substance of which are shared by the Committee of Ministers - are attached as appendices to this reply.

With regard to paragraphs 4 and 5 of Recommendation 1325

7. Before the Multisectoral Group was set up, the Steering Committee for Equality between Women and Men made a detailed study of the arguments for and against the elaboration of a European Convention in this area, consulting a number of other steering committees in the process. The solution of drawing up a draft Convention was not retained: it was considered that it would be impractical in the short-term, given the widely differing approaches to prostitution in the member States. The Committee of Ministers agrees with the Assembly that it would be more useful, as a first step, to draft a Recommendation. The question of elaborating a draft convention could be reconsidered once the draft Recommendation has been completed.

8. The Multisectoral Group (EG-S-TS) has had its terms of reference extended until 30 June 1999 to allow the Group to complete both a draft Recommendation and an explanatory memorandum."

Appendices
1. Opinion of the Steering Committee of Equality between women and men (CDEG);

2. Opinion of the European Committee on Migration (CDMG);
3. Opinion of the European Committee on Crime Problems (CDPC);
4. Opinion of the European Committee on Legal Co-operation (CDCJ);
5. Opinion of the Steering Committee on the Mass Media (CDMM);
6. Opinion of the Steering Committee on Social Policy (CDPS).
7. Opinion of the Steering Committee for Equality between Women and Men (CDEG)
on Parliamentary Assembly Recommendation 1325 (1997)

1. The CDEG welcomes the interest shown by the Parliamentary Assembly in the issue of traffic in women and forced prostitution. The CDEG believes that the Assembly takes a clear and timely position on this issue in the present context.

2. The CDEG takes a particular interest in, and has worked continuously on, this issue over the last six years. In 1991 a Seminar was organised in Strasbourg on action against traffic in women and forced prostitution as violations of human rights and human dignity. Following the conclusions of this Seminar, a Group of specialists was created which, over two years, drew up a final report of activities, containing an action-oriented list of priorities for the CDEG. In 1994, the CDEG asked an external consultant to draw up a plan of action, which was made available to the public in 1996 and contained a detailed analysis of the situation and a series of suggestions for action to be taken.

3. In view of the considerable increase in traffic in women and forced prostitution, the CDEG has decided to follow up the activities already undertaken. After consultations with the different Council of Europe committees with competence in the legal, social, economic, human rights and media fields, a Multisectoral Group on Action against Trafficking in Human Beings for the purpose of Sexual Exploitation was created under the authority of the CDEG. This Group was given the task, among others, of preparing a draft Recommendation or other proposal including basic principles and suggestions for action at the national level on the fight against traffic in human beings for the purpose of sexual exploitation. This Group will meet for the first time in December 1997.

4. The CDEG and its Secretariat have established active co-operation with other organisations dedicated to action against traffic in human beings (European Commission, International Organisation for Migration, Europol, the Budapest Group).

5. Taking into account its previous and on-going work, the CDEG wishes to make the following comments.

General comments

6. The CDEG notes with interest that as far as the personal scope of application is concerned, the Recommendation addresses traffic in women, excluding traffic in children and men. The explanatory report of the Recommendation gives the following reasons for this choice: the number of men who fall victim to traffic in human beings is minimal and the traffic in children calls for different measures from those which apply to traffic in women (there is a far wider consensus on what needs to be done where children are concerned and rapid progress has therefore been made in this area). The CDEG shares this point of view but wishes to point out, as it has done several times in the past, that while traffic in human beings for the purpose of sexual exploitation certainly affects mainly women, young girls are also concerned. The situation of young under age girls should not be neglected.The Multisectoral Group, created under the authority of the CDEG, will pay close attention to this aspect, for its terms of reference are to investigate “trafficking in human beings for the purposes of sexual exploitation with special emphasis on traffic in women and children, especially young girls”. The work of this Group will follow up the Assembly’s Recommendations, and the CDEG hopes that the Assembly will give the Group its full support.

7. The CDEG wishes to point out that the terminology “forced prostitution” is not compatible with present legislation in certain member States. The CDEG suggests the use of the concept “traffic for the purposes of sexual exploitation,” a term accepted by all Council of Europe member States.
Paragraphs 1 and 2

8. The CDEG shares the Assembly's concern about the increase in a phenomenon which constitutes a modern form of slavery. As to the definition in paragraph 2, the CDEG wishes to make the following comments. The definition of the phenomenon of trafficking in human beings is one of the major difficulties this subject raises and the CDEG welcomes the intentions of the Assembly in this area where the Assembly aims to promote a wide definition in order to encompass all cases of use of force and exploitation. The CDEG notes with satisfaction that an effort has been made to take into consideration all cases, including those concerning consenting persons. However, it appears that the list at the end of paragraph 2, detailing the different forms of use of force, might allow a limited interpretation. Furthermore, such detailed mention of the use of force might lessen the consideration of cases of consenting persons. The CDEG wishes to emphasise that such a precise reference to the use of force therefore risks creating limits when interpreting the definition established by the Parliamentary Assembly.

Paragraphs 4 and 5

9. The CDEG supports this Recommendation but wishes to point out that, prior to the setting-up of the aforementioned Multisectoral Group, it made a detailed study of the arguments for and against the elaboration of a European convention on this subject. The CDEG also consulted various other Council of Europe Committees on the matter (CDMM, CDPS, CDDH, CDEM, CDCJ, T-SG). In the course of this analysis, different obstacles were brought to light and an intermediary solution was chosen, namely the preparation of a draft recommendation of the Committee of Ministers to the member States in accordance with the present Assembly's recommendations in paragraph 5.

10. Concerning the Assembly's request to draw up a convention on traffic in women and, in view of the reservations mentioned above concerning the definition and personal scope of application, the CDEG could possibly examine again this possibility once the work of the Multisectoral Group on Action against Trafficking in Human Beings for the purpose of Sexual Exploitation has been completed.

Paragraph 6

11. The CDEG supports the measures which member States would be invited to adopt by the Committee of Ministers. The CDEG considers the recommended measures to be clear and detailed and notes with interest that these are often specific measures, which are indispensable in order to combat a phenomenon which often escapes existing legislation even if, in theory, such legislation were applicable.

12. The CDEG particularly supports the measures set out in sub-paragraphs i, x, xi and xii, which it considers essential in areas of prevention of trafficking and protection of the victims. As to sub-paragraph i, in particular, the CDEG wishes to emphasise the very important role which the media could play in matters of prevention in countries of origin, of transit and of destination. By systematically associating itself with the CDMM in its work, the CDEG has tried to take this factor into consideration.

13. As far as sub-paragraph x is concerned and in general, the contribution of national and international NGOs in action against traffic in human beings also seems indispensable at all levels, whether in prevention, collection of information and data, awareness-raising of authorities and public opinion or assistance to the victims. The role of NGOs might be different depending on whether it is a question of a country of origin or a country of destination. With this in mind, the CDEG has decided to devote a seminar in 1998 to NGOs combating traffic in human beings for the purpose of sexual exploitation. This would be the first seminar in the framework of a series of activities aimed at NGOs, and the CDEG thus wishes to emphasise the importance it attaches to the subject.

Opinion of the European Committee on Migration (CDMG) on Parliamentary Assembly Recommendation 1325 (1997)

In response to the occasional terms of reference given to it by the Committee of Ministers in Decision No. CM/688/140597, the European Committee on Migration (CDMG) adopted the following Opinion on paragraphs 6(ii) and (iii) of the above-mentioned Recommendation:

"1. The CDMG welcomes the Assembly's recommendation addressed to the Committee of Ministers in paragraph 6 (ii) to urge member states to introduce training schemes for immigration staff enabling them to be fully aware of the problem of trafficking in women and to recognise potential victims. The CDMG underlines, however, that in its view the identification of a person as a potential victim of traffickers should not systematically lead to a refusal to deliver a visa or to allow this person access to the territory of the state concerned. The legal effects and other consequences of such an identification should be examined on a case-to-case basis, while taking into consideration the protection needs of the potential victims.

2. The CDMG takes note of the recommendation contained in paragraph 6(iii) to create specific police structures to combat traffic in women and forced prostitution and to improve international co-operation in this field. Given that the Budapest Group enjoys observer status in the CDMG, it is also emphasised that such international co-operation has recently been recommended through very concrete proposals by the Conference of Ministers on the prevention of illegal migration held in the context of the Budapest process in Prague on 14 and 15 October 1997. The CDMG therefore suggests to transmit recommendation 1325 (1997) of the Parliamentary Assembly to the Budapest Group for information."

Opinion of the European Committee on Crime Problems (CDPC) on Parliamentary Assembly Recommendation 1325 (1997)
(adopted by the Bureau of the CDPC on 27 November 1997)

1. By Decision No. CM/667/140597 the Committee of Ministers invited the CDPC to give an opinion on paragraphs 6(ii) to (iv) and (vi) to (viii) of Parliamentary Assembly Recommendation 1325 (1997) on traffic in women and forced prostitution in Council of Europe member States.

2. The CDPC welcomes the Recommendation and shares the Assembly's concern at the dramatic increase in recent years in traffic in women and forced prostitution in Council of Europe member States and thus fully recognises the need for urgent and concerted action.

3. As regards paragraph 6 (ii) of the Recommendation, the CDPC fully supports the Assembly's proposal aimed at introducing specialised training of immigration staff, in particular in consulates delivering visas and at border points. Such training would considerably increase the efficacy of that staff in preventing this criminality. In this context, the CDPC underlines the need for such measures to be taken as an integral part of broader and comprehensive national strategies aimed at providing adequate training also for other agencies, mainly the police.

4. As regards paragraph 6 (iii) of the Recommendation, the CDPC endorses the call on member States to increase specialised knowledge of the police services concerned, which will not in all cases require the creation of specific structures, and to improve international communication, co-ordination and co-operation, as the complexity, size and sophisticated nature of this criminality require them.

5. As regards paragraph 6 (iv) of the Recommendation, the CDPC would like to emphasise that both the seizure and the confiscation of profits from crime are already provided for by international legal instruments among which is the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime. With a view to contributing to uniform and effective law enforcement action also against traffic in women and forced prostitution, its is desirable that all States Party to the Convention extend its scope of application to this type of criminality. As concerns the closure of establishments in which victims of traffic are sexually exploited, the CDPC wishes to point out that such closure could be considered as a purely administrative measure as well as a penal sanction imposed by the judicial authorities.

6. As regards paragraphs 6 (vi) and (vii) of the Recommendation, the CDPC would like to point out that questions of assistance to victims and their protection in court proceedings have already been addressed in Recommendation No. R (85) 11 on the position of the victim in the framework of criminal law and procedure and in Recommendation No. R (97) 13 concerning intimidation of witnesses and the rights of the defence. As to the Assembly's call for criminal law and criminal procedure provisions, the CDPC considers that these are aspects of the general problem of traffic in women that could usefully be studied by the Multisectoral Group on Action against Trafficking in Human Beings for the Purpose of Sexual Exploitation (EG-S-TS) in the context of its endeavour to develop an overall European strategy for combating this type of criminality. It will advise its representative on the Group accordingly.

7. Concerning paragraph 6 (viii) of the Recommendation, the CDPC recalls the European Convention on Extradition (1957) Article 6.2 of which provides that, where the requested Party does not extradite its national, it shall at the request of the requesting Party submit the case to its competent authorities in order that proceedings may be taken if they are considered appropriate. In this context, the CDPC also recalls the Report on "Extraterritorial Criminal Jurisdiction," prepared by a select committee of the CDPC in 1990, which addresses the extraterritorial application of national criminal law for offences of an international dimension and suggests solutions to possible conflicts of jurisdiction which may arise from it.

8. Although not specifically asked to express its opinion on paragraph 6 (v) of the Recommendation, the CDPC wishes to support the underlying aim of the proposal; it is indeed in the interests of justice that everything should be done to ensure that victims can give evidence in court proceedings.

9. As the fight against traffic in women and forced prostitution requires urgent and concerted action - as the Assembly rightly emphasises in paragraph 3 of its Recommendation - the CDPC welcomes the multidisciplinary approach adopted by the Multisectoral Group on Action against Trafficking in Human Beings for the Purpose of Sexual Exploitation (EG-S-TS) on which it is represented by an expert, and to whose work it will actively contribute, with a view to eradicating this serious violation of fundamental human rights. In this context, the CDPC would wish to be involved in any follow-up to the proposal, made in paragraph 4 of the Recommendation, aimed at the elaboration of a convention.

Opinion of the European Committee on Legal Co-operation (CDCJ) on paragraphs 6.ii and 6.v of Parliamentary Assembly Recommendation 1325 (1997)

1. Following the request of the Committee of Ministers, the European Committee on legal co-operation (CDCJ) has prepared the following Opinion on paragraphs 6.ii and 6.v of the above Recommendation. The CDCJ also took account of the report prepared by Ms R. WOHLWEND (Doc. 7785) and the Opinion prepared by Ms I.B. JOHANSSON (Doc. 7808).

A. General matters

2. The CDCJ stressed the scale and topical relevance of the phenomenon of traffic in women and forced prostitution in Council of Europe member States. In this connection it referred to the existence of several legal instruments dealing directly or indirectly with this subject. Any work undertaken in this field should therefore take this fact into account and the need to deal with the global scope of traffic in women and forced prostitution. In this connection, the United Nations work for the establishment of an International Criminal Court, where enforced prostitution was being considered as a crime to be included in the Court's jurisdiction, is also relevant.

3. The CDCJ noted that, although traffic in human beings affects women more seriously than men, men are also not spared. In addition in view of the serious nature of sexual exploitation of children, children should receive specific consideration.

4. The CDCJ noted that the Committee of Ministers had set up the Multisectoral Group on action against trafficking in human beings for the purpose of sexual exploitation (EG-S-TS). This Multisectoral Group of

specialists is composed of experts from various committees of the Council of Europe (including the CDCJ), under the authority of the Steering Committee for equality between women and men (CDEG).

5. As the questions considered by the CDCJ fall under the terms of reference of the EG-S-TS, it should be considered by this Group, in particular as this problem concerns immigration matters, the European Committee on migration (CDMG) and the European Committee on crime problems (CDPC) are called upon to designate an expert to participate in the EG-S-TS.

B. Paragraph 6.ii of the Assembly Recommendation

6. In paragraph 6.ii the Assembly recommends the Committee of Ministers to urge member States to: "... ii. introduce training of immigration staff, in particular in consulates delivering visas and at border points, in order to ensure that such staff are fully aware of the problem, are provided with up to date information on trafficking methods and trends, and are trained to recognise potential victims". The CDCJ recognised the importance of involving fully immigration staff in this problem. It therefore supports this proposal.

C. Paragraph 6.v of the Assembly Recommendation

7. In paragraph 6.v the Assembly recommends the Committee of Ministers to urge member States to: "... v. grant residence prmits to victims of traffic and forced prostitution who are willing to testify in court, and include them in witness protection pogrammes if necessary".

8. The CDCJ recognised that such measures would be very efficient to fight traffic and forced prostitution. However, as indicated by Mrs Johansson in her Opinion (Doc. 7808, paragraph 2), the estimated traffic of women to the European Union member states in 1995 is 500,000. While agreeing that the permits envisaged by paragraph 6.v of this Recommendation may be necessary for a short time, the CDCJ realised that owing to the large number of persons involved there would be many difficulties
for States to find satisfactory solutions in all cases. Indeed some States may have to consider such measures on a case by case basis, on their merits. However steps taken under this Recommendation, in particular if the recommendation under paragraph 6.ii concerning immigration results in a reduction of cases, would assist States in carrying out the proposal contained in paragraph 6.v.

9. The CDCJ also noted that in several international fora the granting of a temporary residence permit to victims of traffic and forced prostitution who are willing to testify in court has been recommended. Reference is made to the European guidelines for effective measures to prevent and combat trafficking in women for the purpose of sexual exploitation adopted at the Ministerial Conference under the Presidency of the European Union in The Hague from 24 to 26 April 1997 and the recommendations adopted at the Conference of Ministers on the Prevention of Illegal Migration (Budapest Process) held in Prague on 14 and 15 October 1997.

Opinion of the Steering Committee on the Mass Media (CDMM) on paragraph 6 i) of Parliamentary Assembly Recommendation 1325 (1997)

General remarks

1. The Steering Committee on the Mass Media (CDMM) shares the concerns of the Parliamentary Assembly on the phenomenon of traffic in women and forced prostitution. It strongly condemns these practices, which run contrary to the fundamental principle of human rights and human dignity. It fully supports the move by the Parliamentary Assembly to undertake urgent joint action against these phenomena at the Council of Europe level.

2. The CDMM notes that these phenomena raise, inter alia, the question of the portrayal of women in the media, given that the stereotype and degrading image of women sometimes represented in some media may

influence the behaviour/attitude of those involved, as providers or "consumers," in the trafficking of women and prostitution. The CDMM recalls that it has always been attentive to the question of presenting a fair image of women in the media, respecting the cardinal principle of editorial independence of the latter. In particular, as early as 1993, the CDMM submitted a written contribution to the 3rd European Ministerial Conference on equality between women and men (Rome, 1993). In this contribution, entitled "the causes of violence against women: the role of the media," the CDMM underlined its interest in carrying out activities aimed at heightening the media's awareness of their own specific responsibilities and to encourage the media to practise self-regulation in order to "promote the communication of a more positive image of women in society and to avoid depicting them in circumstances suggestive of vulnerability and violence".

3. Following this contribution, the CDMM organised in 1994, in co-operation with the Steering Committee for Equality between Women and Men (CDEG), a seminar on "Human rights and gender: the responsibility of the media," which led to the formulation of several proposals for concrete action. One of these proposals was that the Council of Europe organise an activity specifically aimed at media professionals to examine in a practical manner the image and portrayal of the sexes in the media. As a result, the CDMM and the CDMM will organise in Strasbourg on 28-29 September 1998 a workshop on ""good" and "bad" practices regarding the image of women in the media" which will be attended by professionals from the written press, the audiovisual and the new communications services.

4. Besides the question of the image of women in the media, trafficking in women and forced prostitution also raise the problem of the use of means of public communication in promoting these activities. If the use of the traditional media in the written press and broadcasting sectors do not seem to be in question in this respect, on the other hand the use by networks of prostitution and trafficking in women of the new communication services accessible on line, notably on the Internet, calls for particular attention.

5. Faced with this problem, but also with the use of the new communications services in undermining the fundamental rights and dignity of other individuals, such as children, the States participating in the 5th European Ministerial Conference on Mass Media Policy, held in Thessaloniki (Greece) on 11-12 December 1997, agreed, within the framework of Resolution No. 1 adopted at the Conference, to take any measures which are considered necessary to "combat the use of the new communications and information services for spreading any ideology, or carrying out any activity, which is contrary to human rights, human dignity and the fundamental rights of others" and "to co-operate in the fight against such use". Any initiatives which might be taken as a follow-up to Recommendation 1325 (1997) of the Parliamentary Assembly could be based on this Resolution.

Observations concerning paragraph 6 (i) of the Recommendation

6. At the general level, the CDMM notes that the range of measures which might be taken in application of this paragraph go beyond the strict scope of its competence, in that the measures to increase public awareness might be (and might gain from being) led via larger channels than the media, for example via educational and social institutions, in particular those which are addressed at women, and especially young women. In the same respect, the question of information provided "by the staff of consulates and embassies dealing with requests for visas and work permits" goes beyond the area of competence of the CDMM and, therefore, will not be commented on.

7. Concerning the particular field of the media, the CDMM notes that the latter might play an effective role in the relay of information and in raising public awareness, not only to "traffickers' potential victims," but also to the public in general. To be efficient, the fight against trafficking in women and forced prostitution means that all individuals should be made aware of the seriousness of these phenomena and also of the different forms that they may take and the actions or sanctions which might be taken against those who are at the origin of or who "benefit" from these activities.

8. The CDMM recalls that the contribution of the media to such an information and awareness raising policy can only take place if they are voluntarily willing to do so, and that they have themselves to be aware of the importance of such a contribution. Such action might notably be taken by the joint organisation of activities

- by public authorities and professional media organisations, at the national or European level - aimed at media professionals, and which might also be open to other bodies, such as women's defence organisations.

9. This being so, it should be kept in mind that the editorial treatment in the media of society and public questions, which include trafficking in women and forced prostitution, vary according to their nature and content. Any strategy aimed at increasing awareness amongst the media should be sufficiently flexible and targeted to take into account the specificity of the different media. In this context, particular attention should be given to the media which are essentially, if not exclusively, aimed at men.

Opinion of the Steering Committee on Social Policy (CDPS) on Parliamentary Assembly Recommendation 1325 (1997)

(adopted by the Bureau of the CDPS on 15 September 1998)

1. Following the request of the Committee of Ministers to submit an opinion on Recommendation 1325 (1997) of the Parliamentary Assembly the Bureau of the CDPS has adopted the following response:

2. The Bureau of the CDPS welcomes the Recommendation as highly timely and important.

3. The Bureau of the CDPS considers that the scope of this Recommendation is largely covered by the legal and criminal law field.

4. The particular contribution that can be made from the social field is currently taken into account in the framework of the Multisectoral Group on Action against Trafficking in Human Beings for the purpose of Sexual Exploitation (EG-S-TS), where CDPS has been represented up till now.

5. The Bureau of CDPS considers that the appropriate reply to the Parliamentary Assembly Recommendation will be made through the draft Recommendation of the Committee of Ministers currently being prepared by the EG-S-TS.

645th meeting – 20 October 1998
Item 10.2

REPLY OF THE COMMITTEE OF MINISTERS TO PARLIAMENTARY ASSEMBLY RECOMMENDATION 1371 (1998) ABUSE AND NEGLECT OF CHILDREN

Decision

The Deputies adopted the following reply to Parliamentary Assembly Recommendation 1371 (1998):

"Recommendation 1371 (1998) on abuse and neglect of children adopted by the Parliamentary Assembly on 23 April 1998 mainly concerns a wide range of measures that member States of the Council of Europe should adopt in order to provide legal and social protection for children against paedophilia, exploitation for pornography, prostitution, incest, inappropriate criminal proceedings, repetition of offences of sexual violence against minors, abusive sterilisation, violence and mutilations against girls, abuse including abuse within the family, refusal of necessary care and fraudulent actions with a view to adoption.

The Committee of Ministers underlines that it adopted 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 (90) 2 on social measures concerning violence within the family, Recommendation No. R (93) 2 on the medico-social aspects of child abuse, and as early as 1991, adopted Recommendation No. R (91) 11 on sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults, which sets out a comprehensive plan of action in this area.

The Committee of Ministers welcomed the fact that the Parliamentary Assembly via Recommendation 1371 (1998) recalls essential principles for efficient policies against child neglect and abuse. It also contributes to keeping these issues on the political agenda of both the Council of Europe and its member States.

Bearing in mind the considerable amount of work already carried out by the Parliamentary Assembly and its proposals the Intergovernmental Programme of Activities for 1998 provides for several new activities in this area, both under legal and social aspects.

Firstly, the legal activities will be carried out under the auspices of the European Committee on crime problems (CDPC) as follow up to the decisions taken at the Second Summit of the Council of Europe (10-11 October 1997) under the heading "Security of citizens - protection of children". When implementing these activities, in the legal area, both Recommendation 1371 (1998) of the Assembly and the results of the European Follow-up Conference to the 1996 World Congress against commercial sexual exploitation of children (Strasbourg, 28-29 April 1998) will be taken into account. The following matters will be examined:

- the practical difficulties arising in international judicial co-operation with regard to cases involving sexual exploitation of children for commercial purposes; this activity would focus on possible lacunae in the existing criminal law conventions and could pay attention to the proposals made by the Assembly to prepare binding international instruments. Reference was made in this context to a Convention dealing in particular with child pornography (see paragraph 14.i of the Assembly Recommendation) or a Convention setting up a register of convictions for offences against minors (see paragraph 14.ii of Recommendation 1371 (1998));

- the effective management of sex offenders in the community and in (penal) institutions;

- the use of new communication technologies for the purpose of sexual exploitation of children and

- the effective implementation of Recommendation No. R (91) 11 on sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults.

The CDPC has dealt with this question and has set up a Reflection Group to consider, inter alia, the report on the European follow-up conference to the 1996 World Congress against Commercial Sexual Exploitation of Children (Strasbourg, 28-29 April 1998) and the survey on the implementation of Recommendation No. R (91) 11 on sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults. The Reflection Group will shortly adopt its report.

The Committee of experts on family law (CJ-FA) will examine the item concerning the international abduction of children for adoption purposes. In this respect it is necessary to take into account that, in the framework of the Council of Europe, a convention has been prepared concerning adoption in general (the scope of application is not limited to international adoptions): the European Convention on the adoption of children of 1967. This Convention is being examined by a Working Party of the CJ-FA in the context of its work on the legal status of children and may possibly be revised. The Recommendation, in particular paragraph 13 j iv., will be taken into account during this work.

The Recommendation will also be brought to the attention of committees dealing with certain specific matters such as social matters, bioethics (in particular paragraph 13 g and i) and equality (in particular paragraph h).

Secondly, as regards activities carried out in the social sector, the Programme for Children, as approved by the Ministers' Deputies at their 634th meeting, 3-5 June 1998, specifically takes the United Nations Convention on the Rights of the Child as its departure point. Concerning paragraph 6 of Recommendation 1371, all member States of the Council of Europe have ratified the United Nations Convention on the Rights of the Child. Many of the Articles of this Convention cover the questions under consideration, and it is in this context that European States are developing the 'genuine culture of children's rights' referred to in paragraph 7.

The relevant document states that "the elements (of the Programme) should take into account the best interests of the child, as set out in the United Nations Convention on the Rights of the Child. The broad basis of the Programme would be the promotion, participation and protection of children and provision of services for them".

One of the three key elements that have been agreed for the Programme for Children is entitled "Social support systems for children at risk of, or who have been victims of, abuse, violence and exploitation".

The areas likely to be covered in this context are rehabilitation, prevention, training and awareness raising. Possible activities include:

- The training of professionals working with children (carers, educators, teachers, social workers etc) for the detection of sexual exploitation and abuse;

- Methods and practice for swift action when abuse/exploitation comes to light (e.g. a protocol and procedure for social workers and other professionals);

- The development of methods for the effective rehabilitation of child victims;

- The inclusion of relevant material in parental education programmes, to raise the level of awareness and to provide parents with appropriate educational tools;

- The development of positive ways to use the Internet and modern communication technology for informing children, parents and authorities about sexual exploitation and abuse.

Other associated work in the social field that might be taken into account here is a newly constituted committee of specialists on social workers, which held its first meeting in September 1998."

23 June 1999 (21st Sitting)

REPLY OF THE COMMITTEE OF MINISTERS TO PARLIAMENTARY ASSEMBLY RECOMMENDATION 1415 (1999)

Additional protocol to the European Convention on Human Rights concerning fundamental social rights

(Extract from the Official Gazette of the Council of Europe – June 1999)

The Assembly strongly reaffirms its commitment to the effective protection of human rights. It observes that there can be no genuine democracy without recognition of all human rights, including social rights.

1. Economic and social rights are inherent aspects of human dignity and are clearly human rights, in the same way as are civil and political rights. These two categories of rights are interdependent and cannot be dealt with differently.

2. Most states are currently carrying out economic reforms and substantial social changes. The east and central European countries, in particular, are going through a difficult period of transition. The globalisation of the economy and of commercial and financial markets, as well as increasing pressure on society on the economic front and from the logic of competition, make it essential to promote common values and standards that can be respected by all European countries.

3. Economic progress is not necessarily concomitant with social progress, but there should be no economic progress without recognition of social progress and social rights. The future shape of society depends on this.

4. The member states of the Council of Europe must continue to co-operate to draw up common social standards, and all must accept similar social commitments. They must be firmly committed to guaranteeing the enjoyment and effective exercise of social rights for everyone. This objective must be an absolute priority for governments.

5. On the occasion of the 50th anniversary of the Universal Declaration of Human Rights, the Committee of Ministers adopted, on 10 December 1998, a declaration in which "the governments of member states of the Council of Europe [reaffirm] the need to reinforce the protection of fundamental social and economic rights (…) which form an integral part of human rights protection".

6. The Assembly recalls that the European Social Charter is the benchmark for fundamental social rights and one of the keystones of the European social model.

7. The Assembly has been closely involved in promoting this instrument and, above all, in giving it fresh impetus, and in this connection recalls its Recommendation 1354 (1998). It especially welcomes the success of the campaign launched in January 1997 to promote ratification, and the entry into force of the 1995 protocol providing for a system of collective complaints, and would like to see the European Social Charter and the revised Charter ratified by the largest possible number of states in time for the Council of Europe's 50th anniversary in May 1999.

8. If democracy is to be firmly rooted in Europe, it is necessary to guarantee greater effectiveness and greater enforceability of social rights. Thought should be given to the reinforcement of existing international legal instruments.

9. In Recommendation 1354 (1998) the Assembly notes that the European Court of Human Rights is "a central authority for the protection of human and civil rights and human dignity" and asks that "the possibility of transferring individual rights from the Social Charter to the European Convention on Human Rights" be examined "in order to create the basis for stricter legal observance".

10. Extending the sphere of jurisdiction of the European Court of Human Rights, to which complaints can be made by individuals, appears to be the most efficient means – complementary to the supervision machinery of the European Social Charter – of improving the protection of European citizens, and of guaranteeing full respect of social rights by states.

11. A protocol to the European Convention on Human Rights would make it possible to remedy deficiencies and would constitute an instrument for strengthening social cohesion, in particular with a view to putting an end to inequalities and safeguarding the interests of the most vulnerable sectors of society. The elaboration of such a protocol is, for the Council of Europe, the challenge of the next millennium.

12. The Assembly notes that a certain number of social rights are already recognised and protected by the European Convention on Human Rights, in particular under Articles 4, 8, 11 and 14. However, these articles are of limited scope in relation to both violations of the principle of non-discrimination (Article 14) and the recognition of collective rights (Article 11).

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

i. to pledge, at all levels, to secure the recognition and immediate and practical implementation of social rights;

ii. to adopt legislation recognising and guaranteeing everyone the full benefit of minimum fundamental social rights;

iii. to sign and ratify the relevant international instruments, in particular the European Social Charter, the revised European Social Charter and the revised European Code of Social Security;

iv. to introduce immediately the legislation and regulations required for implementation of these instruments;

v. to reinforce national legal mechanisms and procedures whereby individuals can satisfactorily claim their social rights in their national courts.

15. The Assembly recommends that the Committee of Ministers:

i. carry out a survey to ascertain which of the social rights guaranteed by the constitutions of member states, and considered as enforceable by national courts, might be added to the rights protected by the provisions of the European Convention on Human Rights;

ii. carry out a survey to ascertain which of the rights guaranteed by the European Social Charter and the revised European Social Charter could be considered enforceable and be added to the rights protected by the provisions of the European Convention on Human Rights;

iii. consult the European Court of Human Rights in order to ascertain which of the social rights could be considered as already guaranteed by the Convention, in the light of its case-law;

iv. draft an additional protocol to the European Convention on Human Rights, on the basis of the above-mentioned surveys, with a view to guaranteeing as a first stage some of the following rights:

a. Protection of basic needs

– the right to housing;

– the right to basic social and medical assistance;

– the right to a minimum income;

b. Protection in the work environment

– the right to fair remuneration;

– the right to receive regularly and on time wages, pensions and social allowances;

– the right to fair and satisfactory working conditions which preserve human dignity (including the right to reasonable working hours, to annual paid leave, to public holidays with pay and to a weekly rest period);

– the right to safe and healthy working conditions and to protection from unhealthy and dangerous work;

– the right to appropriate vocational training;

– the right to specific protection in the event of termination of employment (minimum period of notice of dismissal, right of workers dismissed for reasons other than misconduct to minimum compensation, prohibition of dismissal and of termination of employment on arbitrary grounds);

– the right of employed women, whether salaried or self-employed, as mothers or pregnant women, to protection;

– prohibition of work by children who have not yet reached the school-leaving age;

– the right to integration in the world of work of persons with disabilities;

– the right to protection from sexual harassment in the workplace.

16. The Assembly, recognising that this is an ambitious and difficult undertaking, is of the opinion that a progressive approach is required, and that the legal enforceability of all these rights should constitute a long-term objective.

17. Moreover the Assembly takes note that the Committee of Ministers, in the Declaration on the occasion of the 50th Anniversary of the Universal Declaration of Human Rights, agreed to "finalise as soon as possible the text of a legally binding instrument providing for the prohibition of discrimination in all its forms".

18. It recalls that it has repeatedly urged the Committee of Ministers to elaborate an additional protocol to the European Convention on Human Rights strengthening the non-discrimination clause of Article 14. It underlines that numerous social rights are related to equality. A draft protocol could therefore deal with a number of social rights, such as non-discrimination in respect of access to health care and social services, equal treatment at work and equal remuneration, in particular between men and woman, or non-discrimination in respect of access to social housing.

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[1] Assembly debate on 23 June 1999 (21st Sitting) (see Doc. 8357, report of the Social, Health and Family Affairs Committee, rapporteur: Mrs Pulgar; and Doc. 8433, opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Jurgens).
Text adopted by the Assembly on 23 June 1999 (21st Sitting).

3 April 2000 (9th Sitting)

Reply of the Committee of Ministers to Parliamentary Assembly Recommendation 1450 (2000)[1]
Violence against women in Europe

1. The Assembly deplores the great increase in the number of women subjected to violence in Council of Europe member states. Every day in Europe one woman in five is a victim of violence.

2. Hundreds of thousands of women thus face physical and mental violence at home or outside, violence which is sometimes inflicted by the public authorities or by coercive institutions. Oppression of women as manifested in domestic violence, rape and sexual mutilation is a reality known, and denounced, in many countries.

3. The Assembly reaffirms the support it gave to the Beijing Platform for Action adopted at the 1995 United Nations Conference on Women, when the different forms of violation of women's rights were clearly defined and forthrightly condemned.

4. The Assembly notes that although domestic violence is one of the commonest forms of violence against women, it remains the least visible. And yet it is estimated that more women in Europe die or are seriously injured every year through domestic violence than through cancer or road accidents. The costs, in terms of human and other resources, are as great to the medical and health services as they are to employers, the courts and the police.

5. The Assembly accordingly condemns violence against women as being a general violation of their rights as human beings - the right to life, safety, dignity and physical and psychological well-being.

6. It utterly deplores that in some member countries there are still murders committed allegedly to preserve honour, forced marriages and other forms of sacrifice, and it underlines the urgency of taking action to punish all criminal acts committed in the name of tradition or religion.

7. The Assembly condemns with equal strength genital mutilation, still too often practised in the name of custom or cultural and religious tradition, which amounts to barbaric torture inflicted on young women. It therefore invites member states to implement the measures proposed in Recommendation 1371 (1998).

8. It likewise condemns the growing scale of prostitution and traffic in women in Council of Europe member states, brought about by international networks whose activities have made this one of the largest areas of organised crime.

9. The Assembly recognises the important role played by non-governmental organisations (NGOs) in the defence of women's rights and in the stand taken against violence towards women in its various forms. It invites member states to fully support such NGOs in their national and international activities.

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

    i. draw up a European programme to combat violence against women, with the aim of:

        a. harmonising law and procedure so as to establish a proper system of European positive law;

        b. bringing in legislation outlawing all forms of domestic violence;

        c. establishing legal recognition of marital rape and making it a criminal offence;

d. ensuring greater protection for women, for example by means of orders restraining violent husbands from entering the marital home and measures to properly enforce penalties and sentences;

e. ensuring greater flexibility as regards both access to justice and the availability of various procedures, with provision for *ex officio* action by the authorities, *in camera* hearings and court benches made up equally of female and male judges;

ii. draw up a European charter of domestic work;

iii. invite member states to:

a. ratify, if they have not yet done so, and implement the United Nations Convention on the Elimination of All Forms of Discrimination against Women and its protocol;

b. step up the role of the European Union Observatory on Violence against Women;

c. implement the measures advocated in Recommendation 1325 (1997) on trafficking in women and forced prostitution in Council of Europe member states and speedily make substantial funding available for programmes of support and assistance to victims of traffic in human beings;

d. step up international co-operation between state institutions and NGOs in order to improve protection for the victims of trafficking in women, something which requires, *inter alia*, increased awareness-raising and training for those in primary contact with potential victims of trafficking in women;

e. introduce training programmes for police officers and judges dealing with women victims of violence;

f. encourage recruitment of female police officers;

g. set up centres for women victims of violence;

h. run information and awareness-raising campaigns to educate the public about the unacceptability of violence towards women and set up preventive initiatives to promote equal relations.

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[1] *Assembly debate* on 3 April 2000 (9th Sitting) (see Doc. 8667, report of the Committee on Equal Opportunities for Women and Men, rapporteur: Mrs Vermot-Mangold).
Text adopted by the Assembly on 3 April 2000 (9th Sitting).

30 June 2000 (24th Sitting)

Committee of Ministers Reply to Parliamentary Recommendation 1469 (2000)[1] Concerning Mothers and babies in prison

1. Assembly Recommendation 1257 (1995) on conditions of detention in Council of Europe member states recommends more limited recourse to prison sentences.

2. Despite this, the number of women being sent to prison under sentence and on remand is increasing in many Council of Europe member states. The overwhelming majority of women sent to prison are accused of, or convicted of, relatively minor offences and they do not represent a danger to the community.

3. It is not known how many babies and young children are separated from their mothers in prison. There are about 100 000 women in prison in European countries, and the Howard League for Penal Reform, a non-governmental organisation in the United Kingdom, estimates that this means that some 10 000 babies and children aged under 2 are affected by this situation.

4. Experts agree that early maternal separation causes long-term difficulties, including impairment of attachments to others, emotional maladjustment and personality disorders. It is also recognised that the development of young babies is retarded by restricted access to varied stimuli in closed prisons.

5. In view of the adverse effects of imprisonment of mothers on babies the Assembly recommends that the Committee of Ministers invite member states:

   i. to develop and use community-based penalties for mothers of young children and to avoid the use of prison custody;[2]

   ii. to develop education programmes for criminal justice professionals on the issue of mothers and young children, using the United Nations Convention on the Rights of the Child and the European Convention on Human Rights;

   iii. to recognise that custody for pregnant women and mothers of young children should only ever be used as a last resort for those women convicted of the most serious offences and who represent a danger to the community;

   iv. to develop small scale secure and semi-secure units with social services support for the small number of mothers who do require such custody, where children can be cared for in a child-friendly environment and where the best interests of the child will be paramount, whilst guaranteeing public security;

   v. to ensure that fathers have more flexible visiting rights so that the child may spend a little time with its parents;

   vi. to ensure that staff have appropriate training in child care;

   vii. to develop appropriate guidelines for courts whereby they would only consider custodial sentences for pregnant women and nursing mothers when the offence was serious and violent and the woman represented a continuing danger;

   viii. to report back on the progress made by the year 2005.

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[1] *Assembly debate* on 30 June 2000 (24th Sitting) (see Doc. 8762, report of the Social, Health and Family Affairs Committee,rapporteur: Mr Vis).
Text adopted by the Assembly on 30 June 2000 (24th Sitting).

[2] Community sentences can include probation, community service, restorative measures like mediation, compensation to victims, or suspended prison sentences which only come into force if further offences are committed.

30 June 2000 (24th Sitting)

Committee of Ministers Reply to Parliamentary Assembly Recommendation 1470 (2000)[1] Situation of gays and lesbians and their partners in respect of asylum and immigration in the member states of the Council of Europe

1. The Assembly recalls and reaffirms its Recommendation 924 (1981) on discrimination against homosexuals, Recommendation 1236 (1994), on the right of asylum, and Recommendation 1327 (1997) on the protection and reinforcement of the human rights of refugees and asylum seekers in Europe.

2. The Assembly is concerned by the fact that immigration policies in most Council of Europe member states discriminate against lesbians and gays. In particular, the majority of them do not recognise persecution for sexual orientation as a valid ground for granting asylum, nor do they provide any form of residence rights to the foreign partner in a bi-national same-sex partnership.

3. Furthermore, the rules concerning family reunion and social benefits usually do not apply to same-sex partnerships.

4. The Assembly is aware of a number of documented cases of persecution of homosexuals in their countries of origin, including Council of Europe member states.

5. The Assembly is of the opinion that homosexuals who have a well-founded fear of persecution resulting from their sexual preference are refugees under Article 1.A.2. of the 1951 Convention Relating to the Status of Refugees as members of a particular social group, and consequently should be granted refugee status. The present practice in some Council of Europe member states to grant them leave to stay on humanitarian grounds may be detrimental to their human rights, and cannot of itself be considered as a satisfactory solution.

6. Moreover, the Assembly is aware that the failure of most member states to provide residence rights to the foreign partner in a bi-national partnership is the source of considerable suffering to many lesbian and gay couples who find themselves split up and forced to live in separate countries. It considers that immigration rules applying to couples should not differentiate between homosexual and heterosexual partnerships. Consequently, proof of partnership other than a marriage certificate should be allowed as a condition of eligibility for residence rights in the case of homosexual couples.

7. Therefore the Assembly recommends that the Committee of Ministers:

   i. instruct its appropriate committees:

      a. to hold exchanges of views and experience on these subjects;

      b. to examine the question of recognition of homosexuals as members of a particular social group in the understanding of the 1951 Geneva Convention with a view to ensuring that persecution on grounds of homosexuality is recognised as a ground for asylum;

      c. to develop guidelines for the treatment of homosexuals who are refugees or members of a bi-national partnership;

      d. to initiate the setting up of a European system for data collection, and for the documentation of abuses against homosexuals;

      e. to co-operate with, and support, groups and associations defending the human rights of homosexuals in respect of asylum and immigration policies in Council of Europe member states.

ii. urge the member states:

a. to re-examine refugee status determination procedures and policies with a view to recognising as refugees those homosexuals whose claim to refugee status is based upon well-founded fear of persecution for reasons enumerated in the 1951 Geneva Convention and the 1967 Protocol relating to the Status of Refugees;

b. to adopt criteria and guidelines dealing with homosexuals seeking asylum;

c. to ensure that the authorities responsible for the refugee status determination procedure are well informed about the overall situation in the countries of origin of applicants, in particular concerning the situation of homosexuals and their possible persecution by state and non-state agents;

d. to review their policies in the field of social rights and protection of migrants in order to ensure that homosexual partnership and families are treated on the same basis as heterosexual partnerships and families;

e. to take such measures as are necessary to ensure that bi-national lesbian and gay couples are accorded the same residence rights as bi-national heterosexual couples;

f. to encourage the establishment of non-governmental organisations to help homosexual refugees, migrants and bi-national couples to defend their rights;

g. to co-operate more closely with UNHCR and national non-governmental organisations, promote the networking of their activities, and urge them to systematically monitor the observance of the immigration and asylum rights of gays and lesbians;

h. to ensure that the training of immigration officers who come into contact with asylum seekers and bi-national same-sex couples includes attention to the specific situation of homosexuals and their partners.

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[1] *Assembly debate* on 30 June 2000 (24th Sitting) (see Doc. 8654, report of the Committee on Migration, Refugees and Demography, rapporteur: Mrs Vermot-Mangold).
Text adopted by the Assembly on 30 June 2000 (24th Sitting).

PART IV: EUROPEAN UNION LEGISLATION AND CASE-LAW

A) Introduction to the European Union

THE EUROPEAN UNION[30]

The European Community/Union (EU) was established[31] in 1958. It is currently made up of fifteen democratic States for the purposes of, among other things, promoting European unity, improving living and working conditions for citizens, promoting peace, and assisting developing countries. The Member States are identified in Appendix II.

The EU is a community of shared values founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law. The EC seeks to uphold the universality, interdependence and indivisibility of all human rights. It offers protections for both civil and political rights, and economic, social and cultural rights.

Although the founding treaties of the EU contained no specific provisions on fundamental rights, the Court of Justice has gradually developed a system of guarantees. The rulings given by the Court have been essentially based on:

- Article 220 (ex Article 164) of the EC Treaty establishing the European Community[32] which requires the Court to ensure that the law is observed in the interpretation and application of the Treaty;
- the political dimension of the Community, which is grounded in a European model of society, including the protection of fundamental rights recognised by all Member States.

In addition to the case-law of the Court of Justice, the Treaty of Amsterdam[33] has given formal recognition to human rights.

1) Summary of the Treaty of Amsterdam[34]

The provisions of the new Treaty include the following:

- Article 6 (ex Article F) of the EU Treaty has been amended so as to reaffirm the principle of respect for human rights and fundamental freedoms;
- a procedure is laid down for dealing with cases where a Member State has committed a breach of the principles on which the Union is based;
- more effective action is to be taken to combat not only discrimination based on nationality but also discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation;
- new provisions on equal treatment for men and women are inserted in the Treaty establishing the European Community;
- individuals are afforded greater protection with regard to the processing and free movement of personal data;

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[30] Information for this introduction was taken from the EU homepage at: http://www.europa.eu.int/inst-en.htm.
[31] Treaty Establishing the European Community, *Official Journal C 340, 10.11.1997, pp. 173-308*
[32] *Ibid.*
[33] Entered into force 1 May 1999. Note: since the adoption of this Treaty, the Treaty of Nice has amended this treaty. The Nice was signed 26 February 2001 and has not yet entered into force. A full text version can be found at: http://europa.eu.int/abc/treaties_en.htm .
[34] Due to space constraints, the full text of this Treaty could not be reproduced in this compilation. A full text version may be found at: http://europa.eu.int/abc/treaties_en.htm . This summary was taken from a document titled "The Amsterdam Treaty: A Comprehensive Guide" available on the Europa website at: http://europa.eu.int/scadplus/leg/en/lvb/a10000.htm.

- the Final Act was accompanied by declarations on the abolition of the death penalty, respect for the status of churches and philosophical or non-confessional organisations and on the needs of persons with a disability.

2) Key Institutions of the EU

Parliament of the European Union[35]

Elected every five years, the European Parliament is the expression of the democratic will of the Union's 374 million citizens. Brought together within pan-European political groups, the major political parties operating in the Member States are represented.
Parliament has three essential functions:

1. It shares with the Council the power to legislate, i.e. to adopt European laws (directives, regulations, decisions). Its involvement in the legislative process helps to guarantee the democratic legitimacy of the texts adopted;
2. It shares budgetary authority with the Council, and can therefore influence European Union (EU) spending. At the end of the procedure, it adopts the budget in its entirety;
3. It exercises democratic supervision over the Commission. It approves the nomination of Commissioners and has the right to censure the Commission. It also exercises political supervision over all the institutions.

Council of the European Union[36]

The Council is the EU's main decision-making body. It is the embodiment of the Member States, whose representatives it brings together regularly at the ministerial level. The Council has a number of key responsibilities, but one of its most important roles is its task of legislating on a wide range of EU issues. The Council exercises this power in co-decision with the European Parliament.

The European Commission[37]

The European Commission embodies and upholds the general interest of the Union. The President and Members of the Commission are appointed by the Member States after they have been approved by the European Parliament.

The Commission is the driving force in the Union's institutional system:

1. It has the right to initiate draft legislation and therefore presents legislative proposals to Parliament and the Council;
2. As the Union's executive body, it is responsible for implementing the European legislation (directives, regulations, decisions), budget and programmes adopted by Parliament and the Council;
3. It acts as guardian of the Treaties and, together with the Court of Justice, ensures that Community law is properly applied;
4. It represents the Union on the international stage and negotiates international agreements, chiefly in the fields of trade and cooperation.

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[35] For more information on the Parliament of the EU, see: http://www.europarl.eu.int/home/default_en.htm
[36] For more information on the Council of the EU, see: http://ue.eu.int/en/summ.htm
[37] For more information on the European Commission, see: http://www.europa.eu.int/comm/index_en.htm

Economic and Social Committee[38]

The European Economic and Social Committee (ECSC) represents the views and interests of organised civil society vis-à-vis the Commission, the Council and the European Parliament. The Committee has to be consulted on matters relating to economic and social policy; it may also issue opinions on its own initiative on other matters which it considers to be important.

EU legislation that has been brought into force is included in Section A below. The most recent legislation was selected where it was found to be relevant to reproductive and sexual health rights.

The Court of Justice[39] and the Court of First Instance

The Court of Justice ensures that Community law is uniformly interpreted and effectively applied. It has jurisdiction in disputes involving Member States, EU institutions, businesses and individuals.

The Court of Justice has jurisdiction to hear disputes to which the Member States, the Community institutions, undertakings and individuals may be parties.

Since it was set up in 1952, more than 8,600 cases have been brought before the Court. There were already 200 new cases a year by 1978, and 1985 saw more than 400 cases brought.

To cope with that influx while still dealing with cases with reasonable despatch, the Court of Justice amended its Rules of Procedure to enable it to deal with cases more rapidly and requested the Council to set up a new judicial body.

The creation of the Court of First Instance

In response to that request, the Council set up a Court of First Instance.

The aim of the creation of the Court of First Instance in 1989 was to strengthen the judicial safeguards available to individuals by introducing a second tier of judicial authority and enabling the Court of Justice to concentrate on its essential task, the uniform interpretation of Community law.

Jurisdiction of the Court of Justice

It is the responsibility of the Court of Justice to ensure that the law is observed in the interpretation and applications of the Treaties establishing the European Communities and of the provisions laid down by the competent Community institutions.

To enable it to carry out that task, the Court has wide jurisdiction to hear various types of action and to give preliminary rulings.

The various forms of action

- ***Proceedings for failure to fulfill an obligation*** **-** Such proceedings enable the Court of Justice to determine whether a Member State has fulfilled its obligations under Community law. An action may be brought by the Commission - as is practically always the case - or by another Member State.

[38] For more information on this Committee, see: http://www.ces.eu.int/index800.htm
[39] For more information on the court and its procedures, see: http://curia.eu.int/en/index.htm

If the Court finds that the obligation has not been fulfilled, the Member State concerned must comply without delay. However, if, after new proceedings are initiated by the Commission, the Court of Justice finds that the Member State concerned has not complied with its judgment, it may impose a fixed or a periodic penalty.

- ***Proceedings for annulment***
  A Member State, the Council, the Commission and, in certain circumstances, the Parliament, may apply to the Court of Justice for the annulment of all or part of an item of Community legislation, and individuals may seek the annulment of a legal measure which is of direct and individual concern to them. The Court may thus review the legality of the acts of the Community institutions. If the action is well-founded, the contested measure is declared void.

- ***Proceedings for failure to act***
  The Court of Justice may also review the legality of a failure to act by a Community institution, and penalize silence or inaction.

- ***Actions for damages***
  In an action for damages, based on non-contractual liability, the Court of Justice rules on the liability of the Community for damage caused by its institutions or servants in the performance of their duties.

- ***Appeals***
  Finally, the Court of Justice may hear appeals, on points of law only, against judgments given by the Court of First Instance in cases within its jurisdiction.

- ***Preliminary rulings***
  The Court of Justice also has jurisdiction in another very important kind of procedure.
  Although the Court is, by its very nature, the supreme guardian of Community legality, it is not the only judicial body empowered to apply Community law.

  The courts of each of the Member States are also Community courts inasmuch as:
- they have jurisdiction to review the administrative implementation of Community law, for which the authorities of the Member States are essentially responsible; and
- many provisions of the Treaties and of secondary legislation - regulations, directives and decisions - directly confer individual rights on nationals of Member States which national courts must uphold.

  In cases involving Community law, national courts, if in doubt as to the interpretation or validity of that law, may, and in some cases must, seek a preliminary ruling from the Court of Justice on the relevant questions. The purpose of this system of seeking preliminary rulings is to ensure that Community law is interpreted and applied uniformly throughout the Community.

  A preliminary ruling is also the form of procedure by which any European citizen may seek clarification of the Community rules which concern him or her.

  Although such a ruling may be sought only by a national court which alone has the power to decide that it is appropriate do so, all the parties involved may take part in the proceedings before the Court of Justice.

Once the Court of Justice rules on the law (declares what the relevant Community law is), the national court to which that ruling is addressed must apply the law, as interpreted by the Court of Justice, without modification or distortion, to the dispute before it.

A ruling on interpretation by the Court also serves as a guide for other national courts dealing with a substantially similar problem or a question on which a preliminary ruling has already been given.

Jurisdiction of the Court of First Instance

The Court of First Instance currently has jurisdiction to rule at first instance on:

- all actions for annulment, for failure to act and for damages brought by natural or legal persons against the Community;
- actions brought against the Commission under the ECSC Treaty by undertakings or associations of undertakings; and
- disputes between the Community and its officials and servants.

3) Procedure Following Breach by a Member State

On a proposal from the Commission or one third of the Member States, the Council - in the shape of the heads of state or government - may determine the existence of a breach by a Member State. The breach must be "serious and persistent". The European Parliament has to give its assent by a majority of its members and a two-thirds majority of the votes cast. The government of the Member State in question is first invited to submit its observations.

The Council's decision establishing a breach will be considered unanimous even where a Member State abstains.

Once a serious and persistent breach has been established, the Council may (but need not necessarily) suspend some of the Member State's rights under the Treaty. However, the country remains bound by its obligations. The suspension of rights might, for instance, involve withdrawing the Member State's voting rights in the Council.

At this second stage, the Council acts by a qualified majority, disregarding the votes of the Member State concerned.

If there is a change in the situation that led to a Member State's suspension, the Council can decide to vary or revoke the measures taken.

When taking such a decision, the Council acts by a qualified majority, disregarding the votes of the Member State concerned.

B) EU Legislation in Force

This is a list of titles of EU directives, resolutions, recommendations, decisions, regulations, and communications that may be relevant to promoting the application of human rights to reproductive and sexual health. The information contained in this section was obtained from Eur-Lex at: http://europa.eu.int/eur-lex/en/index.html. Only the directives are binding on member states.

DIRECTIVES

376L0207 Council Directive 76/207/EEC of 9 February 1976
on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions
(Official Journal L 039 , 14/02/1976 p. 0040 – 0042)

386L0378 - Council Directive 86/378/EEC of 24 July 1986
on the implementation of the principle of equal treatment for men and women in occupational social security schemes
(*Official Journal L 225 , 12/08/1986 p. 0040 - 0042*)

386L0613 - Council Directive 86/613/EEC of 11 December 1986
on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood
(*Official Journal L 359 , 19/12/1986 p. 0056 - 0058*).

392L0085 Council Directive 92/85/EEC of 19 October 1992
on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)
(Official Journal L 348 , 28/11/1992 p. 0001 – 0008)

392L0091- Council Directive 92/91/EEC of 3 November 1992
concerning the minimum requirements for improving the safety and health protection of workers in the mineral- extracting industries through drilling, appropriate rest periods for pregnant women and nursing mothers.
(Official journal NO. L 348 , 28/11/1992 P. 0009 – 0024)

396L0097 Council Directive 96/97/EC of 20 December 1996
amending Directive 86/378/EEC on the implementation of the principle of equal treatment for men and women in occupational social security schemes
(Official Journal L 046 , 17/02/1997 p. 0020 – 0024)

397L0080 Council Directive 97/80/EC of 15 December 1997
on the burden of proof in cases of discrimination based on sex
(Official Journal L 014 , 20/01/1998 p. 0006 – 0008)

300D0750 2000/750/EC: Council Decision of 27 November 2000
establishing a Community action programme to combat discrimination (2001 to 2006)
(Official Journal L 303 , 02/12/2000 p. 0023 – 0028)

32000L0043 Council Directive 2000/43/EC of 29 June 2000
implementing the principle of equal treatment between persons irrespective of racial or ethnic origin
(*Official Journal L 180 , 19/07/2000 P. 0022 – 0026)*

PROPOSALS FOR COUNCIL DIRECTIVES

Commission Of The European Communities (Brussels, 7.6.2000 COM(2000) 334 final 2000/0142 (COD)Proposal for a Directive
of The European Parliament And Of The Council amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions

Commission of the European Communities (Brussels, 12.9.2001 COM(2001) 510 final 2001/0207 (CNS) Proposal for a Council Directive
on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection

501PC0321 Amended Proposal for a Directive of the European Parliament and of the Council amending Council Directive 76/207/EEC
on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (presented by the Commission pursuant to Article 250 (2) of the EC-Treaty) (25/06/2001)

599PC0638 Proposal for a Council Directive
on the right to family reunification
(02/07/2001)

DECISIONS

395D0420 95/420/EC: Commission Decision of 19 July 1995 amending Decision 82/43/EEC
relating to the setting up of an Advisory Committee on Equal Opportunities for Women and Men
(Official journal NO. L 249 , 17/10/1995 P. 0043 – 0046)

395D0593 - 95/593/EC: Council Decision of 22 December 1995
on a medium-term Community action programme on equal opportunities for men and women (1996 to 2000)
(*Official Journal L 335 , 30/12/1995 p. 0037 - 0043*).

396D0645 96/269/ECSC: **Decision No 645/96/EC of the European Parliament and of the Council of 29 March 1996**
adopting a programme of Community action on health promotion, information, education and training within the framework for action in the field of public health (1996 to 2000)
(Official Journal L 095 , 16/04/1996 p. 0001 – 0008)

300D0293 Decision No 293/2000/EC of the European Parliament and of the Council of 24 January 2000
adopting a programme of Community action (the Daphne programme) (2000 to 2003) on preventive measures to fight violence against children, young persons and women
(*Official Journal L 034 09.02.00 p.1*).

301D0051 2001/51/EC: Council Decision of 20 December 2000
establishing a Programme relating to the Community framework strategy on gender equality (2001-2005)
(Official Journal L 017 , 19/01/2001 P. 0022 – 0029)

500PC0793 Amended Proposal for a Council Decision
on the programme relating to the Community framework strategy on gender equality (2001-2005) (presented by the Commission pursuant to Article 250 (2) of the EC Treaty)

COUNCIL REGULATIONS

397R0550 Council Regulation (EC) No 550/97 of 24 March 1997
on HIV/AIDS-related operations in developing countries
(Official journal NO. L 085 , 27/03/1997 P. 0001 – 0005)

397R1484 Council Regulation (EC) No 1484/97 of 22 July 1997
on aid for population policies and program in developing countries
(Official journal NO. L 202 , 30/07/1997 P. 0001 – 0005)

398R2836 - Council Regulation (EC) No 2836/98 of 22 December 1998
on integrating of gender issues in development cooperation
(*Official Journal L 354 , 30/12/1998 p. 0005 – 0009*).

RESOLUTIONS

382Y0721(02) Council Resolution of 12 July 1982
on the promotion of equal opportunities for women
(*Official Journal C 186 , 21/07/1982 p. 0003 - 0004*).

384Y0621(02) Council Resolution of 7 June 1984
on action to combat unemployment amongst women
(*Official Journal C 161 , 21/06/1984 p. 0004 – 0006*

489Y0105(01) Resolution of the Council and of the Ministers of Education meeting within the Council of 23 November 1988
concerning health education in schools
(*Official Journal C 003 , 05/01/1989 p. 0001 – 0003*).

386Y0812(02) Second Council Resolution of 24 July 1986
on the promotion of equal opportunities for women
(*Official Journal C 203 , 12/08/1986 p. 0002 - 0004*).

489Y1031(01) Resolution of the Council and of the Ministers for Social Affairs meeting within the Council of 29 September 1989
on combating social exclusion
(*Official journal NO. C 277 , 31/10/1989 P. 0001 - 0001*).

490Y0116(01) Resolution of the Council and the Ministers for Health of the Member States, meeting within the Council of 22 December 1989
on the fight against AIDS
(Official journal NO. C 010 , 16/01/1990 P. 0003 – 0006)

390Y0627(05) Council Resolution of 29 May 1990
on the protection of the dignity of women and men at work
(*Official Journal C 157 , 27/06/1990 p. 0003 - 0004*)

490Y1231(01) Resolution of the Council and of the representatives of the Governments of the Member States, meeting within the Council of 3 December 1990
concerning an action programme on nutrition and health
(Official journal NO. C 329 , 31/12/1990 P. 0001 – 0003)

495Y1110(02) - Resolution of the Council and the representatives of the Governments of the Member States, meeting within the Council of 5 October 1995
on the image of women and men portrayed in advertising and the media
(*Official Journal C 296 , 10/11/1995 p. 0015 - 0016*).

397Y1230(01) Council Resolution of 4 December 1997
concerning the report on the state of women's health in the European Community
(*Official Journal C 394 , 30/12/1997 p. 0001 – 0002)*

399Y0716(01) - Council Resolution of 20 May 1999
on women and science
(*Official Journal C 201 , 16/07/1999 p. 0001 - 0001*).

A5-0059/2001 - European Parliament Resolution on the Commission Communication to the Council and the European Parliament
on the European Community's Development Policy COM(2000) 212 -C5-0264/ 2000 - 2000/2141(COS))
(Official Journal C 277/130 1/03/2001)

300Y0731(02) Resolution of the Council and of the Ministers for Employment and Social Policy, meeting within the Council of 29 June 2000
on the balanced participation of women and men in family and working life
(Official Journal C 218 , 31/07/2000 p. 0005)

400Y1228(01)Resolution of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, of 14 December 2000
on the social inclusion of young people
(Official Journal C 374 , 28/12/2000 P. 0005)

RECOMMENDATIONS

384X0635 - 84/635/EEC: Council recommendation of 13 December 1984
on the promotion of positive action for women
(*Official journal NO. L 331 , 19/12/1984 P. 0034 - 0035*).

392H0131 - 92/131/EEC: Commission Recommendation of 27 November 1991
on the protection of the dignity of women and men at work
(Official Journal L 049 , 24/02/1992 P. 0001 – 0008)

392X0241 - 92/241/EEC: Council recommendation of 31 March 1992
on child care
(*Official journal NO. L 123 , 08/05/1992 P. 0016 - 0018*).

396X0694 - 96/694/EC: Council Recommendation of 2 December 1996
on the balanced participation of women and men in the decision-making process
(*Official journal NO. L 319 , 10/12/1996 P. 0011 - 0015*).

COMMUNICATIONS

22.1.2001 Com(2000)854 Final/2 Commission of the European Communities Brussels
combating trafficking in human beings and combating the sexual exploitation of children and child pornography
(Proposal for a Council Framework Decision)

21.11.2001, Com (2001) 681 final Commission of the European Communities, Brussels, , European Commission White Paper, a New Impetus for European Youth
young people see sexuality as an important aspect of their well-being and personal autonomy. They perceive a need for more information on sexuality, particularly sexual education, contraception, sexual diseases etc. This information should be provided in school as well as outside school in non-formal learning environments such as youth organizations, leisure and sports facilities etc.

REPORTS

398Y1216(03) - Special Report No 22/98-
concerning the management by the Commission of the implementation of measures to promote equal opportunities for women and men accompanied by the replies of the Commission (Pursuant to Article 188c (4), second subparagraph, of the EC Treaty)
(*Official Journal C 393 , 16/12/1998 p. 0024 – 0046*).

C) Cases of the Court of Justice

The following cases were selected for their relevance to reproductive and sexual heath rights, and were obtained from: http://europa.eu.int/eur-lex/en/search/search_case.html. Only judgments from 1990 onwards were included. They are listed in reverse chrolonogical order.

DECISIONS

Council Directives Referred to:

75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women.

76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security.

86/613/EEC of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood

92/85/EEC of 19 October 1992, on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC).

Maria Luisa Jiménez Melgar v Ayuntamiento de Los Barrios,
Judgment of the Court (Fifth Chamber) of 4 October 2001, Case C-438/99
European Court reports 2001 Page 0000

- Article 10 of Council Directive 92/85/EEC of 19 October 1992, has direct effect and is to be interpreted to the effect that, in the absence of transposition measures taken by a Member State within the period prescribed by that directive, it confers on individuals rights on which they may rely before a national court against the authorities of that State.
- Where non-renewal of a fixed-term contract is motivated by the worker's state of pregnancy, it constitutes direct discrimination on grounds of sex, contrary to Article 2(1) and 3(1) of Council Directive 76/207/EEC of 9 February 1976.
- In providing that the dismissal of a pregnant worker, of a worker who has recently given birth or of a worker who is breastfeeding may take place, in exceptional cases and, where applicable, provided that the competent authority has given its consent, Article 10(1) of Directive 92/85 is not to be interpreted as imposing on Member States any obligation to have a national authority, having found that there is an exceptional case justifying the dismissal of a pregnant worker, give its consent prior to the employer's decision to dismiss the worker.

Julia Schnorbus v Land Hessen **Judgment of the Court (Sixth Chamber) of 7 December 2000, Case C-79/99**
European Court reports 2000 Page I-0000

- National provisions governing the date of admission to the practical legal training which is a necessary prerequisite of access to employment in the civil service fall within the scope of Council Directive 76/207/EEC of 9 February 1976.
- National provisions such as those at issue in the main proceedings do not constitute discrimination directly based on sex.
- National provisions such as those at issue in the main proceedings constitute indirect discrimination based on sex.
- Directive 76/207 does not preclude national provisions such as those at issue in the main proceedings, in so far as such provisions are justified by objective reasons and prompted solely by a desire to counterbalance to some extent the delay resulting from the completion of compulsory military or civilian service.

Angelo Ferlini v Centre hospitalier de Luxembourg **Judgment of the Court of 3 October 2000, Case C-411/98**
European Court reports 2000 Page I-8081

- The application, on a unilateral basis, by a group of healthcare providers to EC officials of scales of fees for medical and hospital maternity care which are higher than those applicable to residents affiliated with the national social security scheme constitutes discrimination on the ground of nationality prohibited under the first paragraph of Article 6 of the EC Treaty (now, after amendment, the first paragraph of Article 12 EC), in the absence of objective justification in this respect.

Birgitte Jørgensen v. Foreningen af Speciallæger**, Judgment of the Court (Sixth Chamber) 6 April 2000 (1), Case C-226/98**

- In order to determine whether indirect discrimination on grounds of sex exists in a case concerning equal treatment such as the present case, Council Directive 76/207/EEC of 9 February 1976 and Council Directive 86/613/EEC of 11 December 1986 must be interpreted as requiring a separate assessment to be made of each of the key conditions governing the exercise of a professional activity laid down in the contested provisions, in so far as those key elements constitute in themselves specific measures based on their own criteria of application and affecting a significant number of persons belonging to a determined category.
- Budgetary considerations cannot in themselves justify discrimination on grounds of sex. However, measures intended to ensure sound management of public expenditure on specialised medical care and to guarantee people’s access to such care may be justified if they meet a legitimate objective of social policy, are appropriate to attain that objective and are necessary to that end.

***Jämställdhetsombudsmannen v. Örebro läns landsting*, Judgment of the Court (Sixth Chamber) 30 March 2000 (1), Case C-236/98**

- Directive 75/117/EEC - Comparison of a midwife's pay with that of a clinical technician. Taking into account a supplement and a reduction in working time for inconvenient working hours:
  the inconvenient-hours supplement is not to be taken into account in calculating the salary used as the basis for a pay comparison for the purposes of Article 119 of the Treaty (Articles 117 to 120 of the EC Treaty were replaced by Articles 136 EC to 143 EC) and Council Directive 75/117/EEC of 10 February 1975. If a difference in pay between the two groups compared is found to exist, and if the available statistical data indicate that there is a substantially higher proportion of women than men in the disadvantaged group, Article 119 of the Treaty requires the employer to justify the difference by objective factors which are unrelated to any discrimination on grounds of sex.
- Neither the reduction in working time, by reference to the standard normal working time for day-work, awarded in respect of work performed according to a three-shift roster, nor the value of such a reduction, are to be taken into consideration for the purpose of calculating the salary used as the basis for a pay comparison for the purposes of Article 119 of the Treaty and Directive 75/117. However, such a reduction may constitute an objective reason unrelated to any discrimination on grounds of sex such as to justify a difference in pay. It is for the employer to show such is in fact the case

***Silke-Karin Mahlburg v. Land Mecklenburg-Vorpommern,* Judgment of the Court (Sixth Chamber) 3 February 2000 (1)**, **Case C-207/98**

- Article 2(1) and (3) of Council Directive 76/207/EEC of 9 February 1976 precludes a refusal to appoint a pregnant woman to a post for an indefinite period on the ground that a statutory prohibition on employment attaching to the condition of pregnancy prevents her from being employed in that post from the outset and for the duration of the pregnancy.

***Tanja Kreil v. Bundesrepublik Deutschland*, Judgment of the Court 11 January 2000 (1), Case C-285/98**

- Council Directive 76/207/EEC of 9 February 1976 precludes the application of national provisions, such as those of German law, which impose a general exclusion of women from military posts involving the use of arms and which allow them access only to the medical and military-music services.

***Susanne Lewen v. Lothar Denda*, Judgment of the Court (Sixth Chamber)21 October 1999 (1), Case C-333/97**

- A Christmas bonus of the kind at issue in the main proceedings constitutes pay within the meaning of Article 119 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC), even if it is paid voluntarily by the employer and even if it is paid mainly or exclusively as an incentive for future work or loyalty to the

undertaking or both. However, it does not fall within the concept of payment within the meaning of Article 11(2)(b) of Council Directive 92/85/EEC of 19 October 1992.

- Article 119 of the Treaty precludes an employer from excluding female workers on parenting leave entirely from the benefit of a bonus paid voluntarily as an exceptional allowance at Christmas without taking account of the work done in the year in which the bonus is paid or of the periods for the protection of mothers (in which they were prohibited from working) where that bonus is awarded retroactively as pay for work performed in the course of that year.
- However, neither Article 119 of the Treaty nor Article 11(2) of Directive 92/85 nor Clause 2(6) of the Annex to Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICEF, CEEP and the ETUC precludes a refusal to pay such a bonus to a woman on parenting leave where the award of that allowance is subject to the sole condition that the worker must be in active employment when it is awarded.
- Article 119 of the Treaty, Article 11(2)(b) of Directive 92/85 and Clause 2(6) of the Annex to Directive 96/34 do not preclude an employer, when granting a Christmas bonus to a female worker who is on parenting leave, from taking periods of parenting leave into account, so as to reduce the benefit pro rata. However, Article 119 of the Treaty precludes an employer, when granting a Christmas bonus, from taking periods for the protection of mothers (in which they were prohibited from working) into account, so as to reduce the benefit pro rata.

***Oumar Dabo Abdoulaye and Others v. Régie Nationale des Usines Renault SA*, Judgment of the Court (Fifth Chamber) 16 September 1999 (1), Case C-218/98**

- The principle of equal pay laid down in Article 119 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC) does not preclude the making of a lump-sum payment exclusively to female workers who take maternity leave where that payment is designed to offset the occupational disadvantages which arise for those workers as a result of their being away from work.

***Gabriele Gruber v. Silhouette International Schmied GmbH & Co. KG*, Judgment of the Court 14 September 1999 (1), Case C-249/97**

- Article 119 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC) does not preclude national legislation under which a termination payment is granted to workers who end their employment relationship prematurely in order to take care of their children owing to a lack of child-care facilities for them, where that payment is reduced in relation to that received, for the same actual period of employment, by workers who give notice of resignation for an important reason related to working conditions in the undertaking or to the employer's conduct.
- The fact that in the Member State concerned nurseries are mostly run by the public services or with their financial support does not affect the answer given to the first question.

***Høj Pedersen & others v. Kvickly Skive, Bagner, Rasmussen & Hyitfeldt Guld og Sølv ApS,* Judgment of the Court (Sixth Chamber) 19 November 1998(1) Case C-66/96**

- It is contrary to Article 119 of the EC Treaty and Council Directive 75/117/EEC of 10 February 1975 for national legislation to provide that a pregnant woman who, before the beginning of her maternity leave, is unfit for work by reason of a pathological condition connected with her pregnancy, as attested by a medical certificate, is not entitled to receive full pay from her employer but benefits paid by a local authority, when in the event of incapacity for work on grounds of illness, as attested by a medical certificate, a worker is in principle entitled to receive full pay from his or her employer.
- It is not contrary to Article 119 of the Treaty or Directive 75/117 for national legislation to provide that a pregnant woman is not entitled to receive her pay from her employer where, before the beginning of her maternity leave, she is absent from work by reason either of routine pregnancy-related inconveniences, when there is in fact no incapacity for work, or of medical recommendation intended to protect the unborn child but not based on an actual pathological condition or on any special risks for the unborn child, while any worker who is unfit for work on the grounds of illness is in principle entitled thereto.
- It is contrary to Council Directive 76/207/EEC of 9 February 1976 and to Council Directive 92/85/EEC of 19 October 1992 for national legislation to provide that an employer may send home a woman who is pregnant, although not unfit for work, without paying her salary in full when he considers that he cannot provide work for her.

***Margaret Boyle and Others v. Equal Opportunities Commission,* Judgment of the Court 27 October 1998 (1) Case C-411/96**

- Article 119 of the EC Treaty, Article 1 of Council Directive 75/117/EEC of 10 February 1975 and Article 11 of Council Directive 92/85/EEC of 19 October 1992 do not preclude a clause in an employment contract which makes the payment, during the period of maternity leave referred to by Article 8 of Directive 92/85, of pay higher than the statutory payments in respect of maternity leave conditional on the worker's undertaking to return to work after the birth of the child for at least one month, failing which she is required to repay the difference between the amount of the pay she will have received during the period of maternity leave, on the one hand, and the amount of those payments, on the other.
- Article 8 of Directive 92/85 and Article 5(1) of Council Directive 76/207/EEC of 9 February 1976 do not preclude a clause in an employment contract from requiring an employee who has expressed her intention to commence her maternity leave during the six weeks preceding the expected week of childbirth, and is on sick leave with a pregnancy-related illness immediately before that date and gives birth during the period of sick leave, to bring forward the date on which her paid maternity leave commences either to the beginning of the sixth week preceding the expected week of childbirth or to the beginning of the period of sick leave, whichever is the later.
- A clause in an employment contract which prohibits a woman from taking sick leave during the minimum period of 14 weeks maternity leave to which a female worker is entitled pursuant to Article 8(1) of Directive 92/85, unless she elects to return to work and thus terminate her maternity leave, is not compatible with Directive 92/85. By contrast, a

clause in an employment contract which prohibits a woman from taking sick leave during a period of supplementary maternity leave granted to her by the employer, unless she elects to return to work and thus terminate her maternity leave, is compatible with Directives 76/207 and 92/85.

- Directives 92/85 and 76/207 do not preclude a clause in an employment contract from limiting the period during which annual leave accrues to the minimum period of 14 weeks maternity leave to which female workers are entitled under Article 8 of Directive 92/85 and from providing that annual leave ceases to accrue during any period of supplementary maternity leave granted to them by their employer.
- Directive 92/85 precludes a clause in an employment contract from limiting, in the context of an occupational scheme wholly financed by the employer, the accrual of pension rights during the period of maternity leave referred to by Article 8 of that directive to the period during which the woman receives the pay provided for by that contract or national legislation.

***Mary Brown v. Rentokil Limited,* Judgment of the Court, 30 June 1998 (1), Case C-394/96**

- Articles 2(1) and 5(1) of Council Directive 76/207/EEC of 9 February 1976 preclude dismissal of a female worker at any time during her pregnancy for absences due to incapacity for work caused by illness resulting from that pregnancy.
- The fact that a female worker has been dismissed during her pregnancy on the basis of a contractual term providing that the employer may dismiss employees of either sex after a stipulated number of weeks of continuous absence does not affect the answer given.

***Caisse Nationale d'Assurance Vieillesse des Travailleurs Salariés (CNAVTS) v. Évelyne Thibault,* Judgment of the Court (Sixth Chamber) 30 April 1998 (1)**, **Case C-136/95**

- Articles 2(3) and 5(1) of Council Directive 76/207/EEC of 9 February 1976 preclude national rules which deprive a woman of the right to an assessment of her performance and, consequently, to the possibility of qualifying for promotion because she was absent from the undertaking on account of maternity leave.

Lisa Jacqueline Grant v. South-West Trains Ltd – **Judgment of the Court February 1998, Case C-249/96**

- The refusal by an employer to allow travel concessions to the person of the same sex with whom a worker has a stable relationship, where such concessions are allowed to a worker's spouse or to the person of the opposite sex with whom a worker has a stable relationship outside marriage, does not constitute discrimination prohibited by Article 119 of the EC Treaty or Council Directive 75/117/EEC of 10 February 1975.

***Handels og Kontorfunktionærernes Forbund i Danmark som mandatar for Helle Elisabeth Larsson mod Dansk Handel og Service som mandatar for føtex Supermarked A/S,* Judgment of the Court (Sixth Chamber) 29 May 1997**, **Case C-400/95**

- Unless otherwise stipulated in national legislation, protection of women, in particular in relation to pregnancy and maternity, issued according to Articles 2(3) of Council Directive

76/207/EEC preclude national rules which deprive a woman of the right to an assessment of her performance and, consequently, to the possibility of qualifying for promotion because she was absent from the undertaking on account of maternity leave. Article 5(1) Combined with Article 2(1) are not precluding dismissal because of absence due to an illness caused by pregnancy and birth, even if the illness has occurred during the pregnancy and has continued after the maternity leave.

***Larsson v. Føtex Supermarked,* [1997] ECR I-2757, Case C-400/95**

- The Court ruled that account may be taken of a woman's absence from work between the beginning of her pregnancy and the beginning of her maternity leave when calculating absence for reasons of dismissal. It affirmed that during the period of maternity leave a woman is protected from dismissal. It however remarked that when the Pregnancy Directive (Directive 92/85) came into full force and effect, protection will also be afforded from the start of pregnancy.

***Commission of the European Communities, v. Italian Republic,* - Judgment of the Court (Fifth Chamber) 4 December 1997 (1), Case C-207/96**

- By retaining in national law rules prohibiting nightwork by women, contrary to Article 5 of Council Directive 76/207/EEC of 9 February 1976.

***Mary Teresa Magorrian, Irene Patricia Cunningham v. Eastern Health and Social Services Board, Department of Health and Social Services,* Judgment of the Court (Sixth Chamber) 11 December 1997 (1), Case C-246/96**

- Periods of service completed by part-time workers who have suffered indirect discrimination based on sex must be taken into account as from 8 April 1976, the date of the judgment in Case C-43/75 Defrenne, for the purposes of calculating the additional benefits to which they are entitled.

***P. against S. and Cornwall County Council*, Judgment of the Court, 1996, Case C-13/94.**

- Given the objective of Directive 76/207, Article 5(1) prevents discharge of a transsexual due to change of sex. As it is one of a person's basic rights not to be exposed to differential treatment based on sex, the Directive also applies to the differential treatment rising from the person's shift of sex, since such differential treatment essentially, if not solely, is based on the person's sex. Discharge of such a person with the argument that the concerned intends to go through or has gone through a change of sex exposes the concerned person for a treatment which is less favourable compared to the persons of the sex which the concerned person was regarded to belong to before the operation.

***Joan Gillespie and others vs. Northern Health and Social Services Board and others*, Judgment of the Court 16. February 1996, Case C-342/93**

- The term wages in the Treaty Article 119 and Council Directive 75/117/EEC of 10 February 1975 includes all the payments that the employee gets due to the employment, deriving directly or indirectly from the employer.
- In so far as the calculation of these payments rests upon the wages the female employee has received before the start of her maternity leave, the payments must include increases of

salary occurring between the beginning of the period, the reference salary includes, and the finish of the maternity leave from the time they went into force. To exclude the female employee from such rise of salary during her maternity leave would be a discrimination of her solely in her capacity of employee, as she would have received higher wages if she had not been pregnant.

***Gabriele Habermann-Beltermann vs. Arbeiterwohlfahrt, Bezirksverband Ndb/Opf.eV*, Judgment of the Court (Sixth Chamber) 5. May 1994, Case C-421/92**

- Council Directive 76/207/EEC: Article 2 (1) and 2(3) together with Article 3(1) and Article 5(1) in Council Directive 76/207 precludes that an employment contract - for an indefinite period concerning night work and which is agreed between the employer and employee who were at the time of entering into the contract both ignorant of the pregnancy - is declared null and void because of an legal prohibition against night work in national legislation during the period of pregnancy and breast-feeding. The Council Directive also precludes that the employer contest the validity of the contract based on a delusion as to essential preconditions in regard to the employee at the time of entering into the contract. Since the contract was for an indefinite period the prohibition against pregnant women working in the night only was obliging for a limited period compared to the total period of the contract.

***Carole Louise Webb v EMO Air Cargo (UK) Ltd.* Judgment of the Court (Fifth Chamber) of 14 July 1994, Case C-32/93**
European Court reports 1994 Page I-3567 Swedish special edition 1994 Page 2/I0035

- Article 2(1) read with Article 5(1) of Council Directive 76/207/EEC of 9 February 1976 precludes dismissal of an employee who is recruited for an unlimited term with a view, initially, to replacing another employee during the latter's maternity leave and who cannot do so because, shortly after her recruitment, she is herself found to be pregnant.

***Commission of the European Communities v Grand Duchy of Luxem*bourg, Judgment of the Court of 10 March 1993, Case C-111/91**
European Court Reports 1993 page I-0817 Swedish Special Edition 1993 page 0035

- By imposing residence requirements for the grant of childbirth and maternity allowances, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 7(2) of Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community, Article 18(1) of Council Regulation No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as codified by Council Regulation (EEC) No 2001/83 of 2 June 1983, and Article 52 of the EEC Treaty

***Alicia Speybrouck v European Parliament* Judgment of the Court of First Instance (Fifth Chamber) of 28 January 1992, Case T-45/90**
European Court Reports 1992 page II-0033

- The principle of equal treatment for men and women in matters of employment and the corresponding prohibition of any direct or indirect discrimination on grounds of sex form part of the fundamental rights the observance of which the Court of Justice and the Court of First Instance must ensure pursuant to Article 164 of the EEC Treaty. Under the Staff Regulations, the requirements imposed by the principle of equal treatment for male and female workers are in no way limited to those resulting from Article 119 of the EEC Treaty or from the Community directives adopted in that field. Therefore, a pregnant employee cannot be dismissed on account of her pregnancy, such a dismissal being in breach of the said principle of equal treatment. That does not mean, however, that she cannot be dismissed for reasons unconnected with her pregnancy.

***The Society for the Protection of Unborn Children Ireland Ltd v Stephen Grogan and others,* Judgment of the Court of 4 October 1991**, **Case C-159/90**
European Court reports 1991 Page I-4685

- Medical termination of pregnancy, performed in accordance with the law of the State in which it is carried out, constitutes a service within the meaning of Article 60 of the Treaty. The provision of information on an economic activity is not to be regarded as a provision of services within the meaning of Article 60 of the Treaty where the information is not distributed on behalf of an economic operator but constitutes merely a manifestation of freedom of expression. As a result, it is not contrary to Community law for a Member State in which medical termination of pregnancy is forbidden to prohibit students associations from distributing information about the identity and location of clinics in another Member State where voluntary termination of pregnancy is lawfully carried out and the means of communicating with those clinics, where the clinics in question have no involvement in the distribution of the said information.

OPINIONS

Commission v. Hellenic Republic - Opinion of Advocate General Fennelly delivered on 8 July 1999 (1), **Case C-187/98**

- The Hellenic Republic has failed to fulfil its obligations under Community law, in particular those under Article 119 of the EC Treaty (Articles 117 to 120 of the Treaty have been replaced by Articles 136 EC to 143 EC), Article 3 of Council Directive 75/117/EEC of 10 February 1975 and Article 4(1) of Council Directive 79/7/EEC of 19 December 1978, by not abolishing with retroactive effect, from the date of entry into force in Greece of these Community-law provisions, regulations which impose conditions on married female workers which are not imposed on their married male counterparts in respect of the grant to employees of family or marital allowances, allowances which are taken into account in determining their income for the purposes of calculating pension rights.

***Mary Brown v Rentokil Ltd*. Reference for a preliminary ruling: House of Lords - United Kingdom, Case C-394/96**
Opinion of Mr Advocate General Ruiz-Jarabo Colomer delivered on 5 February 1998
Equal treatment for men and women - Dismissal of a pregnant woman - Absences due to illness arising from pregnancy.
European Court Reports 1998 page I-4185

***Handels- og Kontorfunktionærernes Forbund i Danmark, acting on behalf of Berit Høj Pedersen v Fællesforeningen for Danmarks Brugsforeninger and Dansk Tandlægeforening and Kristelig Funktionær*-Organisation v Dansk Handel &** Opinion of Mr Advocate General Ruiz-Jarabo Colomer delivered on 10 July 1997, Case C-66/96
Reference for a preliminary ruling: Sø- og Handelsretten - Denmark.
Equal treatment for men and women - Remuneration - Working conditions for a pregnant woman.
European Court Reports 1998 page I-7327

Handels- og Kontorfunktionærernes Forbund i Danmark, acting on behalf of Helle Elisabeth Larsson v Dansk Handel & Service, acting on behalf of Føtex Supermarked A/S.
Opinion of Mr Advocate General Ruiz-Jarabo Colomer delivered on 18 February 1997. Case C-400/95
Reference for a preliminary ruling: Sø- og Handelsretten - Denmark.
Equal treatment of men and women - Directive 76/207/EEC - Conditions governing dismissal - Absence due to an illness attributable to pregnancy or confinement - Absence during pregnancy and after confinement.
European Court Reports 1997 page I-2757

P v S and Cornwall County Council
Opinion of Mr Advocate General Tesauro delivered on 14December 1995, Case C-13/94
Reference for a preliminary ruling: Industrial Tribunal, Truro - United Kingdom. Equal treatment for men and women - Dismissal of a transsexual.
European Court Reports 1996 page I-2143

Carole Louise Webb v EMO Air Cargo (UK) Ltd.
Opinion of Mr Advocate General Tesauro delivered on 1 June 1994, Case C-32/93
Reference for a preliminary ruling: House of Lords - United Kingdom. Equal treatment for men and women - Directive 76/207/EEC - Replacement of an employee on maternity leave - Replacement found to be pregnant - Dismissal
European Court reports 1994 Page I-3567 Swedish special edition 1994 Page 2/I0035

Gabriele Habermann - Beltermann v Arbeiterwohlfahrt, Bezirksverband Ndb./Opf. e.V.
Opinion of Mr Advocate General Tesauro delivered on 27 January 1994, Case C-421/92
Reference for a preliminary ruling: Arbeitsgericht Regensburg, Landshut - Germany. Directive 76/207/EEC - Night-time work by pregnant women.
European Court Reports 1994 page I-1657

Commission of the European Communities v Grand Duchy of Luxembourg.
Opinion of Mr Advocate General Jacobs delivered on 16 December 1992, Case C-111/91.
Childbirth and maternity allowances – Residence requirement - Validity.
European Court Reports 1993 page I-0817 Swedish Special Edition 1993 page 0035

The Society for the Protection of Unborn Children Ireland Ltd v Stephen Grogan and others
Opinion of Mr Advocate General Van Gerven delivered on 11 June1991, Case C-159/1991
Reference for a preliminary ruling: High Court - Ireland. Freedom to provide services - Prohibition on the distribution of information on clinics carrying out voluntary
terminations of pregnancy in other Member States.
European Court Reports 1993 page I-0637 Swedish Special Edition 1993 page 0027

Oumar Dabo Abdoulaye and Others v Régie nationale des usines Renault SA
Opinion of Mr Advocate General Alber delivered on 3 June 1999, Case C-218/98
Reference for a preliminary ruling: Conseil de Prud'hommes, Le Havre - France. Interpretation of Article 119 of the EC Treaty (Articles 117 to 120 of the EC Treaty have been replaced by Articles 136 EC to 143 EC) and of Directives 75/117/EEC and 76/207/EEC - Collective agreement providing for an allowance for pregnant women going on maternity leave.
European Court Reports 1999 page I-5723

Susanne Lewen v Lothar Denda
Opinion of Mr Advocate General Ruiz-Jarabo Colomer delivered on 4 March 1999, Case C-333/97
Reference for a preliminary ruling: Arbeitsgericht Gelsenkirchen - Germany. Equal pay for male and female workers - Entitlement to a Christmas bonus - Parental leave and maternity leave.
European Court Reports 1999 page I-7243

Commission of the European Communities v Grand Duchy of Luxembourg
Opinion of Mr Advocate General Jacobs delivered on 16 December 1992, Case C-111/91
Childbirth and maternity allowances – Residence requirement - Validity.
European Court Reports 1993 page I-0817 Swedish Special Edition 1993 page 0035