



Strasbourg, 6 November 2003

DH-DEV(2003)009

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

**COMMITTEE OF EXPERTS FOR
THE DEVELOPMENT OF HUMAN RIGHTS
(DH-DEV)**

MEETING REPORT

31st meeting, Wednesday 29 October – Friday 31 October 2003

Item 1: Opening of the meeting

1. The Committee of Experts for the Development of Human Rights (DH-DEV) held its 31st meeting in Strasbourg (Human Rights Building) from 29 to 31 October 2003, with Mr Silvio CAMILLERI (Malta) in the Chair. The list of participants can be found in Appendix I. The agenda as adopted and references to working documents appear in Appendix II.

Item 2: Adoption of the agenda

2. See Item 1.

Item 3: Protection of human rights during armed conflict as well as during internal disturbances and tensions

3. The Chair provided a brief presentation on the work carried out in the framework of the Committee as regards this question and recalled that the Committee would adopt its Final Activity Report on it this meeting.

4. He recalled that the discussions held at the previous meetings took place on three main issues. The first one was the possibility of amending Article 15 of [the European Convention on Human Rights \("the Convention"\)](#); the Committee had not deemed it necessary or desirable. The second one concerned the setting-up of a fact-finding mechanism where there is a threat or where there are allegations of serious and massive violations of human rights. He noted that the Committee had endorsed the idea – initially proposed by the Dutch delegation in a non-paper submitted to the Committee at its last meeting – of the Council of Europe [Commissioner for Human Rights \("the Commissioner"\)](#) undertaking such fact-finding as part of his existing mandate. Finally, he recalled that the third issue on which the Committee still needed to decide was whether a recommendation or a similar instrument would be desirable in the field at issue.

1. A possible recommendation or other instrument on the protection of human rights during armed conflict as well as during internal disturbances and tensions

5. With regard to this issue, the Chair referred to the Study commissioned by the Committee at its last meeting on the relevant principles developed in the case-law of the [European Court of Human Rights \("the Court"\)](#) from the Convention ([DH-DEV\(2003\)001](#)). The aim of this document was to provide a basis for the Committee's discussions on the issue. The consultant who had prepared it, Mr Jeremy McBRIDE, presented his study to the Committee, following which an exchange of views took place.

Discussion on the study on the principles governing the application of the European Convention on Human Rights during armed conflict and internal disturbances and tensions.

6. Some experts asked questions as to the possibility of addressing the responsibility of non-State actors during armed conflicts as well as internal disturbances and tensions in the framework of the Convention system. Mr McBride noted that whilst the Convention is directed to States and not to non-State actors, the former have a positive obligation to respond adequately to threats to rights such as the right to life in crisis situations within their jurisdiction.

7. The question of the feasibility of common guidelines that would cover a wide range of crisis situations – i.e. armed conflicts, internal disturbances and tensions – was raised by some experts. Mr McBride considered that such guidelines would constitute common minimum standards applicable in all these situations. He added that it would prove difficult to distinguish between each type of crisis situations.

8. As regards the risk of weakening the existing protection mechanisms about which some experts expressed concern, Mr McBride emphasised that guidelines would not be meant to be an end in themselves. He indicated that they could cover aspects such as the training of armed forces and other actors involved in planning and acting in emergency situations. Moreover, a wider dissemination of a document such as guidelines could also be envisaged, notably to those whose rights could be potentially affected in crisis situations.

9. The Chair on behalf of the Committee thanked Mr McBride for his excellent work and for his participation in this exchange of views.

General comments on the Study and opinions as to the follow-up to be given to it

10. See the Final Activity Report ([DH-DEV\(2003\)002 Final](#), paragraphs 21 to 24).

2. The Commissioner for Human Rights as a possible fact-finding body in situations where there is a threat or where there are allegations of serious and massive violations of human rights

11. The Chair recalled that whilst the possibility of the Commissioner carrying out fact-finding had been agreed on, the question of the practical ways and means, notably as regards the recourse to external experts, which would enable the Commissioner to undertake fact-finding still remained to be discussed. The Director of the Office of the Commissioner, Mr Christos GIAKOUMOPOULOS, was invited to meet the DH-DEV experts to discuss this topic.

Exchange of views between the Director of the Office of the Commissioner and DH-DEV experts on the practical modalities of fact-finding by the Commissioner in situations where there is a threat or where there are allegations of serious and massive violations of human rights

12. Mr Giakoumopoulos noted that a list of experts in the various relevant fields, who would be available at a very short notice where urgent fact-finding is required, would be a possible way of ensuring that the Commissioner can have recourse to external experts. He indicated that such a list would need to be long and regularly updated in order to ensure that a sufficient number of experts were available when needed. Some experts were of the view that a rolling list would be preferable to a permanent body of experts on standby, which may entail considerable cost. A possible co-operation of the [Council of Europe](#) with member States and international organisations which have similar rosters of experts could be envisaged. Mr Giakoumopoulos agreed that co-operation with other international organisations (such as UNHCR or OSCE) could be an option. The Commissioner could also have recourse to experts appearing on the list following a proposal by member States, having due regard to the need to preserve the independence which the Commissioner has to demonstrate in fact-finding and the need to avoid cumbersome ad hoc negotiations about the choice of experts.

13. In addition, Mr Giakoumopoulos emphasised that some kind of special reserve fund would need to be set up and be at the disposal of the Commissioner in case situations warranting fact-finding would arise. Such a fund would be necessary in order to provide logistical support to the Commissioner and the experts involved.

14. Some experts also brought up the issue of entrusting the task of public prosecutor at the Court to the Commissioner as was recommended by the [Parliamentary Assembly](#) (“the Assembly”) in its [Recommendation 1606\(2003\)](#) ([DH-DEV \(2003\)007](#), § 10 (ii-iii)). The Committee, however, concluded that the issue went beyond the present terms of reference of the DH-DEV and was within the remit of the CDDH’s Drafting Group on the reform of the Convention.

15. The Chair on behalf of the Committee thanked Mr Giakoumopoulos for this fruitful exchange of views.

3. Adoption of the Final Activity Report and draft declaration of the Committee of Ministers on the Protection of Human Rights during Armed Conflict, Internal Disturbances and Tensions

16. The DH-DEV considered that it would be appropriate to reflect the outcome of this activity in a draft declaration in which reference would be made to the importance of compliance with applicable human rights standards during armed conflict, internal disturbances and tensions, to ongoing activities, to the fact-finding role which the Commissioner can play and to the elaboration of practical information and training materials. This draft declaration could be adopted by the [Committee of Ministers](#). The Committee therefore elaborated the text of a draft declaration (Appendix IV, Final Activity Report, [DH-DEV\(2003\)002](#)). It subsequently adopted its Final Activity Report and considered that it had fulfilled the terms of reference given to it by [the CDDH](#) for this activity.

Item 4: Draft opinions of the CDDH on Recommendations of the Parliamentary Assembly¹

17. The Chair explained that the Ministers’ Deputies had communicated to the CDDH [Recommendations 1606\(2003\)](#) “Areas where the European Convention on Human Rights cannot be implemented” and [1614\(2003\)](#) on “Environment and human rights” both adopted by the Parliamentary Assembly, respectively on 23 and 27 June 2003, for possible comments to be submitted by 1 December 2003. The Bureau of the CDDH, at its 64th meeting (25-26 September 2003), had invited the DH-DEV to hold an exchange of views on the aforementioned Recommendations; the CDDH will be adopting its opinions on them at its next meeting (18-21 November 2003).

(i) Draft opinion of the CDDH on Parliamentary Assembly Recommendation 1606(2003) “Areas where the European Convention on Human Rights cannot be implemented”

18. The Committee examined the draft opinion prepared by the Secretariat ([DH-DEV\(2003\)007](#)) and, after having made some amendments to the text, adopted the draft opinion as it appears in Appendix III.

¹ These two Recommendations can be found in documents [DH-DEV\(2003\)004](#) and [DH-DEV\(2003\)005](#).

19. One expert was of the view that this opinion should address the Assembly's recommendation to the member States to introduce legislation on universal jurisdiction enabling States to take proceedings against the perpetrators of international crimes. However, the Committee did not consider it necessary to address this issue in the draft opinion, given that this particular recommendation was not addressed to the Committee of Ministers.

(ii) Draft opinion of the CDDH on the Parliamentary Assembly Recommendation 1614(2003) "Environment and human rights"

20. The Committee examined the draft opinion prepared by the Secretariat ([DH-DEV\(2003\)008](#)) and made a few amendments, following which it adopted this document the draft opinion as it appears in Appendix IV.

21. While some experts expressed their doubts as regards the usefulness of a recommendation in this area (see §§ 5 and 6 of the draft opinion), the majority of experts considered it very useful to elaborate such an instrument for the reasons set out in § 5 of the draft opinion.

Item 5: Exchange of views on future activities of the DH-DEV

22. See § 19 in respect of the Parliamentary Assembly Recommendation 1614(2003) "Environment and human rights" as well as the draft opinion on this Recommendation in Appendix IV. The DH-DEV lacked the time for a general exchange of views on possible future activities.

Item 6: Other business

23. The Committee noted that this was the last meeting with Mr Camilleri in the Chair. It therefore thanked him most warmly for having chaired the work of the Committee in such an energetic and stimulating manner. The Committee as a whole also expressed its support for the candidature of Ms Inger KALMERBORN (Sweden), Vice-Chairperson of the Committee, to succeed Mr Camilleri as the Committee's Chairperson.

Item 7: Date of the next meeting

24. The Secretariat informed the Committee that the date of its next meeting would be fixed after the coming meeting of the CDDH (18-21 November).

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APPENDIX I**LIST OF PARTICIPANTS****ALBANIA / ALBANIE**

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M. Christopher TYCZKA

Mle Isabelle MARCHINI

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APPENDIX II**AGENDA**

Item 1: Opening of the meeting

Item 2: Adoption of the agenda

Item 3: Protection of human rights during armed conflict as well as during internal disturbances and tensions

Working documents prepared for the 31st meeting

- Draft Final Activity Report on the question of the protection of human rights during armed conflict as well as during internal disturbances and tensions [DH-DEV\(2003\)002](#)
- Consultant Study on the principles governing the application of the ECHR during armed conflict and internal disturbances and tensions, prepared by Mr J. McBride [DH-DEV\(2003\)001](#)
- Extracts of the Report of the 55th meeting of the CDDH (17-20 June 2003) [DH-DEV\(2003\)003](#)

Working documents prepared for previous meetings

- Consultant Study on human rights protection during situations of armed conflicts, internal disturbances and tensions, prepared by Ms F. Hampson [DH-DEV\(2002\)001](#)
- Extracts of the report of the 51st meeting of the CDDH (27 February-2 March 2001) [CDDH\(2001\)015](#)
- Extracts of the report of the 52nd meeting of the CDDH (6-9 November 2001) [DH-DEV\(2002\)002](#)
- Texts adopted by the European Ministerial Conference on Human Rights (Rome, 3-4 November 2000) [H/conf\(2000\)001](#)
- Report of the 30th meeting of the DH-DEV (18-20 December 2002) [DH-DEV\(2002\)008](#)
- Document prepared by the Secretariat on Article 15 of the European Convention on Human Rights [DH-DEV\(2002\)004](#)
- Document prepared by the Secretariat on existing fact-finding mechanisms of the Council of Europe [DH-DEV\(2002\)005](#)

- Document prepared by the Secretariat on types of issues raised by situations where there is a threat of serious or massive human rights violations [DH-DEV\(2002\)006](#)

Item 4: Exchange of views on two Recommendations of the Parliamentary Assembly

- Parliamentary Assembly Recommendation Rec1606(2003) on Areas where the European Convention of Human Rights cannot be implemented, accompanied by the Report of the Parliamentary Assembly Committee on Legal Affairs and Human Rights [DH-DEV\(2003\)004](#)
- Parliamentary Assembly Recommendation Rec1614(2003) on Environment and Human Rights, accompanied by the Report of the Parliamentary Assembly Committee on the Environment, Agriculture and Local and Regional Affairs and the Opinion of the Parliamentary Assembly Committee on Legal Affairs and Human Rights [DH-DEV\(2003\)005](#)
- Decisions adopted by the Ministers' Deputies at their 848th meeting, 10 July 2003, item 3.1 [DH-DEV\(2003\)006](#)
- Draft Opinion of the CDDH on Parliamentary Assembly Recommendation Rec1606(2003) on Areas where the European Convention of Human Rights cannot be implemented [DH-DEV\(2003\)007](#)
- Draft Opinion of the CDDH on Parliamentary Assembly Recommendation Rec1614(2003) on Environment and Human Rights [DH-DEV\(2003\)008](#)

Item 5: Exchange of views on future activities of the DH-DEV

Item 6: Other business

Item 7: Date of next meetings

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APPENDIX III

**Draft opinion of the CDDH
on Recommendation of the Parliamentary Assembly 1606 (2003)
“Areas where the European Convention on Human Rights
cannot be implemented”**

1. The Steering Committee for Human Rights (“the CDDH”) shares the concern of the Parliamentary Assembly (“the Assembly”) as regards the existence in member States of the Council of Europe of areas where the European Convention on Human Rights (“the Convention”) cannot be implemented. The CDDH notes that notwithstanding the fact that the Convention applies to all States Parties, there are in practice areas where obstacles to its implementation exist, mainly due to ongoing armed conflicts, internal disturbances and tensions. As the Assembly is aware, cases concerning certain aspects of this problem have been brought before the European Court of Human Rights (“the Court”). In addition, the CDDH recalls the existence of the various other human rights mechanisms of the Council of Europe, such as the European Committee for the Prevention of Torture, the European Committee of Social Rights, the Advisory Committee on the Framework Convention for the Protection of National Minorities, the European Commission against Racism and Intolerance or the Commissioner for Human Rights (“the Commissioner”), and notes that the situations covered by the Assembly Recommendation would not necessarily pose obstacles to their operation.

2. In response to the Assembly’s recommendation that the Committee of Ministers takes steps to ensure that the Convention is better known and that training is widely provided in order to prevent human right violations (paragraph 10 (i)), the CDDH draws attention to the *Committee of Ministers’ Recommendation on publication and dissemination in the member States of the text of the European Convention on Human Rights and of the case-law of the European Court of Human Rights* of 18 December 2002², which aims at facilitating access to the Court’s case-law at national level. The CDDH further notes that it is presently drafting a *Committee of Ministers’ Recommendation to member States on the European Convention on Human Rights in university education and professional training*³. The CDDH would also like to refer to the Final Activity Report of the Committee of Experts for the Development of Human Rights (“the DH-DEV”) on the Protection of Human Rights during Armed Conflict as well as during Internal Disturbances and Tensions [*to be completed in the light of CDDH discussions on the Final Activity Report*].

3. As to the Assembly’s recommendation to envisage an *actio popularis* and create the post of public prosecutor at the Court, entrusting this task to the Commissioner (paragraphs 10 (ii-iii)), the CDDH notes that in the context of its ongoing work on the reform of the Convention mechanism, it has received a proposal from the Commissioner to amend the Convention so as to authorise the Commissioner to lodge applications with the Court. The CDDH is currently considering this proposal.

4. Regarding the Assembly’s recommendation to include in the Convention an obligation on States to comply with measures imposed by the Court (paragraphs 10 (iv)), the CDDH

² [Recommendation Rec\(2002\)13](#) of the Committee of Ministers.

³ Prepared by the Committee of Experts for the Improvement of Procedures for the Protection of Human Rights ([DH-PR](#)).

emphasises that Article 46 § 1 of the Convention already provides that “*the High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties*”. The CDDH therefore considers it unnecessary to amend the Convention as proposed by the Assembly. The CDDH however acknowledges that the present situation as regards the execution of judgments of the Court could be improved and, in this context, refers to its Final Report on “Guaranteeing the long-term effectiveness of the European Court of Human Rights”⁴, which contains, *inter alia*, proposals to improve and accelerate the execution of judgments of the Court. The CDDH is currently looking into how these proposals could be incorporated in an amending Protocol to the Convention, as part of the ongoing reform of the system. The CDDH also recalls that the Committee of Ministers is currently examining how to deal with slow or inadequate execution of judgments of the Court⁵.

5. Therefore, the CDDH concludes that the abovementioned issues raised in the Assembly’s Recommendation are currently being addressed in various ongoing activities of the Council of Europe.

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⁴ Document [CDDH \(2003\)006 Final](#).

⁵ See also Parliamentary Assembly’s [Recommendations 1477\(2000\)](#), [1546\(2001\)](#) and [1576\(2002\)](#) regarding the execution of judgments of the European Court of Human Rights.

APPENDIX IV

**Draft opinion of the CDDH
on Recommendation of the Parliamentary Assembly 1614 (2003)
“Environment and human rights”**

1. The Steering Committee for Human Rights (“the CDDH”) shares the belief of the Parliamentary Assembly (“the Assembly”), expressed in [Recommendation 1614 \(2003\)](#) on “Environment and human rights”, that a healthy, viable and decent environment is of paramount importance and that, accordingly, human rights which may be relevant to the protection of the environment need to be effectively protected.

2. The CDDH notes that the Assembly recommends that the Committee of Ministers: (i) draw up an additional protocol to the European Convention on Human Rights (“the Convention”) (paragraphs 8 and 10 (i)) and (ii) draw up as an interim measure a recommendation of the Committee of Ministers in this area (paragraph 10 (ii)). The Assembly also recommends that it be represented in any committee entrusted by the Committee of Ministers with responsibility for drafting these texts.

3. The CDDH acknowledges that neither the Convention nor its additional protocols expressly recognise a right to the protection of the environment. However, it notes that several member States have already included in their Constitutions provisions on the protection of the environment, formulated as a right and/or as a State objective. A provision on environmental protection has also been included in the Charter of Fundamental Rights of the European Union in Article 37, which provides that “*a high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development*”.

4. The CDDH recalls that the Convention system already indirectly contributes to the protection of the environment through existing Convention rights and their interpretation in the case-law of the European Court of Human Rights (“the Court”). The Court has, for instance, interpreted Article 2 as protecting the rights of victims of fatal accidents caused by government negligence in the environmental field. Moreover, it has held that the State’s positive obligation which derives from Article 2 is also applicable to public activities in the environmental field, notably those liable to give rise to a serious risk for life⁶. Furthermore, Article 8 has become a central provision in the sphere of environment protection: the Court has found that “*severe environmental pollution may affect individuals’ well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely*”⁷. It is also worth recalling that Article 10 naturally covers the right to information in environmental matters, the right to hold opinions⁸ as well as to receive and impart information and ideas⁹. As to the right to the peaceful enjoyment of possessions, guaranteed by Article 1 of [Protocol No. 1](#), the Court has also held that it was applicable in environmental matters, for instance where (i) pollution causes loss or degradation of one’s property¹⁰, or (ii) a victim does not receive compensation for health deterioration resulting from grave

⁶ European Court of Human Rights, *Öneryildiz v. Turkey*, no. 48939/99, judgment of 18 June 2002 (not final, submitted to the Grand Chamber, before which it is still pending).

⁷ European Court of Human Rights, *Guerra and Others v. Italy*, no. 14967/89, judgment of 19 February 1998; European Court of Human Rights, *Lopez Ostra v. Spain*, no. 16798/90, judgment of 9 December 1994.

⁸ European Court of Human Rights, *Piermont v. France*, nos. 15773/89, 15774/89, judgment of 27 April 1995.

⁹ European Court of Human Rights, *Thoma v. Luxembourg*, no. 38432/97, judgment of 29 March 2001.

¹⁰ European Court of Human Rights, *Öneryildiz v. Turkey*, *ibid.*

environmental problems¹¹. Several judgments of the Court on Articles 6 and 13, notably concerning the protection against water pollution¹², or noise disturbance¹³ and air pollution¹⁴ caused by aircrafts, show that these provisions offer procedural protection to individuals in this area.

5. The CDDH considers that the Court's case-law shows that the Convention already offers a certain degree of protection in relation to environmental issues. Furthermore, it is likely that the Court's case-law will continue to evolve in this area. Therefore, the CDDH is of the opinion that it would not be advisable to draft an additional protocol to the Convention at this stage, along the lines set out in the Assembly's Recommendation¹⁵. On the other hand, the CDDH does see merit in the idea of drafting a recommendation of the Committee of Ministers to member States, recapitulating the rights as interpreted in the Court's case-law and also emphasising the need to strengthen environmental protection at national level, notably as concerns access to information, participation in decision-making processes and access to justice in environmental matters. The CDDH believes that such a recommendation, by making more explicit the protection indirectly afforded by the Convention to the environment, would also be a useful way of promoting greater awareness in member States of the implications of their existing obligations under the Convention in environmental matters.

6. Following the Parliamentary Assembly proposals, the CDDH considers that such a Committee of Ministers recommendation could rely on the principles recognised in the Court's case-law and set out the ways in which the Convention provides indirect individual protection against environmental degradation, including the right to an effective remedy (Article 13 of the Convention) where there is an arguable complaint that a Convention right has been breached. Such a recommendation could also address measures that could be taken at national level in order to give effect to those principles.

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7. In the light of the above observations, the CDDH proposes that the Committee of Ministers gives it terms of reference to draft such a recommendation. The CDDH would welcome participation of a representative of the Parliamentary Assembly in such an activity.

¹¹ European Court of Human Rights, *Burdov v. Russia*, no. 59498/00, judgment 7 May 2002.

¹² European Court of Human Rights, *Zander v. Sweden*, no. 14282/88, judgment of 25 November 1993.

¹³ European Court of Human Rights, *Hatton and Others v. the United Kingdom*, no. 36022/97, judgment of 8 July 2003.

¹⁴ European Court of Human Rights, *Zimmermann and Steiner v. Switzerland*, no. 8737/79, judgment of 13 July 1983.

¹⁵ See in this connection the Reply adopted by the Ministers' Deputies at their 729th meeting (15 November 2000) to the Parliamentary Assembly's [Recommendation 1431 \(1999\)](#).