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Addressing the issue of Daesh foreign fighters and their families returning from Syria and other countries to the member States of the Council of Europe

Reply to Recommendation¹: Recommendation 2244 (2023)
Committee of Ministers

1. The Committee of Ministers has carefully examined Parliamentary Assembly [Recommendation 2244 \(2023\)](#) and forwarded it to the Council of Europe Committee on Counter-terrorism (CDCT), the European Committee on Legal Co-operation (CDCJ) and the Steering Committee for the Rights of the Child (CDENF) for information and possible comments. It welcomes the attention given by the Assembly to the potential return of Daesh foreign fighters and their families, including children, to Council of Europe member States. The Committee agrees that this is a pressing issue requiring concerted international action and the broadest possible co-operation.

2. In this context, the Committee draws attention to the new Counter-terrorism Strategy for 2023-2027, which it adopted on 10 February 2023, setting out a number of actions aimed at supporting member States in addressing challenges related to disengagement and reintegration, links between terrorism and violations of the laws on armed conflict, and return and relocation of foreign terrorist fighters. In addition, the Council of Europe Strategy for the Rights of the Child (2022-2027) contains objectives and actions which are relevant to safeguarding the rights of children of Daesh foreign fighters.

3. With respect to paragraph 4.1 of the recommendation, the Committee notes that the Counter-terrorism Strategy calls for the drafting of non-binding instruments to further support member States in the areas of deradicalisation, disengagement and social reintegration of persons involved in, or at risk of being involved in, terrorism, particularly as concerns women and children who have been involved with, or exploited by, terrorist groups. This work will be based on the report under preparation by the CDCT on comparative practices in these areas that take stock of advancements across member States.

4. As concerns paragraph 4.2 of the recommendation, the Committee of Ministers welcomes the call for justice and accountability for foreign fighters suspected of having perpetrated acts of terrorism, war crimes, crimes against humanity and genocide. It fully agrees that the magnitude and severity of these crimes call for an examination of the interplay between counter-terrorism legislation and the rules of armed conflict, including the issue of cumulative prosecutions. In this context, the Committee informs the Assembly that, under the Counter-terrorism Strategy, the CDCT will continue work on the use of information collected in conflict zones as evidence in criminal proceedings for terrorism and other offences, the elaboration of guidance on prosecuting terrorist offences and serious violations of international humanitarian law committed in the context of an armed conflict, and efforts aimed at raising capacities of national authorities to consider and apply cumulative charging, with a view to effectively prosecuting persons suspected of having been involved in terrorism offences or serious violations of international humanitarian law committed in the context of an armed conflict.

1. Adopted at the 1477th meeting of the Ministers' Deputies (4 October 2023).



5. Regarding paragraph 4.3, the Committee considers that there are substantial complications involved in the setting up of an international tribunal, or hybrid tribunal with jurisdiction over international crimes, to prosecute Daesh foreign fighters, not least the question of the death penalty mentioned by the Assembly. It recalls that the CDCT has on numerous occasions welcomed efforts made by member States to ensure judicial processing of individuals suspected of involvement in terrorist activities in Syria and Iraq, and supported these efforts through activities to improve international co-operation in this area, such as its 24/7 Network on Foreign Terrorist Fighters. The CDCT also plans to prepare a report on the status and developments regarding foreign terrorist fighters in Europe to ensure that member States are kept abreast of threats within and beyond Europe stemming from European foreign terrorist fighters.
6. Concerning paragraph 4.4, the Committee acknowledges the complicated situation, both from a security and human rights perspective, of children left in camps in North-East Syria, where they are detained in wholly unsuitable conditions and exposed to violence, sexual abuse and exploitation, risk of radicalisation and other violations of their fundamental rights.
7. On the question of deprivation of nationality, the Committee of Ministers agrees that children of foreign fighters should be treated first and foremost as children and should not bear the consequences of the offences committed by their family members. In this context it recalls the safeguards set out in the 1961 UN Convention on the Reduction of Statelessness and the 1997 European Convention on Nationality (ETS No. 166), as well as in Recommendation [CM/Rec\(2009\)13](#) on the Nationality of Children. It informs the Assembly that further work is planned on specific issues related to statelessness of children and their access to nationality.
8. The Committee of Ministers further agrees, in principle, that children of foreign fighters who are nationals of member States, when they are repatriated, it can be with their mothers where possible. This is for each member State to decide. In the judicial procedures against parents upon their arrival on the national territory of a member State, maintaining the link with their children should then be considered on a case-by-case basis, taking into account the best interests of the children. It informs the Assembly that work connected with these challenging questions is currently ongoing or planned, including draft recommendations on the rights and best interests of the child in parental separation and in child care proceedings; guidance on (re)integration programmes for children exposed to terrorist violence and ideologies; assessment of the needs and challenges of child victims and witnesses of violent crimes within the justice system, including re-integration and rehabilitation of children affected by terrorism; and children's rights in crisis and emergency situations, including armed conflict and terrorism.