

CDDH(2017)06

01/12/2017

## **STEERING COMMITTEE FOR HUMAN RIGHTS**

### **(CDDH)**

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#### **Recommendations of the Parliamentary Assembly transmitted by the Ministers' Deputies to the CDDH**

**Possible draft replies, as amended by the Bureau in November 2017  
for examination by the CDDH at its 88<sup>th</sup> meeting (5-7 December 2017)**

#### Introduction

1. At their 1289<sup>th</sup> (14 June 2017), 1291<sup>st</sup> (5 July 2017) and 1298<sup>th</sup> (25 October 2017) meetings, the Ministers' Deputies transmitted to the CDDH the following recommendations of the Parliamentary Assembly for information and possible comments:

- 2104(2017) – “Human rights of older persons and their comprehensive care”;
- 2110(2017) – “The implementation of judgments of the European Court of Human Rights”;
- 2115(2017) – “The use of new genetic technologies in human beings”;
- 2116(2017) – “Promoting the human rights of and eliminating discrimination against intersex people”.

2. For each Recommendation, the present document reproduces its text followed by possible draft comments, for examination by the Bureau at its 98<sup>th</sup> meeting (Copenhagen, 21-22 November 2017), then by the CDDH at its 88<sup>th</sup> meeting (5-7 December 2017).

## I. RECOMMENDATION 2104(2017) – “HUMAN RIGHTS OF OLDER PERSONS AND THEIR COMPREHENSIVE CARE”

### *Text of the Recommendation*

1. The Parliamentary Assembly refers to its [Resolution 2168 \(2017\)](#) on human rights of older persons and their comprehensive care.
2. The Assembly welcomes the recent work of the Committee of Ministers in this field, resulting in the adoption of [Recommendation CM/Rec\(2014\)2](#) on the promotion of human rights of older persons, which is a comprehensive instrument and an ambitious statement on the rights of older persons.
3. The Assembly notes that other regional organisations promoting human rights have recently opted for a legally binding instrument devoted to the rights of older persons, for example the Inter-American Convention on Protecting the Human Rights of Older Persons and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa.
4. In the light of the foregoing, the Assembly recommends that the Committee of Ministers:
  - 4.1. thoroughly examine the implementation of [Recommendation CM/Rec\(2014\)2](#), notably by closely involving civil society and all other relevant stakeholders in the process;
  - 4.2. based on the conclusions drawn from this exercise, consider the necessity and feasibility of drawing up a legally binding instrument in this field;
  - 4.3. urge those member States which have not yet done so to sign and ratify the European Social Charter (revised) (ETS No. 163) and accept, in particular, its Article 23 on the right of elderly persons to social protection.

### *Draft comments*

1. The Steering Committee for Human Rights (CDDH) takes note of the Parliamentary Assembly Recommendation 2104(2017) - “*Human rights of older persons and their comprehensive care*”. It considers that the Assembly addresses herewith one of the major challenges Europe faces with respect to human rights.
2. The CDDH welcomes the positive reaction of the Assembly to the [Recommendation CM/Rec\(2014\)2](#) of the Committee of Ministers on the promotion of human rights of older persons. It recalls that, in the terms of reference for 2018-2019, the Committee of Ministers invited the CDDH to examine the implementation of this instrument.
3. As suggested by the Assembly, the CDDH intends to examine in more detail how to proceed to this implementation, notably by closely associating to this process the civil society and the stakeholders concerned.
  - (i) As a first step, it envisages to ask member States and other stakeholders to update the catalogue of good practices accompanying the Recommendation from 2014 and to communicate any positive developments occurred since 2014.

- (ii) On the basis of the information received, a Workshop or an intergovernmental Seminar involving civil society could be organised by the CDDH in 2018 or early 2019. Within such a framework, discussions could take place, if appropriate, to explore the relevance of a specific legally binding instrument in this field. It is clear however, that the added value of such a new instrument should be carefully explored in relation to the existing major instruments of the Council of Europe, namely the European Convention on Human Rights and the (revised) European Social Charter. It should be necessary to assess whether or not an effective implementation by member States of these basic common standards is sufficient to ensure appropriate protection of human rights of older persons. These standards are reminded in the aforementioned Recommendation CM/Rec(2014)2.

4. ~~In this context, the CDDH cannot but subscribe to the call of the Assembly that the (revised) European Social Charter be signed and ratified by the member States that have not yet done so and that its notes the relevance and the importance of Article 23 (the right of elderly persons to social protection) of the revised European Social Charter. be accepted by as many States as possible. On this last point, the~~ CDDH recalls that its terms of reference for 2018 and 2019 also entrust it to conduct a thorough reflection on the protection of social rights within the Council of Europe and that, in this framework, it will address, *inter alia*, the situation of older persons.

## II. RECOMMENDATION 2110(2017) – “THE IMPLEMENTATION OF JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS”

### *Text of the Recommendation*

1. Referring to its [Resolution 2178 \(2017\)](#) on the implementation of judgments of the European Court of Human Rights, the Parliamentary Assembly welcomes the measures taken by the Committee of Ministers to improve the process of its supervision of the implementation of judgments of the Court.
2. The Assembly once again urges the Committee of Ministers to use all available means to fulfil its tasks under Article 46.2 of the European Convention on Human Rights (ETS No. 5, “the Convention”). Accordingly, it recommends that the Committee of Ministers:
  - 2.1. give renewed consideration to the use of the procedures provided for in Article 46, paragraphs 3 to 5, of the Convention, in the event of implementation of a judgment encountering strong resistance from the respondent State;
  - 2.2. make more frequent use of interim resolutions with a view to pinpointing the difficulties in implementing certain judgments;
  - 2.3. tackle urgently systemic problems identified in pilot judgments delivered by the Court, with particular attention paid to all related cases;
  - 2.4. do more work towards greater transparency of the process of supervising the implementation of judgments;

2.5. give applicants, civil society, national human rights protection bodies and international organisations a greater role in this process;

2.6. continue to strengthen synergies, within the Council of Europe, between all the stakeholders concerned, in particular the European Court of Human Rights and its Registry, the Assembly, the Secretary General, the Commissioner for Human Rights, the Steering Committee for Human Rights, the European Commission for Democracy through Law (Venice Commission) and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

2.7. increase the resources of the Department for the Execution of Judgments of the European Court of Human Rights;

2.8. encourage the Department for the Execution of Judgments to increase exchanges with the Court and its Registry and also to consult more with national authorities in cases where particular difficulties arise over the definition of implementation measures.

### **Draft comments<sup>1</sup>**

1. The Steering Committee for Human Rights (CDDH) takes note of the Parliamentary Assembly Recommendation 2110 (2017) – “*The implementation of judgments of the European Court of Human Rights*”.

2. The CDDH notes that the issue of implementation of the Convention, including the execution of the Court’s judgments, was highlighted in the 2015 Brussels Declaration. The issue of execution of judgments and its supervision by the Committee of Ministers is one of the main themes of the CDDH’s on-going work under its terms of reference to examine the longer-term future of the Convention system and the Court.<sup>2</sup>

3. In 2013, the CDDH identified three general causes of failure to execute judgments in a timely manner: (i) reluctance on the part of either the executive to propose measures or parliament to adopt legislation; (ii) substantive problems and technical complexity, e.g. need for a wide range of measures requiring co-ordination or extensive legal reforms; and (iii) inertia, being a simple failure to take action not linked to any particular political or technical consideration, but e.g. to a shortage of staff.<sup>3</sup>

4. Since 2014, regular exchanges of information on various issues connected to the execution of judgments have taken place within the relevant bodies of the CDDH, regarding *inter alia* the re-examination or reopening of cases following judgments of the Court<sup>4</sup> as well as verification of

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<sup>1</sup> Prepared by the DH-SYSC at its 4<sup>th</sup> meeting (9-10 November 2017, DH-SYSC(2017)05 [Appendix III](#)).

<sup>2</sup> See the terms of reference for the biennium 2018–2019 for the CDDH and the DH-SYSC. In the 2015 CDDH report on the longer-term future of the system of the European Convention on Human Rights, execution of judgments and its supervision were identified as one of four overarching areas that are crucial for the longer-term effectiveness and viability of the Convention system. In its contribution to the Brussels Conference, the CDDH affirmed that full and rapid execution of judgments of the Court, in accordance with Article 46, is essential for the effective functioning of the Convention system.

<sup>3</sup> CDDH report on whether more effective measures are needed in respect of States that fail to implement Court judgments in a timely manner, 2013, document CDDH(2013)R79 Addendum I, §§ 6–7.

<sup>4</sup> See document DH-GDR(2014)R6, Item 5.

the compatibility of legislation with the Convention.<sup>5</sup> The CDDH has also taken an active part in a number of extraordinary events concerning execution.<sup>6</sup>

5. Concerning in particular rapid execution of judgments of the Court, the CDDH has in 2017 elaborated a *Guide to good practices on the implementation of the Recommendation (2008)2 on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights*. The Guide includes an inventory of good practices relating to implementation of the Recommendation.<sup>7</sup>

6. Regarding the ideas put forward by the Assembly in its Recommendation 2110 (2017) to the Committee of Ministers, the CDDH wishes to submit the following comments:

- 2.1. *give renewed consideration to the use of the procedures provided for in Article 46, paragraphs 3 to 5, of the Convention, in the event of implementation of a judgment encountering strong resistance from the respondent State*

7. It is worth recalling the CDDH's 2008 *Practical proposals for the supervision of the execution of judgments of the Court in situations of slow execution*.<sup>8</sup> This text contributed to the Committee of Ministers' introduction of the 'twin-track' (standard and enhanced) supervision process. In 2013, the CDDH submitted its report on whether more effective measures are needed in respect of States that fail to implement Court judgments in a timely manner.<sup>9</sup> The 2017 *Guide to good practices on the implementation of the Recommendation CM/Rec(2008)2* examined in particular the role of the co-ordinator in identifying execution measures, practices ensuring the visibility of and promoting sufficient acquaintance with the execution process, the co-operation of member States with the Committee of Ministers and the Department for the Execution of Judgments, as well as the means to prevent or resolve a significant persistent problem in the execution process.

8. The CDDH is following with interest the recent developments in the area the of procedures provided for in Article 46, paragraphs 3 to 5, of the Convention, regarding both individual

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<sup>5</sup> "Overview of the exchange of views held by the DH-SYSC at its 1<sup>st</sup> meeting (25–27 April 2016) on the verification of the compatibility of legislation with the Convention (arrangements, advantages, obstacles)", document DH-SYSC(2016)013REV.

<sup>6</sup> In particular, the Multilateral Round Table on "Reopening of proceedings following a judgment of the European Court of Human Rights" (Strasbourg, 5–6 October 2015) and the International Conference "Enhancing national mechanisms for effective implementation of the European Convention on Human Rights" (Saint-Petersburg, 22–23 October 2015). In addition, a conference on "The long-term future of the European Court of Human Rights" was organized in Oslo in April 2014 by the Norwegian research center *PluriCourts* under the aegis of the Council of Europe with the active participation of the CDDH.

<sup>7</sup> See document CDDH(2017)R87 Addendum I.

<sup>8</sup> See document CDDH(2008)014 Addendum II.

<sup>9</sup> See document CDDH(2013)R79 Addendum I. The text was examined by the Ministers' Deputies following receipt of comments by the Court. For the Court's comments, see "Reply of the European Court of Human Rights to Committee of Ministers request for comments on the CDDH Report on Execution", document DD(2014)650.

measures<sup>10</sup> relating to individual applicants and general measures<sup>11</sup> to address systemic shortcomings.

9. In its work on civil society and National Human Rights Institutions, the CDDH has noted that in the case of systemic shortcomings in the protection and promotion of human rights, many of the judgments of the Court concerning such situations have yet to be implemented through the adoption of general measures.<sup>12</sup>

10. At the same time, the CDDH is continuing its work by producing a compilation of good practices regarding the general measures taken by member States aimed at executing judgments of the Court concerning human rights defenders, national institutions for human rights, and freedom of assembly and association.<sup>13</sup>

- *2.5. give applicants, civil society, national human rights protection bodies and international organisations a greater role in this process*

11. The Brussels Declaration<sup>14</sup> reiterated the need to involve National Human Rights Institutions and civil society where appropriate in the supervisory mechanism established by the Convention. In the same light, the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements<sup>15</sup> make provision for the involvement of national human rights protection bodies and civil society in the process of the supervisory mechanism concerning the implementation of judgments of the Court. The CDDH relied significantly upon the jurisprudence of the Court in its analysis on the impact of current national legislation, policies and practices on the activities of civil society organisations, human rights defenders and national institutions for the promotion and protection of human rights. Applicants could be invited, when appropriate, to actively collaborate in the execution of judgments.

- *2.6. continue to strengthen synergies, within the Council of Europe, between all the stakeholders concerned, in particular the European Court of Human Rights and its Registry, the Assembly, the Secretary General, the Commissioner for Human Rights, the Steering Committee for Human Rights, the European Commission for Democracy through Law (Venice Commission)*

<sup>10</sup> See notably the case of *Ilgar Mammadov v. Azerbaijan*, Application no. 15172/13, Judgment of 22 May 2014, European Court of Human Rights.

<sup>11</sup> See notably the case of *Burmych and Others v. Ukraine*, Applications nos. 46852/13 et al., Judgment of 12 October 2017 (Grand Chamber), European Court of Human Rights.

<sup>12</sup> “Analysis on the impact of current national legislation, policies and practices on the activities of civil society organisations, Human Rights defenders and national institutions for the promotion and protection of Human Rights”, see document CDDH(2017)R87 Addendum IV, § 276.

<sup>13</sup> *Ibid.*, § 277.

<sup>14</sup> Brussels Declaration, 2015, Preamble, Recital 7.

<sup>15</sup> Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, Rule 9 – Communications to the Committee of Ministers, as amended by the Ministers’ Deputies at their 1275<sup>th</sup> meeting, 18 January 2017.

*and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*

12. The CDDH, through its subcommittee the DH-SYSC, will work in close synergy and cooperation with other relevant Council of Europe instances and activities.<sup>16</sup> One example of such synergy in practice, albeit in a different area than the execution of the Court's judgments, is the close interaction between the CDDH, the Court and its Registry, the PACE and the Advisory Panel of Experts on Candidates for Election as Judge to the Court in the work undertaken within the CDDH concerning the process of selection and election of judges of the Court.<sup>17</sup> The CDDH and its subcommittees work in their activities in close synergy with the Department for the Execution of Judgments. One example of this cooperation is the latter's presentation of the search tool HUDOC-EXEC and of information on the state of execution of the Court's judgments prior to the 2<sup>nd</sup> meeting of the DH-SYSC in 2016.<sup>18</sup>

- *2.7. increase the resources of the Department for the Execution of Judgments of the European Court of Human Rights*

13. In its 2015 report on the longer-term future of the Convention system, the CDDH has underlined the significance of the bodies dealing with the supervision of the execution of judgments of the Court (e.g. the Committee of Ministers assisted by its Secretariat and the Department for the Execution of Judgments of the Court) having sufficient capacity to process effectively the high number of cases decided by the Court.<sup>19</sup> Support for increased resources for the Department of Execution of Judgments was also expressed in the 2015 Brussels Declaration.

*Conclusion*

14. The CDDH emphasises to the Parliamentary Assembly that the long-term efficacy of the Convention, including the implementation of the Court's judgments, rests on the enhanced dialogue between all actors of the Convention. In this regard, the Council of Europe will continue its work in the upcoming months with the aim of enhancing, at every stage of the process, this dialogue which is beneficial to the execution of judgments.

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<sup>16</sup> CDDH report on the longer-term future of the system of the European Convention on Human Rights, 2015, document CDDH(2015)R84 Addendum I, §§ 158, 170 ii), vi).

<sup>17</sup> This work is currently being undertaken within the framework of follow-up to the 2015 CDDH report on the longer-term future of the system of the Convention, which in turn is the result of intergovernmental work undertaken in response to §§ 35.c-f of the Brighton Declaration.

<sup>18</sup> See document DH-SYSC(2016)R2, § 3.

<sup>19</sup> CDDH report on the longer-term future of the system of the European Convention on Human Rights, 2015, document CDDH(2015)R84 Addendum I, §§ 136, 156, 170 iii).

### III. RECOMMENDATION 2115(2017) – “THE USE OF NEW GENETIC TECHNOLOGIES IN HUMAN BEINGS”

#### *Text of the Recommendation*

1. Genetic engineering techniques have been applied in the medical field for several decades now. However, new technologies are developing very rapidly: recent discoveries related to the human genome have opened the door to new opportunities and unprecedented ethical concerns. On the one hand, this improved knowledge of our make-up as human beings brings with it welcome potential to diagnose, prevent and eventually cure diseases in the future. On the other hand, it raises complex ethical and human rights questions, including – but not limited to – unintended harm which may result from the techniques used, access and consent to such techniques, and their potential abuse for enhancement or eugenic purposes.

2. In particular, recent advances in genome editing are bound to result in germline interventions in human beings quite soon, for example with the birth of children whose genome has been altered with some unforeseeable consequences in such a way that their descendants are also affected. The scientific consensus is that these techniques are not “safe”, leading to a *de facto* moratorium. However, other techniques, such as pronuclear transfer technology (the “three-parent” technique), which is used to avoid maternal inheritance of mitochondrial disease, have been used and resulted in the birth of two babies (one of them for reasons other than the treatment of mitochondrial disease), despite considerable ethical controversy and scientific uncertainty about the long-term effects.

3. Deliberate germline editing in human beings would cross a line viewed as ethically inviolable. Indeed, the 1997 Council of Europe Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (ETS No. 164, “Oviedo Convention”), binding on the 29 member States which have ratified it, posits in its Article 13 that “an intervention seeking to modify the human genome may only be undertaken for preventive, diagnostic or therapeutic purposes and only if its aim is not to introduce any modifications in the genome of any descendants”. The convention does, however, also establish a specific procedure for its amendment (Article 32), which should be read in conjunction with Article 28, which imposes on States Parties to see to it that “the fundamental questions raised by the developments of biology and medicine are the subject of appropriate public discussion in the light, in particular, of relevant medical, social, economic, ethical and legal implications, and that their possible application is made the subject of appropriate consultation”.

4. Numerous scientific and ethical bodies are starting to make recommendations to establish an appropriate regulatory framework for genome editing and germline interventions in human beings, including most recently the United States National Academy of Sciences and National Academy of Medicine, and the European Academies Science Advisory Council (EASAC). There is currently a prohibition on interventions aimed at modifying the germline in human beings in all European Union and many Council of Europe member States.

5. The Parliamentary Assembly thus recommends that the Committee of Ministers:

5.1. urge member States which have not yet ratified the Oviedo Convention to do so without further delay, or, as a minimum, to put in place a national ban on establishing a pregnancy with germline cells or human embryos having undergone intentional genome editing;

5.2. and, in addition, develop a common regulatory and legal framework which is able to balance the potential benefits and risks of these technologies aiming to treat serious diseases, while preventing abuse or adverse effects of genetic technology on human beings;



5.3. foster a broad and informed public debate on the medical potential and possible ethical and human rights consequences of the use of new genetic technologies in human beings;

5.4. instruct the Council of Europe Committee on Bioethics (DH-BIO) to assess the ethical and legal challenges raised by emerging genome editing technologies, in the light of the principles laid down in the Oviedo Convention and the precautionary principle;

5.5. recommend that member States, on the basis of the public debate, the DH-BIO assessment and the common regulatory and legal framework devised, develop a clear national position on the practical use of new genetic technologies, setting the limits and promoting good practices.

***Comments of the DH-BIO***<sup>20</sup>  
**(for the information of the CDDH)**

1. The Committee of Ministers agreed to communicate to the Committee on Bioethics (DH-BIO), as well as to the Steering Committee for Human Rights (CDDH), for information and possible comments, the Council of Europe Parliamentary Assembly (PACE) Recommendation 2115 (2017) – “The use of new genetic technologies in human beings”.

2. The DH-BIO examined the Recommendation at its 12<sup>th</sup> plenary meeting (26-27 October 2017) and adopted these comments.

3. In its Recommendation, the PACE notes that “... recent discoveries related to the human genome have opened the door to new opportunities and unprecedented ethical concerns... this improved knowledge of our make-up as human beings brings with it welcome potential to diagnose, prevent and eventually cure diseases in the future. On the other hand, it raises complex ethical and human rights questions, including – but not limited to – unintended harm which may result from the techniques used, access and consent to such techniques, and their potential abuse for enhancement or eugenic purposes”.

4. The DH-BIO welcomes the initiative taken by the PACE. Together with the latter it agrees with the “potential to diagnose, prevent and eventually cure diseases in the future” offered by new genetics technologies. But it also, shares the concerns expressed on the risks of certain technological developments and their possible applications to human beings. In this context, it recalls, as does the PACE, that Article 13 of the Convention on Human Rights and Biomedicine (Oviedo Convention) limits the purposes for which interventions on the human genome may be undertaken and prohibits intervention intending to introduce any modification in the genome of descendants.

5. The Statement on Genome Editing Technologies adopted by the DH-BIO in December 2015 underlines that the Oviedo Convention provides a framework and principles that could be used as reference for the debate called for at international level on the use of new genetic technologies in human beings. The DH-BIO therefore particularly welcomes the Assembly’s recommendation to “urge member states which have not yet ratified the Oviedo Convention to do so without further delay, or, as a minimum, to put in place a national ban on establishing a pregnancy with germline cells or human embryos having undergone intentional genome editing.”

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<sup>20</sup> Adopted by the Bureau of the DH-BIO, by written procedure, on 27 November 2017.

6. The DH-BIO agrees with the Assembly that there is a need to “foster a broad and informed public debate on the medical potential and possible ethical and human rights consequences of the use of new genetic technologies in human beings”. These considerations also find their expression in Article 28 of the Oviedo Convention, which calls to Parties to see to it that “the fundamental questions raised by the developments of biology and medicine are the subject of appropriate public discussion in the light, in particular, of relevant medical, social, economic, ethical and legal implications, and that their possible application is made the subject of appropriate consultation.” In view of this undertaking and as part of its initiatives to address human rights challenges raised by emerging technologies, the DH-BIO has committed itself to develop guidance on how to promote public discussion and consultation on fundamental questions raised by the developments of biology and medicine.

7. The Assembly recommends that the Committee of Ministers “instruct[s] the DH-BIO to assess the ethical and legal challenges raised by emerging genome editing technologies, in the light of the principles laid down in the Oviedo Convention and the precautionary principle”. The DH-BIO has already started to examine developments in this area, which has led to the adoption of the above-mentioned Statement on Genome Editing Technologies where it agreed, “as part of its mandate, to examine the ethical and legal challenges raised by these emerging genome editing technologies, in the light of the principles laid down in the Oviedo Convention.”

8. The DH-BIO is committed to continue addressing human rights issues raised by genome editing technologies, and recalls in this respect that it intends to develop in the next biennium a Strategic Action Plan addressing human rights issues raised by emerging technologies and developments in the biomedical field. This Strategic Action Plan would be based on the outcome of the Conference organised by the DH-BIO on the occasion of 20<sup>th</sup> anniversary of the Oviedo Convention organised under the auspices of the Czech Chairmanship of the Committee of Ministers, which covered, *inter alia*, human rights challenges raised by new technological developments in the fields of genetics and genomics.

### **Draft comments**

1. The Steering Committee for Human Rights (CDDH) takes note of the Parliamentary Assembly Recommendation 2115(2017) - “*The use of new genetic technologies in human beings*” and ~~fully endorses~~ commends to the Committee of Ministers the comments provided by the Committee on Bioethics (DH-BIO) on this subject. It considers that the ethical and legal implications of genetic technologies in human beings ~~are calling for~~ want an in-depth debate in light of the requirements of the European Convention on Human Rights and of the Oviedo Convention, and in accordance with the precautionary principle.

2. The CDDH welcomes the commitment made by the DH-BIO under paragraph 8 of its comments to continue its work in this field.

## **IV. RECOMMENDATION 2116(2017) – “PROMOTING THE HUMAN RIGHTS OF AND ELIMINATING DISCRIMINATION AGAINST INTERSEX PEOPLE”**

### ***Text of the Recommendation***

1. The Parliamentary Assembly refers to its [Resolution 2191 \(2017\)](#) on promoting the human rights of and eliminating discrimination against intersex people, in which it calls on member States to take a number of measures to achieve these goals, *inter alia* in the field of children’s rights and bioethics.

2. The Assembly believes it essential that rapid progress be achieved by member States and that Council of Europe standards be developed further in this field.

3. It therefore invites the Committee of Ministers to:

3.1. bring [Resolution 2191 \(2017\)](#) to the attention of the governments of all member States;

3.2. instruct the Committee on Bioethics to continue its work on strengthening children's rights in biomedicine, in particular as regards the protection of intersex children's right to physical integrity and respect for the principle of free and informed consent, with a view to drawing up Council of Europe standards and guidelines in this field.

***Comments by the DH-BIO***<sup>21</sup>  
**(for information of CDDH)**

1. The Committee of Ministers agreed to communicate to the Committee on Bioethics (DH-BIO), as well as to the Steering Committee for Human Rights (CDDH), for information and possible comments, Recommendation 2116 (2017) – “Promoting the human rights of and eliminating discrimination against intersex people”.

2. The DH-BIO examined the Recommendation at its 12<sup>th</sup> plenary meeting (26-27 October 2017) and adopted these comments.

3. In its Recommendation, the Assembly, referring to its Resolution 2191 (2017), invites the Committee of Ministers to “instruct the Committee on Bioethics to continue its work on strengthening children's rights in biomedicine, in particular as regards the protection of intersex children's right to physical integrity and respect for the principle of free and informed consent, with a view to drawing up Council of Europe standards and guidelines in this field.” The DH-BIO observes that not all of the issues addressed in Resolution 2191 (2017) fall within its field of competence. It will therefore confine itself to the issues relevant to the latter.

4. The objective of the work carried out by the DH-BIO is to protect human dignity and individual rights in the field of biomedicine. Children's rights to physical integrity and respect for the principle of free and informed consent, as protected by the Convention on Human Rights and Biomedicine (Oviedo Convention), form part of this objective.

5. The DH-BIO has instigated work in the area referred to by the Assembly by organising a hearing addressing, in particular human rights issues for intersex children, at its 9th plenary meeting (Strasbourg, 31 May-2 Jun 2016), in cooperation with the Council of Europe's Sexual Orientation and Gender Identity (SOGI) Unit. Those issues were further analysed in two studies on children's rights in biomedicine<sup>22</sup>, commissioned by the DH-BIO within the framework of the Strategy for the Rights of the Child, which specifically refer to the situation of children with differences in sex development and intersex conditions<sup>23</sup>. Against this background and taking into account the interest already expressed by delegations in the ethical issues raised by

<sup>21</sup> Adopted by the Bureau of the DH-BIO, by written procedure, on 27 November 2017.

<sup>22</sup> Kavot Zillén, Jameson Garland, Santa Slokenberga, Uppsala University, “The Rights of Children in Biomedicine: Challenges posed by Scientific Advances and Uncertainties”, 2017, <https://rm.coe.int/16806d8e2f>; and Ton Liefwaard, Aart Hendriks, Daniella Zlotnik, Leiden University, “From Law to Practice, towards a roadmap to strengthening children's rights in the era of biomedicine”, 2017, <https://rm.coe.int/leiden-university-report-biomedicine-final/168072fb46>

<sup>23</sup> Leiden, pp. 34-35, Uppsala, pp. 40-45.

interventions on intersex children, the DH-BIO, at its 11<sup>th</sup> plenary meeting (Strasbourg, 6 – 8 June 2017), agreed to include the topic of Intersex Children in its program of activities.

6. Consequently, this subject matter will be part of a Strategic Action Plan to be developed by the DH-BIO with the objective to ensure, *inter alia*, that human rights of particularly vulnerable groups are better protected. This Strategic Action Plan will be based on the outcome of the Conference organised by the DH-BIO on the occasion of the 20<sup>th</sup> anniversary of the Convention on Human Rights and Biomedicine (Oviedo Convention) on 24-25 October 2017, under the auspices of the Czech Chairmanship of the Committee of Ministers, which dedicates a session to the evolution of practices in the biomedical field in relation to autonomy – consent and privacy.

7. The DH-BIO appreciates the encouragement to pursue its work on strengthening children's rights in biomedicine, and, in particular, of intersex children and agrees with the Assembly that there is a strong need for working towards common European standards and to provide guidance on how best to protect the human rights of intersex children, taking into account the different groups of persons involved (the child itself, its parents, health professionals, social workers (...)). It is in this spirit that the DH-BIO is committed to continue its work in this field, in close co-operation with other relevant bodies and institutions, including in particular the Ad Hoc Committee for the Rights of the Child (CAHENF) and, the Commissioner on Human Rights, as well as with the SOGI Unit.

### **Draft comments**

1. The Steering Committee for Human Rights (CDDH) takes note of the Parliamentary Assembly Recommendation 2116 (2017) - "*Promoting the human rights of and eliminating discrimination against intersex people*" and commends to the Committee of Ministers fully endorses the comments provided by the Committee on Bioethics (DH-BIO) on this subject.

2. The CDDH takes this opportunity to stress the need, for the ~~considers it necessary to (i) remind~~ member States, to recall the common basic standards to be respected in the field of human rights with regard to intersex people; indeed, the protection of human rights concerns each individual and the member States have committed themselves to secure the enjoyment of the rights and freedoms to everyone within their jurisdiction without discrimination on any ground such as sex; ~~(ii)~~ From this perspective, member States may be required to provide practical orientation ~~to member States~~ on the best way to protect human rights of intersex persons and most particularly of intersex children. ~~3-~~ In view of the complexity of these issues, ~~T~~the CDDH welcomes the commitment made by the DH-BIO under paragraph 7 of its comments to continue its work in this field, in close co-operation with other relevant bodies and institutions within the Council of Europe.