



CDDH(2022)R97 Addendum 1
16/12/2022

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

**COMMENTS ADOPTED BY THE CDDH ON RECOMMENDATIONS
OF THE PARLIAMENTARY ASSEMBLY**

Recommendations [2238 \(2022\)](#) “Safe third countries for asylum seekers” and
[2240\(2022\)](#) “Preventing vaccine discrimination”

Recommendation [2238\(2022\)](#) Provisional version

Safe third countries for asylum seekers

1. The Parliamentary Assembly refers to its [Resolution 2461 \(2022\)](#) “Safe third countries for asylum seekers” and emphasises the need for greater co-ordination among member States, in order to effectively protect human rights of asylum seekers and the right to asylum in Europe.

2. Welcoming Recommendation No. R(97)22 of the Committee of Ministers to member States containing Guidelines on the Application of the Safe Third Country Concept, the Assembly recommends that the Committee of Ministers:

2.1 review this Recommendation in the light of relevant jurisprudence of the European Court of Human Rights, develop new standards to enable member States to improve their assessment of the safety of third countries and regularly up-date them in accordance with legal developments to come and future jurisprudence;

2.2 consider setting standards on the transfer, return and readmission of asylum seekers and refugees, taking due account of the effective protection of their human rights under the European Convention on Human Rights (ETS No. 5) and their right to apply for and seek asylum under international refugee law;

2.3 seek co-operation of the Council of Europe and its member States with the European Union Agency for Asylum, in order to prevent discrepancies in the application of the safe third country concept in Europe to the detriment of human rights and the right to apply for and seek asylum;

2.4 invite member States to inform the Committee of Ministers about their practice regarding the safe third country concept as well as their practice as regards procedural means available to rebut the presumption of safety of a country.

CDDH COMMENTS

1. The CDDH takes note of Parliamentary Assembly Recommendation 2238 (2022) on safe third countries for asylum seekers, including the proposal that the Committee of Ministers review its Recommendation No. R(97)22 of the Committee of Ministers to member States containing Guidelines on the Application of the Safe Third Country Concept.

2. The CDDH recalls that in 2009, the Committee of Ministers adopted [Guidelines on human rights protection in the context of accelerated asylum procedures](#). These Guidelines, which were drafted by the CDDH, include a section on the safe third country concept and are accompanied by a detailed [explanatory memorandum](#).

3. The CDDH observes that the European Court of Human Rights has examined issues relating to removal of asylum seekers to third countries in a number of judgments delivered since the Committee of Ministers adopted Recommendation No. R(97)22, as set out in the relevant section of the [Guide on the case-law of the European Convention on Human Rights](#) (last updated on 31 August 2022).

4. The CDDH further observes that a 2020 publication of the Council of Europe and the European Union Agency for Fundamental Rights entitled "[Fundamental rights of refugees, asylum applicants and migrants at the European borders](#)" includes a section on the situation under international law more generally.

5. The CDDH concludes that since the Committee of Ministers adopted Recommendation No. R(97)22 some 25 years ago, various bodies of the Council of Europe have continued to develop standards relevant to application of the safe third country concept. These standards could form the basis of a review and possible revision of the Recommendation No. R(97)22.

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Recommendation [2240\(2022\)](#) | **Provisional version**

Preventing vaccine discrimination

1. Referring to its [Resolution 2468 \(2022\)](#) "Preventing vaccine discrimination", the Parliamentary Assembly recommends that the Committee of Ministers:

1.1 establish a list of human-rights compliant and effective practices as regards the use of passes during the Covid-19 pandemic, with a special focus on the purposes for which they were used, the conditions under which they were issued and the period of their validity;

1.2 reflect on the impact of Covid passes, and in particular vaccine passes, on human rights and fundamental freedoms, and consider how best to ensure that such measures do not constitute discriminatory practices in light of Article 14 of the European Convention on Human Rights (ETS No. 5);

1.3 exchange information on these issues with other international organisations such as the United Nations, the World Health Organisation (WHO) and the European Union, and reflect, in co-operation with them, on the need to establish further common standards on measures to counter the Covid-19 pandemic.

1.4 provide input to the Intergovernmental Negotiating Body to draft and negotiate a WHO convention, agreement or other international instrument on pandemic prevention, preparedness and response, with the aim of ensuring its compatibility with Council of Europe human rights standards.

CDDH COMMENTS

1. The CDDH takes note of Parliamentary Assembly Recommendation 2240 (2022) on preventing vaccine discrimination.

2. The CDDH points out that reflection on the impact of Covid passes, and in particular vaccine passes, on human rights and fundamental freedom should also take into account the jurisprudence of the European Court of Human Rights, which points to the fact that protecting health as well as the rights of others are legitimate Government aims, and that vaccination

protects both those who receive it and also those who cannot be vaccinated for medical reasons and are therefore reliant on herd immunity for protection against serious contagious diseases (see the judgment of the European Court of Human Rights in the case of *Vavříčka & otrs v. Czech Republic*, app. no. 47621/13 et al, Grand Chamber, 8 April 2021).

3. The CDDH recalls that in May 2021, the Committee on Bioethics, which was then a subordinate body of the CDDH, published a “Statement on Human Rights Considerations Relevant to ‘Vaccine Pass’ and Similar Documents”, which included a section on risks of discrimination.