

OPINION OF THE CAHDI

On Recommendation 2126 (2018) of the Parliamentary Assembly of the Council of Europe – “Humanitarian needs and rights of internally displaced persons in Europe”

1. On 15 May 2018, the Ministers’ Deputies at their 1316th meeting agreed to communicate [Recommendation 2126 \(2018\)](#) of the Parliamentary Assembly of the Council of Europe (PACE) on “*Humanitarian needs and rights of internally displaced persons in Europe*” to the Committee of Legal Advisers on Public International Law (CAHDI), for information and possible comments¹. The Ministers’ Deputies also communicated this Recommendation to the Steering Committee for Human Rights (CDDH). PACE [Resolution 2214 \(2018\)](#), on the same topic, subject, is associated to it.
2. The CAHDI examined the abovementioned Recommendation at its 56th meeting (Helsinki, Finland, 20-21 September 2018) and made the following comments which concern aspects of the Recommendation which are of particular relevance to the Terms of Reference of the CAHDI.
3. The CAHDI underlines the need to apply all relevant obligations under international humanitarian law in situations of armed conflict as well as international human rights law, including the *European Convention on Human Rights* (ECHR) and to take account of related case-law, to internally displaced persons in member States. The CAHDI further recalls that, in accordance with Article 1 of the ECHR, Parties must secure the rights and freedoms of everyone within their jurisdiction.
4. The CAHDI further recalls that the primary responsibility for protecting internally displaced persons and their rights, as well as for providing them with humanitarian assistance, lies with the state concerned as stated in the Committee of Ministers *Recommendation Rec(2006)6 on internally displaced persons*².
5. The CAHDI further recalls that internally displaced persons are entitled to the enjoyment of their property and possessions or to receive adequate compensation in accordance with human rights law as stated in the Committee of Ministers *Recommendation Rec(2006)6 on internally displaced persons*³.

¹ The Ministers’ Deputies specifically indicated in their decision that they “agreed to communicate it [Recommendation 2126 (2018)] to the Committee of Legal Advisers on Public International Law (CAHDI), for information and possible comments by 29 June 2018.” However, taking into account that the 56th meeting of the CAHDI would take place on 20 and 21 September, it was agreed to send the CAHDI opinion to the Secretariat of the Committee of Ministers on 30 September 2018.

² See paragraph 4 of [Committee of Ministers Recommendation Rec\(2006\)6 on internally displaced persons](#), adopted on 5 April 2006.

³ Paragraph 8 of [Committee of Ministers Recommendation Rec\(2006\)6 on internally displaced persons](#), adopted on 5 April 2006: “*Internally displaced persons are entitled to the enjoyment of their property and possessions in*

6. The CAHDI points out that the ECHR sets up a well-established system for securing the execution of the judgments of the European Court of Human Rights (ECtHR), including the Parties' obligation to abide by the final judgments of the ECtHR and the role of the Committee of Ministers in the supervision of the execution of such judgments. The CAHDI further points out that, under Article 46(4) of the Convention, if the Committee of Ministers considers that a Party to the ECHR refuses to abide by a final judgment in a case to which it is a party, it may refer to the Court the question of whether the Party concerned has failed to fulfil its obligation in relation to the binding force and execution of judgments of the ECtHR.
7. The CAHDI notes the need to improve the capacity of the Convention's system to provide better support to States in addressing complex execution processes, including in situations relating to unresolved conflict zones⁴.
8. Taking into account the above-mentioned arguments, the CAHDI considers that the measures proposed in paragraph 3 of the Parliamentary Assembly's Recommendation 2126 (2018), namely the development of "guidelines for the recognition and enforcement by domestic courts in other member states of judgments of the European Court of Human Rights awarding financial compensation to internally displaced persons, if a respondent State refuses to execute such a judgment", lies outside its purview.

accordance with human rights law. In particular, internally displaced persons have the right to repossess the property left behind following their displacement. If internally displaced persons are deprived of their property, such deprivation should give rise to adequate compensation".

⁴ [11th Annual Report of the Committee of Ministers 2017 on the Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights](#), p.10.