

Conclusions and Recommendations to the 8th meeting of the Ad hoc Committee on Action Against Trafficking in Human Beings [CAHTEH] 22 February – 25 February 2005.

Background information:

The 8th meeting of the CAHTEH was devoted to examining the Parliamentary Assembly, Opinion No. 253 (2005) on the draft Council of Europe convention on action against trafficking in human beings. To this end, several NGO's without Observer status, among which La Strada International, were invited to participate in the meeting and thus add to the debate. The NGO involvement to the 8th meeting was the result of joint NGO lobby, coordinated by Amnesty International and Anti Slavery International.

Many of the amendments set out in the Parliamentary Assembly's Opinion are recommendations that NGO's have been making for some time and have been put forward in the context of the Council of Europe's Convention by Amnesty International who has been (granted) participation status to the CAHTEH meetings since the 5th meeting in July 2004.

La Strada International has commented on the 1st draft of the Council of Europe Convention in May 2004 as well as on the 3rd draft of the Council of Europe Convention in July 2004. In preparation of the 6th meeting in September-October 2004, La Strada International has added and signed up to a joint NGO statement that Amnesty International represented at the meeting and requested for participation in the meeting(s).

Summary of the outcomes to the 8th meeting and follow-up:

In general, most of the recommendations of the Parliamentary Assembly's Opinion are not included in the current draft of the Council of Europe Convention on Action against Trafficking in Human Beings. There were a number of provisions to the draft Convention that should have been strengthened in order to meet the aims set out in article 1 of the draft Convention, among which the enhancement of protection of human rights. The Parliamentary Assembly aimed to do so by proposing several amendments relating to identification and reflection delay, assistance and protection including residence, repatriation and resettlement of trafficked persons as well as non-punishment provisions and provisions relating to jurisdiction and the monitoring mechanism.

It is highly regrettable that the CAHTEH has not provided these standards by failing to adopt the recommendations of the Parliamentary Assembly of the Council of Europe (PACE), which were strongly supported by the participating and representing NGO's. The Committee of Ministers to the Council of Europe will now review, debate and adopt the draft Convention this month (March 2005). The Convention will then be opened to signature at the Council of Europe's Third Summit of Heads of State and Government on 16/17 May 2005.

Together with Amnesty International and Anti-Slavery International, the La Strada International Network has called on the Committee of Ministers of the Council of Europe, to strengthen the provisions related to assistance and protection of trafficked persons. The Committee of Ministers will begin their examination and debate of the draft Council of Europe Convention on Action against Trafficking in Human Beings in their first meeting March 2nd and will finalise their examination of the Draft Convention by the end of March 2005.

The debates of the Committee of Ministers are not available to the public. However, when the Convention is adopted it will be made public and there will undoubtedly be an announcement on the CAHTEH internet (www.coe.int/trafficking) and Council of Europe internet (www.coe.int) sites.

Concerns:

1. It is regrettable that, in the context of the negotiations within the Council of Europe's Ad Hoc Committee on Action against Trafficking in Human Beings, the protection of the rights of trafficked persons appeared to be secondary to political and institutional positioning.

For matters falling within its competence, the European Community votes on behalf of its Member States that are parties to this Convention and have transferred competence in this matter to the European Community. The input of the individual member or associated states to the European Union was therefore limited. Under community competence falls the Council Directive of the European Union on the residence permit issued to third country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (Directive 2004/81/EC, 29 April 2004). The standards set out in this directive seem to have become the maximum instead of building upon it and go forward with this.

2. The few additional provisions for victims of trafficking in human beings, hardly add any value to international standards that are already set out. The language of the draft Convention of the Council of Europe has weakened in the process of negotiations, thus failing to comprehensively address state obligations to respect and protect the human rights of trafficked persons.

The La Strada International Network together with Amnesty International and Anti Slavery International, have strongly urged the Committee of Ministers to ensure that the treaty it adopts, requires all of the Parties to the treaty to ensure that:

- all trafficked persons are given access to necessary medical assistance including psychological care and treatment (Article 12(1) (b)) and, if necessary, that assistance and protection measures are made available to the family members ;

Comment: In the 8th meeting, provisions for family reunification were rejected and agreed was on 'emergency' medical assistance instead of 'necessary medical assistance.

- a recovery and reflection period, of at least three months, and sufficient for the person concerned to begin to recover, escape the influence of their traffickers and make informed decisions about their future is offered to every trafficked person (Article 13 (1));
- *Comment: A reflection period of at least three months was rejected. No agreement was reached on the absolute minimum of a 30 days reflection delay. There was consensus on the purposes of the reflection delay described in article 13 and assistance measures contained in Article 12, paragraphs 1 and 2.*
- renewable residence permits, of at least 6 months in length, are issued to trafficked persons if either, following a risk assessment, the competent authorities consider that their stay is necessary owing to their personal situation or that their stay is necessary of the purpose of their participation in proceedings, including criminal proceedings against their traffickers or proceedings for compensation, and provide for family reunification (Article 14 (1));

Comment: the 6 month minimum period was rejected as were the family reunification provisions. Added was that the issuance of a residence permit should not prejudice the right to seek and enjoy asylum- though the non-renewal or withdrawal of a

residence permit is subject to the conditions provided for by the internal law of the Party. A risk assessment has not been included as such but in cases a victims submits an application for another kind of residence permit, it shall be taken into account that he or she holds, or has held, a residence permit in the context of trafficking (personal situation, risks and cooperation with competent authorities).

- the possibility that trafficked persons are detained, charged or prosecuted for illegal entry or residence and activities is prohibited unless it is shown that these are not a consequence of their situation as a victim (Article 26);

Comment: the wording to this non punishment provision has weakened so, that states should only provide for 'the possibility', of not imposing penalties on victims for their involvement in unlawful activities. States have argued that they do not want to grant immunity from prosecution for crimes of a trafficked person though will take into account that these crimes committed are directly related to the situation of trafficking.

- one single, independent expert body (GRETA) monitors the implementation of the Convention by EU and non-EU member states alike. In addition, the organizations consider that the treaty should empower the GRETA to receive information from any source, including the European Union and members of civil society, and should permit each Party to declare that they recognize the competence of the GRETA to consider collective complaints about a Party's failure to implement provisions of the Convention.

Comment: The European Community's proposed for a disconnection clause, amending that the Committee of Parties becomes the body generally in charge with decision-making concerning the Convention instead of the Committee of Ministers. For matters falling within its competence, the European Community votes on behalf of its Member States that are parties to this Convention and have transferred competence in this matter to the European Community. The European Community shall have the same number of votes as the number of these Member States. For matters falling within the competence of the European Community, the Commission of the European Communities shall be responsible to monitor the proper implementation of these provisions of the Convention by the Member States of the European Community who have transferred their competence in these matters to the European Community.

The above mentioned recommendations, though they are consistent with the recommendations set out in the Opinion of the Parliamentary Assembly of the Council of Europe of January 2005 and of non-governmental organizations who work directly with and on behalf of trafficked persons, are not included in the current draft of the Convention.

Rather, many of the key provisions concerning the protection and assistance of trafficked persons, contained in the draft Convention submitted to the Committee of Ministers, fail to significantly enhance the assistance and protection available under some current national or European Union legislation. They result, from lowest-common denominator positions agreeable to the European Union member states, which now form a majority of the 46 Council of Europe member states.