



CDDH-BU(2018)R99
05/06/2018

BUREAU OF THE STEERING COMMITTEE FOR HUMAN RIGHTS

(CDDH-BU)

REPORT

99th meeting
Andorra la Vella (Andorra), 17–18 May 2018

1. The Bureau of the Steering Committee for Human Rights (CDDH-BU) held its 99th meeting from 17 to 18 May 2018 in Andorra la Vella (Andorra), under the chairmanship of Mr Hans-Jörg BEHRENS (Germany). The list of participants appears in Appendix I.

PRÉPARATION OF THE 89th PLENARY MEETING OF THE CDDH (19-22 JUNE 2018)

2. The Bureau approved the draft agenda CDDH(2018)OJ1 and suggested some changes in **the draft order of business of the CDDH meeting** (see Appendix II below).

3. The Bureau consented to the participation of the Conference of European Churches (CEC) to the work of the CDDH in June on items 2 (Recommendations of the Parliamentary Assembly), 5 (Development and promotion of human rights) and 7 (Bioethics) of the draft agenda.

4. Regarding the seven **Recommendations of the Parliamentary Assembly** (item 2 of the draft agenda) transmitted to the CDDH for information and possible comments, the Bureau considered that all the subject-matters addressed in these texts might warrant comments by the CDDH.

- Following a detailed examination of each of the Recommendations, the Bureau adopted the draft comments set out in Appendix III below as a basis for discussion for the CDDH at its meeting in June. These proposals made by the Bureau are equally laid down in document CDDH(2018)04 which contains the text of the Recommendations concerned.
- The Bureau noted that the CDDH would hold an exchange of views with the representatives of the Council of Bars and Law Societies of Europe (CCBE) during its examination of Recommendation 2121 (2018)¹ and with representatives of *Amnesty International* and the NGO *Omega Research Foundation* during its examination of Recommendation 2123 (2018)². As regards the latter Recommendation, it took note of the written proposals submitted by *Amnesty International* and *Omega Research Foundation* and invited these two organisations to send them directly for information to all members of the CDDH via the Secretariat.

5. As regards the **implementation of the terms of reference of the CDDH for 2018-2019** (item 3 of the agenda), the Bureau was informed of the current budgetary situation of the Organisation and the implications for the Secretariat of the CDDH in terms of financial and human resources. It noted that the Director General of the DGI would address these questions in his opening speech at the CDDH meeting in June.

- The Bureau invited the CDDH to exchange views on this important issue afterwards, bearing in mind its current calendar of activities. Following that discussion, the CDDH could envisage, if appropriate, to postpone one or more of the meetings currently scheduled.

¹ "The case for drafting a European convention on the profession of lawyer".

² "Strengthening international regulations against trade in goods used for torture and the death penalty".

- The Bureau further invited the CDDH to exchange views with the experts concerned on the activities envisaged by the future Chairmanships of the Committee of Ministers during the present biennium 2018-2019³.

- The Bureau finally noted that the CDDH should proceed to a comprehensive exchange of views in November 2018 on the activities which it wishes to pursue or launch in the next biennium 2020-2021 in order to be in a position to submit its formal proposals to the Committee of Ministers in June 2019. It was noted that the latter will adopt its decisions in this regard in autumn 2019.

6. With regard to the **work related to the system of the European Convention on Human Rights** (item 4 of the agenda), the Bureau examined the follow-up to the Copenhagen Declaration as well as the work in progress in the Drafting Groups DH-SYSC-II and DH-SYSC III and in the Committee of Experts on the system of the Convention (DH-SYSC).

7. *Follow-up to the Copenhagen Declaration* – The Bureau welcomed the organisation of the Conference by the Danish Chairmanship in April⁴ and invited the Danish delegation as well as the Secretariat to inform the CDDH in June of the decisions of the 128th Session of the Committee of Ministers (Elsinore, Denmark, 18 May 2018) concerning the follow-up to be given to the Copenhagen Declaration adopted at the Conference.

8. *Drafting Group DH-SYSC-II* – The Bureau expressed its satisfaction to the Chair of the Group, Ms Florence MERLOZ (France) with the considerable work which has already been accomplished by the Drafting Group on the place of the European Convention on Human Rights in the European and international legal order.

- The Chair of the DH-SYSC-II reported on the works of the 3rd meeting (3-5 April 2018) and emphasised in particular that the active participation of the *ad hoc* experts during the meeting had been very valuable. Furthermore, the Bureau noted that the revised reports of the co-rapporteurs would be ready on 1 June 2018.

- The Bureau considered it important that the CDDH would be in a position to consolidate theme 1 in its entirety at its meeting in November 2018. It emphasised that, at this stage, the CDDH was essentially invited to inform itself of the state of the work in progress, but that it might also, if it considered it useful, give possible guidance for the further work.

- In any event, it was necessary to bear in mind that the final report of the CDDH on the place of the Convention in the European and international legal order should be adopted by the latter at the end of the present biennium, at its 92nd meeting, November 2019.

9. *Drafting Group DH-SYSC-III* – The Bureau noted that the Secretariat had prepared a working document for updating Recommendation Rec(2004)4 of the Committee of Ministers to member States on the European Convention on Human Rights in university education and professional training which would serve as a basis for the meeting by videoconference which the DH-SYSC-III would hold in autumn 2018.

³ Croatia (May - November 2018); Finland (November 2018 - May 2019); France (May 2019 – November 2019); Georgia (November 2019 – May 2020).

⁴ High-level Conference entitled “*Continued Reform of the European Court of Human Rights Convention System – Better Balance, Improved Protection*” (Copenhagen, Denmark, 11-13 April 2018).

- The Bureau does not exclude that, in consultation with the Chair of the Group, Ms Vasileia PELEKOU (Greece), it propose to the CDDH that this Drafting Group will hold a meeting in Strasbourg at a later stage.

10. *Committee of Experts on the system of the Convention (DH-SYSC)* – The Bureau noted that the main task of the DH-SYSC in its next meeting was to consolidate the works currently conducted by its Drafting Group DH-SYSC-II⁵.

- The Bureau wondered whether it would not be appropriate to postpone the meeting (scheduled for 18-19 October 2018) to spring 2019 in order for the Committee of Experts to be in a position to give its views on the work of the DH-SYSC-II at a more advanced stage thereof. It proposed that this aspect be examined with the Chair of the DH-SYSC, Ms Brigitte OHMS (Austria) at the meeting of the Bureau on 19 June 2018 at 9:00 a.m. and that she would also participate in the 100th meeting of the Bureau (Berlin, 8-9 November 2018) in order to prepare the item concerning the DH-SYSC (work of the Committee, dates of the meetings in 2019 and afterwards) which would be examined by the CDDH at its 90th meeting (27-30 November 2018).

11. As to the **work in the field of development and promotion of human rights** (item 5 of the agenda), the Bureau examined the work in progress in the following areas: social rights; freedom of expression and links with other human rights; human rights and migration; civil society and national human rights institutions.

12. *Drafting Group on Social Rights (CDDH-SOC)* – The Bureau expressed its satisfaction with the very considerable work accomplished by the Drafting Group on Social Rights which would allow the CDDH to examine in June, with a view to its adoption, the Draft Analysis of the legal framework of the Council of Europe for the protection of social rights in Europe.

- As regards the further work, it agreed with the content of §§ 14-15 of the report of the 2nd meeting of the Group (2-4 May 2018) which would be presented to the CDDH in June by the Chair of the Drafting Group (CDDH-SOC), Mr Vít A. SCHORM (Czech Republic). It is recalled in these paragraphs that the CDDH-SOC is called upon to examine a second report identifying good practices and making, as appropriate, proposals with a view to improving the implementation of social rights and to facilitating in particular the relationship between the Council of Europe instruments with other instruments for the protection of social rights⁶.

- The Secretariat will provide basic preparatory work for the structure and essential content of the second report for the 3rd meeting of the CDDH-SOC (5–7 September

⁵ In addition, the DH-SYSC will be called upon to organise relevant work on the Guide to Good Practice that accompanies Recommendation Rec(2010)3 of the Committee of Ministers to member States on effective remedies for excessive length of proceedings.

⁶ According to the CDDH-SOC, the second report should:

- (i) focus on the Charter system and address the grounds why Member States have not to date given it a more important role and how these grounds could be addressed;
- (ii) give reasons to the Member States for ratifying the Revised Charter and accepting the collective complaints procedure, notably to promote social cohesion;
- (iii) address the complexity of the system of the State reporting procedure under the Charter and how it could be improved, as well as the positive aspects and added value, but also the issues raised by the collective complaints procedure;
- (iv) address other specific aspects mentioned in § 14 of the report of the 2nd meeting of the CDDH-SOC.

2018), taking into account possible instructions given by CDDH at its 89th meeting in June 2018.⁷

13. *Drafting Group on Freedom of Expression and links with other human rights (CDDH-EXP)* – The Chair of the CDDH and of the CDDH-EXP, Mr Hans-Jörg BEHRENS (Germany), reported on the work of the 3rd meeting of the Group (25-27 April 2018) aimed at preparing a draft Guide to good practices on reconciling freedom of expression with other rights and freedoms, in particular in culturally diverse societies.

- In order to supplement the national examples of good practices set out in the draft Guide, the Bureau would consider it very useful if the CDDH gave a new deadline for submission of information to the Secretariat, for instance until mid-October 2018. It could be envisaged that the CDDH-EXP would meet in spring 2019, having in mind that the CDDH would be called upon to adopt the Guide at its meeting in June 2019.

14. *Drafting Group on Human Rights and Migration (CDDH-MIG)* - The Chair of the CDDH-MIG, Mr Morten RUUD (Norway), reported on the work of the 4th meeting of the Group (21-23 March 2018)⁸ dedicated to the examination of the preliminary structure of the Handbook on effective alternatives to detention of migrants and asylum seekers.

- The Bureau noted with satisfaction the information given to promote the dissemination, in the member States, of the Analysis adopted by the CDDH of the “legal and practical aspects of effective alternatives to detention in the context of migration”.

- The Bureau considered that, given the complexity and the sensitive character of the questions addressed by this Drafting Group, the future works of the Group should be limited to a better implementation of the basic rules existing in that area without attempting to establish new rules. To this end, the Handbook on effective alternatives to detention of migrants and asylum seekers which would be elaborated by the CDDH-MIG should focus on the didactic and practical aspects.

- The CDDH would be invited in June to take note of the draft Handbook prepared by the Secretariat and the rapporteur. The text would be available as from 15 June. It was envisaged that the final draft Handbook would be finished by the CDDH-MIG at its meeting in October 2018.

15. *Drafting Group on Civil Society and National Human Rights Institutions (CDDH-INST)* – The Chair of the CDDH-INST, Ms Krista OINONEN (Finland), reports on the work of the 3rd meeting (21-23 March 2018) at which it prepared the draft Declaration on the need to strengthen the protection and promotion of the civil society space. This text shall accompany the future CDDH Guide to good practices of implementation of existing national legislation regarding the protection and promotion of the civil-society space.

⁷ It is envisaged that the Secretariat prepares a working document combining the draft overview over the possible contents of the second report presenting proposals with a view to improving the implementation of social rights (document CDDH-SOC(2018)08) with elements of the Summary (CDDH-SOC(2018)07) and of the Short analysis of the replies to the questionnaire (CDDH-SOC(2018)06). The document will also include the conclusions drawn from the Analysis of the legal framework of the Council of Europe for the protection of social rights in Europe (document CDDH-SOC(2018)04).

⁸ It is envisaged that the Group will meet external experts at its 5th meeting (17-19 October 2018).

- The Bureau considered that the draft Declaration was very exhaustive and that it could be examined by the CDDH at its 90th meeting (27-30 November 2018) with a view to its adoption.

- The Finnish expert will make a preliminary presentation to the CDDH in June on the aim and the organisation of the future Workshop on civil-society space which will be placed under the auspices of the Finnish Presidency of the Committee of Ministers and which will take place during the meeting of the CDDH in November 2018. This event will be prepared in close cooperation with the Secretariat. One of the aims of the Workshop will be to raise awareness of the member States to the Declaration and the Guide to good practices.

- The Bureau noted that, according to the terms of reference given by the Deputies⁹, the CDDH-INST was called upon to revise, in 2019, Recommendation No. R(97)14 of the Committee of Ministers to member States on the establishment of independent national institutions for the protection and promotion of human rights. At the same time, the Bureau noted that it was advisable to examine, in 2019, the possibility to revise Recommendation No. R(85)13 on the institution of the ombudsman. It proposed that the CDDH would hold a first exchange of views on that subject-matter in June, with a view to taking a decision in November, in the light notably of the conclusions of the Workshop and bearing in mind the works currently carried out by the Venice Commission on the institution of the ombudsman in the member States.

16. As regards the **follow-up of activities carried out by the CDDH** (item 6 of the agenda) the Bureau noted that the CDDH would exchange views and provide guidance on the ongoing follow-up work to certain activities which it had already carried out in the following fields: human rights and business; female genital mutilation and forced marriage; victims of terrorist acts; access to official documents; discrimination on grounds of sexual orientation or gender identity.

17. *Human rights and business* – The Bureau invited the Secretariat to inform the CDDH in June of the developments in the creation and the establishment of the Online Platform¹⁰ in synergy with the HELP Unit¹¹ of the Division of National Implementation of Human Rights. It further invited the members of the delegations, where applicable, to inform the CDDH of their authorities' intention to contribute financially to that project of importance for the CDDH and, more generally, for the Council of Europe.

⁹ *Civil Society, Human Rights Defenders and National Human Rights Institutions*

- (i) On the basis of work conducted in 2016-2017, prepare a draft non-binding instrument of the Committee of Ministers and a guide of good practice with the aim that member States, through their legislation, policies and practices, effectively protect and promote the civil society space (activities of organisations of the civil society, human rights defenders and national institutions for the promotion and protection of human rights) (deadline: 31 December 2018).
- (ii) In particular, proceed to the revision of Recommendation No R(97)14 of the Committee of Ministers to member States on the establishment of independent national institutions for the promotion and protection of human rights (deadline: 31 December 2019).

¹⁰ According to Recommendation CM/Rec(2016)3 of the Committee of Ministers to member States on Human Rights and Business, the Platform should (i) facilitate the exchange of information and visibility concerning the good practices related to the implementation of Recommendation CM/Rec(2016)3 and National Action Plans on the implementation of the United Nations Guiding Principles on Human Rights and Business, including best practices for their development and regular review, and (ii) develop other potential resources and features to aid national implementation.

¹¹ The European Programme for Human Rights Education for Legal Professionals (HELP) supports member States of the Council of Europe in the implementation of the European Convention on Human Rights at national level.

18. *Female genital mutilation and forced marriage* – The Bureau welcomed the recent publication of a book containing both the Declaration of the Committee of Ministers of 19 May 2017 and the Guide of the CDDH to good and promising practices to prevent and combat these violations of human rights.

- This book, which will be presented to the CDDH by the Secretariat in June, will constitute the principal document of the international Conference on “Policy for Progress: Ending FGM and Forced Marriage” which the British authorities are organising under the auspices of the Council of Europe and which will be held in London in autumn 2018¹².

- Information on the state of preparation of this event will be provided to the CDDH by the British delegation and by the Secretariat in June. One of the aims of the Conference will be to consider the best ways and means to ensure that the good and promising practices be known and effectively implemented in the different member States.

- Noting that the Directorate General of Democracy (DGII) was the entity responsible for cooperating directly in the organisation of the Conference, the Bureau would consider it very useful if members of its Secretariat, in particular of the GEC and of the GREVIO, exchanged views with the CDDH in June in order to coordinate the Council of Europe’s approach at the Conference¹³.

19. *Victims of terrorist acts* - The Bureau welcomed the recent publication of a volume containing the text of the revised Guidelines of the Committee of Ministers on the protection of victims of terrorist acts (19 May 2017) which were prepared by the CDDH¹⁴.

- This volume, which will be presented by the Secretariat to the CDDH in June, will provide a basis for the Workshop which will take place at the 91th meeting of the CDDH (June 2019) under the aegis of the French Chairmanship of the Committee of Ministers¹⁵.

- The French expert will present preliminary elements to the CDDH in June concerning the purpose and the organisation of the future Workshop, to be prepared in close co-operation with the Secretariat. One of the aims of the Workshop will be to raise the member States’ awareness to the revised Guidelines and to share good practices in this respect.

¹² The CDDH will be informed of the precise dates of the Conference as soon as they will be fixed. The Bureau encouraged the CDDH experts to appoint national experts to participate in this important event, it being understood that the expense should be borne by their respective national authorities.

¹³ The Bureau did not exclude that, if necessary, a small working group gathering experts from the GEC, the GREVIO and the CDDH could be set up in view of coordinating the Council of Europe’s approach at the Conference. At this stage, the Bureau noted with satisfaction that inter-Secretariat fruitful contacts have been established between DGI and DGII to follow this important issue.

¹⁴ The volume also contains the text of the Guidelines of the Committee of Ministers on human rights and the fight against terrorism (11 July 2002) as well as the proceedings of the High-level Seminar which took place on 13-14 June 2005.

¹⁵ The French expert will present the other events that her authorities envisage during the French Chairmanship of the Committee of Ministers (May-November 2019) to the CDDH in June.

20. *Access to official documents* - The Bureau found it important that this item systematically appeared in the agenda of the plenary CDDH meetings. At this stage, however, and in view of the various other ongoing activities, it did not consider it necessary to suggest to the CDDH to envisage a Workshop during the present biennium aimed at raising awareness about the Tromsø Convention.

21. *Discrimination on grounds of sexual orientation or gender identity* - The Bureau found it very useful that the Secretariat of the DG II, and its particular representatives from the Sexual Orientation and Gender Identity Unit (SOGI) could inform and exchange views with the CDDH in June on the current follow-up to the implementation of Recommendation Rec(2010)5.

- Information could cover in particular the number and the quality of the replies already received to the questionnaire.

- As to a possible Conference on the follow-up to the Recommendation, the Bureau considered that an exchange of views on the subject could take place at the next meeting of the CDDH in November 2018.

22. As to the work on **bioethics** (item 7 of the agenda), the Bureau noted that:

- The Secretary of the Committee on Bioethics (DH-BIO), Ms Laurence LWOFF, would report on the work of the 13th meeting (22-25 May 2018) concerning in particular the changes made by the DH-BIO to the draft Additional Protocol concerning the protection of human rights and dignity of persons with mental disorders with regard to involuntary placement and treatment as well as the changes made to the draft explanatory report. The CDDH will be informed of the follow-up foreseen by the DH-BIO to this issue, it being understood that it could be envisaged that these texts be transmitted to the CDDH for opinion at an appropriate stage.

- Furthermore, the CDDH will be informed on the other ongoing and future activities within the DH-BIO, in particular concerning the impact on human rights of the new technologies in the bio-medical field.

23. With regard to the **focal points of the CDDH with other bodies** (item 8 of the agenda), the Bureau noted that information will be provided on their work since the 88th meeting (5-7 December 2017). The Bureau invited the CDDH in June to:

- review the current list in order to decide on the appropriateness to maintain all focal points;

- appoint two focal points concerning respectively the Ad hoc Committee for the Rights of the Child (CAHENF) and the Committee of the Parties to the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse ("Lanzarote Committee");

- underline that, in many cases, the focal points could limit themselves to collecting information on the results of the meetings of other bodies. Their physical participation in the meetings should be considered on a case-by-case basis depending on the agendas.

24. As regards the **invitees** to the CDDH meetings (item 9 of the agenda), the Bureau considered that:

- the CDDH could invite Ms Dunja MIJATOVIC, new Commissioner for Human Rights of the Council of Europe to its meeting in November 2018;
- it would also be very useful to exchange views in November with Mr Jan KLEISSEN, Director of the Information Society and Action against crime Directorate (DGI), on implications on human rights of developments in the field of artificial intelligence;
- the Secretariat could contact the Secretariat of the European Union Agency for Fundamental Rights (FRA) so as, at an appropriate stage, the latter informs the CDDH of common interest work under way or envisaged by the Agency.

25. Regarding the follow-up to the **Conventions** for which the CDDH is responsible (item 10 of the agenda), the Bureau invited the CDDH to ask the experts who so wish to inform the CDDH of the intention of their authorities to proceed to a signature/ratification in the near future.

- Concerning Protocol No. 15, the Bureau drew the attention to the fact that four ratifications were still necessary for its entry into force and encouraged the experts of the countries concerned to closely follow this important question.
- As for Protocol No. 16, which will enter into force on 1st August 2018 in respect of the ten States that have ratified it¹⁶, the Bureau considered that its progressive implementation by the Court will be a determining element to encourage new ratifications. It suggested that the CDDH should examine, as from June, the most appropriate modalities for the future follow-up, by the CDDH, to this implementation.
- Finally, the Bureau suggested that the Secretariat briefly informed the CDDH in June on the current contacts between the Council of Europe and the European Commission with a view to a possible relaunch of the process of the EU accession to the Convention. The Bureau noted that, as soon as there would be clear signals of a political will to move forward in this matter, it will become a priority for the CDDH.

26. Concerning **publications** (item 11 of the agenda):

- The Bureau would find it very useful if, in the light of information provided by the Secretariat, the CDDH exchanged views in June on (i) the texts already published or being published; (ii) on their circulation (electronic/hard copies); (iii) on the extent of their dissemination and (iv) on the impact of such publications in view of the targeted audiences;
- The Bureau appreciated in particular the publication of the Annual Report on the supervision of the execution of judgments and decisions of the Court, which was a major source of information to member States and notably to the Government Agents. It suggested that the CDDH exchanged views in June with Mr Fredrik SUNDBERG, Deputy to the Head of the Execution Department, concerning the 2017 Report and the perspectives of publication of this tool in the forthcoming years.

27. As to the **calendar** (item 12 of the agenda), the Bureau invited the CDDH to review the one of the current biennium in light of the information provided in the framework of item 3 of the agenda (terms of reference of the CDDH for 2018-2019).

¹⁶ Albania, Armenia, Estonia, Finland, France, Georgia, Lithuania, Saint-Marin, Slovenia, Ukraine.

- While noting that the discussion might lead to postponing one or another meeting already scheduled, the Bureau considered that, for the other meetings, it would be necessary to keep the current dates fixed. Any change of dates could indeed cause important difficulties both for the Secretariat and for the experts¹⁷.

- The Bureau noted that the Finnish authorities will propose organising a Workshop on the European Court of Human Rights on Monday 26 November 2018 in the afternoon, the eve of the next plenary CDDH meeting. Since the Government Agents' meeting usually takes place at that moment, the Bureau asked the Secretariat to contact the Registry of the Court so as to explore the possibility to hold the Agents' meeting in the morning of Monday 26 November 2018, for instance at 10:00 a.m.

28. Concerning the **promotion of human rights of older persons**:

- The Bureau welcomed the initiative of the Permanent Representation of the Federal Republic of Germany, in co-operation with the Croatian Chairmanship of the Committee of Ministers, to organise an Exhibition which will be inaugurated on Thursday 21 June 2018, at noon, in the lobby of the *Agora* building and which will last from 21 to 28 June 2018. This Exhibition, which has already been presented in Geneva, will provide useful insights for the Workshop that will follow.

- The Bureau particularly appreciated the topics to be discussed during the Workshop of the CDDH under the aegis of the Croatian Chairmanship of the Committee of Ministers as well as the quality of the appointed keynote speakers (the programme of the Workshop appears in the Annotations on the draft agenda, document CDDH(2018)03).

- It suggested that, in the light of the results of the Workshop and of the replies received from member States to the Secretariat's questionnaire, the CDDH would transmit its conclusions on the follow-up to Recommendation CM/Rec(2014)2¹⁸ to the Committee of Ministers in November 2018.

29. At the end of its work, the Bureau warmly thanked the Andorran authorities for their hospitality.

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¹⁷ The Bureau considered the possibility to modify the date of the CDDH meeting in June so as to take into account the request put forward by the Polish delegation linked to the organisation of the Warsaw Seminar on human rights. For technical reasons, it was unfortunately not possible to comply with this request.

¹⁸ Recommendation CM/Rec(2014)2 of the Committee of Ministers to member States on the promotion of human rights of older persons (19 February 2014).

APPENDIX I

List of participants/Liste des participants

BUREAU MEMBERS / MEMBRES DU BUREAU

ANDORRA / ANDORRE

Mr Joan FORNER ROVIRA, Directeur, Département pour les Affaires bilatérales et consulaires, Ministère des Affaires Extérieures, Andorra la Vella

ESTONIA / ESTONIE

Mrs Maris KUURBERG, Government Agent before the ECtHR, Ministry of Foreign Affairs, Tallinn

FINLAND / FINLANDE

Ms Krista OINONEN, Government Agent before the ECtHR, Director, Unit for Human Rights Courts and Conventions, Ministry for Foreign Affairs, Helsinki

FRANCE

Mme Florence MERLOZ, Sous-directrice des droits de l'homme, Ministère de l'Europe et des Affaires Etrangères, Direction des affaires juridiques, Paris

GERMANY / ALLEMAGNE

Mr Hans-Jörg BEHRENS, Head of Unit IVC1, Human Rights Protection; Government Agent before the European Court of Human Rights, Bundesministerium der Justiz und für Verbraucherschutz, Berlin
Chairman of the CDDH / Président du CDDH

GREECE / GRECE

Ms Zinovia STAVRIDIS, Head of the Public International Law Department/Special Legal Department, Ministry of Foreign Affairs, Athens

LATVIA / LETTONIE

Mrs Kristine LICE, Government Agent before the ECtHR, Representative of the Government before International Human Rights Organisations, Ministry of Foreign Affairs, Riga

NORWAY / NORVEGE

Mr Morten RUUD, Norwegian Ministry of Justice and the Police, Legislation Department, Oslo

SECRETARIAT

DG I – Human Rights and Rule of Law / Droits de l'Homme et État de droit Council of Europe / Conseil de l'Europe, F-67075 Strasbourg Cedex

Mr Alfonso DE SALAS, Head of the Human Rights Intergovernmental Cooperation Division / Chef de la Division de la coopération intergouvernementale en matière de droits de l'Homme, *Secretary of the CDDH / Secrétaire du CDDH*

Ms Corinne GAVRILOVIC, Assistant / Assistante, Human Rights Intergovernmental Cooperation Division / Division de la coopération intergouvernementale en matière de droits de l'Homme

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INTERPRÈTE

Mme Lea OUEDRAOGO

APPENDIX II

Draft order of business as revised by the Bureau

Reminders

- The **draft agenda** is online (see document CDDH(2018)OJ1)
- The Bureau will meet on Tuesday 19 June at 9:00 in the Agora Building, 6th floor, room C6 50 C
- The 89th meeting of the CDDH will take place on 19-22 June 2018 in the Agora Building, room G03

TUESDAY 19 June	WEDNESDAY 20 June	THURSDAY 21 June	FRIDAY 22 June
9:30	10:00	10:00	9:30
<p><u>Item 1</u>: OPENING OF THE MEETING</p> <p><u>Item 2</u>: PACE RECOMMENDATIONS Exchange of views with <i>Amnesty International, Omega Research Foundation, CCBE</i></p> <p><u>Item 3</u>: TERMS OF REFERENCE FOR CDDH 2018-2019 <i>Envisaged activities by the future chairmanships of the CM</i></p>	<p><u>Item 5</u>: DEVELOPMENT AND PROMOTION OF HUMAN RIGHTS</p> <p>5.1 Social rights (CDDH-SOC)</p> <p>5.2 Freedom of expression and links to other human rights (CDDH-EXP)</p> <p>5.3 Human rights and migration (CDDH-MIG)</p> <p>5.4 Civil society and national human rights institutions (CDDH-INST)</p>	<p><u>Item 6</u>: FOLLOW-UP OF ACTIVITIES OF CDDH</p> <p>6.1 Human rights and business</p> <p>6.2 Female genital mutilation and forced marriage</p> <p>6.3 Victims of terrorist acts</p> <p>6.4 Access to official documents</p> <p>6.5 Discrimination on grounds of sexual orientation or gender identity</p> <p>12:00 Inauguration of the Exhibition on older persons</p>	<p><u>Exchange of views on the Exhibition and the Workshop</u></p> <p><u>Item 8</u>: FOCAL POINTS</p> <p><u>Item 9</u>: INVITÉES</p> <p><u>Item 10</u>: CONVENTIONS</p> <p><u>Item 11</u>: PUBLICATIONS</p> <p><u>Item 12</u>: CALENDAR</p> <p>Adoption of the draft abridged meeting report</p> <p>13:00 End of meeting</p>
13:00 Lunch	13:00 Lunch	13:00 Lunch	
14:30	14:30	14:15	
<p><u>Item 4</u>: SYSTEM OF THE ECHR</p> <p>4.1 Follow-up to the Copenhagen Declaration</p> <p>4.2 Place of the ECHR (DH-SYSC-II) Item 4.2</p> <p>4.3 The ECHR in education and training (DH-SYSC-III)</p>	<p><u>Item 7</u>: BIOETHICS</p> <p>[If necessary:</p> <p>Item 2 (continuation)</p> <p>Item 5.1 (continuation)</p> <p>Item 5.2 (continuation)</p> <p>Item 5.4 (continuation)]</p>	<p>Workshop on the promotion of human rights of older persons (see Programme)</p>	
17:30 End of session	17:30 End of session	17:30 Vin d'honneur	

APPENDIX III

Recommendations of the Parliamentary Assembly

Elements suggested by the Bureau for possible CDDH comments

I. [Draft] CDDH comments on Recommendation 2121(2018) – “The case for drafting a European convention on the profession of lawyer”

1. The Steering Committee for Human Rights (CDDH) takes note of Parliamentary Assembly Recommendation 2121(2018) - *“The case for drafting a European convention on the profession of lawyer”*. It fully shares the concerns regarding threats, in certain national contexts, to the security and independence of lawyers as well as to their ability to perform their professional duties effectively. Like the Assembly, the CDDH stresses that the free exercise of the profession of lawyer is indispensable to the full implementation of the fundamental right to a fair trial guaranteed by Article 6 of the European Convention on Human Rights. In this context:

- (i) the possibility to establish an early-warning mechanism to respond to immediate threats to lawyers’ safety and independence and to their ability to perform their professional duties effectively deserves detailed examination¹⁹;
- (ii) training activities concerning Recommendation No R(2000)21 of the Committee of Ministers to member States on the freedom of exercise of the profession of lawyer and other relevant instruments²⁰ need to be carried out in the framework of bilateral co-operation. These activities could aim at raising awareness of State representatives about the role played by lawyers in a democratic society and about the need to respect and protect the free exercise of their profession²¹;
- (iii) finally, the current work regarding the implementation of Recommendation 2085(2016) on “Strengthening the protection and role of human rights defenders in Council of Europe member States” should fully consider including the situation of lawyers.

2. As for solutions and replies to the issues of threats and harassment mentioned in the Recommendation, the CDDH considers that:

- (i) for short-term solutions and immediate replies, establishing an early-warning mechanism could indeed be useful;

¹⁹ This examination should be carried out notably in the light of the experience acquired by the current Platform to promote the protection of journalism and safety of journalists, by the Working Group on Human Rights Defenders set up within the Human Rights Committee of the Conference of INGOs of the Council of Europe and by the action carried out by the Commissioner for Human Rights in favour of human rights defenders.

²⁰ These instruments comprise, *inter alia*, the Charter of core principles of the European legal profession of the Council of Bars and Law Societies of Europe, the Turin Charter on the exercise of the profession of lawyer in the twenty-first century of the International Association of Lawyers, as well as the Standards applicable to the independency of the profession of lawyer, International principles of ethics of legal practice and of the Guide for the establishment of complaint and disciplinary procedures of the International Bar Association.

²¹ These activities would also aim at reminding that numerous provisions of Recommendation No R(2000)21 represent already binding standards under the European Convention on Human Rights.

- (ii) for long-term solutions, the European Convention on Human Rights system, notably through binding judgments of the Court in the fields, in particular, of Articles 2, 3, 6 and 8 and 10 of the Convention, constitutes an effective and sufficient framework.

3. The CDDH wonders whether a binding international legal instrument would be the appropriate framework to address situations which may concern only certain countries to varying degrees. In any event, it would be necessary to ensure that the new control mechanism to be established in the framework of a new convention would have a real added value compared to the aforementioned early-warning mechanism, in terms of competence, effectiveness and transparency.

4. The CDDH would be ready, if appropriate, to contribute to the work of the competent bodies on this matter which the Committee of Ministers would deem necessary.

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II. [Draft] CDDH comments on Recommendation 2122(2018) – “Jurisdictional immunity of international organisations and rights of their staff”

1. The Steering Committee for Human Rights (CDDH) takes note of Parliamentary Assembly Recommendation 2122 (2018) - “*Jurisdictional immunity of international organisations and rights of their staff*”.

2. The CDDH notes that appropriate legal instruments have been developed by the most important international organisations regarding their accountability for human rights violations towards their own staff²². It concurs with the Assembly on the need of providing access to an effective remedy to staff members of international organisations concerning their labour rights since such a remedy is not available under the national legal systems of member States.

3. Concerning the Council of Europe, its Staff Regulations²³ show that the Administrative Tribunal of this Organisation has been set up to decide upon appeals against decisions taken in the administrative complaints procedure. The CDDH considers that, in the light of relevant practices existing in member States or in other international organisations, the Secretariat of the Council of Europe could analyse in which cases it would be appropriate for trade unions to have *locus standi* before the Administrative Tribunal.

4. In its previous comments on Parliamentary Assembly Recommendation 2037 (2014) about *Accountability of international organisations for human rights violations*²⁴, the CDDH already shared the approach of the Committee of Legal Advisers on Public International Law (CAHDI) regarding conflict resolution mechanisms between international organisations and their staff. The CDDH agrees with the Assembly that the CAHDI remains the body best placed to

²² <https://rm.coe.int/accountability-of-international-organisations-for-human-rights-violati/1680761005>

²³ Part VII of the Staff Regulations of the Council of Europe sets out the system of dispute settlement between staff members and the organisation; in this regard, Article 59 sets out the so-called “complaints procedure” and under Article 60 an appeal procedure can be launched before the Administrative Tribunal “in the event of either explicit rejection, in whole or part, or implicit rejection of a complaint lodged under Article 59”.

²⁴ Recommendation 2037 (2014) was adopted by the Assembly on 31 January 2014.

discuss, on a regular basis, the extent to which internal remedies in international organisations are compatible with human rights.

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III. [Draft] CDDH comments on Recommendation 2123(2018) – “Strengthening international regulations against trade in goods used for torture and the death penalty”

1. The Steering Committee for Human Rights (CDDH) takes note of Parliamentary Assembly Recommendation 2123(2018) – *“Strengthening international regulations against trade in goods used for torture and the death penalty”*.

2. It takes note of the legal and political instruments that have already been adopted in different fora in this respect as well as the call of the Assembly that member States put in place a legislation regulating trade in goods used for the death penalty, torture and inhuman or degrading treatment or punishment.

3. In respect of this last point, the CDDH recalls that paragraphs 24 and 27 of the Appendix to Recommendation CM/Res(2016)3 of the Committee of Ministers to member States on human rights and business already contain specific provisions for member States aimed at preventing business enterprises domiciled within their jurisdiction from trading in such goods and at informing business enterprises of potential human rights consequences of their operations²⁵.

4. Furthermore, it notes that the Council of Europe already recognised the need to exchange information between the States on the existing best practices on combating the trafficking in goods used for torture and the death penalty. Indeed, an online Platform on Human Rights and Business is currently being put in place within the departments of the Organisation in charge of cooperation in the human rights field (HELP Programme).

5. The CDDH believes it important that this Platform, which it initiated, becomes a powerful tool for:

- (i) raising awareness of member State authorities about international and regional mechanisms for the protection of human rights and about the reports of independent organs of the civil society as regards the situation of the death penalty, torture and inhuman or degrading treatment or punishment in third

²⁵ *Paragraph 24*: “In order not to facilitate the administration of capital punishment or torture in third countries by providing goods which could be used to carry out such acts, member States should ensure that business enterprises domiciled within their jurisdiction do not trade in goods which have no practical use other than for the purpose of capital punishment, torture, or other cruel, inhuman or degrading treatment or punishment”;

Paragraph 27: “Member States should be in a position to inform business enterprises referred to in paragraph 20 on the potential human rights consequences of carrying out operations in conflict-affected areas, and in other sectors or areas that involve a high risk of a negative impact on human rights, and provide assistance to these business enterprises, in line with relevant international instruments, such as the OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones or the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. Member States should facilitate business enterprises’ adherence to sector-specific standards, such as the Voluntary Principles on Security and Human Rights and the International Code of Conduct for Private Security Providers. Member States should consider performing a sector-risk analysis in order to identify the sectors in which activities are most at risk of having a negative impact on human rights”.

countries which they should take into account when examining requests for authorisation of trade in relevant goods;

- (ii) providing periodic reports on the States' regulatory activities in this area, including decisions given on requests for authorisation of trade in specific goods and the specific reasons for those decisions.

6. Finally, the CDDH supports the call for ratification by all member States of the Council of Europe, of Protocols Nos. 6²⁶ and 13²⁷ to the Convention.

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IV. [Draft] CDDH comments on Recommendation 2125 (2018) – “State of emergency: Proportionality issues concerning derogations under Article 15 of the European Convention on Human Rights”

1. The Steering Committee for Human Rights (CDDH) takes note of Parliamentary Assembly Recommendation 2125 (2018) – “*State of emergency: Proportionality issues concerning derogations under Article 15 of the European Convention on Human Rights*”. It considers that the Assembly addresses therein an important challenge which the system of protection of human rights as guaranteed by the Convention is currently facing.

2. Indeed the CDDH notes with concern that States increasingly need to consider having recourse to their right of derogation. It draws attention to the update, in April 2018, of the factsheet “Derogation in time of emergency”, published by the European Court of Human Rights²⁸.

3. The CDDH recalls that:

- (i) Under Article 15 of the Convention, any High Contracting Party has the right, in time of war or public emergency threatening the life of the nation, to take measures derogating from its obligations under the Convention, other than those listed in paragraph 2 of that Article, provided that such measures are strictly proportionate to the exigencies of the situation and that they do not conflict with other obligations under international law²⁹.
- (ii) Even if in this matter the European Court of Human Rights has recognised a margin of appreciation to the States to decide on the application of Article 15, this margin is subject to the supervision by the Court. In determining whether a State has gone beyond what is strictly required, the Court gives appropriate weight to factors such as the nature of the rights affected by the derogation, the circumstances leading to, and the duration of, the emergency situation³⁰. Even if there is such situation as to justify

²⁶ To date: 46 ratifications and 1 signature not followed by ratification.

²⁷ To date: 44 ratifications and 1 signature not followed by ratification.

²⁸ European Court of Human Rights, Press Unit, Factsheet “Derogation in time of emergency”, April 2018.

²⁹ See, e.g., *Şahin Alpay v. Turkey*, no. 16538/17, 20 March 2018, § 74.

³⁰ See *Brannigan and McBride v. the United Kingdom*, nos. 14553/89 and 14554/89, 25 May 1993, § 43; *A. and Others v. the United Kingdom* [GC], no. 3455/05, 19 February 2009, § 173.

derogation from obligations under the Convention, the derogating measures have to address it adequately and rationally and must not be disproportionate³¹.

- (iii) [With regard to the assessment of the proportionality of measures restricting the exercise of rights or freedoms under the Convention, it is to be noted that, as recalled in the recent Copenhagen Declaration³², where a balancing exercise has been undertaken at the national level in conformity with the criteria laid down in the Court's jurisprudence, the Court has generally indicated that it will not substitute its own assessment for that of the domestic courts, unless there are strong reasons for doing so.³³]

4. The CDDH further recalls that in its opinion CDL-AD(2016)010 on "The Legal Framework Governing Curfews", adopted at its 107th Plenary Session (Venice, 10-11 June 2016), the European Commission for Democracy Through Law (Venice Commission) also pointed out (§ 95) that although it was a state's duty to muster all its resources to combat the terrorist threat and protect its citizens from such attacks, it was also crucial in a democratic society to strike the right balance between security needs and the exercise of rights and freedoms, showing due regard for the requirements of the rule of law.

5. The CDDH does not consider it necessary to examine the State practice in relation to derogations from the Convention in order to identify legal standards and good practice and, on that basis, adopt a recommendation to member States on the matter. According to the CDDH, the aforementioned Court's factsheet, as updated in April 2018, provides sufficient information.

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V. [Draft] CDDH comments on Recommendation 2126 (2018) – "Humanitarian needs and rights of internally displaced persons in Europe"

1. The Steering Committee for Human Rights (CDDH) takes note of Parliamentary Assembly Recommendation 2126 (2018) – *"Humanitarian needs and rights of internally displaced persons in Europe"*.

2. The CDDH recalls that the European Court of Human Rights has recognised that the arbitrary displacement of persons from their habitual place of residence is in breach of the European Convention on Human Rights³⁴, and that it is crucial to guarantee their human rights³⁵ and to execute judgments regarding them.

³¹ Compare *A. and Others v. the United Kingdom*, cited above, § 174.

³² Adopted at the High Level Conference on 12 and 13 April 2018 at the initiative of the Danish Chairmanship of the Committee of Ministers.

³³ See § 28 (c) of the Declaration.

³⁴ See *Loizidou v. Turkey (GC)*, no. 15318/89, 18 December 1996 and *Sargsyan v. Azerbaijan (GC)*, no. 40167/06, 16 June 2015.

³⁵ In particular the right to life, the prohibition of torture, the right to liberty and security, the right to respect for private and family life and the protection of property (Articles 2, 3, 5 and 8 of the Convention and Article 1 of Protocol No 1 to the Convention). Recommendation Rec(2006)6 of the Committee of Ministers to member States on internally displaced persons recalls that "the national authorities of the member States on the territory of which internal displacement is taking place are primarily responsible for the protection and assistance of the internally displaced persons, notwithstanding the rights and obligations of other states or appropriate international organisations under international law".

3. The 11th Annual Report of the Committee of Ministers on the supervision of execution of judgments and decisions of the Court³⁶ mentions a number of pending cases concerning internally displaced people³⁷. These cases reveal important and complex structural problems, related, for many of them, to situations in post-conflict regions, demanding time and efforts in many respects. In this context, the recent Copenhagen Declaration³⁸ has strongly encouraged the Committee of Ministers to continue to use all the tools at its disposal when performing the important task of supervising the execution of judgments, including the procedures under Article 46 (3) and (4) of the Convention, keeping in mind that it was foreseen that these procedures would be used sparingly and in exceptional circumstances respectively.³⁹

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VI. [Draft] CDDH comments on Recommendation 2129 (2018) – “Copenhagen Declaration, appreciation and follow-up”

1. The Steering Committee for Human Rights (CDDH) takes note of Parliamentary Assembly Recommendation 2129(2018) - *“Copenhagen Declaration, appreciation and follow-up”*.

2. It notes that, at its 128th ministerial session (18 May 2018) the Committee of Ministers endorsed the Declaration adopted on 13 April 2018 and invited the various stakeholders to implement it.

3. The CDDH is convinced that the Committee of Ministers will continue to take concrete and effective measures for addressing problems relating to the ineffectiveness of national implementation of the Convention, including the insufficient execution of the judgments of the Court. It also welcomes the willingness of the Assembly to continue its commitment in the process of the reform of the Convention system, in order to protect its fundamental principles, in particular the independence of the Court, to reinforce the role of national parliaments and to compel member States to account for the respect of their obligations.

4. In this respect, the CDDH considers it crucial that the Assembly continues ensuring that national parliaments effectively implement Recommendation CM/Rec(2004)05 of the Committee of Ministers to the member States on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights.⁴⁰

³⁶ <https://rm.coe.int/annual-report-2017/16807af92b>

³⁷ See e.g. *Mirzayev v. Azerbaijan* (group), no. 50187/06 (non-enforcement of final judicial decisions ordering the eviction of internally displaced persons who were unlawfully occupying the applicant's apartment), *Chiragov and Others v. Armenia* (GC) (group), no. 13216/05, 16 June 2015 (impossibility for displaced persons to gain access, in the context of the Nagorno-Karabakh conflict, to their homes and properties in Nagorno-Karabakh and the surrounding territories), *Sargsyan v. Azerbaijan* (GC), no.40167/06, 16 June 2015 (impossibility for displaced persons to gain access, in the context of the Nagorno-Karabakh conflict, to their homes and properties and relatives' graves in the disputed area near Nagorno-Karabakh on the territory of Azerbaijan) or *Xenides-Arestis v. Turkey* (group), no. 46347/99 (continuous denial of the applicants' access to their properties).

³⁸ Adopted at the High Level Conference meeting on 12 and 13 April 2018 at the initiative of the Danish Chairmanship of the Committee of Ministers.

³⁹ See § 24 of the Declaration.

⁴⁰ Adopted by the Committee of Ministers on 12 May 2004 at its 114th Session.

5. Indeed, as it is stated in the Copenhagen Declaration, the CDDH considers it of outmost importance that national parliaments are appropriately involved in ensuring that policies and legislation comply fully with the Convention, including by checking, in a systematic manner and at an early stage of the process, the compatibility of draft legislation and administrative practice in the light of the Court's jurisprudence⁴¹. Furthermore, the CDDH recalls the importance of the involvement of national parliaments in the process of the execution of judgments, as it has been highlighted in the Brussels Declaration.⁴²

6. Finally, the CDDH considers that the Copenhagen Declaration, which stresses the importance of an effective protection of the Convention standards at the national level and of a full, effective and prompt execution of the judgments of the European Court of Human Rights, and which develops, in the light of Protocol No. 15 to the Convention, the ideas concerning the principle of subsidiarity and the margin of appreciation of national courts, provides useful elements to the reflection that the Committee of Ministers must conclude before the end of 2019 on whether the measures taken until now are sufficient to ensure sustainable functioning of the Convention's control mechanism or whether it is appropriate to envisage more significant changes.

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VII. [Draft] CDDH comments on Recommendation 2130 (2018) – “Legal challenges related to hybrid war and human rights obligations”

1. The Steering Committee for Human Rights (CDDH) takes note of Parliamentary Assembly Recommendation 2130 (2018) – “*Legal challenges related to hybrid war and human rights obligations*”.

2. The CDDH shares the concerns of the Assembly concerning in particular cyber-attacks and mass disinformation campaigns and notes that the Council of Europe⁴³ combats the threat of cybercrime through different legal instruments, while respecting and encouraging freedom of expression and activity of the media and internet users.

3. In this context, the CDDH recalls that its Drafting Group on Freedom of Expression and links to other Human Rights is addressing misinformation in order to identify good practices to combat it in culturally diverse societies.

4. As to the development of legal standards to combat the threats of hybrid war, the CDDH stresses the importance of the Budapest Convention on Cybercrime⁴⁴, the only binding international instrument on this issue, and notes that an adequate monitoring is carried out on a regular basis⁴⁵ to guarantee compliance with its provisions. Further ratifications of this

⁴¹ See § 16 (b) of the Declaration.

⁴² Adopted at the High-level Conference on 26 and 27 March 2015 at the initiative of the Belgian Chairmanship of the Committee of Ministers. See in particular § 2 (h) of section B of the Action Plan appended to the Declaration.

⁴³ See the work of its Information Society Department within the Directorate General of Human Rights and Rule of Law.

⁴⁴ <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680081561>

⁴⁵ Article 46 of the Budapest Convention sets out that the Parties shall, as appropriate, consult periodically with a view to facilitating the effective use and implementation of this Convention, including the identification of any problems thereof, the exchange of information on significant legal, policy or technological developments pertaining to cybercrime and the collection of evidence in electronic form and consideration of possible supplementation or

instrument would be preferable rather than drafting any new binding legal instrument on the issue.

5. The CDDH would be ready, if appropriate, to contribute to the work of the competent bodies on this matter which the Committee of Ministers would deem necessary.

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