

CDDH(2018)18

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## **STEERING COMMITTEE FOR HUMAN RIGHTS**

### **(CDDH)**

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

#### **Texts of the Recommendations and elements of the Secretariat in view of possible CDDH comments**

#### Introduction

1. Following the decisions of the Ministers' Deputies adopted at their 1328<sup>th</sup> meeting (24 October 2018), the texts of the following Recommendations of the Parliamentary Assembly, adopted at its Autumn Plenary Session (8-12 October 2018), have been transmitted to the CDDH for information and possible comments:

- Recommendation 2140 (2018) – “Unlimited access to member States, including “grey zones”, by Council of Europe and United Nations human rights monitoring bodies” ;
- Recommendation 2141 (2018) – “Family reunification of refugees and migrants in the Council of Europe member States” ;

2. The present document contains the texts of these Recommendations and elements suggested by the Secretariat in view of possible CDDH comments which should reach the Secretariat of the Committee of Ministers **by 7 December 2018**.

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**RECOMMENDATION 2133 (2018) – “UNLIMITED ACCESS TO MEMBER STATES, INCLUDING “GREY ZONES”, BY COUNCIL OF EUROPE AND UNITED NATIONS HUMAN RIGHTS MONITORING BODIES “**

***Text of the Recommendation***

Parliamentary Assembly

1. The Parliamentary Assembly recalls its Resolution 2240 (2018) on unlimited access to member States, including “grey zones”, by Council of Europe and United Nations human rights monitoring bodies.

2. The Assembly calls on the Committee of Ministers to hold an urgent discussion whenever a Council of Europe human rights monitoring body is denied access, or allowed access only on conditions that are politically unacceptable or incompatible with the body’s mandate, to all or part of a member State’s territory. Such a discussion should aim at finding rapid, effective solutions to such situations, where appropriate by applying diplomatic pressure on the responsible authorities, including, where applicable, through the State exercising effective control over a territory and its de facto authorities.

3. The Assembly also calls on the Committee of Ministers to consider the introduction within the Council of Europe of a presumption that all member States consent to visits by Council of Europe and United Nations human rights monitoring bodies in circumstances where there is reason to believe that there are serious violations of fundamental human rights and dignity such as threats to life, torture, inhuman or degrading treatment or denial of basic humanitarian needs. Such a presumption could be rebuttable in exceptional circumstances, for instance where denial of access is necessary for reasons relating to national defence, public safety or serious local public disorder. It would, however, be for the State concerned to raise such objections upon being informed of a monitoring body’s intention to visit in circumstances that invoke the presumption of consent.

4. The Assembly further calls on the Committee of Ministers to undertake a detailed, systematic review of the state of co-operation between Council of Europe and United Nations human rights monitoring mechanisms, in co-operation with the United Nations, with a view to enhancing co-ordination and maximising synergies. Such a review should include exploration of possibilities for reinforcing the overall human rights monitoring of “grey zones” (States’ territories that are under the control of de facto authorities) within Council of Europe member States, including through joint activities of bodies responsible for monitoring comparable human rights issues, whilst respecting the particularities of those bodies’ mandates, composition, structures and working methods. The review could also engage with relevant monitoring mechanisms of other international organisations, including the Organization for Security and Co-operation in Europe.

***Draft comments***

1. The Steering Committee for Human rights takes note of Parliamentary Assembly Recommendation 2140 (2018) : “*Unlimited access to member States, including “grey zones”, by Council of Europe and United Nations human rights monitoring bodies*”. It shared its concerns about the difficulties encountered by Council of Europe and United Nations human rights monitoring bodies, as well as by other international organisations, to access to member States’ territories which are “grey zones”.
2. The CDDH recalls the importance of ensuring the implementation of the Council of Europe’s treaties on the whole territory of each contracting Party. It notes in this respect that the visits made by the monitoring bodies established by these instruments help

formulating proposals aimed at improving respect for the conventions in the visited countries. However, whereas the CPT benefits from a presumption that all member States consent to its visit thanks to the combination of Articles 8 and 9 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, this is not the case for other monitoring bodies such as the Advisory Committee of the Framework Convention for the Protection of National Minorities, the European Commission against Racism and Intolerance (ECRI), the GRECO or the GRETA.

3. Consequently, the CDDH considers it useful to reflect upon the opportunity and feasibility of establishing, within the Council of Europe, a rebuttable presumption of consent to the visits carried out by the monitoring bodies which work on some aspects on human rights protection.
4. Finally, the CDDH shares the approach of the Assembly according to which the strengthening of human rights monitoring in the “grey zones” should be discussed in liaison with the United Nations, with a view, as appropriate, to conducting joint actions by both Organisations.

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## **RECOMMENDATION 2141 (2018) – “FAMILY REUNIFICATION OF REFUGEES AND MIGRANTS IN THE COUNCIL OF EUROPE MEMBER STATES”**

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

#### **Parliamentary Assembly**

1. Referring to its Resolution 2243 (2018), the Parliamentary Assembly emphasises the importance of protecting family life under Article 8 of the European Convention on Human Rights (ETS No. 5) and recommends that the Committee of Ministers:

1.1. develop guidelines for the application of the right to family reunification of refugees and migrants as well as for mutual legal assistance and administrative co-operation between member States and with third countries in this field;

1.2. invite member States to establish bilateral arrangements to represent each other for the purposes of collecting visa applications and issuing visas;

1.3. invite the member States that have not yet done so to join, or co-operate with, the European Union Schengen Visa Information System with a view to exchanging the data necessary for enabling more rapid family reunification;

1.4. co-operate with the International Committee of the Red Cross in promoting mechanisms and action for finding missing family members of refugees, in co-operation with national Red Cross and Red Crescent societies and national parliaments;

1.5. reinforce Council of Europe action on combating trafficking of child refugees, ensuring that unaccompanied child refugees are reunited with their parents, unless this is against the best interests of a child, for example if parents have participated in the trafficking of this child.

**Draft comments**

1. The Steering Committee for Human rights takes note of Parliamentary Assembly Recommendation 2141 (2018) "*Family reunification of refugees and migrants in the Council of Europe member States*". It underlines the necessity to protect the right to respect for family life as recognised by Article 8 of the European Convention on Human Rights and the relevant case-law of the Court, and stresses the importance of allowing refugee children to join their parents, unless it is exceptionally deemed to be against their best interests.
2. The CDDH recalls Article 19(6) of the European Social Charter which obliges Contracting States to facilitate the family reunion of migrant workers who legally reside in the country, and the relevant conclusions of the European Committee of Social Rights, specifying that this provision also applies to refugees.
3. The CDDH draws attention to Recommendation CM/Rec (2007)9 of the Committee of Ministers to member States on life projects for unaccompanied migrant minors. Paragraphs 18 and 24 encourage member States to seek the parents/guardians of unaccompanied minors, establishing contact to facilitate possible family reunification and/or to expedite departure to a third country to join family members. It also recalls Recommendation No. R(99)23 of the Committee of Ministers on family reunion for refugees and other persons in need of international protection, as well as Recommendation (2002)4 on the legal status of persons admitted for family reunification.
4. In this context, the CDDH welcomes the work of the Special Representative of the Secretary General on Migration and Refugees. This work includes the drafting of a manual on the standards and good practices for restoring family links and family reunification. The manual aims at facilitating the cooperation and training of relevant professionals in Council of Europe member States. The CDDH Drafting Group on Migration and Human Rights (CDDH-MIG) has also, *inter alia*, addressed the topic of the right to respect for family life in the context of immigration detention and alternatives to immigration detention. Besides, in October 2018, it deliberated on future work on reception conditions for migrant and refugee children.
5. [As regards the issue of human trafficking emphasized in the Parliamentary Assembly Recommendation 2141 (2018), the CDDH highlights in particular the on-going work of GRETA in the field, which in recent years has prioritised and outlined targeted prevention measures against the human trafficking of unaccompanied or separated minors and irregular migrant children.]
6. The CDDH believes that its Drafting Group constitutes an appropriate framework to consider questions linked to the family reunification of unaccompanied children, including the possibility to prepare guidelines for the implementation of the right to family reunification.