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Member states' duty to co-operate with the European Court of Human Rights

Reply to Recommendation¹: Recommendation 1809 (2007)
Committee of Ministers

1. The Committee of Ministers has examined Parliamentary Assembly [Recommendation 1809 \(2007\)](#) on "Member states' duty to co-operate with the European Court of Human Rights". It has brought the recommendation to the attention of member states and forwarded it to its Steering Committee for Human Rights (CDDH). The CDDH has given an opinion, appended to this reply, with which the Committee fully concurs.

2. It points out that in its interim reply adopted at the 1009th meeting of the Ministers' Deputies (24 October 2007), it had congratulated the Parliamentary Assembly on the work accomplished in the preparation and adoption of [Resolution 1571 \(2007\)](#) and [Recommendation 1809 \(2007\)](#) on "Member states' duty to co-operate with the European Court of Human Rights".

3. As stated in the recommendation itself, the Committee of Ministers has, on numerous occasions, stressed the importance of member states' obligation to co-operate with the European Court of Human Rights. For example, in its Resolution ResDH(2006)45, the Committee of Ministers, emphasising that respect of this obligation was of fundamental importance for the proper and effective functioning of the Convention system, deplored the fact that violations of this obligation had nevertheless continued to be found in recent judgments of the Court. In this resolution, the Committee of Ministers called on contracting states to ensure that all measures had been taken so that the relevant authorities complied with requests for assistance from the Court under Article 38 of the European Convention on Human Rights ("the Convention") and to ensure that authorities effectively seized with such requests complied strictly with them.

4. The Committee of Ministers notes that questions relating to unlawful acts from which applicants to the Court, or people close to these applicants, had suffered, have been discussed on several occasions by the Ministers' Deputies.

5. In view of the fundamental importance of member states' duty to co-operate with the Court, the Committee of Ministers informs the Parliamentary Assembly that, in accordance with the opinion of the Steering Committee for Human Rights (CDDH), it is intending to draw up a draft resolution addressing the concerns expressed by the Assembly in its [Resolution 1571 \(2007\)](#) and its [Recommendation 1809 \(2007\)](#), in particular with regard to the protection of applicants, their lawyers and members of their family, the investigations to be carried out and the measures to be taken.

1. adopted at the 1067th meeting of the Ministers' Deputies (9 October 2009)



Appendix to the reply

CDDH opinion² on Parliamentary Assembly Recommendation 1809 (2007) and Resolution 1571 (2007) on “Member states’ duty to co-operate with the European Court of Human Rights”

1. The Steering Committee for Human Rights (CDDH) concurs entirely with the Assembly that whilst states generally co-operate well with the Court, it is a matter of grave concern that isolated cases persist of interference with applicants, their families and their lawyers and other representatives.
2. The CDDH agrees fully with the Assembly’s conclusion that “the right of individuals to apply to the Court is a central element of the human rights protection mechanism in Europe and must be protected from interference at all levels.” It strongly supports the philosophy running through the Assembly’s report and adopted texts and shares the Ministers’ Deputies’ conclusion that the issues raised are of great importance for the effectiveness of the European system of human rights protection.³
3. All States Parties to the Convention have undertaken not to hinder in any way the effective exercise of this right (Article 34 of the Convention). Furthermore, the Court’s case law has now clearly established that all States Parties are obliged to comply with an order of interim measures made under Rule 39 of the Rules of Court and that non-compliance may imply a violation of Article 34.⁴
4. In particular, the CDDH would underline the Assembly’s recommendations to member states made in paragraphs 17.2 and 17.3 of [Resolution 1571 \(2007\)](#). These duties to protect and to investigate reflect states’ basic positive obligations that are an essential characteristic of the Convention system as a whole.
5. As regards the question posed by the Ministers’ Deputies concerning the advisability of drawing up a recommendation to member states along the lines proposed by the Assembly, the CDDH is of the opinion that such a course of action would not be appropriate at present. It suggests that the Deputies, by means of a resolution, echo the worries expressed by the Assembly in particular in paragraphs 17.2 and 17.3 of the aforementioned resolution. Finally, it considers that the issue of Rule 39 of the Rules of Court, including the question of its status, should be examined in detail in the context of future work on a Statute for the Court.

2. Adopted by the CDDH at its 68th meeting (24-27 March 2009).

3. See doc. CM/Del/Dec(2007)1009/3.1a para. 4, 24 October 2007.

4. See e.g. *Mamatkoulou v. Turkey*, applications Nos 46827/99 & 49651/99, judgment of 4 February 2005, para. 129.