

Strasbourg, 17 November 2014

CDDH-BU(2014)R92

**STEERING COMMITTEE FOR HUMAN RIGHTS  
(CDDH)**

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**BUREAU OF THE STEERING COMMITTEE  
FOR HUMAN RIGHTS**

**(CDDH-BU)**

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**REPORT**

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**92<sup>nd</sup> meeting**

**Strasbourg, 12-13 November 2014**

## **PREPARATION OF THE 82<sup>nd</sup> CDDH MEETING**

**(19-21 November 2014)**

### Introduction

1. The CDDH Bureau held its 92<sup>nd</sup> meeting in Strasbourg from 12 to 13 November 2014, with Mr Vít A. SCHORM (Czech Republic) as Chairman. The list of participants appears in Appendix I. The meeting was devoted to the preparation of the 82<sup>nd</sup> plenary CDDH meeting (Strasbourg, 19-21 November 2014).

### **ITEM 1: OPENING OF THE MEETING, ADOPTION OF THE AGENDA AND OF THE ORDER OF BUSINESS**

2. The Bureau examined the draft agenda and order of business of the CDDH meeting in November and made a few amendments (see document CDDH(2014)OJ003Rev).

### **ITEM 2: RECOMMENDATIONS OF THE PARLIAMENTARY ASSEMBLY**

3. The Bureau examined the draft comments prepared by the Secretariat and made a few amendments. They appear in Appendix II in this report.

### **ITEM 3: REFORM OF THE COURT (DH-GDR)**

*3.1 Rules of Court - Procedure of amendment and legal statute*

*3.2 Longer term reform*

*3.3 Brussels Conference*

*3.4 Further issues*

4. The Bureau agreed with the set of elements appearing in the revised draft annotated agenda. Regarding the CDDH contribution to the Brussels Conference, the Bureau stressed that this will not be a draft legal instrument requiring a long and detailed negotiation within the CDDH, but a document set out to provide useful elements for consideration to the authors of the future draft Declaration to be submitted to the Conference. The CDDH should thus be able to adopt it without any particular difficulty at its meeting in November.

### **ITEM 4: DEVELOPMENT AND PROMOTION OF HUMAN RIGHTS**

*4.1 Corporate social responsibility in the field of human rights (CDDH-CORP)*

**4.2 Human rights in culturally diverse societies (CDDH-DC)****4.3 Future work**

5. The Bureau agreed with the set of elements appearing in the revised draft annotated agenda.

6. Regarding item 4.2, it suggested to the CDDH to extend the deadline of presentation of the Compilation and good practices currently set for 31 December 2014, until 30 June 2015. As for the draft Guidelines, it noted that the CDDH is expected to consider them at its meeting in December 2015.

7. Regarding item 4.3, the Bureau suggested to the CDDH to:

- ask the Committee of Ministers for an extension of the deadline of presentation of the draft feasibility study currently set for 31 December 2014, until 30 June 2015, in order to allow the CDDH members to send their possible comments to the Rapporteur;

- to take a formal decision by 30 June 2015 on other possible priority area of work for the development and promotion of human rights, with a view to submitting proposals on specific activities to the Committee of Ministers for the next biennium.

**ITEM 5: BIOETHICS (DH-BIO)****5.1 Examination of the draft Additional Protocol to the Convention on Human Rights and Biomedicine****5.2 Presentation of proposals for future activities for the 2016-2017 Biennium**

8. The Bureau asked the Secretariat to send for information to the CDDH members, document DH-BIO(2014)23, which constitutes a summary of the report on ethical questions raised by emerging sciences and technologies prepared by two DH-BIO experts Consultants.

**ITEM 6: YOUNG PEOPLE'S ACCESS TO FUNDAMENTAL RIGHTS**

9. The Bureau indicated that, at this stage, possible comments from CDDH members on the ongoing draft Recommendation are to be addressed to both experts representing the CDDH in this work.

**ITEM 7: EXPERTS REPRESENTING THE CDDH IN OTHER BODIES**

10. The Bureau exchanged views on the item also in relation with item 10 below and asked the Secretariat to explore the best way to obtain, well in advance, information on work considered in other Committees or bodies that could be of interest for the CDDH.

**ITEM 8: INVITEES FOR THE FORTHCOMING MEETINGS**

11. The Bureau asked the Secretariat to inform the CDDH in November on the four possible invited personalities already contacted with a view to meetings in 2015.

**ITEM 9: REVIEW OF COUNCIL OF EUROPE CONVENTIONS**

12. The Bureau suggested to the CDDH to exchange views in November in particular on the prospect for signatures and ratifications of Protocols No 15 and No 16 and to re-examine the situation of the Convention No 205 at its meeting in June 2015, in the light of additional information sent by the CDDH members.

**ITEM 10: CDDH WORK BEYOND THE CURRENT BIENNIUM**

13. The Bureau suggested to the CDDH to give any useful comments in order to consolidate the current working document prepared by the Secretariat and to be able, on this basis, to reach conclusions in June 2015, regarding in particular elements it wishes to appear in its draft terms of reference for the next biennium, including the list of activities it wishes to achieve, during that period in respect of the future on longer-term of the Convention system and the Court, the development and promotion of human rights and bioethics.

**ITEM 11: ELECTIONS**

14. The Bureau suggested to the CDDH that potential candidates will have to be made known to the Secretary of the Steering Committee, Alfonso DE SALAS, by Wednesday 19 November before 1 p.m., with a view to the elections to be held the next morning from 10:30 a.m.

**ITEM 12: INVITEE**

15. The Bureau took note that the Secretariat will send to the CDDH members a short document containing general information on the CPT, with a view of the meeting with this Committee's Chairman.

**ITEM 13: CALENDAR OF MEETINGS**

16. The Bureau took note with satisfaction that the Committee of Ministers agreed on the extension, until 31<sup>st</sup> December 2015, of the terms of reference for the preparation of the final CDDH report on the future on longer-term of the Convention system and the Court. From that time on, the set of DH-GDR and GT-GDR-F meetings, which appeared until now in square brackets in the draft calendar for 2015 (see CDDH(2014)OJ003rev, Appendix II), are confirmed.

**ITEM 14: FURTHER ISSUES**

- 14.1 Information on the International Conference " Application of the European Convention on Human Rights and Fundamental Freedoms on national level and the role of national judges" ( Baku, 24-25 October 2014)***
- 14.2 Information on other events of interest for the CDDH members***
- 14.3 Prenatal sex selection - Information on the follow-up by the Committee of Ministers***

17. The Bureau agreed with the set of elements appearing in the revised draft annotated agenda. Regarding the mandate given by the Committee of Ministers to the CDDH for examination of the prenatal sex selection issue, the Bureau suggested to the CDDH to include this theme in the list of topics to debate in 2015 for the next biennium (see paragraph 13 above).

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Appendix I**List of participants****ARMENIA / ARMENIE**

Mr Levon AMIRJANYAN, Chef du département des affaires juridiques, Ministère des affaires étrangères

**AUSTRIA / AUTRICHE**

Mrs Brigitte OHMS, Deputy Government Agent, Division for International Affairs and General Administrative Affairs, Federal Chancellery

**BELGIUM / BELGIQUE**

Mr Philippe WERY, Attaché, SPF Justice, Service des Droits de l'Homme

**CZECH REPUBLIC / REPUBLIQUE TCHEQUE**

Mr Vít SCHORM, Government Agent, Ministry of Justice

**ESTONIA / ESTONIE**

Mrs Maris KUURBERG, Government Agent before the European Court of Human Rights, Ministry of Foreign Affairs

**GERMANY / ALLEMAGNE**

Mr Hans-Jörg BEHRENS, Head of Unit IVC1, Human Rights Protection; Government Agent before the European Court of Human Rights, Bundesministerium der Justiz

**RUSSIAN FEDERATION / FEDERATION DE RUSSIE**

Mr Vladislav ERMAKOV, Ministry of Foreign Affairs

**SWITZERLAND / SUISSE**

Mr Frank SCHÜRMANN, Agent du Gouvernement, Chef de l'Unité Droit européen et Protection Internationale des droits de l'Homme, Office fédéral de la justice

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**AUTRES PARTICIPANTS / OTHER PARTICIPANTS****THE NETHERLANDS / PAYS-BAS**

Mr Martin KUIJER, Senior legal adviser human rights law, Ministry of Justice, Legislation Department, The Hague

**NORWAY / NORVEGE**

Mr Morten RUUD, Norwegian Ministry of Justice and the Police, Legislation Department, Oslo

**SECRETARIAT**

**DG I – Human Rights and Rule of Law / Droits de l’Homme et État de droit  
Council of Europe / Conseil de l’Europe, F-67075 Strasbourg Cedex**

Mr Mikhail LOBOV, Head of Human Rights Policy and Development Department / Chef du Service des politiques et du développement des droits de l’Homme

Mr Alfonso DE SALAS, Head of the Human Rights Intergovernmental Cooperation Division / Chef de la Division de la coopération intergouvernementale en matière de droits de l’Homme, Secretary of the CDDH / Secrétaire du CDDH

Ms Corinne GAVRILOVIC, Assistant / Assistante, Human Rights Intergovernmental Cooperation Division / Division de la coopération intergouvernementale en matière de droits de l’Homme

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**INTERPRETERS / INTERPRÈTES**

Ms Monique PALMIER

Mr Christopher TYCZKA

Mr Didier JUNGLING

## Appendix II

### **Parliamentary Assembly Recommendations transmitted by the Ministers' Deputies to the CDDH : Draft comments by the CDDH including suggestions made by the Bureau**

#### **PARLIAMENTARY ASSEMBLY RECOMMENDATION 2046(2014) - THE "LEFT-TO-DIE BOAT": ACTIONS AND REACTIONS**

##### *Draft comments*

1. The Steering Committee for Human Rights (CDDH) takes note of Parliamentary Assembly Recommendation 2046 (2014), especially against the background of recurrent tragic incidents in the past few months,<sup>1</sup> and their devastating toll on human life. The CDDH concurs that these incidents have shed light on the serious problems arising from lack of accountability, transparency and co-ordination in this area, resulting in failure to rescue people in distress at sea.

2. In this regard, the CDDH concurs that it is essential to promote a common, coherent and effective application of the legal framework of search and rescue (SAR) policies in Europe, and agrees that the Council of Europe has an important role in assisting member States in this regard and enhancing solidarity among them.

3. To avoid replication and unnecessary overlap, and to ensure that objectives in this field are achieved with added value, it is crucial, in the CDDH's view, to enhance coordination and cooperation regarding on-going activities before initiating new ones. Concerning the Assembly's request for a feasibility study on a common approach to fill vital legal gaps in SAR in the Mediterranean Sea, the CDDH wishes to draw attention to the important role entrusted to the European Agency for the Management of Operational Cooperation at the External Borders (Frontex) under the comprehensive [EU Regulation No 656/2014 of 15 May 2014 establishing rules of the surveillance of the external sea borders in the context of operational cooperation](#). [The CDDH also takes note of the important contribution by the EU's Fundamental Rights Agency \(FRA\) in this field.](#)<sup>2</sup> The Parliamentary Assembly itself has played an active role in encouraging international efforts leading to progress in this area. In addition, the CDDH notes that much concrete work has

<sup>1</sup> Reuters, ["As many as 700 migrants feared drowned in Mediterranean"](#) 15.09.14); The Guardian, ["Migrant boat was 'deliberately sunk' in the Mediterranean Sea, killing 500"](#), 15.09.14); ["Boat tragedy in the Mediterranean: call for investigation into the latest deaths"](#), 18.09.14).

<sup>2</sup> See, in this context, a FRA report on [Detention of third country nationals in return procedures, containing a specific chapter on the immigration detention of children \(p. 55 ff\)](#). In 2010, FRA published a report on [separated, asylum-seeking children in European Union Member States, based on qualitative interviews with asylum seeking children and adults providing for their needs \(pp. 66ff\)](#). See also the [2014 Handbook on European law relating to asylum, borders and immigration, jointly produced by the European Court of Human Rights and the FRA, \(Ch. 9 deals with unaccompanied minors\)](#).



and continues to be undertaken by various organizations, notably the United Nations High Commissioner for Refugees (UNHCR), which has implemented the comprehensive Central Mediterranean Sea Initiative, and is currently preparing a Protection Dialogue in December 2014, to further develop the Global Initiative for Protection at Sea,<sup>3</sup> the main aim of both initiatives being to devise concrete steps forward – in collaboration with various key actors and states – in averting the loss of lives at sea.<sup>4</sup>

4. The CDDH takes note of the Assembly's request for guidelines on how to implement the *Hirsi Jamaa and Others v. Italy* case of the European Court of Human Rights (ECtHR). In this context, the CDDH also takes note of the Assembly's initiative to tackle this issue further in a follow-up Motion for Resolution on "The Implementation of the Hirsi judgment: have push-backs come to an end?"<sup>5</sup>, the outcomes of which remain to be seen. It is expected that the Committee of Ministers will continue to diligently fulfil its duty to supervise the adoption of the measures required by the judgment in accordance with Article 46 of the European Convention on Human Rights (ECHR).<sup>6</sup> On a more general note, however, the CDDH is fully aware of the far-reaching impact of this judgment as to the scope of applicability of the ECHR to persons intercepted both in waters of non-EU countries and international waters (*see also the CDDH reply to PACE Rec 2047 (2014), para. 3ff*). ~~Given the transnational nature of mixed migratory flows, the CDDH concurs that it may be worth exploring the need for reinforcement of the existing framework and, possibly, for adoption of further guidelines so as to prevent push-back practices more effectively.~~ The CDDH wishes to express its availability to ~~study~~ contribute to the examination of such matter ~~this matter more closely~~ should the Committee of Ministers so decide.

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## PARLIAMENTARY ASSEMBLY RECOMMENDATION 2047(2014) – “THE LARGE-SCALE ARRIVAL OF MIXED MIGRATORY FLOWS ON ITALIAN SHORES”

### *Draft comments*

<sup>3</sup> The Dialogue will inform the implementation of a two-year Global Initiative on Protection at Sea (available at: <http://www.unhcr.org/5375db0d9.html>; See also the Global Initiative of Protection at Sea, <http://www.unhcr.org/5375db0d9.html> (accessed: 10.10.14).

<sup>4</sup> More background information on UNHCR's Central Mediterranean Sea Initiative is available at: <http://www.refworld.org/docid/538d73704.html>.

<sup>5</sup> Doc. 13629, 07.10.14.

<sup>6</sup> See in this regard, the outcome of the 1164<sup>th</sup> meeting – 07.03.13, Case against Italy (Case No. 14), (accessed: 08.10.14).

1. The Steering Committee for Human Rights (CDDH) takes note of the Parliamentary Assembly's [Recommendation 2047 \(2014\)](#) on "The large-scale arrival of mixed migratory flows on Italian shores", a topic of persistent concern both in Europe and beyond. Given recent data on the 'alarming increase' in the number of deaths occurring during irregular crossings of the Mediterranean Sea every year,<sup>7</sup> the CDDH agrees on the crucial importance of increased efforts to prevent these humanitarian tragedies and concurs that the Council of Europe (CoE) has a vital role to play in tackling human rights challenges arising in this area.

2. The CDDH takes note of the Assembly's request (para. 4.1) to reflect on the manner of introducing a new international crime, when persons obtain financial benefit, directly or indirectly, for the transportation of people in unseaworthy vessels, which carries risks of death or injury. The CDDH suggests that such a reflection is more appropriately dealt with by the European Committee on Crime Problems (CDPC). The CDDH also wishes to draw attention to the already existing international instrument in the field, the [UN Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Crime](#), which explicitly calls on States Parties to criminalize the smuggling of migrants and ancillary acts, when these are committed with intent and with the aim of obtaining, directly or indirectly, financial or material gain.<sup>8</sup> Rather than duplicating international efforts, the CDDH proposes that this Protocol should be strengthened by calling on all states not having ratified it, to do so swiftly,<sup>9</sup> and to enhance international cooperation in the implementation thereof.

3. Concerning paragraphs 4.2 and 4.3 of the Assembly's Recommendation, the CDDH contends that these may be discordant with well-established requirements of international law, (i.e. principle of *non-refoulement*,) and in particular the jurisprudence of the European Court of Human Rights (ECtHR). ~~In particular,~~ The CDDH draws attention to the judgment of the ECtHR in the case of [Hirsi Jamaa and Others v. Italy \(2012\)](#), a case explicitly referred to in the Recommendation. In *Hirsi Jamaa*, the Court held that while Contracting States are free to devise their own immigration policies, this right is circumscribed by Article 3 (freedom against torture or inhuman or degrading treatment) of the [European Convention on Human Rights](#) (ECHR), where the removal of a person would expose him/her to a real risk of facing such treatment in the receiving country, irrespective of whether this person was intercepted in the waters of a non-EU country or international waters. The Court reiterated the need for an assessment of individual circumstances (prohibition of collective expulsions of aliens, Art. 4, Prot. 4), and access to an effective remedy (Art. 13). Given the foregoing, the CDDH submits that any arrangements for automatically returning people to a non-EU country, as suggested in the Recommendation, would risk contravening the ECHR's requirements.

4. The need to address possible issues encountered in the implementation of the *Hirsi Jamaa* case is reflected both in PACE Recommendations 2047 (2014) and 2046 (2014), albeit in

<sup>7</sup> UNHCR, "Mediterranean crossings more deadly a year after Lampedusa tragedy", 02.10.14, at: <http://www.unhcr.org/print/542d12de9.html> (accessed: 03.10.14).

<sup>8</sup> UN Protocol, Art. 6.

<sup>9</sup> Ratification status: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg\\_no=XVIII-12-b&chapter=18&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=XVIII-12-b&chapter=18&lang=en) (accessed: 02.10.14).

diverging ways (*see CDDH reply to PACE Rec 2046 (2014), para. 4*). The CDDH takes note of the Assembly's request in Recommendation 2047 (2014) to "make this judgment compatible" with CoE Member States' right to draw up their own immigration policies. In this context, the CDDH refers to the Court's position quoted above, that the Contracting States' freedom to devise their own immigration policies does not relieve them from honouring their undertakings under the Convention, and to comply with the Court's judgments in any specific case. It is indeed for the Respondent State to find, under the supervision of the Committee of Ministers, the most appropriate ways of complying with the judgments, and to adapt their immigration policies accordingly. Therefore it is expected that the Committee of Ministers will continue to diligently fulfil its duty to supervise the adoption of the measures required by the *Hirsi Jamaa* judgment in accordance with Article 46 of the ECHR.

5. The CDDH takes note of the Assembly's request to consider the necessity of an extensive review of the "Dublin Regulation" and its implementation. Although the Council of Europe's activities, including ECtHR jurisprudence, have concrete repercussions on the manner in which the Regulation is applied, the CDDH considers it unsuitable for the Committee of Ministers to assume any role in the review of a European Union (EU) Regulation. The CDDH suggests that the CM could only encourage its member States concerned to ensure the proper application of the Dublin Regulation – and if necessary the adaptation thereof – so as to be in conformity with their obligations under the Convention, ECtHR judgments and other CoE instruments.

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## **PARLIAMENTARY ASSEMBLY RECOMMENDATION 2051(2014) - REINFORCEMENT OF THE INDEPENDENCE OF THE EUROPEAN COURT OF HUMAN RIGHTS**

### ***Draft comments***

1. The Steering Committee for Human Rights (CDDH) takes note of Parliamentary Assembly Recommendation 2051(2014) on the 'reinforcement of the independence of the European Court of Human Rights'. It recalls the emphasis placed on this important issue in the declarations adopted at the successive Interlaken, Izmir and Brighton Conferences, reflected also in its own relevant activities.

2. As regards ~~ratification of~~ the Sixth additional Protocol to the General Agreement on Privileges and Immunities of the Council of Europe (CETS No. 162), the CDDH ~~recalls that it had elaborated this instrument following adoption of Protocol no. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms (CETS No 155), as a necessary consequence of the restructuring of the control mechanism (merger of the Commission and the Court). The Sixth Protocol was thus intended to consolidate and ultimately replace the Fourth and Fifth additional Protocols to the General Agreements on Privileges and Immunities of the Council of Europe (CETS Nos. 036 and 137) of the General Agreement on Privileges and Immunities of the Council of Europe. These latter instruments, along with the Second Protocol~~

~~(CETS No 022), remained in force with respect to proceedings under the former system, of which there are no longer any. Furthermore, these Protocols have not been open to signature or ratification since the entry into force of Protocol No 11 (CETS No 155) on 1st November 1998. The CDDH notes that only two member States have not yet ratified it CETS No. 162, although one of them had ratified both of its predecessor instruments in this field<sup>10</sup>. The CDDH therefore concurs with the Parliamentary Assembly's encouragement to member States that have not yet done so to ratify CETS No. 162.~~

3. As regards issues concerning social security and retirement, the CDDH recalls the discussions in the Ministers' Deputies following the presentation by the President of the Court of a "Comparative survey on the recognition of service as a Judge of the European Court of Human Rights". It notes that the Ministers' Deputies at their 1195<sup>th</sup> meeting, from 19 to 20 March 2014,<sup>11</sup> subsequently adopted decisions on the matter, including to resume consideration of it before 31 December 2015.

4. Finally, as regards the question of the Court's budget, the CDDH notes that this is one of the issues currently under examination by Drafting Group "F" on the reform of the Court (GT-GDR-F) as part of its work on the longer-term future of the Convention system and the Court. The CDDH will present its final report on this matter in 2015.<sup>12</sup>

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## **PARLIAMENTARY ASSEMBLY RECOMMENDATION 2055(2014) - THREATS AGAINST HUMANITY POSED BY THE TERRORIST GROUP KNOWN AS "IS": VIOLENCE AGAINST CHRISTIANS AND OTHER RELIGIOUS OR ETHNIC COMMUNITIES**

### ***Draft comments***

1. The Steering Committee for Human Rights (CDDH) takes note of Parliamentary Assembly Recommendation 2055 (2014) on "Threats against humanity posed by the terrorist group known as "IS": violence against Christians and other religious or ethnic communities". It shares the concerns expressed by the Parliamentary Assembly in [Resolution 2016 \(2014\)](#) about the situation in the Middle-East regarding ongoing violent actions, including religious and ethnic cleansing perpetrated by the "IS" against Christians and other religious or ethnic communities.

<sup>10</sup> [Fourth and Fifth additional Protocols to the General Agreements on Privileges and Immunities of the Council of Europe \(CETS Nos. 036 and 137\).](#)

<sup>11</sup> -Decision CM/Del/Dec(2014)1195/4.3

<sup>12</sup> The current deadline for this work is 15 March 2015, but the CDDH at its 81<sup>st</sup> meeting requested the Committee of Ministers to extend this deadline until 31 December 2015.

2. As regards the tragic and unprecedented humanitarian consequences of the current crisis, the CDDH acknowledges that current humanitarian aid supplies are insufficient and joins the Assembly's call to the Committee of Ministers to exhort its member states to increase and expand them further "as part of a strategic, longer-term approach to foster plurality and human rights with a particular focus on greater support to religious and ethnic communities".

3. The CDDH takes note of the Assembly's call to the Committee of Ministers to develop the political aspect of its annual "Exchanges on the Religious Dimension of Intercultural Dialogue" and to contemplate discussions on different religious perspectives of human dignity. It also acknowledges the call to the Committee of Ministers to envisage possible ways to monitor the situation of governmental and societal restrictions on religious freedom and related rights in Council of Europe's member states and neighbouring states and to periodically report to the Assembly. In this context, the CDDH wishes to recall the importance of the Council of Europe's work on intercultural dialogue, including its religious dimension, especially since the launch of the [White paper on intercultural dialogue](#), which constituted an important milestone for intercultural dialogue policy in Europe, and was followed up with a new version published in 2010 and Parliamentary Assembly [Recommendation 1962 \(2011\)](#) on "The religious dimension of intercultural dialogue". [Moreover, the Venice Commission has prepared a number of studies and reports related to human rights in culturally diverse societies<sup>13</sup>, to which should be added the work of the European Commission against Racism and Intolerance \(ECRI\)<sup>14</sup>. The CDDH also recalls the \[Manual on hate speech<sup>15</sup>\]\(#\) and the \[Declaration of the Committee of Ministers on human rights in culturally diverse societies<sup>16</sup>\]\(#\).](#)

4. In this regard, the CDDH acknowledges the relevance and importance of such calls and initiatives and expresses its readiness to assist in such requests, not least through its ongoing work on Human Rights in culturally diverse societies. The drafting group on this issue (CDDH-DC), which held its 2nd meeting on 21-24 October 2014, took account of the Parliamentary Assembly Recommendation 2055 (2014) and Resolution 2016 (2014) in the process of compiling the existing Council of Europe standards relating to the principles of freedom of

<sup>13</sup> [CDL-AD\(2008\)026 Report on the relationship between Freedom of Expression and Freedom of Religion: the issue of regulation and prosecution of Blasphemy, Religious Insult and Incitement to Religious Hatred adopted by the Venice Commission at its 76th Plenary Session \(Venice, 17-18 October 2008\); CDL-AD\(2005\)009 Report on Electoral Rules and Affirmative Action for National Minorities' Participation in decision-making process in European countries adopted by the Council for Democratic Elections at its 12th meeting \(Venice, 10 March 2005\) and the Venice Commission at its 62th Plenary Session \(Venice, 11-12 March 2005\); CDL-AD\(2007\)001 Report on Non-citizens and Minority Rights adopted by the Venice Commission at its 69th plenary session \(Venice, 15-16 December 2006\).](#)

<sup>14</sup> [In this context, see ECRI General Policy Recommendation No.1 "Combating racism, xenophobia, antisemitism and intolerance".](#)

<sup>15</sup> [Drafted by a consultant at the request of the CDDH \(2008\).](#)

<sup>16</sup> [Adopted by the Committee of Ministers on 1st July 2009 at 1062<sup>nd</sup> meeting of the Ministers' Deputies.](#)

thought, conscience and religion and the links to other Convention rights, in particular freedom of expression. The Drafting Group's next step will be the elaboration of guidelines on the protection and promotion of human rights in culturally diverse societies with the purpose of providing guidance to member States on enhancing the effective implementation of the Council of Europe standards in this field.

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## **PARLIAMENTARY ASSEMBLY RECOMMENDATION 2056 (2014) - THE ALTERNATIVES TO IMMIGRATION DETENTION OF CHILDREN**

### ***Draft comments***

1. The Steering Committee for Human Rights (CDDH) takes note of Parliamentary Assembly Recommendation 2056 (2014) on “The alternatives to immigration detention of children”, a topic of great concern, especially against the background of a continued practice of immigration detention of children in Council of Europe member states<sup>17</sup>. The CDDH notes that the immigration detention of children, notably unaccompanied minors, continues to be subject of considerable debate, and research findings are increasingly revealing the long-term negative impact of detention on children, however short the duration<sup>18</sup>. As a result, there is now an increasing momentum to seriously restrict, if not prohibit altogether, this practice at the European level, as was already pointed out in texts adopted since 2005<sup>19</sup>. In this context, the CDDH recalls that all member states of the Council of Europe have ratified the [United Nations Convention on the Rights of the Child](#), creating a framework of special safeguards to adequately protect and assist all children in an indiscriminate manner, regardless of various factors, such as nationality, race, ethnicity, social origin, language, and immigration status<sup>20</sup>.

<sup>17</sup> [PACE Resolution 2020 \(2014\)](#), “The alternatives to immigration detention of children”, para. 1.

<sup>18</sup> [PACE report](#), “The alternatives to immigration detention of children”, [Doc. 13597](#), 15.09.14, pp. 6-8. See also, International Detention Coalition, [“There are alternatives: A handbook for preventing unnecessary immigration detention”](#), 2011, p. 009.

<sup>19</sup> See in this context, Ad hoc Committee of Experts on the Legal Aspects of Territorial Asylum, Refugees and Stateless Persons (CAHAR), [Twenty guidelines on forced return](#), 925 Meeting, 4 May 2005, Guideline 11, p. 36. [PACE Resolution 1810 \(2011\)](#), on “Unaccompanied children in Europe: issues of arrival, stay and return”, para. 5.9, and [PACE Recommendation 1985 \(2011\)](#), on “Undocumented migrant children in an irregular situation: a real cause for concern” para. 9.4.5. Also, addressing immigration detention of children is explicitly addressed as a key priority in the EU Agenda, and proposals for amending EU asylum law to prohibit the detention of children, notably unaccompanied minors, are ongoing (see [EU Agenda for the Rights of the Child](#), p. 9).

<sup>20</sup> [UN Convention on Rights of the Child](#), Art. 2.



2. The CDDH takes note of the Assembly's call to launch a study first to collect qualitative and quantitative data on child immigration detention practices and use of non-custodial, community-based alternatives thereto, and second, to promote the sharing of these practices across Europe. Regarding the first part of the study, the CDDH wishes to point out that as part of the [EU Agenda for the Rights of the Child](#), the Fundamental Human Rights Agency of the European Union (FRA) has initiated various data collection and comparative analysis research projects relating to children, such as the [Mapping project on child protection systems in the EU](#), and the [Children and justice project, which focuses on child participation in justice proceedings in conformity with the Committee of Ministers Guidelines on child-friendly justice](#). Due to its capacity and experience with conducting studies of this nature in the field of children's rights, and to avoid duplication of efforts, the CDDH considers the FRA to be the appropriate forum at the present time to adequately build on previous research findings and to carry out the initial data collection proposed by the Assembly. In a second step, and building on the FRA's possible work in this area, the CDDH expresses its willingness to study the feasibility of collecting further data for other Council of Europe member states, notably as regards the use of alternatives to immigration detention of children. Concerning the second part of the study, the CDDH expresses its willingness to contribute to various activities that may assist in effectively promoting the sharing of best practices across Council of Europe member States.

3. Regarding the Assembly's call to the Committee of Ministers to set up child-friendly age-assessment guidelines, the CDDH acknowledges the importance of this issue and notes that currently there is a lack of consensus about the applicable procedures in order to accurately assess the age of an individual<sup>21</sup>. The CDDH recalls that there is, at present, no reliable method to determine, without some margin of error, the age of an individual<sup>22</sup>. Given the significant consequences of age-assessment on the individual(s), the CDDH expresses its willingness to study more closely whether there is a need to formulate guidelines in this area, should the Committee of Ministers so decide. However, as a preliminary step, and given the Parliamentary Assembly's in-depth work in the area of migrant children, the CDDH would suggest for the Assembly to provide additional information on current practices of age-assessment in Council of Europe member states, and to elaborate, where possible, on best practices. In this context, the CDDH draws attention to the study of the European Asylum Support Office (EASO), on [Age Assessment practice in Europe](#) as regards EU member states. The CDDH is confident that the additional information provided by the Assembly would serve as a solid basis in order to examine the feasibility of elaborating guidelines<sup>23</sup>.

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<sup>21</sup> [PACE Resolution 1996 \(2014\)](#), "Migrant children: what rights at 18?", para. 3.

<sup>22</sup> [PACE report](#), "Undocumented migrant children in an irregular situation: a real cause for concern", [Doc. 12718](#), 16.09.11, para. 94. See also European Asylum Support Office (EASO), report on [Age Assessment practice in Europe](#), p. 8.

<sup>23</sup> [The CDDH could ask DH-BIO to identify an expert who would be in charge of providing a scientific opinion on age-assessment techniques.](#)