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Pegasus and similar spyware and secret State surveillance

Reply to Recommendation[1]: Recommendation 2258 (2023)

1. The Committee of Ministers has carefully examined Parliamentary Assembly Recommendation 2258 (2023) "Pegasus and similar spyware and secret State surveillance" and has forwarded it to the Steering Committee for Human Rights (CDDH) and the Steering Committee on Media and Information Society (CDMSI) for information and possible comments.

2. The Committee of Ministers shares the Assembly's concern at the deeply intrusive nature of Pegasus and similar spyware tools which turn targeted smartphones into 24-hour surveillance devises. Given the role played by mobile phones in collecting, storing and processing large amounts of highly sensitive personal data, there is a resulting risk of serious violations of the right to private and family life, as protected by Article 8 of the European Convention on Human Rights.

3. In view of the gravity of this threat, the Committee of Ministers considers the Assembly's recommendation in paragraph 1.1 to prepare a non-binding instrument on secret surveillance and human rights to be feasible and to have genuine added value. It invites the CDDH to bear this in mind for the mid-term review of its terms of reference, if appropriate. Such an instrument – a recommendation or guidelines – should apply principles from the European Court of Human Rights jurisprudence to the case of spyware, include examples of existing national good practices, and take into account subsequent developments in the Court's case law and the Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS No. 223).

4. As regards the Assembly's proposal in paragraph 1.2 to examine the feasibility of a Council of Europe convention on the acquisition, use, sale and export of spyware, and in light of Recommendation CM/Rec(2016)3 on human rights and business which recalls that States have a duty to protect individuals against human rights abuses by third parties, including business enterprises, the Committee of Ministers is of the view that this should only be considered following any work on a non-binding instrument as indicated above, where necessary.

5. In respect of the recommendation in paragraph 1.3 to co-ordinate efforts with other international organisations, the Committee of Ministers assures the Assembly that this is done systematically in standard-setting and co-operation work. Moreover, at their 133rd Ministerial Session on 16 and 17 May 2024, the Committee of Ministers reiterated the importance of the reinforcement of the Council of Europe's external dimension and co-operation with the EU and the UN among other international organisations.

1. Adopted at the 1505th meeting of the Ministers' Deputies (3 September 2024).