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Strasbourg, 14 January 2016

CDDH(2015)R84

STEERING COMMITTEE FOR HUMAN RIGHTS  
(CDDH)

## **REPORT**

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84<sup>th</sup> meeting  
7–11 December 2015

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## List of Addenda

- I. CDDH REPORT ON THE LONGER-TERM FUTURE OF THE SYSTEM OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS**
- II. DRAFT RECOMMENDATION OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON HUMAN RIGHTS AND BUSINESS AND ITS DRAFT EXPLANATORY MEMORANDUM**
- III. DRAFT GUIDELINES OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON THE PROTECTION AND PROMOTION OF HUMAN RIGHTS IN CULTURALLY DIVERSE SOCIETIES**
- IV. THE IMPACT OF THE ECONOMIC CRISIS AND AUSTERITY MEASURES ON HUMAN RIGHTS IN EUROPE – FEASIBILITY STUDY**

The Steering Committee for Human Rights (CDDH) held its 84<sup>th</sup> meeting from 7 to 11 December 2015 in Strasbourg with Mr Vít A. SCHORM (Czech Republic) in the Chair. The list of participants appears in Appendix I. The agenda, as adopted, appears in Appendix II.

## MAIN CONCLUSIONS

In particular, at this meeting the CDDH:

1. took note of informal information provided by the Delegation of the European Union to the Council of Europe concerning in particular the state of play on the European Union accession to the European Convention on Human Rights (see Appendix VIII);
2. adopted its comments on Parliamentary Assembly Recommendations 2078 (2015) “Countries of transit: meeting new migration and asylum challenges”, 2079 (2015) “Implementation of judgments of the European Court of Human Rights” and 2081 (2015) “Abuse of pretrial detention in States Parties to the European Convention on Human Rights” (see Appendix III);
3. concerning the reform of the Court:
  - i. adopted its report on the longer-term future of the system of the European Convention on Human Rights and decided to transmit it to the Committee of Ministers (document CDDH(2015)R84 Addendum I);
  - ii. took note of information on the Multilateral Round Table on “Reopening of proceedings following a judgment of the European Court of Human Rights” (Strasbourg, 5–6 October 2015) and on the International Conference “Enhancing national mechanisms for effective implementation of the European Convention on Human Rights” (Saint-Petersburg, 22–23 October 2015);
4. concerning development and promotion of human rights:
  - i. adopted the draft Recommendation of the Committee of Ministers to member States on human rights and business and its draft explanatory report and decided to transmit them to the Committee of Ministers (document CDDH(2015)R84 Addendum II);
  - ii. adopted the draft Guidelines on the promotion and protection of human rights in culturally diverse societies and their explanatory memorandum and decided to transmit them to the Committee of Ministers (document CDDH(2015)R84 Addendum III);
  - iii. adopted its feasibility study on the impact of the economic crisis and austerity measures on human rights in Europe and decided to transmit it to the Committee of Ministers (document CDDH(2015)R84 Addendum IV);
5. concerning bioethics, took note of the work conducted by the Committee on Bioethics (DH-BIO) regarding notably the draft Recommendation on the processing, for insurance purposes, of health-related data, including data resulting from genetic testing and of the decision taken unanimously to recommend the CDDH to approve the draft instrument and send it to the Committee of Ministers with a view to its adoption;

6. exchanged views on the draft Recommendation of the Committee of Ministers to the member States on young people's access to fundamental rights, as prepared by the Joint Council on Youth (CMJ);
7. exchanged views on the information provided by experts representing the CDDH in other bodies (see [Appendix V](#));
8. appointed its Rapporteur on Roma and Traveller Issues;
9. exchanged views with Professor Dr Theresia DEGENER (Germany), vice-Chair of the UN Committee on the Rights of Persons with Disabilities and decided on possible invitees for its upcoming meetings (see [Appendix IX](#));
10. exchanged views and information on prospects for further signatures and ratifications of a number of instruments (European Agreement relating to persons participating in proceedings of the European Court of Human Rights (CETS No. 161); Protocols Nos. 15 and 16 to the European Convention on Human Rights; Council of Europe Convention on Access to Official Documents (CETS No. 205));
11. agreed on the organisation of its work during the 2016–2017 biennium;
12. held elections (see [Appendix VII](#));
13. adopted the calendar of meetings of the CDDH and its subordinate bodies (see [Appendix X](#));
14. agreed on the following deadline for submission of comments with respect to the following matter(s):

8 January 2016: Suggestions for substantial corrections to the draft meeting report (CDDH(2015)R84) that the Secretariat will send to all participants by 22 December 2015: [VSchorm@msp.justice.cz](mailto:VSchorm@msp.justice.cz); [alfonso.desalas@coe.int](mailto:alfonso.desalas@coe.int)

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## THE REPORT

### **ITEM 1: OPENING OF THE MEETING, ADOPTION OF THE AGENDA AND ORDER OF BUSINESS**

1. Mr Mikhail LOBOV, Head of the Human Rights Policy and Co-operation Department, welcomed the experts and mentioned the work with which the Ministers' Deputies had entrusted the CDDH for the next biennium, in particular that to be undertaken in cooperation with other relevant bodies of the Organisation.

2. Mr Philippe BOILLAT, Director General, Directorate General of Human Rights and Rule of Law (DGI), attended the informal statement and exchange of views with Ms Vanda ŠIPOŠOVÁ, Deputy to the Head of the European Delegation to the Council of Europe, on the prospects regarding accession by the Union to the European Convention on Human Rights. Ms Šipošová reiterated the firm commitment of the EU towards accession to the European Convention on Human Rights, which constitutes a binding obligation under the Lisbon Treaty.

3. Recalling the personal commitment of Vice-President Timmermans and the priority given to this file within the working programme 2016 of the European Commission, she indicated that the "Working Party on Fundamental Rights, Citizens Rights and Free Movement of Persons" (FREMP) has resumed its discussions aiming at finding technical solutions to the questions identified by the opinion of the Court of Justice. She expressed the view that once the internal issues will be resolved, negotiations are facilitated by the fact that no new negotiation mandate is required.

4. The CDDH thanked Ms Šipošová for her presentation. The text of her intervention appears in Appendix VIII hereafter.

### **ITEM 2: RECOMMENDATIONS OF THE PARLIAMENTARY ASSEMBLY**

5. The CDDH adopted its comments on Parliamentary Assembly Recommendations 2078 (2015) "Countries of transit: meeting new migration and asylum challenges", 2079 (2015) "Implementation of judgments of the European Court of Human Rights" and 2081 (2015) "Abuse of pretrial detention in States Parties to the European Convention on Human Rights" (see Appendix III hereafter).

### **ITEM 3: REFORM OF THE COURT (DH-GDR)**

#### ***3.1 Draft CDDH report on the longer-term future of the Convention system***

6. The Chair of the Committee of experts on the reform of the Court (DH-GDR), Mr Morten RUUD (Norway), reported on the 9<sup>th</sup> meeting (17–20 November 2015) of the Committee which was in particular devoted to the detailed examination and adoption of the draft report on the longer-term future of the Convention system. The Chair of the drafting Group "F" on the reform of the Court (GT-GDR-F), Mr Martin KUIJER (the Netherlands), provided information about the preparatory work carried out in respect of the elaboration of the text.

7. Following its examination, the CDDH adopted the text as it appears in document CDDH(2015)R84 Addendum I. One delegation abstained. The CDDH congratulated the two bodies and their Chairs for the quality of the work accomplished. It paid particular tribute to

the Chair of the drafting Group for his personal commitment in the preparation of the text as well to the whole Group “F” and the Secretariat. It also expressed its gratitude to the seven independent external experts<sup>1</sup> who had participated in this work.

### 3.2 *Activities during the 2016–2017 biennium*

8. The CDDH noted that the Terms of reference for the Committee of experts on the system of the European Convention on Human Rights (DH-SYSC) has been adopted without modifications. It appears in Appendix IV of this report. The Chair of the DH-GDR presented the possible planning and working methods of the DH-SYSC during the 2016–2017 biennium, as adopted by the DH-GDR (doc. DH-GDR(2015)R9, Appendix III). The CDDH endorsed these proposals.

- (i) Regarding the choice of the theme for the first exchange of information of the DH-SYSC in spring 2016 on the implementation of the Convention and the execution of the Court’s judgments, it noted the theme selected, *i.e.* the mechanisms for ensuring the compatibility of laws with the Convention (arrangements, advantages, obstacles). The Secretariat, entrusted with the organisation of the holding of this exchange of views will communicate information thereon in due course;
- (ii) Regarding the exchange of views on the re-examination or reopening of cases following judgments of the Court, held at the 8<sup>th</sup> meeting of the DH-GDR, the CDDH took note of the future online publication of the overview of this exchange (document DH-GDR(2015)008restricted), once the Secretariat has included modifications that may be sent by the experts by Friday 15 January 2016.

9. The CDDH considered that it would be useful if the DH-SYSC, like the CDDH, invites bodies and figures specialised in some of the work that this new Committee will carry out during the biennium 2016–2017, notably regarding the follow up work to the report on the longer-term future of the system of the Convention.

10. Furthermore, the CDDH decided to entrust the DH-SYSC with the systematic follow-up on the prospects of signatures and ratifications of Protocols No. 15 and 16 to the Convention as well as the follow-up of the European Agreement relating to Persons Participating in Proceedings of the European Court of Human Rights (see Item 10 hereafter). In addition to request of information from concerned experts, awareness-raising actions could be envisaged to reach a higher number of signatures and ratifications of these instruments.

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<sup>1</sup> Sir Nicolas BRATZA (former President of the European Court of Human Rights), nominated by the Court; Mr Alvaro GIL-ROBLES (former Council of Europe Commissioner for Human Rights), nominated by the Secretary General; Professor Christoph GRABENWARTER (Judge, Constitutional Court of Austria; Professor, University of Vienna; member of the European Commission for Democracy through Law (“the Venice Commission”)), nominated by the Secretary General; Mr Bahadır KILINÇ (Judge Rapporteur, Deputy Secretary of the Constitutional Court of Turkey at the time of appointment), nominated by the Secretary General; Mr Alain LACABARATS (Chamber President, Court of Cassation of France), nominated by the Consultative Council of European Judges; Professor Giorgio MALINVERNI (Honorary Professor, University of Geneva; former Judge of the Court), nominated by the Venice Commission; and Professor Tatiana NESHATAEVA (Judge, Court of the Eurasian Economic Union; and Professor, Russian State University of Justice), nominated by the Secretary General.

### **3.3 Information on relevant events**

11. The CDDH took note of brief information provided by experts and the Secretariat on:
  - (i) The Multilateral Round Table on “Reopening of proceedings following a judgment of the European Court of Human Rights” (Strasbourg, 5–6 October 2015);
  - (ii) The International Conference “Enhancing national mechanisms for effective implementation of the European Convention on Human Rights” (Saint-Petersburg, 22–23 October 2015);
  - (iii) The forthcoming holding of a Conference in Oslo (29 February–1<sup>st</sup> March 2016) organised by the University network *Pluricourts* on “Reforms in the framework of the follow-up bodies of the United-Nations treaties and of the European Court of Human Rights: mutual lessons”.

## **ITEM 4: DEVELOPMENT AND PROMOTION OF HUMAN RIGHTS**

### **4.1 Corporate social responsibility in the field of human rights (CDDH-CORP)**

12. The Chair of the Drafting Group on human rights and business (CDDH-CORP), Mr René LEFEBER (the Netherlands) reported on the sixth and final meeting of the Group (2–4 November 2015), having finalised the draft recommendation of the Committee of Ministers to member States on human rights and business and its explanatory memorandum.

13. The CDDH next examined the comments on these texts submitted by various delegations in advance of this meeting. After having accepted minor modifications to the text and having found consensus regarding the outstanding paragraph, the CDDH unanimously adopted the draft recommendation of the Committee of Ministers to member States on human rights and business along with its explanatory memorandum as they appear in document CDDH(2105)R84 Addendum II. It offered its congratulations to Prof. Lefeber for the effective preparatory work which allowed for the adoption of an ambitious text in the field of human rights and business which has an undeniable added value.

14. Regarding future activities to follow-up and promote this new non-binding instrument:
  - (i) Several delegations stressed the significance on a wide distribution of the text to other relevant international organisations, in particular the European Union, the OECD, the ITO and the United Nations, where the Recommendation could be officially presented in the margins of the next United Nations Forum on Business and Human Rights, scheduled for autumn 2016;
  - (ii) It was proposed that the various texts having a link with the Recommendation, as well as the various translations, are compiled on the website of the Council of Europe;
  - (iii) It was evoked that a member State taking on the Presidency of the Committee of Ministers in the near future could integrate the promotion of the Recommendation in its programme and organise a related event;
  - (iv) Concerning the event scheduled on this subject during the CDDH’s mandate for the next biennium, the CDDH decided that it should be organised in June 2017

and proposed to Prof. Lefeber to be the contact person for the Secretariat for the preparation of this event (see item 11 hereafter).

#### 4.2 *Human rights in culturally diverse societies (CDDH-DC)*

15. The Chairperson of the Drafting Group on human rights in culturally diverse societies (CDDH-DC), Ms Krista OINONEN (Finland) reported on the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> (final) meetings (8–10 September, 27–29 October and 23–25 November 2015) which resulted in the adoption by the Group of the draft Guidelines on the protection and promotion of human rights in culturally diverse societies. She noted that there was no need for an explanatory memorandum since the Guidelines were based on existing standards; most of these standards were already referred to in the “Compilation of Council of Europe standards relating to the principles of freedom of thought, conscience and religion and links to other human rights”, adopted by the CDDH at its meeting in June 2015.

16. The CDDH fully backed this approach and asked the Secretariat to make the references to the standards on which the drafting of the Guidelines was based, easily accessible on the CDDH website.

17. The CDDH examined in detail each amendment to the Guidelines proposed by the participants to the CDDH prior to and during the meeting. During the discussion one delegation expressed reservation with the addition of a sentence on gender equality (former paragraph 33 of the draft Guidelines) and other delegations expressed reservation with regard to paragraphs 55–57 (“Rights concerning identity”).

18. Following its examination, the CDDH adopted the draft Guidelines as it appears in document CDDH(2015)R84 Addendum III and decided to transmit them to the Committee of Ministers for adoption. The Delegation of Poland reserved its position in respect of paragraph 32 (former paragraph 33)<sup>2</sup>. For its part, the delegation of the Russian Federation made the following statement regarding paragraph 44<sup>3</sup>:

“With regard to paragraph 44 of the draft Guidelines of the Committee of Ministers to member States on the protection and promotion of human rights in culturally diverse societies, the delegation of the Russian Federation would like to refer to the Statement of the Permanent Representative of the Russian Federation to the Council of Europe at the 1081<sup>st</sup> meeting of the Committee of Ministers of the Council of Europe under item 4.7 of the meeting’s agenda”.

19. The CDDH congratulated Ms Oinonen and the Drafting Group for having succeeded with the drafting of this text on topical issues of a particularly sensitive nature of general

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<sup>2</sup> Paragraph 32 (former paragraph 33) reads as follows: “Member States ensure equality between women and men in culturally diverse societies and the systematic integration of this dimension in the framework of securing human rights and fundamental freedoms. They should also secure gender equality. These should be ensured regardless of traditional or cultural attitudes.”.

<sup>3</sup> Paragraph 44 reads as follows: “Member States should consistently combat any form of physical, sexual, psychological and economic violence particularly directed against women and girls (including stalking, sexual violence, forced and child marriage, female genital mutilation, forced abortion and forced sterilisation, sexual harassment, crimes committed in the name of so-called “honour”, aiding or abetting and attempt to commit any of these offences), as well as violence against persons on the basis of their sexual orientation or gender identity, including situations when violence is perpetrated under the pretext of a cultural and religious prescription or practice. They should strive to adopt adequate legislation and introduce initiatives to prevent such violence, protect the victims and prosecute the perpetrators.”.



interest. It noted that the future Guidelines of the Committee of Ministers on Human Rights in culturally diverse societies would be the subject of a thematic debate with the United Nations which the Committee of Ministers planned to organise in February 2016.

20. Finally, the CDDH exchanged views on the distribution and follow-up (including in the CDDH Terms of Reference for the 2016–2017 biennium) of both the future Guidelines and the above-mentioned compilation of Council of Europe standards relating to the principles of freedom of thought, conscience and religion and links to other human rights. The CDDH proposed to organise an awareness-raising event on these texts in June 2016 and proposed to Ms Oinonen to be the contact person for from the Secretariat for the preparation of this event (see item 11 hereafter).

#### **4.3 *The impact of the economic crisis and austerity measures on human rights in Europe***

21. The rapporteur of the CDDH, Ms Zinovia STAVRIDI (Greece), presented the revised draft feasibility study on the impact of the financial crisis and austerity measures on human rights in Europe (CDDH(2015)007rev), as examined by the Bureau at its 94<sup>th</sup> meeting of 26–27 November 2015, and recalled the main stages of its elaboration since June 2014.

22. The CDDH then examined the written comments submitted by the delegations in advance of the meeting and, following a small number of minor amendments, unanimously adopted the draft feasibility study on the impact of the economic crisis and austerity measures on human rights in Europe. It sincerely congratulated the rapporteur for the work accomplished and for having found satisfactory compromises on many politically sensitive questions.

23. It agreed to transmit the document to the Committee of Ministers for it to decide on the appropriate follow-up it wished to give to the feasibility study.

### **ITEM 5: BIOETHICS (DH-BIO)**

#### **5.1 *Work conducted under CDDH authority***

24. The Chair of the Committee on Bioethics (DH-BIO) Mr Mark BALE (United Kingdom), informed the CDDH about the decisions taken at its 8<sup>th</sup> plenary meeting (1<sup>st</sup>–4 December 2015) and in particular on the following items:

- (i) the DH-BIO agreed, unanimously, to submit to the CDDH the draft Recommendation on processing, for insurance purposes, of personal health-related data, including data resulting from genetic testing, recommending the CDDH to approve it and to send it to the Committee of Ministers with a view to its adoption. The CDDH decided to discuss this text at its meeting in June 2016;
- (ii) the DH-BIO had set up a strategic group as a follow-up to the conference on emerging technologies and human rights held on 4–5 May 2015 under the auspices of the Belgian Chairmanship of the Committee of Ministers. This strategic group would focus on the outputs of the conference and would consider related initiatives that could be taken at the Council of Europe and, where appropriate, those which might be more relevant for other international organisations. It will present its proposals to the DH-BIO at its 9<sup>th</sup> plenary meeting (31 May–2 June 2016);

- (iii) the DH-BIO adopted a Statement on genome editing technologies. The adoption of this statement was guided by emerging technologies with considerable potential for research for the benefit of human health but also, source of concern as to misuses and abuses, in particular the intentional modification of human genome so as to produce individuals endowed with particular characteristics and required qualities.

25. The CDDH thanked Mr Bale for this information and for the answers provided during the exchange of views. In the light of the DH-BIO's decision by acclamation to prolong Mr Bale in his function for another year, the CDDH confirmed his re-election as Chairperson of the DH-BIO.

### **5.2 Other ongoing work within the DH-BIO**

26. The CDDH also noted that:

- (i) the DH-BIO had approved, by unanimity of the votes cast (with 4 abstentions), the draft Recommendation on research on biological materials of human origin, with a view to its presentation to the Committee of Ministers for adoption. One delegation made a reservation with regard to three articles;
- (ii) in respect of the draft Additional Protocol concerning the protection of human rights and dignity of persons with mental disorder with regard to involuntary placement and involuntary treatment, it was noted that, in the light of the comments received during the public consultation (22 June to 15 November 2015), the DH-BIO considered it important to reflect on the possible ways forward on this topic. To that end, Delegations as well as members of the Drafting Group in charge of preparing the draft Protocol were invited to reply to a set of questions by 29 February 2016, with a view to a discussion at the 9<sup>th</sup> plenary meeting on possible ways to pursue work in this area;
- (iii) the DH-BIO was currently updating a 2005 questionnaire on medically assisted procreation, which will be complemented with questions on surrogacy;
- (iv) the DH-BIO was pursuing the preparation of a course on core human rights principles in the biomedical field intended for legal professionals as well as health professionals;
- (v) in the framework of the preparation of the Conference which, end 2017, will mark the 20<sup>th</sup> anniversary of the Convention on Human Rights and Biomedicine, the DH-BIO will organise a workshop on the case law of the European Court of Human Rights relevant to bioethical issues, by the end of 2016. With a view to facilitate participation of CDDH Delegations, the DH-BIO proposed exceptionally, to hold its meeting the same week as the meeting of CDDH (6–8 December 2016), thereby organising the workshop on Monday 5 December. The CDDH supported the DH-BIO's proposal.

### **5.3 Activities proposed in bioethics for the 2016–2017 biennium**

27. The draft terms of reference of the DH-BIO and its programme of activities for 2016–2017 appears in Appendix IV of this report.

**ITEM 6: YOUNG PEOPLE'S ACCESS TO FUNDAMENTAL RIGHTS**

28. Mr Vladislav ERMAKOV (Russian Federation) informed the CDDH about his participation in the work of the 3<sup>rd</sup> and last meeting (31 August–1<sup>st</sup> September 2015) of the drafting Group on the preparation of the draft Recommendation, from now on entitled “Young people’s access to rights”. The Draft Recommendation will be submitted to the Committee of Ministers at the beginning of 2016. The CDDH thanked the Rapporteur Mr. Ermakov (Russian Federation) as well as Ms Nataliia SHAKURO (Ukraine), who also participated previously as Rapporteur for the CDDH in the work of this group, for their contribution to the drafting of this instrument.

**ITEM 7: EXPERTS REPRESENTING THE CDDH IN OTHER BODIES**

29. The CDDH exchanged views on information provided by the experts who had represented the latter since its 83<sup>rd</sup> meeting (June 2015, see document CDDH(2015)014). A summary table of meetings and events of various bodies in 2015, and the experts appointed by the CDDH to attend them if the agenda so requires, is set out in Appendix V hereafter:

- Mr Vladislav ERMAKOV (Russian Federation) attended the 3<sup>rd</sup> meeting of the drafting Group on draft Recommendation on young people’s access to fundamental rights (Strasbourg, 31 August–1<sup>st</sup> September 2015); see item 6 above.
- Mr Vít A. SCHORM (Czech Republic) attended the *Folke Bernadotte Academy* (FBA) joint meeting on 7 September 2015 on “European Fair Trial Standards in Administrative Justice”.
- Ms Isabelle NIEDLISPACHER (Belgium), Mr Martin KUIJER (the Netherlands) and Mr Vít A. SCHORM (Czech Republic) attended the Conference on the “Reinforcement of national mechanisms for the effective implementation of the European Convention on Human Rights”, co-organised by the Directorate General of Human Rights and Rule of Law and the Constitutional Court of the Russian Federation (Saint-Petersburg, 22–23 October 2015); see item 3.3 above.
- Mr Arto KOSONEN (Finland) attended the 104<sup>th</sup> plenary session of the Venice Commission (Venice, 22–24 October 2015).
- Ms Maria de Fátima GRAÇA CARVALHO (Portugal) attended the 90<sup>th</sup> meeting of the European Committee on Legal Co-operation (CDCJ, Strasbourg, 28–30 October 2015).
- Ms Gabriele SCHERER (Germany) attended the Working Party on Fundamental Rights, Citizen's Rights and Free Movement of Persons (FREMP, Brussels, 4–5 November 2015).
- Ms Maria Benedetta FRANCESCONI (Italy) attended the United Nations Forum on Business and Human Rights: “Promoting the guiding principles on business and Human Rights in global governance frameworks: recent developments and opportunities for further alignment” (Geneva, 16–18 November 2015);
- Mr Roland BÖCKER (the Netherlands) attended the training session “Gender Equality Rapporteurs” (Strasbourg, 17 November 2015).

- Mr Joan FORNER ROVIRA (Andorra) attended the 13<sup>th</sup> meeting of the Committee of the Parties to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse (Lanzarote Committee, Strasbourg, 1<sup>st</sup>–4 December 2015).

30. During the exchange of views with its representatives, the CDDH noted in particular the following:

- (i) Ms Maria de Fátima Graça Carvalho (Portugal) drew CDDH’s attention in particular to the preparation, within the CDCJ, of a draft Recommendation on the legal regulation of lobbying activities.
- (ii) Mr Roeland Böcker (the Netherlands) mentioned the draft opinion being prepared by the Committee of Legal Advisers on Public International Law (CAHDI) on Recommendation 2069 (2015) of the Parliamentary Assembly of the Council of Europe – “Drones and targeted killings: the need to uphold human rights and international law” at the CAHDI’s 50<sup>th</sup> meeting (Strasbourg, 24–25 September 2015). He also evoked his participation at the training session for Gender Equality Rapporteurs. During the present meeting, he drew CDDH’s attention, in his capacity as Gender Equality Rapporteur, to relevant aspects such as the under-representation of women within the outgoing Bureau.
- (iii) Mr Joan Forner Rovira (Andorra) informed of the adoption by the Lanzarote Committee on 4 December 2015 of the 1<sup>st</sup> implementation report concerning the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse. This report focuses on the protection of children against sexual abuse in the circle of trust in 26 Parties to the Convention. The executive Secretary to the Committee, Ms Gioia SCAPPUCCI, underlined that the report contains promising practices identified, deficiencies and relevant recommendations addressed to the parties by the Committee.

31. The CDDH asked the Secretariat to ensure that the various bodies in which he has representatives, such as the CEPEJ and those appearing in the previous paragraphs, send their invitations and draft agenda of the meetings in a timely manner to the CDDH representatives, in order to allow them to evaluate the interest of taking part thereto.

#### **ITEM 8: APPOINTEMENT OF A CDDH RAPPORTEUR ON ROMA AND TRAVELLER ISSUES**

32. The CDDH appointed Ms Svetlana GELEVA (the Former Yugoslav Republic of Macedonia) as Rapporteur on Roma and Traveller Issues<sup>4</sup>. It asked the Rapporteur to regularly attend the Ad hoc Committee of experts on Roma and Traveller Issues (CAHROM) meetings.

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<sup>4</sup> See report of the 7<sup>th</sup> meeting CAHROM(2014)8. This proposal was reflected in the Secretary General Strategy for the inclusion of the Roma community 2015-2019, document SG/INF(2015)16. The CAHROM underlined that the terms “Roma and Travellers” are being used at the Council of Europe to encompass the wide diversity of the groups covered by the work of the Council of Europe in this field: on the one hand a) Roma, Sinti/Manush, Calé, Kaale, Romanichals, Boyash/Rudari; b) Balkan Egyptians (Egyptians and Ashkali); c) Eastern groups (Dom, Lom and Abdal); and, on the other hand, groups such as Travellers, Yenish, and the populations designated under the administrative term “Gens du voyage”, as well as persons who identify themselves as Gypsies. See document SG/INF(2015)16.

**ITEM 9: INVITEES**

33. In her intervention during the CDDH, Dr Theresia DEGENER (Germany), vice-Chair of the Committee on the Rights of Persons with Disabilities (CRPD), noted the interest of her committee to exchange views, notably with Council of Europe's bodies. She mentioned the CRPD's approach aiming at considering disability in a human rights context rather than a medical one and referred to ongoing work relating to the Additional Protocol concerning the protection of human rights and dignity of persons with mental disorder with regard to involuntary placement and involuntary treatment.

34. The CDDH thanked Prof. Degener for her very informative presentation and for her replies during the exchange of views which followed. Her intervention is to be found in Appendix IX hereafter.

35. As regards the 85<sup>th</sup> meeting (June 2016):

- (i) The CDDH noted with appreciation that Professor Dr Frédérique DREYFUS-NETTER (France), jurist and expert in bioethics, confirmed her participation;
- (ii) The CDDH also decided to invite the new President of the European Court of Human Rights, Mr Guido RAIMONDI.

36. The CDDH decided to discuss other invitees to further meetings in June 2016. It endorsed the Bureau's suggestion to invite President of other Steering Committees, in a procedure which remains to be decided, in order to reinforce cooperation in the implementation of the activities planned for the biennium.

**ITEM 10: REVIEW OF COUNCIL OF EUROPE CONVENTIONS**

37. The CDDH exchanged views and information on the prospects of signature and ratification of several instruments within its responsibility:

- (i) it discussed in particular about the opportunity to draw the Committee of Ministers' attention to the low ratification rate (7 ratifications up to date) of the Council of Europe's 2009 Convention on access to official documents.<sup>5</sup> The discussion showed that even though few experts communicated national information on the ratification prospects of this instrument, the latter maintains its relevance and that time should be allocated to examine the best way to relaunch it;
- (ii) took note of the state of signatures and ratifications of Protocol Nos. 15 and 16 to the European Convention on Human Rights<sup>6</sup> and, considering that its Committee DH-SYSC is a particular appropriate body to discuss this question in detail, decided to entrust the DH-SYSC with the follow-up of those instruments (see paragraph 10 above).

38. The CDDH noted that the list of treaties placed under its responsibility, as appended to its new terms of reference (see Appendix IV hereafter), contains more instruments than in the past and that the list provides no indications as to their level of priority and relevance. The

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<sup>5</sup> Document CDDH(2015)009 includes the relevant and complete information as regards this Convention.

<sup>6</sup> Document CDDH(2015)005 presents the state of signatures and ratifications of Protocols Nos. 15 and 16 to the Convention as well as of the European Agreement relating to Persons Participating in Proceedings of the European Court of Human Rights.

CDDH instructed the Secretariat to proceed, in cooperation with the Treaty Office, to an organisation of this list grouping the conventions by categories in light of their level of relevance.

### **ITEM 11: PREPARATION OF THE CDDH 2016–2017 BIENNIUM WORK**

39. The CDDH welcomed the adoption by the Committee of Ministers, on 25 November 2015, of the terms of reference for the CDDH and its committees DH-SYSC and DH-BIO for 2016–2017 though noted with regret that the qualification that it would undertake certain work on the development of human rights only if resources permit was omitted from the proposal presented to the Committee of Ministers. Accordingly, it considered in detail working methods and calendar for their implementation. In light of the comments made at the meeting it endorsed the reflections of the Bureau and the Secretariat’s proposals appearing in CDDH(2015)015Rev.

40. In particular, during its present meeting, the CDDH decided the following:

- (i) even though the final deadline for the majority of activities is the end of 2017, it would be preferable to embark upon certain activities only once others have been completed. At this stage, the CDDH gave priority to work on issues related to work related to female genital mutilation and forced marriage. To this end, it set up the Drafting Group on female genital mutilation and forced marriage (CDDH-MF), the mandate of which appears at Appendix V, and appointed Mr Rob LINHAM (United Kingdom) President and Rapporteur for this activity.
- (ii) given that the proposal to set up the Drafting groups DH-SYSC-REC, DH-SYSC-I and DH-SYSC II originated from the DH-SYSC and that these groups will be directly answerable to it, it will be up to the DH-SYSC to decide about their composition at its next plenary meeting (25–27 April 2016). The dates foreseen for the meetings of these groups appear in the general calendar (see Appendix X hereafter) ;
- (iii) Rapporteurs were appointed for each of the five activities entrusted by the Committee of Ministers to the CDDH concerning development and promotion of human rights. The Rapporteur’s task is to supervise and orientate the Secretariat’s work of research and analysis which will serve as a basis for the future work:<sup>7</sup>
  - \* Rapporteur on social rights (CDDH-SOC): Ms Chantal GALLANT (Belgium);
  - \* Rapporteur on female genital mutilation and forced marriage (CDDH-MF): Mr Rob LINHAM (United Kingdom);
  - \* Rapporteur on freedom of expression and links to other human rights (CDDH-EXP): Ms Kristine LICE (Latvia);
  - \* Rapporteur on migration and human rights (CDDH-MIG): Mr Frank SCHURMANN (Switzerland);

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<sup>7</sup> The CDDH also retained the possibility, if necessary, of “virtual” meetings, involving, for instance, the Rapporteur and certain participants to the CDDH, as a method that could facilitate further decision making by the relevant body.

- \* Rapporteur on civil society and national human rights institutions (CDDH-INST): Ms Krista OINONEN (Finland);
- (iv) the two events which, according to the new terms of reference, the CDDH is called to organise during the biennium will take place respectively in June 2016 (“human rights in culturally diverse societies”) and June 2017 (“human rights and business”)<sup>8</sup>. The CDDH proposed to the former Presidents of the drafting Groups in charge of these issues, namely respectively Ms Krista OINONEN (Finland) and Prof. René LEFEBER (the Netherlands), to act as contact persons with the Secretariat for the organisation of these events;
- (v) At its 85<sup>th</sup> meeting (June 2016), the CDDH will decide if necessary to set up the following Drafting groups : Drafting Group on social rights (CDDH-SOC); Drafting Group on freedom of expression and links to other human rights (CDDH-EXP) ; Drafting Group on migration and human rights (CDDH-MIG) ; Drafting Group on civil society and human rights national institutions (CDDH-INST) ;
- (vi) the CDDH will come back to the organisation of work for 2017 at its meetings in June and December 2016, in light of progress achieved;
- (vii) as regards the meetings calendar, it was decided to space meetings as far as possible and to avoid that the plenary bodies under the CDDH meet at the same time as each other or too close to the date when the CDDH is called to take decisions regarding their work;
- (viii) the Secretariat will circulate short information to participants in the CDDH on the current structure of intergovernmental committees of the Council of Europe.

## **ITEM 12: ELECTIONS**

41. The CDDH held elections for the Chair and the vice-Chair of its Committee as well as for four members of its Bureau. It also held elections for the chair of the Committee of experts on the System of the European Convention on Human Rights (DH-SYSC) (see Appendix VII hereafter). It noted that the DH-SYSC will elect its own vice-Chair at its 1<sup>st</sup> meeting (25–27 April 2016).

## **ITEM 13: CALENDAR OF MEETINGS**

42. The CDDH adopted the calendar of its meetings as well as that of its subordinate bodies for the first semester of 2016. It is understood that the remainder of the calendar is only indicative and that the precise dates need to be confirmed. In particular, the CDDH will revert in June and December 2016 on the dates planned for 2017, in light of the progress achieved in the various activities. The calendar as adopted by the CDDH at this stage figures in Appendix X hereafter.

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<sup>8</sup> The CDDH noted that a Seminar on the relevant Court’s case-law concerning bioethics will take place on the eve of its December 2016 meeting and that participants in the CDDH will be invited to attend it. Given that this DH-BIO Seminar is certainly of direct interest for the CDDH, the December 2016 meeting will not be an appropriate moment to foresee more events.

**ITEM 14: OTHER ISSUES**

43. During the exchange of views with the Chair of DH-BIO, the possible work to be carried out by the CDDH regarding the question of prenatal sex selection was mentioned<sup>9</sup>. The CDDH decided to return to this matter at one of its future meetings.

\* \* \*

**ACKNOWLEDGMENTS**

44. At the end of this meeting, the CDDH expressed its gratitude to Mr Matthias KLOTH, member of the Secretariat, who has very actively contributed to the work of the Committee. It wished him success in the new functions that he has been called to perform within the Organisation.

45. This meeting being the last one chaired by Mr Vít A. SCHORM (Czech Republic), the CDDH expressed its highest appreciation for the exemplary manner in which he has chaired the work of the Steering Committee and for the unstinting commitment he has shown throughout his participation in the work of the CDDH and many of its bodies. The CDDH expressed hope that, with a view to carrying out other work in the future, it could count on the unanimously acknowledged expertise and authority of its outgoing President.

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<sup>9</sup> At their 1207th meeting (17 September 2014), the Ministers' Deputies instructed the CDDH, with the support of the DH-BIO, and in co-operation with the Gender Equality Commission (GEC), to consider and make proposals for concrete action to be undertaken by the Council of Europe in this field. The deadline for this work was left at the discretion of the CDDH.



## **APPENDIX I. LIST OF PARTICIPANTS**

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### ALBANIA/ALBANIE

Ms Alma HICKA, Ministry of Justice, Tirana

Mr Roden HOXHA, Deputy to the Permanent Representative, Permanent Representation of Albania to the Council of Europe, Strasbourg

### ANDORRA/ANDORRE

Mr Joan FORNER ROVIRA, Représentant permanent Adjoint d'Andorre auprès du Conseil de l'Europe, Strasbourg

### ARMENIA/ARMENIE

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### AUSTRIA/AUTRICHE

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### BELGIUM/BELGIQUE

Mr Philippe WERY, Chef du Service des droits de l'homme, SPF Justice, Service des Droits de l'Homme

### BOSNIA AND HERZEGOVINA / BOSNIE-HERZEGOVINE

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### BULGARIA/BULGARIE

Ms Emanuela TOMOVA, 1<sup>st</sup> Secretary, Human Rights Directorate, Ministry of Foreign Affairs

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Ms Romana KUZMANIĆ OLUIĆ, Counsellor, Ministry of Foreign and European Affairs

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–

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Grégoire DEVICTOR

Bettina LUDEWIG

Jean-Jacques PEDUSSAUD

\* \* \*

**APPENDIX II. AGENDA**

- ITEM 1: OPENING OF THE MEETING, ADOPTION OF THE AGENDA AND ORDER OF BUSINESS
- ITEM 2: RECOMMENDATIONS OF THE PARLIAMENTARY ASSEMBLY
- ITEM 3: REFORM OF THE COURT (DH-GDR)
- 3.1 *Draft CDDH report on the longer-term future of the Convention system*
- 3.2 *Activities during the 2016–2017 biennium*
- 3.3 *Information on relevant events*
- ITEM 4: DEVELOPMENT AND PROMOTION OF HUMAN RIGHTS
- 4.1 *Corporate social responsibility in the field of human rights (CDDH-CORP)*
- 4.2 *Human Rights in Culturally Diverse Societies (CDDH-DC)*
- 4.3 *The impact of the economic crisis and austerity measures on human rights in Europe*
- ITEM 5: BIOETHICS (DH-BIO)
- 5.1 *Work conducted under CDDH authority*
- 5.2 *Other ongoing work within the DH-BIO*
- 5.3 *Activities in bioethics for the 2016–2017 biennium*
- ITEM 6: YOUNG PEOPLE’S ACCESS TO FUNDAMENTAL RIGHTS
- ITEM 7: EXPERTS REPRESENTING THE CDDH IN OTHER BODIES
- ITEM 8: APPOINTMENT OF A CDDH RAPPORTEUR ON ROMA AND TRAVELLER ISSUES
- ITEM 9: INVITEES
- ITEM 10: REVIEW OF COUNCIL OF EUROPE CONVENTIONS
- ITEM 11: PREPARATION OF THE CDDH 2016–2017 BIENNIUM WORK
- ITEM 12: ELECTIONS
- ITEM 13: CALENDAR OF MEETINGS
- ITEM 14: OTHER ISSUES

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### APPENDIX III. CDDH COMMENTS ON PARLIAMENTARY ASSEMBLY RECOMMENDATIONS

(as adopted by the CDDH at its 84<sup>th</sup> meeting, 7–11 December 2015)

***CDDH comments on  
Parliamentary Assembly Recommendation 2078(2015)  
“Countries of transit: meeting new migration and asylum challenges”***

1. The Steering Committee for Human Rights (CDDH) takes note of PACE Recommendation 2078(2015) on “Countries of transit: meeting new migration and asylum challenges”.
2. The CDDH takes note of the call of PACE regarding the importance of respecting and protecting the human rights of migrants and refugees in cooperation with transit countries.
3. Asylum seekers at risk of being returned to certain third countries might be subjected to inhuman and degrading treatment. In this context, the CDDH also notes the call of the Assembly to support these countries in the implementation of effective international protection and essential services.
4. Considering the deepening of the migration crisis, the CDDH shares the opinion of the Assembly that the crisis requires a coordinated response which is effective and based on the prevention of human rights violations. The ability of the Council of Europe to make a unique contribution in this area should also be borne in mind.
5. In this context, the CDDH recalls that its mandate for the biennium 2016–2017 provides for the production of an “*analysis on the legal and practical aspects of specific migration-related human rights issues, in particular effective alternatives to detention*”, with the mandate also anticipating that “*the need for further work in the field by the CDDH is explored*”.
6. Conscious of the quality of asylum procedures and of the negotiation of readmission agreements, the CDDH wishes once more to draw attention to the *Guidelines on human rights protection in the context of accelerated asylum procedures*, elaborated by the CDDH and adopted by the Committee of Ministers on 1<sup>st</sup> July 2009 at its 1062<sup>nd</sup> meeting.
7. Regarding paragraph 3.2 of the Assembly’s recommendation, the CDDH notes that the principle of non-refoulement represents a fundamental, well-established principle of international law that underlies the reasoning of the European Court of Human Rights in the case of *Hirsi Jamaa v Italy* (2012) in the context of refugees and asylum seekers – a case to which Recommendation 2078(2015) makes explicit reference.
8. The CDDH is of the opinion that the case is of considerable importance, particularly in terms of the extraterritorial applicability, only in exceptional cases, of the Convention.
9. The Court held that, while Contracting Parties are free to devise their own immigration policies, this right is limited by Article 3 (prohibition of torture or inhuman or degrading treatment), where the removal of persons would expose them to a real risk of facing such treatment in the receiving country, irrespective of whether they were intercepted in territorial waters and transferred aboard an official vessel. The Court reiterated in cases referring to a group of persons the need for an assessment of individual circumstances (prohibition of



collective expulsion of aliens, Article 4 of Protocol No. 4 to the Convention) and access to an effective remedy (Article 13 of the Convention).

10. The CDDH is aware of the important issues raised by the Parliamentary Assembly in this recommendation. Nevertheless, in absence of case-law of the Court to this respect, it notes that the Court's adjudication in the *Hirsi Jamaa* case cannot be construed as being applicable to other distinct situations cited in paragraph 10 of Resolution 2073(2015) of the Parliamentary Assembly on countries of transit.

11. The CDDH remains confident that the Committee of Ministers – particularly when supervising the execution of judgments – will continue to monitor compliance by member States with the principle of non-refoulement, ensuring that respondent States are held to account where there is evidence of returning migrants in violation of the Convention.

***CDDH comments on  
Parliamentary Assembly Recommendation 2079(2015)  
“Implementation of judgements of the European Court of Human Rights”***

1. The Steering Committee for Human Rights (CDDH) takes note of Parliamentary Assembly Recommendation 2079(2015) on the “Implementation of judgments of the European Court of Human Rights”, calling on the Committee of Ministers to use all available means to effectively fulfil its task of supervising the implementation of judgments of the Court. The CDDH reaffirms that full and prompt execution of Court judgments, in accordance with the obligation set out in Article 46 of the Convention, is essential for the effective functioning of the Convention system.

2. The CDDH recalls its previous contributions regarding both the execution and the supervision process<sup>10</sup> and refers to its reflections thereon in its report on the longer-term future of the system of the European Convention on Human Rights.<sup>11</sup>

***CDDH comments on  
Parliamentary Assembly Recommendation 2081(2015)  
“Abuse of pretrial detention in States Parties to the European Convention on  
Human Rights”***

1. The Steering Committee for Human Rights (CDDH) takes note of Parliamentary Assembly Recommendation 2081(2015) on the “Abuse of pretrial detention in States Parties to the European Convention on Human Rights”, calling on the Committee of Ministers to consider ways of reducing recourse to and abuse of pretrial detention, and to enhance its cooperation with the European Union while pursuing this objective.

2. The CDDH draws attention to paragraph 1 of Article 5 of the European Convention on Human Rights, which guarantees the right to liberty and security of person.<sup>12</sup> It recalls that the

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<sup>10</sup> See CDDH 2008 report on practical proposals for the supervision of the execution of judgments of the Court in situations of slow execution (doc. CDDH(2008)014 Addendum II), CDDH 2013 report on whether more effective measures are needed in respect of States that fail to implement Court judgments in a timely manner (doc. CDDH (2013)R79 Addendum I), as well as the CDDH contribution to the Brussels Conference on the “Implementation of the European Convention on Human Rights, our shared responsibility” (document CDDH(2014)R82 Addendum II).

<sup>11</sup> Document CDDH(2015)R84 Addendum I.

purpose of this article is to prevent arbitrary or unjustified deprivations of liberty<sup>13</sup> and that the right to liberty and security is of the highest importance in a democratic society.<sup>14</sup> Although there are limitations to this right set out in paragraph 1, the CDDH recalls Article 18 ECHR, which prohibits the restrictions permitted to the Convention's rights and freedoms from being applied for any purpose other than those for which they have been prescribed.<sup>15</sup>

3. The CDDH also draws particular attention to paragraph 3 of Article 5 ECHR, which states that "*everyone arrested or detained ... shall be entitled to trial within a reasonable time or to release pending trial*". Pretrial detention in States Parties to the European Convention on Human Rights must therefore meet this standard, interpreted in the light of the case-law of the European Court of Human Rights.<sup>16</sup>

4. Furthermore, everyone detained has the right, under paragraph 4 of Article 5, to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful. In particular, persons detained pending trial must be presumed innocent until such time as they are convicted and any pretrial detention must not exceed a reasonable time.

5. Based on well-established case law, numerous cases of the European Court of Human Rights have revealed violations of these requirements of the Convention. Following these cases, reforms are in progress in several countries under the supervision of the Committee of Ministers.

6. In addition to relevant case-law of the Court, notably concerning Articles 3 and 5 of the Convention, the CDDH recalls the previous work of the Committee of Ministers on pretrial detention, in particular Recommendation Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse, and Recommendation Rec(2006)2 on European Prison Rules, the appendix to the latter providing detailed information on the minimum standards for the treatment of all prisoners. Furthermore, the Council of Europe Annual Penal Statistics (SPACE Statistics) are also an important tool in the monitoring of pretrial detention, in particular regarding the representation of foreign nationals.

7. The CDDH welcomes the recent research report regarding pretrial detention in the European Union, co-authored by a member of the CPT.

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<sup>12</sup> See of particular relevance, *Svipsta v. Latvia*, App. no. 66820/01, judgment of 9 March 2006, (automatic renewal of pretrial detention) and *Laumont v. France*, App. no. 43626/98, judgment of 8 November 2001, (continued detention for further investigations).

<sup>13</sup> See *McKay v. United Kingdom* [GC], App. no. 543/03, judgment of 3 October 2006, §30.

<sup>14</sup> See *Medvedyev and Others v. France* [GC], App. no. 3394/03, judgment of 29 March 2010, §76.

<sup>15</sup> See, for example, regarding Article 5, *Lutsenko v. Ukraine*, App. no. 6492/11, judgment of 3 July 2012 and *Gusinskiy v. Russia*, App. no. 70276/01, judgment of 19 May 2004, and in the particular context of pretrial detention, *Cebotari v. Moldova*, App. no. 35615/06, judgment of 13 November 2007.

<sup>16</sup> See, for example, regarding grounds for refusing bail, *Tiron v. Romania*, App. no. 17689/03, judgment of 7 April 2009, §37, *Smirnova v. Russia*, App. nos. 46133/99 et al., judgment of 24 July 2003, §59 and *Piruzyan v. Armenia*, App. no. 33376/07, judgment of 26 June 2012, §94. More generally, see also *McKay v. United Kingdom* [GC], App. no. 543/03, judgment of 3 October 2006, *Bykov v. Russia* [GC], App. no. 4378/02, judgment of 10 March 2009 and *Idalov v. Russia* [GC], App. no. 5826/03, judgment of 22 May 2012.

8. Finally, the CDDH recalls that continued consideration of the conformity of national systems with the requirements of the Convention generally,<sup>17</sup> and through the process of execution of judgments in particular, provides important opportunities to integrate European standards with national law and practice. The CDDH encourages such initiatives. The CDDH subscribes to the PACE recommendation encouraging the continued cooperation between the relevant bodies of the Council of Europe and the European Union on related issues.

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<sup>17</sup> See notably Recommendation (2004)5 of the Committee of Ministers to member States on the verification on the compatibility of draft laws, existing laws and administrative practice with standards laid down in the European Convention on Human Rights.

## **APPENDIX IV. TERMS OF REFERENCE OF THE CDDH AND ITS SUBORDINATE BODIES FOR THE BIENNIUM 2016–2017**

*(as adopted by the Committee of Ministers at their 1241<sup>st</sup> meeting, 24–26 November 2015)*

### **Steering Committee for Human Rights (CDDH)**

Set up by the Committee of Ministers under Article 17 of the Statute of the Council of Europe and in accordance with Resolution CM/Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods.

**Type of committee:** Steering Committee

Terms of reference valid from: **1 January 2016 until 31 December 2017**

#### **MAIN TASKS**

Under the authority of the Committee of Ministers, and bearing in mind the Council of Europe legal standards as well as the relevant jurisprudence of the European Court of Human Rights, the CDDH will conduct the intergovernmental work of the Council of Europe in the human rights field and will advise and give its legal expertise to the Committee of Ministers on all questions within its field of competence. In particular, the CDDH will:

- (i) work on the protection, development and promotion of human rights in Europe to:
  - (a) contribute to enhancing the protection of human rights by improving the effectiveness of the control mechanism of the European Convention on Human Rights and the implementation of the Convention at national and European levels, this work being a permanent priority for the CDDH;
  - (b) provide effective responses at the normative and general policy levels to the challenges posed to human rights in European societies;
- (ii) follow the implementation of the non-binding instruments that it has prepared as well as conventions for which it has been given supervision by the Committee of Ministers;
- (iii) advise other bodies of the Organisation to ensure that their activities concerning human rights duly reflect the requirements of the Convention and the relevant jurisprudence of the Court;
- (iv) contribute to co-operation and support activities to national initiatives in the field of the protection, development and promotion of human rights;
- (v) without prejudice to the missions of intergovernmental committees of the Council of Europe that already follow the work of monitoring mechanisms, follow the activities of the relevant monitoring and other bodies protecting human rights;
- (vi) where necessary, co-ordinate transversal intergovernmental activities in the field of human rights including bioethics;
- (vii) take due account of a gender perspective and to building cohesive societies in the performance of its tasks;
- (viii) in accordance with decisions CM/Del/Dec(2013)1168/10.2 of the Committee of Ministers, carry out, at regular intervals, within the limits of the available resources and bearing in mind its priorities, an examination of some or all of the conventions for which it has been given responsibility, in co-operation, where appropriate, with the relevant convention-based bodies, and report back to the Committee of Ministers.

#### **PILLAR/SECTOR/PROGRAMME**

**Pillar:** Human Rights

**Sector:** Protecting Human Rights / Ensuring Social Rights

**Programme:** Enhancing the Effectiveness of the ECHR System at national and European level / Bioethics

## **SPECIFIC TASKS**

### **1. Protection of human rights:**

Oversee the work of the Committee of experts on the reform of the Court (DH-SYSC) (see terms of reference of the DH-SYSC).

### **2. Development and promotion of human rights:**

If necessary, and to avoid any duplication, appropriate co-ordination and co-operation with relevant conventional and monitoring bodies and other Council of Europe bodies involved is to be ensured.

#### **Social rights**

- (i) Undertake an analysis of the legal framework of the Council of Europe for the protection of social rights in Europe, in particular the jurisprudence of the European Court of Human Rights as well as other relevant sources e.g. reports and decisions of those Council of Europe bodies having a mandate relating to social rights and their implications for the respective States Parties (deadline: 31 December 2016);
- (ii) On this basis, identify good practices and make, as appropriate, proposals with a view to improving the implementation of social rights and to facilitate in particular the relationship between the various European instruments for the protection of social rights (deadline: 31 December 2017).

#### **Female genital mutilation and forced marriage**

- (i) Further to work already conducted in the area of human rights and culturally diverse societies, undertake work to combat and prevent female genital mutilation and forced marriage, which are serious violations of human rights. To this end, conduct an analysis of the legal situation at international level and in the Council of Europe member States (deadline: 30 June 2016).
- (ii) On this basis, prepare a guide to good national practices aimed at combatting and preventing these affronts and, if necessary, make proposals to (a) ensure coherent policies and better implementation of the legislation aimed at preventing these affronts; (b) reinforce the national and European legal framework as well as co-operation between member States; (c) raise awareness of this issue. These proposals may result in, inter alia the preparation of a draft recommendation of the Committee of Ministers (deadline: 31 December 2017). This activity is to be carried out ensuring appropriate co-ordination and co-operation with the relevant bodies involved, in particular the GEC, GREVIO, GRETA and the CDPC.

#### **Freedom of expression and links to other human rights**

- (i) Following the work already carried out by the CDDH in promoting pluralism and tolerance and contributing to maintaining cohesive societies, conduct an analysis of the relevant jurisprudence of the European Court of Human Rights and other Council of Europe instruments to provide additional guidance on how to reconcile freedom of expression with other rights and freedoms, in particular in culturally diverse societies (deadline: 31 December 2016).
- (ii) On this basis, prepare a guide to good national practices on reconciling the various rights and freedoms concerned (deadline: 30 June 2017). If necessary, a draft recommendation of the Committee of Ministers on “cyber security and human rights” is prepared (deadline: 31 December 2017).

#### **Migration**

In light of the Court’s relevant jurisprudence and other Council of Europe instruments, conduct an analysis on the legal and practical aspects of specific migration-related human rights issues, in particular effective alternatives to detention, and the need for further work in the field by the CDDH is explored (deadline: 31 December 2017).

### **3. Civil Society and National Human Rights Institutions**

- (i) Conduct a study on the impact of current national legislation, policies and practices on the activities of civil society organisations, human rights defenders and national institutions for the promotion and protection of human rights, and identifying the best examples thereof (deadline: 31 December 2016).
- (ii) On this basis, submit proposals to ensure that member States, through their legislation, policies and practices, effectively protect and promote the civil society space (deadline: 30 June 2017).

**4. Dissemination and awareness-raising:** hold an event in 2016 on the initiative / with the participation of the CDDH to ensure the visibility, and raise awareness, of the work conducted in 2014–2015 on human rights in culturally diverse societies. Hold a similar event in 2017 on the work conducted in 2014–2015 on corporate social responsibility in the field of human rights.

**5. Bioethics:** oversee from the human rights perspective the intergovernmental work in the field of bioethics (see terms of reference of the DH-BIO).

**COMPOSITION****Members:**

Governments of member States are invited to designate one or more representatives of the highest possible rank in the field of human rights.

The Council of Europe will bear the travel and subsistence expenses of one representative from each member State (two in the case of the State whose representative has been elected Chair).

Each member of the committee shall have one vote. Where a government designates more than one member, only one of them is entitled to take part in the voting.

In accordance with decisions CM/Del/Dec(2013)1168/10.2 of the Committee of Ministers, in cases where there is no convention-based body including all the Parties, non-member States are invited to take part, with a right to vote, in the committee meetings pertaining to the conventions to which they are Parties.

**Participants:**

The following may send representatives, without the right to vote and at the charge of their corresponding administrative budgets:

- Parliamentary Assembly of the Council of Europe;
- Congress of Local and Regional Authorities of the Council of Europe;
- European Court of Human Rights;
- Council of Europe Commissioner for Human Rights;
- Conference of INGOs of the Council of Europe;
- Committees or other bodies of the Council of Europe engaged in related work, as appropriate.

The following may send representatives, without the right to vote and without defrayal of expenses:

- European Union (one or more representatives, including, as appropriate, the European Union Agency for Fundamental Rights (FRA));
- Observer States to the Council of Europe: Canada, Holy See, Japan, Mexico, United States of America;
- Representatives of other international organisations (Organisation for Security and Co-operation in Europe (OSCE) / Office for Democratic Institutions and Human Rights (ODIHR), Office of the United Nations High Commissioner for Human Rights).

**Observers:**

The following may send representatives, without the right to vote and without defrayal of expenses:

- Belarus;
- Non-member States with which the Council of Europe has a Neighbourhood Partnership including relevant cooperation activities;
- Non-governmental organisations (Amnesty International, International Commission of Jurists (ICJ), European Trade Union Confederation (ETUC), International Federation of Human Rights (FIDH), European Roma<sup>18</sup> and Travellers Forum), as well as the European Network of National Human Rights Institutions (ENNHRI).

**WORKING METHODS****Plenary meetings**

48 members, 2 meetings in 2016, 4 days

48 members, 2 meetings in 2017, 4 days

**Bureau**

8 members, 2 meetings in 2016, 2 days

8 members, 2 meetings in 2017, 2 days

The Committee will also appoint a Gender Equality Rapporteur from amongst its members.

The rules of procedure of the Committee are governed by Resolution CM/Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods.

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<sup>18</sup> The terms “Roma and Travellers” are being used at the Council of Europe to encompass the wide diversity of the groups covered by the work of the Council of Europe in this field: on the one hand a) Roma, Sinti/Manush, Calé, Kaale, Romanichals, Boyash/Rudari; b) Balkan Egyptians (Egyptians and Ashkali); c) Eastern groups (Dom, Lom and Abdal); and, on the other hand, groups such as Travellers, Yenish, and the populations designated under the administrative term “*Gens du voyage*”, as well as persons who identify themselves as Gypsies.

Subject to the agenda, the Chairs of the subordinate structures to the CDDH may be invited to attend CDDH Bureau and/or plenary meetings.

#### **SUBORDINATE STRUCTURE(S) TO THE CDDH**

The CDDH has a coordinating, supervising and monitoring role in the functioning of its subordinate bodies:

- Committee of experts on the system of the European Convention on human rights (DH-SYSC) (see separate terms of reference) and Drafting Groups;
- Committee on Bioethics (DH-BIO) (see separate terms of reference)

CDDH	
5	Convention for the Protection of Human Rights and Fundamental Freedoms
9	Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms
12	European Interim Agreement on Social Security Schemes Relating to Old Age, Invalidity and Survivors
13	European Interim Agreement on Social Security other than Schemes for Old Age, Invalidity and Survivors
14	European Convention on Social and Medical Assistance
20	Agreement on the Exchange of War Cripples between Member Countries of the Council of Europe with a view to Medical Treatment
35	European Social Charter
40	Agreement between the Member States of the Council of Europe on the issue to Military and Civilian War-Disabled of an International Book of Vouchers for the repair of Prosthetic and Orthopaedic Appliances
46	Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto
48	European Code of Social Security
67	European Agreement relating to Persons participating in Proceedings of the European Commission and Court of Human Rights
68	European Agreement on Au Pair Placement
78	European Convention on Social Security
078A	Supplementary Agreement for the Application of the European Convention on Social Security
83	European Convention on the Social Protection of Farmers
93	European Convention on the Legal Status of Migrant Workers
114	Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty
117	Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms
126	European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
139	European Code of Social Security (Revised)
142	Protocol amending the European Social Charter
148	European Charter for Regional or Minority Languages
154	Protocol to the European Convention on Social Security
157	Framework Convention for the Protection of National Minorities
158	Additional Protocol to the European Social Charter Providing for a System of Collective Complaints
161	European Agreement relating to persons participating in proceedings of the European Court of Human Rights
163	European Social Charter (revised)
164	Convention for the protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine
168	Additional Protocol to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, on the Prohibition of Cloning Human Beings

CDDH	
177	Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms
186	Additional Protocol to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin
187	Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances
195	Additional Protocol to the Convention on Human Rights and Biomedicine, concerning Biomedical Research
197	Council of Europe Convention on Action against Trafficking in Human Beings
203	Additional Protocol to the Convention on Human Rights and Biomedicine concerning Genetic Testing for Health Purposes
205	Council of Europe Convention on Access to Official Documents
210	Council of Europe Convention on preventing and combating violence against women and domestic violence
213	Protocol No. 15 amending the Convention for the Protection of Human Rights and Fundamental Freedoms
214	Protocol No. 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms

## Committee of experts on the system of the European Convention on human rights (DH-SYSC)

Set up by the Committee of Ministers under Article 17 of the Statute of the Council of Europe and in accordance with Resolution CM/Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods

**Type of committee:** Subordinate body

Terms of reference valid from: **1 January 2016 until 31 December 2017**

### MAIN TASKS

Under the supervision of the Steering Committee for Human Rights (CDDH), the DH-SYSC will conduct the intergovernmental work intended to enhance the protection of human rights by improving the effectiveness of the control mechanism of the European Convention on Human Rights and the implementation of the Convention at national level, as assigned by the Committee of Ministers to the Steering Committee.

### PILLAR/SECTOR/PROGRAMME

**Pillar:** Human Rights

**Sector:** Protecting Human Rights

**Programme:** Enhancing the effectiveness of the ECHR System at national and European level

### SPECIFIC TASKS

- (i) Concerning the measures taken by member States to implement the relevant parts of the Brighton Declaration: prepare a draft report for the Committee of Ministers containing (a) an analysis of the responses given by member States in their national reports, and (b) possible recommendations for follow-up (deadline: 30 June 2016);
- (ii) Concerning the longer term future of the Convention system and the Court: achieve any results expected on the basis of decisions that may be taken by the Committee of Ministers further to the submission of the CDDH report containing opinions and possible proposals on this issue (deadline: 31 December 2017);
- (iii) Concerning the implementation of the Convention and execution of the Court's judgments: ensure that information is exchanged regularly - in order to assist member States in developing their domestic capacities and facilitate their access to relevant information (see paragraph 29 (a) i) of the Brighton Declaration and paragraph C. 1. g) of the Brussels Declaration);
- (iv) Concerning Recommendation CM/Rec(2008)2 on efficient domestic capacity for rapid execution of judgments of the European Court of Human Rights: take stock of its implementation, and make an



inventory of good practices relating to it and, if appropriate, provide for updating the recommendation in the light of practices developed by the States Parties (deadline: 30 June 2017);

- (v) Submit, if appropriate, proposals to the Committee of Ministers regarding the following recommendations (deadline: 31 December 2017):
- Recommendation Rec(2004)4 on the Convention in university education and professional training, along with the development of guidelines on good practice in respect of human rights training for legal professionals;
  - Recommendation CM/Rec(2010)3 on effective remedies for excessive length of proceedings and its accompanying Guide to Good Practice.

## **COMPOSITION**

### **Members:**

Governments of member States are invited to designate one or more representatives of the highest possible rank in the field of human rights.

The Council of Europe will bear the travel and subsistence expenses of one representative from each member State (two in the case of the State whose representative has been elected Chair).

Each member of the committee shall have one vote. Where a government designates more than one member, only one of them is entitled to take part in the voting.

### **Participants:**

The following may send representatives, without the right to vote and at the charge of their corresponding administrative budgets:

- Parliamentary Assembly of the Council of Europe;
- Congress of Local and Regional Authorities of the Council of Europe;
- European Court of Human Rights;
- Council of Europe Commissioner for Human Rights;
- Conference of INGOs of the Council of Europe;
- HELP Network Consultative Board;
- Committees or other bodies of the Council of Europe engaged in related work, as appropriate.

The following may send representatives, without the right to vote and without defrayal of expenses:

- European Union (one or more representatives, including, as appropriate, the European Union Agency for Fundamental Rights (FRA));
- Observer States to the Council of Europe: Canada, Holy See, Japan, Mexico, United States of America;
- representatives of other international organisations (Organisation for Security and Co-operation in Europe (OSCE) / Office for Democratic Institutions and Human Rights (ODIHR), Office of the United Nations High Commissioner for Human Rights, Office of the United Nations High Commissioner for Refugees).

### **Observers:**

The following may send representatives, without the right to vote and without defrayal of expenses:

- Belarus;
- Non-member States with which the Council of Europe has a Neighbourhood Partnership including relevant cooperation activities;
- Non-governmental organisations (Amnesty International, European Trade Unions Confederation (ETUC), International Commission of Jurists (ICJ), International Federation of Human Rights (FIDH), European Roma and Travellers Forum, Open Society Justice Initiative (OSJI)), as well as the European Network of National Human Rights Institutions (ENNHRI).

## **WORKING METHODS**

### **Plenary meetings:**

48 members, 2 meetings in 2016, 3 days

48 members, 2 meetings in 2017, 3 days

The Committee will also appoint a Gender Equality Rapporteur from amongst its members.

The rules of procedure of the Committee are governed by Resolution CM/Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods.

## Committee on Bioethics (DH-BIO)

Set up by the Committee of Ministers under Article 17 of the Statute of the Council of Europe and in accordance with Resolution CM/Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods

**Type of committee:** Subordinate body

Terms of reference valid from: **1 January 2016 until 31 December 2017**

### MAIN TASKS

Under the authority of the Committee of Ministers, the DH-BIO shall carry out the tasks assigned to the Steering Committee on Bioethics (CDBI) by the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine.

Under the supervision of the Steering Committee for Human Rights (CDDH), the DH-BIO will conduct intergovernmental work on the protection of human rights in the field of biomedicine assigned to it by the Committee of Ministers. The DH-BIO will in particular:

- (i) conduct regular re-examinations foreseen in the Convention and its Additional Protocols;
- (ii) develop further the principles laid down in the Convention on Human Rights and Biomedicine, as appropriate;
- (iii) contribute to raising awareness and facilitating the implementation of these principles;
- (iv) assess ethical and legal challenges raised by developments in the biomedical field;
- (v) co-operate with the European Union and relevant intergovernmental bodies, in particular with a view to promoting consistency between the normative texts;
- (vi) in accordance with decisions CM/Del/Dec(2013)1168/10.2 of the Committee of Ministers, carry out, at regular intervals, within the limits of the available resources and bearing in mind its priorities, an examination of some or all of the conventions<sup>19</sup> for which it has been given responsibility and report back to the Committee of Ministers.

### PILLAR/SECTOR/PROGRAMME

**Pillar:** Human Rights

**Sector:** Ensuring Social Rights

**Programme:** Bioethics

### SPECIFIC TASKS

- (i) Subject to the carrying out of consultations on a draft text, finalise an additional protocol on the protection of the human rights and dignity of persons with mental disorders with regards to involuntary treatment and involuntary placement.
- (ii) On the basis of the outcome of the International Conference on Emerging Technologies and Human Rights, prepare a White Paper on challenges for human rights raised by emerging technologies and their convergence.
- (iii) Re-examine, and where appropriate, revise the Additional Protocol concerning Biomedical Research.
- (iv) Contribute to the re-examination of Recommendation (97)5 on the protection of medical data carried out by the T-PD
- (v) Provide support to possible work on prenatal sex selection undertaken by the CDDH in co-operation with the Gender Equality Commission.
- (vi) Finalise a survey on the Oviedo Convention – impact, relevance and challenges.
- (vii) Organise an International Conference for the 20<sup>th</sup> anniversary of the Oviedo Convention.

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<sup>19</sup> Cf. Relevant decision of the Committee of Ministers (CM/Del/Dec(2013)1168/10.2) and list of Conventions in Appendix 1.

**COMPOSITION****Members:**

Governments of the member States are invited to designate one or more representatives of the highest possible rank, with appropriate expertise in the various aspects of bioethics, including in relation to emerging technologies, and able to consider these from a human rights perspective.

The Council of Europe will bear the travel and subsistence expenses of one representative from each member State (two in the case of the State whose representative has been elected Chair).

Each member of the committee shall have one vote. Where a government designates more than one member, only one of them is entitled to take part in the voting.

In accordance with decisions CM/Del/Dec(2013)1168/10.2 of the Committee of Ministers, in cases where there is no convention-based body including all the Parties, non-member States are invited to take part, with a right to vote, in the committee meetings pertaining to the conventions to which they are Parties.

**Participants:**

The following may send representatives, without the right to vote and at the charge of their corresponding administrative budgets:

- Parliamentary Assembly of the Council of Europe;
- Consultative Committee of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (T-PD), Committee (Partial Agreement) on Transplantation of Organs and Tissues (CD-P-TO) and Committee (Partial agreement) on Blood Transfusion (CD-P-TS),<sup>20</sup>
- Council of Europe Commissioner for Human Rights;
- Conference of INGOs of the Council of Europe;
- Committees or other bodies of the Council of Europe engaged in related work, as appropriate.

The following may send representatives, without the right to vote and without defrayal of expenses:

- European Union;
- Observer States to the Council of Europe: Canada, Holy See, Japan, Mexico, United States of America;
- Other international organisations: European Science Foundation (ESF), OECD, UNESCO and WHO.

**Observers:**

The following may send representatives, without the right to vote and without defrayal of expenses:

- Australia, Israel;
- the Conference of European Churches (KEK);
- Other non-governmental organisations, including professional organisations, which could be invited by the DH-BIO to attend specific meetings of the DH-BIO in accordance with CM/Res(2011)24.

**WORKING METHODS****Meetings:**

48 members, 2 meetings in 2016, 4 days

48 members, 2 meetings in 2017, 4 days

**Bureau**

7 members, 2 meetings in 2016, 2 days

7 members, 2 meetings in 2017, 2 days

The Chair or vice-Chair of DH-BIO may be invited to attend the meetings of the CDDH and its Bureau in order to inform on progress with its work.

The Committee will also appoint a Gender Equality Rapporteur from amongst its members.

The rules of procedure of the Committee are governed by Resolution CM/Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods.

DH-BIO	
164	Convention for the protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine
168	Additional Protocol to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, on the Prohibition of Cloning Human

<sup>20</sup> European Directorate for the Quality of Medicines and Healthcare.

	Beings
186	Additional Protocol to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin
195	Additional Protocol to the Convention on Human Rights and Biomedicine, concerning Biomedical Research
203	Additional Protocol to the Convention on Human Rights and Biomedicine concerning Genetic Testing for Health Purposes

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**APPENDIX V. EXPERTS REPRESENTING THE CDDH IN OTHER BODIES**

*(depending on the relevance of the agenda)*

1. Comité de bioéthique (DH-BIO) : Mme Committee on Bioethics (DH-BIO): Ms Brigitte KONZ (Luxembourg)
2. Commission for Democracy through Law (Venice Commission): Mr Arto KOSONEN (Finland)
3. European Commission for the Efficiency of Justice (CEPEJ): Mr Vít A. SCHORM (Czech Republic)
4. Committee of Legal Advisers on Public International Law (CAHDI): Mr Roeland BÖCKER (The Netherlands)
5. European Committee on Legal Co-operation (CDCJ): Ms Maria de Fátima GRAÇA CARVALHO (Portugal)
6. Steering Committee on Media and Information Society (CDMSI): Ms Kristine LICE (Latvia)
7. Ad hoc Committee of experts on Roma and Traveller Issues (CAHROM) : Ms Svetlana GELEVA (the Former Yugoslav Republic of Macedonia)
8. European Consultative Committee of the Convention for the protection of individuals with regard to automatic processing of personal data (T-PD): Ms Brigitte OHMS (Austria)
9. Committee of Experts on Terrorism (CODEXTER): Mr Rob LINHAM (United Kingdom)
10. Ad hoc Committee to elaborate an additional protocol to the Convention on the Prevention of Terrorism (CETS No 196): Mr Rob LINHAM (United Kingdom)
11. Drafting Group on a Committee of Ministers draft recommendation on the “foreign terrorist fighters”: Ms Krista OINONEN (Finland)
12. Committee of the Parties to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse (“the Lanzarote Committee”): Mr Joan FORNER ROVIRA (Andorra)
13. UN Forum on Human Rights and Business: Prof. René LEFEBER (The Netherlands)

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14. Mr Roeland BÖCKER (Pays-Bas) is the CDDH Gender Equality Rapporteur. DH-SYSC and DH-BIO will appoint their own Gender Equality Rapporteur at their respective next meeting.
15. Ms Svetlana GELEVA (the Former Yugoslav Republic of Macedonia) is the CDDH Rapporteur on Roma and Traveller Issues.

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**APPENDIX VI. MANDATE OF THE CDDH DRAFTING GROUP  
ON FEMALE GENITAL MUTILATION AND FORCED MARRIAGE  
(CDDH-MF)**

*(as adopted by the CDDH at its 8<sup>th</sup> meeting, 7–11 December 2015)*

Under the authority of the CDDH, the CDDH-MF is called to:

- (i) Further to work already conducted in the area of human rights and culturally diverse societies, undertake work to combat and prevent female genital mutilation and forced marriage, which are serious violations of human rights. To this end, conduct an analysis of the legal situation at international level and in the Council of Europe member States (deadline: **31 March 2016**).
- (ii) On this basis, prepare a guide to good national practices aimed at combatting and preventing these affronts and, if necessary, make proposals to (a) ensure coherent policies and better implementation of the legislation aimed at preventing these affronts; (b) reinforce the national and European legal framework as well as co-operation between member States; (c) raise awareness of this issue. These proposals may result in, inter alia the preparation of a draft recommendation of the Committee of Ministers (deadline: **15 November 2016**).

Composition: 10 members at the expense of the Council of Europe's budget (Belgium, Bulgaria, Croatia, Czech Republic, France, the Netherlands, Norway, Switzerland, Turkey, United Kingdom (Presidency)).

This activity is to be carried out ensuring appropriate co-ordination and co-operation with the relevant bodies involved, in particular the GEC, GREVIO, GRETA and the CDPC.

Rapporteur on female genital mutilation and forced marriage: Mr Rob LINHAM (United Kingdom)

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## APPENDIX VII. COMPOSITION OF THE BUREAU, CHAIRMANSHIPS AND RAPPORTEURS

*(following the elections at the 84<sup>th</sup> meeting of the CDDH, 7–11 December 2015)*

<b>BUREAU OF THE CDDH</b>	<b>END OF THE MANDATE</b>	<b>REFERENCES</b>
Ms Brigitte KONZ (Luxembourg), Chair	31 December 2016 (elected for 1 year renewable once)	84 <sup>th</sup> meeting of the CDDH (December 2015)
Mr Hans-Jörg BEHRENS (Germany), vice-Chair	31 December 2016 (elected for 1 year renewable once)	84 <sup>th</sup> meeting of the CDDH (December 2015)
Mr Rob LINHAM (United Kingdom), Member	31 December 2016 (elected for 2 years renewable once)	82 <sup>nd</sup> meeting of the CDDH (November 2014)
Mr Morten RUUD (Norway), Member	31 December 2016 (elected for 2 years renewable once)	82 <sup>nd</sup> meeting of the CDDH (November 2014)
Ms Brigitte OHMS (Austria), Member	31 December 2017 (elected for 2 years not renewable)	84 <sup>th</sup> meeting of the CDDH (December 2015)
Ms Kristine LICE (Latvia), Member	31 December 2017 (elected for 2 years renewable once)	84 <sup>th</sup> meeting of the CDDH (December 2015)
Ms Zinovia STAVRIDI (Greece), Member	31 December 2017 (elected for 2 years renewable once)	84 <sup>th</sup> meeting of the CDDH (December 2015)
Mr Joan FORNER ROVIRA (Andorra), Member	31 December 2016 (elected for 1 year renewable once)	84 <sup>th</sup> meeting of the CDDH (December 2015)
<b>DH-BIO</b> Mr Mark BALE (United Kingdom), Chair	31 December 2016 (elected for 1 year not renewable)	84 <sup>th</sup> meeting of the CDDH (December 2015)
<b>DH-SYSC</b> Ms Isabelle NIEDLISPACHER (Belgium), Chair	31 December 2016 (elected for 1 year renewable once)	84 <sup>th</sup> meeting of the CDDH (December 2015)
<b>CDDH-MF</b> Mr Rob LINHAM (United Kingdom), Chair	31 December 2016 (elected for 1 year renewable once)	84 <sup>th</sup> meeting of the CDDH (December 2015)
<b>RAPPORTEURS</b>		
<b>CDDH-EXP</b> Ms Kristine LICE (Latvia)	31 December 2017	84 <sup>th</sup> meeting of the CDDH (December 2015)
<b>CDDH-MF</b> Mr Rob LINHAM (United Kingdom)	31 December 2017	84 <sup>th</sup> meeting of the CDDH (December 2015)
<b>CDDH-MIG</b> Mr Frank SCHURMANN (Switzerland)	31 December 2017	84 <sup>th</sup> meeting of the CDDH (December 2015)
<b>CDDH-INST</b> Ms Krista OINONEN (Finland)	31 December 2017	84 <sup>th</sup> meeting of the CDDH (December 2015)
<b>CDDH-SOC</b> Mme Chantal GALLANT (Belgium)	31 December 2017	84 <sup>th</sup> meeting of the CDDH (December 2015)

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**APPENDIX VIII. SPEECH OF MS VANDA ŠIPOŠOVÁ, DEPUTY TO  
THE HEAD OF THE DELEGATION OF THE EUROPEAN UNION  
TO THE COUNCIL OF EUROPE**

*(84<sup>th</sup> CDDH meeting, 7–11 December 2015)*

1. First of all, please allow me to thank the CDDH Secretariat and its Bureau for their forth-coming approach in allowing the European Union to come before you today to present an update on the current state-of-play in the process of the EU accession to the European Convention on Human Rights. I regret very much that due to challenges in timing, Ambassador Jari VILEN is not able to be here himself, as he was when the European Union presented its last update on the issue in the latest CDDH meeting on 17 June.

2. The accession of the European Union to the ECHR has been from the start, as you well know, both a very ambitious and a very important project. It remains so today. Thus, while the European Union respects the opinion 2/13 of the European Court of Justice on the compatibility of the Draft Accession Agreement with EU law – after all the European Commission had requested this opinion – and fully recognizes the need to take it into account in pursuing the next steps in the accession process, the European Union strongly reaffirms that accession of the EU to the ECHR is a binding treaty obligation, introduced and assumed by the Member States of the European Union in the Lisbon Treaty. This project, while by no accounts not challenging, is thus one of constitutional importance for the European Union. In this line, the pursuit of EU accession to the ECHR has been identified as one of the priorities of the European Commission Work Programme 2015 and reaffirmed as such again in the Commission Work Programme for 2016. The EU accession to the ECHR is therefore at the forefront of EU's work in regards to fundamental rights.

3. Following the publication of the CJEU opinion 2/13 on 18 December 2014, the European Commission has immediately recognized that an in depth analysis of the points made in the opinion 2/13 will be necessary to pave the way forward on EU accession to the ECHR and has informed our partners in the Council of Europe of this planned work at the earliest opportunity. Since then, various actors of the European Union including Commission First Vice-President Frans Timmermans, who has special responsibility for this file within the European Commission, have on a number of occasions reiterated the commitment of the European Union to bring this file to successful fruition and have further emphasized that the relevant institutions of the European Union are indeed engaged in discussions on this issue.

4. In this respect, the European Commission, in its capacity as the EU negotiator for the file continues to consult on the issues raised in the opinion 2/13 with the special committee designated by the Council of the European Union, namely the Working Party on Fundamental Rights, Citizens Rights and Free Movement of Persons (FREMP). The last meeting of this working party in the context of the EU accession to the ECHR took place on 4 November 2015. In this regard, please allow me to, in addition to the European Commission's own efforts on the file, express our appreciation for the efforts of the current Luxembourgish Presidency, whose willingness and support for having this item frequently on the agenda of the FREMP working party is instrumental. An invaluable initiative of the Luxembourgish Presidency in regards to EU accession to the ECHR, was also the inclusion of it on the agenda of the October Justice and Home Affairs Council on ministerial level. The JHA Ministers with the participation of Commission First Vice President Timmermans and Commissioner for

Justice Věra Jourová had a good discussion on the subject, expressing support for the technical work done at FREMP level and inviting the European Commission to reiterate the EU's commitment on the issue to the negotiation partners.

5. To sum up, allow me to, a bit more informally, share with you also that the EU accession to the ECHR was one of the topics of discussion of a very recent meeting, on 25 November 2015, between Commission First Vice President Timmermans and CoE Secretary General Thorbjorn Jagland. Commission First Vice President Timmermans reiterated the commitment of the EU as well as his personal commitment to proceed on this file, offered that as soon as the EU has internally resolved the questions and challenges posed to it directly by the opinion 2/13, it will reach out to negotiation partners to pursue the remainder of the work together and on a positive note he was able to share his assessment that negotiations will be facilitated by the fact that no new negotiating mandate for the EU will be required to keep working on this file.

6. EU accession to the ECHR will strengthen fundamental values, and enhance the coherence of fundamental rights protection in Europe. Allow me to assure you, that this goal, which is of paramount importance, as well as the binding commitment to make it a reality expressed by the Member States of European Union in the Lisbon Treaty is not something taken lightly at the EU level.

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**APPENDIX IX. SPEECH OF PROFESSOR DR THERESIA DEGENER,  
VICE-CHAIR OF THE UN COMMITTEE ON THE RIGHTS  
OF PERSONS WITH DISABILITIES (CRPD)**

*(84<sup>th</sup> CDDH meeting, 7–11 December 2015)*

1. It is a pleasure to meet with the Steering Committee for Human Rights and exchange views today on 10<sup>th</sup> December 2015 – the international human rights day. As the Vice-Chairperson of the Committee on the Rights of Persons with Disabilities, I convey greetings from my fellow CRPD Committee members to you.

2. The CRPD Committee is very interested in exchanging views with regional HR organisations and we have done so on a number of occasions. In particular during our 12<sup>th</sup> session we devoted a full day on 26 September 2014 for a dialogue with regional human rights mechanisms in which the Council of Europe also participated. That dialogue was very fruitful and we have learned a great deal about the various activities within the Council of Europe relating to the protection of human rights of persons with disabilities.

3. We were particularly pleased by the landmark Issues paper by the Council of Europe's former High Commissioner for Human Rights (Thomas Hammarberg) on “the right to live independently and be included in the community” (20 February 2012) which gave an excellent analysis of the legal and political content and impact of Article 19 of the CRPD which speaks of those rights. We are currently working on a draft general comment on Article 19 CRPD and the High Commissioner's Issue Paper of 2012 will be one of our major resources.

4. We have also taken note that the European Court of Human Rights has referred to the CRPD and our jurisprudence in a significant number of cases now. The Court has adopted a heightened standard of scrutiny regarding different treatment of persons with disabilities in *Glor v. Switzerland*, (application no. 13444/04, judgment 30 April 2009) and an even stricter standard in *Alajos Kiss v Hungary*<sup>21</sup> 20 May 2010 and this strict standard of scrutiny when it comes to disability discrimination was replicated in the case of *Kiyutin v Russia*<sup>22</sup> (application no. 2700/10, judgment 10 March 2011).

5. This growing recognition of the CRPD and our jurisprudence among Council of Europe legal bodies is proof that the paradigm shift from the medical model to the human rights model of disability has arrived in European human rights law. This paradigm shift is at the heart of the CRPD and its purpose as enshrined in Article 1 CRPD is “to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity”. When we say that we want to abolish the medical model of disability we want to eradicate that disabled persons are seen as medical problems, that disabled persons are reduced to their impairment. To do away with the medical model of disability also means to break the cycle of institutionalization and segregation of disabled people into separate institutions, schools or sheltered employment. The human rights model of disability acknowledges that disability is a social construct and that the problems disabled persons experience are not so much caused by their

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<sup>21</sup> *Alajos Kiss v Hungary*, app. no. 38832/06, judgment of 20 May 2010.

<sup>22</sup> *Kiyutin v Russia*, app. no. 2700/10, judgment of 10 March 2011.

impairments but by barriers and discrimination in our environment, in our communication and by lack of adequate support. The human rights model of disability applies the principle of universality of all human rights and breaks with the prejudice that impairment might hinder human rights exercise. If we believe that human rights cannot be gained or taken away, because we acquire them qua birth, then it is logical to assume that all persons with disabilities are subjects of human rights and can enjoy and exercise these human rights with or without support. This is why Article 12 CRPD assumes that all persons with disabilities have legal capacity. In our Concluding Observations as well as in our General Comment No 1 we have clearly established that legal guardianship and other forms of substitute decision regimes and proxies are a violation of the CRPD. The CRPD demands that in all cases the wishes and preferences of persons with disabilities are taken seriously and must be respected and protected. The human rights model of disability is based on the firm commitment to freedom and equality for all persons with disabilities. The fact that some persons with disabilities might need assistance and support does not mean that they cannot enjoy all human rights. Autonomy and self-determination can be expressed and performed in many different ways. Human rights do not carry a precondition of skills or capacities with them, neither to speak or think clearly nor to hop on one leg.

6. But because the medical model of disability has prevailed for so long and is still powerful in some places and sectors, it is important to check our legal systems and our policies and practices. They need to be reviewed and stripped of the medical model of disability. This is particularly important when we talk about persons with cognitive, intellectual or psycho-social impairments. These are the most vulnerable among disabled persons when it comes to legal incapacitation, forced treatment and forced institutionalization.

7. The Fundamental Rights Agency 2012 publication on “Involuntary placement and involuntary treatment of persons with mental health problems” demonstrates that human rights violations are rampant in the mental health sector. It strikingly shows that forced institutionalization and treatment lead to fear and trauma but not to cure or peace. Similar studies from various regions of the world demonstrate that persons with cognitive impairments are stripped of their human rights as soon as they enter institutions or because they endure overprotection within their own families. These practices have a long history and most social service providers still adhere to the medical model of disability. So do many laws that allow for disenfranchisement, legal incapacitation or interdiction, forced institutionalization and forced treatment.

8. Mr. Chairman, distinguished members of the Steering Committee, we believe that human rights standard setting is important and has made this world a better place. We do believe that human rights organisations, such as the treaty bodies of the UN and the regional human rights mechanisms should work together when it comes to standard setting and jurisprudence. International and European human rights law will be stronger if it is concise and coherent. It will send a clearer message to state parties and civil society if the international human rights canon gives a clear picture on what human rights are and when they are violated. It is worthwhile to avoid law making that is overlapping but contradicting. Of course it is not always possible to avoid conflicts of law, given that human rights standards are developed in different regions of this world and at different times. Human rights law instruments are living instruments and thus, they need to be interpreted according to the highest and most recent standard of human rights protection. Once we have developed high standards we should take great caution not to derogate or abrogate them.

9. This is why we are concerned about the draft Oviedo Protocol which in our view contradicts our General Comment No 1 relating to Article 12 and our new Guidelines on

Article 14. In both of these statements we have set the standard that substituted decision making regimes need to be replaced by supported decision making and that neither forced institutionalization nor forced treatment is in line with the CRPD (Art. 12, 14, 15, 17).

10. The draft Oviedo protocol is an expansion of Article 7 of the Convention on Medicine and Bioethics and deals with involuntary “placement” (defined broadly to include short and long term involuntary placements, all of which are all disability based detention contrary to Article 14 of the CRPD), as well as involuntary treatment.

11. Contrary to the explanatory document, the CRPD does not prohibit only those involuntary placements that are based on impairment alone, and with no other criteria or procedures. Article 14 prohibits involuntary placements – long or short term – that are based on disability with or without additional factors or criteria. The Committee interprets Article 14 to require States parties to ensure that no person is detained in any kind of a mental health facility, including under criteria such as “danger to self or others” or “need for care and treatment.”

12. In the draft protocol, placements are defined broadly as “placing a person in a particular environment for a particular purpose or purposes” and “involuntary” is defined as being done to a person who objects to the measure.

13. Criteria for such placements (draft Article 10) are that it has a therapeutic purpose and is least restrictive alternative, and that either (a) the person’s mental health condition represents a significant risk of serious harm to person’s own health, and ability to decide on placement is severely impaired, or (b) person’s mental health condition represents a significant risk of serious harm to others.

14. This is in direct contradiction to Article 12 as well as Article 14 of the CRPD. The decision as to whether to enter a hospital or other environments for therapeutic purposes is within the scope of a person’s right to decide whether to have or not have a medical treatment. The Committee has said clearly in General Comment No.1 that persons with disabilities retain legal capacity at all times including in crisis situations, and that all mental health services must be based on the free and informed consent of the person concerned. Furthermore a person’s actual or perceived mental capacity (decision-making skills) cannot be used to justify deprivation of legal capacity to make decisions. Thus Article 12 by itself would be enough to negate the first premise of “danger to self” and/or “need for care and treatment”, which the Committee has rejected as a justification for mental health detention. (The Committee has used various terminologies that all cover the same situations that the Oviedo draft protocol treats as “involuntary placements” of persons with mental disorders.) It is prohibited by Article 14 as well as Article 12 of the CRPD, as it is a discriminatory deprivation of liberty that is being applied only to persons with mental disorders, and on the basis of a perceived deficit in mental capacity (decision-making skills).

15. The second premise, of “risk of harm to others” discriminates against persons with disabilities because preventive detention based on a prediction that the person will commit acts that harm others. Someone who has a psychosocial disability cannot be used as a predictor of violence.

16. The qualifier that it should be determined to be “least restrictive environment” is irrelevant and does not negate discriminatory detention.

17. Criteria for involuntary treatment (draft Article 11) are similar. Treatment is defined as an intervention that has a therapeutic purpose in relation to that disorder, which can include

management or cure or the disorder and rehabilitation. The same premises apply regarding significant risk of serious harm to the person's own health / severe impairment of ability to decide about treatment, or significant risk of serious harm to others; and least intrusive alternative.

18. This is contrary to CRPD Articles 12, 14, 15, 16, 17 and 25. Neither therapeutic purpose nor an actual or perceived risk of serious harm, nor an actual or perceived impairment of decision-making skills is reason to deprive a person of the right to make decisions about medical treatment. The Committee has emphasized that persons with disabilities retain legal capacity at all times including in crisis situations. The Committee has emphasized in General Comment No. 1 para 42 that such interventions can only be carried out with the free and informed consent of the person concerned. The Committee has also called for an end to involuntary treatment in mental health services under Article 15, which concerns the freedom from torture and ill-treatment.

19. Draft Article 13 addresses procedures for emergency situations; it should be emphasized again that under CRPD Articles 12 and 14 an emergency cannot justify involuntary placements in a mental health facility (or on the ground of mental disorder) or involuntary treatment. Persons with disabilities retain their legal capacity at all times including in crisis situations.

20. The Committee has provided for the situation where it is not practicable after significant efforts have been made to determine the person's will and preferences; in that case "best interpretation of will and preferences" rather than best interests shall be determined.

21. The draft protocol does not adhere to this standard, as its entire premise is that involuntary treatment and involuntary placement are defined as occurring despite the person's objection. If a person is objecting to treatment, the person's will and preferences have been determined and all further interactions must respect that refusal of treatment and not intrude further.

22. The Draft Protocol addresses procedures and includes the concept of a person of trust, similar to the CRPD concept of a person who can provide support in exercising legal capacity. But the person of trust is only brought in as an individual who can be involved in supporting a person who is subject to involuntary treatment and/or involuntary placement. Under the CRPD, in contrast, support in the exercise of legal capacity is the opposite of involuntary treatment and involuntary placement; instead of involuntary measures, the CRPD calls for:

- 1) respecting the person's autonomy, will and preferences,
- 2) providing accommodations and support to make decisions with respect to treatment or services, living arrangements, and any temporary environment for respite or care or services; and
- 3) providing decision-making support as well as practical support, emotional support and any other kinds of support that may be relevant in exercising and asserting rights and in daily life, according to the person's expressed needs.

23. Mr. Chairman, distinguished members of the Steering Committee for Human Rights, we hope that the Oviedo Protocol will be revised and brought in alignment with the CRPD, and our General Comment No. 1 relating to Article 12 and our recently adopted Guidelines on Article 14 CRPD will be taken into account.

## APPENDIX X. CALENDAR OF MEETINGS OF THE CDDH AND SUBORDINATE BODIES FOR 2016–2017

(as adopted by the CDDH at its 84<sup>th</sup> meeting, 7–11 December 2015)

<b>2016</b>	
1 <sup>st</sup> meeting of the Committee of Experts on the System of the European Convention on Human Rights (DH-SYSC)	25–27 April
1 <sup>st</sup> meeting of the CDDH Drafting Group on female genital mutilation and forced marriage (CDDH-MF)	27–29 April
1 <sup>st</sup> meeting of the DH-SYSC Drafting Group on Recommendation CM/REC(2008)2 (DH-SYSC-REC)	23–25-May
95 <sup>th</sup> meeting of the Bureau of the Steering Committee for Human Rights (CDDH-BU)	Paris, 26–27 May
9 <sup>th</sup> meeting of the Committee on Bioethics (DH-BIO)	31 May–3 June
<i>HELP Conference</i>	<i>Strasbourg, 15–17 June</i>
85 <sup>th</sup> meeting of the Steering Committee for Human Rights (CDDH) Event on human rights in culturally diverse societies	14–17 June
1 <sup>st</sup> meeting of the DH-SYSC Drafting Group I on the follow-up to the CDDH report on the longer-term future of the Convention (DH-SYSC-I)	29 June–1 <sup>st</sup> July
2 <sup>nd</sup> meeting of the CDDH Drafting Group on female genital mutilation and forced marriage (CDDH-MF)	21–23 September
1 <sup>st</sup> meeting of the CDDH Drafting Group on migration and human rights (CDDH-MIG)	September
2 <sup>nd</sup> meeting of the DH-SYSC Drafting Group I on the follow-up to the CDDH report on the longer-term future of the Convention (DH-SYSC-I)	19–21 October
1 <sup>st</sup> meeting of the CDDH Drafting Group on civil society and national human rights institutions (CDDH-INST)	October
2 <sup>nd</sup> meeting of the Committee of Experts on the System of the European Convention on Human Rights (DH-SYSC)	8–10 November
3 <sup>rd</sup> meeting of the CDDH Drafting Group on female genital mutilation and forced marriage (CDDH-MF)	November
96 <sup>th</sup> meeting of the Bureau of the Steering Committee for Human Rights (CDDH-BU)	Paris, 24–25 November
Seminar on case-law of the Court relevant to bioethical issues and 10 <sup>e</sup> meeting of the Committee on Bioethics (DH-BIO)	5–8 December
86 <sup>th</sup> meeting of the Steering Committee for Human Rights (CDDH)	6–9 December
<b>2017 (DATES TO BE SPECIFIED IN JUNE/DECEMBER 2016)</b>	
3 <sup>rd</sup> meeting of the DH-SYSC Drafting Group I on the follow-up to the CDDH report on the longer-term future of the Convention (DH-SYSC-I)	February
1 <sup>st</sup> meeting of the CDDH Drafting Group on social rights (CDDH-SOC)	February

2 <sup>nd</sup> meeting of the CDDH Drafting Group on migration and human rights (CDDH-MIG)	February
2 <sup>nd</sup> meeting of the CDDH Drafting Group on civil society and national human rights institutions (CDDH-INST)	March
1 <sup>st</sup> meeting of the CDDH Drafting Group on freedom of expression and links to other human rights (CDDH-EXP)	March
1 <sup>st</sup> meeting of the DH-SYSC Drafting Group II on the follow-up to the CDDH report on the longer-term future of the Convention (DH-SYSC-II)	March
3 <sup>rd</sup> meeting of the Committee of Experts on the System of the European Convention on Human Rights (DH-SYSC)	April
2 <sup>nd</sup> meeting of the CDDH Drafting Group on social rights (CDDH-SOC)	April
3 <sup>rd</sup> meeting of the CDDH Drafting Group on migration and human rights (CDDH-MIG)	May
2 <sup>nd</sup> meeting of the CDDH Drafting Group on freedom of expression and links to other human rights (CDDH-EXP)	May
2 <sup>nd</sup> meeting of the DH-SYSC Drafting Group II on the follow-up to the CDDH report on the longer-term future of the Convention (DH-SYSC-II)	June
3 <sup>rd</sup> meeting of the CDDH Drafting Group on civil society and national human rights institutions (CDDH-INST)	June
97 <sup>th</sup> meeting of the Bureau of the Steering Committee for Human Rights (CDDH-BU)	June
11 <sup>th</sup> meeting of the Committee on Bioethics (DH-BIO)	May/June
87 <sup>th</sup> meeting of the Steering Committee for Human Rights (CDDH) [40 <sup>th</sup> anniversary of the CDDH] Event on Human Rights and Business	June
3 <sup>rd</sup> meeting of the DH-SYSC Drafting Group II on the follow-up to the CDDH report on the longer-term future of the Convention (DH-SYSC-II)	September
3 <sup>rd</sup> meeting of the CDDH Drafting Group on freedom of expression and links to other human rights (CDDH-EXP)	September
3 <sup>rd</sup> meeting of the CDDH Drafting Group on social rights (CDDH-SOC)	October
4 <sup>th</sup> meeting of the Committee of Experts on the System of the European Convention on Human Rights (DH-SYSC)	November
International Conference for the 20 <sup>th</sup> anniversary of the Oviedo Convention and 12 <sup>th</sup> meeting of the Committee on Bioethics (DH-BIO)	November/December
98 <sup>th</sup> meeting of the Bureau of the Steering Committee for Human Rights (CDDH-BU)	November
88 <sup>th</sup> meeting of the Steering Committee for Human Rights (CDDH)	December