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Abuse of state secrecy and national security: obstacles to parliamentary and judicial scrutiny of human rights violations

Reply to Recommendation¹: Recommendation 1983 (2011)
Committee of Ministers

1. The Committee of Ministers has examined with interest Recommendation 1983 (2011) of the Parliamentary Assembly on “Abuse of State secrecy and national security: obstacles to parliamentary and judicial scrutiny of human rights violations”. It has transmitted it to a number of intergovernmental bodies² for comments, and to the European Commission for Democracy through Law (the Venice Commission) and the Council of Europe Human Rights Commissioner for information.

2. The Parliamentary Assembly recommendation is a convincing reminder that where the cloak of secrecy is used to cover violations of human rights, not only have State authorities failed to live up to their duty to protect the rights of their citizens but also democracy and rule of law are seriously in danger. This is not less so when extensively broad assertions of the notions of State secrecy extend to information or data on which the public has a legitimate interest of disclosure.

3. The Committee of Ministers has taken note of the Parliamentary Assembly’s request that it draw up a recommendation on the notion of State secrecy and the use to be made of it. The Committee notes that some of the concerns of the Assembly are met in its Guidelines on eradicating impunity for serious human rights violations, adopted on 30 March 2011. It draws attention to the fact that these guidelines provide, *inter alia*, that “States are to combat impunity as a matter of justice for the victims” (Chapter I, paragraph 3) and that they “are addressed to States, and cover the acts or omissions of States, including those carried out through their agents” (Chapter II, paragraph 2). However, the Committee of Ministers considers that the issues raised by the Assembly are of importance and it will continue to take them into consideration in its work.

4. With regard to the Parliamentary Assembly’s recommendation that all member States be invited to review or, if necessary, set up suitable and effective parliamentary and other independent mechanisms for the oversight of the secret services, the Committee of Ministers would again draw attention to the Guidelines on eradicating impunity for serious human rights violations. These guidelines invite States to “consider establishing non-judicial mechanisms, such as parliamentary or other public inquiries, ombudspersons, independent commissions and mediation, as useful complementary procedures to the domestic judicial remedies guaranteed under the Convention”³ (Chapter XV) and suggest that they “should also establish mechanisms to ensure the integrity and accountability of their agents” (Chapter III, paragraph 7).

5. Furthermore, in line with the Assembly’s recommendation, the Committee of Ministers invites member States to review, where necessary, criminal and civil justice procedures aimed at facilitating the establishment of special procedures in the criminal and civil courts to permit proper conduct of proceedings involving the handling of information of a sensitive nature covered by secrecy.

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2. Steering Committee on Human Rights (CDDH), Steering Committee on the Media and New Communication Services (CDMC) and European Committee on Crime Problems (CDPC).

3. European Convention on Human Rights.



6. Finally, the Committee of Ministers underlines the importance of the public's participation in governance, which is essential to both judicial and parliamentary scrutiny of recourse to State secrecy. Consequently, the Committee encourages member States to ratify the Council of Europe Convention on Access to Official Documents (CETS No. 205), stipulating that limitations to the right of access to public documents must be set down precisely in law, be necessary in a democratic society and proportionate.