

**CDDH comments on the Parliamentary Assembly Recommendation 2125(2018)
“Proportionality issues concerning derogations under Article 15 of the
European Convention on Human Rights”**

89th meeting - 19–22 June 2018 - CDDH(2018)R89

1. The Steering Committee for Human Rights (CDDH) takes note of Parliamentary Assembly Recommendation 2123(2018) – “*Strengthening international trade in goods used for torture and the death penalty*”

2. It takes note of the legal and political instruments that have already been adopted in different fora in this respect as well as the call of the Assembly that member States put in place a legislation regulating trade in goods used for the death penalty, torture and inhuman or degrading treatment or punishment.

3. On this last point, the CDDH recalls that paragraphs 24 and 27 of the Appendix to Recommendation CM/Res(2016)3 of the Committee of Ministers to member States on human rights and business already contain specific provisions for member States aimed at preventing business enterprises domiciled within their jurisdiction from trading in such goods and at informing business enterprises of potential human rights consequences of their operations¹.

4. Furthermore, it notes that the Council of Europe has already recognised the need to exchange information between the States on the existing best practices on combating the trafficking in goods used for torture and the death penalty. Indeed, an online Platform on Human Rights and Business is currently being put in place within the departments of the Organisation in charge of cooperation in the human rights field (HELP Programme).

5. The CDDH believes it important that this Platform, which it initiated, becomes a powerful tool for:

- (i) raising awareness of member State authorities about international and regional mechanisms for the protection of human rights and about the reports of independent organs of the civil society as regards the situation of the death penalty, torture and inhuman or degrading treatment or punishment in third countries which they should take into account when examining requests for authorisation of trade in relevant goods;
- (ii) providing periodic reports on the States’ including decisions given on requests for authorisation of trade in specific goods and the specific reasons for those decisions.

¹ *Paragraph 24*: “In order not to facilitate the administration of capital punishment or torture in third countries by providing goods which could be used to carry out such acts, member States should ensure that business enterprises domiciled within their jurisdiction do not trade in goods which have no practical use other than for the purpose of capital punishment, torture, or other cruel, inhuman or degrading treatment or punishment” ;

Paragraph 27: “ Member States should be in a position to inform paragraph 20 on the potential human rights consequences of carrying out operations in conflict-affected areas, and in other sectors or areas that involve a high risk of a negative impact on human rights, and provide assistance to these business enterprises, in line with relevant international instruments, such as the OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones or the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. Member States should facilitate specific business standards, such as the Voluntary Principles on Security and Human Rights and the International Code of Conduct for Private Security Providers. Member States should consider performing a sector-risk analysis in order to identify the sectors in which activities are most at risk of having a negative impact on human rights” .

6. The CDDH supports the call for ratification by all member States of the Council of Europe, of Protocols Nos. 6² and 13³ to the Convention.

7. Finally, the CDDH considers it very useful that the Committee of Ministers draws attention to this matter with a view to reaffirm that Europe is strongly opposed to the death penalty, torture and inhuman or degrading punishment or treatment at worldwide level. The CDDH would be ready to draft a non-binding legal instrument (e.g. a political Declaration) if the Committee of Ministers decides to give it a mandate to this end.

* * *

Text of Recommendation 2125(2018)

Proportionality issues concerning derogations under Article 15 of the European Convention on Human Rights

Parliamentary Assembly

1. The Parliamentary Assembly refers to its [Resolution 2209 \(2018\)](#) “ State of emergency proportionality issues concerning derogations under Article 15 of the European Convention on Human Rights ” .

2. The Assembly recommends that the Committee of Ministers examine State practice in relation to derogations from the European Convention on Human Rights (ETS No. 5), in the light of the requirements of Article 15 and the case law of the European Court of Human Rights , the requirements of international law and recommendations in [Resolution 2209 \(2018\)](#), with a view to identifying legal standards and good practice and, on that basis, adopt a recommendation to member States on the matter.

² To date: 46 ratifications and 1 signature not followed by ratification.

³ To date: 44 ratifications and 1 signature not followed by ratification.