

CDDH comments on the Parliamentary Assembly Recommendation 2140(2018) - UNLIMITED ACCESS TO MEMBER STATES, INCLUDING “GREY ZONES”, BY COUNCIL OF EUROPE AND UNITED NATIONS HUMAN RIGHTS MONITORING BODIES

90th meeting - 27–30 November 2018 - CDDH(2018)R90

1. The Steering Committee for Human rights takes note of Parliamentary Assembly Recommendation 2140 (2018) : “*Unlimited access to member States, including “grey zones”, by Council of Europe and United Nations human rights monitoring bodies*”. It shared its concerns about the difficulties encountered by Council of Europe and United Nations human rights monitoring bodies, as well as by other international organisations, to access to member States’ territories, including “grey zones”.
2. The CDDH recalls that the Council of Europe’s treaties are applicable on the whole territory of each contracting Party. It observes at the outset that the supervisory bodies acting under the European Convention on Human Rights have, on many occasions, made use of their competencies to carry out inquiries on the ground, including in such zones, with a view to establishing the facts. The European Court of Human Rights fully retains this power, all Contracting Parties being bound by the duty to cooperate with a view to establishing the facts pursuant to Article 38 of the Convention.
3. Concerning the monitoring bodies established by other instruments of the Council of Europe, the CDDH notes that their visits help formulating proposals aimed at improving respect for the conventions in the visited countries. However, whereas the CPT benefits from a presumption that all member States consent to its visit thanks to the combination of Articles 8 and 9 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, this is not the case for other monitoring bodies such as the Group of States against Corruption (GRECO), the Group of Experts on Action against Trafficking in Human Beings (GRETA), the Advisory Committee of the Framework Convention for the Protection of National Minorities, or the European Commission against Racism and Intolerance (ECRI).
4. Consequently, the CDDH considers that it could be useful to reflect upon the opportunity and feasibility of establishing, within the Council of Europe, a rebuttable presumption of consent to the visits carried out by the monitoring bodies which work on some aspects on human rights protection.
5. Finally, the CDDH shares the approach of the Assembly according to which the strengthening of human rights monitoring in the “grey zones” should be discussed in liaison with the United Nations, with a view, as appropriate, to conducting joint actions by both Organisations.

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Text of Recommendation 2140(2018)
“UNLIMITED ACCESS TO MEMBER STATES, INCLUDING “GREY ZONES”, BY COUNCIL OF EUROPE AND UNITED NATIONS HUMAN RIGHTS MONITORING BODIES”
Parliamentary Assembly

1. The Parliamentary Assembly recalls its Resolution 2240 (2018) on unlimited access to member States, including “grey zones”, by Council of Europe and United Nations human rights monitoring bodies.

2. The Assembly calls on the Committee of Ministers to hold an urgent discussion whenever a Council of Europe human rights monitoring body is denied access, or allowed access only on conditions that are politically unacceptable or incompatible with the body's mandate, to all or part of a member State's territory. Such a discussion should aim at finding rapid, effective solutions to such situations, where appropriate by applying diplomatic pressure on the responsible authorities, including, where applicable, through the State exercising effective control over a territory and its de facto authorities.

3. The Assembly also calls on the Committee of Ministers to consider the introduction within the Council of Europe of a presumption that all member States consent to visits by Council of Europe and United Nations human rights monitoring bodies in circumstances where there is reason to believe that there are serious violations of fundamental human rights and dignity such as threats to life, torture, inhuman or degrading treatment or denial of basic humanitarian needs. Such a presumption could be rebuttable in exceptional circumstances, for instance where denial of access is necessary for reasons relating to national defence, public safety or serious local public disorder. It would, however, be for the State concerned to raise such objections upon being informed of a monitoring body's intention to visit in circumstances that invoke the presumption of consent.

4. The Assembly further calls on the Committee of Ministers to undertake a detailed, systematic review of the state of co-operation between Council of Europe and United Nations human rights monitoring mechanisms, in co-operation with the United Nations, with a view to enhancing co-ordination and maximising synergies. Such a review should include exploration of possibilities for reinforcing the overall human rights monitoring of "grey zones" (States' territories that are under the control of de facto authorities) within Council of Europe member States, including through joint activities of bodies responsible for monitoring comparable human rights issues, whilst respecting the particularities of those bodies' mandates, composition, structures and working methods. The review could also engage with relevant monitoring mechanisms of other international organisations, including the Organization for Security and Co-operation in Europe.