



Strasbourg, 19 April 2005

DH-DEV(2005)005

STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)

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

REPORT

33rd meeting, Wednesday 13 April – Friday 15 April 2005

Items 1 & 2: Opening of the meeting and adoption of the agenda

1. The Committee of Experts for the Development of Human Rights (DH-DEV) held its 33rd meeting in Strasbourg (Human Rights Building) from 13 to 15 April 2005, with Ms Inger KALMERBORN (Sweden) 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 3: Human Rights and the Environment

2. The DH-DEV resumed its discussions on the question of the protection of Human Rights and the Environment in accordance with the terms of reference received by the Steering Committee for Human Rights (CDDH) from the Committee of Ministers. With regard to the type of instrument to be drawn up on the subject, the Committee decided that a manual would be the most appropriate instrument in this field.

3. In support of its decision to choose a manual rather than guidelines the Committee considered that a manual would be more practical and pedagogical and would help raise general awareness. It considered that the target audience should not only be public authorities but also the public at large and that a manual would therefore be more suitable. A large majority of members felt that in view of their solemn character guidelines would not be appropriate on the ground that there was insufficient case-law with regard to some of the relevant provisions of the Convention to draw up guidelines. The fact that States enjoy in principle a wide margin of appreciation with regard to a number of environmental matters affecting Convention rights was thought to be an obstacle to the drafting of guidelines in this area. Some members underlined that a manual would also indirectly serve the Court by helping potential applicants to better assess whether their claims relating to the environment would be arguable before the Court. Only a few members stated that they could also see merits in guidelines, arguing that such an instrument was not in itself legally binding either.

4. The Committee agreed that the manual should be drafted in a clear and concise manner in view of its broad target audience (public authorities and the public at large) and that any legal concepts relied on should be explained, either in the introduction or in a glossary appended to it. As to its structure, it was decided that it should contain both principles emerging from the case-law and practical examples illustrating them on the basis of the relevant cases examined by the Court. Its introduction should underline the interconnection of the protection of human rights and the environment. It was considered that attention could be drawn to the Aarhus Convention in this introduction. Reference could also be made in it to Article 11 of the Revised Social Charter and the relevant conclusions of the European Committee of Social Rights. General principles applying irrespective of the provisions of the Convention at stake would then be indicated. Principles relating to the relevant substantive provisions of the Convention (Article 2, 8 and 10 of the Convention and 1 of Protocol No. 1) and to procedural rights akin to those protected by the Aarhus Convention (Articles 6 and 13) would follow. It was agreed that Article 3 should not be dealt with in a separate section, given the absence of any judgment where the Court has found a breach of this article. It was considered, however, that it could be mentioned in the introduction or in a footnote that the Court has not excluded the applicability of Article 3 in this context.

5. The Committee started drafting the manual on the basis of the elements drawn from the case-law at the last meeting, as revised by the Secretariat in the light of recent judgments of the European Court of Human Rights (document DH-DEV(2005)001). The result of this work can be found in Appendix III.

6. The DH-DEV decided to set up a drafting group to continue work on the manual. This group will be composed of Ms Jolien SCHUKKING (Netherlands), Ms Brigitte OHMS (Austria), Ms Camilla BUSCK-NIELSEN (Finland), Mr Gilles DUTERTRE (France), Mr Kyrre GRIMSTAD (Norway), Mr João Manuel DA SILVA MIGUEL (Portugal), Mr Chanaka WICKREMASINGHE (United Kingdom), Ms Patricia QUILLACQ (CO-DBP). It will meet on 28-29 June 2005.

7. The DH-DEV will resume its work and complete the draft manual at its next meeting (12-14 October 2005) in order to adopt its final report of activity and refer it to the CDDH for examination and adoption at its meeting of 22-25 November 2005. The terms of reference for this activity expire on 31 December 2005.

Item 4: Seminar marking the entry into force of Protocol No. 12

8. Discussions on the Seminar on Protocol No. 12 were based on the draft outline paper (DH-DEV (2005) 002) prepared by the Secretariat. With regard to the proposed content and structure of the seminar, the Committee globally endorsed the Secretariat's proposals with the addition of some amendments. These have been reflected in the revised outline paper as it appears in Appendix IV to this report.

9. It was confirmed that following the introductory speeches, one session of the Seminar would concentrate on the scope of the protocol and the second session on the more practical aspects of ratification. Several experts mentioned the fact that it was important for the panels to be made up of persons with differing views and experiences so as to promote and stimulate useful and practical discussions. With regard to chairpersons, it was specified that one person on each of the two panels, would also act as chair to their panel and that a general chairperson would be required to open the seminar and carry out the task of summing up the debates at the end of the day. As concerns the report to be prepared under the Secretariat's responsibility after the Seminar, it was explained that the aim would be to highlight the main issues raised during discussion, in a manner which might assist States on a practical level to proceed more swiftly towards ratification of Protocol No 12.

10. Several members emphasised the fact that it was important for all participants to have the necessary expertise and knowledge so as to be able to make an active and useful contribution to the discussions. The event should thus be conceived as a meeting of specialists and the desirability for qualified persons in the field should be reflected in the invitation letters.

11. Some members considered that it was important to clarify the relationship between Article 14 of the ECHR and Protocol No. 12, as this would be relevant to discussions and was an aspect which could bring instructive and concrete elements to the debate. It was also considered important that a representative of the Court (preferably a judge) present his or her point of view on Protocol No 12.

12. The Committee also suggested names of possible speakers/panelists/chairpersons. In particular, the Committee suggested that either Mr Herman VON HEBEL (Netherlands), or Ms Michèle DUBROCARD (France), respectively former chair and vice-chair of the DH-DEV, and both therefore well-acquainted with the preparatory work on the Protocol, might be contacted as the possible speaker for the introductory presentation on the Protocol itself. It was suggested that Mr Jeroen SCHOKKENBROEK, Head of the Intergovernmental Human Rights Programmes Department of the Council of Europe, might be requested to assume the role of general chairperson, having been Secretary to the DH-DEV during the elaboration of the Protocol.

Item 5: Exchange of views on themes for future activities of the CDDH

13. The Secretariat outlined the themes set out in DH-DEV(2005)003. Some members expressed reservations about two of the themes – children and violence and impunity. With regard to children and violence doubts were expressed as to whether this was an appropriate subject for further standard-setting activities by the CDDH/DH-DEV given the already existing human rights standards in this field and the work being undertaken by other services in the Council of Europe and by other international organisations. For impunity, several members felt that any work in this area would need to provide real added value, particularly in respect of the ongoing work by the United Nations. One member expressed the view that it was necessary to carefully demarcate this subject from that of state immunity.

14. Several members supported the theme of freedom of religion. In their opinion, there was a real need to address this issue from a European perspective taking into account the existing case-law of the Strasbourg Court. The theme would also fit in with the broader theme on human rights in a multicultural society, which was already on the CDDH's agenda. However, some hesitation about the appropriateness of this theme was also expressed because of its controversial nature.

15. The themes of rights of the elderly and data protection met with some approval. However, in respect of the latter theme, some hesitation was expressed, since it was felt that Article 8 of the Convention may provide sufficient protection. It was stressed that work on any future additional protocol to the European Convention on Human Rights should be carried out by the CDDH. Another area that was suggested for possible consideration for future work was the rights of the terminally ill and dying. This proposal met with some approval although some members were of the opinion that the sensitivity of the subject and the differences in national legislation in this field might hinder progress were the CDDH/DH-DEV to undertake work on this theme.

16. Finally, the proposal to add the theme of extra-judicial executions for consideration by the CDDH was favourably received by the Committee.

Item 6: Other business

Election of the Vice-Chair

17. The Chair informed the Committee that Ms Denise McQUADE, current Vice-Chair, was due to take up new functions which made it no longer possible for her to attend the DH-

DEV meetings. The Committee thanked her for her regular and invaluable contributions over the years to its work and wished her every success in her new post.

18. The DH-DEV elected Ms Jolien SCHUKKING (Netherlands) as Vice-Chair by acclamation.

Item7: Dates of the next meeting

19. The next meeting will take place on 12-14 October 2005.

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

Ms Alma KASA, Legal Adviser, Legal Affairs and Treaties Department at the Ministry of Foreign Affairs, TIRANA

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Ms. Syuzanna TSATURYAN, Chief Specialist, Legal Department, Ministry of Foreign Affairs, Yerevan

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BULGARIA / BULGARIE

Mr A.TEHOV, Head of the Department of Human Rights, Ministry of Foreign Affairs, SOFIA

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CYPRUS / CHYPRE

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LATVIA / LETTONIE

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* * *

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* * *

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Amnesty International

International Commission of Jurists / Commission internationale de Juristes

International Federation of Human Rights / Fédération internationale des Droits de l'Homme

European Coordinating Group for National Institutions for the promotion and protection of human rights/Groupe de coordination européenne des institutions nationales pour la promotion et la protection des droits de l'homme

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Interprètes:

Mme Sally BAILEY

Mr Philippe QUAINÉ

Mr Robert SZYMANSKI

Appendix II**Item 1: Opening of the meeting****Item 2: Adoption of the agenda****Item 3: The Protection of Human Rights and the Environment**Working documents

- Elements for an instrument on Human Rights and the Environment DH-DEV(2005)001
- Revised overview of the case-law of the European Court of Human Rights in environmental matters DH-DEV(2004)002Rev
- Ad hoc terms of reference with a view to drafting an instrument on the Environment and Human Rights and related texts DH-DEV(2004)001
- The Revised European Social Charter and the right to environment protection DH-DEV(2004)003
- The protection of the Environment in a Human Rights Context DH-DEV(2004)004
- Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention, United Nations Economic Commission for Europe – UNECE) DH-DEV(2004)005
- Report of the 32nd meeting (20-22 October 2004) DH-DEV(2004)007

Item 4: Seminar marking the entry into force of Protocol No. 12Working document

- Outline for a seminar marking the entry into force of Protocol No. 12 DH-DEV(2005)002

Item 5: Exchange of views on future activities of the CDDHWorking document

- Elements prepared by the Secretariat for an exchange of views on future activities of the CDDH DH-DEV(2005)003

Item 6: Other business

Item 7: Date of next meetings

Appendix III

**ELEMENTS FOR A MANUAL ON THE ENVIRONMENT
AND HUMAN RIGHTS**

Please note that the elements in both italics and square brackets were not discussed at this meeting (Introduction, General Elements, III – Right to a peaceful enjoyment of possessions and adverse environmental factors, VI – Access to justice in environmental matters).

INTRODUCTION

- [1. *[The protection of human rights and the environment constitute two fields which tend to converge in Europe.] There is increasing awareness of the importance of a sound, quiet and healthy environment which allows individuals to fully enjoy the rights and freedoms which are guaranteed by the European Convention on Human Rights (“the Convention”).*
 2. *This awareness has undoubtedly an impact on what is expected of public authorities in terms of protection of human rights and the environment.*
 3. *The aim of an instrument on human rights and the environment would be to contribute to an increased understanding of the interrelation between the protection of human rights and the environment.*
 4. *Such an instrument should rely on the existing case-law of the European Court of Human Rights (“the Court”). It should refer to the various obligations which are incumbent on High Contracting Parties in order to avoid human rights protected by the Convention being seriously affected by environmental matters.*
 5. *In showing the interrelation between the rights protected by the Convention and environmental matters, it could contribute to bringing to light the need to strengthen the protection of the environment at national level, notably in ensuring access to information, public participation in decision-making processes and access to justice in environmental matters.*
- * * *
6. *The Convention indirectly provides a certain degree of protection with regard to environmental matters, as demonstrated by the evolving case-law of the Court in this area.*
 7. *The Court recognises that where an individual is seriously affected by environmental factors, an issue may arise under the Convention. The case-law has already identified issues related to the environment under Articles 2, 3, 6, 8 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention.*
 8. *In addition, attention needs also to be drawn, beyond the framework of the Council of Europe, to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention, United Nations Economic Commission for Europe – UNECE), to which a number of Member States are already a party¹.]*
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¹ The elements drawn from the Aarhus Convention are indicated separately from those of the Court’s case-law. See document DH-DEV(2004)005 for the full text of this Convention.

GENERAL ELEMENTS

- [a) *No provisions of the Convention are specifically designed to provide general protection of the environment as such. Other international instruments and domestic legislation are more pertinent in dealing with it*².
- b) *The Convention does offer an indirect protection of the environment since the effective enjoyment of the rights which are encompassed in it depend notably on a sound and healthy environment conducive to well-being.*
- c) *The principle of subsidiarity is particularly important in the context of environmental matters. National authorities enjoy in principle a wide margin of appreciation in determining the steps to be taken to ensure compliance with the Convention*³. *They are best placed to assess what might be the best policy with regard to environmental issues which belong to a difficult social and technical sphere*⁴.]

I – RIGHT TO LIFE⁵ AS WELL AS PERSONAL SAFETY AND ACTIVITIES DANGEROUS FOR THE ENVIRONMENT

- a) The right to life is protected under Article 2 of the Convention. Public authorities have a duty to take appropriate measures to protect life. This obligation applies in the context of any activity in which the right to life may be at stake and therefore also in the case of dangerous activities such as the operation of waste-collection sites or nuclear tests. This obligation of public authorities applies to public and private activities.
- b) The responsibility of public authorities depends on factors such as the harmfulness of the dangerous activities, the foreseeability of the risks to life, the status of those involved in bringing about those risks and whether the acts or omissions attributable to them are deliberate.⁶
- c) In order to prevent infringements of the right to life as a result of dangerous activities, public authorities must put in place a legislative and administrative framework designed to effectively protect the right to life.⁷ This includes in particular:

² Kyratatos v. Greece, judgment of 22 May 2003, para. 52.

³ Hatton and Others v. United Kingdom, judgment of 8 July, paras. 97, 98 and 100.

⁴ Powell & Rayner v. United Kingdom, judgment of 21 February 1990, para. 44.

⁵ "Article 2 – Right to life

1 Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2 Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

a. in defence of any person from unlawful violence;

b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

c. in action lawfully taken for the purpose of quelling a riot or insurrection."

⁶ Öneriyıldız v. Turkey, judgment of 30 November 2004 (Grand Chamber), para. 73.

⁷ Ibid. at para. 89.

- making regulations [geared to the special features of dangerous activities] governing the licensing, setting-up, operation, security and supervision of [such] [dangerous] activities;⁸
 - placing particular emphasis on the public's right to information concerning such activities;⁹
 - [acting of their own motion, in the light of the information available concerning the likelihood of a risk to individuals' health, and doing all that could be required of them to prevent individuals' life from being avoidably put at risk¹⁰];
 - providing for appropriate procedures for identifying shortcomings in the technical processes concerned and any errors committed by those responsible [at different levels.]¹¹
- d) In the event of alleged infringements of the right to life which may engage the responsibility of public authorities under Article 2, they have a duty to ensure an effective and concrete response so that the legislative and administrative framework set up to protect the right to life is properly implemented and any breaches of that right are repressed and punished.¹²
- e) Public authorities must promptly initiate an independent and impartial investigation aimed at ascertaining the circumstances in which [the incident / infringement of Article 2] took place and any shortcomings in the operation of the regulatory system. It must also be capable of identifying the public officials or authorities involved.¹³
- f) In the case where the infringement of the right to life is intentional, the public authority's response should be to initiate criminal proceedings in order to comply with Article 2 of the Convention. In the case where the infringement is unintentional, civil, administrative or even disciplinary remedies may suffice. However, in certain cases where the infringement is unintentional, State failure to charge those responsible with a criminal offence may itself amount to a violation of Article 2. This will be in cases where it is established that the negligence attributable to public officials or bodies goes beyond an error of judgment or carelessness in that the authorities in question, while fully realising the likely consequences, failed to take measures to avert the risk inherent in the dangerous activity.¹⁴

⁸ Ibid. at para. 90.

⁹ Ibid.

¹⁰ L.C.B. v. United Kingdom, judgment of 9 June 1998, paras. 36 and 38.

¹¹ Öneriyıldız Judgment at para. 90.

¹² Ibid., para. 91.

¹³ Ibid., para. 94.

¹⁴ Ibid., para. 93.

II – RESPECT FOR PRIVATE AND FAMILY LIFE AS WELL AS HOME¹⁵ AND THE ENVIRONMENT

- a) Under Article 8 of the Convention everyone has the right to respect for his private and family life and his home. This right implies respect for the quality of private life as well as the scope for enjoying the amenities of one's home¹⁶. Breaches of the right to respect for home are not confined to breaches such as unauthorised entry into a person's home.
- b) Where individuals are affected by environmental factors, such as dangerous activities, pollution, noise or fumes, an interference with their right to respect for private and family life and for home may arise¹⁷. This may be the case even if their health is not seriously endangered¹⁸. The crucial element in determining whether environmental factors have adversely affected one of the rights safeguarded by Article 8 is the existence of a harmful effect interfering directly and seriously with a person's private or family sphere and not simply the general deterioration of the environment¹⁹.
- c) While the object of Article 8 is essentially that of protecting the individual against arbitrary interference by public authorities, it does not merely compel public authorities to abstain from such interference. In certain circumstances, authorities must adopt measures designed to secure the right to respect for private and family life and for home, including the obligation to inform the public about environmental risks. Article 8 may apply in environmental cases whether pollution is directly caused by the public authorities or whether State responsibility arises from the failure to regulate private industry properly²⁰. Public authorities should also ensure that the measures which are taken to secure the rights guaranteed by Article 8 are implemented in practice²¹.
- d) Decisions of public authorities affecting environmental issues should, *inter alia*, be compatible with Article 8²². Any decisions affecting the right to respect for private and family life as well as home must be provided for by law and follow a legitimate aim, such as the economic well-being of the country or the protection of health. Moreover, these decisions must be proportionate to the legitimate aim pursued and, for this purpose, a fair balance must be struck between the interest of the individual and the interest of the community as a whole²³. Since public authorities are best placed to assess what might be the best policy with regard to environmental issues which belong

¹⁵ "Article 8 – Right to respect for private and family life

1 Everyone has the right to respect for his private and family life, his home and his correspondence.

2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others".

¹⁶ Powell & Rayner v. United Kingdom, para. 40.

¹⁷ Hatton, § 96.

¹⁸ Lopez Ostra, para. 51.

¹⁹ Kyrattos v. Greece, para 52, Hatton para. 96.

²⁰ Hatton v. UK, para. 98.

²¹ Moreno Gomez., para. 61.

²² Hatton and Others v. United Kingdom, para. 99.

²³ Lopez Ostra, para. 51

to a difficult social and technical sphere²⁴, they enjoy in principle a wide margin of appreciation in determining the steps to be taken to ensure compliance with the Convention²⁵.

III – RIGHT TO A PEACEFUL ENJOYMENT OF POSSESSIONS AND ADVERSE ENVIRONMENTAL FACTORS

- [a) *Genuine, effective exercise of the right to a peaceful enjoyment of possessions does not depend merely on the public authorities' duty not to interfere, but may require positive measures of protection in respect of activities dangerous for the environment, particularly where there is a direct link between the measures which individuals may legitimately expect from the authorities and the effective enjoyment of their possessions*²⁶. *The preventive measures should reasonably be regarded as a suitable means of averting the environmental risk brought to their attention*²⁷.
- b) *Public authorities must do everything within their power to protect the individuals' proprietary interests including where they could be threatened by dangerous activities*²⁸.
- c) *The protection of the environment is a legitimate aim in view of the interests of the community to justify in some cases certain restrictions on the individual right to a peaceful enjoyment of possessions*²⁹.]

IV – RIGHT TO RECEIVE, IMPART AND HAVE ACCESS TO INFORMATION³⁰ ON ENVIRONMENTAL MATTERS

- a) Article 10 of the Convention guarantees the right to receive and impart information and ideas. In the particular context of the environment, there exists a strong public interest in enabling individuals and groups to contribute to the public debate by disseminating information and ideas on matters of general public interest³¹.

²⁴ Powell & Rayner v. United Kingdom, judgment of 21 February 1990, para. 44.

²⁵ Hatton and Others v. United Kingdom, judgment of 8 July, paras. 97, 98 and 100.

²⁶ Öneriyıldız v. Turkey, para. 134.

²⁷ Ibid., para. 107.

²⁸ Ibid., para. 135.

²⁹ Fredin v. Sweden, judgment of 18 February 1991, para. 48,

and Pine Valley Developments Ltd and Others v. Ireland, judgment of 29 November 1991, para. 57.

³⁰ "Article 10 – Freedom of expression

1 Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2 The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

³¹ Steel and Morris v. United Kingdom, judgment of 15 February 2005, para. 89. Vides Aizsardzības Klubs v. Latvia, judgment of 27 May 2004 paras. 40, 42.

- b) According to Article 10, any restrictions by the public authorities on the right to receive and impart information, including on environmental matters, must be prescribed by law and follow a legitimate aim. A measure interfering with any aspect of this freedom must be proportionate to the legitimate aim pursued and, for this purpose, a fair balance must be struck between the interest of the individual and the interest of the community as a whole.
- c) Freedom to receive information under Article 10 cannot be construed as imposing on public authorities positive obligations to collect and disseminate information relating to the environment of its own motion³².
- d) Nevertheless, the right to life enshrined in Article 2 and the right to respect for private and family life as well as home under Article 8 may entail a right to information³³. In the particular context of dangerous activities falling within the responsibility of the State, special emphasis should be placed on the public's right to information.³⁴
- e) In the first place, public authorities are required to establish an effective and accessible procedure enabling such individuals to seek all relevant and appropriate information when public authorities engage in dangerous activities which might have adverse consequences on the health of those exposed to such activities³⁵.

³² Guerra and Others v. Italy, para. 53.

³³ Öneriyıldız, para. 108 and Guerra and Others v. Italy, para. 60.

³⁴ Öneriyıldız v. Turkey, paras. 90 and 149.

³⁵ McGinley and Egan v. United Kingdom, judgment of 9 June 1998, para. 101. This judgment referred to "hazardous activities" rather than the commonly used expression of "dangerous activities", which was however used in the French translation ("activités dangereuses") and later in the Öneriyıldız Grand Chamber case. The case-law does not define this expression. By way of an example of definition, see Article 2 of the Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment (a Council of Europe convention, ETS no. 150, known as the Lugano Convention - signed in 1993 but not in force yet):

"1 "Dangerous activity" means one or more of the following activities provided that it is performed professionally, including activities conducted by public authorities:

a the production, handling, storage, use or discharge of one or more dangerous substances or any operation of a similar nature dealing with such substances;

b the production, culturing, handling, storage, use, destruction, disposal, release or any other operation dealing with one or more:

– genetically modified organisms which as a result of the properties of the organism, the genetic modification and the conditions under which the operation is exercised, pose a significant risk for man, the environment or property;

– micro-organisms which as a result of their properties and the conditions under which the operation is exercised pose a significant risk for man, the environment or property, such as those micro-organisms which are pathogenic or which produce toxins;

c the operation of an installation or site for the incineration, treatment, handling or recycling of waste, such as those installations or sites specified in Annex II, provided that the quantities involved pose a significant risk for man, the environment or property;

d the operation of a site for the permanent deposit of waste.

2 "Dangerous substance" means:

a substances or preparations which have properties which constitute a significant risk for man, the environment or property. A substance or preparation which is explosive, oxidizing, extremely flammable, highly flammable, flammable, very toxic, toxic, harmful, corrosive, irritant, sensitizing, carcinogenic, mutagenic, toxic for reproduction or dangerous for the environment within the meaning of Annex I, Part A to this Convention shall in any event be deemed to constitute such a risk;

- f) When the issue of access to information which can allay individuals' fears, or enable them to assess the environmental danger to which they are exposed is sufficiently closely linked to their right to life under Article 2 or their private and family life within the meaning of Article 8, public authorities may be required to provide information to those concerned³⁶.

**V – DECISION-MAKING PROCESSES
IN ENVIRONMENTAL MATTERS
AND PUBLIC PARTICIPATION IN THEM**

- a) Public authorities should accord due weight to the interests of individuals in the framework of the decision-making processes affecting environmental issues.³⁷
- b) Decision-making processes concerning complex issues of environmental and economic policy should necessarily involve appropriate investigations and studies in order to allow them to strike a fair balance between the various conflicting interests at stake. However, this does not mean that decisions can only be taken if comprehensive and measurable data are available in relation to each and every aspect of the matter to be decided.³⁸

**VI – ACCESS TO JUSTICE
IN ENVIRONMENTAL MATTERS**

[a) *The right to have access to a court as enshrined in Article 6³⁹ of the Convention will come into play in cases raising an environmental issue when the dispute concerns a right recognised by domestic law insofar as this right can be considered as a civil right within the meaning of the Convention.*

b) *In environmental matters, the right of access to a tribunal must be guaranteed if a direct link between the alleged problem and the right recognised in domestic law has been established⁴⁰. It implies that:*

- *the outcome of the dispute is directly decisive for the individuals' right⁴¹;*
- *the individuals concerned are personally exposed to a danger that is serious, specific and imminent in violation of their right⁴²;*

b substances specified in Annex I, Part B to this Convention. Without prejudice to the application of subparagraph a above, Annex I, Part B may restrict the specification of dangerous substances to certain quantities or concentrations, certain risks or certain situations."

³⁶ Önerıldız, para. 108, and McGinley and Egan, para. 97.

³⁷ Hatton and Others v. United Kingdom, para. 99.

³⁸ Ibid., para. 128.

³⁹ "Article 6 – Right to a fair trial

1 In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice".

⁴⁰ Balmer-Schafroth v. Switzerland, judgment of 26 August 1997, para. 40.

⁴¹ Zander v. Sweden, judgment of 25 November 1993, para. 25.

- *the dangers reach a degree of probability which makes the outcome of the proceedings directly decisive for the rights of those concerned*⁴³.
- c) *The right to an effective remedy in the framework of the national judicial system as encompassed in Article 13*⁴⁴ *will only come into play with regard to the rights guaranteed by the Convention. Therefore, it will play a role concerning environmental issues wherever the subject-matter comes within the ambit of one of the Convention rights.*
- d) *A judicial review will be considered an effective remedy in the context of environmental matters if it allows consideration of whether the measure taken by the authorities represented a justifiable limitation on the Convention rights*⁴⁵.
- e) *Concerning the procedural aspect of the right to respect for private and family life and for home, individuals concerned must be able to appeal to the courts against any decision, act or omission where they consider that their interests or their comments have not been given sufficient weight in the decision-making process*⁴⁶.]

⁴² Balmer-Schafroth v. Switzerland, para. 40.

⁴³ Ibid., para. 40.

⁴⁴ “Article 13 – Right to an effective remedy

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity”.

⁴⁵ Hatton v. UK, para. 141.

⁴⁶ Taşkın v. Turkey, para. 119

Appendix IV

Revised outline for a Seminar marking the entry into force of Protocol No. 12 (Strasbourg, 11 October 2005)

1. Aim

The aim of the Seminar is to mark the occasion of the entry into force of Protocol No. 12 (1 April 2005). It will examine the challenges raised by the Protocol's effective application with a view to promoting further ratifications.

2. Participants

The seminar will bring together (i) government representatives of the 46 member States of the Council of Europe, as well as of observer States, (ii) judges of the European Court of Human Rights, members of the European Commission against Racism and Intolerance (ECRI) and members of the Parliamentary Assembly, (iii) academic experts and representatives of civil society, including non-governmental organisations active in the fight against discrimination, and national human rights institutions, as well as (iv) representatives of the Council of Europe and (v) representatives of other international organisations.

The number of participants would be approximately 70. In addition to the 46 members of the DH-DEV and rapporteurs/panelists, the following bodies should be invited to be represented:

- European Court of Human Rights;
- European Commission against Racism and Intolerance (ECRI);
- Parliamentary Assembly of the Council of Europe;
- Commissioner for Human Rights of the Council of Europe;
- Steering Committee for Equality between Women and Men (CDEG);
- United Nations bodies working in this field (Human Rights Committee, Committee on the Elimination of Racial Discrimination (CERD), Committee on the Elimination of Discrimination against Women CEDAW);
- European Monitoring Centre on Racism and Xenophobia (EUMC)
- European Commission;
- European Parliament;
- OSCE (Office for Democratic Institutions and Human Rights (ODIHR))
- NGO/NHRI observers to the CDDH (International Federation of Human Rights, Amnesty International, International Commission of Jurists (ICJ), European Coordinating Group for National Institutions for the promotion and protection of human rights) and other NGOs working in this field.

Member States are of course free to send additional experts, at their own expenses.

In order for the Seminar to yield useful results, it is essential that participants have the necessary expertise and knowledge of the subject in order to be able to make an active and useful contribution to the discussions.

3. Procedure

The seminar will be brief and highly focused. Following welcoming remarks [by the Secretary General], the seminar would start with three introductory presentations on (i) the experience of the UN Human Rights Committee in applying the freestanding non-discrimination provision of Article 26 of the ICCPR, (ii) the existing case-law of the European Court of Human Rights under Article 14 of the ECHR and (iii) on Protocol No 12 itself. Following these presentations, there will be two sessions. Each session will be addressed by a panel of three speakers, one of whom will act as chair to his or her panel, and each of whom will give a short introductory speech, followed by discussions. Each panel should reflect in the choice of speakers composing them the different views existing with regard to Protocol No. 12. The first session would consider the scope of application of Protocol No. 12, with a view to clarifying the obligations deriving from its provisions. The second session would examine the implications of a ratification of Protocol No. 12 for national authorities, particularly in the light of the experience of States having already ratified.

At the end of the Seminar, a summing-up of the debates will be made by the Chair. Following the Seminar, the Secretariat will prepare a brief report on the discussions that will have taken place. Particular emphasis will be put on practical steps to be taken in order to promote the ratification of Protocol No. 12. The summary will be the sole responsibility of the Secretariat.

4. Documents

Protocol No. 12 and its explanatory report, the opinions of the European Court of Human Rights and the Parliamentary Assembly on draft Protocol No 12, relevant ECRI general policy recommendations (in particular recommendations No. 1 on combating racism, xenophobia, antisemitism and intolerance, No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level and No. 7 on national legislation to combat racism and racial discrimination), EU Council Directives 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and 2000/78/EC establishing a general framework for equal treatment in employment and education and, if available, the Proceedings of the Nordic Round Table on Protocol No 12 (December 2004).

5. Dates

The seminar will take place on one full day, 11 October 2005, preceding the DH-DEV meeting which will take place from 12 to 14 October 2005. It will begin at 9.30 a.m. and will continue until 6 p.m.

Appendix

Preliminary draft programme for the seminar on Protocol No 12

- 09.30 – 09.45 Welcome address by the Secretary General or Deputy Secretary General (to be confirmed).
- 09.45 – 10.10 Presentation: *The experience of the Human Rights Committee in applying the freestanding non-discrimination provision of Article 26 of the ICCPR*
- 10.10 – 10.35 Presentation: *Protecting against discrimination under the European Convention on Human Rights (Article 14)*
- 10.35 – 11.00 Presentation: *The genesis of Protocol No. 12*
- 11.00 Break
- 11.30 Topic One: *The scope of Protocol No. 12*
- Panel of three persons chaired by ...: introductory statements of 5 minutes to start off discussions
- What is the exact scope of Protocol No. 12? What is its relationship with Article 14 ECHR? To what extent are positive measures required/allowed? Do the provisions of Protocol No. 12 have horizontal effects? What are the relations between Protocol No. 12 and EU law?
- 11.45 – 13.00 Discussions
- 14.45 Topic Two: *How to prepare ratification in practice?*
- Panel of three persons chaired by ...: introductory statements of 5 minutes to start off discussions
- What has been the experience of States that have ratified Protocol No. 12? What have been obstacles preventing States from ratifying it? What kind of measures (legislative and other) have been taken prior to ratification? How can the Council of Europe assist States in the ratification process?
- 15.00 – 16.30 Discussions
- 16.30 Break
- 17.00 Summing up by the Chair followed by a concluding debate