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Strengthening international regulations against trade in goods used for torture and the death penalty

Reply to Recommendation[1]: Recommendation 2123 (2018)
Committee of Ministers

1. The Committee of Ministers has carefully examined Recommendation 2123 (2018) on "Strengthening international regulations against trade in goods used for torture and the death penalty", which it has forwarded to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the Steering Committee for Human Rights (CDDH) and the European Committee on Crime Problems (CDPC) for information and any comments.

2. The Committee of Ministers reiterates its unwavering commitment to the absolute prohibition of torture and inhuman or degrading treatment or punishment and to the abolition of the death penalty, which constitute remarkable standard-setting achievements of the Council of Europe. It emphasises that member States' compliance with their commitments involves them taking effective measures to prevent activities that might facilitate or contribute to application of the death penalty, torture and inhuman or degrading treatment or punishment in other countries.

3. The question of the abolition of the death penalty is examined every six months by the Committee of Ministers, and the member States that are not yet Parties to Protocols no. 6 and no. 13 to the European Convention on Human Rights are called upon, at that time, to ratify them. Similarly, the Committee of Ministers firmly and systematically condemns every execution carried out in Japan and the United States, which hold observer status with the Council of Europe, and in Belarus. Moreover, in April 2018, the Committee of Ministers instructed its Rapporteur Group on Human Rights to examine the initial draft Resolution of the General Assembly of the United Nations on a moratorium on the use of the death penalty to be prepared in New York in 2018 by the Inter-Regional Task Force on the death penalty (IRTF), with a view to identifying issues which Council of Europe member States may actively promote in the negotiation process. Accordingly, the Committee of Ministers is resolutely committed to the worldwide abolition of the death penalty.

4. The absolute prohibition of torture and inhuman or degrading punishment or treatment also remains a priority for the Council of Europe, and the Committee of Ministers welcomes in this connection the key role played by the European Court of Human Rights and the European Committee for the Prevention of Torture (CPT). It draws the Assembly's attention to the conference organised in March 2018 by the Danish Chairmanship of the Committee of Ministers on preventing torture and ill-treatment during the initial stages of police custody and pre-trial detention. With regard to the Assembly's suggestion that CPT reports be published (paragraph 10.6), the Committee of Ministers reiterates its view that the publication of CPT reports helps to prevent violations of the rights of persons deprived of their liberty and it once again encourages the States Parties to authorise publication of the reports concerning them. In this context, it also encourages States which have not done so to request in advance the automatic publication of future CPT visit reports and related government responses.

1. Adopted at the 1323rd meeting of the Ministers' Deputies (12 September 2018).

5. Where regulating the trade in goods used for torture and the death penalty is concerned, the Committee of Ministers is fully aware of this issue, as demonstrated in paragraphs 24 and 27 of the Appendix to its Recommendation CM/Rec(2016)3 on human rights and business, which set out specific provisions aimed at prohibiting enterprises domiciled within the jurisdiction of member States to trade in such goods and informing those enterprises of the potential impact of their operations on human rights.

6. The fact that certain goods used to carry out torture and the death penalty can be produced or marketed in Council of Europe member States and exhibited at trade shows or accessible on the websites of European companies is undeniably a source of concern. The Committee of Ministers recalls that the CPT has opposed on several occasions the use of certain devices or equipment (e.g. electric stun body belts; cage or net beds) or has urged the national authorities to put an end to unacceptable practices such as the use of devices on detained persons to block their vision or blindfolding them during transportation or police interviews. The CPT has also made a series of recommendations in order to mitigate the risks of misuse of other devices or equipment referred to in the Assembly's Recommendation.

7. The Council of Europe is aware of the need for information to be shared between States on best practices for combating dealing in goods used for torture and the death penalty. A digital platform on human rights and business is being set up for that purpose and should serve to:

7.1. raise awareness of member States' authorities about international and regional mechanisms for the protection of human rights and about the reports of independent organs of the civil society as regards the situation of the death penalty, torture and inhuman or degrading treatment or punishment in third countries which they should take into account when examining requests for authorisation of trade in relevant goods;

7.2. provide periodic reports on the States' regulatory activities in this area, including decisions given on requests for authorisation of trade in specific goods and the specific reasons for those decisions.

8. In addition, the Committee of Ministers welcomes the creation, in November 2017, of the Global Alliance to end trade in goods used for capital punishment and torture. It is pleased to see that 41 Council of Europe member States have adopted the Alliance's political declaration and invites the other member States to join them.

9. The Committee of Ministers agrees with the Assembly that strengthening international regulations against trade in goods used for torture and the death penalty would be a useful addition to efforts at European and global levels to prohibit torture and inhuman or degrading treatment or punishment and abolish the death penalty. It is convinced that, in view of its pioneering role in these areas, the Council of Europe should contribute, for example by providing member States with a general framework and guidance for measures to take, with a view to establishing and implementing an effective regulatory system. Accordingly, the Committee of Ministers believes that it would be expedient to have a study carried out by the Steering Committee for Human Rights enabling it to gauge the feasibility of a legal instrument in this sphere, taking account of existing work within the framework of the Council of Europe and other international arenas, as well as examples of good practices to be gathered via the new digital platform on human rights and business. It agrees to come back to this matter in the light of the findings of the feasibility study.