CDDH(2024)R100 Addendum 1
03/07/2024

STEERING COMMITTEE FOR HUMAN RIGHTS (CDDH)

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COMMENTS ADOPTED BY THE CDDH[1] ON RECOMMENDATIONS OF THE PARLIAMENTARY ASSEMBLY

- **2272 (2024) "Mainstreaming the human right to a safe, clean, healthy and sustainable environment with the Reykjavík process"**
- **2275 (2024) "Ending the detention of "socially maladjusted" persons"**
- **2276 (2024) "Children in the world of work: eradicating harmful child labour"**

[1] At its 100th meeting, 25–28 June 2024.

Recommendation 2272 (2024) "Mainstreaming the human right to a safe, clean, healthy and sustainable environment with the Reykjavík process"

1. The Parliamentary Assembly refers to its Resolution 2545 (2024) "Mainstreaming the human right to a safe, clean, healthy and sustainable environment with the Reykjavik process".

2. The Assembly maintains that the recognition of the right to a healthy environment must be based on a human rights approach. In this regard, it reaffirms its Recommendation 2211 (2021) "Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe", in which it proposed complementary tools to achieve this.

3. The Assembly notes that the Council of Europe already offers a convention ecosystem covering many aspects of the right to a healthy environment. It sees this as an opportunity to capitalise on existing standards.

4. The Assembly therefore recommends that the Committee of Ministers:

4.1 actively support the work of the Intersecretariat Task Force on the Environment established following the 4th Council of Europe Summit, and carefully consider its proposals when drawing up a strategy and an action plan;
4.2 give utmost priority to implementing the encouragement made in Reykjavik to set up an *ad hoc* intergovernmental committee to organise, co-ordinate and run the implementation of the strategy and the action plan;
4.3 devote the normative part of the strategy to the formal recognition of the right to a healthy environment at the level of the Council of Europe, by developing a binding legal instrument as soon as possible;
4.4 in so doing, focus on the rapid implementation of Recommendation 2211 (2021), including devising a specific, autonomous instrument covering substantive rights and procedural matters relating to the environment that capitalises fully on the standards which have already been drawn up;
4.5 ensure that the draft convention superseding and replacing the Convention on the Protection of the Environment through Criminal Law (ETS No. 172), currently being prepared within the Council of Europe, incorporates the notion of ecocide as a criminal offense and establishes an effective monitoring mechanism;
4.6 give the *ad hoc* intergovernmental committee a multidisciplinary role, enabling it to act as an interface between the Council of Europe and civil society in its broadest sense and to carry out activities aimed at environmental monitoring and governance as soon as it has been set up;
4.7 highlight the committee's added value in dealings with the Organisation's other bodies, with which effective and focused partnerships may be established to drive forward change in environmental monitoring and governance;
4.8 set up a rapporteur group on environmental affairs at Committee of Ministers level to ensure unity and co-ordination in decision making.

CDDH COMMENTS

1. The CDDH takes note of Parliamentary Assembly Recommendation 2272 (2024), "Mainstreaming the human right to a safe, clean, healthy and sustainable environment with the Reykjavík process", and its accompanying Resolution 2545 (2024).

2. The CDDH recalls its earlier comments on Assembly Recommendation 2211 (2021), "Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe". It also recalls its comments on Assembly Recommendation 2251 (2023), "Political strategies to prevent, prepare for, and face the consequences of natural disasters", in which it referred to the initiation of its examination on the need for and feasibility of a further instrument or instruments on human rights and the environment. At the invitation of the

Committee of Ministers, this examination bore in mind the proposals made in Assembly Recommendation 2211 (2021) concerning protection of the right to a clean, healthy and sustainable environment.

3. As regards paragraph 4.3. of Recommendation 2272 (2024), the CDDH notes that since it adopted its comments on Assembly Recommendation 2211 (2021), the Committee of Ministers has given terms of reference to the CDDH for 2024–2027 calling for the preparation of a Study on the need for and feasibility of a further instrument or instruments in the field of human rights and the environment. The CDDH Drafting Group on human rights and environment (CDDH-ENV) has been working on this issue in close collaboration with representatives of the Assembly, a range of other Council of Europe bodies, other international organisations, and numerous civil society organisations. At its final meeting in March 2024, the CDDH-ENV adopted a draft report.

4. In this context, the CDDH recalls the rulings of the European Court of Human Rights in April 2024 in a group of cases relating to the effects of climate change. These rulings are relevant to a number of fundamental issues that were addressed in the draft report prepared by the CDDH-ENV. A clear understanding of the meaning and implications of the Court's rulings will require detailed examination and discussion.

5. In light of this development, the CDDH has prepared a progress report to the Committee of Ministers on its work on this issue, setting out its intentions for finalisation of its study on need and feasibility at its meeting in November 2024. Subject to the results of that study and any subsequent decisions taken by the Committee of Ministers, the envisaged Drafting Committee on human rights and the environment (DH-ENV) will respond promptly to any instructions given to it. More generally, the CDDH recalls that the negotiation of new legal instruments inevitably takes time.

6. As regards paragraph 4.4 of Assembly Recommendation 2272 (2024), whilst unclear about the intended relationship between the instrument described herein and that mentioned in paragraph 4.3 of this recommendation, the CDDH considers that all relevant issues have been examined by the CDDH-ENV in its draft report. The CDDH will take these issues into account when finalising its feasibility study.

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Recommendation 2275 (2024) "Ending the detention of "socially maladjusted" persons"

1. The right to liberty is one of the most fundamental human rights. It is guaranteed in Article 5 of the European Convention on Human Rights (ETS No. 5, "the Convention"). However, the Convention includes a limitation to the right to liberty specifically on the basis of mental impairment, drug or alcohol use, or not having a fixed abode. With the formulation in Article 5 (1) (e), reportedly stemming from the eugenics movement, "persons of unsound mind, alcoholics or drug addicts or vagrants" can be lawfully detained. These persons have been referred to as "socially maladjusted", including in the past by the European Court of Human Rights, an approach that is considered discriminatory and stigmatising in the human rights community.

2. The Convention is the only international human rights treaty that excludes these groups from the full enjoyment of the right to liberty. This is problematic as detaining such vulnerable persons effectively puts them at higher risk of systematic rights violations, on the sole ground that they might hypothetically pose a danger to others or that their own interest may necessitate their detention. The initial draft of the Convention did not contain a reference to "socially maladjusted" persons – indeed, the Parliamentary Assembly, in 1949, had recommended a text closer to the Universal Declaration of Human Rights.

3. In the last 70 years, there has been a worldwide paradigm shift to a human rights-based approach, as exemplified by the United Nations Convention on the Rights of Persons with Disabilities, ratified by all member States of the Council of Europe except Liechtenstein. The United Nations interpretation of the rights of persons with disabilities and the interpretation given by the Committee on the Rights of Persons with Disabilities do not allow for the deprivation of liberty based on an actual or perceived disability. The interpretation provided by the United Nations is, however, very seldom applied in the context of the European Court of Human Rights, since the formulation of Article 5 (1) (e) does not oblige it to.

4. The idea of social control – whether of persons with psychosocial disabilities, of persons who use drugs or alcohol, or of persons without a fixed abode – is not compatible with our 21st century understanding of human rights. The Assembly underlines the urgent need for the Council of Europe, as the leading regional human rights organisation, to fully integrate the worldwide paradigm shift to a modern human rights-based approach in its work. The time has come to move away from the discriminatory concept of excluding certain groups from human rights protection. The Assembly thus recommends that the Committee of Ministers:

4.1 support member States in taking the necessary steps for the full enjoyment of the right to liberty by the groups referred to in Article 5 (1) (e) of the Convention, in co-operation with the European Union, the United Nations and its agencies (in particular, the World Health Organization), non-governmental organisations and organisations of persons with lived experience, *inter alia*:

4.1.1 in removing discriminatory limitations on the full enjoyment of the right to liberty of the groups referred to from their constitutions, their legislation and their policies;

4.1.2 in developing adequately funded, human rights-compliant strategies for deinstitutionalisation with clear time frames and benchmarks with a view to a genuine transition to independent living for persons with disabilities, mental health problems, and for persons who use drugs or alcohol;

4.1.3 in running public awareness-raising campaigns, in order to overcome stereotypes and prejudice surrounding persons with disabilities, with mental health problems, persons who use drugs or alcohol or who do not have a fixed abode, and promote the full inclusion in society of these persons;

4.2 call on the Council of Europe Development Bank, the World Bank and other social development funds such as the European Structural and Investment Funds to support member States to allocate adequate resources for support services that avoid the detention and/or institutionalisation of persons with disabilities, mental health problems, or persons who use drugs or alcohol – such as

the strengthening, creating and maintaining of community-based services (including drug consumption rooms, therapeutic communities and supportive living arrangements);

4.3 in line with the unanimously adopted Recommendation 2158 (2019) "Ending coercion in mental health: the need for a human rights-based approach" and with Recommendation 2227 (2022) "Deinstitutionalisation of persons with disabilities", adopt guidance to member States promoting voluntary measures in mental healthcare services and pay due attention, in its further consideration of the draft additional protocol to the 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") concerning the protection of human rights and dignity of persons with regard to involuntary placement and involuntary treatment within mental healthcare services, to ensuring that any Council of Europe guidance is fully in line with the Convention on the Rights of Persons with Disabilities, the guidance of the United Nations and its agencies and the widely-accepted best practice.

CDDH COMMENTS

1. The CDDH takes note of Parliamentary Assembly Recommendation 2275 (2024), "Ending the detention of 'socially maladjusted' persons". Recalling the mandate given to it by the Committee of Ministers to advise other bodies on issues relating to the European Convention on Human Rights (the Convention) and the caselaw of the European Court of Human Rights (the Court), the CDDH makes the following observations.

2. The CDDH recalls that the Convention was drawn up as a response to the crimes of the Nazi regime, including the Holocaust and other atrocities committed in the pursuit of so-called racial purity. It would, therefore, disagree with the suggestion that Article 5(1)(e) of the Convention stemmed from "the eugenics movement" (paragraph 2 of Recommendation 2275). The CDDH sees nothing in the text of the Convention or of its *travaux préparatoires* that could justify this view.[2] It also notes that Recommendation 24 (1950), unanimously adopted by the then-Consultative Assembly, expressed a favourable opinion on the final draft text of the Convention, with no reservations on the provision in question.

3. As to the assertion that there has been a "worldwide paradigm shift to a human rights-based approach" that would not allow for deprivation of liberty based on actual or perceived disability (paragraph 3 of Recommendation 2275), the CDDH is aware of ongoing debate in this area. It recalls that an individual would not be detained under Article 5(1)(e) of the Convention on account of a "disability", but rather because of a pressing need to protect that individual or the wider public.[3] More generally, the CDDH considers the implication that Article 5(1)(e) is not "human rights-based" to be irreconcilable with the status of the Convention as a human rights treaty; it recalls that the Convention permits deprivation of liberty only on specific grounds as limited exceptions to the general principle that everyone has the right to liberty, on strict conditions and subject to stringent safeguards (see below). The CDDH also recalls the work of the former Committee on Bioethics (DH-BIO), in particular to prepare a draft Additional Protocol to the Convention on human rights and biomedicine (the Oviedo Convention, ETS No. 164) concerning the protection of human rights and dignity of persons with regard to involuntary placement and involuntary treatment within mental healthcare services, and that of its successor, the Steering Committee for Human Rights in the Fields of Biomedicine and

[2] The *travaux préparatoires* are recorded in doc. DH (56) 10, 08 August 1956.
[3] See, for example, *Enhorn v. Sweden*, App. no. 56529/00, judgment of 25 January 2005 – deprivation of liberty to prevent the spreading of infections disease only as a "last resort"; *Kharin v. Russia*, App. no. 37345/03, judgment of 03 February 2011 – detention of alcoholics only "for the protection of the public or their own interests".

Health (CDBIO), to prepare a draft recommendation promoting the use of voluntary measures in mental health care services.

4. The CDDH notes the assertion that detention under Article 5(1)(e) of the Convention puts those concerned "at higher risk of systematic rights violations, on the sole ground that they might hypothetically" pose a danger to others or that detention may be in their own interest (paragraph 2 of Recommendation 2275). It recalls, for example, that "persons of unsound mind" must be informed of the reasons for their detention, in accordance with Article 5(2) of the Convention,[4] and may only be lawfully detained should certain strict criteria be satisfied, including objective medial expertise unless emergency detention is required.[5] More generally, it recalls the detailed, specific safeguards under Article 5(4) of the Convention, as interpreted by the Court, which entitle everyone who is deprived of their liberty to take proceedings by which the lawfulness of their detention shall be decided speedily by a court and their release ordered if the detention is not lawful. It further recalls Article 13 of the Convention, which guarantees an effective remedy before a national authority to everyone who claims that their rights or freedoms have been violated. These provisions apply as much to persons deprived of their liberty in accordance with Article 5(1)(e) of the Convention as they would to persons deprived of their liberty under any other provision of Article 5(1).

5. The CDDH notes the assertion that Article 5(1)(e) of the Convention amounts to a discriminatory restriction on certain individuals' rights (paragraph 4 of Recommendation 2275). It recalls that under the Convention, differential treatment only amounts to discrimination if there is no objective and reasonable justification for it.[6] In this connection, the CDDH recalls that States have positive obligations under Article 2 of the Convention (right to life), including, for example, to afford general protection to society against potential violent acts of an apparently mentally disturbed person,[7] and to protect persons, including those suffering from mental health problems, from self-harm.[8] Deprivation of liberty may in certain circumstances be an appropriate means of fulfilling such obligations.

6. Finally, as regards the terminology used in Recommendation 2275 (2024), the CDDH notes that not only does the "initial draft of the Convention" contain no reference to "socially maladjusted persons", neither does the final, adopted text (paragraph 2 of Recommendation 2275). It notes that the expression "social control" is also not used in the Convention or by the Court in relation to Article 5(1)(e), and considers that it misrepresents the legitimate purpose that this provision is intended to serve (paragraph 4 of Recommendation 2275). More generally, the CDDH considers that the fact that the Convention uses terminology that was current at the time of its drafting but which has since evolved does not negate the validity of its provisions, especially bearing in mind the Court's interpretation of the Convention as a 'living instrument'.

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[4] *Van der Leer v. Netherlands*, App. no. 11509/85, judgment of 22 January 1990.
[5] See e.g. *Ilnseher v. Germany*, Apps. no. 10211/12 and 27505/14, Grand Chamber judgment of 4 December 2018.
[6] See e.g. *Molla Sali v. Greece*, App. no. 20452/14, Grand Chamber judgment of 19 December 2018.
[7] See e.g. *Bljakaj & otrs v. Croatia*, App. no. 74448/12, judgment of 18 September 2014.
[8] See e.g. *Fernandes de Oliveira v. Portugal*, App. no. 78103/14, Grand Chamber judgment of 31 January 2019.

Recommendation 2276 (2024) "Children in the world of work: eradicating harmful child labour"

1. The Parliamentary Assembly refers to its Resolution 2548 (2024) "Children in the world of work: eradicating harmful child labour" highlighting the need for more effective action to end child labour by 2025 in line with the commitment of member States of the Council of Europe under target 8.7 of the United Nations 2030 Agenda for Sustainable Development. Urgent and co-ordinated action by member States is necessary at national, European and international levels to meet this ambitious objective, using, amongst other, relevant Council of Europe instruments that provide a protective legal framework for children. The Assembly moreover strongly supports the Durban Call to Action which was adopted on 20 May 2022 at the 5th Global Conference on the Elimination of Child Labour and considers that it should serve as a basis for member States' action.

2. The Assembly therefore asks the Committee of Ministers to recommend to member and observer States of the Council of Europe to:

2.1 take urgent action under the Council of Europe Strategy for the Rights of the Child 2022-2027, the European Social Charter (ETS Nos. 35 and 163), the European Convention on Human Rights (ETS No. 5, Article 4 banning slavery and servitude), the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201, Lanzarote Convention), the Convention on Cybercrime (ETS No. 185, Budapest Convention), the Convention on Action against Trafficking in Human Beings (CETS No. 197), as well as the United Nations Convention on the Rights of the Child, the Convention on the Worst Forms of Child Labour (Convention No. 182) of the International Labour Organization and the Durban Call to Action in order to address the root causes of child labour and effectively eradicate child labour, in particular the worst forms of exploitation of children through forced work in sweatshops, sex industry, armed forces or criminal networks;

2.2 accede to the above-mentioned legal instruments if they have not yet done so;

2.3 seize opportunities of co-operation with the European Union, the International Labour Organization, the Organisation for Economic Co-operation and Development, the International Organization for Migration and the United Nations Children's Fund with a view to accelerating global action to eliminate child labour.

CDDH COMMENTS

1. The CDDH takes note of Parliamentary Assembly Recommendation 2276(2024), "Children in the world of work: eradicating harmful child labour", and its accompanying Resolution 2548(2024). The CDDH fully supports the Parliamentary Assembly's aim of eradicating child labour, in particular the worst forms such as those described in the Recommendation.

2. In this connection, the CDDH recalls Committee of Ministers Recommendation CM/Rec(2022)21 to member States on preventing and combating trafficking in human beings for the purpose of labour exploitation, the preamble to which recalls existing international instruments, including the 1999 ILO Worst Forms of Child Labour Convention, and underlines the Recommendation's relevance to the issue of child labour. The explanatory report to Recommendation CM/Rec(2022)21 includes a section specifically on protecting child victims in this context (paragraphs 37–39).